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11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 ESTATE OF LEROY HAEGER; DONNA
15 HAEGER, individually and as personal
16 representative of the Estate of LeRoy
Haeger; BARRY HAEGER and
SUZANNE HAEGER,

17 Plaintiffs,

18 vs.

19 THE GOODYEAR TIRE & RUBBER
COMPANY, an Ohio corporation;
20 FENNEMORE CRAIG, P.C., an Arizona
professional corporation; ROETZEL &
21 ANDRESS, a legal professional
association; GRAEME HANCOCK;
22 BASIL MUSNUFF; DEBORAH OKEY,

23 Defendants.

No. CV2013-052753

**THE HAEGERS' SUPPLEMENTAL
STATEMENT OF FACTS IN
OPPOSITION TO GOODYEAR AND
OKEY'S MOTIONS FOR PARTIAL
SUMMARY JUDGMENT**

(Assigned to the Honorable
John R. Hannah, Jr.)

24 Though this court allowed Goodyear to defend the fraud and abuse of process
25 claims (reserving its decision regarding what, if any, findings would be given preclusive
26 effect), Goodyear's motions for partial summary judgment endeavor to rewrite the record.
27 In *Haeger I*, the factual findings were based on clear and convincing evidence. Goodyear
28 now requests this court to reverse the findings of the district court and the Ninth Circuit,

1 utilizing the same arguments to now assert there are no disputed facts and that Goodyear is
2 entitled to judgment as a matter of law. This vast overreach has sadly compelled the
3 Haegers to burden this Court with the entirety of the sanctions proceedings in *Haeger I*.
4 That record is set forth in the Haegers' Supplemental Statement of facts (SOF).

5 The SOF sets forth the complete factual record to rebut Goodyear's factual
6 assertions set forth in its Statement of Facts. That document omits the majority of the
7 underlying record which was relied upon by the District Court to reach its factual
8 determinations. The SOF includes omitted documents, supplemented by additional matters
9 of record in *Haeger I* that preceded the sanctions proceedings and the significant factual
10 developments in *Haeger II*. It also includes all of Goodyear's filings, so little is new to
11 Goodyear.

12
13 1. Based upon the record attached hereto, the United States District Court found
14 clear and convincing evidence to support each of the factual findings which Goodyear now
15 challenges in its Statement of Facts in Support of Motions for Summary Judgment.
16 **Exhibit 1**, Findings in *Haeger v. Goodyear*, 906 F.Supp.2d 938 (D. Ariz. 2012).

17 2. The Ninth Circuit Court of Appeals affirmed each of the District Court's
18 factual and legal findings. **Exhibit 2**, Findings in *Haeger v. Goodyear*, 793 F.3d 1122 (9th
19 Cir. 2015).

20 3. The record supporting Judge Silver's determinations commenced with a
21 Motion for Sanctions for Discovery Fraud filed on May 31, 2011 and culminated in a
22 judgment awarding attorneys' fees on August 26, 2013, 27 months after the proceedings
23 commenced. **Exhibit 3**, Exhibit Index of Sanction Proceedings. There were in excess of
24 3,000 pages of filings submitted to the Court associated with the Court's sanction
25 determination and published opinion. *Id.* Discovery included approximately 500 pages of
26 deposition testimony and an evidentiary hearing spanning more than 200 pages. *Id.* The
27 appellate proceedings included an additional 6,000 pages of briefing, supporting excerpts,
28

1 and supplemental excerpts of record. *Id.*

2 4. The documents identified by date and Bates range in Exhibit 3 are each
3 contained in **Exhibit 4**. This exhibit is provided for reference to the Court as Goodyear
4 has renewed its factual and legal arguments, each of which was previously addressed
5 (repeatedly) and rejected based upon the clear and convincing evidence. Further,
6 Goodyear has renewed its arguments that the published opinion of the District Court,
7 affirmed on appeal, is not binding as Goodyear did not have a “full and fair opportunity to
8 litigate the issues in the District Court,” necessitating the inclusion of the sanction record.
9 *See* Goodyear Motion for Partial Summary Judgment, p. 11.

10 5. Judge Silver has her own standing orders. (**Exhibit 5**, P HAEGER 5214-
11 5223.) In discussing F.R.C.P. 26(a)(1): Mandatory Disclosure, the Court makes clear that
12 the Rule “requires identification of all documents and witnesses that the disclosing party
13 *may* use to support its claims and defenses.” *Id.* at 5215 (emphasis supplied).

14 The word “may” is not permissive; it means any possibility that a party
15 “might” use the material; ... “use” is defined broadly to include all
proceedings including pretrial conferences, motions and trials. ...

16 *Id.*

17 6. Judge Silver had a standing order regarding how to handle discovery
18 disputes. *Id.* at 5218. The parties were not allowed to file a motion to compel, but rather
19 were instructed to set forth a brief summary of the dispute. The statement was generally
20 not to exceed one page unless enlargement was approved by the Court. The Court’s
21 preference was for one short paragraph.

22 7. The Court specified that the Rule 16 Scheduling Order must provide a final
23 date for supplementation of all disclosures and answers to discovery requests. “A party is
24 not relieved from the obligation of disclosure merely because another has not made a
25 disclosure or has made an inadequate disclosure. The Rule applies to all corrective
26 information which is learned by the client or the attorney.” *Id.* at 5221 (original emphasis).

27 8. **Exhibit 6** lists the misrepresented and concealed facts and documents which
28

1 support the Haegers' claims in Counts I, II, and III of the Amended Complaint relating to
2 fraudulent concealment, fraudulent nondisclosure, or fraudulent misrepresentation during
3 the course of *Haeger I*. These were provided in response to interrogatories in *Haeger II*.
4 *Id.* at 3-23.

5 9. The Haegers separately set forth the discovery requests in *Haeger I* which
6 sought the information which was either fraudulently misrepresented, fraudulently
7 disclosed, or fraudulently concealed. *Id.* at 24.

8 10. The Haegers also set forth the actions which constituted abuse of process in
9 response to interrogatories. *Id.* at 26-63.

10 11. Goodyear concealed and misrepresented failure data in *Haeger I*. Goodyear
11 disclosed only 14 property damage claims, three bodily injury claims and one lawsuit
12 during *Haeger I*. **Exhibit 7**, GY-HAEGER01125-01127.

13 12. In *Schalmo v. Goodyear*, Goodyear disclosed 28 bodily injury claims
14 between January 1995 through July 25, 2008. **Exhibit 8**, GY-HAEGER019157.

15 13. In order to appreciate the fraud in *Haeger I*, it is appropriate to first
16 understand what has finally been disclosed in *Haeger II*. The motive for the deceptions in
17 *Haeger I* is evident from a review of what was concealed. Since the filing of *Haeger II*,
18 Goodyear has been compelled to disclose:

19 (a) A list of 41 lawsuits involving G159 claims. **Exhibit 9**,
20 GY-HAEGER006210-006219.

21 (b) A list of claims for injury and/or death included within Goodyear's
22 disclosure of property damage claims (more than 600). **Exhibit 10**,
23 GY-HAEGER011267-011281 (The lightly highlighted claims
24 represent injury or death claims settled outside of litigation, the dark
25 highlighted claims represent injury and death claims settled in
26 litigation matters.).

27 (c) A list of all property damage, injury or death claims, identifying the
28

1 loss date, the report date, the vehicle year, vehicle make and vehicle
2 model and cause of failure for all of the claims (more than 700).
3 **Exhibit 11**, GY-HAEGER012655-012669. It reveals approximately
4 70% of all claims involved various manufacturers and models of
5 motorhomes. It identifies 16 different motorhome manufacturers and
6 34 different models of motorhomes involved in G159 failures between
7 1996 and 2015, including Fleetwood, Monaco, Gulf Stream, Country
8 Coach, America, Safari, Beaver, SMC, Newmar, Coachman,
9 Keystone, Holiday Rambler, Allegic, Americoach, among others.

10 (d) Documents reflecting that there have been 3,484 adjustments arising
11 out of warranty returns of G159s. **Exhibit 12**, GY-HAEGER011265-
12 011266.

13 (e) Documents reflecting that there were only 160,683 G159 tires
14 manufactured from 1996 with production terminating in early 2003.
15 **Exhibit 13**, GY-HAEGER011356.

16 Attached as **Exhibit 14**, is a chart which summarizes the escalating adjustments, property
17 damage claims and injury and death claims on an annual basis (based upon Exhibit 10).
18 **Exhibit 15**, is a chart prepared by Haegers' counsel listing the identities and dates of injury
19 and death claims.

20 14. Under the National Traffic and Motor Vehicle Safety Act of 1966, if a
21 manufacturer of a tire or NHTSA decides that there is a defect related to motor vehicle
22 safety, the manufacturer must provide owners notification and a remedy for the defect.
23 **Exhibit 16**, Engineering Analysis Report and Initial Decision Regarding EA00-0235
24 Firestone Wilderness AT Tires, October 2001, PEXP00866-867PEXP008666-67.

25 15. *United States v. General Motors Corp.* ("Wheels"), 518 F. 2d 430 (D.C. Cir.
26 1975), is the seminal decision on what constitutes a defect. A tire is defective if it is
27 subject to a significant number of failures in operation. The defect determination may be
28

1 based exclusively on the performance record of the tire. *Id.* at PEXP0867. It need not be a
2 substantial percentage of the total number of components produced. *Id.*

3 16. The Haegers' Fifth Supplemental Disclosure Statement in *Haeger II* sets
4 forth the opinions of the Haegers' retained experts. Tab Turner's opinions regarding the
5 settlement value of *Haeger I* in the absence of fraud are set forth in his report and his
6 deposition. **Exhibit 17**, Sixth Supplemental Disclosure Statement; **Exhibit 18**, Turner
7 Deposition at 121.

8 17. Mr. Turner has handled over 1,000 tread separate-related cases in his career
9 and has tried approximately 200 jury trials. He has settled cases from hundreds of
10 thousands of dollars to over a billion dollars. *Id.* at 44. He was personally involved in the
11 creation, negotiation and the passage of the Transportation Recall Enhancement,
12 Accountability and Documentation Act ("TREAD" Act.) The law was designed to
13 increase consumer safety through mandates assigned to NHTSA and was drafted in
14 response to fatalities related to Ford Explorers fitted with Firestone tires. *Id.* at 45. Mr.
15 Turner worked directly with Senator John McCain who was the sponsor of the TREAD
16 Act legislation in the United States Senate. *Id.* at 114.

17 18. From the early 1990's to the present, Mr. Turner was involved in hundreds
18 of cases involving the Firestone ATX and Wilderness AT tires, which were the subject of
19 the August 2000, Firestone recall for safety related defects. Exhibit 17 at 46.

20 19. Goodyear knew claims were escalating each year. During the first year of
21 production in 1996, there were three claims, 1997/5 claims, 1998/17 claims, 1999/54
22 claims, 2000/59 claims, 2001/117 claims, 2002/101 claims, 2003/74 claims, 2004/68
23 claims, 2005/42 claims. By the end of 2000, Goodyear had received 540 claims, excluding
24 claims set forth in multiple lawsuits filed prior to that date. *Id.* at 49.

25 20. The G159 raw failure rate is one of the highest – on a part per million (ppm)
26 basis, that Mr. Turner has ever experienced, including tires that have been recalled as
27 defective and unreasonably dangerous. *Id.* at 51.

1 21. The Field Performance data is one of the most critical aspects of product
2 design evaluation. The data is used to assess the need for intervention and remedial action.
3 *Id.* at 54. Failure claim rates are frequently expressed on a parts per million basis to
4 characterize field performance of tires. *Id.* Goodyear admitted (via Olsen) that the
5 industry-wide acceptable claim failure rate for tires is 3.4 ppm. *Id.* It is also accepted that
6 an analysis of cumulative failure frequencies in which rates are based on total tire
7 production is known to understate true risk of failure because it does not account for
8 attrition of tires due to wear out and prior failures. *Id.* at fn. 16.

9 22. The property damage average claim rate for the G159 between 1996 and
10 2014 was 2,670 ppm without including injury or death claims. *Id.* at 55. Such failure rates
11 are unheard of for consumer products. *Id.* at 56.

12 23. There were 35 property damage claims arising out of G159 failures that
13 involved Arizona residents, 20 of which occurred before the crash in 2003 involving the
14 Haegers. *Id.* at 57.

15 24. Thereafter, there were three fatalities in Arizona arising out of G159 failures
16 and at least nine injuries involving the Bogaert, Haley and Haeger family members. *Id.* at
17 57.

18 25. The G159 claim rate for death and injuries arising out of a population of a
19 mere 160,000 tires is 27 times worse than the death/injury claim rate for the Firestone
20 recalled tires. *Id.* at 57.

21 26. Turner notes that Goodyear admitted during the sanctions proceedings that
22 all testing should have been disclosed in 2006 in response to the Haegers' First Request for
23 Production of Documents. If the tests had been timely disclosed, the Haegers would have
24 possessed powerful evidence to explain the subject tire failure and other tire failures on
25 motorhomes. Turner opines that truthful disclosure of that information would have
26 resulted in the District Court compelling full disclosure of field performance data for the
27 tires and the failure data on all forms of motorhomes. *Id.* at 60.

1 27. The field performance data would have revealed the overwhelming majority
2 of all G159 separation failures were occurring in motorhome applications, regardless of
3 manufacturer. Production of truthful information would have altered the focus of
4 discovery. The Court would have had a clear picture the G159 failures were occurring
5 predominantly on motorhomes, which were exposed to higher prolonged operating
6 temperatures than most applications for which the tire may have otherwise been marketed
7 (beverage delivery trucks). The Court would have had the benefit of seeing and knowing
8 the escalating number of claims, Goodyear's knowledge of the bulging claims data, the
9 unprecedented claim failure rates and the failure consequences arising from an increased
10 speed limit approved for the G159 from 65 mph to 75 mph. *Id.* at 62-63.

11 28. Mr. Turner summarizes the deceptive interface between Goodyear and
12 Fleetwood, which was never explored by the District Court due to Goodyear's deceptions.
13 He notes Goodyear concealed the temperature limitations of the tire and the universe of
14 failure data from Fleetwood, suggesting the failures arose from overload, underinflation,
15 and vehicle speed; all under control of the customers. *Id.* at 86. He sets forth changes in
16 design of the tire adopted in 1999 to make the tire less prone to belt edge separation. He
17 identifies at least 28 additional property damage claims from failed G159s on Fleetwood
18 motorhomes (following the Fleetwood recall), each of which was a G159 with the new
19 revised tread package. He notes that, following modification to the tread belt package,
20 failures continued to escalate. "Adjustments increased dramatically: in 1999/165,
21 2000/436, 2001/462, 2002/967." Property damage claims also skyrocketed: 1999/54,
22 2000/59, 2001/117, 2002/101. Injury and death claims mounted as did the lawsuits. The
23 failures were irrefutable proof of the defective nature of the G159. *Id.* at 86-87.

24 29. Mr. Turner opines that by December 13, 1998, Goodyear would have
25 recognized that the G159 was not reasonable safe and considered to be defective in terms
26 of design and performance, triggering Goodyear's statutory obligation that it provide
27 notice and a remedy (recall). *Id.* at 88.

1 30. Rather than complying with its reporting obligations, Goodyear concealed
2 test and failure data from motorhome manufacturers, including Fleetwood and Monaco. It
3 secretly endeavored to modify the design utility of the tire in a failed effort to make a
4 beverage truck tire suitable for its predominant motorhome applications. Attempts to
5 make the tire more heat resistant through modification of compounds and change in tread
6 design failed and Goodyear quietly ceased manufacture while very quietly settling
7 hundreds of property damage claims. *Id.* at 89.

8 31. The failure to timely notify NHTSA of the defective nature of the tire
9 exposed Goodyear to substantial civil and criminal penalties. *Id.* at 91.

10 32. Mr. Turner relied upon the published opinions of both the District Court and
11 the Ninth Circuit Court of Appeals to support his opinion that Goodyear's objections to
12 discovery requests were improper, that it was obligated to produce requested test data and
13 that Goodyear relied upon all such testing for its suitability determinations and that its
14 claims to the contrary are deceptive. *Id.* at 99.

15 33. Turner opines that the failure to warn claim would not have been dismissed
16 as the recently disclosed failure date, combined with Goodyear's own standard of care
17 documentation verify the absolute obligation of Goodyear to provide warnings to the
18 Haegers and the public regarding the G159. Goodyear was required as a matter of law to
19 provide NHTSA with notification there was a defect affecting motor vehicle safety
20 regarding the G159.

21 34. The evidence of such defect was overwhelming and required Goodyear to
22 respond years before the Haeger accident. The test data also revealed the G159 should
23 have been speed rated well below 75 mph to assure that it was not exposed to an
24 environment beyond its design temperature capacity.

25 35. Goodyear was obligated to provide a warning following the sale of the G159,
26 and admonish users that the failure data revealed the lack of suitability for prolonged
27 highway use. *Id.* at 100.

1 36. Documents previously claimed to be confidential by Goodyear involving the
2 Wrangler RTS tires have now been disclosed to Plaintiffs. These documents reveal
3 historical adjustment, property damage, death and injury claim, arising from Goodyear's
4 Wrangler tires used in a light truck application. Goodyear had produced approximately 2.8
5 million of these tires. It received only four property damage claims and no death or injury
6 claims. **Exhibit 19**, Documents relating to Wrangler RTS tire.

7 37. There were 160,683 G159s manufactured. There were at least 98 death or
8 injury claims and well in excess of 600 property damage claims caused by G159 failures.
9 By comparison, for the Goodyear Wrangler tire, there was approximately one property
10 damage claim out of every 700,000 tires produced. For the G159, there was one property
11 damage claim out of approximately every 266 tires.

12 38. As part of NHTSA's ongoing investigation regarding expanding the recall of
13 Firestone tires, they had the opportunity to contrast the peer performance of multiple
14 Goodyear tires used in various light truck and sport utility vehicle applications.
15 Goodyear's other tires comparable to the G159 displayed a ppm failure rate for tread
16 separations between 0 to 10 ppm. Exhibit 16 at PEXP00858.

17 39. Goodyear has now disclosed tread separation property damage claim rates.
18 See Exhibit 11. Using that data, Mr. Turner calculates a ppm failure rate of 3,055. Exhibit
19 18, Turner Deposition at p. 46.

20 40. Goodyear commenced manufacturing of the G159 in 1996, which was
21 specifically designed for stop-and-go beverage delivery trucks. **Exhibit 20**, Beverage
22 Truck Memo, GY_INT_008643-44 ("Using a tire designed specifically for start-and-stop
23 delivery service will result in optimum tire performance . . .").

24 41. The G159 was marketed for metro service. **Exhibit 21**,
25 GY-HAEGER001903-001904.

26 42. Although the G159 was designed for and primarily used for metro service
27 vehicles, it fit motorhomes and Goodyear subsequently sold the tire for that application. *Id.*

1 43. Goodyear's decision to sell the tire for prolonged highway speed motorhome
2 use caused the failures it concealed from the District Court and the Haegers. **Exhibit 22**,
3 Carlson Deposition at 57-65, 71, 81-84, 107-109, 137-141.

4 44. The parties' first discovery dispute involved Goodyear's insistence upon the
5 acquisition of a protective order that prohibited sharing of disclosures Goodyear claimed to
6 be confidential with any entity or individual. **Exhibit 23**, Doc. 49 8/21/06 Joint Report Re
7 Discovery Dispute Concerning Entry of Protective Order.

8 45. On August 22, 2006, the Court addressed the parties' concerns regarding the
9 protective order. **Exhibit 24**, Transcript of Proceedings at 9-10. (The Haegers asserted the
10 sharing provision was designed to ensure there is consistent production in similarly
11 situated cases). The Court stated:

12 Every officer before this Court has an obligation to provide all relevant
13 discovery. ... It really would be inquiry concerning their credibility. The
14 rules provide for protection. The rules require, as I said, that anything that
 is relevant must be turned over to counsel and to all the parties so that
 proposal is denied.

15 *Id.*

16 46. As a result of the Court's comments and admonitions, as of August 2006 all
17 counsel were expressly aware of the Court's expectations regarding discovery and
18 disclosure and that as officers of the Court, all relevant information was to be appropriately
19 identified and disclosed.

20 47. As of August 2006, the Haegers reasonably relied upon the Court's
21 comments, the Court's orders, the Federal Rules of Civil Procedure and the ethics of the
22 attorneys representing Goodyear, as well as Goodyear's obligations as a party to the
23 litigation to be sure that relevant information would be disclosed to facilitate a trial based
24 upon the truth regarding the G159.

25 48. Goodyear had submitted written questions (interrogatories) to the Haegers
26 that required them to set forth their theories as to the defective nature of the G159. On
27 August 18, 2006, the Haegers advised Goodyear in response to its interrogatory:
28

1 The tire was specifically designed for pick-up and delivery
2 trucks in commercial service. Nonetheless Goodyear marketed
3 this tire for Class A motorhome use, which was an
4 inappropriate use of the original design of the G159 . . . There
5 are fundamental differences between a tire which is designed
6 for pick-up and delivery trucks and those used in Class A
7 motorhomes. Delivery trucks start and stop on a regular basis
8 and travel at predominately lower speeds. As a consequence,
9 the tire is exposed to significantly less heat. Prolonged heat
10 causes degradation of the tire which, under appropriate
11 circumstances, can lead to tire failure and tread separation even
12 when the tire is properly inflated. When the G159 is utilized in
13 a freeway application it regularly travels at freeway speeds of
14 approximately 75 MPH . . . when utilized in Class A
15 motorhomes/freeway applications, the tire is operating at
16 maximum loads and at maximum speeds, producing heat and
17 degradation to which the tire was not designed to endure,
18 leading to its premature failure.

19 **Exhibit 25**, Haegers' Answers to Goodyear's Contention Interrogatories.

20 49. Goodyear and its attorneys filed its initial disclosure statement on December
21 15, 2005. The disclosure statement failed to identify a single individual in Goodyear's
22 employ who knew of relevant information regarding the G159 and might be utilized in
23 Goodyear's defense. Goodyear failed to identify a single Goodyear document generated
24 that it expected might be utilized in the defense of the *Haeger* litigation, even though
25 Goodyear maintained that the tire was state of the art and had been adequately tested to
26 insure its safe utilization at 75 MPH. **Exhibit 26**, Goodyear's Initial Disclosure Statement
27 in *Haeger I*.

28 50. By December 15, 2005, Goodyear had already been sued dozens of times for
alleged G159 failures. *See* Exhibit 9. There have been at least 98 claims of death or injury
alleged to have arisen from the G159 failures. Exhibit 15.

51. Goodyear represented its disclosures were "based on information reasonably
available to Goodyear at this time." Exhibit 26.

52. Though Goodyear had been defending dozens of G159 suits and was aware
of hundreds of property damage claims, dozens of deaths and injuries and thousands of
adjustments, it failed to identify a single Goodyear employee likely to have any
discoverable information related to Goodyear's defenses. Similarly, Goodyear failed to

1 identify a single Goodyear document which Goodyear “may” use to support its defenses.
2 Exhibit 26.

3 53. Between December 15, 2005 and October 5, 2007, Goodyear filed various
4 disclosure statements. At no time did Goodyear identify any entity, or any individual other
5 than Goodyear’s expert witnesses, that it “may” use to defend its interests.

6 54. Goodyear never supplemented its disclosures or discovery responses to
7 reveal the truth regarding failure data, failures in motorhomes, actual death and injury
8 claims or requested test data. *Id.*

9 55. Goodyear’s only disclosures regarding test data and failure data were limited
10 to the following (collectively, **Exhibit 27**): Crown separation adjustment data from
11 October 1998 to June 2003, GY-HAEGER-000316; Bodily injury claims on Gulf Stream
12 motorhomes October 4, 1998 to June 14, 2003, GY-HAEGER-000323; Property damage
13 claims on Gulf Stream motorhomes October 4, 1998 to June 14, 2003, GY-HAEGER-
14 000324; List of lawsuits involving Gulf Stream motorhomes between October 4, 1998 to
15 June 14, 2003, GY-HAEGER-000325; five property damage claim forms involving Gulf
16 Stream motorhomes, GY-HAEGER-000598-607; updated list of lawsuits, bodily injury
17 claims and crown separation data to (allegedly) comply with the Court’s January 2007
18 order, GY-HAEGER-001126-1128; laboratory durability high speed testing, GY-
19 HAEGER-001961-1969.

20 56. The Haegers submitted their First Request for Production of Documents and
21 interrogatories to Goodyear on September 22, 2006. The Haegers had submitted 39
22 requests for production. Goodyear specified 16 general objections to all requests and then
23 voiced additional objections to each separate request that it failed to identify a single
24 responsive document. **Exhibit 28**, Goodyear’s original Responses to Requests for
25 Production.

26 57. The Haegers had submitted 20 interrogatories. Goodyear objected to each
27 and every interrogatory and failed to provide any substantive response. **Exhibit 29**,

1 Goodyear's original Interrogatory Answers.

2 58. On September 21, 2006, Haegers' counsel expressed criticisms regarding the
3 inadequacy of Goodyear's disclosures. No supplemental disclosure was provided in
4 response to this specific request. **Exhibit 30**, Letter from David Kurtz to Graeme Hancock
5 (Sep. 21, 2006).

6 59. On November 1, 2006, Goodyear provided supplemental responses to the
7 Haegers' First Request for Production of Documents. **Exhibit 31**. Goodyear's
8 supplemental response regarding the Haegers' request for the production of road test,
9 wheel test, high speed testing and durability testing provided:

10 Subject to and without waiving the foregoing objections, and in a good
11 faith spirit of cooperation, Goodyear will produce, subject to the protective
12 order entered in this case, the DOT test data for the subject tire for the
subject time frame.

13 *Id.*

14 60. Goodyear thereafter identified nine (9) pages of documents representing the
15 body of DOT test data referenced in Goodyear's supplemental response to Plaintiffs' First
16 Request for Production, representing DOT tests which were performed between October
17 1998 and December 2002. **Exhibit 32**.

18 61. The DOT tests that were disclosed, revealed no temperature information
19 whatsoever. Rather, each test was performed at 30 MPH per hour for a period of 1,710
20 miles as part of the required government endurance testing for the tire prior to sale. *Id.*

21 62. On December 20, 2006, counsel for the Haegers wrote a letter to Hancock,
22 local counsel for Goodyear, demanding that if any test data other than the disclosed DOT
23 test data existed it was incumbent upon Goodyear to disclose such test data. **Exhibit 33**.

24 63. Goodyear never denied its duty to disclose requested relevant test data.
25 Neither Goodyear nor any of its attorneys responded to Plaintiffs' December 20, 2006
26 demand. No further tests were disclosed in response.

27 64. On December 28, 2006, the parties filed their first Joint Statement of
28

1 Discovery Dispute. **Exhibit 34**, Doc. #97 Joint Statement of Discovery Dispute.

2 Plaintiffs' position was expressed as follows:

3 The discovery disputes generally revolve around the question of what tires
4 and motorhomes are substantially similar and the dates of relevant
5 information to which Plaintiffs are entitled. Plaintiffs' discovery requests
6 to Goodyear are generally focused upon data regarding both the G159 ...
7 and its replacement, the G670 RV tire of the same size. Requests have
8 included design files, marketing literature, warranty claims, consumer
9 complaints, accident reports, property damage, litigation files, test records
10 ... government communications regarding the tires.

11 Goodyear's position:

12 Goodyear has produced information regarding the subject tire, including
13 plant specification, plant specification history, DOT test data, adjustment
14 data. It has produced claims and lawsuit information pertaining to this tire
15 on Gulf Stream motorhomes. *The objections to plaintiffs' discovery*
16 *requests are based in part on plaintiffs having not disclosed a defect theory*
17 *that makes the request relevant to this case. In the absence of such*
18 *disclosure, plaintiffs requests appear to fishing expeditions for information*
19 *that is confidentially and competitively sensitive. (Emphasis supplied.)*

20 The tire at issue was involved in replacement programs on motorhomes or
21 coaches manufactured by unrelated manufacturers (e.g. not Defendant Gulf
22 Stream), who elected to replace their tires with larger weight capacity tires
23 because of loading issues particular to their coaches. The documentation
24 associated with those replacement programs confirms that the issues were
25 related to coach weight and loading and not to any Goodyear tire's
26 designed weight carrying capacity. . . .

27 *Id.*

28 65. Goodyear falsely represented to the Court that the Haegers had not set forth a
defect theory.

66. Goodyear misrepresented that the Monaco replacement program was related
to coach weight and loading. No such supporting documentation exists or has ever been
disclosed. Rather, Goodyear paid to replace all six G159 tires on more than 1,000 Monaco
motorhomes. **Exhibit 35**, Monaco Recall.

67. On January 3, 2007, the Court held the hearing regarding the discovery
dispute. **Exhibit 36**, Transcript of January 3, 2007 proceedings. The Court focused its
attention on the discovery regarding the G670 replacement RV tire and questions regarding
similarity with its predecessor, the G159. The discussion included the Haegers' request

1 that they be provided copies of data Goodyear had just reported to NHTSA's Office of
2 Defect Investigations regarding the failure rates for both the G159 and its replacement the
3 G670. This discussion was extensive. *Id.*

4 68. On page 16, Goodyear's counsel commenced its argument regarding the lack
5 of substantial similarity between the G670 and G159. In reference to the G159, counsel
6 represented, "Goodyear has answered all of the discovery for that tire." *Id.*

7 69. Goodyear's counsel thereafter addressed the cutoff date for production of
8 responsive information advising the Court that Goodyear had produced "their data through
9 the date of the accident in 2003." *Id.* at 18.

10 70. Goodyear did not disclose to the Court that it was withholding test data.
11 Goodyear did not disclose to the Court what it knew and had not disclosed regarding
12 property damage, death and injury claims. *See id.*

13 71. The Court expressed its interest in what Goodyear produced to NHTSA and
14 whether it related to the tire in this case. Goodyear responded, "I believe that there is some
15 data somewhere in there that relates to the G159 produced that's at issue because when
16 you ask for all information about steel tires you'll get some information about this
17 particular product. It's again, like asking Ford tell me everything about your passenger car
18 lines. And you'll get Ford Expeditions in there by definition." *Id.* at 21-22.

19 72. The Court commented that NHTSA must have had something in mind when
20 they asked these questions of Goodyear. The Court expressed, "And if what they had in
21 mind related to the G159 tire and its potential defects or its inability to handle the weight
22 factor of a motorhome, then that certainly would have some relevancy. If it is within the
23 custody and control of your client, then I would be inclined to ask you or order you to
24 provide that information to plaintiffs' counsel. But that's what I am missing here." *Id.* at
25 22.

26 73. Goodyear's counsel advised the Court,

27 The result of the investigation was that NHTSA not only closed their
28

1 investigation of Toyo, but came out with a finding that specifically said the
2 Toyo tire is not defective. So presumably whatever they were doing
3 gathering my company's information to look at Toyo ended saying, no, Toyo
4 doesn't have a problem. And we're not claiming its defective. And that's a
5 fairly rare thing for NHTSA actually to not let you go but to give you a clean
6 bill of health and tell you the Toyo tire is not defective.

7 *Id.* at 23.

8 74. Goodyear had only disclosed approximately 10% (58) of such claims in
9 response to NHTSA's inquiry. **Exhibit 37**, NHTSA request and Goodyear response.
10 Goodyear misrepresented to the Court that NHTSA said the Toyo tire is not defective.
11 **Exhibit 38**, NHTSA Report re Toyo (revealing that NHTSA made no such determination
12 that the tire was not defective but rather the motorhome manufacturer voluntarily recalled
13 the tires).

14 75. The discussion regarding substantial similarity concluded with the Court's
15 comment, "But considering what I have in front of me today, that's the G159 and G670,
16 the information you provided me and that I have gleaned from – that Mr. Hancock has
17 provided me, shows there is a tenuous connection between the two and your claim today.
18 So that information is not required." Exhibit 34 at 29. The Court made clear that while it
19 was not going to compel production of further data regarding the replacement G670 tire at
20 that point. *Id.*

21 76. The Court next addressed the scope of discovery. Haegers' counsel
22 explained that the Haegers had been asking for data after the date of the accident because,
23 "it's discoverable evidence as to a strict liability defect claim." *Id.* at 31. The Court
24 stated, "The question is whether or not the documentation needs to be produced after the
25 date of the accident." The Court inquired of Goodyear whether such data was available.
26 Goodyear responded, commencing on page 32, as follows:

27 In other words, what Goodyear said generally speaking is this tire is made
28 to a specification. We've made changes to the specification, but we started
making it in 1996. We quit making it in 2003. *We've produced all of the
data we had as of the date of the accident so that you can say, knew or
should have known through negligence, or that's enough data so that if*

1 *there is some kind of problem in the production it's obvious.*

2 *Id.* at 33 (emphasis supplied).

3 77. Goodyear knowingly misrepresented the truth. The data it had as of the date
4 of the accident in June 2003 revealed unheard of failure rates and more than 38 death and
5 injury claims. To this date, Goodyear cannot identify a single Goodyear tire with as many
6 property damage, death or injury claims per 160,000 tires produced. **Exhibit 39**,
7 Depositions of Lynn Lovell, p. 38; James Stroble, pp. 371-372; David Bialosky, p. 39;
8 Tom Harvie, p. 66; and Brenda Cavanaugh, pp. 157-158.).

9 78. The Court then directed its inquiry to what was requested in discovery. The
10 Court was informed that among the categories of requested information are warranty
11 claims and property damage claims for tread separations. The Court ordered Goodyear to
12 produce such documentation regarding the G159, but denied any further discovery
13 regarding the G670. Exhibit 34 at 35.

14 79. Goodyear never disclosed the property damage claims allegedly caused by
15 tread separations through 2010, which the Court ordered to be disclosed. Such disclosure
16 did not occur until 2016 in *Haeger II*. See Exhibit 11.

17 80. In the course of ongoing discussions regarding production of G670 failure
18 data, the Court was specifically advised that the G159 was an inner city bus tire that stops
19 and starts in the city and was put on the freeway without testing beyond 30 mph.
20 Exhibit 36 at 36. The comment reflected counsel's invited understanding as to the limit of
21 testing. The Court ultimately ruled that if an expert report is provided that says the G670
22 and the G159 are the same, that any information that Goodyear has not provided will need
23 to be turned over and provided. *Id.* at 38.

24 81. Goodyear never disclosed to the Court or counsel there was undisclosed
25 testing above 30 mph.

26 82. As to Production of the NHTSA information, the Court held,

27 Based upon what Mr. Hancock has said was the issue that was presented to
28

1 them by NHTSA, there's nothing there. Now I would agree with you if it
2 was in their custody and control, their client's custody and control and the
3 information was relevant to your input, then I would require it. But I don't
4 see it, so that's the answer today.

4 *Id.* at 41.

5 83. The Court was relying upon Goodyear's attorneys' deceptive claims in
6 denying discovery regarding NHTSA. *See id.*

7 84. The Court thereafter addressed the Haegers' request for warranty and failure
8 rate claims for all Class A motorhomes manufactured by Gulf Stream. *Id.* at 48. The
9 Court instructed the parties to meet and confer to work out substantial similarity issues. It
10 ruled, "If you cannot agree on what substantially similar is, then you can come back here
11 and explain it to me." *Id.* at 49.

12 85. Ultimately Goodyear's counsel expressed a core understanding of the
13 Court's ruling:

14 As I understand it, the Court has denied the motion but has granted it with
15 respect to my client Goodyear with respect to the warranty claims and
16 property damage claims for this model tire and changed the cutoff date
 from the date of the accident to forward, when we respond or and asked us
 to supplement with that.

17 *Id.* at 54.

18 86. Counsel's expression reflected his understanding that all property damage
19 claims involving the G159 had been ordered to be disclosed. *Id.*

20 87. On February 21, 2007, the parties filed their next joint statement re discovery
21 dispute. **Exhibit 40.** The dispute primarily centered upon whether Goodyear could
22 proceed with expert depositions prior to a complete exchange of expert reports and
23 rebuttals. *Id.*

24 88. In discussing concerns regarding proceeding with expert discovery before all
25 reports were submitted and documents disclosed, the Haegers pointed out to the Court that
26 Goodyear's Answer to the Complaint claimed affirmative defenses which included that the
27 plans, specifications, and designs of the tire, as well as the method and techniques of
28

1 manufacture, inspection and testing conformed with the state of the art. *Id.* at 5. The
2 Court was advised that Goodyear refused to answer the interrogatory which requested the
3 identification of such facts to support these defenses. The Court was advised that the
4 evasive discovery response deprived the Plaintiffs' expert of an opportunity to express
5 opinions regarding whatever defense Goodyear ultimately intends to advance in the case.
6 *Id.* at 6.

7 89. Additionally, the Haegers advised the Court that Goodyear had failed to
8 comply with the Court's recent discovery order:

9 The Court will recall when the parties were last before the Court in their
10 discovery dispute, the Court ordered that Goodyear provide additional
11 discovery for various warranty claims and damage claims which have been
12 reported since the Haegers' accident. In the intervening six weeks
13 Goodyear has failed to comply with the Court's order.

12 *Id.* at 6.

13 90. On March 23, 2007, the parties filed their joint statement for a scheduled
14 status conference of April 6, 2007. **Exhibit 41.** The document referenced the discovery
15 dispute regarding the timing of Plaintiffs' expert witness depositions, noting the matter has
16 been briefed and is pending before the Court.

17 91. On April 6, 2007, the parties attended a status hearing. **Exhibit 42,**
18 Transcript of Proceedings.

19 92. The Court was advised that the expert opinion evidence regarding substantial
20 similarity had been prepared, identifying Class A motorhomes as being substantially
21 similar and advising the Court that we were now looking for the data. *Id.* at 7.

22 93. The following exchange took place between the Court and Goodyear's
23 counsel:

24 The Court: Let me ask defense counsel is there any internal
25 documentation that's available that has been requested that your clients
26 have not provided?

26 Hancock: Your Honor, speaking on behalf of Goodyear, we've
27 responded to all outstanding discovery and those responses have been
28 outstanding for some time and, you know, if a document shows up we will
of course produce it and supplement our answers, but I think we're done or

1 nearly done.

2 The Court: And your client has provided certification as is required by
3 the rule?

4 Hancock: Correct.

5 *Id.* at 13.

6 94. The Court expected counsel to file a joint statement regarding discovery
7 from Spartan and Goodyear related to substantial similarity. *Id.* at 18.

8 95. On April 17, 2007, the parties filed their joint statement regarding the
9 discovery dispute regarding substantial similarity and the production of documents sought
10 from Spartan and Gulf Stream. **Exhibit 43.**

11 96. Plaintiffs set forth their position, including the identification of expert
12 testimony which established that the G159 was a tire never tested or designed for freeway
13 speeds and that the post-sale repetitive failure history of this tire on this size and weight
14 motorhome also required Defendants to warn the Haegers of the risk of its utilization,
15 which they failed to do so. *Id.* at 2. Plaintiffs then devoted pages to explaining the record
16 from discovery which set forth the factual predicate for determining that all Class A
17 motorhomes are substantially similar. The record included, “The G159 was never tested
18 beyond 30 mph in spite of its anticipated freeway use with motorhomes.” *Id.* at 3.

19 97. The Court was advised, “Vehicle speed is also a significant factor relevant to
20 tire temperature ... The higher operating speed, the faster the heat builds up within the tire
21 ... A tire going at a higher rate of speed deflects more, which in turn transfers to heat.
22 Heat is the worst enemy of tires, according to Goodyear.” *Id.* at 4.

23 98. The Haegers sought consumer complaints and warranty claims from
24 Gulfstream regarding the G159 for motorhomes with the same gross vehicle weight as the
25 Haeger motorhome between 1996 to the date of the response and requested Gulfstream to
26 produce the documents from any lawsuits involving these substantially similar
27 motorhomes.

28 99. The Haegers set forth their expert opinion regarding substantial similarity:

1 The tires in all Class A motorhomes were 12,000 front GAWR (gross axle
2 weight rating), operate under substantially similar conditions unless there is
3 evidence of a mechanical failure or weight differential greater than 5% of
4 the GAWR for the front axle. The differences between models of Class A
5 motorhomes that do not affect weight distribution beyond this threshold do
6 not affect tire performance in any significant way. Although there are a
variety of Class A motorhomes with 12,000 GAWR front axles, the
differences are primarily stylistic or related to various accessories which
generally create only minor differences in weight which have no
meaningful effect on the overall tire performance.

7 *Id.* at 8.

8 100. The Haegers separately set forth their discovery dispute with Spartan
9 whereby they sought information from litigation files involving the Spartan chassis which
10 was sold and utilized by multiple Class A motorhome manufacturers. Discovery was
11 limited to litigation involving Class A motorhomes with the same front and rear axle
12 GAWR weight ratings. *Id.* at 8-9.

13 101. Although Goodyear was not the subject of the joint discovery dispute filed, it
14 set forth its position as to why Fleetwood and other motorhome manufacturers were not
15 substantially similar. *Id.* at 13-15.

16 102. Goodyear did not disclose at this time what it knew about ongoing failures of
17 the G159 on multiple different makes and models of motorhomes. *See id.*

18 103. The discovery dispute included Plaintiffs' reply to the arguments presented
19 by the Defendants. The Haegers set forth further support in the record for the Court's
20 consideration. *Id.* at 16-18. The Haegers stated:

21 We have asked for a specific model of tire, limited to a specific size, with a
22 specific load capacity utilized on motorhomes that operate under the
23 identical weight conditions as the Haeger motorhome. The question is
24 narrowly crafted to ensure that what we seek is substantially similar.
25 We've identified multiple deaths that have occurred on motorhomes
26 virtually identical to the Haegers' on *freeway* accidents ... All of the parties
27 were aware of the problems with the tire and its failure to operate in this
28 setting. The full extent of the knowledge of those failures, which is
reflected in warranty files and litigation matters is relevant to the claims at
issue. The evidence specifically is evidence of the defective design of the
tire for this application, is evidence of the failure to warn of its limitations
initially and post sale failure to warn when repetitive failures were
experienced in the field causing deaths across the country. The question of
admissibility should be reserved for another day.

1 *Id.*

2 104. On May 17, 2007, the discovery dispute between Gulf Stream and Spartan
3 regarding substantial similarity was held. **Exhibit 44**, Transcript of Proceedings. The
4 Court ordered Spartan to produce its litigation files involving seven different lawsuits
5 involving multiple different makes and models of motorhomes. *Id.* at 13. The Court
6 declined the Haegers' request to require Spartan to perform "specific computer word
7 searches" finding:

8 Well I'm not going to order Ms. Lewellan and her client to conduct a
9 specific type of discovery using techniques that you've asked for. *Every*
10 *attorney has the obligation to provide their information through the*
11 *attorney. Every client has the obligation to provide all information that is*
related to the request and then ordered by this Court for them to conduct a
specific type of discovery is not appropriate.

12 *Id.* at 14 (emphasis supplied).

13 105. The Court made clear her order was to produce all of the contents of
14 Spartan's litigation files unless protected by a privilege. *Id.* at 14.

15 106. The Court further stated, "It seems to me that the questions and the discovery
16 that has been asked for at this point is substantially similar, at least they have established
17 by a preponderance of the evidence that it is substantially similar. So that information will
18 be provided unless it's privileged in one way or another." *Id.* at 15.

19 107. The Court thereafter addressed substantial similarity with Gulf Stream. *Id.* at
20 20-21.

21 108. The Court was advised of Gulf Stream's preference to limit discovery to a
22 single particular Gulf Stream model. The Court determined that the information regarding
23 other Gulf Stream models was relevant and ordered production of information from four
24 lawsuits to which Gulf Stream was a party involving the G159 and regarding 14 reported
25 damage claims. *Id.*

26 109. The Court adjourned the hearing but at the request of Goodyear's counsel,
27 reopened the hearing for a "procedural question." *Id.* at 25.

28 110. Spartan's counsel raised concerns about the Court's ruling allowing the

1 exploration of issues with Spartan witnesses relating to Fleetwood failures. The Court
2 overruled that objection. *Id.* at 29-30.

3 111. Goodyear's counsel thereafter noted that if the Court was making a ruling
4 about the scope of discovery beyond the co-defendant's production of documents that he
5 be heard before any depositions. The Court inquired as to the Haegers' plan concerning
6 the scheduled depositions. *Id.* at 31. Extensive exchanges followed regarding the scope of
7 questioning in future depositions. Goodyear represented to the Court that it had decided in
8 January the issue of substantial similarity with respect to Goodyear. *Id.* at 32.

9 112. The Court determined that it would allow questioning regarding anything
10 that is substantially similar. *Id.* at 33.

11 113. Goodyear's counsel pressed the Court stating that it expected to take
12 Plaintiffs' expert's deposition on Monday, representing "He has no tests. He has no
13 evidence to support the notion the tire isn't as represented. . . ." *Id.* at 34.

14 114. After substantial exchanges regarding the scope of questioning in future
15 depositions, the Court stated:

16 It seems to me that the issue has been narrowed to the question of whether
17 or not these should have been marketed, these tires should have been
18 marketed for motorhomes because everybody should have known that the
19 motorhomes travel at more than 65 mph.

19 *Id.* at 45.

20 115. The following exchange took place:

21 Mr. Kurtz: Subsequent to the chassis being made by Spartan, Goodyear
22 got about the business of re-rating its truck tires. And in
23 order to re-rate this tire, Goodyear said, "We've got to do a
24 bunch of new speed tests to determine if it's suitable for 75
25 mph." They avowed to others they did those tests and re-
26 rated the tire after the sale of this coach. Of course, no
27 evidence – although they said they did those tests, they've
28 never been able to produce any tests whatsoever that they did
anything to restudy the tire to discern if in fact it was suitable
for a higher speed. So we have asked for the defendants, as
have many people. None have been produced anywhere in
the country. The tire was never tested above 30 mph. They
put it into the marketplace. It came apart again and again and
again at freeway speeds and they discontinued it.

1 The Court: Mr. Hancock are there any tests that are available to show
2 when this tire was tested for speeds above 30 mph?

3 Hancock: Yes your Honor.

4 The Court: And they have been produced?

5 Hancock: No you Honor, they've been requested from the Plaintiffs in a
6 request for production that arrived in my office I believe last
7 week. The discovery response is due in mid-June. And they
8 will be – I have requested them from my client and they'll be
9 produced at that time.

10 *Id.* at 47-48.

11 116. As to the scope of witness questioning, the Court again stated:

12 It seems to me that the issue has been narrowed after our lengthy
13 conversation to the tests that have been used or were engaged in by
14 Goodyear for the purposes of establishing for their purposes and for
15 consumers that these tires could be used – based upon the weight and
16 pressure that they have indicated they were or that they could hold for
17 traveling above 75 or at 75 mph.

18 Hancock: At and below your Honor.

19 The Court: At and below.

20 *Id.* at 45.

21 117. The Court thereafter specifically authorized questioning of Goodyear
22 witnesses regarding the testing, their knowledge about failures and why they decided not to
23 warn. The final exchange was as follows:

24 Mr. Kurtz: I'm just interested in my cause of action, your Honor. I'm
25 interested in the failure history of the tire, what they knew,
26 what they didn't know, what they tested, what they didn't test
27 and their decision-making as to why consumers didn't receive
28 any other information. I'm sure Goodyear has an
explanation. I'm dying to hear it. But and I certainly feel like
I'm entitled to ask about it.

The Court: You're entitled to ask about it as it relates to this case.

Id. at 52.

118. Four days after the May 17, 2007 hearing, Goodyear advised that it would
not produce a 30(b)(6) witness for deposition, asserting it was too late for the Haegers to
do discovery. This led to the next discovery dispute which was filed on June 1, 2007.

1 **Exhibit 45**, Joint Statement of Discovery Dispute.

2 119. Throughout *Haeger I*, Goodyear had listed only a single Goodyear employee
3 as a witness (Richard Olsen). Goodyear also selected Mr. Olsen to be its corporate
4 representative to address the topics specified in the 30(b)(6) notice of deposition. Though
5 the 30(b)(6) deposition was limited to specific topics, Goodyear refused to present Olsen
6 for a separate deposition regarding the expert report he filed in April 2007. Exhibit 44 at
7 2.

8 120. Though Goodyear was defending, in Arizona, three separate G159 lawsuits
9 involving a Monaco motorhome, a Fleetwood motorhome, and a Gulf Stream motorhome,
10 Goodyear took the position that the Haegers were prohibited from asking questions
11 regarding these other pending litigation matters. *Id.* at 3.

12 121. Goodyear represented that the Court refused to broaden discovery against
13 Goodyear on both January 3, 2007 and May 17, 2007, supporting such an assertion within
14 a mere three pages of the transcripts. *Id.* at Exhibits A and B.

15 122. Goodyear omitted any reference to the Court's prior substantial similarity
16 determinations regarding Spartan and Gulf Stream.

17 123. On June 7, 2007, the Court addressed this new discovery dispute.

18 **Exhibit 46**, Transcript of proceedings.

19 124. The hearing commenced with the Court's inquiry whether the tire was failing
20 on multiple models of motorhomes that had the same axle rating. *Id.* at 4.

21 125. The Haegers' counsel provided a review of the evidence that had been
22 produced in the case, including the Court's prior rulings. *Id.* at 5-14.

23 126. The Court ruled specifically that it was not too late to do factual discovery as
24 Goodyear had claimed. *Id.* at 16.

25 127. The 30(b)(6) topics included the design history of the tire, testing,
26 Goodyear's internal studies of failures with the tire marketed for Class A motorhomes,
27 warnings, suitable alternative tires on this specific axle application (a 12,000 pound front
28

1 and 19,000 pound rear). *Id.* at 21.

2 128. The Court specifically authorized the 30(b)(6) deposition to proceed with the
3 categories identified by Haegers' counsel. *Id.* at 27.

4 129. The Court again determined it would allow the 30(b)(6) deposition to
5 proceed and have the witness address the categories as set forth regarding the designed tire
6 and other substitute tires. *Id.* at 32.

7 130. The Haegers' counsel advised the Court that Goodyear had failed to produce
8 the warranty files and property damage claim files the Court ordered Goodyear to produce
9 last January, reminding the Court that this omission was brought to the Court's attention in
10 February, six weeks after the Court's order. The Court was advised the information was
11 necessary for the expert depositions. *Id.* at 33-34.

12 131. Goodyear's counsel represented to the Court that it had turned over
13 everything required by the Court's order in January 2007. *Id.* at 35.

14 132. Goodyear's counsel expressed his understanding that the Court order
15 required every claim for property damage involving the G159, including lawsuits. *Id.* at
16 37.

17 133. The Haegers' counsel reviewed the Court's order for production of warranty,
18 claim data and property damage claim data for the subject tire and explained that Goodyear
19 had only given a list of Gulf Stream property damage claims and excluded all other claims
20 from production. Similarly, the actual warranty data was not produced but simply a
21 summary of adjustments. The Court was advised that there was a claim form submitted
22 with each warranty claim to Goodyear (a G345 claim form). *Id.* at 37.

23 134. Goodyear's counsel represented to the Court:

24 Every time somebody brings back a warranty claim, a piece of paper is
25 filled out. They're thrown out after a couple of years and they're all
26 stacked up in the warehouses. They're not sorted by anything. And I don't
27 have time to get affidavits from – since we're raising this today cold – from
28 the client about that. We have given him the list of materials. And the
issue is do any of those raise a red flag? Are there so many of them that
Goodyear would have said, "Oh wait a minute. The adjustments are
unusually high on this tire"? And they're not. Or, the warranty claims on

1 this tire when used in this vehicle are unusually high. Because that's how
2 Fleetwood and Monaco situations came about. Goodyear went to the
3 manufacturers and said: We're seeing an odd pattern in the claim data.
Can we talk to you about it? That didn't happen in this case.

4 *Id.* at 38-39.

5 135. Goodyear did not reveal what it actually knew about the unprecedented
6 volume of property damage, injury and death claims. *See generally, id.*

7 136. The Court thereafter ordered Goodyear to determine whether the information
8 was available and whether it would be unreasonably burdensome for Goodyear to ascertain
9 whether or not the documents exist. *Id.* at 39-40.

10 137. The discussion then returned to discovery regarding substantially similar
11 motorhomes. The Court sought verification of what was included within the scope of the
12 Court's order. Haegers' counsel responded:

13 Your Honor, as I understand it, I thought the way I just characterized it was
14 correct, that the Court has ruled that for purposes of discovery, Gulf
15 Stream, Spartan and Goodyear, that we're allowed to do discovery
16 regarding Fleetwood and Monaco incidents based upon the record and that
Mr. Hancock is to undertake further evaluation about the availability of
data associated with those incidents, including warranty information, claim
information, litigation information.

17 The Court: As long as the information relates to the designed tire.

18 Mr. Kurtz: Yes, your Honor, I understand.

19 The Court: Or other tires that were used as or were presented to be
suitable substitutes.

20 Mr. Kurtz: Yes.

21 *Id.* at 49-50.

22 138. Goodyear's counsel thereafter presented to the Court:

23 Your Honor, up until today, you had said no, we're not looking at other
24 motorhomes.

25 *Id.* at 50.

26 139. Goodyear's counsel did not remind the Court of its determinations regarding
27 discovery of substantially similar motorhomes, which was ruled upon in May 2007.

28 140. Goodyear's counsel thereafter presented Goodyear's version of replacement

1 of the G159 on the Monaco and Fleetwood motorhomes. The Court questioned what
2 Goodyear knew or should have known. *Id.* at 52.

3 141. The Haegers' counsel informed the Court that the Haegers had just
4 discovered that in the summer 2000 Goodyear testified that the G159 was a defective tire
5 in motorhome applications. The Haegers' attorney also informed the Court that Goodyear
6 terminated the deposition, acquired the transcript, and willfully destroyed it. *Id.* at 52-53.

7 142. The Haegers' counsel relayed that the deposition was of a 30(b)(6) deponent
8 in the case of *Phillips v. Goodyear* and that the deposition was acquired by Goodyear's
9 counsel and willfully destroyed. The Court was informed that plaintiffs' counsel in *Haley*
10 *v. Goodyear* came across the information and had acquired the court reporter's letter which
11 verified the acquisition of the transcript and its subsequent destruction by Goodyear. *Id.* at
12 53-54.

13 143. Goodyear's counsel represented to the Court that the deposition was minor
14 enough that the parties started it and never finished it because they went to mediation
15 instead. They thereafter settled the case. The question in the case was what to do with a
16 half-finished transcript. Goodyear represented it was the custom and practice when you
17 settled a case, they just said, well, we'll just pretend the deposition never happened,
18 because nobody after the case is settled wants to go back and finish the questioning of the
19 witness. *Id.* at 55.

20 144. Based upon disclosures as of that date, Spartan's counsel asked the Court, "If
21 there's a problem with the G159 on ... any other coaches ... where is the evidence of that?
22 ... [The G159] was widely used throughout the industry by many, many of the coach
23 manufacturers and all three of the major chassis manufacturers. If that's the case, where
24 are the failures?" *Id.* at 66-67.

25 145. The Court subsequently questioned the source of the information that the
26 Haegers' experts were relying upon. *Id.* at 68. The Court asked how the Monaco and
27 Fleetwood failures relate to the motorhome involving the Haeger accident. *Id.* at 71.

1 146. The Haegers' counsel responded:

2 Every one of these – the subject tire, a G159 275/70R22.5, is a tire
3 designed for regional pickup and delivery. All of these motorhomes – and
4 this is the only class we are looking for – are those that have 12,000 pound
5 axles like the Haegers, those that have 19,000 pound rear axles like the
6 Haegers. Every one of those motorhomes we're talking about was that
7 way. And the failure on those motorhomes are all involved with the same
8 tire, in the same application carrying similar loads, operating on freeways
9 where should never had been. ... My expert witnesses specifically
10 testified that all of the motorhomes, Monaco, Gulf Stream and Fleetwood,
11 have the same or similar operating environments in terms of load and speed
12 on the subject tires.

13 *Id.* at 71.

14 147. The Haegers' counsel explained to the Court that their expert tire engineer,
15 Mr. Osborne, designs commercial truck tires like the G159. As a designer he needs to
16 anticipate and understand the environments in which they operate. He testified that when
17 you are going to make a tire that's going to run on a freeway, the G159 is not the tire you
18 would use. It cannot take the loads and speeds at that heat. That's why it failed on
19 Monaco, that's why it failed on Fleetwood, and that's why it fails on Gulf Stream. *Id.* at
20 78-79.

21 148. The Court finally expressed that it was not going to decide that day the
22 question of substantial similarity. The Court ordered the Haegers to fully brief the issue as
23 to why discovery should be expanded to other motorhomes. The Court ordered expedited
24 briefing and requested all sources of information that Mr. Osborne had or will have in his
25 reports, understanding that the scope of discovery is generally much greater than the issues
26 of the admissibility of the evidence. *Id.* at 81-82.

27 149. The Haegers subsequently submitted their brief on June 14, 2007. The
28 Haegers sought leave to file a brief under seal and filed a motion for leave to file excess
pages.

150. The Court's summarily disposed of the brief as untimely. **Exhibit 47**, Order
of June 20, 2007.

151. The Court also denied Plaintiffs' Motion for Leave to File its original brief

1 under seal. *Id.*

2 152. On July 5, 2007, the Haegers filed a Motion for Clarification of the Court's
3 June 20, 2007, Order. **Exhibit 48.**

4 153. The Motion advised the Court of its prior rulings regarding substantial
5 similarity and sought clarification of the Court's order for purposes of discovery.

6 154. The Motion concluded, "It's requested that this Court clarify its June 20
7 Order to verify that it is not designed to reverse a prior ruling made by this Court regarding
8 discovery issues relating to Gulf Stream and Spartan." *Id.* at 3.

9 155. On August 8, 2007, the Court issued its order denying, without comment,
10 Plaintiffs' Motion for Clarification of the June 20, 2007 Order. **Exhibit 49.**

11 156. As of that date, Goodyear had not produced the property damage and
12 warranty claims that had previously been ordered in January 2007. Those property
13 damage claims, if disclosed, would have revealed in excess of 600 claims, the vast
14 majority of which occurred on motorhomes. Rather, as of August 2007, Goodyear had
15 disclosed a mere 14 property damage claims involving Gulf Stream motorhomes.

16 157. Spartan's counsel was unaware of the history of Goodyear's failure data.
17 Had the extensive property damage, injury, and death claims been known to Spartan's
18 counsel, such material would have been disclosed. **Exhibit 50**, 12/19/2016, Deposition of
19 Lisa Lewellan, at 112.

20 158. Goodyear designated Richard Olsen as its 30(b)(6) representative to address
21 specific topics, including warranty claims (adjustments), property damage claims and
22 injury claims. **Exhibit 51**, 30(b)(6) Notice of Deposition. Between 1994 and 2000,
23 Mr. Olsen was the Manager of Customer Engineering, which had the responsibility to
24 analyze the gathered failure data. **Exhibit 52**, Olsen Deposition at 31-32. He represented
25 that the adjustment data regarding tread separations revealed the G159 was "running quite
26 successfully in the field." *Id.* at 42. When studying failure data, Goodyear looks for trends
27 in tire performance. They do overall performance reports by parts per million (ppm). *Id.*

1 at 67-68. They monitored the G159 when it went into production in 1996. As the
2 manager, he was responsible for overseeing all of the data, all of the reports and all of the
3 analysis. *Id.* at 70. The disclosed Goodyear document which identified 453 adjustments
4 for crown separations is a trend analysis. *Id.* at 76. (See Exhibit 13.) The adjustment rates
5 for crown separations which Goodyear disclosed is “a very good one.” (Exhibit 51 at 93.)
6 It would not raise a red flag. The Goodyear legal department maintains the database with
7 respect to property damage claims. *Id.* at 134. Olsen testified he did not know the total
8 property damage claims for the G159 for all Class A motorhomes. *Id.* at 155. He did not
9 recall the total number of property damage claims submitted on the G159. *Id.* at 157.
10 Olsen represented that he was aware of only one personal injury claim. *Id.* at 169.

11 159. Olsen would have been aware if there was a seemingly inordinate number of
12 either warranty claims, adjustments, property damage claims or personal injury claims.
13 That was one of his primary responsibilities and accountabilities to have that information.
14 *Id.* at 428. He does not recall any indication that the tire had a problem. A .28%
15 adjustment rate is “a very good rate.” There was no information over the years the tire was
16 made that led him believe that there was any unusual performance problem with the tire.
17 *Id.* at 429-437.

18 160. Mr. Olsen was also designed by Goodyear to speak on behalf of testing
19 regarding the G159. He denied ever seeing the crown wheel test done on the G159. *Id.* at
20 205-206.

21 161. Olsen testified Goodyear tries to keep temperatures under 200°. If a radial
22 medium truck tire is operating at temperatures in excess of 200° for extended periods of
23 time it can lead to loss of strength in material components of the tire and lead to tread
24 separation. *Id.* at 280, 282-283. Anything over 250° would be a concern as to the
25 capability of the tire to stay together much longer. *Id.* at 283-284. Goodyear takes no
26 temperatures over 250° as a safety precaution due to the threat that the tire may blow up.
27 *Id.* at 294. He testified there was no separate testing available regarding tests ran in the
28

1 development process. *Id.* at 352.

2 162. All of the tests in the databases were searched regarding the G159 and all
3 that exists are contained in the disclosed exhibits. *Id.* at 470-471.

4 163. The W84 high speed test is utilized by Goodyear to give an indication as to
5 the heat durability of the tire. It is an attempt to simulate the heat history of the tire. *Id.* at
6 448, 450. The high speed test doesn't really help Goodyear when trying to speed rate the
7 tire. It's a heat durability test. *Id.* at 450-451. Temperatures generated on Goodyear's
8 steel wheel utilized in the high speed tests are not reflective of the temperatures that would
9 be generated by the tire on the highway. Rather, you would need a temperature reading at
10 45 mph on the test wheel to create an equivalent temperature of 70 to 80 mph on the
11 highway. *Id.* at 455.

12 164. Goodyear's 30(b)(6) Olsen witness avowed that all of Goodyear's tests have
13 been searched and disclosed in the exhibits. *Id.* at 470-471.

14 165. Olsen agreed with Goodyear's retained expert Gardner that at 200°, the G159
15 would experience diminishing properties. **Exhibit 53**, 11/20/2007 Expert Deposition of
16 Richard Olsen, 210.

17 166. On May 31, 2011, the Haegers filed their Motion for Discovery Fraud.
18 Exhibit 4, HS000001-00110. The Motion noted the recent discovery that Goodyear had
19 concealed "internal heat test" records, had recently admitted such but claimed it was
20 entitled to withhold the tests in spite of repetitive representations to the Court and Plaintiffs
21 that all test records had been disclosed. *Id.* at HS00102. The Motion set forth the various
22 representations made to Court and counsel during the various hearings, the Court's orders,
23 the applicable Federal Rules of Civil Procedure requiring supplementation and the history
24 of a similar discovery abuse by Goodyear in 2006 and 2007 in other tire cases. The
25 Motion was supported by 15 separate exhibits, including various portions of transcripts,
26 discovery responses and correspondence. *Id.* at HS000016.

27 167. On July 15, 2011, Goodyear filed its Response to the Motion. *Id.* at
28

1 HS000124-000264. The primary thrust of Goodyear's opposition was that Plaintiffs never
2 filed a motion to compel or a court order compelling production of the tests. *Id.* at
3 HS000125. Goodyear asserted it never represented that the tests it had disclosed
4 comprised the totality of testing. *Id.* at HS000126. Goodyear further asserted that the
5 release prohibited pursuit of the sanctions. *Id.* at HS000130-000131.

6 168. Goodyear's opposition to Plaintiffs' Motion for Sanctions did not advance
7 any argument that the Haegers' First Request for Production had been withdrawn,
8 narrowed or otherwise modified so as to relieve Goodyear of any responsive obligation.

9 169. On July 18, 2011, the Haegers filed their Motion to Compel Goodyear to
10 disclose concealed test data. *Id.* at HS000265-000272. Goodyear claimed that the
11 concealed tests "did not cause any demonstrable harm." The Motion documented
12 Goodyear's continued refusal to disclose the records, necessitating the Motion. *Id.* at
13 HS000282. The Motion also addressed and rebutted Goodyear's claim that the parties'
14 settlement agreement and release prohibited further actions associated with Goodyear's
15 misconduct. *Id.* at HS000288.

16 170. On October 5, 2011, the District Court entered its Order compelling
17 Goodyear to produce "the test results at issue." *Id.* at HS000293-000294.

18 171. On October 6, 2011, Goodyear filed under seal the laboratory durability heat
19 rise test results and protocol in response to the Court's Order. *Id.* at HS000299-000301.
20 (It would later be discovered Goodyear was concealing additional tests.)

21 172. Following review of the documents which purported to be "the tests at
22 issue," the Haegers filed their Reply to Goodyear's Response to the Motion for Sanctions
23 for Discovery Fraud. *Id.* at HS000304-000381. The Reply set forth that the test performed
24 in 1996 (just disclosed) tested the G159 at 35 mph and recorded temperatures up to 229° F.
25 which were predictive of imminent failure when the tire was used in a highway application
26 for which it was allegedly designed. *Id.* at 304. The Motion identified pertinent portions
27 of the underlying records relating to previously disclosed test data and the significance of
28

1 the temperatures reflected in the newly disclosed “tests at issue.” The Court was reminded
2 that Goodyear had evaded the disclosure of injury and accident data, claiming a lack of
3 substantial similarity, when it knew the concealed test fully explained all failures in
4 highway use, regardless of the type of vehicle involved. *Id.* at HS000310. The Reply was
5 supported by 12 separate exhibits, including test data, discovery responses and deposition
6 testimony. *Id.* at HS000316.

7 173. On November 23, 2011, Goodyear’s co-defendant, the Spartan Motor
8 Company, filed its Joinder in Plaintiffs’ Motion for Sanctions for Discovery Fraud. *Id.* at
9 HS000483-000486. Spartan advised the Court that the tests were never disclosed to
10 Spartan either and based on the only evidence disclosed in the four years of litigating the
11 case, Spartan had no reason to dispute Goodyear’s tire expert’s opinion that the G159 was
12 suitable for applications on motorhomes. It asserted disclosure would have altered
13 Spartan’s defense strategy and it may have affected the Plaintiffs’ decision to sue Spartan
14 in the first instance. *Id.* at HS000495.

15 174. On February 24, 2012, the District Court entered its proposed findings of fact
16 and conclusions of law. The Court instructed Goodyear and its counsel to file joint or
17 separate responses, addressing what the current record suggested. *Id.* at HS000499-
18 000524. The proposed order chronicled much of the history of representations, disclosure
19 and testimony. The order also set forth the significance of the concealed tests.

20 ... [T]he undisclosed test results shows how they were relevant to this case.
21 The tests are titled “Laboratory Durability Testing–Heat Rise” and were
22 conducted on four G159 tires on April 21, 1996. The tests were meant to
23 “determine the dynamic heat build-up at specific loads, speeds, and
24 inflations.” The tests were conducted on a “67.23 [inch] diameter
25 flywheel.” The tests consisted of running the tires at 35 miles per hour and
26 checking the temperature of the tire at certain intervals. The tests describe
27 35 miles per hour as reflecting “highway use.” Even though 35 miles per
28 hour seems substantially slower than highway speeds, the rationale for this
description is explained by Goodyear’s 30(b)(6) witness. Testing a tire on a
67-inch flywheel places “upwards of double the speed” impact on a tire as
the tire impact of “a vehicle on a road surface.” In other words, “if you run
45 miles an hour on the steel flywheel [that] is the equivalent temperature
wise of 70, 80 miles an hour on the public highway as far as the heat
history goes.” Under this logic, testing tires at 35 miles per hour on a
flywheel would be the equivalent of 55-65 miles per hour on the highway.

1 According to the results, after running at 35 miles per hour, the G159 tires
2 generated temperatures of up to 229 degrees. Goodyear's internal
3 documents, own expert, and 30(b)(6) witness all agree that this temperature
4 is high and would be cause for concern. *Thus, if these tests had been*
5 *disclosed Goodyear's defense would have been severely compromised; it*
would have been difficult, if not impossible, for Goodyear to claim the
G159 was suitable for use on a motor home given its own testing data that
G159 tires reached temperatures well above 200 degrees at speeds of 55-65
miles per hour.

6 *Id.* at HS000511-000512 (emphasis supplied).

7 175. On March 9, 2012, separate responses to the Court's order were filed by
8 Fennemore Craig/Hancock, Roetzel & Andress/Musnuff, and Goodyear. *Id.* at HS000553-
9 000722.

10 176. Hancock claimed he did not know of the heat rise durability test's existence
11 or of its potential relevance. *Id.* at HS000557. The memorandum addressed the varied
12 expressions by the Court in its proposed order regarding misrepresentations made during
13 the course of discovery to the Court and counsel. The memorandum requested the Court
14 vacate the proposed order or in the alternative set an evidentiary hearing. *Id.* at HS000561.
15 It requested that Hancock be provided an opportunity to present witnesses and testimony
16 as well as exhibits and other evidence establishing his lack of knowledge of the heat rise
17 test and his absolute good faith and candor with counsel and the Court in all
18 communications. *Id.* at 000562. It was supported by Hancock's (false) declaration which
19 avowed, "I was not told about any heat rise testing or the use of heat rise testing to
20 determine the suitability of the subject tire being used at either 65 or 75 mph or at highway
21 speeds generally. I was not aware of the document now at issue in Plaintiffs' Motion for
22 Sanctions or of that test being undertaken on this tire." *Id.* at HS000570-000571. He
23 "declared under penalty of perjury that these representations were true and accurate." *Id.*
24 at HS000576.

25 177. The brief filed on behalf of Roetzel & Andress/Musnuff claimed (falsely)
26 that when the Haegers served their first discovery requests in September 2006, they had
27 not yet "developed or explained their theory as to how the tire at issue allegedly failed."
28

1 *Id.* at HS000607. It echoed the absence of a motion to compel and the lack of a court order
2 compelling the production of all test data. *Id.* at HS000608. It asserted the defect theory
3 was first disclosed in the Haegers' expert report disclosed on January 7, 2007. *Id.* at
4 HS00608. The memorandum was supported by the Declaration of Basil Musnuff which
5 spanned 13 pages and made multiple factual representations, many of which were
6 subsequently determined, based upon clear and convincing evidence, to be untruthful,
7 false, or misleading. *Id.* at HS000619-631. It included avowals that the Haegers had
8 failed to identify a defect theory, which would have indicated what, if any testing might be
9 pertinent; placed Musnuff's own slant on the meaning of various requests for production
10 (subsequently addressed and rejected by Judge Silver); avowed that the only test that
11 Goodyear utilized to determine the suitability of the G159 for highway use was the high
12 speed testing; and set forth his varied explanations why the heat rise durability test was
13 wholly irrelevant.

14 178. Goodyear's response to the Court's proposed order advanced a similar
15 presentation. It too echoed the false claim that the Haegers had failed to identify a defect
16 theory prior to submission of the First Request for Production of Documents. It advanced
17 a new argument that the First Request for Production had somehow been "narrowed"
18 based upon a discussion between the Haegers' counsel and Hancock. Goodyear
19 *mistakenly* represented that Goodyear had produced crown durability, bead durability and
20 DOT extended endurance tests based upon the Declaration of Richard Olsen, which was
21 attached to the response. *Id.* at HS000640.

22 179. Goodyear's Response was supported by the Declarations of Okey, Engineer
23 Sherman Taylor and Goodyear's 30(b)(6) witness Olsen. *Id.* at HS000739-891.

24 180. Okey's Declaration included her avowal that Goodyear's technical personnel
25 had identified only the high speed as used to determine whether the G159 was suitable for
26 high speeds (*id.* at HS000649); avowed that the heat rise test was produced in the *Woods*
27 case in August 2007 in response to a court order requesting production of *all* tests (original
28

1 emphasis) (*id.* at HS000650); and, was only produced in *Schalmo* as the plaintiffs sought
2 discovery relating to heat testing. *Id.*

3 181. At his deposition, Kurtz was asked whether, “in *Woods*, there was an order
4 compelling all tests, correct?” Kurtz responded: “Compelling all tests requested, yes.”
5 Exhibit 69, at 119.

6 182. Taylor’s Declaration acknowledged that he had been asked in 2006 and 2007
7 to locate documents and test data regarding the G159 by Musnuff. Exhibit 4, at
8 HS000654, ¶ 8. He avowed that, “During my search for G159 tire records I was asked to
9 locate test data that the Radial Medium Truck Tire Development Group used to release the
10 G159 for use at highway speeds.” He advised that he located the high speed test data and
11 the heat rise data at the same time and had the test data put into text files which were
12 printed and then delivered to Musnuff. *Id.* at HS000656.

13 183. The Declaration filed by Richard Olsen, the previous 30(b)(6) deponent in
14 *Haeger I*, stated:

15 I was also asked [during his deposition] if there was “any separate testing”
16 besides the tests Goodyear produced, which included DOT tests, crown
durability test, bead durability test and high speed tests.

17 *Id.* at HS000662.

18 184. Goodyear subsequently filed a Notice of Correction on March 13, 2012,
19 advising the Court that the tests Olsen claimed had been disclosed to the Haegers in fact
20 had never been produced. *Id.* at HS000733-000738.

21 185. On March 14, 2012, Goodyear provided sealed reports setting forth tests that
22 the Court ordered be produced by Goodyear in October 2011, which had been concealed.
23 *Id.* at HS000895-000900.

24 186. On March 13, 2012, the Haegers filed a combined reply to
25 Goodyear, Roetzel & Andress and Fennemore Craig’s responses to the Court’s
26 proposed order. *Id.* at HS000739-000891. The brief criticized the several
27 responses of the Defendants.

1 Rather than respond to the Court’s direction, Goodyear and its attorneys
2 continue to file “carefully crafted” pleadings, which do not, in simple, plain
3 declarative sentences, answer who was responsible for the willful
4 withholding of the damning evidence and for misleading the Court.
5 Nowhere in the thirty pages of written text is there an affirmative statement
6 from any person taking responsibility for the decision to withhold the
7 durability test results – even though they were admittedly provided to
8 outside counsel in January 2007 – nor for the decision to continue to
9 withhold them throughout the remaining years of the litigation, even when
10 those tests were ordered produced in other G159 cases.

11 *Id.* at HS000739-000740.

12 187. Plaintiffs’ reply brief addressed the various arguments advanced by the
13 Defendants collectively, including identification of the defect theory, mischaracterizations
14 of deposition testimony, representations during various hearings, concealment of the same
15 durability tests in *Bogaert v. Goodyear* and identified various misrepresentations expressed
16 in the combined pleadings. *Id.* at HS000749-000751. The Haegers’ brief was supported
17 by 13 separate exhibits, including discovery responses in *Schalmo*, multiple letters
18 exchanged between the parties, motions to compel in other G159 cases and Goodyear
19 responses to various discovery matters in other cases where the tests were produced when
20 Goodyear was compelled to do so. The brief was further supported by the Declaration of
21 Kurtz, designed to address the newly minted claims that there had been an agreement to
22 narrow, withdraw or otherwise modify Defendants’ obligations in response to the First
23 Request for Production of Documents. *Id.* at HS000757, 000796-000797.

24 188. The previously concealed crown durability and extended endurance tests, the
25 existence of which was first disclosed in Olsen’s March 2012 Declaration, revealed
26 temperatures for G159 tests performed at 30 and 40 mph in the neighborhood of 250° F,
27 representing temperatures well beyond the design capacity of the G159 (based upon
28 Goodyear’s expert testimony taken in September 2007, which indicated that the tire would
be prone to head-induced material degradation if exposed to prolong temperatures in
excess of 200° F). *Id.*

1 189. The newly-discovered compelled responses to the *Schalmo* request for
2 production revealed that Goodyear disclosed *all* of its tests in response to each of the
3 following requests for production:

- 4 (1) all documents reflecting studies, analysis or testing ... done by
5 Goodyear associated with determining the appropriate speed rating,
6 load range and/or vehicle application of G159 tires....
- 7 (2) all documents reflecting actual results and internal analysis or study
8 of laboratory wheel testing conducted by Goodyear on the G159 tire
9 ... including but not limited to all indoor wheel endurance testing
10 done on the G159 tire.
- 11 (3) all documents reflecting actual test results ... and any internal
12 analysis or study of any other endurance, speed, tread separation
13 resistance, heat resistance, heat profile, durability, and/or load
14 testing done by Goodyear on the G159 tire not encompassed within
15 Request No. 2.

16 *Id.*

17 190. Goodyear disclosed 27 separate test results in response to each of these
18 inquiries. They included the original FMVSS 119 DOT test disclosed to the Haegers in
19 2006. They also included the heat rise durability, crown durability and extended
20 endurance testing concealed from the Haegers, which too was requested in the Haegers'
21 First Request for Production. *Id.* at HS000759-000774.

22 191. In response to the *Schalmo* Request for Production No. 2, Goodyear
23 disclosed the laboratory durability heat rise test. *Id.* at HS000763. Okey claimed in her
24 declaration that the only reason the heat rise tests were disclosed in *Schalmo* was because
25 Request for Production No. 3 sought testing related to heat (heat resistance, heat profile).
26 Request for Production No. 3 from *Schalmo* only sought testing not disclosed in response
27 to Request for Production No. 2; supporting the Court's ultimate determination that Okey's
28 Declaration was false. *See id.* at HS000765-000766.

192. The Haegers' combined reply brief to Defendants' responses to the Silver
proposed order addressed Goodyear's Initial Disclosure Statement in *Haeger I*, which
failed to disclose a single Goodyear witness or a single Goodyear document which

1 Goodyear “may” use in its defense. *Id.* at HS000766-000781.

2 193. The brief was supported by September 21, 2006, correspondence from Kurtz
3 to Hancock addressing the defects in Goodyear’s Initial Disclosure Statement, and the
4 request that Goodyear identify Goodyear employees “most familiar with the testing for the
5 G159 tires.” *Id.* at HS000783-000786.

6 194. The brief was also supported November 9, 2006, correspondence from Kurtz
7 to Hancock, which addressed the defects in Goodyear’s response to Request for Production
8 No. 14.

9 In Request No. 14 we asked for test records for the G159 tires. You
10 provided the DOT test data for the subject tire for the subject time frame.
11 This response excludes test data between 1996 to 1998 and 2005 to 2006.
... Please supplement your response.

12 *Id.* at HS000791.

13 195. The brief addressed the Order issued by Special Discovery Master Skelly in
14 the matter of *Bogaert v. Goodyear*, requiring the production all test data. *Id.* at HS000821-
15 000828.

16 196. The brief was supported by correspondence received from Bogaert’s counsel
17 dated March 12, 2012, noting that in spite of Special Master Skelly’s rulings ordering the
18 production of test data, the responsive heat rise test documents were never received nor
19 disclosed. *Id.* at HS000832.

20 197. On March 14, 2012, the Court entered its Order requiring Goodyear, Roetzel
21 & Andress, and Fennemore Craig to address five specific questions in supplemental
22 briefing. *Id.* at HS000901-000905. The questions are generally summarized as: (1) Why
23 the heat rise tests were produced in *Schalmo* but not produced in response to the Haegers’
24 Third Request for Production; (2) to state in *unequivocal* terms (i.e., “yes” or “no”)
25 whether the crown durability, bead durability, and DOT endurance test reports should have
26 been produced in this case; (3) to state in *unequivocal* terms whether the results of the heat
27 rise test would conflict with any representation made during this litigation; (4) to state in
28 *unequivocal* terms who is responsible for not producing the heat rise tests. In other words,

1 Defendants should assume the Court believes that the heat rise test should have been
2 produced. Under that assumption, which of the three entities should be held responsible
3 for the failure to do so? And (5) State whether the heat rise tests were produced in *Bogaert*
4 *v. Goodyear*, and if not, explain the failure to do so. *Id.*

5 198. Defendants filed their separate responses addressing the five questions. *Id.*
6 at HS000927-001071.

7 199. Fennemore's response to the Court's order maintained that Hancock had not
8 been informed of any possible relevance of the heat rise test to the *Haeger* I matter; was
9 not aware of the new testing documents provided by Goodyear on March 13, 2012 (crown
10 durability, extended endurance and bead durability tests), *id.* at HS000927-928, continued
11 to assert that the Haegers' First Request for Production had been narrowed, *id.* at
12 HS000934; asserted that the Court narrowed the First Request for Production, *id.*; and
13 asserted that "no one suggests (beyond Mr. Kurtz's unsupported speculation)" that Mr.
14 Hancock knew of the document or its contents or was involved in any discussions between
15 Musnuff and Goodyear engineers concerning its purpose, meaning or relevance to this case
16 (referring to the heat rise test), *id.* at HS000934-000935.

17 200. Fennemore responded to the questions asserting (1) it cannot explain why the
18 heat rise test was produced in *Schalmo* because it was not provided to Fennemore for
19 production; does not know the answer why the crown durability, bead durability and DOT
20 tests should have been produced in *Haeger*, asserting it has no knowledge concerning these
21 new tests; admitted that the results of the heat rise test conflicted with representations
22 made during the case; asserted that responsibility for failure to produce the tests rested
23 with Goodyear and Roetzel; and admitted that the heat rise tests were not produced in
24 *Bogaert*, asserting that Goodyear and Musnuff directed Hancock as to his role in the
25 discovery process and relied on them to assess which documents should be produced in
26 *Bogaert*. *Id.* at HS000937-000940.

27 201. The Roetzel response claimed that all the tests were produced in *Schalmo* but
28

1 not in *Haeger*, because they were each responsive to a request for wheel testing and that 25
2 of the 27 tests were responsive to load testing. Roetzel claimed that the crown durability,
3 bead durability, and DOT endurance tests should not have been produced in *Haeger* as
4 they were not used to determine the tire's suitability for highway speeds. It claimed that
5 the heat rise tests did not conflict with representations made during the *Haeger* litigation
6 and admitted that Goodyear and Roetzel were responsible for the decision not to produce
7 the tests in *Haeger*. Roetzel explained that the tests were not produced in *Bogaert* because
8 the *Bogaert* plaintiffs only sought testing used to determine the tire's suitability for 65 and
9 75 mph. *Id.* at HS000945-000955.

10 202. The Roetzel response was supported by the second Declaration of Musnuff.
11 *Id.* at HS000960-000969.

12 203. The Musnuff Declaration specified in precise detail the purpose of each of
13 the 26 tests. He identifies Tests 1, 2, 5-22, 25 and 26 as tests related to load; Tests 1-22,
14 25 and 26 as wheel testing; and Test 1, 2, 5-22, 25 and 26 as endurance or durability tests.

15 204. Paragraph 16 of his Declaration identifies the limited testing produced to the
16 Haegers. It specifies that tests 1 through 8, 22, 23 and 24 were not produced in *Haeger*
17 because they were not responsive to the Third Request for Production. *Id.* at HS000964.

18 205. The remainder of Musnuff's Declaration sets forth his position as to why the
19 tests were not produced in *Bogaert* and explains what tests were produced in *Woods* in
20 response to various discovery requests.

21 206. Goodyear filed its separate response to the Court's Order responding to
22 specific questions. *Id.* at HS001012-001071. The Response was supported by deposition
23 testimony, a Supplemental Declaration of Olsen, the *Woods* Motion to Compel and the
24 August 17, 2007 *Woods* Order compelling production. *Id.* at HS0001026.

25 207. Goodyear claimed that the heat rise test was produced in *Schalmo* as it was a
26 wheel test. Goodyear denied that the crown durability, bead durability and extended
27 endurance testing should have been produced in *Haeger* as it was allegedly not responsive
28

1 to the Third Request for Production (found to be false). Goodyear claimed it did not know
2 why the crown durability, bead durability and extended endurance tests were not produced
3 in *Haeger*, asserting they were provided to Musnuff and that Goodyear did not make
4 decision to not produce the tests (found to be false). Goodyear placed responsibility for a
5 lack of production squarely on Roetzel and Musnuff.

6 208. Goodyear did acknowledge that if the Haegers' First Request for Production
7 of Documents was operative, all of the tests should have been produced in response to
8 Request for Production No. 14. *Id.* at HS001016.

9 If Plaintiffs First Request for Production remained operative,
10 notwithstanding that Plaintiffs did not file a motion to compel to challenge
11 Goodyear's objections or otherwise narrow their First Request, the crown
12 durability, bead durability and DOT endurance tests should have been
13 produced in response to Request No. 14 to the First Request. Ultimately
14 Goodyear does not know why coordinating counsel did not produce the
15 crown durability, bead durability and DOT endurance test results in this
16 case.

17 *Id.* at HS001016.

18 209. Goodyear's 30(b)(6) witness Olsen filed a new declaration in support of
19 Goodyear's Response. *Id.* at HS001033. His new declaration provides:

20 Prior to executing my March 8, 2012, Declaration, I reviewed the
21 documents I still have related to the *Haeger* case. Within my files, was a
22 summary of the results of the crown durability, bead durability and DOT
23 endurance test. My files did not contain the actual test result sheets. ... I
24 mistakenly concluded Goodyear's outside counsel had produced the crown
25 durability, bead durability and DOT endurance test based in part on the
26 summary of these test results contained in my files.

27 *Id.* at HS001034.

28 210. On March 20, 2012, the Haegers filed their Combined Reply to the
Defendants' Responses to the Court's five questions. *Id.* at HS001074-001133. The
pleading addressed each of the varied and inconsistent arguments advanced by the
Defendants to justify their conduct in response to the five questions. The pleading was
supported by five separate exhibits, including the *Schalmo* court order compelling
responses to the request for production, Goodyear's original objections to the *Schalmo*

1 Request for Production, a summary of representations made during the litigation which
2 conflict with the tests and additional excerpts from the deposition of James Gardner. *Id.* at
3 HS001092.

4 211. On March 31, 2012, the Court entered an order requiring the parties to file a
5 list of individuals “whom they wish to call to testify at the hearing on March 22, 2012,”
6 advising that the individuals will be subject to direct and cross-examination by opposing
7 counsel and the Court. *Id.* at HS001134-001135.

8 212. In the same Order, the Court stated

9
10 Based on their submissions, it is clear that Goodyear and its counsel remain
11 committed to advocating seemingly untenable positions. For example,
12 Goodyear and its counsel seek to justify withholding heat testing of the tire at
13 issue in this case despite the fact that plaintiffs, the Court and defense
14 counsel knew plaintiffs’ defect theory involved heat issues. Rather than
15 appearing contrite, Goodyear and its counsel have sought to justify their
16 actions through hyper-technical parsing of their actions during discovery.
17 This is directly contrary to long-established authority. *See* Fed.R.Civ.P. 34
18 Advisory Committee notes, 1993 amendments, Subdivision (a) (“[discovery
19 requests] should not be interpreted in an artificial, restricted or hyper-
20 technical manner to avoid disclosure of information fairly covered by the
21 discovery request ...”).

22 *Id.*

23 213. On March 31, 2012, the parties filed their Joint List of Witnesses. *Id.* at
24 HS001138-001143.

25 214. The list states:

26 Goodyear does not expect to call any witnesses.

27 Fennemore Craig and Graeme Hancock do not expect to call any witnesses.

28 Roetzel & Andress expects to call Basil Musnuff.

Separately the Haegers and Spartan identified their witnesses. *Id.*

215. Prior to the evidentiary hearing there was no request by Goodyear that
Plaintiffs produce any additional information other than that which was disclosed in the
multiple rounds of prior briefing. Goodyear made no request that either the Haegers or any

1 of their attorneys testify at the time of the evidentiary hearing. At no time did Goodyear
2 submit any additional discovery request to the Haegers. Similarly, Goodyear chose not to
3 present any expert witness testimony nor introduce any matters other than those which had
4 been identified in the record. It called no witnesses at the evidentiary hearing, but did
5 participate in cross-examination of Musnuff. *Id.* at HS003905-004105.

6 216. On March 29, 2012, the transcript of the March 22, 2012 proceedings was
7 made a matter of record. *Id.*

8 217. Following the evidentiary hearing, the Court issued its Minutes. *Id.* at
9 HS001146. The minutes set forth the scope of examination by the parties and identified
10 dates for additional production and depositions. It set the final briefing schedule. *Id.*

11 218. On March 26, 2012, the Haegers served their Court-authorized Request for
12 Production of Documents upon Goodyear. *Id.* at HS001149-001154.

13 219. On April 6, 2012, the parties submitted a Joint Statement of Discovery
14 Dispute. *Id.* at HS001175-001212. The Dispute set forth the request for production served
15 upon Goodyear which sought:

16 All documents, including all written and electronic communications,
17 including all attachments thereto, which address, discuss or related to:

- 18 (1) Requests for test data;
- 19 (2) All proposed and final discovery responses and proposed and final
20 supplemental discovery responses to such requests for test data;
- 21 (3) The objection to or withholding of test data;
- 22 (4) The contents and/or meaning of such test data; and
- 23 (5) Disclosure obligations pursuant to applicable state or federal rules of
24 civil procedure.

24 *Id.*

25 220. On April 10, 2012, the Court issued its order compelling Goodyear to
26 produce the requested documents. *Id.* at HS001213-001216.

27 221. On April 18, 2012, the parties submitted their second Joint Statement on
28 Discovery Dispute. *Id.* at HS001222-001273.

1 222. On April 24, 2012, the Court issued its second order regarding the parties'
2 discovery dispute. *Id.* at HS001274-001278. The Court noted its prior order for Goodyear
3 to produce documents responsive to the Plaintiffs' request from the year 2000 to the
4 present. The Order instructed:

5 The present dispute is whether the court meant or required Goodyear
6 conduct specific searches or whether the court meant to require Goodyear
7 to respond to the actual request for production beginning as of the year
8 2000. Considering the difficulty in the past regarding Goodyear's
9 compliance with discovery requests, Goodyear must respond to the actual
10 request for production of documents. ... If absolutely necessary, the
11 parties may request the Court reset the briefing dates.

12 223. On March 25, 2012, the deposition of Goodyear Engineer Sherman Taylor
13 was taken. *Id.* at HS004307-004583.

14 224. On June 8, 2012, the deposition of Okey was taken. *Id.* at HS004106-
15 004306.

16 225. On June 22, 2012, Goodyear, Fennemore Craig and Roetzel filed their
17 Opening Briefs. *Id.* at HS001288-001618 (330 pages).

18 226. Fennemore Craig's opening brief spanned more than 100 pages, including
19 exhibits. *Id.* at HS001288-001393.

20 227. The opening brief stated:

21 Since the proposed findings were issued, the record has been substantially
22 more developed. In considering the final order, the Court now has the
23 benefit of testimony, evidence and arguments that were not available when
24 the Proposed Findings were issued.

25 *Id.* at HS001289.

26 228. Argument included that Hancock made no decision regarding production of
27 the heat rise test data, he did not act in bad faith, did not knowingly make
28 misrepresentations to the Court, and did not purposely conceal documents responsive to
discovery requests. *Id.* at HS001293.

 229. The opening brief was supported by ten separate exhibits, including multiple
deposition excerpts from four separate witnesses, correspondence, email and a detailed
declaration of Mr. Hancock. *Id.* at HS001306. The declaration continued to advocate that

1 Goodyear had somehow been relieved of responding to the First Request for Production
2 and that the Third Request for Production a narrow set of test records. *Id.* at HS001323.

3 230. After the Court determined that Goodyear had waived any privilege
4 regarding discussions relating to test data, Goodyear disclosed an email chain between
5 Hancock, Musnuff, and Stroble (the manager of the Product Analysis Group whose
6 members included Stroble, Olsen, and Taylor). The memo sought Hancock's input
7 regarding the disclosure of test data in the matter of *Bogaert v. Goodyear*, which was then
8 pending in the Maricopa County Superior Court. It provided:

9 One of the 30(b)(6) topics relates to testing done to make sure the tire was
10 suitable for RV use. There was no testing specifically done on RVs, but
11 *our whole testing package was to ensure that the tire was suitable for*
12 *various over-the-road applications, including RVs. ... Stroble thinks it*
13 *may be helpful to produce these documents so that he can review them in*
14 *preparation for his deposition. That seems okay with me. Do you agree?*
15 *Thoughts?*

16 **Exhibit 54**, 6/2008 – 10/2008 Email Chain Between Hancock and Musnuff Re: Hancock's
17 Input Regarding Disclosure of Test Data In *Bogaert v. Goodyear*. (emphasis supplied).

18 231. Hancock's declaration submitted with his responsive brief stated:

19 I responded by email to Musnuff that same day – June 5, 2008. I was
20 aware James Stroble, Goodyear's expert in *Bogaert*, was to be deposed on
21 June 19, 2008, and I wanted to determine if any decision had been made as
22 to whether the tests identified in Mr. Musnuff's email needed to be
23 produced under Rule 26.1, Ariz.R.Civ.P. In the subsequent discussion, Mr.
24 Musnuff advised me that, based upon his discussions with Goodyear, the
25 tests were not, in fact, used for the purposes suggested in his email and did
26 not meet the standard for production.

27 *Id.* at HS001324.

28 232. The tests were never disclosed in *Bogaert v. Goodyear*, in spite of the
Special Discovery Master's Order.

233. "Discussions" between Musnuff and Hancock regarding production in
Bogaert continued from June through October 2008. Exh. 54.

234. Musnuff and Roetzel & Andress set forth their arguments in their opening
brief. *Id.* at HS001568-001615. Roetzel and Musnuff continued to assert that the Haegers
failed to identify their defect theory prior to Goodyear's response to the First Request for

1 Production. They asserted there was no obligation to produce additional tests absent a
2 motion to compel; Kurtz agreed to serve new more narrowed discovery requests following
3 Goodyear's objections to the First Request for Production; and that the only testing utilized
4 by Goodyear to determine the suitability of the tire for highway speeds was the high speed
5 testing. *Id.* at HS001569-001570. The motion set forth Musnuff/Roetzel's view of the
6 documents disclosed throughout the course of discovery and testimony during the
7 evidentiary hearing and the depositions of Okey and Taylor, which followed the
8 evidentiary hearing. *Id.*

9 235. Roetzel & Andress' brief placed responsibility for failure to disclose the test
10 data squarely upon Goodyear. *Id.*

11 236. It asserts Musnuff's "reliance on Goodyear was appropriate and cannot give
12 rise to any award of sanctions." *Id.* at HS001585.

13 237. Goodyear's opening brief advanced similar arguments. *Id.* at HS001394-
14 001567. It asserted that the testimony during the evidentiary hearing and related
15 depositions established that: (1) Goodyear did not seek to conceal the heat rise test or
16 other test data; (2) the heat rise test was never used by Goodyear to determine the G159's
17 suitability to operate at highway speeds; (3) Goodyear relied solely on the high speed test
18 to determine that the G159 was suitable to operate at highway speeds, and (4) Goodyear
19 subjectively acted in good faith based upon the facts presented by outside counsel as well
20 as reliance on their legal advice. It asserted it was outside counsel which made relevance
21 and responsiveness decisions regarding disclosure and production. *Id.* at HS001395.

22 238. Goodyear maintained that Musnuff was responsible for Goodyear's
23 discovery responses, Goodyear relied on counsels' advice, Musnuff made production
24 decisions, and, that the Haegers' First Request for Production was narrowed by agreement.
25 *Id.* at HS001397-001398.

26 239. The majority of Goodyear's brief set forth its view as to why Goodyear's
27 conduct was not sanctionable, setting forth its expansive argument regarding the law and
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1 facts absolving Goodyear of responsibility in allowing them to rely on its outside counsels'
2 determinations. *Id.* at HS001402-001406.

3 240. Goodyear too asserted that the Haegers had failed to identify their defect
4 theory prior to responding to the First Request for Production, failed to file a motion to
5 compel, and asserted Plaintiffs had agreed to narrow the First Request for Production and
6 “supplanted” the first request for documents with the Third Request for Production of
7 Documents. *Id.* at HS001406-001408.

8 241. Goodyear asserted that the evidence shows unequivocally that Goodyear did
9 not conceal nor have a corporate strategy to conceal, that the heat rise test was not
10 responsive to the Third Request for Production of Documents; and that only the high speed
11 test was used to determine suitability of the tire to operate at highway speeds. *Id.* at
12 HS001410-001411.

13 242. As to the misrepresentations regarding test data by Goodyear’s 30(b)(6)
14 witness, Goodyear blamed that deception upon outside counsel. *Id.* at HS001412. Olsen
15 was prepared by Musnuff and Hancock, they provided the documents for his review, he
16 was not given the heat rise test and was unaware of its existence, and all of the 30(b)(6)
17 witness’s representations were truthful and accurate and had been otherwise misconstrued.
18 *Id.* at HS001411-001413.

19 243. The Haegers filed a simultaneous supplemental brief. *Id.* at HS001619-
20 001645.

21 244. The Haegers set forth an index of the arguments contained within the brief,
22 *id.* at HS001620, which included:

- 23 • Hancock lied to the Court about not having heard of the heat rise test during
24 the pendency of the *Haeger* litigation.
- 25 • Musnuff misled the Court about the heat rise test being an irrelevant
26 compounder’s test.
- 27 • Hancock misled the Court about his involvement in delaying production of
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1 the limited tests that Goodyear did produce.

- 2 • Goodyear continued to conceal damning test results even after the Court
- 3 ordered production of all test results “at issue.”
- 4 • Hancock continued to falsely testify about his representations during
- 5 discovery.
- 6 • Goodyear’s false statements were knowingly made.
- 7 • Goodyear rejected its outside counsel’s recommendations to disclose
- 8 additional tests to plaintiffs.
- 9 • Musnuff repeatedly failed to cure misstatements and to timely disclose
- 10 relevant test data.

11 245. The Haegers’ brief sought an award of attorneys’ fees and specifically
12 requested the Court to allow the Haegers to supplement their Complaint under Rule 15(d).

13 246. Specifically, the Haegers requested the Court to allow the Haegers to file a
14 supplemental complaint, supported by non-monetary sanctions, including striking
15 Goodyear’s underlying Answer and instructing the jury that Goodyear engaged in
16 discovery fraud as a matter of law. *Id.* at HS001632-001633.

17 247. The Haegers’ brief provided:

18 There is no dispute that Goodyear’s fraudulent acts changed the entire
19 landscape of the *Haeger* case. Had Goodyear been forthcoming in
20 disclosing the highly relevant temperature data regarding the test results for
21 the G159, and been forthcoming regarding the limitations of the tire’s heat
22 resistance, this action would have followed an entirely different and much
23 shorter path. In fact, had the truth been disclosed, the indefensibility of the
24 G159 would have been apparent and the case would have either promptly
settled for an appropriate amount or Goodyear would have been exposed to
a substantial jury verdict for compensatory damages, together with a
punitive damages award. Thus, as a starting point, this Court should
require Goodyear and its counsel to reimburse Plaintiffs for all attorneys’
fees, costs and expenses incurred.

25 While the award of fees, costs and expenses is an appropriate first step, it
26 does not make the Plaintiffs whole. The result of the discovery fraud by
27 Goodyear and its counsel was that Goodyear was able to force a settlement
28 with Plaintiffs for just a fraction of what Plaintiffs’ claims were worth.
Merely reimbursing attorneys’ fees, costs and expenses, does not begin to
remedy the fraudulently induced settlement. In fact, from Goodyear’s
perspective, that would be a great result because Goodyear would still

1 escape the payment of millions of dollars it avoided by concealing the truth.

2 *Id.* at HS001634.

3 248. The Haegers suggested a way forward to the Court:

4 Once the supplemental complaint is filed and answered, the parties should
5 need only a short time for limited discovery and disclosure. ... Additional
6 orders providing for non-monetary sanctions will be appropriate and
7 necessary to prevent Goodyear from benefiting from its discovery fraud.

8 The Court should, as a sanction for Goodyear's discovery fraud, strike that
9 portion of Goodyear's answer that responds to the original Complaint. This
10 is well within the Court's inherent power and it is fully appropriate here
11 given the fact that Goodyear has already had its opportunity to litigate the
12 original Complaint by the rules, and has grossly and repeatedly violated
13 those rules.

14 *Id.* at HS001637.

15 A supplemental evidentiary presentation would be straightforward and
16 would include expert testimony on behalf of the Plaintiffs as to what the
17 settlement value of the case would have been had Goodyear been
18 forthcoming and honest in its disclosures and discovery responses. See
19 *Living Designs, Inc.*, 431 F.3d at 367-69. In *Living Designs*, the Ninth
20 Circuit recognized the option to rescind the settlement agreement or affirm
21 the settlement and sue for fraud. *Id.* at 359. The Court noted that the
22 critical consideration in a supplementary fraud action is the actual
23 settlement value of the case on the date the fraudulent settlement was
24 reached. *Id.* at 363. Such a determination is well within the competence of
25 the jury to determine, utilizing expert and other testimony. *Id.*

26 *Id.* at HS001637.

27 249. The Haegers separately requested the Court to enter a sanction limiting
28 discovery to only expert testimony on the difference between the amount of the
fraudulently induced settlement and what the Haegers would have received had the true
facts been produced by Goodyear. They requested that the Court require Goodyear to pay
for all expert expenses and requested an order that no other discovery would be permitted.
They also requested that the Court enter an order prohibiting Goodyear from filing
additional motions, including motions in limine. It requested that the Court sanction
include prohibiting Goodyear from arguing the fault of nonparties and instructing the jury
as to the background regarding the sanctions the Court imposed. The Haegers suggested:

Part of the appropriate exercise of discretion is to similarly utilize the
Court's inherent power to provide appropriate instructions to the jury to

1 ensure a cost-effective, speedy and just evidentiary presentation, not
2 delayed by further discovery disputes, or an endless array of pleadings and
3 motions, which Goodyear would no doubt otherwise file in a continuing
4 effort to exhaust the financial resources of the Plaintiffs and their counsel.
5 As a further exercise of the Court's inherent power, and based upon this
6 fully developed evidentiary record, the Plaintiffs believe the Court should
7 instruct the jury that the G159 tire be deemed defective and preclude
8 Goodyear from presenting any evidence or argument to the contrary. See
9 F.R.P. 37(b)(2)(A)(i and ii).

6 *Id.* at HS001639.

7 250. The Haegers filed a Statement of Facts in support of their supplemental brief.
8 *Id.* at HS001647-002088. The filing set forth 172 separate statements of fact. The
9 Statement of Facts was based upon the pleadings and discovery that occurred in the case
10 *since* the Court issued its proposed order in February 2012, including (1) testimony offered
11 during the evidentiary hearing on March 22, 2012, (2) the Taylor and Okey depositions,
12 (3) the newly-disclosed Brendan Rodgers deposition, and (4) the documents Goodyear
13 produced in response to the Plaintiffs' recent discovery request (production of which was
14 compelled by the Court). Goodyear employees referenced in the submitted statement of
15 facts included Jim Stroble, Manager of the Product Analysis Group; Sherman Taylor, tire
16 engineer, Product Analysis Group; Richard Olsen, tire engineer, Product Analysis Group;
17 Brenda Cavanaugh, claim analyst, Goodyear Law Department; and Deborah Okey,
18 Associate General Counsel. *Id.* at HS001648.

19 251. The following statements of fact are taken *verbatim* from the Supplemental
20 Statement of Facts filed by the Haegers in June 2012. (Each paragraph has been indented
21 to maintain the original number of each factual representation with the same exhibit
22 numbering for ease of this Court's reference. An index of the exhibits supporting each
23 statement is located at HS001682-001685. References to "Doc." Number refer to the
24 Haeger docket in the District Court. The Docket entries can be accessed on PACER.)

25 1. By October 2004, Goodyear established its usual practice of
26 objecting to requests for test data and thereafter limiting disclosure to only
27 the identification of DOT (Department of Transportation) FMVSS 30 mph
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1 tests performed on the G159 from the date of manufacture of the tire
2 involved in the accident to the date of the accident at issue. (Exh. 1).

3 2. On April 27, 2006, Ms. Cavanaugh asked Mr. Stroble to
4 confirm the existence of all testing, other than the DOT testing, regarding
5 the G159 (Exh. 2). Although Goodyear failed to disclose the responsive
6 memo, it appears that Goodyear had identified all G159 testing before the
7 Haegers submitted their first discovery requests.

8 3. On September 26, 2006, Mr. Musnuff informed Goodyear
9 that it will produce “per our usual practice” only the DOT tests from the
10 date of manufacture to the date of accident in response to the Haegers’ First
11 Request for Production which sought all test data regarding the G159,
12 including but not limited to, wheel tests, durability tests and high speed
13 tests (Exh. 3).

14 4. On October 18, 2006, Mr. Hancock acknowledged his
15 understanding that Plaintiffs’ defect theory was that in motor home use, the
16 G159 was producing heat and degradation which the tire was not designed
17 to endure, leading to premature failure and was inappropriate for use on any
18 motor home (Exh. 4).

19 5. On October 23, 2006, Mr. Hancock submitted Goodyear’s
20 responses to the Haegers’ First Set of Interrogatories and First Request for
21 Production, objecting to each and every discovery request.

22 6. On November 1, 2006, Mr. Hancock filed Goodyear’s
23 Supplemental Responses to the Haegers’ First Set of Interrogatories and
24 Request for Production, maintaining its objections, and identifying FMVSS
25 DOT test data, “in the good faith spirit of cooperation” in response to
26 Plaintiffs’ requests that Goodyear disclose test data relating to the G159,
27 per the “usual practice” as expressed on September 26, 2006.

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Interrogatory 16. Test data. **His allegation** that the tire wasn't designed for prolonged freeway use **would seem to put speed or endurance data at issue. What testing exists?** If none, can we point to the adjustment claims data and fleet testing as "real world" experience in this 1996 tire that existed by 2000, when the accident tire was produced? What did that data look like as of then?

* * *

RTP 14. Test records for all testing on this size G159. Again, was the only testing at 30 mph or less? What speed testing/fleet testing did Goodyear rely on? **Can/should we supplement**, since this theory is the tire can't operate at 75 mph in the southwest for long periods?

This lengthy and thorough email is completely silent about any discussion which Mr. Hancock alleges occurred with Mr. Kurtz on December 5, 2006, during which Mr. Kurtz allegedly agreed to withdraw, eliminate or revise the Haeger Plaintiffs' original discovery requests or otherwise relieve Goodyear of any duty to timely supplement their responses (Exh. 7).

11. On January 11, 2007, Mr. Hancock and Mr. Musnuff agreed that they should supplement the Haeger discovery responses, to identify testing at all speeds above 30 mph. (Exh. 8)

12. On January 11, 2007, Mr. Musnuff advised Ms. Okey that now that the Plaintiffs were pinpointing speed as an issue, Goodyear should consider supplementing their responses to Haeger discovery, to show testing of the G159s at all speeds greater than 30 mph. (Exh. 9)

13. Mr. Musnuff requested Sherman Taylor, a Goodyear tire engineer, to identify all tests performed to "release" the G159 for sale to the public (Exh. 10).

14. On January 24, 2007, in response to Mr. Musnuff's request for identification of all tests, Mr. Taylor acquired test results for the high speed durability tests, the bead durability tests, the heat rise durability tests, the crown durability tests and the DOT extended endurance tests, all of

1 which were then provided within a week or so to Mr. Musnuff and were
2 thereafter the subject of a meeting, where the contents of such tests results
3 were discussed between Mr. Stroble, Mr. Musnuff and Mr. Taylor, as well
4 as perhaps Ms. Cavanaugh. The tests revealed ever increasing temperatures
5 at speeds of 30 mph (DOT endurance), 35 mph (heat rise durability) and 40
6 mph (crown durability), ranging between 207°F to 255°F (Exh. 11).

7 15. In spite of the Hancock/Musnuff recommendation that
8 Goodyear supplement its responses and disclose the above-referenced test
9 data, Goodyear (presumably Ms. Okey) decided that no such
10 supplementation would be provided.

11 16. On February 12, 2007, Mr. Musnuff advised Mr. Hancock of
12 the existence of high speed durability tests, and provided the W84-high
13 speed durability test protocol and a summary of high speed test results,
14 which was prepared by Mr. Taylor (Exh. 12).

15 17. On February 12, 2007, Mr. Musnuff wrote to Ms. Cavanaugh:
16 Pursuant to an agreement to resolve a discovery dispute in Haeger, we
17 agreed to expand the time frame for which we are producing documents.
18 Taking this approach was very helpful when we actually got before the
19 judge because we **looked** to be cooperative in discovery; the judge entered
a very favorable order on other discovery issues if you recall. (emphasis
supplied)

20 Mr. Musnuff requested that Goodyear provide additional documentation
21 expanding the dates of disclosure for FMVSS 119 DOT tests, to include
22 back to 1996 and expanded dates for identification of specification changes
23 to the G159 for supplemental disclosure (Exh. 13).

24 18. On February 13, 2007, Mr. Musnuff advised Ms. Okey of the
25 Plaintiffs' request that Defendants supplement disclosure statements
26 identifying electronically stored data, which would be used to support
27 defenses under recent revisions to FRCP 26. Goodyear never prepared a
28 response to the communication or otherwise supplemented disclosure

1 statements by identifying electronically stored data, with the sole exception
2 of the limited untimely production of high speed durability tests which
3 occurred in June 2007. The remaining electronically stored test data
4 remained concealed (Exh. 14).

5 19. On February 13, 2007, Mr. Musnuff specified that “if” we
6 disclose high speed testing, then we need to disclose all high speed test
7 results (Exh. 15).

8 20. On February 19, 2007, Mr. Hancock advised Mr. Musnuff
9 that Goodyear needed to gather and produce documents regarding high
10 speed testing, but advised there was “no deadline.” Mr. Hancock also
11 asked Mr. Musnuff specifically, “Is there any other data on testing this tire
12 **we want** to produce?” No additional test data, including high speed data
13 was either produced or disclosed to the Haeger Plaintiffs or the Court until
14 June 2007 (Exh. 16).

15 21. On April 16, 2007, Ms. Okey was informed that Ms.
16 Cavanaugh thought that Goodyear should issue a service bulletin or some
17 other public relations statement regarding the G159 being speed-rated at 75
18 mph, contrary to Plaintiffs’ theories and statements that the tire was not
19 appropriate for use on motor homes, providing Ms. Okey with customer
20 contact queries, arising from a website which claimed that the G159 “has a
21 history of detreads and failures and is not safe or appropriate for use on
22 RVs.” The site referenced also stated that, “several RV manufacturers
23 utilized this defective product from the mid 90’s through 2004. They also
24 claimed it is still on the market, despite ‘limited recalls and tire replacement
25 programs.’” (Exh. 17)

26 22. On April 30, 2007, in a related G159 case, Mr. Musnuff was
27 advised by Jim Stroble of the existence of various computerized databases
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1 that recorded test data in response to a plaintiffs' document request for the
2 production of a duplicate computerized database relating to the G159 (Exh.
3 18).

4 23. On June 7, 2007, this Court extended discovery beyond July
5 5, 2007, as was specified in the Haeger Scheduling Order, to allow briefing
6 regarding substantial similarity issues (Doc. 243 at 81). Scheduled
7 depositions were vacated (*Id.* at 84). Goodyear treated the Court's order as
8 a stay and originally declined to even produce high speed testing data in
9 response to the Third Request for Production, which was served upon
10 Goodyear May 8, 2007. When Plaintiffs insisted that there was no stay in
11 place, Goodyear revisited that determination and thereafter, decided to
12 provide responses to the Third Request for Production (Exh. 19).

13 24. On June 13, 2007, Ms. Okey was provided with the draft
14 response to the Haegers' Third Request for Production of Documents (Exh.
15 20).

16 25. On June 20, 2007, Mr. Musnuff advised Mr. Okey, "this
17 federal judge is doing a GREAT job. Graeme just got a tremendous ruling
18 from her. At several junctures in this case, she has refused to expand the
19 scope of discovery to give plaintiff's counsel leeway to get discovery
20 regarding all the numerous other cases and claims involving this tire on
21 Fleetwoods, Monaco's and other motor homes. . . . Today, she issued an
22 order stating that plaintiffs had been given a last chance to present their
23 argument, that their brief had been rejected under the rules, and that
24 plaintiff's motion to expand discovery was summarily denied. Now that
25 the scope of discovery issue is resolved, we ought to return our responses to
26 these RFP's as soon as possible. I think it would serve us well to serve our
27 responses right on the heel of her ruling." Goodyear filed its response to
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1 Plaintiffs' Request for Production on June 21, 2007, two weeks after it was
2 due (Exh. 21).

3 26. On July 9, 2007, Mr. Musnuff was informed by Mr. Taylor,
4 that the "design release standards" for the G159 are the same, regardless of
5 whether it was being utilized in a Class A motor home application or a
6 regional pick-up and delivery application and that testing includes,
7 footprint, extended endurance, crown durability, bead durability, and high
8 speed durability tests (Exh. 22).

9 27. On August 20, 2007, the *Woods*' court entered its order
10 compelling Goodyear to disclose all testing to which Goodyear had
11 previously objected. Up until that time, Goodyear had disclosed only the
12 DOT test data. Mr. Musnuff expressed, "we tried hard to avoid this
13 through our original objections to the requests, but this does not appear to
14 be a judge who is inclined to listen much to our arguments." In an attached
15 "Plan of Action for Compliance with the Order on Plaintiffs' Motion to
16 Compel," Mr. Musnuff set forth that Goodyear needed to produce
17 documents regarding ALL types of testing regarding the G159 tire in
18 response to the requests for Goodyear to identify testing to determine the
19 suitability of the tires to be driven at both 65 and 75 mph, noting, "This is
20 the unfortunate reality of the judge's decision." (Exh. 23)

21 28. On August 27, 2007, Sherman Taylor forwarded to Mr.
22 Musnuff, in response to the Plan of Action, the test protocols as well as the
23 previously provided test results (provided 1/24/07) for the heat rise
24 durability tests, the bead durability tests, the crown durability tests and the
25 DOT extended endurance tests, to support Goodyear's proposed response to
26 Request for Production No. 7, which sought tests used to determine the
27 suitability of the motor home to travel at speeds of 65 mph (Exh. 24).

1 29. On August 30, 2007, the Roetzel firm provided Ms. Okey
2 with the draft supplemental responses in *Woods*. The Responses to
3 Requests for Production No. 7 and 8 regarding identification of testing to
4 determine suitability of the tires to be driven at 65-75 mph were revised
5 from Mr. Musnuff's earlier suggestion to now limit production to only the
6 high speed test records. All tests were disclosed in response to the Request
7 for Production No. 9, which sought testing to determine the suitability of
8 the tire for use on Class A motor homes (Exh. 25).

9 30. On the date that the *Woods* court issued its order compelling
10 production of additional documents, the Haeger Plaintiffs filed their
11 Seventh Request for Production, asking that Goodyear provide all
12 documents produced in the *Woods* case in response to the court's August
13 27, 2007 order. Goodyear objected, claiming that production was overly
14 broad, unduly burdensome, irrelevant, constituted confidential information,
15 sought documents subject to a protective order, sought privileged
16 information and documents not subject to discovery, among other broad
17 objections (Exh. 26).

18 31. On September 19, 2007, Mr. Musnuff provided Mr. Stroble
19 with transcripts of Mr. Olsen's 30(b)(6) deposition taken in the Haeger case
20 and the transcripts for Mr. Olsen and Mr. Gardner's expert depositions
21 from the Haeger case, which were taken September 12 and 13, 2007 (Exh.
22 27).

23 32. In spite of the *Woods* order, which compelled the production
24 of all test data, Goodyear remained obstructive in its refusal to produce
25 requested test data in other cases. On October 1, 2007, plaintiffs' counsel
26 in *Anton v. Goodyear* wrote to Goodyear addressing discovery deficiencies
27 regarding requests served 10 months earlier on January 19, 2007. The
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1 correspondence referenced certain rulings by Judge Smith in that case,
2 entitling plaintiffs to discovery which Goodyear continued to refuse to
3 provide. Although Goodyear had objected to discovery because plaintiffs
4 had allegedly not identified “a defect theory” (a contention which
5 Plaintiffs’ counsel disputed), counsel referenced the court’s order
6 addressing Goodyear’s objections that it was entitled to withhold data
7 because of the absence of a clearly articulated defect theory. The court had
8 ruled, “Goodyear’s objections are based on argument on why plaintiffs’
9 theories in this case fail on the merits or why the information sought is of
10 little or no evidentiary value, but they are not valid objections to
11 discovery.” The correspondence went on to address the same kind of
12 objections Goodyear expressed in all G159 cases, including its refusal to
13 disclose failure data on motor homes, identify individuals with relevant
14 knowledge, refusal to provide adjustment data and refusal to produce
15 responsive test data for requests for production which sought “wheel test
16 data, durability tire testing, endurance tire testing and high speed tire
17 testing.” Goodyear has not disclosed either its response to plaintiffs’
18 communication, the resulting motion practice or any rulings of the court
19 (Exh. 28).

20 33. On November 12, 2007, Mr. Hancock objected in the Arizona
21 state case of *Haley* to plaintiffs’ request that Goodyear identify documents
22 produced in the *Woods* case pursuant to the court’s August 22, 2007 order,
23 stating that the request “seeks confidential information, seeks documents
24 subject to a protective order, seeks privileged information, seeks documents
25 not subject to discovery and requests information regarding vehicles, other
26 than the Subject Vehicle which are Not Substantially Similar,” among other
27 objections (Exh. 29).

1 34. On November 13, 2007, Jim Stroble identified additional test
2 protocols, which were not provided in response to the August 2007 court
3 order in the *Woods* case. Among test protocols earlier produced was the
4 protocol W16 for bead durability. Attached to the November 13, 2007
5 memo were two additional documents to be stamped for production in
6 *Woods*, the W05 bead durability test and the W10 bead durability test, both
7 of which contemplated recording tire temperatures during testing. Neither
8 the W05 test, nor the W10 test protocols were disclosed in the *Haeger* case
9 until after the evidentiary hearing held on March 22, 2012 (Exh. 30).

10 35. On June 5, 2008, Mr. Musnuff wrote to Mr. Hancock in
11 reference to the Arizona State case of *Bogaert*. He commented:

12 In meeting with Jim Stroble yesterday, we came to conclude that we might
13 be best served by producing data from additional tests of the subject tire.
14 As you know, we have produced the available electronically maintained
15 high speed test data in this case (and in *Haeger* and *Haley* as well), along
16 with the current protocol.

17 One of the 30(b)(6) topics relates to testing done to make sure the tire was
18 suitable for RV usage. There was no testing specifically done on RVs, but
19 **our whole testing package was to ensure that the tire was suitable for
20 various over-the-road applications, including RV.**

21 **In the *Woods* case, we were compelled to produce other testing
22 data/protocols in addition to High Speed. There, we produced (i)
23 extended DOT testing data; (ii) heat-rise test data; (iii) bead durability
24 (aka Runflat) test data and (iv) crown durability test data, along with
25 the current (evergreen) protocol for each of these tests.** [We have also
26 committed to producing these tests/protocols in *Schalmo* upon resolution of
27 confidentiality issues.] These test documents are in the same type of
28 electronic data format that you are familiar with from the high-speed tests.

29 **Jim thinks it may be helpful to produce these documents** so that he can
30 review them in preparation for his deposition. **That seems okay with me.
31 Do you agree? Thoughts?**

32 On June 5, 2008, **Mr. Hancock responded, "Let's discuss."** On
33 September 3, 2008, Mr. Hancock asks, "Basil -- did you come to a
34 conclusion on this?" On October 2, 2008, Mr. Hancock advised Mr.
35 Musnuff, "Need to discuss this." The discussions which followed are not

1 disclosed. The tests were never disclosed in *Bogaert* or in the *Haley* case.
2 Similarly, although briefing dispositive motions was underway during the
3 summer of 2008 in Haeger, at no time did Mr. Hancock, Mr. Musnuff or
4 Goodyear bring the existence of these tests to the attention of the Haeger
5 Plaintiffs or the Court or otherwise supplement prior discovery responses
6 (Exh. 31).

7 36. On June 9, 2008, in response to *Bogaert's* motion to intervene
8 in the Haeger case, Mr. Hancock asserted, "there is absolutely no support
9 for Ms. Bogaert's unsupported, unverified accusation that Goodyear has
10 somehow produced different documents in different cases in response to
11 identical discovery requests. None." (Doc. 687, at 6).

12 37. On March 31, 2009, Mr. Rooney of the Roetzel firm advised
13 Mr. Hancock and Ms. Okey of, "a job well done by all" in reference to this
14 Court's summary judgment rulings. Mr. Rooney expressed:

15 This was a monumental effort by many, involving hotly-contested
16 depositions. Simplistically, this included strategy, briefing and depositions.
17 But that does not begin to truly describe the incredible effort.

18 The result is outstanding. Though sealed, the decision spikes every
19 argument plaintiffs made. It does not prevent future skirmishes over the
20 same issue (nor could it), but it will stand testament in Goodyear's favor. I
21 believe it is the best decision Goodyear could have obtained.

22 * * *

23 I would like to extend my appreciation to all who were involved,
24 including Graeme and his people from the standpoints of strategy and
25 briefing. (Exh. 32).

26 38. On April 9, 2009, the Roetzel firm advised Ms. Okey that
27 Goodyear should take another look at their approach to discovery
28 responses, advising of the need for specificity in objections, attaching
Mancia v. Mayflower Textile Services, 253 F.R.D. 354 (D. Md. 2008) (Exh.
33).

1 39. On May 8, 2009, Mr. Musnuff advised Jim Stroble of how the
2 heat rise testing was being utilized in the *Schalmo* case, stating:

3 At a hearing this week, Plaintiff highlighted the heat rise testing taken
4 during the durability testing of the G159 in our size. He argued that
5 Goodyear determined that the test wheel equivalent of 75 mph is 35 mph
6 during testing. And at that speed on the wheel, the heat recorded exceeded
7 that disclosed in the Ford and Charles article (194°F). Please see GY
8 *Schalmo* 1332, at bottom, for the heat generated at 35 mph. GY *Schalmo*
9 1333 says that 35 mph in the test is ‘highway use.’ (Exh. 34).

10 40. On September 3, 2009, Mr. Hancock communicated with Mr.
11 Stroble regarding the performance of additional tests on the G159. He
12 stated, “Our goal is to not only figure out the hottest temperature, but how
13 long the old test exposes the test tire to temperatures above what they
14 would get on a test track, for example, temperatures greater than 140 °.”
15 Mr. Hancock’s comment reflects the understanding, consistent with Mr.
16 Gardner’s testimony that at 75 mph, the G159 should be running 140 to
17 150°, which would be the expected temperature to be achieved on the test
18 track (Exh. 35).

19 41. On March 10, 2010, the plaintiffs’ expert in the *Schalmo* case,
20 Dennis Carlson, was deposed. Mr. Carlson made clear that at temperatures
21 in excess of 200°, that tread life would be substantially impacted, but would
22 not be visible from inspecting a failed tire. He stated that visible damage to
23 the tire only occurs when there is reversion in the rubber (aka bluing),
24 which only occurs if a tire is substantially under-inflated, in which event
25 temperatures can reach 300 to 400° which creates “bluing” in the tire (Exh.
26 36).

27 42. Mr. Carlson opined that the heat rise test is done to be sure
28 that a tire does not overheat. He verified that when he was in the employ of
Michelin, that they used a similar heat rise test with a failure limit in the
neighborhood of approximately 200°F. He addressed the Goodyear

1 research article, which established a 194° temperature beyond which the
2 G159 should not be exposed and addressed Goodyear's admission that 42
3 mph to 50 mph on the test wheel is equivalent to 75 mph on the road,
4 explaining that temperatures at 229° at 35 mph on the test wheel reflect
5 temperatures generated at a speed less than the operational environment
6 encountered by a motor home when traveling in highway conditions. Mr.
7 Carlson opined that the 35 mph test on the curved wheel is equal to
8 something in the order of 60 to 65 mph on the highway. He concluded that
9 the G159 did not meet Goodyear's own specifications and was running too
10 hot to be safely utilized in that application (Exh. 36).

11 43. On April 9, 2010, in a request for settlement authority in the
12 *Schalmo* case, Goodyear states:

13 Unfortunately, Plaintiffs will likely be able to introduce evidence of the
14 numerous other lawsuits involving this tire on RVs, and the over four
15 hundred property damage and bodily injury claims which Goodyear has
16 received with respect to this tire while being used on Class A recreational
17 vehicles. (Exh. 37).

18 All the failures of the G159 which have produced bodily injury and
19 property damage claims have occurred solely when the tire used in a high
20 speed motor home application. Goodyear has never identified a single
21 failure of the G159 when utilized in a metro inner city application.

22 44. Although Goodyear claims that the G159 is an all-purpose
23 highway tire, Goodyear (via Mr. Taylor) admits that the G159 was
24 marketed for metro use commencing between 1996 and 2000 in the early
25 years of its production. (See Exh. 23). Between 2000 and 2003, the tire
26 was marketed as a regional pick-up and delivery truck tire. Goodyear has
27 historically described the G159 as designed for pick up and delivery trucks.
28 There are no disclosed tread separations of the G159 in these applications
(Exh. 38).

1 45. On April 25, 2012, Plaintiffs took the deposition of Sherman
2 Taylor. His testimony included the following:

3 A. The purpose of Goodyear's durability tests are to be
4 sure that the tire is adequately durable for its intended applications (Exh. 39
5 at 39-40).

6 B. In May 2006, Mr. Musnuff requested Mr. Taylor to go
7 and look for tests, other than the DOT tests (Exh. 39 at 63-66).

8 C. Mr. Musnuff asked Mr. Taylor to locate testing to
9 "release" the tire, meaning all tests Goodyear would have used before the
10 tire was approved for sale and production. In response, Mr. Taylor located
11 all the tests on January 24, 2007 (Exh. 39 at 88-90).

12 D. Mr. Taylor states that he would not have acquired the
13 tests on his own and that he only acquired them because Mr. Musnuff
14 instructed him to do so. He also would have explained the tests to Mr.
15 Musnuff and would have had a meeting with Mr. Stroble, Mr. Musnuff and
16 perhaps Ms. Cavanaugh to discuss the test results (Exh. 39 at 98-102).

17 E. On June 21, 2007, Mr. Taylor advised Mr. Musnuff,
18 Mr. Stroble and Mr. Olsen, in response to *Woods'* fifth request for
19 production No. 9, seeking identification of tests regarding suitability for
20 motor homes that, "tires are released according to a development release
21 procedure, regardless of application" and thereafter identified the various
22 tests, including those tests concealed in Haeger (Exh. 39 at 119-20).

23 F. On August 27, 2007, Mr. Taylor sent all of the test
24 protocols and results from the tests which were not disclosed in Haeger to
25 Mr. Musnuff (Exh. 39 at 135-36).

26 G. Compounds used in tires relate to the tire's strength,
27 durability, heat resistance, integrity and design application (Exh. 39 at 143).

1 46. On June 8, 2012, Plaintiffs took Ms. Okey's deposition. Ms.
2 Okey testified:

3 A. The conduct of Goodyear, Roetzel and Fennemore was
4 all justified, ethical and appropriate (Exh. 40 at 14-17).

5 B. The discovery drafts of the various G159 cases were
6 submitted to her for review and approval and she did make revisions on
7 occasion (Exh. 40 at 26-28).

8 C. If Ms. Okey felt that responses were unethical or
9 inappropriate, then she would revise them (Exh. 40 at 29).

10 D. Ms. Okey has been trial counsel in the past and is well
11 familiar with the Federal Rules of Civil Procedure and discovery
12 obligations (Exh. 40 at 35-36).

13 E. Ms. Okey had the authority to insist upon revisions to
14 draft discovery responses (Exh. 40 at 34-37).

15 F. In every case, Ms. Okey instructed counsel to acquire
16 protective orders and was insistent those protective orders prohibit sharing
17 information with plaintiffs in other cases (Exh. 40 at 42).

18 G. After acquiring protective orders, Goodyear would
19 thereafter take "appropriate steps as approved by the courts" to prohibit
20 plaintiffs from sharing information regarding the number of people hurt by
21 tread separations of the G159 (Exh. 40 at 46).

22 H. Ms. Okey kept Goodyear's General Counsel fully
23 informed about how she was defending the G159 cases (Exh. 40 at 52-53).

24 I. Ms. Okey was supervising counsel in the *Bahena* case
25 and discovery responses were submitted to her for review and approval
26 (Exh. 40 at 65-66).

27 J. There have been over 400 bodily injury and property
28

1 damage claims regarding the G159 on motor homes (Exh. 40 at 85-86).

2 K. Ms. Okey knew that Goodyear maintained electronic
3 databases that stored test data (Exh. 40 at 95, 98-99).

4 L. Ms. Okey admits in all G159 cases, that whenever
5 plaintiffs asked Goodyear to disclose wheel tests, endurance tests and high
6 speed testing, objections were made and Goodyear never simply disclosed
7 the tests (Exh. 40 at 100).

8 M. Goodyear would prepare “appropriate” objections to
9 discovery requests and then the “appropriate” information would be
10 provided as the case evolved (Exh. 40 at 101).

11 N. The Roetzel firm would make discovery
12 recommendations and she would have a “give and take” and come to joint
13 decisions relating to discovery disclosures (Exh. 40 at 113).

14 O. Ms. Okey never instructed the Roetzel firm not to file
15 an objection to any discovery request in any G159 case (Exh. 40 at 114).

16 P. Ms. Okey has no recollection of any concerns
17 regarding the objections filed by Goodyear to the Haeger Plaintiffs’
18 Request for Production No. 14 or Interrogatory No. 16 (Exh. 40 at 143-44).

19 Q. Goodyear never voluntarily produced all tests when
20 requested to (Exh. 40 at 147).

21 R. Goodyear was the decision-maker regarding
22 objections. If she felt they needed to be changed, she would have done that
23 (Exh. 40 at 149).

24 S. Ms. Okey denies that Goodyear relies on all tests to
25 determine suitability of the G159 for every application for which the tire
26 was designed, in direct contradiction to multiple disclosures contained in
27 the newly-disclosed evidence (Exh. 40 at 174).

1 T. Ms. Okey claims that this Court ruled that the scope of
2 discovery was narrowed “to what did Goodyear rely on in order to
3 determine if the tires were suitable for highway speeds,” so Goodyear was
4 no longer required to respond to the First Set of Interrogatories or Request
5 for Production in Haeger (Exh. 40 at 182-83).

6 U. Ms. Okey has reviewed Goodyear’s Response to
7 Plaintiffs Haegers’ Motion for Sanctions and states that the Response set
8 out the facts as Ms. Okey understood them to be (Exh. 40 at 164).

9 V. Ms. Okey approved the draft supplemental response to
10 the request for production in *Woods* on August 30, 2007, wherein Goodyear
11 produced all test results in response to the request for production which
12 sought tests to determine the suitability of the tire for use on motor homes
13 (Exh. 40 at 194).

14 W. Ms. Okey admits that if she had been told that
15 Plaintiffs’ defect theory was that the G159 can’t endure heat in a highway
16 application, then that would have been enough information to conclude that
17 the tests that revealed temperatures in operating environments may be
18 relevant and would activate Goodyear’s disclosure obligations in response
19 to requests for test data, based on that defect theory (Exh. 40 at 213).

20 X. When Ms. Okey recommended settlement in *Schalmo*
21 after the verdict was rendered, acquiring continued confidentiality of
22 Goodyear’s test data was an important part of that settlement (Exh. 40, at
23 229-30).

24 47. The following statements were made by Mr. Musnuff during
25 the course of the evidentiary hearing of March 22, 2012:

26 A. Mr. Musnuff claims he has no ability to understand the
27 nature or purpose of any of the tests or tests results unless explained to him
28

1 by a Goodyear tire engineer. (Doc. 1014 at 29).

2 B. Mr. Musnuff admits that the heat rise durability test is
3 a wheel test (*Id.* at 37).

4 C. After all test data was disclosed in the *Woods* case, he
5 did go through the Haeger discovery responses to decide if supplementation
6 was necessary and concluded that the disclosed tests were not responsive to
7 any discovery requests (*Id.* at 39-40).

8 D. Mr. Musnuff admits that the heat rise durability test
9 was one of the tests utilized by Goodyear to determine suitability for
10 highway purposes (*Id.* at 53-54).

11 E. In all the G159 cases, Goodyear never produced the
12 tests without objecting and never produced all test data voluntarily (*Id.* at
13 57-58).

14 F. Mr. Musnuff received no written communication from
15 the engineers at Goodyear that suggested the heat rise durability test was
16 not a durability test (*Id.* at 61).

17 G. Ms. Okey was a participant in all discovery decisions
18 (*Id.* at 63).

19 H. Goodyear settled the *Haley*, *Bogaert* and *Haeger* cases
20 without disclosing the heat rise durability tests (*Id.* at 64).

21 I. Ms. Okey specifically approved the objections filed in
22 the *Haeger* case (*Id.* at 65).

23 J. Goodyear followed the same process in discovery in
24 all G159 cases (*Id.* at 66).

25 K. Mr. Musnuff was not the decision maker regarding
26 whether Goodyear would object to discovery requests (*Id.* at 67).

27 L. Ms. Okey was fully cognizant and aware of what was
28

1 being produced and not produced in every G159 case (*Id.* at 67).

2 M. All protective orders had non-sharing provisions (*Id.* at
3 69).

4 N. Mr. Hancock declared the Gardner deposition in the
5 *Haeger* case confidential (*Id.* at 71).

6 O. Mr. Gardner's testimony in the *Haeger* case was never
7 disclosed to any other attorney in the G159 cases (*Id.* at 73).

8 P. Goodyear never used Olsen in any other G159 case,
9 after Mr. Olsen expressed his opinions regarding the limited heat resistance
10 of the G159. Mr. Musnuff claimed he retired (*Id.* at 74).

11 Q. Mr. Olsen was used only in the *Haeger* case (*Id.* at
12 74).

13 R. Mr. Musnuff was a participant in the decision to
14 declare the Rogers deposition confidential (*Id.* at 73).

15 S. Mr. Musnuff does not recall if he told Mr. Hancock
16 about the heat rise durability test in *Bogaert* (*Id.* at 82).

17 T. At no time did Mr. Hancock voice any objection to not
18 disclosing the test data in *Haeger* (*Id.* at 83).

19 U. Mr. Musnuff acknowledges that there was always
20 wheel testing for every Goodyear tire, prior to its being released for sale.
21 Some wheel tests, but not all, are to determine if the tire is fit for a given
22 application (*Id.* at 84-85).

23 V. Mr. Musnuff consulted with Ms. Okey before deciding
24 that the heat rise durability test did not need to be produced in *Haeger* and
25 had spoke with Ms. Okey on many occasions regarding these tests (*Id.* at
26 104).

27 W. After the *Woods* court order compelling the disclosure
28

1 of all tests, Mr. Musnuff and Ms. Okey jointly decided to not produce them
2 in *Haeger* (*Id.* at 123).

3 X. Mr. Musnuff would work with the Goodyear engineers
4 and the Goodyear law department to formulate what he believed to be
5 correct discovery responses (*Id.* at 125).

6 Y. Mr. Hancock suggested that disclosure of test data in
7 *Haeger* should be limited to high speed test data and that's what happened
8 (*Id.* at 129).

9 Z. Mr. Musnuff states it would have been unduly
10 burdensome to produce the electronic tests until Goodyear knew
11 specifically what the defect theory was, in spite of the ease of production
12 (*Id.* at 132).

13 AA. Mr. Musnuff was fully cognizant that the witnesses
14 (Olsen and Gardner) said when the G159 was exposed to prolonged
15 operation at temperatures above 200°, that the tire can tear and fail (*Id.* at
16 133-34).

17 BB. Mr. Musnuff was fully aware that excessive heat can
18 lead to tread separations (*Id.* at 135).

19 CC. Mr. Musnuff admits that at no time did Goodyear
20 disclose to the *Schalmo* court or the *Schalmo* plaintiffs that Goodyear's
21 experts in the *Haeger* case said that the tire would foreseeably fail at
22 temperatures above 200° (*Id.* at 144).

23 48. The following statements were made by Mr. Hancock during
24 the evidentiary hearing.

25 A. Mr. Hancock avowed that he had never heard before
26 the Motion for Sanctions of a heat rise durability test. (*Id.* at 149).

27 B. Mr. Hancock admits that the heat rise durability test
28

1 was not disclosed in either the *Haley* or the *Bogaert* cases (*Id.* at 149).

2 C. Mr. Hancock asserts that his role was to confirm that
3 Goodyear had searched the appropriate places, review the objections
4 proposed and if Mr. Hancock thought they were appropriate, to file them
5 (*Id.* at 152).

6 D. Mr. Hancock understood that Goodyear was saying it
7 was burdensome and had not looked when Mr. Hancock approved
8 Goodyear's objections to Plaintiffs' First Request for Production of
9 Documents and First Set of Interrogatories (*Id.* at 152).

10 E. It was Mr. Hancock that suggested that Goodyear
11 should produce only DOT testing in *Haeger* (*Id.* at 153).

12 F. Mr. Hancock has no recollection of recommending
13 that Goodyear search for durability tests (*Id.* at 153).

14 G. Mr. Hancock says he first heard of high speed tests in
15 April or May of 2007 (*Id.* at 158).

16 H. Mr. Hancock later testified he does not know if he
17 knew of the high speed tests at the time of the April 6, 2007 hearing (*Id.* at
18 164).

19 I. Mr. Hancock admits that counsel for the Haegers never
20 withdrew the First Request for Production of Documents (*Id.* at 165).

21 J. Mr. Hancock admits that there was no documentation
22 that the Haegers' counsel withdrew the First Request for Production or
23 relieved Goodyear of its duty to supplement (*Id.* at 166).

24 K. Mr. Hancock admits that when he took the deposition
25 of Mr. Osborne, Plaintiffs' expert, he had led Mr. Osborne to believe that
26 no high speed testing had been done (*Id.* at 166).

27 L. During the course of the evidentiary hearing, Mr.
28

1 Hancock was asked:

2 Question: At any point in time, did you discuss, learn of, hear, comment on
3 the durability heat rise test prior to the Motion to Compel and Motion for
4 Sanctions in this case?

5 Answer: Let me be really clear sir. My license to practice is on the line. I
6 never saw the heat rise test until it was ordered produced in this case after
7 your motion. I did not know the contents of the heat rise test at any time
8 prior to its production here. I did not know that it was called anything but a
9 heat rise test and no one mentioned it to me ever during any of the time
10 frames referenced in the Court's order. (*Id.* at 167-68).

11 M. When Mr. Hancock was advised that the Haegers
12 believed that the test information had been withheld, Mr. Hancock
13 unequivocally stated: "I did not withhold it." (*Id.* at 168). On June 5, 2008,
14 Mr. Musnuff had approached Mr. Hancock and suggested that the test data
15 be disclosed in the *Bogaert* case, as Mr. Musnuff perceived it may be
16 beneficial to Goodyear. Mr. Hancock invited a "discussion." We know
17 that subsequently that the tests were not disclosed in the *Bogaert* case or in
18 *Haeger*.

19 N. The following exchange took place:

20 Question: Now, here, as local counsel, had you known that in the *Woods*
21 case and in the *Schalmo* case that the trial judge ordered production of the
22 durability tests in both of those cases, do you believe that Goodyear had an
23 obligation to produce those documents in the Arizona state court cases of
24 *Bogaert* and *Haley*?

25 Answer: I didn't know that because I didn't see the tests, sir. Had I known
26 them, had I known their content, I would have had asked what the heck
27 they meant. And had I had any concern at all about Rule 26.1, I would
28 have urged counsel to produce them if I felt it fell within those categories."
(*Id.* at 172).

Although Mr. Hancock may not have seen the tests, he was made aware
that they had been compelled to be produced in the *Woods* case and had
already been informed what they meant, as Mr. Musnuff specifically
advised him that the whole package of test data were used to determine the
suitability of the G159 for all applications, including motor homes.

O. Mr. Hancock testified that if he had been aware of the

1 court's order in *Woods*, he would have encouraged counsel to consider
2 whether the tests should be produced and if national counsel refused to
3 produce them, he would have engaged his partner at Fennemore, who
4 handles ethics matters, to discern whether Fennemore should withdraw
5 from representation (*Id.* at 173-74). Mr. Hancock was aware of the Woods
6 court order and still the tests were never disclosed and obviously, he and his
7 firm did not withdraw from any of the G159 cases it was handling.

8 P. Mr. Hancock denied that he was ever told of the
9 *Woods* order (*Id.* at 174).

10 Q. Mr. Hancock testified that he had no conversations
11 with Goodyear's expert, since the date the *Haeger* case was settled (April
12 24, 2010) and as of that date, he was unaware of other tests (*Id.* at 179).

13 R. In reference to the Court's Proposed Findings, Mr.
14 Hancock testified, "I always understood that what I was telling you was the
15 truth and it wasn't something I was making up or just kind of shooting from
16 the hip I had absolutely no clue at any of the dates that you mentioned
17 in your Order that there was anything amiss." (*Id.* at 183).

18 S. Mr. Hancock stated, "Your Honor, I didn't lie to you,
19 ever." (*Id.* at 184).

20 49. Mr. Hancock claimed that he had not been informed of any
21 possible relevance of the heat rise tests (Doc. 949 at 1). Mr. Hancock had
22 been informed in June 2008 that that test, as part of the full package of
23 tests, were all utilized to determine the suitability of the G159 for its
24 intended applications, including motor homes.

25 50. On March 23, 2012, the Court ordered Goodyear to disclose
26 the deposition of Brendan Rodgers, which Goodyear had historically
27

1 refused to disclose, claiming the testimony was “confidential.” Mr.
2 Rodgers testified:

3 A. He was Chief Engineer for truck tire development
4 (Exh. 41 at 22).

5 B. Thomas Ford, the author of the article establishing the
6 194°F limitation for truck tires, was Mr. Rodgers’ boss (*Id.* at 54).

7 C. He has read the Ford article and its statement that tires
8 are developed to withstand a maximum of 194°F. He was recognized as
9 providing “exceptional support” in its publication. Today, the operating
10 temperature of truck tires would actually be lower than in 1987 when the
11 article was written (*Id.* at 57-58)

12 D. The operating temperatures would have been lower by
13 1996, when the G159 was released (*Id.* at 59).

14 E. The operating temperatures came down as a
15 consequence of effects to improve fuel economy, which was addressed by
16 reducing “rolling resistance” of tires (*Id.* at 62).

17 F. In 1996, Goodyear would have also performed
18 Extended Durability Testing to “release” the tire (*Id.* at 169).

19 51. Attached hereto are select portions of discovery requests and
20 Goodyear’s objections to the identification of test data in the cases for
21 which disclosures were provided in response to Plaintiffs’ Request for
22 Production served following the recent evidentiary hearing. (Exh. 42).

23 52. On December 14, 2010, Ms. Okey sought authority from
24 Goodyear to settle the *Schalmo* case after the verdict, when the appellate
25 process was underway. Ms. Okey expressed, “as a result of the settlement,
26 we will be able to maintain confidentiality of our documents.” The
27
28

1 memorandum notes, “the business agrees with the resolution of this matter
2 at this time.” (Exh. 43)

3 53. On June 2, 2011, local counsel for Goodyear provided Ms.
4 Crisp (Ms. Okey’s replacement) and Mr. Casto of the Roetzel firm with a
5 summary of the 30(b)(6) and expert testimony of Mr. Stroble, a member of
6 the Product Analysis Group who testified on Goodyear’s behalf in the
7 *Moore v. Goodyear* case. Mr. Stroble had received the Gardner and Olsen
8 depositions from the *Haeger* case. In the *Moore* case, Mr. Stroble,
9 testifying as Goodyear’s 30(b)(6) deponent, testified that the G159 would
10 have to approach the “cure” temperatures for the tire to begin to break
11 down, in direct contrast to the prior (concealed as confidential) 30(b)(6)
12 deposition testimony of Mr. Olsen in the *Haeger* case. In the same case,
13 Mr. Gardner testified on behalf of Goodyear, now claiming that these “cure
14 temperatures are in the 300 to 350° range.” Although he did not know the
15 curing temperature of the G159, he testified that, “I know it’s probably over
16 300°.” (Exh. 44)

17 54. The testimony of Mr. Gardner and Mr. Olsen in the *Haeger*
18 case was not disclosed to plaintiffs’ counsel or the court in the *Moore* case.

19 55. By 1998, Goodyear was actively interfacing with Fleetwood
20 regarding the cause of G159 tread separations. Goodyear had assured
21 Fleetwood that all appropriate testing had been done to approve the tire for
22 highway use in motor home applications (i.e., 65-75 mph). Moreover,
23 Goodyear specifically advised Fleetwood that the tires would only generate
24 temperatures up to 185° at speeds of 75 mph. On November 16, 1998,
25 Goodyear suggested to Fleetwood that the G159 failures were the natural
26 consequence of either overload, under-inflation, excessive speed or road
27 hazards. In support, Goodyear quoted extensively from the Heavy Duty
28

1 Truck Tire Engineering article authored by Goodyear engineers, Ford and
2 Thomas, which established that the maximum operating temperature for the
3 G159 was 194°. Goodyear did not disclose to Fleetwood its test data
4 reflecting temperatures in excess of 200°F. The test data was never
5 disclosed to the Department of Transportation (Exh. 45).

6 56. Goodyear participated in a “customer satisfaction
7 changeover” program with Monaco at Goodyear’s expense due to G159
8 tread separations. When the original draft communication was prepared to
9 inform customers that the tires were going to be replaced, Goodyear
10 “revised” the letter to be sent to Monaco customers, to add language which
11 placed responsibility for the failures of the tire upon the customers as the
12 result of inflation practices (Exh. 46).

13 57. Mr. Olsen acted as Goodyear’s 30(b)(6) witness in the
14 *Haeger* case. Although he remained in the employ of Goodyear through
15 March of 2009, Goodyear never utilized Mr. Olsen again as either an expert
16 or a 30(b)(6) witness in any G159 case. Rather, Jim Stroble, the Manager
17 of the Product Analysis Group, of which Mr. Olsen was a member, became
18 the deponent for Goodyear.

19 58. Goodyear declared the testimony provided by its 30(b)(6)
20 witness, Mr. Olsen, confidential, such that it would not be disclosed in
21 other G159 cases (Exh. 47).

22 59. In *Bogaert*, the special discovery master granted plaintiffs’
23 motion to compel, ordering Goodyear to produce relevant test data. It also
24 ordered Goodyear to gather information for its 30(b)(6) witness to testify
25 regarding various categories, including:

26 All testing to determine suitability of the tires to be driven at 65 mph, 75
27 mph, and for suitability determinations regarding use on Class A motor
28 homes.

1 65. Goodyear claimed that it understood the scope of discovery
2 was narrowed by the Court to require Goodyear to produce only test results
3 used to determine the G159 was suitable for use at highway speeds (Doc.
4 984 at 2). At no such time, did the Court narrow Goodyear's responsive
5 discovery obligations.

6 66. Goodyear asserted in briefing that it had produced crown
7 durability, heat durability and DOT endurance testing to Plaintiffs during
8 discovery (Doc. 984 at 6, fn. 3).

9 67. Mr. Musnuff testified that Goodyear no longer utilized Mr.
10 Olsen after the *Haeger* case, because he had retired. As of 2012, Mr. Olsen
11 still works as a consultant and expert witness for Goodyear (Doc. 984-1 at
12 13, ¶ 1).

13 68. Mr. Olsen stated, "I was also asked if there was any separate
14 testing besides the tests Goodyear produced, which included DOT tests,
15 crown durability tests, bead durability tests and high speed durability tests."
16 (Doc. 984-1 at 17, ¶ 18). The only tests produced in *Haeger* were 30 mph
17 DOT tests and the high speed tests.

18 69. Mr. Olsen admits that his statement referenced in the
19 preceding paragraph was premised on a summary of the test results that was
20 "contained in his files." (Doc. 1001-1 at 9, ¶ 4). Goodyear represented that
21 Mr. Olsen's files had been fully disclosed prior to his deposition. No such
22 summary was ever disclosed.

23 70. On April 21, 2008, Goodyear provided a supplemental
24 response to plaintiffs' third request for production of documents in
25 *Schalmo*, which asked Goodyear to produce all test documents associated
26 with determining the appropriate speed rating of the G159. In response,
27

1 Goodyear identified 27 tests, which included all of the tests concealed from
2 the Haegers (Doc. 992-1 at Exh. 1).

3 71. Shortly after the *Haeger* litigation was commenced in 2005,
4 Goodyear provided its disclosure statement, which failed to identify any
5 witnesses or exhibits (Doc. 992-1 at Exh. 2). Plaintiff asked Goodyear to
6 cure the deficiency and Goodyear refused (Doc. 992-1 at Exh. 3).

7 72. Plaintiffs answered all of Goodyear's discovery requests and
8 set forth in great detail Plaintiffs' defect theory (Doc. 963, Exh. 4).

9 73. All of the tests which have been subsequently disclosed by
10 Goodyear constitute "wheel tests." Plaintiffs' First Request for Production
11 of Documents asked Goodyear to identify "wheel tests" regarding the tire at
12 issue.

13 74. Mr. Osborne's report, submitted on or about January 1, 2007,
14 stated, "according to the test sheets the tire was run for fifty-seven (57)
15 hours at 30 mph and that was the limit of endurance testing done by
16 Goodyear." (Doc. 983-1 at 5).

17 75. When the high speed tests were subsequently disclosed,
18 Plaintiffs' expert, Mr. Osborne, made clear his opinions about the
19 significance of heat measurements which Goodyear had previously
20 concealed (Doc. 992-1 at Exh. 6).

21 76. Like occurred in the *Haeger* case, on July 11, 2006, when
22 Goodyear responded to the *Bogaert* plaintiffs' request for production,
23 Goodyear itemized three pages of general objections and objected to every
24 one of the plaintiffs' request, not producing a single document with its
25 response (Doc. 992-1 at 57).

26 77. In January 2011, Plaintiffs communicated their concerns to
27 Goodyear about potentially concealed test data in *Haeger*. Goodyear
28

1 admitted it had not disclosed test data and, after review of the entirety of its
2 files, set forth its justification for failing to disclose test data. Nowhere in
3 that March 2011 correspondence is there any reference to any allegation of
4 an agreement to narrow the scope of Plaintiffs' discovery requests, as was
5 recently alleged to have occurred by Mr. Hancock. (Doc. 938-1 at Exh. 9).
6 Moreover, when Goodyear responded to Plaintiffs' Motion for Sanctions, it
7 was similarly silent as to any assertion that there had been any form of a
8 narrowing agreement reached between Mr. Hancock and Mr. Kurtz (Doc.
9 948). Mr. Hancock asserted in the Response to Motion for Sanctions that,
10 "Goodyear acted properly and in compliance with the rules." (*Id.* at 2).
11 Rather than suggest that there had been some narrowing agreement,
12 Mr. Hancock represented to the Court that the failure to produce test data to
13 the Plaintiffs "did not cause Plaintiffs any demonstrative harm" and that the
14 concealed tests "add nothing material to the mix of information that has
15 long been known by the parties." (*Id.* at 7).

16 78. In *Haeger, Schalmo* and *Woods*, Goodyear refused to produce
17 requested test data, asserting that the parties had "failed to identify a defect
18 theory." (Doc. 992 at Exhs. 10, 11; Doc. 938 at Exh. 4).

19 79. Ms. Okey avowed, "I am aware that the heat rise report was
20 produced in the *Woods* case in August 2007 in response to a court order
21 requesting production of **all** tests." (Doc. 984-1 at 5, ¶ 10). The testing
22 sought by the *Woods* plaintiffs was testing to determine the "suitability of
23 tires to be driven at 65 mph," testing to determine the "suitability of such
24 tires to be driven at 75 mph," and testing to determine the "suitability of
25 such tires for use on Class A motor homes." (Doc. 982, Exh. 11, Req. 7-9).
26 The court's order was that Goodyear produce to plaintiff "every document
27 requested regarding the G159 275/70R22.5 tire equipped on any and all
28

1 Class A motor homes.” (Doc. 992, Exh. 12). The court did not simply
2 order Goodyear to disclose all tests, but rather the specific tests which were
3 at issue.

4 80. Ms. Okey avowed that the heat rise laboratory durability test
5 was produced in *Schalmo* only because a discovery request specifically
6 requested heat rise or heat testing results. Goodyear’s supplemental
7 response to plaintiff’s third request for production in *Schalmo* reveals that
8 Goodyear produced the laboratory durability heat rise test as testing done
9 by Goodyear associated with determining the appropriate speed rating of
10 the G159, as indoor wheel testing and as test results for “endurance, speed,
11 tread separation resistance, heat resistance, heat profile, durability and/or
12 load testing done by Goodyear on the G159.” (Doc. 992, Exh. 1).

13 81. The Fennemore firm represented that it had not been provided
14 the heat rise test and had not been informed of any possible relevance (Doc.
15 999 at 1).

16 82. The Fennemore firm asserted that Mr. Hancock had not seen
17 and “was not aware of” the new testing documents provided by Goodyear
18 on March 13, 2012.

19 83. The Fennemore firm asserted that, “the documents provided
20 on March 13, 2012 were not sent to Mr. Hancock for production and
21 therefore, were not produced.” (Doc. 999 at 2).

22 84. The Fennemore firm noted that Musnuff’s declaration never
23 denies or contradicts Hancock’s testimony (Doc. 999 at 3).

24 85. Fennemore admits Mr. Hancock had an obligation to perform
25 a reasonable inquiry into Goodyear’s document production, asserting that
26 the uncontested evidence shows he satisfied that obligation (Doc. 999 at 4).
27
28

1 86. The Fennemore firm represented that there was no evidence
2 that Mr. Hancock received the heat rise test documents in the *Bogaert* case
3 (Doc. 999 at 10).

4 87. The Fennemore firm represented that there was no evidence
5 that Mr. Hancock was aware of the high speed tests on May 17, 2007. (*Id.*).

6 88. The Fennemore firm represented that it has no knowledge
7 concerning these new tests, the purpose of the tests or what these tests
8 represent (referring to the crown durability, bead durability and DOT
9 endurance tests). (*Id.* at 12).

10 89. Mr. Musnuff claimed that the crown durability, bead
11 durability and DOT endurance tests were not produced because Goodyear
12 advised that the only testing used by Goodyear to determine suitability for
13 highway speeds was the high speed testing (Doc. 1000 at 9).

14 90. Plaintiffs previously identified various conflicting
15 representations contained in the summary judgment pleadings which relate
16 to test data (Doc. 1003 at Exh. B).

17 91. Haeger counsel has wasted countless hours and been
18 prohibited from being able to accept additional work as a result of
19 Goodyear's discovery abuse (Exh. 50).

20 252. On June 22, 2012, Spartan filed its Supplemental Brief setting forth the
21 factual claims which supported Spartan's pursuit for fees for concealing data in multiple
22 G159 cases to which Spartan was a party. *Id.* at HS002089-002101.

23 253. Spartan asserted that the fraud perpetrated upon Spartan occurred in eight
24 different legal matters over the last 12 years. *Id.* at HS002090.

25 254. Spartan asserted that Goodyear sat silent about undisclosed tests while
26 Spartan's experts testified, ignorant of "crucial liability evidence." *Id.* at HS002091.

27 255. Spartan asserted that the nondisclosure deprived Spartan of evidence
28

1 fundamental to its defense, including decisions involving (1) the ability to effectively
2 communicate with Goodyear and other counsel based upon facts which would have
3 exculpated Spartan; (2) the ability to effectively tender Spartan's defense to Goodyear,
4 initiating immediate suits or indemnity, settlement negotiations and agreements, filing of
5 dispositive motions, effective use of offers of judgment and pretrial strategy; (3) an
6 evidentiary analysis, and use of, Spartan's own tire expert on liability issues, and form
7 cross-examination of Goodyear liability witnesses at deposition or trial, etc. *Id.* at
8 HS002091-002092.

9 256. Spartan asserted it was Goodyear's customer and relied upon Goodyear's
10 representations about the safety and applicability of the G159 at issue in motorhome
11 applications. At no time was Spartan informed of any problem with the tire's use on
12 motorhomes. Instead, Spartan repeatedly witnessed Goodyear attribute G159 failures in
13 each case to other causes, including driver error, tire impact damage, or weight
14 imbalances, never knowing that Goodyear's own testing arguably documented the tire's
15 inability to withstand heat generated at highway speeds. As a result of this deceit, Spartan
16 was unnecessarily sued and suffered immeasurable injury to its corporate reputation and
17 goodwill. *Id.* at HS002092.

18 257. Goodyear repetitively relied upon the Heavy Duty Tire Truck Engineering
19 publication authored by Goodyear engineers Ford and Thomas which set forth the 194°
20 temperature limitation of the tire, quoting from it while not disclosing the entire
21 publication. *Id.* at HS002093.

22 258. Goodyear simply failed to be honest with its customers and pushed blame
23 either on to them or the drivers of the motorhomes. *Id.* at HS002093.

24 259. Spartan asserted,

25
26 It now appears the G159 model at issue was designed as a metro tire. From
27 what Spartan can now discern, all 400 bodily injury and property damage
28 claims happened only when the tire was used on motorhomes. It certainly
does not look to be a Fleetwood problem, Gulf Stream problem, or a Monaco

1 problem. It appears to be a universal problem with the G159 in this
2 application. ... Goodyear was free to argue as it saw fit. It was not,
3 however, free to conceal evidence to which Spartan was entitled to defend
itself as Goodyear did. *Id.* at HS002094.

4 260. Spartan sought a return of all of its fees, costs, and settlement payments in
5 other cases where the truth was not disclosed. *Id.* at HS002095.

6 261. On June 26, 2013, the District Court entered its order regarding Spartan's
7 pending claims. *Id.* at HS002818-003827. Goodyear objected to the Court addressing
8 Spartan's request, as it had appealed the Court's Order regarding *Haeger*. The Court ruled
9 it would wait to address Spartan's argument until the mandate issued from the appeal.
10 Since there remains a single legal issue to be addressed by the United States Supreme
11 Court, no mandate has issued. Thus, Spartan's claims for fraud remains before the District
12 Court to be addressed in future proceedings. *Id.* at HS003823.

13 262. On July 9, 2012, Roetzel, Fennemore, and Goodyear filed their closing
14 briefs, including a response to the Plaintiffs' Statement of Facts in Support of
15 Supplemental Brief. *Id.* at HS002106-HS002300-487 (805 pages).

16 263. Roetzel and Musnuff's closing brief attempted to persuade the Court that the
17 temperature results contained in the concealed test data were irrelevant, referencing
18 temperatures in an ASTM Study published in 2010 (which involved different tire
19 manufacturers, with different size tires, using different compounds than those employed in
20 the G159 which was manufactured in 1996). *Id.* at HS002113-002115.

21 264. Roetzel and Musnuff again set forth their analysis as to the evolution of
22 discovery responses, alleged agreements to narrow production, the search for test data, and
23 what testing was utilized to approve the tire for highway use. *Id.* at HS002106-002111.

24 265. Roetzel and Musnuff attempted to defend the testimony of Goodyear's
25 30(b)(6) witness as not deceptive. *Id.* at HS002119-002121.

26 266. Roetzel and Musnuff also attempted to explain the June 5, 2008 email which
27 set forth communications between Goodyear, Roetzel, and Hancock identifying the
28

1 utilization of all tests to approve the tire for suitability determinations for over-the-road
2 use. *Id.* at HS002121-002122.

3 267. Musnuff filed his Second Supplemental Declaration in support of the final
4 brief. *Id.* at HS002131-001-123. The Declaration verified that Musnuff did discuss
5 production of the heat rise test prior to 2010 with Ms. Okey in reference to
6 supplementation of Goodyear's responses to the Haegers' Third Request for Production
7 following the production of test data in *Woods*. *Id.*

8 268. Musnuff's Declaration also addressed the June 5, 2008 email chain
9 referencing its language that "Our whole testing package was to ensure that the tire was
10 suitable for various over-the-road applications, including RV." His Declaration provided:

11 I understood that "suitability for over-the-road" was much broader than
12 suitability for a speed rating of 65 or 75 mph, and that the "package" I
13 mentioned would include a wider variety of tests than simply the W84 high
14 speed test. This continues to be my understanding.

14 *Id.* at HS002131-005.

15 269. Musnuff's Declaration was in direct contrast to Hancock's Declaration,
16 wherein he swore that Musnuff told him that his original email was incorrect. *Id.*

17 270. Musnuff's Declaration set forth multiple references to the record, attaching
18 exhibits, to support the positions that Musnuff and Roetzel had advanced in their briefing.
19 *Id.*

20 271. On July 9, 2012, Fennemore Craig and Hancock filed their responsive brief.
21 *Id.* at HS002132-002169.

22 272. The presentation set forth arguments and documents to advance the claim
23 that Hancock "did not knowingly make false statements;" fulfilled his duties as local
24 counsel; that he was never consulted on whether tests disclosed in the June email were
25 responsive to discovery requests and alleged that Musnuff had recanted his expressions in
26 the June 5, 2008 email. *Id.* at HS002132-002133.

27 273. Fennemore Craig and Hancock filed a separate response to each of the
28 Statements of Fact presented by the Haegers in their opening brief. *Id.* at HS002170-

1 002224.

2 274. Goodyear too filed its closing brief on July 9, 2012. *Id.* at HS002240-
3 002261.

4 275. It renewed its arguments regarding reliance upon outside counsel, that it was
5 not a participant in production decisions, explained the heat rise test and addressed the
6 varied arguments presented by Spartan. *Id.*

7 276. Goodyear separately filed a Controverting Statement of Facts in response to
8 Plaintiffs Statement of Facts. *Id.* at HS002262-002300-487 (525 pages).

9 277. On July 9, 2012, the Haegers filed their combined Response Brief addressing
10 each of the Defendants' June submittals. The arguments (and supporting exhibits)
11 addressed the following (among other issues):

- 12 • That the record clearly demonstrated that Plaintiffs never agreed to relieve
13 Goodyear of its obligation to respond to the first set of discovery requests.
- 14 • That the record clearly demonstrated that Goodyear and its counsel
15 understood that the concealed tests were part of the determination of the
16 tire's suitability for highway use.
- 17 • It set forth the varied misrepresentations during the evidentiary hearing by
18 Mr. Hancock.
- 19 • It identified the false representations contained in Hancock's new
20 Declarations.
- 21 • It set forth the national practice of concealing test data as it relates to the
22 credibility to be given to the current claims of Goodyear's intent and alleged
23 desire to conform to discovery rules.
- 24 • It reviewed the deceptions regarding the significance of temperature data and
25 how Goodyear deceived Fleetwood and Monaco.
- 26 • It documented nationally fraudulent conduct.
- 27 • It analyzed Goodyear's effort to avoid sanctions by blaming outside counsel
28

1 and the lack of support in the clear record.

2 *Id.* at HS002351-002439.

3 278. Spartan filed its closing brief on the same date. *Id.* at HS002440-002448.
4 Spartan joined in and adopted all arguments made by the Haegers throughout the sanction
5 proceedings. *Id.* at HS002440.

6 279. Spartan set forth additional information regarding the eight cases it defended
7 between 2000 and 2012, each of which was impacted by the concealed test data and other
8 deceptions by Goodyear. *Id.* at HS002441.

9 280. Spartan asserted, “The parties’ concealment of the G159 test data kept
10 claimants ignorant of the real reason for the tire’s multitude of failures. The hidden
11 evidence encouraged claimants to assert alternative liability theories against numerous co-
12 defendants, including Spartan.” *Id.* at HS002441.

13 281. Spartan spent approximately \$1 million in legal defenses to defend the two
14 longest and most costly cases, *Haeger* and *Schalmo*. *Id.* at HS002443.

15 282. On November 8, 2012, the Court entered its order regarding its factual and
16 legal determinations arising from its review of the preceding two years of briefing,
17 depositions, document production and the evidentiary hearing. *Id.* at HS002465-002532.
18 The Order was subsequently published.

19 283. The District Court had the benefit of direct participation in the proceedings
20 between 2005 and 2012. It had addressed more than 160 motions, issued more than 250
21 orders, and was participant in more than 16 hours of discovery dispute, two days of pretrial
22 hearings, and asked its own extensive questions throughout the evidentiary hearing.

23 284. The Court addressed Spartan’s claim for sanctions separately. The Court
24 held it would be inappropriate to sanction Hancock, Musnuff, and Goodyear for actions
25 taken in other cases. Therefore the only issue the Court would address was whether
26 Spartan could recover expenses incurred in the present action. The Court’s Order found:

27 Absent some evidence of a causal connection between misconduct and
28 Spartan’s defense, Spartan is not entitled to an award of fees in this case.

1 Spartan likely would have a viable case of fraud against Goodyear based on
2 Goodyear's misrepresentations, but that claim should be litigated in as a
3 separate action where Spartan can introduce evidence regarding all of the
G159 litigation that it was involved in over the years.

4 *Id.* at HS002530.

5 285. Spartan requested leave to submit additional evidence of the causal
6 connection associated with its fee claim. The Court granted Spartan's Motion. *Id.* at
7 HS002533-002540.

8 286. On December 13, 2012, the Haegers filed their Application for Attorneys'
9 Fees and Costs with supporting declarations. *Id.* at HS002553-002832.

10 287. On December 13, 2012, Spartan filed a supplemental pleading regarding the
11 causal connection between the misconduct at issue and Spartan's defense of the case. *Id.*
12 at HS002833-002846.

13 288. Spartan's filing was supported by the separate declarations of Spartan's
14 Director of Consumer Affairs and Spartan's counsel, Lisa Lewellan. *Id.*

15 289. The declarations set forth Goodyear's deception, how it impacted Spartan's
16 defense and how the matter would have been handled in a dissimilar fashion had the truth
17 been disclosed. *Id.*

18 290. Ms. Lewellan's Declaration reflected that she had innumerable conversations
19 with Goodyear's local counsel regarding the defense of the case and at no time was the
20 existence of other test data disclosed. Rather, Hancock assured Ms. Lewellan that there
21 was no evidence (including G159 tire test data) indicating any problem when using this
22 particular tire in a motorhome application. Ms. Lewellan relied upon Hancock's
23 representations regarding the tire test data that Plaintiffs sought, and representations she
24 witnessed during the various discovery related hearings before Judge Silver. *Id.* at
25 HS002841.

26 291. Ms. Lewellan avowed that if she had been informed of the concealed test
27 data and what she now understands to be the temperature limitations of the tire, she would
28 have recommended her client sue Goodyear immediately for indemnity pursuant to A.R.S.

1 § 12-624. She would have separately recommended that Spartan retain its own tire failure
2 expert to provide expert opinion evidence regarding the cause of the tire's failures. Ms.
3 Lewallen maintains that Goodyear's concealment of the test data during discovery and the
4 testimony of Goodyear's two experts deprived her and her client of critical information
5 that would have dramatically changed their defense. She advised the Court that Spartan
6 expended over \$500,000.00 in legal fees unnecessarily in the defense of *Haeger I*. Finally,
7 Ms. Lewellan states, "If I had any indication that the tire test data that I now know was
8 concealed existed, I would have immediately advised the other parties' counsel and the
9 Court of a fraud being perpetrated by Goodyear and its counsel." *Id.* at HS002842-
10 002843.

11 292. On June 23, 2012, the Court entered its order in part regarding the Haegers'
12 Motion for Attorneys' Fees and Costs. *Id.* at HS003818-003827. The Court held:

13 In short sanctions were necessary because "Goodyear and its attorneys
14 adopted a strategy ... to resist all legitimate discovery, withhold *obviously*
15 responsive documents, allow plaintiffs and their experts to operate under
16 erroneous facts, disclose small subsets of documents as late as possible" and otherwise attempt to frustrate the administration of justice. (Original emphasis.)

17 *Id.* at HS003818-003827.

18 293. The Court sought input from the parties regarding appointment of a special
19 master. The parties requested the Court address the fee petition. *Id.*

20 294. On August 26, 2012, the Court entered its Order analyzing the various
21 objections to the fee petition, set forth calculations to the fees incurred as a result of the
22 misconduct by Goodyear, and (after making documented specific deductions) directed the
23 Clerk to enter judgment in favor of the Haegers and against Hancock in the amount of
24 \$548,240.20 and against Goodyear and Musnuff in the amount of \$2,192,960.93.
25 Judgment was entered accordingly. *Id.* at HS003846-003870.

26 295. The entire transcript of proceedings and the depositions of Ms. Okey and
27 Taylor with Exhibits are part of the District Court's records. *Id.* at HS003905-004583.

28 296. The District Court's Order was subject to two separate rounds of appellate

1 briefing. Goodyear first timely appealed that portion of the Order which required
2 publication of the District Court's Order in every G159 case. *Id.* at HS004584-004765.

3 297. On December 16, 2013, Goodyear, Musnuff and Hancock filed three
4 separate Opening Briefs in the Ninth Circuit. *Id.* at HS004766-004988.

5 298. On February 24, 2014, the Haegers filed their Combined Answering Brief.
6 *Id.* at HS004989-005126.

7 299. On April 16, 2014, Goodyear, Musnuff and Hancock filed their Reply Briefs.
8 *Id.* at HS005127-005263.

9 300. The Briefs were supported by excerpts of record and supplemental excerpts
10 of record. ER1-2668; SER1-1177 (approximately 4000 pages).

11 301. The Haegers' Combined Answering Brief addressed the multitude of factual
12 and legal arguments advanced by the Defendants before the Ninth Circuit. Each were
13 either questions of law (reviewed *de novo*) or questions of fact which the District Court
14 found based upon clear and convincing evidence. *Id.*

15 302. The Haegers' Combined Answering Brief was 122 pages. *Id.* at HS004989-
16 005122.

17 303. Relying upon matters of record, the Haegers' Statement of Facts was set
18 forth in approximately 30 pages of the brief. *Id.* at HS005009-005039. The factual
19 findings reviewed on appeal included:

- 20 • There was no agreement to withdraw and narrow the First Request for
21 Production requesting test data.
- 22 • The case was always about heat-induced failures of the G159 (the defect
23 theory.)
- 24 • The tire was designed as a pick-up and delivery truck tire to operate in a
25 stop-and-go application where it regularly cooled (avoiding prolonged heat
26 exposure).
- 27 • Musnuff did not have authority to make discovery decisions as that was the
28

1 sole province of Goodyear by and through Ms. Okey.

- 2 • Goodyear and Musnuff jointly participated in decisions to avoid disclosing
- 3 test data.
- 4 • Goodyear required Musnuff to acquire protective orders which prohibited
- 5 sharing with other victims.
- 6 • The protective orders allowed Goodyear broad discretion to declare
- 7 documents and testimony confidential.
- 8 • Test data was to be disclosed only if compelled to do so.
- 9 • The tire was developed to withstand a maximum temperature of 194°.
- 10 • Goodyear omitted the temperature limitations in communications with
- 11 Fleetwood and Monaco.
- 12 • Goodyear's expert established the expected operating temperature for the
- 13 G159 at freeway speed was 140 to 150°.
- 14 • Goodyear's experts admitted the G159 would start to degrade and be
- 15 threatened with tread separation if exposed to prolonged temperatures above
- 16 200°.
- 17 • Goodyear's expert depositions in the *Haeger* case were declared confidential
- 18 and never shared in other G159 cases.
- 19 • Ms. Okey would review, revise and approve discovery responses in the G159
- 20 cases across the nation.
- 21 • Goodyear consistently objected to the production of test data in each of the
- 22 G159 cases.
- 23 • Goodyear always objected to requests for production of test data.
- 24 • The tests were never simply disclosed when requested.
- 25 • The Third Request for Production in *Haeger* was broader than the First
- 26 Request as it sought other than just test records.
- 27 • Musnuff and Hancock clearly understood the Haegers' heat theory in 2006
- 28

1 and appreciated the need to supplement the Response to the First Request for
2 Production by identifying tests at various higher speeds.

- 3 • Musnuff and Hancock knew that Goodyear said “no it won’t” produce tests
4 in response to the Haegers’ interrogatory which requested such information
5 in September 2006.
- 6 • Hancock and Musnuff knew that speed or endurance testing was directly at
7 issue.
- 8 • Musnuff and Hancock privately agreed and recommended to Goodyear to
9 supplement discovery responses with all tests above 30 mph, but no such
10 supplementation occurred.
- 11 • Goodyear had located all tests by January 24, 2007, and concealed the data.
- 12 • Based upon Goodyear’s explanation as to equivalencies, the temperature
13 revealed in Goodyear’s high speed tests only reflected temperatures
14 equivalent to 89 mph on the highway as far as heat history and were of
15 limited value to the Haegers.
- 16 • The summary of the previously concealed tests, temperatures and
17 significance was set forth.
- 18 • Lacking critical test data (which completely verified the Haegers’ heat
19 theory), the case was settled in April 2010.
- 20 • The Haegers discovered an article regarding the introduction of heat test
21 evidence in *Schalmo v. Goodyear*.
- 22 • Goodyear thereafter admitted that it had concealed requested tests from the
23 Haegers.
- 24 • When the District Court ordered Goodyear to produce the tests at issue,
25 Goodyear disclosed only the heat rise durability test which revealed the tire
26 generated temperatures up to 229° at highway speeds.
- 27 • Goodyear concealed the remaining tests.

- 1 • Goodyear's 30(b)(6) witness mistakenly asserted in a declaration during the
2 sanction proceedings that other tests had been disclosed in *Haeger I*, which
3 never occurred.
- 4 • On March 13, 2012, Goodyear finally disclosed the remaining concealed test
5 data.
- 6 • The newly disclosed tests revealed temperatures recorded at 30, 35 and 40
7 mph with highway equivalencies of 53 mph, 62 mph and 71 mph.
- 8 • Tests revealed that the G159 operated at highway speeds was exposed to
9 temperatures which ranged between 229° and 260°.
- 10 • F.R.C.P. 26(e) imposed a continuing duty to make amended disclosures.
- 11 • Goodyear concealed damning test evidence in the Arizona state court cases
12 of *Bogaert* and *Haley*.
- 13 • Hancock filed a false declaration that he was not told about any heat rise
14 testing; was not aware of the tests.
- 15 • Hancock was aware of all of the concealed tests by name.
- 16 • Hancock filed another false declaration that Musnuff told him the June 5,
17 2008 email was completely erroneous.
- 18 • Musnuff admitted that the June 5, 2008 email meant what it said.
- 19 • Goodyear and Musnuff tried hard to avoid disclosure of test data in the
20 *Woods* case.
- 21 • Goodyear identified the DOT endurance test, heat rise durability test, bead
22 durability test, crown durability test, and high speed durability test as all
23 responsive to the Woods' Request for Production No. 7.
- 24 • All tests were acknowledged by Goodyear to be responsive to requests for
25 testing used to determine suitability of the G159 for use on Class A
26 motorhomes, testing used to show the maximum internal operating
27 temperatures at the belt edge of the G159 and test wheel durability testing,
28

1 endurance tire testing and high speed testing when compelled to respond to
2 the Request for Production by the *Woods* court.

- 3 • Goodyear identified all testing when compelled to do so in *Schalmo* as
4 responsive to requests for tests to determine the appropriate speed rating,
5 load range and/or vehicle application; lab wheel testing ... including but not
6 limited to all indoor wheel testing and in response to a request for results of
7 any other endurance, speed, tread separation, resistance, heat resistance, heat
8 profile, durability, and/or load testing.
- 9 • The tests were never produced in the *Bogaert* case in spite of the Special
10 Discovery Master's Order.
- 11 • All of the tests were the subject of a 30(b)(6) deposition taken of Goodyear
12 in *Haeger* in 2007, although not disclosed.
- 13 • Goodyear's 30(b)(6) witness failed to identify the tests even though he stated
14 the G159 was tested based upon load and speed. The 30(b)(6) notice
15 required production of a witness to describe load testing of the G159.
- 16 • Olsen was aware prior to the 30(b)(6) deposition of the design release testing
17 for the G159 included footprint, extended endurance, crown durability, bead
18 durability and that the high speed durability test was merely optional.
- 19 • The 30(b)(6) witness had a summary of the tests he was concealing in his file
20 at his deposition.
- 21 • Goodyear's attorneys failed to correct deceptions during the 30(b)(6)
22 deposition and never supplemented their disclosures regarding concealed test
23 data.
- 24 • Goodyear admits that the concealed tests should have been produced in
25 response to the First Request for Production.
- 26 • Goodyear's attorneys understood the concealed tests were highly relevant.
- 27 • Goodyear's engineers never suggested that the high speed test was the only
28

1 test used to determine the G159's suitability for highway speeds.

- 2 • The 2010 ASTM Study by Goodyear is inconsequential, which involved new
- 3 compounds and different manufacturers' tires and could not possibly
- 4 overcome Goodyear's admissions in its publications about the temperature
- 5 limitations of the G159 and its own expert engineer's testimony about those
- 6 limitations.
- 7 • Hancock's representations during the April 2007 and May 2007 hearings
- 8 were false.
- 9 • Goodyear and its attorneys were not sanctioned for misconduct in other
- 10 cases.
- 11 • Goodyear's production decisions were regularly made by what served its
- 12 best interest.
- 13 • The District Court did not levy sanctions solely because of improper
- 14 objections to the First Request for Production but rather as a result of a long
- 15 list of egregious misconduct. (Identifying 19 separate misrepresentations
- 16 identified in the underlying proceedings.)

17 *Id.* at HS005058-005059.

18 304. The Ninth Circuit was presented with the following legal arguments:

- 19 • Rule 37 did not provide the exclusive means for imposing sanctions for
- 20 discovery misconduct.
- 21 • FRCP Rule 26(g) does not require filing of a motion to compel if the
- 22 certification requirement of FRCP 26(g) is interposed for any improper
- 23 purpose.
- 24 • Goodyear is not insulated from sanctions by asserting "timely objections."
- 25 • Objections to requests for production must specify the part to which the
- 26 objection applies.
- 27 • Objections cannot be imposed for improper purposes.

- 1 • Goodyear's objections to the First Request were improper as they either had
- 2 to object to the whole request or specify the part to which the objection was
- 3 filed. A partial or a response without any indication a response is partial is
- 4 improper.
- 5 • The absence of a written order does not preclude sanctions for abuse of
- 6 process.
- 7 • The release was not applicable. *Id.* at HS005066-005079.
- 8 • Goodyear is bound by the acts of its attorneys.

9 305. The Ninth Circuit Court of Appeals affirmed the District Court's factual
10 findings and its legal determinations.

11 306. On May 16, 2016, Goodyear filed a Petition for Writ of Certiorari.
12 HS005264-005500. The Petition presented two separate questions for the Supreme
13 Court's consideration: (1) Is a Federal Court required to tailor compensatory civil
14 sanctions imposed under inherent to harm directly caused by sanctionable misconduct
15 when the court does not afford sanctioned parties protections of criminal due process? (2)
16 May a court award attorneys fees under its inherent powers as sanctions against a client for
17 actions by its attorney that are not fairly attributable to the client's own subjective bad
18 faith? *Id.* at HS005265.

19 307. Goodyear's Petition squarely presented to the Supreme Court the following:

20 Disregarding Supreme Court authority requiring bad faith by the sanctioned
21 party, the Ninth Circuit deemed the client responsible for the alleged bad
22 faith of its counsel. Not only does this rule conflict with the Court's
23 requirements ..., but it will also erode the cornerstone of the attorney-client
relationship by precluding clients from effectively relying on advice of their
attorneys....

24 *Id.* at HS005274.

25 308. Goodyear set up its own version of the facts in its nine-page Statement of the
26 Case where it argues Goodyear's alleged reliance upon outside counsel, its version of what
27 tests were used for what purpose and the improper factual determinations regarding
28 Goodyear's role, acts and decision-making throughout the underlying case and the sanction

1 proceedings. *Id.* at HS005275-005281.

2 309. Goodyear devoted the majority of its brief to persuading the Court that it
3 should review the Ninth Circuit Opinion which found Goodyear responsible for the acts of
4 its lawyers. *Id.* at HS005289-005299.

5 310. The Haegers filed their Brief in Opposition. *Id.* at HS005501-005523.

6 311. The Haegers' introduction provided:

7 The underlying proceedings and resulting decisions by the District Court
8 and the Ninth Circuit addressed carefully orchestrated fraud involving years
9 of willful deceptions, including bad faith discovery conduct, repeated
10 misrepresentations to the Court and the Haegers, and false deposition
11 testimony during discovery, none of which was discovered until after the
12 case had been settled. These deceptions concealed, for the entire five years
13 of litigation, critically important test data and which the Haegers had
14 requested regarding the Goodyear G159 tires and sent the Haegers on a
15 completely misdirected frolic. The Ninth Circuit agreed that
16 Goodyear's misconduct "caused significant harm and forcing the Haegers
17 to engage in sham litigation and their likely foregoing millions of dollars in
18 the settlement they adopted under false pretenses."

19 During more than two years of post settlement sanctions related litigation in
20 the District Court, Goodyear and its lawyers filed 15 briefs, participated in
21 discovery and presented testimony at a 6 hour evidentiary hearing. After
22 that thorough process, the District Court painstakingly detailed in a 66-page
23 order a long list of sanctionable misconduct which "continued throughout
24 the entire litigation, including post dismissal" ... The heart of the District
25 Court's finding was a recognition that Goodyear's in-house attorney "was
26 always the final decision-maker regarding Goodyear's discovery responses"
27 and she knew "that Goodyear's responses in the present case were grossly
28 inaccurate"

The Ninth Circuit unanimously upheld the District Court's findings that
Goodyear and its attorneys engaged ... sanctionable misconduct.... The
Petitioner also claims the Ninth Circuit's decision conflicts with this
Court's decisions in the Eleventh Circuit by allowing sanctions to be
imposed against Goodyear based solely on the bad faith misconduct of
Goodyear's attorneys. Again, there is no conflict. Sanctions were not
imposed against Goodyear based solely on the bad faith misconduct of its
attorneys. Instead, the District Court found numerous instances in which
Goodyear itself directly engaged in bad faith misconduct, and Goodyear did
not challenge most of these findings as clearly erroneous in the Ninth
Circuit and has not asked this Court to review the Ninth Circuit's
affirmance of those findings here. Accordingly, the Court's review is
unwarranted and the Petition should be denied.

26 *Id.* at HS005507-005508.

27 312. The responsive memorandum also chronicled pages of Goodyear's own
28

1 independent misconduct. *Id.* at HS005512-005515. They included, in the most simple
2 terms:

- 3 • Ms. Okey was the final decision-maker.
- 4 • The lawyers recommended Goodyear supplement Goodyear’s response to
5 the First Request for Production, which it did not do.
- 6 • Ms. Okey knew Goodyear’s discovery responses were grossly inaccurate and
7 that Goodyear was not cooperating in discovery.
- 8 • Goodyear’s repeated claim that the Haegers did not set forth the defect
9 theory was part of a general strategy to obstruct and delay discovery.
- 10 • Despite knowing the defect theory, Goodyear decided to make no effort to
11 provide responsive documents.
- 12 • Goodyear took positions in other G159 cases which are directly contrary to
13 the positions they took in *Haeger*.
- 14 • Ms. Okey filed a sworn declaration which included false and misleading
15 information.
- 16 • Goodyear’s 30(b)(6) witness testified falsely. The falsity emerged only as a
17 result of Goodyear’s inability to keep its falsehoods straight.
- 18 • Goodyear knew all tests were responsive to the Haegers’ Third Request for
19 Production. Goodyear attempted to conceal documents.
- 20 • Goodyear was acting with its counsel together making material false
21 misleading statements and withholding documents.
- 22 • From the very beginning Goodyear adopted a plan providing only those
23 documents they wished to provide and making false statements to the Court
24 in an attempt to hide their behavior.
- 25 • When the Court ordered Goodyear to produce “the test results at issue”
26 Goodyear concealed the majority of them.

27 *Id.*

1 313. Goodyear filed its Reply Brief. *Id.* at HS005523-005535.

2 314. The Supreme Court of the United States granted the Petition for the Writ
3 Certiorari limited to only Question 1. It declined to review any of the factual
4 determinations or legal determinations at issue in *Haeger II* made by the District Court and
5 affirmed by the Ninth Circuit, including the multiple determinations regarding Goodyear's
6 litigation misconduct. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 30 (2016).

7 **OTHER RELEVANT WITNESS TESTIMONY**

8 **Lisa Lewellan**

9 315. Lisa Lewellan was counsel for Spartan throughout the underlying
10 proceedings. She continues to represent Spartan in ongoing litigation arising out of
11 Goodyear's misrepresentations before Judge Silver in the United States District Court. *See*
12 *generally* Exhibit 50.

13 316. Spartan was involved in multiple G159 cases as a co-defendant commencing
14 in 2000 and continuing to date. *Id.* at pp. 96-97.

15 317. Like the District Court and Haegers' counsel, Lewellan was repeatedly
16 assured by Goodyear's attorneys that there was no other testing than that which was
17 disclosed. *Id.* at 71-72.

18 318. Lewellan's client Spartan was unaware of any problems with the G159
19 operating at highway speeds. *Id.* at 44.

20 319. The District Court's observations that the record bore out that all tests were
21 disclosed was absolutely consistent with Lewellan's understanding. *Id.* at 94.

22 320. Lewellan wholeheartedly agrees that the District Court was being deceived.
23 *Id.* at 94-95.

24 321. None of Spartan's employees were aware of the concealed tests or how they
25 impacted the suitability of the G159 to operate at prolonged highway speeds. *Id.* at 100.

26 322. The District Court ordered Spartan to produce its litigation files involving its
27 chassis used on multiple manufacturers' motorhomes as a result of the District Court's
28

1 determination regarding substantial similarity. *Id.* at 102.

2 323. No Spartan employee ever expressed to Lewellan that they were aware of the
3 more than 600 property damage claims or that Goodyear had told Spartan employees of the
4 15 to 20 different manufacturers' motorhomes which were experiencing G159 failures. *Id.*
5 at 103.

6 324. When Lewellan deposed Goodyear's 30(b)(6) witness in September 2007,
7 Olsen testified that there was no problem with the G159, which was evident from his
8 review of the failure data. *Id.* at 104-105.

9 325. The representations made to Lewellan by Goodyear's 30(b)(6) witness were
10 consistent with what Goodyear lawyers had told her throughout the proceedings. *Id.* at
11 105.

12 326. Spartan was unaware that there had been 600 to 700 property damage and/or
13 injury claims arising out of alleged G159 failures. If the information had been brought to
14 her attention during the course of the *Haeger* case, Lewellan would have disclosed it. *Id.*
15 at 112.

16 327. During the course of the various discovery hearings, Goodyear repeatedly
17 told Judge Silver that all of the failures involving the G159 had to do with Fleetwood and
18 Monaco events which were unrelated to issues associated with the G159. Goodyear's
19 attorney described it as a weight bias issue that was unrelated. Goodyear's attorneys never
20 identified to Lewellan that there had been at least 16 different motorhome manufacturers
21 that had alleged G159 failures in their motorhomes. *Id.* at 112-113.

22 328. Goodyear's attorneys never disclosed to Lewellan that there were at least 34
23 different models of motorhomes that were involved in alleged G159 failures. Lewellan
24 had no idea of the number of different makers or the extent of all claims. *Id.* at 113.

25 329. Goodyear never disclosed to Lewellan that there had been 41 lawsuits
26 associated with alleged G159 failures. *Id.* at 114.

27 330. Goodyear never disclosed to Lewellan or her client that there had been in
28

1 excess of 100 death or injury claims arising out alleged G159 failures. *Id.* at 114.

2 331. Goodyear never disclosed that after the Fleetwood recall the G159 continued
3 to fail on other Fleetwood motorhomes. *Id.* at 115.

4 332. Not only did Goodyear attorneys conceal that there were ongoing failures
5 with Fleetwood motorhomes after the recall involving certain Fleetwood models,
6 Goodyear led Lewellan to believe that the Fleetwood problem was a weight and balance
7 issue and after the tires were changed, the problems went away. *Id.* at 117.

8 333. Goodyear never disclosed that they had ongoing failures on the Monaco
9 Scepter, the Monaco Beaver Thunder, the Monaco Panther, the Monaco Beaver Santiam,
10 or the Monaco Camelot. *Id.* at 117.

11 334. Goodyear never disclosed to Lewellan that they had failures on multiple
12 models of Newmar motorhomes, including the Mountaineer, the Londonaire, and the
13 Countryaire.

14 335. Goodyear and its attorneys never disclosed they had multiple failures of the
15 G159 on the Holiday Rambler motorhomes, including the Imperial, the Endeavor, and the
16 Scepter. *Id.* at 118.

17 336. Lewellan had just learned all of that information. If Lewellan had known of
18 the failures involving the G159 on motorhomes, the evidence would have been
19 discoverable as to the defective nature of the tire, in her opinion. *Id.* at 118
20 (“Absolutely.”).

21 337. It is Lewellan’s opinion that Judge Silver would have been very surprised
22 and upset to discover there had been over 600 property damage claims and nearly 100
23 people killed or injured from alleged G159 failures in light of what she was previously
24 told. *Id.* at 118-119.

25 338. When Judge Silver was asking for proof that we now know Goodyear knew
26 about, Goodyear never spoke up and advised the Court that there actually was substantial
27 other failure data involving 15 to 16 manufacturers of motorhomes that go far beyond the
28

1 Fleetwood and Monaco. *Id.* at 119.

2 339. The way Goodyear's attorneys presented the failures involving the
3 Fleetwood and Monaco motorhomes, they were designed to convey an impression that
4 they were completely unrelated and not substantially similar which is also why Spartan
5 believed that information. *Id.* at 119-120.

6 340. Lewellan questioned Goodyear's 30(b)(6) witness Olsen about whether there
7 was any data indicating a performance problem with the tire. The witness stated he was
8 looking for trends in failure data to make such a determination. The 616 property damage
9 claims, 3,484 warranty returns, and 98 death and injury claims are indicative of an
10 escalating trend. *Id.* at 120-121.

11 341. When Lewellan was questioning Goodyear's 30(b)(6) witness, this was the
12 kind of failure data she was inquiring about and which she wanted to know about, as did
13 Spartan. *Id.* at 121-122.

14 342. The first G159 case involving Spartan commenced in 2000. As of that date
15 Spartan was unaware that there were 436 adjustments that year alone, 78 property damage
16 claims, and six death or injury claims that year. *Id.* at 122.

17 343. If Spartan was aware of this information it would have handled matters
18 totally differently. *Id.* at 123.

19 344. In particular, Spartan takes great pride in its product and its reputation and in
20 a very competitive market, especially during the recession, which are the years during
21 which this occurred, Spartan would have authorized her to do things differently. They
22 would have tendered their defense. If Goodyear refused and Spartan had this information,
23 they would have sued Goodyear for indemnity. They would have retained their own tire
24 expert. They would not have relied on Goodyear to get experts that would opine about the
25 safety of the tire. She would have contacted Haegers' counsel about dismissing Spartan
26 from the case because she presumes that given the same information, counsel would
27 dismiss Spartan from the case because it is obviously a reflection of performance issues
28

1 with the tire. *Id.* at 123.

2 345. Spartan had an expectation of honesty and integrity from Goodyear in its
3 communications. *Id.* at 124.

4 346. Goodyear had an obligation to disclose this data to Lewellan so she could
5 defend Spartan's interests when Spartan was being sued by the Haegers and the same duty
6 to the Haegers regarding disclosure.

7 347. The failure to disclose this information to Lewellan and her client deprived
8 them of information truly essential to Spartan's defense. *Id.* at 124.

9 348. During the course of the litigation neither Musnuff nor Hancock ever
10 suggested to Lewellan that the Haegers had narrowed or withdrawn or otherwise modified
11 their First Request for Production. The first time Lewellan heard that claim was when it
12 was first voiced during the sanction proceedings. *Id.* at 126-127.

13 349. The District Court had made clear its expectations that the attorneys were to
14 produce requested relevant information and Lewellan had the same expectation of all of
15 the parties and counsel during *Haeger I.* *Id.* at 129-130.

16 350. The now-disclosed escalating failure data and the number of people hurt or
17 killed is what brings real damage value to a case and would have had that effect in *Haeger*
18 *I.* *Id.* at 132.

19 351. Lewellan believes that the failure to disclose the truth regarding test and
20 failure data deprived the Haegers of a fair trial. *Id.* at 133.

21 352. The District Court did not order production by Goodyear of failure data
22 which had been previously ordered in *Woods v. Goodyear* because the Court did not
23 appreciate substantial similarity of the failures because the Court did not know all of the
24 information available as it was not disclosed by Goodyear. The District Court's ruling was
25 based on the limited information available to her. *Id.* at 136-137.

26 353. When Judge Silver was talking about the absence of substantial similarity in
27 *Woods*, during the October 2007 discovery hearing, she had been deprived of appropriate
28

1 disclosures to really make a well-informed analysis, just as Lewellan and the Haegers'
2 counsel were. *Id.* at 142-143.

3
4 **Christopher Roberts**

5 354. Christopher Roberts represented the Schalmos in the *Schalmo v. Goodyear*,
6 which was tried in Florida in 2010. **Exhibit 56**, 11/14/2016 Deposition of Christopher
7 Roberts, at *see generally*.

8 355. The *Schalmo* case was regulated by a protective order with a non-sharing
9 providing. Mr. Roberts never violated the terms of that protective order. *Id.* at 96.

10 356. In order to get the test data ultimately disclosed in the *Schalmo* case, he was
11 required to file a motion to compel. *Id.* at 106.

12 357. When he would request depositions from other G159 cases, Goodyear would
13 only disclose those portions for which Goodyear had not claimed “confidentiality.” *Id.* at
14 115-116.

15 358. Roberts never received any portion of Goodyear’s expert Gardner’s
16 deposition, which was taken in *Haeger I* in September 2007, wherein Gardner expressed
17 that the G159 would have an expected operating temperature between 140 to 150° when
18 operated at a proper pressure for its rated load at 75 mph. He similarly did not receive that
19 portion of Gardner’s testimony which expressed the opinion that the G159 would begin to
20 experience diminishing properties if exposed to temperatures above 200° for prolonged
21 periods of time which could lead to separation. *Id.* at 116-117.

22 359. Brendan Rodgers’ deposition was similarly never disclosed in *Schalmo*. *Id.*
23 at 117.

24 360. During the *Schalmo* trial James Stroble testified as Goodyear’s spokesman.
25 Stroble swore that the G159 passed all of the 75 mph tests such that it could be rated for 75
26 mph utilization. Stroble also swore during the course of the *Schalmo* trial that the 194°
27 temperature limitation as expressed in the Ford and Charles article was meaningless.
28

1 Stroble's testimony directly contradicted the concealed Goodyear 30(b)(6) witness
2 testimony from *Haeger* and the opinions of Goodyear's expert in *Haeger*, Jim Gardner.
3 Goodyear concealed the 200° limitation from the Court and the jury in the *Schalmo* case.
4 When Stroble took Gardner's deposition in the *Schalmo* case, Gardner did not disclose that
5 the tire would be prone to failure if exposed to temperatures beyond 200° for prolonged
6 periods of time. Rather, Gardner testified that the 194° limitation from the Ford and
7 Charles publication had nothing to do with the G159 limitations. He believes that
8 Goodyear's evidentiary presentation regarding the G159 performance and high speed
9 testing and its ability to withstand higher temperatures was a deceptive presentation. *Id.*
10 117-125.

11 361. Goodyear concealed the true property damage claim rate from the Schalmos
12 and concealed dozens of lawsuits. *Id.* at 131-133.

13 362. Goodyear did not reveal that there were 25 property damage claims when the
14 G159 was rated for 65 mph and that there were 600 more when Goodyear approved the tire
15 for 75 mph utilization. *Id.* at 136.

16 363. Goodyear concealed the change in compounds to make the G159 tire more
17 heat resistant which took place in January 2007. *Id.* at 137.

18 364. It is Roberts' opinion, after reviewing what was concealed, that the Judge in
19 the Florida Court would have allowed punitive damages to go to the jury if Goodyear and
20 its attorneys had been forthcoming. *Id.* at 142-145.

21
22 **Tim Casey**

23 365. Tim Casey represented the Haley family in the matter of *Haley v. Goodyear;*
24 *et al.*, which was filed in the Maricopa County Superior Court in April 2007.

25 366. Throughout the litigation the Haegers' counsel David Kurtz abided by the
26 terms of the protective order which regulated what he could disclose. **Exhibit 57,**
27 11/07/2016 Deposition of Tim Casey, at 24.

1 367. In May 2007, Casey set forth what he believed was discoverable and
2 expected to be produced from Goodyear. *Id.* at 28.

3 368. In follow-up communications with Goodyear’s local counsel Hancock, he
4 sought to address discovery disputes. He was told that local counsel “can’t make any
5 decision about what documents to produce and not produce unless OGC [Goodyear Office
6 of General Counsel] approves it.” *Id.* at 35-36.

7 369. Hancock represented to Casey that he could not do a damn thing about
8 discovery disputes without Ohio’s approval. He was specifically told that Ohio approval
9 meant General Counsel for Goodyear, not Musnuff. *Id.* at 38.

10 370. Hancock made clear he was referring to Goodyear’s in-house legal
11 department as opposed to Musnuff. *Id.* at 39.

12 371. Hancock represented that the only testing Goodyear had relative to the G159
13 was the high speed testing and the DOT FMVSS testing that was produced. Hancock was
14 also careful to tell Casey that is what he had been told by Goodyear. *Id.* at 40-41.

15 372. Casey had requested all prior lawsuits, all claims, property damage and
16 personal injury records which he never received. *Id.* at 42-43.

17 373. Casey had multiple conversations with Hancock where he was told the
18 ultimate decision was at the Office of General Counsel at Goodyear. What gets disclosed,
19 when it gets disclosed, what even exists is all decided by the Office of General Counsel.
20 *Id.* at 50.

21 374. In Casey’s original May 2007 letter identifying documents he felt entitled to
22 pursuant to Rule 26.1, it specified, “All testing of any type, and the resulting data
23 conducted by Goodyear for the 275/70R22.5 G159 tire, Load Range H, after Goodyear
24 began selling the foregoing tire to the public in 1996 and identify the Goodyear employees
25 past, present, most knowledge on the subject.” *Id.* at 56.

26 375. Casey also sought all tests relating to Goodyear’s decision to make a rating
27 of the G159 for use at 65 to 75 mph. *Id.* at 58.

1 376. Casey expressed that he was not required to demand those things as
2 Goodyear was affirmatively obligated to disclose it. *Id.* at 59.

3 377. Casey states that Goodyear has been doing litigation in Arizona for a long
4 period of time and the idea that they did not understand its obligations and are blaming
5 their lawyers or anyone boggles his mind. *Id.* at 62.

6 378. Goodyear only disclosed the non-confidential portions of Olsen's 30(b)(6)
7 deposition in *Haeger*. *Id.* at 71.

8 379. The Haleys' Disclosure Statement which Casey drafted set forth their heat-
9 related defect theory. *Id.* at 79-80.

10 380. In August 2007, Casey wrote to Hancock identifying deficiencies with
11 Goodyear's 26.1 disclosure statement. Hancock's message, directly or indirectly, was the
12 Office of General Counsel makes the decisions and he is working with coordinating, but its
13 OGC that makes decisions. *Id.* at 87-88.

14 381. Hancock represented that Casey had the same test data that was disclosed in
15 other cases. *Id.* at 95-96.

16 382. When Casey discovered the destruction of the Cox deposition in an unrelated
17 G159 case, which was terminated and subsequently destroyed as a result of Goodyear's
18 witness admitting there is a defect in the G159, Goodyear used its protective order in the
19 Cox case to punish the plaintiff's lawyer for speaking the truth in reference to their
20 egregious tactic of destroying a deposition transcript of a witness that Casey was told was
21 a 30(b)(6) corporate representative of Goodyear who admitted a defect in the G159.
22 Goodyear tried to scare the you-know-what out of him and did drag him into Court with a
23 contempt proceeding. *Id.* at 97-98.

24 383. When Casey filed his motion to compel, his certification of efforts to resolve
25 the discovery dispute expressed, "Goodyear's Arizona counsel, as undersigned counsel
26 understands it, is required to obtain authority from a client representative before
27 substantively resolving any discovery dispute and/or making any level of assurance that
28

1 Goodyear will produce certain information or documents.” *Id.* at 104-105. This statement
2 was based upon prior conversations with Hancock that he has described. The client
3 representative was General Counsel for Goodyear. *Id.*

4 384. Casey was told that the only testing that exists is that which was given to
5 him. *Id.* at 106.

6 385. When Casey attempted to cross-notice a deposition in the G159 case
7 involving the Anton family, Hancock would not stipulate. Hancock did not make any
8 decisions without checking with General Counsel. It was General Counsel that made all
9 decisions and Hancock was the messenger boy. *Id.* at 114.

10 386. Goodyear refused to follow the Arizona Rules of Civil Procedure,
11 specifically Rule 26.1 and was letting him know in writing they were not going to comply
12 with 26.1, that everything ought to be Rule 34. *Id.* at 125.

13 387. In April 2008, Casey became fed up. As of that date Goodyear had not
14 produced a single G159 document pursuant to Rule 26.1. He renewed his demand for
15 production of documents disclosed by Goodyear in the *Woods* case. Shortly thereafter
16 Goodyear contacted him to settle the *Haley* case. *Id.* at 130-131.

17 388. Casey is not able to tell what happened with his motion to compel because it
18 was part of the confidential settlement that Goodyear required. *Id.* at 133-134.

19 389. When Casey talked to the plaintiff’s lawyer who was involved in the Cox
20 case, he states, “Not only did he tell me that the 30(b)(6) representative admitted there was
21 a defect, but he talked about how immediately right after that, Goodyear ran at him and
22 threw a bunch of money at him and his clients, and then the agreement was to basically
23 destroy the evidence of that.” *Id.* at 137.

24 390. Up to this day after 26 years, Casey has never heard of a client requesting the
25 destruction of evidence or a lawyer doing it at the request of a client. Goodyear sure
26 knows how to find lawyers to do its bidding. That is Casey’s view. *Id.* at 138.

27 391. In Casey’s 26.1 request he asked Goodyear to identify the universe of related
28

1 claim and failure data, including adjustments, property damage claims, bodily injury
2 claims and lawsuits. He never saw any of it. *Id.* at 146.

3 392. Casey is shown the adjustment information produced in the *Schalmo* case,
4 which identifies 3,472 adjustments through July 2008, or 2.16% of production. Casey says
5 he would remember that number because when he worked at Snell & Wilmer in the Ford
6 Firestone litigation, the failure rate in that litigation was dwarfed by this calculation.

7 393. Goodyear never disclosed that there had been over 400 property damage
8 claims involving motorhomes alone. *Id.* at 148.

9 394. Goodyear never disclosed that after the Fleetwood recall in October 1999, it
10 continued to see repeated failures of Fleetwood motorhomes involving the G159. *Id.* at
11 150.

12 395. Casey expresses his frustration that when he looks at all the failure data
13 which is so upsetting is this is all the information that Goodyear had before his clients'
14 decedent Joe Haley was decapitated. *Id.* at 152.

15 396. The existence of all of this failure data collectively is one of the predicates
16 for proving an entity such as Goodyear had notice of defect. *Id.* at 154.

17 397. Goodyear never admitted that the G159 was prone to separation when
18 exposed to prolonged temperatures above 200°. *Id.* at 174.

19 398. Unimaginable consequences can come out of facts regarding this failure date
20 that he didn't know about. Casey now understands why they cheated because that is the
21 way they are going to put this out and be able to settle those case. *Id.* at 187.

22 399. Between the very first and last disclosure by Goodyear, not a single witness
23 who knew anything about anything was ever disclosed who would testify. *Id.* at 189.

24 400. Goodyear never disclosed they had changed compounds in the G159 in
25 January 2007 to make the tire more heat resistant. *Id.* at 193.

26
27 **Michael Medina**

1 401. Michael Medina acted as counsel for the Bogaert family in *Bogaert v.*
2 *Goodyear; et al.*, filed in the Maricopa County Superior Court in 2006. **Exhibit 58**,
3 Deposition of Michael Medina at *see generally*.

4 402. On February 2, 2006, the Bogaerts filed their First Disclosure Statement. It
5 set forth their defect theory that the G159 was defective as it lacked adequate durability to
6 resist tread separation. *Id.* at 30.

7 403. The First Request for Production of Documents sought all documents
8 relating to any testing (surveillance, high speed, endurance, track, and/or highway)
9 conducted in the design or the development of the G159 tires. *Id.* at 39.

10 404. Goodyear's response to the First Request for Production, filed in July 2006,
11 asserted that the Bogaerts had failed to identify their defect theory. *Id.* at 33.

12 405. The Bogaerts' Fourth Supplemental Disclosure Statement identified their
13 expert Dennis Carlson and his opinions that the tire was designed for lower speeds and
14 loads and lacked adequate durability, especially when operated at highway speeds with
15 high ambient temperatures. Carlson opined the tire was not adequate for RVs, including
16 the subject RV when operated at highway speeds. *Id.* at 47-49. It essentially ran too hot.

17 406. There were various exchanges between Hancock and Medina regarding
18 production of test data. They never reached an agreement. That is why the Motion to
19 Compel was filed by Medina. *Id.* at 75.

20 407. Judge Skelly's Order required the production of all testing conducted by
21 Goodyear that was undertaken, at least in part, to determine the suitability of the tire to be
22 driven at 65 mph without an undue risk of tread or belt separations. It was not limited to
23 high speed testing. That request deals with endurance testing. The Order also required all
24 testing conducted by Goodyear of its model G159 tire that was undertaken at least in part
25 to determine the suitability of such tires for use on Class A motorhomes without an undue
26 risk of tread or belt separation. *Id.* at 87-90.

27 408. On May 9, 2008, Medina wrote to Hancock following the Special Discovery
28

1 Master's Order. "Your letter appears to attempt to relitigate many issues already briefed
2 and ruled upon by Judge Skelly. The Order specifically provides, 'Defendants shall
3 produce the documents that the 30(b)(6) deponents will be asked about.'" *Id.* at 104.

4 409. Given Judge Skelly's Order, Medina believed Goodyear would comply with
5 it and produce the testing. *Id.* at 107.

6 410. Prior Judge Silver's Order, Medina had never heard of the laboratory
7 durability heat rise test in any Goodyear case. *Id.* at 124.

8 411. Goodyear never disclosed that they were withholding tests. It was his
9 understanding that all tests ordered by the Special Discovery Master had in fact been
10 disclosed and produced. *Id.* at 124-125.

11 412. Goodyear's objection to their First Request for Production that the Bogaerts
12 failed to identify a defect theory was something he would regularly see in Goodyear
13 responses to discovery requests in other cases. *Id.* at 126-127.

14 413. Goodyear would regularly produce the FMVSS 119 DOT data because they
15 knew it was not relevant. The tests were developed in the 1960s before the advent of the
16 steel belted radial. Even the recalled Firestone Wilderness tires passed the FMVSS DOT
17 test. The testing is inadequate. The FMVSS testing is simply outdated. Medina has never
18 seen a steel belted radial tire that has failed the FMVSS baseline testing. *Id.* at 127-128.

19 414. Medina was shown an email from March 2, 2007, regarding Musnuff and
20 Hancock talking about gathering necessary test records. Medina had to wait another year
21 and get an order from the Discovery Master compelling Goodyear to produce the tests that
22 Hancock and Musnuff knew were at issue. *Id.* at 131-133.

23 415. Medina never withdrew any of the document requests Judge Skelly ordered
24 Goodyear to produce. *Id.* at 134.

25 416. Medina was aware of the Ford and Charles publication which established
26 that radial medium truck tires should not generate temperatures in excess of 194° or they
27 will start to experience diminishing properties that could lead to separation. He has a copy
28

1 of it in his office. *Id.* at 135-136.

2 417. Goodyear never disclosed to him that Brendan Rodgers testified that the
3 G159 tire manufactured in 1996 should actually be running cooler than those designed in
4 1988 when the publication was first authored. *Id.* at 137.

5 418. Medina was supposed to get all of the documents Skelly ordered before the
6 depositions so he could ask thoughtful questions to Goodyear's 30(b)(6) witness. *Id.* at
7 138.

8 419. Goodyear presented Jim Stroble as its 30(b)(6) witness. He was specifically
9 identified as Goodyear's witness on testing. *Id.* at 139.

10 420. When Stroble appeared, Medina believed he had all tests and questioned
11 Stroble based on the limited data he had. *Id.* at 140.

12 421. Medina was never told by Goodyear or any of its attorneys or corporate
13 representatives that he did not have all the tests. *Id.*

14 422. When Goodyear responded to the Bogaerts' First Request for Production in
15 July 2006, it listed 16 general objections and then more objections in specific response to
16 their request for all test data. Goodyear only disclosed the FMVSS DOT tests. *Id.* at 143-
17 144.

18 423. Medina also asked for all documents relating to property damage claims,
19 personal injury claims and lawsuits involving separations or alleged separations. *Id.* at
20 145.

21 424. Medina asked for communications between Goodyear and NHTSA
22 concerning the performance of Goodyear tires on recreational vehicles. Goodyear
23 responded that it possessed no such documents relating to communications with NHTSA.
24 *Id.* at 146.

25 425. Goodyear never disclosed the communications they had with NHTSA in
26 response to NHTSA's peer inquiry which required Goodyear to disclose property damage,
27 injury and adjustment claims regarding the G159 when used on motorhomes. *Id.*

1 426. Goodyear never disclosed that there were 41 lawsuits arising out of G159
2 failures. *Id.* at 149.

3 427. The Request for Production that Goodyear was compelled to respond to in
4 *Woods* (regarding testing to determine the G159's suitability for motorhome use), is word
5 for word identical to the Request for Production Judge Skelly required Goodyear to
6 respond to in *Bogaert*. *Id.* at 150-151.

7
8 **Thomas Harvie**

9 428. Thomas Harvie was Goodyear's General Counsel between 1995 and 2009.
10 **Exhibit 59**, 12/08/2016 Deposition of Thomas Harvie at 9. He was responsible for
11 assuring that Goodyear complied with governmental regulations relating to reporting
12 defects in tires manufactured by Goodyear that may affect motor vehicle safety and to
13 ensure that Goodyear was properly reporting failure data to NHTSA to comply with Early
14 Warning Reporting requirements. *Id.* at 10. Harvie states that a defect is an imperfection
15 that is serious enough to cause either property damage or personal injury. *Id.* at 13.

16 429. During the years he acted as General Counsel, Goodyear never recalled any
17 tires for defects. *Id.* at 17.

18 430. The issues associated with G159 failures were not significant enough to
19 require Board attention. *Id.* at 25.

20 431. Debbie Okey was the senior litigation lawyer whose primary responsibility
21 was to stay abreast of developments regarding G159 failure data and litigation. *Id.* at 50.

22 432. Harvie cannot agree or disagree with Turner's conclusion that the G159 has a
23 parts per million failure rate that is in multiple times that of the worst recalled tire in
24 America. *Id.* at 66.

25 433. Okey was never reprimanded or disciplined for approving the conduct that
26 resulted in the sanctions in the *Bahena* case. *Id.* at 84.

27 434. Harvie cannot recall any changes in Goodyear's legal department following
28

1 the \$30 million sanction in *Bahena*. *Id.* at 86-87.

2
3 **David Bialosky**

4 435. David Bialosky took over as General Counsel for Goodyear commencing in
5 2009. **Exhibit 60**, 12/09/2016 Deposition of David Bialosky at 9.

6 436. He cannot identify any tire made by Goodyear that has ever displayed a 3000
7 ppm claim rate for property damage claims caused by tread separations. *Id.* at 39.

8
9 **Jim Stroble**

10 437. Jim Stroble was employed by Goodyear for 30 years. **Exhibit 61**,
11 08/22/2016 Deposition of Jim Stroble at 7.) He assisted in gathering documents and
12 information and responding to discovery requests in *Haeger*. *Id.* at 9. He testified in
13 *Schalmo*. *Id.* at 10.

14 438. The heat rise test was not requested specifically in *Haeger* and so it was not
15 produced. *Id.* at 11.

16 439. From 2002-2014 Stroble was manager of the Product Analysis Group. *Id.* at
17 24-25. Members of the group included Taylor, Olsen, and Shelton. *Id.* at 26.

18 440. The Product Analysis Group regularly worked with Goodyear legal
19 department and outside counsel in answering interrogatories and deciding what, if any,
20 documents would be produced in response to requests for production. *Id.* at 34-35.

21 441. When outside counsel wants information from Goodyear, they have to go
22 through the Product Analysis Group. *Id.* at 35. Lawyers are not allowed to go around and
23 search for what they want. *Id.* at 35-36. The Group would work with attorneys to draft
24 responses or the Product Analysis Group drafted responses themselves in response to
25 discovery requests. *Id.* at 37.

26 442. Musnuff and Goodyear acting together would decide what would and would
27 not be disclosed. *Id.* at 155.

1 443. Stroble is familiar with the Olsen and Gardner opinions from *Haeger*. He
2 never wrote to anyone to challenge Gardner’s opinions or differ with those opinions. He
3 never took issue with any of Olsen’s opinions. *Id.* at 173.

4 444. Goodyear claimed 353 pages of Olsen’s 30(b)(6) testimony in *Haeger* to be
5 confidential. *Id.* at 209. He reviewed the deposition testimony and filed a declaration
6 representing that the information should all be kept confidential. *Id.* at 214-215.

7 445. Stroble has testified several times in other G159 cases different than Olsen
8 when he was testifying as Goodyear’s 30(b)(6) witness. He never disclosed Olsen’s
9 testimony. *Id.* at 233.

10 446. Brenda Cavanaugh, Goodyear’s paralegal, asked him to confirm the
11 existence of other testing on April 27, 2006. It would have been his normal practice and
12 procedure to have complied. *Id.* at 277-279. He would have known where to look for the
13 testing. *Id.* at 279-280.

14 447. In September 2006, Cavanaugh and Musnuff exchanged an email regarding
15 production in response to the Haegers’ First Request for Production indicating that “Per
16 our usual practice” they would disclose only the DOT test. That was the usual practice.
17 *Id.* at 281-282. Production requests in every tire case normally called for test data. *Id.* at
18 287.

19 448. Goodyear’s legal department made the final decisions about what was
20 produced. *Id.* at 294.

21 449. Stroble was the 30(b)(6) witness in *Bogaert*. He understood Goodyear was
22 supposed to be producing documents that related to topics he would be testifying about.
23 He was specifically designated to testify on Goodyear’s behalf regarding testing. *Id.* at
24 322, 324-325.

25 450. Goodyear was supposed to produce all documents regarding testing for
26 suitability for motorhomes in *Bogaert*. *Id.* at 327.

27 451. Stroble does not recall what was produced. *Id.* at 333.

1 452. Stroble does not recall discussions between Musnuff, himself and Hancock
2 in June 2008, regarding production of test data in *Bogaert* as was addressed in the June 5,
3 2008, email between the three of them. *Id.* at 335-337.

4 453. When shown the failure data, Stroble says he was not aware of the 730
5 property damage, injury or death claims that is now disclosed by Goodyear and was not
6 aware of the 41 lawsuits. *Id.* at 355. He similarly was not aware of the 98 injury or death
7 claims. *Id.* at 356.

8 454. Stroble does not know if it is normal for there to be 98 claims for death or
9 injury per 160,000 tires produced. *Id.* at 371.

10 455. Stroble cannot identify any Goodyear tire with that failure rate. *Id.* at 372.

11 456. Stroble has never heard of a Goodyear tire with 98 deaths or injuries per
12 160,000 tires made. *Id.* at 374.

13 457. Stroble also testified as Goodyear's 30(b)(6) witness on August 22, 2016 in
14 *Haeger II*. **Exhibit 62**, 8/22/2016 Rule 30(b)(6) Deposition of James Stroble.

15 458. The Global Master Specification is Goodyear's Corporate Tire Release
16 Policy. *Id.* at 17.

17 459. When the G159 was brought online, the high speed test was "optional." *Id.*
18 at 21.

19
20 **Lyn Lovell**

21 460. Lyn Lovell is the Goodyear Director of Government Compliance and
22 Product Performance. Her deposition was taken on October 4, 2016. **Exhibit 63**,
23 10/04/2016 Deposition of Lyn Lovell, at 7.

24 461. Lovell cannot identify any Goodyear tire that produced 100 death or injury
25 claims per 160,000 tires produced as she lacks the data. *Id.* at 36. She cannot answer one
26 way or another any other Goodyear tire that produced property damage claims at a rate of
27 600, per 160,000 tires. *Id.* at 38.

1 462. If a defect relates to motor vehicle safety, Goodyear has five days to notify
2 the government. *Id.* at 59.

3 463. Goodyear never reported the 600 property damage claims to NHTSA. *Id.* at
4 67.

5 464. Goodyear never volunteered the property damage claim information to
6 NHTSA. *Id.* at 68.

7 465. Goodyear did not disclose adjustments to NHTSA. *Id.* at 69.

8 466. Lovell cannot identify any Goodyear tire with a ppm failure rate of 1000. *Id.*
9 at 86.

10
11 **Brenda Cavanagh**

12 467. Brenda Cavanaugh was a paralegal who worked for tire companies from
13 1997 through 2014. She worked at Goodyear as a senior paralegal and a claim analyst
14 between 1999 and 2015. Her duties included gathering claims data, lawsuits and
15 adjustment data. **Exhibit 64**, 10/12/2016 Deposition of Brenda Cavanaugh, at 8-9, 16-17,
16 21.

17 468. Assistant General Counsel had responsibility to evaluate the volume or
18 trends of the failure data. Okey would receive proposed discovery responses. *Id.* at 40-41,
19 46. They tried to get discovery draft responses to Okey by a certain date so she would
20 have adequate time to review them. *Id.* at 60.

21 469. It is likely that all of the discovery responses at Goodyear she would review
22 started out with objections. *Id.* at 66-70.

23 470. On April 27, 2006, she asked Stroble to confirm any other testing beyond the
24 FMVSS DOT testing. *Id.* at 89.

25 471. Stroble would gather the requested tests. His practice would have been to
26 give them to Musnuff. *Id.* at 92-94.

27 472. The usual practice in Goodyear cases was to produce only the DOT tests
28

1 when there was a request for test data. *Id.* at 100.

2 473. Cavanaugh has never seen 3,400 adjustments for 160,000 tires produced. *Id.*
3 at 150. In her experience she has never seen a tire that displayed failure rates like the
4 G159. *Id.* at 157-158.

5 474. After the *Bahena* sanctions striking Goodyear's Answer and the \$30 million
6 verdict, there was no discussion in the legal department that litigation would be handled
7 differently. *Id.* at 162.

8 475. There were no new policies in the legal department regarding how Goodyear
9 would handle discovery after Judge Silver's Opinion in *Haeger I.* *Id.* at 164.

10
11 **Barry Haeger**

12 476. Barry Haeger's deposition was taken on October 6, 2016. **Exhibit 65.**

13 477. Barry does not recall Kurtz expressing belief that Goodyear was concealing
14 relevant test data during the underlying case. *Id.* at 44.

15 478. Kurtz thought the biggest problem was that when you limited the evidence, it
16 was like trying a case where the Haegers are the only ones that had a tire failure. *Id.* at 57.

17 479. Part of the settlement decision included that they had been going through
18 litigation for seven years. They knew that even if they were to win the case, Goodyear
19 would appeal. A Goodyear attorney even told him that they would keep pushing the
20 litigation and your parents would never see any of the money because they would be dead.
21 *Id.* at 68.

22 480. At the time he executed the settlement agreement he was not aware that
23 Goodyear had produced test data in other cases that had not been produced in this case. *Id.*
24 at 72.

25 481. Barry has been emotionally affected because it was determined that
26 Goodyear had lied throughout the proceedings and lied to the Judge. His wife, his mother
27 and himself have to relive the whole process every time they come to a deposition. He has
28

1 mental anguish over having to do this. It has been 14 years and it has definitely been
2 enough. *Id.* at 103.

3 482. During the course of *Haeger I*, Barry had no idea that Goodyear or its
4 employees had provided false testimony. *Id.* at 103-104.

5 483. The stress and anguish just keeps on happening every day. Its like a faucet
6 that is dripping and it just keeps on happening. *Id.* at 106.

7
8 **Suzanne Haeger**

9 484. Suzanne Haeger was deposed on October 6, 2016. **Exhibit 66**, 10/6/2016
10 Deposition of Suzanne Haeger.

11 485. When Suzanne executed the release, she thought it was only for injuries from
12 the accident in 2003, nothing more. *Id.* at 28.

13 486. Suzanne suffers from anxiety, nerves and stomach issues related to the
14 litigation. *Id.* at 32.

15 487. Suzanne first learned that Goodyear had withheld information related to test
16 data and the number of injuries, deaths, lawsuits, property damage after the sanctions. *Id.*
17 at 42.

18 488. When the Haegers settled the case, Suzanne had no information from
19 whatever source, including Mr. Kurtz, that Goodyear had fraudulently concealed or
20 fraudulently failed to disclose information regarding any test data concerning the G159.
21 *Id.* at 43.

22 489. When Suzanne read Silver's Order and realized that the attorneys had lied in
23 the courtroom, the Judge was upset, they too were very upset. She felt abused. She felt
24 like it was resurfacing everything all over again. The fact that her father-in-law somehow
25 felt that he was the cause and that he never knew the truth is painful. *Id.* at 44.

26 490. She and her family had no idea what if anything other lawyers in other G159
27 cases had or did not have from Goodyear due to the non-sharing agreements. *Id.* at 50.

1
2 **Donna Haeger**

3 491. Donna Haeger was deposed on October 6, 2016. **Exhibit 67**, 10/06/2016
4 Deposition of Donna Haeger.

5 492. One of the reasons she settled is because the lawyers said they would hold it
6 up in court until she passed away. If we didn't sign they would appeal, appeal forever. *Id.*
7 at 24.

8 493. Donna has suffered emotional distress in the sanctions case as there is a lot
9 of stress and anger. Goodyear thinks they are above the law and can do anything they
10 please. They have been found guilty of fraud and they won't accept it. Nothing happens
11 to them. They just go on day after day and they don't care about the consumer. *Id.* at 36-
12 37.

13 494. The fact that Goodyear lies is very stressful. She is not supposed to have
14 stress because of her rheumatoid arthritis. She is not supposed to be in stressful situations.
15 Judge Silver's Order itself was upsetting to her and she does see a doctor as a result of the
16 stress. *Id.* at 38-40.

17 495. She is very angry about being deposed. It just goes on and on. Goodyear
18 doesn't worry about paying lawyers, but for some reason they are upset about giving us a
19 fair judgment on something they knew could happen. *Id.* at 40.

20 496. Basil Musnuff was deposed on October 27, 2016, in *Haeger II*. **Exhibit 68**,
21 10/27/2016 Deposition of Basil Musnuff.

22 497. Musnuff testified he had never done anything in *Haeger I* that he believed
23 was outside the course and scope of his responsibility as an attorney for Goodyear. *Id.* at
24 28-29.

25 498. Musnuff testified he was never accused by Goodyear of doing anything
26 outside of the scope of his responsibilities. *Id.* at 35.

27 499. Musnuff testified all discovery requests and documents that were going to be
28

1 produced pursuant to discovery in the G159 cases would be approved by Okey. *Id.* at 54,
2 56.

3 500. Musnuff testified that he ran all discovery responses past Okey for review,
4 comment, and approval—including the documents to be produced. *Id.* at 78-79.

5 501. Musnuff testified all final decision-making was Okey's. *Id.* at 89-90.

6 502. Kurtz was deposed on November 1, 2016, in *Haeger II*. **Exhibit 69**,
7 11/01/2016 Deposition of David Kurtz.

8 503. Kurtz testified that the First Joint Discovery Dispute, filed on December 28,
9 2006, included a request to expand the date for test production beyond Goodyear's
10 production which went only up until the date of the accident. Kurtz believed that
11 Goodyear had produced all of its available tests. *Id.* at 30-31.

12 504. The May 17, 2007, hearing was not about the Haegers' Third Request for
13 Production. The Court was addressing the scope of depositions in response to Goodyear's
14 inquiry. The Court's comment that the scope was "narrowed" was in reference to such
15 questioning. *Id.* at 39-41.

16 505. Kurtz only knew about the FMVSS DOT tests and the high speed tests. *Id.*
17 at 98.

18 506. No other attorney mentioned to him about the heat rise test until after the
19 *Schalmo* verdict. *Id.* at 140.

20 507. Goodyear's Global Master Specification set forth the testing required to
21 release the G159 for sale. The document itself was "considered a highly confidential
22 document no subject to discovery" by Goodyear. Okey instructed National Coordinating
23 Counsel that its Global Master Specification (release grid) was not to be produced even
24 under a protective order. **Exhibit 70**, FC-HAL015391-015394, GY_INT_006282.

25 508. In May 2009, the Haegers received a copy of the Schalmos'
26 Non-confidential Proffer of Evidence in Support of Motion to Amend Complaint to Assert
27 a Claim for Punitive Damages against Defendants Goodyear Tire & Rubber Company and
28

1 Fleetwood Motorhomes of Indiana, Inc., Schalmo's Motion to Amend Complaint to Assert
2 a Claim for Punitive Damages and the Court's May 19, 2009 Order finding, "[T]here is
3 sufficient evidence from which a jury could reasonably conclude that Goodyear was aware
4 of life-threatening defects in the design of the tire in question ... and that Goodyear
5 withheld that information or failed to warn the motoring public of said life-threatening
6 design defects...." The Non-confidential Proffer set forth the history of discovery that had
7 taken place in the *Schalmo* case, setting forth the record of how Goodyear deceived
8 Fleetwood and the public regarding the safety, performance and testing of the G159.
9 **Exhibit 71**, HAEGER000640-000851. It included a Goodyear admission that Fleetwood
10 product liability claims "should probably not be discussed with the vehicle owners." *Id.* at
11 000687.

12 509. Exhibits 15 and 16 attached to the Supplemental Statement of Facts were
13 prepared by Plaintiffs' counsel with the assistance of staff. **Exhibit 72**, Declaration of
14 David L. Kurtz.

15 510. There is remaining discovery to be completed in this case, including the
16 depositions of Basil Musnuff and Sim Ford. There are also outstanding documents to be
17 produced by Goodyear regarding other G159 cases.

18 511. Goodyear's Answers to Plaintiffs' Second Set of Interrogatories set forth
19 only testing required by Goodyear to release the tire for highway use. High speed testing
20 was not required. **Exhibit 73**, Goodyear's Answers to Plaintiffs' Second Set of
21 Interrogatories, 27 & 28.

22 512. The District Court reserved judgment on the admissibility of the limited data
23 disclosed by Goodyear until trial and acquired an admission that Goodyear relied upon
24 such data to determine whether the tire was defective. **Exhibit 74**, April 14th Transcript of
25 Pretrial Status Hearing, at 146-147.

26 513. Goodyear disclosed all tests in *Woods* (including the heat rise tests in
27 response to plaintiffs' Request for Production 22 (which sought wheel and endurance
28

1 testing) and in response to the Fifth Request For Production Nos. 5, 6, and 9 (which sought
2 tests used to determine maximum design speed, maximum design temperature at belt
3 edges, and tests for suitability for motor home use). **Exhibit 75**, RA6076-6107.

4 514. Ms. Okey testified it was a “general practice” that she would review draft
5 discovery responses in G159 cases and revise where she saw fit. **Exhibit 76**, 06/08/2012
6 Deposition of Deborah Okey, at 27-28.

7 515. Ms. Okey testified that she was the “the primary person, the primary point of
8 contact” with respect to the G159 cases. *Id.* at 111-12.

9 516. Ms. Okey possessed ultimate decision-making authority with respect to
10 discovery responses. *Id.* at 150.

11 517. Goodyear filed a second declaration from Stroble in the sanctions proceeding
12 which falsely and misleadingly claimed that adjustment and property damage claims
13 information for tires manufactured to the same specification as the Haeger tire reflected an
14 adjustment rate of only a fraction of one percent and a small number of property damage
15 claims. **Exhibit 79**, 10/24/2011 Declaration of James C. Stroble, ¶ 4.

16 518. Where the letters from Mr. Kurtz mention the Haegers’ knowledge of
17 undisclosed tests, the reference is to concealed high speed testing (not the heat test
18 information that came to light after *Schalmo*). *See* Exh. 72.

19 519. The Haegers were aware in the underlying litigation that Goodyear was not
20 producing all of the *high speed* tests. However, Goodyear asserted that it was justified in
21 withholding high speed tests because they had to do with non-production tires. *Id.*

22 520. Goodyear did not inform Plaintiffs that it was withholding any additional
23 G159 test data. *Id.*

24 521. The jury in *Schalmo*, which used the heat test data that was never disclosed
25 to the Haegers to find that the G159 was defective in design, awarded the plaintiffs in that
26 case \$5.6 million. **Exhibit 77**, 01/06/2011 Letter from David L. Kurtz to Basil J. Musnuff.

1 DATED this 9th day of January, 2017.

2 GALLAGHER & KENNEDY, P.A.

3 AND

4 THE KURTZ LAW FIRM

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17 this 9th day of January, 2017, to:

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