Craig R. McClellan (71865)
Michelle D. Mitchell (221841)
Robert J. Chambers, II (244688)
THE McCLELLAN LAW FIRM
1144 State Street
San Diego, California 92101
(619) 231-0505 Telephone
(619) 544-0540 Facsimile
Attorneys for Intervenors

THE UNITED STATE DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HAROLD J. PHILLIPS and GEORGANNE PHILLIPS, Plaintiffs, v. GOODYEAR TIRE & RUBBER COMPANY, an Ohio Corporation, and DOES 1 through X, inclusive, Defendants.	Cause No. 02 CV1642 (B) (NLS) **INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.** (Oral Argument Requested)

Pursuant to Rules 24(b) and 26(c), Federal Rules of Civil Procedure, the Ninth Circuit's decision in *Folz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003), and the inherent authority of the Court, Leroy Haeger, Kori D. Haley, Margaret Rose Bogaert, Billy Wayne Woods, Joseph Anton, and John H. Schalmo ("Intervenors") respectfully move the Court for its Order:

(1) granting Intervenors' Motion to Intervene to resolve a question of law or fact that is common to this underlying litigation and to the Intervenors' collateral litigation; and

(2) granting Intervenors' Motion to modify the June 13, 2003 Protective Order entered in this case in the interests of justice and for public policy reasons so that they may obtain from defendant Goodyear Tire & Rubber Company ("Goodyear") a complete copy of a court reporter's notes and deposition exhibits

for the June 19, 2003 deposition of Goodyear witness Mr. Kim Cox, or in the alternative, the ability to depose all attendees at the Cox deposition without Goodyear refusing to allow such discovery by invoking the terms of the Court's June 13, 2003 Protective Order.

To acquire other documents and deposition testimony concerning information that is claimed to be "confidential" in the matter of *Harold J Phillips and Georg-Anne Phillips v. Goodyear Tire & Rubber Co.*, United States District Court for the Southern District of California, Case No. 02 CV1642 (B) (NLS) (the "Phillips Case"), Intervenors make these Motions to eliminate the potential for duplicative discovery, to prevent Goodyear in the Intervenors' collateral litigation from concealing material evidence regarding the central issue of whether there is a defect in the Goodyear G159 275/70R/22.5 tire when it is used on Class A motor homes, and to promote fair and just trials in each of the Intervenors' collateral litigation cases.

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

MEMORANDUM OF POINTS AND AUTHORITES

I. INTRODUCTION.

Each of the Intervenors are named plaintiffs in their respective collateral litigation wherein they have filed suit against Goodyear alleging that its G159 275/70R/22.5 tire is defective when used on Class A motor homes. This underlying action, the Phillips Case, also was an action wherein the Phillips family filed suit against Goodyear alleging that the G159 275/70R/22.5 tire was defective when used on Class A motor homes. (*See* Phillips Complaint at ¶¶ 4, 6-9, a copy of the Phillips Complaint is attached for the court's convenience as Exhibit 1). Indeed, the left front G159 275/70R/22.5 tire on the Phillips' Class A motor home (i.e., a Monaco Coach Windsor)

experienced a tread/belt separation causing an accident, personal injuries, and property damage to the Phillips family. (*Id.*).

Intervenors have learned that on June 19, 2003 in the Phillips Case, Goodyear tendered for deposition in Akron, Ohio, Mr. Kim Cox. Mr. Cox was a Goodyear employee who served as Goodyear's Rule 30(b)(6), Fed. R. Civ. P., witness. Mr. Guy Ricciardulli represented the Phillips plaintiffs at the Cox deposition. Mr. John P. McCormick represented Goodyear at the deposition. ***During the deposition, Mr. Cox admitted under oath during direct examination by Mr. Ricciardulli that "there was a defect in the G159 when used on a motor home," and "that they [i.e., Goodyear] had a problem and paid the [prior] claim."***

After the Cox admission, Goodyear's Mr. McCormick abruptly interrupted and terminated the Cox deposition. Goodyear immediately offered to mediate the case with the Phillips family, and the case settled. On August 19, 2003, Goodyear counsel Mr. McCormick then wrote a letter to the court reporter who took the Cox deposition and requested that "the original and all copies of your notes and the transcript of that deposition be forwarded to me for destruction." Mr. Ricciardulli stipulated to Goodyear's request. On October 1, 2003, the court reporter advised Goodyear that she did not prepare a transcript of the Cox deposition, and forwarded her original notes of the Cox deposition to Goodyear's counsel.

Goodyear's counsel Mr. McCormick actually *destroyed* the court reporter's notes of the Cox deposition. (*See* ¶ 9 of the Declaration of John P. McCormick In Support of Issuance of an Order to Show Cause as to Why Plaintiffs' Counsel Guy Ricciardulli Should Not be Found in Contempt for Violation of Protective Order and Enjoined From Further Violation, filed in the Phillips Case on June 22, 2007.).

In each of the Intervenors' respective collateral litigation, Goodyear has expressly denied that there is a defect in its G159 275/70R/22.5 tire, including when it is used on a Class A motor home. These denials by Goodyear in the collateral litigation are directly contradicted by the June 19, 2003 sworn testimony of Goodyear's Rule

30(b)(6) witness Cox wherein he admitted a defect in the G159 275/70R/22.5 tire when it was utilized on a motor home. As such, Intervenors in their collateral litigation have sought from Goodyear the production of the court reporter's notes of the Cox deposition. In some of the Intervenors' cases, Goodyear has disclosed that it has destroyed the court reporter's notes of the Cox deposition, which is consistent with the McCormick Declaration submitted in this case.

Based on Goodyear' representation that it destroyed the Cox deposition notes from the Phillips Case, certain Intervenors have sought to depose, and indeed all Intervenors will eventually need to depose, some or all of the following persons who were present at the deposition of Cox to learn what admissions were made by Cox during his testimony: Mr. Cox, Mr. McCormick, Basil Musnuff (an outside attorney serving as "national counsel" for Goodyear), Mr. Ricciardulli, and Joyce Zingale (the court reporter).

Goodyear opposes Intervenors' efforts to depose the attendees of the Cox deposition. Goodyear asserts that the subject matter of the Cox deposition is confidential pursuant to the Court's June 13, 2003 Protective Order entered in the Phillips Case. Goodyear further argues that this Court's Protective Order forbids the Cox deposition attendees from testifying about the substance of the Cox June 19, 2003 deposition testimony. Therefore, the question of law or fact common to the Phillips Case and the Intervenors' collateral litigation is whether the Court's Protective Order was intended to protect from disclosure only the confidential, proprietary, and trade secret information of Goodyear about the design, manufacturing and testing process for the G159 275/70R/22.5 tire from its business competitors, or whether it also allows Goodyear to conceal from other litigants in substantially similar litigation over the same product the prior admission of defect by a corporate Rule 30(b)(6) witness.

II. THE COLLATERAL LITIGATION REGARDING THE DEFECT IN THE GOODYEAR G159 275/70R/22.5 TIRE.

A. The Intervenors' Collateral Litigation.

On June 14, 2003, the Haeger family was driving their Class A motor home when one of its Goodyear G159 275/70R/22.5 tires experienced a tread/belt separation and caused the motor home to lose control and rollover. Three people were seriously injured in the crash. As such, Intervenor Haeger filed suit against Goodyear for the personal injuries caused by a design defect in the G159 275/70R/22.5 tire when it is used on a Class A motor home. That action is pending in the United States District Court for the District of Arizona in a matter styled *Leroy Haeger, et al. v. Goodyear et al.,* U.S. District Court for the District of Arizona, Case No. CV05-2046-PHX-ROS. (A copy of the Haeger's Complaint is attached to this Motion as Exhibit 2).

On December 15, 2006, twenty-seven year old Joseph Haley was partially decapitated and killed when a Goodyear G159 275/70R/22.5 tire on the left front of a Class A motor home experienced a tread/belt separation causing the motor home to lose control and crash into the car driven by Mr. Haley and occupied by his wife, Kori D. Haley. Intervenor Kori D. Haley filed a wrongful death and personal injury lawsuit against Goodyear alleging that the Goodyear G159 275/70R/22.5 tire is defective in design when used on Class A motor homes. The Haley lawsuit is pending in Maricopa County Superior Court, Phoenix, Arizona, in an action styled *Kori D. Haley et al. v. Goodyear et al.,,* NO.: CV 2007-006515. (A copy of the Haley Complaint is attached to this Motion as Exhibit 3).

On July 20, 2003 the Bogaert family was driving their Class A motor home when the left front G159 275/70R/22.5 tire experienced a tread/belt separation and caused the motor home to lose control and overturn. Two people in the motor home were killed in the accident, and three other people were seriously injured. As a result, Intervenor Margaret Bogaert filed a lawsuit against Goodyear alleging that the Goodyear G159 275/70R/22.5 tire is defective in design when used on Class A motor homes. The

Bogaert lawsuit is pending in Maricopa County Superior Court, Phoenix, Arizona, in an action styled *Margaret Rose Bogaert, et al. v. Goodyear et al.*, CV 2005-051486. (A copy of the Bogaert Complaint is attached to this Motion as Exhibit 4).

On October 18, 2003 the Woods family was traveling in their Class A motor home when the left front Goodyear G159 275/70R/22.5 tire experienced a tread/belt separation causing the motor home to lose control and crash. Four people were seriously injured in the accident. Intervenor Billy Wayne Woods, therefore, filed a lawsuit against Goodyear alleging that the Goodyear G159 275/70R/22.5 tire is defective in design when used on Class A motor homes. The Woods lawsuit is pending in Hale County Circuit, Alabama, in an action styled *Billy Wayne Woods et al. v. Goodyear et al.*, CV 04-45. (A copy of the Woods Complaint is attached to this Motion as Exhibit 5).

On August 26, 2005, the Anton family was driving their Class A motor home when its right front Goodyear G159 275/70R/22.5 tire experienced a tread/belt separation causing the motor home to lose control and crash. One person died from injuries caused by the crash. Three other people suffered injuries as a result of the crash. Intervenor Joseph Anton filed a lawsuit against Goodyear alleging that the Goodyear G159 275/70R/22.5 tire is defective when used on Class A motor homes. The Anton lawsuit is pending in the United States District Court for the Southern District of Texas, in an action styled Joseph Anton *et al. v. Goodyear et al.*, CV 4:06-CV03221. (A copy of the Anton Complaint is attached to this Motion as Exhibit 6).

On August 11, 2004, John H. Schalmo was driving a Class A motor home when one of its Goodyear G159 275/70R/22.5 tires experienced a tread/belt separation causing the motor home to lose control. Five people were seriously injured in the crash. As a result, Intervenor John H. Schalmo filed a lawsuit against Goodyear alleging that the Goodyear G159 275/70R/22.5 tire is defective when used on Class A motor homes. The Schalmo lawsuit is pending in the Sixth Judicial Court, Pasco County, Florida, in

an action styled *John H. Schalmo et al. v. Goodyear et al.*, No. 51-2006-CA-2064-WS. (A copy of the Schalmo Complaint is attached to this Motion as Exhibit 7).

In summary to this point, the Intervenors are families from Arizona, Alabama, Texas, and Florida who all make the *same* defect allegations against Goodyear over the *same* G159 275/70R/22.5 tire when used on a Class A motor home as did the Phillips family in the Phillips Case.

B. The G159 Defect Litigation before the Phillips Case.

In addition to the foregoing, the Court may find additional background information helpful in deciding these Motions. Neither the Phillips Case nor the Intervenors' collateral litigation are the only litigation Goodyear has faced over its G159 275/70R/22.5 tire. Long before the filing of the Phillips Case, Goodyear had already been aware of numerous G159 275/70R/22.5 tire failures on motor homes and that the families in those motor homes, or their insurance carriers covering those motor homes, were alleging that the tire was defective when used on such motor homes.

For example, Intervenors are aware that Goodyear had been sued for defects in the G159 275/70R/22.5 tire in at least six (6) separate jurisdictions **before** the Phillips case. These six cases are: *James England, et al. v. Goodyear, et al.* (U.S. District Court for the District of South Dakota, Case No. 5:01-CV-05026-AWB); *James M. Wright, et al. v. Goodyear, et al.* (District Court, Johnson County, 249th Judicial District, Texas, Case No. C 2000 0090); *Herman Wayne Cooner v. Goodyear, et al.* (Circuit Court of Walker County, Alabama, Case No. CV-01-667); *Richard Dutilly, as subrogor of Progressive Insurance Co. v. The Goodyear Tire & Rubber Company* (Superior Court of Pima County, Arizona, Case No. C20030834); *Buddy E. Price, et al. v. Goodyear,* Circuit Court of Jefferson County, Alabama, Case No. CV-02-2782-GWN); and *Alsie Cluff, Jr. v. Goodyear* (U.S. District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:04CV51GURO).

Based on the foregoing, Goodyear knew *before* the filing of the Phillips Case, and admissions at the Cox deposition, that there was significant potential for other

lawsuits over the safety of the G159 275/70R/22.5 tire on Class A motor homes, and that it had an affirmative obligation to preserve relevant and material evidence relating to the tire. *See* 49 C.F.R. § 576.5-6 (imposing on Goodyear a duty to maintain "for a period of five calendar years" all "documentary materials" concerning "malfunctions that may be related to motor vehicle safety" including "discussion of such malfunctions."). Goodyear also was obligated to disclose to the federal government, owners, purchasers, and dealers when it learns a tire is defective and the defect relates to motor vehicle safety. 49 U.S.C. § 30118(c)(1).

C. The G159 Defect Litigation After the Phillips Case Excluding the Intervenors' Lawsuits.

After the Cox deposition and Goodyear settling the Phillips Case, Goodyear became aware of other numerous tread/belt separation failures of the G159 tire when used on Class A motor homes. More specifically, Goodyear was sued in twenty-eight (28) different lawsuits involving G159 tread/belt separation and Class A motor homes, including those brought by the Intervenors. In each case, upon information and belief, Goodyear has denied that the G159 275/70R/22.5 tire is defective.

Those lawsuits are: *Progressive Specialty Insurance Co. v. Goodyear* (Circuit Court for St. Clair County, Alabama, Pell City Division, Case No. CV-03-0182); *Roger A. Buis et al. vs. Goodyear, et al.* (Circuit Court, Okaloosa County, Florida; Case No. 2003 CA 005100); *James Donald Stroud, et al. v. Goodyear, et al.,* (Escambia County, Florida, Case No. 03-CA-984); *National General Insurance Company v. Goodyear, et al.*(U.S. District Court for the Northern District of Ohio, Case No. 5:05CV1819); *George Washington, et al. v. Goodyear, et al.* (Fifth Judicial Circuit, Sumter County, Florida, Case No. 2004 CA 000895); *Amelia Gayarre, et al. v. Goodyear, et al.* (U.S. District Court, Southern District of Florida, Case No. 03-62173); *Norman E. Samuel v. Goodyear, et al.* (U.S. District Court for the Northern District of Alabama, Case No. 7:03-CV-3099-TMP); *Progressive Northwestern Insurance Company, as subrogee for Leroy C. Brown v. Goodyear* (California Superior Court, Riverside County, Case No.

BLC003213); *National General Insurance Company v. Goodyear* (U.S. District Court for the Middle District of Florida, Case No. 8:06-CV-01549-EAK-TGW); *Progressive Ins. Co. v. Goodyear* (District Court, El Paso County, Colorado, Case No. 2005CV2875); *Willie Brown, et al. v. Goodyear, et al.* (Superior Court of California, Orange County, Case No. 05 CC 08938); *Nationwide Mutual Insurance Company v. Goodyear* (278th Judicial District of Madison County, Texas, Case No. 06-11001-278-06); *Nina Faye Irwin, et al. v. Goodyear* (U.S. District Court for the Middle District of Florida, Case No. 8:07-CV-00149-T-26MSS); *Central Mutual Insurance Companies v. Goodyear* (Summit County, Ohio, Court of Common Pleas, Case No. 2006-09-5629); and *Elaine Alderman, et al. v. Goodyear, et al.* (Santa Rosa District Court, New Mexico, Case No. D-424-CV-200100043).

Intervenors are currently investigating whether Goodyear ever disclosed in any of the foregoing cases Mr. Cox as a witness, or disclosed that he had previously given sworn deposition testimony admitting the defective nature of the G159 275/70R/22.5 tire on Class A motor homes.

III. WHAT THE INTERVENORS LEARNED ABOUT THE COX DEPOSITION IN THE PHILLIPS CASE.

Ms. Eileen Henry, a paralegal working on Intervenor Haley's lawsuit was in the process of gathering information and evidence for potential use in the Haley case. During that process, she telephonically spoke with Guy A. Ricciardulli, Esq. on the afternoon of Thursday, May 24, 2007. (*See* Affidavit of Intervenor Haley attorney Timothy J. Casey, attached as Exhibit 8).

Mr. Ricciardulli is an attorney located in San Diego, California. Mr. Ricciardulli previously represented the plaintiffs in the Phillips Case. Ms. Henry immediately shared with Intervenor Haley's attorney Timothy J. Casey the information that Mr. Ricciardulli had told her about during their telephone conversation about the Phillips Case. (*Id.*) She informed attorney Casey that Mr. Ricciardulli told her that he remembered that several years ago he deposed a Goodyear witness in Akron, Ohio

wherein the witness admitted there was a defect in the G159 275/75R/22.5 tire, defense counsel "shut-down" the deposition, Goodyear settled the case, and the parties agreed to seal the deposition transcript. (*Id.*)

Given the significance of the information provided by Mr. Ricciardulli, attorney Casey personally, and promptly, called Mr. Ricciardulli and telephonically spoke with him on the afternoon of Thursday, May 24, 2007 about the information he had just provided to Ms. Henry. To make certain attorney Casey had correctly understood the information that Mr. Ricciardulli had provided to him during the May 24, 2007 conversation, and to request additional information, attorney Casey again spoke telephonically with Mr. Ricciardulli on Friday, May 25, 2007 at 11:50 a.m., on Thursday, May 31, 2007 at 8:20 a.m., and May 31, 2007 around 1:00 p.m. and 4:30 p.m. (*Id.*)

Mr. Ricciardulli told attorney Casey the following information about the Phillips Case:

(a) The case involved an allegation of a defect in a Goodyear G159 275/75R/22.5 tire while on a motor home;

(b) In 2003, Mr. Ricciardulli, on behalf of his clients, issued a deposition notice to Goodyear pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure. Among other things, the deposition notice asked Goodyear to tender for deposition "a person most knowledgeable about the resolution of the claims made by plaintiff to defendant regarding allegations of defect that occurred in August 2000 in Nebraska;"

(c) On June 20, 2003, Goodyear tendered a witness pursuant to the deposition notice. The deposition took place in Akron, Ohio;

(d) The court reporter recording the deposition was from Merritt & Loew Court Reporters located in Akron, Ohio;

(e) Mr. Ricciardulli did not remember the name of the Goodyear witness tendered by Goodyear, nor did he have his notes from the deposition

indicating the witness' name. Mr. Ricciardulli, however, remembered that the witness was a Goodyear employee from its "liability claims team" that "handled" liability claims submitted to Goodyear;

(f) **Mr. Ricciardulli recalled that the Goodyear witness admitted under oath that "there was a defect in the G159 when used on a motor home," and "that they [i.e., Goodyear] had a problem and paid the claim."**

(g) Goodyear was represented at the Rule 30(b)(6) deposition by San Diego, California attorney Mr. McCormick. Immediately after the Goodyear witness made the foregoing admissions, Mr. McCormick terminated the deposition of the Goodyear witness and advised Mr. Ricciardulli that Goodyear would settle the Phillips Case; and

(h) As part of the settlement reached with Goodyear, Mr. Ricciardulli agreed to seal the deposition of the Goodyear Rule 30(b)(6) witness, and stipulated in a letter sent to Merritt & Lowe Court Reporters that the deposition's notes/recordings taken by the Merritt & Lowe Court Reporters were to be sent to Goodyear's defense counsel John P. McCormick.

(*Id.*)[1]

On Friday, June 1, 2007 at 8:30 a.m. attorney Casey spoke telephonically with Ms. Beth Merritt at Merritt & Lowe Court Reporters. (*Id.*) Ms. Merritt researched her file information on the Phillips Case and told attorney Casey the following: (a) the plaintiff in the Phillips Case took the deposition of Goodyear employee Kim Cox on Thursday, June 19, 2003, and the deposition was stopped; (b) the remaining depositions

---

[1] Goodyear asserts in its June 22, 2007 Motion to Show Cause in relation to Mr. Riccardulli that he supposedly disclosed confidential information. The Affidavit of Attorney Casey makes clear that Mr. Riccardulli did nothing of the sort. Mr. Riccardulli advised only that in the Phillips case in the summer of 2004 an unnamed Goodyear employee serving as a Rule 36(b)(6) witness admitted a defect in the G275/70R/22.5 tire when used on motor homes, and explained the actions of Mr. McCormick surrounding the same. There is nothing proprietary, trade secreted or confidential about such a defect admission or the circumstances surrounding a deposition. Indeed, Goodyear cites no authority for such a proposition. Goodyear now wants an order to re-conceal from the federal government, the motoring public, and the Intervenors what it concealed in 2004 despite federal law and regulations prohibiting such secrecy. *See, e.g.*, 49 U.S.C. § 3118(c)(1) (requiring the reporting of defects); 49 C.F.R. § 576 (requiring the preservation of the Cox deposition notes for five years).

noticed or scheduled in the Phillips Case for Friday, June 20, 2003 were cancelled; (c) *Goodyear counsel McCormick and Phillips counsel Ricciardulli co-signed a letter dated August 19, 2003 directing Merritt & Lowe to forward to Mr. McCormick the original and all copies of the Kim Cox deposition transcript "**for destruction**;"* and (d) Merritt & Lowe provided the Kim Cox deposition notes to Mr. McCormick on October 1, 2003. (*Id.*)

Exhibit A to the Casey Affidavit is the letter sent to Merritt & Lowe Court Reporters dated August 19, 2003 co-signed by Goodyear counsel Mr. McCormick and Phillips counsel Mr. Ricciardulli. (*Id.*) Attorney Casey received the letter from Ms. Merritt via facsimile on June 1, 2007 at 12:05 p.m. (*Id.*)

Exhibit B to the Casey Affidavit is the letter from Merritt & Lowe Court Reporters dated October 1, 2003 forwarding to Goodyear counsel Mr. McCormick the notes and exhibits from the deposition of Kim Cox taken on June 19, 2003 and advising that the deposition was never transcribed. (*Id.*) Attorney Casey received this letter from Ms. Merritt via facsimile on June 1, 2007 at 12:05 p.m. (*Id.*)

IV. GOODYEAR'S RESPONSE TO THE INTERVENORS' DISCOVERY OF THE COX DEPOSITION AND ADMISSION.

A. Goodyear Destroyed the Cox Deposition Notes.

After learning the foregoing information, several of the Intervenors asked Goodyear to produce the court reporter's notes of the Cox deposition. In response, Goodyear advised Intervenor Woods that the notes were destroyed. (Exhibit 9). Goodyear has advised Intervenor Haeger that the notes were destroyed. (Exhibit 10 at pg. 56, lns. 15-16: Goodyear counsel G. Hancock advising the court: "And there is no record. We've checked."). Mr. McCormick also has represented to this Court that he destroyed the Cox deposition notes. (*See* ¶ 9 of the Declaration of John P. McCormick In Support of Issuance of an Order to Show Cause as to Why Plaintiffs' Counsel Guy Ricciardulli Should Not be Found in Contempt for Violation of Protective Order and Enjoined From Further Violation, filed in the Phillips Case on June 22, 2007.).

B. The Federal Court in *Haeger* Has Ordered the Depositions of Messrs. McCormick and Cox.

During a June 7, 2007, hearing in Intervenor Haeger's case, Goodyear's counsel proffered the following explanation for the destruction of the court reporter's notes from the Cox deposition:

> Mr. HANCOCK [Goodyear counsel]: Mr. Cox is not on any litigation team. He is now retired as an employee and in 2003 was somewhere to talk about warranty claims or adjustment. *His deposition was minor enough that the parties started it and then never finished it because they went to mediation instead.*
>
> They then settled the case. The question in that case -- which I was not involved in but was in California [i.e., the Phillips Case]... was what do we do with a half-finished deposition transcript?
>
> Because Goodyear never did cross-examination. *And it is a custom and practice when you settle a case, they just said, well, we'll just pretend the deposition never happened,* because nobody after the case is settled wants to go back and finish questioning the witness, either the plaintiff who didn't finish or the defendant who never asked a question.

(Exhibit 10 at pg. 55, lns. 7-25) (Emphasis added). The federal court in Intervenor Haeger's case did not accept Goodyear's explanation. Accordingly, the federal court ordered that Intervenor Haeger was permitted to take the depositions of Mr. McCormick and Mr. Cox. (*Id.* at p. 59, lns. 1-3; p. 87, ln. 13; p. 87, ln. 22 to p. 88, ln. 5). More specifically as to Mr. McCormick, the Court ordered that "he can testify to what was said [by Cox on June 19, 2003] unless somehow there is a court order that it's privileged or that it was under seal or that I need to address that issue." (*Id.* at p. 88, lns 2-6).

C. Goodyear in the *Haeger* and *Haley* Collateral Litigation Refuses to Produce Messrs. McCormick and Cox citing the Phillips Case Protective Order.

In a Motion to Quash the deposition of Mr. McCormick in the *Haeger* case, Goodyear argues that "[n]either Mr. McCormick nor Mr. Cox can testify regarding what

was said in [the Cox June 19, 2003] deposition in the Phillips case without violating the Court's [Protective] Order." (*See* Exhibit 11, at p. 3, lns. 16-17). Similarly, on June 9, 2007 in the *Haley* case Goodyear represented to the collateral court that the deposition of Cox in the Phillips Case is "confidential," and that if Intervenor were to "notice the witness [i.e., Mr. McCormick] up and ask him what did you see or hear or taste in that deposition.... the answer is, as an officer of the Court, Mr. McCormick can't respond because of the protective order." (*See* Exhibit 12 at p. 9, lns 2-9).

In summary, Goodyear's Rule 30(b)(6) corporate witness Cox admitted in 2003 during his deposition in the Phillips Case that the G159 275/70R/22.5 tire was defective on Class A motor homes. In spite of federal regulations, Goodyear appears to have used this Court's Protective Order as a pre-textual reason to destroy the court reporter notes of the Cox deposition -- notes that are highly relevant, if not dispositive of Intervenors' defect claims in their collateral litigation, and required to be disclosed to the federal government and others -- and is now again using this Court's Protective Order to bar Intervenors from learning the truth about Cox' deposition testimony. That is wrong, and it is not permitted by the Ninth Circuit.

V. THE COURT SHOULD MODIFY ITS PROTECTIVE ORDER TO ALLOW INTERVENORS ACCESS TO THE COURT REPORTER'S NOTES OF THE COX DEPOSITION OR TO DEPOSE THE ATTENDEES OF THE DEPOSITION IN THE PHILLIPS CASE FOR USE IN THEIR COLLATERAL LITIGATION.

Rule 26(b), Fed. R. Civ. P, provides that a party may obtain discovery regarding *any* matter that is relevant to the claim or defense so long as the matter is not privileged. Goodyear does not contend that the Cox notes or the depositions of those that attended Cox's deposition are irrelevant or are somehow privileged. Instead, Goodyear merely argues that the information is discoverable only if permitted by this Court via modification of its Protective Order.

The Court's Protective Order at paragraph 15 provides that the "Court may modify this stipulated protective order in the interests of justice or for public policy

reasons." The Court should modify its protective order. The general public policy contemplated by the Federal rules is that discovery should proceed in the open unless compelling reasons exist to do otherwise. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992); *Phillips v. General Motors*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *American Tel & Tel. Co. v. Grady*, 594 F.2d. 594, 596 (7th Cir. 1978); *Citicorp. v. Interbank Card Ass'n*, 478 F. Supp. 756, 765 (S.D.N.Y. 1979).

The Ninth Circuit's decision in *Folz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003) is controlling on the issues presented by the Intervenors. In *Folz*, the plaintiff sued State Farm alleging that it had defrauded its insureds of personal injury protection owned to them under their State Farm automobile insurance policies. During the discovery process State Farm secured from the court three protective orders, one of which was a blanket protective order designed to keep secret all other 'confidential information" produced by the parties in discovery. State Farm eventually settled the lawsuit under confidential terms, and with a stipulated request that the entire court file be sealed.

After the settlement, private intervenors -- individuals involved in collateral litigation against State Farm -- sought access to both discovery materials and court records in the underlying *Folz* litigation. The intervenors had asserted in their collateral litigation claims "similar to those made in the *Folz* litigation." *Id.* at 1128-29. The intervenors, therefore, moved to intervene, to unseal the court record, and to modify the protective orders to gain access to discovery material produced by State Farm. *Id.*

The district court granted the motion to intervene, partially granted the motion to unseal, and denied the motion to modify the protective order. On appeal, the Ninth Circuit held that intervenors' motion required State Farm to make an actual showing of good cause under Rule 26(c) for the continued protection of any discovery materials. More importantly, the Ninth Circuit further held:

> **This court *strongly favors access to discovery materials to meet the needs of parties engaged in collateral litigation.*** Allowing the fruits of one litigation to facilitate preparation in other cases advances the interests of judicial economy by

> avoiding the wasteful duplication of discovery.... Where reasonable restrictions on collateral disclosure will continue to protect an affected party's legitimate interests in privacy, *a collateral litigant's request to the issuing court to modify an otherwise proper protective order so that collateral litigants are not precluded from obtaining relevant material should generally be granted.*

331 F.3d at 1131-32 (citations omitted) (Emphasis added).

The Ninth Circuit, therefore, set forth a simple two-pronged approach for collateral litigants to obtain protected discovery for their collateral proceedings. First, "the collateral litigant must demonstrate the relevance of the protected discovery to the collateral proceedings and its general discoverability therein." *Id.* at 1132. In making this determination, the "court that entered the protective order should satisfy itself that the protected discovery is sufficiently relevant to the collateral litigation that a substantial amount of duplicative discovery will be avoided by modifying the protective order." *Id.* In order to do this, the district court can compare the Intervenors' complaints with the complaint of the plaintiff in the underlying litigation to determine whether there is sufficient relevance. *Id.*[2]

Second, once the court makes "a rough estimate of relevance... the only issue it determines is whether the protective order will bar the collateral litigant from gaining access to the discovery already conducted. Even if the issuing court modifies the protective order, it does not decide whether the collateral litigants will ultimately obtain the discovery materials." *Id.* at 1133. The "ultimate discoverability of specific materials covered by the protective order must be resolved by the collateral courts." *Id.* The Ninth Circuit reasoned:

> Allowing the parties to the collateral litigation to raise specific relevance and privilege objections to the production of any otherwise properly protected materials in the collateral court further serves to prevent the subversion of limitations on discovery in the collateral proceedings. These procedures also

---

[2] The Ninth Circuit did not hold that the collateral litigants were required to obtain a relevance determination from the court overseeing the collateral litigation prior to requesting the modification of a protective order from the court that issued the order. 331 F.3d at 1132

> preserve the proper role of each of the courts involved: **the court responsible for the original protective order decides whether modifying the order will eliminate the potential for duplicative discovery.** If the protective order is modified, the collateral courts may freely control the discovery process in the controversies before them without running up against the protective order of another court.

Id. (Emphasis added)

Here, the first prong of the *Folz* approach is easily satisfied. The admission by Goodyear Rule 30(b)(6) witness Cox in the Phillips Case that the G159 275/70R/22.5 tire is defective is highly relevant to the Intervenors' collateral litigation. Like the Phillips in their case, each of the Intervenors' collateral litigation involves a G159 275/70R/22.5 tire tread/belt separation on a Class A motor home while in use. Like the Phillips in their case, each of the Intervenors allege that the G159 275/70R/22.5 tire is defective. Like the Phillips in their case, each of the Intervenors allege that their family member's death or injuries were all caused by Goodyear's defective G159 tire. Intervenors respectfully submit that Cox's admission of defect in the tire is the quintessential definition of relevant information in each of their collateral litigation.

Goodyear was affirmatively obligated to report to the government, consumers, dealers and others its conclusion that the G159 275/70R/22.5 tire was defective when utilized on motor homes. 49 U.S.C. § 3118(c)(1). The penalties for the violation of that statute are significant. Despite is clear obligations under federal law, Goodyear acknowledges that it destroyed records in violation of other federal regulations. See 49 C.F.R. § 576. Public policy and the health and safety of the motoring public all compel the disclosure of information related to a safety defect associated with a tire. These interests necessarily should trump a contorted agreement upon which a tire manufacturer uses to hide evidence of a defect from the federal government, this Court, the motoring public, and the Intervenors in their collateral litigation.

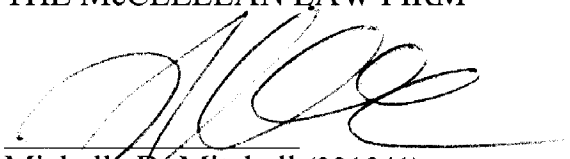
VI. CONCLUSION.

Based on the foregoing, Intervenors request that the Court grant their Motion to Intervene and grant their Motion to Modify the Court's June 13, 2003 Protective Order

so that it will not bar the Intervenors from obtaining the court reporter's notes and exhibits of the Cox deposition or from deposing the attendees of the Cox deposition to learn their recollections of Cox's testimony during his June 19, 2003 deposition in the Phillips Case.

RESPECTFULLY SUBMITTED this 28th day of June, 2007.

THE McCLELLAN LAW FIRM



Michelle D. Mitchell (221841)
THE McCLELLAN LAW FIRM
1144 State Street
San Diego, CA 92101
Counsel for Intervenors

ORIGINAL of this document
filed with the Clerk's Office
this 28th day of June, 2007.

COPY of this document hand-delivered this
18th day of June, 2007 to:
Hon. Nita L. Stormes
Magistrate, United State District Court
United States District Court for the Southern
District of California
880 Front Street
Room 4290
San Diego, California 92101-8900

COPY of this document hand-delivered this
28th day of June, 2007 to the following
counsel of record

Guy Riccadulli, Esq.
12396 World Trade Drive, #305
San Diego, CA 92128
Counsel for the Phillips Plaintiffs.

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.

COURTESY COPY of this document mailed this
28th day of June, 2007 to the following
persons:

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

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.

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

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 in Arizona action.

Jere Beasly, 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.

EXHIBIT 1 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

GUY A. RICCIARDULLI, BAR #116128
ATTORNEY AT LAW
12396 WORLD TRADE DRIVE, #305
SAN DIEGO, CA 92128
(858) 487-8006
(858) 487-8109

Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

HAROLD J. PHILLIPS and GEORG-ANNE PHILLIPS Plaintiffs, v. GOODYEAR TIRE & RUBBER COMPANY) an Ohio Corporation, and DOES I through X, inclusive, Defendants.	CASE NO. GIC 790941 COMPLAINT FOR DAMAGES FOR STRICT LIABILITY; BREACH OF IMPLIED AND EXPRESS WARRANTY; AND NEGLIGENCE

FIRST CAUSE OF ACTION

(STRICT LIABILITY)

1. Defendant is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Ohio and qualified to do and doing business in California, with its principal place of business in Akron, Ohio.

2. The true names or capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as DOES I through X, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of

the Defendants designated herein as DOE is negligently responsible in some manner for the events and happenings herein referred to and thereby negligently and proximately caused injuries and damages to Plaintiffs as herein alleged, and therefore, Plaintiffs sue said Defendants by such fictitious names and will ask leave of Court to amend this Complaint to show the true names and capacities when the same have been ascertained.

3. At all times herein mentioned, each of the Defendants was the agent and employee of each of the remaining Defendants and was at all times acting within the purpose and scope of such agency and employment.

4. Defendant is, and at all times herein mentioned was, engaged in the business of manufacturing motor home tires for sale to and use by members of the general public, and as a part of its business defendant manufactured the motor home tire more specifically known as the "Goodyear G159 Unisteel; DOT number MC6Y270W1000; size 275170R22.5 hereinafter referred to as "the tire".

5. C & D MOTOR HOMES is, and at all times herein mentioned was, engaged in the business of selling motor homes at retail to members of the general public in the City of San Diego, State of California.

6. On or about June 21, 2000, at San Diego, California, plaintiffs purchased a Windsor motor home, equipped with Goodyear tires referred to in paragraph 4 above, and hereinafter referred to as "the motor home", from C&D MOTOR HOMES, at its place of business hereinabove alleged.

7. Defendant intended that the motor home tires manufactured

by it be used on motor homes.

8. At all times herein mentioned, defendant knew that its motor home tires would be purchased by members of the public and used by the purchasers without inspection for defects.

9. The tire was, at the time plaintiffs purchased the motor home on which it was mounted, as herein alleged, defective in design and/or manufacturing and unsafe for is intended purpose in that the tire tread separated internally, thereafter causing the tread to catastrophically separate from the tire.

10. On or about February 7, 2002, plaintiff was driving the motor home, with the subject tire mounted on the motor home's left front. Plaintiff was driving on Interstate 10 at or near Wilcox, Arizona. During the course of this use and as a proximate result of the defect hereinabove described, the tread separated from the tire, causing Plaintiff to lose control of the motor home, leave the roadway, and violently collide with adjacent embankment.

11. As a direct and proximate result of the aforesaid failure of the defective tire manufactured by defendant, Plaintiffs, and each of them, were injured in their health, strength, and activity, sustaining severe injury to their bodies and injury to their nervous systems and persons, all of which said injuries have caused and continue to cause said Plaintiffs great mental, physical and nervous pain and suffering, all to their general damage in an amount unknown at this time, but which is within the jurisdiction of this Court and according to proof at time of trial. Plaintiffs are informed and believe and thereon allege that said injuries will result in some permanent disability to each of them.

12. As a direct and proximate result of the aforesaid failure

of the defective tire manufactured by defendant, Plaintiffs, and each of them, were compelled to and did incur expenses for physicians, medical care, hospitalization and other incidental expenses, and will have to incur additional like expenses in the future. The full amount of such expenses is not known to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at the time of trial herein.

13. At the time of these injuries, Plaintiffs were employed in their usual occupation. As a further direct and proximate result of the aforesaid failure of the defective tire manufactured by defendant Plaintiffs, and each of them, and by reason of the injuries suffered by them, Plaintiffs have been prevented from attending to such occupations, and thereby lost earnings. Plaintiffs are informed and believe and thereon allege that they will be prevented from attending to such occupation for a period in the future, and further, that Plaintiffs have suffered permanent injuries to such a degree that their earning capacities have been impaired. The full amount of said loss of earnings, past and future, is unknown to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at time of trial herein.

14. As a further proximate result of the defect and resultant crash herein alleged, the plaintiffs' motor home was significantly damaged proximately causing a permanent diminution in value together with Plaintiffs' personal property contained within said motor home, all to their damage in an amount according to proof at time of trial herein.

15. As a further proximate result of the defect and resultant

crash herein alleged, the plaintiffs' motor home was significantly damaged thereby rendering plaintiffs homeless and proximately causing plaintiffs to lose the use of their motor home, Plaintiffs were required to and did incur alternative housing expenses, all to their additional damage in an amount according to proof at time of trial herein.

SECOND CAUSE OF ACTION

(BREACH OF WARRANTY)

16. Plaintiffs incorporated herein as though fully set forth paragraphs 1-15 of their first cause of action.

17. Defendant was a merchant with respect to the motor home tires of the kind which were sold to plaintiffs, and there was in the sale to plaintiffs express and implied warranties that such tires were merchantable and would perform in an acceptable fashion.

18. Defendant breached such express and implied warranties in the sale of the motor home tires in that such tires were not fit for the ordinary purposes for which such tires are used in that the tread separated from the tires, causing the motor home to leave the roadway and violently collide with the embankment. As a result thereof plaintiffs did not receive goods as expressly and impliedly warranted by defendant to be merchantable.

19. Plaintiffs discovered the breach of warranty on or about February 7, 2002. Thereafter, and on or about March 12, 2002, defendants were notified of this breach by letter, a true copy of which is attached to this complaint as Exhibit 1 and made a part hereof.

20. As a proximate result of defendant's breach of its express and implied warranties, Plaintiffs, each, were injured in their health, strength, and activity, sustaining severe injury to their bodies and injury to their nervous systems and persons, all of which said injuries have caused and continue to cause said Plaintiffs great mental, physical, and nervous pain and suffering, all to their general damage in an amount unknown at this time, but which is within the jurisdiction of this Court and according to proof at time of trial. Plaintiffs are informed and believe and thereon allege that said injuries will result in some permanent disability to each of them.

21. As a further direct and proximate result of the Defendant's aforesaid breach of the express and implied warranties, Plaintiffs each were compelled to and did incur expenses for physicians, medical care, hospitalization and other incidental expenses, and will have to incur additional like expenses in the future. The full amount of such expenses is not known to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at the time of trial herein.

22. At the time of these injuries, Plaintiffs were employed in their usual occupation. As a further direct and proximate result of the defendant's aforesaid breach of the express and implied warranties, and by reason of the injuries suffered by them, Plaintiffs have been prevented from attending to such occupations, and thereby lost earnings. Plaintiffs are informed and believe and thereon allege that they will be prevented from attending to such occupation for a period in the future, and further, that Plaintiffs have suffered permanent injuries to such a degree that their

earning capacity has been impaired. The full amount of said loss of earnings, past and future, is unknown to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at time of trial herein.

23. As a further proximate result of the breach of warranties and resultant crash herein alleged, the plaintiff's motor home was significantly damaged, proximately causing a permanent diminution of value, together with Plaintiffs' personal property contained within said motor home all to their damage in an amount according to proof at time of trial herein.

24. As a further proximate result of the breach of warranties and resultant crash herein alleged, the plaintiff's motor home was significantly damaged thereby causing plaintiffs to suffer a loss of use of their motor home, rendering plaintiffs homeless. Plaintiffs were required to and did incur alternative housing expenses during the extended repair period, all to their additional damage in an amount according to proof at time of trial herein.

THIRD CAUSE OF ACTION

(NEGLIGENCE)

25. Plaintiffs incorporated herein as though fully set forth paragraphs 1-15 of their first cause of action and paragraphs 16 through 24 of their second cause of action.

26. At all times herein mentioned, Plaintiff HAROLD PHILLIPS was operating a certain 2000 Monaco motor home along and upon Interstate 10, at or near Wilcox, Arizona.

27. At all times herein mentioned, Plaintiff GEORG-ANNE PHILLIPS was a passenger in that certain 2000 Monaco motor home driven by Plaintiff HAROLD PHILLIPS.

28. Defendants, and each of them, so negligently carelessly, and recklessly, designed, manufactured and sold to the general public the Goodyear tire 275/70R22.5, which, at said time was mounted on the Monaco motor home driven by Plaintiff so as to cause said tire tread to separate from the tire causing the motor home to leave the roadway and crash into the embankment and proximately causing Plaintiffs to suffer the hereinafter described injuries and damages.

29. As a direct and proximate result of the aforesaid negligence, recklessness, carelessness, and unlawfulness of the Defendants, and each of them, Plaintiffs each were injured in their health, strength, and activity, sustaining severe injury to their bodies and injury to their nervous systems and persons, all of which said injuries have caused and continue to cause said Plaintiffs great mental, physical, and nervous pain and suffering, all to their general damage in an amount unknown at this time, but which is within the jurisdiction of this Court and according to proof at time of trial. Plaintiffs are informed and believe and thereon allege that said injuries will result in some permanent disability to each of them.

30. As a further direct and proximate result of the aforesaid negligence, recklessness, and carelessness of Defendants, and each of them, Plaintiffs each were compelled to and did incur expenses for physicians, medical care, hospitalization and other incidental expenses, and will have to incur additional like expenses in the future. The full amount of such expenses is not known to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at the time of trial herein.

Court and according to proof at the time of trial herein.

31. At the time of these injuries, Plaintiffs were employed in their usual occupation. As a further direct and proximate result of the aforesaid negligence, recklessness, carelessness, and unlawfulness of the Defendants, and each of them, and by reason of the injuries suffered by them, Plaintiffs have been prevented from attending to such occupations, and thereby lost earnings. Plaintiffs are informed and believe and thereon allege that they will be prevented from attending to such occupation for a period in the future, and further, that Plaintiffs have suffered permanent injuries to such a degree that their earning capacity has been impaired. The full amount of said loss of earnings, past and future, is unknown to Plaintiffs at this time, but is within the jurisdiction of this Court and according to proof at time of trial herein.

32. As a further direct and proximate result of the aforesaid negligence, recklessness, carelessness, and unlawfulness of the Defendants, the plaintiff's motor home was significantly damaged, causing a permanent diminution in value together with Plaintiffs' personal property contained within said motor home all to their damage in an amount according to proof at time of trial herein.

33. As a further direct and proximate result of the aforesaid negligence, recklessness, carelessness, and unlawfulness of the Defendants, the plaintiff's motor home was significantly damaged thereby causing plaintiffs to suffer a loss of use of their motor home, rendering plaintiffs homeless. Plaintiffs were required to and did incur alternative housing expenses during the extended repair period, all to their additional damage in an amount

according to proof at time of trial herein.

WHEREFORE, Plaintiffs pray judgement against Defendants, and each of them, as follows:

FIRST CAUSE OF ACTION:

1. For general damages in an amount according to proof;

2. For past and future medical and incidental expenses in an amount according to proof;

3. For past and future lost earnings and earning capacity in an amount according to proof;

4. For damages to personal property and the motor home in an amount according to proof;

5. For loss of use of the motor home and housing expenses in an amount according to proof;

6. For costs of suit incurred herein; and

7. For such other and further relief as this Court deems just and proper.

SECOND CAUSE OF ACTION:

1. For general damages in an amount according to proof;

2. For past and future medical and incidental expenses in an amount according to proof;

3. For past and future lost earnings and earning capacity in an amount according to proof;

4. For damages to personal property and the motor home in an amount according to proof;

5. For loss of use of the motor home and housing expenses in an amount according to proof;

6. For costs of suit incurred herein; and

7. For such other and further relief as this Court deems just and proper.

THIRD CAUSE OF ACTION:

1. For general damages in an amount according to proof;

2. For past and future medical and incidental expenses in an amount according to proof;

3. For past and future lost earnings and earning capacity in an amount according to proof;

4. For damages to personal property and the motor home in an amount according to proof;

5. For loss of use of the motor home and housing expenses in an amount according to proof;

6. For costs of suit incurred herein; and

7. For such other and further relief as this Court deems just and proper.

DATED: 6-19-02

GUY A. RICCIARDULLI
Attorney for Plaintiff

EXHIBIT 2 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

The Kurtz Law Firm
7600 North 15th Street
Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300
David L. Kurtz, #007433

Cozen O'Connor
501 West Broadway
Suite 1610
San Diego, CA 92101
Telephone: (619) 234-1700
Blanca Quintero, #019565

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

LEROY and DONNA HAEGER, husband and wife; BARRY and SUZANNE HAEGER, husband and wife; FARMERS INSURANCE COMPANY OF ARIZONA, an Arizona corporation,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER COMPANY, an Ohio corporation; SPARTAN MOTORS, INC., a Michigan corporation; and GULFSTREAM COACH, INC., an Indiana corporation,

Defendants.

No. CV2005-050959

COMPLAINT

(Tort –Non-Motor Vehicle)

GENERAL ALLEGATIONS

1. Leroy and Donna Haeger, husband and wife, are residents of the State of New Mexico.

2. Barry and Suzanne Haeger, husband and wife, are residents of the State of Arizona.

3. Farmers Insurance Company of Arizona is an Arizona corporation with

its principal place of business in Maricopa County, Arizona.

4. Defendants are foreign corporations doing business in Maricopa County Arizona, and which have otherwise manufactured and/or sold products which have been placed in the stream of commerce and which have caused damages to Plaintiffs in amounts in excess of the jurisdictional limits of this Court.

5. Defendants Goodyear, Spartan and Gulfstream each contributed in various ways to the manufacture, production, design, sale and warnings associated with a motorhome which was involved in an accident which caused serious injuries to Plaintiffs.

6. Defendant Goodyear Tire & Rubber Company is a manufacturer and/or seller of tires.

7. Defendant Spartan Motors, Inc. is the manufacturer of the chassis of the motorhome.

8. Defendant Gulfstream Coach, Inc. is the manufacturer of the coach and its various component parts which was purchased by Plaintiffs Leroy and Donna Haeger.

9. On June 14, 2003, the motorhome owned by Leroy and Donna Haeger and occupied by all of the Plaintiffs, was involved in a rollover accident as a result of the unforeseeable failure of the front tire on the motorhome.

10. Plaintiffs Leroy and Donna Haeger each suffered, and will continue in the future to suffer, from permanent disfiguring personal injuries, loss of each other's consortium, and emotional distress from witnessing the injuries of each other and their family members.

11. Plaintiff Suzanne Haeger suffered, and will continue in the future to suffer, from permanent and disfiguring personal injuries, the loss of her husband's consortium, and emotional distress from witnessing the injuries to her husband and other

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

family members.

12. Plaintiff Barry Haeger suffered, and will continue in the future to suffer, from bodily injuries, loss of consortium of his spouse, and emotional distress from witnessing the injuries to his spouse and parents.

13. Plaintiff Farmers Insurance Company of Arizona was the insurer of the motorhome and a jeep, which was being towed by the motorhome on the date of the accident.

14. Plaintiff Farmers Insurance Company of Arizona extended benefits to Plaintiffs Leroy and Donna Haeger pursuant to the terms and conditions of its contract of insurance in the amount of $115,800.17 for damages to the motorhome, the jeep and various contents of the vehicles.

15. Plaintiffs each lost various personal property as a result of the accident in an amount to be proven at the time of trial.

16. The Haeger Plaintiffs have incurred various necessary medical expenses, including, but not limited to, air and ground ambulance, hospitalizations, surgeries, physical therapy, medications and costs associated with the provision of necessary medical care including travel, food and lodging. These damages represent liquidated amounts entitling Plaintiffs to an award of prejudgment interest.

17. Plaintiff Farmers Insurance Company of Arizona's expenses provided pursuant to the terms and conditions of its insurance contract represent liquidated sums entitling Farmers to an award of prejudgment interest.

18. Plaintiffs Leroy and Donna Haeger's dog was ejected from the vehicle and suffered serious injuries from the accident which required extensive medical care and expense, which is the obligation of Defendants, in an amount to be proven at the time of trial.

19. Defendants are each responsible for the damages suffered by Plaintiffs.

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

COUNT ONE

(Strict Product Liability; Manufacturing and/or Design)

20. Paragraphs 1 through 19 are incorporated herein by this reference.

21. Defendants are manufacturers and/or sellers of products which were defective and unreasonably dangerous as a result of either manufacturing and/or design which proximately caused the accident and Plaintiffs' injuries.

COUNT TWO

(Strict Product Liability; Failure to Warn)

22. Paragraphs 1 through 21 are incorporated herein by this reference.

23. Defendants prepared, utilized and/or ratified all instructions and/or warnings regarding the motorhome, the tires and their use by Plaintiffs.

24. The instructions and/or warnings were defective as they failed to advise, warn or otherwise inform Plaintiffs adequately of the risks of the use of the motorhome and how to avoid catastrophic tire failure which produced the accident and associated injuries.

25. The defective instructions and/or warnings were a proximate cause of the Plaintiffs' injuries.

COUNT THREE

(Strict Liability; Post-Sale Warnings)

26. Paragraphs 1 through 25 are incorporated herein by this reference.

27. Subsequent to the sale of the motorhome Defendants knew of defects in the manufacture, design and/or warnings associated with the motorhome and its tire.

28. Defendants knew how to locate the purchasers of their products and were obligated to warn Plaintiffs of the defects which were discovered subsequent to the sale of the motorhome.

29. Defendants undertook no effort to advise or warn of these defects subsequent to the sale.

30. This post-sale failure to warn was a proximate cause of the accident rendering Defendants liable for Plaintiffs' injuries.

COUNT FOUR

(Strict Liability; Failure to Recall)

31. Paragraphs 1 through 30 are incorporated herein by this reference.

32. Subsequent to the sale, Defendants became aware of defects associated with the motorhome and the tires which required Defendants to recall the product.

33. Defendants failed to recall the product.

34. Such failure was a proximate cause of the accident and Plaintiffs' injuries.

COUNT FIVE

(Negligent Design and/or Manufacture)

35. Paragraphs 1 through 34 are incorporated herein by this reference.

36. Defendants each had a duty to design and/or manufacture their products to protect users of the products from foreseeable risks of harm.

37. Defendants failed to appropriately design and/or manufacture their products, which was a proximate cause of Plaintiffs' injuries.

COUNT SIX

(Negligence; Failure to Warn)

38. Paragraphs 1 through 37 are incorporated herein by this reference.

39. Defendants each had a duty to provide instruction and warnings in such a fashion to protect Plaintiffs from foreseeable risks of harm.

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

40. Defendants failed to provide adequate instructions and/or warnings and such failure was a proximate cause of Plaintiffs' damages, rendering Defendants liable.

COUNT SEVEN

(Negligence; Post-Sale Failure to Warn)

41. Paragraphs 1 through 40 are incorporated herein by this reference.

42. Subsequent to the sale of the vehicle, Defendants became aware of risks of harm associated with the use of the vehicle, which required Defendants to provide a post-sale warning to users of the vehicle of risks which potentially could be avoided by post-sale warnings.

43. Defendants knew how to locate the purchasers of their vehicles and could have provided post-sale instructions and/or warnings to avoid foreseeable risks of harm.

44. Defendants failed to provide such post-sale instructions and/or warnings to Plaintiffs and such failure was a proximate cause of Plaintiffs' damages.

COUNT EIGHT

(Negligence; Failure to Recall)

45. Paragraphs 1 through 44 are incorporated herein by this reference.

46. The tires which were originally sold by Defendant Goodyear with the motorhome are no longer manufactured by Goodyear.

47. The tires are no longer manufactured by Goodyear as a result of problems, including performance problems associated with the employment of the tires in motorhomes and other large vehicles.

48. Defendants each were aware of problems associated with the utilization of the tire in motorhomes, including the motorhome involved in this incident.

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

49. Defendants each failed to participate in a recall of the motorhome and the tires, which should have been undertaken to avoid foreseeable risks of harm.

50. The failure to recall the motorhome and the tires was a breach of Defendants' duties to Plaintiffs and has proximately caused their injuries.

COUNT NINE

(Exemplary Damages)

51. Paragraphs 1 through 50 are incorporated herein by this reference.

52. Defendants were aware of the risks of harm associated with the utilization of their product.

53. Defendants knowingly, willfully and wantonly failed to undertake any effort to protect Plaintiffs from such risks, knowing full well that Plaintiffs were exposed to serious risk of personal injury.

54. Defendant Goodyear's model tire has been involved in various failures which have caused personal injuries to others.

55. Defendants Gulfstream and Spartan were also aware of the history of this model of Goodyear tire's failure and associated injuries to the users of the product, including users of similar motorhomes.

56. Defendants each failed to undertake any effort whatsoever to protect Plaintiffs from the risk of serious injuries associated with the use of their product and in particular, the risks associated with the utilization of the product employing Goodyear's tires.

57. Defendants' actions were knowing, willful and wanton, and substantially certain to expose Plaintiffs to risks of serious personal injuries.

58. Plaintiffs are entitled to an award of punitive damages to punish Defendants and to deter them from similar future conduct in an amount to be proven at the

time of trial.

WHEREFORE, Plaintiffs request judgment be entered in their favor for all damages proximately caused by the acts and omissions of Defendants, including an award of prejudgment interest, punitive damages and costs incurred herein.

DATED this 13th day of June, 2005.

THE KURTZ LAW FIRM

By: _____
David L. Kurtz

COZEN O'CONNOR

By: _____
Blanca Quintero

THE KURTZ LAW FIRM
7600 North 15th Street, Suite 100
Phoenix, AZ 85020
Telephone: (602) 371-1300

F:\Haeger\Pleadings\Complaint.doc

EXHIBIT 3 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

Timothy J. Casey (#013492)
SCHMITT, SCHNECK, SMYTH & HERROD, P.C.
1221 East Osborn Road, Suite 105
Phoenix, Arizona 85014-5540
Telephone: (602) 277-7000
Facsimile: (602) 277-8663
timcasey@azbarristers.com

Counsel for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KORI D. HALEY, surviving spouse of JOSEPH JOHN HALEY, deceased, individually and on behalf of BRODY HALEY, the surviving minor child of JOSEPH JOHN HALEY, and as Personal Representative of the ESTATE OF JOSEPH JOHN HALEY; and JOSEPH HALEY, as the surviving father of JOSEPH JOHN HALEY, deceased; and, JANE HALEY, as the surviving mother of JOSEPH JOHN HALEY, deceased;

Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation; MONACO COACH CORPORATION, a foreign corporation; TRUCK REPAIR NETWORK, INC., a foreign corporation; BEAUDRY MOTOR COMPANY, an Arizona corporation d/b/a BEAUDRY RV COMPANY and BEAUDRY RV-TUCSON; BEAUDRY RV COMPANY, an Arizona corporation d/b/a BEAUDRY RV-TUCSON; DOUGLAS B. SMITH, a married man; BARBARA J. SMITH, a married woman; JOHN DOES I-X; JANE DOES I-X; ABC CORPORATIONS I-X; DEF LIMITED LIABILITY COMPANY, I-X; and XYZ, PARTNERSHIPS OR LLP, I-X,

Defendants.

NO.: CV2007-006515

COMPLAINT

(Tort-Motor Vehicle; Wrongful Death)

(Jury Trial Requested)

The Plaintiffs, by and through undersigned counsel, assert, aver, and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Kori D. Haley is the surviving spouse of decedent Joseph John Haley, and is a resident of Maricopa County, Arizona.

2. Plaintiff Kori D. Haley is the natural mother of Brody Haley, the natural minor child of Joseph John Haley and Kori D. Haley, and minor Brody Haley is a resident of Maricopa County.

3. Plaintiff Kori D. Haley is the Personal Representative of the Estate of Joseph John Haley.

4. Plaintiff Joseph Haley is the surviving father of Joseph John Haley, and is a resident of Maricopa County, Arizona.

5. Plaintiff Jane Haley is the surviving mother of Joseph John Haley, and is a resident of Maricopa County, Arizona.

6. The Defendant Goodyear Tire and Rubber Company is an Ohio corporation authorized to do business, and is doing business, in the State of Arizona, and caused an event to occur in Arizona from which these claims arise.

7. The Defendant Monaco Coach Corporation is a foreign corporation authorized to do business, and is doing business, in the State of Arizona, and caused an event to occur in Arizona from which these claims arise.

8. The Defendant Truck Repair Network, Inc. is a foreign corporation authorized to do business, and is doing business, in the State of Arizona, and caused an event to occur in Arizona from which these claims arise.

9. The Defendant Beaudry Motor Company is an Arizona corporation d/b/a Beaudry RV Company and/or Beaudry RV-Tucson, and is authorized to do business, and is doing business, in the State of Arizona, and caused an event to occur in Arizona from which these claims arise. For all purposes material to this Complaint, Beaudry Motor Company is, upon information and belief, the alter ego of Beaudry RV Company and/or Beaudry RV-Tucson.

10. The Defendant Beaudry RV Company is an Arizona corporation d/b/a Beaudry RV-Tucson, and is authorized to do business, and is doing business, in the State of Arizona, and caused an event to occur in Arizona from which these claims arise.

11. The Defendants Douglas B. Smith and Barbara J. Smith are husband and wife, residents of the State of Arizona, and caused an event to occur in Arizona from which these claims arise. These defendants were, upon information and belief, at all times pertinent to this Complaint acting for, on behalf of, and in furtherance of the interests of their marital community and community property.

12. The fictitiously named Defendants John Does I-X, Jane Does I-X, ABC Corporations I-X, DEF Limited Liability Company, I-X, and XYZ Partnerships or Limited Liability Partnerships, I-X are corporations, businesses, entities, persons, agents, servants, and/or employees whose true names are not know to the Plaintiffs at the present time. Plaintiffs are informed, and upon information and belief, allege that the fictitiously named Defendants are residents of the State of Arizona and/or are doing business in Arizona, and are entities that caused an event to occur in Arizona out of which Plaintiffs' claims arise. When the true names of said corporations, businesses, entities, persons, agents, servants, and/or employees become known to the Plaintiffs, they will ask leave of the Court to amend this Complaint to reflect such true names together with appropriate charging allegations. Each of these fictitiously named Defendants were a cause of Plaintiffs' damages by actionable conduct.

13. Plaintiffs have suffered damages in an amount that exceeds the jurisdictional minimum of this Court.

14. This Court has jurisdiction over this case, and venue for this Complaint and action is proper before this Court.

15. At all times material to this Complaint, Defendants Douglas Smith and Barbara Smith owned a 2004 Monaco Coach Corporation Diplomat motor home, VIN 1RF42464542027050 ("the Smith's motor home").

16. The Smith's motor home is a Class A motor home.

17. On December 15, 2006, at approximately 11:59 a.m., defendant Barbara Smith

was driving the Smith's motor home with a 1995 Buick Roadmaster station wagon in tow, northbound on State Route 85 at highway speed. At or near milepost 153.8, the left front tire of the Smith's motor home experienced a tread/belt separation whereupon the Smith's motor home and the towed vehicle crossed into the southbound traffic lane into approaching southbound traffic and crashed into a Honda Civic car driven by Joseph John Haley and occupied by Plaintiff Kori D. Haley, and another passenger.

18. As a direct and proximate result of the tread/belt separation, and subsequent loss of control of the Smith's motor home with the towed vehicle, Joseph John Haley was killed; Kori D. Haley suffered the death of her husband, and experienced severe emotional distress due to the death of her husband and personally witnessing his death; Brody Haley suffered the death and loss of his father; and Joseph and Jane Haley suffered the death and loss of their adult son.

19. The above-described left front tire on the Smith's motor home was a Goodyear Tire and Rubber Company G159 275/70R/22.5 Load Range H, Regroovable Tubeless tire ("the G159 tire").

FIRST CAUSE OF ACTION

(Strict Product Liability- Defect and Failure to Warn-Goodyear)

20. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

21. The Defendant Goodyear Tire and Rubber Company ("Goodyear") was responsible for the design, manufacture, construction, assembly, testing, labeling and sale of the G159 tire, and participated in placing the G159 tire into the stream of commerce.

22. The G159 tire was being used at the time of the above-described crash in a manner foreseeable by Goodyear.

23. The G159 tire is defective and unreasonably dangerous when used on a Class A motor home. The G159 tire is also defective and unreasonably dangerous in that Goodyear failed to provide adequate warnings and instructions concerning its use, maintenance, replacement, and repair when used on a Class A motor home.

24. The aforementioned tread/belt separation and loss of motor home control was a

direct and a proximate result of the G159 tire being defective and unreasonably dangerous when used on a Class A motor home and/or the failure of Goodyear to warn and instruct about the safe and proper use, maintenance, replacement, and repair of the G159 tire when used on a Class A motor home. As a result, Goodyear should be held strictly liable in tort to the Plaintiffs.

25. As a direct and a proximate result of the defective and unreasonably dangerous condition of the G159 tire when used on a Class A motor home, and said deficiencies in its warning and/or instructions, Joseph John Haley was killed; Kori D. Haley suffered the death of her husband, and experienced severe emotional distress due to the death of her husband and personally witnessing his death; Brody Haley suffered the death of his father; and Joseph and Jane Haley suffered the death of their son.

26. As a direct and a proximate result of the death of Joseph John Haley, the following individuals have been deprived of the normal love, care, affection, companionship, support, financial support, and other benefits and pleasures of the family relationship: Kori D. Haley, Brody Haley, Joseph Haley, and Jane Haley.

27. As a direct and a proximate result of the defective nature of the G159 tire, the Plaintiffs have incurred funeral expenses, medical and other health care related expenses, and, upon information and belief, will be forced to incur additional medical and other health care related expenses in the future.

28. The Plaintiffs further allege that Goodyear, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct through the use of the G159 tire on Class A motor homes might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Goodyear, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

SECOND CAUSE OF ACTION

(Strict Product Liability- Failure to Recall-Goodyear)

29. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

30. Subsequent to the sale and marketing of the G159 tire to the Class A motor home public and Class A motor home manufacturers, Goodyear became aware of the risk, problems, and/or defects associated with the use of the G159 tire on Class A motor homes which required Goodyear to recall the G159 tire.

31. Goodyear did not recall the G159 tire, although its stopped manufacturing it in year 2003.

32. As a direct and a proximate result of the failure to recall the G159 tire, the December 15, 2006 crash occurred, and Plaintiffs suffered injuries and damages as alleged in paragraphs 25-27.

33. The Plaintiffs further allege that the Goodyear, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct through the use of the G159 tire on Class A motor homes might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Goodyear, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

THIRD CAUSE OF ACTION

(Strict Product Liability- Failure to Issue Post Sale Warnings-Goodyear)

34. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

35. After the sale and marketing of the G159 tire, Goodyear knew of the risks, problems, and/or defects in the manufacturer, design, and/or warnings on, or accompanying, the G159 tire when it was used on Class A motor homes.

36. Goodyear knew how to locate the purchasers of G159 tires, and was obligated to warn the same of the risk, problems, and/or defects in the G159 tire which were discovered subsequent to its first sale and introduction into the Class A motor home market.

37. Goodyear undertook no effort to advise or warn of the risk, problems, and/or defects in the G159 tire subsequent to its first sale and introduction into the Class A motor home market.

38. As a direct and a proximate result of this post-sale failure to warn by

Goodyear, the December 15, 2006 crash occurred and renders Goodyear liable to Plaintiffs for Plaintiffs' injuries and damages as alleged in paragraphs 25-27.

39. The Plaintiffs further allege that Goodyear, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct through the use of the G159 tire on Class A motor homes might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Goodyear, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

FOURTH CAUSE OF ACTION

(Negligence-Goodyear)

40. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

41. Goodyear was negligent, careless, and reckless: (a) in the design, manufacturer, assembly, installation, distribution, maintenance, and sale of the G159 tire for use on Class A motor homes; (b) in the failure to warn and instruct with respect to the safe and proper use of the G159 tire when used on Class A motor homes; (c) in the failure to provide post-sale instructions and/or warnings regarding the G159 tire and its use on Class A motor homes; and (d) in failing to recall the G159 tire for use on Class A motor homes.

42. As a direct and a proximate result of such negligence, carelessness and recklessness, the December 15, 2006 crash occurred, and the Plaintiffs suffered injuries and damages as set forth in paragraphs 25-27.

43. The Plaintiffs further allege that Goodyear, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct through the use of the G159 tire on Class A motor homes might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Goodyear, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

FIFTH CAUSE OF ACTION

(Strict Products Liability- Defect and Failure to Warn- Monaco Coach)

44. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

45. The Defendant Monaco Coach Corporation ("Monaco Coach") was responsible for the design, manufacture, construction, assembly, testing, labeling and sale of Monaco Coach Diplomat motor homes, including the Smith's motor home. Monaco Coach participated in placing the Smith's motor home into the stream of commerce.

46. The Smith's motor home was being used at the time of the above-described crash in a manner foreseeable by Monaco Coach.

47. The Smith's motor home, as well as other model years of the Monaco Coach Diplomat model of motor home, was defective and unreasonably dangerous in that it had, upon information and belief, a weight bias between the ends of the front axle that could result in an overload condition of one of the front steering tires.

48. The Smith's motor home, as well as other model years of the Monaco Coach Diplomat model of motor home, was also defective and unreasonably dangerous in that it failed to have adequate warnings and instructions on, or accompanying it, concerning the selection of safe and appropriate replacement tires to use on it if replacement of the original tires provided by Monaco Coach was required for any reason.

49. As a direct and a proximate result of the defective and unreasonably dangerous nature of the Smith's motor home, and said deficiencies and defects in its warning and/or instructions, the December 15, 2006 crash occurred, and Plaintiffs suffered injuries and damages as set forth in paragraphs 25-27.

50. The Plaintiffs further allege that Monaco Coach, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Monaco Coach, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

SIXTH CAUSE OF ACTION

(Negligence- Post Sale Failure to Warn- Monaco Coach)

51. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

52. Monaco Coach owed a duty of due care to its customers, authorized sales and services dealers, and the foreseeable motoring public to provide warnings and/or instructions in such a fashion as to protect the same and warn them about the foreseeable risks, dangers, problems, and/or defects associated with the use of the G159 tire on the Smith's motor home, including the use of the G159 tire as a replacement tire for the Goodyear G670 model of tires on the subject motor home at the time of purchase by the Smith Defendants.

53. Before, during, and subsequent to the sale of the Smith's motor home, Monaco Coach knew of the risks, problems, and/or dangers associated with using the G159 tire on its Class A motor homes, including but not limited to the use of such a tire as a replacement tire on the Smith's motor home, and, in addition, the risks and dangers associated with using the G159 tire as a replacement tire for one of the steering tires on its Class A motor homes, including the Smith's motor home. This knowledge required Monaco Coach to provide a post-sale warning to users of its Class A motor homes, the Smith Defendants, and to Monaco Coach's authorized sales and service dealers, about the risks and dangers associated with using the G159 tire on its Class A motor homes, and/or using it as a replacement tire for Goodyear G670 model tires that were on the Smith's motor home at the time of sale, which could be potentially avoided by post sale warnings.

54. Monaco Coach knew how to locate the purchasers of its Class A motor homes, including the Smith Defendants, and it further knew how to locate its authorized sales and service dealers including but not limited to Beaudry RV-Tucson and, therefore, could have provided post-sale instructions and warnings to avoid foreseeable risks of harm in using the G159 tire with its Class A motor homes, including the Smith's motor home.

55. Despite its knowledge and experience, Monaco Coach failed to provide such post-sale instructions and/or warnings to the purchasers of their Class A motor homes, including the Smith Defendants, and further failed to provide such post sale instructions

and/or warnings to its authorized sales and service dealers, including Beaudry RV-Tucson.

56. As a direct and a proximate result of the foregoing negligence by Monaco Coach, the December 15, 2006 crash occurred, and the Plaintiffs suffered injuries and damages as set forth in paragraphs 25-27.

57. The Plaintiffs further allege that Monaco Coach, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. Monaco Coach, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

SEVENTH CAUSE OF ACTION

(Negligence- Ostensible Agency of Monaco for Beaudry RV-Tucson)

58. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

59. Defendant Beaudry RV-Tucson is an authorized sales and service dealer for Monaco Coach. Monaco Coach, upon information and belief, expressly authorized Beaudry RV-Tucson to service its motor home products in southern Arizona, and to hold itself out to the Class A motor home owning public as an authorized service dealer for Monaco Coach and its Class A motor home products, including the Smith's motor home.

60. Defendant Monaco Coach represented to the Class A motor home owning public in its literature, including its website on-line service locator, that Defendant Beaudry RV-Tucson was its authorized agent for purposes of performing service on Monaco Coach Class A motor home products, including the Smith's motor home.

61. Upon information and belief, the Smith Defendants took their 2004 Monaco Coach Diplomat model of Class A motor home to Defendant Beaudry RV-Tucson because it was an authorized sales and service dealer for Monaco Coach Class A motor home products, was believed to be trained and qualified in providing reasonable and appropriate service on Monaco Coach Class A motor home products, was approved by Monaco Coach to perform service work on Monaco Coach Class A motor home products, and was held out to the

public by Monaco Coach as a Monaco Coach authorized service center.

62. Defendant Beaudry RV-Tucson is the ostensible or apparent agent of Defendant Monaco Coach Corporation.

63. As the principle, Monaco Coach is vicariously liable and/or responsible under the legal theory of *respondeat superior* for the damages and injuries to Plaintiffs that are a direct and a proximate result of the acts, errors, and/or omissions of its agent, Beaudry RV-Tucson, as alleged below in paragraphs 76-86.

EIGHTH CAUSE OF ACTION

(Negligence- Truck Repair Network, Inc.)

64. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

65. Defendant Truck Repair Network, Inc. ("TRN") represents to the public that it pre-selects its agents/vendors in various geographic areas, and that such agents/vendors are qualified and/or trained before they provide truck repair service to customers of TRN. TRN further represents to the public that it monitors the status and quality of the repairs and/or service performed by its agents/vendors.

66. The Smith's motor home experienced a failure in one of the Goodyear G670 model of tires that was original equipment on the motor home at the time of its purchase by the Smith Defendants.

67. The Smith Defendants hired TRN to arrange for the servicing of the Smith's motor home by one of its pre-selected agents/vendors, and for its agent/vendor to select for the Smith's motor home a safe, reasonable, and appropriate replacement tire and to install the same.

68. Upon information and belief, the Smith Defendants, and the foreseeable motoring public, relied on TRN and its agent/vendor to select a safe, reasonable, and appropriate replacement tire for use on the Smith's motor home.

69. TRN, through its authorized agent/vendor, serviced the Smith's motor home.

70. The agent/vendor of TRN who serviced the Smith's motor home was, at all times pertinent to this Complaint, acting in the course and scope of its employment or agency

with TRN.

71. TRN, through its authorized agent/vendor, negligently, carelessly, and recklessly serviced the Smith's motor home by unilaterally selecting an old year-2000 G159 model of tire to install on the Smith's motor home to replace a Goodyear G670 model of tire, thereby resulting in a mismatch of different tire models on the Smith's motor home. The tire selected by TRN was the G159 tire referenced in paragraph 19.

72. The G159 tire selected by TRN through its authorized agent/vendor was not a safe, reasonable, and appropriate replacement tire for the Smith's motor home.

73. Upon information and belief, the management of TRN and/or its agent/vendor compensation policies, practices, procedures, understandings, and/or contractual arrangements create a business environment or incentive for the agents/vendors to sell improper or aged equipment or products for use as replacement parts and results in the agent/vendor acting in a manner contrary to the safety interests of the customer and the motoring public, and in a negligent, careless, and reckless manner.

74. As a direct and a proximate result of the foregoing negligence, carelessness, and recklessness by TRN and its authorized agent/vendor, the Plaintiffs suffered injuries and damages as set forth in paragraphs 25-27.

75. The Plaintiffs further allege that the TRN, acting to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. TRN, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

NINTH CAUSE OF ACTION

(Negligence- Beaudry Defendants)

76. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

77. Upon information and belief, Defendants Beaudry Motor Company, Beaudry RV-Tucson and/or Beaudry RV Company ("the Beaudry Defendants") are an authorized

sales and service dealer for Monaco Coach.

78. Monaco Coach expressly authorized Defendant Beaudry RV-Tucson to service Monaco Coach Class A motor home products in southern Arizona, and to hold itself out to the Class A motor home owning public as an authorized service provider and location for Monaco Coach.

79. On multiple occasions the Beaudry Defendants and/or their agents/employees inspected and serviced the Smith's motor home. These defendants owed a duty to their customers and the foreseeable motoring public to perform such inspections and service in a reasonable, appropriate, and prudent fashion.

80. The employees or agents of the Beaudry Defendants who serviced the Smiths' motor home were, at all times pertinent to this Complaint, acting in the course and scope of their employment or agency with the Beaudry Defendants.

81. The Beaudry Defendants, as an authorized sales and service dealer for Monaco Coach and other Class A motor home manufacturers, knew or should have known of the problems, risks, and dangers associated with using the G159 tire on the Smith's motor home, including the use of such a model tire as a steering tire.

82. The Beaudry Defendants, in and of itself, and as an authorized sales and service dealer for Monaco Coach, knew or should have known of the problems, risks and dangers associated with not properly inflating the tires on the Smith's motor home.

83. The Beaudry Defendants and/or their agents/employees negligently, carelessly, and recklessly inspected and serviced the Smith's motor home, including but not limited to the service they performed on said motor home on March 13, 2006 and December 14, 2006.

84. Upon information and belief, the management of the Beaudry Defendants and/or the policies, practices, procedures, and understandings of these defendants, placed unreasonable time schedules and/or service goals on the employees and/or agents who serviced the Smith's motor home such that they acted in a negligent, careless, and reckless manner.

85. As a direct and a proximate result of the foregoing negligence and recklessness by the Beaudry Defendants, the Plaintiffs suffered injuries and damages as set forth in

paragraphs 25-27.

86. The Plaintiffs further allege that the Beaudry Defendants, acting to serve their own interests and having reason to know and consciously disregarding the substantial risk that their conduct might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to other persons. The Beaudry Defendants, therefore, should be required to respond to the Plaintiffs in the form of a punitive or exemplary damage award.

TENTH CAUSE OF ACTION

(Negligence- Smith Defendants)

87. Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

88. Defendants Douglas Smith and Barbara Smith acted negligently and carelessly in the maintenance of their motor home, and failed to ensure that it was maintained in a safe, reasonable, and roadworthy condition for highway use on the date of the crash.

89. The Smith's motor home and the 1995 Buick Roadmaster station-wagon were joined in tow and were in the possession and control of Defendant Barbara Smith at the time of the crash.

90. Defendant Barbara Smith acted negligently and carelessly in the operation and/or driving of the Smith's motor home with the 1995 Buick Roadmaster station-wagon in tow at the time of the crash.

91. On the date of the crash, Defendant Douglas Smith negligently entrusted the driving of the Smith's motor home with a towed vehicle to his spouse, Barbara, when he knew, or should have known, that his spouse was not sufficiently experienced in the safe driving and handling of the Smith's motor home with a towed vehicle in the event of a foreseeable emergency situation.

92. As a direct and a proximate result of the foregoing negligence, carelessness, and recklessness by the Smith Defendants, the Plaintiffs suffered injuries and damages as set forth in paragraphs 25-27.

WHEREFORE, the Plaintiffs request judgment against the Defendants and each of

them as follows:

A) For general damages in an amount deemed fair and reasonable by a jury, but in any event well in excess of the minimum jurisdictional limits of this Court;

B) For special damages in an amount to be proven at trial;

C) For punitive damages against those defendants for which such claim is asserted;

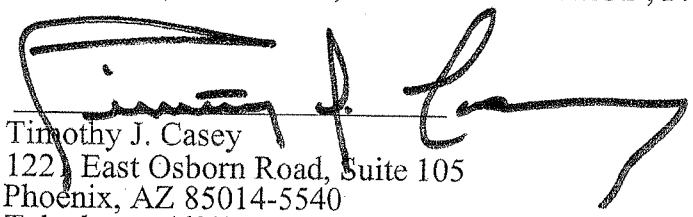
D) For all costs incurred herein; and

E) For such further relief as the Court deems just and proper.

PLAINTIFFS REQUEST A JURY TRIAL.

DATED this 13th day of April, 2007.

SCHMITT, SCHNECK, SMYTH & HERROD, P.C.



Timothy J. Casey
1221 East Osborn Road, Suite 105
Phoenix, AZ 85014-5540
Telephone: (602) 277-7000
Facsimile:(602)277-8663
timcasey@azbarristers.com
Attorney for Plaintiffs

ORIGINAL of the foregoing filed this 13th day of April, 2007, with:

Clerk of Superior Court
Maricopa County, AZ
201 West Jefferson Street
Phoenix, AZ 85003

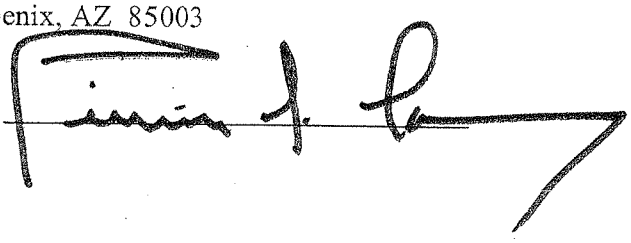
By: 

EXHIBIT 4 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

Thomas F. Dasse (AZ Bar No. 005409)
LAW OFFICES OF THOMAS F. DASSE, P.C.
14646 North Kierland Blvd.
Suite 235
Scottsdale, Arizona 85254
(480) 998-8222

Attorneys for Plaintiff Margaret Bogaert

Frank E. Lesselyong, Esq. (AZ Bar No. 004582)
KLEINMAN, LESSELYONG & NOVAK
382 East Palm Lane
Phoenix, Arizona 85004

Attorneys for Sandra Frederick

COPY

JUL 18 2005

MICHAEL K. JEANES, CLERK
O. CARDENAS
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

No. CV2005-051486

MARGARET ROSE BOGAERT, surviving spouse of JAMES CHARLES FREDERICK, individually and on behalf of RYAN FREDERICK and PAIGE FREDERICK, surviving minor children of JAMES CHARLES FREDERICK, and as Personal Representative of the ESTATE OF BRANDON FREDERICK, SANDRA FREDERICK; surviving mother of BRANDON FREDERICK,

Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation; GREAT WEST HOLDINGS, INC., an Arizona corporation; GREAT WEST TIRE, INC., an Arizona corporation; GREAT WEST TRUCK CENTER, INC. an Arizona corporation; FINDLAY RV CENTER, INC., a Nevada corporation; FINDLAY AUTOMOTIVE, INC., a Nevada corporation; FINDLAY AUTOMOTIVE OF NEVADA, LLC, a Nevada limited liability company; HOHL-FINDLAY, LLC, a Nevada limited liability company; JOHN DOES I-X and JANE DOES I-X; ABC CORPORATIONS I-X and XYZ PARTNERSHIPS I-X,

Defendants.

COMPLAINT

(Tort – Motor Vehicle; Wrongful Death)

(Jury Trial Requested)

The Plaintiffs, by and through counsel undersigned, allege as follows:

GENERAL ALLEGATIONS

I

Plaintiff Margaret Rose Bogaert is the surviving spouse of James Charles Frederick and is a resident of Canada.

II

Plaintiff Margaret Rose Bogaert is the adoptive mother of Ryan Frederick and Page Frederick, both of whom are natural minor children of James Charles Frederick.

III

Plaintiff Margaret Rose Bogaert is the court appointed Personal Representative of the Estate of Brandon Frederick.

IV

Plaintiff Sandra Frederick is the surviving mother of Brandon Frederick and is a resident of the State of Wisconsin.

V

The Defendant Goodyear Tire and Rubber Company is an Ohio corporation authorized to do business, and doing business, in the State of Arizona, that caused an event to occur in Arizona from which these claims arise.

VI

The Defendants Great West Holdings, Inc., Great West Tire, Inc., and Great West Truck Center, Inc. (hereafter "the Great West defendants") are each Arizona corporations authorized to do business, and doing business, in the State of Arizona that caused an event to occur from which these claims arise.

VII

The Great West defendants own and operate facilities located in or near Kingman, Arizona that do business under the fictitious name of Great West Commercial Tire Center.

///

///

VIII

The Defendants Findlay RV Center, Inc., Findlay Automotive, Inc., Findlay Automotive of Nevada, LLC, and Hohl-Findlay, LLC (hereafter "the Findlay defendants") are each Nevada companies that do business in the State of Arizona that caused an event to occur from which these claims arise.

IX

The Findlay defendants own and operate facilities located in or near Las Vegas, Nevada that do business under the fictitious name of Findlay RV.

X

John Does I-X, Jane Does I-X, ABC Corporations I-X and XYZ Partnerships I-X are corporations, businesses, entities, persons, agents, servants or employees whose true names are not known to the Plaintiffs at the present time. Plaintiffs are informed and upon information and belief, allege that John Does I-X, Jane Does I-X, ABC Corporations I-X and XYZ Partnerships I-X are residents of the State of Arizona or are entities that caused an event to occur in Arizona out of which Plaintiffs' claims arise or are doing business in Arizona. When the true names of said persons, agents, servants, employees, corporations or entities become known to the Plaintiffs, they will ask leave of the court to amend the Complaint to reflect such true names together with the appropriate charging allegations. Each of these defendants caused plaintiffs' damages by negligence or by breach of duties owed to plaintiffs, or is responsible as a matter of law for acts of others who caused plaintiffs' damages by such negligence or breach of duty.

FIRST CAUSE OF ACTION

XI

Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

XII

On July 20, 2003, at approximately 7:35 a.m., James Charles Frederick was driving a 1998 Fleetwood Motor-home eastbound on Interstate 40 near Milepost 223 in Torrance County, New Mexico, when the left front tire experienced a tread/belt separation causing the vehicle to go out of

control and overturn. As a direct and proximate result of the tread/belt separation, and subsequent loss of vehicle control, James Charles Frederick and Brandon Frederick were killed, Ryan Frederick sustained physical injuries and experienced severe emotional distress due to the deaths of his father (James Charles Frederick) and brother (Brandon Frederick); Paige Frederick experienced severe emotional distress due to the deaths of her father (James Charles Frederick) and brother (Brandon Frederick); and Rose Boegart experienced severe emotional distress due to the deaths of James Charles Frederick and Brandon Frederick.

XIII

The above-described left front tire was a Goodyear 275/70 R 22.5, with DOT No. MC6Y270W449.

XIV

The Defendant Goodyear Tire and Rubber Company was responsible for the design, manufacture, construction, assembly, testing, labeling and sale of the subject tire, and participated in placing said tire into the stream of commerce.

XV

The Finlay defendants are engaged in the business of selling recreational vehicles equipped with tires, and on or about September of 2001 sold the above-described tire as part of its sale of the 1998 Fleetwood Motor-home to James Charles Frederick.

XVI

The subject tire was being used at the time of the above-described accident in a manner foreseeable by the Defendants, and as so used was defective, unfit and unreasonably dangerous for its foreseeable use; the tire was also defective and unreasonably dangerous in that the Defendants failed to provide adequate warnings and adequate instructions concerning its use, maintenance and repair.

XVII

The aforementioned tread/belt separation and loss of vehicle control was a direct and proximate result of a defect or defects in the subject tire and/or the failure of the Defendants to warn and instruct in the safe and proper use of the subject tire. As a result, the Defendants, should be held

strictly liable in tort to the Plaintiffs.

XVIII

As a direct and proximate result of the defective nature of the subject tire and said deficiencies in warnings and/or instructions, James Charles Frederick and Brandon Frederick were killed; Ryan Frederick sustained physical injuries and experienced severe emotional distress due to the deaths of his father (James Charles Frederick) and brother (Brandon Frederick); Page Frederick experienced severe emotional distress due to the deaths of her father (James Charles Frederick) and brother (Brandon Frederick); and Rose Boegart experienced severe emotional distress due to the deaths of James Charles Frederick and Brandon Frederick.

XIX

As a direct and proximate result of the death of James Charles Frederick, the following individuals have been deprived of the normal love, care, affection, companionship, support, and other pleasures of the family relationship: Margaret Rose Bogaert, Ryan Frederick, and Paige Frederick.

XX

As a direct and proximate result of the death of Brandon Frederick, the following individuals have been deprived of the normal love, care, affection, companionship, support, and other pleasures of the family relationship: Sandra Frederick, Margaret Rose Bogaert, Ryan Frederick, and Paige Frederick.

XXI

As a further direct and proximate result of the defective nature of the above-described tire and said deficiencies in warnings and/or instructions, the Plaintiffs have incurred medical and other health care related expenses, and, upon information and belief, will be forced to incur additional medical and other health care related expenses in the future.

SECOND CAUSE OF ACTION

XXII

Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

XXIII

The Goodyear Tire and Rubber Company was negligent and careless in the design, manufacture, inspection, assembly, installation, distribution, maintenance and sale of the above-described tire and in the failure to warn and instruct with respect to the safe and proper use of said tires; as a direct and proximate result of such negligence and carelessness, the Plaintiffs suffered the damages set forth above in paragraphs XVIII, XIX, XX and XXI.

XXIV

The Plaintiffs further allege the Goodyear Tire and Rubber Company, acting to serve its own interests, having reason to know and consciously disregarding the substantial risk that its conduct might significantly injure the rights of others, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to those persons. These defendants should therefore be required to respond to the Plaintiffs in punitive damages.

THIRD CAUSE OF ACTION

XXV

Plaintiffs hereby incorporate by reference all prior allegations of this Complaint as though fully set forth herein.

XXVI

On or about June 13, 2003, the above-described vehicle and tires, including the subject tire, were serviced and/or inspected at the Great West Commercial Tire Center in Kingman, Arizona, a facility owned and operated by the Great West defendants.

XXVII

Upon information and belief, the Great West defendants negligently and carelessly inspected the above-described subject tire and this negligence was a cause of the Plaintiff's injuries described above.

XXVIII

The damages sustained by the plaintiffs exceed the minimum jurisdictional limits of this Court.

///

WHEREFORE, the Plaintiffs request judgment against the Defendants as follows:

a) For general damages in an amount deemed fair and reasonable by a jury, but in any event well in excess of the jurisdictional limits of this Court;

b) For special damages in an amount to be proven at trial;

c) For punitive damages against the Goodyear Tire and Rubber Company;

d) For all costs incurred herein; and

e) For such further relief as the Court deems just and proper.

PLAINTIFFS REQUEST A JURY TRIAL.

DATED this 18th day of July, 2005.

LAW OFFICES OF THOMAS F. DASSE, P.C.

By: _____
Thomas F. Dasse
14646 North Kierland Blvd.
Suite 235
Scottsdale, Arizona 85254
Attorneys for Plaintiff Margaret Bogaert

and

KLEINMAN, LESSELYONG & NOVAK

By: _____
Frank E. Lesselyong, Esq.
382 East Palm Lane
Phoenix, Arizona 85004

Attorneys for Plaintiff Sandra Frederick

EXHIBIT 5 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

BILLY WAYNE WOODS; SHIRLEY WOODS; JON M. WOODS; STACY WOODS; Plaintiffs, v. THE GOODYEAR TIRE AND RUBBER COMPANY; MONACO COACH CORPORATION; COLONIAL SALES-LEASE-RENTAL, INC. (d/b/a COLONIAL RV CENTER); Fictitious Party "A", whose identity is presently unknown to the Plaintiffs, who is an entity, an individual or corporation responsible for the design, manufacture, testing or placing into service or marketing the Goodyear tire, which is the subject of this litigation, Fictitious Party "B", whose identity is unknown to the Plaintiffs at this time, being that individual, entity or corporation responsible for the design, manufacture, testing of any component part of the subject line of Goodyear tires inclusive of the subject tire, Fictitious Party "C", whose identity is unknown to Plaintiffs at this time, being that individual, entity or corporation responsible for the design, manufacture, testing or marketing of the vehicle, which is the subject of this litigation, Fictitious Party "D", whose identity is unknown to the Plaintiffs at this time, being that individual, entity or corporation responsible for the design, manufacture, testing or marketing of any component part of the subject tire or tire line, Fictitious Party "E", whose identity is unknown to the Plaintiffs at this time, being that individual, entity or corporation responsible for designing, manufacturing, testing, marketing and/or	§ §	CIVIL ACTION NO.: CV-04-45 __PLAINTIFFS DEMAND TRIAL BY JURY__

selling any failing component part of the subject vehicle; **Defendants.**	§ § § § §	

COMPLAINT

STATEMENT OF THE PARTIES

1. Plaintiffs, Billy Wayne Woods, and his wife, Shirley Woods, are citizens and residents of St. Claire County, Alabama, living at 216 Oak Grove Road, Springville, Alabama, 35146. Both of these Plaintiffs are over the age of 19 years.

2. Plaintiffs, Jon M. Woods and Stacy Woods, are husband and wife over the age of nineteen years. They are residents and citizens of Hale County, Alabama, living at 40 Park Manor, Moundville, Alabama, 35474.

3. Defendant, The Goodyear Tire and Rubber Company ("Goodyear"), is a foreign corporation doing business in Hale County, Alabama, and in the State of Alabama at large through its agents. Defendant Goodyear is in the business of manufacturing, assembling, distributing and selling tires for use by ordinary consumers such as the Plaintiffs in this case.

4. Goodyear is registered to do business in the State of Alabama and its registered agent is The Corporation Company, 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109. The principal address for this Defendant is 1144 East Market Street, Akron, Ohio, 44316-0001. Goodyear is organized and incorporated in accordance with the laws of the state of Ohio.

5. Defendant, Monaco Coach Corporation ("Monaco"), is a foreign corporation organized and incorporated under the laws of the state of Delaware. It is

doing business in the state of Alabama through agents such as Defendant Colonial Sales-Lease-Rental, Inc. Its principle place of business is 91320 Coburg Industrial Way, Eugene, Oregon 97408. Monaco designs, manufactures, sells and markets recreational vehicles and manufactured the 2001 Monaco Diplomat LE recreational vehicle, which is the subject of this litigation. Its registered agent is John W. Nepute, 91320 Coburg Industrial Way, Coburg, Oregon, 97408.

6. The Defendant, Colonial Sales-Lease-Rental, Inc. (d/b/a Colonial RV Center) (hereafter, "Colonial"), is a domestic corporation incorporated under the laws of the state of Alabama. It is qualified to do business in the state of Alabama and its registered agent is Grady Wayne Smith, 733 Pinson Street, Tarrant, Alabama, 35217. Its principle place of business is 6400 First Avenue South, Birmingham, Alabama, 35212. Colonial sells, distributes and markets recreational vehicles in Jefferson County, Alabama, and sold the 2001 Monaco Diplomat LE, VIN 1RF12061712014569 to the Plaintiffs, Billy Wayne Woods and Shirley Woods.

STATEMENT OF FACTS

7. On October 18, 2003, the Plaintiffs were traveling in the 2001 Monaco Diplomat LE, VIN 1RF12061712014569. Mr. Billy Wayne Woods was driving the recreational vehicle at the time of the accident. The Woods family was traveling north on I-75 in Turner County, Georgia, approximately 1/10 of a mile north of County Road 252, when the accident occurred. The left front (driver's side) Goodyear G159 Unisteel 275/70R22.5 tire suffered a tread separation failure, causing loss of control of the vehicle. The tire failure caused the vehicle to cross over the median of I-75 and travel across the two southbound lanes of I-75, continuing in a northwesterly direction off-road

across the front of the southbound Rest Area striking an embankment. The vehicle then ran over a direction sign and across the entranceway to the rest area. The vehicle then struck another embankment before coming to rest on the north side of the rest area facing north, approximately 150 feet north of the entrance road.

Woods Family Members Injured

8. Billy Wayne Woods was the driver of the recreational vehicle at the time of the accident. He suffered serious and permanent personal physical injuries, mental anguish, pain and suffering during and following the accident. Mr. Woods suffered a burst fracture in his spinal cord at T12 with greater than 50% loss of vertebral body height and protrusion into canal space. He also suffered L1 burst fracture with 40% canal compromise. He was treated for spinal cord injury. The L1 spinal cord injury resulted in paraplegia and motor nonfunctional.

9. Shirley Woods, Jon M. Woods and Stacy Woods were passengers in the recreational vehicle at the time of the accident. Each of them suffered various serious personal physical injuries, mental anguish, pain and suffering during and following the accident. Shirley suffered a lumbar spine compression fracture at L1 and multiple left side rib fractures. Jon M. Woods suffered a broken left hip and multiple fractures including crushed pelvis. Stacy Woods suffered a compression fracture at L1 and a nonsupportive fracture at T12. Mathew Woods (age 5 at time of accident) and Carson Woods (age 1 at the time of accident), the minor children of Jon and Stacy Woods were passengers in the vehicle and escaped serious injury.

10. The Goodyear G159 Unisteel 275/70R22.5 tire was designed, engineered, inspected, manufactured, marketed, distributed and sold by Defendants, Goodyear and

fictitious defendants. The identifying information on the defective tire is in part "Goodyear G159 Unisteel Regroovable, 275/70R22.5, Load Range H, DOT: MC6Y 270W 4600". On information and belief, the tire was manufactured at the Goodyear plant located in Danville, Virginia, during the forty-sixth week of 2000. The tire had good tread depth at the time of the tread separation failure. The Goodyear tire, which is the subject matter of this lawsuit, is defective in one or more of the following respects: (a) improper design of the tire from a handling, durability and stability standpoint; (b) the tire and tire line was improperly designed and manufactured creating an unreasonable and dangerous propensity to separate under normal and foreseeable circumstances; (c) failure to provide a reasonable and adequate warning to suppliers and users of the tire about the tire's propensity to separate; (d) marketing the tire in such a way as to mislead consumers as to the safety, stability, and maneuverability and road worthiness of the tires; (e) improper and inadequate testing of the tire and its components; (f) hiding from the public the true nature of the tire and its propensity to separate and cause a driver to lose control and be involved in potentially fatal accidents; (g) failing to properly train its employees in the proper inspection, manufacturing, and servicing of the tires; (h) failing to design the subject tire and tire line in a manner so as not to suffer a tread separation under normal driving conditions and foreseeable service of the subject vehicle; (i) failing to properly monitor detreading causes in its tires and warn the public of dangerous propensities; (j) failing to conduct proper testing of the subject tire and tire design and/or its components to determine strength, durability, load range or otherwise determine suitability of the tire for the service requirements of the vehicle which is the subject of this accident; and/or (k) failing to manufacture the tire in accordance with its

specifications; and failing to utilize sufficient antidegradants and antiozonants in the design to avoid premature degradation from age and use in service.

11. This accident, and the resulting injuries to the Woods family members, was directly and/or proximately caused by the failure of the defective tire mounted on the left front (driver's side) location when the tread separation occurred during service on the subject vehicle.

COUNT ONE -- AEMLD

12. Plaintiffs adopt and incorporate by reference all prior paragraphs of the Complaint as if set out here in full.

13. Defendant Goodyear and the fictitious defendants, at all times relevant to this action, were engaged in the business of manufacturing, assembling, and distributing Goodyear G159 Unisteel tires for use in Alabama and elsewhere by ordinary consumers, and did manufacture and distribute the subject Goodyear G159 Unisteel tire which was on the left front (driver's side) wheel of the vehicle driven by Billy Wayne Woods at the time of the subject accident, and did disseminate information, advertisements, and promotions for the Goodyear G159 Unisteel tires in Alabama.

14. Defendant Monaco and the fictitious defendants, at all times relevant to this action, were engaged in the business of manufacturing, assembling and distributing the 2001 Monaco Diplomat LE recreational vehicle. As the vehicle manufacturer, it had ultimate control over the design, specification, testing and approval process for installing as a component part of the vehicle, the subject Goodyear G159 Unisteel tire line and the subject Goodyear G159 Unisteel tire, which is the subject matter of this litigation on said vehicle driven by Billy Wayne Woods at the time of the accident. The subject tire

was not a proper fitment for the vehicle given its gross weight and load capacity and lack of strength and durability of the tire design. The vehicle manufacturer approved as original equipment and/or as a replacement a tire not adequate in its design to safely perform under normal and expected operating conditions for the subject vehicle. Thus, the vehicle equipped with this component tire was unreasonably dangerous to operate. Defendant Monaco knew or should have known of the defect and failed to warn the public or recall its vehicles equipped with the subject tires.

15. The Defendant, Colonial, sold the Monaco Diplomat LE recreational vehicle to Billy W. Woods and Shirley Woods on or about April 8, 2001, for the total cash price of $181,384.36.

16. Defendants, Goodyear and Monaco, directed or controlled the acts and/or omissions of fictitious defendants in the design and manufacture of the subject tire. Defendants, Goodyear, Monaco and the fictitious defendants, participated in the design, development, testing, manufacturing and/or distribution of the subject tire. Additionally, Defendants, Goodyear and Monaco, directed or should have directed the quality control policies, practices and procedures of fictitious defendants.

17. Plaintiffs aver that the subject Goodyear G159 Unisteel tire and the subject vehicle were expected to, and did, reach the consumer without substantial change from its condition at the time and place it left the control of the Defendants.

18. Plaintiffs aver that the subject Goodyear G159 Unisteel tire and the subject vehicle were defectively designed, manufactured, and assembled resulting in tread separation failure during reasonable, foreseeable and ordinary use. The tire was a failing component of the subject vehicle at the time of the accident.

19. The subject Goodyear G159 Unisteel tire and the subject vehicle were defective at the time it left the control of the Defendants, and these defects rendered the tire and subject vehicle unreasonably dangerous when used as it was intended to be used by consumers, including the Woods family.

20. The defective condition of the subject Goodyear G159 Unisteel tire and subject vehicle has been known by Defendants or should have been known by Defendants prior to the sale and distribution of the subject tire to the consumer. Defendants failed to warn of or correct the defective condition. Alternatively, the Defendants knew, should have known or did discover the defects in the subject tire and vehicle after placing same into production and into the stream of commerce and failed to timely warn the consumers, including the Woods family, and/or failed to timely recall the defective products.

21. The unreasonably dangerous defects which existed in the subject Goodyear G159 Unisteel tire and subject vehicle, proximately caused the accident and injuries and damages to the Woods family as stated herein above.

WHEREFORE, Plaintiffs demand judgment against the Defendants, including the fictitious defendants, in such an amount as the jury may award for compensatory and punitive damages, plus the cost of this action.

COUNT TWO – NEGLIGENCE

22. Plaintiffs adopt and incorporate by reference all prior paragraphs of the Complaint as if set out here in full.

23. Defendants, Goodyear, Monaco and fictitious defendants, negligently and/or wantonly designed, manufactured, inspected, tested and distributed the subject

Goodyear G159 Unisteel tire that was on the left front (driver's side) wheel of the vehicle driven by Billy Wayne Woods on October 18, 2003.

24. Defendants, Goodyear, Monaco and fictitious defendants, negligently and/or wantonly warranted that the tire was fit for ordinary use by consumers, such as Billy Wayne Woods and Shirley Woods; that the manufacturing process resulted in a tire safe for ordinary use; and that this tire was not defective.

25. Defendants, Goodyear, Monaco and fictitious defendants, negligently and/or wantonly failed to correct or warn of the defective condition of the tire, after it became known, or reasonably should have been known by the Defendants.

26. As a proximate result of the Defendants', Goodyear's, Monaco's and fictitious defendants', negligent conduct, the Plaintiffs suffered injuries and damages, including personal physical injury, mental pain, suffering, physical pain and mental anguish as a proximate result of all of the Defendants' wrongful conduct.

WHEREFORE, Plaintiffs demand judgment against the Defendants, including the fictitious defendants, in such an amount as the jury may award for compensatory and punitive damages, plus the cost of this action.

COUNT THREE — WARRANTY CLAIM

27. Plaintiffs adopt and incorporate by reference paragraphs 1-26 of the Complaint as if set out here in full.

28. Defendants, Goodyear, Monaco and fictitious defendants, are sellers as such term is defined under Section 7-2-103 of the *Alabama Code (1993)*, of consumer rubber products including, but not limited to, medium truck tires or of the subject vehicle.

29. Defendants, Goodyear, Monaco and fictitious defendants, did distribute and sell Goodyear G159 Unisteel medium truck tires and the subject vehicle. The tire and subject vehicle made the basis of this action were subsequently sold, without modification, to a user or consumer for usage on the subject vehicle.

30. Defendants, Goodyear, Monaco and fictitious defendants, warranted that the Goodyear tire and the subject vehicle were reasonably fit and suitable for the purpose for which they were intended to be used. Plaintiffs aver that these Defendants breached said warranty in that at the time the tire was manufactured, assembled and sold, it was in a dangerously defective and unsafe condition.

31. On October 18, 2003, the Goodyear tire made the basis of this action was in use having been mounted on the left front (driver's side) wheel of the accident vehicle. Billy Wayne Woods and the Woods family were traveling north on I-75 in said vehicle when the tread separated from the subject Goodyear G159 Unisteel tire, made the basis of this action, causing him to crash and lose control of the subject vehicle and leave the roadway, crossing the median and both southbound lanes of I-75 and, ultimately, crashing into an embankment in or near a rest area.

32. This accident, which injured and damaged the Woods family members, was proximately and directly related to Defendants' breach of their implied warranty of fitness and suitability for the product's intended use.

WHEREFORE, Plaintiffs demand judgment against the Defendants, including the fictitious defendants, in such an amount as the jury may award for compensatory and punitive damages, plus the cost of this action.

COUNT FOUR – WANTONESS

33. Plaintiffs adopt and incorporate by reference paragraphs 1-32 of the Complaint as if set out here in full.

34. Defendants', Goodyear's, Monaco's and the fictitious defendants', conduct was conduct carried on with a reckless or conscious disregard of the rights or safety of others. Said conduct proximately caused the accident, injuries and damages to the Plaintiffs, including personal physical injury, mental pain, suffering, physical pain and mental anguish, medical bills and expenses.

WHEREFORE, Plaintiffs demand judgment against the Defendants, including the fictitious defendants, in such an amount as the jury may award for compensatory and punitive damages, plus the cost of this action.

COUNT FIVE — NEGLIGENCE

35. Plaintiffs adopt and incorporate by reference paragraphs 1-34 as if set out here in full.

36. Defendant Colonial negligently failed to inspect the subject vehicle for safety and negligently failed to prepare the subject vehicle for sale to Billy Wayne Woods and Shirley Woods.

37. Defendant Colonial had a duty to inspect, prepare, and service the vehicle and tires prior to delivery of the subject vehicle to Billy Wayne Woods and Shirley Woods.

38. Defendant Colonial breached their duty to use reasonable care in inspecting, preparing and servicing the subject vehicle.

39. As a result of said breach, Defendant Colonial failed to discover the defective condition of the subject tire and vehicle at the time of delivery of the subject vehicle to Billy Wayne Woods and Shirley Woods. Defendants negligently failed to correct or warn of the defective condition of the tire, after it became known, or reasonably should have been known, by the Defendant Colonial.

40. As a proximate result of the Defendant Colonial's negligent conduct, the Plaintiffs suffered injuries and damages, including personal physical injury, mental pain, suffering, physical pain and mental anguish, medical bills and expenses.

WHEREFORE, Plaintiffs demand judgment against the Defendant Colonial in such an amount as the jury may award for compensatory and punitive damages, plus the cost of this action.

JERE L. BEASLEY (BEA020)

STEPHEN W. DRINKARD (DRI005)
Attorneys for Plaintiffs

OF COUNSEL:

BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
Post Office Box 4160
Montgomery, Alabama 36103-4160
(334) 269-2343

JURY DEMAND

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY ON ALL ISSUES OF THIS CAUSE.

OF COUNSEL

FILED

APR 15 2004

GAY NELL TINKER, CLERK
HALE COUNTY, ALABAMA

EXHIBIT 6 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

NO. 2006-53767

JOSEPH ANTON, ROSE ANTON, Individually and As Next Friend of CANIVAN ROSE ANTON and JOSEPH ROBERT ANTON, Minors, ELIZABETH ANTON CHEA, and MARGO ANTON SMITH	§	IN THE DISTRICT COURT OF
VS.	§	HARRIS COUNTY, T E X A S
THE GOODYEAR TIRE & RUBBER COMPANY, MONACO COACH CORPORATION, PRUETT TIRE, INC./NEVADA, LES SCHWAB TIRE CENTERS OF NEVADA, INC. and PRUETT TIRE, INC., d/b/a LES SCHWAB TIRES	§	280TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Joseph Anton, Rose Anton, Individually and As Next Friend of Canivan Rose Anton and Joseph Robert Anton, Minors, Elizabeth Anton Chea, and Margo Anton Smith, Plaintiffs, complaining of The Goodyear Tire & Rubber Company, Monaco Coach Corporation, Pruett Tire, Inc./Nevada, Les Schwab Tire Centers of Nevada, Inc., and Pruett Tire, Inc., d/b/a Les Schwab Tires, Defendants, and for cause of action would respectfully show the Court the following:

I.

DISCOVERY

1. Plaintiff intends to conduct discovery in this matter under Level 3 of Rule 190.

II.

PARTIES

2. Plaintiffs Joseph Anton, Rose Anton, and Margo Anton Smith are residents of

Houston, Harris County, Texas.

3. Plaintiff Elizabeth Anton Chea is a resident of South Carolina.

4. Defendant The Goodyear Tire & Rubber Company is an Ohio corporation doing business in the state of Texas and can be served with citation through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

5. Defendant Monaco Coach Corporation is a Delaware corporation. Defendant Monaco Coach Corporation engages in business in the State of Texas but does not maintain a regular place of business or a designated agent upon whom service may be had upon causes of action arising out of such business done in this state. For those reasons, service of process is to be made pursuant to § 17.044, Civ. Prac. & Rem. Code, by serving the Secretary of State of the State of Texas as agent for Monaco Coach Corporation. This suit arises out of business done on a more or regular basis by Monaco Coach Corporation in this state, and under the circumstances, Monaco Coach Corporation has appointed the Texas Secretary of State as its agent upon whom service of process may be had in this action. The Secretary of State is requested to forward a copy of process and this petition to the President, Vice President or registered agent of Monaco Coach Corporation at its home office and principal place of business at 91320 Coburg Industrial Way, Coburg, Oregon 97408.

6. Defendant Pruett Tire, Inc./Nevada is a Nevada corporation. Defendant Pruett Tire, Inc./Nevada engages in business in the state of Texas but does not maintain a regular place of business or a designated agent upon whom service may be had upon causes of action arising out of such business done in this state. For those reasons, service of process is to be made pursuant to § 17.044, Civ. Prac. & Rem. Code, by serving the Secretary of State of the State of Texas as the agent

for Pruett Tire, Inc./Nevada. This suit arises out of business done on a more or less regular basis by Pruett Tire, Inc./Nevada in this state, and under the circumstances, Pruett Tire, Inc./Nevada has appointed the Texas Secretary of State as its agent upon whom service of process may be had in this action. The Secretary of State is requested to forward a copy of process and this petition to the President, Vice President or registered agent of Pruett Tire, Inc./Nevada at its home office and principal place of business at 1660 (or 395) Sixth Street, Wells, Nevada 89835.

7. Defendant Les Schwab Tire Centers of Nevada, Inc., is a Nevada corporation. Defendant Les Schwab Tire Centers of Nevada, Inc., engages in business in the state of Texas but does not maintain a regular place of business or a designated agent upon whom service may be had upon causes of action arising out of such business done in this state. For those reasons, service of process is to be made pursuant to § 17.044, Civ. Prac. & Rem. Code, by serving the Secretary of State of the State of Texas as the agent for Les Schwab Tire Centers of Nevada, Inc. This suit arises out of business done on a more or less regular basis by Les Schwab Tire Centers of Nevada, Inc. in this state, and under the circumstances, Les Schwab Tire Centers of Nevada, Inc., has appointed the Texas Secretary of State as its agent upon whom service of process may be had in this action. The Secretary of State is requested to forward a copy of process and this petition to the President or Vice President of Les Schwab Tire Centers of Nevada, Inc., at its home office and principal place of business at 646 NW Madras Highway, Prineville, Oregon 97754.

8. Defendant Pruett Tire, Inc., d/b/a Les Schwab Tires is a corporation, company or other entity located in Nevada and doing business in the state of Texas. Defendant Pruett Tire, Inc., d/b/a Les Schwab Tires can be served with process through its attorney, Raymond P. Augustin, Jr., Suite 800, 3421 N. Causeway Blvd., Metairie, Louisiana 70002.

III.

JURISDICTION/VENUE

9. This is a wrongful death, product liability, breach of warranty and negligence cause of action in which Plaintiffs' damages exceed the minimum jurisdictional limits of this court. Venue is proper in Harris County under the provisions of §15.033 because this action is for breach of warranty by a manufacturer of consumer goods and Harris County is the county of Plaintiff's residence and was the county of residence for Carol Anton (Decedent) at the time of the incident.

IV.

FACTS

10. Prior to August 26, 2005, Plaintiff Joseph Anton entered into an agreement with American QuarterCoach Management, Inc., to acquire an ownership interest in a recreational vehicle to be managed, maintained, serviced, fueled, provisioned and stored when not in use by American QuarterCoach Management, Inc.

11. Plaintiff purchased an ownership interest in a 2004 Holiday Rambler Scepter ("the Rambler" or "the RV"), VIN 1RF42464542027257. This purchase occurred at least in part in Harris County, Texas.

12. The Holiday Rambler model of vehicle is manufactured, assembled, marketed and placed into the stream of commerce by Defendant Monaco Coach Corporation.

13. On or about August 26, 2005, Joseph Anton was driving a 2004 Holiday Rambler, VIN 1RF42464X42026671, westbound on Interstate 12 when the vehicle's front right tire suffered a failure and rapid depressurization, causing the RV to go out of control. The vehicle left the roadway

and traveled through a ditch and into a tree line.

14. The scene photographs below accurately depict the remnants of the tire, the patch of the vehicle as the RV left the road and the RV's appearance following the incident.

15. The tire that failed was a 275/70R22.5 Goodyear G159 tubeless tire manufactured during week 41 of the year 2000.

16. Prior to August 26, 2005, the tire that failed was sold and/or was involved in tire services provided by the Pruett Tire Center in Wells, Nevada.

17. Joseph Anton's wife, Carol Anton, was the right front passenger in the RV at the time of the incident, and Rose Anton, Canivan Rose Anton, and Joseph Robert Anton were also passengers.

18. In the incident, Carol Anton sustained serious injuries, including head injuries, and was transported to the hospital where she later died.

V.

STRICT LIABILITY - THE GOODYEAR TIRE & RUBBER COMPANY

19. Defendant designed, manufactured, assembled, marketed and sold a product

(275/70R22.5 Goodyear G159, hereafter "the tire at issue") which is unreasonably and dangerously defective in its design, manufacture and as marketed.

20. Plaintiffs contend that the tire at issue was defectively designed, manufactured, assembled, marketed and sold by Defendant The Goodyear Tire & Rubber Company.

21. Such defects were proximate and producing causes of the incident, the death of Carol Anton, and all damages suffered by Plaintiffs as set forth herein.

22. There were safer alternative designs that would have prevented these defects. The safer alternative designs would have prevented or significantly reduced the risk of injury without substantially impairing the tire at issue's utility.

23. Furthermore, the safer alternative designs were economically and technologically feasible at the time the tire at issue left the control of Defendant by the application of existing or reasonably achievable scientific knowledge.

24. Defendant The Goodyear Tire & Rubber Company, therefore, is strictly liable to Plaintiffs under applicable products liability law without regard to or proof of negligence or gross negligence, although Plaintiffs would also show that the tire at issue was negligently designed, manufactured, assembled, marketed and placed into the stream of commerce in a defective condition and that such negligence and defects were producing and proximate causes of the incident, the injuries to and death of Carol Anton, and the damages to Plaintiffs as set forth herein.

25. The tire at issue was defective in the following non-exclusive respects:

a. The tire's components improperly bonded during its manufacture;

b. The tire's skim stock did not incorporate the requisite amount of antidegradant chemicals such that its internal components would resist breakdown as a result of the escape of inflationary gases into the tire's

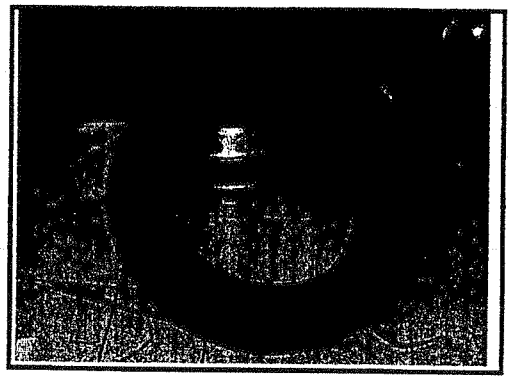
internal structure; and

c. The tire was placed into the stream of commerce without warnings regarding the tire's defects and about the effects of tire aging.

26. The unreasonably dangerous nature of the defects as outlined above creates a high probability that at highway speeds, the tire will, without warning to the driver, suffer tread separation. Loss of human life and/or severe and permanent personal injuries will result.

27. Defendant The Goodyear Tire & Rubber Company knew of this probability prior to production and marketing of the tire at issue and, in conscious disregard of the consequences, Defendant willfully and wantonly manufactured and sold the defective tire at issue which caused the incident, the death of Carol Anton and Plaintiffs' damages.

28. The defective nature of the tire at issue rendered it unreasonably dangerous and was a proximate and producing cause of the incident, the fatal injuries sustained by Carol Anton and the



damages to Plaintiffs as more specifically described herein. The photographs below accurately depict the failed tire.

VI.

NEGLIGENCE - THE GOODYEAR TIRE & RUBBER COMPANY

29. The injuries and damages suffered by Decedent and Plaintiffs were proximately caused by the negligence of Defendant The Goodyear Tire & Rubber Company in designing, manufacturing, assembling, testing, marketing and placing into the stream of commerce the tire at issue, including:

a. Negligent design of the tire;

b. Failing to incorporate in the skim stock the requisite amount of antidegradant chemicals such that the tire's internal components would resist breakdown as a result of the escape of inflationary gases into the tire's internal structure;

c. Failing to provide reasonable and adequate warnings to the users of the tire about the tire's unreasonably dangerous conditions and the effects of age on its components; and

d. Failing to provide reasonable and adequate warnings to the users of the tire regarding the tire's suitability for and use on certain RV's, including the Rambler.

30. The negligence of Defendant The Goodyear Tire & Rubber Company was a proximate and producing cause of the incident, injuries and damages complained of herein.

VII.

STRICT LIABILITY - MONACO COACH CORPORATION

31. Defendant manufactured, assembled, marketed and sold a product (Holiday Rambler Scepter, hereafter "the Rambler") which is unreasonably and dangerously defective.

32. Plaintiffs contend that the Rambler was defective in that it was marketed and sold with axles and/or tires of an improper and inadequate load range. The weight of the Rambler caused such tires to be at or near their maximum capacity during operation of the Rambler. Defendant Monaco Coach Corporation should have specified a tire that had a greater capacity.

33. Selling the Rambler with tires of too low a load range and specifying such load range tires for the Rambler and without warnings regarding the known dangers of overloading constitutes a defect in the Rambler, and such defect was a proximate and producing cause of the incident, the death of Carol Anton, and all damages suffered by Plaintiffs as set forth herein.

34. Defendant Monaco Coach Corporation, therefore, is strictly liable to Plaintiffs under applicable products liability law without regard to or proof of negligence or gross negligence, although Plaintiffs would also show that the Rambler at issue was negligently assembled, marketed and placed into the stream of commerce in a defective condition and that such negligence and defect were producing and proximate causes of the incident, the injuries to and death of Carol Anton, and the damages to Plaintiffs as set forth herein.

VIII.

NEGLIGENCE - THE MONACO COACH CORPORATION

35. The injuries and damages suffered by Decedent and Plaintiffs were proximately caused by the negligence of Defendant Monaco Coach Corporation in marketing and selling the RV with axles and/or tires of an improper and inadequate load range. The weight of the Rambler caused such tires to be at or near their maximum capacity during operation of the Rambler, and Defendant

Monaco Coach Corporation negligently failed to specify a tire that had a greater capacity.

36. Defendant Monaco Coach Corporation had known since 1999 that the Goodyear G159 application on a motorhome chassis would, and did, result in inadequate load margin.

37. Defendant Monaco Coach Corporation negligently failed to warn and instruct regarding adequacy of load range, load margin, and the importance of knowing the individual weights of each corner of the vehicle when placing tires on the RV.

38. Defendant Monaco Coach Corporation negligently failed to warn and instruct users regarding tire aging.

39. Defendant Monaco Coach Corporation knew of the relationship between improperly loaded or underinflated tires and tire failures, but it failed to properly warn and instruct users regarding such relationship.

40. The negligence of Defendant Monaco Coach Corporation was a proximate and producing cause of the incident, injuries and damages complained of herein.

IX.

NEGLIGENCE - PRUETT TIRE, INC./NEVADA, LES SCHWAB TIRES OF NEVADA, INC., and PRUETT TIRE, INC., D/B/A LES SCHWAB TIRES

41. Upon information and belief, the injuries and damages suffered by Decedent and Plaintiffs were proximately caused by the negligence of Defendants Pruett Tire, Inc./Nevada, Les Schwab Tires, Inc., and Pruett Tire, Inc., d/b/a Les Schwab Tires ("the Pruett Defendants") in failing to properly inspect and/or service the Rambler and its tires, in selling or otherwise placing into the stream of commerce a defective tire, in failing to provide a safe tire, and in failing to properly instruct and warn regarding the dangerous defects in the tire at issue.

42. Additionally, the Pruett Defendants knew, or should have known, that the Goodyear 275/70R22.5 G159 tire was not an appropriate application for RV's, yet they negligently sold the tire at issue for use on the Rambler.

43. The Pruett Defendants knew, or should have known, that the Goodyear 275/70R22.5 G159 tire was failing on motorhomes, yet they negligently failed to warn Plaintiffs and suggest a larger (275/80R22.5 or 295/80R22.5) tire or a tire that was specifically developed for use on large RV's.

44. The Pruett Defendants knew, or should have known, that knowing the individual weights of each corner of a recreational vehicle was important in connection with tire selection, suitability and, ultimately, performance, as well as the safety of RV occupants, yet they negligently failed to properly warn or instruct users about this issue.

45. The negligence of the Pruett Defendants was a proximate cause of the incident, injuries and damages complained of herein.

X.

BREACH OF WARRANTY - THE GOODYEAR TIRE & RUBBER COMPANY and THE PRUETT DEFENDANTS

46. Defendants The Goodyear Tire & Rubber Company and the Pruett Defendants, by and through their sale of the tire at issue, impliedly warranted that the tire was fit for the purposes for which it was intended, including highway use on RV's. Plaintiffs made use of the product as alleged herein, and relied on the implied warranties.

47. Contrary thereto, the tire at issue was not fit for its intended use, rendering the product in question unreasonably dangerous.

48. The Goodyear Tire & Rubber Company and the Pruett Defendants breached the implied warranties by the failure of the tire and its components as set forth herein and the improper marketing with regard to Defendants' failure to warn of the tire's known dangerous defects.

49. The Goodyear Tire & Rubber Company's and the Pruett Defendants' breaches of warranty and the defects set forth herein rendered the tire at issue unreasonably dangerous and was a proximate cause and a producing cause of the injuries and damages complained of herein. Further, Defendants' conduct was done knowingly.

XI.

BREACH OF WARRANTY - MONACO COACH CORPORATION

50. Defendant Monaco Coach Corporation, by and through its sale of the Rambler at issue, impliedly warranted that the RV was fit for the purposes for which it was intended, including highway use. Plaintiffs made use of the product as alleged herein, and relied on the implied warranties.

51. Contrary thereto, the RV's axles and/or tires were of an improper and inadequate load range, and the weight of the Rambler caused the tires to be at or near their maximum capacity during operation of the RV, rendering the product in question unreasonably dangerous.

52. Defendant Monaco Coach Corporation breached the implied warranty by the failure of its axles and/or specified tires as set forth herein and the improper marketing with regard to Defendant's failure to specify a tire that had a greater capacity.

53. Defendant Monaco Coach Corporation's breach of warranty and the defects set forth herein rendered the RV at issue unreasonably dangerous and was a proximate cause and a producing cause of the injuries and damages complained of herein. Further, Defendant's conduct was done

knowingly.

XII.

GROSS NEGLIGENCE AND MALICE - ALL DEFENDANTS

54. Plaintiffs would show that the conduct of Defendants constitutes gross negligence and malice as those terms are defined and understood in Texas law because they showed such an entire want of care as to establish that the acts or omissions complained of resulted from actual conscious indifference to the rights, welfare, or safety of the persons affected by it, including Plaintiffs and Decedent. Accordingly, Plaintiffs seek exemplary damages from Defendants in addition to their compensatory damages.

55. Plaintiffs further allege that the conduct of Defendant Monaco Coach Corporation in designing, manufacturing, marketing and/or placing into the stream of commerce the vehicle at issue in a defective condition with axles and/or tires of an improper and inadequate load range was undertaken willfully, wantonly and with conscious disregard for the consequences, thus constituting grounds for punitive damages for gross negligence and malice.

56. Prior to the incident made the basis of this lawsuit, Defendant Monaco Coach Corporation knew of the relationship between improperly loaded or underinflated tires and tire failures.

57. Prior to the incident made the basis of this lawsuit, Defendant Monaco Coach Corporation knew that the 275/70R22.5 tire was not an appropriate application for the Rambler.

58. Prior to the incident made the basis of this lawsuit, Defendant Monaco Coach Corporation offered to replace 275/70R22.5 tires with 295/80R22.5 tires on certain RV's (other than the Rambler at issue) because of the risk of experiencing overload conditions on a front tire.

59. Despite all of the knowledge described in the preceding paragraphs, Defendant Monaco Coach Corporation's Rambler was fitted with 275/70R22.5 tires.

60. Plaintiffs further allege that the conduct of Defendant The Goodyear Tire & Rubber Company in designing, manufacturing, marketing and/or placing into the stream of commerce the tire at issue in a defective condition was undertaken willfully, wantonly and with conscious disregard for the consequences, thus constituting grounds for punitive damages for gross negligence and malice.

61. Prior to the incident made the basis of this lawsuit, Defendant The Goodyear Tire & Rubber Company offered to replace 275/70R22.5 tires with 295/80R22.5 tires on certain RV's (other than the Rambler at issue) because of the risk of experiencing overload conditions on a front tire.

62. Prior to the incident made the basis of this lawsuit, Defendant The Goodyear Tire & Rubber Company knew that overloading of a tire could lead to tire failure which could result in loss of vehicle control and in personal injuries and/or vehicle damage.

63. Prior to the incident made the basis of this lawsuit, Defendant The Goodyear Tire & Rubber Company knew that RV's were still being fitted with its G159 tires and that tire failures were continuing to occur.

64. Despite such knowledge, the Rambler was fitted with 275/70R22.5 tires.

65. In light of the above, and other misconduct, Plaintiffs request exemplary or punitive damages in an amount sufficient to punish Defendants Monaco Coach Corporation and The Goodyear Tire & Rubber Company consistent with their net worth, in an amount that a finder of fact, in its discretion, awards in excess of minimal jurisdictional limits of the Court and not to exceed any applicable limitation provided by law.

XIII.

DAMAGES - WRONGFUL DEATH AND SURVIVAL

66. Plaintiff Joseph Anton is the surviving husband and a statutory beneficiary of Decedent Carol Anton and is entitled to bring an action on account of her wrongful death. Plaintiffs Rose Anton, Elizabeth Anton Chea, and Margo Anton Smith are the surviving children and the statutory beneficiaries of Decedent Carol Anton and are entitled to bring an action on account of her wrongful death.

67. This action is, therefore, brought by Plaintiffs Joseph Anton, Rose Anton, Elizabeth Anton Chea, and Margo Anton Smith pursuant to Tex. Civ. Prac. & Rem. Code §§ 71.002-.004, commonly referred to as the "Wrongful Death Act," and Joseph Anton also brings this action pursuant to the terms and provisions of Tex. Civ. Prac. & Rem. Code § 71.021, known as the "Survivor's Act," and any and all other applicable laws including the common law of the State of Texas.

68. As a direct and proximate result of the conduct of Defendants, Carol Anton died. Plaintiffs seeks to recover a sum of money that would fairly and reasonably compensate them for their pecuniary loss such as the loss of care, maintenance, support, services, advice, counsel, and all other reasonable contributions having a pecuniary value.

69. Plaintiff Joseph Anton also seeks to recover a sum of money that would fairly and reasonably compensate him for the termination of the husband-wife relationship, including loss of the love, comfort, companionship and society that he would have received from his wife, Carol Anton, had she lived.

70. Plaintiffs Rose Anton, Elizabeth Anton Chea, and Margo Anton Smith also seek to

recover a sum of money that would fairly and reasonably compensate them for the termination of the parent-child relationship, including loss of the love, comfort, companionship and society that they would have received from their mother, Carol Anton, had she lived.

71. Plaintiffs Joseph Anton, Rose Anton, Elizabeth Anton Chea, and Margo Anton Smith also seek compensation for the emotional pain, torment and suffering that they have suffered, and in reasonable probability will continue to suffer, in connection with the wrongful death of Carol Anton.

72. Additionally, Plaintiff Joseph Anton has incurred and is entitled to recover the expenses of Carol Anton's funeral and all other economic losses, including medical expenses incurred in an attempt to save Carol Anton's life.

73. Plaintiff Joseph Anton is also entitled to be compensated for the suffering Carol Anton was caused to endure from the injuries received in the incident made the basis of this suit until the time of her death.

XIV.

DAMAGES - INDIVIDUAL AND BYSTANDER

74. Plaintiffs Joseph Anton, Rose Anton, Canivan Rose Anton and Joseph Robert Anton were all passengers inside the vehicle at the time of the accident. These Plaintiffs were forced to witness this accident, suffered injuries to their bodies, and were forced to witness and be bystanders to the terrible death of their wife, mother, and grandmother as a result of the strict liability, negligence, and breach of warranty of the Defendants.

75. These Plaintiffs are therefore entitled to recovery of damages for their own bodily losses, including pain and suffering in the past and in the future, mental anguish in the past and in the future, and reasonable and necessary medical expenses.

XV.

PRE-JUDGMENT INTEREST

76. Plaintiffs would additionally say and show that they are entitled to recover pre-judgment interest and attorney's fees in accordance with law and equity as part of their damages herein, and Plaintiffs here and now sue for recovery of pre-judgment interest and attorney's fees as provided by law and equity under the applicable provisions of the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial, Plaintiffs recover actual damages, as specified above, from the Defendants, both jointly and severally; that they recover exemplary damages, that they recover their costs of Court herein expended; that they recover the interest, both pre-judgment and post-judgment, to which they are entitled under the law; and for such other and further relief, both general and special, legal and equitable, to which they may be justly entitled.

Respectfully submitted,

THE AMMONS LAW FIRM, LLP

ROBERT E. AMMONS
State Bar No. 01159820
JOSEF F. BUENKER
State Bar No. 03316860
3700 Montrose Boulevard
Houston, Texas 77006
Telephone: 713.523.1606
Telecopier: 713.523.4159

ATTORNEYS FOR PLAINTIFFS

EXHIBIT 7 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

JOHN H. SCHALMO, individually,
KELLY J. SCHALMO, individually and
as mother and natural guardian of CHELSEA
DECKER, a minor, WILLIAM McCLINTOCK,
individually, and RUTH McCLINTOCK,
individually,

Plaintiffs,

Case No.: 51-2006-CA-2064-WS

vs.

THE GOODYEAR TIRE & RUBBER
COMPANY, an Ohio Corporation,
FLEETWOOD MOTOR HOMES OF INDIANA,
INC., a foreign corporation, LAZY DAYS'
R.V. CENTER, INC., a Florida Corporation, and
SPARTAN CHASSIS, INC., a foreign corporation,

Defendants
_____/

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, JOHN H. SCHALMO, individually, KELLY J. SCHALMO, individually and as mother and natural guardian of CHELSEA DECKER, WILLIAM McCLINTOCK, individually, and RUTH McCLINTOCK, individually, sue THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio Corporation, FLEETWOOD MOTOR HOMES OF INDIANA, INC., a foreign corporation, LAZY DAYS' R.V. CENTER, INC., a Florida corporation, and SPARTAN CHASSIS, INC., a foreign corporation, and allege:

Allegations Common to All Counts

1. This is an action for damages, and the amount in controversy exceeds $15,000, exclusive of interest, attorneys' fees, and costs.

2. At the time of the incident which is the subject of this complaint, John H. Schalmo was, and at the present time is, a resident of Pasco County, Florida, and the legal spouse of Kelly J. Schalmo.

3. At the time of the incident which is the subject of this complaint, Kelly J. Schalmo was, and at the present time is, a resident of Pasco County, Florida, and the legal spouse of John H. Schalmo and the mother and natural guardian of Chelsea K. Decker, a minor, also a resident of Pasco County, Florida.

4. At the time of the incident which is the subject of this complaint, William McClintock was, and at the present time is, a resident of Pasco County, Florida, and the legal spouse of Ruth McClintock.

5. At the time of the incident which is the subject of this complaint, Ruth McClintock was, and at the present time is, a resident of Pasco County, Florida, and the legal spouse of William McClintock.

6. At all times material to this complaint, The Goodyear Tire & Rubber Company (hereinafter "Goodyear") was an Ohio corporation, authorized to do business, and doing business, in the State of Florida. Goodyear was and is in the business of designing, developing, testing, manufacturing, advertising, selling and distributing tires for use on private and commercial vehicles including motor homes.

7. At all times material to the incident which is the subject of this complaint, Fleetwood Motor Homes of Indiana, Inc. (hereinafter "Fleetwood") was a foreign corporation, doing business in the State of Florida. Fleetwood was and is in the business of designing, developing, testing, manufacturing, advertising, assembling, selling and/or distributing motor homes for sale to the

consuming public in Florida and elsewhere, including the 2000 American Tradition Motor Home at issue in this complaint.

8. At all times material to the incident which is the subject of this complaint, Lazy Days' R.V. Center, Inc. (hereinafter "Lazy Days") was a Florida corporation, authorized to do business, and doing business in the State of Florida. Lazy Days was and is engaged in the business of marketing, selling, servicing, and distributing into the stream of commerce in Florida various models of Fleetwood-manufactured motor homes, including the 2000 American Tradition Motor Home at issue in this complaint.

9. At all times material to the incident which is the subject of this complaint, Spartan Chassis, Inc. (hereinafter "Spartan"), was a foreign corporation doing business in the State of Florida. Spartan was and is engaged in the business of designing, developing, testing, manufacturing, advertising, assembling, selling and/or distributing into the stream of commerce including to Florida, various truck, bus, RV and other heavy vehicle chassis, including the RV chassis incorporated into the 2000 American Tradition Motor Home at issue in this complaint.

10. During the 36th week of production in calendar year 1999, at its manufacturing facility in Danville, Virginia, Goodyear manufactured and subsequently sold and placed into the stream of commerce a Goodyear G159 Unisteel tire, size 275/70R22.5 DOT number MC6Y270W369 (the subject tire).

11. Fleetwood designed and/or assembled a 2000 American Tradition Motor Home, VIN 4VZBN229XYC035039 (the subject vehicle) which incorporated a Spartan chassis (the "subject chassis") and the subject tire, and thereafter placed the vehicle into the stream of commerce in Florida for resale to the public by delivering it or causing it to be delivered to Lazy Days for sale to a

member of the consuming public. Prior to the initial sale of the 2000 American Tradition Motor Home at issue in this case, Fleetwood issued a recall calling for removal of tires identical to the subject tire from identical or substantially similar vehicles as the subject vehicle due to a known undue risk of tire failure. Despite this, Fleetwood placed the subject vehicle equipped with the subject tire into the stream of commerce and did not include the subject vehicle or tire in its recall.

12. The subject vehicle was advertised for sale and was in fact sold and placed into the stream of commerce by Lazy Days, who sold the subject vehicle equipped with the subject tire and subject chassis to a private party. The subject vehicle was subsequently purchased by John and Kelly Schalmo through an agent or employee of Lazy Days. Between the time of the initial sale and the subsequent resale John and Kelly Schalmo, Lazy Days inspected the tires on the accident vehicle and performed extensive service on the vehicle. At all relevant times, the subject vehicle, including the subject tire and subject chassis, were intended to or expected to and did reach the consumer including John and Kelly Schalmo without substantial change in the condition in which they were sold.

13. On or about August 11, 2004, John Schalmo was operating the subject vehicle on State Road 8 in Washington County, Florida near the town of Chipley, Florida. At that time and place, the subject Goodyeer steel-belted radial tire suffered a catastrophic separation of the tread from the belts/carcass of the tire.

14. As a result of the tire failure, control of the subject Fleetwood vehicle was lost, and the vehicle veered off the roadway, entered a ditch, went up an embankment, and struck a group of large trees. As a further result of the crash, each of the plaintiffs sustained injuries, losses and damages as explained more fully below.

15. As a direct consequence of the subject accident, John Schalmo sustained serious and permanent physical injuries, past and future physical and mental pain and suffering, past and future mental anguish, disfigurement, loss of past and future income and wages and earning capacity and other economic damages, past and future medical and rehabilitation expenses, past and future loss of enjoyment of life, and other losses both in the past and to be sustained in the future. His injuries are permanent and continuing in nature, and his ability to work has been, and will continue to be, impaired.

16. As a direct consequence of the subject accident, Kelly Schalmo sustained physical injuries requiring medical treatment and resulting expense, and further sustained past and future loss of consortium, society and companionship with her spouse, John Schalmo, as a result of his injuries, and has suffered from emotional and mental grief, anguish and trauma.

17. As a direct consequence of the subject accident, Chelsea Decker sustained physical injuries requiring medical treatment and resulting expense, and has suffered from mental grief, anguish and trauma.

18. As a direct consequence of the subject accident, Bill McClintock sustained serious and permanent physical injuries including but not limited to loss of both of his legs, past and future physical and mental pain and suffering, disfigurement, past and future mental anguish, loss of past and future income and wages and earning capacity, past and future economic damages, past and future medical and rehabilitation expenses, past and future loss of enjoyment of life, and other losses both in the past and to be sustained in the future. He further sustained past and future loss of consortium, society and companionship with his spouse, Ruth McClintock, as a result of her injuries. Bill McClintock's injuries, damages and wage/economic losses are permanent and continuing in

nature.

19. As a direct consequence of the subject accident, Ruth McClintock sustained serious and permanent physical injuries, past and future physical and mental pain and suffering, past and future mental anguish, past and future economic damages, past and future medical and rehabilitation expenses, past and future loss of enjoyment of life, and other losses both in the past and to be sustained in the future. She further sustained past and future loss of consortium, society and companionship with her spouse, Bill McClintock, as a result of his injuries. Ruth McClintock's injuries are permanent and continuing in nature.

COUNT I - NEGLIGENCE AGAINST GOODYEAR

20. This is an action for damages against Goodyear for negligence.

21. Plaintiff realleges paragraphs 1 through 19, above.

22. The tread separation failure of the tire on the Schalmo vehicle was the direct and proximate result of the negligent design and/or manufacture of the subject tire by Defendant Goodyear.

23. Goodyear's negligence in connection with the design of the subject tire consists of, but is not limited to, the following:

A. Inadequate consideration of the design limitations and weight of the vehicles upon which the tire would be operated in ordinary road service;

B. Inadequate consideration of the ambient temperatures to which the tire would be subjected in ordinary road operation in southern states;

C. Design of the tire with an inadequate margin of safety to prevent belt/belt and tread/belt separations in ordinary road operations or under expected and anticipated

road conditions and vehicle usage;

D. Inadequate sizing or compounding of the belt wedges;

E. Excessive use of fillers or other ingredients in the inner liner stock compounds, and/or the use of an inappropriate inner liner compound;

F. Utilization of improper compounds for, or ingredients in, the ply stocks, belt stocks, and tread base stocks, to achieve a cost savings at the expense of adequate adhesion;

G. Utilization of tread compounds with a useful life greater than the wear life of other tire structures intended to adhere to those treads;

H. Insufficient design of the belt edges, which rendered the tire insufficiently robust to withstand the loads applied;

I. Engineering a tire that is unreasonably sensitive to variations in the production process;

J. The incorporation of outdated technology which exacerbated the problems created by the design, allowing oxygen to interact with the rubber compounds, resulting in degradation of the skim compound; and

K. The selection of inadequate anti-degradant chemicals to be employed in the rubber compounds of the tire.

24. The negligent manufacturing practices employed by Defendant Goodyear at its manufacturing plant include, but are not limited to:

A. Inadequate inspections at all phases of tire production, including final inspection;

B. Failure to use reasonably available and feasible x-ray and similar technology as

part of the inspection process;

C. Failure to follow company mandated rules and regulations relating to tire quality;

D. Use of dry stock in building tires;

E. The excessive and dangerous use of solvents to increase stickiness or tack in dry stock during the building process of tires;

F. Failure to maintain temperature and humidity control in critical tire building areas and operations;

G. Utilization of scrap or rejected stocks or materials in building tires;

H. The overheating or burning of inner liner stocks during the curing process in the production of tires for sale;

I. The production of ply and belt sheets with inadequate rubber coating;

J. Improper use of "work-away";

K. The stretching of improperly cut plies or belt sheets through the use of solvents;

L. Improper alignment of belts and plies in the construction of tires for sale;

M. The use of insufficient or inadequate mold pressure;

N. Improper stitching; and

O. The inclusion of inadequate anti-degradant compounds in the tire.

25. In addition to the above-described design and manufacturing defects, Defendant Goodyear negligently warned or failed to warn Plaintiffs of hazards associated with the subject tire about which Goodyear either knew or should have known. In this regard, prior to the sale of the subject vehicle equipped with the subject tire, Goodyear actually knew that the vehicle/tire combination on the Schalmo vehicle was hazardous and likely to cause serious bodily injury or

death. Goodyear has since developed a tire which it says is more appropriate for application on such vehicles, but Goodyear never warned consumers who had previously purchased the subject tire of a hazard. Further, Fleetwood with the actual knowledge of Goodyear issued a recall of the same tire/vehicle combination prior to the sale of the subject vehicle and tire, including instructions to remove the tire from the class of vehicles which included the subject vehicle. Unfortunately, Goodyear failed adequately to warn consumers of this known danger including by issuing its own recall of the subject tire, or otherwise making consumers such as the Schalmos aware of the hazard. Goodyear's failure to provide adequate warning stemmed from its desire to avoid publicity concerning the known hazard and its desire to avoid expense associated therewith. Goodyear, to protect its own profit and public perception of its products, failed to take reasonable efforts to ensure that consumers such as the plaintiffs herein would be aware of hazard which led to the recall, failed to conduct its own recall to include the Schalmo vehicle and tires specifically, and in fact the plaintiffs were unaware of the hazard, directly resulting in the injuries and damages stated above.

26. Goodyear knew or should have known of the defects in the subject tire, especially when employed on vehicles in the same class as the subject vehicle, and knew or should have known that the subject tire was incorrectly employed on vehicles of the class of the subject vehicle, before the subject tire or vehicle were sold and before the subject accident occurred. The information which led to the recall was known to Goodyear well before the recall was issued and well before the subject tire/vehicle combination were initially sold, yet Goodyear nonetheless sold the subject tire for use the subject vehicle and subsequently failed adequately to warn plaintiffs to remove the subject tire after the sale. Goodyear's actions in this regard were negligent. As a direct and proximate result of the negligence of Defendant Goodyear, Plaintiffs have been damaged and have sustained losses as

previously described.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Goodyear for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT II - STRICT LIABILITY AGAINST GOODYEAR

27. This is an action for damages against Defendant Goodyear for strict liability.

28. Plaintiff realleges paragraphs 1 through 19, above.

29. The Unisteel steel-belted radial tire manufactured and distributed by Defendant Goodyear was unfit and unsafe for its intended uses and purposes because of defects inherent in its design.

30. These design defects included, but were not limited to, the following:

A. Inadequate consideration of the design limitations and weight of the vehicles upon which the tire would be operated in ordinary road service;

B. Inadequate consideration of the ambient temperatures to which the tire would be subjected in ordinary road operation in southern states;

C. Design of the tire with an inadequate margin of safety to prevent belt/belt and tread/belt separations in ordinary road operations or under expected and anticipated road conditions and vehicle usage;

D. Inadequate sizing or compounding of the belt wedges;

E. Excessive use of fillers or other ingredients in the inner liner stock compounds, and/or the use of an inappropriate inner liner compound;

F. Utilization of improper compounds for, or ingredients in, the ply stocks, belt stocks, and tread base stocks, to achieve a cost savings at the expense of adequate adhesion;

G. Utilization of tread compounds with a useful life greater than the wear life of other tire structures intended to adhere to those treads;

H. Insufficient design of the belt edges, which rendered the tire insufficiently robust to withstand the loads applied;

I. Engineering a tire that is unreasonably sensitive to variations in the production process;

J. The incorporation of outdated technology which exacerbated the problems created by the shoulder design, allowing oxygen to interact with the rubber compound, resulting in degradation of the skim compound; and

K. The selection of inadequate anti-degradant chemicals to be employed in the rubber compounds of the tire.

31. The Unisteel steel-belted radial tire manufactured and/or distributed by Defendant Goodyear was also unfit and unsafe for its intended uses and purposes because of defects inherent in its manufacture.

32. These manufacturing defects include, among other things, a lack of proper adhesion between the steel belts and/or between the steel belts and the surrounding materials to prevent them from separating under expected and anticipated road conditions and loads during normal use, the improper placement of belt #4 over belt #3 of the tire, and all of the defects delineated at paragraph 24.

33. At all times material to this complaint, Defendant Goodyear inadequately warned or failed to warn Plaintiff of the design and manufacturing defects which Defendant Goodyear knew or should have known to exist in the subject tire, including but not limited to that the subject tire was unfit and unsafe for use on the subject vehicle, was unfit and unsafe for use after several years of aging regardless of tread depth due to inadequate and/or improper anti-degradant chemicals used in its construction, and including but not limited to the serious hazard as described in paragraphs 25 and 26. The inadequate warning or failure to warn was itself a defect in the tire.

34. As a result of the design and/or manufacturing defects in the Goodyear Unisteel steel-belted radial tire, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Goodyear for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT III - NEGLIGENCE AGAINST FLEETWOOD

35. This is an action for damages against Defendant Fleetwood for negligence.

36. Plaintiff realleges paragraphs 1 through 19 above.

37. Defendant Fleetwood as the manufacturer, designer and/or assembler of the American Tradition motor home which is the subject of this complaint, was under a duty to Plaintiffs to exercise ordinary and reasonable care in the design and assembly of its product including all component parts so as to reduce or prevent injuries resulting from its normal and anticipated use.

38. Defendant Fleetwood designed and/or assembled the American Tradition motor home in such a manner was to create a danger, unknown to Plaintiffs or any other user, rendering it unsafe during ordinary use under foreseeable conditions.

39. Defendant Fleetwood breached the duty of reasonable care it owed to Plaintiff by, among other things:

A. Placing and/or incorporating Goodyear G159 Unisteel 275/70R22.5 tires on the vehicle with actual or constructive knowledge that such tires were inadequate for the actual loads to which the tires including the subject tire foreseeably would be subjected during normal operation;

B. Placing and/or incorporating a defective and unreasonably dangerous Goodyear G159 Unisteel tire on the subject vehicle with actual or constructive knowledge of the defect(s) present therein;

C. Failing to provide or inadequately providing the user(s) of the vehicle with information relating to weight and load limitations applicable to the subject tires;

D. Failing to mount more robust tires of a safer alternative design as original equipment on the vehicle, which tires would have significantly reduced the risk of an accident such as occurred here, without substantially impairing the utility of or significantly increasing the cost of the vehicle;

E. Configuring the assembled vehicle such that the weight distribution created an undue strain and stress on the front tires and/or failing to employ a tire adequately designed to handle the loads to which it would be subjected;

F. Failing to ensure that all dealers of its vehicles and consumers who had purchased such vehicles were aware of the recall which required removal of identical tires on identical vehicles, and failing to follow its own recommendations for placement of a more robust tire on vehicles of the class to which the subject vehicle belonged; and

G. Incorporating the subject chassis in the vehicle with actual or constructive knowledge that the design of the chassis was unfit and unsafe in the event of a foreseeable tire failure and with actual or constructive knowledge that the design of the chassis had a tendency to create an unequal weight distribution across the front axle, which could foreseeably lead to tire overloading and failure.

40. In addition to negligently designing and/or assembling the subject vehicle, as alleged above, Fleetwood also breached its duty of reasonable care owed to Plaintiffs by negligently failing to review and utilize the information contained in warranty claims, accident data, and/or claims data readily available to it regarding the tire and/or vehicle combination and/or the tire/vehicle combination of similar vehicles, and to react appropriately to such information prior to this accident.

41. Defendant Fleetwood knew or should have known of the above-identified dangers and hazards in its vehicle especially when equipped with the subject tire, and either negligently warned or negligently failed to warn Plaintiffs of such defects. Fleetwood did in fact recall identical and/or substantially similar vehicles due to a known hazard associated with use of tires identical to the subject tire, but Fleetwood failed to take reasonable

measures to ensure that consumers and/or dealers were aware of same and as a result the subject vehicle was sold with the subject tire, and the tire was not subsequently removed and replaced with an appropriate tire. Fleetwood also failed despite actual or constructive knowledge of the hazard, to include the subject vehicle and tire combination within its recall and/or to otherwise warn consumers that the recall was not sufficiently broad. The inadequate warning or the failure to warn of the known hazard was itself a defect in the product and fell below the applicable standard of care owed by Fleetwood to the Plaintiffs.

42. As a direct and proximate result of the negligence of Fleetwood, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Fleetwood for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT IV - STRICT LIABILITY AGAINST FLEETWOOD

43. This is an action for damages against Defendant Fleetwood for strict liability.

44. Plaintiff realleges paragraphs 1 through 19 above.

45. The American Tradition motor home manufactured, designed, sold and/or assembled by Defendant Fleetwood was unfit and unsafe for its intended uses and purposes because of defects inherent in its design or manufacture including but not limited to defects inherent in the design or manufacture of the Goodyear tire and the Spartan chassis which are the subject of this Complaint and which are component parts of the vehicle which Fleetwood placed into the stream of commerce.

46. These design and/or manufacturing defects included, but were not limited to, the

items previously enumerated in paragraphs 23, 24, 30, and 32 above, which paragraphs are incorporated by reference as though fully set forth herein. Additionally, the vehicle was defective in design by virtue of the fact it was configured by Fleetwood and/or at Fleetwood's direction such that it had a weight distribution placing undue stress and strain on the front tires of the vehicle especially with the type of tire chosen by Fleetwood. The weight distribution incorporated into the design rendered the vehicle defective and unreasonably prone to tire failure at the front wheel positions especially with the subject tire at the front position as opposed to a more robust tire capable of handling additional loads.

47. At all times material to this complaint, Defendant Fleetwood inadequately warned or failed to warn Plaintiff of the design defects which Defendant Fleetwood knew or should have known to exist in its product including in its component parts which Fleetwood placed into the stream of commerce, including failing adequately to warn or advise consumers and/or retailers of the recall which called from removal of the subject tire from the class of vehicles to which the subject vehicle belonged, and failing to expand the recall to include the subject vehicle and tire. The inadequate warning or failure to warn was itself a defect in the product.

48. As a direct and proximate result of the design and/or manufacturing defects in the subject vehicle and its component part(s) including the subject tire, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Fleetwood for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT V - STRICT LIABILITY AGAINST LAZY DAYS

49. This is an action for damages against Defendant Lazy Days for strict liability.

50. Plaintiff realleges paragraphs 1 through 19 above.

51. The subject motor home marketed and sold by defendant Lazy Days was unfit and unsafe for its intended uses and purposes because of defects inherent in its design or manufacture including but not limited to defects inherent in the design or manufacture of the Goodyear tire and Spartan chassis which are the subject of this Complaint and component parts of the vehicle which Lazy Days placed into the stream of commerce.

52. These design and/or manufacturing defects included, but were not limited to, the items previously enumerated in paragraphs 23, 24, 30, 32, and 46 above, and those items stated in paragraph 66 below, which paragraphs are incorporated by reference as though fully set forth herein.

53. At all times material to this complaint, Defendant Lazy Days inadequately warned or failed to warn Plaintiff of the design defects which Defendant Lazy Days knew or should have known to exist in its product including in its component parts which Lazy Days placed into the stream of commerce. The inadequate warning includes but is not limited to failing to take reasonable measures to ensure that consumers were aware of the recall addressed elsewhere in this complaint, and failing to take reasonable measures to ensure that consumers were otherwise aware of the hazard sought to be addressed by the recall which was present in the subject vehicle and tire combination. Lazy Days knew or should have known that the same hazard addressed by the recall existed in the subject vehicle and tire and Lazy Days failed to warn consumers of that hazard. The inadequate warning or failure to warn was itself a defect in the product.

54. As a direct and proximate result of the design and/or manufacturing defects in the subject vehicle and its component part(s) including the subject tire, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Lazy Days for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT VI - NEGLIGENCE AGAINST LAZY DAYS

55. This is an action for damages against Defendant Lazy Days for negligence.

56. Plaintiff realleges paragraphs 1 through 19 above.

57. Prior to the initial sale of the subject vehicle equipped with the subject tire in this case, Fleetwood issued a recall which called for the removal of tires identical to the subject tire from vehicles of the class to which the subject vehicle belonged. Lazy Days knew or should have known of the recall before its initial sale of the subject vehicle, and knew or should have known that the hazard addressed by the recall was present in the subject vehicle. Lazy Days negligently failed to remove the subject tire from the vehicle or replace it with a more robust tire capable of handling the stresses and strains associated with normal operation of the subject vehicle. As a retailer of the subject vehicle equipped with the subject tire, Lazy Days owed a duty of reasonable care to consumers to ensure that known hazards such as those that existed in the subject vehicle were reasonably corrected and/or that consumers were made aware of the hazard. Lazy Days failed to do so.

58. Defendant Lazy Days, despite actual or constructive knowledge of the recall, sold the subject vehicle equipped with the subject tire to a private party without replacing

the subject tire or warning the consumer of the hazard or of the existence of the recall. Lazy Days, through its agent(s) or employee(s), subsequently brokered the sale of the subject vehicle equipped with the subject tire to the plaintiffs herein. Further, the sale of the subject vehicle by the initial purchasers to the plaintiffs was easily ascertainable through an inquiry to the Department of Motor Vehicle records and/or through other publicly available records. Lazy Days had actual or constructive knowledge of the identity of the Schalmos and that they had purchased the subject vehicle with the subject tire, but at no time did Lazy Days or its agents or employees warn or advise the Schalmos of the existence of the recall, or of the hazard addressed by the recall of which Lazy Days actually knew or should have known and which existed in the subject vehicle.

59. Even had Lazy Days not learned of the specific identity of the Schalmos and that they had purchased the subject vehicle, Lazy Days had a duty to take reasonable measures to ensure that its original purchaser was aware of the existence of the recall and of the hazard described above so that the hazard could be rectified before the resale of the vehicle to the Schalmos. To the extent notice was given to the initial purchaser but the original purchaser did not respond, Lazy Days had a duty to make reasonable efforts to ensure that subsequent purchasers were made aware of the hazard addressed by the recall. A limited number of the vehicles were sold rendering the identification of subsequent purchasers both practicable and prudent. Lazy Days failed to take reasonable steps to ensure that the plaintiffs or the original purchaser were aware of the recall or the hazard it sought to correct which existed in the subject vehicle, and breached its duty of care to the plaintiffs by failing to take such measures.

60. Defendant Lazy Days even without the benefit of the recall knew or should have

known that the subject tire, chassis and vehicle combination was dangerous and hazardous and that the subject tire was prone to suffer a tread separation failure with a resulting loss of vehicle control as occurred here. Despite this knowledge, Lazy Days sold the subject vehicle, chassis, and tire combination, and then failed to warn consumers including the plaintiffs of the hazard.

61. The sale of the subject vehicle equipped with the subject chassis and the subject tire, and the failure to warn as described above were negligent, fell below the applicable standard of care, and directly and proximately caused the injuries and damages alleged above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Lazy Days for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT VII - NEGLIGENCE AGAINST SPARTAN

62. This is an action for damages against Defendant Spartan for negligence.

63. Plaintiff realleges paragraphs 1 through 19 above.

64. Defendant Spartan as the manufacturer, designer and/or assembler of the chassis which was incorporated into the American Tradition motor home which is the subject of this complaint, was under a duty to Plaintiffs to exercise ordinary and reasonable care in the design and assembly of its product including all component parts so as to reduce or prevent injuries resulting from its normal and anticipated use.

65. Defendant Spartan designed and/or assembled the subject chassis in such a manner was to create a danger, unknown to Plaintiffs or any other user, rendering it unsafe

during ordinary use under foreseeable conditions.

66. Defendant Spartan breached the duty of reasonable care it owed to Plaintiff by, among other things:

A. Selecting and placing Goodyear G159 Unisteel 275/70R22.5 tires on the chassis before delivery to Fleetwood with actual or constructive knowledge that such tires were inadequate for the actual loads to which the tires including the subject tire foreseeably would be subjected during normal operation;

B. Placing a defective and unreasonably dangerous Goodyear G159 Unisteel tire on the subject chassis with actual or constructive knowledge of the defect(s) present therein;

C. Failing to provide or inadequately providing the user(s) of the chassis with information relating to weight and load limitations applicable to the subject tires or chassis;

D. Failing to mount more robust tires of a safer alternative design as original equipment on the chassis, which tires would have significantly reduced the risk of an accident such as occurred here, without substantially impairing the utility of or significantly increasing the cost of the chassis;

E. Configuring the chassis such that the weight distribution when employed in the Fleetwood vehicle created an undue strain and stress on the front tires and/or failing to employ a tire adequately designed to handle the loads to which it would be subjected;

F. Failing to react to the recall issued by Fleetwood and/or failing to issue its

own recall to ensure that its chassis would not be used with the subject tire and that any manufacturers or consumers who had purchased their chassis equipped with the subject tire would know of the hazard associated with failing to replace the subject tire with a proper tire;

G. Designing the subject chassis in such a way that the front end was overly flexible, resulting in an undue hazard of loss of control in the event of a foreseeable tire failure on the front;

H. Designing the subject chassis in such a way that it exacerbated the potential of unequal weight distribution on the front tires, leading to foreseeable overloading of the tires and an undue risk of tire failure; and

G. Selling the subject chassis with actual or constructive knowledge that the design of the chassis was otherwise unfit and unsafe in the event of a foreseeable tire failure.

67. In addition to negligently designing and/or assembling the subject chassis, including the improper selection of component parts as alleged above, Spartan also breached its duty of reasonable care owed to Plaintiffs by negligently failing to review and utilize the information contained in warranty claims, accident data, and/or claims data readily available to it regarding the tire and vehicle combination when the chassis was employed in a Fleetwood vehicle, and to react appropriately to such information prior to this accident.

68. Defendant Spartan knew or should have known of the above-identified dangers and hazards in its chassis especially when equipped with the subject tire and employed in a Fleetwood motor home, and either negligently warned or negligently failed to warn Plaintiffs of such defects. Spartan had actual knowledge of the Fleetwood recall, and was

involved in crafting the remedy for the hazard which led to the recall. Despite this, Spartan did not take reasonable measures to ensure that the hazard was addressed in the subject vehicle or that consumers were aware of the hazard. The inadequate warning or the failure to warn of the known hazard was itself a defect in the product and fell below the applicable standard of care owed by Spartan to the Plaintiffs.

69. As a direct and proximate result of the negligence of Spartan, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Spartan for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

COUNT VIII - STRICT LIABILITY AGAINST SPARTAN

70. This is an action for damages against Defendant Spartan for strict liability.

71. Plaintiff realleges paragraphs 1 through 19 above.

72. The Spartan chassis manufactured, designed, sold and/or assembled by Defendant Spartan was unfit and unsafe for its intended uses and purposes because of defects inherent in its design or manufacture including but not limited to defects inherent in the design or manufacture of the Goodyear tire which is the subject of this Complaint and which was a component part of the chassis Spartan placed into the stream of commerce.

73. These design and/or manufacturing defects included, but were not limited to, the items previously enumerated in paragraph 66 above, which paragraph is incorporated by reference as though fully set forth herein.

74. At all times material to this complaint, Defendant Spartan inadequately warned

or failed to warn Plaintiffs of the design defects which Defendant Spartan knew or should have known to exist in its product including in its component parts which Spartan placed into the stream of commerce. The inadequate warning or failure to warn was itself a defect in the product.

75. As a direct and proximate result of the design and/or manufacturing defects in the subject vehicle and its component part(s) including the subject tire, Plaintiffs were each damaged and suffered the losses as stated above.

WHEREFORE, Plaintiffs each demand judgment for damages against Defendant Spartan for their actual damages, together with the costs of suit incurred in the trial and appellate courts, prejudgment interest on all economic damages, and such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

Dated this ___ day of _____, 2006

Hugh N. Smith
Florida Bar Number: 120166
Christopher J. Roberts
Florida Bar Number 0150525
SMITH & FULLER, P.A.
455 North Indian Rocks Rd., Suite A
Belleair Bluffs, FL 33770
(727) 252-5252
(727) 252-5255 (facsimile)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail on _____ ___, 2006 to: Katie L. Dearings, Esquire, Rutledge R. Liles, Esquire, Attorney for Fleetwood Enterprises, Inc. and Lazy Days' R.V. Center, Inc., Liles, Gavin, Costantino & George, 225 Water Street, Suite 1500, Jacksonville, Florida 32202, Keith Skorewicz, Esquire, Attorney for Spartan Chassis, Inc., Bush Ross, P.A., 220 South Franklin Street, Tampa, Florida 33601, and Murray, Marin & Herman, P.A., Attorney for Goodyear Tire & Rubber Company, Bank of America Plaza, Suite 1810, 101 East Kennedy Boulevard, Tampa, Florida 33602-5148.

_____

Hugh N. Smith
Florida Bar Number: 120166
Christopher J. Roberts
Florida Bar Number 0150525
SMITH & FULLER, P.A.
455 North Indian Rocks Rd., Suite A
Belleair Bluffs, FL 33770
(727) 252-5252
(727) 252-5255 (facsimile)
Attorneys for Plaintiffs

EXHIBIT 8 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

LEROY and DONNA HAEGER et al.

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER COMPANY, et al.

Defendants.

NO.: CV05-2046-PHX-ROS

AFFIDAVIT OF TIMOTHY J. CASEY, ESQ.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF ALABAMA

WESTERN DIVISION

NORMAN E. SAMUEL, ADMINSTRATOR OF THE ESTATE OF MARY ANNE SAMUEL, DECESASED, AND NORMAN E. SAMUEL, INDIVIDUALLY,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER COMPANY, et al.

Defendants.

NO.: CV-03-TMP-3099-W

AFFIDAVIT OF TIMOTHY J. CASEY, ESQ.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KORI D. HALEY, surviving spouse of JOSEPH JOHN HALEY, deceased, individually and on behalf of BRODY HALEY, the surviving minor child of JOSEPH JOHN HALEY, and as Personal Representative of the ESTAE OF JOSEPH JOHN HALEY; and JOSEPH HALEY, as the surviving father of JOSEPH JOHN HALEY, deceased; and, JANE HALEY, as the surviving mother of JOSEPH JOHN HALEY, deceased; Plaintiffs, vs. THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation; *et al.* Defendants.	NO.: CV 2007-006515 **AFFIDAVIT OF TIMOTHY J. CASEY, ESQ.** (Assigned to the Honorable Glenn Davis)

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

Affiant, Timothy J. Casey, under oath, declares and testifies as follows:

1. My name is Timothy J. Casey. I am a member of the State Bar of Arizona and in good standing since 1991. I am lead trial counsel for plaintiffs Kori D. Haley, Joseph Haley, and Jane Haley in the matter styled *KORI D. HALEY, surviving spouse of JOSEPH JOHN HALEY, deceased, individually and on behalf of BRODY HALEY, the surviving minor child of JOSEPH JOHN HALEY, and as Personal Representative of the ESTAE OF JOSEPH JOHN HALEY; and JOSEPH HALEY, as the surviving father of JOSEPH JOHN HALEY, deceased; and, JANE HALEY, as the surviving mother of JOSEPH JOHN HALEY, deceased,* pending in the Maricopa County Superior Court, CV 2007-006515, Honorable Glenn Davis, presiding ("the Haley Case"). The Haley Case

involves a December 15, 2006 crash in Arizona whereby a Goodyear G159 275/75R/22.5 tire on the left front of a Monaco Coach Corporation Diplomat motor home detreaded and separated causing the motor home to cross into oncoming traffic and hit the Honda Civic car driven by twenty-seven year old Joseph John Haley and occupied by his wife, Kori D. Haley. Joseph John Haley died as a result of the crash.

2. I am over eighteen (18) year of age, competent to testify, and make this Affidavit upon my personal knowledge. I make this Affidavit without waiving, or intending to waive, any Attorney Work Product Privilege.

3. Ms. Eileen Henry, a paralegal employed by my law firm, was in the process of gathering information and evidence for potential use in the Haley Case at my direction and under my supervision. During that process, she telephonically spoke with Guy A. Ricciardulli, Esq. on the afternoon of Thursday, May 24, 2007.

4. Mr. Ricciardulli is an attorney located in San Diego, California. The contact information I have for Mr. Ricciardulli is Law Offices of Guy A. Ricciardulli, 12396 World Trade Drive, Suite 202, San Diego, California 92128. Mr. Ricciardulli previously represented plaintiffs Harold J. Phillips and Georg-Anne Phillips in a lawsuit against Goodyear Tire and Rubber Company ("Goodyear") pending in the United States District Court for the Southern District of California, *Harold Phillips v. The Goodyear Tire & Rubber Company, 3:02-cv-01642-B-NLS* ("the Phillips Case"). The Phillips Case involved a motor home wherein a failure in a rear G159 275/75R/22.5 tire caused personal injuries and property damage.

5. Ms. Henry immediately shared with me the information that Mr. Ricciardulli had told her about during their telephone conversation about the Phillips Case. She informed me Mr. Ricciardulli told her that he remembered that several years ago he deposed a Goodyear witness in Akron, Ohio wherein the witness admitted there was a defect in the G159 275/75R/22.5 tire, defense counsel "shut-down" the deposition, Goodyear settled the case, and the parties agreed to seal the deposition transcript. Given the significance of the information provided by Mr. Ricciardulli, I personally, and promptly, called Mr. Ricciardulli and telephonically spoke with him on the afternoon of

Thursday, May 24, 2007 about the information he had just provided to Ms. Henry. To make certain I had correctly understood the information that Mr. Ricciardulli had provided to me during our May 24, 2007 conversation, and to request additional information, I again spoke telephonically with Mr. Ricciardulli on Friday, May 25, 2007 at 11:50 a.m., on Thursday, May 31, 2007 at 8:20 a.m., and May 31, 2007 around 1:00 p.m. and 4:30 p.m.

6. Mr. Ricciardulli told me the following information about the Phillips Case:

(a) The case involved an allegation of a defect in a Goodyear G159 275/75R/22.5 tire while on a motor home;

(b) In 2003, Mr. Ricciardulli, on behalf of his clients, issued a deposition notice to Goodyear pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure. Among other things, the deposition notice asked Goodyear to tender for deposition "a person most knowledgeable about the resolution of the claims made by plaintiff to defendant regarding allegations of defect that occurred in August 2000 in Nebraska;"

(c) On June 20, 2003, Goodyear tendered a witness pursuant to the deposition notice. The deposition took place in Akron, Ohio;

(d) The court reporter recording the deposition was from Merritt & Loew Court Reporters located in Akron, Ohio;

(e) Mr. Ricciardulli does not remember the name of the Goodyear witness tendered by Goodyear, nor did he have his notes from the deposition indicating the witness' name. Mr. Ricciardulli, however, remembered that the witness was a Goodyear employee from its "liability claims team" that "handled" liability claims submitted to Goodyear;

(f) Mr. Ricciardulli recalls that the Goodyear witness admitted under oath that "there was a defect in the G159 when used on a motor home," and "that they [i.e., Goodyear] had a problem and paid the claim."

(g) Goodyear was represented at the Rule 30(b)(6) deposition by San Diego, California attorney John P. McCormick. Immediately after the Goodyear witness made the foregoing admissions, Mr. McCormick terminated the deposition

of the Goodyear witness and advised Mr. Ricciardulli that Goodyear would settle the Phillips Case;

(h) As part of the settlement reached with Goodyear, Mr. Ricciardulli agreed to seal the deposition of the Goodyear Rule 30(b)(6) witness, and stipulated in a letter sent to Merritt & Lowe Court Reporters that the deposition's notes/recordings taken by the Merritt & Lowe Court Reporters were to be sent to Goodyear's defense counsel John P. McCormick; and

(i) Mr. Ricciardulli declined to provide me with any documentation from the Phillips Case citing to the Protective Order existing in that case and the Phillips-Goodyear settlement agreement.

7. On Friday, June 1, 2007 at 8:30 a.m. I spoke telephonically with Ms. Beth Merritt at Merritt & Lowe Court Reporters. Ms. Merritt researched her file information on the Phillips Case and told me the following: (a) the plaintiff in the Phillips Case took the deposition of Goodyear employee Kim Cox on Thursday, June 19, 2003, and the deposition was stopped; (b) the remaining depositions noticed or scheduled in the Phillips Case for Friday, June 20, 2003 were cancelled; (c) Goodyear counsel John P. McCormick and Phillips counsel Guy Ricciardulli co-signed a letter dated August 19, 2003 directing Merritt & Lowe to forward to Mr. McCormick the original and all copies of the Kim Cox deposition transcript "for destruction;" and (d) Merritt & Lowe provided the Kim Cox deposition notes to Mr. McCormick on October 1, 2003.

8. Attached to this Affidavit as Exhibit A is the letter to Merritt & Lowe Court Reporters dated August 19, 2003 co-signed by Goodyear counsel Mr. McCormick and the Phillips counsel Mr. Ricciardulli. I received this letter from Ms. Merritt via facsimile on June 1, 2007 at 12:05 p.m.

9. Attached to this Affidavit as Exhibit B is the letter from Merritt & Lowe Court Reporters dated October 1, 2003 forwarding to Goodyear counsel Mr. McCormick the notes and exhibits from the deposition of Kim Cox taken on June 19, 2003 and advising that the deposition was never transcribed. I received this letter from Ms. Merritt via

facsimile on June 1, 2007 at 12:05 p.m.

10. On May 7, 2007, Goodyear filed an Answer to the Complaint filed by my clients in the Haley Case. Goodyear's Answer at ¶¶ 23, 25, 35, 41, and 99 unequivocally deny my clients' allegation that the Goodyear G159 275/75R/22.5 tire is defective. These denials appear to be directly rebutted or contradicted by the sworn testimony of Kim Cox, the Rule 30(b)(6) witness tendered by Goodyear on June 19, 2003 in the Phillips Case, according to the information provided to me by Mr. Ricciardulli and Ms. Merritt. On behalf of my clients in the Haley Case, I will, at the very least, request that Goodyear produce the foregoing described deposition transcript and/or notes to my clients via Rule 34, Arizona Rules of Civil Procedure and/or Rule 26.1, Arizona Rules of Civil Procedure, and tender Kim Cox for deposition.

TIMOTHY J. CASEY

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 6th day of June, 2007, before me personally appeared Timothy J. Casey, to me personally known, being duly sworn, executed the foregoing affidavit.

Witness my hand and official seal.

Notary Public

My Commission Expires:

LYNN FREED
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
November 5, 2008

EXHIBIT A TO THE AFFIDAVIT OF TIMOTHY J. CASEY, ESQ.

McCORMICK
& MITCHELL APC

ATTORNEYS AT LAW • FOUNDED 1971

JOHN P. McCORMICK
DIRECT DIAL NO.: (619) 235-8444
DIRECT FAX NO.: (619) 235-9432
E-MAIL ADDRESS: jpm@mccormickandmitchell.com

August 19, 2003

Ms. Joyce L. Zingale
Merritt & Loew
330 Quaker Square
120 E. Mill Street
Akron, Ohio 44308

Re: Phillips v. Goodyear, et al.
US District Court Case No.02 CV 1642B (CGA)

Dear Ms. Zingale:

You may recall that on June 19, 2003 you reported the commencement of the deposition of Kim Cox. Shortly after its commencement, the deposition was interrupted and counsel agreed to proceed to mediation.

We recently conducted the mediation and through it have successfully settled this case. Accordingly, pursuant to the stipulation of the parties, I request the original and all copies of your notes and the transcription of that deposition be forwarded to me for destruction.

Should you have any questions in connection with this request please do not hesitate to contact either of the undersigned.

Sincerely,

John P. McCormick
Attorney for Defendant
GOODYEAR TIRE & RUBBER COMPANY

Agreed to per stipulation:

Guy Ricciardulli
Attorney for Plaintiff

jpm/lhr

EXHIBIT B TO THE AFFIDAVIT OF TIMOTHY J. CASEY, ESQ.

MERRITT & LOEW
Court Reporting Service

ELIZABETH A. MERRITT
BETH E. LOEW

(330) 434-1333

330 QUAKER SQUARE • 120 E. MILL ST.
AKRON, OHIO 44308

Copy

October 01, 2003

John P. McCormick, Attorney at Law
McCormick & Mitchell APC
625 Broadway, Suite 1400
San Diego, CA 92101

Re: Phillips vs. Goodyear, et al.

Dear Mr. McCormick;

Per your request, enclosed please find the notes and exhibits from the deposition of Kim Cox, taken June, 19, 2003. The deposition was never transcribed.

If we can be of further assistance, please call.

Sincerely,

Joyce L. Zingale

acl

Enclosures

EXHIBIT 9 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

IN THE CIRCUIT COURT FOR HALE COUNTY, ALABAMA

BILLY WAYNE WOODS; SHIRLEY WOODS; JON M. WOODS; AND STACY WOODS,	)	
Plaintiffs,	)	
v.	)	
GOODYEAR TIRE & RUBBER COMPANY; MONACO COACH CORPORATION; AND COLONIAL SALES-LEASE-RENTAL, INC. (D/B/A/ COLONIAL RV CENTER),	)	CIVIL ACTION NO.: CV-04-0045
Defendants.	)	

DEFENDANT THE GOODYEAR TIRE AND RUBBER COMPANY'S RESPONSE TO PLAINTIFFS' AMENDED FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant, The Goodyear Tire & Rubber Company, hereby responds to Plaintiffs' Amended Fourth Request for Production of Documents as follows:

REQUEST FOR PRODUCTION:

1. Produce the deposition transcript of Kim Cox, and all deposition exhibits thereto, as well as any and all notes related thereto, taken by or on behalf of the court reporter and/or court reporting service. Said deposition was taken on June 19, 2003, in the case *Harold Phillips v. The Goodyear Tire & Rubber Company*, United States District Court for the Southern District of California, 3:02-cv-01642-B-NLS.

RESPONSE:

Subject to and without waiving the following objections, Goodyear states that it does not possess the requested documents.

Goodyear objects to this Request for the reasons and on the grounds that it seeks documents and information subject to a Protective Order entered by United States District Court for the Southern District of California in the case *Harold Phillips v. The Goodyear Tire & Rubber Company*, United States District Court for the Southern District of California, 3:02-cv-01642-B-NLS, and it seeks documents and information that contain confidential information or information which constitutes confidential commercial information, reflects trade secrets, information which is otherwise proprietary and, which is entitled to protection under this Court's Protective Order.

John D. Watson (WAT035)
Andrew B. Johnson (JOH168)
Hallman B. Eady (EAD006)
Attorneys for
Goodyear Tire & Rubber Company

OF COUNSEL:

BRADLEY ARANT ROSE & WHITE LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2104
Telephone: (205) 521-8000
Facsimile: (205) 521-8800

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing on:

Counsel for Plaintiffs:

Jere Beasley, Esq.
Richard Morrison, Esq.
Kendall C. Dunson, Esq.
Beasley, Allan, Crow, Methvin,
Portis & Miles, P.C.
P.O. Box 4160
Montgomery, Alabama 36103-4160

James H. Seale, III, Esq.
1004 Main Street
P.O. Box 241
Greensboro, AL 36744

Counsel for Monaco Coach Corporation:

Stephen L. Poer, Esq.
Campbell, Waller & Poer, L.L.C.
2100A Southbridge Pkwy., Suite 450
Birmingham, Alabama 35209

Counsel for Colonial RV Center:

A. Courtney Crowder, Esq.
Phelps, Jenkins, Gibson & Fowler, L.L.P.
Post Office Box 020848
Tuscaloosa, AL 35402-0848

by placing copies of same in the United States Mail, first-class postage prepaid to their regular mailing addresses, on this 21st day of June, 2007.

OF COUNSEL

EXHIBIT 10 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

LEROY AND DONNA HAEGER, et al.,	
Plaintiff,	**CIV 05-2046-PHX-ROS**
vs.	Phoenix, Arizona June 7, 2007 8:35 a.m.
GOODYEAR TIRE AND RUBBER COMPANY, an Ohio corporation; SPARTAN MOTORS, INC., a Michigan corporation; GULFSTREAM COACH, INC., an Indiana corporation,	
Defendants.	

BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DISCOVERY DISPUTE HEARING

Official Court Reporter:
Linda Schroeder, RDR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc. 32
Phoenix, Arizona 85003-2151
(602) 322-7249

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

Our tires were on their vehicle. Nothing by Fleetwood ever said and there's anything wrong with Goodyear's vehicle -- with Goodyear's tires, nothing.

The Monaco experience is, again, a competitor, and Monaco has our tires on a number of their vehicles. They did a vehicle placard recall.

The Court will know that the placard is the thing that's on your vehicle that says this size tire and this inflation pressure. The Monaco folks on some but not all of their vehicles with Goodyear tires, including this tire, goofed, and their placard said to keep it at too low an inflation pressure for the weight of their vehicle. Their vehicle is not built by Spartan. It has an entirely different suspension system. And so those people have been involved in a whole lot of litigation, and Goodyear's been involved in some litigation because of that.

THE COURT: Okay. What information do you have, Mr. Kurtz, that Goodyear knew or should have known of this litigation such that they had an obligation to change or to give notice to the public?

MR. KURTZ: Several things. I'll start with the one most recently discovered.

In 2000, summer of 2000, Goodyear testified that the G159 of this specific size was a defective tire in motor home applications.

THE COURT: In all motor home applications?

MR. KURTZ: In all motor home applications. Goodyear promptly terminated that deposition, acquired the transcript, and willfully destroyed it. And that's in front of Your Honor. That's where I would start.

I would then go on to tell Your Honor that in the Fleetwood -- I don't know. Mr. Hancock always talks about --

THE COURT: I'm sorry, Mr. Kurtz. Whose deposition was taken? That happened to be a deposition of somebody from Goodyear?

MR. KURTZ: Yeah. It was Kim Cox, Your Honor, was a 30(b)(6) deponent in the United States District Court federal court case of Phillips versus Goodyear. She was deposed in the summer of 2003 before the Haegers got hurt. And she testified in reference to a 30(b)(6) topic about other Goodyear failures, that Goodyear had determined the G159 of this size tire was defective when used on all motor homes.

And then that deposition was acquired by Goodyear's counsel, at the instruction presumably of Goodyear as an entity, and willfully destroyed.

THE COURT: Well, how -- If it was -- How did this information surface? How is it that you determined or you learned of this?

MR. KURTZ: To tell you, Your Honor, the information was found by another lawyer in town, attorney you're familiar

with, Your Honor, Tim Casey, used to be with Snell & Wilmer, defense lawyer, now also with one of these Goodyear cases that Mr. Hancock is defending.

And Mr. Casey came across the information and presented it to me. He acquired the court reporter's letter, which I've given to the Court and disclosed to all the parties, which verifies the acquisition of the transcript and its subsequent destruction by Goodyear.

And that new evidence of course we have a subpoena issued to the court reporter that's going to be served on them today, and we've noticed Goodyear's attorney's deposition in this case. But that's where we began.

THE COURT: Let me stop you.

Kim Cox, what is or was her position with Goodyear in 2006 that gave her the authority to make this representation, assuming --

MR. KURTZ: She was the -- She's on the litigation -- some litigation team, as I understand. But she was the designated representative, the 30(b)(6) deponent for Goodyear, speaking on behalf of the corporation, when she made the statement.

And when she made the statement, it's my understanding the deposition was then terminated and subsequently destroyed. So she's picked by Goodyear to speak to the topic.

THE COURT: Mr. Hancock.

MR. SHELY: Your Honor, excuse me. This is Bob Shely, and I wonder if I might weigh in for one minute on one incident that may be relevant to this discussion.

THE COURT: I will allow you in a moment. Let me ask Mr. Hancock first.

MR. HANCOCK: You know, let me answer all of those questions. Your Honor, it's a time-worn tactic to come running in at the last minute with some new huge emergency. It's not Ms. Cox. It's Mr. Cox.

Mr. Cox is not on any litigation team. He is now retired as an employee and in 2003 was somewhere to talk about warranty claims or adjustments. His deposition was minor enough that the parties started it and then never finished it because they went to mediation instead.

They then settled the case. The question in that case -- which I was not involved in but was over in California but didn't involve a Gulf Stream motor home -- was what do we do with a half-finished deposition transcript?

Because Goodyear never did cross-examination. And it is a custom and practice when you settle a case, they just said, well, we'll just pretend the deposition never happened, because nobody after the case is settled wants to go back and finish questioning the witness, either the plaintiff who didn't finish or the defendant who never asked a question.

THE COURT: Where is Mr. Cox?

MR. HANCOCK: I have no idea, sir -- ma'am. He's retired. I asked my client that, and they said we'll try and track him down. But now, again, Your Honor, with only a few days left, we suddenly have deposition notices put out sua sponte in California without subpoena power jurisdiction for the court reporter, for the lawyer who represented Goodyear, for everybody but Mr. Cox, in order to ask did he say something.

THE COURT: Let me ask you: Do you have reason to believe that he said all motor homes? Do you have reason to believe that?

MR. HANCOCK: Absolutely not, Your Honor. And without divulging attorney-client privilege, I can tell you I have the exact opposite understanding. And there is no record. We've checked.

MR. KURTZ: Your Honor, if it please the Court, I have the declaration -- Mr. Abernethy has it there in his possession -- which I'm pleased to provide Your Honor regarding his investigation and his discussions associated with his representation. And they are in striking contrast to Mr. Hancock's avowals.

THE COURT: When did you learn about this?

MR. KURTZ: June 1st.

THE COURT: Of this year?

similarity argument, but I think it's important to understand the context in which this case is being argued is the context of the Monaco and the Fleetwood cases where there appeared to be some sort of weight or design issue on those particular coaches that led to this unusual claims history. Gulf Stream does not have that history. There has not been a series of defective tire claims made against Gulf Stream on these cases.

And that's why our concern, the defendants' concern collectively, about getting off into Monaco and Fleetwood is so wide afield, because Gulf Stream is not going to -- we're going to produce documents to Mr. Kurtz this week on what we have. But Gulf Stream does not have that type of litigation history, the kind of, you know, sporadic, one-off type cases that happen, you know, regularly in anybody's -- in anybody's -- in any corporation's career.

But we don't have the type of recall, we don't have the history, we don't have anything that's akin to what Monaco and Fleetwood had.

THE COURT: Okay. Mr. Kurtz --

MR. KURTZ: Yes, Your Honor.

THE COURT: -- it seems that at a starting point, fundamental to all of this is what was said and by whom.

And it seems that you have only identified, at least as of today, that Mr. Kim Cox may have made a representation that there was a failure of the G159 tire on all motor homes.

I am going to allow some discovery concerning that particular issue before I consider expanding the discovery into other motor homes like Monaco and Fleetwood.

So is that understood, Mr. Kurtz?

MR. KURTZ: I can understand -- I understand what you said, Your Honor. I'm just -- I think -- Here's my concern with it, quite frankly, Your Honor, is we're sitting here in a discussion over the telephone with -- where your decisions are premised on the avowals of counsel without regard to evidence in the record.

And you're making an evidentiary ruling, with all due respect, Your Honor, where you're having to display a certain level of confidence in the absence of documents.

I previously briefed this for the Court with the documents, with the Bates stamped ranges of the evidence that is presented to you, so that when I spoke, it would have efficacy which would support and you would understand that they weren't opinions.

What happened in Monaco and Fleetwood involved thousands of these tires that were killing people. It was in Monaco there was no weight issue at all. They pulled all of the tires, this subject tire, off those coaches because of the failures in the field.

That's been concealed from the Court, but in 29 separate lawsuits involving Gulf Stream, Monaco, Fleetwood,

Then once I make a decision, counsel are going to confer and decide what discovery is necessary to complete the litigation in this case and understanding that it has to be done on a short -- You're all going to be on a short leash. And you're going to submit that to me, and I'm going to decide when the discovery is to be completed.

MR. KURTZ: Your Honor, Dave Kurtz again. Thank you, Your Honor.

As to the substantial similarity briefing, the only additional discovery that I think would bear upon the Court's analysis would be to have the court reporter's -- the deposition testimony of Mr. Cox and the transcript, if it's available, of the testimony of the lawyers as to what was said by Goodyear about substantial --

THE COURT: I'm going to allow inquiry into Mr. Cox. I don't know how much information there is at this time, but I'm going to require -- it appears to be, in this case, it only relates to Goodyear -- Goodyear to do an inquiry and provide all information about Mr. Cox's purported testimony that this tire was a problem on all motor homes.

MR. KURTZ: Thank you, Your Honor.

MR. SHELY: Your Honor, Bob Shely here. I may not have understood. Is it the Court's intention that we should go ahead with depositions scheduled for next week or --

THE COURT: No.

before I expand this.

MR. KURTZ: Very good, Your Honor.

MR. HANCOCK: Your Honor, just two questions. One, are we free to approach the Court if there's new stuff in Mr. Osborne that we've not seen and we'd like an opportunity to question --

THE COURT: You can approach the Court --

MR. HANCOCK: Thank you, Your Honor.

THE COURT: -- if there's new stuff that you believe is unreliable.

MR. HANCOCK: Exactly, Your Honor.

THE COURT: That's the point.

MR. HANCOCK: Exactly, Your Honor.

The second question has to do with Mr. Cox. I don't know. I'm assuming we can locate him. But plaintiffs, without any consulting with anybody, have noticed up the depositions of the court reporters and the lawyers in the case. And of course the lawyers are going to have to invoke attorney-client privilege. I wonder if we could just begin with can we locate Mr. Cox -- not Ms. Cox; it's Mister -- and if he says I didn't say that and wouldn't have a basis to say that, you know, can we then talk about it, rather than launch a five-deposition travel to California, depose a bunch of lawyers over --

THE COURT: Who is it that will testify, Mr. Kurtz,

and will they assert the privilege?

MR. KURTZ: The answer is plaintiffs' counsel in the Phillips case will testify that Mr. -- if Mr. Cox should deny his testimony, plaintiffs' counsel will testify, as he's informed Mr. Casey, that that's exactly what was said.

And of course we're not going to know exactly because Goodyear grabbed the transcript and had it burned.

THE COURT: All right. Now, when you say that, I presume what -- your answer to my question is he's not going to assert the privilege. He's going to testify to facts rather than privileged information?

MR. KURTZ: That's correct.

THE COURT: Okay. I'm going to allow it. I'm going to allow him to take the deposition. And I'm going to order Goodyear -- I presume it's your witness -- to find this witness if you can.

MR. HANCOCK: If we can, Your Honor. Thank you.

MR. KURTZ: I would think, Your Honor, the only depositions would be Cox and Goodyear's defense lawyer, and, in the event they were to deny it, then plaintiffs' counsel. But I'm hoping that I don't encounter the denial --

THE COURT: Well, and both counsel know the scope of a privilege. Certainly an attorney can testify to the facts. And that's been established by the Supreme Court a long time ago. He is not required to testify to anything that's

privileged.

So to make this clear, he can testify to what was said unless somehow there is a court order that it's privileged or that it was under seal or that I need to address that issue. So he can testify to what was said and by whom and, in particular, Mr. Cox. All right. Is that clear?

MR. KURTZ: Yes, Your Honor.

THE COURT: This matter is adjourned.

MS. LEWALLEN: Your Honor, I'm sorry. Am I clear that all depositions that are currently set, then, are off?

THE COURT: They're off.

MS. LEWALLEN: Thank you.

THE COURT: They've been vacated.

MR. KURTZ: Thank you, Your Honor.

(Proceedings recessed at 10:31 a.m.)

EXHIBIT 11 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

FENNEMORE CRAIG, P.C.
Graeme Hancock (No. 007190)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000
Email: ghancock@fclaw.com

Attorneys for Defendant
The Goodyear Tire & Rubber Company

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

LEROY and DONNA HAEGER, husband and wife; BARRY and SUZANNE HAEGER, husband and wife; FARMERS INSURANCE COMPANY OF ARIZONA, an Arizona corporation,

Plaintiffs,

v.

GOODYEAR TIRE AND RUBBER COMPANY, an Ohio corporation; SPARTAN MOTORS INC., a Michigan corporation; and GULFSTREAM COACH, INC., an Indiana corporation,

Defendants.

No. CV05-2046-PHX-ROS

DEFENDANT GOODYEAR'S MOTION TO QUASH

Defendant Goodyear requests the Court quash the deposition notices and existing subpoenas outstanding for the depositions of John McCormick, Merritt & Loew Court Reporters in Akron, Ohio, and Kim Cox.

I. A PROTECTIVE ORDER ENTERED BY THE DISTRICT COURT IN THE *PHILLIPS* CASE BARS INQUIRY REGARDING THE COX DEPOSITION.

The parties were last before the Court on June 7, 2007. At that time, Plaintiffs raised sua sponte a request to depose an otherwise unrelated witness (Mr. Cox) regarding his prior testimony in 2003 in an otherwise unrelated lawsuit (Phillips v. Goodyear) in United States District Court for the Southern District of California. Plaintiffs stated that they had information about a "Cox deposition" in that case from a lawyer in a different Arizona law firm who had in turn heard about Mr. Cox's testimony from one of the lawyers involved in the Phillips case. Plaintiffs requested leave to depose both Mr. Cox and Goodyear's lawyer in the Phillips case about what Mr. Cox said in his 2003 Phillips deposition.

The Court allowed these two depositions to go forward, specifically ruling that witnesses could be questioned about what testimony occurred in that California deposition, ***unless it was subject to a protective order***:

> Mr. Kurtz: I would think, Your Honor, the only depositions would be Cox and Goodyear's defense lawyer and, in the even they were to deny it, then plaintiffs' counsel. But I'm hoping that I don't encounter the denial—
>
> The Court: Well, and both counsel know the scope of a privilege. Certainly an attorney can testify to the facts. And that's been established by the Supreme Court a long time ago. He is not required to testify to anything that's privileged.
>
> So to make this clear, he can testify to what was said *unless somehow there is a court order that it's privileged or that it was under seal* or that I need to address that issue. So he can testify to what was said and by whom and, in particular, Mr. Cox. Allright. Is that clear?
>
> Mr. Kurtz: Yes, Your Honor.
>
> The Court: This matter is adjourned.

See Transcript of Proceedings at p. 87-88 (emphasis added).

Goodyear's counsel has investigated the matter. The protective Order entered in the Phillips case limits the disclosure and use of the depositions taken in that action and the Cox deposition was taken subject to that Protective Order. See Order, attached as Exhibit A; Affidavit of John McCormick, attached as Exhibit B. Specifically, the Protective Order issued by the United States District Court in the Phillips case expressly provides that depositions taken and placed under the confidentiality order may only be used for purposes of that case, and may not be disclosed to third parties or used for any other purposes, without order of the Phillips Court. See Exhibit A at ¶ ¶ 1, 3.

At the time of the Cox deposition in the Phillips matter, no one contested the deposition being placed under the Protective Order (Exhibit B at ¶ 3). When the parties resolved that litigation, the provisions of the Protective Order requiring the return to Goodyear of all protected depositions for disposal. Again, no one contested this or the protected nature of the Cox deposition. Indeed, the Plaintiffs' counsel in Phillips actually signed the joint letter to the Ohio court reporter, requesting that the reporter return the original notes of the Cox deposition to Goodyear for disposal. See Exhibit C attached.

Neither Mr. McCormick nor Mr. Cox can testify regarding what was said in the deposition in the Phillips case without violating that Court's order. Plaintiffs in this action now know this, having received confirmation that the transcript was sealed. Accordingly, Defendant requests that the Court issue an Order quashing all deposition notices relating to the testimony in the deposition of Kim Cox in Phillips v. Goodyear.

PLAINTIFFS' POSITION:

SPARTAN'S POSITION:

GULF STREAM'S POSITION:

CONCLUSION

Defendant requests that the Court quash all existing deposition notices in this case relating to the testimony of Mr. Cox in the California case, Phillips v. Goodyear, based on the existing Protective Order from the United States District Court in that case and the admission that the deposition was placed under seal.

A proposed form of Order is attached

DATED this ____ day of June, 2007.

Fennemore Craig, P.C.

By s/Graeme Hancock
Graeme Hancock
Attorneys for
The Goodyear Tire & Rubber Company

CERTIFICATE OF SERVICE

☒ I hereby certify that on June 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

David L. Kurtz
THE KURTZ LAW FIRM
7420 East Pinnacle Peak Road
Building D, Suite 128
Scottsdale, Arizona 85255
Attorneys for Plaintiffs

James M. Abernathy
Abernethy & Green, P.L.C.
3838 North Central Avenue, Suite 1750
Phoenix, AZ 85012
Attorneys for Plaintiffs

Blanca Quintero
COZEN O'CONNOR
501 West Broadway
Suite 1610
San Diego, CA 92101
Attorneys for Plaintiffs

Robert W. Shely
Rodney W. Ott
BRYAN CAVE LLP
Two North Central Avenue
Suite 2200
Phoenix, AZ 85004
Attorneys for Defendant Gulf Stream Coach, Inc.

Lisa Lewallen
Jennings Haug & Cunningham
2800 N. Central Avenue
Suite 1800
Phoenix, AZ 85004
Attorneys for Defendant Spartan Motors, Inc.

s/ Nancy J. Rimsek

EXHIBIT 12 TO:

INTERVENORS' MOTION TO INTERVENE AND MODIFY THE COURT'S PROTECTIVE ORDER ENTERED JUNE 13, 2003.

Cause No. 02 CV1642 (B) (NLS)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KORI D. HALEY, JOSEPH HALEY, et al.,

Plaintiffs,

vs.

THE GOODYEAR TIRE AND RUBBER COMPANY, MONACO COACH CORPORATION, et al.,

Defendants.

No. CV 2007-006515

Phoenix, Arizona
June 19, 2007
9:04 a.m.

BEFORE: HONORABLE GLENN M. DAVIS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

REPORTED BY:

LYNN D. CRONIN
Certified Court Reporter
Cert. No. 50535

SUPERIOR COURT

A P P E A R A N C E S

FOR PLAINTIFFS:

SCHMITT, SCHNECK, SMYTH & HERROD
BY: TIMOTHY J. CASEY, ESQ.

FOR DEFENDANT, GOODYEAR:

FENNEMORE CRAIG
BY: GRAEME E. HANCOCK, ESQ.

FOR DEFENDANT, SMITH:

LLOYD J. ANDREWS, ESQ.
ATTORNEY AT LAW
(Appearing telephonically)

SUPERIOR COURT

Phoenix, Arizona
June 19, 2007
9:04 a.m.

P R O C E E D I N G S

SUPERIOR COURT

C E R T I F I C A T E

I, LYNN D. CRONIN, CERTIFIED COURT REPORTER, DO HEREBY CERTIFY THAT THE PROCEEDINGS AND TESTIMONY REPORTED

BY ME REGARDING THE AFORECAPTIONED MATTER ARE CONTAINED FULLY AND ACCURATELY IN THE NOTES TAKEN BY ME UPON SAID MATTER; THAT THE SAME WERE TRANSCRIBED BY ME WITH THE AID OF A COMPUTER; AND THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE SAME, ALL DONE TO THE BEST OF MY SKILL AND ABILITY.

DATED THIS_____DAY OF_____, 2007.

_____
LYNN D. CRONIN, RPR
CERTIFIED COURT REPORTER
CERT. NO. 50535

SUPERIOR COURT

unheard of.

In short, Your Honor, I'd ask that you deny the motion -- emergency motion to allow their counsel to attend the deposition of John McCormick and question the witness. And I'd also ask that we instruct all of the parties in the case to follow the rules.

SUPERIOR COURT

And then thirdly I'd ask given the protective order -- if I may approach -- given the protective order in the Phillips case that the Court issue an order that we won't be noticing up individuals to question them about discovery in the Phillips case absent leave of Court.

MR. CASEY: Do you have an extra copy of the order?

MR. HANCOCK: Your Honor, I have copies for whoever is here.

MR. CASEY: Thank you.

MR. HANCOCK: I pulled this off the Federal Court website. And it's a fairly standard protective order. Paragraph one says you can only use things -- I'm on page three, Your Honor -- paragraph one says you can only use things in this action and you can't disclose it to others.

Paragraph two says you can't do this -- you can only use to these people not to others.

Paragraph three says deposition testimony can be marked as confidential. In other words, the deposition becomes confidential.

And when you turn to the back it has provisions in paragraphs ten and 11 saying when the case is resolved, as

this case was in 2004 all the plaintiffs will return an affidavit saying they've destroyed all the confidential documents, returned everything to Goodyear, et cetera, et

cetera, et cetera.

And in this case if you read Mr. Casey's affidavit he's interested in knowing what happened in that deposition and the answer is it's confidential. Now, you can notice a witness up and you can ask him what he thinks today but you can't notice the witness up and ask him what did you see or hear or taste in that deposition. Because the answer is as an officer of the Court Mr. McCormick can't respond because of the protective order.

THE COURT: Thank you. Counsel?

MR. CASEY: Yes, Your Honor. Two issues. Procedurally this is an extraordinary circumstance and events did develop very quickly. Let me just start off by saying that this Court has the inherent authority to allow whatever depositions it so chooses to go forward. If in fact Mr. McCormick's deposition does not go forward that's an issue obviously our case, the Haley case, no deposition will go forward if the underlying deposition doesn't go forward.

I will be back asking this Court for intervention so we can depose Mr. McCormick eventually at sometime. The remedy here is a protective order by Goodyear in the Haeger case for Judge Silver to rule that the party to the deposition is a private party. It's a private deposition that can only be attended by lawyer's in that case.