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CENTRAL U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *UP*

DEPUTY

1 Michael Goldstein, Esq. (SBN 95128) ___
2 LAW OFFICES OF MICHAEL GOLDSTEIN
3 120 Birmingham Drive, Suite 200
4 Cardiff, CA 92007
5 Telephone: 760-436-1801
6 Facsimile: 760-436-8248

7 Attorneys for Plaintiffs' Counsel
8 Guy Ricciardulli, Esq.

9 **THE UNITED STATE DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 HAROLD J. PHILLIPS and)
12 GEORG-ANNE PHILLIPS,)
13)
14 Plaintiffs,)
15 v.)
16 GOODYEAR TIRE & RUBBER)
17 COMPANY, an Ohio Corporation, and)
18 DOES 1 through X, inclusive,)
19 Defendants.)

Cause No. 02 CV1642 (B) (NLS)
**ATTORNEY RICCIARDULLI'S
RESPONSE IN OPPOSITION TO
GOODYEAR'S APPLICATION FOR
ORDER TO SHOW CAUSE**

20 Plaintiffs' counsel Guy Ricciardulli, Esq. ("Attorney Ricciardulli") submits this
21 Response in Opposition to defendant Goodyear Tire & Rubber Company's ("Goodyear")
22 Application for Order to Show Cause as to why Plaintiffs' Counsel should not be Held in
23 Contempt for Violation of Protective Order.
24

25 This Motion is supported by the following Memorandum of Points and Authorities,
26 the Court's entire file in this matter, and any oral argument that the Court may wish to hear.
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37 JAA

1 **I. INTRODUCTION.**

2 Goodyear has asked this Court to hold Attorney Ricciardulli in contempt for allegedly
3 violating the Court’s June 13, 2003 Protective Order (Docket No. 22). Goodyear claims that
4 a violation occurred when Attorney Ricciardulli told another lawyer who is currently in
5 litigation against Goodyear – litigation involving the same tire, the same tire defect claims,
6 and the same Class of motor home - that a Goodyear corporate representative had essentially
7 made an admission of liability at his deposition.
8

9
10 *“Mr. Cox testified that Goodyear was aware of the fact that the subject tire – the*
11 *Goodyear “G 159” - did not perform properly when it was placed in use on a Class A*
12 *coach”*

13 * * *

14
15 *“I cannot recall with certainty the exact language that Mr. Cox used at his deposition*
16 *to describe the nature of the problem with the G 159 tire. However, I do recall being*
17 *very pleased with the candor of the testimony - which I construed as a clear admission*
18 *of liability.” (See Ricciardulli Declaration, paragraphs 5 & 6, filed herewith)¹.*

19
20 It is important for the Court to appreciate that nowhere in its Application has
21 Goodyear accused Attorney Ricciardulli of revealing any trade secrets or proprietary
22 information.

23 The Court should deny Goodyear’s Motion because:
24

25 _____
26 ¹ The tire at issue herein is a Goodyear G159, 275/70 R 22.5 tire (hereinafter a “G 159 tire”).
27 The subject testimony came from Goodyear employee, Mr. Kim Cox, whom Goodyear had
28 produced for deposition as a Rule 30(b)(6), Fed. R. Civ. P., corporate witness in the summer
of 2003.

1 (a) the plain language of the Protective Order protects from disclosure only proprietary,
2 trade secret or confidential business information that would work a material harm on
3 Goodyear should such information fall into the hands of its competitor tire manufacturers;

4 (b) the express terms of the Protective Order do not bar, and cannot be reasonably
5 interpreted as barring, disclosure of the fact of a prior Goodyear witness' testimonial
6 admission of liability in specific litigation; and
7

8 (c) in disclosing the testimonial admission of liability, Attorney Ricciardulli was in
9 substantial compliance with the Protective Order and acted on a good-faith, reasonable
10 interpretation of the Order.
11

12 **II. THE LEGAL STANDARD.**

13 To hold Attorney Ricciardulli in civil contempt, Goodyear must prove with clear and
14 convincing evidence that he violated a specific provision of the Protective Order. *Vertex*
15 *Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982); *see also In re:*
16 *Dual Deck Video Cassette Record Antitrust Litigation Go-Video, Inc. v. The Motion Picture*
17 *Association of America et al.*, 10 F.3d 693, 695 (9th Cir. 1993). This heavy standard requires
18 more evidence than does the preponderance of the evidence standard applicable to most civil
19 cases. *Battaglia v. United States*, 653 F.2d 419, 422 (9th Cir. 1981). A finding of contempt
20 is not appropriate if Attorney Ricciardulli's limited disclosure was in substantial compliance
21 with the Protective Order and "appears to be based on a good faith and reasonable
22 interpretation of the [court's order]." *Vertex Distrib., Inc.*, 689 F.2d at 889.²
23
24
25

26 ² "Substantial compliance" with a protective order is a defense to an application for contempt.
27 *Vertex Distrib., Inc.*, 689 F.2d. at 892; *see also Go-Video*, 10 F.2d at 695 ("Because Go-
28 Video substantially complied with a reasonable interpretation of the protective order, it could
not properly be held in contempt.").

1 Goodyear has failed to provide any evidence -- let alone evidence meeting its clear
2 and convincing evidentiary burden -- establishing that the Protective Order expressly
3 bestowed "confidential" status upon a witness' testimonial admission of liability. Goodyear's
4 failure is not surprising because the express terms of the Protective Order do *not* protect from
5 disclosure such testimonial admissions. To the contrary, the terms intend, on their face, to
6 protect only proprietary, trade secret, confidential commercial or business information that
7 would work a material harm on Goodyear if such information were to fall into the hands of
8 its competitor tire manufacturers.
9
10

11 Absent clear and unambiguous language which expressly precludes the disclosure of a
12 witness' admission of liability, or any language that would impliedly classify such an
13 admission as proprietary, trade secret or confidential business information, a finding of
14 contempt is clearly not warranted because Attorney Ricciardulli substantially complied with
15 the Order and made a good-faith and reasonable interpretation that the Order did not
16 preclude disclosure of the admission of liability.
17

18 **III. THE PROTECTIVE ORDER DOES NOT TREAT PARTY**
19 **OPPONENT TESTIMONIAL ADMISSIONS AS "PROPRIETARY"**
20 **OR "CONFIDENTIAL."**
21

22 The starting point for the Court's ruling on Goodyear's Application is the Protective
23 Order. As a practical matter, the Protective Order is a stipulated contract between the
24 Plaintiffs and Goodyear that was subsequently adopted by the Court as its Order. California
25 law on contract interpretation, therefore, provides guidance in evaluating the Protective
26 Order and determining whether Attorney Ricciardulli violated the same beyond substantial
27
28

1 compliance. *Vertex Distrib., Inc.*, supra, 689 F.2d at 892 (“Since ... orders have many of the
2 attributes of ordinary contracts, they should be construed basically as contracts....”); *see also*
3 *United States v. ITT Continental Baking Co.* (1975) 420 U.S. 223, 236-237
4

5 All contracts in California, whether public or private, are to be interpreted by the same
6 rules. *Cal Civ. Code § 1635*. A court must first look to the plain meaning of the contract’s
7 language. *Cal Civ. Code §§ 1638, 1644*. This first inquiry focuses on whether the express
8 provisions of the contract clearly and unambiguously prohibit a certain disclosure. If the
9 express provisions do not specifically prohibit a disclosure, it is logical and reasonable to
10 conclude that a violation of the express terms of the contract/order did not occur. A party
11 can not violate a term that does not exist in the order.
12

13 If the language in the contract is ambiguous, the second inquiry requires the contract
14 to “be interpreted in the sense in which the promisor [Plaintiffs and Attorney Ricciardulli]
15 believed, at the time of making it, and that the promisee [Goodyear] understood it. *Cal. Civ.*
16 *Code § 1649*. This inquiry does not consider the subjective belief of the promisor but, rather,
17 the “objectively reasonable” expectation of the promisee. *Bank of the West v. Superior Court*
18 (1992) 2 Cal. 4th 1254, 1265. “Although the intent of the parties determines the meaning of
19 the contract, the relevant intent is objective – that is, *the objective intent as evidenced by the*
20 *words of the instrument, not a party’s subjective intent.*” *Badie v. Bank of America* (1998)
21 67 Cal. App. 4th 779, 802 (internal quotation marks and citation omitted) (Emphasis added).
22 In other words, the past or current subjective intent of Goodyear about the treatment of the
23 testimonial admission of liability is immaterial; what is dispositive is whether Goodyear’s
24 expectation (i.e., that the admission by Cox would remain hidden forever by virtue of the
25
26
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1 Protective Order) is “objectively reasonable” based on the parties’ intent as shown by the
2 language of the Protective Order itself. As shown above already, the words of the Protective
3 Order make no reference to testimonial admissions and the intent of the Order was to guard
4 only true business secrets. As a consequence, Goodyear’s expectation is not “objectively
5 reasonable.”
6

7 If after this second inquiry any ambiguity remains, the language of the contract should
8 be interpreted strongly against the party who caused the uncertainty to exist. *Cal Civ. Code* §
9 1654.³
10

11 With the foregoing background provided, it is helpful to turn to the key provisions of
12 the Protective Order.

13 **A. A Testimonial Admission is Not “Proprietary” Under the Order.**

14 The recital to the Order shows the intent of the parties when seeking the Order. The
15 intent was to protect documents and testimony that contained sensitive commercial and
16 business information and secrets. For example, the recital states that “discovery requests
17 have been made calling for [Goodyear] to produce documents and information Goodyear
18 believes to be **proprietary and confidential.**” (*See* June 13, 2003 Protective Order, at p. 1,
19 Ins. 17-20) (Emphasis added). The Order expressly states that it is intended “to preserve the
20 confidentiality of said documents...” (*Id.* at ln. 24).
21
22

23 The Protective Order, however, does not define the term “proprietary.” As such, the
24 Court is to construe the undefined term “according to the plain meaning a layman would
25 ordinarily attach to them.” *Ray v. Farmer Ins. Exch.* (1988) 200 Cal. App. 3d 1411. The
26
27

28 ³ Goodyear drafted the proposed Protective Order that was entered by the Court.

1 undefined term is also “to be understood in [its] ordinary and popular sense....” *Cal. Civ.*
2 *Code § 1644.*

3 The term “proprietary” is commonly defined as “something that is used, produced, or
4 marketed under exclusive legal right of the inventor or maker; something that is protected by
5 secrecy, patent, or copyright against free competition as to name, product, composition, or
6 process of manufacturer; something that is used, made, or marketed by one having the
7 exclusive legal right (a process).” (*Webster’s Ninth New Collegiate Dictionary* (1983) at
8 p. 944). Applying this common lay definition of the term “proprietary” to the testimonial
9 admission disclosed by Attorney Ricciardulli, it is readily apparent that the disclosed
10 information is not “proprietary.”
11
12

13
14 The Cox admission is *not* a disclosure of a secret, a patent, or a copyright. The
15 Cox admission does *not* concern those types of subjects which are typically considered by
16 businesses as proprietary, such as Goodyear’s research, development data, tire adhesion
17 compounds or formulas, rubber compounds or ingredients, design specifications,
18 performance standards, testing protocols or results, the manufacturing or quality control
19 processes or any other type of information which could reasonably constitute confidential
20 commercial information. In fact, Goodyear has conspicuously failed to charge Attorney
21 Ricciardulli with disclosing any such proprietary information. Finally, the disclosure simply
22 is *not* the type of information that would work a material economic harm on Goodyear should
23 it fall into the hands of its economic competitors in the tire manufacturing industry.⁴
24
25

26 _____
27 ⁴ This is especially true in year 2007 because the G159 275/70 R 22.5 tire was pulled from the
28 market in 2003 and Goodyear permanently stopped its production the same year.
Information about the tire, therefore, is arguably stale. Moreover, while the disclosure of a

1 If there is any ambiguity in the Protective Order as to what constitutes “proprietary”
 2 information, that ambiguity supports a denial of Goodyear’s Application. “Where the
 3 language of a[n] [order] is too vague, it cannot be enforced; to do so would be an invalid
 4 exercise of judicial authority.” *Vertex Distrib., Inc.*, supra at 889; see also *International*
 5 *Longshoremen’s Assoc, Local 1291 v. Philadelphia Marine Trade Assoc.* (1967) 389 U.S.
 6 64, 76 (reversing a civil contempt judgment founded upon a decree too vague to be
 7 understood); *United States v. Joyce*, 498 F.2d 592, 596 (7th Cir. 1974) (reversing a contempt
 8 judgment because terms of a court order should be clear and specific and leave no doubt or
 9 uncertainty in the minds of those to whom it is addressed.).
 10
 11

12 The Protective Order does not define the term “proprietary” and does not include any
 13 reference to a witness’ testimonial admission. For these reasons as well, the Court should
 14 deny Goodyear’s application.
 15

16 **B. A Testimonial Admission is Not “Confidential” Under the Order.**

17 The Protective Order does not include the testimonial admission of liability within its
 18 definition of the term “confidential.” The Order at “definitions” section “A” defines the term
 19 “confidential:”
 20

21 The words “confidential,” “confidential information,” and “confidential material”
 22 describe information which **is or contains trade secrets, research, development and**
 23 **other proprietary matters including, but not limited to, methodology, technique,**
 24 **process, control, and evaluation** which any party believes in good faith pertains to
 25

26 testimonial admission of defect might expose Goodyear to liability in the collateral litigation
 27 over the safety of the G159 tire, that fact alone does not equate to economic harm brought
 28 about by a competitor in the tire industry learning a true secret about Goodyear’s product.

1 its trade or business and has independent value from not being generally known and
2 not being readily ascertainable by other persons who may obtain economic value from
3 its disclosure or use. In addition, such information is not normally revealed to others
4 except in confidence and is not revealed to others in the party's **trade or business** and
5 **is of the type that the party has made efforts to maintain as secret.**

6
7 (See June 13, 2003 Protective Order, at p. 2, lns. 3-9) (Emphasis added).

8 If the express definition of "confidential" does *not* include a Goodyear witness
9 admitting liability, a violation of the Protective Order could not have occurred. Moreover,
10 the definition of "confidential" cannot be artfully expanded by Goodyear years later to
11 somehow broadly include such an admission.

12
13 A corporate witness' admission of liability in a product case may be many things - it
14 may be embarrassing; it may affect the corporation's goodwill or reputation; it may prevent
15 Goodyear from denying a defect in collateral litigation. The one thing the admission
16 certainly is not however, is a confidential business or trade secret intended to be protected
17 from disclosure by the Protective Order. The Protective Order was intended by the parties to
18 protect true business secrets from competitors, not from litigation admissions. (See attached
19 Declaration of Guy Ricciardulli).

20
21
22 The clear and unambiguous language of the Protective Order does not bestow
23 "confidential" status on the testimonial admission of liability. Moreover, the clear and
24 unambiguous intent of the parties when entering into the Protective Order was to keep secret
25 from Goodyear's economic competitors its confidential commercial and business
26 information. It is not "objectively reasonably" for Goodyear to now argue that a testimonial
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1 admission of liability by its corporate representative in a deposition is now somehow
2 confidential when that was never expressed in the Protective Order and was certainly not
3 intended by the parties as demonstrated by the language of the Protective Order itself. *Bank*
4 *of the West* supra, 833 P.2d 545; *see also* attached Declaration of Guy Ricciardulli. On these
5 grounds alone, the testimonial admission is not “confidential.” The Court should deny
6 Goodyear’s Motion.
7

8 Again, if there is any ambiguity as to what constitutes “confidential” information in
9 the Protective Order, that ambiguity supports a denial of Goodyear’s Application. *Vertex*
10 *Distrib., Inc.* supra, 689 F.2d at 889; *International Longshoremen’s Assoc, Local 1291.*
11 *supra*, 389 U.S. at 76.
12

13 C. **An Agreement That the Cox Deposition Would Be Subject to the Terms of**
14 **the Protective Order Did Not Bestow Confidential Status On the Subject**
15 **Admission**
16

17 Goodyear’s Application relies heavily on the fact that Attorney Ricciardulli agreed
18 that the Cox deposition would be subject to the terms of the Protective Order. To support
19 this argument, Goodyear relies on the Protective Order at the “definitions” section “B”
20 provides. This section provides:
21

22 Information designated as “confidential” or “confidential information” or
23 “confidential material” shall be considered trade secret and fully protected by this
24 order. All portions of transcripts, depositions, exhibits, or other pleadings or filings in
25 this action **which contain or otherwise set forth documents, information, or other**
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1 materials, or contents thereof, which have been previously designated as
2 confidential, shall likewise be subject to the terms of this protective order.

3 (See June 13, 2003 Protective Order, at p. 2, lns. 10-15) (Emphasis added).
4

5 As can be seen from the attached Declaration of Guy Ricciardulli, he does not now
6 recall entering into any such stipulation.

7 *"I don't recall ever having any discussion with Mr. McCormick regarding the*
8 *applicability of the provisions of the Protective Order to the transcript of the Cox*
9 *deposition. I have reviewed Mr. McCormick's declaration wherein he states and/or*
10 *implies that I stipulated that the transcript, in its entirety, would be treated as*
11 *confidential. I have to believe that if I had entered into such an extraordinary*
12 *stipulation, I would remember having done so."*
13

14 (See Ricciardulli Declaration, paragraph 9)
15

16 It is also interesting to note that all documentary evidence of such a stipulation – i.e.
17 the on-the-record statements of counsel - were apparently all deliberately destroyed by
18 Goodyear's counsel. It should be clear however, that any agreement between counsel as to
19 the applicability of the Protective Order to the Cox deposition would have no effect on the
20 analysis herein. The deposition testimony regarding Mr. Cox's admission of liability would
21 be entitled to protection from disclosure if, and only if, it constituted proprietary information
22 - which was clearly not the case. Thus, any agreement that the Cox deposition would be
23 subject to the terms of the Protective Order would not have magically bestowed confidential
24 status on the subject admission, which was never entitled to any such protection from the
25 outset.
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1 **IV. ATTORNEY RICCIARDULLI'S DISCLOSURE OF THE**
2 **TESTIMONIAL ADMISSION WAS BASED ON A GOOD-FAITH AND**
3 **REASONABLE INTERPRETATION OF THE PROTECTIVE ORDER**
4 **AND HE WAS IN SUBSTANTIAL COMPLIANCE WITH THE**
5 **ORDER.**
6

7 As discussed above, it is inappropriate to hold a party in contempt of a Court Order if
8 the party's action "appears to be based on a good faith and reasonable interpretation of the
9 [court's order]," and he was in substantial compliance with the Order. *Vertex Distrib., Inc.*
10 *supra*, 689 F.2d at 889. That is precisely the scenario here.

11 The Protective Order does not expressly prohibit the disclosure of party-opponent
12 admissions. It also does not impliedly include such testimonial admissions within its
13 definition of the term "confidential." Thus, when Attorney Ricciardulli was contacted by
14 counsel in collateral litigation regarding the G159 tire, he had a good-faith belief, based in his
15 reasonable interpretation of the Protective Order, that the Order did not prohibit him from
16 disclosing the statement of a Goodyear witness admitting liability in the scenario of G 159
17 tire being placed in service on a Class A motor homes. (*Id.*)

18 Indeed, even the affidavit of counsel in one of the collateral litigation matters,
19 Timothy J. Casey, Esq., makes abundantly clear that Attorney Ricciardulli was prudent and
20 careful in responding to the inquiry. For example, when Mr. Casey asked Attorney
21 Ricciardulli if he could get copies of Goodyear documents from the *Phillips* case, Attorney
22 Ricciardulli declined to provide them, out of caution and concern that those documents might
23 be confidential and therefore protected from disclosure under the Protective Agreement. (*See*
24
25
26
27
28

1 Goodyear's Memorandum at Exhibit "D" to the McCormick Declaration (Casey Affidavit) at
2 ¶ 6(i). This fact, along with the fact that Goodyear has not charged Attorney Ricciardulli
3 with any disclosure of undisputed trade or business secrets, demonstrates that he was at all
4 times in substantial compliance with the Protective Order. Under these circumstances, it
5 would be manifestly unfair to hold Attorney Ricciardulli in contempt for allegedly violating
6 the Protective Order.
7

8
9 Finally, there are other reasons the Court should deny Goodyear's Motion - public
10 policy considerations of public health and safety, and the promotion of fairness and efficiency
11 in the administration of justice. Goodyear is apparently attempting to forever conceal a prior
12 corporate admission of liability regarding the G 159 tire, notwithstanding the importance of
13 this information to public health and safety, and, according to the Casey Affidavit, in the
14 collateral litigation wherein Goodyear has apparently denied that the G159 tire is defective.
15 "Circumstances weighing against confidentiality exist when confidentiality is being sought
16 over information important to the public health and safety [citation omitted], and when the
17 sharing of information among litigants would promote fairness and efficiency [citation
18 omitted]." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785 (3d Cir. 1994); *see also*
19 *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 258 (7th Cir. 1975) ("[M]any important
20 social issues become entangled to some degree in civil litigation.... [Litigation] often exposes
21 the need for governmental action or correction. Such revelations should not be kept from the
22 public.").

23
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25
26 It has long been recognized that "[a]n attorney has an obligation not only to protect
27 his client's interests but also to respect the legitimate interests of fellow members of the bar,
28

1 the judiciary, and the administration of justice.” *Kirsh v. Duryea* (1978) 21 Cal.3d 303, 309.
2 Attorney Ricciardulli substantially complied with the Protective Order and acted on a good-
3 faith and reasonable interpretation of the Protective Order when he disclosed the testimonial
4 admission. He did nothing more. As can be seen from a review of the Petition to Intervene
5 however, Goodyear has allegedly failed to make disclosures required by law to the federal
6 government pursuant to 49 C.F.R. § 576.5-6 and 49 U.S.C. § 30118(c)(1), or to the collateral
7 litigants which have sought to Intervene in this case. Rather, Goodyear wants to punish
8 Attorney Ricciardulli - but there is no legitimate basis for punishing him for having disclosed
9 a testimonial admission that is neither covered by any term of the Protective Order nor was
10 ever contemplated as confidential by the parties when they signed and filed the Protective
11 Order.
12
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14

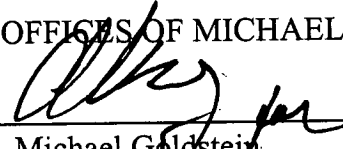
15 **V. CONCLUSION.**

16 Based on the foregoing, Attorney Ricciardulli respectfully requests that the Court
17 deny Goodyear’s Application.

18 Dated: August 16, 2007

Respectfully Submitted,

LAW OFFICES OF MICHAEL GOLDSTEIN

By: 
Michael Goldstein
120 Birmingham Drive, Suite 200
Cardiff, CA 92007
Tel: 760-436-1801 / Fax: 760-436-8248
Attorneys for Guy Ricciardulli, Esq.

26 **ORIGINAL** of this document
27 filed with the Clerk’s Office
28 this 16th day of August, 2007.

1 **COPY** of this document hand-delivered this
2 16th day of August, 2007 to:

3 Hon. Nita L. Stormes
4 Magistrate, United State District Court
5 United States District Court for the Southern
6 District of California
7 880 Front Street
8 Room 4290
9 San Diego, California 92101-8900

8 **COPY** of this document hand-delivered this
9 16th day of August, 2007 to the following
10 counsel of record

10 John P. McCormick, Esq.
11 McCORMICK & MITCHELL
12 8885 Rio San Diego Drive
13 Suite 212
14 San Diego California 92108
15 Counsel for Goodyear in the Phillips Case

Thomas Beck, Esq.
COZEN O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101
Counsel for Plaintiff-in-Intervention
American
And Foreign Insurance Company in the
Phillips Case

16 **COURTESY COPY** of this document mailed this
17 16th day of August, 2007 to the following
18 persons:

18 Walter M. Yoka, Esq.
19 YOKA & SMITH, LLP
20 777 South Figueroa Street
21 Suite 4200
22 Los Angeles, CA 90017
23 Counsel for Goodyear in the Phillips Case
24 Re Motion for Order to Show Cause

David L. Kurtz, Esq.
THE KURTZ LAW FIRM
7420 East Pinnacle Peak Road
Suite 128
Scottsdale, Arizona 85255
Attorney for the Haegers in Arizona
action.

24 Craig R. McClellan, Esq.
25 Michelle D. Mitchell, Esq.
26 THE McCLELLAN LAW FIRM
27 1144 State Street
28 San Diego, CA 92101
Counsel for Intervenors

Timothy J. Casey, Esq.
SCHMITT, SNECK, SMYTH &
HERROD, P.C.
1221 East Osborn Road
Suite 105
Phoenix, Arizona 85014
Attorneys for the Hales in Arizona action

1 Thomas F. Dasse, Esq.
2 David Medina, Esq.
3 LAW OFFICE OF THOMAS F. DASSE,
4 P.C.
5 14646 North Kierland Blvd.
6 Suite 235
7 Scottsdale, AZ 85254
8 Attorneys for the Bogaerts in Arizona
9 action.
10
11
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Jere Beasley, Esq.
Rick Morrison, Esq.
BEASLY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
P.O. Box 4160
Montgomery, Ala. 36103
Attorneys for the Woods in the Alabama
action.

Robert E. Ammons, Esq.
THE AMMONS LAW FIRM, LLP
3700 Montrose Blvd.
Houston, Texas 77006
Attorneys for the Antons in the Texas
action

Hugh N. Smith, Esq.
SMITH & FULLER, P.A.
455 North Indian Rocks Rd.
Suite A
Belleair Bluffs, FL 33770
Attorneys for the Schalmos in the Florida
action.

1 Michael Goldstein, Esq. (SBN 95128)
2 LAW OFFICES OF MICHAEL GOLDSTEIN
3 120 Birmingham Drive, Suite 200
4 Cardiff, CA 92007
5 Telephone: 760-436-1801
6 Facsimile: 760-436-8248

7 Attorneys for Plaintiffs' Counsel
8 Guy Ricciardulli, Esq.

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SOUTHERN DISTRICT OF CALIFORNIA
BY: *GP* DEPUTY

9 THE UNITED STATE DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 HAROLD J. PHILLIPS and)
12 GEORG-ANNE PHILLIPS,)
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14 Plaintiffs,)
15 v.)
16 GOODYEAR TIRE & RUBBER)
17 COMPANY, an Ohio Corporation, and)
18 DOES 1 through X, inclusive,)
19 Defendants.)

Cause No. 02 CV1642 (B) (NLS)

DECLARATION OF GUY
RICCIARDULLI IN SUPPORT OF
HIS RESPONSE IN OPPOSITION TO
GOODYEAR'S APPLICATION FOR
ORDER TO SHOW CAUSE

19 I, Guy Ricciardulli, hereby declare:

20 1. If called as a witness in the above-captioned matter, I am competent to and
21 would testify to the following facts, of which I have personal knowledge.

22 2. I was the attorney of record for the Plaintiffs, Harold J. Phillips and Georg-
23 Anne Phillips, in the above-referenced matter.

24 3. When I reviewed and signed the proposed Protective Order in the instant
25 matter in 2003, it was my understanding that the Protective Order would treat as confidential,
26 only "trade secrets, research, development and other proprietary matters . . ." – as the
27
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1 language of the Protective Order itself provides. I understood however, that deposition
2 testimony of Goodyear employees could be entitled to confidentiality, *if* that testimony
3 related to such “trade secrets, research, development or other proprietary matters.” I did not
4 believe, nor consider, that an admission of liability (as described below) by a Goodyear
5 representative (designated by Goodyear as a Rule 30(b)(6) witness) could be properly treated
6 as a proprietary or confidential business secret, such that it was entitled to protection from
7 disclosure under the Protective Order.
8

9
10 4. In June of 2003, I noticed the deposition of the Goodyear employee(s) who
11 was/were most knowledgeable with respect to the processing of property damage claims.
12 Thereafter, I traveled from my office in San Diego, California, to Goodyear's corporate
13 headquarters in Akron, Ohio, and began the deposition of Goodyear employee, Kim Cox,
14 who was produced by Goodyear as the “person most knowledgeable” with respect to the
15 foregoing subject.
16

17 5. Soon after the commencement of the deposition, in response to my
18 questioning, Mr. Cox testified that Goodyear was aware of the fact that the subject tire – the
19 Goodyear “G 159” - did not perform properly when it was placed in use on a Class A coach
20 (RV), which had been the scenario in the instant case. (That had also been the scenario in a
21 prior incident involving my client and another “G 159” tire failure. I was not involved in the
22 claim arising out of the prior incident; my client was able to resolve that claim against
23 Goodyear by himself).
24

25
26 6. At this point in time, I cannot recall with certainty the exact language that Mr.
27 Cox used at his deposition to describe the nature of the problem with the G 159 tire.
28

1 However, I do recall being very pleased with the candor of the testimony - which I construed
2 as a clear admission of liability. Indeed, Goodyear's counsel, John McCormick, appeared to
3 me to be taken aback by Mr. Cox's apparent admission – and, in fact, he asked for a recess in
4 the deposition immediately thereafter.
5

6 7. During the deposition recess, Mr. McCormick approached me and suggested
7 that we terminate the deposition and instead focus our efforts on mediation and settlement. I
8 agreed to Mr. McCormick's proposal regarding the termination of the deposition and the case
9 was settled shortly thereafter. I had concluded then, and I believe now, that Goodyear's
10 newfound interest in mediation was a direct consequence of the damaging nature of Mr.
11 Cox's admission of liability. In fact, my belief in that regard was only strengthened, and
12 considerably so, when Mr. McCormick advised me that he wanted to obtain the Court
13 Reporter's notes of the Cox deposition, so that he could destroy them – a scheme which he
14 apparently accomplished.
15

16 17 8. I never considered that the subject testimony by Mr. Cox fell within the
18 category of "trade secret or proprietary information." In fact, in the course of resolving his
19 prior claim with Goodyear, that similar information about the G 159 tire had been
20 communicated directly to my client.
21

22 9. I don't recall ever having any discussion with Mr. McCormick regarding the
23 applicability of the provisions of the Protective Order to the transcript of the Cox deposition.
24 I have reviewed Mr. McCormick's declaration wherein he states and/or implies that I
25 stipulated that the transcript, in its entirety, would be treated as confidential. I have to
26 believe that if I had entered into such an extraordinary stipulation, I would remember having
27
28

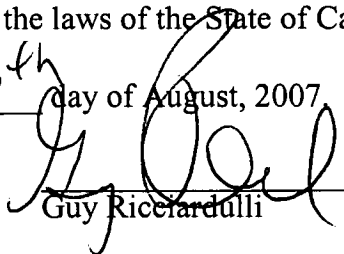
1 done so. I can state unequivocally that it was never my intent to so stipulate, and treat as
2 confidential, the above-referenced testimony by Mr. Cox. I did not then believe, nor do I
3 now believe, that such an admission falls within the category of "trade secret or other
4 proprietary information" entitled to confidentiality under the Protective Order.
5

6 11. In or around May, 2007, I received a telephone call from Tim Casey, who
7 advised me that he was an attorney in Arizona and that he was prosecuting a claim against
8 Goodyear for the alleged failure of a Goodyear G 159 tire. Mr. Casey asked me about my
9 experiences in the prosecution of the instant case. I told Mr. Casey about the Cox deposition,
10 including the admission by Mr. Cox, as described above, the deposition recess and the
11 resolution of the case shortly thereafter.
12

13 12. At the time that I disclosed this information to Mr. Casey, I did not believe
14 that the admission by Mr. Cox was "confidential information" that was protected from
15 disclosure by the Protective Order.
16

17 13. In light of the recent developments, namely, the pendency of the *Order to Show*
18 *Cause*, I do not intend to discuss, and will not discuss, any further aspect of the Cox
19 deposition with anyone, unless the Court makes clear that my disclosures about the same are
20 allowed, and until I am subpoenaed by a court of competent jurisdiction to provide testimony
21 about the same.
22

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed this 16th day of August, 2007



Guy Ricciardulli

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 16, 2007, a true and correct copy of the foregoing has been served as follows:

Personally Served this 16th day of August, 2007:

John P. McCormick, Esq.
McCORMICK & MITCHELL
8885 Rio San Diego Drive
Suite 212
San Diego California 92108
Counsel for Goodyear in the Phillips Case

Thomas Beck, Esq.
COZEN O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101
Counsel for Plaintiff-in-Intervention
American
And Foreign Insurance Company in the
Phillips Case

Served by Mail this 16th day of August, 2007:

Walter M. Yoka, Esq.
YOKA & SMITH, LLP
777 South Figueroa Street, Suite 4200
Los Angeles, CA 90017
Counsel for Goodyear in the Phillips Case
Re Motion for Order to Show Cause

Thomas F. Dasse, Esq.
David Medina, Esq.
LAW OFFICE OF THOMAS F. DASSE, P.C.
14646 North Kierland Blvd., Suite 235
Scottsdale, AZ 85254
Attorneys for the Bogaerts (Arizona action)

Craig R. McClellan, Esq.
Michelle D. Mitchell, Esq.
THE McCLELLAN LAW FIRM
1144 State Street
San Diego, CA 92101
Counsel for Intervenors

Jere Beasley, Esq.
Rick Morrison, Esq.
BEASLY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
P.O. Box 4160
Montgomery, Ala. 36103
Attorneys for the Woods (Alabama action).

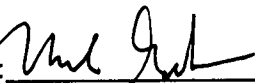
David L. Kurtz, Esq.
THE KURTZ LAW FIRM
7420 East Pinnacle Peak Rd., Suite 128
Scottsdale, Arizona 85255
Attorney for the Haegers (Arizona action.)

Robert E. Ammons, Esq.
THE AMMONS LAW FIRM, LLP
3700 Montrose Blvd.
Houston, Texas 77006
Attorneys for the Antons (Texas action)

Timothy J. Casey, Esq.
SCHMITT, SNECK, SMYTH & HERROD
1221 East Osborn Road, Suite 105
Phoenix, Arizona 85014
Attorneys for the Haleys (Arizona action)

Hugh N. Smith, Esq.
SMITH & FULLER, P.A.
455 North Indian Rocks Rd., Suite A
Belleair Bluffs, FL 33770
Attorneys for the Schalmos in the Florida action.

LAW OFFICES OF MICHAEL GOLDSTEIN

By: 
Michael Goldstein