

Judge John Hannah: This is Haeger vs Goodyear, CV 2013-052753, would those on the phone please introduce themselves starting on the plaintiff side.

Lisa Lewallen: Mr. Kurtz is not here, Your Honor. This is Lisa Lewallen for Spartan Motors [RV manufacturer that has intervned in the case and filed for relief against Goodyear].

John Hannah: Okay, all right.

Jennifer Bennett: This is Jennifer Bennett [Public Justice attorney representing the Center for Auto Safety]

John Hannah: Okay.

Richard Traulsen: Richard Traulsen, as well Your Honor.

Foster Robberson: Your Honor, this is Foster Robberson along with Susan Freeman for Goodyear and I did place a call to Mr. Kurtz as we were trying to put this call together. Given the emergency nature of it, left him a message about 15 minutes ago and told him that we're in an emergency situation and we're reaching out to the court. So he was notified but I had no way of reaching him beyond leaving a message on his law firm phone number.

John Hannah: All right. Is that everybody then, who's on the call?

Lisa Lewallen: Yes, sir.

John Hannah: Okay.

John Hannah: All right, we'll go ahead without Mr. Kurtz. I'm not likely to enter any kind of an order in this hearing although, if I'm asked to, obviously, I'll consider it, and I guess if that happens I'll have to consider, what, if anything, to do about Mr. Kurtz's absence. Let's set that aside for a moment, the parties have asked me to make myself available because there's an emergency in the case. I have some information, but I'm going to let counsel and Mr. Robertson and Mrs. Freeman tell me what the issue is exactly and what if anything you're asking me to do this afternoon.

Foster Robberson: Thank you, Your Honor, Foster Robberson again. Your Honor, I want to thank the court for responding so promptly, and also I want to thank counsel on the line for responding so promptly and for their cooperation. This is obviously an extraordinary proceeding and we acknowledge that, but I think that the circumstances warrant it.

Foster Robberson: So here's what has happened, Your Honor, from the Goodyear perspective. We received an email this afternoon from a Ryan Felton, R-Y-A-N first name, last name Felton, F-E-L-T-O-N, who identifies himself as with something called

Transportation and Technology Reporter, Jalopnik, and the time I have on this email is roughly a quarter to four this afternoon. Frankly, I don't know what time zone that is. I don't know whether it's my time zone or some other time zone, but that's what I have on this email. And, Mr. Felton sent this email to a Jim Davis, an employee at Goodyear and his email says, I can read it because it's very short.

Foster Robberson: It says, "Hi Jim, we obtained, from the Maricopa County Superior Court Clerk's Office, a copy of the letter that was unsealed this morning by Judge Hannah. The letter sent by attorney David Kurtz to NHTSA highlights a number of things, namely" ... and actually I'll skip the bullet points, but there are something on the order of a half dozen bullet points that Mr. Felton put together based on these documents that he has apparently obtained. Then he says, "Do you have any comments on the statements made by Kurtz in the letter, particularly the items cited above? Do you know how many G59s were sold as OEs to the manufacturer in total from 1996 to 2003? Do you have any additional comments on Lovell's reported testimony?" And then here's one of the most important things it says, "We're writing a story today and so I'd appreciate a response at your earliest convenience. My deadline is 6:30 p.m. EDT. Thanks" and then there's a Ryan Felton and a telephone number and an email.

Foster Robberson: So, Your Honor, based on this communication from Mr. Felton, he obtained documents from the Clerk's Office. We believe those documents were supposed to be sealed. We believe that they were released by the Clerk's Court ... by the Clerk of the Court in error. And we believe this is in direct contravention of the court's minute entry dated yesterday and particularly page 25 where it says "all other sealed items and the records shall remain under seal pursuant to the previous order of the court."

Foster Robberson: Your Honor, so, if we take Mr. Felton as good to his word, what is about to happen is Goodyear is going to lose substantial rights, potentially, have confidential documents, and you know, Your Honor, how Goodyear has argued and taken measures to protect these documents. The court has recognized that those documents should remained sealed until there is Appellant review. That is all about to be undone through no fault whatsoever of Goodyear. Now, I don't know how Mr. Felton happened to be at the Clerk's Office at some hour this morning, with all or some portion of Your Honor's order in hand and how he managed to get these documents from the Clerk of the Court, in contravention of the order. But clearly that wasn't at Goodyear's doing and it wasn't Goodyear's responsibility for that, when it was somebody else's responsibility, I suppose we'll get to the bottom of that, in days or weeks to come.

Foster Robberson: But right now what we are asking for is for action. What I would like for the court to do, would be, to be willing to contact Mr. Felton with counsel involved—I have his phone number here—and emphasize to him that these documents remain under seal. I actually experienced a situation similar to this in my practice several years ago where a reporter had a confidential document leaked to her—this is a television reporter—and the reporter when contacted

by, and I don't remember if was the court's directly involved, it's been several years ago. But when contacted and made to understand that the documents that she had were not supposed to be in her possession, she agreed to hold them up until the process could run its course. So, we would like for it to be emphasized to Mr. Felton, and we think that the court has the loudest megaphone here, that he's not supposed to have these documents, that he will be undercutting an order of the court if he goes ahead and publishes them and that parties in this case will essentially have rights taken from them. At this point anyway, just emphasize to him that he was provided with these documents by mistake and that we should try to unwind that mistake before it's amplified.

Foster Robberson: That's what's happening from Goodyear's perspective and that is our request your honor.

John Hannah: Could you read me the first couple of sentences of the email again where he explains how he came into possession of the information?

Foster Robberson: Yes, Your Honor.

Foster Robberson: It says, "Hi Jim, we obtained, from the Maricopa County Superior Court Clerk's Office, a copy of the letter that was unsealed this morning by Judge Hannah. The letter sent by attorney David Kurtz to NHTSA highlights a number of things, namely..." and then it goes into his bullet points.

John Hannah: Okay. Do we ... is that the only information that we have that this document was obtained from the Clerk?

Foster Robberson: No, Your Honor. Our paralegal spoke with the Deputy Clerk this morning ... this afternoon, his name is Edgar [inaudible], he's here and he could tell you what he learned if you wish to hear from him.

John Hannah: Well, I guess I may have to contact somebody myself, but I guess it can't hurt for me to ... to tell me what he knows.

Foster Robberson: All right, this is Edgar [inaudible] a paralegal at our firm. Edgar why don't you tell the court and counsel...

Edgar: Yes, Your Honor. Once Mrs. Freeman forwarded a copy of the email from Mr. Felton to me, she asked me to run down to the Jackson Street Service Center where I found the Clerk who handles the sealing and unsealing of documents. Spoke to her and she said, "Yes, I know about this." She inadvertently unsealed some of the documents in the case, the ones listed in the minute entry from yesterday, and resealed them after she got a call from another clerk that the proper interpretation of your order was to keep everything sealed. Another clerk pulled their files and said that the, Mr. Felton, 'cause it shows in their receipt, just before noon was able to get a copy of document 460. He paid two

hundred something dollars, which extrapolates to the 262, 62 pages of document 460.

John Hannah: Hang on a second. First of all, do you know the name of the person you talked to?

Edgar: I didn't get her name, her badge was covered, but there's only one person that told me. She's the only person that handles the sealing and unsealing of documents.

John Hannah: Okay.

Edgar: So it can be readily figured out who she was.

John Hannah: Okay-

Edgar: She was very apologetic, she said she misunderstood the minute entry. She wasn't sure what was meant by your last paragraph.

John Hannah: Okay. Then you said that, just now, that she identified the document that was released?

Edgar: Yes, another clerk there at the office pulled up their receipts, their electronic receipts, and it shows that Mr. Felton through another service center paid for a copy of document 460.

John Hannah: Okay. The only document-

Edgar: Document, I'm sorry to interrupt, sir. The name of the document is the Haegers' Notice of Filing of Documents Under Seal. The first exhibit to that filing is a copy of Mr. Kurtz letter, which contains all the information in Mr. Felton's email.

John Hannah: Right, was that ... Is it your understanding that that was the only document that was released?

Edgar: As far as the clerk who was checking their payment computers could tell, that was the only document that was paid for today, out of that case.

John Hannah: Okay. All right. The ... Susan can you stay for a few minutes?

Susan Freeman: Yes.

John Hannah: I'm thinking that, since it's five to five, I'm thinking I may recess this hearing for just a minute so I can talk to the Clerk's Office myself. What I'm inclined to do is have you all just wait on the line, not try to reconstitute the call, but if we go on any longer, I'm not going to be able to get a hold of anybody. I think I would like to talk to ... well, I've already gotten an email from a lawyer over there. I may have to treat them as a party here. But whether I do that or not, it strikes me

that if somebody over there has more information, then that's not necessarily a bad thing.

John Hannah: Mr. Robberson, do you have any thoughts or comment on that?

Foster Robberson: I definitely think everyone should stay on the line, because I don't want to lose anybody and have to go through those steps again. We're certainly willing to do that, Your Honor, but I do reiterate our request to try to somehow bring the court's situation to the attention of Mr. Felton before he does what he says he's going to do, which is to publish this.

John Hannah: It sounds like he's in the Eastern time zone. I think his email said something about EDT. I assume that means Eastern Daylight Time, which means, where he is, it's already almost 8:00. Let me ... all right, I will only be gone for a minute or two, I will be back in just a couple of minutes. Everybody please sit tight.

Foster Robberson: Thank you, Your Honor.