

Issued by the
UNITED STATES DISTRICT COURT
 ----- DISTRICT OF ARIZONA -----

LEROY and DONNA HAEGER, et al, <p style="text-align: center;">Plaintiff,</p> vs. GOODYEAR TIRE AND RUBBER COMPANY, et al., <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">SUBPOENA DUCES TECUM IN A CIVIL CASE</p> <p style="text-align: center;">CASE NUMBER: CV05-2046</p>
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TO: Merritt & Loew
 330 Quaker Square
 120 E. Mill Street
 Akron, OH 44308

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

<small>PLACE OF TESTIMONY</small>	<small>COURTROOM</small>
	<small>DATE AND TIME</small>

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

<small>PLACE OF DEPOSITION</small>	<small>DATE AND TIME</small>

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE EXHIBIT A ATTACHED**

<small>PLACE</small>	<small>DATE AND TIME</small>
The Kurtz Law Firm 7420 E. Pinnacle Peak Rd., Suite 128 Scottsdale, AZ 85255	June 18, 2007

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:

<small>PREMISES</small>	<small>DATE AND TIME</small>

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

<small>ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)</small>	<small>DATE</small>
<i>Attorney for Plaintiffs</i>	6-6-07
<small>ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER</small>	
David L. Kurtz, The Kurtz Law Firm, 7420 E. Pinnacle Peak Rd., Suite 128, Scottsdale, AZ 85255, (480) 585-1900	

PROOF OF SERVICE

DATE PLACE

SERVED

PAID
JUL 28 2003

I N V O I C E

MERRITT & LOEW
Court Reporting Service
330 Quaker Square -- 120 E. Mill Street
Akron, Ohio 44308
(330) 434-1333 Fax (330) 434-4334

Invoice Number	Invoice Date
2300601	6/19/03

[REDACTED] Attorney at Law
12396 World Trade Dr., # 305
San Diego, CA 92128

Job Taken 6/19/03 [REDACTED]

Reporter:
Joyce Zingale

TAX ID#: 34-1541638

Description	Total
Phillips et al., vs. Goodyear Tire & Rubber Co, et al. USDC S. CA: 02CV1742B	
Deposition of Kim Cox	
Attendance of Reporter	125.00
Invoice Total	125.00
Balance Due	125.00

Thank you for using Merritt & Loew

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P3029

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ELIZABETH A. MERRITT
BETH E. LOEW

(330) 434-1333

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

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

DECLARATION OF DAVID KURTZ

STATE OF ARIZONA :
 : ss.
County of Maricopa :


1. I am one of the attorneys retained to represent the Haeger family in the pending action, *Haeger v. Goodyear, et al.*, Cause No. CV05-2046-PHX-ROS.

2. In response to Goodyear's assertions that it was legal to destroy the 30(b)(6) deposition, I contacted the Public Relations Chair of the Ohio Court Reporters Association to determine whether an Ohio court reporter could release deposition notes for destruction to a party without retaining a copy. I was advised on November 8, 2007, by Linda Sturm, the Public Relations Chair for the Ohio Court Reporters Association, that "in Ohio we are required to archive either the paper or digital notes for five years."

3. I also acquired a copy of the Ohio Court Reporters Association Reporting Rules. Those rules specifically require court reporters to retain either the paper notes of the deposition or the deposition transcript for a period of five years from the date of the deposition.

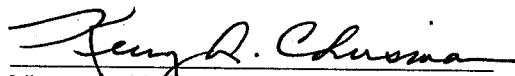
4. The attached email is a true and authentic copy of the communication exchanged between my office and the Public Relations Chair of the Ohio Court Reporters Association.

Further Affiant sayeth not.



David L. Kurtz

SUBSCRIBED AND SWORN TO before me this 4th day of January, 2008, by David L. Kurtz.



Notary Public

My Commission Expires:

3-15-09



KERRY A. CHRISMAN
Notary Public - Arizona
Maricopa County
Expires 03/15/09

Ohio Reporting Rules

The Ohio Rules of Civil Procedure govern the courts in Ohio. Rules 27 through 32 relate to depositions and transcripts. <http://www.sconet.state.oh.us/Rules/civil/default.asp>

(*Please note that the rules change, and the Website is not updated frequently. For complete information, secure the newest copy of the Ohio Rules of Civil Procedure.)

Contracting

Effective July 1, 2001, Civil Rule 28 of the Ohio Rules of Civil Procedure was amended by the addition of division (D) prohibiting certain contractual arrangements for court reporting services.

All court reporters working in Ohio and all attorneys taking depositions in Ohio must adhere to this rule.

[Click here](#) for the full language and Staff Note.

Reading and Signature Requirements in Ohio

Rule 30(E) of the Ohio Rules of Civil Procedure contains the requirements regarding reading and signing of the deposition transcript by a witness.

(E) Submission to witness; changes; signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness within seven days of its submission to the witness, or within such longer period, not exceeding twenty-eight days, to which the parties agree, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Certification of Transcripts

Rule 30(F) regards the certification of transcripts.

(F) Certification and filing by officer; exhibits; copies; notice of filing.

(1) Upon request of any party or order of the court, the officer shall transcribe the deposition. Provided the officer has retained an archival-quality copy of the officer's notes, the officer shall have no duty to retain paper notes of the deposition testimony beyond five years from the date of the deposition. The officer shall certify on the transcribed deposition that the witness was fully sworn or affirmed by the officer and that the transcribed deposition is a true record of the testimony given by the witness. If any of the parties request or the court orders, the officer shall seal the transcribed deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and, upon payment of the officer's fees, promptly shall file it with the court in which the action is pending or send it by certified or express mail to the clerk of the court for filing.

Unless objection is made to their production for inspection during the examination of the witness, documents and things shall be marked for identification and annexed to and returned with the deposition. The materials may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the

materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition.

(2) Upon payment, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party requesting the filing of the deposition shall forthwith give notice of its filing to all other parties.

Taxes on Transcripts

Gov. Bob Taft has proposed as part of his tax reform package a "commercial activity tax," commonly referred to as a gross receipts tax. This may affect court reporters. OCRA will keep you informed on this issue.

Notary Public Requirements

To be a freelance reporter in the state of Ohio, you must be a Notary Public of Ohio in order to administer the oath to witnesses. To be a notary, you must reside in the state of Ohio. The notary commission test is given in the county in which you are a resident.

[Click here](#) for more information on being a notary in Ohio.

Archival of Paper Notes

Each court maintains its own rules regarding the storage of paper notes. You MUST retain an archive of readily retrievable notes in depositions for five years. You will note that the Ohio Rules of Civil Procedure states "paper" notes. OCRA will investigate this matter due to the fact that some machines no longer produce paper notes. Notes on death penalty must NOT be destroyed.

David L. Kurtz

From: Linda Sturm [lstorm@insight.rr.com]
Sent: Thursday, November 08, 2007 2:03 PM
To: info@ocraonline.com; David L. Kurtz
Subject: Re: question

In Ohio we are required to archive either the paper or digital notes five years.

Linda Sturm
PR chair, Ohio Court Reporters Association

----- Original Message -----

From: OCRA
To: [Linda Sturm](mailto:Linda.Sturm)
Sent: Thursday, November 08, 2007 12:15 PM
Subject: FW: question

-----Original Message-----

From: David L. Kurtz [mailto:]
Sent: Thursday, November 08, 2007 11:57 AM
To: info@ocraonline.com
Subject: question

Can an Ohio court reporter release paper notes for destruction to a party without retaining a copy? If asked to destroy electronic backup can an Ohio court reporter destroy the electronic media? It appears to me that a record must be kept for at least 5 years. Am I wrong?

David L. Kurtz
The Kurtz Law Firm
7420 E. Pinnacle Peak Road, Suite 128
Scottsdale Arizona, 85255
480-585-1900

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Thank you.

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce document shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

1. The transcription of the deposition of Kim Cox taken June 19, 2003, in the matter of *Phillips v. Goodyear, et al.*, which was then pending in the United States District Court for the Southern District of California, Case No. 02 CV 1642B (CGA).
2. A copy of the actual notes of the deposition of Kim Cox taken by reporter Joyce Zingale on behalf of Merritt & Loew regarding the deposition of Kim Cox taken June 19, 2003.
3. A copy of any electronic media which would have preserved the deposition testimony of Kim Cox taken June 19, 2003, by Joyce Zingale.

11230

MERRITT & LOEW COURT REPORTING SERVICE

ATTORNEY Riccicardulli RPT# Jim DATE & TIME Th 6-19-03 9:00-11:30 JOB NO. 11230

LOCATION M & L, 330 OS, 120 EMS, Athron

COURT & COUNTY USDC - Southern Dist of CA CASE NO. 02CV1742B (CGA) JUDGE _____

CAPTION Harold J. Phillips and Georg-Anne Phillips -vs- Goodyear Tire & Rubber Company an Ohio Corporation and Does/ through X include

ALSO PRESENT Fasil Musnuff

11234

ATTORNEYS Guy A. Riccicardulli 16789
12396 World Trade Dr.
#305
San Diego, CA 92128
(858) 487-8006

John P. McCormick
McCormick & Mitchell
625 Broadway, #1400
San Diego, CA 92101

Thomas M. Regan
Cozen O'Connor
501 West Broadway, #1610
San Diego, CA 92101

#171 002

WITNESSES	CROSS	DIRECT	WAIVED
<u>Kim Cox</u>	<u>Riccicardulli</u>	<u>Adjourned</u>	<u>Y/N/NS</u>
			<u>Y/N/NS</u>
			<u>Y/N/NS</u>
			<u>Y/N/NS</u>

ORIGINAL _____ COPY _____ DATE NEEDED _____
EXHIBITS I have copies

LTP 103 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 - ABCDEFGHIJKLMNOPQRSTUVWXYZ
FF: 123 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 - ABCDEFGHIJKLMNOPQRSTUVWXYZ

Homer Lughlin