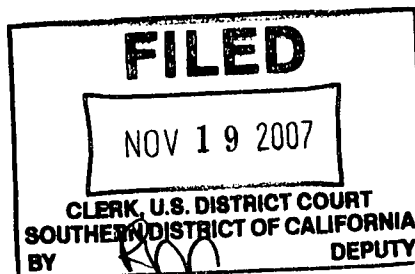


1 John P. McCormick, Esq. (SBN 38064)
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13 wyoka@yokasmith.com
14 alatiolait@yokasmith.com

unsealed 11/28/08
ORDERED SEALED BY COURT

12 Attorneys for Defendant, THE GOODYEAR TIRE & RUBBER COMPANY

13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 HAROLD J. PHILLIPS and GEORG-ANNE) CASE NO.: 02 CV 1642 B (NLS)
17 PHILLIPS,)
18 Plaintiffs,) **DECLARATION OF JOHN P. McCORMICK**
19 vs.) **IN REPLY TO THE OPPOSITION OF GUY**
20) **RICCIARDULLI TO GOODYEAR'S**
21 THE GOODYEAR TIRE & RUBBER) **APPLICATION FOR ORDER TO SHOW**
22 COMPANY, an Ohio Corporation, and DOES 1) **CAUSE UNDER SEAL**
23 THROUGH X, Inclusive,) **DEPT: "F"**
24 Defendants.) **JUDGE: Hon. Nita Stormes**
25) **CONDITIONALLY UNDER SEAL**

25 **This envelope is sealed subject to a motion or an application to file the record under seal**
26 **and contains material designated confidential in this action by The Goodyear Tire & Rubber**
27 **Company and is not to be opened or the contents thereof displayed or revealed except by the**
28 **Court or upon order of the Court.**

45 bail

CONDITIONALLY UNDER SEAL
02 CV 1642 B (NLS)

1 John P. McCormick, Esq. (SBN. 38064)
Konrad M. Rasmussen, Esq. (SBN. 157030)
2 McCORMICK & MITCHELL
8885 Rio San Diego Drive, Suite 212
3 San Diego, California 92108
Telephone: (619) 294-8444
4 Facsimile: (619) 294-8447

5 Attorneys for Defendant THE GOODYEAR
TIRE & RUBBER COMPANY
6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 HAROLD J. PHILLIPS and GEORG-
ANNE PHILLIPS,
10

11 Plaintiffs,
12

13 v.

14 THE GOODYEAR TIRE & RUBBER
COMPANY, an Ohio Corporation,
15 and DOES 1 THROUGH X,
16 Inclusive,

17 Defendants.
18

CASE NO: 02 CV 1642 B (NLS)

**DECLARATION OF JOHN P. McCORMICK
IN REPLY TO THE OPPOSITION OF GUY
RICCIARDULLI TO GOODYEAR'S
APPLICATION FOR ORDER TO SHOW
CAUSE**

Date:
Time:
Ctrm: F
Judge: Hon. Nita Stormes

19 I, John P. McCormick, say:

20 1. If called as a witness in the above-
21 captioned matter, I am competent to and would in fact
22 testify to the following facts of which I have
23 personal knowledge except as otherwise indicated.
24

25 2. I am now and have been since the first
26 appearance of The Goodyear Tire & Rubber Company
27 ("Goodyear") in the within action one of the attorneys
28 for Goodyear. As such, in April of 2003 I was the

1 recipient of five deposition notices and demands for
2 production of documents from Mr. Ricciardulli's office
3 dated April 19, 2003.

4 3. One of these deposition notices requested a
5 Goodyear representative who was "the person most
6 knowledgeable regarding the resolution of the claims
7 made by plaintiffs to defendants regarding the alleged
8 tire failures which occurred on or about August 2000
9 in Nebraska." Please see Exhibit A hereto, page 2,
10 lines 2-4.

11 4. This deposition notice also requested the
12 production of correspondence with third persons
13 relating to the August 2000 tire failures and
14 documents generated by or referred to by any Goodyear
15 employee relating to the investigation or inspection
16 of the tires involved in the August 2000 claim.
17 Please see Exhibit A, page 2, lines 10-16.

18 5. Prior to the service of this deposition
19 notice, I had received from the plaintiffs an unsigned
20 letter to Harold Phillips from Goodyear which bore
21 initials of "KRC" and a facsimile transmittal
22 indication that it came from "KR Cox". My
23 investigation and the investigation of Goodyear
24 personnel, located a gentleman by the name of Kim Cox
25 who had handled the Phillips property damage claim
26 arising out of their August 2000 incident in Nebraska,
27 which was different from the incident giving rise to
28

1 this litigation.

2 6. At the time of Mr. Cox's deposition which I
3 believe was on June 20, 2003 (by agreement the noticed
4 date was changed), certain documents which had been
5 either previously produced or which were produced at
6 the time of the deposition and which related to the
7 aforementioned property damage claim were considered
8 proprietary and confidential and were accordingly so
9 stamped pursuant to a Protective Order which has been
10 referred to in my earlier declaration and which had
11 been issued by the Honorable Nita Stormes pursuant to
12 stipulation.

13 7. Attached as Exhibit B is a true and correct
14 electronic reproduction of a letter to Mr.
15 Ricciardulli dated May 7, 2003 in which I state at
16 page 2, paragraph 1: "We are waiting on your and Mr.
17 Regan's signatures on the Protective Order. If we
18 receive those signatures soon, you should have the
19 documents prior to the depositions." Also attached as
20 Exhibit C hereto is a true and correct electronic
21 reproduction of a letter I sent to Mr. Ricciardulli
22 wherein I state at page 1, paragraph 4 and page 2,
23 paragraph 1 that upon my receipt of the Protective
24 Order I will forward requested documentation to him
25 and, as to documents to be produced at the referenced
26 deposition, they will be produced subject to
27 appropriate objection and the Protective Order.

28

1 8. These confidential and proprietary
2 documents were, accordingly, designated as such and
3 were presented to Mr. Ricciardulli under the
4 protection of the Protective Order above referred to.

5 9. Mr. Cox was offered for deposition to
6 testify only about the handling of the Phillips' prior
7 property damage claim arising out of their Nebraska
8 accident. Mr. Cox was not offered as a witness
9 regarding any topics other than the handling of the
10 Phillips prior property damage claim arising out of
11 their Nebraska accident.

12 10. I have read the declaration of Guy
13 Ricciardulli dated August 16, 2007 and have the
14 following specific comments:

15 A. His statement in paragraph 4 that his
16 deposition notice was "with respect to the processing
17 of property damage claims" is in error. The deposition
18 notice spoke directly and specifically to the handling
19 of the prior property damage claim submitted by the
20 Phillips regarding an incident in Nebraska. (See
21 Exhibit A attached hereto.)
22

23 B. As to the contents of paragraph 5 of Mr.
24 Ricciardulli's declaration claiming Mr. Cox testified
25 concerning Goodyear's awareness of a certain claimed
26 proposition the substance of Mr. Cox's testimony is
27 subject to the protective Order in this case and will
28 not be discussed herein. However, I note that Mr. Cox

1 was produced to testify regarding the handling of the
2 prior Nebraska claim and he was not designated to
3 testify regarding the suitability of any tire in any
4 particular application nor do I know him to be
5 qualified to do so.

6 C. In response to the contents of paragraph 6
7 of Mr. Ricciardulli's declaration regarding my state
8 of mind and the reason for the adjournment of the
9 deposition, I refer to paragraph 5 of my declaration
10 of June 22, 2007 which was filed with the moving
11 papers wherein I state:

12 5. Prior to the commencement of the Cox
13 deposition, Mr. Ricciardulli had inquired
14 into Goodyear's willingness to defer
15 depositions and enter into an agreement to
16 mediate this litigation. I was unable to
17 obtain the necessary authority from my
18 client prior to the start of Mr. Cox's
19 deposition. However, shortly after the
20 commencement of the deposition, I received
21 authority from Goodyear to agree to mediate
the case, which I immediately communicated
to Mr. Ricciardulli. At that juncture, Mr.
Ricciardulli and I agreed to adjourn the
incomplete deposition of Mr. Cox, at which
point I reiterated that contents of the
deposition were subject to the provisions
of the Court's Protective Order. Again,
Mr. Ricciardulli agreed to this designation
and did not challenge it.

22 D. Mr. Ricciardulli's statement in paragraph 8
23 of his declaration that he never considered the
24 subject testimony of Mr. Cox within the Protective
25 Order is contradicted by:

26 (1) The fact that the deposition which he
27 noticed and the documents which he requested be
28

1 produced were delayed pending issuance of the
2 Protective Order;

3 (2) Mr. Cox was designated to testify
4 regarding "the resolution of the claims made by
5 plaintiffs to defendants regarding the alleged tire
6 failures which occurred on or about August 2000 in
7 Nebraska." (See Exhibit A hereto.)

8 (3) The affidavit of Tim Casey, paragraph
9 6, subparagraph (i) located at page 5 and beginning at
10 line 7 states, "Mr. Ricciardulli declined to provide
11 me with any documentation from the Phillips case
12 citing the protective order existing in that case and
13 the Phillips-Goodyear settlement agreement." (See
14 Exhibit D to the moving papers.)

15 (4) My letter of May 27, 2003 directed to
16 Mr. Ricciardulli a copy of which is attached as
17 Exhibit C made it clear that all documents to be
18 produced at or incidental to the noticed deposition
19 would be subject to the protective order.

20 E. In Paragraph 9 of his declaration Mr.
21 Ricciardulli expresses doubt that he agreed to treat
22 the Cox deposition as confidential. However, it is
23 uncontradicted that Mr. Ricciardulli agreed to keep the
24 testimony of the Cox deposition confidential under the
25 protective order by co-signing a letter to the court
26 reporter instructing her to return or destroy all
27 notes or transcripts from the deposition.

28

1 11. At the time of the adjournment of the Cox
2 deposition, the agreement to seal the testimony and
3 the documents referenced in that testimony and
4 produced pursuant to it was, to my understanding,
5 clearly pursuant to the provisions of the protective
6 order issued by Judge Stormes. This procedure I
7 believe to be authorized by FRCP 30 (f)(2).

8 I declare under penalty of perjury under the laws
9 of the State of California that the foregoing is true
10 and correct.

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Dated: Nov-14, 2007

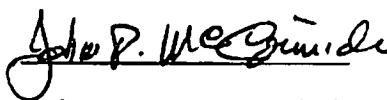

John P. McCormick

EXHIBIT A

(1) (4)

1 GUY A. RICCIARDULLI, BAR #116128
2 ATTORNEY AT LAW
3 12396 WORLD TRADE DRIVE, #305
4 SAN DIEGO, CA 92128
5 (858) 487-8006
6 (858) 487-8109

7 Attorney for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 HAROLD J. PHILLIPS and) CASE NO. 02CV1742B(CGA)
11 GEORG-ANNE PHILLIPS)
12 Plaintiffs,) PLAINTIFFS' AMENDED NOTICE OF
13 v.) TAKING DEPOSITIONS AND
14 GOODYEAR TIRE & RUBBER COMPANY) DEMAND FOR PRODUCTION OF
15 an Ohio Corporation,) DOCUMENTS
16 and DOES I through X,)
17 inclusive,)
18 Defendants.)

19 TO: ALL PARTIES TO THE WITHIN LITIGATION AND TO THEIR
20 RESPECTIVE ATTORNEYS OF RECORD HEREIN:

21 PLEASE TAKE NOTICE that the law office of Guy A. Ricciardulli,
22 attorney of record for the Plaintiffs herein, will take the
23 deposition set forth below before a Certified Shorthand Reporter
24 and Notary Public, said deposition to continue from day to day
25 until completed, Sundays and holidays excepted:

26 1. PLACE: Merrit & Lowe Court Reporters, #330 Quaker Square,
27 120 E. Mill, Akron, Ohio 44308 303 434-1333.

28 2. DATE: MAY 20, 2003

3. TIME: 9:00 A.M.

1 4. DEPONENT: Defendant Goodyear Tire & Rubber Company's
2 person most knowledgeable regarding the resolution of the claims
3 made by Plaintiffs to defendants regarding the alleged tire
4 failures which occurred on or about August 2000, in Nebraska.

5
6 NOTICE IS FURTHER GIVEN that you are hereby required to bring
7 with you to this deposition the following documents and things
8 which are either in your possession or under your control or under
9 the control of your representative:

10 1. Any and all correspondence received or sent by Defendant
11 to any third party including Plaintiffs which references or relates
12 in any way to the August 2000 tire failures.

13 2. Any and all documents generated by or referred to by any
14 Goodyear employee which relates in any way to any investigation or
15 inspection related to the subject tires which were the subject of
16 Plaintiffs' August 2000 claim.

17
18
19 DATED: April 29, 2003

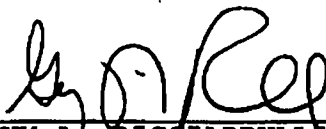

GUY A. RICCIARDULLA
Attorney for Plaintiff

EXHIBIT B

McCORMICK
& MITCHELL APC

ATTORNEYS AT LAW • FOUNDED 1971

KONRAD M. RASMUSSEN
DIRECT DIAL NO.: (619) 235-8444
DIRECT FAX NO.: (619) 235-9432
E-MAIL ADDRESS: kmr@mccormickandmitchell.com

May 7, 2003

Guy A. Ricciardulli, Esq.
LAW OFFICES OF GUY A. RICCIARDULLI
12396 World Trade Drive, Suite 305
San Diego, CA 92128

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

Dear Guy:

Enclosed are Goodyear's objections to your five amended notices of taking depositions and demand for production of documents at deposition. Although the notices are still technically defective in that they do not name the Goodyear Tire & Rubber Company as the deponent, as indicated in earlier correspondence, we are attempting to identify the appropriate Goodyear representatives and provide you with available dates for the depositions.

The amended notices also do not comply with the Rule 30(b)(5) requirement of 30 days notice when seeking production of documents at deposition. Goodyear will need at least the statutory time to gather the responsive documents. I would therefore ask that you agree to continue these depositions to dates which are mutually agreeable and which provide Goodyear the requisite time for document production. If you won't agree to continue them, please advise as soon as possible and explain why so Goodyear can move for a protective order.

One of your notices seeks written communications sent or received by Goodyear from Monaco Coach Corporation or Monaco coach users regarding the use, performance, or maintenance of any Goodyear 275170R22.5 LR H, G159 tires. These documents were sought in your earlier request for production to Goodyear, so there will be no additional documents produced at the deposition.

Guy A. Ricciardulli, Esq.

Re: Phillips v. Goodyear, et al.
May 7, 2003
Page 2

Your letter of April 30 complains Goodyear's discovery responses shed no light on its position. This complaint is premature, as documents are yet to be produced. We are waiting on your and Mr. Regan's signatures on the protective order. If we receive those signatures soon, you should have the documents prior to the depositions.

Having a protective order in place will also expedite the production at deposition of any additional documents which Goodyear considers trade secret, proprietary, or otherwise confidential. As requested in the transmittal letter which accompanied the proposed protective order, I would ask that if you have any objections to signing and returning it, you let me know so that I can seek the court's assistance prior to the depositions.

Sincerely,

MCCORMICK & MITCHELL

Konrad M. Rasmussen

KMR/amc

cc: Thomas Regan

EXHIBIT C

McCORMICK
& □□□□□□□ 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

May 27, 2003

VIA FACSIMILE (858) 487-8109
[THIS TRANSMISSION CONTAINS TWO PAGES]

Guy A. Ricciardulli, Esq.
LAW OFFICES OF GUY A. RICCIARDULLI
12396 World Trade Drive, Suite 305
San Diego, CA 92128

Re: Phillips v. Goodyear, et al.
United States District Court Case No.: 02 CV 1642B (CGA)
Date of Incident: 02/07/02

Dear Guy:

We have identified those deponents required by four of your five deposition notices. As previously mentioned, we will stand on our objection regarding your request to depose the person most knowledgeable regarding the post-accident condition of plaintiffs' tire. We believe that is a proper subject of expert witness discovery.

As to the balance of the requested areas to be covered, we have identified three persons who appear to be the most knowledgeable. At least one of these persons is not available on the following dates:

June 5 and 6, June 10, June 17, June 20, the week of June 23, and July 4 through July 11. May I request you schedule these depositions to avoid these dates.

In connection with your document request, as soon as we have received the judge's signature on the protective order, I will contact your office to confirm that the documents to be produced in response to your request for production are available. Those documents have been identified and are here in our office properly stamped with the restrictive endorsement.

Guy Ricciardulli
Re: PHILLIPS
May 27, 2003
Page 2

In connection with the documents to be produced at deposition, to the extent they are not included in the previously requested documents, they will be, subject to appropriate objection and the protective order, produced at deposition.

However, in one of your deposition notices, you request the person most knowledgeable regarding the "manufacturing and warranty" of the referenced tire. In that same notice you seek all documents "generated ... as a result of the manufacturing process of the subject tire, including but not limited to any and all quality control documentation." Both the area to be covered by deposition testimony and the documents requested are too vague to allow appropriate response. If you can limit this request in some appropriate manner, we will do our best to comply.

I trust this letter will avoid the necessity of the meeting scheduled for this afternoon. If not, please give me a call. Thank you.

Sincerely,

McCORMICK & MITCHELL

John P. McCormick

JPM/amc

PROOF OF SERVICE

PHILLIPS v. GOODYEAR TIRE & RUBBER COMPANY
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA
Case No.: 02 CV 1642 B (NLS)

GOOD.31886

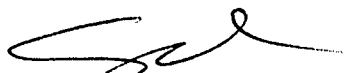
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is **777 S. Figueroa Street, Suite 4200, Los Angeles, California 90017.**

On November 15, 2007 I served the foregoing document: **DECLARATION OF JOHN P. McCORMICK IN REPLY TO THE OPPOSITION OF GUY RICCIARDULLI TO GOODYEAR'S APPLICATION FOR ORDER TO SHOW CAUSE** on the interested party or parties in this action as contained on the attached service list

- (BY MAIL) I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- (VIA OVERNIGHT MAIL) I deposited such envelope in the Overnite Express box at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- (BY FACSIMILE) In addition to regular mail, I sent this document via facsimile, number(s) as listed on the attached mailing list, on May 16, 2007.
- (BY PERSONAL SERVICE) Such envelope was delivered by an agent of Document Delivery Service by hand to the office of the addressee.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 15, 2007, at Los Angeles, California.



Salvador Quintero

PHILLIPS v. GOODYEAR TIRE & RUBBER COMPANY
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA
Case No.: 02 CV 1642 B (NLS)

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