
IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

MAR 29 2016

U.S. Court of Appeals
Fourth Circuit

THEODORE G. HARTSOCK, JR.
as Personal Representative of the Estate of Sarah Mills Hartsock
(Estate of Sarah Mills Hartsock),

Plaintiff-Appellee,

v.

GOODYEAR DUNLOP TIRES NORTH AMERICA LTD.,
a foreign corporation;
THE GOODYEAR TIRE & RUBBER COMPANY,
a foreign corporation,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA AT CHARLESTON

JOINT APPENDIX - VOLUME II OF IV - PUBLIC
(Pages 355 - 747)

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:13-cv-00419-PMD

THEODORE G. HARTSOCK, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
SARAH MILLS HARTSOCK,)
)
Plaintiff,)
)
-versus-)
)
GOODYEAR DUNLOP TIRES NORTH AMERICA,)
LTD., a foreign corporation; and THE GOODYEAR)
TIRE & RUBBER COMPANY, a foreign corporation,)
)
Defendants.)
)

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION
FOR PROTECTIVE ORDER PURSUANT TO LOCAL RULE 30.04(C) AND
RULE 26(C)(1) CONCERNING THE DEPOSITION OF TERRY PARSONS (DE 103)**

I. Nature of the pending motion.

Terrence Parsons (Parsons), a current employee of Defendant The Goodyear Tire & Rubber Company (Goodyear) was deposed on April 17, 2015. Plaintiff noticed his deposition in an individual capacity (DE 103-2).¹ Defendants also designated Parsons to testify on three topics as a Rule 30(b)(6), Fed.R.Civ.P., witness.²

¹ This was an updated notice. Parsons' deposition was originally noticed for February 10, 2014 (DE 70-13).

² Parsons Deposition 51:24-57:2; DE 70-14; DE 70-15. Defendants have designated the entirety of Parsons' deposition confidential pending further review of the transcript. Parsons Deposition 5:23-6:10. In accordance with Confidentiality Order ¶6(2), Plaintiff has not attached any deposition excerpts hereto as exhibits, but has footnoted the deposition excerpts and will provide all excerpts referenced in the footnotes to the Court for *in camera* review.

Defendants seek a protective order concerning categories of information upon which Plaintiff sought deposition testimony from Parsons. The categories of information upon which Parsons was instructed not to answer questions concern:

1. His examination of the subject tire³;
2. The butyl content of the subject tire's inner liner⁴; and
3. Information contained in the deposition of James Koerner, reviewed by Parsons, concerning a National Highway Transportation Safety Administration (NHTSA) early warning notice.⁵

Plaintiff is not pursuing category 3 because Parsons has no independent knowledge concerning that category.

II. Examination of the subject tire.

A. Procedural history

Defendants' counsel instructed Parsons not to answer any questions concerning his examination of the subject tire. The question of whether Parsons may be deposed concerning his examination of the subject tire has been twice briefed and twice ruled upon by this Court (DE 83; DE 92). In ruling on Defendants' motion for reconsideration (DE 92, pp. 5-6) the Court stated:

Rule 26(b)(4)(D) protects from deposition "an expert who has been retained or specially employed by another party in anticipation of litigation." As the Court explained in its Order, "there is no indication in the record that [Mr. Stroble and Mr. Parsons] have any duties or responsibilities other than analyzing . . . tires and field scenes" that are involved with either a claim or an accident. May 5, 2014 Order 8. The Court thus found that Mr. Parsons and Mr. Stroble—who are regular, salaried employees of Defendants whose regular job duties include

³ Parsons Deposition 13:22-14:4 and 26:10-23.

⁴ Parsons Deposition 46:19-48:3.

⁵ Parsons Deposition 102:6-105:7.

evaluating all tires that are involved in litigation—have been neither retained nor specially employed by Defendants in anticipation of litigation. If Defendants wish to invoke the protection of Rule 26(b)(4)(D) for non-testifying experts, they could retain an outside expert to evaluate the tires involved in litigation—which is clearly contemplated by the rule—or they could modify their policies and procedures to ensure that in-house experts who are asked to consult in a litigation matter are truly “specially employed” on the matter and not simply performing the same duties they are assigned to do as a matter of course.

Moreover, the Court finds unpersuasive Defendants’ assertion that they will suffer manifest injustice when the depositions go forward because Plaintiff will be “afforded unfair, unwarranted, and unjustified access to the opinions, thoughts, and mental impressions of their adversary in high stakes litigations.” Mot. for Reconsideration 12. Although the Court has held that Mr. Stroble and Mr. Parsons are not protected from deposition under Rule 26(b)(4)(D), nothing in the May 5 Order prevents Defendants from properly asserting the protections of the attorney-client privilege or the work-product doctrine with respect to certain testimony or documents specifically related to this litigation.

(footnote omitted). Defendants attempt to use the last sentence as an all encompassing exception to vitiate the core ruling of the Court – that Parsons could be deposed concerning the tire inspection.

In discussing the basis for his instruction not to answer questions concerning Parsons’ inspection of the subject tire, Mr. Toole asked: “Is there a specific section that says you get to ask questions of this witness, a nondisclosed expert witness into the substance of what his inspection found pursuant to request for counsel to do the inspection?” This is the very issue raised by Mr. Toole during the April 15, 2014 hearing on Defendants’ Motion for Protective Order (DE 67):

Mr. Art -- it's listed as Art Strobel, it's Jim Strobel, they made a mistake in the notice. He is someone that is an in-house expert. He, as part of his job, inspects the tires that are at issue in this lawsuit. We've asked that they inspect those tires. He does that on a routine basis at the request of counsel and other instances where they're being sued in other instances. He's not been disclosed as an expert in this case, he's not an expert or a disclosed expert in this case, and until such time as he has been disclosed

as an expert in this case, we would ask the Court's indulgence and allow him not to be taken.

(Exhibit A, Hearing transcript, April 15, 2014, 23:12-22). In response to Mr. Toole's query during Parsons' deposition, Plaintiff's counsel read an excerpt of the May 8, 2014 Order into the record. Mr. Toole's final response was that he was basing his objection to all questions concerning the tire inspection on the Court's inclusion of language in the order allowing for the possibility of objections based on attorney-client privilege or work-product.⁶

A few minutes after the initial exchange the question of Parsons' examination of the subject tire was again the point of inquiry. This time it arose in the context of conclusions reached by Parsons as a result of the examination, Mr. Toole again instructed the witness not to answer any questions. Again he asserted that "the inspection [was] done pursuant to request of counsel of my firm and the legal department for this case, exactly."⁷

Defendants are again pursuing the position that the "inspection of the Tire at Issue was done at the request of counsel, in preparation for litigation and should be protected under Rule 26(b)(4)(D), Fed.R.Civ.P.," although this time they add the work-product doctrine and attorney-client privilege to their arguments to support the instructions not to answer questions. (DE 103, p.6). They even go so far as to attach exhibits in support of the current motion that were prepared for purposes of past filings on this issue:

- Exhibit C-2 previously submitted as DE 67-3 (Defendants' original Motion for Protective Order);

⁶ Parsons Deposition 14:1-18:7.

⁷ Parsons Deposition 26:13-23.

- Exhibit C-3 previously submitted as DE 80-3 (Defendants' Supplemental Brief Concerning In-House Consultants);
- Exhibit C-4 previously submitted as DE 84-1 (Defendants' Motion for Reconsideration of the May 5, 2014 Order);
- Exhibit D previously submitted as DE 80-4.

To the extent that the Court takes this matter up for reconsideration, Plaintiff incorporates by reference his previous filings on this issue. (DE 70, §C.2, pp. 16-18; DE 81; DE 90). As additional factual support for the Court's previous rulings, Plaintiff submits Parsons most recent testimony concerning his general job description and those within his department who examined the subject tire.⁸ This testimony is consistent with his prior testimony that served as a foundation for the Court's previous rulings.

B. Privileges

It is difficult to say what privileges might have been brought to bear on what topics because Defendants' counsel precluded all discussion of Parsons' tire examination and the conclusions he reached as a result of the examination. Despite this, the principles of the work-product and attorney-client privileges can be generally canvassed and applied to the limited questions asked.

i. Work-product privilege

The work-product privilege is comprised of two types of materials, tangible documents and things and intangibles. The analysis of these materials varies in the foundation of the privilege.

⁸ Parsons Deposition 19:19-22:4.

1. Tangible documents and things

Discovery of documents and tangible things "prepared in anticipation of litigation or for trial by or for another party or its representative" are ordinarily not discoverable. Rule 26(b)(3)(A), Fed.R.Civ.P. However, "work-product immunity never reaches to protect from discovery actual evidence taken from the scene or facts about the scene or incident. Facts stated by witnesses may be discovered by deposition or interrogatory." Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Murray Sheet Metal Co., Inc., 967 F.2d 980, 984 n.5 (4th Cir. 1982). Further, the work-product privilege does not protect materials prepared in the ordinary course of business. Id.

2. Intangible

Discovery of intangible work-product is not based on Rule 26, Fed.R.Civ.P., but on case law arising from Hickman v. Taylor, 329 U.S. 495 (1947). Maynard v. Whirlpool Corp., 160 F.R.D. 85 (S.D. W.Va. 1995). "The test for whether a claim of work-product privilege is viable is 'whether, in light of the nature of the [intangible work product] and the factual situation in the particular case, the [information] can fairly be said to have been prepared or obtained because of the prospect of litigation.'" Alexander v. Fed. Bureau of Investigation, 192 F.R.D. 12, 17 (D.C. Cir. 2000), quoting Senate of Puerto Rico v. United States Dep't of Justice, 262 U.S. App. D.C. 166, 823 F.2d 574, 587 n.42 (D.C. Cir. 1987).

Parsons was not asked to provide any reports or documents prepared at the request of counsel. He was not asked anything concerning his interaction with counsel or possible instructions received from counsel. He was not asked any question that would reveal the opinions, impressions or strategy of Defendants' counsel. He was

asked about information he gathered as part of his ordinary, day-to-day job activities. The fact that his inspection of the tire was undertaken as part of his ordinary, day-to-day job activities has been previously ruled up by the Court: Parsons and a coworker were determined to be "regular, salaried employees of Defendants whose regular job duties include evaluating all tires that are involved in litigation." (DE 92, p. 5). Accordingly, the work-product privilege does not apply to the facts and information sought from Parsons in his deposition on April 17, 2015.

ii. Attorney-client privilege

The attorney-client privilege protects the disclosure of communications between the attorney and client. The privilege does not protect any facts that are the subject of the communications:

"[The] protection of the privilege extends only to communications and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney." Philadelphia v. Westinghouse Electric Corp., 205 F.Supp. 830, 831 (ED Pa. 1962).

Upjohn Co. v. United States, 449 U.S. 383, 395-396 (1980).

Parsons was asked what he did in his examination of the subject tire and what he concluded about the cause of the subject tire's failure as result of his examination. He was not asked to reveal any communications with counsel concerning his examination or conclusions. The facts concerning what he did in examining the subject tire, the facts he determined from examining the subject tire, and the conclusions he reached as a result of his examination of the subject tire, are not protected by the attorney-client privilege.

Neither the work-product privilege nor the attorney-client privilege provided a well-founded basis for instructing Parsons not to answer questions concerning his inspection of the subject tire and the conclusions he reached as a result of that inspection. Defendants' motion should be denied and Plaintiff should be allowed to continue Parsons deposition to determine the facts and information that were withheld.

III. Inner liner butyl content.

Parsons was instructed not to answer questions concerning the butyl content of the inner liner of the subject tire. Plaintiff's main defect theories are that the design of the G670RV 295/80R22.5 tire, as well as its manufactured condition, allowed inflation pressurized air to migrate from the air chamber into the structure of the tire. The pressurized air in the tire structure and belts caused separations within the tire; interaction of the air with the compounds inside the tire caused those compounds to degrade, leading to separation of the tire plies and blowout. Two factors influence the ability of the air to migrate from the air chamber into the body of the tire; 1) the amount of butyl rubber in the compound of the inner liner, and 2) the thickness of the inner liner. Testimony of Defendants employees, coupled with Goodyear documents, has established that an inner liner gauge thinner than specified by the governing design specification required a tire to be scrapped.⁹ (DE 102-1 and supporting materials). It is Plaintiff's position, as set forth in his motion for summary judgment (DE 102), that the inner liner of the subject tire was thinner than its specification called for, therefore the subject tire should have been scrapped rather than sold.

⁹ Parsons Deposition 48:12-50:7 and 65:5-18.

Of equal importance to Plaintiff's defect theory is the rubber compound from which the inner liner was manufactured. Parsons acknowledged that the inner liner contained some percentage of butyl.¹⁰ He also testified that the butyl compounds are resistant to air permeation into the structure of the tire.¹¹ Whether the butyl content of this inner liner was 100 percent or 10 percent is relevant to the performance of the inner liner and additional design defects in the G670RV 295/80R22.5. Insufficient butyl content will contribute to intracarcass pressurization and the failure mode of the subject tire.¹²

Rule 26(c)(1)(G), Fed.R.Civ.P., provides in pertinent part:

The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way....

This section was added in 1970. The *Advisory Committee Notes, 1970 Amendment*, explained:

The new reference to trade secrets and other confidential commercial information reflects existing law. **The courts have not given trade secrets automatic and complete immunity** against disclosure, but have in each case weighed their claim to privacy against the need for disclosure. Frequently, they have been afforded a limited protection. See, e.g., Covey Oil Co. v Continental Oil Co., 340 F2d 993 (10th Cir 1965); Julius M. Ames Co. v Bostitch, Inc., 235 F Supp 856 (SD NY 1964).

(emphasis added).

¹⁰ Parsons Deposition 46:19-47:7.

¹¹ Parsons Deposition 219:6-13.

¹² Parsons Deposition 48:12-50:7.

To obtain a protective order under Rule 26(c), the party resisting discovery must establish that the information sought is covered by the rule and that it will be harmed by disclosure. See 8 Charles Alan Wright, et al., Federal Practice and Procedure § 2043, at 555-57 (2d ed. 1994). If this showing is made, the party seeking the materials then must establish that the information is sufficiently necessary and relevant to his case to outweigh the harm of disclosure. See id. at 559.

In re Wilson, 149 F.3d 249, 252 (4th Cir. 1998).

The necessity of a case by case analysis, as well as the differing results that may be obtained depending on the facts of the case, is provided by a comparison of Urbina v. Goodyear Tire & Rubber Company, 2009 U.S. Dist. LEXIS 17931 (C.D. Cal. 2009), to a case cited by Defendants, Hajek v. Kumho Tire Co., 2010 U.S. Dist. LEXIS 10551 (D. Neb. 2010, objections denied by 2010 U.S. Dist. LEXIS 32614 (D. Neb. 2010)). The Urbina court determined that it was appropriate to require Goodyear to disclose percentages of halogenated butyl used in the tire at issue in that case, noting that the broad protective order already in place would protect Goodyear's trade secret. In contrast the Hajek court determined Kumho would not be required to produce the formula for its skim stock rubber.

Plaintiff does not contend that the butyl content of the subject inner liner is not a trade secret. Plaintiff does contend that the butyl content of the subject inner liner is relevant to the proof of his case – it explains in whole or in part the reasons for the tire's failure and the manner in which the subject tire failed. The evidence adduced thus far in discovery establishes that the subject tire's inner liner did not meet the minimum gauge design specification for a G670RV 295/80R22.5 inner liner. Whether the butyl content was also below the design specification and the impact that has on the integrity of the tire's structure is equally relevant to Plaintiff's defect theory. The ability of Plaintiff to

prove his case outweighs the potential harm to Defendants from disclosure of the butyl content of the inner liner. Further, the protective order in place in this action will provide the protection Defendants seek for their trade secret.

IV. Conclusion.

Plaintiff requests that the Court enter an order denying Defendants' motion as to Parsons' inspection of the subject tire and conclusions reached as a result thereof and his knowledge of the butyl content of the G670RV 295/80R22.5 inner liner, and allowing Plaintiff to reconvene Parsons' deposition to inquire into these subjects.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

May 12, 2015

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

THEODORE G. HARTSOCK, JR., as :
personal representative of the :
Estate of Sarah Mills Hartsock :
vs. :
GOODYEAR DUNLOP TIRES NORTH :
AMERICA, LTD, et al. : 2:13 CV 419

Motions hearing in the above matter held Tuesday,
April 15th, 2014, commencing at 2:11 p.m., before the
Hon. P. Michael Duffy, in Courtroom I, United States
Courthouse, 85 Broad Street, Charleston, South Carolina,
29401.

APPEARANCES:

MIA L. MANESS, ESQ. and MARK C. TANENBAUM, ESQ.,
P.O. Box 20757, Charleston, SC, appeared for
plaintiff.

DONALD R. FOUNTAIN, JR., ESQ., 1919 N. Flager Dr.,
West Palm Beach, FL, appeared for plaintiff.

CURTIS L. OTT, ESQ., P.O. Box 7368, Columbia, SC,
appeared for defendants.

M. GARY TOOLE, ESQ. and BIANCA G. LISTON, ESQ.,
P.O. Box 4924, Orlando, FL, appeared for
defendants.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
P.O. Box 835
Charleston, SC 29402
843/723-2208

Exhibit A

1 would ask that the Court not allow 800 pages or three days,
2 but we don't have any problem with producing him.

3 THE COURT: All right.

4 MR. TOOLE: Mr. Badzinski, B-A-D-Z-I-N-S-K-I, and Jim
5 Koerner, were involved in the G670 295 program, but this is
6 some we feel like are cumulative, and they're asking and
7 talking about the design and the manufacture. If they feel
8 that after a 30(b)(6) they need them, too, again I would ask
9 that they come back.

10 THE COURT: That objection is overruled as to those
11 two. Go ahead.

12 MR. TOOLE: All right. Mr. Art -- it's listed as Art
13 Strobel, it's Jim Strobel, they made a mistake in the notice.
14 He is someone that is an in-house expert. He, as part of his
15 job, inspects the tires that are at issue in this lawsuit.
16 We've asked that they inspect those tires. He does that on a
17 routine basis at the request of counsel and other instances
18 where they're being sued in other instances. He's not been
19 disclosed as an expert in this case, he's not an expert or a
20 disclosed expert in this case, and until such time as he has
21 been disclosed as an expert in this case, we would ask the
22 Court's indulgence and allow him not to be taken.

23 THE COURT: Wait a minute. He's an employee of your
24 company, isn't he?

25 MR. TOOLE: Yes, sir.

* * *

ATTACHMENT 1

PRESENTED FOR INCAMERA REVIEW

DOCKET 109

ATT. 1: DEPOSITION EXCERPTS OF TERRY PARSONS, 4/17/2015

SEE JOINT APPENDIX VOL. IV, PP. 1084-1116

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:13-cv-00419-PMD

THEODORE G. HARTSOCK, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
SARAH MILLS HARTSOCK,)
)
Plaintiff,)
)
-versus-)
)
GOODYEAR DUNLOP TIRES NORTH AMERICA,)
LTD., a foreign corporation; and THE GOODYEAR)
TIRE & RUBBER COMPANY, a foreign corporation,)
)
Defendants.)
)

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION
FOR PROTECTIVE ORDER PURSUANT TO LOCAL RULE 30.04(C) AND
RULE 26(C)(1) CONCERNING THE DEPOSITION OF DENISE SEILER (DE 107)**

I. Nature of the pending motion.

Denise Seiler (Seiler), a current employee of Defendant Goodyear Dunlop Tires North America, LTD. (Dunlop)¹ was deposed on April 24, 2015, as a Rule 30(b)(6), Fed.R.Civ.P., designee. (Exhibit A, Toole letter of 1/30/15). Seiler has worked for Dunlop since May 2007 at the Tonawanda plant where the subject tire was manufactured. She has never been deposed before.²

¹ Seiler Deposition 9:16-17. Defendants have designated the entirety of Seiler's deposition confidential pending further review of the transcript. Seiler Deposition 9:21-10:9. In accordance with Confidentiality Order ¶6(2), Plaintiff has not attached any deposition excerpts hereto as exhibits, but has footnoted the deposition excerpts and will provide all excerpts referenced in the footnotes to the Court for *in camera* review.

² Seiler Deposition 10:11-19, 11:5-10, 13:17-25 and 20:15-20.

Defendants seek a protective order concerning areas of inquiry addressed in Seiler's deposition: Those areas of inquiry are:

1. The butyl content of the subject tire's inner liner³; and
2. Generally, preparation undertaken by Seiler for her deposition.⁴

Plaintiff is not opposing issues concerning Seiler's preparation for her deposition because his counsel never asked her to reveal discussions she had with defense counsel and because she either ultimately responded to the questions asked or the response became irrelevant. The only area of inquiry raised in Defendants' motion which Plaintiff opposes concerns the butyl content of the subject tire's inner liner.

II. Inner liner butyl content.

Seiler was instructed not to answer questions concerning the butyl content of the inner liner of the subject tire. Plaintiff's main defect theories are that the design of the G670RV 295/80R22.5 tire, as well as its manufactured condition, allowed inflation pressurized air to migrate from the air chamber into the structure of the tire. The pressurized air in the tire structure and belts caused separations within the tire; interaction of the air with the compounds inside the tire caused those compounds to degrade, leading to separation of the tire plies and blowout. Two factors influence the ability of the air to migrate from the air chamber into the body of the tire; 1) the amount of butyl rubber in the compound of the inner liner, and 2) the thickness of the inner liner. Testimony of Defendants employees, coupled with Goodyear documents, has established that an inner liner gauge thinner than specified by the governing design

³ Seiler Deposition 131:23-132:13.

⁴ Seiler Deposition 30:14-34:5, 102:11-104:5, 170:12-174:21, 182:5-183:14 and 219:19-221:5.

specification required a tire to be scrapped.⁵ (DE 102-1 and supporting materials). It is Plaintiff's position, as set forth in his motion for summary judgment (DE 102), that the inner liner of the subject tire was thinner than its specification called for, therefore the subject tire should have been scrapped rather than sold.⁶

Of equal importance to Plaintiff's defect theory is the rubber compound from which the inner liner was manufactured. Seiler testified that the inner liner is the only component of the tire that contains butyl.⁷ She also testified, as did Terrance Parsons, that the butyl compounds are resistant to air permeation into the structure of the tire.⁸ Whether the butyl content of this inner liner was 100 percent or 10 percent is relevant to the performance of the inner liner and additional design defects in the G670RV 295/80R22.5. Insufficient butyl content will contribute to intracarcass pressurization and the failure mode of the subject tire.⁹

Rule 26(c)(1)(G), Fed.R.Civ.P., provides in pertinent part:

The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way....

This section was added in 1970. The *Advisory Committee Notes, 1970 Amendment*, explained:

⁵ Parsons Deposition 48:12-50:7 and 65:5-18.

⁶ Badzinski Deposition 137:3-14 and 376:18-385:14.

⁷ Seiler Deposition 131:11-22 and 133:18-134:8.

⁸ Seiler Deposition 131:17-18 and 134:9-17; Parsons Deposition 219:6-13.

⁹ Seiler Deposition 216:9-218:14; Parsons Deposition 48:12-50:7.

The new reference to trade secrets and other confidential commercial information reflects existing law. **The courts have not given trade secrets automatic and complete immunity** against disclosure, but have in each case weighed their claim to privacy against the need for disclosure. Frequently, they have been afforded a limited protection. See, e.g., Covey Oil Co. v Continental Oil Co., 340 F2d 993 (10th Cir 1965); Julius M. Ames Co. v Bostitch, Inc., 235 F Supp 856 (SD NY 1964).

(emphasis added).

To obtain a protective order under Rule 26(c), the party resisting discovery must establish that the information sought is covered by the rule and that it will be harmed by disclosure. See 8 Charles Alan Wright, et al., Federal Practice and Procedure § 2043, at 555-57 (2d ed. 1994). If this showing is made, the party seeking the materials then must establish that the information is sufficiently necessary and relevant to his case to outweigh the harm of disclosure. See id. at 559.

In re Wilson, 149 F.3d 249, 252 (4th Cir. 1998).

The necessity of a case by case analysis, as well as the differing results that may be obtained depending on the facts of the case, is provided by a comparison of Urbina v. Goodyear Tire & Rubber Company, 2009 U.S. Dist. LEXIS 17931 (C.D. Cal. 2009), to a case cited by Defendants, Hajek v. Kumho Tire Co., 2010 U.S. Dist. LEXIS 10551 (D. Neb. 2010, objections denied by 2010 U.S. Dist. LEXIS 32614 (D. Neb. 2010)). The Urbina court determined that it was appropriate to require Goodyear to disclose percentages of halogenated butyl used in the tire at issue in that case, noting that the broad protective order already in place would protect Goodyear's trade secret. In contrast the Hajek court determined Kumho would not be required to produce the formula for its skim stock rubber.

Plaintiff does not contend that the butyl content of the subject inner liner is not a trade secret. Plaintiff does contend that the butyl content of the subject inner liner is relevant to the proof of his case – it explains in whole or in part the reasons for the tire's

failure and the manner in which the subject tire failed. The evidence adduced thus far in discovery establishes that the subject tire's inner liner did not meet the minimum gauge design specification for a G670RV 295/80R22.5 inner liner. Whether the butyl content was also below the design specification and the impact that has on the integrity of the tire's structure is equally relevant to Plaintiff's defect theory. The ability of Plaintiff to prove his case outweighs the potential harm to Defendants from disclosure of the butyl content of the inner liner. Further, the protective order in place in this action will provide the protection Defendants seek for their trade secret.

III. Conclusion.

Plaintiff requests that the Court enter an order denying Defendants' motion as to Seiler's knowledge of the butyl content of the G670RV 295/80R22.5 inner liner, and allowing Plaintiff to reconvene Seiler's deposition to inquire into this subject.

Respectfully submitted,

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EXHIBITS SUBMITTED FOR INCAMERA REVIEW

DOCKET 114

**DEPOSITION EXCERPTS OF DENISE REBA SEILER, 4/24/2015
[DKT114]**

SEE JOINT APPENDIX VOL. IV, PP. 1117-1147

**DEPOSITION EXCERPTS OF TERRY PARSONS, 4/17/15
[DKT114 FN 5]**

SEE JOINT APPENDIX VOL. IV, PP. 1148-1153

**DEPOSITION EXCERPTS OF DANIEL BADZINSKI, 4/23/15
[DKT114 FN 6]**

SEE JOINT APPENDIX VOL. IV, PP. 1154-1165

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

**DEFENDANTS' REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
THEIR MOTION FOR PROTECTIVE ORDER PURSUANT
TO LOCAL RULE 30.04(C) AND RULE 26(C)(1) CONCERNING THE DEPOSITION
OF TERRY PARSONS AND SUPPORTING MEMORANDUM OF LAW (DE 103, 109)**

Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY ("Defendants"), by and through their undersigned counsel, hereby serve this their Reply to Plaintiff's Memorandum in Opposition to Defendants' Motion for Protective Order Pursuant to Local Rule 30.04(c), and Rule 26(c)(1) Concerning Terry Parsons (DE 103, 109).¹ Defendants recognize that replies are discouraged; however, Defendants submit this brief to frame the proper issue before the Court in light of Plaintiff's argument.

¹ Defendants attach hereto as **Exhibit A and Exhibit A Conf** the final transcript pages containing the questions relevant to this motion.

I. Testimony Related to Parsons' Examination of the Tire

Plaintiff takes the position that testimony concerning the examination of the Tire at Issue by Messrs. Stroble and Parsons "has been twice briefed and twice ruled upon by this Court." DE 109 at p. 2. However, this is not so. The issue which was before the Court was whether an in-house engineer can be considered "specially employed" under Rule 26(b)(4)(D), FED.R.CIV.P., thus precluding a deposition by Plaintiff in this case.

At all times material, Defendants took the position that the deposition of Jim Stroble, Goodyear's in-house engineer, was precluded by Rule 26(b)(4)(D), FED.R.CIV.P. and that based on Mr. Parsons' previous employment in the department that designed the Tire at Issue², his deposition was limited to "non-privileged work product type areas." See e.g. DE 67 at p.19; DE 67-7 at pg. 2; DE 71; DE 79, at 24:8-13; 24:15-25:6.

After the April 15, 2014 hearing, the parties both submitted case law on this sole issue. (DE 80, 81). In fact, in Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion for Protective Order – Jim Stroble, Plaintiff argued that "[t]he issue at hand is whether Jim Stroble, a current employee of Defendant Goodyear Dunlop Tires North America, Ltd. (Goodyear) who has examined the subject tire and its companion tires as part of his regular, day-to-day employment **can be shielded from deposition** as a non-testifying expert; the issue is not whether an adverse party may seek discovery from a non-testifying expert, nor is it whether an in-house employee can be designated as an expert." (DE 81 at p.2). (Emphasis added).

On May 5, 2015, this Court entered its Order and ruled that "neither Mr. Stroble nor any other engineer in [the Product Analysis] department (including Mr. Parsons) is 'retained or

² This matter allegedly involves a particular tire G670RV 295/80R22.5 bearing DOT No. DANU2CAW3503 which designation indicates a particular tire manufactured by Goodyear Dunlop Tires North America, LTD ("GDTNA") at its Tonawanda (Buffalo), New York plant during the 35th week of 2003.

‘specially employed’ within the meaning of Rule 26(b)(4)(D).” DE 83 at p.8. Defendants thereafter filed a Motion for Reconsideration, wherein it sought reconsideration on the Court’s ruling and whether it intended to strip away “work product protection from the efforts of in-house technical experts who work at the direction of counsel...”. DE 84 at p. 2. In denying Defendants’ Motion for Reconsideration, the Court clarified its ruling and unequivocally stated that:

Although the Court has held that Mr. Stroble and Mr. Parsons are not protected from deposition under Rule 26(b)(4)(D), **nothing in the May 5 Order prevents Defendants from properly asserting the protections of the attorney-client privilege or the work-product doctrine** with respect to certain testimony or documents specifically related to this litigation.

DE 92 at p. 6. (Emphasis added).

As provided in the supplemental brief on this issue, Plaintiff argued that “[t]he Product Analysis Department, as a **matter of routine**, looks at all tires involved in an adjustment claim or accident reported to Defendant Goodyear that fit these criteria: a) all personal injury claims; and b) all property damage claims exceeding a value of \$15,000.” DE 81 at p. 2. With that premise, Plaintiff now claims that he is entitled to depose Mr. Parsons on facts pertaining to his inspection of the tires/rims, as well as any expert opinions rendered based on this examination.³ As provided in Hickman v. Taylor, 329 U.S. 495, 516 (1947) (Jackson, J., concurring), “[d]iscovery was hardly intended to enable a learned profession to perform its functions . . . on wits borrowed from the adversary.” This is exactly what Plaintiff’s counsel is attempting to do here. See Exhibit A at 26:13 (“Q. Did you reach a conclusion about the cause of the failure of the Hartsock tire?”).

Further and contrary to Plaintiff’s assertions, this litigation and the eventual examination

³ Mr. Parsons’ deposition, consisting of approximately 280 pages, started at 9:00 a.m. and ended at 4:38 p.m.

of the tires and rims are not routine and arise directly from the request of legal counsel in defense of this litigation. As provided herein, the tires and rims were obtained in this litigation, the companion tires and rims are partly owned by Defendants, these tires and rims are the subject of multiple preservation orders, and all tires and rims were the subject of a Tire Inspection Agreement outlining the manner and method of the non-destructive testing.⁴

Further supporting the privileged nature of testimony pertaining to the examination of the tires and rims in this litigation is the Affidavit of James Stroble. (DE 103-6 at ¶¶ 9-10). Mr. Stroble clearly affirms that at the request of counsel, Mr. Stroble, along with the other engineers in his department, examined, photographed and x-rayed the subject tire and companion tires. Mr. Stroble also travelled to Piedmont, Alabama and inspected the vehicle, companion tires and

⁴ -Although Plaintiff's counsel had possession of the Tire at Issue, it filed a Motion to Preserve, to which Defendants consented, to prevent the sale of the subject RV involved in the July 5, 2010 accident, as well as the remaining other seven tires installed on the RV. (DE 9);

-On February 27, 2013, an Order was entered preserving the "RV including, but not limited to, its rims, wheels and tires...". (DE 10);

-A Joint Motion to Modify Protective Order to Preserve Certain Physical Evidence was filed by the parties on April 25, 2013. (DE 28). After a joint inspection of the RV and installed tires were completed, the parties reached an agreement with the owner of the RV to purchase the remaining tires. A modification of the previous Order (DE 10) was requested allowing the parties to purchase the tires and rims present on the RV without violation of this Court's preservation Order. (DE 28).

-This Court granted the modification on April 26, 2013 (DE 29) and permitted the parties to purchase the tires and rims installed on the RV from the current owner of the RV, Mr. Fagan.

Exhibit B;

-The Plaintiff "agreed to make the subject tire, which he has control of, available for inspection by Defendants" and entered into a Tire Inspection Agreement. The Agreement also provided that "Defendants and Plaintiff together have joint ownership of the rims and other seven tires from the Recreational Vehicle ("RV") that collided with the Plaintiff's decedent. The parties have agreed to make those available for inspection, first by the Plaintiff and then by the Defendants." (DE 103-7 Exhibit D);

-On July 9, 2013, Plaintiff's expert, Carlson Engineering, shipped the six companion tires (LR1 Inner and Outer; RR1 Inner and Outer; LR2; and RR2) to Goodyear. **Exhibit C** (HartsockPL-0201-0204); and

-On July 30, 2013, Plaintiff's expert, McSwain Engineering, Inc., shipped the incident tire; tire pieces; the L.F. wheel and the R.F. tire/wheel assembly to Goodyear. **Exhibit D** (HartsockPL-0205-0206).

wheels, including the left front wheel. He indicated that, with respect to this matter, he had “no reason to believe that the Product Analysis Department would have examined the subject tire or performed any of the work described above.” *Id.* at ¶ 11. Mr. Parsons, in his Affidavit (DE 103-4 at ¶ 15), stated that “Mr. Stroble and I examined the Tire at Issue, as well as the companion tires. This examination was completed at the request of legal counsel and in anticipation of and/or preparation for litigation.” Further, counsel requested the examination of the tires and rims to assist in the defense of this lawsuit and to develop a defense to Plaintiff’s claims in this litigation. This is likely the same reason why Plaintiff’s counsel had the very same tires and rims sent to his experts prior to their delivery to Defendants and the same reason why, in response to First Interrogatories Nos. 20 and 21 seeking Plaintiff’s manufacturing or design defect claims, he asserted the work-product privilege, consulting expert-privilege and objected as the Interrogatories seek the “premature disclosure of expert opinions in that testifying experts have not been identified and no reports have been prepared.” **Exhibit E.**

To allow Plaintiff to discover the results of Mr. Parsons’ inspection, as well as communications between counsel concerning the examination and possible defenses in this case, would be prejudicial. To provide anything less than full protection would evade the protections afforded under the work-product doctrine and attorney-client privilege. For a document or information to be created “in anticipation of litigation,” it must be “prepared because of the prospect of litigation when the preparer faces an actual claim following an actual event or series of events that reasonably could result in litigation.” Nat’l Union Fire Ins. Co. v. Murray Sheet Metal Co., 967 F.2d 980, 984 (4th Cir. 1992). There can be no question here that the inspection of the tires and rims in this matter resulted in response to the lawsuit Plaintiff filed against Defendants. After the filing of this lawsuit, the parties jointly acquired the companion tires and

rims from the RV owner. The affirmations of Messrs. Stroble and Parsons, the facts leading to Goodyear's ultimate inspection of the tires and rims and the ultimate opinions rendered by Goodyear's in-house engineers based on these inspections, as well as any communications with counsel, warrant work-product protection⁵ and attorney-client protection.

II. Plaintiff Has Failed to Meet His Burden to Seek Discovery of Trade Secrets

Discovery of the percentage of the halobutyl content of a tire is a core trade secret to tire manufacturers, including Goodyear. In his Opposition, Plaintiff states, without evidentiary support, that the halobutyl content of the inner liner is relevant to his defect claim. Plaintiff, however, has not provided any Affidavits from his experts explaining how this information is relevant and necessary in order to render their opinions in this case. Further, Plaintiff has not provided any evidence refuting Mr. Parsons' statement that "[t]here is no methodology via 'reverse engineering' or otherwise to determine if the rubber in the tire at issue conforms to the rubber formulas after curing" and that "[d]isclosure of Goodyear's rubber compound formulas is ... not necessary to make a determination regarding whether a particular tire was improperly manufactured." DE 103-3 at ¶ 16.

"The general rule concerning discovery of trade secrets in cases before the federal courts is succinctly stated in 4 Moore, Federal Practice, para. 26.60[4], at 242-45 (2d ed. 1970).

No absolute privilege protects trade secrets from disclosure through the discovery process. If the information sought is relevant and necessary, at the discovery stage of the litigation, to the preparation of the case of the applicant therefor, disclosure

⁵ As provided in In Re Allen, 106 F.3d 582, 607 (4th Cir. 1997), in order to overcome the work-product privilege afforded to the inspection of the tires and rims performed by Goodyear's Product Analysis Department at the request of legal counsel, Plaintiff must show both a substantial need and the inability to secure the substantial equivalent of the materials by alternate means without undue hardship. Plaintiff has failed to make any such showing and cannot make such a showing as he has retained his own experts who likewise have examined the tires and rims.

will be required. However, the courts are loath to order disclosure of trade secrets **absent a clear showing of an immediate need for the information requested.**"

Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146, 1185 (D.S.C. 1974). (Emphasis added).

The South Carolina Supreme Court case of Laffitte v. Bridgestone Corp., 674 S.E.2d 154, 162-163 (S.C. 2008) citing to Duplan, is also instructive. There, the South Carolina Supreme Court held that "regarding the requirement that the trade secret information must be "relevant," we hold that the information **must be relevant** not only to the general subject matter of the litigation, **but also relevant** specifically to the issues involved in the litigation." It further opined that "[f]or the trade secret information to be deemed 'necessary,' we hold that the party seeking the information 'cannot merely assert unfairness but **must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits** to the point that an unjust result is a real, rather than a merely possible, threat.'" Id. at 163. (Emphasis added). In the case at bar, no such clear showing has been made. Plaintiff has failed to show that the immediate need for this information is necessary and that he will be impaired in the presentation of his case on the merits. It can only be assumed by the filing of Plaintiff's Motion for Summary Judgment on his defect theory⁶, that Plaintiff cannot take such a position. See Rule 11(b)(2) and (3), Fed.R.Civ.P.⁷

⁶ Defendants oppose the Motion for Summary Judgment and refer this Court to its opposition filed under DE 110.

⁷ "By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney ... certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances... (2) the claims, defenses, and other legal contentions are warranted by existing law... (3) the factual contentions have evidentiary support ...".

Plaintiff also refers to the case of Urbina v. The Goodyear Tire & Rubber Company, 2009 U.S. Dist. LEXIS 17931 (C.D. Cal. 2009) where the Court ordered production of the percentage of halogenated butyl used in the formulas for rubber compounds to manufacture the inner liner. However, this case is distinguishable from Urbina where the plaintiff submitted an Affidavit from his expert to meet his burden to seek such information. As articulated therein, the plaintiff bore the burden of establishing that “the trade secret sought is relevant and necessary to the prosecution or defense of the case **before a court** is justified in ordering disclosure.” Id. at *11. (Citation omitted) (emphasis added). Despite Plaintiff’s unsupported *ipse dixit*, he has not made the requisite showing to permit discovery of core trade secret information.

III. Conclusion

WHEREFORE, Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY, respectfully request that this Court enter an Order granting their Motion for Protective Order Pursuant to Local Rule 30.04(C), preserving the objections and sustaining counsel’s instructions to the witness, Terry Parsons, not to answer questions protected by the attorney-client privilege and/or work-product doctrine; and, pursuant to Rule 26(c)(1), Fed.R.Civ.P, to prevent disclosure of highly confidential trade secrets.

s/ Curtis L. Ott
 Curtis L. Ott (Fed. I.D. No. 5939)
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Attorneys for Defendants

May 22, 2015

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr.,)
et al,)

)
Plaintiffs,)

)
VS.) Civil Action No.

) 2:13-cv-00419-PMD
Goodyear Dunlop tires North)
America, Ltd., et al,)
Defendants.)

DEPOSITION OF TERRY PARSONS

April 17, 2015

The videotaped deposition of Terry Parsons, taken by Bonnie M. Mako, a Stenotype Reporter and Notary Public within and for the State of Ohio, at Akron/Canton Airport, Canton, Ohio, commencing at 9:04.a.m., on the date above set forth.

1 2007 to present, under your job description as the chief
2 tire analysis engineer in the product analysis department
3 is, quote, laboratory field inspections and analysis of
4 claim tires. That's what it says, right?

5 A. Yes, that's what it says.

6 Q. That's the only thing it says, right?

7 MR. TOOLE: Objection. Form.

8 A. Yes. That's a bullet that is a brief
9 description of the activity of that department.

10 Q. And there is no real dispute that one of your
11 main job duties is to examine claim tires that come to
12 Goodyear where somebody says I bought a Goodyear tire, I
13 had a problem that either caused property damage to my
14 vehicle, in excess of 15 thousand, it caused an injury or
15 caused a death, true?

16 MR. TOOLE: Objection. Form.

17 A. We examine claim tires as you described. If
18 it's a property damage claim in excess of 15 thousand, if
19 it's a bodily injury or a death, we'll examine those.
20 We'll also examine tires that are involved in a
21 litigation of some kind.

22 Q. And you did that for this case. You examined
23 the tire that was the subject of this case, the Hartsock
24 case, right?

25 A. Yes, I did.

1 **Q. Can you tell us about your examination, what**
2 **you did?**

3 MR. TOOLE: I'm instructing you
4 not to answer.

5 MR. FOUNTAIN: On what basis?

6 MR. TOOLE: He was asked to
7 inspect that tire based on my request or my
8 law firm's request and the request of the
9 legal department at Goodyear Tire.

10 MR. FOUNTAIN: Judge Duffy already
11 covered this topic in two different orders
12 where you tried to prevent that from
13 happening and he said no.

14 MR. TOOLE: Well, if you want to
15 cite the order to me that says he is entitled
16 to get into our inspection --

17 MR. FOUNTAIN: Sure. Let me see.
18 I've marked as Exhibit No. 3 to the
19 deposition, and also Exhibit No. 4, two
20 different orders from Judge Duffy. Exhibit
21 No. 3 is dated May the 5th, 2014. Then you
22 filed a Motion for Rehearing or requested
23 further briefing opportunity and the judge
24 entered an order on 6/16/2014. Those are
25 Exhibits 3 and 4.

1 And I don't want to argue with you
2 about it. If you want to tell him not to
3 answer, it's something we'll bring up with
4 the court but I don't think you are entitled
5 to do that.

6 MR. TOOLE: And what specifically
7 is the section of the order that you are
8 talking about?

9 MR. FOUNTAIN: All of it, but --

10 MR. TOOLE: Is there a specific
11 section that says you get to ask questions of
12 this witness, a nondisclosed expert witness
13 into the substance of what his inspection
14 found pursuant to request for counsel to do
15 the inspection?

16 MR. FOUNTAIN: I presume you
17 already read the orders. Let me just to cite
18 Exhibit No. 4. This is Judge Duffy's Order
19 on your Motion for Reconsideration dated June
20 16, 2014, page 5 of the Order. Quote, There
21 is no indication in the record that Mr.
22 Stroble and Mr. Parsons have any duty --

23 MR. TOOLE: I'm sorry. If you can
24 tell me what page.

25 MR. FOUNTAIN: We are on page 5,

1 Exhibit No. 4, quote --

2 MR. TOOLE: Hold on.

3 MR. FOUNTAIN: Bottom half of the
4 page. There is no indication in the record
5 that Mr. Stroble and Mr. Parsons have any
6 duties or responsibilities other than
7 analyzing tires and field scenes, that are
8 involved with either a claim or an accident.

9 May 5, 2014 Order, Paragraph 8. The
10 Court thus found that Mr. Parsons and Mr.
11 Stroble - who are regular, salaried employees
12 of Defendants whose regular job duties
13 include evaluating all tires that are
14 involved in litigation - have been neither
15 retained nor specially employed by Defendants
16 in anticipation of litigation.

17 If Defendants wish to invoke the
18 protection of Rule 26(b)(4)(d) for
19 non-testifying experts, they could retain an
20 outside expert to evaluate the tires involved
21 in litigation - which is clearly contemplated
22 by the rule - or they could modify their
23 policies and procedures to ensure that
24 in-house experts who are asked to consult in
25 a litigation matters are truly "specially

1 employed" on the matter and not simply
2 performing the same duties they are assigned
3 to do as a matter of course. Footnote No. 6.

4 Page 7 of the Order, Conclusion.

5 For the foregoing reasons --

6 MR. TOOLE: Wait. I'm sorry.

7 Can you just hold on. Okay.

8 MR. FOUNTAIN: Page 7 of the
9 Order, Conclusion. For the foregoing
10 reasons, it is ordered that Defendants'
11 Motion for Reconsideration is denied.

12 I think Judge Duffy made it
13 abundantly clear that Mr. Parsons' duties are
14 the regular duties of his employment when he
15 inspected the tire in this case and I'm
16 entitled to inquire about it.

17 MR. TOOLE: Let me cite you back.
18 When you stopped reading, if we continued on
19 in that same paragraph on page 6. If you go
20 to the first real paragraph, if you go to the
21 fourth line. Although the Court has held
22 that Mr. Stroble and Mr. Parsons are not
23 protected from deposition under Rule
24 26(b)(4)(D), nothing in the May 5th Order
25 prevents the Defendants from properly

1 asserting the protections of the
2 attorney-client privilege or the work-product
3 doctrine with respect to certain testimony or
4 documents specifically related to this
5 litigation.

6 That's the basis for my
7 instruction.

8 **Q. (BY MR. FOUNTAIN) What is the date that you**
9 **examined the tire in this case?**

10 A. I don't recall exactly. I can guess, if
11 that's okay.

12 **Q. You can estimate. That would be great.**

13 MR. TOOLE: He doesn't want you
14 to guess. If you know, you can tell him.
15 Let me finish. If you know, you can tell
16 him. If you don't know, tell him you are not
17 certain, you don't know.

18 A. I believe it was in the summer time of 2013.

19 **Q. When you examined the tire in this case, you**
20 **did so for the purpose of determining why it failed,**
21 **right?**

22 A. The purpose of any examination would be to go
23 through the entire product, the entire evidence, and see
24 if there is anything you could determine as to a cause.

25 **Q. And when you examined the tire in this case,**

1 you did it as part of your normal duties as the director
2 of the department, true?

3 MR. TOOLE: Objection. Form.

4 A. That would not be true. I'm not the director
5 of the department or was not the director of the
6 department.

7 Q. Let me restate the question.

8 When you examined the tire in this case to
9 determine why it failed, you did that as part of your
10 regular job duties as the chief tire analysis engineer
11 for the product analysis department of Goodyear, right?

12 MR. TOOLE: Objection. Form.

13 A. You are citing the title correctly but I
14 disagree that I was directing that department.

15 Q. Okay. I didn't mean to suggest you were
16 directing that department. Let's have a clean question.

17 I'm looking at your curriculum vitae which is
18 in front of you, Exhibit No. 7. Here is my question.

19 When you examined the tire in this case, the
20 Hartsock case, to determine why it failed, your
21 examination was part of your regular job duties as the,
22 quote, chief tire analysis engineer product analysis
23 department, true?

24 MR. TOOLE: Objection. Form.

25 A. I would modify that just a little bit. I

1 would say that I did that as part of one of the chief
2 tire analysis engineers in that department.

3 Q. And the policy is that when a claim tire
4 comes in like the one in this case, it gets examined not
5 just by you but also by the other people in your
6 department, right?

7 MR. TOOLE: Objection. Form.

8 A. Our procedure is such that when an
9 examination is undertaken, it will be a -- a lead
10 examiner will start the examination. If it's a large or
11 complex enough examination, there could actually be two
12 people teaming up on that examination. When that
13 examination is finished, all of the chief tire analysis
14 engineers in the department plus the manager will review
15 the examination. The only person who doesn't review it
16 would be our administrative assistant.

17 Q. Were you the lead examiner on this case?

18 A. I believe so.

19 Q. And you were the lead examiner when you
20 examined the Ken Green tire as well, right?

21 A. I believe so.

22 Q. Have you been the lead examiner on all of the
23 G670 claim tires that have come in because you were
24 involved in the supervisory capacity of the design?

25 MR. TOOLE: Objection. Form.

1 A. No.

2 Q. Have you been the lead examiner on all of the
3 G670 tires that are claim tires in size 295/80R22.5?

4 MR. TOOLE: Objection. Form.

5 A. No.

6 Q. All right. Who else examined the accident
7 tire from this case other than yourself in your
8 department?

9 A. It would have been all of the tire, chief
10 tire analysis engineers plus the manager.

11 Q. Can you give me their names?

12 A. At that time it would have been Mr. Stroble
13 as the manager, and Mr. Dancy, Mr. Lawrence, and Mr.
14 Bryant.

15 Q. Okay. Did you say Dancy like D-a-n --

16 A. D-a-n-c-y.

17 Q. Can you give me their first names, please?

18 Mr. Dancy's first name?

19 A. Mr. Dancy's first name is Joe.

20 Q. Mr. Lawrence's first name?

21 A. Mr. Lawrence's first name is Jay.

22 Q. And the other gentleman?

23 A. Mr. Bryant's first name is Mike.

24 Q. Anybody else that would have examined the
25 tire in this case with the purpose of determining the

1 **cause of the failure?**

2 A. In addition to Mr. Stroble?

3 Q. Yes, sir.

4 A. No.

5 Q. Now, you have equipment available to you when
6 you examine tires in your lab, right?

7 A. We do.

8 Q. And you have microscopes available, right?

9 A. We do.

10 Q. And when you are tasked with attempting to
11 determine the thickness or the gauge of a component such
12 as the inner liner, do you use a microscope to do that?

13 A. The determination of liner gauge is not a
14 very good practice in a tire analysis system because
15 normally when liner is breached or a tire has been
16 subjected to run flat or disablement condition, there is
17 a lot of damage in a lot of areas, that's not the way to
18 determine inner liner gauge thickness.

19 Q. So how do you do that?

20 MR. TOOLE: Are you asking him
21 about this specific inspection or are you
22 asking him generically about how you would
23 typically try to determine that?

24 MR. FOUNTAIN: First, generically.

25 A. Are you talking about generically how we

1 would determine it when we were producing the product in
2 the factory?

3 Q. No. Let me ask you a clean question.

4 When you are examining a claim tire, how do
5 you go about measuring or determining the thickness or
6 gauge of the inner liner? What process do you use?

7 A. The process that you would use if you're
8 analyzing a tire that's been disabled would be to see if
9 you could find an area that's not damaged. And if it is
10 in a way that you can measure it, you could either
11 measure it with a caliber or a snap gauge.

12 Q. Okay.

13 A. But I need to caution that if it's damaged,
14 that's a very inaccurate measurement.

15 Q. And when you say a caliber, you are talking
16 about a handheld device where that measures the thickness
17 of something?

18 A. Yes.

19 Q. And a snap gauge is another handheld device,
20 right?

21 A. It is.

22 Q. But you do have microscopic capability in
23 your lab, right?

24 A. We have microscopic capability. I don't know
25 if we have capability to do scaling on that microscope.

1 Q. Okay. You do have a microscope called a
2 Keyence, right?

3 A. We do.

4 Q. And are you not aware that that microscope
5 has scaling ability on it?

6 MR. TOOLE: Objection. Form.

7 Asked and answered.

8 A. I'm not aware of that ability.

9 Q. Have you ever used the microscope in your
10 lab, the Keyence microscope, to measure a component in a
11 claim tire inner liner?

12 A. Are you asking in any case?

13 Q. Yes, sir.

14 A. I've attempted to get a gauge measurement by
15 the use of a handheld scale and the assistance of the
16 microscope.

17 Q. So the answer is, yes, I have used the
18 Keyence microscope in the lab to assist me in determining
19 inner liner gauge in a claim tire?

20 MR. TOOLE: Objection. Form.

21 A. My answer would be I've used the microscope
22 with the assistance of a handheld scale to try to
23 determine if I could see the liner gauge. And again, I
24 need to caution that each tire is different when it's
25 been through a condition of disablement and you would

1 have to find a spot where that measurement makes sense or
2 is deemed accurate.

3 Q. And do you have some scientific basis for
4 your statement that you think that a tire that's been
5 through a disablement, had a blowout separation, that the
6 inner liner gauge has changed from the pre-accident
7 condition?

8 MR. TOOLE: Objection. Form.

9 A. The only that thing I have to support that
10 would be my experience looking at tires and inner liners
11 on tires for a number of years.

12 Q. So for example, you've never actually tested
13 your theory. You've never taken a tire with a known
14 inner liner gauge of "X", run it through a disablement
15 and then done an analysis to determine whether or not the
16 inner liner changed vis-a-vis or as a result of the
17 disablement?

18 MR. TOOLE: Objection. Form.

19 A. I've not conducted the experiment you've
20 described. However, I do know that inner liner once
21 stretched doesn't tend to return to its former shape.

22 Q. How far does it have to be stretched before
23 it won't return to its former shape?

24 A. I don't have that information.

25 Q. Do you know the inner liner compound in this

1 case -- for the tire in this case?

2 A. I know where the inner liner is and what it
3 is. I would have to refer to the specs to have a
4 compound.

5 Q. And do you have any data on how far the inner
6 liner that was used in the tire in this case can be
7 stretched before it won't return to its original
8 dimension when the stress is released?

9 A. I don't have any data on that, no.

10 Q. Did you attempt to measure the inner liner
11 thickness for the Hartsock tire?

12 MR. TOOLE: Don't answer.

13 Q. Did you reach a conclusion about the cause of
14 the failure of the Hartsock tire?

15 MR. TOOLE: Don't answer.

16 MR. FOUNTAIN: Gary, no point in
17 me going down the list, I've got a bunch of
18 questions to ask about that, if you are not
19 going to let him talk about anything about
20 the examination of the Hartsock tire.

21 MR. TOOLE: Of the inspection done
22 pursuant to request of counsel of my firm and
23 the legal department for this case, exactly.

24 Q. (BY MR. FOUNTAIN) All right. Let's move on
25 to another topic. Tell me what you did in order to

1 **prepare yourself to come to this deposition today.**

2 A. I met with counsel and we discussed some of
3 the exhibits. We reviewed depositions that I'd done.

4 **Q. Did you review your deposition from the case**
5 **of Ken Green versus Goodyear?**

6 A. Yes.

7 **Q. Did you review all three days of the**
8 **deposition?**

9 A. Yes.

10 **Q. Did you review any other materials from the**
11 **Ken Green case?**

12 MR. TOOLE: Are you saying did he
13 review all three with counsel or did he
14 review all three himself?

15 MR. FOUNTAIN: I didn't really
16 parcel that out or care. I just wanted to
17 know if he reviewed it.

18 MR. TOOLE: Okay. That's fine.

19 **Q. So we are clear, did you review anything else**
20 **other than your deposition from the Ken Green case?**

21 A. I reviewed with counsel the property damage
22 claims.

23 **Q. Okay. Property damage claims that were**
24 **listed in the Ken Green case or the property damage**
25 **claims in general?**

1 A. As I remember, it would have been the
2 property damage claims for this case, the Hartsock case.

3 Q. Okay. All right. Did you review the
4 deposition of Jim Koerner that was given in this case,
5 the Hartsock case?

6 A. I reviewed with counsel Mr. Koerner's
7 deposition.

8 Q. Any other depositions that you have reviewed
9 in order to prepare yourself for today other than your
10 deposition from the Ken Green case and Mr. Koerner's
11 deposition from this case?

12 A. I also reviewed with counsel Mr. Stroble's
13 deposition.

14 Q. Okay. Have you given any other depositions
15 in any case involving the G670 tire, other than when you
16 and I were there together?

17 A. As I recall, that case that you are talking
18 about, would have been the Ken Green case was the only
19 one that I've given a deposition on.

20 Q. Okay. Is the Goodyear G670 tire, size
21 295/80R22.5 still in production today at Goodyear's
22 Dunlop plant in Tonawanda, New York?

23 A. Yes.

24 Q. Do you know the current inner liner gauge or
25 thickness of the tire that's being produced today?

* * *

EXHIBIT A

SUBMITTED FOR IN CAMERA REVIEW

DOCKET 116

EX. A: DEPOSITION EXCERPTS OF TERRY PARSONS, 4/17/15

SEE JOINT APPENDIX VOL. IV, PP. 1166-1170



McDONALD TOOLE WIGGINS, P.A.
ATTORNEYS AT LAW

April 26, 2013

Charlie Fagan
Fagans Auto Parts
2417 U.S. 278
Piedmont, AL 36272

Ref: G003-10195
Dep:

Date: 26Apr13
Wgt: 1.00 LBS
DV: 0.00

SHIPPING: 13.50
SPECIAL: 8.53
HANDLING: 0.00
TOTAL: 22.03

Svcs: PRIORITY OVERNIGHT ASR
TRCK: 5443 0264 2691

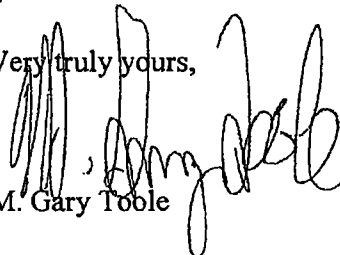
Re: *Hartsock v Goodyear*
Our File No.: G003-10195

Dear Mr. Fagan:

Please allow this letter to confirm that on Saturday, May 4, 2013 starting at 10:00am, you will have the subject RV pulled out and lifted for access and removal of the 6 rear tires and 2 front rims. In addition, payment will be made to you by both parties totaling \$6,500.00.

If this letter does not accurately reflect our agreement, please contact me immediately. Thank you for your cooperation in this matter.

Very truly yours,


M. Gary Toole

MGT/km

/193

Enclosure: Court Order Modifying February 27, 2013 Order to Preserve
Certain Physical Evidence



MCDONALD TOOLE WIGGINS, P.A.
ATTORNEYS AT LAW

April 26, 2013

Mia Lauren Maness, Esq.
Mark C. Tanenbaum, P.A.
241-243 East Bay Street
P.O. Box 20757
Charleston, SC 29413-0757

Re: *Hartsock v Goodyear*
Our File No.: G003-10195

Dear Ms. Maness:

Please allow this letter to confirm that on Saturday, May 4, 2013 starting at 10:00am, we have arranged for the subject vehicle inspection with tire and rim removal at Fagan's Auto Parts in Piedmont, Alabama. I have spoken with Mr. Fagan and he has agreed to move the vehicle out and have the vehicle lifted so that the tires and rims can be removed.

This will further confirm that your investigators will be in attendance with a check made payable to Fagans Auto Parts in the amount of \$3,250.00. In addition, your investigators will deliver the 6 rear tires and 2 front rims to your experts for inspection. Upon completion, your experts will deliver the 6 rear tires and 2 front rims to Goodyear.

If this letter does not accurately reflect our agreement, please contact me immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Gary Toole", is written over a horizontal line. Below the signature, the name "M. Gary Toole" is printed in a standard font.

M. Gary Toole

MGT/km

//192

101028 (7-11)

FROM:

Carlson Engineering

1548-A S Euclid Ave

Tucson, AZ 85713

No. 4213

SIZE: 295/75R22.5 144/144L

TYPE: TOYO M147 DSOC II Technology

VEHICLE POSITION: LR1 Inner

SERIAL: 3C371L7 4806

CUSTOMER NAME: Hartsock

TOWN:

STATE: SC

TO:

THE GOODYEAR TIRE & RUBBER COMPANY
1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A,
FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM
AKRON, OHIO 44316-0001

SHIP - PROTECTIVE SIGNATURE

101028 (7-11)

FROM:

Carlson Engineering

1548-A S Euclid Ave.

Tucson, AZ 85713

No. 4214

SIZE: 295/80R22.5 LRH

TYPE: Goodyear G670RV

VEHICLE POSITION: LR1 Outer

SERIAL: DANU 2CAW 3603

CUSTOMER NAME: Hartsock

TOWN:

STATE: SC

TO:

THE GOODYEAR TIRE & RUBBER COMPANY
1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A,
FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM
AKRON, OHIO 44316-0001

SHIP - PROTECTIVE SIGNATURE

101028 (7-11)

FROM:

Carlson Engineering

1548-A S. Euclid Ave.

Tucson, AZ 85713

No. 4215

SIZE: 295/80R22.5 LRH

TYPE: Goodyear G670RV

VEHICLE POSITION: RR1 Inner

SERIAL: DANU 2CAW 3603

CUSTOMER:
NAME: Hartsock

TOWN:

STATE: SC

TO:

THE GOODYEAR TIRE & RUBBER COMPANY
1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A,
FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM
AKRON, OHIO 44316-0001

SHIP - PROTECTIVE SIGNATURE

101028 (7-11)

FROM:

Carlson Engineering

1548-A S. Euclid Ave.

Tucson, AZ 85713

No. 4217

SIZE: 295/80R22.5 LRH

TYPE: Goodyear G670RV

VEHICLE POSITION: RR2 Outer

SERIAL: DANU 2CAW 2407

CUSTOMER:
NAME: Hartsock

TOWN:

STATE: SC

TO:

THE GOODYEAR TIRE & RUBBER COMPANY
1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A,
FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM
AKRON, OHIO 44316-0001

SHIP - PROTECTIVE SIGNATURE

101028 (7-11)	No. 4218
FROM:	SIZE: 295/80R22.5 LRH
Carlson Engineering	TYPE: Goodyear G670RV
1548-A S. Euclid Ave.	VEHICLE POSITION: LR2
Tucson, AZ 85713	SERIAL: DANU 2CAW 4103
	CUSTOMER NAME: Hartsock
	TOWN: STATE: SC
TO:	
THE GOODYEAR TIRE & RUBBER COMPANY 1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A, FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM AKRON, OHIO 44316-0001	
SHIP - PROTECTIVE SIGNATURE	

101028 (7-11)	No. 4219
FROM:	SIZE: 295/80R22.5
Carlson Engineering	TYPE: Goodyear G670RV
1548-A S. Euclid Ave.	VEHICLE POSITION: RR2
Tucson, AZ 85713	SERIAL: DANU 2CAW 3603
	CUSTOMER NAME: Hartsock
	TOWN: STATE: SC
TO:	
THE GOODYEAR TIRE & RUBBER COMPANY 1376 TECHWAY DRIVE GATE, BLDG. 72 - TRC 530A, FOR DEPT. 461G - 3RD FLOOR LEGAL ROOM AKRON, OHIO 44316-0001	
SHIP - PROTECTIVE SIGNATURE	

McSwain Engineering, Inc.3320 McLemore Drive
P.O. Box 10888
Pensacola, Florida 32524-0888(850) 484-0506
FAX (850) 484-0508**EVIDENCE TRANSMITTAL FORM**

Date: 7/29/2013 Actual ship date July 30, 2013

Case #: M1136-EV HARTSOCK

Ship To: Goodyear Tire and Rubber Co.
1376 Techway Drive Gate, Akron OH 44316-0001

The following components were packaged and shipped by McSwain Engineering, Inc. Please verify that the itemized components have been received, sign your name, legibly print your name, mark that components have been inventoried, and return this document in the enclosed envelope. Call immediately for any concerns regarding the condition of these components.

Subject Goodyear L.F. Tire, DOT DANU 2CAW 3503, G670RV, 295/80R22.5 LRH

Subject Detached Tread/Belt and Misc. Tire Pieces (45), G670RV, 295/80R22.5 LRH

Subject L.F. Wheel

Subject Companion Goodyear R.F. Tire/Wheel Assembly, DOT Missing, Only 1 Sidewall and Portion of the Carcass remain of this Tire, G670RV, 295/80R22.5 LRH

<i>Ray Regimbal</i>
Packaged By / Date
RAY REGIMBAL
Verified By / Date
<i>UPS Signature Security Service</i>
Shipped Via.

Received By / Date
Printed Name
Components Inventoried: ☐ Yes ☐ No

409

HartsocKPL-0206

 Air Freight Services Air Waybill		SHIPMENT DATE 30JUL2013	PICKUP CONFIRMATION 302-829-111-2	ORIGIN 302-829-111-2	TRACKING NUMBER 302-829-111-2															
FOR MORE INFORMATION ups.com or 1-800-443-8379 (U.S. only)																				
1. SUBMITTER FROM UPS Supply Chain Solutions Account Number: 0 4 6 1 9 8 0 2 5 Enter Account Number: 8504840506 UPS Account Number: V 9 8 F 0 3 From (Your Name): RAY REGIMBAL Phone Number (Very Important): 8504840506 Company Name: MCSWAIN ENGINEERING, INC. Dept. or Floor: Address: 3320 MCLEMORE DRIVE City: PENSACOLA State/Prov.: FL ZIP/Postal Code (Required): 32514 Shipper's Reference: HARTSOCK																				
2. TO CONSIGNEE UPS Supply Chain Solutions Account Number: 0 4 6 1 9 8 0 2 5 Enter Account Number: 3307964652 UPS Account Number: Contact Name: THE GOODYEAR TIRE & RUBBER CO. Dept. or Floor: DEPT. 461G - 3RD FL LEGAL ROOM Address: 1376 TECHWAY DRIVE GATE BLDG. 72 - TRC 530A City: AKRON State/Prov.: OH ZIP/Postal Code (Required): 44316-0001 Consignee's Reference: 4232, 4233, 4234, 4235 Country: US																				
TRACKING NUMBER 302-829-111-2 NON-NEGOTIABLE AIR WAYBILL EXECUTIVE OFFICES: Alpharetta, GA 30005																				
SERVICES For Definition of Services: See ups.com U.S., Puerto Rico, & Canada: ☒ NEXT DAY AIR FREIGHT ☐ 2ND DAY AIR FREIGHT ☐ 3 DAY FREIGHT ** Non-Guaranteed: ☐ NEXT DAY AIR FREIGHT NGS ☐ 2ND DAY AIR FREIGHT NGS ☐ 3 DAY FREIGHT NGS ** International: ☐ EXPRESS FREIGHT ☐ AIR FREIGHT DIRECT ☐ AIR FREIGHT CONSOLIDATED ** Requires additional daylight in transit to some destinations. See ups.com for details. *** Guaranteed on-schedule delivery where such services are available. See ups.com for details.																				
SHIPMENT DETAILS <table border="1"> <thead> <tr> <th>PIECES</th> <th>LENGTH</th> <th>WIDTH</th> <th>HEIGHT</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>48</td> <td>40</td> <td>30</td> <td>PALLET</td> </tr> <tr> <td>1</td> <td>48</td> <td>40</td> <td>21</td> <td>PALLET</td> </tr> </tbody> </table> TOTAL PIECES: 2 TOTAL WEIGHT: 250 SPECIAL INSTRUCTIONS: SS SERVICE						PIECES	LENGTH	WIDTH	HEIGHT	DESCRIPTION	1	48	40	30	PALLET	1	48	40	21	PALLET
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DECLARED VALUE Declared Value: \$ Declared Value Limit: \$ UPS's liability shall be limited to the higher of \$50 per shipment or \$.50 per pound of cargo lost or damaged unless a higher amount is specified in the declared value box. If this shipment involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention or the Montreal Convention may apply. These Conventions govern and in most cases limit UPS's liability for loss, damage, or delay to cargo. Subject to this, UPS shall in no event be liable for any special, incidental, or consequential damages, and unless a higher value is declared and additional charge paid, UPS's liability shall be limited to the amounts set forth in the UPS Air Freight Terms and Conditions of Contract, available at ups.com . For international and Canadian shipments, exporter understands that commercial invoices and other documents may be required, and authorizes UPS to act as Forwarding Agent for export control and customs purposes. Shipper certifies that these commodities, technology or software were exported from the US in accordance with the Export Administration Regulations. Diversion contrary to law is prohibited.																				
SHIPPER'S AUTHORIZATION AND SIGNATURE Signature: X Date: Title: Company: Address: City: State: ZIP: Country: Phone: Fax: E-mail: Signature: Title: Company: Address: City: State: ZIP: Country: Phone: Fax: E-mail:																				

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No.: 2:13-cv-00419-PMD

**DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFF**

TO: MARK C. TANENBAUM, ESQUIRE, AND DAVID R. FOUNTAIN, JR.,
ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant Goodyear Dunlop Tires North America, LTD ("GDTNA"), by and through its undersigned counsel, propounds the following interrogatories to Plaintiff. The interrogatories should be answered separately and fully in writing under oath and a copy of your answers should be served upon counsel for Defendant within thirty (30) days after service herewith. GDTNA requests that these interrogatories be deemed to be of a continuing nature so as to require supplementation and amendment promptly, as needed, in order to comport with facts and information that is not known or available to Plaintiff when his initial answers to these interrogatories are served.

If any interrogatory cannot be answered in full, it should be answered to the extent possible and should set forth the reasons why it cannot be fully answered. If you refuse to answer any interrogatory in whole or in part, please set forth the factual basis for your refusal to answer, including any claim of privilege, in sufficient detail to permit the Court to adjudicate the

purchased (please state the exact dates), including the name and address of the person the tire was purchased from and who purchased the tire, as well as the amount paid to purchase each tire.

18. Please identify by name and address all persons or entities that performed maintenance, modification, alteration, service or repair on the recreational vehicle and tire at any time prior to the accident. As to each such person or entity, state the nature of the maintenance, modification, alteration, service or repair and the date it was performed.

19. Had the recreational vehicle or any of its component parts been involved in any earlier accidents? If so, please state the date of such accident(s), the place of the accident(s), and describe the nature and extent of any damage.

20. Do you contend that there was a manufacturing or design defect in the tire referenced in Plaintiff's Amended Complaint? If so, state whether it was a design defect or a manufacturing defect; what specific component or components of the tire is alleged to be defective; what the alleged defect is; and specify each and every fact, other than the mere occurrence of the incident that forms the basis of this lawsuit, relied upon you in support of such claim of defect.

21. If you contend there was a design or manufacturing defect in the tire in response to Interrogatory No. 20, state in detail and with specificity how the component or components of the tire alleged to be defective should have been designed or manufactured to avoid any defective condition which you contend existed.

22. Please provide the phone number(s) of any cellular or mobile phone Plaintiff's decedent used or owned at the time of the subject accident. For each number, please state the name and address of the account holder, account number, service provider, and dates of service.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

CIVIL ACTION NO.: 2:13-cv-00419-PMD

**THEODORE G. HARTSOCK, JR., AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF SARAH MILLS HARTSOCK,**

Plaintiff,

VS.

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD., a foreign corporation; and **THE GOODYEAR TIRE & RUBBER COMPANY**, a foreign corporation,

Defendants.

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) **PLAINTIFF'S ANSWERS TO**
) **DEFENDANT GOODYEAR DUNLOP**
) **TIRES NORTH AMERICA, LTD.'S**
) **FIRST SET OF INTERROGATORIES**
) **TO PLAINTIFF**
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TO: CURTIS L. OTT, ESQUIRE, GALLIVAN WHITE & BOYD, P.A., AND M. GARY TOOLE, ESQUIRE, McDONALD TOOLE WIGGINS, P.A., ATTORNEYS FOR DEFENDANTS:

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Theodore G. Hartsock, Jr., as Personal Representative of the Estate of Sarah Mills Hartsock answers Defendant Goodyear Dunlop Tires North America, Ltd. First Set of Interrogatories to Plaintiff as follows:

General Objections

Plaintiff objects to disclosing any communications and to identifying or producing any documents containing or reflecting communications protected by the attorney-client privilege or the work product of her attorneys. Plaintiff further objects to discovery requests, definitions or instructions that seek or purport to extend his obligation in

tire at any time prior to the accident. As to each such person or entity, state the nature of the maintenance, modification, alteration, service or repair and the date it was performed.

ANSWER: Plaintiff was not the owner of the recreational vehicle and the information available to him is limited to those documents listed on Exhibit A. See HartsockPL 0039/0092 and 0101/0129.

19. Had the recreational vehicle or any of its component parts been involved in any earlier accidents? If so, please state the date of such accident(s), the place of the accident(s), and describe the nature and extent of any damage.

ANSWER: Plaintiff was not the owner of the recreational vehicle and is not in possession of information responsive to this Interrogatory.

20. Do you contend that there was a manufacturing or design defect in the tire referenced in Plaintiff's Amended Complaint? If so, state whether it was a design defect or a manufacturing defect; what specific component or components of the tire is alleged to be defective; what the alleged defect is; and specify each and every fact, other than the mere occurrence of the incident that forms the basis of this lawsuit, relied upon you in support of such claim of defect.

ANSWER: Plaintiff objects to this Interrogatory to the extent that it seeks information protected by the work product privilege, and consulting expert privilege. Plaintiff also objects to this Interrogatory on the grounds that Defendants seek premature disclosure of expert opinions in that testifying experts have not yet been identified and no reports have been prepared. Discovery is ongoing and Defendants have produced no substantive documents to date. Plaintiff expects that production of

documents (design and manufacturing documents) will provide additional information regarding manufacturing and design defects. Subject to and without waiving these objections, the subject tire, a Goodyear G670RV 295/80R22.5, contained manufacturing and design defects, and was defective from a warnings perspective as well.

21. If you contend there was a design or manufacturing defect in the tire in response to Interrogatory No. 20, state in detail and with specificity how the component or components of the tire alleged to be defective should have been designed or manufactured to avoid any defective condition which you contend existed.

ANSWER: See Interrogatory Answer No. 20.

22. Please provide the phone number(s) of all cellular or mobile phone Plaintiff's decedent used or owned at the time of the subject accident. For each number, please state the name and address of the account holder, account number, service provider, and dates of service.

ANSWER: Plaintiff will provide this information upon receipt.

23. If you or anyone acting on your behalf has had any communications with GDTNA and/or The Goodyear Tire & Rubber Company or someone you believe or believed to be a representative of these entities with respect to any subject that is relevant to the claims made by you in this lawsuit, please state the date, circumstances, and substance of each such communication.

ANSWER: No.

[SIGNATURE ON FOLLOWING PAGE]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

**DEFENDANTS' REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
THEIR MOTION FOR PROTECTIVE ORDER PURSUANT
TO LOCAL RULE 30.04(C) AND RULE 26(C)(1)
CONCERNING THE DEPOSITION OF DENISE SEILER (DE 107, 114)**

Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY ("Defendants"), by and through their undersigned counsel, hereby serve this their Reply to Plaintiff's Memorandum in Opposition to Defendants' Motion for Protective Order Pursuant to Local Rule 30.04(c), and Rule 26(c)(1) Concerning Denise Seiler (DE 107, 114).¹ Defendants recognize that replies are discouraged; however to frame the proper issue before the Court in light of Plaintiff's argument and as the issue addressed herein concerning the instructions not to answer provided to Ms. Seiler² are the same concerning instructions provided to Terry Parsons, Defendants hereby adopt the arguments raised in Section II of their Reply to Plaintiff's Memorandum in Opposition to Defendants' Motion for Protective Order Concerning the Deposition of Terry Parsons filed on May 22, 2015 under DE 116, as if

¹ Defendants attach hereto as **Exhibit A Conf** the final transcript pages containing the questions relevant to this motion.

² Ms. Seiler's deposition, consisting of approximately 332 pages, started at 9:54 a.m. and ended at 5:12 p.m.

fully set forth herein.

III. Conclusion

WHEREFORE, Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY, respectfully request that this Court enter an Order granting their Motion for Protective Order Pursuant to Local Rule 30.04(C), preserving the objections and sustaining counsel's instructions to the witness, Denise Seiler, not to answer questions pursuant to Rule 26(c)(1), Fed.R.Civ.P, to prevent disclosure of highly confidential trade secrets.

s/ Curtis L. Ott

Curtis L. Ott (Fed. I.D. No. 5939)
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Tel: (407) 246-1800/FAX: (407) 246-1895

Attorneys for Defendants

May 29, 2015

Columbia, South Carolina

EXHIBIT A

DOCKET 117

SUBMITTED FOR IN CAMERA REVIEW

**EX. A: DEPOSITION EXCERPTS OF DENISE REBA SEILER,
4/24/15**

SEE JOINT APPENDIX VOL. IV, PP. 1171-1173

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

CIVIL ACTION NO.: 2:13-cv-00419-PMD

THEODORE G. HARTSOCK, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
SARAH MILLS HARTSOCK,)

Plaintiff,)

-versus-)

GOODYEAR DUNLOP TIRES NORTH AMERICA,)
LTD., a foreign corporation; and THE GOODYEAR)
TIRE & RUBBER COMPANY, a foreign corporation,)

Defendants.)
_____)

**PLAINTIFF'S DESIGNATION OF EXPERTS
AND CERTIFICATION OF COMPLIANCE WITH RULE 26(a)(2), FED.R.CIV.P.**

Pursuant to Rule 26(a)(2), Fed.R.Civ.P., and the Consent Fifth Amended Scheduling Order of March 9, 2015, the above-named Plaintiff discloses the following expert witnesses and certifies that the required disclosures have been made as to each:

- a) Oliver G. Wood, Jr., Ph.D.
P.O. Box 24677
Columbia, SC 29224

Dr. Wood is an economist. He is expected to testify concerning the Defendants ability to pay punitive damages. The materials he has reviewed and the opinions he has formed concerning Defendant's ability to pay punitive damages are set forth in his report of July 2, 2015 (Wood-0001/0011). His testimony will be based upon his knowledge, experience and training in the area. Dr. Wood's CV, testimony list, and fee

schedule are Bates numbered Wood-0012/0036.

b) L. Wayne McCracken, Jr., P.E.
McCracken Engineering
P.O. Box 17149
Chapel Hill, NC 27514

Mr. McCracken is a licensed professional engineer specializing in accident reconstruction. He will testify concerning his reconstruction of the subject incident, tire loading and alignment of the recreational vehicle, vehicle speed issues as to the recreational vehicle, vehicle control issues as to the recreational vehicle, and other similar incidents in which he has participated as an expert involving these issues. The materials he has reviewed and the opinions he has formed are set forth in his report of June 29, 2015 (McCracken-0001/0014). His testimony will be based upon his knowledge, experience and training in the area. Mr. McCracken's CV and testimony list are Bates numbered McCracken-0015/0025.¹ Mr. McCracken's hourly fee is included in his report.

c) Dennis Carlson, P.E.
Carlson Engineering, Inc.
1548-A South Euclid Avenue
Tuscon, AZ 85713

Mr. Carlson is a licensed professional engineer specializing in tire failure analysis. He will testify concerning the failure analysis he performed on the subject G670 RV 295/80R22.5 LRH tire. The materials he has reviewed and the opinions he has formed as to the tire failure are set forth in his report of July 2, 2015 (Carlson-0001/0052). Mr. Carlson's CV, testimony list, and fee schedule are Bates numbered Carlson-0053/0070.

¹ An updated testimony list will be provided for Mr. McCracken upon receipt.

d) Richard McSwain, Ph.D., P.E.
McSwain Engineering, Inc.
P.O. Box 10888
Pensacola, FL 32524-0888

Dr. McSwain is a licensed professional metallurgical engineer specializing in failure analysis and engineering investigation of failed and accident related components. He will testify concerning his examination, documentation and non-destructive measurement of the subject G670 RV 295/80R22.5 LRH tire, located on the left front of the recreational vehicle, as well as the right front tire from the same vehicle and other exemplar tires. The materials he has reviewed and the conclusions he has reached are set forth in his report dated July 2, 2015 (McSwain-0001/0380). Dr. McSwain's CV, testimony list, and fee schedule are Bates numbered McSwain-0381/0418.

MARK C. TANENBAUM, P.A.

By s/Mia Lauren Maness
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mark@tanenbaumlaw.com
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AND

**CLARK FOUNTAIN, LA VISTA, PRATHER,
KEEN & LITTKY-RUBIN**

DONALD R. FOUNTAIN, JR.
(admitted *pro hac vice*)
dfountain@clarkfountain.com
1919 N. Flagler Drive, 2nd Floor
West Palm Beach, FL 33407
Telephone: (561) 899-2100

ATTORNEYS FOR PLAINTIFF

July 6, 2015

F:\mcl\Hartsock v Goodyear\FACTS\Experts - Plaintiff\1-EXPERT DISCLOSURES\1- Plaintiff's Expert Designation final docx-7/6/2015 4 32 PM

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:13-cv-00419-PMD

THEODORE G. HARTSOCK, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
SARAH MILLS HARTSOCK,)
)
Plaintiff,)
)
-versus-)
)
GOODYEAR DUNLOP TIRES NORTH AMERICA,)
LTD., a foreign corporation; and THE GOODYEAR)
TIRE & RUBBER COMPANY, a foreign corporation,)
)
Defendants.)
_____)

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER
PURSUANT TO LOCAL RULE 30.04(C) AND
RULE 26(C)(1) AS REQUESTED BY THE COURT ON AUGUST 31, 2015

At the hearing held on August 31, 2015, the Court requested that the parties provide supplemental briefing on two issues: 1) the facts relevant to Terry Parsons' employment; and 2) whether Defendants will be compelled to produce the halobutyl formula for the inner liner of the subject tire.

I. Parsons' Employment as it Pertains to His Examination of the Subject Tire.

Terry Parsons (Parsons) is a current employee of Defendant The Goodyear Tire & Rubber Company (Goodyear). He has been deposed twice in connection with the

G670RV 295/80R22.5, load range H, tire and has provided five affidavits.¹ Of the affidavits submitted the ones dated February 5, 2014 and April 21, 2014 touch on matters concerning his employment.

His first deposition was in the case of Green v. Goodyear.² In Green Goodyear designated Parsons as its corporate representative pursuant to Rule 30(b)(6), Fed.R.Civ.P. He testified that his position with the company is as a Chief Tire Analysis Engineer in the Product Analysis Department. He described the work of his department and the process by which inspections are conducted. Goodyear's Product Analysis Department, headed by Jim Stroble (Stroble), examines all tires Goodyear receives notice of that are involved in adjustment claims where the property damage is in excess of \$15,000 or the incident resulted in personal injury or death. Where appropriate department engineers will go into the field and analyze tires/wheels or field scenes. If there are companion tires they also examine them. When a qualifying property damage or personal injury claim is received, a lead examiner is designated according to who among the engineers in the department is available. The lead examiner sets up a form that will be filled out with respect to the examination. Observations concerning the tire(s)

¹ Parsons Affidavit of November 21, 2011 submitted as DE 37-6;
Parsons Affidavit of August 12, 2013 submitted as DE 38-4, 57-1, 67-4, 76-12, 104-3, 105-4, 107-4, 108-1 and 110-8;
Parsons Affidavit of **February 5, 2014** submitted as DE 67-3, 103-4 and 104-8;
Parsons Affidavit of **April 21, 2014** submitted as DE 80-3 and 103-5; and
Parsons Affidavit of April 24, 2015 submitted as DE 103-3, 105-3, 107-3 and 108-3.

² Green v. Goodyear collectively refers to companion actions filed in Florida, Kenneth J. Green, Nicole Ammons as Personal Representative of the Estate of William Y. Green, deceased, and Katherine Youngblood, as Personal Representative for the Estate of Jean M. Hodgin, deceased, v. Goodyear et al. (Palm Beach County Circuit Court, Case Nos. 50-2010 CA 003001 XXXX MB; 50-2010 CA 003026 XXXX MB; and 50-2010 CA 016336 XXXX MB). The tire at issue in those actions was also a G670RV 295/80R22.5, load range H, manufactured in Buffalo, New York.

are recorded on the form and photographs are taken to document the observations. Although there is a lead examiner, it is the policy of the department that all analysts in the department, including Stroble, look at all tires that come in. He, Stroble and the other engineers employed in the Product Analysis Department examined the subject tire in Green, in accordance with the policy of the department. (Exhibit A, Parsons Deposition March 8, 2012, 11:10-16:13)³

When Parsons' deposition was noticed in the instant case, whether he would be deposed was the subject of a Motion for Protective Order filed by Defendants on February 5, 2014 (DE 67). Defendants sought to preclude his deposition on the ground that it was cumulative. (DE 67, p. 16-17). In that same motion, Defendants sought protection from deposition for his supervisor Stroble, claiming that Stroble's testimony is protected by the attorney-client privilege and work product doctrine because he is a non-testifying expert. In support of their position they submitted the Parsons Affidavit of February 5, 2014, in which he stated that he and Stroble had examined the Hartsock subject tire and companion tires at the request of counsel. (DE 67-3, ¶¶ 14-15).

During the course of the hearing on the motion, Defendants asserted that Parsons, in addition to Stroble, is a non-testifying expert. At the request of defense counsel the Court allowed supplemental briefing on whether both Parsons and Stroble are non-testifying experts protected from discovery. (Exhibit B, April 15, 2014 Transcript 39:18-40:2). Defendants submitted the Parsons Affidavit of April 21, 2014 (DE 80-3) in support of their supplemental briefing on whether he was a non-testifying expert in this case. In that affidavit Parsons asserted that his work in the Product

³ In accordance with Confidentiality Order ¶6(2), Plaintiff has not filed the deposition excerpt but will provide it to the Court for *in camera* review.

Analysis Department is in anticipation of litigation and that his inspection of the Hartsock tire was completed at the request of legal counsel. (DE 80-3, ¶¶ 4-8 and 10-11).

In neither of Parsons' affidavits was mention was made of his Rule 30(b)(6) testimony in Green, concerning the day-to-day work of the Product Analysis Department, although his affidavits improperly contradict his earlier testimony. See generally Nkwocha v. S.C. State Univ., 2014 U.S. Dist. LEXIS 40661, *6 (D.S.C. Mar. 26, 2014) (triable issue of fact at summary judgment cannot be created by contradicting deposition testimony with a subsequent affidavit). No effort was made to reconcile the contradictions.

Following the supplemental briefing (DE 80 and 81) the Court issued its May 5, 2014 order concluding "that neither Mr. Stroble nor any other engineer in that department (including Mr. Parsons) is 'retained or specially employed' within the meaning of Rule 26(b)(4)(D). Accordingly, the Court denies Defendants' motion for a protective order with respect to both Mr. Stroble and Mr. Parsons."⁴ (DE 83, p. 8). Defendants moved for reconsideration of the Order (DE 84). The Court denied the motion and declined to certify its May 5 order for immediate appeal. (DE 92). In ruling against Defendants the Court reiterated that neither Stroble nor Parsons qualifies as a non-testifying expert subject to protection under Rule 26(b)(4)(D). The Court did, however provide for the possibility that there may be some points upon which a reasonable objection may be made by defense counsel:

Although the Court has held that Mr. Stroble and Mr. Parsons are not protected from deposition under Rule 26(b)(4)(D), nothing in the May 5 Order prevents Defendants from properly asserting the protections of the

⁴ This ruling was rendered despite the inclusion in the record of the Parsons Affidavit of April 21, 2014 (DE 80-3).

attorney-client privilege or the work-product doctrine with respect to certain testimony or documents specifically related to this litigation.

(DE 92, p. 6).

Parsons was deposed in this case on April 17, 2015. He again testified concerning his job and responsibilities with Goodyear. He is the chief product analysis engineer. (Exhibit C, Parsons Deposition 6:24-7:10). His job entails lab analysis, field analysis, review of claim tires and "any other tire that comes into the department." The tires he analyzes include those involved in property damage claims in excess of \$15,000, those involved in an incident involving bodily injury or death, and tires involved in litigation of some kind. He examined the subject tire as one of the Chief Tire Analysis Engineers in the department and was the lead examiner, but the entire engineering staff in the department examined the tire. (Exhibit C, 10:17-13:25, 19:19-20:21, 21:6-22:3, 79:10-80:6). He again described the examination procedure for the department:

Our procedure is such that when an examination is undertaken, it will be a -- a lead examiner will start the examination. If it's a large or complex enough examination, there could actually be two people teaming up on that examination. When that examination is finished, all of the chief tire analysis engineers in the department plus the manager will review the examination. The only person who doesn't review it would be our administrative assistant.

(Exhibit C, 20:3-14). As with the Green tire, he, Stroble and the other engineers employed in the Product Analysis Department examined the subject tire in this case, in accordance with the policy of the department. Stroble was deposed on August 14, 2014 and his testimony concerning criteria for examining tires mirrors Parsons', as does his testimony about the activities involved in examining a tire. Stroble adds, however, that sometimes x-rays and video may be taken, or shearography may be conducted. (Exhibit D, Stroble Deposition 22:4-25:7, 62:22-63:12).

Parsons' description of the work of the Product Analysis Department in his April 17, 2015 deposition is the almost identical to the description he gave as Goodyear's Rule 30(b)(6) designee in Green. There is no mention in either deposition of Goodyear's counsel directing that the tires be reviewed under some different procedure. Parsons' more recent deposition provides an additional detail on the results of an examination: "Any examination...[includes] looking at what might have caused the disablement." (Exhibit C, 59:13-20).⁵ The Product Analysis Department's day-in day-out work is to examine tires involved in property damage claims in excess of \$15,000 and those involved in incidents resulting in personal injury or death. One employee engineer takes the lead in the examination, but all engineers in the department review the examination.

As previously found by Judge Duffy, Parsons is not a non-testifying expert protected from discovery by Rule 26(b)(4)(D). Rather he is a Goodyear employee, subject to questioning concerning his examination, limited only by possible assertions of privilege that may arise by virtue of conversations with counsel or some similar circumstance. It is these potential limited situations that Judge Duffy's statement (DE 92, p. 6) was intended to acknowledge. Judge Duffy's orders otherwise make clear that Parsons was an employee, doing his work-a-day job, and is subject to questioning concerning what his job specifically entailed as to the subject tire, wheels and companion tires. Based on Parsons' testimony in Green and the instant case, this encompasses at the least testimony concerning the form that was filled out with respect

⁵ In accordance with Confidentiality Order ¶6(2), Plaintiff has filed a redacted copy of this deposition excerpt but will provide an unredacted copy to the Court for *in camera* review.

to the examination; observations concerning the tire(s) that were recorded on the form; the photographs taken to document the observations; and the determination of what caused the disablement. All of these activities are part of his day-to-day job duties in examining tires, wheels, and any companion tires for property damage claims in excess of \$15,000 and incidents involving personal injury or death. Based on Stroble's testimony the questioning may also encompass x-rays, video and shearography.

Plaintiff requests that Goodyear's motion be denied and the Court order that Parsons be made available for resumption of his deposition to address the examination he and his co-workers conducted on the subject tire, wheels, and companion tires.

II. Production of the Halobutyl Formula.

A. Legal Standard

Rule 26(c)(1)(G), Fed.R.Civ.P., provides in pertinent part:

The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way....

This section was added in 1970. The *Advisory Committee Notes, 1970 Amendment*, explained:

The new reference to trade secrets and other confidential commercial information reflects existing law. **The courts have not given trade secrets automatic and complete immunity** against disclosure, but have in each case weighed their claim to privacy against the need for disclosure. Frequently, they have been afforded a limited protection. See, e.g., Covey Oil Co. v Continental Oil Co., 340 F2d 993 (10th Cir 1965); Julius M. Ames Co. v Bostitch, Inc., 235 F Supp 856 (SD NY 1964).

(emphasis added). Even before Rule 26(c)(1)(G) was added it had long been recognized that a trial court could order production of trade secrets: “[I]f, in the opinion of the trial judge, it is or should become necessary to reveal the secrets to others it will rest in the judge's discretion to determine whether, to whom, and under what precautions, the revelation should be made.” E. I. du Pont de Nemours Powder Co. v. Masland, 244 U.S. 100 (1917).

The applicable standard for production of trade secrets is Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (D. Del. 1985). Pechiney Plastic Pkg., Inc. v. Curwood, Inc. (Ex parte Sealed Air Corp.), 220 F.R.D. 452, 453 (D.S.C. 2004). “There is no absolute privilege to protect trade secrets from disclosure during the discovery process. Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146, 1185 (D.S.C. 1974). ‘Discovery [of confidential information] is virtually always ordered once the movant has established that the secret information is relevant and necessary.’ Coca-Cola Bottling Co., 107 F.R.D. at 293.” Id.; see also Mustang Innovation, LLC v. Sonoco Prods. Co., 2015 U.S. Dist. LEXIS 96551, *5 (D.S.C. July 24, 2015).^{6, 7} “When

⁶ The language cited by Defendants (DE 116, p. 6-7) from Duplan Corp., quoting 4 Moore, Federal Practice, ¶ 26.60[4], stating that the party seeking disclosure must make a clear showing of an immediate need for the trade secret is not the applicable standard. Further, the quoted language is no longer found in any section of 6-26 Moore’s Federal Practice - Civil § 26.100 *et seq.* (2015), the sections of that treatise that address protective orders and trade secrets, nor is Duplan Corp. cited for that specific proposition in any case by the Fourth Circuit Court of Appeals or any district court within the Fourth Circuit.

⁷ Defendants posit that Laffitte v. Bridgestone Corp., 674 S.E.2d 154 (S.C. 2009), is instructive to the Court’s inquiry. Defendants fail to note that the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 *et seq.*, which is central to the decision in Bridgestone has been held inapplicable to a products liability action by the district court. Sturdivant v. Cont’l Tire the Americas, LLC, 2015 U.S. Dist. LEXIS 6489, *9 (D.S.C. Jan.

the material sought involves matters which go to the heart of the case, it is likely that some type of disclosure must be expected." Brittain v. Stroh Brewery Co., 136 F.R.D. 408, 416 (M.D. N.C. 1991).

In Coca-Cola Bottling Co. the court ordered production of the formulas for diet Coke, old Coke, new Coke, caffeine free Coke, and some experimental low calorie colas that had not even been marketed. In doing so the court noted:

The balance between the need for information and the need for protection against the injury caused by disclosure is tilted in favor of disclosure once relevance and necessity have been shown. As the Supreme Court has recognized, "orders forbidding any disclosure of trade secrets or confidential commercial information are rare." A survey of the relevant case law reveals that discovery is virtually always ordered once the movant has established that the secret information is relevant and necessary. The reason for allowing the discovery of trade secrets whenever they are needed to advance the just adjudication of a lawsuit is simple: in the absence of an applicable privilege, "judicial inquiry should not be unduly hampered." As Judge Learned Hand stated in one of the earliest trade secret cases:

It is true that the result may be to compel the defendant to disclose [trade secrets], and that that may damage the defendant That is, however, an inevitable incident to any inquiry in such a case; unless the defendant may be made to answer, the plaintiff is deprived of its right to learn whether the defendant has done it a wrong.

Coca-Cola Bottling Co., 107 F.R.D. at 293-294 (citations omitted) (emphasis added).

B. Relevance

Plaintiff has previously conceded that the halobutyl formula constitutes a trade secret and asserted the relevance of the formula to the issues in the litigation. (DE 109, p. 9-11). In support of the relevance of the formula, portions of Court's Exhibit 4, the

21, 2015); Griego v. Ford Motor Co., 19 F. Supp. 2d 531, 533 (D.S.C. 1998). Thus Laffitte cannot be instructive on whether Goodyear must produce the inner liner formula.

report of Dennis Carlson (Carlson)⁸, were read into the record. Those portions specifically addressed the importance of the halobutyl compound used as the inner liner of the subject tire and the role the compound formula will play in his opinions concerning the failure of the subject tire. (Exhibit E August 31, 2015 Transcript 61:17-62:2, 62:7-63:13).⁹

Carlson was deposed on September 2, 2015. The negative impact of the unknown halobutyl compound formula was made clear in his testimony. When asked about alternative designs for the subject tire, it was an impediment to both identification of an alternative design and identification of a potential defect in the subject tire. (Exhibit F, Carlson Deposition 188:22-189:8, 193:13-196:18).¹⁰ When asked to identify other tires in the G670 line that are not defective and could serve as alternative designs, it was in impediment. (Exhibit F, 203:14-205:16, 210:23-211:21). The point that the unknown halobutyl compound formula is necessary to fully explain his opinions was clearly stated:

Q Yeah. Let me ask you this: On Page 18 you talk about you would like to know the halobutyl content, you would like to know the formula for the compound; but you go on and give the manufacturing and design defects. For instance, the inner liner is too thin, it wasn't tested properly, it should have had nylon caps. Are you going to give those opinions with regard to design defect and manufacturing defect that you give in this report whether you receive the halobutyl content or the formula for the compound or not?

⁸ Dennis Carlson, M.S.M.E., P.E., is a licensed professional engineer specializing in tire failure analysis. He has been designated as one of Plaintiff's experts. (DE 118).

⁹ In accordance with Confidentiality Order ¶6(2), Plaintiff has not filed the transcript excerpts included in Exhibit E, but will provide them to the Court for *in camera* review.

¹⁰ In accordance with Confidentiality Order ¶6(2), Plaintiff has not filed any of the deposition excerpts included in Exhibit F, but will provide them to the Court for *in camera* review.

A Well, I probably will give some form of that opinion; **but I would feel a lot more comfortable if I had the halobutyl content, because that will cover all the bases as far as inner liner compound.**

Q But you are still going to give an opinion of defective inner liner in the design and manufacture regardless of whether you get the compound formula or the percentage of halobutyl; true?

A Based on the thickness.

Q So that's a true statement?

A Right.

Q You are going to give manufacturing and design defects regardless of whether you get that additional information or not; yes?

A **Yes; but I would like to know not only the halobutyl content but the filler composition.**

(Exhibit F, 300:12-301:14) (emphasis added).

Additional testimony by Carlson concerning the halobutyl compound formula included:

- The industry standard at the time the subject tire was manufactured called for 100% bromobutyl rubber;
- If the subject tire inner liner had a butyl content of less than 100% then that is an additional defect in the tire;
- 100% butyl is the best inner liner for a medium truck tire;
- The defense that the barrier gauge of the tire is also a layer that prevents air permeation into the structure of the tire cannot be properly assessed and defended without knowledge of the inner liner formula and its butyl content.
- His ability to fully explain his opinions is hampered by his lack of knowledge of the inner liner formula and its butyl content.

(Exhibit F, 323:6-326:16).

Carlson's testimony, in addition to his report, demonstrate the relevance of the halobutyl compound formula to the issues in this action. It relevant not only to his

opinion concerning the defects in the subject tire, but also to his ability to assess Goodyear's defense concerning the construction of the tire. These are matters that go to the heart of the case and the Defendants' liability. To the extent that Goodyear claims damage from the disclosure, there are two points to be considered:

1. There is a confidentiality order in place which will protect the halobutyl formula;
2. Goodyear's right to maintain the secrecy of the halobutyl compound formula cannot be allowed to deprive Plaintiff of the "right to learn whether [Goodyear] has done [him] a wrong."

Plaintiff requests that Goodyear's motion be denied and the Court order Goodyear to disclose the halobutyl compound formula.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

September 15, 2015

EXHIBIT A, E, F

DOCKET 128

SUBMITTED FOR IN CAMERA REVIEW

- EX. A: DEPOSITION EXCERPTS OF TERRENCE LEE PARSONS,
3/8/2012 [DKT128-1][PP. 11-16]
SUBMITTED FOR IN CAMERA REVIEW
SEE JOINT APPENDIX VOL. IV, PP. 1174-1180
- EX. E: TRANSCRIPT EXCERPTS OF MOTIONS HEARING,
8/31/2015 [DKT128-5] [PP. 61-63]

SEE JOINT APPENDIX VOL. IV, PP. 1181-1184
- EX. F: DEPOSITION EXCERPTS OF DENNIS CARLSON, JR.,
9/2/2015 [DKT128-6]
SEE JOINT APPENDIX VOL. IV, PP. 1185-1202

Exhibit B

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

3 THEODORE G. HARTSOCK, JR., as :
4 personal representative of the :
Estate of Sarah Mills Hartsock :
5 vs. :
6 GOODYEAR DUNLOP TIRES NORTH :
AMERICA, LTD, et al. : 2:13 CV 419

8 Motions hearing in the above matter held Tuesday,
9 April 15th, 2014, commencing at 2:11 p.m., before the
10 Hon. P. Michael Duffy, in Courtroom I, United States
11 Courthouse, 85 Broad Street, Charleston, South Carolina,
12 29401.

13
14 APPEARANCES:

15 MIA L. MANESS, ESQ. and MARK C. TANENBAUM, ESQ.,
16 P.O. Box 20757, Charleston, SC, appeared for
17 plaintiff.

18 DONALD R. FOUNTAIN, JR., ESQ., 1919 N. Flager Dr.,
West Palm Beach, FL, appeared for plaintiff.

19 CURTIS L. OTT, ESQ., P.O. Box 7368, Columbia, SC,
20 appeared for defendants.

21 M. GARY TOOLE, ESQ. and BIANCA G. LISTON, ESQ.,
22 P.O. Box 4924, Orlando, FL, appeared for
23 defendants.

24 REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
25 P.O. Box 835
Charleston, SC 29402
843/723-2208

Exhibit B

1 * * *
2 which is in May, and in between the two time periods,
3 Mr. Parsons was designated as an expert. And I can hand this
4 up to Your Honor, but --

5 THE COURT: I take your word for it.

6 MR. FOUNTAIN: I'm happy to clear that up, Your
7 Honor. His deposition occurred over a period of three days.
8 When we started the deposition, he had not been disclosed. We
9 went home, came back another time. In the interim, they
10 disclosed him, but they took the position that you are not
11 able to take his deposition as an expert, and they instructed
12 him not to answer any questions about his examination of the
13 tire. That was the subject that we were going back in front
14 of the Court to address, because we said, you disclosed him as
15 an expert after the deposition had commenced but not
16 concluded, yet you've refused to let him answer expert
17 questions about his examination of the tire. The case
18 settled, the Court never resolved it.

19 THE COURT: All right, sir. Anything else?

20 MR. TOOLE: Yes, sir. Your Honor, may we brief that?
21 I didn't realize that that was going to come up that he was
22 not designated as an expert. And that's very important,
23 because the --

24 THE COURT: I'll save you time. Yes, you can brief
25 it. I'll give everybody five days to brief that. Might as
 well put them both in that category.

Exhibit B

1 MR. TOOLE: Yes, sir. Mr. Strobels and Mr. Parsons?

2 THE COURT: Yes.

3 MR. TOOLE: Okay.

4 THE COURT: By the way, I feel guilty about being so
5 flip about my colleagues in Oklahoma. I did not mean that at
6 all. Go ahead.

7 MR. TOOLE: I believe 30(b)(2), with regard to those
8 fact witnesses, we've now covered.

9 MS. MANESS: So I believe.

10 THE COURT: Everybody in agreement on that? Let's go
11 to 30(b)(6).

12 MR. TOOLE: Your Honor, I have a lot of paper here, I
13 know you're --

14 THE COURT: Take your time. I'm a bad paper shuffler
15 myself.

16 MR. TOOLE: The 30(b)(6), Your Honor, was served
17 January the 8th, 2014, and it is marked as Exhibit 1. It's
18 right after the individuals that we just talked about, it's
19 still part of Exhibit 1. It's the third page. And in this
20 document they've listed out the various categories/topics that
21 they want to talk about. And this gets into -- if the Court
22 would look at Exhibit A to that notice, and there are 14
23 enumerated paragraphs there. And they're talking about the
24 design and development, which is something I'd told the Court
25 or represented that with regard to the 295, we had offered to

* * *

Exhibit C

1

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr.,)
et al,)
)
Plaintiffs,)
)
VS.) Civil Action No.
) 2:13-cv-00419-PMD
Goodyear Dunlop tires North)
America, Ltd., et al,)
Defendants.)

— — — — —

DEPOSITION OF TERRY PARSONS

April 17, 2015

— — — — —

The videotaped deposition of Terry Parsons, taken by Bonnie M. Mako, a Stenotype Reporter and Notary Public within and for the State of Ohio, at Akron/Canton Airport, Canton, Ohio, commencing at 9:04.a.m., on the date above set forth.

1 going forward.* * * other thing and I
2 won't interrupt anymore, we, Goodyear, takes
3 this transcript to be confidential pursuant
4 to the protective order or at least portions,
5 and we'll follow through as we have in other
6 depositions in the case, but for now we ask
7 that the entire transcript be kept
8 confidential as well as the exhibits until we
9 have had time to get the transcript in and
10 designated.

11 MR. FOUNTAIN: Okay. Since we are
12 keeping track of the time, I have the time as
13 9:10 right now, although the court reporter's
14 watch might be slower than mine.

15 - - - - -

16 CROSS-EXAMINATION

17 OF MR. PARSONS

18 **Q. (BY MR. FOUNTAIN) In any event, good morning**
19 **Mr. Parsons. How are you?**

20 A. Good.

21 **Q. Would you Give us your full name, please.**

22 A. Terry, T-e-r-r-e-n-c-e, Lee, L-e-e, Parsons,
23 P-a-r-s-o-n-s.

24 **Q. And what is your occupation?**

25 A. I'm a product analysis, chief product

1 analysis engineer at the Goodyear Tire and Rubber
2 Company.

3 Q. Chief product analysis engineer?

4 A. Yes.

5 Q. And your employer is who?

6 A. The Goodyear Tire and Rubber Company.

7 Q. Do you work for the Goodyear Dunlop
8 organization at all?

9 A. I work for the Goodyear Tire and Rubber
10 Company.

11 Q. Can you tell us generally what your
12 connection and involvement was in the design process or
13 the manufacture process of tires that Goodyear designated
14 as G670 size 295/80R22.5 that were made at the Tonawanda,
15 New York Plant?

16 A. You are talking about the 295 size of the
17 general time frame of 2003, 2004?

18 Q. Okay. Sure.

19 A. I was the manager of radial medium truck tire
20 and retreads at Goodyear in Akron.

21 Q. And did you have any direct involvement in
22 the design of the tire in this case? And the tire is the
23 G670 295/80R22.5 tire.

24 A. My role at that time would have been the
25 manager of that department that had the design

* * *

1 Q. Okay. You remember the Ken Green case,
2 right?

3 A. Yes.

4 Q. Professional golfer who had an accident, lost
5 his leg with a separation and blowout of a G670 tire size
6 295/80R22.5 made at the Tonawanda plant in 2004, right?

7 MR. TOOLE: Objection. Form. You
8 can answer.

9 A. I'm not sure I would agree that it was a
10 separation leading to blowout. I think there were other
11 causes.

12 Q. And you remember the Severino case, right?

13 A. I do.

14 Q. A Marathon LHS tire size 295/80R22.5, right?

15 A. Yes. The Severino case involved a 295
16 80R22.5 Marathon LHS.

17 Q. Now, since November of 2007, your job has
18 been the, quote, chief tire analysis engineer in the
19 product analysis department for Goodyear, right?

20 A. That's correct.

21 Q. And the primary function of your job when you
22 go to work every day is the laboratory field inspection
23 and analysis of claim tires, true?

24 MR. TOOLE: Objection. Form.

25 A. That's a broad generalization. Our

1 department does laboratory analysis. We have and do go
2 on field exams and we analyze products that are sent in
3 for a number of reasons.

4 Q. Okay. But I'm not talking about your
5 department, I'm talking about you, personally, Terry
6 Parsons. Your main job when you go to work every day is
7 the laboratory field inspection and analysis of claim
8 tires since November 2007, right?

9 MR. TOOLE: Objection. Form.

10 You can answer.

11 A. The date's correct. I'm just saying that my
12 job involves all of those things. I do lab analysis,
13 I've done field analysis, and I've reviewed claim tires
14 and any other tire that comes into the department.

15 Q. All right. Where I got that information from
16 is from your curriculum vitae or your resume that was
17 provided in this case. And I'll mark it as Exhibit No. 7
18 and it's Hartsock Bate No. 22137.

19 MR. FOUNTAIN: Gary, do you want
20 to take a look at it before?

21 MR. TOOLE: If you'll give me the
22 earlier -- do you have an earlier exhibit
23 number from either his earlier depositions or
24 Strobbe or -- Hold on. As I understand, the
25 Notice said with regard to paper that you

1 were going to be showing him either exhibits
2 in Mr. Koerner's deposition in this case, Mr.
3 Stroble's deposition in this case or Mr.
4 Parsons' prior depositions in the Green case.
5 So I think it will go smoother if you just
6 tell me what those numbers are.

7 MR. FOUNTAIN: His CV had not been
8 produced when that depositions were taken.

9 MR. TOOLE: I'm not arguing about
10 it. I'm just saying --

11 MR. FOUNTAIN: It's not an exhibit
12 to those depositions.

13 MR. TOOLE: If you can just show
14 me a copy of it.

15 MR. FOUNTAIN: Sure. Absolutely.

16 MR. TOOLE: Or do you have extra
17 copies of it?

18 MR. FOUNTAIN: I don't. It's
19 marked at Exhibit No. 7. It's Bate No.
20 22137.

21 **Q. Okay. Mr. Parsons, can you just confirm**
22 **that's an authentic accurate copy of your curriculum**
23 **vitae dated January 2015?**

24 A. Yes, it is.

25 **Q. Okay. And on there it says from November**

1 2007 to present, under your job description as the chief
2 tire analysis engineer in the product analysis department
3 is, quote, laboratory field inspections and analysis of
4 claim tires. That's what it says, right?

5 A. Yes, that's what it says.

6 Q. That's the only thing it says, right?

7 MR. TOOLE: Objection. Form.

8 A. Yes. That's a bullet that is a brief
9 description of the activity of that department.

10 Q. And there is no real dispute that one of your
11 main job duties is to examine claim tires that come to
12 Goodyear where somebody says I bought a Goodyear tire, I
13 had a problem that either caused property damage to my
14 vehicle, in excess of 15 thousand, it caused an injury or
15 caused a death, true?

16 MR. TOOLE: Objection. Form.

17 A. We examine claim tires as you described. If
18 it's a property damage claim in excess of 15 thousand, if
19 it's a bodily injury or a death, we'll examine those.
20 We'll also examine tires that are involved in a
21 litigation of some kind.

22 Q. And you did that for this case. You examined
23 the tire that was the subject of this case, the Hartsock
24 case, right?

25 A. Yes, I did.

* * *

1 you did it as part of your normal duties as the director
2 of the department, true?

3 MR. TOOLE: Objection. Form.

4 A. That would not be true. I'm not the director
5 of the department or was not the director of the
6 department.

7 Q. Let me restate the question.

8 When you examined the tire in this case to
9 determine why it failed, you did that as part of your
10 regular job duties as the chief tire analysis engineer
11 for the product analysis department of Goodyear, right?

12 MR. TOOLE: Objection. Form.

13 A. You are citing the title correctly but I
14 disagree that I was directing that department.

15 Q. Okay. I didn't mean to suggest you were
16 directing that department. Let's have a clean question.

17 I'm looking at your curriculum vitae which is
18 in front of you, Exhibit No. 7. Here is my question.

19 When you examined the tire in this case, the
20 Hartsock case, to determine why it failed, your
21 examination was part of your regular job duties as the,
22 quote, chief tire analysis engineer product analysis
23 department, true?

24 MR. TOOLE: Objection. Form.

25 A. I would modify that just a little bit. I

1 would say that I did that as part of one of the chief
2 tire analysis engineers in that department.

3 Q. And the policy is that when a claim tire
4 comes in like the one in this case, it gets examined not
5 just by you but also by the other people in your
6 department, right?

7 MR. TOOLE: Objection. Form.

8 A. Our procedure is such that when an
9 examination is undertaken, it will be a -- a lead
10 examiner will start the examination. If it's a large or
11 complex enough examination, there could actually be two
12 people teaming up on that examination. When that
13 examination is finished, all of the chief tire analysis
14 engineers in the department plus the manager will review
15 the examination. The only person who doesn't review it
16 would be our administrative assistant.

17 Q. Were you the lead examiner on this case?

18 A. I believe so.

19 Q. And you were the lead examiner when you
20 examined the Ken Green tire as well, right?

21 A. I believe so.

22 Q. Have you been the lead examiner on all of the
23 G670 claim tires that have come in because you were
24 involved in the supervisory capacity of the design?

25 MR. TOOLE: Objection. Form.

1 A. No.

2 Q. Have you been the lead examiner on all of the
3 G670 tires that are claim tires in size 295/80R22.5?

4 MR. TOOLE: Objection. Form.

5 A. No.

6 Q. All right. Who else examined the accident
7 tire from this case other than yourself in your
8 department?

9 A. It would have been all of the tire, chief
10 tire analysis engineers plus the manager.

11 Q. Can you give me their names?

12 A. At that time it would have been Mr. Stroble
13 as the manager, and Mr. Dancy, Mr. Lawrence, and Mr.
14 Bryant.

15 Q. Okay. Did you say Dancy like D-a-n --

16 A. D-a-n-c-y.

17 Q. Can you give me their first names, please?
18 Mr. Dancy's first name?

19 A. Mr. Dancy's first name is Joe.

20 Q. Mr. Lawrence's first name?

21 A. Mr. Lawrence's first name is Jay.

22 Q. And the other gentleman?

23 A. Mr. Bryant's first name is Mike.

24 Q. Anybody else that would have examined the
25 tire in this case with the purpose of determining the

1 **cause of the failure?**

2 A. In addition to Mr. Stroble?

3 Q. **Yes, sir.**

4 A. No.

5 Q. **Now, you have equipment available to you when**
6 **you examine tires in your lab, right?**

7 A. We do.

8 Q. **And you have microscopes available, right?**

9 A. We do.

10 Q. **And when you are tasked with attempting to**
11 **determine the thickness or the gauge of a component such**
12 **as the inner liner, do you use a microscope to do that?**

13 A. The determination of liner gauge is not a
14 very good practice in a tire analysis system because
15 normally when liner is breached or a tire has been
16 subjected to run flat or disablement condition, there is
17 a lot of damage in a lot of areas, that's not the way to
18 determine inner liner gauge thickness.

19 Q. **So how do you do that?**

20 MR. TOOLE: Are you asking him
21 about this specific inspection or are you
22 asking him generically about how you would
23 typically try to determine that?

24 MR. FOUNTAIN: First, generically.

25 A. Are you talking about generically how we

* * *

1 (Whereupon, the previous question was read back.)

2 - - - - -

3 MR. TOOLE: You can answer.

4 A. I would need to refer to the specification
5 that was applicable at that time.

6 Q. Okay. You consider yourself an expert in the
7 field of tire failure analysis, right?

8 A. Yes.

9 Q. You consider yourself an expert in the field
10 of medium truck tire, like the tire in this case, failure
11 analysis, right?

12 A. Yes.

13 Q. And you have performed a tire failure
14 analysis of the tire in this case, fair?

15 A. I would say it a little differently. I
16 performed an examination of the tire in this case.

17 Q. You haven't performed a tire failure analysis
18 examination of the tire in this case?

19 A. Any examination would be including looking at
20 what might have caused the disablement.

21 Q. I want to cover the standards that apply to
22 the inner liner for the tire in this case. Actually,
23 before we do that -- strike that. Let me back up.

24 Exhibit 10 that we are looking at, this is
25 not the design section of the manual that talks about how

* * *

1 claims memorized. We have given you a lot of
2 paper and if you want to go through them he
3 is here to comment and answer the questions
4 about them. He has not memorized it and he
5 certainly doesn't know factually whether what
6 is stated in the documents is true or not.
7 That's something if you want to go through
8 the documents, he is here to answer your
9 questions on them.

10 **Q. You have examined each of the tires, the G670**
11 **tires, for which a wrongful death or personal injury**
12 **claim has been presented against Goodyear, right?**

13 MR. TOOLE: Objection. Form. Do
14 you mean a lawsuit or do you mean --

15 MR. FOUNTAIN: Let me ask another
16 question.

17 **Q. Have you examined each Goodyear G670**
18 **295/80R22.5 tire for which a claim either in writing or a**
19 **lawsuit has been filed against Goodyear for wrongful**
20 **death or personal injury?**

21 **A. Our process is that if that property damage**
22 **claim is above 15 thousand and if there is a bodily**
23 **injury or litigation, that our department will analyze**
24 **those tires.**

25 **Q. All right. So the answer would be yes, you**

1 have examined those tires?

2 MR. TOOLE: Objection. Form.

3 A. A qualified yes in that we talked earlier
4 about lead examiner versus all of the examiners. And
5 what I think I said was that all of us look at all of the
6 tires but we are not all leads on each exam.

7 Q. Do you have for me a number, like how many
8 claim tires for personal injury, wrongful death, or
9 property damage your department has analyzed?

10 A. No, I don't have that summary.

11 Q. Okay. Do you have an estimate?

12 A. No.

13 Q. The only way really to figure that out is to
14 go through all of the documents and for us to catalog it;
15 is that the way?

16 A. I don't have a summary.

17 Q. Is there a summary that you have put together
18 or that exists at Goodyear where you have kind of
19 summarized all the G670 claims of this size tire?

20 A. The only thing I've seen are property damage
21 claims in a summary.

22 Q. You have seen a summary of property damage
23 claims?

24 A. Numbers.

25 Q. Okay. What's that document called?

* * *

Exhibit D

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION
4 CIVIL ACTION NO: 2:13-cv-00419-PMD
5
6

7 THEODORE G. HARTSOCK, JR., AS
8 PERSONAL REPRESENTATIVE OF THE
9 ESTATE OF SARAH MILLS HARTSOCK,
10

11 Plaintiff,

12 vs.

13 GOODYEAR DUNLOP TIRES NORTH AMERICA,
14 LTD., a foreign corporation; and THE
15 GOODYEAR TIRE & RUBBER COMPANY, a foreign
16 corporation,
17

18 Defendants.
19
20

21 Videotaped Deposition of
22 JAMES STROBLE
23 CERTAIN PORTIONS OF THIS TRANSCRIPT AND
24 EXHIBITS WILL BE DESIGNATED CONFIDENTIAL
25 PURSUANT TO PROTECTIVE ORDER

August 14, 2014

9:00 a.m.

Taken at:

22 Hilton Garden Inn
23 5251 Landmark Boulevard
24 Canton, Ohio

25 Jill A. Kulewsky, RPR, Notary Public

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305-376-8800

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 MR. TOOLE: Objection. Form.

2 A. Well, for this tire, it would just
3 be one tire.

4 Q. Okay. So you did conduct an
5 evaluation of the failed tire in this case, in
6 the Hartsock case?

7 A. I examined it, yes.

8 Q. And did you attempt to reach a
9 conclusion or opinion about what caused its
10 failure?

11 A. We probably came to preliminary
12 conclusions.

13 Q. And you say we, who is "we"?

14 A. Well, it would be the team.

15 Q. Who is on the team?

16 A. At the time the product analysis
17 team would be Terry Parsons, Jay Lawrence, Joe
18 Dancy, Mike Bryant, myself, and we have one
19 administrative individual.

20 Q. And other than you, is the team
21 still the same?

22 A. No.

23 Q. What's the team make-up currently?

24 A. Jay Lawrence, Terry Parsons, Mike
25 Bryant, Joe Dancy, Kevin Legge and Elaine

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Exhibit D

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Page 23

1 Horst.

2 Q. And who took over your position or
3 will take over your position when you retire?

4 A. Jay Lawrence.

5 Q. Now, other than the tire in this
6 case, the Hartsock tire, the G670 295/80R22.5
7 tire, have you examined any other G670 tires
8 that have failed in the field?

9 A. We've examined other tires that
10 have been involved in claims in litigation,
11 yes.

12 Q. How many?

13 A. I don't recall.

14 Q. One or two, a couple dozen?

15 MR. TOOLE: Objection. Form. You
16 can answer it if you know.

17 A. I don't -- I don't recall. I can't
18 say exactly.

19 Q. And every time that you would have
20 examined a G670 tire that had failed in the
21 field --

22 (Knock at the door.)

23 MR. TOOLE: Hold on.

24 THE VIDEOGRAPHER: Off the record.

25 (A brief recess was taken.)

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 THE VIDEOGRAPHER: On the record.

2 Q. Okay. Every time that you examine
3 a G670 tire that fails in the field, do you
4 conduct written notes?

5 MR. TOOLE: Objection. Form.

6 A. We take notes of observations, yes.

7 Q. Do you take photographs?

8 A. Yes.

9 Q. X-rays?

10 A. Sometimes.

11 Q. Okay. Videos?

12 A. Depending on the case, sometimes.

13 Q. Okay. Anything else that you do to
14 document an examination of a failed G670 tire?

15 MR. TOOLE: Objection. Form.

16 A. Not all of them are failed that we
17 look at, for one. In some cases we'll get
18 companion tires. It could be two total tires.
19 It might just be the incident tire, it might be
20 6 or 8 total tires. So it's possible we do
21 shearography.

22 Q. And when you're examining G670
23 tires, whether they're the tire that actually
24 failed in the field or a companion tire that
25 was on the vehicle that did not fail, is there

Exhibit D

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 always a written record made of the examination
2 process?

3 MR. TOOLE: Objection. Form.

4 A. Yes, we take -- we take observation
5 notes of every tire we look at, yes.

6 Q. And --

7 A. And photographs.

8 Q. And how long are the files of these
9 tire examinations kept?

10 A. As long as the law department tells
11 us to keep them.

12 Q. How long do they tell you to keep
13 them?

14 A. We do this at the direction of the
15 law department. We look at all these tires.

16 Q. Is there a standard? Do they tell
17 you to keep them for seven years or ten years,
18 what's the practice?

19 A. There is no standard that I know
20 of. It varies case to case.

21 Q. Okay. As you sit here today, do
22 you personally remember examining any other
23 failed G670 tires other than the one in this
24 case?

25 MR. TOOLE: Objection. Form. You

* * *
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Exhibit D

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 worth of damage, that doesn't go to the
2 adjustment department, does it?

3 MR. TOOLE: Objection. Form.

4 A. The data would go.

5 Q. Where does the claim go?

6 A. To the law department.

7 Q. And is that department D-805?

8 A. The law department?

9 Q. No, the department that handles the
10 property damage claims within the law
11 department.

12 A. Oh, I don't know the number.

13 Q. What I'm trying to figure out is --

14 A. When you said where does the claim
15 go -- I'm sorry to interrupt but --

16 Q. Go ahead.

17 A. I was thinking when a consumer
18 actually makes a claim, then it would -- on the
19 property damage, it would come in through the
20 property damage claims, but I believe it also
21 goes into the law department.

22 Q. So back to my example. Somebody
23 has a G670 on an RV, they go off the road, they
24 hit a tree, there's \$50,000 worth of damage to
25 the RV. Nobody is hurt, it's a property damage

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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1 claim. If that comes into Goodyear, ultimately
2 it would go to your department as well, true?

3 A. At \$50,000, yes.

4 Q. And the floor or the minimum amount
5 that you deal with in your department is
6 15,000?

7 A. Yes, sir.

8 Q. So for any property damage claims
9 where the claim is \$15,000 or more or where
10 someone is hurt, injured or killed, those
11 claims would go to your department?

12 A. Yes, sir.

13 Q. What I'm trying to figure out is --
14 Mr. Koerner told us that in 2010 an early
15 warning notice to NHTSA was issued for the tire
16 in this case. What I'm trying to figure out
17 is, where does the data that gave rise to that
18 come from? Does it come out of the adjustment
19 department, does it come out of your department
20 or some other department?

21 MR. TOOLE: Objection to the form.

22 A. What data are you looking for?

23 Q. All right, let's back up.

24 In order for there to be a
25 requirement to do an early warning to NHTSA,

* * *

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PRINTER'S NOTE

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EXHIBIT E

SUBMITTED FOR IN CAMERA REVIEW

DOCKET 128-5 (OMITTED)

**TRANSCRIPT EXCERPTS OF MOTIONS HEARING, 8/31/2015
[DKT128-5] [PP. 61-63]**

SEE DOCKET 128-5 AT JOINT APPENDIX VOL. IV, PP. _____

EXHIBIT F

SUBMITTED FOR IN CAMERA REVIEW

DOCKET 128-6 (OMITTED)

**DEPOSITION EXCERPTS OF DENNIS CARLSON, JR., 9/2/2015
[DKT128-6] [PP. 61-63]**

SEE DOCKET 128-6 AT JOINT APPENDIX VOL. IV, PP. _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

**DEFENDANTS' SUPPLEMENTAL BRIEF ON TRADE SECRET
MATERIAL PURSUANT TO THE AUGUST 31, 2015 HEARING**

Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY ("Defendants"), by and through their undersigned counsel, hereby serve this Supplemental Brief on Trade Secret Material Pursuant to the August 31, 2015 Hearing.

I. Plaintiff Has Failed to Meet His Burden to Seek Discovery of Trade Secrets

The percentage of the halobutyl content of a tire is a core trade secret held closely by tire manufacturers. Federal and state courts across the United States have afforded the greatest trade secret protection to tire compounds and formulas – including halobutyl content. In fact, they have determined that the value of preserving such information as trade secret justified excluding such data from the discovery process. Hajek v. Kumho Tire Co., 4:08CV3157, 2010 WL 503044, at 10* (D. Neb. Feb. 8, 2010) objections overruled, 4:08CV3157, 2010 WL 1292447 (D. Neb. Mar. 30, 2010) (denying motion to compel production of rubber compound formulas, including halobutyl percentages); see also, In re Continental Gen. Tire, 979 S.W.2d 609, 615

(Tex.1998); In re Bridgestone/Firestone, Inc., 106 S.W.3d 730, 733-34 (Tex.2003); and Bridgestone/Firestone, Inc. v. Superior Court, 7 Cal.App.4th 1384, 1397 9 Cal.Rptr.2d 709 (1st Dist.1992);); American Standard Inc. v. Pfizer, 828 F.2d 734, 743-44 (Fed. Cir. 1987); Heller v. Shaw Indus., 1997 U.S. Dist. LEXIS 18521, **9-11 (E.D. Pa. 1997). Similarly, Goodyear's global design manual contains core and closely held trade secrets.

II. Plaintiff's Tire Consultant, Dennis Carlson, has Disclosed Confidential Information, Including Compound Formulas, in the Past

In support of his discovery demand, Plaintiff indicates, without an affidavit providing any particular support for the proposition, only a statement from the report of Dennis Carlson, Plaintiff's tire consultant, that [REDACTED]

[REDACTED]

[REDACTED] Confidential Report at Page 18.

Placing such information at the disposal of Plaintiff's consultant, Dennis Carlson, is particularly and rightfully unsettling to Defendants. To put it mildly, Mr. Carlson, has a long history of failing to respect the intellectual property rights of tire companies. In fact, courts have consistently found his views concerning protection of and actions regarding confidentiality of tire company information wanting.

In Nevil v. Ford Motor Company, No., Mr. Carlson was held in contempt for violating the protective order after revealing General Tire's confidential information in two cases. See also Exhibit A Nevil v. Ford Motor Co., 1999 U.S. Dist. LEXIS 23222 (S.D. Ga. Dec. 23, 1999). Since then, Mr. Carlson has specifically been precluded from receiving confidential information in more than one case. Exhibit B, 10/20/2008 Order in Galle v. The Goodyear Tire & Rubber Co., No. 2007-CI-00418, ¶ 2(g) ("Under no circumstances shall Dennis Carlson receive any protected or confidential documents of The Goodyear Tire & Rubber Company since the Court

has found that he does not appear to take protected orders seriously.”); and **Exhibit C**, 7/1/2013 Order in Hobbs v. The Goodyear Tire & Rubber Co., Case 4:09-CV-01765, 2(d) (“If Mr. Carlson is a consultant in this case, a court hearing shall be held in order to determine his access to any protected documents or testimony.”).

Mr. Carlson also violated the non-disclosure agreement he entered into during his employment with Michelin. **Exhibit D**, 7/24/1997 Order from Michelin Americas Research & Development Corp., v. Dennis Carlson, Jr., Case 96-CP-23-2943. Again in 2008, Mr. Carlson had to be reminded of his confidentiality obligations. **Exhibit E** 9/25/2008 letter to Dennis Carlson with attached settlement agreement. Also in 2008, Mr. Carlson attempted to volunteer the protected tolerances for joints and belt edges from all tire manufacturers, which is information he had learned in litigation. **Exhibit F**, Carlson 4/7/2008 testimony in Crowther et al. v. Goodyear Tire & Rubber Corp., 218:6-219:22.

Indeed, Mr. Carlson persists to this day in disclosing even the halobutyl content of some of the tires manufactured by his former employer. In the Hartsock matter, Mr. Carlson disclosed the halobutyl content of former employer Michelin:

[REDACTED]

Confidential Exhibit G: 195:9 to 195:25). *See also Exhibit D.*

[REDACTED]

[REDACTED]

Exhibit G: 221:16 to 222:7

Mr. Carlson is simply not a trustworthy recipient of such important confidential trade secret information as compound formulas and the global design manual. No Confidentiality Agreement will protect Defendants should this information be disclosed to Mr. Carlson.

Moreover, whether the disclosure is proposed for Carlson or some unnamed person, Plaintiff's general allegations that the halobutyl formula of the inner liner or information contained in the global design manual is somehow relevant to his defect claim falls short of the requirements for disclosure of such confidential information. Before considering other factors that might justify such discovery, Plaintiff needs to identify precisely what part of his case hinges upon the disclosure. See Bridgestone/Firestone, Inc. v. Superior Court, 9 Cal. Rptr. 2d 709, 713, 716 (App. 1994) (the party seeking discovery of trade secrets must make a "particularized showing that the information is **relevant and necessary to the proof**" and "that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit;" and production of trade secrets will be denied where it is indicated only that "would be helpful," because "nothing in the record demonstrates the necessity" of the trade-secret information). (Emphasis added). [REDACTED]

[REDACTED] he does not explain how this information is necessary to prove his defect theories nor does he indicate how this information, or the

information in the global design manual, might be the source of any air loss during the life of the tire. See **Exhibit H**, Affidavit of Kevin Legge re confidentiality of global design manual. In fact, Mr. Carlson testified that he was not aware of any issues or problems with any of the G670 295 tires on the subject RV losing air. **Exhibit G** Carlson Testimony 133:18 to 135:3.

Further, Plaintiff has not provided any evidence refuting Mr. Parsons' statement that "[t]here is no methodology via 'reverse engineering' or otherwise to determine if the rubber in the tire at issue conforms to the rubber formulas after curing" and that "[d]isclosure of Goodyear's rubber compound formulas is ... **not necessary** to make a determination regarding whether a particular tire was improperly manufactured." (DE 103-3 at ¶ 16) (emphasis added). In fact, Plaintiff has not made any sworn showing that the requested information is necessary to the issues involved in the litigation. There is simply no good reason to release such core and valuable information to Plaintiff and/or Mr. Carlson. Based on Mr. Carlson's conduct, there is no revision to the Confidentiality Agreement that can protect Defendants.

III. Defendants Need Not Show Actual Harm to Prevent Disclosure

Defendants must show only that disclosure of trade secrets "might be harmful" under the case law. See McKellips v. Kumho Tire Co., 305 F.R.D. 655, 663 (D. Kan. 2015) (a trade secret owner seeking a protective order must "demonstrate that its disclosure might be harmful"); R & D Bus. Sys. v. Xerox Corp., 152 F.R.D. 195, 196-97 (D. Colo. 1993) ("movants must establish that the information sought is a trade secret, and demonstrate that its disclosure might be harmful," and court denied discovery requests because "the potential harm described by movants far outweighs the need [requestor] has shown for any other information") (emphases added). This is the proper standard. It would be error to require a loss of valuable trade secrets as a prerequisite to protecting those trade secrets.

IV. The Risk To Goodyear's Property Is Very Real

As the FBI has observed, trade-secret theft is a growing problem. A graphic example is the investigation of the theft of DuPont Company corporate secrets for sale to a Chinese government-owned company. *See Exhibit I Justin Scheck & Evan Perez, FBI Traces Trail of Spy Ring to China, Wall St. J., Mar. 8, 2012.* The tire industry is not immune from this problem. In fact, within the last two years, a federal appeals court affirmed the conviction of two engineers who surreptitiously took photos using a cellphone while at a Goodyear tire plant on other business. *See United States v. Howley, 707 F.3d 575, 577-79 (6th Cir. 2013).* A federal district court sanctioned a plaintiffs' attorney for disseminating a tire company's trade secrets to other plaintiffs' attorneys in patent violation of a protective order. *See Trenado v. Cooper Tire & Rubber Co., No. 4:08-cv-00249, 2011 WL 79525 (S.D. Tex. Jan. 6, 2011).*; *affirmed by Smith & Fuller, P.A. v. Cooper Tire & Rubber Co., 685 F.3d 486, 491 (5th Cir. 2012).* The court noted that the attorney being sanctioned disseminated the documents at a plaintiffs' attorneys' conference, having "previously agreed that his law firm would serve as a 'clearing house for the accumulated information.'" *Id.* at 2, n.2. In yet another matter, a different plaintiff's lawyer was sanctioned for failing to destroy all confidential documents subject to a non-sharing protective order. *Johnson v. Hankook Tires Am. Corp.*, Misc. Action H-10-422, slip op. at 1 (S.D. Tex. March 1, 2011). Further, the Fourth Circuit recently upheld a \$26 million verdict against a competitor for its role in the theft of trade secret blueprints (specifications) for the design and manufacture of specialized mining tires. *Tire Eng'g & Distrib. LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 298 (4th Cir. 2012).

Once a trade secret becomes publically-known, it loses its status and value. As the court in *DVD Copy Control Ass'n v. Bunner*, 31 Cal.4th 864 (2003) stated at page 881: "Trade

secrets are a peculiar kind of property. Their only value consists in their being kept private.” (*quoting In re Ia. Freedom of Info. Council*, 724 F.2d 658, 662 (8th Cir. 1983). Elsewhere, the court explained, “prohibiting the disclosure of trade secrets . . . is the only way to preserve the property interest created by trade secret law and its concomitant ability to encourage invention.” *DVD Copy Control*, *supra*, at 881.

Further, Goodyear has experienced concrete harm from the theft of its tire-building technology by a competitor in China, and that evidence is before the Court. *See Exhibit J*. Defendants’ concern that competitors will go to great lengths, including criminal activity, to obtain their know-how is not speculative; it is a demonstrated fact.

Any argument that competitors will not look to litigation for Defendants’ technical information ignores reality. If Defendants’ confidential and proprietary information is not protected, it will become a source for competitors to gain an unfair advantage, and to Goodyear’s detriment.

V. Defendants’ Trade Secret Property Is Constitutionally Protected.

It is axiomatic that a court order to enforce a party’s discovery requests constitutes government action for constitutional purposes. In *Doe v. 2TheMart.com, Inc.*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001), the court quashed subpoenas, on First Amendment grounds, seeking to identify people who commented anonymously on an Internet message board. As a predicate to its constitutional analysis, the court stated, “A court order, even when issued at the request of a private party in a civil lawsuit, constitutes state action and as such is subject to constitutional limitations.” 140 F.Supp. 2d at 1091-92. Similarly, in *Berkeley v. Eisen*, 699 So. 2d 789 (Fla. DCA 1997), telephone numbers sought in discovery were protected on constitutional privacy

grounds. The court explained, "Court orders compelling discovery constitute state action that may impinge on constitutional rights . . . ". 699 So. 2d at 790.

VI. Conclusion

WHEREFORE, Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY, respectfully request that this Court enter an Order preventing disclosure of highly confidential trade secrets concerning the rubber formula and global design manual.

s/ Curtis L. Ott
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Attorneys for Defendants

September 15, 2015

Columbia, South Carolina



JILL MOCK NEVIL, et al., Plaintiffs, vs. FORD MOTOR COMPANY, et al., Defendants.

CV 294-015

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
GEORGIA, BRUNSWICK DIVISION

1999 U.S. Dist. LEXIS 23222

December 23, 1999, Decided
December 23, 1999, Filed

DISPOSITION: [*1] Defendant General Tire's Motion for Sanctions GRANTED.

CASE SUMMARY:

PROCEDURAL POSTURE: Pursuant to *Fed. R. Civ. P. 37(b)*, defendant manufacturer filed a motion for sanctions and/or a motion to show cause why an expert who appeared on behalf of plaintiffs in a product liability case should not be held in contempt for violating a protective order, which the expert had signed, that restricted the use and dissemination of confidential and proprietary information disclosed during discovery.

OVERVIEW: The manufacturer argued that the expert should be sanctioned for violating the protective order and disclosing protected trade secrets in two separate proceedings. The expert maintained that he merely disclosed the existence of the documents without disclosing their substance. He also argued that much of the disputed testimony concerned information in the public domain, not trade secrets. He denied any wrongdoing. Notwithstanding his contentions, it was evident that the expert disclosed information in his deposition testimony about the documents covered by the order, and at times, disclosed specific information contained in the manufacturer's studies. Even if the information was already in the public domain, his testimony revealed that he learned of it from the manufacturer's documents which violated the order. Although the disclosures violated the letter of the order perhaps more than the spirit of the agreement, the disclosures were serious enough to warrant a reprimand. The manufacturer sought sanctions that essentially reaf-

firmed the terms of the order and required the expert to reveal any other violations. Because the request was not overreaching, it was granted.

OUTCOME: The court held the expert witness in contempt of court and granted the manufacturer's motion for sanctions.

CORE TERMS: tire, protective order, cap, ply, confidential, manufacturer, contempt, deposition testimony, contamination, zero-degree, nylon, trade secret, public domain, disclosing, discovery, violating, sheet, belt, confidential information, order requiring, manufacturing, appreciate, propensity, disclosures, captioned, speaking, handled, talking, haven't

LexisNexis(R) Headnotes

Civil Procedure > Discovery > Protective Orders
Trade Secrets Law > Civil Actions > Discovery
Trade Secrets Law > Civil Actions > Protection Orders
[HN1] *Fed. R. Civ. P. 37(b)* provides that a court may enter any "just" order, including an order of contempt, for failure to obey the court's discovery orders. *Rule 37(b)* applies to protective orders entered under *Fed. R. Civ. P. 26(c)*. *Rule 26(c)(7)* allows parties to enter into protective orders to ensure that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.

EXHIBIT A

COUNSEL: For JILL MOCK NEVIL, JAMIE NEVIL, plaintiffs: Billy N. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA.

For JILL MOCK NEVIL, plaintiff: G. Brinson Williams, Jr., Jones, Osteen, Jones & Arnold, Hinesville, GA.

For JILL MOCK NEVIL, plaintiff: Bobby T. Jones, Julian B. Smith, Jr., Jones & Smith, PC, Metter, GA.

For GENERAL TIRE, INC., defendant: Richard Byron Attridge, King & Spalding, Atlanta, GA.

For GENERAL TIRE, INC., defendant: John E. Bumgartner, Whelchel, Brown, Readdick & Bumgartner, Brunswick, GA.

For GENERAL TIRE, INC., defendant: Roberta M. Mowery, McGuireWoods, LLP, Richmond, VA.

For GENERAL TIRE, INC., defendant: Jeffrey J. Casto, Norman S. Carr, George W. Rooney, Jr., Randall J. Moore, Roetzel & Andress, Akron, OH.

For DENNIS CARLSON, interested party: Robert P. Killian, Killian & Boyd, PC, Brunswick, GA.

For DENNIS CARLSON, interested party: Dennis Carlson, Edwards & Carlson, Inc., Louisville, KY.

JUDGES: Dudley H. Bowen, Jr., CHIEF UNITED STATES DISTRICT JUDGE.

OPINION BY: Dudley H. Bowen, Jr.

OPINION

ORDER

In the captioned case, Defendant General Tire, Inc. ("General Tire") [*2] has filed a Motion for Sanctions and/ or a Motion to Show Cause Why Dennis Carlson Should Not Be Held in Contempt. Upon consideration of the briefs submitted by counsel, the hearing held on November 30, 1999, and the relevant law, it is hereby held that Mr. Carlson is in contempt of court. Accordingly, General Tire's Motion for Sanctions is **GRANTED** for the reasons set forth below.

I. Background

Plaintiff filed a products liability lawsuit against Defendants. Plaintiffs retained the services of Mr. Dennis Carlson ("Carlson") as an expert witness in the case. The case was settled and dismissed in 1996. During the discovery phase of the trial, the parties signed a Stipulated

Protective Order ("Protective Order") that restricted the use and dissemination of confidential and proprietary information disclosed during discovery. Mr. Carlson also signed this protective order. General Tire contends that Mr. Carlson violated the terms of this Protective Order by disclosing General Tire's confidential information to third parties unrelated to this litigation.

II. Legal Analysis

General Tire has filed a Motion for Sanctions and/ or a Motion to Show Cause Why Dennis Carlson [*3] Should Not Be Held in Contempt. These motions are filed pursuant to *Federal Rule of Civil Procedure 37(b)*. [HN1] *Rule 37(b)* provides that the Court may enter any "just" order, including an order of contempt, for failure to obey the Court's discovery orders. *Rule 37(b)* applies to protective orders entered under *Rule 26(c)*. *Rule 26(c)(7)* allows parties to enter into protective orders to ensure that "a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way."

The Protective Order signed by the parties in this case contains the following language:

Absent a further order of the Court, those documents marked as Confidential Material, as described in Paragraph IA, shall not be used for any purpose other than the prosecution or defense of this captioned action, and shall not be shown, disseminated or disclosed in any matter to anyone other than covered persons without the prior written agreement of General Tire or order of the Court after due notice to General Tire.

Mr. Carlson signed an acknowledgment of the Protective Order which reads:

I hereby acknowledge and affirm that I have read [*4] the terms and conditions of the Protective Order agreed to by the parties in Jill Mock Nevil v. Ford Motor Company and General Tire, Inc., Civil Action No. CV294-15, on August 2, 1995. I understand the terms of the Order as a condition to being provided access to the Confidential Documents furnished by General Tire, Inc. ("General Tire"). Further, by executing this Written Assurance, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Protective Order.

General Tire argues that Mr. Carlson should be sanctioned for violating the Protective Order and disclosing protected trade secrets in two separate proceedings, *Mun et al. v. Uniroyal Goodrich Tire Co.* and *Siegel v. Sears Roebuck & Co.* In *Mun et al. v. Uniroyal Goodrich Tire Co.*, General Tire maintains that Mr. Carlson violated the Protective Order during his deposition testimony taken on February 20, 1996. The specific testimony is as follows:

Q: All right. Now, as I understand it, that background information which is deemed confidential or protected has not been released in any fashion into the public domain or otherwise so that [*5] we could actually see it, correct?

A: That is my understanding, yes, sir.

Q: All right, counsel who is here today, Cora Perez, has been kind enough to provide us with a sheet that indicates the three cases in which these things have occurred, one being *Tinsley v. General Tire*, correct-

A: Yes.

Q: -being handled by Tom Conway on the Plaintiff's side; *Laschuck vs. Firestone*, being handled by Tom Dasse in Phoenix, right-

A: Yes, sir.

Q: -and *Nevil vs. General Tire*, and apparently the lawyer Plaintiff's lawyer there is Brinson Williams?

A: Yes, sir.

Q: All right. Are the documents which are part of the protected materials in these cases still in your possession and control?

A: Yes.

Q: Generally speaking, would they classify as manufacturing and design documents, or do they fall into some other category?

A: I think they would fall into that category, yes.

Q: Just generally speaking, how do they assist you at all in reaching your opinions without revealing any of the confidential information?

A: They show some of the design processes-two of the cases show some of the design processes that some of the other companies have gone through.

Q: Those companies apparently being General [*6] Tire and Firestone?

A: Yes.

Q: The design processes you are talking about, is it the nylon cap ply processes?

A: Yes. Two of those refer to that.

Q: Which cases refer to that?

A: The ones against General.

(Carlson Dep. at 10-11.)

Q: Now, what did you look at historically to find out about various manufacturers? I appreciate that you brought this sheet with you today, and we'll make this an exhibit to your deposition in a little while. The sheet I was reading from, I appreciate you bringing that over today. What studies have you done about tire manufacturing from the late 1980s through the 80s in terms of the use of nylon cap plies and ultimately why a manufacturer stopped using them in most instances?

A: I've seen a lot of papers by manufacturers. For instance, General calls it the Legacy Plus. They put out a series of tires called the Legacy and the Legacy Plus. The only difference is that they put a zero-degree belt in there, and some manufacturers have indicated that they have used it to control separation problems in their plants.

Q: Okay. Who? Who said that?

A: It's in part of the documents here, General did.

Q: Oh, the protected documents?

A: Yes.

[*7] (Carlson Dep. at 208.)

Q: I don't see how any of those records from General Tire, from what you have

described to us generically, have any bearing on your opinions here, true?

A: They support some of my opinions, yes.

Q: They do?

A: Yes.

Q: The General Tire exhibits?

A: Yes.

Q: You mean modifications or changes in manufacture?

A: Yes, the using of zero-degree belts to correct production problems.

Q: Are you saying that General Tire in some fashion used zero-degree belts to avoid the contamination separation thing that we have here?

A: They proposed it and gave an estimate of how much it would help?

Q: With regard to contamination separation?

A: The separation problem they were having at the time.

Q: Was there a separation problem based upon contamination from people's hands?

A: That was part of it, there was a contamination issue. They had a design issue also.

Q: You are sure these records support what you are saying?

A: Yes.

(Carlson Dep. at 301-02.)

General Tire also argues that Mr. Carlson violated the Protective Order in his deposition testimony in *Siegel v. Sears Roebuck & Co.*, taken on January 18, 1996. The specific testimony in this case [*8] is as follows:

Q: How many other companies tires have you testified are defective for lack of a cap ply?

A: Well, many of the other major manufacturers.

Q: Can you name them?

A: Well, Firestone and General, probably Goodrich-though I don't remember Goodrich.

(Carlson Dep. at 337.)

Q: Do you have any explanation how it is that all the different tire designers working for all these different companies are putting out defective tires?

A: They don't want to spend an extra 50 cents in their tire.

Q: Is there any reason why you believe that's the case?

A: Yeah.

Q: What are the other reasons? Any other reasons?

A: I said that is-no. That is the reason.

Q: You believe it is purely a cost issues?

A: Sure.

Q: Have you ever seen any documents suggesting that?

A: Yeah.

(Carlson Dep. at 338-39.)

Q: Have you ever done it for any tire you believe should have had a cap ply?

A: No.

Q: Why haven't you tried to do that?

A: Didn't need to.

Q: Can you give me a list of any Michelin tires made ever that are non-high-speed rated that have cap plies?

A: No. I don't think so.

Q: Are there any, to your knowledge?

A: Not to my knowledge.

Q: Have you [*9] ever conducted any tests to measure the separation propensity of tires with and without cap plies?

A: I haven't done any.

Q: Do you know of anybody else that has done such a test?

A: Yeah.

Q: Who?

A: Well, there's some manufacturers, I've read their memos and such that indicate that separations are reduced a considerable amount by nylon cap plies.

(Carlson Dep. at 340-41.)

Q: What studies have you seen where a manufacturer took a tire with a cap ply and an identical tire without a cap ply and measured and compared their separation propensity? Have you ever seen such a study?

A: No, I have seen the results of that in some of the papers that I've seen under protective order. There is also an STL film that shows a tire with a cap ply and without failing, and you can see the difference in the failure mechanism that you know, the one with the nylon cap fails at a much higher speed and fails less dramatically.

Q: Any other studies or tests which in your mind prove the desirability of zero-degree cap plies?

A: No.

Q: Okay. the confidentiality documents you're talking about, is that the General Tire documents?

A: Sure.

(Carlson Dep. at 341-42.)

In response [*10] to this deposition testimony, Mr. Carlson maintains that he merely disclosed the existence of General Tire documents without disclosing their substance. Further, Mr. Carlson argues that much of the disputed testimony concerns information in the public domain, not trade secrets. He denies any wrongdoing and contends that he did his best to follow the terms of the Protective Order.

Notwithstanding Mr. Carlson's contentions, it is evident that Mr. Carlson disclosed information in his deposition testimony about the General Tire documents covered by the Protective Order. At several points in his testimony, Mr. Carlson discloses specific information

contained in General Tire studies. Even if this general information is already in the public domain, his testimony reveals that he learned of this information from General Tire documents. Assertions that this evidence came from specific General Tire documents violates the terms of the Protective Order. Accordingly, I find that Mr. Carlson's actions are in contempt of this Court.

Because Mr. Carlson has committed serious violations of the Protective Order, Defendant's Motion for Sanctions is **GRANTED**. Although Mr. Carlson's disclosures [*11] violate the letter of the Protective Order perhaps more than the spirit of the agreement, the disclosures are serious enough to warrant a reprimand from the Court.

General Tire, however, has requested minimal sanctions. These include the following:

1. An order sanctioning Mr. Carlson and/ or an Order to show cause why he should not be held in contempt of court for violating the terms of the August 8, 1994 Protective Order;
2. An order enjoining Mr. Carlson from showing, discussing, or divulging Confidential Material obtained from General Tire in any manner which would violate the August 8, 1994 Protective Order issued by this Court;
3. An order requiring Mr. Carlson to return all Confidential Material which is the subject of the August 8, 1994 Protective Order issued in this case; and
4. An order requiring Mr. Carlson to identify all cases and provide the address of counsel of record in which he has shown, discussed or disclosed Confidential Material in violation of the August 8, 1994 Protective Order issued in this case.

General Tire is basically seeking an order reaffirming the terms of the Protective Order and requiring Mr. Carlson to provide information concerning [*12] any other violations of the Protective Order. Because General Tire's requested relief is not overreaching, it is hereby **GRANTED**.¹ Further conduct violating the terms of the Protective Order will likely result in more serious sanctions being entered against Mr. Carlson.

¹ In regard to General Tire's request for return of documents, Mr. Carlson has testified under oath that he does not have any of these documents in his possession. Specifically, Mr. Carlson

1999 U.S. Dist. LEXIS 23222, *

testified at the November 30, 1999 hearing as follows:

Q: Have you any document, any copy of any document, any recording, any electronic data, or any reproduction by any other means, of any material that you received confidentially in the Nevil case?

A: No, I don't.

Q: Have you returned all of that in accordance with the agreement you signed?

A: Yes.

Q: Have you destroyed any of that, apart from or in a way different from that which you agreed to?

A: I don't think so. I don't understand.

Q: Well, have you gotten rid of any of it prior to this hearing?

A: Oh, no, sir.

Q: You are telling me that everything you have done with all of the confidential or privileged material has been done strictly in accordance with the agreement you signed?

A: Yes, sir.

Q: Did you make any copies of that material for your private use in your office?

A: No, sir.

(Nov. 30, 1999 Hr'g Tr. at 32-33.)

[*13] III. Conclusion

It is ordered that Mr. Carlson is found to be in contempt of court. Accordingly, General Tire's Motion for Sanctions (Doc. No. 207) is **GRANTED**. Each party will bear its own costs.

ORDER ENTERED at Augusta, Georgia, this 23rd day of December, 1999.

Dudley H. Bowen, Jr.

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr.,)

et al,)

)

Plaintiffs,)

)

VS.) Civil Action No.

)

2:13-cv-00419-PMD

Goodyear Dunlop tires North)

America, Ltd., et al,)

Defendants.)

- - - - -

DEPOSITION OF TERRY PARSONS

April 17, 2015

- - - - -

The videotaped deposition of Terry Parsons, taken by
Bonnie M. Mako, a Stenotype Reporter and Notary Public
within and for the State of Ohio, at Akron/Canton
Airport, Canton, Ohio, commencing at 9:04.a.m., on the
date above set forth.

* * *
1 2007 to present, under your job description as the chief
2 tire analysis engineer in the product analysis department
3 is, quote, laboratory field inspections and analysis of
4 claim tires. That's what it says, right?

5 A. Yes, that's what it says.

6 Q. That's the only thing it says, right?

7 MR. TOOLE: Objection. Form.

8 A. Yes. That's a bullet that is a brief
9 description of the activity of that department.

10 Q. And there is no real dispute that one of your
11 main job duties is to examine claim tires that come to
12 Goodyear where somebody says I bought a Goodyear tire, I
13 had a problem that either caused property damage to my
14 vehicle, in excess of 15 thousand, it caused an injury or
15 caused a death, true?

16 MR. TOOLE: Objection. Form.

17 A. We examine claim tires as you described. If
18 it's a property damage claim in excess of 15 thousand, if
19 it's a bodily injury or a death, we'll examine those.
20 We'll also examine tires that are involved in a
21 litigation of some kind.

22 Q. And you did that for this case. You examined
23 the tire that was the subject of this case, the Hartsock
24 case, right?

25 A. Yes, I did.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUSTIN HOBBS, ET AL.,

Plaintiffs,

VS.

**GOODYEAR DUNLOP TIRES
NORTH AMERICA, LTD.**

Defendant

www.ck12.org

CIVIL ACTION NO. H-09-1765

AMENDED PROTECTIVE ORDER

This matter is before the Court on the parties' Stipulation for a Protective Order. Being fully advised, the Court finds that discovery may include the production of documents and information a party believes to be proprietary and confidential. Additional requests for such proprietary and confidential information are likely to be made. It will facilitate discovery without prejudice to any party to enter the following Protective Order:

The following restrictions shall be observed as to the Confidential Documents and Information produced by a party pursuant to this ORDER:

I. Definitions

- A. Information designated as "Confidential" or "Confidential Information" or "Confidential Material" shall be considered trade secret and fully protected by this ORDER. All portions of transcripts, depositions, exhibits, or other pleadings or filings in this action which contain or otherwise set forth documents, information, or other materials, or contents thereof, which have been previously designated as Confidential, shall likewise be subject to the terms of this ORDER.
- B. "Communicate" (or variants of this verb) means to disclose, show, give, imply, list, describe, provide, make available, furnish or allow exposure of information in any fashion to any person, including without limitation any mailing, faxing, hand delivery, photograph, electronic, digital or any other duplication method.

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EXHIBIT C

EXHIBIT 1

- C. "Copy" or "Copies" means reproductions made through any process, including but not limited to photocopying or photographic, any form of reproduction, manual recopying, microfilm, dictation, or mechanical, visual, digital or electronic duplication which in any way attempts to produce the substance, form, or intent of information;
- D. "Document" or "Documents" includes all written, recorded, digital, electronic or graphic material, whether produced or created by a party or another person and whether produced pursuant to Rule 34, pursuant to subpoena, by agreement or otherwise and includes both those items of a tangible nature and any computer files;
- E. "Party" means any person or entity named in this litigation and any of their affiliated persons or entities;
- F. "Person" means any natural person, or any legal or business entity, profit or nonprofit organizations, or any governmental agency;
- G. "Producing Party" means the party who produced Confidential Documents or Information;
- H. For purposes of this ORDER, "conclusion of this litigation" means the execution of a settlement agreement or release disposing of all claims, entry of final judgment or the exhaustion of appeals or the expiration of time for appeals.

II. Restrictions

1. Confidential Documents and the Information contained therein shall be used by the parties and those persons identified in Paragraph 2 only for the purpose of the prosecution or defense of this captioned action, and shall not be communicated in any manner to anyone other than those persons identified in Paragraph 2, without order of the Court after due notice to the Producing Party. Each and every Confidential document produced (including copies, excerpts, digests, summaries or indices thereof) by a party shall be clearly marked and identified with the legend:

CONFIDENTIAL

**THIS DOCUMENT PRODUCED UNDER COURT ORDER FOR USE IN
JUSTIN HOBBS, ET AL. V. GOODYEAR DUNLOP TIRES NORTH
AMERICA, LTD., NO. H-09-1765; IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON**

**DIVISION, AND SHALL NOT BE USED FOR ANY OTHER PURPOSE
WHATSOEVER.**

In the event any party creates a computer database, disk, compact disk, drive, digital or other electronic record containing Confidential Documents or Information, the party creating such an electronic record shall mark the case or envelope containing the material with the language contained in Paragraph 1. Documents printed from such electronic media shall be marked the same as documents originally produced on paper.

2. Confidential Documents and Information shall not be given, shown, made available, discussed or otherwise communicated in any way except to a "Covered Person," defined as follows:

- a. The Court or Courts in which this litigation is being pursued;
- b. The party or a person employed by a corporate party who is participating in the management of this litigation and the preparation of this case for trial;
- c. The attorneys of record for the parties and their associated attorneys, including the employees of any such attorneys to whom it is necessary that the material be shown for purposes of the litigation; and
- d. Independent professional engineers, accident reconstruction or other independent experts retained by a party or an attorney of record to assist in the preparation of this litigation, other than Dennis Carlson. If Mr. Carlson is a consultant in this case, a court hearing shall be held in order to determine his access to any protected documents or testimony.

3. Before disclosing Confidential Documents or Information to any Covered Person who is a competitor or an employee of or consultant to a competitor of the Producing Party, the party wishing to make disclosure shall give at least 10 days advance notice in writing to the

counsel of the Producing Party, stating the name and address of the person to whom disclosure is intended and identifying the Confidential Information or Documents to be disclosed. If within the 10-day period the Producing Party files a motion objecting to the disclosure, disclosure shall not be made until the Court rules upon the motion.

4. No Confidential Documents shall be transmitted by email to a covered person, but shall only be transmitted on discs or other physical media.

5. Deposition testimony relating to or discussing a party's Confidential Information shall be protected under this ORDER and the entire transcript including such testimony shall be treated as confidential for a period of 30 days after the court reporter serves copies of the transcript on the parties. Within those 30 days, the proponent of confidential treatment of all or any portion of the deposition shall serve on all counsel of record a designation of confidentiality that identifies by page those pages to be marked with the Confidential legend of Paragraph 1. Thereafter any party opposing that designation has 30 days from the service of the designation to file a motion challenging the scope of the designation of confidentiality. The transcripts of such deposition testimony shall be treated the same under this ORDER as other documents marked Confidential. The court reporter and videographer, if any, for any such deposition, shall be provided a copy of this ORDER by the party at whose instance the deposition is taken, shall acknowledge this ORDER on the record and shall not disclose to anyone other than those specified in paragraph 2 any deposition testimony or exhibit in this case.

6. Confidential Documents and Information shall not be given, shown, made available, discussed or otherwise communicated to anyone other than the attorneys of record for a party without first informing them of the contents of this ORDER. In the case of persons specified in 2(d) hereinabove, counsel shall obtain from such person a signed acknowledgment, in the form attached hereto as EXHIBIT A, that the person:

a. is familiar with the terms of this ORDER and agrees to comply with and be bound by them, and

b. submits to the jurisdiction of this Court or any other court of competent jurisdiction for the purposes of enforcement of this ORDER.

Within ten (10) days after making a disclosure authorized by paragraph 2, counsel making such disclosure shall file under seal, the original acknowledgment (Exhibit A), and a description of the Confidential Documents and/or Information disclosed to each signer, and shall serve upon counsel for the Producing Party a written notice identifying the Documents and/or Information disclosed, and the number of people to whom each disclosure was made.

7. Any party to this litigation may challenge a "Confidential" designation by filing a motion under seal within 30 days of the receipt of the Confidential Document or Information, to be heard *in camera*. Pending a ruling of the Court, the challenged Document or Information shall continue to be treated as Confidential under this ORDER.

8. All writings submitted to or filed with the Court in connection with any pre-trial proceedings which contain, set forth, summarize or otherwise disclose Confidential Documents or Information shall be filed under seal and such documents shall not be publicly available, except by further order of this Court.

9. At the trial of this cause, the parties agree that the protection of the confidentiality of Confidential documents shall continue to the maximum extent permitted by the Court, pursuant to such procedures as the Court may require.

10. If any party or person that has obtained Confidential Documents or Information under the terms of this ORDER receives a subpoena or other legal process commanding the production of any such Confidential Documents or Information ("the subpoena"), such party or person shall promptly notify the party or person that designated the Documents or Information as

Confidential of the service of the subpoena. The party or person receiving the subpoena shall not produce any Confidential Document or Information in response to the subpoena without either the prior written consent of the Producing Party, or an order of a court of competent jurisdiction. However, the Producing Party in such case shall have the burden of seeking a court order relieving the subpoenaed party or person of the obligations of the subpoena prior to the return date of such subpoena.

11. The inadvertent production in the course of discovery in this action of any document or information (whether designated as Confidential or not) shall not be deemed to waive whatever attorney-client privilege, work product protection or other privilege or immunity that would otherwise attach to the document or information produced or to other documents or information, as long as the Producing Party or person, promptly after discovery of the inadvertent production, notifies the other party or parties of the claim of privilege or other protection or immunity. Upon such notice, the other party or parties shall promptly destroy all copies of the documents or information referred to and notify the Producing Party or person that it has done so. Such destruction and notice shall not constitute an acknowledgment that the claimed document or information is in fact privileged or entitled to protections or immunity.

12. Within twenty-one (21) days after the conclusion of this litigation, unless the Court orders otherwise, Counsel for any party who received Confidential Documents or Information shall request from all persons to whom Confidential Documents and Information have been provided an affidavit in the form of Exhibit B hereto. The request shall include notification to the recipients that the litigation has concluded. Copies of such requests shall be filed, under seal, with the Court.

13. Within fourteen (14) days of receipt of notice of the conclusion of this litigation, each Covered Person under paragraph 2b and 2d of this ORDER shall:

a. return to the counsel that disclosed Confidential Documents or Information to them all Confidential Documents and all documentary materials reflecting Confidential Information which are in his/her possession, custody or control, and

b. serve upon the disclosing counsel an affidavit in the form of EXHIBIT B, attesting that he/she has returned all Confidential Documents and Information.

14. Unless the Court orders otherwise, within sixty (60) days after the conclusion of this litigation, every counsel who has received the Confidential Documents or Information of another party shall:

a. Return the original and all copies of the Confidential Documents provided by the Producing Party which are in the possession, custody or control of such counsel; and

b. Either deliver to counsel for the Producing Party all documentary materials reflecting information contained in or derived from Confidential Documents provided by the Producing Party which are in the possession, custody or control of such counsel; OR

c. destroy such documentary materials, and notify counsel for the Producing Party in writing that such action has been taken; and

d. file under seal, all original executed affidavits received; and

e. Inform counsel for the Producing Party in writing of the identity of any Confidential Documents or Information contained in or derived from such documents, known to such counsel, which have *not* been returned and/or destroyed in the manner required by this ORDER, and the identity of any person who has failed to return each such Confidential Document and/or item of Confidential Information.

15. Nothing in this ORDER shall limit or otherwise affect:

a. the rights of any party to object to any further production or use at trial of Confidential Documents or the Information contained therein; or

b. the rights of any party to seek a more restrictive treatment of highly confidential information.

16. At the conclusion of this litigation, the Court shall retain jurisdiction in the case for enforcement of this ORDER. At the conclusion of this litigation, counsel for a Producing Party shall not be entitled to inspect and copy those documents previously filed under seal with the Court pursuant to this ORDER unless the Court determines the Producing Party has shown "Good Cause" to inspect and copy said materials. An example of "Good Cause" may include the Producing Party's documentation of a violation of this ORDER by submitting an affidavit to the Court showing that not all of the documents covered by this ORDER were returned or destroyed as provided by this ORDER. "Good Cause" may also include a Producing Party's documentation of a violation of this ORDER by submitting an affidavit to the Court showing that the documents governed by this ORDER were being utilized in a manner not permitted by this ORDER. At least ten (10) days prior to any hearing on the issue of whether a Producing Party has shown "Good Cause," the Producing Party shall notify in writing all counsel of record of the Producing Party's attempt to establish "Good Cause" with the Court so as to permit the Producing Party to inspect and copy those materials previously filed under seal with the Court.

17. By their signature upon the stipulation for the entry of this ORDER and their signatures below, counsel for the parties signify their understanding of this ORDER and their agreement to abide by its terms unless and until it is modified or superseded by further order of this Court. The attorneys of record are responsible for employing reasonable measures, consistent with this ORDER, to control duplication of, access to and distribution of copies of

Confidential information and to collect or destroy all documents at the conclusion of this litigation.

Dated: _____

Dated: _____

Attorney for Plaintiff

Attorney for Defendant

APPROVED, AND SO ORDERED, this 1st day of

JULY, 2010.



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Michelin Americas Research & Development Corp.,	)	
	)	
Plaintiff,	)	ORDER
	)	96-CP-23-2943
	)	
vs.	)	
	)	
Dennis Carlson, Jr.,	)	
	)	
Defendant.	)	

FILED-CLERK OF COURT
GREENVILLE, S.C.
JUL 28 4 02 PM '91

Plaintiff Michelin Americas Research & Development Corp. ("MARC") brought this action against its former employee, Dennis Carlson, Jr. ("Carlson") seeking temporary and permanent injunctive relief to prevent Carlson from using or disclosing MARC's trade secrets and confidential information in contravention of his employee's secrecy and non-disclosure agreements and the South Carolina Uniform Trade Secrets Act as set forth in §39-8-1 et seq., S.C. Code Ann. (1996).

BACKGROUND

For the most part, the facts in this case are undisputed. MARC is a research and development company which operates in the competitive, technology-driven tire, rubber and transportation related industries. MARC is in the business of developing trade secret and confidential tire technology, designs, and other sophisticated technical information. Carlson worked for MARC from March 1977 to November of 1987 as a research engineer at MARC's Research and Development Center and its test track. Both are located in upstate South Carolina.

While employed by MARC, Carlson was involved in the testing of light truck tires manufactured by Michelin. Michelin North America, Inc. and MARC share the same parent company. The Uniroyal Goodrich Tire Company was merged into Michelin North America, Inc. in 1995. Michelin is one of the largest manufacturers of tires in the world.

In 1977 and 1980 Carlson signed non-disclosure agreements with MARC. The agreements are similar, with the chief difference being that the 1980 agreement also contains a non-compete

clause. In that the non-compete clause has long since expired, the Court is concerned only with the confidentiality portions of the agreement. The applicable portion of the 1980 agreement states that Carlson agrees:

"To maintain in confidence at all times during and after your employment any knowledge acquired in the course of your employment with Michelin or which you may acquire after such employment as to the confidential information, technical know-how and trade secrets of Michelin, and also as to confidential records, drawings, data, methods, programs, processes, apparatus, and inventions of Michelin; and you specifically agree that you will not use any of said knowledge independently of your work for Michelin and will not divulge the same to others."

In November 1987, Carlson resigned from MARC to accept employment with S.E.A., Inc., a consulting firm that provides technical witnesses for a fee. Then, in August 1994, Carlson left S.E.A. and joined George R. Edwards, Inc., another firm providing technical testimony in the field of tire design and manufacture. Carlson is currently the President and controlling shareholder of a group known as Edwards and Carlson, Inc. The majority of Carlson's work at Edwards and Carlson, Inc. involves consulting an expert witness services for Plaintiff's attorneys in tire related product liability actions commenced against tire manufacturers, including companies affiliated with MARC.

MARC alleges that Carlson violated his agreements, the S.C. Trade Secrets Act, and his common law duties. The allegations primarily relate to his being retained in a tire failure case filed in the State of Michigan, captioned Wilson v. Michelin North America, Inc., 94-432456-NP. Various pleadings, orders, and transcript of hearings from that case were filed as exhibits in this case. Those exhibits and Carlson's testimony indicate that the attorney in the Wilson case named Carlson as a fact witness and the Court entered an Order requiring his testimony with certain confidentiality requirements. Subsequently, in Wilson, Michelin sought to have Carlson excluded. To defend against that Motion, Wilson's attorney had Carlson file an affidavit setting forth the nature of his testimony (hereinafter referred to as the Wilson affidavit). In his affidavit, Carlson disclosed the results of a research test he performed regarding the pressure at which a Michelin 16-inch like truck tire with a 19-strand wire bead construction will burst when mounted on a 16.5 inch wheel. Wilson intended to use this information to argue that Michelin had notice since 1980 that the tires would fail

in a mismatch situation.

After the Wilson affidavit was filed, MARC's attorneys filed a motion for a protective order seeking to have the affidavit removed from the public record because it allegedly contained secret and proprietary information. The judge denied MARC's motion in an Order dated November 11, 1996. The information contained in the Wilson affidavit remains in the Court's file and is in the public domain. [The Wilson case has been settled and is now over.]

Michelin presented no other evidence which proves that Carlson may have breached his agreements or duties other than the allegations regarding the Wilson affidavit.

Carlson testified that prior to the Wilson case, he was an expert witness in a case filed in known as Doke v. Uniroyal Goodrich Tire Company. As noted earlier, the Uniroyal Goodrich Tire Company has been merged into Michelin North America, Inc. The Doke case involved similar issues to those as Wilson. During his deposition in Doke, Uniroyal/Goodrich's attorneys asked Carlson specific questions about testing he had done while employed by MARC. That deposition was taken subject to a protective order and MARC has never raised any question regarding Carlson's testimony in Doke. Specifically, Carlson testified that he was asked about the 1980 bursting on Michelin light truck tires and Carlson revealed that he had done such testing at MARC and that the tires had failed at 65 pounds per square inch. This is substantially the same information as contained in the Wilson affidavit. At the trial of this matter, the deposition testimony of Kenneth J. Moran, an attorney who represents Goodyear Tire, was published. Goodyear is not related to Michelin and is, in fact, a direct competitor. Mr. Moran was defending Goodyear in a case in the state of Missouri, entitled Cole v. Goodyear. Carlson was an expert witness for Cole. During Carlson's deposition, Moran revealed to Carlson that he had obtained a copy of the Doke deposition, and Moran asked Carlson questions based on the Doke deposition. Moran stated that he had received the Doke deposition from Michelin's attorneys during the course of his investigation of the Cole case. Not only did Moran use the Doke deposition containing the same allegedly confidential information as the Wilson affidavit, but he also sent it to another competitor of Michelin, Bridgestone Tire. During the Cole deposition, Carlson notified Moran that he understood that Michelin considered the Doke deposition confidential. Moran then put the part of the Cole deposition dealing with the Doke deposition under a "Protective Order". Nonetheless, Moran had

the Doke deposition and shared it with others. Approximately one year after the Cole deposition, in November of 1996, Michelin called Mr. Moran and asked that he retrieve all the deposition copies. Moran then returned the Doke deposition to Michelin attorneys. Carlson testified at trial that he did not know the deposition was returned and knew that Moran, who represented a competitor of Michelin, had possession of the Doke deposition and was aware of its contents. These facts are important not only to show that, whether inadvertent or not, a publication was made prior to the Wilson affidavit and that Carlson was aware, before the Wilson affidavit, that an attorney for a competitor of Michelin had possession of the information.

Carlson testified that he also knew the burst tests, that were the subject of the Wilson affidavit had been duplicated by competitors and researchers in the tire industry including Smithers and UMTRI (tire researchers with nationwide publications). However, according to Randy Clark, a former MARC employee who worked with Carlson in the 1980's, and James Moxie, a current MARC employee, MARC took numerous steps to insure that trade secrets and confidential information remained confidential, such as requiring employees to sign secrecy and non-disclosure agreements and restricting access to such information to only those employees who had a "need to know" information to perform their job. The testimony also established that MARC was very secretive, including having secured facilities that were fenced and patrolled by security guards.

Mr. Joseph Grant, an employee of Continental General Tire, a competitor of MARC and Michelin, testified that 1980 burst test is the type of information that CTG would consider to be trade secret and of value to his company. Jerry Leyden, an expert in the tire and rubber industry, also confirmed that the 1980 burst test would provide valuable information to a MARC competitor. He stated that the information disclosed by Carlson would allow a knowledgeable tire engineer to determine what components Michelin was using in that particular tire, the performance capability of that particular design, and Michelin's product development stage at that time. Leyden testified that such information could have an influence on a competitor's own design philosophy; even with such information being from 1980.

The evidence at trial demonstrates that the 1980 burst test information was generally known in the tire industry. However, it is likewise clear it was not generally known what specifics in testing protocol was used by MARC. In fact, Carlson himself testified that the results of his tests were not

identical to the test results found by others. It is clear that the tire development industry is very secretive and competitive and that such information was and would have been, as testified by Mr. Grant, "extremely valuable" to a competitor; even on a tire out of production such as the tire in question.

DISCUSSION

A. PERSONAL JURISDICTION.

Carlson, who resides in Jefferson County, Kentucky, contends that this Court lacks personal jurisdiction over him. However, the Courts of South Carolina may exercise personal jurisdiction over a person "who acts ... as to a cause of action arising from the person's ... (a) transacting any business in this State; or ... (g) entry into a contract to be performed in whole or in part by either party in this state ...". See, SC Code Ann. §36-2-803. The evidence establishes that Carlson entered into this non-disclosure agreement in South Carolina and the performance of these agreements took place, at least in part, in South Carolina. The agreements are directly related to Carlson's former employment in this state and the business he transacted while at MARC.

Furthermore, the exercise of jurisdiction over Carlson does not offend due process since during the ten years he was employed at MARC, Carlson availed himself to the privileges and protections of being a resident of and conducting business in South Carolina. See, International Shoe Co. v. Washington, 326 US 310 (1945). Further, since leaving MARC, Carlson has transacted business in this state through his doing several accident investigations in South Carolina. Carlson also acknowledged that disclosure or use of MARC's trade secrets could result in harm to MARC and its employees within South Carolina.

The Court finds sufficient basis to exercise personal jurisdiction over Carlson.

B. COLLATERAL ESTOPPEL.

Carlson claims that the instant of suit is barred by collateral estoppel arising out of the Wilson case. The evidence proffered by Carlson shows that the issues of breach of the non-disclosure agreements and violation of the SCUTSA which are the focus of the instant case, were neither before the Wilson Court nor decided by that Court. As such, the elements of collateral estoppel are simply not present in this case. See, Roberts v. Recovery Bureau, Inc., 450 S.E.2d 616 (SC Ct. App. 1994).

Further, collateral estoppel is generally an affirmative defense which must be raised prior to trial. See, Jordan v. Jordan, 326 S.E.2d 416 (S.C. App. 1985).

C. BREACH OF THE AGREEMENTS.

The validity and enforceability of the non-disclosure agreements was undisputed by the parties and, in fact, Carlson readily admitted at trial that the agreements are valid and enforceable contracts under which he has a continuing duty to not disclose or use MARC's trade secrets or confidential information. As noted earlier, the only evidence introduced by MARC relative to the breach of the agreement is Carlson's execution of the Wilson affidavit.

Carlson argues that the information in the affidavit cannot be a trade secret or legally protected confidential information. Carlson cited as authority Carolina Chemical Equipment Co., Inc. v. Muckenfuss, 471 S.E.2d 721 (SC App. 1996) and Travenol Laboratories, Inc. v. Turner, 228 S.E.2d 478 (NC App. 1976). MARC, of course, argues to the contrary citing as authority Boeing v. Sierracin Corp., 738 P.2d 665 (Wash. 1987); Pepsico, Inc. v. Redmond, 1996 WL 3965 (N.D. Ill. 1996), the South Carolina Uniform Trade Secrets Act (§39-8-1, et seq.) and argued that Muckenfuss is no longer good law in light of recent amendments to the South Carolina Uniform Trade Secrets Act.

As noted earlier, the Court finds that the specific information disclosed by Carlson in the Wilson affidavit was a trade secret or confidential information prior to its disclosure. See, §39-8-1 (4). However, and as noted above, it is also clear that Michelin, Plaintiff's parent company, must share at least some of the responsibility for the publication MARC now complains of. Specifically, the information made available by Michelin in the Doke and Cole cases. While such disclosure in Doke and Cole was, in all likelihood, inadvertent, nonetheless the bell has been rung. Additionally, the facts of this case are further complicated by the ruling of the Court in Wilson, as set forth in its November 11, 1996 Order, refusing to seal Carlson's affidavit. In other words, the information in the Wilson affidavit is, by Court Order, now in the public domain. So, while the Court does find that Carlson has violated the non-disclosure agreements, the Court cannot find such disclosure as indicative of Carlson's intent to disregard the non-disclosure agreements or that it demonstrates a propensity by Carlson to disclose company trade secrets or confidential information in the future. Rather, the Court notes that Carlson has been away from MARC for over ten years, actively

involved as an expert witness in tire defect cases, and the only evidence presented concerning his breach of the non-confidentiality agreements was the Wilson affidavit.

Notwithstanding the above, it is clear that Carlson possesses significantly valuable company trade secrets and confidential information that could cause MARC significant and immeasurable harm. Further, given the very nature of Carlson's business, there certainly is a reasonable basis for concern by MARC of a real threat of future disclosures.

RELIEF GRANTED

In light of the above, the Court having carefully considered all the evidence, briefs, and oral arguments submitted and presented by the parties at trial, it is **Ordered, Adjudged, and Decreed** as follows:

1. Defendant's Motion to dismiss on the grounds of lack of personal jurisdiction, collateral estoppel, and lack of trade secret/confidential information, is denied.

2. That Dennis P. Carlson, Jr. is directed to comply with and restrained from violating the non-disclosure agreements previously executed and, in particular, from:

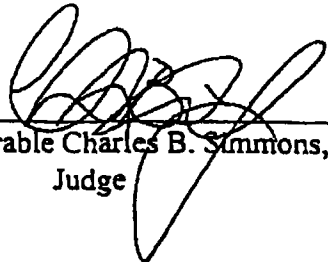
Disclosing or using, without the express prior written approval of MARC, any secret or confidential information (including matters of a technical nature, such as "know-how", formulas, secret processes, machines, inventions, research projects, and matters of a business nature, such as information about costs, profits, markets, sales, list of customers and any additional information of a similar nature) of MARC of which Carlson became informed during his employment with MARC, whether or not developed by Carlson. Any information or data not generally available to the public shall be considered secret or confidential for the purposes of this Order.

For the purposes of this Order, the precise facts set forth in paragraphs 2 thru 5 of the Affidavit of Dennis Carlson, Jr., sworn to on September 24, 1996 and filed in the Wilson v. Michelin North America, 94-432496-NP (Mich. Cir. Ct.), shall be deemed generally available to the public and thus not secret or confidential. Any revelation by Carlson beyond the precise facts in that affidavit shall be governed by this Order.

3. In the event MARC shall have sufficient evidence that Carlson has or is going to disclose MARC's trade secrets and confidential information, MARC may immediately petition the appropriate Court for relief. This specifically includes filing a Motion for contempt in the Court of

Common Pleas for Greenville County, South Carolina.

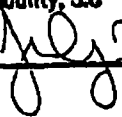
AND IT IS SO ORDERED.



The Honorable Charles B. Simmons, Jr.
Judge

Greenville, SC
July 24, 1997

A Certified Copy


Clerk of Court C.P. & G.S.
Ex-Officio Clerk County Court
Greenville County, S.C.
Dated July 28, 1997




MORRIS, MANNING & MARTIN, LLP
ATTORNEYS AT LAW

**FACSIMILE
TRANSMISSION
FORM**

*1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 233-7000*

Facsimile Number: 404-365-9532

FACSIMILE COVER SHEET

Please deliver the following pages to:

NAME	FACSIMILE NUMBER	COMPANY
Dennis Carlson, P.E.	520-623-1631	Carlson Engineering, Inc.
Stewart Eisenberg, Esq.	215-546-0118	Eisenberg, Rothweiler, Winkler
James Brogan, Esq.	215-656-3301	DLA Piper Rudnick Gray Cary
IF TRANSMISSION IS CONFIDENTIAL TO INDIVIDUAL RECIPIENTS, A SEPARATE COVER SHEET IS REQUIRED		

FROM: Elizabeth C. Helm, Esq.

DIRECT DIAL PHONE: 404-495-3672

CLIENT/MATTER: 13581-40904

DATE: September 25, 2008

PAGES TO FOLLOW: 12

COMMENTS:

Please see attached.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

EXHIBIT E



Elizabeth C. Helm
404-504-7792
ehelm@mmmlaw.com
www.mmmlaw.com

September 25, 2008

VIA FACSIMILE (520) 623-1631

Carlson Engineering, Inc.
Dennis Carlson, P.E.
1548-A South Euclid Avenue
Tucson, Arizona 85713

Re: Settlement Agreement

Dear Mr. Carlson:

As you know, I represent Michelin North America, Inc. ("MNA"). It seems that you have to be periodically reminded of your obligations and agreements with Michelin. I am enclosing, again, a copy of your January 2000 Settlement Agreement with MNA and MARC. Specifically, I refer you to Paragraph 4 which sets forth in detail the only information you are allowed to reveal regarding your employment ant MARC, and the information you obtained as a result of it.

I have been provided with a supplemental letter report you prepared in *Ramos v. Goodyear* dated September 5, 2008. In that report you purport a tolerance for belt splices at Michelin and Michelin's quality assurance procedures. This is the type of confidential information specifically addressed in the Settlement Agreement that you were both ordered not to reveal and subsequently specifically agreed not to reveal. In direct violation of that Agreement you have now revealed confidential and trade secret information to one of Michelin's competitors. Michelin insists that you immediately withdraw the report, inform all parties to the case that you cannot render the opinions contained in it because it is a violation of your agreements with Michelin, and retrieve all copies of the report and send them to me along with your certification that none exist other than the ones you send to me.

Very Truly Yours,

MORRIS, MANNING & MARTIN, LLP

Elizabeth C. Helm

Enclosure

cc: Stewart Eisenberg (via facsimile)
James Brogan, Esq. (via facsimile)

Buckhead Office
(404) 233-7000
1600 Atlanta Financial Center
3343 Peachtree Road, N. E.
Atlanta, Georgia 30328
Fax: (404) 365-9532

With offices in

Washington, DC
Raleigh-Durham, N.C.

2305322 v01

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and is effective this ____ day of January, 2000, by and among:

MICHELIN AMERICAS RESEARCH & DEVELOPMENT CORPORATION ("MARC"), a Delaware corporation, with its principal place of business in Greenville, South Carolina,

MICHELIN NORTH AMERICA, INC. ("MNA"), a New York corporation, with its principal place of business in Greenville, South Carolina, and

DENNIS CARLSON, JR. ("Carlson"), individually and on behalf of any companies with which he is affiliated, a resident of Louisville, Kentucky.

(Where no distinction is made herein, "Party" or "Parties" refer respectively to any or all of the above referenced parties to this Agreement.)

WHEREAS, MARC is a research and design company and MNA is a tire manufacturing company in the highly competitive tire industry;

WHEREAS, Carlson was formerly employed by MARC from 1977 to 1987;

WHEREAS, while an employee of MARC, Carlson executed two Non-Disclosure Agreements in 1977 and 1980, respectively (hereinafter the "Non-Disclosure Agreements");

WHEREAS, for the purposes of this Agreement, the parties acknowledge that the "Michelin Group" includes MARC, MNA, Michelin North America (Canada) Inc., Michelin Corporation, La Manufacture Francaise des Pneumatiques Michelin, Uniroyal Goodrich Canada, Inc., B.F. Goodrich Canada, Inc., Uniroyal Goodrich Tire Company, Inc., The Uniroyal Goodrich Tire Company (a New York partnership), The Uniroyal Goodrich Tire Company (a Delaware Corporation), The B.F. Goodrich Company, Uniroyal, Inc., Uniroyal Ltd., Uniroyal Tire Ltd., Uniroyal Tire Company, Inc., and any of their respective domestic or foreign affiliates, and any of the respective predecessors, successors, assigns, owners, partners, employees, officers, directors, and agents of any of the foregoing;

WHEREAS, for some time now, Carlson has made his living primarily as an expert witness, consultant and tire failure analyst in connection with product liability actions against tire manufacturers;

WHEREAS, MARC contends that Carlson, while performing services as an expert witness, consultant and tire failure analyst, improperly disclosed and used confidential information of MARC in violation of the Non-Disclosure Agreements;

WHEREAS, as a result of what MARC contends were violations of the Non-Disclosure Agreements, MARC filed suit in 1996 against Carlson in the Court of Common Pleas for the County

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of Greenville, State of South Carolina (hereinafter the "Court") in the matter of Michelin Americas Research & Development Corporation, Plaintiff, v. Dennis Carlson, Jr., Defendant, Case No. 96-CP-23-2943 (hereinafter the "Lawsuit");

WHEREAS, on July 24, 1997 the Court entered an Order (hereinafter the "July 24, 1997 Order") which is attached hereto as Appendix 1;

WHEREAS, MARC contends that Carlson has violated the Non-Disclosure Agreements and the July 24, 1997 Order as specified in its MARC's Motion for Contempt filed in the Lawsuit on or about October 16, 1998, in its Amended Motion for Contempt filed in the Lawsuit on or about August 13, 1999, and the Supplement to the Amended Motion for Contempt filed on December 14, 1999, and as would have been heard by the Court at the evidentiary hearing scheduled for December 17, 1999;

WHEREAS, Carlson does not contest making the statements set forth in the transcripts referenced in the amended contempt motion and the supplement thereto, but Carlson does contend that such statements were not in violation of the Non-Disclosure Agreements or the July 24, 1997 Order;

WHEREAS, the Michelin Group alleges that violations of this Agreement, the Non-Disclosure Agreements and the July 24, 1997 Order will cause irreparable harm to MARC and the Michelin Group, and the damages caused to MARC and the Michelin Group through Carlson disclosing or using MARC confidential information are difficult to ascertain;

WHEREAS, the parties recognize that in ongoing product liability matters against one or more of the Michelin Group where Carlson has been directly or indirectly retained as an expert witness, consultant or tire failure analyst as of the date of this Agreement, withdrawal could prejudice the litigants, and such a withdrawal may be prohibited by the courts in which those actions are pending;

WHEREAS, Edwards & Carlson has filed for bankruptcy in the Bankruptcy Court for the Eastern District of Kentucky, Case No. 99-3067 the ("Bankruptcy Proceedings"), and MARC and MNA have appeared in said proceedings as creditors of the estate or parties in interest;

WHEREAS, the parties acknowledge and understand that said Bankruptcy Proceedings will not discharge or effect Carlson's obligations under the Non-Disclosure Agreements or the July 24, 1997 Order;

WHEREAS, the parties seek to resolve their differences in such a way so as to protect MARC's interests and confidential information, while at the same time permitting Carlson to continue as an expert witness as provided herein; and

WHEREAS, in exchange for the promises contained herein, MARC is willing to withdraw with prejudice MARC's Amended Motion for Contempt as supplemented on December 14, 1999 against Carlson.

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NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Carlson shall not accept any future employment of any type or otherwise act or be engaged in any capacity as an expert witness (testifying or otherwise), consultant or tire failure analyst (a) in any matter adverse to one or more of the Michelin Group, (b) in any claim against any entity for whom a member of the Michelin Group may be liable through assumption, indemnification, operation of law or otherwise, or (c) in any matter in which Carlson is called on to examine or to inspect any tire or other product designed, developed, manufactured or distributed by one of more of the Michelin Group. The restrictions set forth in this paragraph apply to Carlson in any capacity and preclude him from performing any such services in a personal capacity, as an employee or agent of Carlson Engineering or any other company, or in any other representative capacity. If Carlson is in doubt as to whether a particular tire is subject to the foregoing prohibitions, he may contact James Moxie or another individual designated by MARC to receive this contract. See paragraph 7 for clarification.
2. MARC and MNA will, if permitted by the Bankruptcy Court, cease its participation and withdraw any claims in the bankruptcy proceeding of Edwards & Carlson, Inc. in Kentucky and will not seek or accept any proceeds from that bankruptcy estate or from anyone else resulting from that matter.
3. MNA will, if permitted to do so by the Court, withdraw its Motion for Contempt in the pending case of Dean Edward Martin, et al. v. Michelin North America, Inc., United States District Court for the Eastern District of Tennessee, Civil Action No. 3:06-CV-635 and will not seek or accept any sanction from Mr. Carlson or anyone else arising from said Motion or as a result of any action taken by the Court related to the subject matter of the Motion.
4. Carlson's 1977 and 1980 Non Disclosure Agreements remain in full force and effect and this settlement agreement does not vacate or in any way modify the July 24, 1997 Order. Carlson may, however, disclose facts regarding his employment with MARC as follows:
 - The information included on Carlson's resume, which includes general background facts regarding his employment (dates of employment, positions held, and the models of tires on which he performed work). A copy of Mr. Carlson's resume is attached to this contract as Appendix 2 and incorporated herein.
 - A general description of the functions of MARC, which shall be limited to a statement relating to its development of tires for the North American market which includes design and testing.

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- A general description of Carlson's experience and duties at MARC, which shall be limited to a statement relating to the extent of his experience in the areas of testing, such as rolling resistance, ozone, burst testing, endurance, adhesion, separation, track evaluations, application of statistical process control, and handling tests.
 - A general description of his experience in analyzing test results and tire failure analysis which shall be limited to a statement relating to his personal participation in such activities.
 - A general description of his experience in the manufacturing of tires, including writing and modifying green and cured tire specifications which shall be limited to a statement relating to his personal participation in such activities.
 - Other information permitted by Judge Simmons' July 24, 1997 Order and the Non-Disclosure Agreements.
 - Carlson may describe his personal reasons for leaving MARC.
5. As to those cases listed on Schedule A wherein Carlson is currently retained as an expert adverse to one or more of the Michelin Group, subject to him complying with paragraph 4. above, Carlson may continue in that role until those cases are concluded. In such cases, the provisions of paragraph 4. above apply. Nothing in this Agreement shall preclude any member of the Michelin Group from challenging Carlson's qualifications, competency or credentials as an expert in any such cases.
6. Nothing set forth above shall preclude Carlson from giving factual testimony in cases involving one or more of the Michelin Group if Carlson does so pursuant to a valid subpoena or as otherwise ordered by a court of competent jurisdiction. Carlson may not under any circumstances (a) volunteer factual information pertaining in any manner to his employment or activities at MARC or other factual information relating to MARC, (b) take any steps to increase his accessibility to a subpoena or jurisdiction of a court such as traveling to any location to testify where Carlson is not legally obligated to appear, and/or (c) accept compensation for factual testimony of any nature whatsoever, other than travel expenses and a reasonable witness fee, where permitted by law, not to exceed \$50 per day. The provisions of this paragraph do not apply to Carlson's participation in the cases listed in Schedule A.
7. Before accepting employment or being retained, either individually or as an employee of a company, in any matter that is not adverse to any of the Michelin Group, Carlson shall provide the attorneys and/or litigants retaining him, or any company with which he is affiliated, with a copy of the Non-Disclosure Agreements, the July 24, 1997 Order and the list referenced in paragraph 5 above. A signed Acknowledgment Form affirming that these documents have been provided is

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attached hereto as Attachment B and must be provided to MARC within twenty-one (21) days of the disclosure that Carlson has been retained to the addresses set forth below:

James A. Moxie

Michelin Americas Research & Development Corporation

Post Office Box 19001

Greenville, South Carolina 29602-9001

and to

George E. Schulz, Jr., Esquire

Holland & Knight LLP

50 North Laura Street, Suite 3900

Jacksonville, Florida 32202

8. Notwithstanding anything in this Agreement to the contrary, in the event of a breach of any provision of this Agreement by Carlson, MARC or MNA shall be entitled to any remedy provided in equity or at law. In any action brought under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses.
9. MARC will withdraw the Amended Motion for Contempt as supplemented on December 14, 1999 with prejudice. As of the date of this Agreement, the Michelin Group is unaware of any statements by Carlson that the Michelin Group contends are violative of the July 24, 1997 Order or nondisclosure agreements which are not included in the Amended Motion for Contempt as supplemented on December 14, 1999.
10. As to those cases on Schedule A, statements made by Carlson in direct response to questions posed by lawyers representing the Michelin Group cannot be the basis of a motion or other legal proceeding seeking to hold Carlson liable under the July 24, 1997 Order or nondisclosure agreements.
11. CAPACITY. Each of the persons executing this Agreement, as a Party or on behalf of a Party, hereby declares, covenants and warrants that he or she is over eighteen (18) years of age, is suffering from no legal or mental disability which would impair or disable such person from executing this Agreement, and that, if he or she is acting in a representative capacity, he or she has specific, actual authority to do so. Each Party hereby declares, covenants and warrants that there have been no

representations, statements, promises, inducements, or agreements made by any of the other Parties hereto or their respective agents or attorneys and not herein expressed, to influence such Party into making or executing this Agreement.

12. **COMPLETE AGREEMENT.** The Parties hereto have read this Agreement in the presence of their attorneys and understand the purport, tenor and effect of this Agreement. The consideration provided for herein is the full, complete and entire consideration for this Agreement, and other than the written provisions specifically set forth herein, there is no agreement, oral or written, express or implied, whereby Carlson or MARC are to receive from the other any money or money's worth for the execution of this Agreement. This Agreement contains and sets forth the entire agreement among the Parties hereto, and there is no part of the agreement among them in respect of the premises which is not fully, completely, accurately and truly set forth herein. The obligations of Carlson under any other agreements or otherwise to any of the Michelin Group remain in full force and effect, and any obligations of Carlson hereunder are supplemental to those other obligations.
13. **EFFECT OF BREACH.** This Agreement and every provision hereof is final, binding and unconditional. Neither this Agreement nor any of the provisions hereof are rescindable or voidable by any Party. For any breach of any of the rights, responsibilities or obligations created by this Agreement, any Party shall have every remedy available at law or in equity, including, without limitation, injunctive relief.
14. **GOVERNING LAW.** This Agreement shall be governed by, interpreted, and enforced in accordance with South Carolina law without giving effect to the principles of conflicts of laws thereof.
15. **INUREMENT.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, legal representatives, successors and assigns.
16. **MODIFICATIONS.** This Agreement can be modified or rescinded only by a writing signed by all Parties or by their duly authorized agents.
17. **CAPTIONS.** Captions and paragraph headings used herein are for convenience only, are not a part hereof and shall not be deemed to limit or alter any provisions hereof or to be relevant in construing this Agreement.
18. **VARIATION OF PRONOUNS, PLURALS, ETC.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or gender neutral, singular or plural, as the identity of the person or persons may require.
19. **SEVERABILITY.** It is the intention of the parties hereto that the provisions of this Agreement shall be construed as severable as to section, paragraph, sentence, clause, phrase, time, area, and restricted activity and that if any section, paragraph, sentence or phrase hereof be deemed too broad in scope as to time, area or restricted activity,

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FROM-ARNOLD & MURPHY, LLC / K. KENISON, PC

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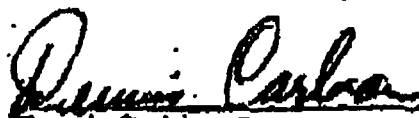
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that the section, paragraph, sentence, clause, phrase, period of time, geographical area or restricted activity shall be reduced to such scope as is reasonable and enforceable, and this Agreement shall be construed as if it had originally been drawn in such reduced form, to the end that the restraints hereby imposed may be enforced by injunction. In the event any section, paragraph, sentence, clause, or phrase of this Agreement is deemed unenforceable or invalid, the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect.

20. **NON-ADMISSION.** By entering into this Agreement, Carlson does not admit that he has violated his MARC confidentiality agreements and expressly denies that he has done so. This agreement will not be used as evidence in any proceeding except for a proceeding brought to enforce this agreement or to allege a breach thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.


Dennis Carlson, Jr.


Brian P. Murphy
Attorney for Dennis Carlson, Jr.

State of South Carolina
County of Greenville

The foregoing instrument was acknowledged before me this _____ day of January, 2000, by Dennis Carlson, who is: (personally known to me) or, who has (produced _____ for identification).

Notary Public, State of South Carolina
Name of Notary _____
Commission Number _____
Expiration _____

Michelin Americas Research
& Development Corporation

By: DA Cockrell

Name: D.A. Cockrell

Its: Attorney

State of South Carolina
County of Greenville

The foregoing instrument was acknowledged before me this _____ day of January, 2000,
by _____, who is: (personally known to me) or who has (produced
_____ for identification).

Notary Public, State of South Carolina
Name of Notary _____
Commission Number _____
Expiration _____

Michelin North America, Inc.

By: Daniel S. Sanders, Jr.

Name: Daniel S. Sanders, Jr.

Its: Attorney

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State of South Carolina
County of Greenville

The foregoing instrument was acknowledged before me this _____ day of January, 2000,
by _____ who is: (personally known to me) or who has (produced
_____ for identification).

Notary Public, State of South Carolina

Name of Notary _____

Commission Number _____

Expiration _____

AUF
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UGLE FREE LAW

03/29 '00 08:59 NO.715 13/15

NO.385 P.12

Schedule A

MARC V. CARLSON

MNA Uniroval and BFG Cases

Case	Att.	Location
Lovett	Lytal & Reiter	Florida
Chevres	Ray Boniford	Florida
Holtman	Armstrong Teasdale	Missouri
Beason	Bates	Texas
Papworth	Cherundale	New York
Stanton	Woody	Indiana
Andrews	Beauchamp	Georgia
Rocha	Garcia	Texas
Garcia	Garcia	Texas
Vattakrweid	Mithoff	Texas
Collier	Hildebrand	Illinois
Siegal	Fischer	Florida
Boruch	Lanza	New Jersey
Rodriguez	Arices	Florida
Paul	Workman	W. Virginia
Norte	Kaster	Florida
Alvarez	Hill	California
Gomez	Garcia	Texas
Jean-So	Idell	California
Martin	Smith	Tennessee
Parel	Puize	California
Beatty	Gillis	Massachusetts
Freitas	Bartnik	Connecticut
Simpson	Shea	California
Chan	Shea	California
For Squirrels/Griego	Williams	Georgia
Woods	Richard	Alabama
Lucas	Dasse	Arizona
Torrence	Wakefield	Ohio
Greene	Roberts	Florida
Milbrook	Mathews	Florida
Holmes	Victor Poulas	Texas
Sobszak	Breen	California
Bulldog Services	Zuppa	New Mexico
Jocobo-Aquino	Bennett	California
Dickenson	Strong	Missouri
Hartley Ready Mix	Brown	North Carolina
Valenzuela v. Riken	Bennett	California

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10/15/2008 3:47PM

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03/29 '00 08:59 NO.715 14/15
NO.386 P.13

<u>Case</u>	<u>Attn.</u>	<u>Location</u>
Sprong	McAbee	Wisconsin
Garcia	Stark	Arizona
Mitchell	Kaster	Florida
Sowerfield	Kernes	Pennsylvania
DeLouis	Kaster	Florida
Pollock	Materna	Michigan
Fought	Kaster	Florida
Leech	Carson	Oregon
Jenkins	Kaster	Florida
Vela	Gilbert	Colorado
King	Kaster	Florida
	Harrington	Kentucky

IN THE FOURTH JUDICIAL DISTRICT COURT - PROVO DIVISION
IN AND FOR UTAH COUNTY, STATE OF UTAH

MARK J. CROWTHER, on behalf of)
himself and JULIE CROWTHER and)
SPENCER CROWTHER, minors, LINSAY)
CROWTHER, EARL MORRISON and)
DOROTHY MORRISON, as heirs of)
DEBORAH M. CROWTHER, deceased,)
Plaintiffs,)
vs.)
GOODYEAR TIRE & RUBBER)
CORPORATION, an Ohio corporation,)
Defendant.) Case No.: 06041981
GOODYEAR TIRE & RUBBER)
CORPORATION,)
Third-Party Plaintiff,)
vs.)
MICHAEL A. GAVIN and EDWARD)
HANNON,)
Third-Party Defendants.)

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF DENNIS P. CARLSON, JR.

Tucson, Arizona
April 7, 2008
9:16 a.m.

EXHIBIT F

Reported by:
BECKY BAUMERT
Certified Reporter
Certificate Number 50152

BAUMERT REPORTERS, INC.
834 North First Avenue
Phoenix, Arizona 85003
(602) 955-0562

* * *

1 Q. Is it your testimony that if you have any
2 waviness at the belt edge that that means the tire is
3 defective?

4 A. No. It has to be excessive, a certain amount.
5 When you use the word "any," that is an imprecise area.

6 Q. Are you aware of any published testing,
7 scientific studies or peer-reviewed literature indicating
8 that waviness at the belt edge is a defect in the tire?

9 A. There are many company documents that indicate
10 that, but every company I know of has a tolerance for
11 joints and belt edges.

12 Q. I am going to object, nonresponsive.

13 Are you talking about protected documents of
14 other tire companies?

15 A. Yes.

16 Q. Then why are you talking about them?

17 A. I can tell you the general substance of what they
18 say.

19 Q. Do the Protective Orders allow you to do that,
20 really?

21 MR. CUTT: Well, he hasn't identified a document,
22 so how could he have violated a Protective Order?

23 MR. EDWARDS: Oh, my gosh. That's your position?

24 MR. CUTT: Well, he hasn't identified a company,
25 a time period, or a document.

1 Q. BY MR. EDWARDS: Can you produce any of these
2 documents to me that I can look at and cross-examine you
3 on?

4 A. No.

5 Q. Okay. Now, let me go back to my --

6 A. That's one reason I want to look at the cut tire
7 analysis, because they do have specs for things like that.
8 They should anyway.

9 Q. Let me go back and ask -- Objection,
10 nonresponsive.

11 Let me ask my original question, because you
12 didn't answer that. I didn't ask about internal company
13 documents that are subject to some other company's
14 Protective Order. Okay. I asked about published testing,
15 published scientific studies and published peer-reviewed
16 literature. Okay. Now that you have that understanding,
17 and we are clear, let me ask my question again. Okay.

18 Can you identify any published testing, published
19 scientific studies or published peer-reviewed literature
20 indicating that waviness at the belt edge is a defect in
21 the tire?

22 A. No.

23 Q. Thank you, sir.

24 A. I wouldn't say any tire company would put
25 something out there that would set them up for --

* * *

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, BECKY BAUMERT, a Certified Reporter,
6 Certificate Number 50152, in the state of Arizona; that
7 the witness before testifying was duly sworn by me to
8 testify to the whole truth; that the questions propounded
9 to the witness and the answers of the witness thereto were
10 taken down by me in shorthand and thereafter reduced to
11 transcript form under my direction; that the deposition
12 was submitted to the witness to read and sign; that the
13 foregoing 254 pages are a true and correct transcript of
14 all proceedings had upon the taking of said deposition,
15 all done to the best of my skill and ability.

16 I FURTHER CERTIFY THAT I am in no way related to
17 any of the parties hereto nor am I in any way interested
18 in the outcome hereof.

19 DATED at Phoenix, Arizona, this 16th day of May
20 2008.

Becky Baumert
BECKY BAUMERT
Certified Reporter
Certificate Number 50152

EXHIBIT G

DOCKET 130

SUBMITTED FOR IN CAMERA REVIEW

**EX. G: DEPOSITION EXCERPTS OF DENNIS P. CARLSON, JR.,
9/2/2015 [PP. 195, 221-22]**

SEE JOINT APPENDIX VOL. IV, PP. 1203-1206

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

CASE NO.: CA: 2:13-cv-00419-PMD

Plaintiff,

vs.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and Goodyear Tire &
Rubber Company, a foreign corporation,

Defendants.

AFFIDAVIT OF KEVIN C. LEGGE

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

BEFORE ME, the undersigned Notary Public in and for the aforementioned State and County, personally came and appeared Kevin C. Legge, who, upon being duly sworn, did depose and state as follows:

1. My name is Kevin C. Legge. I understand the nature of this oath, and I am otherwise competent to testify to the matters stated in this Affidavit. This testimony is based on my own personal knowledge and the facts stated herein are true and correct.

2. I am employed as a Chief Tire Analysis Engineer for The Goodyear Tire & Rubber Company ("Goodyear").

3. I hold a Bachelor of Science degree in Mechanical Engineering from Ohio State University, and joined Goodyear in 1980. From my work at Goodyear I have knowledge and

EXHIBIT H

CA: 2:13-cv-00419-PMD

experience concerning design, development, manufacturing, testing and analysis of tires, including analysis of failed tires both in the field and in the laboratory, including tires from development testing and various customers. I am familiar with Goodyear's policies and practices with respect to the confidentiality of scientific and technical information and trade secrets.

4. From my work with Goodyear, I am knowledgeable about the design specifications for Goodyear tires. I am also familiar with the efforts that Goodyear makes to protect its proprietary and trade secrets.

5. The tire business is highly competitive. Competitors are always seeking to gain any advantage, whether it is more lead time for the introduction of new products, or an understanding of the competitions methods, thinking, goals and strategy. The only access a competitor could get to these trade secrets would be through the discovery process in a lawsuit.

6. Goodyear's global design manual includes information regarding its compound formulas, and its core design methodology and philosophy. The manual is not limited to specific components or tire products but would provide information concerning all aspects of the development of tires manufactured by Goodyear. Access to this manual is limited to certain select employees within Goodyear. Disclosure of the global design manual would result in immediate harm to Goodyear through the release of its confidential designs and methods of engineering tires. The information contained in Goodyear's global design manual is not known outside of Goodyear's business. Even within Goodyear, the global design manual can only be accessed by select associates on a need to know basis with express authorization. . Goodyear preserves the secrecy of its trade secret information by limiting the availability of the information

CA: 2:13-cv-00419-PMD

within Goodyear to those who truly "need to know" and by securing from those employees with access to the secrets a written promise to preserve Goodyear's trade secrets. Goodyear's designs and engineering findings and procedures have been developed at great expense, are not made available to the public, and are maintained as confidential documents under Goodyear's security system.

7. Likewise, Goodyear's compound formulas, including the types and amount of specific chemicals, steps of mixing the chemicals/compounds and method of creating the finished tire, which includes the halobutyl content of a tire's inner liner, are not known outside of Goodyear's business. Goodyear also takes important steps to ensure that its trade secrets and competitively sensitive information remain strictly confidential, even within the company. Goodyear preserves the secrecy of its trade secret information by limiting the availability of the information within Goodyear to those who truly "need to know" and by also securing from those employees with access to the secrets a written promise to preserve Goodyear's trade secrets. For example, even tire designers know rubber compounds by code numbers, as opposed to their chemical formulas. Thousands of man-hours and millions of dollars are devoted to develop, evaluate, produce and test new rubber compounds for Goodyear's products. Goodyear's compound formulas have been developed at great expense, are not made available to the public, and are maintained as confidential documents under Goodyear's security system.

8. Goodyear's policies with regard to dissemination of confidential information are given to all new employees when they are hired at Goodyear. Access to company buildings is restricted via key card and guards. Goodyear employees who are given access to computer systems have a user identification number and password and must agree not to disclose their

CA: 2:13-cv-00419-PMD

passwords to others. Employees with computer access also must agree not to attempt to intentionally access computer programs or data files that they have not been authorized to access. Employees must return all company records containing any confidential or trade secret information when their employment with Goodyear ends.

9. Goodyear implements security precautions, at significant cost, for the purpose of safeguarding its trade secrets and confidential information. Goodyear makes a significant investment each year on all of its combined security measures.

10. A competitor could use trade secret information to copy all or part of Goodyear's rubber compounds, tire designs, manufacturing processes, and quality control policies and procedures to obtain a technical advantage. The competitor could do so without compensating Goodyear for its expenses incurred in developing these ideas. Just as significantly, the competitor's development time and cost would be greatly reduced if it can obtain trade secrets produced in discovery.

11. Competitors in the tire industry do not disclose information about their tire compounds or core design methodology and philosophy. Goodyear does not have access to its competitors' formulas. It would be devastating to Goodyear's competitive position in the marketplace if its compound formulas or core design methodology and philosophy become public. If this information was disclosed to Plaintiff's counsel, consultants, and/or experts, even if they were not given a copy of the formula to retain, the formula for the compound, and information concerning Goodyear's core design methodology and philosophy, would remain in their memory. The confidential and trade secret nature of this information would be breached

CA: 2:13-cv-00419-PMD

and forever lost. Further, the risk that the information would be revealed, directly or indirectly, to Goodyear's competitors is a real and substantial concern.

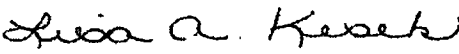
12. I am familiar with the discovery produced in this matter. Plaintiff is in possession of documents specific to the G670RV 295/80R22.5 tire that provide detail on the manner in which the tire was constructed and manufactured.

FURTHER AFFIANT SAYETH NOT.



KEVIN C. LEGGE

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, in the State of Ohio,
County of Summit, on this 15th day of September, 2015.



NOTARY PUBLIC, STATE OF OHIO



OFFICIAL SEAL
LISA A. KESEK
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES JANUARY 24, 2016
RECORDED IN MEDINA COUNTY, OHIO



A SWEET NEW TAKE ON THE NEWS.
THE NEW WSJ ANDROID APP.



THE WALL STREET JOURNAL
Read ambitiously

THE WALL STREET JOURNAL

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BUSINESS

FBI Traces Trail of Spy Ring to China

By JUSTIN SCHECK And EVAN PEREZ

Updated March 10, 2012 5:29 p.m. ET

ORINDA, Calif.—Federal agents were searching Walter and Christina Liew's home here last July for evidence of corporate espionage when a safe deposit box key caught their attention. They asked Ms. Liew if she knew where the bank was located. Her husband told her in Chinese to say she didn't, according to an account later given by federal prosecutors.

An agent who understood Chinese picked up on the exchange and followed Ms. Liew as she left the house, drove to an Oakland bank and tried to empty a safe deposit box the key fit. The box, according to prosecutors, contained documents outlining a more than decade-long plot to steal DuPont Co. corporate secrets and sell them to a Chinese government-owned company.

The Liewes now are at the center of a case that the Justice Department says marks the first time U.S. officials have filed criminal espionage charges against a state-owned foreign company. The company, Pangang Group, is fighting the charges, which were unveiled a month ago in San Francisco. The Liewes were charged with conspiring to steal trade secrets and sell them to the Chinese, charges they deny.

EXHIBIT I



A search of Walter and Christina Liew's home in Orinda, Calif., pictured, led to seizure of a trove of documents.
JUSTIN SCHECK/THE WALL STREET JOURNAL

RELATED VIDEO

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The allegations involve an obscure chemical and a 50-year-old technology that is hardly cutting edge, but one DuPont has wanted, for decades, to keep secret. The case, described by people intimate with its details and revealed by documents reviewed by The Wall Street Journal, provides a rare view inside a stepped-up drive the federal government has mounted to combat organized efforts by foreign governments to steal U.S. intellectual property.

"What we've learned since the end of the Cold War is that when it comes to the economy, our adversaries and even our allies will spy on us when it's in their economic interest," said Frank Figliuzzi,

the Federal Bureau of Investigation's assistant director for counterintelligence. He wouldn't comment on the DuPont-related case but said that, speaking generally, the FBI is doubling down on corporate-espionage investigations because despite years of attempts by the bureau to raise awareness at companies and prosecute trade-secret theft, the problem is growing.

Spy Trade

The U.S. effort to counter alleged economic espionage has led to recent prosecutions, including:



Hanjuan Jin was convicted of trade-secret theft but not espionage.

February 2012 Hanjuan Jin, naturalized U.S. citizen, found guilty in Chicago of stealing trade secrets from Motorola. Judge rejected charges of economic espionage for the benefit of China and its military. Sentence pending.

January 2012 Wen Chyu Liu, aka. David Liou, sentenced to 60 months in prison after being convicted in 2011 of conspiracy to commit trade-secret theft from Dow Chemical Co. and sell to companies in China. Case involved chlorinated polyethylene process.

February 2010 Dongfan "Greg" Chung sentenced to 108 months in prison after conviction for economic espionage and acting as an illegal agent of China, involving theft of Boeing Co. technology related to Space Shuttle.

June 2008 Xianlong Sheldon Meng sentenced to 24 months in prison for economic espionage and violating Arms Export Control Act. He admitted stealing trade secrets from ex-employer Quantum 3D Inc., which makes a simulation system for military training.



Since passage of a law in 1996 giving the Justice Department wide powers to prosecute corporate espionage, only about a dozen cases have been brought. The number of cases has remained low even as Department officials publicly announced attempted crackdowns on corporate spying before, including one in 2007. Convictions are hard to get because they require tying companies directly to foreign governments, said Patrick Rowan, a former national-security prosecutor.

Lisa Monaco, assistant U.S. attorney general for national security, who also wouldn't comment on the DuPont-related case, said that while espionage is traditionally thought of as nations trying to steal military or diplomatic secrets, "today's espionage also involves nation states like China focused on stealing research and development, sensitive technology, corporate trade secrets and other materials to advance their economic and military capabilities."


Xiaodong Sheldon Meng drew a jail term for economic espionage.

China regularly denies that its government or state-owned companies engage in concerted efforts at corporate

espionage. On a broader level, China aims at gathering already-discovered technical know-how to build global competitors through legitimate means such as joint ventures. More controversially, China has been insisting that foreign companies hand over technology as the price of market access. Within China, many foreign companies are so concerned about intellectual-property theft that they avoid bringing in their cutting-edge technology and manufacturing processes.

Federal law-enforcement officials contend many U.S. companies do too little to protect their interests, failing to monitor employees and rarely bringing problems to federal agents for fear of bad publicity.

That is not the case with DuPont. It hires former high-ranking federal agents to keep tabs on its intellectual property and notifies federal officials of problems. The Justice Department has won at least four DuPont-related cases in recent years, among them convictions in 2009 of a former DuPont employee for stealing information related to Kevlar high-strength fabric and giving it to a Korean company, and of another for stealing trade secrets related to light-emitting diodes and taking them to China.

DuPont tries as hard to protect long-established technologies as new ones. It was more than 50 years ago that the company laid the groundwork for an efficient process to produce titanium dioxide, a white pigment used in paints and other products, according to court filings. The company honed the process through the years, becoming the world's largest producer of the chemical. To keep its complex production process secret, DuPont allowed most employees to know about only individual pieces of it.

Chinese state-owned companies, including Pangang, a conglomerate based in Panzhihua in Sichuan Province, talked for years with DuPont about opening a joint-venture titanium plant in China, say people familiar with the matter, but a deal was never worked out.

In the 1990s, according to documents confiscated from Mr. Liew in Orinda last summer and since filed in federal district court in San Francisco, Pangang and Chinese-government officials started asking businessmen to procure DuPont's proprietary titanium-production methods.

A spokesman for the Chinese embassy in Washington called that assertion "groundless," saying: "There would not be any kind of instruction or request to Chinese businessmen. They behave on their own behalf." He said the DuPont case is a business dispute and the businessmen involved "have no connection to the Chinese government."

Pangang didn't respond to requests for comment. A former chairman of the company denied it dealt in stolen intellectual property.

One document taken in the search of the Liews' home and filed with the court is a letter Mr. Liew addressed in 2004 to Pangang officials, in which he stated that a high-ranking Chinese Communist Party leader asked him in 1991 to bring titanium-dioxide-making secrets back to China.

Chemical Reaction

Below, an excerpt from an indictment alleging a conspiracy to steal DuPont Co.'s secret process for producing titanium dioxide and provide the information to a Chinese state-owned company.

INTELLIGENCE ALLEGATIONS

1. The government of the People's Republic of China (PRC) publicly admitted the development of chloride route titanium dioxide (TiO₂) production technology as a scientific and economic priority. Economic growth in the PRC had created significant

"Some years ago China let me know that she urgently needed titanium white by chlorination technology," the letter reads.

"After many years of follow-up research and application, my company has possession and mastery of the complete DuPont way."

In an affidavit filed in court, Mr. Liew—a 54-year-old Malaysian-born naturalized U.S. citizen who worked in Silicon Valley as an electrical engineer—said, "Those documents are not accurate or reliable." Mr. Liew said he had misrepresented facts, including his employment history and relationships with Chinese officials.

A lawyer for Mr. Liew said during a bail proceeding that his client hadn't told the truth in some documents cited by the government, including business pitches that claimed ties to Chinese Communist Party officials.

A former Pangang executive to whom the letter was addressed, Hong Jibi, said he was unfamiliar with Mr. Liew. "I don't know him, I never met him, I never dealt with him, and I never got any letter from him," Mr. Hong said in Beijing.

Over the past 15 years, according to court filings and people familiar with the matter, Mr. Liew hired several former DuPont employees knowledgeable about specific pieces of the titanium process—a practice that isn't illegal.

One was Tim Spitler, an engineer in Reno, Nev., with a reputation for great titanium expertise. He told a friend around 2003 that he was working with Mr. Liew to cobble together titanium-making know-how to sell to a Chinese company, the friend said in an interview. A lawyer for Mr. Spitler said he eventually agreed to cooperate with investigators.

Another was Tze Chao, a 36-year DuPont veteran. Mr. Chao—who last week pleaded guilty to conspiracy to commit economic espionage—said in a statement filed in court that shortly after his 2002 retirement, Pangang officials asked him to provide DuPont titanium-dioxide-making information. Mr. Chao said he hooked up with Mr. Liew after learning Mr. Liew was trying to sell similar information to Pangang.

Prosecutors have filed in court letters purportedly written by Mr. Liew in which he says he has sold DuPont titanium-oxide technology to various companies affiliated with the Chinese government.



Tim Spittler

Mr. Liew's companies received more than \$12 million from a Pangang subsidiary between 2009 and 2011 for his efforts, prosecutors alleged in their indictment of the Liew. The couple, prosecutors charged, "wired millions of dollars in proceeds from Pangang Group to Christina Liew's relatives" in China.

In 2010, DuPont received an anonymous letter saying that Mr. Liew and one of his employees, a Bay Area man who was also employed by Chevron Corp., had sold DuPont information to a Chinese company, according to court filings.

Chevron security officials began an investigation after hearing from DuPont, court filings say, and searched the computer of the employee, named John Liu. They found documents related to DuPont technology, court filings

said. Mr. Liu's lawyer noted that his client hasn't been charged. According to people familiar with the case, Mr. Liu has cooperated with prosecutors.

Chevron last March forwarded information found on Mr. Liu's computer to DuPont, which in turn brought it to FBI agents in San Francisco, said people familiar with the case.

DuPont last spring also filed a civil suit against Mr. Liew in San Francisco federal court, seeking damages for alleged theft of trade secrets. Mr. Liew's response denied that he and his partners possessed DuPont trade secrets and said there was "no uniqueness" to its titanium-dioxide process. He filed a counterclaim alleging that DuPont had improperly obtained his trade secrets. The suit is pending.

DuPont said the case "demonstrates that DuPont reacts swiftly and vigorously when its trade secrets are stolen. When we learned of the suspected theft, we investigated further until we had sufficient information to file suit. We also notified law enforcement."

On July 19, FBI agents searched the Liews' gray house in Orinda, a hilly suburb about 25 miles east of San Francisco. It was during that search that an agent trailed Ms. Liew to a safe deposit box that contained documents and disk drives, prosecutors wrote last month in a court filing opposing bail for Mr. Liew. The Liews were arrested on charges of obstructing their investigation.

FBI agents soon learned that two senior Pangang executives were in California and preparing to meet with the Liews, according to lawyers familiar with the case. They included a top company executive, Zhuang Kai. Agents confiscated the Chinese executives' passports and told them to stay in the hotel in Alameda, Calif., as material witnesses while the investigation continued.

Federal agents began translating thousands of pages of Chinese-language documents confiscated from the Liews and following the leads generated.

The investigation led them to Mr. Chao, the DuPont retiree. Agents searched Mr. Chao's house in Delaware in October, according to a statement he made as part of his guilty plea. While they found some DuPont-related documents, said a person familiar with the case, they missed others.

A few days later, Mr. Chao's court filing says, he took those others into his yard and burned them. But the information the FBI did find was enough for the 77-year-old to decide to cooperate with investigators, court filings show.

Prosecutors granted immunity to the two Pangang executives visiting California so they would talk with prosecutors with their American lawyers present. In late fall prosecutors decided they could no longer hold the men as witnesses and let them return to China. Lawyers for both men say their clients have done nothing wrong.

Prosecutors went ahead with preparations for a case against others, and made plans to ask a grand jury to hand up an indictment on a Wednesday in early January, said people familiar with the case. But days before the scheduled grand jury meeting, one intended witness, Mr. Spitler, the Reno-area engineer with the wide knowledge of the titanium dioxide process, shot himself. His family hasn't returned calls requesting comment.

Prosecutors regrouped, and in early February obtained indictments that included Mr. and Ms. Liew; Pangang Group and three affiliates; a midlevel executive of a Pangang affiliate in China for whom the indictment said an arrest warrant had been issued; and a former DuPont engineer named Robert Maegerle. All were charged with conspiracy to commit economic espionage except for Mr. Maegerle, who was charged only with conspiracy to commit theft of trade secrets. He pleaded not guilty on Thursday.

Mr. Chao, in pleading guilty in San Francisco federal court a week ago to conspiracy to commit economic espionage, said he had been led astray after officials from the People's Republic of China "overtly appealed to my Chinese ethnicity and asked me to work for the good of the PRC."

Pangang Group's lawyers have said they believe the prosecutors must go through the Chinese judicial system to serve the indictment and are fighting the matter in court. They haven't filed a plea.

Ms. Liew pleaded not guilty Thursday. Mr. Liew intends to do so as well, his lawyer said. Mr. Liew remains in an Alameda County jail, where he has been since the July raid on his home in Orinda.

—Kersten Zhang and Carlos Tejada contributed to this article.

Write to Justin Scheck at justin.scheck@wsj.com and Evan Perez at evan.perez@wsj.com

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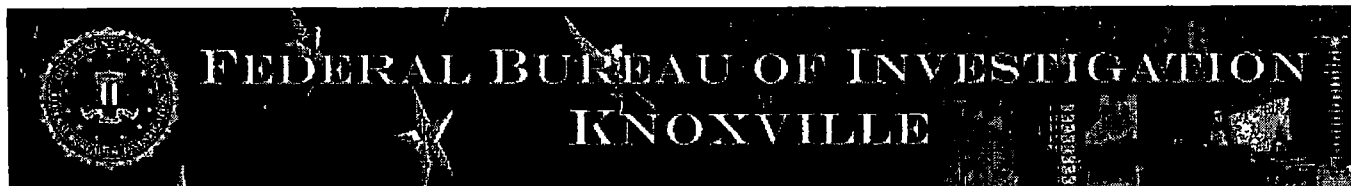


EXHIBIT J

Knoxville Home

Department of Justice Press Release

Contact Us

For Immediate Release

U.S. Department of Justice

Territory/Jurisdiction

December 9, 2010

Office of Public Affairs

(202) 514-2007/TDD (202) 514-1888

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- What We Investigate
- Our Partnerships
- Knoxville History

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Two Engineers Found Guilty of Stealing Goodyear Trade Secrets

WASHINGTON—A federal jury convicted Clark Alan Roberts, 47, and Sean Edward Howley, 39, both former engineers with Wyko Tire Technology Incorporated, located in Greenback, Tenn., of stealing trade secrets from the Goodyear Tire and Rubber Company, Assistant Attorney General Lanny A. Breuer of the Criminal Division and U.S. Attorney William C. Killian for the Eastern District of Tennessee announced today.

After a one-week trial, the jury found Roberts and Howley guilty of one count of conspiracy to commit trade secret theft, one count of trade secret theft, one count of unlawful photographing of trade secrets, three counts of transmittal of trade secrets, one count of possession of trade secrets, two counts of wire fraud, and one count of conspiracy to commit wire fraud.

"Unable to create an effective design on their own, these engineers stole trade secrets from a competitor in order to fulfill a contract," said Assistant Attorney General Breuer. "We will not allow the hard work and resources businesses put into product development to be compromised by individuals who unlawfully obtain protected secrets."

"The ruling in this case will send a message that complicated trade secret violations will be aggressively investigated and prosecuted by U.S. Attorney's Offices and the Department," said U.S. Attorney Killian.

According to the evidence presented in court, Wyko secured a \$1.2 million contract in early 2007 with the Haohua South China Guilin Rubber Company Limited (HHSC), a Chinese tire manufacturing company located in Guilin, Peoples Republic of China, to supply tire building equipment for use in producing radial "off the road" (OTR) tires, which are used on very large earth moving and mining equipment. Wyko was in the business of making tire building equipment for Goodyear and other tire manufacturers. One of the pieces of equipment that Wyko agreed to sell to HHSC was called a swab down device, which is used during the manufacture of a giant OTR tire. However, Wyko had never built a swab down device before and was having difficulty in the spring of 2007 completing their design of the swab down device.

On May 30 and 31, 2007, Roberts and Howley, traveled to a Goodyear tire manufacturing facility located in Topeka, Kan., to service Wyko equipment located in the Goodyear plant with the intention of taking photographs of Goodyear's swab down device to assist them with completing their design even though they knew Goodyear protected the swab down device as a trade secret. On May 31, 2007, the defendants used a cell phone camera to surreptitiously take seven unauthorized photographs of a Goodyear swab down device, without the knowledge or permission of Goodyear. The defendants then e-mailed the unauthorized photographs to employees at a Wyko subsidiary located in Dudley, England, who used the trade secret information contained in the photographs to complete a similar piece of tire building equipment for the HHSC contract.

The defendants are scheduled to be sentenced on the 10 felony counts by U.S. District Court Judge Thomas Phillips on April 14, 2011. The defendants face a maximum of 10 years in prison for each trade secret count, 20 years in prison for each wire fraud count, and \$2.5 million in fines.

The case was prosecuted by Trial Attorney Thomas S. Dougherty of the Criminal Division's Computer Crime and Intellectual Property Section and Assistant U.S. Attorney D. Gregory Weddle of the U.S. Attorney's Office for the Eastern District of Tennessee. The case was investigated by the FBI's Knoxville Division.

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FBI.gov is an official site of the U.S. Federal Government, U.S. Department of Justice.

Exhibit G

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Attorneys for Defendant The Goodyear Tire & Rubber Company

**SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA**

JEFFERY AND GINA DARDEN,
husband and wife; MELISSA FOWLER,
a single woman; and RITCHIE CHIN, a
single man,

Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER
COMPANY, an Ohio corporation; FORD
MOTOR COMPANY, a Delaware
corporation; DON SANDERSON FORD,
INC., an Arizona corporation;
RADAMAQ, INC., an Arizona
corporation; JOHN DOES I-X and JANE
DOES I-X; ABC CORPORATIONS I-X;
and XYZ PARTNERSHIPS I-X,

Defendants.

No. CV2013-007284

**DECLARATION OF JAY K.
LAWRENCE**

(Assigned to The Honorable Randall
Warner)

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1 1. My name is Jay K. Lawrence. I understand the nature of this oath, and I am
2 otherwise competent to testify to the matters stated in this Declaration. This testimony is
3 based on my own personal knowledge and the facts stated herein are true and correct.

4 2. I am a Chief Tire Analysis Engineer for The Goodyear Tire & Rubber
5 Company ("Goodyear"). Since 1976, I have been employed by Goodyear in various
6 capacities involving tire technology, including among many others the design and
7 developmental testing of tires.

8 3. From my work with Goodyear, I am knowledgeable about the design and
9 manufacturing processes of Goodyear tires. I am also familiar with Goodyear's warranty
10 practices. I regularly perform forensic tire examinations, including investigations of
11 separations between tread and belts on tires manufactured by Goodyear. I am also familiar
12 with the efforts that Goodyear makes to protect its proprietary information and trade
13 secrets. I am authorized by Goodyear to make this Declaration on its behalf.

14 4. The Tire at Issue in this case is alleged to be a LT245/75R16 LRE Wrangler
15 HT tire, bearing DOT No. DA11MMJV1212 alleged to have been at the left rear position
16 on the vehicle at the time of the accident. This designation indicates a Goodyear branded
17 tire manufactured during the 12th week of 2012 at Goodyear Dunlop Tires North America
18 Ltd.'s Buffalo, New York plant.

19 5. The tire is a radial tire. A radial tire is a complex highly engineered
20 composite structure consisting of six major components. Each of these primary
21 components is engineered to serve specific functions in the tire. The first is the inner liner,
22 which is a unique rubber compound that acts as the tire's inner tube and helps to retain the
23 air in the tire. The second are the tire beads consisting of steel wires and a unique rubber
24 compound coating that secure the tire to the rim once the tire has been inflated. The third
25 are the body plies that give the tire the strength and structure necessary to retain the air
26 pressure to carry the specified loads. The fourth are the steel belts, which are a composite

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1 of steel cords and a rubber compound that provide additional strength and stability in the
2 tread area. The fifth is the tread, which consists of specially formulated rubber compound
3 and specially designed tread element geometry that provide wet and dry traction,
4 treadwear, rolling resistance, and ride and handling characteristics. Tread geometry,
5 including rib, lug and groove location, depth, size, shape, density and proximity to one
6 another can alter the location and degree of forces/stresses on the tire carcass and change
7 use and ride characteristics. The sixth are the rubber sidewalls, which protect the internal
8 structure against minor cuts and abrasions and provide aesthetic appearance to the tire.
9 During vulcanization, chemical reactions and material movement occur making it not
10 possible to fully "reverse engineer" a tire from its cured to pre-cured state. Therefore,
11 design details, compound formulae and production methods are closely guarded trade
12 secrets.

13 6. Although every radial tire contains the fundamental components mentioned
14 above, differences exist among these components depending on the tire design. The
15 multiple interactions among many compounds and reinforcements within a certain design
16 structure dictate the performance of a tire. Additionally, tires respond differently to
17 varying service conditions, which include combinations of inflations, steering forces,
18 loads, and vehicle dynamics. A relationship of similarity between tires cannot be correctly
19 shown by selecting single compounds or components or even groupings of components.
20 Compounds and reinforcements such as wire coat stock (sometimes referred to by others
21 as "skim stock" or "coat stock") and belt wire constructions, may be used across vastly
22 differing types of tires ranging from passenger to radial light truck to racing tires. That is
23 why, from an engineering and technical standpoint, "similar tires" are those manufactured
24 to the same material and construction specification. "Similar tires" should therefore be
25 defined as tires built at the same Buffalo, New York plant from September 18, 2011 (six
26 months before the manufacture of the Tire at Issue) to September 18, 2012 (six months

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1 after the manufacture of the Tire at Issue), using the same material and construction
2 specification, and which have the same cured tread pattern.

3 7. I understand that in this case the plaintiffs have alleged that a tire
4 disablement occurred that resulted from a defect in a tire. It is wrong to assume, however,
5 that if a tire disablement occurred, the tire was defective. There are a variety of reasons as
6 to why a tire disablement may occur, and a defect is rarely such a cause. Simply because a
7 tire disablement occurs does not mean there is a defect in the tire. Over-deflection from
8 under-inflation, over-loading or a combination of both is a major cause of tire
9 disablements. A puncture or cut in the tire also may result in an eventual tire disablement.
10 Road hazards, impact damage and other abuse during the service life can also lead to a tire
11 disablement.

12 8. The detailed description of the design used to make a tire at Goodyear is
13 called a "tire specification" and Goodyear's tire specifications are among Goodyear's most
14 valuable assets and are carefully guarded. Even fragments of tire specifications can offer
15 insight into Goodyear's design, construction, and manufacturing theory and processes.
16 Goodyear's tire designs are an integrated compilation of several unique elements and the
17 exact combination of those elements is unique, offering Goodyear a competitive advantage
18 over the tire companies which do not possess this knowledge. The only access a
19 competitor could get to these trade secrets would be through disclosure pursuant to the
20 discovery process in a lawsuit.

21 9. The technical information, including design, manufacturing, testing,
22 adjustment and quality control information, includes confidential research, development,
23 production, and marketing information. Its disclosure will severely injure Goodyear and is
24 considered by Goodyear to be confidential proprietary and trade secret.

25

26

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1 10. The tire business is highly competitive. Competitors are always seeking to
2 gain any advantage, whether it is more lead time for the introduction of new products, or
3 an understanding of the competition's methods, thinking, goals and strategy.

4 11. Goodyear takes important steps to ensure that its trade secrets and
5 competitively sensitive information remain strictly confidential. Even after a new model
6 tire is released to the public, the specific technical information about the tire is treated as
7 confidential, commercial trade secret, proprietary information by Goodyear. Disclosure of
8 such information to a competitor would give the competitor information that otherwise
9 could not be obtained. From this information the competitor could realize substantial cost
10 savings or make adaptations. This would severely and unfairly reduce Goodyear's
11 competitive advantage.

12 12. For these reasons, Goodyear takes steps to ensure that competitively
13 sensitive trade secret and confidential information remain confidential within the company.
14 Goodyear preserves the secrecy of its trade secret information by limiting the availability
15 of this information within Goodyear to those who truly "need to know" and by securing
16 from those employees with access to the secrets a written promise to preserve the
17 confidentiality of this information. Numerous security procedures are in place to preserve
18 Goodyear's trade secrets. For example, even tire designers know rubber compounds by
19 code numbers, as opposed to their chemical formulae. Goodyear's policies with regard to
20 dissemination of confidential information are given to all new employees when they are
21 hired at Goodyear. Those policies include prohibition of, among other things,
22 disseminating any information as to design, materials, construction, manufacturing
23 equipment and processes, test data, warranty policies, terms or condition of sale, or
24 customer classification in connection therewith. Goodyear regularly sends reminders of
25 those policies to Goodyear employees who may have exposure to personnel from other tire
26 companies. Goodyear's designs and engineering findings and procedures have been

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1 developed at great expense, are not made available to the public, and are maintained as
2 confidential documents under Goodyear's security system. Access to company buildings
3 is restricted via key card and guards.

4 13. Goodyear employees agree not to disclose to persons outside of the company
5 any trade secrets or other confidential company information without the company's
6 permission. Goodyear employees who are given access to computer systems have a user
7 identification number and password and must agree not to disclose their passwords to
8 others. Employees with computer access also must agree not to attempt intentionally to
9 access computer programs or data files that they have not been authorized to access. Job
10 responsibilities govern as to what computer or other information a particular employee is
11 given access. Employees must return all company documents containing any confidential
12 or trade secret information when they terminate their employment with Goodyear.

13 14. Access to Goodyear's tire manufacturing plants is restricted. Any person
14 who is not a Goodyear employee assigned to work in the plant must obtain approval in
15 writing to enter the plant. This includes management-level Goodyear employees who do
16 not work inside the plant itself. All of the security precautions outlined in this and the
17 preceding paragraphs are maintained at significant cost to Goodyear for the purpose of
18 safeguarding its trade secrets and confidential information. Goodyear makes a significant
19 investment each year on all of its combined security measures.

20 15. A competitor could use the technical information requested by plaintiffs to
21 copy all or part of Goodyear's specifications, manufacturing processes, quality control, test
22 protocols, and data, research or marketing techniques and policies and give them a
23 technical advantage. The competitor could do so without compensating Goodyear for its
24 expenses incurred in developing these ideas. Just as significantly, the competitor's
25 development time and cost for the concept, design or component would be greatly reduced
26 if it had access to the tire specifications and other documents for the Goodyear tires about

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1 which plaintiffs seek information. Competitors would also be spared the considerable
2 additional expense associated with attempted reverse engineering to gain information on
3 Goodyear technology. This triple threat of a competitor's unearned savings, Goodyear's
4 uncompensated expense and the competitor's market gain would result in an unfair
5 competitive disadvantage to Goodyear.

6 16. Goodyear's specifications for tire building, manufacturing, quality control,
7 design, and other documents pertaining to the design and manufacture of tires provide the
8 detail necessary to design and manufacture its products. Only if provided through a
9 vehicle such as this litigation can a competitor gain access to this information.

10 17. Goodyear has invested millions of dollars in its decades of developing tire
11 technology and products. Tires in production are constantly reviewed and incremental
12 improvements are implemented. Even designs for discontinued tires are useful as part of
13 that evolutionary process, both to Goodyear and to Goodyear's competitors. Learning
14 what designs are not optimal can be as valuable as learning optimal design features.
15 Goodyear's design experience is a unique asset that gives it a competitive advantage and
16 the disclosure of that unique experience to a competitor poses a grave risk of offering the
17 competitor an unfair advantage.

18 18. The documents plaintiffs have requested will reveal much more information
19 to Goodyear's competitors than the competitors themselves could ever obtain without
20 them. Although a competitor could buy a tire, examine it, attempt to simulate the tests
21 Goodyear has conducted, and replicate or reproduce the components, this process (known
22 as "reverse engineering") is extremely expensive and time-consuming. Moreover, reverse
23 engineering can only provide limited information about a tire; for example, it cannot reveal
24 the compound formulas or uncured component dimensions used in the tire. Goodyear's
25 designs, engineering findings and procedures, test protocols and findings, manufacturing
26 processes, and quality assurance systems have been developed at great expense, are not

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1 published outside of Goodyear, and are maintained as confidential under Goodyear's
2 security system.

3 19. A large part of Goodyear's investment in a particular tire includes the tire's
4 performance in tests. Goodyear maintains its test protocols, test records and memoranda
5 discussing those records as highly confidential and these test results form a significant part
6 of Goodyear's assets, representing millions of dollars of investment and countless hours.
7 Not only the tests, but the designs of the tests themselves are important assets guarded by
8 Goodyear to maintain their secrecy within the company. The testing that Goodyear has
9 performed gives Goodyear a competitive advantage over the tire companies which do not
10 possess this knowledge. It would be very expensive for another tire company to duplicate
11 Goodyear's testing and would take a very long time. A competitor learning directly how it
12 compared with Goodyear in tests would eliminate or reduce the need to perform testing on
13 competitor tires, thereby giving the competitor an unfair advantage.

14 20. Consistent with the highly proprietary and trade secret nature of this
15 information, Goodyear carefully guards the secrecy of its design information. Access to
16 this tire design information is very limited and restricted to a small group of people on a
17 "need-to-know" basis. Other company personnel do not have access to this information.
18 The information concerning Goodyear's tire designs and revisions of those designs that is
19 kept electronically is on password-protected computer systems. Only certain employees
20 have the ability to access these systems.

21 21. Goodyear's tire design information is the result of years of continuous
22 research and development. Goodyear spends millions of dollars each year on its research
23 and development of tire designs. While it is not possible to put a precise monetary value
24 on the particular design at issue, the design of the Tire at Issue and its revisions are a result
25 of many years of research and development.
26

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1 22. Competitors in the tire industry also do not disclose information about their
2 tire designs. Goodyear does not have access to its competitors' tire design information. It
3 would be extremely devastating to Goodyear's competitive position in the marketplace if
4 its design information became public. A competitor could use this information to copy
5 Goodyear's unique designs of its tires. This would save the competitor years of research
6 and development which would not have otherwise been easily duplicated.

7 23. Information concerning Goodyear's manufacturing processes, including its
8 vulcanization process and quality control information, is confidential, trade secret,
9 proprietary, competitively sensitive information. It is not disclosed to Goodyear's
10 competitors and has cost millions of dollars to develop through extensive research and
11 development. It has resulted in the development of unique processes and equipment
12 known or owned only by Goodyear. This information is one of the primary means by
13 which Goodyear gains an advantage over its competitors. It has allowed Goodyear to save
14 costs, improve efficiency, and improve product quality. Goodyear would be severely
15 harmed by its disclosure. A competitor could not learn or duplicate this information
16 except for its disclosure through lawsuits. Only employees who need to know this
17 information are provided it, and it is not provided to anyone outside of Goodyear.
18 Production of information about any part of the tire building and manufacturing process
19 would unfairly place Goodyear at a significant competitive disadvantage. Moreover, the
20 entire manufacturing process is not implicated in a purported tread belt separation.

21 24. Likewise, Goodyear's quality control procedures and documents related
22 thereto are considered to be confidential, proprietary, trade secret, competitively sensitive
23 information and are not disclosed by Goodyear. Goodyear's quality assurance systems
24 have been developed at great expense, are not published, and are maintained as
25 confidential under Goodyear's security system. These procedures allow Goodyear to
26 advance the development of its product and achieve greater efficiency than its competitors.

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1 It has taken Goodyear years to develop these procedures at a significant cost. The
2 disclosure of information about Goodyear's quality assurance procedures would be
3 harmful to Goodyear and would diminish its competitive position in the marketplace.

4 25. Another important part of the investment reflected in Goodyear's designs is
5 the result of consumer use of Goodyear's tires. Some indication of the actual demands
6 being placed upon a tire in the market is reflected in the number of tires returned for
7 customer dissatisfaction. In an "adjustment," a customer is given partial credit toward a
8 replacement tire or a replacement at no charge. The granting of such a credit is driven
9 primarily by a commitment to customer satisfaction and can result even when it is clear
10 that there was nothing wrong with the tire involved. Adjustments do not represent
11 determinations that a product on which an adjustment is offered is defective, but they do
12 represent an indication of customer satisfaction. Accordingly, adjustment data can offer
13 valuable consumer feedback, positive or negative, to assist Goodyear in offering
14 consumers desirable products. Goodyear preserves the confidentiality of this adjustment
15 data very carefully.

16 26. The adjustment data and claims information that Goodyear has collected
17 gives Goodyear a competitive advantage over the tire companies which do not possess this
18 knowledge. It is impossible for another tire company to obtain Goodyear's adjustment
19 data by that competitor's own efforts. Knowing Goodyear's adjustment data and claims
20 information would offer a competitor of Goodyear a competitive advantage. Moreover,
21 Goodyear's adjustment data and claims information would allow a competitor to compare
22 its tires' performance against Goodyear's in a way that would not be otherwise possible
23 and that would give the competitor an unfair competitive advantage. In this manner, a
24 competitor could identify those of its tires that must be improved and in what areas of
25 performance that improvement is needed.
26

1 27. Even learning the details of Goodyear's adjustment system offers a
2 competitive advantage to another manufacturer, which could learn to change its adjustment
3 policies to meet Goodyear's standards, thereby unfairly neutralizing one of Goodyear's
4 competitive advantages.

5 Further, Affiant sayeth not.

6 
JAY K. LAWRENCE, AFFIANT

8 Sworn and subscribed before me this 15th day of May, 2014.



Linda McKisson
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 11/30/2018


NOTARY PUBLIC, STATE OF Ohio

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 THEODORE G. HARTSOCK, JR., as :
5 personal representative of the :
6 Estate of Sarah Mills Hartsock :
7 vs. :
8 :
9 GOODYEAR DUNLOP TIRES NORTH :
10 AMERICA, LTD, et al. : 2:13 CV 419

11 Telephone conference in the above matter held Monday,
12 September 21st, 2015, commencing at 12:06 p.m., before the
13 Hon. Mary Gordon Baker, in camera, United States Courthouse,
14 85 Broad Street, Charleston, South Carolina, 29401.

15 APPEARANCES:

16 MIA L. MANESS, ESQ. and MARK C. TANENBAUM, ESQ.,
17 P.O. Box 20757, Charleston, SC, appeared for
18 plaintiff.

19 CURTIS L. OTT, ESQ., P.O. Box 7368, Columbia, SC,
20 appeared for defendants.

21 M. GARY TOOLE, ESQ. and BIANCA G. LISTON, ESQ.,
22 P.O. Box 4924, Orlando, FL, appeared for
23 defendants.

24 REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
25 P.O. Box 835
Charleston, SC 29402
843/723-2208

1 THE COURT: Thank y'all. We are on the record, by
2 the way, so if everyone would speak clearly and slowly, we're
3 on the record in Hartsock v. Goodyear, 2:13-CV-419. We're
4 here on a follow-up to the hearing we held the other week on
5 these discovery issues regarding the expert witness and the
6 butyl content.

7 I've received and reviewed the supplemental information
8 from the lawyers. And let me ask, my first question is --
9 first concern and question is the issue about the expert,
10 Dennis Carlson, that I'm only hearing about now, that was not
11 mentioned in the hearing, that the plaintiff has not had a
12 chance to respond to. And the major reason for this hearing
13 is to give the plaintiff a chance to respond to the
14 allegations and documents against Mr. Carlson.

15 But why did we not have this aired out earlier at the
16 prior hearing?

17 I'm sorry, if everyone will identify yourself for the
18 record and who will be speaking on behalf of that party.

19 MS. MANESS: Mia Maness for the plaintiffs.

20 MR. TANENBAUM: Mark Tanenbaum is here also for the
21 plaintiff, Your Honor.

22 THE COURT: For the defendant?

23 MR. OTT: Curtis Ott for Goodyear. And I will be
24 doing most, if not all, of the argument for us.

25 MR. TOOLE: Your Honor, Gary Toole and Bianca Liston

1 are also here on behalf of Goodyear.

2 THE COURT: Thank you. So, Mr. Ott, why am I just
3 seeing this argument now? It's kind of out of the blue, and
4 it's a serious issue.

5 MR. OTT: I don't disagree with your
6 characterization, Your Honor, about it being a serious issue.
7 I think the simple response for why you're first hearing about
8 it is that at the time we filed our motion for protective
9 order as to the three proponents, Mr. Parsons, Mr. Badzinski
10 and Miss Seiler, the response from the plaintiffs didn't
11 include any affidavit, any testimony or anything along the
12 lines of this is why we need this.

13 THE COURT: Wasn't Dennis Carlson noticed as an
14 expert prior to that though?

15 MR. OTT: Noticed as an expert. His -- the
16 plaintiffs had provided an expert report from him, yes. His
17 deposition had not been scheduled at the time of the briefing
18 of those motions.

19 THE COURT: Why would you not mention it in the
20 hearing itself?

21 MR. OTT: Your Honor, I'm sorry, I did not hear you.

22 THE COURT: Why would you not mention it at the
23 hearing itself?

24 MR. OTT: I don't know if I knew the extent all of
25 this testimony. But our point at the hearing was that they

1 failed their burden, at the time of the briefing, to satisfy
2 their requirements under the trade secret analysis framework.

3 THE COURT: Well, as you know, I'm leaning -- I
4 actually don't necessarily think you're correct on that. But
5 I would like to ask the plaintiff why the butyl content issue
6 didn't come up until this year.

7 Miss Maness?

8 MS. MANESS: Your Honor, I know that we had asked for
9 it before; they had not given it to us. There was another
10 opportunity to ask for it. We did. It became an issue and
11 was ripe for briefing before the Court.

12 THE COURT: What do y'all say about these issues with
13 Mr. Carlson?

14 MR. OTT: Your Honor, could Miss Liston add something
15 to the comments, please?

16 THE COURT: About my first question, why we're not
17 hearing about this argument until now? That's all I'm dealing
18 with right now.

19 MS. LISTON: Okay. When we filed the motion for
20 protective order, that was before any of the expert
21 disclosures were done. The motions were filed earlier on this
22 year. Expert disclosures of plaintiff, I believe, was in July
23 of this year. And so the information about Mr. Carlson as
24 being a testifying expert in this case, was not disclosed
25 until recently.

1 THE COURT: I understand, but that's July 6, 2015,
2 and I don't have the date of our hearing in front of me. Hold
3 on one second. I think it was 8-31. And I don't -- so that
4 was over a month after you knew Mr. Carlson, you had to know
5 that Mr. Carlson was the expert. And I just -- and that there
6 were -- y'all had problems with him as an expert. But --

7 MS. LISTON: Your Honor, after the hearing, after the
8 hearing of August 31st you asked us a couple of questions
9 about why, you know, a protective order wouldn't, I guess, be
10 able to be had in this case, and if there's any issues or
11 problems with prior disclosures or -- and you asked us a
12 series of questions. And after that, I ended up
13 investigating, and that's where I located the information
14 about Mr. Carlson.

15 THE COURT: So you're saying you didn't know about
16 that information at the time of our hearing?

17 MS. LISTON: Correct.

18 THE COURT: All right.

19 MS. LISTON: Yes. Me personally. So I have been
20 responding to the motion, drafted that -- you know, researched
21 the information and located the information. So personally, I
22 did not have that information.

23 THE COURT: I just feel like we've sandbagged the
24 plaintiff a little bit, but I would like to give the plaintiff
25 an opportunity to discuss this issue and what we can do to

1 ameliorate it, if anything.

2 MS. MANESS: Yes, ma'am. Well, first off, Your
3 Honor, I want to point out that Goodyear has been aware that
4 Mr. Carlson is involved in this case in one capacity or the
5 other since June of 2013, when Mr. Carlson's office contacted
6 Goodyear to ship tires to them that Goodyear had requested
7 that were at Mr. Carlson's office. Goodyear was contacted
8 directly by Mr. Carlson's office. And the next day -- that
9 was June 28th, 2013. On June the 29th, 2013, after
10 Mr. Carlson's office e-mailed us to say we contacted Goodyear
11 directly about shipping these tires to them, and this is what
12 we were told. Mr. Tanenbaum forwarded that e-mail to counsel
13 on the phone with us today.

14 THE COURT: That relates to the timing issue. And
15 although I'm not pleased about it, it's not -- but I am going
16 to let y'all respond to it and see what is the plaintiff's
17 response to the merits, and these orders I'm looking at about
18 Mr. Carlson, who hasn't seemed to be able to abide by these
19 confidentiality orders.

20 Miss Maness? Did we drop y'all?

21 MR. OTT: I'm still here, but I don't know where
22 everybody else is.

23 MS. MANESS: No, we're not, but I think when I turned
24 a page, my hand hit the mute button.

25 So, Your Honor, there are two issues here. The first is

1 Neville, in which Mr. Carlson was found to have violated the
2 letter of the confidentiality, but certainly not, as the Court
3 said, the spirit of the protective order in that case.
4 Because the information that was disclosed, although he did
5 learn it from confidential documents, was in the public
6 domain.

7 The second one is in the Greenville District Court case,
8 and that is Michelin versus Carlson, and that sounded like
9 more or less a hot mess. But in that case, of course, and I
10 know Your Honor has read this or has been briefed on it, that
11 Mr. Carlson gave an affidavit, after being subpoenaed for a
12 deposition in which he provided information. And the
13 subpoena, he complied with, he provided the information. He
14 thereafter gave -- and that was in -- that deposition was in
15 November of 1995.

16 His affidavit concerning information that Michelin
17 complained about was in November of 1996, issued on November
18 the 11th, I believe. And during that same time frame,
19 Michelin actually gave the protected deposition to counsel, to
20 Goodyear counsel, and it ended up being disseminated by
21 Goodyear counsel.

22 And I think that in reading this order, it is interesting
23 to note that the Court had to work through what came first,
24 essentially, the chicken or the egg, with the disclosure,
25 whether it was Mr. Carlson or whether it was Michelin, and

1 ultimately held that both of them contributed to the problem.

2 And the Court found there that it did not demonstrate a
3 propensity by Mr. Carlson to disclose company trade secrets or
4 confidential information in the future. And, in fact, Mr.
5 Carlson has not. There are two protective orders attached to
6 the submission by the Court. One of those is in a case
7 called Gaul. And, in fact, I've checked with Mr. Carlson,
8 Mr. Carlson wasn't even a witness in that case, didn't know
9 about the entry of this protective order that mentioned him
10 until after the fact. He wasn't involved in that case.

11 In the Hobbs case he was involved, but he did not view any
12 documents. Mr. Carlson has not been alleged to have provided
13 confidential information outside of the two cases, Neville and
14 the Michelin case in Greenville.

15 And, in fact, in our case, the document -- or rather, the
16 deposition excerpts that were attached, to suggest that
17 Mr. Carlson was disclosing confidential Michelin information
18 in our case, there are two patents that Michelin filed. One
19 was -- went on record in October of 1998, the other went on
20 record in March of 1999. That both recite the butyl content
21 of the XZA-1 tire, that Mr. Carlson repeated in his
22 deposition. And in terms of the inner liner measurements on
23 Michelin tires, those were all taken following his employment
24 by Michelin, in -- of tires in the recent past.

25 So there's nothing in our deposition transcript that is

1 protected to Michelin. And there is nothing -- Mr. Carlson
2 has not ever been alleged to have disclosed inner liner
3 thicknesses or formulas or anything other than the two
4 instances that are noted in the published cases.

5 THE COURT: But that's still of concern to me,
6 especially when another judge basically wouldn't let him see
7 anything until he had a separate court hearing.

8 What does the defendant say to Miss Maness' comments?

9 MR. OTT: Your Honor, that's a pretty long list of
10 attachments showing questions by various judges about
11 Mr. Carlson's ability to abide by the terms of these same
12 protective orders and confidentiality orders, and the further
13 finding of the contempt of court for violation of a -- in the
14 past.

15 THE COURT: It is the distant past though, Mr. Ott,
16 that's 1999, and -- the Neville case is 1999 and the Michelin
17 v. Carlson is 1996.

18 MR. OTT: Yes, Your Honor, but again, as recently as
19 2013, the Court in the Hobbs matter said if Mr. Carlson is a
20 consultant in this case, a court hearing should be held in
21 order to determine his access to any protected documents or
22 testimony. So it scans a pretty long period of time.

23 THE COURT: Well, and I'm happy to have a hearing
24 with Mr. Carlson to remind him of his obligations, if that
25 would help allay your concerns, Mr. Ott.

1 But, Miss Maness, I think you wanted to speak.

2 MS. MANESS: Yes, ma'am. I only wanted to note that
3 in the Hobbs case there is nothing -- I mean, we've got this
4 one bare statement in that protective order. We have no
5 information about what went into that. And I do know that
6 Michelin, on -- excuse me -- Goodyear, on both the occasion of
7 the Gaul case, and I'm aware of another case where they got a
8 court to enter a protective order involving Mr. Carlson where
9 he wasn't even involved.

10 So there is no way of knowing what this Court was told or
11 what information was provided, if any, in defense of Mr.
12 Carlson, before this order was entered. I mean, it's just a
13 bare assertion without any information about why the Court --
14 if all the Court was basing it on was those late '90
15 incidents, then I don't think we can say that there is a
16 continuum. It's just a handy use of information, without any
17 background from Mr. Carlson to put it in perspective. And the
18 Court issued this order, and he's not -- Mr. Carlson isn't
19 present to address it.

20 THE COURT: Have y'all -- I take it there's been no
21 talk between y'all about trying to come to an accommodation on
22 the attachment to the confidentiality order that the experts
23 have to sign, which may give some comfort to the defendant
24 that this won't happen again. Is it worth me even asking
25 y'all to try to come up with one, or I do need to come up with

1 it?

2 MS. MANESS: We have not had a discussion about that.
3 Frankly, there was -- in terms of Mr. Carlson, last week is
4 the first time I saw this. And Mr. Carlson has signed Exhibit
5 B to our confidentiality order in this case.

6 THE COURT: I take it -- I'm sorry -- I'm sure he's
7 already had access to a lot of whatever has been produced so
8 far, correct?

9 MS. MANESS: Everything. Everything.

10 THE COURT: Defendant, do y'all have anything further
11 to say about it?

12 MR. OTT: Nothing, Your Honor. Your Honor, just
13 given the gravity of the trade secrets and the information
14 that they're seeking, it's Goodyear's position that we don't
15 believe a protective order, especially considering the
16 witness, would be able to be drafted to ensure with confidence
17 that there would not be problems in the future. So --

18 THE COURT: So y'all aren't even willing to try;
19 y'all really want me to rule so you can appeal it to Judge
20 Duffy, right?

21 MR. OTT: Your Honor, I can assure you that's not
22 what -- we do not want that. But hopefully you understand
23 we're -- the company takes the formula, the compounding
24 formula and the amount of halobutyl, as well as their --
25 Mr. Carlson's work at the request of counsel, very seriously,

1 and --

2 THE COURT: I understand that, and I also -- but I do
3 see Miss Maness' point that the confidential -- the more
4 recent things in the confidentiality order, there is no
5 information, you know, we don't know why the judge put that in
6 there or what was presented, and it didn't look like
7 Mr. Carlson had an opportunity to defend himself either. I
8 will note that.

9 MR. OTT: I was remiss. Also, the Global Design
10 Manual, that would be the other thing that plaintiff is
11 seeking.

12 THE COURT: All right. Anything further from either
13 party?

14 MS. MANESS: No, ma'am.

15 THE COURT: I would like, just in an abundance of
16 caution, I would like for defendant, if you want to do it, you
17 can, Mr. Ott, or if you want the plaintiff to do it, draft a,
18 you know, if you think there's some -- I understand your
19 position, but I'd like to see some proposed language that in
20 the event I rule that this stuff is discoverable and
21 producible to the expert, that might give -- tighten up the
22 language in a normal confidentiality order on what he can, and
23 reminding him that any expert, the consequences of disclosure
24 of confidential material is a possible contempt of court.

25 MS. MANESS: Your Honor, it's also been plaintiff's

1 position that the confidentiality order we have in place
2 clearly states that. I'm happy to review any language the
3 defendant wants to propose.

4 THE COURT: I'd ask the defendant to do that for me,
5 if you would, within ten days. Without waiving your position.
6 I'm not saying that doesn't waive -- I'm not saying that y'all
7 are consenting. But if there's something you wanted added to
8 that confidentiality order, in the event I rule that it's
9 still discoverable and producible to him as an expert, then
10 I'm just giving you the chance to give me some other language
11 and to try to work it out.

12 MR. OTT: Okay. Your Honor, just with the
13 understanding that --

14 THE COURT: You're not waiving your position.

15 MR. OTT: Right. And the response may be that there
16 is no such language.

17 THE COURT: I understand. I just would ask y'all to
18 give it a good try, because y'all did make -- this argument
19 comes late, I know y'all's scheduling order is about to run
20 out, and it would be -- I think y'all should try to make the
21 effort. Because even if you didn't know, Miss Liston,
22 Goodyear evidently knew about Mr. Carlson some months ago.

23 All right?

24 MR. OTT: Thank you very much, Your Honor.

25 THE COURT: Anything further from either side?

1 MS. MANESS: No, ma'am.

2 THE COURT: Thank you. We'll adjourn it. Thanks so
3 much.

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5 (Conference adjourned at 12:25 p.m.)
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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR

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October 1, 2015

The Honorable Mary Gordon Baker
U.S. Magistrate Judge
U.S. District Court
P.O. Box 835
Charleston, SC 29402

Re: *Theodore G. Hartsock, Jr., as Personal Representative of the Estate of Sarah Mills Hartsock v. Goodyear Dunlop Tires North America, LTD, a foreign corporation, and The Goodyear Tire & Rubber Company, a foreign corporation*
C.A. No.: 2:13-cv-00419-PMD
GWB File No.: 8286-1

Dear Judge Baker:

We write following the hearing with you by conference call on September 21st which addressed the parties' supplemental briefing in connection with Defendants' Motions for Protective Order (DE 103 and 107). Specifically, you inquired whether the parties had any suggested language to revise the filed Confidentiality Order (DE 46) should the Court decide to order Defendants to produce protected trade secret information. As stated during the hearing, Defendants do not believe there is any additional language to include in the Confidentiality Order that would protect against the recognized danger and irreversible damage that would result from public dissemination of Defendants' trade secrets; however, the Court allowed ten days to consider this issue. After further consideration and consultation, we stand by our position that the danger and potential damage cannot be eliminated with revisions to the Confidentiality Order.

Thank you for consideration of Defendants' position. Please advise if the Court has any additional questions or requires anything further related to the pending motions.

The Honorable Mary Gordon Baker
October 1, 2015
Page two

With kind regards, I am

Very truly yours,

s/Curtis L. Ott

Curtis L. Ott

CLO/sm

cc: Mark C. Tanenbaum (*via email*)
David R. Fountain, Jr. (*via email*)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah
Mills Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America
LTD, *a foreign corporation*; and
The Goodyear Tire & Rubber
Company,

Defendants.

Civil Action No. 2:13-cv-00419-PMD

ORDER

This matter is before the undersigned United States Magistrate Judge upon Plaintiff's Motion to Compel (Dkt. No. 100) as well as three Motions for Protective Order (Dkt. No. 103; Dkt. No. 105; Dkt. No. 107) filed by Defendants. By the Order of the Honorable Patrick Michael Duffy, these motions were referred to the undersigned. (Dkt. No. 112.) A hearing was held on these matters on August 31, 2015, during which the Motion for Protective Order (Dkt. No. 105) was granted as unopposed. (See Dkt. No. 123.) Additionally, Plaintiff's Motion to Compel (Dkt. No. 100) was granted in part and denied in part. Two of Defendants' Motions for Protective Order (Dkt. No. 103; Dkt. No. 107) were taken under advisement. (See Dkt. No. 123.) Pursuant to the undersigned's instructions at the hearing, the parties have filed supplemental materials as to the motions taken under advisement. (See Dkt. No. 129; Dkt. No. 130; Dkt. No. 128.) After reviewing the parties' supplemental filings, the undersigned conducted a telephone conference on September 21, 2015. (Dkt. No. 132.) During the telephone conference, the undersigned gave the parties ten days to propose alterations to the confidentiality order. (Dkt. No. 132.) On October 1, 2015, counsel for Defendants filed a letter indicating "that the danger and potential damage [of ordering Defendants to produce trade secret information] cannot be eliminated with revisions to the Confidentiality

Order.” (Dkt. No. 136.) This Order memorializes the Court’s rulings made at the hearing and rules on the issues taken under advisement.

Background

Plaintiff Theodore G. Hartsock, Jr., as Personal Representative of the Estate of Sarah Mills Hartsock, filed the instant action against Defendants Goodyear Dunlop Tires North America LTD (“Dunlop”) and Goodyear Tire & Rubber Company (“Goodyear”). (See Dkt. No. 22.) In his Amended Complaint, Plaintiff alleges that on July 6, 2010, a defective tire—manufactured by the Defendants—on a recreational vehicle failed, causing the “motor home [to] cross[] the median of Interstate Highway 26, bursting through the dividing cable barrier and striking Plaintiff’s decedent’s vehicle head on.” (Am. Compl. ¶¶ 16, 29.) Plaintiff’s Amended Complaint seeks damages for survival and wrongful death, and lists the following causes of action: negligence, strict liability, and breach of express and implied warranties. (See generally Dkt. No. 22.)

Discussion

A. Plaintiff’s Motion to Compel (Dkt. No. 100)

In the Motion to Compel, Plaintiff seeks an order compelling “full responses” to Plaintiff’s discovery request numbers 9, 57, 68, 96, and 107. (See Dkt. No. 100 at 1 of 15.) Plaintiff’s motion was granted in part and denied in part at the hearing. Specifically, Plaintiff’s motion was granted as to Exhibit K to Plaintiff’s motion. Plaintiff’s motion was additionally granted as to the “Subject Tire,” the G670RV 295/80R22.5 tire. Plaintiff’s motion was denied in all other respects.

Plaintiff has a right to reconvene the deposition of Mr. Koerner as to any documents produced to Plaintiff after the deposition of Mr. Koerner; Plaintiff shall identify such documents, in writing, by Bates number.

To the extent Defendants have not yet supplemented their discovery responses in conformance with this ruling, they shall do so within ten days of the date of this Order.

B. Motion for Protective Order (Dkt. No. 105)

In this motion, Defendants request a protective order “preserving its privileged objections and sustaining counsel’s instructions to the witness, Daniel Badzinski, not to answer questions protected by the attorney-client privilege and/or work-product doctrine; and, pursuant to Rule 26(c)(1), Fed.R.Civ.P, to prevent disclosure of highly confidential trade secrets.” (Dkt. No. 105 at 9-10 of 10.) This motion was granted as unopposed.

C. Motion for Protective Order (Dkt. No. 107)

This Motion for Protective Order (Dkt. No. 107) pertains to the deposition of Denise Seiler, an employee of Defendant Goodyear Dunlop Tires North America. According to Defendants, Ms. Seiler was identified as a Rule 30(b)(6) deponent “to testify concerning various areas including the design and development of the Tire at Issue.” (Dkt. No. 107 at 2-3 of 11.) Two sets of questions (Questions A and Questions B) are at issue in the motion, although Plaintiff consents to the protective order as to Questions B. (*See* Dkt. No. 107 at 3-5 of 11; Dkt. No. 114 at 2 of 6.) Accordingly, as to Questions B, Defendants’ motion is granted as unopposed.

Questions A pertain to the butyl content of the Subject Tire’s inner liner; Questions A are as follows:

Q. All right. What is the percentage of butyl rubber in the innerliner for the G670 tire?

MR. TOOLE: I’m instructing you not to answer based on the reasons I’ve instructed every other witness since last Friday.

BY MR. FOUNTAIN:

Q. Do you know the butyl content of the innerliner for the G670 tire?

MR. TOOLE: I’m instructing you not to answer based on the same reasons.

...

Q. Has [there] Been any change to the [butyl] content so the innerliner of the G670 from the time production began in May of 2003 to the present?

MR. TOOLE: Same instruction.

(Dkt. No. 107 at 3 of 11.)

In his Response in Opposition, Plaintiff “does not contend that the butyl content of the subject inner liner is not a trade secret.” (Dkt. No. 114 at 4.) Instead, Plaintiff asserts the butyl content of the subject liner “is relevant to the proof of his case—it explains in whole or in part the reasons for the tire’s failure and the manner in which the subject tire failed.” (Dkt. No. 114 at 4-5.) Plaintiff explains his theory of the case as follows:

Plaintiff’s main defect theories are that the design of the G670RV 295/80R22.5 tire, as well as its manufactured condition, allowed inflation pressurized air to migrate from the air chamber into the structure of the tire. The pressurized air in the tire structure and belts caused separations within the tire; interaction of the air with the compounds inside the tire caused those compounds to degrade, leading to separation of the tire plies and blowout. Two factors influence the ability of the air to migrate from the air chamber into the body of the tire; 1) the amount of butyl rubber in the compound of the inner liner, and 2) the thickness of the inner liner. Testimony of Defendants employees, coupled with Goodyear documents, has established that an inner liner gauge thinner than specified by the governing design specification required a tire to be scrapped. . . .

Of equal importance to Plaintiff’s defect theory is the rubber compound from which the inner liner was manufactured. Seiler testified that the inner liner is the only component of the tire that contains butyl. She also testified, as did Terrance Parsons, that the butyl compounds are resistant to air permeation into the structure of the tire. Whether the butyl content of this inner liner was 100 percent or 10 percent is relevant to the performance of the inner liner and additional design defects in the G670RV 295/80R22.5. Insufficient butyl content will contribute to intracarcass pressurization and the failure mode of the subject tire.

(Dkt. No. 114 at 2-3.)

Plaintiff asserts the Motion for Protective Order (Dkt. No. 107) should be denied as to the butyl content of the tire liner because (a) Plaintiff’s “ability . . . to prove his case outweighs the potential harm to Defendants,” and (b) the protective order in place in the case *sub judice* “will provide the protection Defendants seek for their trade secret.” (Dkt. No. 114 at 5.) Plaintiff requests an order “denying Defendants’ motion as to Seiler’s knowledge of the butyl content of the G670RV 295/80R22.5 inner liner, and allowing Plaintiff to reconvene Seiler’s deposition to inquire into this subject.” (*Id.* at 5.)

“There is no absolute privilege to protect trade secrets from disclosure during the discovery process.” *In re Pechiney Plastic Packaging, Inc. v. Curwood, Inc.*, 220 F.R.D. 452, 452 (D.S.C.

2004) (citing *Dunlap Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1185 (D.S.C. 1974)). As Judge Floyd stated in *In re Pechiney*,

The party resisting the discovery must demonstrate to the Court that the information being sought is a trade secret and that its disclosure might be harmful. Once shown, the burden shifts to the party that seeks the discovery to establish the relevance of the trade secret to the lawsuit and that it is necessary to the action. If relevance and necessity are established, then the Court “must balance the need for the information against the injury that would ensue if disclosure is ordered.”

Id. (quoting and citing *Coca-Cola Bottling of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288, 292 (D. Del. 1985)). “The level of necessity that must be shown is that the information must be necessary for the movant to prepare its case for trial, which includes proving its theories and rebutting its opponent’s theories.” *Coca-Cola Bottling of Shreveport*, 107 F.R.D. at 293 (citations omitted). In assessing injury, the “relevant injury . . . is not the injury that would be caused by public disclosure, but the injury that would result from disclosure under an appropriate protective order.” *Id.* “[I]t is presumed that disclosure to a party who is not in competition with the holder of the trade secret will be less harmful than disclosure to a competitor.” *Id.* (citations omitted). The *Coca-Cola* court further stated,

The balance between the need for information and the need for protection against the injury caused by disclosure is tilted in favor of disclosure once relevance and necessity have been shown. As the Supreme Court has recognized, “orders forbidding any disclosure of trade secrets or confidential commercial information are rare.” *Federal Open Market Committee v. Merrill*, 443 U.S. at 362 n. 24, 99 S.Ct. at 2813 n. 24; see also *Morrison-Knudsen Co. v. Department of Army*, 595 F.Supp. 352, 355 (D.D.C.1984), *aff’d mem.*, 762 F.2d 138 (D.C.Cir.1985). A survey of the relevant case law reveals that discovery is virtually always ordered once the movant has established that the secret information is relevant and necessary. See, e.g., *Pennwalt Corp. v. Plough, Inc.*, 85 F.R.D. at 259; *Struthers Scientific & Industrial Corp. v. General Foods Corp.*, 51 F.R.D. at 154; *United States v. An Article of Drug*, 43 F.R.D. at 189; *Centurion Industries*, 665 F.2d at 326; *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d at 999; *Kleinerman v. United States Postal Service*, 100 F.R.D. at 69–70; *Davis v. General Motors Corp.*, 64 F.R.D. 420, 422 (N.D.Ill.1974); *Maritime Cinema Service Corp. v. Movies En Route, Inc.*, 60 F.R.D. 587, 590 (S.D.N.Y.1973); *Spartanics, Ltd. v. Dynetics Engineering Corp.*, 54 F.R.D. 524, 526 (N.D.Ill.1972); cf. *Cleo Wrap Corp. v. Elsner Engineering Works, Inc.*, 59 F.R.D. 386, 388 (M.D.Pa.1972) (discovery denied where relevance slight, need small, and harm great). The reason for allowing the discovery of trade secrets whenever they are needed to advance the just adjudication of a lawsuit is simple: in the absence of an applicable privilege,

“[j]udicial inquiry should not be unduly hampered.” *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d at 999.

Coca-Cola Bottling of Shreveport, 107 F.R.D. at 293.

In the opinion of the undersigned, while the butyl content of the Subject Tire does constitute a trade secret, Plaintiff has established that the information is relevant and necessary. A careful reading of the report of Plaintiff’s expert indicates that the butyl content of the tire is a critical component of determining the cause of the tire failure in the case *sub judice*. (See Pl.’s Ex. 4 at 10-11.) Plaintiff’s expert specifically states that “[i]f the compound used and the manufactured thickness of the inner liner are not sufficient to restrict the migration of inflation pressurized air through the inner liner and into the structure of the tire, a known process referred to as pressurization of the carcass or intra carcass pressurization occurs.” (*Id.* at 11.) This expert further indicated that the tire at issue in the case *sub judice* suffered intra carcass pressurization. (*Id.* at 20.)

The undersigned has reviewed the portions of Plaintiff’s expert’s deposition provided to the Court. (See Dkt. No. 128 Ex. F.) Defense counsel inquired—numerous times—about the expert’s feasible, alternative design to the Subject Tire. (See *id.* at 188-89, 193-96, 204-05) The expert’s response indicated his proposed alternative design contained a specified butyl content. (*Id.* at 188-89, 193-96, 204-05, 323-24.) The expert further indicated that in order to assess one of the defense theories of the case, he needed the butyl content of the Subject Tire. (*Id.* at 325.)

Given all that Plaintiff has presented, it is difficult to imagine what more Plaintiff should be required to present in order to establish relevance and necessity. In the opinion of the undersigned, Plaintiff has met his burden. As noted above, if relevance and necessity are established, then the Court “must balance the need for the information against the injury that would ensue if disclosure is ordered.” *In re Pechiney*, 220 F.R.D. at 452. In assessing injury, the “relevant injury . . . is not the injury that would be caused by public disclosure, but the injury that would result from disclosure under an appropriate protective order.” *Coca-Cola Bottling of Shreveport*, 107 F.R.D. at 293.

In Defendants' supplemental briefing, Defendants complain—for the first time—that Plaintiff's expert “has a long history of failing to respect the intellectual property rights of tire companies” and that “courts have consistently found his views concerning protection of and actions regarding confidentiality of tire company information wanting.” (Dkt. No. 130 at 2.) The undersigned will review the materials submitted by the Defendants in reverse chronological order. Defendants presented an “Amended Protective Order” issued on July 1, 2010 by the United States District Court for the Southern District of Texas in *Hobbs v. Goodyear Dunlop Tires of North America, Ltd.*, Civ.

A. No. H-09-1765. (See Dkt. No. 130-3.) That Order provided, *inter alia*,

Confidential Documents and Information shall not be given, shown, made available, discussed or otherwise communicated in any way except to a “Covered Person,” defined as follows . . . Independent professional engineers, accident reconstruction or other independent experts retained by a party or an attorney of record to assist in the preparation of this litigation, other than Dennis Carlson. If Mr. Carlson is consultant in this case, a court hearing shall be held in order to determine his access to any protected documents or testimony.

(Dkt. No. 130-3 at 3 of 11.) In *Galle v. The Goodyear Tire & Rubber Company, et al.*, Civ. A. No. 2007-CI-00418, the “First Amended Protective Order,” which was issued on October 20, 2008, provides as follows: “Under no circumstances shall Dennis Carlson receive any protected or confidential documents of The Goodyear Tire & Rubber Company since the Court has found that he does not appear to take protected orders seriously.” (Dkt. No. 130-2 at 5 of 22.)

On September 25, 2008, an attorney for Michelin North America, Inc. sent a letter to Mr. Carlson. (Dkt. No. 130-5.) That letter stated, *inter alia*,

It seems that you have to be periodically reminded of your obligations and agreements with Michelin. I am enclosing, again, a copy of your January 2000 Settlement Agreement with MNA and MARC. Specifically, I refer you to Paragraph 4 which sets forth in detail the only information you are allowed to reveal regarding your employment at MARC, and the information you obtained as a result of it.

I have been provided with a supplemental letter report you prepared in *Ramos v. Goodyear* dated September 5, 2008. In that report you purport a tolerance for belt splices at Michelin and Michelin's quality assurance procedures. This is the type of confidential information specifically addressed in the Settlement Agreement and you have now revealed confidential and trade secret information to one of Michelin's competitors. Michelin insists that you immediately withdraw the report, inform all parties to the case that you cannot render the opinions contained in it because it is a

violation of your agreements with Michelin, and retrieve all copies of the report and send them to me along with your certification that none exist other than the ones you send to me.

(Dkt. No. 130-5 at 2 of 13.)

On April 7, 2008, in *Crowther v. Goodyear Tire & Rubber Corporation*, Case No. 06041981 in Utah County, Utah, Mr. Carlson deposed as follows:

Q. Are you aware of any published testing, scientific studies or peer-reviewed literature indicating that waviness at the belt edge is a defect in the tire?

A. There are many company documents that indicate that, but every company I know of has a tolerance for joints and belt edges.

Q. I am going to object, nonresponsive. Are you talking about protected documents of other tire companies?

A. Yes.

Q. Then why are you talking about them?

A. I can tell you the general substance of what they say.

(Dkt. No. 130-6 at 2 of 4.)

In *Nevil v. Ford Motor Co.*, Civ. A. No. 294-015, 1999 WL 1338625 (S.D. Ga. Dec. 23, 1999), Judge Bowen found Mr. Carlson in contempt of court on December 23, 1999. Judge Bowen stated in his order,

[I]t is evident that Mr. Carlson disclosed information in his deposition testimony about the General Tire documents covered by the Protective Order. At several points in his testimony, Mr. Carlson discloses specific information contained in General Tire studies. Even if this general information is already in the public domain, his testimony reveals that he learned of this information from General Tire documents. Assertions that this evidence came from specific General Tire documents violates the terms of the Protective Order. Accordingly, I find that Mr. Carlson's actions are in contempt of this Court.

Nevil, 1999 WL 1338625, at *4.

Finally, in *Michelin Americas Research & Development Corp. v. Carlson*, C/A No. 96-CP-23-2943, Judge Simmons issued an order on July 24, 1997 in Michelin's action against Carlson (a former employee of Michelin) wherein Judge Simmons found that "the specific information disclosed

by Carlson in the Wilson affidavit was a trade secret or confidential information prior to its disclosure.” (Dkt. No. 130-4 at 6 of 8.) Carlson was “directed to comply with and restrained from violating the non-disclosure agreements previously executed.” (*Id.* at 7 of 8.)

Having reviewed the Defendant’s submissions, Defendants have certainly shown the *possibility* of injury in the disclosure. However, in balancing the need for the information against the injury that would ensure if disclosure is ordered, the undersigned concludes the balance weighs more heavily in favor of the need for the information. As detailed above, Plaintiffs have established the need for the information and its relevance. Moreover, Defendants’ arguments about Mr. Carlson have arisen at the end of this case. Defendants certainly knew Mr. Carlson would serve as an expert witness for Plaintiff by July 6, 2015, when Plaintiff filed his designation of experts and provided Defendants with a copy of Mr. Carlson’s expert report. (*See* Dkt. No. 118; *see also* Pl. Ex. 4 to Hr’g of Aug. 31, 2015.)¹ At the hearing on August 31, 2015, however, counsel for Defendants did not voice any concern regarding Mr. Carlson. The concern was first raised to the Court on September 15, 2015, via supplemental briefing. (*See generally* Dkt. No. 130.) During the telephone conference of September 21, 2015, counsel for Plaintiff indicated that, at this point, Mr. Carlson has already seen everything that has been produced. (Hr’g Tr. at 11, Sept. 21, 2015.)

At the time Defendants first raised their concern, only seventeen days remained in the discovery period. (*See* Dkt. No. 98; Dkt. No. 130.) In addition, the undersigned asked counsel for Defendants—without waiving Defendants’ position that the requested material is not discoverable—to confer with counsel for Plaintiff and propose language to strengthen the protection afforded by the confidentiality order. (Hr’g Tr. at 10-13, Sept. 21, 2015.) Defendants’ position is that “the danger and potential damage cannot be eliminated with revisions to the Confidentiality Order.” (Dkt. No. 136.)

Although Defendants have certainly raised the *possibility* of injury due to the disclosure to Mr. Carlson, the Plaintiff’s *actual, demonstrated* need for that information is outweighed by the

¹During the telephone conference on September 21, 2015, counsel for Plaintiff indicated that Defendants were aware of Mr. Carlson’s participation in this case as early as June of 2013. (*See* Hr’g Tr. at 6, Sept. 21, 2015.)

potential injury. Many of the items produced by Defendants to support their argument that Carlson should not have the at-issue information are in the distant past. And although the protective orders in *Hobbs* and *Galle* limit Mr. Carlson's access to confidential information, counsel for Plaintiff indicated during the telephone conference that Mr. Carlson may not have even been involved in those cases. (Hr'g Tr. at 9-10, Sept. 21, 2015.) In light of Plaintiff's demonstrated need for the information, the fact that many of the items presented by Defendants pertain to the distant past, and the fact that Defendants first raised this concern after the hearing and a mere seventeen days prior to the close of discovery, Defendants' Motion for Protective Order (Dkt. No. 107), as it pertains to butyl content, is denied. Plaintiff may reconvene the deposition of Ms. Seiler if Plaintiff wishes to do so.

D. Motion for Protective Order (Dkt. No. 103)

In this Motion for Protective Order, Defendants seek an order "protecting from disclosure certain privileged information addressed during the deposition of Terry Parsons, held on April 17, 2015. Defendants further seek protection . . . from Plaintiff's demand that Goodyear identify its confidential, trade secret compound formula." (Dkt. No. 103 at 1 of 12.) As set forth herein, Defendants' Motion for Protective Order (Dkt. No. 103) is granted in part and denied in part.

1. Butyl Content

Defendants contend that certain information sought in Parsons' deposition constitutes confidential trade secret information. (See Dkt. No. 103 at 9 of 12.) The following questions are at issue herein:

Q. Do you know the butyl content of the inner liner of the Hartsock case, Hartsock tire?

MR. TOOLE: I'm going to instruct you not to answer that question.

MR. FOUNTAIN: Why?

MR. TOOLE: Based on trade secret.

...

Q. Okay. Do you know the halobutyl content or the butyl rubber content of the inner line for the tire in this case?

A. I have an idea.

Q. Okay. Can you tell me what your idea is.

MR. TOOLE: I'm instructing him not to answer. You can ask the same question again and again I'm not going to allow it.

(Dkt. No. 103 at 4 of 12.)

For the reasons discussed above with respect to the Motion for Protective Order as to Seiler's deposition (Dkt. No. 107), Defendants' Motion for Protective Order (Dkt. No. 103) is denied to the extent the motion pertains to butyl content.

2. Attorney-Client Privilege and Work-Product Doctrine

Defendants assert that during his deposition, Mr. Parsons "was asked certain questions which required answers protected by the attorney-client privilege and the work-product doctrine." (Dkt. No. 103 at 3 of 12.) Defendants assert the following questions implicate the attorney-client privilege:

Q. And there is no real dispute that one of your main job duties is to examine claim tires that come to Goodyear where somebody says I bought a Goodyear tire, I had a problem that either caused property damage to my vehicle, it is in excess of 15 thousand, it caused an injury or caused a death, true?

MR. TOOLE: Objection. Form.

A. We examine claim tires as you described. If it is a property damage claim in excess of 15 thousand, if it's bodily injury or a death, we'll examine those. We'll also examine tires that are involved in a litigation of some kind.

Q. And you did that for this case. You examined the tire that was the subject of this case, the Hartsock case, right?

A. Yes, I did.

MR. TOOLE: I'm instructing you not to answer.

MR. FOUNTAIN: On what basis?

MR. TOOLE: He was asked to inspect the tire based on my request or my law firm's request or the request of the legal department at Goodyear Tire.

...

Q. Did you attempt to measure the inner liner thickness for the Hartsock tire?

MR. TOOLE: Don't answer.

Q. Did you reach a conclusion about the cause of the failure of the Hartsock tire?

MR. TOOLE: Don't answer.

(Dkt. No. 103 at 3-4 of 12.)

Defendants assert the following questions implicate the work-product doctrine:

Q. You did see the early warning document?

A. No. I saw an early warning standard document that discussed what an early warning was or is.

MR. TOOLE: If it's something shown to you by counsel, I'm instructing you not to answer. If you saw it other than with me you can answer.

Q. What did you see, I'm curious?

MR. TOOLE: If you saw whatever you are referring to, if you saw it with me being counsel of record, don't answer the question. If you saw it outside of with me you can answer.

A. I saw it with counsel.

(Dkt. No. 103 at 4-5 of 12.)

In opposing Defendants' motion as to the attorney-client privilege and the work-product doctrine, Plaintiff essentially contends that matter has already been ruled upon by the court. (*See* Dkt. No. 109 at 2-5 of 11.) At the April 2014 hearing, Judge Duffy allowed supplemental briefing "on the issue of whether employees Jim Stroble and Terrence Parsons are non-testifying experts who are exempt from giving a deposition under Rule 26(b)(4)(D) of the Federal Rules of Civil Procedure." (Dkt. No. 83 at 5.) Judge Duffy denied Defendants' Motion for a Protective Order with respect to Parsons; his May 5, 2014 Order stated, *inter alia*,

A number of courts have found that in-house experts never fall within the ambit of Rule 26(b)(4)(D). Other courts, however, have recognized instances where an in-house expert can be considered "specially employed in anticipation of litigation" and thus fall within the protection of the rule. Notably, in cases finding that a regular employee may be deemed an in-house expert immune from discovery, the

courts seem to require that, in addition to being in anticipation of litigation, the special employment be on a project other than the kind the employee normally is engaged in.

The Court need not weigh in on which line of cases is correct; under either approach, neither Mr. Stroble nor any engineer in his department is subject to protection under Rule 26(b)(4)(D). The record evidence establishes that Mr. Stroble is the head of the Product Analysis Department and manages a team of three engineers. The duties of the engineers in that department include analyzing tires and field scenes that are involved with either a claim or an accident. In fact, there is no indication in the record that the engineers have any duties or responsibilities other than analyzing these tires and field scenes. According to Mr. Parsons' deposition testimony in the *Green* case, each engineer, including Mr. Stroble, looks at every tire that comes through the department. Therefore, when Mr. Stroble and the other engineers examined the Tire at Issue, they were not performing work outside the scope of their regular employment duties nor were they given a project that they would not ordinarily work on. The record thus demonstrates that Mr. Stroble and the engineers in the Product Analysis Department are regular employees of Defendants whose regular job duties include analyzing tires like the Tire at Issue. In other words, Mr. Stroble "is simply a general employee of the party not specially employed on the case." Fed. R. Civ. P. 26(b)(4)(D) advisory committee's note. Based on these facts, the Court concludes that neither Mr. Stroble nor any other engineer in that department (including Mr. Parsons) is "retained or specially employed" within the meaning of Rule 26(b)(4)(D).

(Dkt. No. 83 at 6-8 (citations omitted).)

Defendants filed a Motion for Reconsideration of Judge Duffy's Order; the Motion for Reconsideration was denied on June 16, 2014. (*See* Dkt. No. 84; Dkt. No. 92.) His June 2014 Order stated, *inter alia*,

[T]he Court is not persuaded by Defendants' arguments that the Court's ruling will result in manifest injustice. Defendants contend that "allowing the Court's Order to stand will cripple Defendants' efforts to defend themselves vigorously against product liability claims," will result in "wide ranging negative consequences for other product manufacturers," and "will have a chilling effect on the Company's willingness to specially employ its own resources in a litigation setting, thereby placing the Company at a severe disadvantage when defending its products." Mot. for Reconsideration 11, ECF 84. However, the Court does not agree that such dire consequences will follow from the Court's application of Rule 26(b)(4)(D) to the facts of this case. Rule 26(b)(4)(D) protects from deposition "an expert who has been retained or specially employed by another party in anticipation of litigation." As the Court explained in its Order, "there is no indication in the record that [Mr. Stroble and Mr. Parsons] have any duties or responsibilities other than analyzing . . . tires and field scenes" that are involved with either a claim or an accident. May 5, 2014 Order 8. The Court thus found that Mr. Parsons and Mr. Stroble—who are regular, salaried employees of Defendants whose regular job duties include evaluating all tires that are involved in litigation—have been neither retained nor specially employed by

Defendants in anticipation of litigation. If Defendants wish to invoke the protection of Rule 26(b)(4)(D) for non-testifying experts, they could retain an outside expert to evaluate the tires involved in litigation—which is clearly contemplated by the rule—or they could modify their policies and procedures to ensure that in-house experts who are asked to consult in a litigation matter are truly “specially employed” on the matter and not simply performing the same duties they are assigned to do as a matter of course.

Moreover, the Court finds unpersuasive Defendants’ assertion that they will suffer manifest injustice when the depositions go forward because Plaintiff will be “afforded unfair, unwarranted, and unjustified access to the opinions, thoughts, and mental impressions of their adversary in high stakes litigations.” Mot. for Reconsideration 12. **Although the Court has held that Mr. Stroble and Mr. Parsons are not protected from deposition under Rule 26(b)(4)(D), nothing in the May 5 Order prevents Defendants from properly asserting the protections of the attorney-client privilege or the work-product doctrine with respect to certain testimony or documents specifically related to this litigation.**

(Dkt. No. 92 at 5-6 (emphasis added).)

Rule 26(b)(3) provides, in relevant part,

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party’s attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(I) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories .

FED. R. CIV. P. 26(b)(3).

To the extent Plaintiff posed questions to Mr. Parsons concerning the early warning document or documents, Mr. Parsons need not answer those questions, as that information is protected. *See In re Allen*, 106 F.3d 582, 608 (4th Cir. 1997) (“We have held that attorney-client privilege does not protect [the selected pages of employment records concerning Donna Willis]. Yet, just as Allen[, the attorney,] prepared the interview notes and summaries in anticipation of litigation, she also chose and arranged these records in anticipation of litigation. This choice and arrangement constitutes opinion

work product because Allen's selection and compilation of these particular documents reveals her thought processes and theories regarding this litigation.").

The question is then whether Mr. Parsons' examination of this tire is protected. Defendants assert as follows:

[C]ontrary to Plaintiff's assertions, this litigation and the eventual examination of the tires and rims are not routine and arise directly from the request of legal counsel in defense of this litigation. As provided herein, the tires and rims were obtained in this litigation, the companion tires and rims are partly owned by Defendants, these tires and rims are the subject of multiple preservation orders, and all tires and rims were the subject of a Tire Inspection Agreement outlining the manner and method of the non-destructive testing.

(Dkt. No. 116 at 3-4.) Furthermore, Mr. Parsons stated as follows in his Affidavit:

14. I report directly to Jim Stroble. Mr. Stroble is employed as the Manager of the Product Analysis Department for The Goodyear Tire & Rubber Company.

15. Mr. Stroble and I examined the Tire at Issue, as well as the companion tires. This examination was completed at the request of legal counsel and in anticipation of and/or preparation for litigation.

(Parsons Aff. ¶¶ 14-15; Dkt. No. 103-4 at 4 of 6.)

Courts have analyzed the work product privilege in two contexts—fact work product and opinion work product. Both are generally protected and can be discovered only in limited circumstances. Fact work product can be discovered upon a showing of both a substantial need and an inability to secure the substantial equivalent of the materials by alternate means without undue hardship. Opinion work product is even more scrupulously protected as it represents the actual thoughts and impressions of the attorney, and the protection can be claimed by the client or the attorney.

In re Grand Jury Proceedings, Thursday Special Grand Jury Sept. Term, 1991, 33 F.3d 342, 348 (4th Cir. 1994) (citations omitted).

Regardless of whether Mr. Parsons regularly examines tires during the course of his job duties or not, the inescapable conclusion in this particular case is that Mr. Parsons examined the Tire at Issue as well as the companion tires at the request of counsel. (See Dkt. No. 103-4 ¶ 15; see also Dkt. No. 129-1 at 9 of 15; Dkt. No. 129-3.) In fact, in order for Defendants to obtain possession of the Tire at Issue and the companion tires for inspection, counsel for the parties entered into a "Tire Inspection Agreement." (See Dkt. No. 103-7.) Mr. Parsons' examination of these particular tires was not

performed to prevent a reoccurrence, to improve safety of the Subject Tire, or to respond to regulatory obligations. *See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). At the time he examined these tires, Mr. Parsons' employer clearly faced an actual claim that had already resulted in litigation. *See id.* The "Tire Inspection Agreement" was signed by Defendants' counsel on June 28, 2013 and signed by Plaintiff's counsel on July 8, 2013. (*See* Dkt. No. 103-7 at 4 of 4.) Mr. Parsons stated in an Affidavit that the inspection of the Tire at Issue and companion tires began in July of 2013. (*See* Dkt. No. 129-1 at 9 of 15.) The instant lawsuit had already begun, having been filed on February 15, 2013. (*See* Dkt. No. 1.) In light of the foregoing, the undersigned concludes that the subjects at issue in the present motion are in fact protected by the work product doctrine. To the extent the questions posed to Mr. Parsons are protected as fact work product, Plaintiffs have not shown a substantial need or an inability to secure the substantial equivalent of the evidence by alternate means without undue hardship. Plaintiff has hired his own expert witnesses to provide opinions on the cause of the tire failure. Plaintiff seeks, *inter alia*, the measurements Mr. Parsons took of the inner liner of the Tire at Issue, and Mr. Parsons' opinions as to why the Tire at Issue failed. Of course, Plaintiff's own experts have undoubtedly performed those measurements and analyses. Defendants' Motion for Protective Order (Dkt. No. 103) is granted with respect to the early warning document(s) as well as Parsons' examination of the Tire at Issue and companion tires. *See Hickman v. Taylor*, 329 U.S. 495, 516 (1947) (Jackson, J., concurring) ("Discovery was hardly intended to enable a learned profession to perform its functions . . . on wits borrowed from the adversary.").

Conclusion

It is therefore ORDERED, for the foregoing reasons, that Defendants' Motion for Protective Order (Dkt. No. 105) is GRANTED.

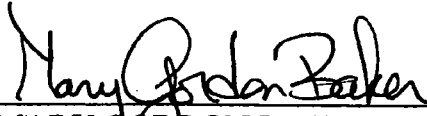
It is further ORDERED that Plaintiff's Motion to Compel (Dkt. No. 100) is GRANTED IN PART and DENIED IN PART. Plaintiff's motion (Dkt. No. 100) is granted as to Exhibit K to Plaintiff's motion as well as to the Subject Tire; Plaintiff's motion is denied in all other respects.

It is also ORDERED that Defendants' Motion for Protective Order (Dkt. No. 103) is GRANTED IN PART and DENIED IN PART. Defendants' motion (Dkt. No. 103) is denied as to the butyl content but granted in all other respects.

It is further ordered that Defendants' Motion for Protective Order (Dkt. No. 107) is GRANTED IN PART and DENIED IN PART. Defendants' motion (Dkt. No. 107) is granted as unopposed as to Questions B; the motion is denied as to Questions A, related to butyl content.

The parties shall comply with the rulings in this Order within ten (10) days of the date of this Order.

AND IT IS SO ORDERED.



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

October 22, 2015
Charleston, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

CASE NO.: CA: 2:13-cv-00419-PMD

Plaintiff,

vs.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and Goodyear Tire &
Rubber Company, a foreign corporation,

Defendants.

**DEFENDANTS, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.
AND THE GOODYEAR TIRE & RUBBER COMPANY'S
OBJECTIONS TO THE REPORT AND RECOMMENDATIONS
CONTAINED IN THE ORDER OF OCTOBER 22, 2015 (DE 137)**

Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY (hereinafter referred to as "GDTNA", "Goodyear" or collectively as "Defendants"), pursuant to FED.R.CIV.P. 72(a), hereby respectfully submit their objections to portions of the Report and Recommendation contained in an Order entered on October 22, 2015 (DE 137). The Order pertained to rulings relative to Defendants' Motions for Protective Order (DE 103, 105 and 107) and Plaintiff's Motion to Compel (DE 100). The Order was issued after briefing, submission of affidavits, argument on August 31, 2015, subsequent briefing and affidavit concerning certain trade secret information at issue, and a telephonic hearing on September 21, 2015. Defendants limit their objections to the Order to the following topics: Plaintiff's Motion to Compel Discovery Request No. 68 and Defendants' Motions for Protective Order (DE Nos. 103 and 107) regarding the production of

highly confidential, trade secret documents and information. Defendants respectfully ask this Honorable Court to sustain Defendants' objections to Discovery Request No. 68 and to grant their Motions for Protective Order. In short, the objections are:

(a) **Request No. 68** –Discovery Request No. 68 sought production of “[a]ny and all documents, both in print and electronic format, **reflecting inner liner targets and minimums** referenced in the **GMS computer** (Goodyear’s electronic reference guide for tire design) stored database regarding inner liners in tires. Please see deposition of Terry Parsons Day #2, P. 419, L14-p.420, l.1).” (DE 100 at pps 11-12) (Emphasis added). Even though Goodyear produced the Global Master Specifications (“GMS”) (DE 100-5 at p. 4; DE 104 at p. 10) referenced by Mr. Parsons, Plaintiff broadened the language referring to the GMS to seek the information concerning the subject contained in Goodyear’s Global Design Manual, and requested that this Court overrule Defendants’ trade secret objection to the provision of this information. The Court heard argument concerning Request No. 68 during the August 31 hearing about the relevance of the Global Design Manual and Defendants’ trade secret objections. (DE 126 31:9-40:11; 60:12-77:12). The Court reserved ruling on this Request. (DE 126 39:1-5). The October 22, 2015 Order requires production of the information from the Global Design Manual.

(b) **“Butyl Content”** – Plaintiff previously sought information concerning the halobutyl content of the inner liner component of the Subject Tire in a request for production to which Defendants objected.¹ Plaintiff took no action on those objections but did pose questions on the same subject at the depositions of Goodyear employees Terry Parsons and Denise Seiler:

¹ Plaintiff’s request for production of the halobutyl formula was sought in Fifth Discovery Request Nos. 64, 65 and 66. (DE 100-2 at pps. 16-17) served on April 1, 2014. As argued at the

Parsons (DE 103 at pps. 3-4)

- Q. Do you know the butyl content of the inner liner of the Hartsock case, Hartsock tire?
- Q. Do you know the halobutyl content or the butyl rubber content of the inner liner for the tire in this case?

Seiler (DE 107 at pps. 3)

- Q. What is the percentage of butyl rubber in the innerliner for the G670 tire?
- Q. Do you know the butyl content of the innerliner for the G670 tire?
- Q. Has [there] been any change to the [butyl] content so the inner liner of the G670 from the time production began in May of 2003 to the present?

Defendants objected to the production of this highly confidential, core trade secret information.

At the hearing, this Court reserved ruling on the trade secret arguments. The October 22, 2015

Order requires production of information describing the halobutyl content of the inner liner.

STANDARD OF REVIEW

As provided under Federal Rule of Civil Procedure 72(a):

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Pursuant to Rule 72(a), Fed. R. Civ. P., the District Judge is, therefore, charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with

hearing, Plaintiff did not seek the Court's determination of Defendants' trade secret objection at that time.

instructions. 28 U.S.C. § 636(b)(1). See also Fuller v. Bryant, 2013 U.S. Dist. LEXIS 81597 (D.S.C. June 11, 2013). “In analyzing an objection under Rule 72(a), this Court will ‘modify or set aside any part of the order that is clearly erroneous or is contrary to law.’” Williams v. Ozmint, 2010 U.S. Dist. LEXIS 100235 (D.S.C. Sept. 23, 2010)(citation omitted).

DEFENDANTS’ OBJECTIONS TO THE REPORT AND RECOMMENDATIONS

I.

Request No. 68: Plaintiff has Failed to Meet His Burden to Seek Discovery of The Requested Trade Secrets

At the hearing of August 31, 2015, this Court permitted the parties to supplement information and provide an additional brief and support relative to the trade secret arguments. (DE 126 72:16-18). On September 15, 2015, Defendants filed their Supplemental Brief on Trade Secret pertaining to Plaintiff’s request for disclosure of information related to the halobutyl content and the requested information from the Global Design Manual. (DE 130). In further support of their objections, Defendants submitted the Affidavit of Kevin Legge declaring, in addition to other affirmations, that the content of the Global Design Manual is a trade secret which is highly guarded and protected from disclosure and that its disclosure would cause immediate harm to Goodyear. (DE 130-7). On the other hand, contrary to his legal obligation, Plaintiff neither provided proof at the hearing nor in his supplemental briefing concerning the relevance and need for this information.² (DE 128). See Bridgestone/Firestone, Inc. v. Superior Court, 9 Cal. Rptr. 2d 709, 713, 716 (App. 1994). Among other things, the Bridgestone court

² [REDACTED] (CONFIDENTIAL Excerpt DE 126 34:16-35:11). (An unredacted copy of this Objection will be provided to the Court for an *in camera* review.)

required the party seeking discovery of trade secrets to make a “particularized showing that the information is **relevant and necessary to the proof**” and demonstrate “that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit.” *Id.* at 716. (Emphasis added) The court further held that the production of trade secrets will be denied where it is indicated only that the information “would be helpful,” because “nothing in the record demonstrates the necessity” of the trade-secret information. See also *In re Remington Arms Co., Inc.*, 952 F.2d 1029, 1032 (8th Cir. 1991) (the party seeking discovery **must** show the information is relevant to the subject matter of the lawsuit and is necessary to prepare the case for trial) (emphasis added); *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 476 (S.C. 2009) *citing to* *Bridgestone* (for same proposition)³.

As the record is void of any showing by the Plaintiff that this information is relevant and necessary to the proof of this case, Defendants request that this Court sustain their objections to Discovery Request No. 68 as Plaintiff has failed to meet his burden to discover this trade secret information.

³ In *Laffitte*, the South Carolina Supreme Court found that the South Carolina Trade Secrets Act applies to a discovery request in a product liability case because “the plain language of § 39–8–60(B) clearly indicates that trade secrets may be protected during discovery not only in misappropriation cases, but in ‘any civil action’ where trade secrets are sought during discovery.” 381 S.C. at 474 (citing the Trade Secrets Act). In so holding, the Court rejected the reasoning employed by another judge of this District in the earlier opinion of *Griego v. Ford Motor Co.*, 19 F.Supp.2d 531 (D.S.C. 1998), which held “the Trade Secrets Act does not apply to a product liability action because it ‘is not based on misappropriation of a trade secret or protection against such a misappropriation.’” *Laffitte*, 381 S.C. at 474 (quoting *Griego*, 19 F.Supp.2d at 533). *Laffitte* was not ambiguous, and there is no reason why a district court ruling on this issue should reach a different conclusion than the South Carolina Supreme Court interpreting the bounds of a South Carolina statute that provides legislative protection to trade secrets. *Contra Sturdivant v. Cont'l Tire The Americas, LLC*, No. 5:14-CV-02852-JMC, 2015 WL 263015, at *3 (D.S.C. Jan. 21, 2015) (declining to apply the Trade Secrets Act in a products liability action by citing to the pre-*Laffitte* case of *Griego*).

II.

Butyl Content: Plaintiff has Failed to Meet His Burden to Seek Discovery of The Requested Trade Secret

As of the date of the hearing on Defendants' Motions for Protective Order (August 31, 2015), the Plaintiff provided argument but no sworn testimony that the butyl information sought was necessary to the proof of his case. This Court, however, allowed the parties to supplement information and provide an additional brief relative to the trade secret arguments. (DE 126 72:16-18). On September 15, 2015, Plaintiff submitted a supplemental brief reasserting his concession that the requested information is a trade secret. (DE 128 at p. 9). Plaintiff also provided some deposition testimony of his expert, Dennis Carlson, and argued that failure to obtain the requested information would impede Mr. Carlson's proffer of an alternative design and identification of a potential defect in the tire at issue. (DE 128 at p. 10; 188:22-189:18 and 193:13-196:18; DE 128 at p. 11; Carlson Depo at 300:12-301:14). The cited testimony, however, fails to provide any support for the proposition that the halobutyl content for the tire at issue can be used to demonstrate that it was defective or that without such information Plaintiff cannot prove his case. While the testimony proposes a percentage of halobutyl content and alleged percentages contained in other non-similar tires, it fails to demonstrate the need for such information to prove Plaintiff's case. In fact, the testimony reveals that Mr. Carlson, at least, had no difficulty reaching his opinion, among others, [REDACTED] (CONFIDENTIAL Report of Dennis Carlson; DE 126 Court's Exhibit 4; DE 128 at p. 11; Carlson Depo at 300:12-301:14). (An unredacted copy of this Objection will be provided to the Court for an *in camera* review.)

The cited testimony further fails to refute the Affidavit of Terrence Parsons that the requested information cannot be used to determine whether a tire was improperly manufactured. (DE 103-3 at ¶ 16). In fact, Plaintiff concedes in his Brief that Mr. Carlson will provide manufacturing and design defect opinions **regardless** of any additional information he receives. (DE 128 at p. 11; Carlson Depo at 300:12-301:14).

As provided above, Plaintiff's submission missed the mark and is insufficient to meet Plaintiff's burden. See Crum v. Bridgestone/Firestone North American Tire, LLC, 2006 PA Super 230, 907 A.2d 578, 588 (Pa. Super. 2006) (reversing the trial court and finding a tire manufacturer's trade secret rubber compound formulas were not subject to discovery because the formulas themselves do not indicate whether a tire was defectively manufactured and that knowledge of the formulas does not aid in determining the physical properties of a tire after the rubber has been cured or vulcanized); Bridgestone Americas Holding, Inc. v. Mayberry, 878 N.E.2d 189, 196 (Ind. 2007) (holding plaintiffs who proved the skim stock formula was relevant, but failed to show how the formula itself was necessary for their case, were not entitled to discover the formula, while noting that testimony revealed that an inspection of the failed tire appears to be "more than an adequate substitute for examining the skim stock formula").

In short, Mr. Carlson's deposition testimony fails to explain how: (1) knowing the halobutyl content of the inner liner, as opposed to Mr. Carlson's observations of the tire at issue, will demonstrate a defect; and (2) the failure to discover this information will adversely affect Plaintiff's proof of the case. Therefore, Goodyear's Motions for Protective Order should be granted.

III.

**Defendants' Trade Secret Property Is
Constitutionally Protected and Its Production Is Harmful**

As provided in their Supplemental Brief, Defendants' trade secrets are constitutionally protected. The requirement that Defendants produce their highly confidential, trade secrets in this case, i.e., information from the Global Design Manual and the halobutyl content of the innerliner, impinges on their rights and does not preserve their property interest in these trade secrets. Defendants were requested by this Court to provide suggested revisions to the Confidentiality Order (DE 46) entered in this case relative to the production of these trade secrets; however, no such revision can adequately protect Defendants' rights. The Court's Confidentiality Order does not provide appropriate protection to Defendants as it allows dissemination of this highly confidential information to a consultant with a history of disclosing trade secret information, other consultants, investigators or experts employed by the parties, court reporters and those engaged to make copies of the information. As outlined in their Supplemental Brief, the production of this trade secret information is harmful.⁴ Defendants, therefore, seek an Order denying Plaintiff's Motion to Compel directed to Discovery Request No. 68 and granting Defendants' Motions for Protective Order.

⁴ Defendants must show only that disclosure of trade secrets "might be harmful" under the case law. See McKellips v. Kumho Tire Co., 305 F.R.D. 655, 663 (D. Kan. 2015) (a trade secret owner seeking a protective order must "demonstrate that its disclosure might be harmful"); R & D Bus. Sys. v. Xerox Corp., 152 F.R.D. 195, 196-97 (D. Colo. 1993) ("movants must establish that the information sought is a trade secret, and demonstrate that its disclosure might be harmful," and court denied discovery requests because "the potential harm described by movants far outweighs the need [requestor] has shown for any other information") (emphases added).

CONCLUSION

Defendants respectfully request that this Honorable Court enter an Order consistent with the relief requested herein and for any other relief that this Court deems appropriate.

s/Curtis L. Ott

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Attorneys for Defendants

October 30, 2015

Columbia, South Carolina

EXHIBIT G

DOCKET 141

SUBMITTED FOR IN CAMERA REVIEW

**Att. 1: TRANSCRIPT EXCERPTS OF MOTIONS HEARING,
8/31/15 [PP. 34-35]**

SEE JOINT APPENDIX VOL. IV, PP. 1207-1209

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah
Mills Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America
LTD, *a foreign corporation*; and
The Goodyear Tire & Rubber Company,

Defendants.

Civil Action No. 2:13-cv-00419-PMD-MGB

ORDER

This matter is before the Court on review of a pretrial discovery order issued by Magistrate Judge Mary Gordon Baker (ECF No. 137). Plaintiff and Defendants have filed objections to various portions of Magistrate Judge Baker's order (ECF Nos. 141 & 142). After carefully considering the parties' objections and the record in this case, the Court finds nothing clearly erroneous or contrary to law in Magistrate Judge Baker's thorough and well-reasoned order. *See* Fed. R. Civ. P. 72(a) (providing that if a party timely objects to a magistrate judge's ruling on a nondispositive matter, the district court must "modify or set aside any part of the order that is clearly erroneous or is contrary to law"); *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985) ("[A] finding is 'clearly erroneous' when . . . the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed." (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))); *King v. Marriott Int'l, Inc.*, No. 9:05-cv-1774-PMD-RSC, 2006 WL 2092592, at *3 (D.S.C. July 26, 2006) ("[A]n order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." (quoting *Tompkins*

v. R.J. Reynolds Tobacco Corp., 92 F. Supp. 2d 70, 74 (N.D.N.Y. 2000))). The Court adopts the reasoning in Magistrate Judge Baker's order as its own.

Therefore, it is **ORDERED** that Plaintiff's objections and Defendants' objections are all **OVERRULED**.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

November 30, 2015
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

**DEFENDANTS' AMENDED MOTION TO REQUEST
REDACTIONS REGARDING THE AUGUST 31, 2015 HEARING (ECF #144)**

Pursuant to the Rule 5.2 of the Federal Rules of Civil Procedure, the Court's September 9, 2013 Confidentiality Order (ECF #46) and the redaction requirements and procedure of the District of South Carolina, Defendants GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY ("Defendants"), by and through their undersigned counsel, hereby serves this amended request to redact the transcript of the August 31, 2015 hearing. Specifically, Defendants designate the following testimony and exhibits as "CONFIDENTIAL" from the August 31, 2015 hearing:

Designated Exhibits from the August 31, 2015 Hearing

Defendants designate all exhibits received by the Court at the August 31, 2015 hearing, Court Exhibits 1-4, as confidential. Defendants recognize that the exhibits were received under seal as Court Exhibits only; however, in an abundance of caution, Defendants re-assert the confidential nature of the Court Exhibits herein.

Designated Testimony from the August 31, 2015 Hearing

With regard to testimony, Defendants designate:

- 4:2-7
- 4:25-6:16
- 9:1-4
- 9:23-10:8
- 13:2-8
- 31:22-25
- 34:4-6
- 34:9
- 34:16-35:11
- 51:15-23
- 52:12
- 63:3-13
- 62:7-19
- 75:19
- 75:23

The undersigned hereby certifies and affirms, in accordance with Local Civil Rule 7.02 DSC, that prior to filing the instant Motion opposing counsel was consulted and does not object to the Motion.

WHEREFORE, Defendants, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.
and THE GOODYEAR TIRE & RUBBER COMPANY, respectfully request that this Court
enter an Order redacting the above-referenced information.

s/ Curtis L. Ott

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Attorneys for Defendants

December 17, 2015

Columbia, South Carolina

Kevin Asanoff

From: Shannon Rush
Sent: Friday, December 18, 2015 8:32 AM
To: e.service
Subject: FW: Activity in Case 2:13-cv-00419-PMD Hartsock v. Goodyear Dunlop Tires North America LTD et al Motion to Redact Transcript

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Paralegal | McDonald Toole Wiggins, P.A.

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U.S. District Court

District of South Carolina

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Case Name: Hartsock v. Goodyear Dunlop Tires North America LTD et al
Case Number: 2:13-cv-00419-PMD
Filer: Goodyear Dunlop Tires North America LTD
Goodyear Tire & Rubber Company, The
Document Number: 168

Docket Text:

Amended MOTION to Redact [126] Transcript,, by Goodyear Dunlop Tires North America LTD, Goodyear Tire & Rubber Company, The. Response to Motion due by 1/7/2016. No proposed order.(Ott, Curtis)

2:13-cv-00419-PMD Notice has been electronically mailed to:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

**DEFENDANTS' MOTION FOR RECONSIDERATION OF THE
NOVEMBER 30, 2015 ORDER OVERRULING DEFENDANTS'
OBJECTIONS TO MAGISTRATE JUDGE BAKER'S OCTOBER 22, 2015
ORDER DENYING DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

I. NATURE OF THE CASE

Defendants request reconsideration of the November 30, 2015 Order (DE 143) overruling Defendants' objections to the Order of October 22, 2015. Reconsideration of this issue is warranted for the following reasons:

Defendants note that Plaintiff has disclosed his theory of liability. His consultant, Dennis Carlson, who claims tire design and manufacturing expertise, opines that the Tire at Issue's inner liner, which is a component primarily responsible for a tire's air retention properties, did not sufficiently prevent the loss of air. (**Confidential Exhibit A**, Carlson Report, at p.10-11, 19-20¹; DE 126 Court's Exhibit 4). He opines that an inner liner with a 100% halobutyl content and a cured thickness greater than that in the Tire at Issue would do a better job than the Tire at Issue's

¹ This exhibit will be provided to the Court for an *in camera* review.

inner liner. (**Exhibit B**, Carlson Deposition 195:9-195:25; 221:16-222:7). He offered this opinion without knowledge of the Tire at Issue's inner liner halobutyl content or reviewing Defendants' global design manual. Carlson did determine to his satisfaction the thickness of the inner liner, which he claims is less than his preferred thickness. Id. In her order, Magistrate Judge Baker nevertheless determined that Plaintiff can obtain the halobutyl content of the inner liner and Defendants' global design manual.

First, Magistrate Judge Baker's determination that Plaintiff met his burden warranting the discovery of trade secret information constitutes a clear error of law. Magistrate Judge Baker erred because she based her ruling on argument alone and incorrectly applied the relevant case law. While Plaintiff's counsel argued that the percentage of halobutyl of the inner liner or the contents of the global design manual are necessary to prove his case, he failed to produce any evidence or sworn testimony in support of his argument. Argument without proof is insufficient under the law. Second, Magistrate Judge Baker's balancing of Plaintiff's alleged relevance and need against the potential for harm to Defendants as the consequence of such disclosure also amounts to a clear error of law.

Defendants will suffer manifest injustice and injury if their Objections to the Order dated October 22, 2015 are not granted. It is undisputed that the percentage of halobutyl of the Tire at Issue's inner liner is a highly protected trade secret. Plaintiff admitted this fact in his brief: "Plaintiff does not contend that the butyl content of the subject inner liner is not a trade secret." See DE 114 at p. 4. Further, Plaintiff offered no opposition to Defendants' contention that the content of the global design manual constitutes a trade secret document. Defendants' good faith efforts to protect their trade secrets will be unfairly compromised by mandating the disclosure of

this information, particularly to a witness with an extensive past of violating confidentiality and protective orders. Moreover, the Court's Order may have unintended, wide ranging, and negative repercussions for all tire manufacturers since the percentage of halobutyl in a tire's inner liner and the content of the global design manual are highly protected trade secrets. In fact, they are such highly protected trade secrets that only specific employees with a need to know are privy. (See Exhibit C, Kevin Legge affidavit dated September 15, 2015 at ¶ 7). Even Defendants' counsel, consultants and expert witnesses have not been provided this information due to the immense potential harm Defendants would suffer if the information was disclosed. (See, e.g. Exhibit C, Legge Affidavit at ¶ 11). For the reasons stated above and explained further below, Defendants' objections should be upheld.

II. STATEMENT OF FACTS

As recognized by Plaintiff and Magistrate Judge Baker, the halobutyl content of the Tire at Issue's inner liner is a trade secret. (See DE 114 at 4 and DE 137 at *4). The halobutyl content and associated formula are the lifeblood of a tire manufacturer and held in the strictest confidence. As explained by Kevin Legge, Chief Tire Analysis Engineer for The Goodyear Tire & Rubber Company, Defendants' global design manual and compound formulas, including the halobutyl content of a tire's inner liner, are well protected. (Exhibit C, Legge Affidavit at ¶ 6-9). This information is so highly protected that counsel for Defendants, Defendants' expert witnesses and Defendants' consulting experts do not know the halobutyl or global design manual contents Plaintiff seeks. Indeed, Defendants' need to protect this information outweighs any benefit they may obtain in this litigation by using it in their defense; and, therefore, Defendants have not disclosed the information to their own expert witnesses.

Defendants have produced approximately 1,400 pages of confidential and proprietary documents. These documents include schematic drawings, the development file, applicable Global Master Specifications and cured tire specifications, as well as testing information concerning the Tire at Issue. Even though Plaintiff never sought to compel the halobutyl content when Goodyear objected in Response to his Fifth Request to Produce Nos. 37, 38, and 39 on May 23, 2014, (DE 100-2 at pg. 23), after a lapse of more than 18 months and without any of the necessary proofs, Plaintiff now demands this information on the basis that it **may** be useful.

Plaintiff has failed to meet the standard of necessity justifying this discovery because he failed to provide anything other than an argument that the information **may** be useful. At the same time, he admits he did not need this information to develop a defect theory. After all, Plaintiff developed and disclosed a defect theory in this case without this information. Plaintiff's mere assertion that this information **may** be helpful to his case is wholly insufficient to warrant discovery of such highly confidential material. Finally, Defendants will not rely upon or refer to either the halobutyl content of the Tire at Issue's inner liner or the content of the global design manual at trial. (DE 128). As such, this information is not necessary to a fair adjudication of this case.

III. LEGAL STANDARD

Recognizing the appropriate, albeit special circumstances for reconsideration, this Court has stated on several occasions:

Reconsideration of a judgment is an extraordinary remedy which should be used sparingly. Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). A motion to reconsider may be granted for three reasons: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or a manifest

injustice. *Id.* Motions to reconsider may not be used to initiate arguments or legal theories that the proponent had the ability to address prior to the judgment. *Id.*

Hickey v. Resolution Mgmt. Consultants, Inc., Civ. No. 2:12-0707, 2012 WL 3597077, at *1 (D.S.C. Aug. 20, 2012) (Duffy, J.).

IV. ARGUMENT

a. Magistrate Baker's interpretation of the required showing of "relevancy and necessity" to discover trade secret information constitutes a clear error of law.

Relying on the decision of Coca-Cola Bottling of Shreveport, Inc. v. Coca-Cola, Co., 107 F.R.D. 288 (D. Del. 1985), Magistrate Judge Baker reasoned that Plaintiff met his burden of proving relevance and necessity, thus warranting discovery of the halobutyl content of the Tire at Issue's inner liner. (DE 137 Order at *6). Judge Baker's Order is void of any finding regarding the global design manual. As to the halobutyl content, Magistrate Judge Baker found it significant that Plaintiff's expert witness, Dennis Carlson, testified that "his proposed alternative design contained a specified butyl content" and that he "indicated that in order to assess one of the defense theories of the case, he needed the butyl content of the Subject Tire." (DE 137 at *6). Magistrate Judge Baker concluded that this was a sufficient showing by Plaintiff to warrant discovery of the halobutyl content of the Tire at Issue's inner liner. This conclusion, however, constitutes a clear error of law. The case relied upon by Magistrate Judge Baker is distinguishable from the facts of this case and contrary to case law relevant to the issues in this matter, and while Mr. Carlson's proposed alternative design contains a specified halobutyl content, the halobutyl content of the Tire at Issue's inner liner is not necessary in his formulation of an alternative design or his ability to assess any of Defendants' theories.

1. **Coca-Cola Bottling of Shreveport, Inc. v. Coca-Cola, Co.** is distinguishable as discovery of trade secret material was only ordered in that case because the case hinged on product identification.

Since there is no dispute that the halobutyl content of the Tire at Issue's inner liner is trade secret information, Plaintiff must show that it is relevant and necessary. See Coca-Cola, Co., 107 F.R.D. at 292. Magistrate Baker correctly cited a brief portion of the court's reasoning in Coca-Cola, Co., when she wrote that "[t]he level of necessity that must be shown is that all information must be necessary for the movant to prepare its case for trial, which includes proving its theories and rebutting its opponent's theories." Id. at 293. However, at issue in Coca-Cola, Co. was whether diet Coke and Coca-Cola are the same product because the dispute between Coca-Cola and its distributors provided for pricing of only one formula and the Coca-Cola Company contended it could charge another price for the diet product. Id. at 296. Therefore, the formulas for both products were relevant and necessary because Plaintiff could not prove that the products were the same and establish product identity without access to the formulas for each product. Id. at 299.

Product identity is not at issue in this case. Rather, the issue is whether the Tire at Issue was defective, and, if so, whether that defect was the proximate cause of Plaintiff's damages. Plaintiff contends the defect and cause was that the Tire at Issue did not maintain air pressure, as well as Mr. Carlson's proposed design. Relying on Coca-Cola, Co. to require production of the halobutyl content of the Tire at Issue's inner liner is an error of law because the facts and issues in that matter and the instant matter are distinct. If the question in this case was whether the Tire at Issue was the same tire as another manufactured and marketed tire, then Magistrate Judge Baker's ruling might be consistent with Coca-Cola, Co. However, Magistrate Judge Baker failed

to make an analysis of “necessity” in a case seeking disclosure of trade secret material for a purpose other than product identification. The proper standard to follow, considering the issues in this case, is that a party seeking discovery of trade secret information must show that they “would be unable to present its case ‘to the point that an unjust result is a real, rather than a merely possible, threat.’” Bridgestone Ams. Holding v. Mayberry, 878 N.E. 2d 189, 196 (Ind. 2007) (quoting In re Bridgestone/Firestone, Inc., 106 S.W. 3d 730, 733 (Tex. 2003)). In re Bridgestone/Firestone, Inc. is the illustrative case on Plaintiff’s required showing prior to the discovery of trade secret information:

Just as a party who claims the trade secret privilege cannot do so generally but must provide detailed information in support of the claim, so **a party seeking such information** cannot merely assert unfairness but **must demonstrate with specificity** exactly how the lack of the information will impair the presentation of the case on the merits **to the point that an unjust result is real**, rather than a merely possible, threat.

106 S.W. 3d at 732-33 (emphasis added). The court further stated that, “[t]he mere possibility of unfairness is not enough to warrant disclosure of the information.” Id. at 734. (emphasis added).

In the instant matter, Plaintiff contends that Mr. Carlson’s design would retain air pressure sufficiently better than the Tire at Issue and would have prevented the accident. Mr. Carlson developed his opinion without knowledge of either the halobutyl content of the inner liner or the guidance Goodyear designers obtain through the global design manual. Neither the halobutyl content of the Tire at Issue nor the global design manual will demonstrate the ability of Mr. Carlson’s design to better retain air. Furthermore, neither Plaintiff nor Mr. Carlson have demonstrated with any “specificity exactly how the lack of the information will impair the

presentation of the case on the merits to the point that an unjust result is real, rather than a merely possible, threat.” Id. at 732-733.

2. Magistrate Judge Baker’s interpretation and reliance on Dennis Carlson’s testimony were misplaced and ordering the disclosure of the halobutyl content of the Tire at Issue’s inner liner constitutes an error of law.

Magistrate Judge Baker reasoned that Plaintiff met his burden of showing relevance and necessity because his expert witness, Dennis Carlson, testified that his proposed alternative design contained a specified butyl content and “that in order to assess one of the defense theories of the case, he needed the butyl content of the Subject Tire.” (DE 137 at *6). However, the defense theory to which the Magistrate Judge Baker refers does not relate to the inner liner but to another component known as a “barrier gauge,” which is placed between the inner liner and below the radial plies of a tire, and may provide additional resistance to air loss in a tire. With respect to this component, upon questioning by Plaintiff’s counsel, Mr. Carlson testified as follows:

Q. Do you understand that one of the defense theories in this case from the defense is going to be that barrier gauge is also a layer of tire that prevents air permeation into the structure of the fire (sic)?

A. Correct, yes.

MR. TOOLE: Objection, form.

BY MR. FOUNTAIN:

Q. In order to assess that defense, do you need to know what the butyl content is?

A. I do.

(Exhibit B, Carlson Depo. p. 325:9-20)

Despite his purported expertise, Mr. Carlson apparently does not appreciate that barrier gauges do not contain butyl based rubber compounds. In fact, Denise Seiler, a Commercial Tire Designer for Goodyear Dunlop Tires North America, Ltd., clearly explained that the barrier layer is an “extra cushion” and not made with a butyl based rubber compound. She testified as follows:

Q. Okay. The barrier layer that's adjacent to the innerliner in the G670, is it – is it a butyl-based rubber compound?

A. It is not.

Q. Okay. Are there any other butyl-based rubber compounds in the G670 tire other than the innerliner?

A. No. You would not want to put butyl in other parts of the tire.

Q. Why not?

A. Butyl, while it's good for air permeability, doesn't like other rubbers quite as much, to put it overly simply.

Q. Okay.

A. So you want it as your innerliner and not in any other part of the tire.

Q. Why doesn't butyl rubber like other rubbers?

A. The same characteristics that give it its air permeability resistance is the same thing that makes it not necessarily as compatible, which is one of the reasons why we always design it with a barrier. So that it – it has that – that extra cushion and the total composite is there and makes the end result the best tire possible.

(Exhibit D, Seiler Depo. pp. 133:18-134:17).

The barrier compound, about which Mr. Carlson claimed a need to know the halobutyl content, does not contain halobutyl. When Mr. Carlson reads the deposition of Ms. Seiler, he will know this fact. Plaintiff has not shown how production of the halobutyl content of a different part of the Tire at Issue's inner liner is relevant or necessary to evaluate the barrier layer. Mr. Carlson has not articulated how the lack of such information will impair the presentation of his theory of defect or address a "defense theory." First, his suggested alternative design should have no bearing on the discovery of the Tire at Issue's inner liner's halobutyl content. He testified clearly at his deposition regarding his alternative design and his opinion concerning the appropriate halobutyl content. Therefore, knowing the halobutyl content of the inner liner will not change this theory. He testified as follows:

Q. What is your feasible, alternative design to the G670 295 tire that we are at issue here with today?

A. **Well, it has to have a hundred percent halobutyl inner liner with a minimum cured spec of 80 thousandths....(193:13-18) (emphasis added).**

Q. Okay, all right. And going back to alternative feasible – feasible, alternative design, I think what your testimony has been is that you would say that it needs to be a minimum of a .08 inner liner thickness with a hundred percent halobutyl?

A. Yes.

Q. And as far as what the other components of what such an alternative, feasible design would be, you haven't evaluated that at this point. Is that fair?

A. Right. Let me make one comment, maybe off the record; but I've had other states that required me to put an alternative, feasible design; but they were only to the elements of what I was criticizing. **And the inner liner thickness is what I'm criticizing the most and testing**, and so that's the reason I was answering it the way it was.

(Exhibit B, Carlson Depo. 218:8-24). (Emphasis added).

Mr. Carlson not only clearly testified that his alternative design includes an inner liner with a hundred percent halobutyl content but also revealed that the primary orientation of his theory is directed to the inner liner **thickness** which he claims to have determined. Simply because Mr. Carlson's alternative design contains a prescribed halobutyl content is insufficient to warrant discovery of the same. Absent a specific showing from Plaintiff on how the halobutyl content of the inner liner is required to prevent an unjust result, Plaintiff has failed to meet his burden. Similarly, Plaintiff has not made any showing with respect to the contents of the global design manual.

3. Magistrate Judge Baker's Ruling Fails to Follow South Carolina State Law.

The South Carolina Trade Secrets Act defines a "trade secret" as "information, including . . . a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:"

- (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and

- (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5).

Defendants contend this Court must apply the Act as a substantive right under Erie R. R. v. Tompkins, 304 U.S. 64 (1938). Under the Erie Doctrine, if the federal rule and state statute conflict, the substantive state statute will be applied if application of the federal rule would modify, enlarge, or abridge a substantive right. Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 394 (2010) (noting statutory text which forbids federal rules from abridging, modifying, or enlarging a substantive state right). Plaintiff, however, may attempt to rely on Griego v. Ford Motor Company, 19 F.Supp.2d 531 (D.S.C. 1998). In that matter the Honorable G. Ross Anderson, Jr. implicitly recognized Defendants' position on this issue when he conceded that the Act establishes "a more stringent standard for the production of trade secrets," **but nevertheless** held that the Act "does not apply to any action that is not based on misappropriation of a trade secret or protection against such a misappropriation." Id. at 533. He then determined that the Act did not apply because the underlying action sounded in tort and product liability. Id.

Subsequently, however, the South Carolina Supreme Court explicitly rejected Griego: "In support of his position, [the plaintiff] asserts Griego . . . , in which the federal district court held that the Trade Secrets Act does not apply to a product liability action because it 'is not based on misappropriation of a trade secret or protection against such a misappropriation.' We decline to adopt the reasoning set forth in Griego" Laffitte v. Bridgestone Corp., 674 S.E.2d 154, 166 n. 9 (S.C. 2009). Laffitte instructs that trade secrets and other confidential information merit substantial protection in South Carolina. The court held that for a party to

successfully compel discovery of trade secrets, he “cannot merely assert unfairness but must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” Laffitte, 674 S.E.2d 154, 163 (S.C. 2009) (quoting In re Bridgestone/Firestone, Inc., 106 S.W.3d 730, 733 (Tex. 2003)). Plaintiff here has not shown how access to Defendants’ trade secrets is “necessary” and will impair the presentation of his case on the merits to the point of an unjust result.

- b. Magistrate Judge Baker’s balancing of Plaintiff’s alleged need for the halobutyl content of the Tire at Issue’s inner liner and the impact of Mr. Carlson’s past transgressions on Defendants’ risk of injury was improper and constitutes a clear error of law.**

Assuming this Court determines Plaintiff did meet his burden, Magistrate Judge Baker still erred in ruling that “in balancing the need for information against the injury that would ensue if disclosure is ordered, the undersigned concludes the balance weighs more heavily in favor of the need for information.” (DE 137 Order at *9). Magistrate Judge Baker did not give appropriate weight to Defendants’ concern about Mr. Carlson’s past treatment of trade secret information because of the timing of the introduction of this concern. Prior to the ordering of supplemental briefs, however, there was no reason for Defendants to explicitly outline and inform the Court of Mr. Carlson’s past violations of various protective orders. Under the balancing test described above, Defendants were not required to make a specific showing of potential harm prior to Plaintiff making a showing of relevance and necessity. Therefore, the fact that Defendants did not identify specific violations by Mr. Carlson until filing their

Supplemental Brief on Trade Secret Material Pursuant to the August 31, 2015 Hearing (DE 130) should have no bearing on the decision rendered by this Court.

Furthermore, this is not a new objection. Defendants have objected to the disclosure of any information related to the halobutyl content of the Tire at Issue's inner liner throughout this litigation. Despite knowing that Defendants objected to the disclosure of this information, Plaintiff did not allege this information was "relevant" or "necessary" until well over a year after receiving Defendants' initial objections. Additionally, on April 9, 2015, prior to the deposition of Denise Seiler and almost a year after Defendants' discovery objections, Plaintiff filed his Notice of Motion and Motion to Compel (DE 100) regarding Defendants' responses to Plaintiff's Fifth Discovery Request. Plaintiff did not then move to compel responses to Fifth Request to Produce Nos. 37, 38 and 39 (DE 100-2 at pg. 23), which pertained to objections regarding the halobutyl content. If the halobutyl content was truly a necessary element of Plaintiff's case, why did Plaintiff not raise the issue in his prior motion? Magistrate Judge Baker's determination that Defendants' potential harm should be negated because they failed to raise it earlier should not be persuasive. Defendants had no reason to raise the argument previously because Plaintiff never sought to compel the information and Plaintiff never met his burden of establishing its relevance and necessity.

V. CONCLUSION

For the reasons set forth above, Defendants respectfully submit that circumstances exist warranting the reconsideration of the Court's November 30, 2015 Order (DE 143) overruling Defendants' objections to the Order of October 22, 2015 (DE 137). If the Court should not reconsider its order and otherwise grant the requested relief, in view of the potential importance

of the decision in this and future litigation, the fact that the decision involves a controlling question of law as to which there is substantial ground for difference of opinions, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, Defendants respectfully request the Court certify its Order pursuant to 28 U.S.C. § 1292(b).

s/Curtis L. Ott

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Tel: (407) 246-1800/FAX (407) 246-1895

Attorneys for Defendants

December 28, 2015

Columbia, South Carolina

EXHIBIT A

DOCKET 170

SUBMITTED FOR IN CAMERA REVIEW

**EX. A: FAILURE ANALYSIS OF A TREAD SEPARATION INCIDENT
INVOLVING A GOODYEAR MEDIUM TRUCK RADIAL
TIRE [DKT170-1]**

SEE JOINT APPENDIX VOL. IV, PP. 1210-1261

In the Matter of:

Hartsock

vs.

Goodyear Dunlop Tires, et al.

Dennis P. Carlson, Jr.

September 2, 2015

**** CONFIDENTIAL ****
Pursuant to Court Order



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EXHIBIT B

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Dennis P. Carlson, Jr. 9/2/2015

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* * *

1 A Okay.

2 Q And my question to you is: What is the
3 feasible, alternative design for the G670 295 that was
4 in the Hartsock accident and had tread separation?

5 MR. FOUNTAIN: Object to the form.

6 MR. TOOLE: What is wrong with the form of
7 that question?

8 MR. FOUNTAIN: Your pronouncement on the law
9 is misleading, irrelevant and was argumentative.

10 MR. TOOLE: It was not intended to be
11 argumentative.

12 BY MR. TOOLE:

13 Q What is your feasible, alternative design to
14 the G670 295 tire that we are at issue here with
15 today?

16 A Well, it has to have a hundred percent
17 halobutyl inner liner with a minimum cured spec of 80
18 thousandths.

19 Now, I see that the Michelin is very close to
20 this and the second Marathon LHS2 is close as far as
21 inner liner is concerned; and I believe both of these
22 had the higher speed rating of 81 miles an hour. Just
23 a minute. Let me check something here.

24 I had -- I actually had a Goodyear plant MC,
25 two of them that McSwain and I both measured, I

* * *

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1 BY MR. TOOLE:

2 Q And what tire in the 35th week of '03 had a
3 minimum -- RV tire had a minimum -- of .80 inner liner
4 thickness?

5 MR. FOUNTAIN: Object to form.

6 A The Marathon LHS comes close, but I don't
7 know what the halobutyl content of that tire is.

8 BY MR. TOOLE:

9 Q So that is not a feasible alternative design
10 as of the 35th week of '03 for you to the G670 295
11 that we are with on; correct?

12 MR. FOUNTAIN: Object to the form.

13 THE WITNESS: I'm sorry?

14 MR. FOUNTAIN: I object to the form.

15 A It was almost good enough.

16 Look, I don't know what the halobutyl content
17 is of the Goodyear tire. I know Michelin uses 100
18 percent halobutyl. That's available in several
19 sections, I mean as --

20 BY MR. TOOLE:

21 Q If you -- have you finished your answer?

22 A No. This exemplar Michelin X Pilot, I think,
23 is -- has got a few measurements under 80 thousandths.
24 It has some under 80 thousandths, and it was made in
25 '02.

* * *

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1 not this large.

2 Q Okay. Do you know what the largest size tire
3 that had been manufactured at that plant next in line
4 to the 295 that we are here on today?

5 A Well, I think there was a 19.5 made there but
6 I can't say that for sure. I will have to go back and
7 look.

8 Q Okay, all right. And going back to
9 alternative feasible -- feasible, alternative design,
10 I think what your testimony has been is that you would
11 say that it needs to be a minimum of a .08 inner liner
12 thickness with a hundred percent halobutyl?

13 A Yes.

14 Q And as far as what the other components of
15 what such an alternative, feasible design would be,
16 you haven't evaluated that at this point.

17 Is that fair?

18 A Right. Let me make one comment, maybe off
19 the record; but I've had other states that required me
20 to put an alternative, feasible design; but they were
21 only to the elements of what I was criticizing.

22 And the inner liner thickness is what I'm
23 criticizing the most and testing, and so that's the
24 reason I was answering it the way it was.

25 Q Okay. So in trying to look at feasible,

* * *

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Dennis P. Carlson, Jr. 9/2/2015

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16 Q The Michelin MZA1 that you talked about that
 17 was at Michelin when you were there in the '80's
 18 before you left in '87, you said that it had an inner
 19 liner that you thought was appropriate, which was a
 20 minimum of .08 inner liner thickness and a 81 mile per
 21 hour speed rating.

22 Is it fair to say that you don't know what
 23 the other components or the specifications would have
 24 been for the other components as we sit here today?

25 MR. FOUNTAIN: Object to the form.

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Dennis P. Carlson, Jr. 9/2/2015

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1 MR. TOOLE: You can answer it.

2 A The ones I can remember, the tires that I
3 designed -- actually, we were using for some of our
4 tires, like the light -- the XTA that I designed had
5 120 thousandths inner liner of a hundred percent
6 halobutyl; and at that time there were a lot of tires
7 that had similar thicknesses.

8 BY MR. TOOLE:

9 Q Are you able to state, within a reasonable
10 degree of engineering certainty, that in the 35th week
11 of '03 the XZA1 was a tire that was a feasible
12 alternative design to the G670 295 for a 45-foot RV?

13 MR. FOUNTAIN: Object to the form.

14 MR. TOOLE: You can answer it.

15 A I think it's very, very close to being
16 acceptable.

17 BY MR. TOOLE:

18 Q Do you know whether it was in production at
19 the time, the 35th week of '03?

20 A Everything that I know would suggest that it
21 probably was.

22 Q Well, I'm asking you within a reasonable
23 degree of engineering certainty.

24 A Then it was.

25 Q And was it -- did they build that tire in the

* * *

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Dennis P. Carlson, Jr. 9/2/2015

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1 BY MR. FOUNTAIN:

2 Q Have you also asked me to try to get the
3 formula for and the butyl content, if any, of the
4 barrier layer or barrier gauge that's adjacent to the
5 inner liner?

6 MR. TOOLE: The same objection.

7 A Yes.

8 BY MR. FOUNTAIN:

9 Q Do you understand that one of the defense
10 theories in this case from the defense experts is
11 going to be that barrier gauge is also a layer of tire
12 that prevents air permeation into the structure of the
13 fire?

14 A Correct, yes.

15 MR. TOOLE: Objection, form.

16 BY MR. FOUNTAIN:

17 Q In order for you to assess that defense, do
18 you need to know what the butyl content is?

19 MR. TOOLE: The same objection.

20 A I do.

21 BY MR. FOUNTAIN:

22 Q Have you in the past received the inner liner
23 formulas and butyl rubber contents for other tires in
24 other cases? I don't want you to tell me what they
25 are, but have you received those before?

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

CASE NO.: CA: 2:13-cv-00419-PMD

Plaintiff,

vs.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and Goodyear Tire &
Rubber Company, a foreign corporation,

Defendants.

_____ /

AFFIDAVIT OF KEVIN C. LEGGE

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

BEFORE ME, the undersigned Notary Public in and for the aforementioned State and County, personally came and appeared Kevin C. Legge, who, upon being duly sworn, did depose and state as follows:

1. My name is Kevin C. Legge. I understand the nature of this oath, and I am otherwise competent to testify to the matters stated in this Affidavit. This testimony is based on my own personal knowledge and the facts stated herein are true and correct.

2. I am employed as a Chief Tire Analysis Engineer for The Goodyear Tire & Rubber Company ("Goodyear").

3. I hold a Bachelor of Science degree in Mechanical Engineering from Ohio State University, and joined Goodyear in 1980. From my work at Goodyear I have knowledge and

EXHIBIT C

CA: 2:13-cv-00419-PMD

experience concerning design, development, manufacturing, testing and analysis of tires, including analysis of failed tires both in the field and in the laboratory, including tires from development testing and various customers. I am familiar with Goodyear's policies and practices with respect to the confidentiality of scientific and technical information and trade secrets.

4. From my work with Goodyear, I am knowledgeable about the design specifications for Goodyear tires. I am also familiar with the efforts that Goodyear makes to protect its proprietary and trade secrets.

5. The tire business is highly competitive. Competitors are always seeking to gain any advantage, whether it is more lead time for the introduction of new products, or an understanding of the competitions methods, thinking, goals and strategy. The only access a competitor could get to these trade secrets would be through the discovery process in a lawsuit.

6. Goodyear's global design manual includes information regarding its compound formulas, and its core design methodology and philosophy. The manual is not limited to specific components or tire products but would provide information concerning all aspects of the development of tires manufactured by Goodyear. Access to this manual is limited to certain select employees within Goodyear. Disclosure of the global design manual would result in immediate harm to Goodyear through the release of its confidential designs and methods of engineering tires. The information contained in Goodyear's global design manual is not known outside of Goodyear's business. Even within Goodyear, the global design manual can only be accessed by select associates on a need to know basis with express authorization. . Goodyear preserves the secrecy of its trade secret information by limiting the availability of the information

CA: 2:13-cv-00419-PMD

within Goodyear to those who truly "need to know" and by securing from those employees with access to the secrets a written promise to preserve Goodyear's trade secrets. Goodyear's designs and engineering findings and procedures have been developed at great expense, are not made available to the public, and are maintained as confidential documents under Goodyear's security system.

7. Likewise, Goodyear's compound formulas, including the types and amount of specific chemicals, steps of mixing the chemicals/compounds and method of creating the finished tire, which includes the halobutyl content of a tire's inner liner, are not known outside of Goodyear's business. Goodyear also takes important steps to ensure that its trade secrets and competitively sensitive information remain strictly confidential, even within the company. Goodyear preserves the secrecy of its trade secret information by limiting the availability of the information within Goodyear to those who truly "need to know" and by also securing from those employees with access to the secrets a written promise to preserve Goodyear's trade secrets. For example, even tire designers know rubber compounds by code numbers, as opposed to their chemical formulas. Thousands of man-hours and millions of dollars are devoted to develop, evaluate, produce and test new rubber compounds for Goodyear's products. Goodyear's compound formulas have been developed at great expense, are not made available to the public, and are maintained as confidential documents under Goodyear's security system.

8. Goodyear's policies with regard to dissemination of confidential information are given to all new employees when they are hired at Goodyear. Access to company buildings is restricted via key card and guards. Goodyear employees who are given access to computer systems have a user identification number and password and must agree not to disclose their

CA: 2:13-cv-00419-PMD

passwords to others. Employees with computer access also must agree not to attempt to intentionally access computer programs or data files that they have not been authorized to access. Employees must return all company records containing any confidential or trade secret information when their employment with Goodyear ends.

9. Goodyear implements security precautions, at significant cost, for the purpose of safeguarding its trade secrets and confidential information. Goodyear makes a significant investment each year on all of its combined security measures.

10. A competitor could use trade secret information to copy all or part of Goodyear's rubber compounds, tire designs, manufacturing processes, and quality control policies and procedures to obtain a technical advantage. The competitor could do so without compensating Goodyear for its expenses incurred in developing these ideas. Just as significantly, the competitor's development time and cost would be greatly reduced if it can obtain trade secrets produced in discovery.

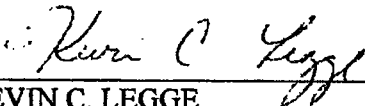
11. Competitors in the tire industry do not disclose information about their tire compounds or core design methodology and philosophy. Goodyear does not have access to its competitors' formulas. It would be devastating to Goodyear's competitive position in the marketplace if its compound formulas or core design methodology and philosophy become public. If this information was disclosed to Plaintiff's counsel, consultants, and/or experts, even if they were not given a copy of the formula to retain, the formula for the compound, and information concerning Goodyear's core design methodology and philosophy, would remain in their memory. The confidential and trade secret nature of this information would be breached

CA: 2:13-cv-00419-PMD

and forever lost. Further, the risk that the information would be revealed, directly or indirectly, to Goodyear's competitors is a real and substantial concern.

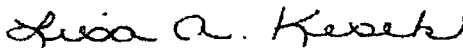
12. I am familiar with the discovery produced in this matter. Plaintiff is in possession of documents specific to the G670RV 295/80R22.5 tire that provide detail on the manner in which the tire was constructed and manufactured.

FURTHER AFFIANT SAYETH NOT.



KEVIN C. LEGGE

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, in the State of Ohio,
County of Summit, on this 15th day of September, 2015.



NOTARY PUBLIC, STATE OF OHIO



OFFICIAL SEAL
LISA A. KESEK
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES JANUARY 24, 2016
RECORDED IN MEDINA COUNTY, OHIO

C O N F I D E N T I A L

VIDEO DEPOSITION
DENISE REBA SEILER

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

THEODORE G. HARTSOCK, JR., AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
SARAH MILLS HARTSOCK,

Plaintiff,

- vs - Civil No.
2:13-cv-00419-PMD

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.,
a foreign corporation; and THE GOODYEAR
TIRE & RUBBER COMPANY, a foreign corporation,

Defendants.

Video deposition of DENISE REBA SEILER,
taken pursuant to the Federal Rules of Civil
Procedure, at the Hilton Garden Inn, 4201 Genesee
Street, Cheektowaga, New York, on April 24, 2015,

commencing at 9:54 a.m., before ANNE T. BARONE,

RPR, Notary Public.

EXHIBIT D

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1 **chief compounder?**

2 A. I do not know.

3 **Q. Does he go back at least ten years?**

4 A. I do not know. I wasn't at the
5 facility ten years ago, so --

6 **Q. Okay. Who was the chief compounder**
7 **when you joined the company?**

8 A. To the best of my knowledge, Mike. I
9 didn't work with him directly, but I believe he
10 was.

11 **Q. Okay. And Mr. McKernan would know the**
12 **butyl rubber content of all the components in all**
13 **the tires made in the plant, right?**

14 MR. TOOLE: Objection. Form.

15 THE WITNESS: He would be our compound
16 expert, yes.

17 BY MR. FOUNTAIN:

18 **Q. Okay. The barrier layer that's**
19 **adjacent to the innerliner in the G670, is it -- is**
20 **it a butyl-based rubber compound?**

21 A. It is not.

22 **Q. Okay. Are there any other butyl-based**
23 **rubber compounds in the G670 tire other than the**
24 **innerliner?**

25 A. No. You would not want to put butyl in

1 other parts of the tire.

2 **Q. Why not?**

3 A. Butyl, while it's good for air
4 permeability, doesn't like other rubbers quite as
5 much, to put it overly simply.

6 **Q. Okay.**

7 A. So you want it as your innerliner and
8 not in any other part of the tire.

9 **Q. Why doesn't butyl rubber like other**
10 **rubbers?**

11 A. The same characteristics that give it
12 its air permeability resistance is the same thing
13 that makes it not necessarily as compatible, which
14 is one of the reasons why we always design it with
15 a barrier. So that it -- it has that -- that extra
16 cushion and the total composite is there and makes
17 the end result the best tire possible.

18 **Q. Butyl rubber does not stick very good**
19 **to steel, does it?**

20 MR. TOOLE: Objection. Form.

21 THE WITNESS: I wouldn't know. I've never
22 tried to do that.

23 BY MR. FOUNTAIN:

24 **Q. Okay. What -- what are the things, the**
25 **properties of butyl rubber that make it not wanting**

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah Mills
Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America, LTD,
a foreign corporation; and The Goodyear Tire
& Rubber Company, a foreign corporation,

Defendants.

Case No. CA: 2:13-cv-00419-PMD

GRANTED


PATRICK MICHAEL DUFFY
United States District Judge

December 29, 2015

**DEFENDANTS' AMENDED MOTION TO REQUEST
REDACTIONS REGARDING THE AUGUST 31, 2015 HEARING (ECF #144)**

Pursuant to the Rule 5.2 of the Federal Rules of Civil Procedure, the Court's September 9, 2013 Confidentiality Order (ECF #46) and the redaction requirements and procedure of the District of South Carolina, Defendants GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD. and THE GOODYEAR TIRE & RUBBER COMPANY ("Defendants"), by and through their undersigned counsel, hereby serves this amended request to redact the transcript of the August 31, 2015 hearing. Specifically, Defendants designate the following testimony and exhibits as "CONFIDENTIAL" from the August 31, 2015 hearing:

Designated Exhibits from the August 31, 2015 Hearing

Defendants designate all exhibits received by the Court at the August 31, 2015 hearing, Court Exhibits 1-4, as confidential. Defendants recognize that the exhibits were received under seal as Court Exhibits only; however, in an abundance of caution, Defendants re-assert the confidential nature of the Court Exhibits herein.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:13-cv-00419-PMD

THEODORE G. HARTSOCK, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
SARAH MILLS HARTSOCK,)
)
Plaintiff,)
)
-versus-)
)
GOODYEAR DUNLOP TIRES NORTH AMERICA,)
LTD., a foreign corporation; and THE GOODYEAR)
TIRE & RUBBER COMPANY, a foreign corporation,)
)
Defendants.)
_____)

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR RECONSIDERATION OF THE NOVEMBER 30, 2015
ORDER OVERRULING DEFENDANTS' OBJECTIONS TO
MAGISTRATE JUDGE BAKER'S OCTOBER 22, 2015 ORDER DENYING
DEFENDANTS' MOTION FOR PROTECTIVE ORDER (DE 170)

I. Nature of the case and procedural history of pending motion.

On July 6, 2010, a recreational vehicle (RV) traveling east on Interstate 26 in Calhoun County, South Carolina, experienced a tread and belt separation and blowout of the left steer axle tire that caused the driver to lose control, crash through the cable barrier, and collide with an oncoming vehicle driven by Sarah Mills Hartsock, Plaintiff's wife, in the westbound lanes. Mrs. Hartsock died at the scene. The tire at issue in this action is aG670RV, 295/80R22.5, load range H, manufactured in Buffalo, New York, mounted in the left front position.

Plaintiff filed a Motion to Compel (DE 100) seeking full responses to his Fifth Discovery Requests No's 9, 57, 68, 96 and 107. The only issue relevant to the matter currently before the Court is whether Defendants are required to produce design specification relevant to the subject tire and contained in the Global Design Manual in response to Discovery Request No. 68. The motion was filed on April 9, 2015. Defendants filed their response on April 24, 2015. (DE 104).

Defendants have sought protective orders concerning certain topics covered in depositions of their current employees Terry Parson and Denise Seiler. The only topic relevant to the matter currently before the Court is whether Defendants' employees are required to answer questions concerning the butyl content of the subject tire's inner liner. The motions were originally filed on April 24, 2015 (DE 103; DE 107). Plaintiff filed memoranda in opposition to the motions on May 18, 2015 (DE 109; DE 114). Defendants' reply followed on May 22 (DE 116).

A hearing was held on August 31, 2015, during which Magistrate Judge Baker heard extensive argument and requested supplemental briefs on two issues. The parties complied, filing supplemental briefs on September 15, 2015. (DE 128, 129, 130). Thereafter the Court scheduled a telephone hearing on September 21, 2015. An order followed on October 22, 2015 (DE 137) in which Magistrate Judge Baker denied Defendants' motions as they pertained to the butyl content of the subject tire and granted Plaintiff's motion as to Discovery Request No. 68, requiring production of the Global Design Manual as it pertains to the subject tire. Defendants filed objections to Magistrate Judge Baker's Order on November 5, 2015. (DE 141). This Court overruled

those objections on November 30, 2015. (DE 143). The instant motion for reconsideration followed on December 28, 2015. (DE 170).

II. Standard of Review: Motion for Reconsideration.

"An interlocutory order is subject to reconsideration at any time prior to the entry of a final judgment." Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1469 (4th Cir. 1991). Moreover, "[m]otions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment." Am. Canoe Ass'n v. Murphy Farms, Inc., 326 F.3d 505, 514 (4th Cir. 2003). Nonetheless, district courts in the Fourth Circuit look to those standards for guidance. Joe Hand Promotions, Inc. v. Double Down Entm't, LLC, C/A No. 0:11-cv-02438, 2012 U.S. Dist. LEXIS 176466, 2012 WL 6210334, at *2 (D.S.C. Dec. 13, 2012). Thus, "the following are appropriate reasons for granting a Rule 54(b) motion: (1) to follow an intervening change in controlling law; (2) on account of new evidence; or (3) to correct a clear error of law or prevent manifest injustice." Id. A motion for reconsideration, however, "is not an opportunity to rehash issues already ruled upon because a litigant is displeased with the result." Id.

Church of Christ at Azalea Drive v. Forest River, Inc., 2013 U.S. Dist. LEXIS 79659, *3-4 (D.S.C. June 6, 2013). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (U.S. 1948).

"Motions to reconsider may not be used to initiate arguments or legal theories that the proponent had the ability to address prior to the judgment." Hickey v. Resolution Mgmt. Consultants, 2012 U.S. Dist. LEXIS 116649, *4 (D.S.C. Aug. 20, 2012), quoting Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Further applying interpretation of Rule 59(e), Fed.R.Civ.P., in the context of Rule 54(b), "mere disagreement with a court's ruling does not warrant a Rule 59(e)

motion.” United States v. PharMerica Corp., 2015 U.S. Dist. LEXIS 76880, *2-3 (D.S.C. 2015).

III. Discussion.

Defendants assert that the Court should reconsider its prior ruling and issue a protective order shielding Parsons and Seiler from answering questions concerning the butyl content of the subject tire’s inner liner and precluding production of relevant portions of the Global Design Manual. In support of their position they rehash prior factual arguments and rulings contained in the Magistrate’s Order, attempting to recast them under the cloak of “error of law.”¹

A. This Court has already determined that the Magistrate’s rulings are not clearly erroneous.

Defendants’ argue that the Magistrate’s order is based on clear errors of law. The Court has already undertaken a thorough review of the Magistrate’s order utilizing this exact standard. In overruling the parties’ objections it held that that there is “nothing clearly erroneous or contrary to law in Magistrate Judge Baker’s thorough and well-reasoned order.” (DE 143).

B. The Magistrate correctly applied controlling law.

Defendants’ criticism of the Magistrate’s order includes her reliance on Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (D. Del. 1985),

¹ Defendants state that they will suffer manifest injustice if the Court does not grant their motion. This statement is included in Section I, Nature of the Case. (DE 170, p. 2). They do not elaborate on that statement anywhere else in the memorandum, include any definition of “manifest injustice” in their discussion of the applicable legal standard, or include any argument to that effect in Section IV, Argument, of the memorandum. For that reason Plaintiff has not included a counter argument herein. Plaintiff has responded only to Defendants’ legal arguments, all of which are premised on asserted errors of law.

and her disregard of the South Carolina Trade Secrets Act (the Act), S.C. Code Ann. § 39-8-10 *et seq.* The issue before the Court is a discovery dispute under Rule 26(c)(1), Fed.R.Civ.P., as correctly noted by Defendants in their initial motions. (DE 103; DE 107). Long standing authority establishes that "the Federal Rules apply in all cases pending in federal court--despite a directly contradictory state law or rule of procedure--so long as the rule at issue neither (1) "exceed[s] the congressional mandate embodied in the Rules Enabling Act" nor (2) "transgress[es] constitutional bounds." Hanna v. Plumer, 380 U.S. 460, 464 (1965). The only law applicable to the issue before the Court is federal law.

The courts within the District of South Carolina have adopted the standard for evaluating production of trade secrets set forth in Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (D. Del. 1985). Mustang Innovation, LLC v. Sonoco Prods. Co., 2015 U.S. Dist. LEXIS 96551 (D.S.C. 2015); Sensormatic Elecs. Corp. v. Tag Co. LLC, 2008 U.S. Dist. LEXIS 5312 (D.S.C. 2008); Pechiney Plastic Pkg., Inc. v. Curwood, Inc. (Ex parte Sealed Air Corp.), 220 F.R.D. 452 (D.S.C. 2004); In re Sealed Air Corp., 220 F.R.D. 452 (D.S.C. 2004). The Magistrate utilized that standard, undertaking a thorough evaluation of its application to the specific facts of this case.

Defendants' assert that Coca-Cola Bottling is the wrong standard, claiming that the correct standard is set forth in the state court cases of Bridgestone Ams. Holding v. Mayberry, 878 N.E.2d 189 (Ind. 2007) and In re Bridgestone/Firestone, Inc., 106 S.W.3d 730 (Tex. 2003). Neither case has ever been cited by a court in this district or

any district court within the Fourth Circuit. Both have been cited by the South Carolina Supreme Court, however, in Laffitte v. Bridgestone Corp., 674 S.E.2d 154 (S.C. 2009).

As they have frequently done throughout this litigation (DE 40, p. 9; DE 75, p. 19; DE 116, p. 7; DE 141, p. 5, DE 170, p. 11), Defendants assert that the Act and Laffitte are binding on this Court. The only federal court to have considered the impact of the Act on discovery in a federal action ruled unequivocally that, by the plain language of the Act, its provisions do not apply to a tort and products liability action such as the one at bar. Griego v. Ford Motor Co., 19 F. Supp. 2d 531 (D.S.C. 1998). Judge G. Ross Anderson held:

This issue is one of first impression in both federal and state courts in South Carolina. Although § 39-8-60(B) appears to establish a more stringent standard for the production of trade secrets, S.C. CODE ANN. § 39-8-110(C) defines the scope of the South Carolina Trade Secrets Act. S.C. CODE ANN. § 39-8-110(C) states:

(C) Any and all other civil remedies that are not based upon misappropriation of a trade secret or upon protection against misappropriation of a trade secret are governed by the rules of procedure, rules of evidence, regulations, and the common law applicable to the administrative law tribunal, or court where the action is filed.

S.C. CODE ANN. § 39-8-110(C) (Supp. 1997) (emphasis added). By its own language, the South Carolina Trade Secrets Act does not apply to any action that is not based on misappropriation of a trade secret or protection against such a misappropriation. Here, the underlying action is one in tort and products liability. Therefore, the Act does not apply in this case.

at 53. In so doing he noted that the defendant therein sought immediate certification for appeal of the discovery issue under 28 U.S.C. § 1292 because the court questioned the applicability of the Act in a diversity action. The determination that the Act did not apply precluded the necessity of an analysis of the issue under Erie R. R. v. Tompkins, 304 U.S. 64 (1938).

Acknowledging that the Act has been held inapplicable to a products liability action by the district court in Griego, Defendants argue that Griego was rejected by the South Carolina Supreme Court. Although in Laffitte the South Carolina Supreme Court declined to adopt the reasoning of Griego, it has not reconciled the language of S.C. Code Ann. § 39-8-60(b) with that of S.C. Code Ann. § 39-8-110(c). Further, the rejection of Griego by the state court is not binding on a federal court in any way. Griego remains the guiding rule of law in the District of South Carolina. Sturdivant v. Cont'l Tire the Americas, LLC, 2015 U.S. Dist. LEXIS 6489, *9 (D.S.C. Jan. 21, 2015) (citing Griego the court declined to grant defendant's Rule 12(f) motion).

The Act, as well as Laffitte and any cases cited therein, have no place in the analysis of whether Defendants must produce the inner liner formula. The Magistrate analyzed applicable law using the facts of this case and reached a sound decision which is not based upon a clear error of law, a point previously made by this Court. Defendants simply disagree with the Magistrate's ruling.

IV. 28 U.S.C. § 1292(b).

Defendants ask the Court to certify its Order pursuant to 28 U.S.C. § 1292(b) if the Court declines to grant their motion for reconsideration. The request must be denied.

As an initial matter, Defendants do not bother to identify the standard by which their request should be evaluated or otherwise demonstrate why the request should be granted within the context of the controlling law discussed below.

Next, discovery orders are generally not subject to direct appeal in the Fourth Circuit:

The Fourth Circuit has determined that discovery orders do not satisfy the collateral order doctrine exception. MDK Inc. v. Mike's Train House, Inc., 27 F.3d 116, 120 (4th Cir. 1994) (citing strong concerns of judicial economy that weigh against granting leave of court to appeal interlocutory discovery orders and observing that "courts have rather routinely declined to extend the collateral order doctrine to discovery rulings."); See also United States v. Moussaoui, 333 F.3d 509 (2003) (denying interlocutory appeal of discovery order). Moreover, the Fourth Circuit has warned "that piecemeal review of decisions that are but steps toward final judgments on the merits are to be avoided, because they can be effectively reviewed together in one appeal from the final judgment." James v. Jacobson, 6 F.3d 233, 237 (4th Cir. 1993).

Blue Cross & Blue Shield of N.C. v. Jemsek Clinic, P.A., 2008 U.S. Dist. LEXIS 121210, *4 (W.D.N.C. Mar. 7, 2008). An alternate route for relief is not provided by 28 U.S.C. § 1292(b): "Given the overriding policy concerns of MDK, Inc. in preventing collateral litigation that would cause unnecessary delay, it is inconceivable that the Fourth Circuit would prohibit direct appeals of discovery orders, yet encourage the very same result through the use of § 1292(b)." Griego, 19 F.Supp.2d at 534.

Finally, should the Court determine that consideration of § 1292(b) is appropriate, Defendants' request must still be denied. Section 1292(b) provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that **such order involves a controlling question of law as to which there is substantial ground for difference of opinion** and that **an immediate appeal from the order may materially advance the ultimate termination of the litigation**, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(Emphasis added). The test under § 1292(b) is three pronged, with an affirmative showing required for each prong: 1) a controlling question of law; 2) as to which there is

substantial ground for difference of opinion; and 3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Griego, 19 F.Supp.2d at 533. The issue presented in Defendants' motion for reconsideration fails to satisfy the test.

There is not a controlling question of law. "A question which requires a factual as well as legal decision is not suitable for interlocutory review." Speizman Knitting Machine Co. v. Terrot Strickmaschinen GmbH, 505 F. Supp. 200, 202 (W.D.N.C. 1981). Here the issue raised to the Court was determined based upon consideration of the law and the specific facts of this case. Further, "[t]he discretionary nature of discovery orders has led at least one Court of Appeals to conclude that discovery orders in general will never involve a controlling question of law." Griego, 19 F.Supp.2d at 533.

An immediate appeal will not materially advance the ultimate termination of the litigation. As in Griego, an appeal on this issue would only serve to further delay the advancement of the litigation. Allowing an appeal of a discovery order would only serve to delay trial, the ultimate resolution of this action.

Defendants have made no effort to establish the standard by which their request under 28 U.S.C. § 1292(b) should be evaluated. Regardless, the discovery issue presented in their motion for reconsideration does not meet any of the requirements of § 1292(b). If the Court denies the motion for reconsideration, the request for certification under § 1292(b) also should be denied.

V. Conclusion.

Defendants fail to meet the standard for reconsideration of the Court's November 30, 2015 order allowing Plaintiff to question Parsons and Seiler concerning the butyl

content of the subject tire's inner liner and requiring production of portions of the Global Design Manual relevant to the subject tire. They also fail to meet the standard for certification of this issue under 29 U.S.C. 1292(b). Both the motion and the certification request should be denied.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

January 14, 2016

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Theodore G. Hartsock, Jr., as Personal
Representative of the Estate of Sarah
Mills Hartsock,

Plaintiff,

v.

Goodyear Dunlop Tires North America
LTD, *a foreign corporation*; and
The Goodyear Tire & Rubber Company,

Defendants.

Civil Action No. 2:13-cv-00419-PMD-MGB

ORDER

This matter is before the Court on Defendants' motion for reconsideration of this Court's November 30, 2015 order, in which the Court overruled objections to an order issued by Magistrate Judge Mary Gordon Baker and adopted her order as its own (ECF Nos. 170, 143, & 137, respectively). Defendants ask that this Court alter portions of its order or, in the alternative, certify its order for immediate appeal.

After carefully reviewing Defendants' motion, as well as Plaintiff's response thereto, this Court declines to alter its November 30 order by itself. As to the certification request, the Court has carefully considered the parties' arguments as to what standard governs the parties' dispute over Defendants' trade secret. In this Court's opinion, Magistrate Judge Baker's order, which this Court adopted, involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b).

Pursuant to § 1292(b), Defendants shall have ten days from the date of this order to apply to the Fourth Circuit for permission to appeal. All proceedings in this matter are hereby **STAYED** pending Defendants' application and, if granted, during the appeal.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

January 19, 2016
Charleston, South Carolina

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

THEODORE HARTSOCK, JR.,	)	2:13-CV-419
	)	
Plaintiff	)	Charleston,
	)	South Carolina
VS	)	August 31, 2015
	)	
GOODYEAR DUNLOP TIRES	)	
NORTH AMERICA LTD	)	
	)	
Defendant	)	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MARY GORDON BAKER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MR. MARK TANENBAUM
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Columbia, SC 29202

Court Reporter: Amy C. Diaz, RPR, CRR
P.O. Box 835
Charleston, SC 29402

Proceedings recorded by mechanical shorthand,
Transcript produced by computer-aided transcription.

AMY C. DIAZ, RPR, CRR OFFICIAL COURT REPORTER

1 THE COURT: Who will be arguing for your side, or
2 are we going to have a mixed bag today?

3 MS. MANESS: I'm going to be mainly for the
4 plaintiff, but I can't really speak for him.

5 MR. OTT: Good morning, Your Honor. I'm Curtis Ott
6 from Columbia with Gallivan White Boyd. With me are Bianca
7 Liston and Gary Toole who are both from Florida and are going
8 to be admitted in this case. I'm going to handle some of the
9 arguments and Ms. Liston is going to handle some.

10 THE COURT: I'm going to go through them one by one,
11 I believe in the order in which y'all briefed it, all right?
12 But it's not exactly in the order of the numerical order of
13 the requests.

14 And I will tell you that, sort of as a general
15 benchmark, you know, we've -- you know, I plan to follow
16 Judge Duffy's sort of rule of thumb as the DJ on the case and
17 has actually expressed his opinion about some of these
18 issues, at least in the context of the 30(b)(6) deposition.
19 So just to give y'all kind of a heads up. But I'm leaning
20 toward limiting things to the subject tire, so that y'all
21 might focus -- plaintiff might focus their arguments in
22 accordance with that, all right?

23 So let's go first to request 96, okay?

24 MS. MANESS: Yes, ma'am.

25 THE COURT: What has been produced and what has not

1 been produced with regard to that from the plaintiff's point
2 of view first?

3 MS. MANESS: Your Honor, we have, as Exhibit K, the
4 materials that have been produced concerning other tire
5 sizes. And we are missing materials as to the 275/70R22.5
6 and the 245/70R22.5 and the 265/75R22.5 for other tires.

7 For our tire it's a little unclear what we are
8 missing.

9 THE COURT: All right. What -- from -- I'm
10 sorry --

11 MS. MANESS: And the reason I say that is
12 defendants have represented that we have a complete design
13 file for our tire, at least that's what I understand their
14 discovery responses to be.

15 After Mr. -- let's see -- the first responses in
16 this case as to 96 were made on May the 23rd, 2014. After
17 that, on June the 24th Mr. Koerner's deposition was taken.
18 And Mr. Koerner said, You don't have a complete design file.

19 Thereafter, in October we got 40 more documents as
20 to our tire and six more documents as to another tire. But
21 the problem that has arisen is we are still not sure we have
22 a complete design file. And there has been testimony since
23 then from Mr. Carncross in May of 2015 -- and I would like to
24 hand it up, it's about three pages, if the Court will allow
25 me to.

1 THE COURT: Sure.

2 MS. MANESS: (Redacted).

3 THE COURT: (Redacted).

4 MS. MANESS: Yes, ma'am, we are talking only about
5 the subject tire.

6 THE COURT: I would ask that we mark this as Court's
7 Exhibit 1.

8 I'm assuming -- I know Defendant will have ready
9 access to it. Y'all brought that with you? All right.
10 Thank you.

11 MS. LISTON: Yes, we have it, Your Honor, but it
12 wasn't raised before.

13 MS. MANESS: It was not.

14 THE COURT: I understand. Just supplementing at
15 the hearing. I'm going to allow that.

16 Shall we take this discrete issue now? And -- what
17 I'm going to do is as we go through them one at a time and
18 what you think -- what you are concerned you don't have and
19 then I'm going to put the burden on the defendant to tell us
20 whether they think they produced everything or not.

21 MS. MANESS: (Redacted).

22 THE COURT: (Redacted).

23 MS. MANESS: (Redacted).

24 THE COURT: (Redacted).

25 MS. MANESS: (Redacted).

1 THE COURT: (Redacted).
2 MS. MANESS: (Redacted).
3 THE COURT: (Redacted).
4 MS. MANESS: (Redacted).
5 THE COURT: (Redacted).
6 MS. LISTON: (Redacted).
7 MS. MANESS: (Redacted).
8 MS. LISTON: (Redacted).
9 MS. MANESS: Unfortunately I wrote on it, but -- I
10 don't have another copy.
11 MS. LISTON: Okay. That's just the one document
12 you refer to?
13 MS. MANESS: Yes. And these are all of the
14 footnote documents from --
15 THE COURT: Whatever we have -- it's not an exhibit
16 to the motion, then it was something that was submitted to
17 Judge Duffy separately --
18 MS. MANESS: Yes.
19 THE COURT: -- thinking that probably he was going
20 to hear this motion?
21 MS. MANESS: Yes.
22 And the reason we did it that way, there are a lot
23 of documents subject to Protective Order, and it just seemed
24 like the cleaner way of doing it, since we are dealing with
25 the discovery issue, than to file motions under seal and --

AMY C. DIAZ, RPR, CRR OFFICIAL COURT REPORTER

1 THE COURT: I'm not -- I'm not criticizing, I'm just
2 saying it never made it to us. So --

3 MS. MANESS: I'm sorry.

4 THE COURT: That's all right.

5 MS. MANESS: We had done this in the past with
6 Judge Duffy and it had worked.

7 THE COURT: As y'all know, I'm newer, so perhaps he
8 forgot to send it my way. And if we have it, we just don't
9 know where we have it.

10 MS. MANESS: I understand, ma'am.

11 THE COURT: Is it an exhibit to your motion?

12 MS. MANESS: It is not. We submitted it
13 separately because it was documents --

14 THE COURT: Of the Confidentiality Order.

15 MS. MANESS: Or that there were depositions for
16 some of these motions that were designated confidential. So
17 I suspect that the Court has not seen some of the pertinent
18 background information on these motions because the
19 deposition testimony was attached for in camera review with
20 the Court.

21 THE COURT: We don't have that testimony.

22 That will be our second Court Exhibit, Court
23 Exhibit 1.

24 MS. LISTON: Your Honor, are we going to be able to
25 mark that confidential later on --

1 THE COURT: Sure. Court Exhibit 2 is under seal.
2 It's under seal anyway because it's a Court Exhibit only, but
3 we'll make sure it's pursuant to the Confidentiality Order.

4 MS. LISTON: Thank you, Your Honor.

5 THE COURT: Am I going to be able to understand it
6 without having read that?

7 MS. MANESS: I think so.

8 THE COURT: All right. I'm going to let you just
9 give it to me by baby steps.

10 So you are worried about the design file, whether
11 they have the whole design file, and this is why you think
12 you don't have the whole design file?

13 MS. MANESS: I have never understood that first
14 footnote 3 document. I wasn't sure what it meant. I
15 addressed it in our motion, but it still -- it suggested to
16 me that there were things we had not seen, because I could
17 not put the documents we had and match them to some of the
18 things on that particular document -- (Redacted) -- that we
19 don't actually have the underlying design file for this tire,
20 the initial design.

21 THE COURT: Well, why don't we stop right there and
22 ask them.

23 MS. MANESS: Yes, ma'am.

24 MS. LISTON: Your Honor, bear with me, I have a
25 cold and it's getting worse.

1 THE COURT: That's all right. I understand. It's
2 that season.

3 MS. LISTON: Mr. Carncross was deposed in this
4 case. He is a gentleman, an elderly gentleman, that had
5 surgery approximately a month before his deposition. I just
6 wanted to give you a background.

7 THE COURT: I understand. I wanted to know if you
8 gave them an early design file.

9 MS. LISTON: They have the development file. They
10 are basing their questioning on what Mr. Carncross testified
11 to.

12 (Redacted).

13 THE COURT: I'm sorry. Say that again. It was
14 produced to them --

15 MS. LISTON: In two separate litigations.

16 THE COURT: I mean, you are talking about a separate
17 case than this one?

18 MS. LISTON: Yes.

19 THE COURT: I don't know -- I only want to know
20 about this case. I can only handle one at a time.

21 MS. LISTON: They compelled it, so -- it was a
22 *Green* case that they -- one of our initial -- their initial
23 Motion to Compel asked for anything that was produced in the
24 *Green* litigation, and Magistrate Hendricks ordered that. So
25 we produced that entire production to them in this case. So

1 in that case there was the development and design file. We've
2 also reproduced it in *Hartsock*.

3 And during the deposition of Mr. Koerner, they asked
4 him if there were any -- anything that wasn't in there. And
5 they were talking -- he's talking about his notes. And he
6 said it was located in an area that he considered to be the
7 vault. We went back after his deposition, obtained the file
8 and produced it to them in the litigation.

9 THE COURT: Did y'all know about the vault at the
10 time of the original -- when y'all were originally producing
11 the documents?

12 MS. LISTON: No. They have it located in a certain
13 section. And a lot of it is in the system PDF. And so this
14 was kind of a filing cabinet that there was a file in there.

15 So after the deposition we went back; found the
16 document. I looked at it this morning and a lot of the
17 documents -- not every document -- was also produced in the
18 Green file where there was an additional development file
19 produced there. And so they had, I would say, 19 of the, I
20 think it's about 40 pages that was additional. This
21 timeline was a new document that was produced in our case.
22 But there isn't any additional development file that's out
23 there. They have what was created by Mr. Koerner and what
24 was created by Mr. Badzinski. Those were the two individuals
25 that were engineers at Goodyear Tire and Goodyear Dunlop who

1 developed this tire.

2 THE COURT: And those have been produced? That's in
3 the 40 supplemental pages?

4 MS. LISTON: Those are in the 300-some pages. The
5 development file is 350 pages long. So they got an
6 additional 40-some pages after the deposition of Mr. Koerner.

7 THE COURT: When was that?

8 MS. LISTON: That was in, I believe, October of
9 last year.

10 THE COURT: And so you are representing to the Court
11 that the entire design file, whether it's the early
12 development or later development, has been produced to the
13 plaintiffs?

14 MS. LISTON: With regard to the development --

15 THE COURT: With regard to the subject tire.

16 MS. LISTON: To the subject tire, the development
17 of the tire, the time that it was developed, yes, they have
18 all the information that shows them how the tire was
19 developed.

20 THE COURT: Ms. Maness?

21 MS. MANESS: Your Honor, I'm still concerned about
22 Mr. Carncross who says that he was -- he was supposed to be
23 one of the designers of this tire. And he said no, that
24 there were -- he had not seen the document yet that
25 identified the designers of this tire. And that was in May

1 of this year.

2 THE COURT: What do you say to that, Ms. Liston?

3 MS. LISTON: I would like to give Your Honor a copy
4 later on. I don't have it with me because I didn't know this
5 was going to be brought up.

6 (Redacted) -- somewhat confused at that time. He's
7 a former employee who underwent some serious surgery right
8 before the deposition. So --

9 THE COURT: I understand. But I mean, if there was
10 material -- I'm just -- you know, it's y'all's duty to figure
11 out whether there is more material that he alluded to or
12 spoke about in his deposition. And what you are telling me
13 is y'all have done a thorough search of wherever the
14 documents might be, including this vault that kind of came to
15 light later?

16 MS. LISTON: Right. They received the development
17 file and they received the information.

18 THE COURT: I want to know was there an early
19 development file that Mr. Carncross was referring to?
20 Whether he's confused or not, was there one?

21 MS. LISTON: They have the development file.
22 There is no early development file for this tire. They have
23 the file that was created by Mr. Koerner who testified at his
24 deposition about the development of the file. They have the
25 testing materials in there, the design of what they used, and

1 they also have the Dunlop design materials.

2 THE COURT: Because, you know, if y'all haven't
3 produced the entire file for the subject tire, that's going
4 to be a problem. Y'all are ordered to produce it, the
5 entire --

6 MS. LISTON: Well, Your Honor, I can go back and
7 reconfirm that if you would like.

8 THE COURT: I want to make sure they are satisfied.

9 MS. MANESS: Your Honor, we would ask that in one
10 spot without supplemental and objections in the middle of all
11 that, that they have supplied all the documents that they
12 have maintained are the complete development file for this
13 tire.

14 MS. LISTON: I can do that.

15 THE COURT: Y'all can do that, can't you? I'm going
16 to go ahead and define the subject tire. G670RV 295/80R22.5;
17 is that correct?

18 MS. LISTON: Yes.

19 THE COURT: Let's go ahead and have that for the
20 record.

21 MS. MANESS: Your Honor, I know that you said you
22 were inclined just to the subject tire, but we do have a
23 ruling on our original discovery request number 11 for other
24 materials concerning other tires.

25 THE COURT: Well, what I understand is that's --

1 Judge Hendricks ruled; is that right? You are talking about
2 Judge Hendricks' ruling --

3 MS. MANESS: Yes.

4 THE COURT: -- that Judge Duffy did not overturn?

5 MS. MANESS: That's right.

6 THE COURT: And what you are saying is you think
7 there are documents missing from that original production
8 ordered by Judge Hendricks?

9 MS. MANESS: Yes, ma'am. We think that there are
10 documents missing specifically as to the tires that have Xs
11 next to them. And then the testimony of Mr. Koerner and Mr.
12 Carncross raises questions in our mind about whether there
13 are other materials as to those other tires in the line that
14 have not been produced.

15 THE COURT: What say the defendants on that?

16 MS. LISTON: Your Honor, with -- we were before
17 Judge Hendricks. There was a Motion to Compel the inner
18 liner specifications.

19 THE COURT: For nine of the tires.

20 MS. LISTON: Nine of the tires.

21 THE COURT: Nine plus the subject tire, a nine --
22 let's not talk over each other. I'm asking whether or not
23 there are ten tires total. One is the subject tire and there
24 were nine additional, correct?

25 MS. LISTON: I know that the production was for

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1 eight of the tires with two tires missing, so -- or two tires
2 outside of the scope. So there is ten tires total. One of
3 them would be our subject tire.

4 THE COURT: Right. And so she ordered that y'all
5 produce all the documents concerning the inner lining of
6 the -- not only the subject tire, but nine other tires,
7 correct?

8 MS. LISTON: She ordered production of the inner
9 liner specification. We produced the inner liner
10 specification for the subject tire within our subject tire
11 scope. It was a year before the production date -- the year
12 after the production date. And so when we went before the
13 Judge at the hearing, the issue that was addressed at that
14 hearing was what tire -- additional tires should be produced
15 and a timeframe.

16 And we received --

17 THE COURT: Say that again. Other additional tires
18 within the timeframe?

19 MS. LISTON: Within the timeframe.

20 THE COURT: Which timeframe then? A year before or
21 after?

22 MS. LISTON: I'm sorry.

23 THE COURT: Go ahead.

24 MS. LISTON: The year before and the year after.

25 THE COURT: I thought Judge Duffy rejected the time

1 limit?

2 MS. LISTON: Judge Duffy did reject the time limit
3 when we were talking about -- he did not -- during his
4 hearing, he said that he did not find that to be appropriate
5 and said for us to work out a time period with regard to the
6 production of the cut tire sheets. And so at the end of the
7 transcript I said I would produce the cut tire sheets.

8 And what I did was -- because there is a retention
9 period for the tires, I went back and said, Okay, for all
10 these tires, give me the cut tire sheets. And I produced
11 what I had available to them without any timeframe.

12 That cut tire sheet will give them the -- if you
13 look at their chart, they have all the inner liner
14 thicknesses for all the tires and they have all the cut tire
15 information.

16 What they are seeking here is the development file
17 for all those tires. And as they argued in their motion, the
18 basis for that is they can understand why it was built a
19 certain way. But they have the information that's needed to
20 determine the thickness of the inner liner. That is being
21 relied upon by their experts and who have rendered opinions
22 and who have issued expert reports in July regarding the
23 thickness.

24 THE COURT: I think y'all are saying, though, you
25 did not have the inner liner design data for three of the

1 tires? I'm looking at y'all's chart.

2 MS. MANESS: Yes, ma'am.

3 THE COURT: Right.

4 MS. MANESS: And the original request number 11 was
5 all documents regarding specification for the inner liner of
6 the Goodyear G670, any specification changes to the inner
7 liner, who was involved in those changes, and moving forward,
8 all -- for all G670 tires. And so the design data is part of
9 the specification of the change. I mean, what is the
10 design? How did they design the inner liner? Gets us to
11 what the specification is.

12 THE COURT: What do the defendants say about that?
13 That does make sense to me, I'll tell you.

14 MS. LISTON: Okay. So there was an objection also
15 with regard to 11 as to scope. That wasn't addressed. What
16 we provided to them was the inner liner specifications for
17 our tires, the subject tire. And then after the Court's
18 Order, we gave them the inner liner specifications for the
19 tires within our scope.

20 THE COURT: But what about the design data?

21 MS. LISTON: But that --

22 THE COURT: You are saying that's not included in
23 the scope of their request or the ruling on --

24 MS. LISTON: This was not included within the
25 ruling. All they brought up during that hearing was that

1 they wanted the inner liner specifications. And I believe
2 the last hearing we were before Judge Duffy they attempted to
3 bring that up and the Judge said that's a little too late,
4 the time has passed. And so we had a discussion at the end
5 of the hearing about the cut tire sheets and I produced that
6 to them.

7 THE COURT: You are saying the cut tire sheet is
8 what -- that doesn't mean a lot to me -- the cut tire sheet
9 is the same thing as the design data, or no?

10 MS. LISTON: The cut tire sheet would tell them the
11 thickness and the minimums of the inner liner that the tire
12 would be designed to.

13 Mr. Fountain has -- which is cocounsel for
14 plaintiff -- in his depositions, all the witnesses have
15 pulled out the specifications for the other tires, have
16 pointed to the design specifications for inner liners showing
17 their thickness. They have the information. If you look
18 at their chart, it says, "Inner liner thickness." And
19 everything is checked on their chart.

20 And if you look at the -- let's see, sorry, Your
21 Honor -- there is the argument before the Judge -- so the
22 last hearing before Judge Duffy, they were trying to broaden
23 the scope. And they said as to the other -- this is Ms.
24 Maness -- "Your Honor, as to the other components in the
25 tire, we have the specifications for all the components

1 because the inner liner specification is in with those. We
2 want to be able to ask them questions about all the
3 components of the tire." The Judge says no. I'm sorry.
4 That would be page 41, line 10 through 24, the transcript for
5 the hearing of April 15th, 2014.

6 And when they were before Judge Hendricks on
7 November 19th, 2013, they identified at that time that
8 there -- let me find the cite for you -- that their defect
9 allegation was the thickness of the liner. So they have
10 that information, that they requested it, and it shows --
11 it's reflected on their chart.

12 THE COURT: But it's not showing -- what they are
13 saying they don't have is the inner liner design data for 3,
14 they don't have the drawing for 2 -- and I'm not sure what
15 drawing that is referring to -- and the specifications for 3.

16 Specifications are specifically covered by Judge
17 Hendricks' ruling, aren't they?

18 MS. LISTON: The specifications that were provided
19 were within the time scope of one year before, one year
20 after. And what we did in the response to the Motion to
21 Compel for the prior hearing is we identified the fact
22 that -- I think two of the tires fell within the -- fell
23 outside of that time scope.

24 THE COURT: Ms. Maness, what about the time scope
25 issue?

1 MS. MANESS: Judge Hendricks did not include the
2 time scope in her ruling.

3 THE COURT: I'm inclined -- Judge Duffy did not
4 overturn Judge Hendricks' ruling -- I'm inclined -- we are
5 going to put this in a written Order -- but I'm going to say,
6 especially specifications, if it's about the inner liner of
7 those other nine tires -- and I don't know -- what does the
8 drawing refer to, Ms. Maness?

9 MS. MANESS: A drawing that includes the designation
10 of the inner liner thickness.

11 THE COURT: Then I think all of that has to be
12 produced. And we'll put this in an Order. I think you need
13 to produce it pursuant to Judge Hendricks' Order.

14 MS. LISTON: The inner liner specification.

15 THE COURT: The drawing and the inner liner design
16 data. I'll be specific if you like. It's Exhibit K to
17 plaintiff's Motion to Compel where the Xs are.

18 MS. LISTON: I don't understand when they say
19 "inner liner design data."

20 THE COURT: I'll let y'all discuss it. The inner
21 liner -- any of the inner liner information that they want on
22 the other nine tires it seems to me is encompassed within
23 Judge Hendricks' ruling and needs to be provided.

24 MS. LISTON: And just -- I'm sorry. I understand
25 your ruling, I just want to --

1 THE COURT: I mean, I don't know what documents you
2 have regarding the --

3 MS. LISTON: I'm sorry. I'm sorry.

4 THE COURT: I don't know what documents you have
5 relating to the design data specifications and drawing for
6 the other nine tires, so I don't know whether that
7 terminology is correct or not. But I expect you two to get
8 together and decide what is left to be produced about the
9 inner liners of the other nine tires.

10 MS. LISTON: Okay. And I know that they checked,
11 so there is information that they received, so I can give
12 them the same information that they believe is missing for
13 those tires.

14 THE COURT: Or you can give them the Bates numbers
15 for what's already been produced. But I want them to be
16 assured that they've gotten all that was encompassed within
17 Judge Hendricks' Order.

18 MS. LISTON: Okay. Thank you, Your Honor.

19 THE COURT: And I think you said two had not been
20 produced at all because of scope. I think you need to
21 produce the two that -- I said all nine.

22 MS. LISTON: Yes, Your Honor.

23 MS. MANESS: Your Honor, I would just add this, two
24 points: One is that to say, We'll give them what we've
25 already given them as to the others doesn't actually take

1 into account that there may be something different for some
2 of these tires that is still included within the scope of our
3 request.

4 And the second point which has not come up yet is
5 when we deposed Mr. Koerner, thinking we had all the
6 documents, we didn't, and we would like to be able to go back
7 and continue his deposition as to the documents that were
8 produced on October the 7th, 2014, and anything that might
9 come as to this tire if there is more.

10 THE COURT: I would say -- sort of preliminary
11 ruling -- I would say you have the right to do that. On new
12 information only.

13 MS. MANESS: Yes, ma'am. Only new.

14 MS. LISTON: Can I ask them to identify the
15 documents that they believe by Bates number that is new?
16 Because there are duplicative documents that have been
17 produced previously, so that we know that, you know, what
18 documents he's asking about --

19 MS. MANESS: Let me double-check the date on Mr.
20 Koerner's deposition, and --

21 MS. LISTON: I believe it's June 24th.

22 THE COURT: June 24th of 2015?

23 MS. LISTON: 14th.

24 MS. MANESS: There was a supplemental production of
25 documents, 40 documents as to G670 295/ADR22.5 on 10-7, 2014.

1 So those are the documents that I know of right now.

2 MS. LISTON: And then there are documents that were
3 produced in the *Green* litigation starting at, I believe,
4 Bates number --

5 THE COURT: You can provide that to them.

6 MS. LISTON: Okay. I'll provide that to them.
7 Thank you.

8 THE COURT: All right. Does that cover 96 now?

9 MS. MANESS: Yes, ma'am.

10 THE COURT: All right. Let's go on to -- I'm going
11 to do them kind of jointly -- 9, 57 and 107.

12 MS. MANESS: Yes, ma'am.

13 THE COURT: About these governmental agencies.

14 One thing -- one question I have, really for the
15 defendants first, is what other agencies do -- y'all complain
16 about their term governmental agency or quasi-governmental
17 agency. I guess it could have been done in an
18 interrogatory, but what agencies does the tire company have
19 to report to when there are defects besides NHTSA?

20 MS. LISTON: I know that there have been some
21 inquiries by the NTSB, National Transportation Safety Bureau,
22 just on accidents, that they don't have to report to them.

23 There is also -- there is also police departments
24 within the United States that ask for help in analyzing an
25 accident and the cause.

1 And so there are different agencies out there that
2 Goodyear Tire would communicate with regarding tires; things
3 like that. And so that was what the objection was for that.
4 And they are saying quasi. I don't know what they are
5 talking about. I responded I think for NHTSA.

6 THE COURT: Did you attempt to talk to her about it
7 and try to figure it out before the hearing?

8 MS. LISTON: I mean, Ms. Maness and I do speak and
9 have conversations. A lot of the discovery has to do
10 directly with Mr. Fountain. And we tried to have a
11 communication with them. And I believe that December of
12 2014 there was a communication and he said NHTSA, and he said
13 no, no time period.

14 THE COURT: Well, I'll ask Ms. Maness to stand.
15 You now have at least gotten the answer to why she's
16 concerned, what -- you know, that there are some police
17 departments, etcetera, that they report to.

18 What are y'all interested in getting?

19 MS. MANESS: The NHTSA early warning materials that
20 Mr. Koerner has testified about and that they have objected
21 to getting us, and said in their last discovery request --
22 first they had the general objection for everything.

23 THE COURT: Right.

24 MS. MANESS: Then they came back after Koerner's
25 deposition, I believe, and said that they had done a search

1 and they could find no nonprivileged documents and we could
2 go to public record. We went to the public record. I
3 went -- to be quite frank, I hired somebody -- can't find it.
4 And they have not provided a privileged log.

5 THE COURT: I understand.

6 MS. MANESS: No idea what we are talking about.
7 We just know that there was a submission to NHTSA, and that's
8 all we know. We don't know what's -- you know, what was in
9 it, what timeframe it covered. We know it was in 2010.

10 THE COURT: Well, I understand that you've gotten
11 indication there definitely is at least one.

12 Let me ask you this: Are you all happy to limit it
13 to NHTSA?

14 MS. MANESS: Yes.

15 THE COURT: NHTSA?

16 MS. MANESS: Yes, ma'am.

17 THE COURT: I understand that y'all's objection
18 is -- well, first of all, is they are correct. And to the
19 extent there is any attorney-client privilege material or
20 work-product material, there has been no log produced. And
21 the confidentiality problem, frankly I think our
22 Confidentiality Order covers it. No one has told me why it
23 doesn't. It's not like it's inter -- I don't even see how
24 in discovery request 9 there is even a possibility of any
25 attorney-client privileged or work-product information

1 because it's communications and notice provided to NHTSA.

2 So that's even -- I think it's impossible to have
3 any privileged information that was produced to a government
4 agency. It would destroy any kind of privilege there.

5 Response -- I guess discovery request number 57
6 possibly could have some attorney-client or work-product
7 material which would need to be logged. And I think 107,
8 that's documents provided to or received from or
9 correspondence to or from NHTSA -- NHTSA, Amy.

10 And I really don't understand how there is any
11 attorney-client or work-product privilege there.
12 Confidentiality actually appears under the regulations 49 CFR
13 512.23. It seems to contemplate that these things would be
14 subject to discovery and a Confidentiality Order because I
15 think subparagraph b(2) says: "Notwithstanding any other
16 provision of this part, information that has been determined
17 or claimed to be confidential may be released pursuant to an
18 Order of court of competent jurisdiction."

19 Those are my thoughts. Once again, I think we
20 could -- I don't know that we -- in light of Judge Duffy's
21 ruling, I definitely want it on the subject tire. I don't
22 know what the argument is for beyond the subject tire.

23 MS. MANESS: Your Honor, we --

24 THE COURT: I think the deposition was with
25 reference to this actual --

1 MS. MANESS: It is.

2 THE COURT: -- subject tire.

3 All right. So let the defendants --

4 MS. LISTON: Your Honor, I -- first of all, one of
5 the -- Exhibit G to plaintiff's counsel's motion there was a
6 letter where they are asking us about early warning notices.
7 And we did do a search looking for notes pertaining to any of
8 them. And we advised them on December 22nd, 2014, and we
9 said to them that: "The early warning reporting is available
10 to you on NHTSA's website. As to any meaning with respect
11 to early warning report, we are unable to locate any notes
12 pertaining to these meetings and those areas where such
13 records are normally ordinarily maintained."

14 And so --

15 THE COURT: I'm sorry. Let me let you finish your
16 sentence.

17 MS. LISTON: So Mr. Koerner's deposition, he
18 testified that there was a meeting held where the early
19 warning report was mentioned. And so we went back to see if
20 there was any notes pertaining to that and we did not locate
21 any.

22 With regard to the early warning system provided by
23 NHTSA, I went on this morning and you could go in through the
24 quarters to see what is reported. And I found the entry on
25 the first quarter of 2010 that they would have access to.

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1 THE COURT: Well, where is the report? I mean,
2 where is the report y'all actually filed with NHTSA?

3 MS. LISTON: The -- I can go back and check to see
4 if they have the document, but it's an Excel spreadsheet that
5 you would upload to their system, and then that information
6 is extrapolated into the search.

7 THE COURT: Because certainly any information that
8 was designated confidential by you and NHTSA would not be
9 publically available?

10 MS. LISTON: Correct.

11 THE COURT: To the extent y'all have it, it needs to
12 be turned over relating to the subject tire.

13 MS. LISTON: Okay.

14 THE COURT: And I would say that to all three
15 requests. And if there is attorney-client privilege or
16 work-product privileged claims with any of the requests,
17 especially with number 57, which is where I think possibly
18 you might actually -- something may or may not exist, then
19 you need to provide a log.

20 MS. LISTON: Yes, Your Honor.

21 THE COURT: Is that sufficient?

22 MS. MANESS: Yes, ma'am. Thank you.

23 Mr. Tanenbaum is pointing out that it may be that
24 the spreadsheet is done in such a way that you might need a
25 key to understand what it says. If there is a key that

1 accompanies, or information that you can't interpret the
2 spreadsheet, we would like the key.

3 THE COURT: That's -- if there is such a key, that
4 needs to be produced, as well.

5 And I'm assuming you can reconvene any deposition
6 you need with regard to that report, as well.

7 MS. MANESS: Thank you.

8 THE COURT: Anything further with 957 and 107?

9 MS. MANESS: No, ma'am.

10 THE COURT: Now, do we need to discuss -- let's
11 see -- the defendant had evidently said that they would
12 search for nonprotective documents submitted to NHTSA
13 concerning the fitness of subject tires on substantially
14 similar RVs from the date of the manufacture of tire at issue
15 to the date of plaintiff's accident, July 6th 2010.

16 I think there is no way to determine what a
17 substantially similar RV is. I'm going to want -- I think
18 you need to produce any NHTSA report concerning fitness of
19 the subject tire.

20 MS. LISTON: Your Honor, I think when we were
21 before Judge Duffy, he indicated that the RVs would be Class
22 A RVs, and so we -- but --

23 THE COURT: Is that sufficient for the plaintiff?
24 Can y'all agree on a limitation on that so that I don't have
25 to try to figure out what a substantially similar RV is?

1 MS. MANESS: Yes, ma'am. Thank you.

2 THE COURT: All right. Thank you.

3 Request number 68. It has been difficult to tell
4 what has been produced and what has not been produced. But
5 let me let Ms. Maness go first.

6 MS. MANESS: Your Honor, request number 68 is the
7 inner liner targets and minimums referenced in the GMS
8 computer, which is the Global -- gosh, I just --

9 THE COURT: Global -- it's not the Global Design
10 Manual.

11 MS. MANESS: Global Materials and Specifications.
12 Have I got that right?

13 MS. LISTON: No, it's the Global Master
14 Specifications.

15 MS. MANESS: Master Specifications. Sorry.

16 And with that, the testimony so far is this: This
17 tire was designed -- and this is per Mr. Koerner -- and I
18 suspect that that's -- his deposition testimony is in the --
19 (Redacted).

20 THE COURT: A GMS computer?

21 MS. MANESS: Yeah. And he said, If I had looked
22 at it and it had been different than what we did in Buffalo,
23 I would have followed it, but we ain't got it.

24 And whether you call it the -- I think that the
25 defendants took issue with what we were calling it -- but

1 regardless of what you do call it -- and let's see, I think
2 the distinction is -- the Global Design Manual, the Global
3 Master Specifications, whatever it is, we don't have it.

4 And again, our original discovery request number 11
5 as far as this relates to the inner liner covers this.

6 THE COURT: We are talking about just the subject
7 tire at this point?

8 MS. MANESS: Yes, ma'am, we are talking about the
9 subject tire.

10 THE COURT: All right. Ms. Liston?

11 MS. LISTON: The request that is at issue 68, if
12 you look at the actual request, it refers to testimony by
13 Terry Parsons.

14 THE COURT: That's right. As opposed to Koerner.

15 MS. LISTON: So Terry Parsons, if you review his
16 testimony, he's talking about the Global Master
17 Specification; he's not talking about a design manual.

18 And so what was produced in response to that request
19 were -- or what we referred to were actually -- strike that.
20 Actually, I searched for the visual standards, which are the
21 Global Master Specifications for the inner liner. We
22 produced those to plaintiff. We also -- and I can give you
23 the Bates label for those if you give me a second --

24 THE COURT: We can do that later.

25 MS. LISTON: Okay.

1 THE COURT: Let's go to the substance first.

2 MS. LISTON: And so the Global Master Specification
3 is going to tell you for an inner liner that there is
4 tolerances when you design the tire. So let's say it's
5 supposed to be, let's say an inch, right? And so let's say
6 the inner liner -- I'm just giving you numbers -- but it will
7 say to you is what is acceptable is that you can manufacture
8 that tire to three-quarters of an inch or an inch and a
9 quarter and anything in between that is okay. Outside of
10 that, then you have protocols that need to be addressed and
11 looked at for the tire. And so those Global Master
12 Specifications provide that information. It's to provide
13 information about what the tolerances, the minimum, what the
14 maximum needs to be for those tires.

15 We also, prior to one of the other G670 corporate
16 rep depositions, produced additional Global Master
17 Specifications that addressed that issue. Also, they have
18 the drawing that was, I believe it was December 2005 for this
19 tire, which identifies what the minimum should be, which --
20 or what they design the tire to versus Goodyear's minimums.
21 There is a little discrepancy about the two different
22 minimums. But they have that information.

23 (Redacted).

24 THE COURT: Slow down one second. I'm trying to
25 find it.

1 MS. LISTON: (Redacted).

2 THE COURT: Exhibit what?

3 MS. LISTON: Exhibit N, as in Nancy. That would
4 be probably confidential testimony. I'm not sure.

5 THE COURT: It may not be in here.

6 MS. LISTON: I can read it slowly.

7 THE COURT: Yeah. We don't have that. All right.

8 MS. LISTON: (Redacted.)

9 So nobody has relied on the Global Spec Manual,
10 whatever he's describing there. But they -- the request
11 nonetheless asks for the Global -- the G -- sorry -- the
12 Global Master Specification, which has been produced to them
13 in this case and they have relative to the subject tire at
14 issue here. I know --

15 THE COURT: Are you saying -- are we trying to say
16 that there is a GMS, there is data in a GMS computer; there
17 is also a Global Design Manual, there is a separate document?

18 MS. LISTON: Yes, there is a Global Design Manual
19 that we told them on numerous occasions that is trade secret.
20 That's kind of their formula --

21 THE COURT: Well, I'm not too worried about that
22 because we've got confidentiality orders for trade secrets.
23 But my question is: Whether there is testimony that was used
24 or not, if there is a Global Design Manual that references
25 the subject tire, that's what you want?

1 MS. MANESS: Yes, ma'am. Because the testimony is
2 it trumped what was going on in Dunlop.

3 MS. LISTON: The testimony by the designer is he
4 did not use that. And it's not --

5 THE COURT: But I think that's -- I understand. But
6 I mean, still if it relates to -- I mean, they can explain it
7 all they want. This is just about whether or not they get
8 to see it, get to see the Global Design Manual and whether or
9 not it's relevant. If it's about the subject tire, I think
10 you have to produce it. But hold on. Let me chat with
11 my --

12 Okay. I mean, I think that it's -- it's relevant
13 or it's, you know, calculated to lead to discovery of
14 admissible evidence.

15 MS. LISTON: So the trade secret portion goes in
16 together with what Mr. Ott is going to argue where they have
17 to show that there is some kind of need that outweighs our
18 protection of that trade secret information? I mean, it's a
19 super secret document that if it gets out will be harmful to
20 Goodyear.

21 THE COURT: I trust that when it's -- if it's
22 produced pursuant to a Confidentiality Order that it will not
23 get out, so to speak, otherwise, except in the context of the
24 litigation. And I mean, it might be relevant to an expert
25 witness they have, that there was another -- I don't know

1 what it says in the Global Design Manual, how different it is
2 from the GMS specs, but perhaps it's relevant to an expert
3 witness's opinion.

4 I just don't see -- and I'll let -- we'll get to the
5 trade secret part in a minute -- but I don't see from a pure
6 discovery standpoint why that should not be produced.

7 MS. LISTON: Your Honor, I just have one concern,
8 but that they have cocounsel in this case who has been
9 seeking other courts to try to compel production of our
10 confidential documents in this case. And I'm concerned that
11 that protection under our Protective Order could be, um, kind
12 of countered by his actions in another court.

13 And we have an affidavit in our possession by Mr.
14 Fountain, who was filing an affidavit in another lawsuit
15 that -- and I can provide you a copy with it -- where he's
16 trying to get confidential documents in this litigation in a
17 California court.

18 THE COURT: Have you provided it to plaintiff's
19 counsel --

20 MS. LISTON: Um --

21 THE COURT: -- before today?

22 MS. LISTON: Plaintiff's counsel wrote it. He is
23 cocounsel in this case.

24 THE COURT: I'm sorry. The folks here in the
25 courtroom today. Because they are not necessarily privy to

1 what their cocounsel does in another case.

2 MS. LISTON: I don't know if they have a copy of
3 it, but I can give them a copy of it.

4 MR. TANENBAUM: I can assure you that whenever this
5 court orders that what we do with these documents, that is
6 all that will be done with them. And if some other court
7 orders Goodyear to produce the same documents there that they
8 produced here, that's a whole different matter.

9 THE COURT: That's a separate court with a
10 separate --

11 MR. TANENBAUM: Separate court; separate
12 jurisdiction. I can assure Your Honor that whatever I'm
13 ordered to do here is what I'm going to do.

14 THE COURT: I'm happy to bring in cocounsel and tell
15 them the same thing, but I'm happy to look at the affidavit,
16 too.

17 MS. LISTON: Can I please?

18 THE COURT: This will be Court Exhibit 3.

19 MS. LISTON: These are just the concerns that we
20 have.

21 THE COURT: Right.

22 MS. LISTON: I'm sorry.

23 THE COURT: Well, it's lengthy and I'm not going to
24 take the time during the hearing to read it right now. I'll
25 reserve ruling on the issue until we have a chance to review

1 it. I also want to hear, of course, the trade secret side
2 of it, as well.

3 MS. LISTON: Thank you, Your Honor.

4 THE COURT: Are we ready for that at this point or
5 do you want to respond to anything further?

6 MS. MANESS: I would like to respond for just a
7 second.

8 THE COURT: Because I mean, you are just getting it,
9 too, I'm assuming, right?

10 MS. MANESS: This is a six-page affidavit. I saw
11 part of it at one point. I did not see the final affidavit.

12 And I would point out that in paragraph 29, which is
13 the very last paragraph, the very last sentence: "Under the
14 terms of the Confidentiality Order in *Hartsock*, I am
15 prohibited from giving the documents to anyone else. But
16 nothing in the Order would prevent Goodyear from producing
17 their own documents in another case."

18 THE COURT: I see. And I'm glad that's in there.
19 That is somewhat reassuring. But once again, you know,
20 another court might rule differently. You know, I can't
21 control that. All I can do is make sure that nothing gets
22 shared from this case in violation of the terms of the
23 Confidentiality Order. But anything further? You know,
24 give us time to review this, right?

25 MS. LISTON: Yes, Your Honor.

1 THE COURT: Do we want to move on to the trade
2 secret part of that right now or do you want to -- it's up to
3 y'all.

4 MS. LISTON: Also, Your Honor, it's the same
5 argument that he will raise. It will be duplicative
6 argument. So we can argue it now, but it's the same as
7 before, or it can be argued in conjunction with the Motion
8 for Protective Order.

9 THE COURT: All right. Let's -- I think it's time
10 to move on anyway. I think it's time to move on to the
11 Protective Order part of it anyway. And I know that y'all
12 are claiming attorney-client work-product doctrine with
13 regard to -- well, testing that Mr. Parsons did on the
14 subject tire after this accident.

15 One of my questions is -- and I'm going to let --
16 since that's actually defendant's motion -- let y'all go
17 first -- but one of the questions I have is: Would Mister --
18 I mean, because obviously Mr. Parsons' job is, in the
19 ordinary course of business, is to test these tires. My
20 question is: Would this -- would he have done this with or
21 without the request of counsel?

22 MR. OTT: The answer, Your Honor -- good morning
23 again. My name is Curtis Ott.

24 THE COURT: Yes, sir.

25 MR. OTT: The short answer is addressed in his

1 affidavit, and that of Mr. Stroble, is that but for the
2 litigation they would not have been asked to take a look at
3 the tires on the subject vehicle; to include the companion
4 tires.

5 And, Your Honor, it's -- I think that that question
6 probably stems from their statement in their response to our
7 motion that this issue has been twice briefed and twice ruled
8 upon. And I want to make sure that the -- that is
9 clarified. Because that is actually not an accurate
10 statement.

11 What was ruled upon in the motion we previously
12 filed in February of 2014 was our request that Mr. Parsons,
13 and indeed another gentleman named Mr. Stroble, be shielded
14 from depositions --

15 THE COURT: Totally.

16 MR. OTT: Totally.

17 THE COURT: And Judge Duffy said no, they can be
18 deposed.

19 MR. OTT: Exactly.

20 THE COURT: But because their normal course of
21 duty -- they are not being asked to do anything that is not
22 within the normal scope of their duties. But he left open
23 the specific assertion of privilege and work-product doctrine
24 during the course of the deposition.

25 MR. OTT: Exactly, Your Honor.

1 So the initial is are they nontestifying consultants
2 who can be shielded? And the Court said no. And because
3 the analysis is is that they do this as part of their regular
4 job duties, then they can be deposed.

5 Well, at that point we filed the Motion to
6 Reconsider and specifically raised this issue of, We want to
7 understand the Court's ruling to make sure, number one, we
8 abide by it; and number two, we understand whether we are
9 allowed to assert privilege, as we would normally, to include
10 attorney-client privilege. But also in this case Rule
11 26(b)(3), which of course the work-product doctrine is
12 derived from. That is a much different scope and much
13 different privilege. And I can get to the difference in
14 that.

15 THE COURT: Well, I understand that work-product is
16 wider -- you are speaking of the difference between
17 attorney-client privilege and work-product doctrine?

18 MR. OTT: Correct.

19 THE COURT: I'm assuming a lot of this is
20 work-product as opposed to attorney-client communications?

21 MR. OTT: It's a mixture. When, of course, we
22 asked them to get involved, we asked them what you find --
23 what you found. We asked them what your opinions are, what
24 your measurements are. So it's indeed communications with
25 counsel in anticipation of litigation at the advice and

1 indeed request of counsel, and otherwise they would not have
2 been involved if we had not specifically asked them.

3 And so we raised this issue with Judge Duffy and
4 specifically asked him to address are we allowed to still
5 assert these privileges? And in his June 16th, 2014 Order,
6 he included this paragraph -- and I submit to Your Honor that
7 if you would have accepted the plaintiff's argument in this
8 case, this paragraph is inconsistent, superfluous, and
9 completely meaningless -- but here is what the paragraph says
10 on -- at the top of page 6: "The Court finds unpersuasive
11 defendants' assertion that they will suffer manifest
12 injustice when the depositions go forward because plaintiff
13 will be afforded unfair, unwarranted and unjustified access
14 to the opinions, thoughts and mental impressions of their
15 adversary in high stakes litigations."

16 So the Court recognizes that that is a legitimate
17 concern, but he says it's not an issue here. Because the
18 next sentence reads: "Although the Court has held that
19 Mr. Stroble and Mr. Parsons are not protected from deposition
20 under Rule 26(b)(4)D), nothing in the May 5th Order prevents
21 defendants from properly asserting the protections of
22 attorney-client privilege or the work-product doctrine with
23 respect to certain testimony or documents specifically
24 related to this litigation."

25 So now we go to Rule 26(b)(3), and: "Ordinarily a

1 party" -- in this case the plaintiff -- "may not discover
2 documents and tangible things that are prepared in
3 anticipation of litigation or for trial by or for another
4 party" -- so in this case Goodyear -- "or its
5 representatives." That's the rule. You can't get it if
6 it's prepared in anticipation of litigation. We have proven
7 that --

8 THE COURT: I understand. I understand.

9 More of my concern is about Mr. Parsons' normal job
10 versus what he's asked to do in anticipation of litigation.
11 And his affidavit says that, but it's rather conclusory. So
12 I'm interested in why it wouldn't have been his normal job to
13 test a tire that had resulted in a blowout and a death.

14 MR. OTT: I think it is his normal job when there
15 is litigation that he will be involved because he's that type
16 of expert to go and do that within Goodyear.

17 THE COURT: Their in-house?

18 MR. OTT: I'm sorry?

19 THE COURT: Their in-house expert?

20 MR. OTT: He is an in-house expert, right.

21 But there has to be litigation for him to go do
22 that. And so he does get involved, and it is at the request
23 of counsel, and it is in anticipation of litigation because
24 that's part of what he does. And so in that -- I'm sorry.

25 THE COURT: Go ahead. Keep going.

1 MR. OTT: So in that instance when we have proven
2 that key fact, that a party has prepared this material and
3 come up with work-product opinion and fact information, then
4 the burden switches to them, being the plaintiff, under
5 subparagraph 2, to show that it has "substantial need for the
6 materials to prepare its case and cannot, without undue
7 hardship, obtain their substantial equivalent by other
8 means."

9 Well, they have not produced anything in this case
10 to say we are not able to obtain exactly what you are doing.
11 Our experts, in-house and otherwise, didn't get involved in
12 this case until after the lawsuit was filed. We had to go
13 to Alabama, get the subject tire, from what I've seen the
14 record and all the documents and orders that had to be
15 generated to make that monumental task come through, but we
16 did it collectively and jointly. None of us had seen it
17 until the lawsuit was filed. After the lawsuit was filed
18 was when the parties first had a chance to take a look at the
19 tires. And so they can obtain the substantial equivalent
20 without undue hardship through their own expert doing exactly
21 what our experts have done.

22 And more importantly, they have not provided you in
23 this record any evidence that they are unable to obtain the
24 substantial equivalent without undue hardship. And indeed,
25 I would submit that that's just not a proper thing for them

1 even to try to say to this Court because they have experts
2 that have been identified in this case -- and indeed some of
3 them have been deposed, if not all of them -- who have
4 provided their opinions, who did the exact same thing that we
5 did. But now to come in and say, You have to give us
6 everything that your in-house people did, that would be going
7 beyond the scope of 26(b)(3).

8 And importantly, there is nothing in 26(b)(3) that
9 has anything to do with whether you do this in the regular
10 course of your business or not. That was an issue in
11 26(b)(4)(D), but it's not in 26(b)(3). All it required is
12 that you do it in anticipation of litigation, whether it's
13 your regular job duties or not.

14 Well, we would have to be able to go through and
15 evaluate a given tire and whether there are problems or not.
16 But we have to be able to do that as part of our defense
17 without sharing that same information with them, which they
18 are equally able to compile and obtain through their own
19 experts.

20 THE COURT: Okay. One rule of clarification
21 factually: Are you saying that everything that Mr. Parsons
22 does in the ordinary course of his job is in anticipation of
23 litigation?

24 MR. OTT: No. Everything having to do with
25 inspection of tires in this type of situation where a lawsuit

1 arises.

2 THE COURT: Or might arise, I guess.

3 MR. OTT: Doing the -- true. It could be in the
4 claims stage. But here, as we said, there was no situation
5 like that because none of us got the tires until after the
6 lawsuit was filed.

7 THE COURT: So Mr. Parsons, all this work was done
8 after the lawsuit was filed?

9 MR. OTT: Yes, ma'am.

10 THE COURT: All right. Ms. Maness?

11 MS. MANESS: Your Honor, I think I'm going to start
12 with page 15 of Mr. Parsons' deposition when this issue comes
13 up. It's Exhibit A on line 10 when Mr. Fountain first asked
14 the questions about --

15 THE COURT: Hold on one sec. Let's find it.

16 (Pause in proceedings.)

17 THE COURT: Do you have a docket number?

18 MS. MANESS: Exhibit A to our -- excuse me.

19 THE COURT: It might also be in that --

20 MS. MANESS: That turned out to be -- no, this is
21 not -- hold on, let me find -- the copy I have does not have
22 it across the top.

23 THE COURT: Was it attached to --

24 MS. MANESS: Yes, ma'am, it was.

25 THE COURT: Let's look and see what exhibit it is.

1 MS. MANESS: It was not.

2 THE COURT: It was not?

3 MS. MANESS: I'll give it to you.

4 THE COURT: We are talking about your Motion to
5 Compel.

6 MS. MANESS: Yes, ma'am. It was attached to Entry
7 Number 109. It was associated with Entry Number 109, but
8 according to footnote 2, Parsons' whole deposition.

9 THE COURT: All right. I think we've got it.

10 MS. MANESS: You do have it?

11 THE COURT: One second. What page? 15?

12 MS. MANESS: 15.

13 MR. OTT: Your Honor, I was just listening, I think
14 y'all are miscommunicating because I think you were looking
15 at the Motion to Compel and she's talking about her response
16 to the Motion --

17 THE COURT: Got it.

18 MR. OTT: -- for Protective Order.

19 THE COURT: That's why my brain is here.

20 MR. OTT: Didn't want y'all to miscommunicate.

21 THE COURT: We need two brains for this one.

22 MS. MANESS: I understand that.

23 I think it was also attached, though, to their
24 responsive --

25 THE COURT: Okay. We've got it now. We've got

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1 page 15.

2 MS. MANESS: All right. So 15 comes as a result
3 of the top of page 14 where Mr. Fountain asks Mr. Parsons:
4 "Can you tell us about your examination" -- meaning the
5 subject tire -- "what you did?" And right after that, Mr.
6 Toole instructs him not to answer. You get to page 15, line
7 10, because they have been discussing whether that was
8 appropriate, Mr. Toole says: "Is there a specific section
9 that says you get to ask questions of this witness, a
10 nondisclosed expert witness, into the substance of what his
11 inspection found pursuant to requests for counsel to do an
12 inspection?"

13 That is a good summary of what we are here about
14 today. I understand they are trying to draw a distinction.
15 We've had this argument. Mr. Toole used the very words that
16 Judge Duffy was dealing with not once, but twice.

17 Now, even if you take, you know, nondisclosed expert
18 witness out of it, prepared in anticipation of litigation
19 does not cover the work done in the ordinary course of
20 business. And this work was done in the ordinary course of
21 business. Judge Duffy has already found that the ordinary
22 course of business for this department is to examine tires.

23 And although Mr. Parsons' deposition raises a -- or
24 rather his affidavit -- raises some question about that,
25 trying to put it out there, when he was deposed in the

1 previous case of *Green vs. Goodyear* as the corporate
2 representative for Goodyear, he said that what his department
3 does is look at property damage claims that are over \$15,000,
4 the tires from those property damage claims that are over
5 \$15,000, all things that were in litigation. That is what
6 he's doing here. He could not have examined this tire
7 before this litigation started because nobody had the tire.
8 This gentleman in Alabama at the salvage yard had the tire.
9 It took a cooperative effort to get the tires out of them.
10 But nobody could look at this tire, these companion tires,
11 until after the litigation started.

12 So it's his job. Not only did he look at it, every
13 other engineer or person at his level in the department
14 looked at it. So it's not particularly special. And we
15 were not asking, Tell us what you were told to do, tell us
16 what you told the attorneys; we asked about his examination
17 of the tire and they shut it down.

18 Now, if Judge Duffy's paragraph on page 6 is read
19 the way the defendants would like it to be read, it got his
20 entire ruling. I'm going to let you take his deposition,
21 but I'm not going to let you ask about the topic that you've
22 already told me that you are going to talk about. That's
23 just nonsense. Because he said we could take the
24 deposition. And what's the point if we can't ask them any
25 questions about his job, which was to look at this tire?

1 That's all he was supposed to do was look at the tire. As
2 far as other sources of information, sure, our experts have
3 looked at this tire, our disclosed experts, as have their
4 disclosed experts.

5 But what they find in-house, you know, if their
6 measurements of this tire match our measurements of this
7 tire, they know daggone good and well that this tire was
8 defective because the requirements for this tire in the inner
9 liner, it has a target width, depth, whichever you want to
10 call it --

11 MR. TANENBAUM: Gauge.

12 MS. MANESS: (Redacted).

13 THE COURT: But do you have their expert opinion as
14 well? Mr. Parsons, I take it, is not going to testify at the
15 trial?

16 MS. MANESS: Mr. Parsons -- I don't know what Mr.
17 Parsons is going to do. I know that they maintained --
18 contrary to the depositions that were taken before our expert
19 reports, they maintained that in depositions when we asked
20 their employees, Can the gauge of an inner liner change from
21 the time it's manufactured to -- through its use in an
22 accident? And they said no, it stays the same. Their
23 expert report says they didn't know. It's a little narrower.
24 It's -- so they are contesting whether their own employees
25 are correct about the fact that the gauge stays the same

1 once -- (Redacted) -- the same down the road. That's what
2 their employees said. That's not what their experts are
3 saying.

4 THE COURT: I still don't see why you need it. In
5 other words, it's sort of like looking for an admission from
6 the company while they were investigating the litigation.
7 You are looking really for an -- that really doesn't have
8 anything to do with whether it's a defect or not.

9 MS. MANESS: What they find will either contradict
10 or support our findings.

11 And again, this was in the regular course of
12 business. This is what this department does. Day in, day
13 out, this is what they do. And I think Judge Duffy, you
14 know, found that in his Order. So I'm confounded by the
15 position that that one sentence on page 6 would essentially
16 eviscerate the point of taking his deposition.

17 THE COURT: All right. I'll let Mr. Ott respond.

18 MR. OTT: Your Honor, I mean, I've already gone
19 over, I think, the correct interpretation of that paragraph
20 from page 6. He wasn't -- Judge Duffy was saying, You lose,
21 you've got to produce him as a witness to testify in this
22 case, and we did produce him. The deposition I think lasted
23 eight hours.

24 So to say that he didn't have anything to talk about
25 during eight hours of testimony --

1 MR. TOOLE: Your Honor, may I? I don't know if
2 this one lasted eight hours, but they had had three hours
3 with that same witness in the *Green* case and multiple hours
4 in this deposition. If it was gutted at page 15 there was no
5 other substance.

6 MR. OTT: There were other things that Mr. Parsons
7 discussed and answered questions about in his deposition to
8 which we did not object.

9 But when it got to the 26(b)(3) work-product
10 privileged inspection, examination, measurements and
11 opinions, then at that point we, we say properly, asserted
12 our objection, our privilege and instructed him not to
13 answer. And then followed the correct procedure to bring
14 this issue before the Court.

15 Mr. Parsons is not our expert in this case. He is
16 not expected to testify. We've identified our expert. His
17 name is Mr. Joe Grant. And so his deposition is going to go
18 forward, I think, later this month.

19 So this also raises the issue from *Hickman vs.*
20 *Taylor*, Your Honor. And it goes back to that first question
21 about whether the plaintiff would be afforded unfair,
22 unwarranted and unjustified access to the opinions, thoughts
23 and mental impressions of their adversary in high stakes
24 litigation. This was addressed by the *Hickman* court. And
25 it says: "Discovery was hardly intended to enable a learned

1 profession to perform its functions on wits borrowed from the
2 adversary." They can do everything that Mr. Parsons did.
3 And indeed they have done everything that Mr. Parsons has
4 done.

5 They have not come forward with the requirement
6 under subparagraph 2 that they prove -- because there is
7 nothing in the record to prove this -- that they have the
8 substantial means for the materials to prepare their case and
9 cannot, without undue hardship, obtain their substantial
10 equivalent by other means.

11 And I also wanted to interject here at this point
12 here, Your Honor, they moved for summary judgment back in
13 April without this information, without this opinion and
14 work-product privilege information from Mr. Parsons. In
15 other words, they said that, as a matter of law, I can create
16 a record to show that I'm entitled to judgment in this case
17 based on the opinions of my expert, and that expert affidavit
18 was attached. That would belie their ability to say that I
19 cannot without undue hardship obtain the substantial
20 equivalent when they are even able to move for summary
21 judgment.

22 THE COURT: That is really not -- my issue is really
23 the ordinary course of business issue. And let me ask the
24 question sort of another way: So if there was no litigation
25 here, are y'all saying that Parsons would never have examined

1 the tire without the litigation?

2 MR. OTT: Outside of the claimed litigation
3 context, that is what we are representing to the Court.

4 MS. MANESS: That is not his testimony as the
5 corporate representative of Goodyear. His testimony was
6 death cases.

7 MR. OTT: Was, I'm sorry? I didn't hear you.

8 MS. MANESS: Death cases, cases involving death and
9 litigation and property damage claims over \$15,000.

10 I would also like to point out that work-product
11 privilege doesn't protect facts. So even if the Court finds
12 that there is some protection here for Mr. Parsons, it
13 doesn't protect the facts.

14 THE COURT: Meaning, like what his -- what their
15 finding was of the measurement?

16 MS. MANESS: Measurement. Just what you did. If
17 we can't ask him about his conclusions, we can still find out
18 what the facts were that were determined.

19 THE COURT: What do you say to that, Mr. Ott?

20 MR. OTT: Well, the privilege, as we set forth in
21 our memorandum on page 8 -- and this all again stems from
22 *Hickman vs. Taylor*, 1947 Supreme Court case, that the
23 privilege encompasses both fact work-product and opinion
24 work-product. "Fact work-product, which consists of
25 documents prepared by an attorney that do not contain the

1 attorney's mental impressions can be discovered only" -- and
2 this is a quote from the case -- "upon a showing of both a
3 substantial need and the inability to secure the substantial
4 equivalent of the materials by alternate means without undue
5 hardship. So again, it just takes us back to Rule
6 26(b)(3)'s language. And I think it's important, Your
7 Honor, because what stands out when you look at just Rule
8 26(b)(3) is that it says that these tangible things that are
9 prepared in anticipation of litigation or for trial by the
10 party or its representative. This is exactly what is
11 contemplated in the rule is the ability for a party to go and
12 do its own independent analysis when there is litigation at
13 stake and not have to share that with the opponent unless
14 they can come forward to meet their burden of showing
15 substantial need and inability to obtain the substantial
16 equivalent; which, again, there is no record to support their
17 position on that issue. Thank you.

18 THE COURT: Do you think that between Mr. Parsons'
19 deposition, and if there are one or two affidavits from
20 him -- I can't remember if it was one for the first 30(b)(6)
21 motion and then one for this one, too?

22 MR. OTT: I think there was a total of three in the
23 record before the Court. Something to do with how --

24 THE COURT: Do you think there is sufficient facts
25 with -- between the deposition and the affidavits -- for the

1 Court to rule -- I'm not going to rule from the bench, I'm
2 going to tell y'all I'm going to take it under advisement --
3 and because -- to me, it is the issue. It is -- I understand
4 your point, they've had access to the tire. I understand
5 that. But if this -- if Mr. Parsons' job -- if this is his
6 job and if it's in the ordinary course of business, that's
7 the issue to me. I just want to know if y'all want to
8 supplement the facts at all.

9 MR. OTT: I would be happy to. I think the very
10 language of the Rule 26(b)(3) where it says --

11 THE COURT: I'm talking about the facts. Are there
12 enough facts in the record for me to rule or does anyone want
13 to supplement this issue? Because I don't quite understand
14 your argument. I'm going to look at what the facts are and
15 what he testified to about what his job really was and
16 whether the tire would have been looked at in the ordinary
17 course of business, or whether or not he's an in-house
18 litigation expert. That to me is two different things.

19 MR. OTT: Based on the Court's question, Your
20 Honor, we would like to submit a supplemental brief on that
21 issue.

22 THE COURT: And then we'll see whether or not it
23 conflicts with the deposition testimony. All right?

24 MS. MANESS: Okay. Your Honor, I'm going to make
25 sure that the Court has the attachment to our entry number

1 109. I know that you had the page I was referencing, but I
2 may need to give you the entirety of it.

3 THE COURT: And was that -- are we talking about
4 Parsons' deposition or something else?

5 MS. MANESS: We are talking about Parsons'
6 deposition.

7 THE COURT: I don't believe we have the whole thing.

8 MS. MANESS: We are talking about Parsons'
9 deposition.

10 THE COURT: How many pages is it?

11 MS. MANESS: Um, probably 30.

12 MR. TOOLE: For the whole deposition?

13 MS. MANESS: For what we had attached.

14 THE COURT: We've got what you had attached, which
15 is about 30 pages. Does it include all his description of
16 his job and his duties?

17 MS. MANESS: Yes, ma'am.

18 THE COURT: All right.

19 MS. MANESS: And then we would also --

20 THE COURT: If you need to supplement with further
21 pages -- if it took eight hours, I don't need all eight. I
22 would rather not have all eight hours' worth.

23 MS. MANESS: We just wanted to give it to you.

24 THE COURT: Right. And if you wanted to supplement
25 anything further, any other deposition pages, you may do so.

1 MS. MANESS: Let me ask the Court this just for
2 clarification because I feel -- plaintiff feels that this has
3 been briefed before and the attachments to those briefs
4 are --

5 THE COURT: Are sufficient.

6 MS. MANESS: -- are applicable to this. Can, as
7 requested in our reply, can those prior briefings be
8 incorporated?

9 THE COURT: Sure. Absolutely.

10 MS. MANESS: Because those prior briefings -- and
11 they also included documents that were and excerpts that were
12 submitted to the Court in camera. So I probably do need to
13 go back and look and make sure that you have the same thing
14 Judge Duffy has.

15 THE COURT: That's fine.

16 MS. LISTON: Your Honor --

17 THE COURT: One second, please. I would rather
18 y'all -- I would rather not rely on Judge Duffy's chambers.
19 If y'all would submit to me directly pursuant to the
20 Confidentiality Order or anything he had that I need for this
21 issue.

22 MS. MANESS: Yes, ma'am.

23 THE COURT: That's what you are telling me.

24 MS. LISTON: As to the issue of the
25 confidentiality.

1 THE COURT: It's all being pursuant to the
2 Confidentiality Order. I'm not telling anyone about
3 anything. How about that? Except her.

4 All right. Now, not done yet. Butyl content.
5 Let's go on to -- let's see, for the record, part of the
6 motion for Protective Order is information in Parsons'
7 deposition that y'all say constitute confidential trade
8 secret information about content of the tire.

9 What I'm going to have y'all focus on first -- I'm
10 going to obviously let the plaintiff go first on this one,
11 because I don't understand, I mean, what the basis of
12 discovery on content is and whether or not there is a viable
13 defense theory developed at this time two years into the case
14 about that. That seems to me something new coming up that
15 didn't come up before. It might have come up during the
16 course of discovery in depositions, but I still don't
17 understand from the briefs what the whole basis is for butyl
18 content now.

19 MS. MANESS: If it would be helpful, I can hand up
20 our expert's report that addresses butyl content.

21 THE COURT: Sure. This will be Court's Exhibit 4.
22 And I'm assuming defendants have a copy, or you are giving
23 them one now?

24 MS. MANESS: It has also been marked.

25 THE COURT: Great. All the Court's exhibits will

1 be subject to the Confidentiality Order.

2 MS. MANESS: The butyl content was the subject of
3 earlier discovery. It's always objected to and never
4 provided on the basis of trade secret, even though we have
5 the Confidentiality Order in place.

6 In Mr. Carlson's expert report, if you look at page
7 10 in the third -- fourth full paragraph after the numbered
8 paragraphs, The plaintiff's theory is that this tire's inner
9 lining was too thin, and potentially the content -- I mean,
10 this has come up before -- was insufficient in the
11 compounding of what was in that inner liner to keep the
12 pressurized air from the inside of the tire from migrating
13 throughout the tire and causing damage. Both because it --
14 the pressure itself and the interaction of the oxygen with
15 the belts inside that will cause oxidation and cause them to
16 separate from the rubber compounds around them.

17 So plaintiff's theory has always been Intra-Carcass
18 Pressurization. I mean, it's been addressed with many of
19 the employee witnesses. Do you know what it is? Do you
20 recognize it? Things like that.

21 (Redacted).

22 And then two more paragraphs down: "If the compound
23 used and the manufactured thickness of the inner liner are
24 not sufficient to restrict the migration inflation
25 pressurized air through the inner liner and into the

1 structure of the tire, a known process referred to as
2 pressurization of the carcass or Intra-Carcass Pressurization
3 occurs." And that is plaintiff's theory of the failure of
4 this case.

5 (Redacted).

6 It is necessary to flush out his opinions. If the
7 halobutyl content isn't a good percentage, then that's a
8 contributing factor to the defect in this tire, or to the
9 failure of this tire. And that's sort of -- his opinions
10 relate to how this tire failed and the percentage of the
11 inner liner, that butyl rubber is a component of that.

12 THE COURT: And are you asking for what the design
13 called for? Because I think I understood whatever this
14 affidavit was that you really can't tell the rubber -- the
15 content now after the curing process?

16 MS. MANESS: But you can look at the formula and
17 know what it was supposed to be.

18 THE COURT: So you are looking for the formula for
19 it?

20 MS. MANESS: Yes, ma'am.

21 THE COURT: All right.

22 Mr. Ott or whomever?

23 MR. OTT: Thank you, Your Honor.

24 And formula's going to be the key word, Your Honor.
25 I cannot overstate the importance of this formula to my

1 clients; and indeed, to any tire manufacturer. This is --
2 this is their life blood. This is something that they have
3 spent literally millions and millions of dollars to
4 formulate, many, many, many hours of employee time, many,
5 many, many hours of research. Every tire manufacturer does
6 this.

7 You know, sometimes we talk about your trade secret
8 sort of flippantly, like everyone protects the relative's
9 favorite food recipe. There is no way I'm going to let you
10 know what is in my shrimp and grits despite how good it is.
11 And you ask that question, I'm not going to give it to you.
12 Even if it was disclosed, there would be no harm done.

13 What I want the Court's focus to be on is how
14 important this is. This is the recipe or the formula for
15 Coke. We cannot go any -- any -- anymore words to be added
16 to the situation to how much importance this is to any tire
17 manufacturer. So that's the context in which we analyze it.

18 And the Courts, in recognizing that trade secrets
19 are deserving of protection, have essentially established a
20 three-tier approach.

21 Number one, it's the burden on that party asserting
22 trade secret protection to establish: Number one, it's a
23 trade secret, and that dissemination of that trade secret
24 into the public would cause irreparable damage. I don't
25 think that they are contesting that portion. Their brief

1 admits that this is a trade secret and they haven't offered
2 any affidavit or any other record evidence to counter the
3 affidavits of Mr. Strobble and Mr. Parsons about how important
4 this is in this very, very competitive industry, and how they
5 would be damaged if this information were disseminated. And
6 so we've met the first stage. I don't think there is any
7 question about that.

8 The second stage then requires them to come forward
9 with evidence to establish that the information is
10 sufficiently necessary and relevant to his case to outweigh
11 the harm of disclosure. And that's a quote from the Fourth
12 Circuit 1996 *In Re: Wilson* opinion cited in their brief.

13 Moore's Federal Practice states: "The Courts are
14 loath to order the disclosure of trade secrets absent a clear
15 showing of an immediate need for the information requested."

16 Our State Supreme Court in 2010 decided *Lafitte vs.*
17 *Bridgestone*, which was essentially on all fours with this
18 case before Your Honor. In that case it was Bridgestone's
19 skim stock formula that was at issue. The trial court had
20 ordered it to be produced and a writ of certiorari was
21 granted to review this issue. And the Court in *Lafitte*
22 established the following: "That for the trade secret
23 information to be deemed necessary, we hold that the party
24 seeking the information cannot merely assert unfairness, but
25 must demonstrate with specificity exactly how the lack of

1 information will impair the presentation of the case on the
2 merits to the point that an unjust result is a real, rather
3 than a merely possible, threat."

4 So, Your Honor, what evidence have they produced in
5 this case, by affidavit or otherwise, to establish that very
6 high standing to show sufficiently necessary and relevant to
7 this case, and that immediate need recognized in Moore's
8 Federal Practice? And then again, that their case would be
9 hampered to the point that there would be an unjust result
10 that would be a real threat? And the answer is, is that
11 they haven't produced anything.

12 THE COURT: You are saying that their expert is
13 saying he needs it to be able to come up with their -- a
14 sufficient opinion. Are you saying that the theory the
15 expert has is bogus? Are you saying that the rubber content
16 doesn't have anything to do with the pressure moving around
17 inside the tire? That's my layperson's way of putting it.
18 Are you saying that? That that's not -- that that's not even
19 a viable theory?

20 MR. OTT: Well, our defense will be that that is an
21 incorrect theory that we'll prove at trial. And once our
22 experts have been deposed on that aspect, they can explain it
23 a whole lot better than I can. We certainly do not agree
24 with Mr. Carlson's opinions.

25 THE COURT: But it's a battle of the experts on

1 that, correct?

2 MR. OTT: As to the inner liner issue, yes.

3 THE COURT: I'm not talking about -- I'm talking
4 about the butyl content. You are saying your expert says
5 that's not relevant to a blowout, but theirs says it is and
6 would like to see it?

7 MR. OTT: What our experts have said is that you
8 cannot reverse engineer, that is, go back from a tire that's
9 been involved in an accident, a failure situation, and go
10 back and find out what the butyl content is. He also said
11 that you do not need to know the halobutyl content to
12 determine whether there was a manufacturing and design defect
13 in the tire.

14 THE COURT: Well, in other words, there can be a
15 defect even without the butyl content, but he's not saying
16 that the butyl content is irrelevant?

17 MR. OTT: Your Honor, exactly. And I mentioned
18 earlier they have moved for summary judgment --

19 THE COURT: I understand they think they can prove
20 their case without it, but that doesn't mean that they don't
21 have a right to it. And whether it's admissible or not at
22 trial is also a little different than discovery. But I'm
23 not telling you -- I'm not ruling on this now, I'm just --

24 MR. OTT: I understand.

25 I don't think that he says in his affidavit in a

1 couple of places that I would like to look at it establishes
2 an immediate need to obtain that. He hasn't explained
3 exactly why it's relevant and why I cannot prepare my case or
4 my opinions without it.

5 THE COURT: Well, I'll let you read this. If you
6 haven't had a chance to review this in anticipation of this
7 hearing, I'll let you do it. I don't mean right now. I'm
8 saying, you know -- and you can submit some sort of argument
9 about that if you rebrief it after this.

10 MR. OTT: All he said is is that, I've requested
11 that it be provided, but he hasn't explained the necessity of
12 it.

13 THE COURT: I think he sort of did, but -- the
14 little bit she read explained it to me. But I'm ---I haven't
15 read the whole thing yet. Because once again, are you
16 saying that butyl content can never be relevant in a tire
17 failure case?

18 MR. OTT: I'm going to have to let --

19 THE COURT: And that's a question -- even if you
20 can't answer it right now, all right? I'm going to let y'all
21 brief this issue again. I'm just going to tell you you can
22 brief it again. That's something I want. That, to me,
23 immediate need, if there is a defense theory that is just not
24 totally -- I mean, a plaintiff's theory that is just not
25 totally beyond the pale, that it's just absolutely not

1 relevant or isn't calculated to lead to the discovery of
2 admissible evidence, that's one thing, but we have -- without
3 you having had the chance to review this in that context, I
4 will let you do it and address the immediate need issue.

5 MR. OTT: Okay. And I understand Your Honor.

6 THE COURT: Let's move from that for a minute to why
7 the Confidentiality Order is not sufficient?

8 MR. OTT: Because then, Your Honor, it switches to
9 the balancing act and how the Court can protect the very,
10 very, very secret information that it is, and whether a
11 Confidentiality Order is going to be sufficient protection in
12 this case or otherwise.

13 Your Honor, I do want to note that indeed these --
14 this information was requested way back with that same
15 plaintiff's fifth discovery requests back in 2014. Request
16 numbers 64, 65 and 66 addressed the exact same butyl content
17 information and formula that they are asking for now.

18 These were served on April 1st, 2014. We objected
19 at that time, again asserting the same positions that we have
20 here, that this is highly confidential protected trade secret
21 information. We never received a -- any type of
22 correspondence from plaintiff's attorney saying, Well, we
23 need to meet and confer on this, or any type of Motion to
24 Compel related to it.

25 THE COURT: Until now.

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1 MR. OTT: Until now.

2 THE COURT: But I also note that the expert's report
3 is dated July 2nd, 2015. So I don't know when the expert
4 formulated that, you know, that he needed that for further
5 evaluation of his opinion. But I do note that that is not
6 until this summer.

7 MR. OTT: If that were so important, then it should
8 have been addressed back here. And that way then their
9 expert would have had presumably what he needed at that
10 point. I think it goes to showing that it wasn't that
11 important; and indeed, he prepared his expert opinion that in
12 their argument would be sufficient to enter judgment as a
13 matter of law in this very case. I think, again, that very
14 expert affidavit without this information shows that they
15 don't have the immediate need for it. But I understand the
16 Court's --

17 THE COURT: Feeling about that. Right.

18 MR. OTT: -- request to move along.

19 THE COURT: And one sec.

20 So, I mean, are you saying that a tire failure could
21 not -- and once again, this is something to address in a
22 supplemental brief if you can't answer it off the top of your
23 head -- I mean, a tire failure could have two causes, right?
24 Or it could have interlocking -- what Ms. Maness said --
25 which would make it -- the inner liner thickness is one

1 thing, and that the butyl content could make it even worse.
2 And I'm not -- once again, I'm just saying, we are talking
3 about whether it's an impossibility for butyl content to be
4 relevant or not.

5 And then the other thing I want you to think about
6 is whether or not there is some sort of modification to the
7 Confidentiality Order that the parties could agree to that
8 would tighten up the concern for y'all's issue.

9 Mr. Tanenbaum, I'll let you interject for a second.

10 MR. TANENBAUM: We've got a halobutyl content
11 formula from -- in a similar piece of litigation and we never
12 had a problem with that. Here it is five years later and
13 nobody has ever come back to say, Oh, We have our formula --
14 any Confidentiality Order and any modifications that are
15 reasonable will not be violated. Same experts in that case
16 as in this case.

17 MR. OTT: But what that does -- and I'm not trying
18 to pass any dispersions on any counsel in this case or any
19 other case -- but when you have multi -- multiple pieces of
20 litigation spanning across the United States and one court
21 rules in one way in another case, and some courts have a
22 nonsharing; some courts have a sharing, and you get into that
23 situation, the danger of this extremely vital and important
24 information getting out increases. That is the concern.

25 And I think that's why these formulas are provided

1 such incredible protection. And indeed, the only case they
2 cited in their response to our memo where it was ordered to
3 be produced was a case in California, the *Urbina* case. But
4 in that instance, they did submit an affidavit from their
5 expert allegedly establishing the substantial need that's
6 required to even get to stage 3. In this case, they have
7 not.

8 THE COURT: Well, I'm going to let them -- because
9 y'all understand my concerns, I'm going to let them
10 supplement, like I'm going to let y'all supplement and brief.
11 And if there are any additional cases that are more specific
12 to this type of trade secret -- I mean, I was thinking about
13 the Coke example. Are you telling me that if someone died
14 from some sort of poisoned Coke that the formula wouldn't
15 be -- or the manufacturing -- the formula wouldn't be
16 released in a very, you know, limited way so that an expert
17 could determine whether it was a formula was the problem or
18 whether or not there was a manufacturing issue, where if
19 something else got injected into it?

20 MR. OTT: I think unless someone came forward with
21 expert testimony establishing exactly why that Coke formula
22 is specifically relevant to this opinion and that I cannot go
23 forward with my case without it --

24 THE COURT: That's different. You just added in
25 something, I can't go forward with my entire case without it.

1 I don't know that that's -- there might be a case that says
2 something about that, but I don't think that's the standard.
3 That's impossible to prove any type of -- I mean, if it's
4 relevant to a tire failure -- if it's possibly relevant to
5 the tire failure, then --

6 MR. OTT: Your Honor, I just go back to the quote
7 from *Lafitte*, and I think it's all on fours with this exact
8 situation in interpreting South Carolina's Trade Secrets Act.
9 "For the trade secret information to be deemed necessary, we
10 hold that the party seeking the information cannot merely
11 assert unfairness, but must demonstrate with specificity
12 exactly how the lack of information will impair the
13 presentation" --

14 THE COURT: Impair the presentation. Impair the
15 presentation.

16 MR. OTT: -- "presentation of case on the merits to
17 the point that an unjust result is a real, rather than a
18 merely possible, threat."

19 THE COURT: Well, I mean -- I'll just tell you that
20 I think that if there is a supplemental contributing cause to
21 a tire failure or whether it's a separate potential entire
22 cause of the tire failure, that's pretty dang important to
23 the case. And pretty -- and first of all, the State of
24 South Carolina -- I'm not saying now that I'm not going to go
25 by its precedent, but I note that it is a state court

1 precedent. And what I -- hold on one second.

2 (Pause in proceedings.)

3 THE COURT: But I'm sure that they will supplement
4 on exactly how it's relevant to the case. And then I'm not
5 saying the state case doesn't apply, it might apply because
6 of the diversity nature of the case, but I'm just saying when
7 you are looking at the cause of a tire failure, if it has
8 possible multiple components that they can show is relevant
9 to that, that's important to me. Let's put it that way.

10 MR. OTT: And I understand. And I would submit
11 that if they could have shown it, then they should have shown
12 it in response to our Motion for Protective Order rather than
13 coming forward now. Their experts were deposed. I'm
14 sorry. I misspoke.

15 THE COURT: Their expert has not been deposed.

16 One question I have: Does the plaintiff have an
17 expert that says what the butyl content of the formula should
18 have been? What the formula should have been?

19 MS. MANESS: I don't believe that Mr. Carlson has
20 expressed that at this point.

21 THE COURT: Well, whether that's in the supplement
22 remains to be seen.

23 Yes, sir?

24 MR. TOOLE: I'm not aware of that. Mr. Carlson's
25 deposition is set for the day after tomorrow. So

1 presumably -- I'm sorry.

2 MR. TANENBAUM: Go ahead.

3 MR. TOOLE: Presumably, if he has opinions with
4 regard to what it should have been, I'm sure he will express
5 them.

6 But, Your Honor, just to clarify, it's -- we have
7 been talking about there is only two ways this tire could
8 detread or separate, and that it would have to be something
9 to do with a formula or something to do with the thickness of
10 the inner liner. And there has been representations that --
11 (Redacted) -- are taking a tire that is seven years old and
12 has thousands, 40,000, 35,000 miles on it and they are trying
13 to say this was the new tire specification, and the new
14 tire -- (Redacted) -- 35,000 miles down the road.

15 They are also ignoring the fact that there is
16 another reason for tread separation and that's abuse of the
17 tire.

18 THE COURT: I understand there are other defenses of
19 the case. I have read enough about it to know that they have
20 other proof problems. But that's really -- my issue is --
21 really is in discovery, whether or not this butyl content is
22 important enough to their theories of the case that it should
23 be disclosed in the strictest of confidentiality.

24 Let me ask you this -- and y'all can refer me to the
25 cases in the orders -- has the butyl content been disclosed

1 in previous litigation and has there been any drastic sort of
2 harm to the company because of it? And that's a question,
3 once again, you may not know the answer to off the top of
4 your head. But that's something -- you know, that's a way
5 to show that the company has been harmed or it's a way to
6 show it's not -- there is not a potential for harm if it's
7 been previously produced and there has been no drastic impact
8 on the company.

9 MR. OTT: We will address that additionally, Your
10 Honor. Of course it only takes one horse leaving the barn
11 for that door -- for that bell to be unrung. So it's a mix
12 of my metaphors.

13 THE COURT: Let's see. I think we have a couple of
14 things that might be resolved or maybe not. Daniel -- next,
15 Daniel Badzinski?

16 MR. OTT: If I may? The motion that we filed as to
17 Mr. Parsons originally included three aspects. Plaintiff
18 says that they are only going to oppose the halobutyl
19 content, which I think we've discussed with Your Honor, and
20 the Rule 26(b)(3) work-product and attorney-client
21 information. So I think that covered all of Parsons. Ms.
22 Seiler, we moved on two bases, one of which they said we are
23 not going to oppose; the other one was the halobutyl content.
24 So the halobutyl --

25 THE COURT: Is in both.

1 MR. OTT: It's in Seiler -- the Seiler and Mr.
2 Parsons.

3 As to Badzinski, we of course had to file the Motion
4 for Protective Order. We raised two or three bases in that
5 motion. And their response simply was to say plaintiff does
6 not contest this motion.

7 So I would assume that the only item left for the
8 Court would be, as to Mr. Badzinski's motion, would be the
9 Court to enter an order granting the motion since it's not
10 opposed.

11 THE COURT: Is that correct, it's not opposed?

12 MS. MANESS: It's not opposed after we read the
13 deposition transcript.

14 THE COURT: So number -- Docket Number 105 as to
15 Mr. Badzinski, that is plaintiff consents to the relief and
16 the Motion for Protective Order should be granted, right?

17 MS. MANESS: Correct. We don't contest it. I
18 would say more it's moot, but however it gets characterized,
19 there is nothing for the Court to determine.

20 THE COURT: It's granted unopposed. All right.
21 And I think we have been over -- Ms. Seiler is going to be
22 similar. Is it Ms.? Yes, Ms. Seiler is going to be similar
23 to the Parsons.

24 MR. OTT: The only aspect of the Motion for
25 Protective Order as to Ms. Seiler that they are opposing is

1 the halobutyl content questions.

2 MS. MANESS: That is correct.

3 THE COURT: All right. So granted in part and
4 withheld in abeyance in part.

5 Anything further?

6 MS. MANESS: Yes, ma'am. Can I raise one other
7 issue?

8 THE COURT: Sure.

9 MS. MANESS: And I think there is disagreement
10 about whether I should raise this, but I'm going to do it
11 anyway because I'm standing in front of a judge.

12 We have noticed the deposition of their expert,
13 Mr. Joe Grant. I noticed it for a hotel close to the
14 airport in Charlotte, which is close to where he is. There
15 is disagreement over whether the deposition, as I understand
16 it, whether the deposition could be taken where we noticed it
17 or if we have to take it at Mr. Ott's office in Charlotte
18 where we didn't notice it.

19 My understanding of Rule 45 is that as long as
20 you've got a witness in the area within a hundred miles of
21 where he regularly transacts business or lives or works that,
22 you know, it's my call as to where I'm going to notice that
23 deposition.

24 Moreover, Mr. Grant's deposition has been taken at
25 the location we chose on previous occasions. So, you know,

1 we are standing here -- I know that Mr. Toole says he needs
2 to talk to Mr. Grant -- but I've got a judge and I have an
3 issue. So I'm going to go ahead and raise it because we
4 would like to take it at the Crowne Plaza near the airport.
5 They are telling us no and they need to take it at Mr. Ott's
6 office in Charlotte.

7 THE COURT: Mr. Toole?

8 MR. TOOLE: Your Honor, I'm sorry this is coming
9 up, but is it all right if I speak?

10 THE COURT: Sure.

11 MR. TOOLE: My name is Gary Toole.

12 And the way this came about is they had asked for
13 dates, which they are entitled to. We provided them dates.
14 We provided them locations where the witnesses would be
15 presented, and which is what they did for us.

16 In response, we took them where -- where they were
17 supposed to be taken. And now they are saying that this
18 hotel, or whatever -- I don't know Charlotte very well. I
19 did Google it, it looks like they are both -- I think one is
20 eight miles from the airport and the other is 11 miles or
21 something. There is like a three-mile difference. The
22 reason we noticed it there is it's in Mr. Ott's office in
23 Charlotte, and it's got conference rooms and all the things
24 that come with an office, and allow us to give a deposition.

25 In response, plaintiff's counsel requested if that

1 they wanted to take it at the Crowne Plaza instead because
2 they've got a lunch or something, I don't know. I don't
3 know. But I haven't talked to Mr. Grant. I told
4 plaintiff's counsel that, Just let me talk to him, and that
5 was not sufficient.

6 THE COURT: Mr. Grant evidently has been deposed at
7 the Crowne Plaza a couple of times before; is that what you
8 are saying?

9 MS. MANESS: Yes, he was.

10 MR. TOOLE: Your Honor, I don't know.

11 THE COURT: You mean in a different case?

12 MS. MANESS: In a different case.

13 THE COURT: I can't imagine what possible difference
14 it can make really to either of y'all. I'm not sure exactly
15 why you would want it at the hotel versus the office, the
16 convenience of an office, you don't always get that. I was
17 curious, is there a substantive reason?

18 MS. MANESS: Your Honor, Mr. Fountain prefers --
19 who is going to be taking his deposition in Florida --
20 cocounsel prefers to take it at the Crowne Plaza. That's
21 where we noticed it. Had they at some point not wanted to
22 take a deposition where our expert had suggested, we would
23 have been happy to take them somewhere else. But my
24 understanding in the past has been when I'm noticing a
25 deposition, I can choose the place.

1 THE COURT: I mean, I think you are right based on
2 the rule. 100 miles.

3 MR. TOOLE: Your Honor, I think that is a subpoena,
4 you can subpoena a witness. We were doing this voluntarily,
5 as we've done with all the other witnesses and they've done
6 with us. If it wasn't a gamesmanship, I don't think it
7 would affect the content of their deposition of having it at
8 a law office versus the Crowne Plaza.

9 MR. TANENBAUM: Not everything has been so
10 voluntary in the case. Not all the witnesses have been
11 produced where we wanted them to. We've had to subpoena
12 several witnesses, including staking out a particular home of
13 someone that --

14 MR. TOOLE: That would have been Mr. Badzinsky, who
15 left the employ of Goodyear.

16 THE COURT: Look -- all right. Let's just calm
17 down for one minute, all right?

18 This is an issue that is -- I mean, really, y'all
19 are going to fight about this? There is so much else
20 substantive that we are at odds about. I mean, I'm going to
21 expect counsel to work it out. But I think she does get
22 to -- I mean, maybe go ahead and subpoena him to the Crowne
23 Plaza, if that was necessary. But -- and I'm not blaming
24 you for raising it; I just think that counsel needs to take a
25 deep breath, and the, you know, convenience to you, Mr. Ott,

1 is, you know, really not the major consideration as far as
2 I'm concerned. So I don't think there is a legal, you know,
3 reason that you can say, No, we don't want to do it at the
4 Crowne Plaza.

5 MR. TOOLE: Just for clarification, it's not Mr.
6 Ott; it was me.

7 THE COURT: I'm sorry. Mr. Toole. But it was Mr.
8 Ott's office.

9 MR. OTT: He was graciously allowing us to use his
10 law office.

11 And I just ask for the opportunity to speak to the
12 witness before I --

13 THE COURT: I'm hoping y'all can work it out.

14 MR. TOOLE: Thank you, Your Honor.

15 MS. MANESS: Thank you, ma'am.

16 THE COURT: Anything further? All right. Thank
17 you very much. I'll look forward to your supplemental --
18 let's give you 14 days. Is that enough time for a
19 supplemental or do you need more?

20 MS. LISTON: I'm going to need more, Your Honor.
21 30 days.

22 THE COURT: 30 days.

23 MS. MANESS: Are we submitting at the same time or
24 serially?

25 THE COURT: I think you submit it at the same time.

1 You really need to do serially at this point? I think you
2 can pretty much anticipate -- I think y'all can probably
3 anticipate what is coming. So I would say at the same time
4 to avoid pushing this too far out.

5 I'm not sure what y'all's Scheduling Order is now,
6 when you are up for trial.

7 MR. TANENBAUM: Well, February.

8 THE COURT: And discovery ends?

9 MS. MANESS: October 1st.

10 THE COURT: October 1st, right. Y'all may need
11 some relief from that then.

12 MR. TOOLE: I'm not aware of there being a trial
13 date in place.

14 MR. OTT: Not before the January term.

15 MR. TANENBAUM: Just while we are here --

16 THE COURT: All these motions are referred to me,
17 but we'll tell Judge Duffy's chambers that we are letting
18 y'all have 30 days to supplement this. If y'all have an
19 issue with the discovery deadline or y'all can just move
20 before Judge Duffy, whatever you want. You may need relief
21 from that, is what I'm saying.

22 MR. TANENBAUM: So -- okay. I've got a day
23 certain November the 3rd, a month-long trial with Judge
24 Gergel, which it's the bellwether, the first bellwether
25 Lipitor trial, and I am full-time Lipitor right now.

1 THE COURT: Got it.

2 MR. TANENBAUM: And then we try the second Lipitor
3 trial in January. And -- unless we finish early enough in
4 November to start in December. And in this case Judge Duffy
5 and Judge Gergel have coordinated this case comes after that.
6 My only -- I'm just stating it now -- is that the first
7 bellwether -- we've all tried tire cases before. I have
8 never tried the bellwether Lipitor case. It's the first of
9 2,250. The Judge -- again, we are just finishing discovery
10 now, so --

11 THE COURT: Had y'all anticipated -- especially in
12 light of this 30 days I'm giving y'all -- had y'all
13 anticipated pushing the discovery deadline out on this case?

14 MR. OTT: Can I just add that the last, which I
15 think was the fifth Amended Scheduling Order from Judge
16 Duffy, has on it that there will be no further continuances
17 of these deadlines. So I'm just putting that out there that
18 we have been instructed that.

19 MR. TANENBAUM: We are not to ask for anymore
20 continuances.

21 THE COURT: Then 30 days is not going to work. I
22 think it needs to be 15. I'll give you 15 days, but I only
23 have --

24 MS. LISTON: To supplement.

25 THE COURT: To supplement, right. So that we can

1 rule, so that y'all can actually move forward. And if you
2 can get it done earlier, do it. But y'all understand what my
3 major concerns are.

4 All right. Thank you.

5 MR. TANENBAUM: If you could persuade Judge
6 Gergel --

7 THE COURT: That's where my realm of influence ends.

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I certify that the foregoing is a correct transcript from the
record of proceedings in the above-titled matter.

Amy C. Diaz, RPR, CRR

September 2, 2015

S/ Amy Diaz

AMY C. DIAZ, RPR, CRR OFFICIAL COURT REPORTER

Docket No. 16-_____

United States Court of Appeals for the Fourth Circuit

THEODORE G. HARTSOCK, JR., as Personal Representative of the
Estate of Sarah Mills Hartsock,

Plaintiff – Respondent,

v.

GOODYEAR DUNLOP TIRES NORTH AMERICA LTD, a foreign
corporation; and THE GOODYEAR TIRE & RUBBER COMPANY, a
foreign corporation

Defendants – Petitioners.

**FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

**GOODYEAR DUNLOP TIRES NORTH AMERICA LTD'S AND
THE GOODYEAR TIRE & RUBBER COMPANY'S
PETITION FOR PERMISSION TO APPEAL FROM
CERTIFIED INTERLOCUTORY ORDER**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 16- Caption: Theodore J. Hartsock, Jr. v. Goodyear Dunlop Tires North America Ltd.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Goodyear Dunlop Tires North America Ltd. ("GDTNA")
(name of party/amicus)

who is _____ a Petitioner _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☒ YES ☐ NO
If yes, identify all parent corporations, including all generations of parent corporations:
GDTNA is owned by SRI USA, Inc. and SRI America, Inc. Sumitomo Rubber Industries, Ltd wholly owns SRI USA, Inc., which wholly owns SRI America, Inc.
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☒ YES ☐ NO
If yes, identify all such owners:
Sumitomo Rubber Industries, Ltd is publicly held.

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: E. Duncan Gatchell, Jr.Date: 1/29/2016Counsel for: Petitioner**CERTIFICATE OF SERVICE**

I certify that on 1/29/2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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1/29/2016
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

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No. 16- Caption: Theodore J. Hartsock, Jr. v. The Goodyear Tire & Rubber Company

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Goodyear Tire & Rubber Company
(name of party/amicus)

who is _____ a Petitioner _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☒ YES ☐ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: E. Dana Getchell, Jr.

Date: 1/29/2016

Counsel for: Petitioner

CERTIFICATE OF SERVICE

I certify that on 1/29/2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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1/29/2016
(date)

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QUESTION PRESENTED¹

This request for interlocutory review raises an important legal issue for this Court's review: whether the district court erred when it applied Rule 26 and federal case law, rather than South Carolina law, in determining the burden of production and persuasion that must be borne to overcome trade secret protections owned by Goodyear Dunlop Tires North America Ltd. ("GDTNA") and The Goodyear Tire & Rubber Company ("GTRC") (collectively, "Defendants").² Defendants contend that, in evaluating discovery rights that attach to claims sounding in South Carolina law, federal courts sitting in diversity must apply the rules of privilege of the State of South Carolina, as construed by its highest court. *See* Fed. R. Evid. 501. To prevent unlawful disclosure of core trade secrets, amounting to a substantial deprivation of those property rights, Defendants petition this Court for interlocutory review of this error.

Defendants proved,³ Plaintiff conceded,⁴ the district court found in the Disclosure Order,⁵ and numerous court decisions confirm,⁶ that the chemical

¹ The facts necessary to understand the question presented are contained in the question presented and in the statement of the case.

² This Court may and should "consider any question reasonably bound up with the certified order, whether it is antecedent to, broader or narrower than, or different from the question specified by the district court. Jurisdiction extends to the order, not the question alone." WRIGHT & MILLER, 16 FEDERAL PRACTICE & PROCEDURE § 3929 (3d ed.) (collecting cases).

³ (Dkt. Nos. 107-3, 107-4, 130-7.)

⁴ (Dkts. No. 109 at 10; Dkt. No. 128 at 9.)

composition of the inner liner of a tire⁷ is a highly sensitive trade secret. It was also uncontested, in fact unanswered by Plaintiffs and unaddressed by the court below, that GTRC's Global Design Manual⁸ constitutes a highly confidential trade secret. Yet the district court ordered production of the trade secrets at issue. *See* (Dkt. Nos. 137, 143, 175) (the "Disclosure Order").

On reconsideration of the Disclosure Order, the district court revisited its direction to disclose these trade secrets to Plaintiff's expert (who has a long history of failing to honor intellectual property rights and confidentiality agreements, *see* (Dkt. No. 137 at 7–10; Dkt. No. 130 at 2–4; Dkt. Nos. 130-1, 130-3, 130-4, 130-6)), to the extent of certifying the Disclosure Order for this Court's review. The district court *sua sponte* stayed the Disclosure Order pending decision on this petition and pending any appeal that may be granted. (Dkt. No. 175 at 1–2.)

STATEMENT OF THE RELIEF SOUGHT

Defendants seek discretionary review pursuant to 28 U.S.C. § 1292(b) and Fed. R. App. P. 5 to avoid having to take a contempt with the attendant risk of a default. In the alternative, and to the extent necessary to afford relief, Defendants

⁵ (Dkt. No. 137 at 6, 9; Dkt. No. 141 at 2)

⁶ (Dkt. No. 130 at 1–2 (collecting cases).)

⁷ The portion of the composition formula in question here is the percentage of halobutyl, or simply butyl, a highly impermeable rubber, contained in the manufacturing formula for the G670RV295/80R22.5 inner liner manufactured by GDTNA (the "Butyl Content").

⁸ *See* (Dkt. No. 130-7 at 2–3, ¶ 6) (Decl. of K. Legge).

petition the Court to treat this petition as one for a writ of mandamus under 28 U.S.C. § 1651. *See, e.g., In re The City of New York*, 607 F.3d 923 (2d Cir. 2010) (granting a writ of mandamus to protect a claim of privilege).

STATEMENT OF THE CASE

The underlying case on the merits is a products liability action asserting that an alleged defect in a tire designed by GTRC and manufactured by GDTNA caused a fatal accident on Interstate Highway 26 in July of 2010. A primary point of contention in this case, as in most design defect cases under South Carolina law, is whether Plaintiff can offer a “feasible alternative design” that would not have performed as the tire in question (the “Subject Tire”) did under the same circumstances. *See Branham v. Ford Motor Co.*, 701 S.E.2d 5, 14 (S.C. 2010) (holding that “the exclusive test in a products liability design case is the risk-utility test with its requirement of showing a feasible alternative design”). Under South Carolina law, it is the actual tire as well the alternative design proposed by Plaintiff that are on trial.⁹

⁹ *See id.* at 16 & n.16 (requiring Plaintiff to “point to a design flaw in the product and show how his alternative design would have prevented the product from being unreasonably dangerous. This presentation of an alternative design must include consideration of the costs, safety and functionality associated with the alternative design,” an “analysis that asks the trier of fact to determine whether the potential increased price of the product (if any), the potential decrease in the functioning (or utility) of the product (if any), and the potential increase in other safety concerns (if any) associated with the proffered alternative design are worth the benefits that will inhere in the proposed alternative design.”).

Plaintiff identified as his expert Dennis Carlson who asserts that he will identify a defect in the Subject Tire and provide an alternative feasible design. Defendants have produced to Plaintiff approximately 1,400 pages of confidential and propriety information—schematic drawings, the development file on the tire, and various engineering specifications on the Subject Tire. Moreover, Plaintiff has been afforded access to the Subject Tire and Defendants' testing information concerning that tire.

Despite this extensive discovery, conducted subject to objections raised more than a year before, (Dkt. No. 100-2 at 18–19; Dkt. No. 100-4 at 2), Plaintiff unexpectedly moved years into the litigation to compel production of the Global Design Manual, (Dkt. No. 100), and, in depositions, asked multiple Defendants' witnesses to disclose the Butyl Content of the Subject Tire. The witnesses refused to answer at the instruction of Defendants' counsel. To resolve this late-developing discovery dispute, Defendants opposed the motion to compel, (Dkt. No. 104), and moved for a protective order as to the objectionable line of questioning in order to establish their right to withhold these trade secrets, (Dkt. Nos. 103, 107).

Plaintiff opposed the protective order, asserting (without evidentiary support) that he was entitled to discover those conceded trade secrets. *See* (Dkts. No. 109 at 10; Dkt. No. 128 at 9). Plaintiff argued that his right to discovery was governed by Federal Rule of Civil Procedure 26(c)(1)(G), as interpreted by *Coca-*

Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (D. Del. 1985), and not by consideration of South Carolina's substantive trade secrets law. *See* (Dkt. No. 128 at 8 & n.7).

Defendants strenuously opposed production of the Butyl Content and Global Design Manual, *see, e.g.*, (Dkt. Nos. 103, 105, 107, 116, 130), arguing, as they had "frequently done throughout this litigation," (Dkt. No. 174 at 6), that South Carolina law controlled what must be demonstrated to overcome a claimed trade secret privilege and that South Carolina's stringent standard had not been met. Furthermore Plaintiff had failed to tether his general claim of need to any specific point of fact at issue in the case. (Dkt. No. 116 at 7; Dkt. No. 130 at 4–5.) Defendants also offered a number of affidavits to support the status of the documents as trade secrets and to demonstrate the harm that would befall them should this information be disclosed. *See* (Dkt. Nos. 107-3, 107-4, 130-7). As Defendants pointed out, Plaintiff submitted no declaration or other evidence stating how the trade secrets were relevant to the issues before the Court or that their discovery was necessary to permit Plaintiff to prove that there was a defect or a feasible alternative design. *See, e.g.*, (Dkt. No. 116 at 6–7; Dkt. No. 130 at 4–5).

Moreover, Plaintiffs, despite being afforded months to develop the dispute through numerous briefs, offered no evidence in response to the affidavit of GTRC's Chief Tire Analysis Engineer explaining that the Butyl Content was

irrelevant to an analysis of a tire defect. (Doc. No. 103-3; Dkt. No. 130 at 5.) That expert, Terrence L. Parsons, averred that compound formulas, including the content of butyl in the formula for a tire, “do not reveal whether a tire containing those compounds will have satisfactory or unsatisfactory physical properties after it is vulcanized,” that the rubber formula cannot be determined from a finished tire, and that proper design, manufacture or the presence of a defect may be determined by examining the tire itself, and not otherwise. *See* (Dkt. No. 103-3 at ¶¶ 5, 13, 15 16; Dkt. No. 130 at 5).

The dispute was referred to a Magistrate Judge who concluded that Defendants could be compelled to disclose the Butyl Content, relying heavily on the reasoning and authority of *Coca-Cola Bottling of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288 (D. Del. 1985), which she quoted, either directly or through other authorities, six times. (Dkt. No. 137 at 3–11.) Although finding that the Butyl Content was a trade secret, disclosure of which, even under a protective order, might well harm Defendants, the Magistrate Judge relied on conclusory assertions, excerpted from the deposition of Plaintiff’s expert conducted without reference to the motion, to conclude that discovery was “necessary.” (Dkt. No. 137 at 6.)¹⁰ The Magistrate Judge did not address Plaintiff’s failure to make any

¹⁰ The Magistrate Judge did not engage the evidence presented by Defendants that simply knowing the manufacturing formula of a tire as it had existed, prior to production and curing, would not shed any light on the reasons

showing, under any standard, with regard to discovery of the Global Design Manual as it relates to the Subject Tire, simply ordering its disclosure. (Dkt. No. 137 at 2; *see* Dkt. No. 141 at 2.)

Defendants filed objections with the district court, challenging the Magistrate Judge's trade secret rulings with regard to disclosure of the Butyl Content and Global Design Manual. (Dkt. No. 141 at 2-3.) Defendants objected that the Magistrate had applied the wrong legal standard to Plaintiff's request for production, arguing that the correct standard was S.C. Code Ann. § 39-8-60(B), as interpreted by *Laffitte v. Bridgestone Corp.*, and that the showing made by Plaintiff fell far short of this standard. *See* (Dkt. No 141 at 4-5 & n.3, 6-7.) Defendants noted that *Laffitte* had rejected the conclusion of *Griego v. Ford Motor Co.*, 19 F. Supp. 2d 531 (D.S.C. 1998), which had held that the protections provided by S.C. Code Ann. § 39-8-60(B) do not apply to "a product liability action," (Dkt. No 14 at 5 n.3.)

that the Subject Tire failed to retain air pressure. Instead, she presumed from Plaintiff's expert's general observations that "the compound used [in] the inner liner" must be "sufficient to restrict the migration of inflation pressurized air" must mean that knowing the manufacturing formula of the inner liner was "a critical component of determining the cause of the tire failure." (Dkt. No. 137 at 6.) The Magistrate Judge further concluded that knowledge of the butyl content was necessary to evaluate a defense, (*id.*), relying upon Mr. Carlson's conclusory statement that he needed "to know what the butyl content" was in order to evaluate the defense "that [the] barrier gauge is also a layer of tire that prevents air permeation into the structure of the fire [sic]." That assertion however is illogical because barrier gauges do not contain butyl. *See* (Dkt. 170-4 at 2-3).

Application of the correct standard plainly requires protection from disclosure, Defendants explained, absent any evidence from Plaintiff, or even an explanation, of how “knowing the [b]utyl content of the inner liner, as opposed to Mr. Carlson’s observations of the tire at issue, will demonstrate a defect” or how “the failure to discover this information will adversely affect Plaintiff’s proof of the case.” (Dkt. No. 141 at 7.) Given that Plaintiff’s expert has stated that he will opine that the subject tire was defective for failure to maintain air pressure, as well as under his proposed alternative design, even without knowing the Butyl Content or reviewing the Global Design Manual, Defendants argued that no showing of necessity had been made. (Dkt. No. 141 at 7.) However, the district court, without further briefing or argument, adopted the Magistrate Judge’s “order as its own,” overruling Defendants’ objections. (Dkt. No. 143.)

Defendants then sought reconsideration, arguing that the “determination that Plaintiff met his burden warranting the discovery of trade secret information constitutes a clear error of law” in light of “the relevant case law.” (Dkt. No. 170 at 2). Defendants explained that *Coca-Cola Bottling of Shreveport, Inc.*, relied upon by the Magistrate was “contrary to case law relevant to the issues in this matter,” (*id.* at 5–7), as that case did not require a showing “with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point [such] that an unjust result is real, rather than a merely possible,

threat,” (*id.* at 7) (citing cases so holding). Defendants further explained that this was the standard for trade secret protection under a controlling construction of S.C. Code Ann. § 39-8-60 handed down by the Supreme Court of South Carolina. *See* (Dkt. No. 170 at 11–12). In the alternative to reconsideration, Defendants sought certification to this Court.

Plaintiff, in response to the reconsideration motion, offered no additional explanation of or support for the conclusion that disclosure was necessary. Plaintiff did concede that the Magistrate Judge relied heavily on *Coca-Cola Bottling Co. of Shreveport*. (Dkt. No. 174 at 4.) Plaintiff nonetheless opposed Defendant’s motion, arguing that “[t]he only law applicable to the issue before the Court is federal law,” citing district court decisions from South Carolina. (*Id.* at 4–5.) Plaintiff principally relied on *Griego*, 19 F. Supp. 2d 531, which had held that the South Carolina Trade Secrets Act (“SCTSA”), S.C. Code Ann. § 39-8-10 *et seq.*, “did not apply to any action that is not based on misappropriation of a trade secret or protection against such misappropriation” and so did not apply to a tort/products liability action against an automotive company. *Id.* at 533.

While conceding that this is contrary to *Laffitte* which had adopted a more demanding standard for whether trade secrets must be disclosed and had rejected *Griego*’s interpretation of the SCTSA, Plaintiff argued that South Carolina’s interpretation is not binding on federal district courts and has “no place in the

analysis of whether Defendants must produce” the trade secrets. (Dkt. No. 174 at 6–7.) Finally, Plaintiff contended that the issue did not meet the standards for § 1292(b) certification. (*Id.* at 9.)

On January 19, the district court denied the motion for reconsideration, declining “to alter” the Disclosure Order. However, the district court found that “the parties’ arguments as to what standard governs the parties’ dispute over Defendants’ trade secret” was “a controlling question of law as to which there is substantial ground for difference of opinion” and concluded that “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” (Dkt. No. 175 at 1.) The Court, *sua sponte*, stayed “[a]ll proceedings in this matter . . . pending Defendants’ application” to this Court “and, if granted, during the appeal.” (*Id.* at 2.)

Defendants now timely apply for review of that order and seek relief therefrom.

REASONS FOR GRANTING INTERLOCUTORY REVIEW

There are three reasons why the Court should exercise its discretion to grant interlocutory review of the Disclosure Order. First, there is a longstanding disagreement between the District of South Carolina and the Supreme Court of South Carolina regarding the applicability of the South Carolina Trade Secrets Act to discovery of trade secrets in civil actions; in fact, this is not the first time that

certification of that issue has been sought from a district court. *See, e.g., Griego v. Ford Motor Co.*, 19 F. Supp. 2d 531, 533–34 (D.S.C. 1998) (refusing certification of an order “concerning the applicability of the South Carolina Trade Secrets Act to federal court”). Second, there is a powerful argument that the district court erred in not applying the South Carolina Trade Secrets Act, in light of *Laffitte’s* controlling interpretation of South Carolina law and given Federal Rule of Evidence 501. Third, denying discretionary review would put Defendants to the unnecessary hazard of a contempt citation with possible default requiring further appeals of the issue, contrary to 1292(b)’s purpose of avoiding needless harm to the litigants by providing a more efficient way to resolve serious legal questions that arise during the course of litigation.

In certifying the Disclosure Order, the district court recognized these facts and, from its vantage, found that a definitive ruling from this Court now would not delay, but rather advance, the ultimate termination of this litigation, a determination to which this Court should generally defer. Moreover, there can be no question but that the interests in avoiding forum shopping and of federalism weigh in favor of this Court deciding whether the South Carolina law protections for trade secrets apply in federal as well as state civil cases in South Carolina.

While there is no appeal of right of discovery orders, even those ordering production of trade secrets, *see MDK, Inc. v. Mike’s Train House, Inc.*, 27 F.3d

116, 122 (4th Cir. 1994); *accord In re Naranjo*, 768 F.3d 332, 342 (4th Cir. 2014), the Supreme Court and this Court have both recognized the propriety of litigants seeking discretionary review when “confronted with a particularly injurious or novel privilege ruling,” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110 (2009), noting that “[t]he ‘safety valve’ of discretionary interlocutory review under 28 U.S.C. § 1292(b) is frequently a ‘better vehicle for vindicating [certain] serious ... claims than the blunt, categorical instrument of [a] § 1291 collateral order appeal,’” *Al Shimari v. CACI Int’l, Inc.*, 679 F.3d 205, 214 (4th Cir. 2012) (quoting *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 883 (1994)); *see, e.g., Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1185–87, 1198 (D.S.C. 1974) (certifying trade secret and other privilege issues for 1292(b) review by the Fourth Circuit), *accepting certified order Duplan Corp. v. Deering Milliken, Inc.*, 540 F.2d 1215 (4th Cir. 1976).

A. A Well-Developed Split of Authority Exists between the Federal Courts and the Courts of South Carolina on the Scope of Trade Secret Protections for Civil Litigants.

A line of authority in the District of South Carolina holds that “[t]he applicable standard concerning the discovery of trade secrets is set forth in *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288, 292 (D. Del. 1985).” *In re Sealed Air Corp.*, 220 F.R.D. 452, 453 (D.S.C. 2004); *accord Mustang Innovation, LLC v. Sonoco Prods. Co.*, No. 4:14-cv-3756, 2015 WL

4508830, at *2 (D.S.C. July 24, 2015); *Anthony v. Atl. Grp., Inc.*, No. 8:09-cv-02383, 8:09-cv-02942, 2012 WL 3597122, at *2 (D.S.C. Aug. 20, 2012); *Sensormatic Elecs. Corp. v. Tag Co. U.S. LLC*, No. 4:07-mc-181, 2008 WL 217113, at *2 (D.S.C. Jan. 24, 2008). This line has continued, unbroken, despite the South Carolina General Assembly's adoption in 1997 of "heightened protection for trade secrets and a greater showing required of persons seeking discovery of such trade secrets," *Griego*, 19 F. Supp. 2d at 532, which protections the District of South Carolina has since 1998 held to be inapplicable to all but trade secret misappropriation claims, *see id.* at 532–33; *accord Sturdivant v. Continental Tire The Americas, LLC*, No. 5:14-cv-02852, 2015 WL 263015, at *3 (D.S.C. Jan. 21, 2015); *cf.* S.C. Code Ann. § 39-8-60.¹¹

¹¹ S.C. Code Ann. § 39-8-60(B)(1) – (4) provides that

[i]n any civil action where discovery is sought of information designated by its holder as a trade secret, before ordering discovery a court shall first determine whether there is a substantial need by the party seeking discovery for the information. 'Substantial need' as used in this section means: (1) the allegations in the initial pleading setting forth the factual predicate for or against liability have been plead with particularity; (2) the information sought is directly relevant to the allegations plead with particularity in the initial pleading; (3) the information is such that the proponent of the discovery will be substantially prejudiced if not permitted access to the information; and (4) a good faith basis exists for the belief that testimony based on or evidence deriving from the trade secret information will be admissible at trial."

The District of South Carolina has so held despite the fact that nearly seven years ago, the Supreme Court of South Carolina made clear that “that the plain language of § 39–8–60(B) clearly indicates that trade secrets may be protected during discovery not only in misappropriation cases, but in ‘any civil action’ where trade secrets are sought during discovery” and that the SCTSA affords increased protection for trade secrets beyond that recognized by the ordinary balancing test of *Coca-Cola. Laffitte v. Bridgestone Corp.*, 674 S.E.2d 154, 161–62 (S.C. 2009) (quoting S.C. Code Ann. § 39-8-60(B)).

To meet the requirements of the SCTSA, the party seeking disclosure of trade secrets must show that the information is “relevant not only to the general subject matter of the litigation, but also relevant specifically to the issues involved in the litigation,” *id.* at 163, and that its disclosure is necessary by showing ““with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat,”” *id.* (quoting *In re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730, 733 (Tex. 2003)). Finally ““suitable substitutes must be completely lacking,”” *id.* (quoting *Bridgestone Am. Holding, Inc. v. Mayberry*, 878 N.E.2d

For commentary on this provision, see Ranee Saunders, *If I Told You Then I'd Have to Kill You: The Standard for Discovery of Trade Secrets in South Carolina*, 61 S.C. L. REV. 717, 718 (2010) (noting that “the specific language of this statute” is “unique to South Carolina,” and that “the test as applied by the supreme court [in *Laffitte*] affords increased protection to the holder of trade secrets than that of other jurisdictions.”).

189, 196 (Ind. 2007)); “[i]n other words, the trial court must evaluate whether there are reasonable alternatives available to the party seeking the discovery of the information, and ultimately, the trial court must require the discovery of a trade secret only when the issues cannot be fairly adjudicated unless the information is available,” *id.* (quotation marks omitted).

Applying this standard to an order directing disclosure by a tire manufacturer of its steel belt skim stock formula, the Supreme Court of South Carolina in *Laffitte* held that this standard had not been met where the proffered “expert testimony does not establish that if the experts were provided the skim stock formula and related manufacturing information, they would necessarily be able to opine on a defect; and (2) other methods, such as testing the tire itself, are available.” *Id.*; *see id.* at 157. The Court found that the “experts’ reasons for opining that the formula was necessary for their analyses do not rise to the level of specificity required for discovery of trade secrets” as one “did not elaborate on why it was “absolutely necessary” that he know the skim stock formula in order to render his expert opinion in the matter,” another failed to explain “how the occurrence of a tread belt separation should result in the automatic conclusion that the belt separation was related to the initial physical properties of the tire requiring disclosure of the skim stock formula,” and a third “provided no indication in his response at deposition that he had examined and subsequently discarded the

alternative theories propounded in his affidavit for the tire's failure." *Id.* at 163–64. Thus, the Court held compelled disclosure unwarranted on the ground that Plaintiff had failed “to adequately articulate how disclosure of the skim stock formula is critical to the analysis in this case” or to provide a “detailed indication as to how the case is incapable of being fairly adjudicated without the trade secret information.” *Id.* at 164. Furthermore, the trial court was found to have erred in ordering disclosure without analysis of “the availability of reasonable alternatives to the discovery of the trade secret” much less any conclusion that this information provided “the sole, or even the best, way to test for defects.” *Id.*

It cannot be gainsaid that *Laffitte* requires a much more exacting analysis than that called for by *Coca-Cola Bottling* or that performed by the Magistrate Judge who similarly ordered disclosure without such showings of relevance, necessity or suitable alternatives. (Dkt. No. 137 at 4–6.) Were there any doubt that the applicable standard is dispositive of whether disclosure should be ordered, Plaintiff's dogged opposition to consideration of *Laffitte* and the district court's certification of which standard applies should resolve it.

B. The District of South Carolina Erred in Denying Civil Litigants the Trade Secret Protections of South Carolina Law, in Contravention of Federal Rule of Evidence 501, and Well-Established Case Authority.

Application of federal common law, rather than South Carolina law as interpreted by the Supreme Court of South Carolina, to determine the scope of

Defendants' trade secret privilege in a South Carolina claim is obvious error.

Under Federal Rule of Evidence 501, "in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision."

See, e.g., Herbert v. Lando, 441 U.S. 153, 182 (1979) (citing Rule 501 and holding that because the cause of action arose under state law, the scope of any non-constitutionally grounded claim of privilege must be that of state law).

The interpretation of S.C. Code Ann. § 39-8-60 by the Supreme Court of South Carolina—that those protections apply to discovery in all civil actions—is conclusive of that statute's meaning. *See Republican Party of Minnesota v. White*, 536 U.S. 765, 809 (2002) ("We are, of course, bound to accept the interpretation of [the State's] law by the highest court of the State." (quotations marks omitted)). Moreover, *Laffitte* expressly rejected *Griego*'s holding that the SCTSA does not apply, depriving it of any authority whatsoever. *See* 674 S.E.2d at 161 n.9. The District of South Carolina's refusal to heed the law of South Carolina is not merely error, but offends principles of federalism and comity, calling for an exercise of this Court's supervisory authority.

Those cases which our research has disclosed which have had occasion to consider whether state trade secret laws apply to discovery in federal courts have followed Federal Rule of Evidence 501 without exception in applying the relevant state's law. *See, e.g., Pasadena Oil & Gas Wyoming LLC v. Montana Oil Props.*

Inc., 320 F. App'x 675, 677 (9th Cir. 2009) (noting that "[s]tate privilege law generally applies to state claims brought in federal court pursuant to diversity jurisdiction, Fed.R.Evid. 501," and applying that rule to a claim of trade secrets privilege); *McKellips v. Kumho Tire Co.*, 305 F.R.D. 655, 662 (D. Kan. 2015) ("Although there is no federal discovery privilege for trade secrets, state law governs privileges in civil diversity cases." (internal footnotes omitted)); *Davis v. Leal*, 43 F. Supp. 2d 1102, 1110 (E.D. Cal. 1999) (applying California law of trade secrets to question of whether party was entitled to discovery of certain information in a federal civil case); *Auto Owners Ins. Co. v. Totaltape, Inc.*, 135 F.R.D. 199, 203 (M.D. Fla. 1990) ("Florida privilege law controls in this declaratory judgment action for which Florida law provides the rule of decision. Therefore, defendant's federal case law does not apply" to trade secret objection to withholding discovery); *cf. Moloney v. United States*, 204 F.R.D. 16, 21 (D. Mass. 2001) (observing that "Federal Rule of Evidence, Rule 501 makes states law privileges applicable in many federal court cases," citing trade secrets protection as an example). This consensus follows naturally from the plain language of Rule 501, and also finds support in the Advisory Committee Notes to the Statute at Large adopting it. *See* 1974 Advisory Comm. Notes, Pub. L. No. 93-595, § 1, 88 Stat. 1926, 1933 (Jan. 2, 1975) (adopting Fed. R. Evid. 501 and noting that listed in an earlier draft among the privileges was that of "trade secrets").

C. The Certified Question Is Controlling, Is Subject to a Substantial Ground for Difference of Opinion, and an Immediate Appeal May Materially Advance the Ultimate Termination of the Litigation.

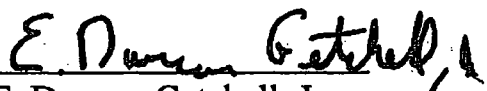
In certifying the Disclosure Order, the district court correctly found that the elements of 28 U.S.C. § 1292(b) have been satisfied. The certified question is controlling, there is a substantial ground for a difference of opinion because of a court split, and interlocutory review may materially advance the ultimate termination on the merits because immediate review permits an orderly decision without the necessity for a contempt with the risk of default. Certification is consistent with the Supreme Court's counsel that "when a privilege ruling involves a new legal question or is of special consequence, [the] district courts should not hesitate to certify an interlocutory appeal," *Mohawk Industries*, 558 U.S. at 110. It is also a faithful application of the view that "controlling means serious to the conduct of the litigation, either practically or legally," *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974) (en banc), and consistent with the recognition that resolving a privilege issue whose importance transcends that of any particular case avoids "harm to a party pendent lite from a possibly erroneous interlocutory order and . . . wasted . . . litigation expense," and, by moving past that issue, materially advances the case to ultimate termination on the merits. *Katz*, 496 F.2d at 755.

It cannot be supposed that the district court certified the Disclosure Order lightly, as it had previously declined certification under § 1292(b) in this very case stating that “the district court should grant this extraordinary remedy only in exceptional circumstances where early appellate review would avoid a protracted and expensive litigation process.” *Hartsock v. Goodyear Dunlop Tires N. Am. LTD*, No. 2:13-CV-00419-PMD, 2014 WL 11022098, at *3 (D.S.C. June 16, 2014) (quotation marks omitted). Having considered the probable gains and losses of immediate appeal on the question of whether to compel disclosure, the district court properly elected to certify the matter to this Court. (Dkt. No. 175.)

CONCLUSION

This Court should permit an appeal following which it should reverse and remand with instructions in keeping with South Carolina law and Federal Rule of Evidence 501.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2016, in accordance with Fed. R. App. P. 5, I filed by hand an original and three copies of the foregoing Petition for Permission To Appeal from Certified Interlocutory Order with the Clerk of this Court and pursuant to Fed. R. App. P. 25(c)(1)(B) & (D) served a true and correct copy of the same by mail and by electronic mail upon counsel for the Plaintiff at the addresses listed below:

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