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10

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

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

16 Plaintiffs,

17 vs.

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

22 Defendants.

No. CV2013-052753

AMENDED COMPLAINT

(Jury Trial Demanded)

(Assigned to the Honorable
John Rea)

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1 Plaintiffs, allege as follows

2 **I. INTRODUCTION**

3 This case arises out of Goodyear and its lawyers' willful concealment of test
4 data regarding the Goodyear G159 tire and the damages caused by that
5 concealment, which spanned a period of years. The complaint is necessarily long as
6 the misconduct involves multiple actors and multiple cases. After briefing and an
7 evidentiary hearing, the United States District Court provided its instructive
8 comment:

9 Litigation is not a game. It is the time-honored method of
10 seeking the truth, finding the truth and doing justice.
11 When a corporation and its counsel refuse to produce
12 directly relevant information an opposing party is entitled
13 to receive, they have abandoned these basic principals in
14 favor of their own interests. The little voice in every
15 attorney's conscience that murmurs *turn over all material*
16 *information* was ignored. (Emphasis in original)

17 . . . The Court is aware of the unfortunate professional
18 consequences that may flow from this order. Those
19 consequences, however, are a direct result of repeated,
20 deliberate decisions by Mr. Hancock, Mr. Musnuff and
21 Goodyear to delay the production of relevant information,
22 make misleading and false in-court statements, and
23 conceal relevant documents. Mr. Hancock, Mr. Musnuff,
24 and Goodyear will surely be disappointed but they cannot
25 be surprised. **(Exhibit 1)**

26 Such was the introduction by Chief Judge Roslyn Silver of the United States
27 District Court for the District of Arizona in her final Order of November 8, 2012,
28 addressing the fraudulent misconduct by Goodyear and its attorneys. Thereafter the
Court's discussion spanned 66 pages of critical commentary, including analysis of
years of misrepresentations and deceptions to the Court, the Haeger family and
other victims related to their simple quest for the truth regarding why Goodyear
G159 tires suffered tread separations, which caused devastating injuries and deaths.

As set forth hereafter in detail, Goodyear and its attorneys engaged in a
conspiracy, which spanned years, to conceal critical test data that revealed the G159
was predictably prone to tread separations from the destructive consequence of heat

1 generated by the tire when used for prolonged periods of time in highway
2 applications, like the Haeger's motorhome. As Judge Silver noted in her preliminary
3 order:

4 If the tests had been disclosed, Goodyear's defense would
5 have been severely compromised; it would have been
6 difficult, if not impossible for Goodyear to claim the G159
7 was suitable for use on a motorhome . . . The conduct at
 issue appears to have stemmed from a deliberate corporate
 strategy adopted by Goodyear to prevent the disclosure of
 . . . test results.

8 This suit seeks redress and punishment for Goodyear's 15-year history of acts
9 of deception, related to the Goodyear G159 275 70R 22.5 tire (the G159) and the
10 damages it caused.

11 **II. BACKGROUND**

12 1. Goodyear commenced manufacture of the G159 in 1996, which was
13 designed for metro service (inner city pickup and delivery trucks), but was
14 subsequently also sold for use on motorhomes which regularly travel long distances
15 on freeways and highways throughout the country. In this application, the G159 was
16 prone to heat induced failure, which regularly manifested in the form of tread
17 separations, which caused countless deaths and injuries.

18 2. The G159 failures resulted in a cascade of claims and lawsuits. Rather
19 than recall the tire, inform users of the limitations of the G159, or reveal the truth
20 regarding the tire's limitations as was known to Goodyear from its own testing, the
21 company employed its vast resources in concert with its willing attorneys to conceal
22 the truth.

23 3. The deceptions saved Goodyear untold millions of dollars, while they
24 lied for years to the victims of G159 tread separations, unjustifiably blaming tire
25 failures on the innocent motorhome drivers causing them even further damage.

26 4. By fraud and deception, Goodyear was able to secretly settle cases for a
27 small fraction of the just compensation victims were entitled to and would have
28

1 received if the truth were disclosed. Such was the damage caused to the Haeger
2 family by this conspiratorial enterprise.

3 **III. THE PARTIES**

4 5. Plaintiff Estate of LeRoy Haeger is represented by and through its
5 executor and personal representative Donna Haeger. The decedent LeRoy Haeger
6 was a resident of New Mexico until his passing in 2008.

7 6. Plaintiff Donna Haeger was the wife of LeRoy Haeger and is a resident of
8 Pima County, Arizona.

9 7. Plaintiffs Barry Haeger and Suzanne Haeger are husband and wife and
10 are residents of Pima County, Arizona. Barry is the son of LeRoy and Donna Haeger
11 and Suzanne is their daughter-in-law.

12 8. Defendant The Goodyear Tire & Rubber Company ("Goodyear") is an
13 Ohio corporation, which does business throughout the United States, including
14 Arizona. Defendant Goodyear's acts and omissions caused events to occur in
15 Maricopa County, Arizona, which are the subject to this Complaint.

16 9. Defendant Roetzel & Andress, a Legal Professional Association, is an
17 Ohio corporation that does business in various states throughout the United States,
18 including Arizona. Defendant Roetzel & Andress' acts and omissions caused events
19 to occur in Maricopa County, Arizona, which are the subject of this Complaint.

20 10. Defendant Basil Musnuff is a resident of the State of Ohio. Defendant
21 Musnuff was a shareholder of Defendant Roetzel & Andress until 2011. Defendant
22 Musnuff's acts were within the course and scope of his employment with Roetzel &
23 Andress and in furtherance of its business. Defendant Musnuff's actions caused
24 events to occur in Maricopa County, Arizona, which are the subject of this Complaint.

25 11. Defendant Fennemore Craig, P.C., is an Arizona professional corporation
26 with its principal offices in Maricopa County, Arizona. Defendant Fennemore Craig's
27 acts and omissions caused events to occur in Maricopa County, Arizona, which are
28 the subject of this Complaint.

1 12. Defendant Graeme Hancock is a resident of Maricopa County, Arizona.
2 Defendant Hancock has been a shareholder of Defendant Fennemore Craig at all
3 material times. Defendant Hancock's acts were within the course and scope of his
4 employment with Defendant Fennemore Craig, P.C., and in furtherance of its
5 business. Defendant Hancock's acts and omissions caused events to occur in
6 Maricopa County, Arizona, which are the subject of this Complaint.

7 13. Defendant Deborah Okey is a resident of the State of Ohio. Defendant
8 Okey was Associate General Counsel for Defendant Goodyear at all material times.
9 Defendant Okey's acts were within the course and scope of her employment with
10 Goodyear and in furtherance of its business. Defendant Okey's acts and omissions
11 caused events to occur in Maricopa County, Arizona, which are the subject of this
12 Complaint.

13 14. The acts and omissions of Defendants Musnuff, Hancock, Okey, Roetzel
14 & Andress and Fennemore Craig were also undertaken on behalf of and within the
15 scope and course of their employment and agency as attorneys for Goodyear and in
16 furtherance of its business.

17 15. Goodyear authorized each of the acts and omissions of Roetzel &
18 Andress, Fennemore Craig, Musnuff, Hancock and Okey as its authorized agents.

19 16. Goodyear ratified each of the acts and omissions of Roetzel & Andress,
20 Fennemore Craig, Musnuff, Hancock and Okey as its authorized agents.

21 17. Roetzel & Andress authorized each of the acts and omissions of Musnuff
22 as its authorized agent.

23 18. Roetzel & Andress ratified each of the acts and omissions of Musnuff as
24 its authorized agent.

25 19. Fennemore Craig authorized each of the acts and omissions of Hancock
26 as its authorized agent.

27 20. Fennemore Craig ratified each of the acts and omissions of Hancock as
28 its authorized agent.

1 **IV. THE HAEGER ACCIDENT**

2 21. In June 2003, the Haeger family was traveling along Interstate 25 in
3 New Mexico at freeway speed in the family's 38-foot motorhome, when the right
4 front tire failed as a result of a tread separation. The tires on the motorhome were
5 all Goodyear G159s. The sudden failure caused the motorhome to veer violently to
6 the right off the freeway where it flew over an embankment and subsequently
7 flipped, skidding along its side.

8 22. The driver, LeRoy Haeger was trapped between the steering wheel and
9 his seat and his right leg was torn apart beneath his knee as a result of impact with
10 debris that entered the motorhome as it slid on its side. The family Great Dane was
11 ejected through the front windshield.

12 23. The impact caused the inside of the motorhome to completely break
13 apart. Suzanne Haeger and Donna Haeger were occupants of the rear of the
14 motorhome. They were buried and pinned in the debris inside the motorhome, and
15 were unable to escape after the accident.

16 24. When the motorhome skidded on its side to a stop, Barry Haeger was
17 hanging in his seat by his seatbelt. Although Barry Haeger was able to get out of the
18 motorhome, he was unable to help any of his family members who remained
19 entrapped after the accident.

20 25. What followed was a slow systematic extraction of the Haeger family
21 members by responding emergency personnel. In order to extricate Donna and
22 Suzanne Haeger, paramedics needed to first extract LeRoy Haeger from the debris.
23 They were required to saw off the steering wheel to release him. They thereafter
24 jacked up a portion of the motorhome to release his leg. He was finally dragged free
25 and airlifted from the accident site to the closest hospital in El Paso.

26 26. Donna and Suzanne Haeger remained buried under the debris while
27 LeRoy Haeger was extricated. To reach Donna and Suzanne, much of the internal
28 components of the motorhome had to be taken off them first. After each was finally

1 released from their entanglements with remnants of the motorhome, Donna was
2 airlifted to the hospital in Albuquerque. Suzanne was transported by ground
3 ambulance to the closest town, Truth or Consequences, New Mexico, and thereafter
4 airlifted to the hospital in El Paso.

5 **V. THE INJURIES**

6 27. At the time of the accident, LeRoy Haeger was 70-years of age. He
7 suffered chest and abdominal trauma, a dislocated elbow, lacerations, and open
8 (externally visible) tibia/fibula fractures. In an effort to save the leg from
9 amputation, he subsequently underwent 17 separate surgeries, including multiple
10 bone and skin grafts and rod placement and removal in his leg. He endured an open
11 wound in his leg for 20 months following the original accident. He developed life-
12 threatening osteomyelitis and experienced multiple infections and abscesses in his
13 leg during his course of recovery. For the rest of his life, he endured chronic leg pain
14 and died from unrelated causes five years following the accident. His medical
15 expenses were \$338,610.00. He lost the consortium of his wife and suffered severe
16 emotional distress from his injuries and witnessing the injuries to his family.

17 28. Donna Haeger was 69-years-old at the time of the accident. She
18 suffered a severed Achilles tendon, fractured wrist, fractured ankle, five fractured
19 toes, multiple jaw fractures, fractured teeth and multiple lacerations. She was wheel
20 chair and home bound for approximately two months, with her jaws wired shut
21 subsequent to the accident. She suffers from permanent facial nerve damage
22 affecting speech and eating. She has endured an aggravation of a pre-existing
23 condition, essential tremors, thereafter requiring her use of special utensils to eat
24 and drink. She suffers from permanent jaw and ankle pain and has ongoing
25 emotional issues associated with the loss of consortium of her husband and
26 emotional distress from her injuries and witnessing the injuries of other family
27 members. Her medical expenses totaled \$52,021.00.

28

1 29. Suzanne Haeger was 42-years-old as of the date of the accident. She
2 suffered head trauma with a resulting hematoma, lacerations and scarring on her
3 legs, chest arms and hands. She experienced a significant crush injury to her left
4 arm, which required two surgeries. She has permanent left arm numbness and
5 associated weakness in her hand, arm and shoulder after reaching maximum medical
6 improvement approximately 15 months after the accident. She suffers from
7 permanent pain from her injuries. She has lost 60% of the function of her left arm.
8 Her participation in daily activities has been permanently altered. Her medical
9 expenses totaled \$21,928.00.

10 30. Barry Haeger was 45-years-old as of the date of the accident.
11 Mr. Haeger witnessed the accident and the entrapment of his family members as well
12 as their limited recovery related to their injuries. He has experienced the loss of
13 consortium related to injuries his wife incurred and endured the emotional distress
14 associated with witnessing the accident and the injuries and entrapment of his family
15 members. His participation in daily activities with his wife has been permanently
16 altered.

17 **VI. THE UNDERLYING LAWSUIT OF HAEGER V. GOODYEAR**

18 31. In the late Summer 2003, the Haegers advised Goodyear of its
19 responsibility for the tread separation and the accident. Goodyear refused to
20 acknowledge any responsibility. In the summer of 2005, the Haegers sued
21 Goodyear. The Complaint included claims for a defective and/or negligent design of
22 the G159 tire involved in the tread separation, failure to warn of the temperature
23 limitations of the G159 and its speed limitations, post-sale failure to warn and
24 negligent failure to warn. The lawsuit sought compensation for their personal
25 injuries and punitive damages.

1 **VII. THE RULES OF PROFESSIONAL CONDUCT SET FORTH THE ETHICAL STANDARDS**
2 **FOR THE CONDUCT OF ATTORNEYS IN LITIGATION.**

3 32. A lawyer, is a member of the legal profession, is a representative of
4 clients, an officer of the legal system and a public citizen having special responsibility
5 for the quality of justice. Whether or not engaging in the practice of law, lawyers
6 should conduct themselves honorably.

7 33. A lawyer's conduct should conform to the requirements of the law, both
8 in professional services to clients and in the lawyer's personal affairs. A lawyer
9 should use the law's procedures only for legitimate purposes and not to harass or
10 intimidate others. A lawyer should demonstrate respect for the legal system and for
11 those who serve it, including judges, other lawyers and public officials. It is also a
12 lawyer's duty to uphold legal process.

13 34. A lawyer shall not unlawfully obstruct another party's access to
14 evidence or unlawfully alter, destroy, or conceal a document or other material having
15 potential evidentiary value. A lawyer shall not counsel or assist another person to do
16 any such act.

17 35. A lawyer shall not falsify evidence, counsel or assist a witness to testify
18 falsely. A lawyer shall not fail to make reasonably diligent effort to comply with
19 legally proper discovery requests by an opposing party.

20 36. A lawyer shall not knowingly make a false statement of fact or law to a
21 court or fail to correct a false statement of material fact or law previously made to
22 the court by the lawyer. A lawyer shall not knowingly offer evidence that the lawyer
23 knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer
24 has offered material evidence and the lawyer comes to know of its falsity, the lawyer
25 shall take necessary remedial measures including, if necessary, disclosure to the
26 Court.

27 37. A lawyer who represents a client and who knows that the person
28 intends to engage, is engaging or has engaged in criminal or fraudulent conduct

1 relating to the proceeding shall take reasonable remedial measures, including, if
2 necessary, disclosure to the Court. The duties of candor continue throughout a
3 proceeding and apply even if compliance requires a disclosure of what would
4 otherwise be confidential information.

5 38. It is professional misconduct for a lawyer to engage in conduct involving
6 dishonesty, fraud, deceit or misrepresentation or to otherwise engage in conduct that
7 is prejudicial to the administration of justice.

8 **VIII. THE FEDERAL RULES OF PROCEDURE SET FORTH THE LEGAL DUTIES OF**
9 **ATTORNEYS AND PARTIES TO LITIGATION**

10 39. The Haegers' lawsuit was prosecuted in the United States District Court,
11 for the District of Arizona, before Judge Roslyn Silver. The Federal Rules of Civil
12 Procedure regulated the conduct of the parties and the lawyers appearing before the
13 Court in the *Haeger* litigation.

14 40. The Federal Rules of Civil Procedure set forth both the obligations and
15 the entitlements of parties to litigation.

16 41. Pursuant to the Federal Rules of Civil Procedure, the Haegers were
17 entitled to request and be provided information regarding matters that were relevant
18 to their claims or Goodyear's defenses. The information requested is deemed
19 relevant if it appears reasonably calculated to lead to the discovery of evidence
20 which may be admissible in the trial of the action.

21 42. When a party, like Goodyear, makes a response to a request to produce
22 relevant documentation, it must supplement or correct its disclosure or response if
23 the party, like Goodyear, learns that in some material respect the disclosure or
24 responses are incomplete or incorrect and the corrected information has not
25 otherwise been made known to a party, like the Haegers.

26 43. These are some of the Federal Rules of Civil Procedure that guided the
27 disclosure obligations of Goodyear and its attorneys. These were among the rules
28 upon which the Haegers relied to discover the truth regarding the G159.

1 **IX. GOODYEAR CRAFTED A NATIONAL STRATEGY TO CONCEAL THE TRUTH**
2 **REGARDING THE G159 TIRE BEFORE THE HAEGER CASE WAS FILED**

3 44. Although the G159 was designed for and primarily used for metro
4 service vehicles, it fit motorhomes and Goodyear subsequently sold the tire for that
5 application.

6 45. Unknown to the Haegers, when their accident occurred in 2003, there
7 had already been countless reported tread separations involving the G159 when used
8 on a motorhome. Plaintiffs have not identified the number because Goodyear has
9 claimed the number is confidential.

10 46. Countless G159 tires suffering tread separations when used on
11 motorhomes were returned to Goodyear under Goodyear's warranty, due to the
12 failures which occurred in that application. Plaintiffs have not identified the number
13 because Goodyear has claimed the number is confidential.

14 47. Separate from the tires returned to Goodyear for warranty replacement,
15 there were countless reported bodily injury and additional property damage claims
16 (beyond damage to the tire itself) arising from tread separation of the G159 when
17 utilized in a motorhome application. Plaintiffs have not identified the number
18 because Goodyear has claimed the number is confidential.

19 48. By 2005, when the Haegers filed their lawsuit, there had already been
20 at least twenty (20) lawsuits filed against Goodyear for tread separations involving
21 the G159 when utilized in motorhomes, resulting in multiple fatalities.

22 49. The G159 first went into production in 1996. Public records revealed
23 that by 1998, there had been dozens of G159 tread separations involving Fleetwood
24 motorhomes, which had been reported to Goodyear, many of which caused fatalities
25 or serious injuries.

26 50. Goodyear denied any responsibility for the tread separations.

27 51. Goodyear advised Fleetwood that "running hotter can take its toll on
28 rubber." Goodyear represented that at 55 MPH the belt edge temperatures of the

1 G159 tire averaged 160° Fahrenheit, whereas running continuously at 75 MPH
2 increased those temperatures to 185° Fahrenheit. Goodyear knew the G159 was
3 generating temperatures vastly in excess of these representations at those speeds
4 but concealed that information from Fleetwood.

5 52. In November 1998, in an effort to place blame on motorhome drivers
6 for the continuous failures of the G159 and escape any responsibility, Goodyear
7 wrote to Fleetwood advising that tire blowouts can relate to a number of factors,
8 however the key ones being overload, under inflation, vehicle speed and road
9 hazards, each of which were the driver's responsibility. Goodyear explained how
10 these circumstances could result in a tread separation:

11 Fatigue and separation are somewhat allied properties of
12 tire endurance. Both can be adversely affected by
13 excessive conditions of load, deflection, inflation and speed.
14 All of these conditions relate to heat buildup, and heat is
15 the greatest enemy of a tire. Excessive heat will cause a
16 degradation of material properties which in turn can impact
17 the tire's endurance and durability.

18 Tires are designed to perform at specific operating
19 temperatures, which is sometimes called 'equilibrium
20 temperature.' At equilibrium the heat generated within the
21 tire structure is equal to the heat dissipated from the tire
22 surfaces. Exceeding this temperature for short periods of
23 time is not a problem but exceeding it for long periods
24 begins to cause loss of strength in the material components
25 and eventually separation of the tires structure.

26 53. Goodyear's November 1998 letter to Fleetwood quoted almost verbatim
27 from a publication authored by Goodyear engineers Thomas Ford and Fred Charles
28 entitled *Heavy Duty Truck Tire Engineering*. The pertinent language from the
publication, upon which Goodyear was relying in its communication to Fleetwood
states:

Fatigue and separation are somewhat allied properties of
tire endurance. Both can be adversely affected by
excessive conditions of load, deflection, inflation and speed.

* * *

1 Heat is the great enemy of tires. Excessive heat will cause
2 the degradation of material properties. Heat is generated
3 by the tire due to the work expended during operation. An
4 equilibrium temperature is developed during continuous
5 operation of a truck tire. The temperature rises very
6 rapidly initially and then gradually levels off to an
7 equilibrium value. At equilibrium temperature, the heat
8 generated within the tire structure is equal to the heat
9 dissipated from the tire surfaces.

10 *Tires are developed to withstand this equilibrium*
11 *temperature which for radial heavy duty truck tires is a*
12 *maximum of 90° Centigrade (194° Fahrenheit). Exceeding*
13 *this temperature for short periods of time is not a problem*
14 *but exceeding it for long periods begins to cause loss of*
15 *strength in the material components and eventually*
16 *separation of the tire's structure. (Emphasis supplied)*

17 54. Although Goodyear quoted directly from this publication in its
18 communications with Fleetwood, it intentionally omitted the language that revealed
19 that the tires are developed to withstand only 194° and that exceeding that
20 temperature for long periods of time will cause a loss of strength in the material
21 components and eventually separation of the tire's structure.

22 55. At the time Goodyear communicated with Fleetwood it knew that its
23 secret test data revealed the G159 was generating temperatures well in excess of
24 194° Fahrenheit when used at highway speeds, explaining the repeated failures and
25 resulting injuries and deaths.

26 56. In June 1998, before misleading Fleetwood, Goodyear had increased the
27 speed rating of the G159 to 75 MPH as a result of increase in speed limits across the
28 country. By approving the tire for 75 MPH Goodyear assured continued sales for all
highway applications. Fleetwood questioned whether construction changes in the
G159 and/or the approval of the tire for utilization of 75 MPH were related to the
tread separations the tire was experiencing. Goodyear informed Fleetwood:

A question was raised relative to the possibility of 75 MPH
compromising the tire's safety margin. Goodyear evaluates
the test results and then determines whether to authorize
75 MPH or keep the tire at 65 MPH. To date if a tire did not
meet our standards, the tire remained at a maximum
speed rating of 65 MPH. In the case of the tire in question,

1 the tire performed to the level that satisfied our high speed
2 requirements and we approved the tire to 75 MPH.

3 57. In June 1998, Goodyear knew its tests revealed the G159 was
4 producing heat up to 229°, vastly beyond 194°, at highway speeds.

5 58. Goodyear advised Fleetwood that in relation to construction changes
6 between 1996 to May 1999, as follows:

7 Relative to the subject tire, our production facility in
8 Danville, Virginia developed the tire in December 1995 and
9 began full production in February 1996. Our design
10 engineers have analyzed all of the tire construction
changes and have determined that the changes would not
have impacted tire performance relative to tread
separations, belt edge separations or high speed durability.

11 59. Although concealed from Fleetwood, Goodyear was actually modifying
12 construction and compounds in the G159 in a failed attempt to rectify heat induced
13 failures in the tire.

14 60. Tread separations of the G159 in highway applications continued. On
15 August 23, 2000, Goodyear communicated with the Monaco Corporation regarding
16 tread separations involving the G159 when utilized on Monaco motorhomes. Again,
17 Goodyear provided an almost identical explanation as was provided to Fleetwood.
18 Once again, Goodyear failed to disclose the 194° design limitations of the G159.
19 Again, Goodyear blamed the failures on motorhome drivers.

20 61. At no time did Goodyear disclose to either Fleetwood or Monaco the test
21 results it possessed which revealed heat generated by the G159 at highway speeds
22 was far in excess of 194° Fahrenheit. Rather, Goodyear actively concealed its test
23 data from these two motorhome manufacturers.

24 62. Although Goodyear was well aware of the relationship between the heat
25 produced by the G159 in highway applications and its failure, it made no subsequent
26 effort to warn users of the limitations of the G159, made no effort to inform the
27 Government what Goodyear knew about the heat that the tire was generating in
28 these high speed applications and made no effort to otherwise recall the tire or

1 provide any post-sale warning to individuals utilizing the G159 on their motorhomes.
2 Rather, Goodyear chose to "run out" the tire and solve one claim at a time while it
3 employed its national strategy to conceal all critical information from those
4 victimized by the G159 and to similarly conceal such data from those governmental
5 entities with the capacity to regulate and punish Goodyear for its conduct. Goodyear
6 knew this strategy would cause future deaths and injuries from G159 tread
7 separations.

8 63. By 2003, as a result of the number of claims and lawsuits arising from
9 tread separations involving the G159 in motorhome applications, Goodyear
10 coordinated the defense of Goodyear's G159 tread separation lawsuits and claims at
11 a national level. It retained the law firm of Roetzel & Andress and its attorney
12 Musnuff to operate as National Coordinating Counsel for all G159 claims and
13 litigation.

14 64. As a result of ongoing failures, Goodyear ceased manufacture of the
15 G159 in 2003. Rather than recall the tire, Goodyear chose to leave the tires in the
16 market, secretly settling cases as they arose as a result of continued tread
17 separations causing injuries and deaths.

18 65. Musnuff and Roetzel & Andress were specifically tasked with defending
19 and confidentially settling every G159 tread separation failure involving motorhomes.

20 66. In cases where lawsuits were filed relating to G159 tread separations,
21 Goodyear's Associate General Counsel, Okey, would retain local counsel in each
22 state, as is required by applicable rules of procedure, to represent Goodyear's
23 interests and instruct those local attorneys to work with National Coordinating
24 Counsel. Thus, Goodyear, through National Coordinating Counsel, kept close control
25 over all aspects of litigation.

26 67. In litigation matters involving the tread separations of the G159 on
27 motorhomes, Roetzel & Andress and Musnuff, maintained responsibility for
28 identifying witnesses, selecting experts, preparing experts and witnesses for

1 deposition and trial and making preliminary recommendations to Goodyear as to
2 disclosures of documents and answers to specific questions raised in those litigation
3 matters. Okey was the final decision-maker regarding what documents would be
4 disclosed and how and if questions would be answered. Similarly, Okey was the
5 decision-maker regarding what objections Goodyear would voice to various requests
6 for information by those victimized by tread separations involving the G159 in
7 motorhomes. Regardless of where the case was filed or which local counsel was
8 retained, Goodyear kept tight control over the G159 cases and nothing was done
9 without the knowledge and consent of its Associate General Counsel.

10 68. As part of Goodyear's national defense of the G159 tread separation
11 cases, Goodyear required Roetzel & Andress, Musnuff and local counsel to request
12 that each court issue a protective order, approved by Goodyear, which allowed
13 Goodyear to designate documents as "confidential" and to claim testimony as
14 "confidential." The protective orders specifically prohibited victims of G159 tread
15 separations and their attorneys from sharing information produced by Goodyear
16 during the course of litigation, which Goodyear claimed to be "confidential," including
17 sharing it with other individuals injured by G159 tread separations. To assure no
18 documents were ever disclosed, each protective order required that all confidential
19 documents be returned to Goodyear after the case was resolved.

20 69. In every G159 litigation matter a "Goodyear form protective order" was
21 issued by each Court. In each instance, those protective orders prohibited sharing
22 any information disclosed which was claimed to be "confidential." The terms of the
23 protective orders allowed Goodyear to unilaterally determine what should be
24 "confidential" by simply stamping each document they did not want others to know
25 about as "confidential." Goodyear similarly could unilaterally declare testimony
26 "confidential" to assure any damning admissions were never disclosed to others
27 victimized by the tire.

28

1 70. When an attorney representing a victim of Goodyear sought even the
2 limited ability to share alleged confidential matters with only other lawyers
3 representing other victims of G159 tread separations, Goodyear objected. It
4 persuaded every court involved in G159 litigation to enter a protective order which
5 allowed Goodyear to prohibit any sharing of any documents or testimony that
6 Goodyear claimed to be "confidential" amongst those victimized by G159 tread
7 separations.

8 71. Whenever Goodyear disclosed any documentation relating to test data
9 or failure data relating to the G159, Goodyear would claim in each case that those
10 disclosures were confidential.

11 72. Whenever a Goodyear witness testified, Goodyear regularly designated
12 most, if not all, of such deposition testimony as confidential such that Goodyear was
13 able to make dissimilar disclosures and representations in similar cases regarding
14 failures of the G159 in motorhome applications.

15 73. Although Goodyear claimed the protective orders were necessary to
16 protect trade secrets, the truth is that the protective orders were designed and
17 utilized to conceal the truth regarding the cause and number of G159 failures so as
18 to minimize Goodyear's damage exposure and minimize settlement payments in
19 defending the G159 in litigation cases across the country.

20 74. By concealing the truth, Goodyear saved tens if not hundreds of millions
21 of dollars in settlements and verdicts and simultaneously evaded regulatory penalties
22 and brand damage which would have accrued if it disclosed the truth regarding the
23 G159. By participating in this deception, attorneys representing Goodyear were
24 handsomely rewarded.

25 75. When the Haegers filed their Complaint in Arizona in the summer of
26 2005, Goodyear, by and through Okey, retained Fennemore Craig and Hancock to
27 act as local counsel. Goodyear had historically and continuously used this firm and
28 Hancock to defend G159 cases filed in Arizona.

1 76. Like all other G159 cases, Goodyear and its attorneys requested the
2 Court enter a protective order in the *Haeger* case, crafted by Goodyear and its
3 National Coordinating Counsel. Goodyear and its attorneys advised Judge Silver
4 "this form of protective order is used throughout the country." The Haegers objected
5 to the protective order as drafted and requested that the protective order include a
6 sharing provision, suggesting it was necessary to insure that all parties litigating
7 cases against Goodyear would receive appropriate and complete data in similarly
8 situated cases.

9 77. The Court rejected Plaintiffs' request for a sharing provision
10 emphasizing that "every officer before this Court has an obligation to provide all
11 relevant discovery" and observed that the Federal Rules of Civil Procedure already
12 provided that anything that is relevant must be turned over to counsel and to all
13 parties so there was no need for a sharing provision.

14 78. As a result of the Court's comments and admonitions, as of August
15 2006, all counsel were expressly aware of the Court's expectations regarding
16 discovery and disclosure and that as officers of the Court, all relevant information
17 was to be appropriately identified and disclosed.

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

23 80. In spite of the Haegers justified reliance, Goodyear and its attorneys, as
24 part of a continuous national deception, concealed the truth regarding testing,
25 temperature limitations and failure history of the G159, while simultaneously
26 blaming the accident on LeRoy Haeger, willfully causing further damage to the
27 Haeger family.

1 **X. THE HAEGERS IDENTIFIED THEIR THEORY OF DEFECTIVE NATURE OF THE G159**
2 **IN 2006 AT THE BEGINNING OF THE CASE**

3 81. Goodyear had submitted written questions (interrogatories) to the
4 Haegers that required them to set forth their theories as to the defective nature of
5 the G159. On August 18, 2006, the Haegers advised Goodyear in response to its
6 interrogatory:

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

17 **XI. FROM THE BEGINNING OF THE HAEGER CASE GOODYEAR AND ITS ATTORNEYS**
18 **FAILED TO COMPLY WITH THE FEDERAL RULES OF CIVIL PROCEDURE AND**
19 **MAKE MEANINGFUL DISCLOSURE OF RELEVANT INFORMATION**

20 82. Goodyear was required to provide an initial disclosure statement to the
21 Haegers which identified all documents which may be utilized in its defense of the
22 case and to identify all individuals with information that Goodyear might use to
support its defense.

23 83. Goodyear and its attorneys filed its initial disclosure statement on
24 December 15, 2005. The disclosure statement failed to identify a single individual in
25 Goodyear's employ who knew of relevant information regarding the G159. It failed
26 to identify a single Goodyear document generated that it expected to utilize in the
27 defense of the *Haeger* litigation, even though Goodyear maintained that the tire was
28

1 state of the art and had been adequately tested to insure its safe utilization at
2 75 MPH.

3 84. The failure to provide required disclosures was part of an orchestrated
4 joint endeavor by Goodyear and its attorneys to conceal relevant information
5 regarding the G159.

6 **XII. GOODYEAR AND ITS ATTORNEYS SUBSEQUENTLY DISCLOSE ONLY DEPARTMENT**
7 **OF TRANSPORTATION (DOT) ENDURANCE TESTS IN RESPONSE TO THE**
8 **HAEGERS' PRELIMINARY REQUEST FOR RELEVANT TEST DATA**

8 85. Plaintiffs submitted a request for the production of documents and
9 written questions (interrogatories) to Goodyear on September 22, 2006.

10 86. Plaintiffs submitted 39 separate requests for production of documents.
11 Goodyear specified 16 "general objections" applicable to all requests and thereafter
12 voiced additional objections to each separate request for the production of
13 documents, while it failed to identify a single responsive document.

14 87. Plaintiffs submitted 20 separate interrogatories to Goodyear. Goodyear
15 objected to each and every interrogatory and failed to provide any substantive
16 response to a single question.

17 88. Plaintiffs' First Request for Production had sought among other things:

18 All test records for the G159 tires, including, but not limited
19 to road tests, wheel tests, high speed testing and durability
20 testing.

20 89. On November 1, 2006, Goodyear provided "supplemental" responses to
21 Plaintiffs' First Request for Production of Documents. Goodyear represented that "in
22 a good faith spirit of cooperation" Goodyear was willing to produce test
23 documentation. Its supplemental response stated:

24 Subject to and without waiving the foregoing objections,
25 and in a good faith spirit of cooperation, Goodyear will
26 produce, subject to the Protective Order entered in this
27 case the DOT test data for the Subject Tire for the Subject
28 Time Frame.

27 90. DOT refers to a class of tests required by the Department of
28 Transportation prior to the sale of commercial medium truck tires like the G159.

1 91. Goodyear thereafter identified nine (9) pages of documents
2 representing the body of DOT test data referenced in Goodyear's supplemental
3 response to Plaintiffs' First Request for Production, representing DOT tests which
4 were performed between October 1998 and December 2002.

5 92. The DOT tests that were disclosed, revealed no temperature information
6 whatsoever. Rather, each test was performed at 30 MPH per hour for a period of
7 1,710 miles as part of the required government endurance testing for the tire prior
8 to sale.

9 93. Goodyear limited disclosure of DOT test data to the "subject time
10 frame" which was unilaterally determined by Goodyear to be the time frame
11 commencing on the date the G159 tires on the Haeger motorhome were
12 manufactured in 1998 and ending on the date of the Haegers' accident in 2003.

13 94. On December 20, 2006, counsel for the Haegers wrote a letter to
14 Hancock, local counsel for Goodyear, demanding if any test data other than the
15 disclosed DOT test data existed, it was incumbent upon Goodyear to disclose such
16 test data.

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

20 96. Plaintiffs brought Goodyear's effort to limit disclosure of test data to a
21 "subject time frame" of its sole design to the Court's attention. In January 2007, the
22 Court ordered Goodyear to produce additional test data commencing on the date the
23 G159 was first produced in 1996 and ending on the date of Goodyear's response to
24 Plaintiffs' request for production.

25 97. In response to the Court's Order, on March 7, 2007, Goodyear produced
26 an additional three (3) pages of DOT test data. These DOT tests were limited to
27 three (3) tests performed between April 1996 and October 1997, again performed at
28 30 MPH for 1,710 miles, which did not record any temperature data whatsoever.

1 98. In spite of Goodyear's obligation to supplement its production of test
2 data, in the event Goodyear discovered it had failed to disclose requested relevant
3 data, at no time did Goodyear ever supplement its response to Plaintiffs' First
4 Request for Production, other than as referenced in ¶¶ 91 and 97.

5 99. The decision to limit disclosure of test data to the DOT tests was part of
6 the endeavor by Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
7 Hancock to conceal other relevant test data regarding the G159, of which the
8 Haegers were unaware.

9 100. In Goodyear's Answer to Plaintiffs' Complaint, Goodyear asserted that
10 its G159 represented the "state of the art."

11 101. Goodyear's "state of the art" defense meant that Goodyear was claiming
12 the G159 matched the technical and scientific knowledge of designing and testing
13 tires that was in existence at the time of manufacture.

14 102. The Haegers' original interrogatories requested that Goodyear identify
15 every fact that supported its state of the art defense.

16 103. Goodyear objected to Plaintiffs' question and provided no substantive
17 response. At no time did Goodyear supplement its answer to Plaintiffs' request that
18 Goodyear identify the facts that supported its state of the art defense.

19 104. In the Haegers' original written interrogatories, they requested that if
20 Goodyear ever maintained any files of any tests regarding the G159, that Goodyear
21 identify the nature of such files and the present custodian of such files.

22 105. Although Goodyear had originally objected to answering the question, in
23 Goodyear's supplemental response filed on November 1, 2006, it stated:

24 Subject to and without waiving the foregoing objections,
25 and in a good faith spirit of cooperation, Goodyear states
26 that it will produce for deposition a corporate
27 representative knowledgeable about the DOT testing for
28 the Subject Tire, subject to the Protective Order entered in
this case, that the Subject Tire was subjected to all
necessary DOT testing, and that in response to Plaintiffs'
request that for production Goodyear will produce, subject

1 to the Protective Order entered in this case the DOT test
2 data for the Subject Tire for the Subject Time Frame.

3 106. In spite of Goodyear's obligation to provide further supplementation to
4 its response if it discovered the identity of any additional test data, at no time did
5 Goodyear ever further supplement its response to this interrogatory.

6 107. Plaintiffs had submitted their requests for the production of relevant test
7 documents and written questions regarding the custodian of all test files in order to
8 acquire relevant information relating to Goodyear and the G159 tire. The answers
9 Goodyear provided to such questions and documents produced by Goodyear were
10 provided to Plaintiffs' retained expert David Osborne.

11 108. Mr. Osborne was Plaintiffs' retained tire engineer. He prepared and
12 disclosed his report on January 1, 2007. It set forth his opinions, in reliance upon
13 the limited information disclosed by Goodyear.

14 109. Mr. Osborne's report opined that the disclosed DOT testing at 30 MPH
15 represented inadequate testing for a tire intended to be utilized in a highway
16 application like the G159 was when utilized in motorhomes.

17 110. Mr. Osborne expressed his opinion that the G159 failed as a
18 combination of load and speed.

19 111. Mr. Osborne had evaluated the tires on the Haeger motorhome and
20 excluded any other explanations for the failure, including impact damage to the tire
21 preceding its failure.

22 112. No further disclosures of relevant information relating to tests of the
23 G159 were disclosed by Goodyear between March 7, 2007 and June 6, 2007.

24 113. At no time did Goodyear or its attorneys disclose the publication of
25 Goodyear engineers, Thomas and Ford, Heavy Duty Truck Tire Engineering, which
26 revealed the maximum operating temperature of the G159 of 194° Fahrenheit.
27
28

1 **XIII. GOODYEAR'S EXPERT REPORTS MADE NO MENTION OF TESTING OF THE G159**
2 **OR ITS TEMPERATURE LIMITATIONS**

3 114. The Federal Rules of Procedure required Goodyear to disclose all
4 opinions of Goodyear experts to be expressed at trial and to identify all documents,
5 facts and data those experts considered in forming those opinions.

6 115. Goodyear disclosed its expert opinions on April 6, 2007, identifying
7 Richard Olsen, a Goodyear tire engineer and James Gardner, a former Firestone tire
8 engineer, as its expert witnesses regarding the design of the G159, its strengths and
9 its limitations.

10 116. The reports of Olsen and Gardner made no mention of Goodyear tests.

11 117. Neither Olsen nor Gardner considered Goodyear test data in forming the
12 opinions expressed in their written reports. All test data was ignored.

13 118. Mr. Olsen claimed the tread separation was caused by impact damage.

14 119. Mr. Gardner claimed the tread separation was caused by impact
15 damage.

16 120. Olsen's report represented that the G159 was designed and rated to be
17 operated at continuous highway speeds of 75 MPH.

18 **XIV. GOODYEAR AND ITS ATTORNEYS UNTIMELY DISCLOSE PREVIOUSLY CONCEALED**
19 **HIGH SPEED DURABILITY TESTS**

20 121. On May 8, 2007, the Haegers served their Third Request for Production
21 of Documents. The request asked that Goodyear disclose all documents which relate
22 to any speed or endurance testing to determine that the subject tire was suitable for
23 65 or 75 MPH highway purposes and all documents which relate to the approval by
24 Goodyear of the G159 for 75 MPH, including but not limited to all testing records
25 relating to suitability of the subject tire for that speed.

26 122. Goodyear knew the Haegers' expert was critical of the absence of any
27 testing at highway speeds when the G159 was allegedly designed for that
28 application. Goodyear needed to fill that void if it was to defend the G159.

1 123. Goodyear responded:

2 Subject to and without waiving the following objections,
3 and in a good faith spirit of cooperation, Goodyear states
4 that it is producing, subject to the Protective Order entered
5 in this case, copies of electronically maintained high speed
6 durability test results conducted on [the G159] since
August 1996. . . . Goodyear objects to this request for the
reasons and on the grounds that it is overly broad, seeks
irrelevant information regarding tires that are not
substantially similar and seeks confidential information.

7 124. Thus, on June 21, 2007, Goodyear for the first time disclosed four (4)
8 high speed durability tests, related to the G159 tire in production, like the tire on the
9 Haeger motorhome. The Haegers had requested that Goodyear disclose all high
10 speed testing on September 22, 2006. Goodyear and its attorneys concealed the
11 high speed tests for nine (9) months.

12 125. The four (4) high speed durability tests that related to the Haegers'
13 G159 were performed in 1996, months after Goodyear started selling the G159.
14 These were the only tests Goodyear alleged it relied upon to approve the G159 for
15 75 MPH use.

16 126. The tests recorded temperatures of the tires tested. The temperatures
17 recorded are not disclosed in this Complaint because Goodyear claimed the test
18 results are confidential.

19 **XV. GOODYEAR THROUGH ITS ATTORNEYS REPETITIVELY REPRESENTED TO THE**
20 **COURT THAT THERE WERE NO OTHER TESTS THAN THOSE WHICH HAD BEEN**
DISCLOSED TO THE HAEGERS

21 127. The parties attended several hearings before Chief Judge Silver of the
22 United States District Court for the District of Arizona.

23 128. On multiple occasions Goodyear, through its attorneys, specifically
24 represented to the Court that it had looked for, located and disclosed all available
25 test data to the Haegers.

26 129. The repetitive representations to the Court led the Court to believe that
27 no other test data regarding the G159 existed and that all available test data had
28 appropriately been disclosed regarding the G159.

1 130. The repetitive representations to the Court led the Haegers' counsel to
2 believe that no other test data regarding the G159 existed and that all available test
3 data had appropriately been disclosed regarding the G159.

4 **XVI. GOODYEAR AND ITS EXPERTS EXPLAINED THE TEMPERATURE LIMITATIONS OF**
5 **THE G159 AND THE MEANING OF AVAILABLE TEST DATA**

6 131. The Federal Rules of Procedure allowed the Haegers to request that
7 Goodyear designate an individual to testify on behalf of the corporation in reference
8 to specific topics.

9 132. The Haegers had requested that Goodyear designate a witness to testify
10 about testing of the G159.

11 133. Goodyear designated its employed tire engineer, Richard Olsen, to
12 testify on behalf of the corporation as to testing known to Goodyear or otherwise
13 available to Goodyear regarding the G159.

14 134. When Mr. Olsen testified he was speaking on behalf of Goodyear.

15 135. It was Mr. Olsen's obligation to review all corporate documentation that
16 was relevant to the deposition topic of testing and he did so prior to answering
17 questions posed by the Haegers' counsel.

18 136. Musnuff and Hancock met with and prepared Mr. Olsen for this
19 deposition.

20 137. Goodyear, by and through the testimony of Mr. Olsen, represented that
21 all available test records had been disclosed and produced to the Haegers.

22 138. Goodyear, by and through Mr. Olsen, represented that there were a
23 number of different test procedures ran during the development process for a tire,
24 but no documentation of these tests was available regarding the G159.

25 139. Based upon the testimony of Goodyear, by and through its designated
26 representative Mr. Olsen, the Haegers again were led to believe that the only
27 available testing was the Department of Transportation 30 MPH tests, previously
28

1 disclosed, and the more recently disclosed high speed testing, which was limited to
2 four tests performed in 1996 on the G159.

3 140. Goodyear's tire engineering expert James Gardner authored Chapter 15
4 to the Pneumatic Tire, a 29-chapter treatise published by NHTSA in 2005. Chapter
5 15 is titled "*Introduction to Tire Safety, Durability and Failure Analysis*" and includes
6 the following observations:

7 3.4 Heat.

8 . . . Elevated and extended heat generation is a primary
9 factor in the breakdown of a tire. Increased heat decreases
10 rubber tear resistance which promotes crack initiation and
11 propagation . . .

12 * * *

13 . . . Rubber deterioration (reversion) from excessive heat
14 buildup results in decrease in tensile strength and general
15 softening. This breakdown from heat is an additive effect
16 that can drive the temperature higher still. Ultimately a
17 component or portion of the tire can reach a critical
18 temperature range where the deterioration of the rubber
19 can cause detachment of the tire in pieces or whole
20 sections of the tread . . .

21 3.6 Speed.

22 Changing the speed of tire rotation affects the centrifugal
23 force and frequency of the deflection cycle. Corresponding
24 changes in the stresses and strains developed in the tire
25 components affects the tire's heat buildup characteristics.

26 The fundamental effect of speed is its influence on the
27 frequency of cyclical deformation. With each rotation, a
28 given radial section of the tire undergoes a stress strain
cycle as it passes through the contact patch. Increasing
the cyclical frequency increases the heat that develops and
hence affects the performance of the tire as a whole,
particularly parameters of the link to durability.

. . . Testing has verified that increasing speed causes an
increase in tire temperature, particularly in the shoulder
area.

141. Goodyear's separately retained expert, Mr. Gardner, testified that a
medium commercial truck tire, like the G159, should operate between 140 to 150°
Fahrenheit at 75 MPH continuous speed on the highway when properly inflated.

1 142. Mr. Gardner testified that if a medium commercial truck tire, like the
2 G159, was exposed to prolonged temperatures in excess of 200° Fahrenheit, that it
3 would experience diminishing properties, which could lead to tread separations.

4 143. Mr. Olsen agreed with Mr. Gardner's opinion that the G159 would be
5 prone to tread separation if continually operated at temperatures in excess of 200°
6 Fahrenheit.

7 144. The Haegers' expert, Mr. Osborne, opined that elevated temperatures
8 can break down the adhesion system of a steel belted radial tire, like the G159, and
9 that high temperatures reduce the tire's tear strength.

10 145. Goodyear, by and through its designated representative Mr. Olsen,
11 explained the high speed tests and the test results.

12 146. Goodyear explained that the high speed tests of the G159 were
13 performed on a 67" steel wheel and explained that this environment is dissimilar to
14 the stresses placed upon the tire in a real world environment like operating on a
15 freeway.

16 147. Goodyear asserted that the nearest equivalent to the stress of running
17 at 75 MPH on a roadway is a 67" wheel test at 42 MPH which was alleged to create the
18 equivalent stresses that would be experienced by the G159 when operated on a
19 highway at 75 MPH.

20 148. In the four high speed durability tests disclosed by Goodyear, the
21 temperature generated by the tire at certain speeds was identified.

22 149. Accepting Goodyear's representations regarding equivalent stresses for
23 testing on a 67" wheel, the four (4) high speed durability tests disclosed by
24 Goodyear regarding the G159 only recorded temperatures at speeds vastly beyond
25 75 MPH highway use.

26 150. Since Goodyear claimed that 42 MPH on the 67" steel wheel was the
27 equivalent of 75 MPH on a highway, a temperature recorded at 75 MPH on the steel
28

1 wheel was merely reflective of a G159 operating at 133 MPH in a highway
2 environment.

3 151. None of the disclosed high speed tests recorded temperatures at
4 42 MPH, the equivalent of the temperature which would be generated at 75 MPH.

5 152. None of the disclosed testing recorded temperatures at any speed which
6 would be equivalent to highway speed of 75 MPH or less.

7 153. Goodyear represented under oath that no other test data existed which
8 recorded temperatures of the G159 at lower speeds.

9 154. Based upon Goodyear's testimony under oath that no other test data
10 was available, Plaintiffs had no Goodyear test data that reflected the G159 was
11 running too hot (greater than 200°) when utilized at freeway speeds between 65 and
12 75 MPH.

13 **XVII. GOODYEAR UTILIZED ITS LIMITED DISCLOSURES OF TEST DATA TO EXPLOIT**
14 **JUDICIAL DETERMINATIONS BEFORE TRIAL**

15 155. The parties were entitled to make arguments to the Court to limit the
16 introduction of evidence at the time of trial based upon the disclosures and
17 testimony provided before trial.

18 156. Goodyear and its attorneys had never disclosed the full number of
19 bodily injury and property damage claims arising from tread separations of the G159
20 on motorhomes to the Court or the Haegers.

21 157. Goodyear and its attorneys utilized the limited test data that it had
22 disclosed in an attempt to persuade the Court that there was no evidence of a defect
23 in the design of the G159.

24 158. Goodyear and its attorneys utilized the limited test data to advance its
25 defense that the G159 in the Haeger accident failed as a result of impact damage
26 caused by LeRoy Haeger, alleging the tire failed as a result of Mr. Haeger's striking
27 some unknown object, at an unknown speed, which Goodyear claimed could result in
28 a tread separation thousands of miles later. Goodyear made this claim even though

1 Mr. Haeger was the only person who drove the motorhome and testified no such
2 impact ever occurred.

3 159. Goodyear advanced this "impact damage" defense even though
4 commercial truck tires, like the G159, are the toughest and strongest tires Goodyear
5 makes.

6 160. This "impact damage" defense was regularly used by Goodyear in the
7 G159 cases, where Goodyear regularly blamed the motorhome drivers for the
8 accidents and injuries their families suffered.

9 161. Goodyear and its attorneys advanced its primary defense that the
10 limited test data disclosed did not support a heat-related failure of the tire in the
11 Haeger accident pointing out the absence of any recorded test temperature results at
12 highway speeds of 75 MPH or less.

13 162. In reliance upon the representations made by Goodyear and the
14 existing record, the Court dismissed Plaintiffs' claims for failure to warn users of the
15 speed limitations of the tire. The Court also entered an order precluding Plaintiffs
16 from the introduction of evidence of any other accidents, lawsuits, bodily injury or
17 property damage claims.

18 163. When LeRoy Haeger died in 2008 from lung cancer, Goodyear and its
19 attorneys continued to blame him for his family's devastating injuries. Goodyear and
20 its attorneys told the Haeger family members that their injuries were LeRoy's fault.

21 164. Goodyear attorney, Hancock, made it clear that Goodyear would appeal
22 any adverse result at trial when he stated that Donna Haeger would be dead before
23 Goodyear was finished.

24 165. The claims left for a jury were limited to Plaintiffs' claims of negligent or
25 defective design of the G159, claims for negligent infliction of emotional distress and
26 claims for loss of consortium as a result of the injuries incurred in the tread
27 separation accident.

28

1 166. Goodyear and its attorneys had dragged the Haegers through the
2 litigation process for seven (7) years, in an effort to exhaust them financially and
3 emotionally.

4 **XVIII. THE HAEGER CASE SETTLED ON THE FIRST DAY OF TRIAL JUST BEFORE THE**
5 **JURY WAS SEATED IN RELIANCE UPON REPRESENTATIONS MADE BY**
6 **GOODYEAR AND ITS ATTORNEYS TO THE COURT AND THE HAEGERS**

7 167. Reasonably relying upon the accuracy of the testimony under oath by
8 Goodyear witnesses, the truthfulness of representations made by Goodyear through
9 its attorneys to the Court, the Federal Rules of Civil Procedure, compliance by
10 Goodyear with orders entered by the Court, conduct consistent with the ethical
11 obligations of counsel as officers of the Court, and considering the remaining
12 disputes between the experts and limited test data, the Haegers entered into a
13 settlement with Goodyear by and through its attorneys.

14 168. Okey, Musnuff and Hancock each participated in the settlement
15 discussions.

16 169. Neither Okey, Musnuff or Hancock advised the Haegers of
17 misrepresentations made to the Court or that it had presented false testimony
18 through its witnesses.

19 170. Unaware of a vast array of deceptions, misrepresentations and
20 concealed data, the Haegers and Goodyear entered into the settlement agreement,
21 but that agreement did not release Goodyear or its attorneys from damages caused
22 by or claims for fraud, perjury, misrepresentations, failure to comply with Court
23 orders or applicable rules of procedure, fraud in the inducement, abuse of process,
24 civil conspiracy, aiding and abetting or for knowingly concealing crucial requested
25 data.

26 171. Had the Haegers known of these deceptions and misrepresentations
27 they would not have settled the case for the consideration provided but the case
28 would have settled for a sum vastly in excess of that provided as these deceptions
would have revealed the indefensible nature of the G159 and that Goodyear and its

1 attorneys had been engaged in a conspiracy spanning years, which knowingly caused
2 countless deaths and injuries, including the devastating injuries suffered by the
3 Haegers. The settlement would have been consistent with the true value of
4 Goodyear's damage liability exposure.

5 **XIX. SUBSEQUENT TO THE SETTLEMENT THE HAEGERS DISCOVER THAT GOODYEAR'S**
6 **DISCLOSURES REGARDING TEST DATA WERE KNOWINGLY AND WOEFULLY**
7 **INCOMPLETE AND DESIGNED TO DECEIVE THE HAEGERS AND THE UNITED**
8 **STATES DISTRICT COURT**

8 172. As of the date of the Haeger settlement, in spite of the dozens of
9 lawsuits related to G159 tread separations on motorhomes, in no case had Goodyear
10 proceeded to trial. Rather each of the G159 tread separation motorhome cases was
11 secretly settled pursuant to the terms of various protective orders and all
12 settlements were deemed confidential and therefore unknown to others victimized by
13 G159 tread separations on motorhomes.

14 173. In the summer 2010, months after the *Haeger* case settled, the first
15 and only G159 trial occurred in Florida, in the matter of *Schalmo v. Goodyear*. The
16 Schalmo family was seriously injured as a result of a right front tire tread separation,
17 just like the Haegers, which resulted in a crash of their motorhome. Like the
18 Haegers, the Schalmo motorhome was occupied by four (4) Schalmo family
19 members, each of which suffered injuries similar to those of the Haeger family.

20 174. The jury in *Schalmo v. Goodyear* rendered its verdict in the amount of
21 \$5.6 million, finding that the G159 was defective in design and was not suitable for
22 highway use.

23 175. Like the *Haeger* case, Musnuff and Roetzel & Andress represented
24 Goodyear in the *Schalmo* case in the capacity of Goodyear's National Coordinating
25 Counsel.

26 176. Like all G159 cases, the *Schalmo* matter proceeded under a protective
27 order, which prohibited the *Schalmo* plaintiffs from disclosing to others any of the
28

1 confidential documents that were disclosed by Goodyear during the course of
2 discovery.

3 177. Subsequent to the entry of the verdict in the *Schalmo* case, the
4 Haegers' counsel became aware of an article authored by SAFETY RESEARCH regarding
5 the *Schalmo* trial. The article stated:

6 A failed Goodyear G159 was the cause of an August 11,
7 2004 crash that seriously injured the driver and two
8 occupants. The tire was the original equipment on a . . .
9 motorhome owned by John Schalmo. Schalmo was on
State Road 8 . . . when the right front tire of his
motorhome suffered a catastrophic tread separation
He died of unrelated causes two years before trial.

10 This was the first G159 case to be resolved in a public trial.
11 Goodyear has quietly settled as many as a dozen G159
12 tread separation cases involving serious injuries and death,
13 in exchange for confidentiality. The Schalmo . . . famil[y]
14 refused to agree to a confidential settlement and have
15 expressed their hope that Goodyear will recall the tire.

16 At trial [plaintiffs] presented Goodyear documents,
17 including *internal heat* and *speed testing* and failure rate
data that [plaintiffs] argued showed that Goodyear knew
the G159 was improperly approved for 75 MPH continuous
highway use. Excessive heat in the tire will break down its
internal components over time and is a leading cause of
tread belt detachment failures as typified by the Schalmo
crash. (Italics supplied)

18 178. In January 2011, Haegers' counsel brought the article to the attention
19 of Goodyear's counsel, Musnuff, providing Goodyear and its attorneys with a copy of
20 the article, which suggested the disclosure of dissimilar testing material in the
21 *Schalmo* case. The correspondence stated:

22 I have attached for your review a copy of an article I
23 discovered which causes me great concern regarding the
24 adequacy and honesty of disclosures made in the *Haeger*
25 case. . . . We forwarded our First Request for Production
26 on September 22, 2006, which required the production of
27 **all** test records for the G159 tire at issue. At the same
28 time, we forwarded a separate set of Nonuniform
Interrogatories which required the identification of any
tests, studies or research performed on the G159 tire at
issue.

Goodyear's first response to the Request for Production and
Nonuniform Interrogatories was a global objection.

1 Subsequently, Goodyear filed supplemental responses,
2 which suggested that the only tests for the G159 were the
3 DOT endurance tests, which you now know were limited to
4 testing the tire at 30 MPH.

5 Since you were active in all phases of discovery in this
6 case, you will appreciate the frolic that followed. Goodyear
7 produced the limited 30 MPH endurance testing which was
8 submitted to our expert and upon which he based his
9 opinions. It wasn't until after his deposition was taken and
10 his rebuttal prepared that Goodyear untimely disclosed the
11 high speed tests. . . . At no time did Goodyear further
12 supplement its responses to the interrogatories to requests
13 for production submitted at the very inception of this case
14 in 2006, which required disclosure of all tests. Regardless,
15 although I am not in possession of these internal heat
16 tests, they are no doubt part of any Goodyear analysis as
17 durability of the G159 and its intended application for
18 motorhomes.

19 Further, we spent countless hours deposing Goodyear's
20 30(b)(6) deponent and Goodyear's experts. No internal
21 heat tests were ever referenced by Goodyear's deponents
22 or experts in their reports or depositions. . . .

23 You have been in control of the *Haeger* case as National
24 Coordinating Counsel since 2003. You have been the only
25 person in the country acting as coordinating counsel in
26 these G159 cases. Your job includes review and approval
27 of all discovery responses by local counsel. Moreover, your
28 role as coordinating counsel and certainly part of your role
as lead trial counsel includes the admitted participation and
the preparation of experts to testify in deposition or trial.
You know what has and what has not been disclosed and
discussed in each of these cases.

You have been in charge of the preparation of Protective
Orders, the objection to sharing agreements, the
production of test data and selection of experts in all of the
G159 cases, every one of which was settled, except the
Schalmo case, which proceeded to trial. Only you know
what was produced in these varied cases, but this newly
discovered evidence clearly suggests that dissimilar test
data was produced in the *Haeger* and *Schalmo* file.

You utilized different lawyers, different 30(b)(6) deponents
and different experts in both *Schalmo* and *Haeger* cases.
. . . All of this appears to have been regulated and blessed
by Goodyear, as I know you reported to the same
Goodyear employee throughout these many years who
surely knew that dissimilar test data was being disclosed.
Further, it is my understanding after the jury awarded \$5.6
million, based upon disclosure of all the test data, that
Goodyear has now settled *Schalmo* pursuant to a new
confidential agreement and has or will seal that trial record,
if allowed. Such an endeavor seems a willful effort to bury

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the complete test data which was introduced at trial in *Schalmo*.

I ask you to be direct in your response and advise me whether there are any internal heat test records as suggested by this article which were not produced to us in the *Haeger* case. As you can appreciate, if that is the case, I spent over five (5) years working on a case with an erroneous set of assumptions based upon disclosure of a fraction of the truth which had significant adverse effects.

179. On January 13, 2011, Musnuff of Roetzel & Andress, on behalf of Goodyear responded to the letter. His letter stated:

While I take issue with many of the statements and position stated in your January 6, 2011 letter, I do not believe it would be productive to respond to them in detail at this time. . . . Goodyear stands behind its discovery responses in the *Haeger* case . . . You and your clients had every opportunity to raise any and all discovery issues with the Court while the case was pending.

180. On January 27, 2011, counsel for the Haegers wrote again to Musnuff. Counsel's letter provides:

Your January 13, 2011 letter fails to answer the simple question posed. Did you disclose the existence of internal heat test records [or other test records] in the *Schalmo* case which were not disclosed in *Haeger*?

Your letter dances around the issue but clearly implies that different test records were in fact disclosed in *Schalmo* which were concealed from the Haeger Plaintiffs. . . .

Your comment about my ability to have previously raised this with the Court is disingenuous. I cannot raise an issue about concealed data/witnesses unless I was aware that such was concealed in the first instance.

181. On February 7, 2011, Musnuff responded:

While I take issue with the statements in your email I do not believe it would be productive to debate these issues further. The *Haeger* case is settled and dismissed.

182. The Haegers' counsel responded:

Your response is evasive and unacceptable. Please provide me the courtesy of an answer to my questions. This case has not been fully litigated if you concealed information for which there was a disclosure obligation. Absent cooperation I will have no choice but to involve the Court.

1 Your failure to provide a simple answer causes me great
2 concern that you have willfully deceived me.

3 183. In follow-up correspondence of February 21, 2011, the Haegers' counsel
4 advised Musnuff:

5 I have set forth a straightforward and simple question to
6 Goodyear. I have asked you to disclose whether there
7 were any internal heat test records or other test records
8 regarding the G159 which were not produced in our case as
9 was suggested by a recent publication regarding the
10 *Schalmo* trial. Rather than providing me an honest
11 response you have claimed . . . "the fact that a particular
12 type of information may have been ruled discoverable in
13 the *Schalmo* case does not mean that it was discoverable
14 in *Haeger*."

15 I am left with only one conclusion considering your
16 response. Specifically, Goodyear and its counsel knowingly
17 failed to disclose requested test records regarding the G159
18 from the Haeger Plaintiffs. Your suggestion that the
19 requested test records were not discoverable is ludicrous.
20 It is particularly inane, considering the testing records were
21 the heart of the defective design determinations by
22 Goodyear's own admission and thus were repetitively
23 requested in requests for production and interrogatories.

24 * * *

25 Apparently, Goodyear has blessed your refusal to answer
26 my simple question and supports the unjustifiable position
27 that you assert as to why and how Goodyear can and will
28 get away with this, which just makes it worse.

It is particularly reprehensible that you knew exactly what
was concealed, as you reviewed and controlled discovery
responses in both the *Schalmo* and *Haeger* cases in your
capacity as National Coordinating Counsel for all of the
G159 cases since 2003. Further, you participated in
discovery in both cases and acted as lead trial counsel and
actually selected the 30(b)(6) deponents and experts to
advance this deception.

* * *

Goodyear has displayed a significant history of deception in
discovery, not only in this case, but in other matters for
which Goodyear has been severely sanctioned. Goodyear
and its counsel's flippant attitude towards its obligations is
wholly unacceptable.

This case and others around the country have to do with
the defective design of the G159. Goodyear testified that
defect determinations are based solely upon test data and

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failure statistics. Goodyear directly represented to Judge Silver, repetitively, that it had disclosed all test data. Moreover, Goodyear, through its counsel, represented to the Court that Goodyear's 30(b)(6) deponent had reviewed all available test data in expressing his opinions. Regardless, Goodyear never disclosed internal heat test records, which are directly relevant in the design suitability of the G159 That conduct is fraudulent. The record in your recent communications make clear that Goodyear was fully participant and aware of the concealment of this data. . . .

While willfully concealing the test data, Goodyear and its counsel have invited Plaintiffs to expend thousands of hours of time and hundreds of thousands of dollars for costs developing their case based upon a fraction of the truth regarding G159 tests. The majority of the motion practice, including motions for summary judgment and motions in limine (all of which were anchored upon fraudulent deposition testimony by Goodyear's in-house expert and 30(b)(6) deponent) represented expenditures inappropriately incurred and which obviously failed to set forth a proper record for the Court, with Goodyear's knowing participation. Goodyear's conduct knowingly deceived the Court regarding the evidence and no doubt impacted Her Honor's rulings. Goodyear harvested this misleading information through settlement with the Haegers, knowing full well that the settlement was premised upon fraudulent misrepresentations and represented settlement well beneath what would have been (presumably was provided) in other cases where full test data was disclosed.

* * *

Your suggestion that the Release provides sanctuary for Goodyear is completely mistaken. A fraudulently induced settlement and known violation of court orders entitles the Haegers to not only request appropriate sanctions, but to separate claims for damages, including those associated with the conspiracy, abuse of process, fraudulent inducement of the settlement and aiding and abetting Goodyear in this wrongful endeavor.

As an officer of the court, the first rule is that you are obligated to advance the just, speedy and inexpensive determination of every action or proceeding. Fraudulent concealment of test data is the worst kind of conduct and defeats the very purpose of the rules while shaming the profession. Every party is entitled to reasonably rely that the parties have complied with court orders in their obligations as officers of the court. Similarly, the court and parties justifiably relied upon Goodyear's representations to the Court regarding complete production of test data . . .

1 I have taken the time to dictate this letter, so that
2 Goodyear will be provided a final opportunity to address
3 this wrongful conduct.

4 184. On March 11, 2011, Goodyear, through Roetzel & Andress responded as
5 follows:

6 This letter responds to your letter of February 21, 2011.
7 . . .

8 . . . We take issue with any suggestion that we . . . misled
9 the Court in any manner . . .

10 Prior to writing this letter Goodyear analyzed this matter
11 and your claims. . . . [t]hat time allowed us to thoroughly
12 review the course and history of discovery in the *Haeger*
13 case. Based on that evaluation Goodyear stands by its
14 conduct throughout the *Haeger* case. *To answer your*
15 *primary question it's true there were testing records*
16 *regarding the . . . G159 tire . . . that were not produced in*
17 *the Haeger litigation.*

18 * * *

19 . . . Goodyear will not produce any further documents to
20 you, or identify cases in which additional testing records
21 were produced. Goodyear will not provide any documents,
22 expert reports, deposition transcripts or trial transcripts
23 from the *Schalmo* case many of which are subject to
24 protective orders and other orders of confidentiality
25 entered by the Court in that case, nor will Goodyear
26 stipulate to lifting any protective order in the *Schalmo*
27 case. (Italics supplied)

28 **XX. THE HAEGERS BRING THE MISCONDUCT OF GOODYEAR AND ITS ATTORNEYS
TO THE ATTENTION OF THE UNITED STATES DISTRICT COURT AND THE COURT
COMPELS DISCLOSURE OF CONCEALED TESTS**

185. Because Goodyear admitted that it had concealed requested test data,
the Haegers brought this matter to the attention of the United States District Court
advising the Court of the history of requests for disclosure of test data, the
representations of complete disclosure by Goodyear's attorneys, and the deposition
testimony of Goodyear that it had disclosed all test data, setting forth the prolonged
nature of Goodyear and its attorneys' deception. The Haegers requested the Court
enter a sanction for the misconduct of Goodyear and its attorneys.

1 186. Goodyear requested that the Court seal the Haegers' motion and the
2 supporting attachments so no one would become aware of these developments. The
3 Court refused stating that such a request was improper.

4 187. Goodyear renewed its request that the Court seal at least select
5 portions of the Haegers' Motion and the supporting exhibits. Again, the Court
6 refused finding there was no basis for Goodyear's request and that Goodyear had not
7 come close to overcoming the strong presumption that the public is entitled access
8 to judicial records.

9 188. Goodyear and its attorneys ultimately responded to the Haegers' Motion
10 for Sanctions and set forth Goodyear's varied alleged justifications for the failure to
11 disclose test data.

12 189. In Goodyear's response, it admitted it had concealed requested tests
13 but asserted that disclosure of the tests would not have affected the outcome in the
14 case while it continued to refuse to disclose concealed tests to the Haegers.

15 190. The Haegers requested the Court enter its order compelling Goodyear to
16 disclose previously requested test data that had been concealed from the Haegers so
17 that the Haegers could fully address Goodyear's assertion that the test data it
18 concealed was meaningless and its deception harmless.

19 191. The Court entered its order regarding the Haegers' Motion to compel the
20 disclosure of test data and ruled:

21 There are serious questions regarding [Goodyear's]
22 conduct in this case and it is well-established that "a court
23 has the power to conduct an independent investigation in
24 order to determine whether it has been a victim of fraud"
25 . . . Pursuant to that power, [Goodyear] will be ordered to
26 produce to [Haegers] and file with the Court the test
27 results at issue.

28 192. The Court's order made clear that Goodyear was to disclose *all* tests
that had been concealed.

193. October 7, 2011, Goodyear for the first time disclosed to the Haegers
the test protocol and test results for its Laboratory Durability Testing – Heat Rise.

1 194. The disclosure by Goodyear represented to the Haeger Plaintiffs and the
2 Court that these additional tests which were being disclosed represented the
3 remaining body of requested but previously concealed test data.

4 195. The newly disclosed test results which had been concealed for years
5 from the Haegers were previously printed from a Goodyear database on January 24,
6 2007 at 2:26 p.m.

7 196. The previously disclosed high speed tests were also printed from the
8 same database on January 24, 2007 at 2:26 p.m.

9 197. Goodyear and its attorneys made a purposeful decision to conceal the
10 heat rise test results at the time it decided to disclose the high speed test results.
11 Goodyear made this decision because the heat rise tests recorded temperatures
12 predictive of imminent failure of the G159 in a highway application.

13 198. The purpose of the newly disclosed tests was to determine dynamic
14 heat buildup at specific speed, load, and inflation for the G159.

15 199. The test is run, like the high speed tests, on a 67" steel wheel.

16 200. The test is run at 35 MPH.

17 201. The newly disclosed tests revealed that four tires were subjected to this
18 test on April 21, 1996.

19 202. The tests revealed temperatures up to 229° Fahrenheit.

20 203. For the first time, more than five (5) years after they were requested,
21 Goodyear disclosed tests where temperatures were recorded on a 67" steel wheel at
22 the equivalent of highway speed. According to Goodyear's previously disclosed
23 expert testimony, the temperatures generated at 35 MPH on the 67" steel wheel are
24 the equivalent of 62.5 MPH in highway use. The newly disclosed test revealed that at
25 62.5 MPH, the G159 was generating heat up to 229° Fahrenheit, a temperature
26 which Goodyear experts had admitted was predictive of tread separation failures if
27 the tire was exposed to prolonged operating conditions at that speed, like what
28 would regularly occur in motorhome use.

1 204. Plaintiffs refreshed the Court's recollection regarding the history of
2 Goodyear's representations, including the Goodyear's engineers publication that
3 established the G159 would predictably suffer tread separations if it was exposed to
4 prolonged operating temperatures in excess of 194°, that Goodyear's experts had
5 testified that when a medium commercial truck tire, like the G159, is exposed to
6 prolonged temperatures over 200° it would experience diminishing properties that
7 can lead to tread separations and that Goodyear's experts had testified that the
8 G159 traveling at 75 MPH should display average temperatures between 140 and
9 150°, all of which revealed the depth of Goodyear's deception and the critically
10 relevant nature of this previously concealed test data as it related to the defective
11 design of the G159 and its suitability for utilization in a highway application.

12 **XXI. THE UNITED STATES DISTRICT COURT FINDS GOODYEAR AND ITS ATTORNEYS**
13 **WERE PARTICIPANT IN A CONSPIRACY**

14 205. On February 24, 2012, the United States District Court entered its order
15 setting forth its proposed findings of fact and conclusions of law regarding Plaintiffs'
16 Motion for Sanctions and ordered that Goodyear and its attorneys file either joint or
17 separate briefs addressing the Court's proposed findings.

18 206. The Court's proposed findings of fact and conclusions of law provided:

19 *According to the test results, after running at 35 MPH, the*
20 *G159 tires generated temperatures of up to 229°.*
21 *Goodyear's internal documents, own expert, and the*
22 *30(b)(6) witness all agree that this temperature is high and*
23 *would be cause for concern. Thus, if these tests had been*
24 *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 motorhome given its own testing data that the
 G159 tires reached temperatures well above 200° at
 speeds of 55 to 65 MPH. (Italics supplied)

25 * * *

26 *This conduct at issue appears to have stemmed from a*
27 *deliberate corporate strategy adopted by Goodyear to*
28 *prevent the disclosure of the internal heat test results.*
 This is supported by the fact that Goodyear's 30(b)(6)
 witness did not disclose the test results and even testified

1 they did not exist. Also, Goodyear apparently did not
2 disclose these test results in other pending cases across
the country. (*Italics supplied*)

3 * * *

4 *The troubling behavior by Goodyear and its counsel began*
5 *almost immediately after the case was filed and continued*
6 *throughout the pretrial proceedings.* The behavior included
inappropriate responses to requests for production as well
as false testimony by Goodyear's 30(b)(6) witness. (*Italics*
supplied)

7 * * *

8 [T]here was no good faith basis for Goodyear's objections
9 to the first request. The internal heat tests were
performed on the *exact* tire at issue, they were *directly*
10 relevant to Plaintiffs' defect theory, and they were
performed at the *same time* other tests, which were
11 produced, were performed. . . . (*original emphasis*)

12 * * *

13 Goodyear's behavior during discovery is sufficient to
14 support an award of sanctions under the Court's inherent
power. In addition, Mr. Hancock's in-court statements
15 qualify as evidence of additional misconduct. Those
statements show *clear and repeated* attempts to mislead
Plaintiffs and the Court. (*Original emphasis*)

16 * * *

17 Given the behavior by Goodyear and its counsel, the Court
18 must impose sanctions. Unfortunately, the present record
does not indicate who is responsible for each instance of
19 misconduct . . . The amount and allocation of sanctions
will be determined after further briefing by the parties.

20 **XXII. THE LAWYERS HIRE LAWYERS TO REPRESENT THEM IN RESPONSE TO THE**
21 **UNITED STATES DISTRICT COURT'S CONSPIRACY CONCLUSION**

22 207. The Court's proposed findings of fact and conclusions of law made clear
23 that it intended to enter sanctions for the misconduct of Goodyear and its attorneys.
24 The Court ordered further briefing to provide Goodyear and its attorneys an
25 opportunity to explain who exactly was responsible for these deceptions. Although
26 Goodyear had historically been represented by Roetzel & Andress and Fennemore
27 Craig and their attorneys Musnuff and Hancock, it retained new counsel for the
28 sanctions proceeding.

1 208. Fennemore Craig and Hancock retained separate counsel to represent
2 their interests.

3 209. Roetzel & Andress and Musnuff retained separate counsel to represent
4 their interests.

5 210. The Court's proposed findings of fact and conclusions of law spanned
6 23-pages of findings and analysis, setting forth repetitive instances of misconduct
7 and misrepresentations by Goodyear and its attorneys, Musnuff and Hancock.

8 211. Management of the law firm of Roetzel & Andress authorized the
9 retention of a separate law firm to act as its authorized agent in all future
10 proceedings. Roetzel & Andress, by and through its management, either authorized
11 or ratified all representations which occurred in future pleadings its attorneys filed
12 and testimony presented to the Court by Musnuff.

13 212. Roetzel & Andress, through its management and authorized attorneys,
14 prepared Musnuff for the evidentiary hearing and the declarations he filed with the
15 Court.

16 213. Management of the law firm of Fennemore Craig authorized the
17 retention of a separate law firm as its authorized agent in all future proceedings.
18 Fennemore Craig, through its management, either authorized or ratified all
19 representations which occurred in future pleadings its attorneys filed and testimony
20 presented to the Court by Hancock.

21 214. Fennemore Craig through its management and authorized attorneys,
22 prepared Hancock for the evidentiary hearing and the declarations he subsequently
23 filed with the Court.

24 215. Goodyear, Okey, Roetzel & Andress and Musnuff had access to all the
25 G159 files, which they reviewed or otherwise ignored, to prepare future submittals to
26 the Court. Those files contained countless communications which they considered
27 privileged that were unknown to the Court or the Haegers. Based on their belief that
28 these communications were privileged, Goodyear, Okey, Roetzel & Andress and

1 Musnuff had no concern that those communications would ever be discovered and
2 thus believed they could craft their submittals to the Court without fear that those
3 documents would ever be revealed or used to impeach what they intended to
4 represent to the Court and the Haegers.

5 216. Fennemore Craig and Hancock had access to all the G159 files they
6 handled as local counsel for Goodyear, which they reviewed or otherwise ignored, to
7 prepare future submittals to the Court. Those files contained countless
8 communications which they considered privileged which were unknown to the Court
9 or the Haegers. Based on their belief that those communications were privileged,
10 Fennemore Craig and Hancock had no concern that those communications would
11 ever be discovered and thus believed they could craft their submittals to the Court
12 without fear that those documents would ever be revealed or used to impeach what
13 they intended to represent to the Court and the Haegers.

14 217. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
15 Hancock worked in concert to advance the representations contained in all future
16 pleadings, declarations under oath and during the evidentiary hearing and final
17 briefing prior to the entry of the Court's final order. Those efforts focused upon
18 persuading the Court and the Haegers that the Court's preliminary findings of fact
19 and conclusions of law were clearly erroneous, should be vacated, that Goodyear and
20 its attorneys had always been honest and that all preceding acts or omissions were
21 in full compliance with ethical and legal requirements.

22 218. Plaintiffs believe, based upon existing disclosures, that Goodyear, Okey,
23 Roetzel & Andress, Fennemore Craig, Musnuff and Hancock withheld and/or
24 misrepresented both the facts and existing evidence to their new attorneys to
25 facilitate the presentation of false evidence to the Haegers and the United States
26 District Court in future filings.

27

28

1 **XXIII. GOODYEAR, OKEY, ROETZEL & ANDRESS, FENNEMORE CRAIG, MUSNUFF AND**
2 **HANCOCK DEVELOP A NEW STRATEGY, IN CONCERT, IN FURTHERANCE OF**
3 **THEIR CONSPIRACY**

4 219. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
5 Hancock were involved in a joint endeavor to conceal crucial test data for years.

6 220. Okey, Roetzel & Andress, Fennemore Craig, Musnuff and Hancock each
7 were involved in assisting Goodyear in responding to Plaintiffs' original Motion for
8 Sanctions. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
9 Hancock each either expressly authorized or otherwise ratified all representations
10 contained in Goodyear's initial responsive pleading to the Haegers' Motion for
11 Sanctions and in opposition to the Haegers' Motion to Compel previously concealed
12 test data.

13 221. The new strategy adopted by Goodyear, Okey, Roetzel & Andress,
14 Fennemore Craig, Musnuff and Hancock involved the coordinated effort to present
15 arguments never previously expressed and advance new misrepresentations in an
16 effort to extricate themselves from the Court's findings of misconduct and
17 misrepresentation and to persuade the Court of an absence of conspiratorial conduct.
18 The conduct of Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
19 Hancock included a concerted strategy to present false testimony and claims in the
20 future evidentiary hearing and in pleadings supported by declarations under oath
21 which contained material misrepresentations of fact. Plaintiffs believe, based upon
22 existing disclosures, that the new attorneys representing these defendants,
23 unknowingly participated in these acts of deception.

24 222. In furtherance of this conspiracy, in spite of legal and ethical
25 obligations, at no time did Roetzel & Andress, Fennemore Craig, Musnuff or Hancock
26 advise the Court that false evidence was being presented.

27 **XXIV. DURING THE COURSE OF BRIEFING GOODYEAR SUBMITTED A DECLARATION**
28 **UNDER OATH WHICH MISTAKENLY REVEALED THAT GOODYEAR HAD**
CONCEALED ADDITIONAL TESTS FROM THE COURT AND THE HAEGERS, IN
SPITE OF THE COURT'S ORDER COMPELLING DISCLOSURE OF ALL TESTS

1 223. In the fall of 2011, the Court had entered an order that required
2 Goodyear to disclose to the Haegers any tests which were previously requested but
3 not disclosed.

4 224. Goodyear's subsequent Court ordered disclosure on October 7, 2011,
5 was limited to disclosing only the heat rise durability tests performed in 1996.

6 225. On March 8, 2012, Mr. Olsen, Goodyear's expert witness and its
7 30(b)(6) deponent, submitted an additional declaration with a Goodyear brief
8 attempting to justify its conduct. In that declaration Mr. Olsen testified under oath
9 that in 2007 in the *Haeger* case, Goodyear disclosed and produced crown durability
10 tests, bead durability tests and DOT endurance tests.

11 226. At no time had Goodyear previously disclosed these tests in *Haeger*.
12 Goodyear had represented under oath, that no such test data existed. Goodyear and
13 its attorneys had made the same representations, repetitively, to the Court.

14 227. Subsequent to the filing of the new Olsen declaration, Musnuff privately
15 reminded his attorneys that no such test data had ever been disclosed in *Haeger*.

16 228. Although Hancock also knew that Olsen's declaration was false, he
17 remained silent, in spite of his obligation to advise the Court of Olsen's
18 misrepresentation.

19 229. Goodyear subsequently filed a "Notice of Correction" stating:

20 Late in the day on March 12, counsel for Roetzel & Andress
21 advised Goodyear's counsel that a statement in Goodyear's
22 March 9, 2012 response to the Court's February 24, 2012
23 proposed order, and in the March 8, 2012 Declaration of
24 Richard Olsen may have been incorrect. In particular,
25 footnote 3 on page 6 of the response states that Goodyear
26 had produced crown durability, bead durability and DOT
27 endurance tests as well as the high speed tests. That
28 statement was based upon ¶ 18 of Mr. Olsen's declaration,
which includes the same statement.

Goodyear does not have copies of the documents produced
in the *Haeger* case. Immediately upon learning of the
potential error, Goodyear began investigating the issue by
requesting copies of documents from Fennemore Craig,
through its counsel and spoke with Mr. Olsen regarding his
statement. Mr. Olsen advised that his statement was

1 premised upon a summary of those test result contained in
2 his current files.

3 During Goodyear's investigation of the possible error . . . it
4 discovered the bead durability, crown durability and DOT
5 endurance test results that were produced in the *Schalmo*
6 case. The crown durability, bead durability and DOT
7 endurance tests reports (consisting of one page each) were
8 printed on January 24, 2007, along with other test reports
9 printed that same day. These test reports, along with
10 other test reports printed on January 24, 2007 were
11 provided to Coordinating Counsel within a few days of that
12 date.

13 Goodyear was unable to determine what had been
14 produced except by seeking this information from its
15 former outside counsel, which Goodyear has done.
16 Goodyear's former outside counsel had advised that they
17 do not believe these test reports were produced in *Haeger*.
18 Thus, Goodyear now believes that the crown durability,
19 bead durability and DOT endurance tests were not
20 produced in this case.

21 230. Goodyear, through its witnesses and its attorneys, had previously
22 repeatedly represented that these newly disclosed tests did not exist.

23 231. These tests were all printed from Goodyear's test database on
24 January 24, 2007, at 2:26 p.m. the same day and time that the high speed durability
25 tests and the heat rise durability tests were also printed.

26 232. Mr. Olsen then submitted an additional declaration under oath wherein
27 he advised the Court that his prior declaration of March 8, 2012 was based on a
28 summary of the tests contained in his file.

29 233. Goodyear and its attorneys represented to the Haegers before the case
30 was settled that they had produced Mr. Olsen's complete file in 2007. There was no
31 summary of the tests provided with the earlier alleged complete disclosure of
32 Mr. Olsen's file. Thus, that summary of the tests had also been concealed from the
33 Court and the Haegers.

34 234. Goodyear subsequently disclosed this new bundle of previously
35 concealed test data to the Haegers.

1 235. These previously concealed tests included multiple additional
2 temperature test results regarding the G159. Those temperatures are not identified
3 in this Complaint as Goodyear claims they are confidential.

4 236. Like the other tests, each of these previously concealed tests were also
5 printed from Goodyear's database on January 24, 2007, but never provided to the
6 Haegers.

7 **XXV. THE UNITED STATES DISTRICT COURT ORDERED FURTHER BRIEFING TO**
8 **RECTIFY EVASIVE FILINGS BY GOODYEAR AND ITS ATTORNEYS**

9 237. After Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff
10 and Hancock filed their supplemental briefs, the Court ordered each of the parties to
11 submit an additional brief as a result of their evasive filings and failure to provide
12 frank meaningful guidance to the Court as to who was responsible for the deceptive
13 conduct which spanned a period of years.

14 238. The Court ordered Goodyear, Roetzel & Andress, Fennemore Craig,
15 Musnuff and Hancock to each file a supplemental brief to specifically address the
16 following issues:

- 17 1. Why the heat rise tests were produced in *Schalmo*
18 but were not produced in *Haeger* in response to
19 request for information in both cases which sought
20 the identification of tests associated with
21 determining the appropriate speed rating for the
22 G159.
- 23 2. To state in *unequivocal* terms (i.e., "yes" or "no")
24 whether the crown durability, bead durability and
25 DOT endurance tests should have been produced in
26 *Haeger*, further instructing that Goodyear and its
27 attorneys provide an explanation for its response.
- 28 3. To state in "*unequivocal terms*" whether the results
of the heat rise test conflicted with *any*
representations made during the *Haeger* litigation.
4. To state in *unequivocal* terms who was responsible
for not producing the heat rise tests. The Court
instructed Goodyear and its attorneys to assume the
Court believes the tests should have been produced
and instructed Goodyear, Roetzel & Andress,
Fennemore Craig, Musnuff and Hancock to specify

1 which of the entities should be held responsible for
2 the failure to do so.

- 3 5. To state whether the heat rise test was produced in
4 the *Bogaert v. Goodyear* case, which was a pending
5 case in the Arizona State court being handled by
6 Goodyear, Roetzel & Andress, Fennemore Craig,
7 Musnuff and Hancock. (Original emphasis)

8 **XXVI. IN THE SUPPLEMENTAL BRIEFING IN RESPONSE TO THE COURT'S SPECIFIC
9 QUESTIONS, ROETZEL & ANDRESS AND MUSNUFF REVEAL ADDITIONAL TESTS
10 WHICH WERE CONCEALED**

11 239. Goodyear, Okey, Roetzel & Andress and Musnuff, Fennemore Craig and
12 Hancock filed three separate supplemental briefs to respond to the specific questions
13 the Court demanded be answered.

14 240. In the supplemental briefing in response to the Court's specific
15 questions, Roetzel & Andress and Musnuff revealed additional tests that had been
16 requested by the Haegers on September 22, 2006, but had remained concealed.

17 241. Musnuff filed an additional declaration under oath with their brief.

18 242. In Musnuff's declaration, he admitted that eleven (11) separate tests
19 were concealed from the Haegers.

20 243. Musnuff admitted that as of March 16, 2012, certain tests remained
21 concealed from the Haegers. To date, those tests have never been disclosed.

22 **XXVII. ON THE EVE OF THE EVIDENTIARY HEARING, THE UNITED STATES DISTRICT
23 COURT WARNS GOODYEAR AND ITS ATTORNEYS ABOUT CONTINUING
24 DECEPTION**

25 244. On March 21, 2012, the day before the evidentiary hearing, the Court
26 issued an order to the parties.

27 245. The order provides:

28 The parties have completed briefing the Motion for
Sanctions. Based on those submissions, *it is clear that
Goodyear and its counsel remain committed to advocating
seemingly untenable positions.* For example, Goodyear
and its counsel seek to justify withholding heat testing of
the tire at issue in this case despite the fact that Plaintiffs,
the Court and defense counsel knew Plaintiffs' defect
theory involved heat issues. *Rather than appearing
contrite, Goodyear and its counsel have sought to justify*

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their actions through hyper-technical parsing of their actions during discovery. . . . Attempting to justify the unjustifiable strengthens the Court's belief that sanctions are appropriate. . . .

The approach taken by Goodyear and its counsel risks grave harm to their reputations. Shakespeare famously identified the folly of such actions:

Good name in man and woman, dear my lord,
is the immediate jewel of their souls.
Who steals my purse steals trash; tis
something, nothing;
Twas mine, tis his, and has been slave to
thousands.
But he that filches from me my good name
robs me of that which not enriches him
and makes me poor indeed.

* * *

If they plan on continuing their actions on the merits, Goodyear and its counsel should be prepared to present substantially more compelling justifications than those that they have proffered to date. If such justifications are not available, Goodyear and its counsel should give serious consideration to settling this matter with Plaintiffs. (Italics supplied)

XXVIII. GOODYEAR, OKEY, ROETZEL & ANDRESS, FENNEMORE CRAIG, MUSNUFF AND HANCOCK PRESENT FALSE TESTIMONY DURING THE EVIDENTIARY HEARING BELIEVING THAT THERE WOULD BE NO FURTHER DISCLOSURES REQUIRED OF THEM WHICH WOULD JEOPARDIZE THIS STRATEGY

246. The Court had ordered the filing of supplemental briefs following its proposed findings of fact of and conclusions of law to assist the Court in its final sanction determinations. Goodyear and Okey filed supplemented briefs and declarations in an endeavor to justify its prior misrepresentations and deceptions.

247. Roetzel & Andress and Musnuff filed supplemental briefs and declarations in an endeavor to justify their prior misrepresentations and deceptions.

248. Fennemore Craig and Hancock filed supplemental briefs and declarations in an endeavor to justify their prior misrepresentations and deceptions.

249. The Court held an evidentiary hearing on March 23, 2012.

1 250. During the evidentiary hearing, Musnuff testified and made material
2 misrepresentations under oath.

3 251. Although Goodyear, Roetzel & Andress, Fennemore Craig, and Hancock
4 knew what was being misrepresented, and in spite of their obligations, each failed to
5 bring to the Court's attention the nature of the misrepresentations and/or material
6 omissions made during the course of the evidentiary hearing.

7 252. During the evidentiary hearing, Hancock made material
8 misrepresentations under oath.

9 253. Although Goodyear, Roetzel & Andress, Fennemore Craig, and Musnuff
10 knew what was being misrepresented, and in spite of their obligations, each failed to
11 bring those misrepresentations and/or material omissions to the attention of the
12 Court.

13 254. Based upon existing information, Plaintiffs believe that the new
14 attorneys representing Goodyear, Roetzel & Andress, Fennemore Craig, Musnuff and
15 Hancock unknowingly facilitated the presentation of false evidence and material
16 misrepresentations to the United States District Court.

17 **XXIX. THE TESTIMONY INTRODUCED BY GOODYEAR AND ITS ATTORNEYS DURING**
18 **THE EVIDENTIARY HEARING RESULTED IN THE WAIVER OF CLAIMS OF**
19 **PRIVILEGE AND RESULTED IN ADDITIONAL DISCOVERY OF COMMUNICATIONS**
20 **RELATING TO TEST DATA IN OTHER G159 CASES WHICH THEY THOUGHT**
21 **WOULD NEVER BE DISCLOSED**

22 255. During the evidentiary hearing, Hancock and Musnuff both testified.

23 256. Hancock and Musnuff testified without objection about communications
24 which would otherwise have been potentially privileged communications.

25 257. At the conclusion of the evidentiary hearing, as a result of the testimony
26 introduced, the Court allowed the Haegers to acquire additional information
27 regarding the G159 from Goodyear.

28 258. The Court specifically ruled that Goodyear's behavior in other litigation
was relevant and that Goodyear's behavior regarding tests other than the heat rise

1 test was also relevant, ordering Goodyear to produce from all the G159 cases since
2 January 1, 2000:

3 All documents, including all written and electronic
4 communications including all attachments thereto, which
5 address, discuss or relate to: (1) requests for test data;
6 (2) all proposed and final discovery responses and
7 proposed and final supplemental discovery responses to
8 requests for such test data; (3) the objection to or
9 withholding of test data; (4) the contents and/or meaning
10 of such test data; and, (5) disclosure obligations pursuant
11 to applicable state or federal rules of civil procedures.

12 259. The Court also ruled that Goodyear's objections to the production of the
13 requested information were not well taken as Goodyear did not assert attorney/client
14 privilege during the evidentiary hearing and submitted a declaration under oath of its
15 in-house counsel, Defendant Okey, in an attempt to defeat liability. Having taken
16 these actions, the Court ruled that Goodyear could not now use the attorney/client
17 privilege as a shield to prevent the Haegers from exploring in-house counsel's
18 behavior and ruled that Goodyear cannot withhold documents based on privilege.

19 260. The Court also ordered that Plaintiffs be allowed to take the deposition
20 of Goodyear's Associate General Counsel, Okey and Goodyear employee Sherman
21 Taylor, who was involved in the location and production of test data to Musnuff in the
22 *Haeger* case.

23 261. The depositions were taken and Goodyear produced some of the Court-
24 ordered additional documentation regarding the G159 that was requested by the
25 Haegers.

26 **XXX. THE COURT-COMPELLED DISCLOSURES FOLLOWING THE EVIDENTIARY**
27 **HEARING REVEALED AND DOCUMENTED A NATIONAL PATTERN OF DECEPTION**
28 **CONCEALING THE MOST CRUCIAL FACTS REGARDING THE G159 AND ITS**
SUSCEPTIBILITY TO HEAT INDUCED TREAD SEPARATIONS

29 262. The newly disclosed documents contain countless admissions. All of the
30 documents have been declared "confidential" by Goodyear and therefore the

1 contents are not disclosed herein, except as referenced by the Court in public filings
2 or otherwise available in the public domain.

3 263. Upon information and belief, Goodyear was not initially concerned about
4 tread separations because the G159 was designed as a pick-up and delivery tire,
5 where its primary application would be inner city use where the tire was not exposed
6 to an environment of continued high speed operation, but rather would regularly
7 start and stop allowing the tire to cool. In that environment, the G159 traveled at
8 predominantly lower speeds such that the tire would not be exposed to continuous
9 high speed use resulting in temperatures which threatened the tire's integrity.

10 264. In 1996 Goodyear knew that the G159 would be prone to tread
11 separations if it was utilized in a prolonged high speed highway application.

12 265. Of the 26 tests performed on the G159, 24 were wheel tests concealed
13 by Goodyear and its attorneys, which were requested to be disclosed and produced
14 in September 2006 in the *Haeger* case. Goodyear, Okey, Roetzel & Andress and
15 Musnuff knew those tests were wheel tests but willfully concealed them from the
16 Haegers throughout the litigation.

17 266. Upon information and belief, Hancock also knew there were wheel tests
18 regarding the G159 which had been requested but were not disclosed.

19 267. The newly disclosed documents revealed that by October 18, 2006,
20 Fennemore Craig and Hancock knew the Haegers' defect theory was that the G159
21 was producing heat and degradation for which the tire was not designed to endure,
22 leading to premature failure. These documents directly contradicted the repetitive
23 representations of Goodyear, Roetzel & Andress, Fennemore Craig, Musnuff and
24 Hancock in pleadings, declarations and testimony presented to the Court that they
25 did not know the Haegers' defect theory until 2007.

26 268. The newly disclosed documents revealed that by November 2006,
27 Goodyear, and specifically Okey, was informed of the Haegers' defect theory by
28 Roetzel & Andress and Musnuff, fully cognizant that the Haegers were claiming the

1 G159 was inappropriate for use in motorhomes because it was designed for pick-up
2 and delivery use and not designed for prolonged use at highway speeds. The
3 documents directly contradicted Goodyear's representations in multiple pleadings
4 submitted to the Court that neither Goodyear nor its attorneys knew the Haegers
5 defect theory.

6 269. Goodyear, Roetzel & Andress, Fennemore Craig, Musnuff, Hancock, and
7 Okey worked in concert to develop a story to combat the Haegers' theory as to why
8 the G159 was failing.

9 270. The newly disclosed documents revealed that Fennemore Craig and
10 Hancock were fully aware that speed or endurance testing was at issue in the *Haeger*
11 case and knew that all related testing needed to be disclosed, but nonetheless
12 participated, in concert with Roetzel & Andress, Musnuff, Goodyear and Okey to
13 conceal the test data in *Haeger* and in other pending cases in the State of Arizona,
14 including *Bogaert v. Goodyear* and *Haley v. Goodyear*.

15 271. The full body of newly disclosed test data revealed that Goodyear knew
16 from the tests undertaken commencing in 1996 that the G159 was producing
17 temperatures predictive of tread separation failure if used for prolonged periods in a
18 highway application but acted in concert with Roetzel & Andress, Musnuff and
19 Fennemore Craig and Hancock to avoid the disclosure of this test data and keep it
20 concealed from victims of tread separations with a right to know.

21 272. Goodyear and its attorneys first disclosed all tests regarding the G159
22 only when compelled to do so by Court order in *Woods v. Goodyear* in August 2007.
23 The *Woods* plaintiffs waited three (3) years and four (4) months for Goodyear to
24 finally disclose the requested test data.

25 273. In spite of 41 reported tread separations involving the G159 on
26 Fleetwood motorhomes, at no time did Goodyear disclose to Fleetwood the testing
27 data that Goodyear possessed which revealed that the tire would predictably fail in a
28 highway motorhome application.

1 274. In spite of 93 tread separations involving the G159 on Monaco
2 motorhomes, at no time did Goodyear disclose test data to Monaco in its possession
3 which revealed that the tire would predictably fail when utilized in a highway
4 motorhome application.

5 275. The newly disclosed documents revealed that Goodyear disclosed the
6 required test data in August 2007 as the result of an Alabama Court's (the *Woods*
7 case) total frustration with Goodyear's discovery conduct, ordering Goodyear to
8 disclose all testing regarding the G159, which Goodyear used to determine the
9 suitability of the tires to be driven at highway speeds. Goodyear and its attorneys
10 admit they "tried hard to avoid this."

11 276. By August 2007, Goodyear, Okey, Roetzel & Andress and Musnuff were
12 fully cognizant of the full scope of testing used by Goodyear to make suitability
13 determinations regarding the G159 and were wholly participant in concealing this
14 data from the Haegers in spite of the clarity of requests for production,
15 interrogatories, representations to the Court and the clarity of Goodyear's obligations
16 to promptly supplement prior representations to the extent they were misleading or
17 new information had been discovered, not previously disclosed.

18 277. On the date that the *Woods* court issued its order compelling Goodyear
19 to produce all tests used to determine the suitability of the G159 to be driven at
20 highway speeds, the Haegers asked Goodyear to provide the documents produced in
21 the *Woods* case in response to the *Woods* Court order. Goodyear, Okey, Roetzel &
22 Andress, Fennemore Craig, Musnuff and Hancock acting in concert, refused claiming
23 the production was unduly burdensome and that the tests were confidential,
24 privileged and subject to a protective order which prohibited discovery.

25 278. Musnuff's testimony at the evidentiary hearing verified that Goodyear,
26 Roetzel & Andress and Musnuff engaged in a conspiracy to conceal the admissions
27 made by Olsen and Gardner during their expert depositions in the *Haeger* case, when
28 both experts admitted the G159 was prone to tread separations if it experienced

1 prolonged temperatures in excess of 200°. Thereafter, these defendants utilized
2 Goodyear employee Mr. Stroble as Goodyear's expert witness in other G159 cases.
3 Goodyear never used Mr. Olsen again as a witness in an effort to further conceal his
4 admissions.

5 279. Upon information and belief, Fennemore Craig and Hancock acted in
6 furtherance of this conspiracy by allowing Stroble to falsely testify under oath in at
7 least one other G159 case.

8 280. In spite of Goodyear's disclosure of all tests pursuant to court order in
9 the *Woods* case, Goodyear and Okey continued to conceal the tests when requested
10 in other pending G159 cases as part of its conspiratorial conduct, in conjunction with
11 National Coordinating Counsel Roetzel & Andress and Musnuff and local counsel
12 Fennemore Craig and Hancock in the Arizona cases.

13 281. *Bogaert v. Goodyear* was filed in the Maricopa County Superior Court in
14 the State of Arizona on July 18, 2005. Like *Haeger*, *Bogaert* involved a tread
15 separation of a G159 on a motorhome at highway speeds. It was a multiple fatality
16 case. Goodyear retained Fennemore Craig and Hancock to defend its interests in
17 conjunction with Roetzel & Andress and Musnuff acting as National Coordinating
18 Counsel.

19 282. On April 13, 2007, *Haley v. Goodyear* was filed in the Maricopa County
20 Superior Court in the State of Arizona. Again, like *Haeger*, it involved tread
21 separation on a motorhome traveling at highway speeds involving a fatality.
22 Goodyear retained Fennemore Craig and Hancock to represent Goodyear in
23 conjunction with Roetzel & Andress and Musnuff acting as National Coordinating
24 Counsel.

25 283. On November 12, 2007, Fennemore Craig and Hancock joined
26 Goodyear, Okey, Roetzel & Andress and Musnuff in a conspiracy to suppress the
27 disclosure of previously disclosed test data in the *Woods* case by refusing to comply
28 with the Haley's request that Goodyear identify all the test documents produced in

1 *Woods* pursuant to that Court's August 2007 order. Goodyear, by and through the
2 acts of its attorneys refused to produce the documents claiming they were
3 confidential, subject to a protective order, privileged and were not subject to
4 discovery.

5 284. The disclosure obligations of Goodyear in the *Bogaert* and *Haley* cases
6 were regulated by the Arizona Rules of Civil Procedure. Those rules required
7 Goodyear to promptly disclose the names of all persons that Goodyear believed may
8 have knowledge or information relevant to the action, specifying the nature of that
9 knowledge. Moreover, Goodyear was required to identify all documents and witness
10 testimony known by Goodyear to exist which may be relevant to the subject matter
11 of the lawsuits and those reasonably calculated to lead to the discovery of admissible
12 evidence. These disclosures were required to be made within 40 days of Goodyear
13 filing its answer to the Complaints in *Bogaert* and *Haley*. Otherwise, Goodyear,
14 Roetzel & Andress, Fennemore Craig, Musnuff and Hancock were required to timely
15 supplement prior disclosures within no later than 30 days after the discovery of new
16 responsive information.

17 285. In spite of Goodyear's disclosure obligations, at no time did Goodyear,
18 Okey, Roetzel & Andress, Fennemore Craig, Musnuff or Hancock disclose the tests
19 previously produced in the *Woods* case nor comply with obligations to identify those
20 individuals with relevant knowledge about tests and test results in *Bogaert* or *Haley*.

21 286. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
22 Hancock thereafter settled the *Haley* and *Bogaert* cases without ever disclosing test
23 data which they were required to disclose as a matter of law, having successfully
24 conspired to conceal that information, just as they did in *Haeger*.

25 287. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
26 Hancock were well aware that disclosure of the test data would render the G159
27 virtually indefensible and substantially change the exposure of Goodyear for
28 damages significantly in excess of funds paid in settlement of those matters.

1 288. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
2 Hancock also concealed the deposition testimony of Gardner and Olsen from the
3 plaintiffs in the *Haley* and *Bogaert* matters due to the damning nature of the
4 admissions contained therein. Both Musnuff and Hancock prepared these witnesses
5 for their depositions. Both Musnuff and Hancock were present during the depositions
6 of Gardner and Olsen. Goodyear, Roetzel & Andress, Fennemore Craig, Musnuff and
7 Hancock all knew that the applicable rules of civil procedure required the disclosure
8 of this testimony to the *Bogaert* and *Haley* families, but nonetheless ignored their
9 legal obligations of disclosure, and participated in concealing that information for
10 Goodyear, the law firms and the lawyers' financial gain.

11 289. Although Goodyear, Okey, Roetzel & Andress and Musnuff all knew of
12 the existence of all relevant tests in early 2007, Fennemore Craig and Hancock have
13 asserted that they did not know about the existence of any tests other than the DOT
14 tests and high speed tests which were disclosed to the Haegers, nor their relevance.
15 The newly discovered evidence revealed that on June 5, 2008, Hancock was
16 specifically informed by Roetzel & Andress and Musnuff:

17 . . . our whole testing package was to ensure that the tire
18 was suitable for various over the road applications,
19 including RV. In the *Woods* case we were compelled to
20 produce other testing data/protocols in addition to high
 speed. There, we produced: (i) extended DOT testing
 data; (ii) heat rise test data; (iii) bead durability test data;
 and, (iv) crown durability test data . . .

21 Nonetheless, after becoming aware of the existence and relevance of these tests,
22 Fennemore Craig and Hancock joined in continued conspiratorial conduct with
23 Goodyear, Okey, Roetzel & Andress and Musnuff by knowingly failing to disclose the
24 tests in the *Bogaert* and *Haley* cases in spite of their clear obligation to do so.
25 Similarly, Fennemore Craig and Hancock continued to conceal these tests from the
26 Haegers and the United States District Court, in spite of a clear obligation to advise
27 Judge Silver and the Haegers of this new test data.

1 290. The newly discovered documents revealed that four (4) days later, on
2 June 9, 2008, in a pleading prepared by Fennemore Craig and Hancock, which was
3 authorized to be filed by Goodyear, Okey, Roetzel & Andress and Musnuff in the
4 *Haeger* litigation, Goodyear asserted that there was "absolutely no support for
5 Ms. Bogaert's unsupported, unverified accusation that Goodyear has somehow
6 produced different documents in different cases in response to identical discovery
7 requests. None." This authorized representation by Fennemore Craig and Hancock
8 was part of a continued conspiracy to conceal the production of dissimilar test
9 materials in different cases in response to identical requests for disclosure. It was a
10 willful and intentional material misrepresentation designed to deceive the Bogaerts
11 as well as the *Bogaert* court. Having been filed in the *Haeger* litigation, it
12 represented another step in the conspiracy to lead the Haegers and the U.S. District
13 Court to conclude that all tests had been disclosed in *Haeger* when Fennemore Craig
14 and Hancock knew this was false.

15 291. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
16 Hancock also engaged in conspiratorial conduct to conceal the disclosure of test data
17 by failing to comply with a special discovery master's order in *Bogaert* that required
18 the disclosure of tests utilized to determine the suitability of the G159 to operate at
19 highway speeds. Again, this decision to conceal the information was a willful one
20 where the defendants acted in concert to conceal this damning evidence from those
21 entitled to know.

22 292. Goodyear, Okey, Roetzel & Andress, Fennemore Craig, Musnuff and
23 Hancock acted in concert to conceal test and failure data to facilitate the settlement
24 of the *Haeger* case for a fraction of its value knowing the full value of the case would
25 have to be paid if the truth had been disclosed. These defendants knew that if they
26 could successfully conceal the countless injury and property damage claims arising
27 from failures from tread separations on motorhomes involving the G159 and conceal
28 all test data which revealed that the tire ran too hot in a highway application so it

1 would predictably fail when utilized in a motorhome highway setting that they would
2 be able to artificially hold down the value of the case and did just that for the gain of
3 all defendants.

4 293. Roetzel & Andress and Musnuff, acting as National Coordinating Counsel
5 had a long-term relationship with Goodyear in the G159 cases, and in a variety of
6 other Goodyear tire litigation matters. Roetzel & Andress and Musnuff assisted
7 Goodyear and Okey in concealing relevant information in the G159 cases to assure a
8 continuous stream of business and revenue for the law firm in direct violation of its
9 legal and ethical obligations.

10 294. Fennemore Craig and Hancock were involved in continued
11 representation of Goodyear in the G159 cases handling at least four (4) such
12 matters. Fennemore Craig and Hancock had also historically worked for Goodyear in
13 various other tire litigation matters and hoped to continue to do so. Fennemore
14 Craig and Hancock engaged in the concealment of relevant information in the G159
15 cases for its financial gain and a continuous stream of revenue from Goodyear cases.

16 295. There have been countless documented tread separations involving the
17 G159 in a motorhome application. At no time has Goodyear ever disclosed a single
18 failure of the G159 when utilized in its original design metro/inner city application
19 where the tire would run cooler at predominantly lower speeds.

20 296. Although Goodyear was fully aware of the deceptive endeavors of
21 Roetzel & Andress, Fennemore Craig, Musnuff and Hancock, and its Associate
22 General Counsel Okey, it has never objected to their actions or omissions.

23 297. It was Goodyear, by and through the acts of its Associate General
24 Counsel Okey, that insisted that protective orders prohibit sharing of information be
25 sought in every G159 case.

26 298. Musnuff's testimony at the evidentiary hearing revealed that Okey,
27 operating as Associate General Counsel for Goodyear, assumed a primary role for
28 supervising and directing the activities of National Coordinating Counsel Roetzel &

1 Andress and Musnuff. Okey was the decision-maker regarding objections to
2 discovery requests in all the G159 cases.

3 299. The newly discovered documents and testimony verified that the
4 decisions regarding what would and would not be disclosed in the G159 cases was a
5 process of joint decision-making between Roetzel & Andress, Musnuff, Okey and
6 Goodyear. Fennemore Craig and Hancock adopted such decisions without regard to
7 their legal and ethical obligations for their financial gain.

8 300. On no occasion did Goodyear ever voluntarily produce all of the tests in
9 any of the G159 cases.

10 301. Between February 2012 through July 2012, Goodyear, Okey, Roetzel &
11 Andress, Fennemore Craig, Musnuff and Hancock acted in concert to continue to
12 deceive the Haegers and the Court regarding why the test data was not disclosed
13 during the *Haeger* case. This concerted action included a coordinated false
14 presentation, in both pleadings and during the evidentiary hearings by claiming:

- 15 (a) that the newly disclosed heat rise durability test was not a
16 durability test;
- 17 (b) That the concealed tests were never utilized to determine the
18 suitability of the G159 for highway purposes;
- 19 (c) That the *Haeger* Plaintiffs had narrowed the first request for
20 production which sought all test data and were seeking only high
21 speed tests.
- 22 (d) That Goodyear and its attorneys disclosed the high speed tests in
23 a timely fashion in response to Plaintiffs' Third Request for
24 Production.
- 25 (e) That Fennemore Craig and Hancock were not aware of test data
26 other than the previously disclosed DOT 30 MPH endurance test
27 and the high speed test;
- 28 (f) That at no time did Fennemore Craig and Hancock, as authorized
agents on behalf of Goodyear, make any misrepresentations to
the Court;
- (g) That at no time did Fennemore Craig and Hancock know of the
Woods court order compelling disclosure of all test data to
determine the suitability of the G159 for high speed application,
which was issued in August 2007;

1 (h) That Goodyear and its attorneys' conduct was all ethical,
2 appropriate and in compliance with applicable rules of civil
3 procedure.

4 302. Each of the representations contained in ¶301 constituted
5 misrepresentations in furtherance of a conspiracy to mislead both the Haegers and
6 the Court regarding the concealment of crucial test data regarding the G159.

7 303. Based upon existing disclosures, Plaintiffs believe the new attorneys
8 representing these defendants unknowingly participated in these acts of deception.

9 **XXXI. ON NOVEMBER 8, 2012, THE COURT ISSUED ITS 66-PAGE ORDER FINDING
10 GOODYEAR AND ITS ATTORNEYS ENGAGED IN PROLONGED AND REPETITIVE
11 ACTS OF FRAUD AND DECEPTION**

12 304. On November 8, 2012, Chief Judge Roslyn Silver, Chief Justice for the
13 United States District Court for the District of Arizona issued her 66-page order
14 setting forth the Court's conclusions regarding the misconduct of Goodyear and its
15 prior attorneys. **(Exhibit 1)**

16 305. Goodyear, Roetzel & Andress, Fennemore Craig, Musnuff and Hancock
17 filed 13 separate briefs relating to the sanction proceedings, between May 2011 and
18 July 2012, which included multiple declarations under oath.

19 306. The Court also evaluated the testimony under oath provided by Musnuff
20 and Hancock during the evidentiary hearing and evaluated the documents disclosed
21 by Goodyear following the evidentiary hearing, pursuant to the Court's Order.

22 307. The Court also considered the testimony of Mr. Taylor and Okey, both
23 Goodyear employees. The Court's findings were based upon a record characterized
24 as presenting clear and convincing evidence of false testimony and
25 misrepresentations by Goodyear and its attorneys.

26 308. The Court determined that Roetzel & Andress and Musnuff worked
27 directly with Goodyear's in-house Associate General Counsel Okey in preparing
28 discovery responses and disclosures in G159 cases.

1 309. The Court found that Goodyear's initial disclosure statement in the
2 *Haeger* case in 2005 contained no meaningful information as was otherwise
3 contemplated by the Federal Rules of Civil Procedure and that in spite of the
4 Haegers' objection and request for supplementation, Goodyear did not supplement
5 any of its initial disclosures in any relevant way.

6 310. The Court held that as of August 18, 2006, Goodyear and its attorneys
7 knew the Haegers' liability theory and that heat would be a central issue in the
8 *Haeger* case.

9 311. The Court held that the repeated representations by Goodyear and its
10 attorneys, that the Haegers did not identify the defect theory of their case until
11 January 7, 2007, was incorrect and contradicted by Goodyear's and its attorneys'
12 statements and appears to have been part of a general strategy to obstruct and
13 delay discovery.

14 312. The Court stated it had rejected the Haegers' request for a sharing
15 provision in the protective order approved by the Court but noted it emphasized and
16 instructed Goodyear and its attorneys that every officer before the Court had an
17 obligation to provide all relevant discovery and observed that the Federal Rules of
18 Procedure provided that anything that was relevant must be turned over so there
19 was no need for a sharing provision as was requested by the Haegers.

20 313. The Court held that Goodyear, by and through the acts of Okey,
21 operating as Associate General Counsel, was always the final decision-maker
22 regarding discovery responses in the G159 cases. The Court found that the Haegers
23 had never entered into any agreement with Goodyear or its attorneys, to relieve
24 them of the obligation to produce the requested test records originally requested in
25 September 2006, as they alleged.

26 314. The Court found that Fennemore Craig and Hancock knew that Plaintiffs
27 had never withdrawn or narrowed their original requests for test records and that
28

1 Roetzel & Andress and Musnuff similarly knew that Plaintiffs' initial request for test
2 records remained active throughout the litigation.

3 315. The Court found that by January 2007, Roetzel & Andress, Musnuff and
4 Goodyear, by and through communications with Okey, considered whether prior
5 disclosures should have been supplemented but none ever occurred.

6 316. The Court found that representations made by Musnuff during the
7 evidentiary hearing that the concealed heat rise test data was merely an irrelevant
8 compounders test with no bearing on durability of the G159 was not believable
9 testimony.

10 317. The Court found that Musnuff knew that compounds used in the tire
11 related to its durability.

12 318. The Court found that because Goodyear, Roetzel & Andress, Fennemore
13 Craig, Musnuff and Hancock were aware of the existence of the high speed tests no
14 later than February 19, 2007, there was no acceptable explanation why those tests
15 were not disclosed and produced at that time.

16 319. The Court found that Hancock made false representations to the Court
17 in April 2007, when he represented to the Court and the Haegers that Goodyear had
18 responded to all outstanding discovery and "if a document shows up we will of
19 course produce it or supplement our answers."

20 320. The Court found that Hancock was untruthful in his representations to
21 the Court in April 2007, because as of that date he was well aware of the existence
22 of Goodyear's high speed durability tests and that they had not been disclosed.

23 321. The Court found that Hancock intentionally misled the Court and the
24 Haegers in May 2007 when he represented that tests over 30 MPH would be
25 produced, which he suggested were solely limited to high speed tests.

26 322. The Court found that Hancock and Musnuff decided to delay production
27 of the tests in hopes of gaining a tactical advantage of the Haegers.

1 323. The Court found that Hancock's representations to the Court and the
2 Haegers that there were "no other documents" beyond those that had already been
3 produced was seriously misleading.

4 324. The Court found that Goodyear and its attorneys were concealing a wide
5 variety of other test documents.

6 325. The Court found that Goodyear and its attorneys knew by August 2007,
7 of the existence of all the tests which related to the suitability of the G159 to be
8 driven at highway speeds and concealed those tests from the Haegers.

9 326. The Court found that Goodyear and its attorneys clearly had no
10 intention of complying with their discovery obligations unless those obligations were
11 in the best interests of Goodyear.

12 327. The Court found that no later than June 5, 2008, Fennemore Craig and
13 Hancock knew the test disclosures in the *Haeger* case had been woefully inadequate.

14 328. The Court found Goodyear, Hancock and Musnuff had knowingly
15 concealed crucial documents in the *Haeger* litigation.

16 329. That Court found that testing at 35 MPH on a steel wheel is the
17 equivalent of 55 to 65 MPH on the highways.

18 330. The Court found the heat rise durability tests should have been
19 produced in response to the very first request for production in *Haeger* in September
20 2006.

21 331. The Court found that Okey, Associate General Counsel for Goodyear,
22 testified falsely when she explained why the documents were ultimately produced in
23 other G159 cases, intentionally misrepresenting the content of Court orders to
24 disclose test data in the *Woods* and *Schalmo* cases, in an attempt to mislead the
25 Court.

26 332. The Court found that Goodyear's 30(b)(6) deponent, Mr. Olsen, had
27 testified falsely during his deposition and filed false declarations under oath in the
28 pending proceedings.

1 333. The Court found that Mr. Olsen, on behalf of Goodyear, falsely testified
2 that he did not have other tests, other than the tests which were disclosed and
3 produced to the Haegers.

4 334. The Court found that Goodyear's 30(b)(6) witness, Mr. Olsen, provided
5 false testimony, but the falsity emerged only as a result of Goodyear's inability to
6 keep its falsehoods straight.

7 335. The Court found that Hancock testified falsely when he represented to
8 the Court that he did not know about the additional tests.

9 336. The Court found that the claims by Goodyear that it did not deliberately
10 conceal any G159 test results was false.

11 337. The Court found that Okey, Goodyear's Associate General Counsel,
12 retained final say regarding production decisions and discovery responses and must
13 have known that Goodyear's responses in the *Haeger* case were grossly inadequate.

14 338. The Court found that the testimony provided by Musnuff and Hancock
15 during the evidentiary hearing conflicted with documentary evidence and was not
16 credible.

17 339. The Court found that Musnuff and Hancock failed to alert the Haegers
18 that tests were being withheld during the course of the *Haeger* litigation.

19 340. The Court found that Musnuff admitted that Goodyear's experts testified
20 that heat in excess of 200° for a prolonged period of time could lead to tread
21 separations.

22 341. The Court found that the heat rise durability test concealed in the
23 *Haeger* case was utilized in the *Schalmo* case to show that G159 was defective.

24 342. The Court found that Goodyear never disclosed in *Schalmo* the expert
25 witness testimony from the *Haeger* case that admitted the tire would foreseeably fail
26 if it was exposed to prolonged operating temperatures above 200°.

1 343. The Court found that Hancock's testimony that he had never heard of a
2 heat rise durability test before the present sanction proceedings in this case was
3 false and was an attempt to paint himself in a sympathetic light.

4 344. The Court found that Goodyear, Musnuff and Hancock engaged in
5 repeated and deliberate attempts to frustrate the resolution of the *Haeger* case on
6 the merits. The Court found that from the very beginning Hancock, Musnuff and
7 Goodyear adopted a plan of making discovery as difficult as possible, providing only
8 those documents they wished to provide, timing the production of a small set of
9 documents they were willing to turn over such that it was inordinately difficult for
10 Plaintiffs to manage their case, and making false statements to the Court in an
11 attempt to hide their behavior.

12 345. The Court determined based upon clear and convincing evidence that
13 the troubling behavior by Goodyear and its attorneys began almost immediately after
14 the *Haeger* case was filed and continued throughout the entire litigation, including
15 following its settlement in 2010.

16 346. The Court ruled that Hancock and Musnuff's decision to not produce the
17 other tests, allegedly learned of in the context of other cases, was a willful and
18 improper attempt to hide responsive documents.

19 347. The Court determined that Okey, Associate General Counsel for
20 Goodyear, knew that Goodyear was not cooperating in discovery and was engaging
21 in willful and improper behavior.

22 348. The Court ruled that Goodyear and Musnuff created frivolous arguments
23 for not disclosing and producing the tests that they adopted only after they were
24 faced with sanctions.

25 349. The Court found that Musnuff and Hancock's decision not to produce
26 tests learned of in the context of other cases was a willful and improper attempt to
27 hide responsive documents and because Goodyear retained final approval authority
28 for discovery responses, it knew the attorneys were acting improperly.

1 350. The Court ruled all the concealed tests had been used by Goodyear to
2 determine the suitability of the G159 for highway use and that Goodyear, Musnuff
3 and Hancock knew this.

4 351. The Court ruled that when Hancock was informed of the existence and
5 purpose of previously concealed test data he willfully participated in keeping the
6 tests concealed by his failure to disclose the tests during the following 22 months
7 until the *Haeger* case settled, representing culpable conduct.

8 352. The Court ruled that Goodyear, through its Associate General Counsel,
9 Okey, acted together with Musnuff making materially false and misleading
10 statements in Court and withholding documents they knew required disclosure.

11 353. The Court ruled that Goodyear and its attorneys adopted a strategy,
12 implemented to great effect, to withhold test data which obviously was required to
13 be disclosed and mislead the Haegers such that they were operating under erroneous
14 facts.

15 354. The Court ruled that the Haegers were entitled to affirm their
16 settlement with Goodyear and pursue an independent course of action for fraud
17 based upon the conduct of Goodyear, Musnuff and Hancock.

18 **XXXII. THE FOUNDATION FOR PUNITIVE DAMAGES**

19 355. Goodyear and its attorneys deceived the Haegers for years for their
20 private gain.

21 356. Goodyear claims in its public filings that its core value is to operate as a
22 socially responsible corporate entity.

23 357. Goodyear claims in its public filings that it conducts business in accord
24 with the highest applicable legal and ethical standards.

25 358. Goodyear claims in its public filings that it will not tolerate illegal or
26 unethical behavior of any kind.

27 359. Goodyear claims in its public filings that its business is committed to
28 doing the "right" thing.

1 360. Goodyear was legally required to notify the Haegers, Government,
2 owners, purchasers and dealers if it learned that the G159 had a "defect" related to
3 "motor vehicle safety." A "defect" is defined to include any defect in the
4 performance of the tire. "Motor vehicle safety" means the performance of the tire in
5 a way that protects the public against unreasonable risk of accidents occurring
6 because of the design or performance of the tire and against unreasonable risk of
7 death or injury in an accident.

8 361. Goodyear was legally required to provide notification to the Haegers,
9 owners, purchasers and dealers which described the defect in the G159, evaluated
10 the risk to motor vehicle safety and specified the measures Goodyear would take to
11 remedy the defect.

12 362. A separate violation is deemed to occur for each tire for which
13 notification was not provided with a maximum civil penalty of \$17,350,000.00.

14 363. At no time has Goodyear provided notification to the Haegers,
15 Government, owners, purchasers and dealers regarding the defect in the G159
16 related to motor vehicle safety.

17 364. Goodyear failed to act as a socially responsible corporate entity, failed
18 to comply with the highest applicable legal and ethical standards and failed to do the
19 "right" thing.

20 365. Goodyear's decision to provide no notification to the Haegers, owners,
21 purchasers or dealers knowingly exposed the public and the Haegers to foreseeable
22 injuries and death.

23 366. Goodyear operates approximately 1,400 tire centers.

24 367. Goodyear willfully failed to provide such notification in an effort to avoid
25 the expenses associated with recalling the tire.

26 368. Goodyear concealed the defective nature of the G159 and avoided
27 recalling the tire in order to protect its brand from the stigma which would arise from
28 admitting the G159 was defective as a result of the recall.

1 369. Goodyear's annual sales total approximately \$21 billion.

2 370. Goodyear's assets total approximately \$17 billion.

3 371. Goodyear has issued approximately 255,000,000 shares of stock.

4 372. Goodyear knew truthful disclosure and recall could directly affect annual
5 sales and affect public perception as to the value of Goodyear's stock.

6 373. Goodyear concealed the truth regarding the G159 from the Haegers, the
7 public and victims of tread separations and thereby saved hundreds of millions of
8 dollars in potential losses from brand damage, decline in stock price and regulatory
9 penalties.

10 374. Goodyear concealed the defective nature of the G159 for years in order
11 to evade and/or minimize responsibility for compensatory damages it was
12 proximately causing from tread separations resulting in deaths and injuries of those
13 victimized by G159 tread separations.

14 375. If Goodyear admitted the G159 was defective, then it would be required
15 to pay for all damages caused by G159 failure.

16 376. Goodyear knew that with each passing year, its responsibility and
17 exposure to punitive damage awards increased as a result of years of concealing the
18 defective nature of the tire and willfully exposing the public to deaths and injuries.
19 This increasing exposure resulted in Goodyear's decision to continue to deceive the
20 public in hope to run out the tire without ever disclosing the truth.

21 377. Goodyear's discovery fraud in *Haeger* was part of a pattern and practice
22 of Goodyear. In January 2007, Goodyear was sanctioned by the District Court of
23 Nevada in the matter of *Bahena v. Goodyear; et al.* The Court found that throughout
24 that litigation Goodyear was engaged in "hiding the ball" and not acting in good faith
25 on multiple occasions involving discovery issues. The Court found that the degree of
26 willfulness of Goodyear to defeat or obstruct the discovery process to be extreme,
27 that its objections to discovery were not expressed in good faith and that Goodyear
28 had taken the approach of stalling, obstructing and objecting finding Goodyear's

1 responses to discovery requests to be "nothing short of appalling." The Nevada
2 court found an overwhelming need to deter Goodyear from continuation of abusive
3 discovery practice and struck Goodyear's Answer. Like *Haeger*, Okey was
4 supervising and directing the conduct of the lawyers in *Bahena v. Goodyear*.

5 378. *Bahena v. Goodyear* proceeded through trial and involved damage
6 claims arising out of the death of three individuals and injuries of seven passengers
7 arising from a tread separation, which resulted in a \$30 million compensatory
8 damage verdict.

9 379. As a result of the sanction striking Goodyear's answer, Goodyear
10 appealed the result in *Bahena v. Goodyear*, attempting to justify its discovery
11 misconduct and seeking a reversal of the District Court's sanction determination and
12 a new trial.

13 380. The Nevada Supreme Court found the District Court did not abuse its
14 discretion in issuing the sanction striking Goodyear's Answer for discovery
15 misconduct.

16 381. Goodyear was also sanctioned in the matter of *Ruiz v. Goodyear*, which
17 was before the Pima County, Arizona Superior Court, for discovery abuse on October
18 25, 2006. Fennemore Craig and Hancock represented Goodyear.

19 382. In *Ruiz v. Goodyear*, Judge Harrington found:

20 Goodyear so narrowly construed the discovery requests
21 and disclosure rules that it has frustrated both the letter
22 and spirit of the rules. In fact, . . . Goodyear has not
23 produced documents because Goodyear has unilaterally
24 decided that the documents are neither relevant nor
25 reasonably calculated to lead to the discovery of admissible
26 evidence even when that interpretation or conclusion is not
27 justifiable. . . . Sanctions against Goodyear are
28 appropriate and overdue.

29 383. Like the *Bahena* and *Haeger* matters, Okey was supervising the
30 discovery actions of Hancock in the *Ruiz v. Goodyear* matter.

1 384. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
2 Hancock, acting in concert, utilized the litigation process in *Haeger* for illegitimate
3 purposes.

4 385. In addition to the deceptive actions of Okey, Roetzel & Andress,
5 Musnuff, Fennemore Craig and Hancock, Goodyear's Associate General Counsel
6 Bertram Bell also approved of Goodyear's discovery misconduct in the *Haeger* case
7 by verifying and representing that facts stated in Goodyear's discovery responses
8 were true in furtherance of the conspiracy to suppress disclosure of test data.

9 386. Upon information and belief, Bertram Bell has regularly approved
10 Goodyear's discovery responses in G159 cases, which failed to comply with legal and
11 ethical disclosure requirements.

12 387. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
13 Hancock, acting in concert, willfully obstructed the Haegers access to evidence.

14 388. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
15 Hancock, acting in concert, intentionally concealed evidence from the Haegers.

16 389. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
17 Hancock, acting in concert, presented false evidence to the Court.

18 390. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
19 Hancock, acting in concert, assisted Goodyear witnesses to testify falsely.

20 391. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
21 Hancock, acting in concert, knowingly made false statements of fact to the Court in
22 the *Haeger* case.

23 392. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
24 Hancock, acting in concert, failed to correct false statements of fact previously made
25 to Judge Silver.

26 393. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
27 Hancock, acting in concert, knowingly offered evidence they knew to be false.
28

1 394. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
2 Hancock, acting in concert, engaged in conduct prejudicial to the administration of
3 justice.

4 395. Roetzel & Andress, Musnuff, Fennemore Craig and Hancock knew that
5 Goodyear was engaged in fraudulent conduct related to the *Haeger* proceedings, yet
6 failed to take remedial measures, including disclosing such knowledge to Judge
7 Silver.

8 396. Roetzel & Andress, Musnuff, Fennemore Craig and Hancock failed to
9 comply with their duty of candor to Judge Silver and the United States District Court,
10 which required them to disclose information which might have otherwise been
11 confidential information in order to comply with their obligations as officers of the
12 Court.

13 397. As a matter of corporate policy, Goodyear had knowingly tolerated and
14 ratified discovery abuse authorized by its legal department without intervention or
15 reprimand continuously between 2006 and 2013.

16 398. Goodyear, Okey, Roetzel & Andress, Musnuff, Fennemore Craig and
17 Hancock knew that their failure to change their litigation tactics in the *Haeger* case
18 was reckless and exposed the Haeger family to significant risk of harm and which
19 caused the Haegers harm financially and emotionally.

20 399. Defendants individually and collectively pursued a course of conduct
21 guided by an evil mind.

22 400. The Defendants engaged in reprehensible conduct which was
23 outrageous, malicious, and/or otherwise fraudulent.

24 401. The Defendants' misconduct was repetitive and spread over a period of
25 years.

26 402. The Defendants each actively concealed their acts and omissions from
27 the United States District Court, the Haegers, other victims of G159 tread
28 separations and all regulatory authorities.

1 403. Defendants' acts and omissions substantially increased the litigation
2 expenses incurred by the Haegers and associated costs, while it increased the
3 profitability for each of the Defendants as a result of their wrongful endeavors.

4 404. Defendants' repeated misrepresentations and deceptions were designed
5 to facilitate Goodyear's ability to wrongfully blame LeRoy Haeger for the accident and
6 the injuries suffered by family members.

7 405. Defendants' acts were designed to exhaust the finances and emotions of
8 the Haeger Family.

9 406. The Haegers were entitled to know the truth regarding the failure
10 history of the G159 and what Goodyear's test data revealed.

11 407. By concealing the truth, Defendants were able to fraudulently induce a
12 settlement for a small fraction of the true value of the Haegers' damage claims and
13 evade trial on the merits.

14 408. Defendants' deceptive endeavors in the G159 cases, and in particular
15 the *Haeger* case, were consistent with the pattern of other similar deceptive activities
16 in other Goodyear tire litigation cases.

17 409. Goodyear developed a national pattern and practice of abusing the
18 litigation process for its private gain and has utilized willing lawyers across the
19 country to facilitate the implementation of its wrongful objectives for its private gain.

20 410. Goodyear's course of conduct is grounded in its corporate policy.

21 411. Goodyear's conduct in the *Haeger* case and other cases is clear
22 evidence of its motive and its state of mind.

23 412. Each of the Defendants intended to damage the Haegers or deliberately
24 interfere with the Haegers' rights, consciously disregarding the unjustifiably
25 substantial risk of significant harm to the Haegers.

26 413. Goodyear's conduct surrounding the G159 reflects an abandonment of
27 all human ethics as it has knowingly and willfully allowed countless citizens to be
28 killed or injured in pursuit of profit.

1 414. Each of the Defendants knew the years of deception caused harm to the
2 Haegers.

3 415. The Defendants have made no endeavor whatsoever to remedy their
4 willful misconduct. Because of the outrageous, willful, prolonged, deceptive and
5 damaging nature of Defendants' underlying acts, Plaintiffs are entitled to an award of
6 punitive damages to be determined by a jury at the time of trial in this action.

7 416. Defendants are jointly and severally liable for compensatory and
8 punitive damages as a result of their concerted actions.

9 417. Defendant Fennemore Craig is vicariously liable for compensatory and
10 punitive damages awarded against Hancock.

11 418. Defendant Roetzel & Andress is vicariously liable for compensatory and
12 punitive damages awarded against Musnuff.

13 419. Goodyear is vicariously liable for compensatory and punitive damages
14 awarded against Hancock, Musnuff and/or Okey.

15 420. Goodyear is vicariously liable for compensatory and punitive damages
16 awarded against Roetzel & Andress and/or Fennemore Craig.

17 421. An award of punitive damages would serve to deter and punish
18 Goodyear for its wrongful conduct.

19 422. An award of punitive damages would serve to deter and punish Roetzel
20 & Andress for its wrongful conduct.

21 423. An award of punitive damages would serve to deter and punish Musnuff
22 for his wrongful conduct.

23 424. An award of punitive damages would serve to deter and punish
24 Fennemore Craig for its wrongful conduct.

25 425. An award of punitive damages would serve to deter and punish Hancock
26 for his wrongful conduct.

27 426. An award of punitive damages would serve to deter and punish Okey for
28 her wrongful conduct.

1 **XXXIII. LEGAL CLAIMS**

2 **COUNT ONE - Fraudulent Misrepresentation**

3 427. Plaintiffs incorporate the preceding allegations.

4 428. Defendants each made misrepresentations for the purpose of inducing
5 the Plaintiffs to act or to refrain from action in reliance upon those
6 misrepresentations. Each of the representations was false and material. Each of the
7 Defendants knew of the falsity of such representations or were otherwise ignorant of
8 their truth. Defendants intended the misrepresentations should be acted upon by
9 the Plaintiffs. The Plaintiffs were ignorant of the falsity of the representations and
10 relied on the truth of such representations. Plaintiffs had the right to rely upon the
11 truth of such representations.

12 429. As a result of Plaintiffs' reliance, Plaintiffs have been proximately
13 injured.

14 430. As a result of these material misrepresentations, Plaintiffs were
15 deceived into entering into a settlement agreement which was fraudulently induced
16 to their damage. As a result of the settlement, the funds received were
17 disseminated in reliance upon prior representations and omissions of Defendants
18 precluding the return of those payments.

19 431. Plaintiffs are entitled to affirm the settlement agreement and pursue
20 this claim for damages.

21 432. Plaintiffs are entitled to damages reflecting the difference between what
22 they were deceived into accepting as a settlement and the true value of their claims
23 against Goodyear as of the date of the fraudulently induced settlement.

24 433. Plaintiffs are entitled to an award of attorneys' fees pursuant to
25 A.R.S. § 12-341.01.

26 434. Plaintiffs are entitled to an award of punitive damages.

27 435. Defendants are jointly and severally liable for all damage awards.
28

1 **COUNT TWO - Fraudulent Nondisclosure**

2 436. Plaintiffs incorporate the preceding allegations ¶¶ 1 through 435.

3 437. Defendants failed to disclose to the Plaintiffs facts which they knew
4 could justifiably induce the Plaintiffs to act or refrain from acting in conjunction with
5 the settlement of the underlying litigation.

6 438. Defendants each had a duty to the Plaintiffs to exercise reasonable care
7 to disclose matters concealed from the Haegers prior to the settlement arising out of
8 their obligations as officers of the court, in accord with Ethical Rules, the Rules of
9 Civil Procedure, pursuant to Court orders, and as a result of representations made to
10 the United States District Court.

11 439. Defendants knew that the failure to disclose matters previously
12 concealed and misrepresented was necessary to prevent prior statements provided
13 to the Court and to the Haegers from being misleading.

14 440. Defendants knew that absent further disclosures, that previous
15 representations were untrue or misleading and that the Plaintiffs believed prior
16 representations to be true.

17 441. Defendants knew that the Haegers would enter into a settlement under
18 a mistaken understanding and that because of the relationship between Plaintiffs and
19 Defendants, and requirements of the practice of law, the Haegers would reasonably
20 expect, and Defendants were required to provide a complete disclosure and failed to
21 do so.

22 442. Defendants' misrepresentations and omissions were either false or
23 created a false impression, were material and each of the Defendants knew of the
24 falsity of such representations or the materially misleading nature of their omissions.
25 Defendants intended that the misrepresentations and/or omissions should be acted
26 upon by the Haegers. The Plaintiffs were ignorant of the falsity of the
27 representations and unaware of the nature of material omissions and relied upon the
28

1 truth of such representations. Plaintiffs had the right to rely upon the truth of such
2 representations.

3 443. As a result of Plaintiffs' reliance and the settlement agreement entered
4 into between Plaintiffs and Goodyear, the Plaintiffs have been proximately injured.

5 444. As a result of these material misrepresentations and omissions,
6 Plaintiffs were deceived into entering into a settlement agreement which was
7 fraudulently induced to their damage. As a result of the settlement, the funds
8 received were disseminated in reliance upon prior representations and omissions of
9 Defendants precluding the return of those payments.

10 445. Plaintiffs are entitled to affirm the settlement agreement and pursue
11 this claim for damages.

12 446. Plaintiffs are entitled to damages reflecting the difference between what
13 they were deceived into accepting as a settlement and the true value of their claims
14 against Goodyear as of the date of the fraudulently induced settlement.

15 447. Plaintiffs are entitled to an award of attorneys' fees pursuant to
16 A.R.S. § 12-341.01.

17 448. Plaintiffs are entitled to an award of punitive damages.

18 449. Defendants are jointly and severally liable for all damage awards.

19 **COUNT THREE - Fraudulent Concealment**

20 450. The Plaintiffs incorporate the preceding allegations of ¶¶ 1 through 449.

21 451. The Haegers and Goodyear entered into a settlement agreement in
22 2010.

23 452. The Defendants, by concealment, intentionally prevented the Haegers
24 from acquiring material information related to the settlement of the *Haeger* action.

25 453. The concealment of the material information by the Defendants caused
26 pecuniary loss to the Haegers.

27 454. Defendants intentionally prevented the Haegers from learning of
28 material facts that were significant.

1 455. Defendants' deceptive acts were intended to hide information, mislead,
2 avoid suspicion and prevent further inquiry into material matters related to the
3 settlement of the underlying action.

4 456. The Defendants actively concealed material facts by words or acts which
5 created a false impression, covering up the truth, including the false denials of
6 knowledge by the Defendants who were in possession of the facts.

7 457. As a result of Defendants' acts, Plaintiffs have been proximately injured
8 in an amount to be proven at the time of trial.

9 458. As a result of these material misrepresentations, Plaintiffs were
10 deceived into entering into a settlement agreement which was fraudulently induced
11 to their damage. As a result of the settlement, the funds received were
12 disseminated in reliance upon prior representations and omissions of Defendants
13 precluding the return of those payments.

14 459. Plaintiffs are entitled to affirm the settlement agreement and pursue
15 this claim for damages.

16 460. Plaintiffs are entitled to damages reflecting the difference between what
17 they were deceived into accepting as a settlement and the true value of their claims
18 against Goodyear as of the date of the fraudulently induced settlement.

19 461. Plaintiffs are entitled to an award of attorneys' fees pursuant to
20 A.R.S. § 12-341.01

21 462. Plaintiffs are entitled to an award of punitive damages.

22 463. Defendants are jointly and severally liable for all damage awards.

23 **COUNT FOUR - Negligent Misrepresentation**

24 464. Plaintiffs incorporate the preceding allegations of ¶¶ 1 through 463.

25 465. Roetzel & Andress, Fennemore Craig, Musnuff and Hancock each owed a
26 duty to Plaintiffs as officers of the Court and lawyers to disclose requested relevant
27 evidence, to not assist witnesses to testify falsely, to answer and/or supplement
28

1 discovery responses in accord with applicable rules of procedure and to make truthful
2 representations to the Court.

3 466. Defendants, by failing to exercise reasonable care in obtaining or
4 communicating information, negligently supplied false information to Plaintiffs.

5 467. Plaintiffs justifiably relied upon the information.

6 468. Plaintiffs were damaged by justifiable reliance.

7 469. Defendants are liable for Plaintiffs' proximately caused damages.

8 470. As a result of these negligent misrepresentations, Plaintiffs were
9 deceived into entering into a settlement agreement which was induced to their
10 damage. As a result of the settlement, the funds received were disseminated in
11 reliance upon prior representations and omissions of Defendants precluding the
12 return of those payments.

13 471. Plaintiffs are entitled to affirm the settlement agreement and pursue
14 this claim for damages.

15 472. Plaintiffs are entitled to damages reflecting the difference between what
16 they were deceived into accepting as a settlement and the true value of their claims
17 against Goodyear as of the date of the negligently induced settlement.

18 473. Plaintiffs are entitled to an award of attorneys' fees pursuant to
19 A.R.S. § 12-341.01.

20 474. Plaintiffs are entitled to an award of punitive damages.

21 475. Defendants are jointly and severally liable for all damage awards.

22 **COUNT FIVE - Abuse of Process**

23 476. Plaintiffs incorporate the preceding allegations of ¶¶ 1 through 475.

24 477. Defendants willfully utilized judicial process for purposes not proper in
25 the regular conduct of the proceedings in the matter of *Haeger v. Goodyear*, Cause
26 No. 2:05-cv-02046-ROS.

27 478. Defendants utilized a process in the United States District Court for
28 illegitimate purposes, including filing false declarations, purposely deceptive

1 pleadings, obstructing access to evidence, which required a disclosure pursuant to
2 applicable rules of procedure, testifying falsely, assisting other witnesses to testify
3 falsely, knowingly making false statements of fact to the Court, failing to correct
4 false statements of fact previously made to the Court, knowingly offering evidence
5 which they knew to be false, knowingly engaging in fraudulent conduct relating to
6 judicial process and failing to take remedial measures, including disclosure to the
7 Court, failing to comply with the duty of candor and otherwise engaging in acts
8 prohibited which were prejudicial to the administration of justice.

9 479. Defendants' acts were undertaken for improper purposes and utilized
10 the process for purposes for which it was never intended.

11 480. Defendants' acts caused the Haegers to suffer emotional distress,
12 inconvenience, anxiety and frustration to their damage.

13 481. Plaintiffs are entitled to an award of punitive damages.

14 482. Defendants are jointly and severally liable for all damage awards.

15 **COUNT SIX -Civil Conspiracy**

16 483. Plaintiffs incorporate the preceding allegations of ¶¶ 1 through 482.

17 484. Defendants agreed to conceal material information from the Haegers,
18 which was required to be disclosed by the applicable Rules of Civil Procedure, the
19 Rules of Professional Conduct and Court orders.

20 485. Defendants agreed to make misrepresentations to the Court and the
21 Haegers.

22 486. Defendants' deceptive acts and misrepresentations represented a
23 concerted plan to engage in fraudulent misrepresentations, fraudulent nondisclosure,
24 fraudulent concealment, and abuse of process.

25 487. Defendants' agreements and resulting conduct were for unlawful
26 purposes or to otherwise accomplish unlawful participation in the litigation process
27 by unlawful means.

28

1 488. The acts of Defendants have caused the Haegers damages for which
2 Defendants are jointly and severally liable.

3 489. Plaintiffs are entitled to an award of punitive damages.

4 **COUNT SEVEN - Aiding and Abetting**

5 490. Plaintiffs incorporate the preceding allegations of ¶¶ 1 through 489.

6 491. Defendants Roetzel & Andress, Fennemore Craig, Musnuff, Hancock and
7 Okey engaged in knowing acts that substantially aided Goodyear to commit wrongful
8 and prohibited conduct which damaged the Haegers, including fraudulent
9 misrepresentations, fraudulent nondisclosure, fraudulent concealment, negligent
10 misrepresentations and abuse of process.

11 492. Defendants are jointly and severally liable for aiding and abetting
12 Goodyear in committing these tortious acts and for the resulting damages that the
13 Haegers suffered.

14 493. Plaintiffs are entitled to an award of punitive damages.

15 WHEREFORE, Plaintiffs request that the Court enter its Order:

16 A. Awarding Plaintiffs their damages incurred as a result of the wrongful
17 acts and omissions of these Defendants;

18 B. Awarding Plaintiffs' attorneys' fees and costs incurred as a result of the
19 wrongful acts and omissions of Defendants;

20 C. Awarding Plaintiffs' pre-judgment interest;

21 D. Awarding punitive damages in an amount sufficient to punish and deter
22 Defendants for their willful, outrageous and evil misconduct.

23 E. Finding Defendants jointly and severally liable for any compensatory
24 and punitive damage awards.

1 DATED this 3rd day of September, 2013.

2 GALLAGHER & KENNEDY, P.A.

3
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16 COPY mailed this same date to:

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