

COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STEVEN A. ETTINGER INC. PROFIT )  
SHARING PLAN, Derivatively on )  
Behalf of Nominal Defendant )  
THE GOODYEAR TIRE & RUBBER )  
COMPANY )  
200 Innovation Way )  
Akron, Ohio 44316-0001 )

Plaintiff, )

v. )

RICHARD J. KRAMER, JAMES A. )  
FIRESTONE, WERNER GEISSLER, )  
PETER S. HELLMAN, LAURETTE T. )  
KOELLNER, W. ALAN )  
McCOLLOUGH, JOHN E. McGLADE, )  
MICHAEL J. MORELL, RODERICK A. )  
PALMORE, STEPHANIE A. )  
STREETER, THOMAS H. )  
WEIDEMEYER, MICHAEL R. )  
WESSEL, SAMIR G. GIBARA, and )  
ROBERT J. KEEGAN, )  
c/o The Goodyear Tire & Rubber )  
Company )  
200 Innovation Way )  
Akron, Ohio 44316-0001 )

Defendants, )

and )

THE GOODYEAR TIRE & RUBBER )  
COMPANY )  
200 Innovation Way )  
Akron, Ohio 44316-0001 )

Nominal Defendant. )

Judge:

Case No.:

**VERIFIED SHAREHOLDER**  
**DERIVATIVE COMPLAINT**  
**(Jury Trial Demanded)**

## **VERIFIED DERIVATIVE COMPLAINT**

Plaintiff, Steven A. Ettinger Inc. Profit Sharing Plan by its attorneys, submits this Verified Derivative Complaint (the "Complaint") on behalf of Nominal Defendant The Goodyear Tire & Rubber Company ("Goodyear" or the "Company") against certain current and former members of the Board of Directors (the "Board") and officers of the Company, seeking to remedy defendants' breaches of fiduciary duties, fraudulent conduct and other violations of law. Plaintiff bases its allegations on personal knowledge as to itself, and upon information and belief as to all other allegations based upon an investigation performed by its attorneys, which included without limitation: (i) review of public filings by Goodyear; and (ii) a review of other publicly available information concerning Goodyear's failure to disclose failure data related to Goodyear's G159 radial medium truck tire.

### **I. NATURE OF THE ACTION**

1. This is a shareholder derivative action brought on behalf of Goodyear against current and former members of the Board: Kramer, Evans, Firestone, Geissler, Hellman, Koellner, McCollough, McGlade, Morell, Palmore, Streeter, Weidemeyer, Wessel, Gibara, and Keegan (collectively referred to as the "Individual Defendants") arising out of the Individual Defendants' breaches of fiduciary duty, fraudulent conduct and *ultra vires* acts. The Individual Defendants allowed Goodyear to engage in activities and violate federal law in connection with its concealment of safety issues related to its G159 tire.

2. The directors of a corporation are responsible for managing its affairs. They owe the corporation a duty of care and loyalty and, therefore, must fulfill these functions lawfully and in accordance with the statutes, rules and regulations applicable

to its business. When faced with a duty to act, such as in the case of the company complying with its duties to evaluate and monitor ongoing litigation matters, directors who fail to cause the corporation to act breach their duties and for damages.

3. As fiduciaries, corporate directors must also protect the corporation's assets and property against losses, whether actual or threatened. They must avert avoidable losses to the corporation whenever possible or reasonable to do so. This includes, among other things, causing the corporation to implement business practices and internal controls sufficient to detect, prevent, and remedy any unethical, deceptive, fraudulent, and unlawful conduct of the officers and employees of the Company.

4. Individual Defendants had actual knowledge and/or should have known that: (1) Goodyear in numerous litigation matters covered-up its own speed tests of the G159 tire because of their detrimental effect on pending litigation and regulatory disclosures; (2) Goodyear engaged in deliberate attempts to mislead Courts and litigants to cover-up detrimental test results; and, (3) Goodyear misrepresented and/or failed to disclose material facts related to the defects and multiple failures of the G159 tires.

5. The conduct of Individual Defendants damaged Goodyear by impairing the Company's reputation, increasing litigation expenses, subjecting the Company to sanctions and exposed Goodyear to additional litigation, civil penalties which can amount to \$105 million, and potential criminal liability.

6. Absent this shareholder derivative action, Goodyear's rights against its fiduciaries will not be vindicated because Goodyear's Board is disabled from controlling the Company's derivative claims against the Individual Defendants. Plaintiffs, by contrast, will adequately protect Goodyear's interests, and seek relief for Goodyear as a result of the actions of the Individual Defendants.

## **II. JURISDICTION AND VENUE**

7. This Court has original jurisdiction over the subject matter of this action.

8. Venue is proper in Summit County, Ohio, because some or all of the conduct described herein took place in Summit County and because Goodyear's headquarters and principal place of business is in Summit County.

## **III. PARTIES**

9. Plaintiff Steven A. Ettinger Inc. Profit Sharing Plan is, and was at all relevant times, a shareholder of nominal defendant Goodyear.

10. Nominal defendant Goodyear is an Ohio corporation with its principal executive offices located at 200 Innovation Way, Akron, Ohio 44316-0001. According to its public filings, Goodyear is one of the world's leading manufacturers of tires that develops, manufactures, markets and distributes tires for most applications. Goodyear developed, manufactured, marketed and distributed the G159 model tire -- produced from 1996 through 2003 -- which is the subject of this action.

11. Defendant Richard J. Kramer ("Kramer") has served as Chairman, CEO and President of Goodyear since 2010. Since joining Goodyear in 2000 he has also held the positions of CFO and President of Goodyear North America.

12. Defendant James A. Firestone ("Firestone") has served as a director of Goodyear since 2007 and as a member of the Audit and Executive Committees of the Board.

13. Defendant Werner Geissler ("Geissler") has served as a director of Goodyear since 2011 and as a member of the Audit Committee, the Executive Committee, and as Chair of the Committee on Corporate Responsibility and Compliance.

14. Defendant Peter S. Hellman ("Hellman") has served as a director of Goodyear since 2010 and as Chair of the Audit Committee and a member of the Executive Committee.

15. Defendant Laurette T. Koellner ("Koellner") has served as a director of Goodyear since 2015 and as a member of the Audit Committee.

16. Defendant W. Alan McCollough ("McCollough") has served as a director of Goodyear since 2007, Lead Director of Goodyear, and as Chair of the Executive Committee.

17. Defendant John E. McGlade ("McGlade") has served as a director of Goodyear since 2012 and as a member of the Governance Committee and the Executive Committee.

18. Defendant Michael J. Morell ("Morell") has served as a director of Goodyear since 2014 and as a member of the Audit Committee and the Committee on Corporate Responsibility and Compliance.

19. Defendant Roderick A. Palmore ("Palmore") has served as a director of Goodyear since 2012 and as a member of the Executive Committee and Chair of the Governance Committee.

20. Defendant Stephanie A. Streeter ("Streeter") has served as a director of Goodyear since 2008 and as a member of the Governance Committee.

21. Defendant Thomas H. Weidemeyer ("Weidemeyer") has served as a director of Goodyear since 2004 and as a member of the Committee on Corporate Responsibility and Compliance.

22. Defendant Michael R. Wessel ("Wessel") has served as a director of Goodyear since 2005 and as a member of the Committee on Corporate Responsibility and Compliance.

23. Defendant Samir G. Gibara ("Gibara") has served as a director of Goodyear from 1996 through 2003.

24. Defendant Robert J. Keegan ("Keegan") served as Chairman, president and CEO of Goodyear from 2003 until he retired in 2010.

25. Collectively, the defendants identified in paragraphs 11-24 will be referred to in this Complaint as the "Individual Defendants."

#### **IV. DUTIES OF THE INDIVIDUAL DEFENDANTS**

26. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due care, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to the Company and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

27. The Individual Defendants, because of their positions of control and authority as directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

28. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of the Company were required to, among other things:

- a. Ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;
- b. Ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, including acting only within the scope of its legal authority; and,
- c. Exercise good faith to ensure that the statements made to the public by the Individual Defendants, through the Company, were not materially false and/or misleading.

#### **Duties of the Audit Committee Members**

29. The current members of the Audit Committee of the Board of Directors of Goodyear are Firestone, Geissler, Hellman, Koellner and Morell.

30. One of the stated purposes of the Audit Committee set by its Charter is “to assist the Board of Directors in the oversight of . . . the Company’s compliance with legal and regulatory requirements. . . .”

31. Members of the Audit Committee meet six (6) times a year and are charged with maintaining effective working relationships with the Board of Directors and management and to “obtain an understanding of the responsibilities of Committee membership as well as the Company’s business, operations and risks.”

32. The Audit Committee Charter imposes on its members the following duties and responsibilities:

- a. Reviewing the annual audit plan and the results thereof of the independent accountants and internal auditors;
- b. Reviewing with management and the independent accountants any significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements;
- c. Discussing with management any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls;
- d. Obtaining and reviewing, at least annually, a report by the independent accountants describing any material issues raised by any inquiry or investigation by governmental or professional authorities;
- e. Reviewing policies and guidelines with respect to risk assessment and risk management, including the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures; and,
- f. Reporting regularly to the Board of Directors with respect to the Company's compliance with legal and regulatory requirements.

33. The members of the Audit Committee had a high degree of responsibility with respect to the Company's compliance with legal and reporting requirements.

34. The members of the Audit Committee had an obligation to make sure that there were adequate internal controls in place to ensure that the products the Company but on the road and sold to customers were safe, that reports of injuries were properly reported to government agencies and officials, and that the Company had a policy for determining when a product is unsafe and defective.

35. As alleged in detail below, the Individual Defendants, particularly the members of the Audit Committee, failed to implement and maintain adequate internal control over the Company's compliance with legal and regulatory requirements, and



thereby violated their fiduciary duty of good faith and as to the members of the Audit Committee, the Audit Committee Charter.

**Duties of the Members on the Committee on Corporate Responsibility and Compliance**

36. The current members of the Committee on Corporate Responsibility and Compliance of the Board of Directors of Goodyear are Geissler, Morell, Weidemeyer, and Wessel.

37. The purpose of the Committee on Corporate Responsibility and Compliance Committee as stated in its Charter is to “(1) to oversee the Company’s compliance program, including the Company’s compliance with the significant legal and regulatory requirements applicable to it, (2) to oversee the Company’s compliance with its major policies, including its policy of adherence to the highest legal and ethical standards, and (3) to monitor how the Company manages its business in a responsible manner.”

38. The Charter of the Committee on Corporate Responsibility and Compliance imposes on its members the following duties and responsibilities:

- a. Monitoring the design, effectiveness and administration of the Company’s legal compliance program;
- b. Monitoring the Company’s compliance with applicable laws, regulations and major policies;
- c. Reviewing any matters involving fraud, whether or not material, that involve management or other employees who have a significant role in the Company’s internal controls; and,
- d. Receiving regular reports from management personnel regarding the subjects above, and in addition, have the authority to retain and terminate outside legal or other advisors to assist the Committee in the performance of its responsibilities.

39. Meetings of the Committee on Corporate Responsibility and Compliance are held at least three (3) times a year and, in addition to the members of the Committee, may be attended by the Lead Director, the Chairman of the Board and Chief Executive Officer, the General Counsel, the Senior Vice President, Global Human Resources, the Vice President, Compliance and Ethics, and the Director, Compliance and Ethics.

40. Members of the Committee on Corporate Responsibility and Compliance had an obligation to ensure the Company complied with legal and regulatory requirements regarding the disclosure and reporting of injuries and defects in its products, to maintaining highest legal and ethical standards, and to conduct the business of the Company in a responsible manner.

41. As alleged in detail below, the Individual Defendants, particularly the members of the Committee on Corporate Responsibility and Compliance, failed in their responsibility to implement and maintain adequate internal control over the Company's compliance with legal and regulatory requirements, and thereby violated their fiduciary duty of good faith to enforce the Charter of the committee.

#### **Business Conduct Manual**

42. Goodyear's Business Conduct Manual (the "Manual") applies to all employees and obligates them to follow "the highest ethical and legal standards in doing business" and to "recognize and do the 'right' thing."

43. The Manual obligates all employees – directors and officers included – to "learn the policies, laws and regulations that apply to your job and Goodyear . . . and comply with them." This includes the obligation to report "whenever you know or

suspect that there has been a violation” and to “cooperate fully and truthfully in any review or investigation of a possible violation.”

44. The Manual notes that “[c]ompliance by each of us with the legal requirements imposed on our business and with the policy and ethical standards we have adopted is vital to our business success and maintaining our reputation as an ethical, responsible company.”

#### **Code of Ethics**

45. Goodyear’s Code of Ethics for the CEO and Senior Financial Officers (the “Code”) reiterates that Goodyear “expects all of its employees to act in accordance with the highest standards of personal and professional integrity in all aspects of their activities, to comply with all applicable laws, rules and regulations, to deter wrongdoing and abide by the Goodyear Business Conduct Manual and other policies and procedures adopted by Goodyear that govern the conduct of its employees.”

46. In particular, the Code obligates Senior Financial Officers to “[c]omply with applicable governmental laws, rules and regulations.”

#### **V. FACTUAL ALLEGATIONS**

47. Goodyear began manufacturing the G159 tire in 1996. Originally intended for short-haul metro service – pickup and delivery trucks -- the G159 was later sold for use on motorhomes which are operated for long distances on the highway. The G159 was designed to withstand a temperature of 194 degrees Fahrenheit. Operating the G159 on vehicles travelling long distances on the highway caused the temperature to exceed 194 degrees.

48. When used on motorhomes, the G159 was prone to overheating which resulted in tread separations which, in turn, resulted in crashes, accidents, and lawsuits.

49. When the speed limits on the nation's highways increased to 75 MPH, Goodyear increased the speed rating on the G159 from 65 MPH to 75 MPH. Goodyear insisted that the increased speed rating was safe and did not compromise the tire's safety margin. Decades later it would begin to emerge that Goodyear's representation was not true.

50. Goodyear knew in 1999 that the G159 was greatly exceeding the temperature limit for the tire when used on motorhomes increasing the risk of a catastrophic tread separation.

51. After the speed rating on the G159 was increased by Goodyear, failure claims increased rapidly.

52. The G159 was manufactured until 2003. In all, about 160,000 tires were manufactured by Goodyear. About 40,000 of those tires were used on motorhomes.

53. Goodyear never recalled the G159.

54. Goodyear faced mounting lawsuits – representing potentially 400 property damage and personal injury claims -- filed across the United States for injuries allegedly resulting from G159 failures. In 2003, Goodyear retained National Coordinating Counsel to manage these lawsuits.

55. Goodyear quietly and confidentially settled these lawsuits while only internally acknowledging that the G159 had problems.

56. As many as forty lawsuits have been filed against Goodyear related to the G159 tire. Many of these lawsuits have been settled quietly without full disclosure of known material facts about the problems with the tires to injured persons and with confidentiality agreements to prevent disclosure of any evidence of defects in the G159.

57. One such lawsuit was *Haeger v. Goodyear Tire & Rubber Co.*, filed in the United States District Court for the District of Arizona.

58. In *Haeger*, though Goodyear and its attorneys were aware of test data that called into question the safety of the G159 when used on motorhomes, that data was concealed from the attorneys representing the Haegers. In fact, in *Haeger* the Court excoriated Goodyear and its attorneys for manipulating the production of documents in the case and “making false statements to the Court in an attempt to hide their behavior.”

59. About a year after *Haeger* was settled after five years of litigation, counsel for the Haegers learned of the existence of some additional concealed test data after a trial in another lawsuit – *Schalmo v. Goodyear Tire & Rubber Co.* – ended in 2010 with a \$5.6 million verdict against Goodyear.

60. The Haegers’ counsel addressed the lack of full disclosure by Goodyear by filing another action in the federal district court which issued an opinion in 2012 that detailed fraud by Goodyear and its attorneys.

61. In the District Court’s opinion addressing the misconduct by Goodyear, the Court excoriated Goodyear’s in-house counsel for both “misleading or false” statements as well as a “deliberate attempt to mislead” the Court regarding the production of the detrimental test results. *See, Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 963 (D. Ariz. 2012). Even Goodyear’s corporate representative was cited as having provided “false” statements to the Court. The Court concluded:

In short, Goodyear's 30(b)(6) witness provided false testimony but the falsity emerged only as a result of Goodyear's inability to keep its falsehoods straight. A responsible corporation would have corrected the false deposition testimony immediately after the fact. At the very least, a responsible corporation would not compound the problem by submitting a false declaration affirming the false deposition testimony. Goodyear has not offered an explanation for [its representative's] testimony or its own

inexplicable behavior. The only reasonable conclusion is that Goodyear was, and continues to be, operating in bad faith.

*Id.* at 964-65.

62. After a recitation of Goodyear's misdeeds, the *Haeger* Court concluded that the "troubling behavior by Goodyear and its counsel began almost immediately after the case was filed and continued throughout the entire litigation, including post-dismissal." *Id.* at 976. The District Court sanctioned Goodyear and its lawyers \$2.7 million for their misconduct.

63. Goodyear appealed the sanctions award and while it was upheld by the Ninth Circuit, the Supreme Court reversed the award and remanded for further proceedings. On remand, the District Court considered whether Goodyear was vicariously liable for the conduct of its attorneys. The Court concluded: "The District Court's previous decision confirms that Goodyear participated directly in the fraud, and that the National Coordinating Counsel and Local Counsel both acted in furtherance of Goodyear's business and within the scope of the attorney's agency." *Haeger v. Goodyear Tire & Rubber Co.*, 2018 U.S. Dist. LEXIS 37321, at \*11 (D. Ariz. Mar. 7, 2018). And, Goodyear's involvement extended well into its corporate offices: "Specifically, the District Court concluded that Associate General Counsel, Ms. Okey, 'was always the final decision maker regarding discovery responses.' [ ] The District Court found that although Goodyear gave the documents to counsel, 'Goodyear is equally responsible' because Goodyear 'retained final approval authority on discovery responses,' and Goodyear therefore knew it 'was not cooperating in discovery and was engaging in bad faith behavior.'" *Id.* at \*11-12 (citations omitted).

64. While Goodyear's conduct in the *Haeger* case was misleading and deceptive, the actual extent of Goodyear's involvement in the concealment of defects related to the G159 tire was not known to the public until 2018 when additional evidence was uncovered.

65. In December 2017, the National Highway Traffic Safety Administration ("NHTSA") opened a Preliminary Evaluation after a court order authorized the disclosure of Goodyear records to NHTSA. The NHTSA investigation focuses on whether Goodyear properly reported failure information and could result in a fine. NHTSA opened a formal defect investigation regarding the G159 on January 1, 2018.

66. If NHTSA determines that Goodyear failed to report information required by law, NHTSA can assess a civil penalty of \$21,000 per violation up to a maximum of \$105 million for a related series of violations.

67. In April 2018, the blog, Jalopnik, obtained access to attorney David Kurtz' July 2017 letter to NHTSA and some of the documents that outlines evidence discovered in *Haeger* but which was not part of the District Court's decisions. That information had previously been sealed as a result of a protective order obtained by Goodyear. Indeed, a significant amount of relevant documents remain sealed. But when an April 4, 2018 opinion by Judge John Hannah of the Maricopa County Superior Court caused a "clerk to briefly unseal the records," Jalopnik was able to legally obtain a copy of some of the sealed records. In response to the release of the documents, Goodyear's attorneys sought to have the Court contact Jalopnik and urge it to "do the right thing" and not publish the records. The Court refused.

68. Judge Hannah's Order discusses the elaborate scheme of protective orders utilized by Goodyear to conceal the tire defect issues. *Haeger v. Goodyear Tire &*

*Rubber Company*, Superior Court of Arizona, Maricopa County, Case No. CV 2-13-0527, ¶24-37 (April 4, 2018). Judge Hannah noted that because of the protective orders obtained by Goodyear, “no court has been in a position to assess adequately the risk to public safety that the tire may pose or the degree to which Goodyear’s assurances of safety can be trusted.” *Id.* at ¶37.

69. The recently disclosed sealed records revealed previously unknown facts about the involvement of Goodyear’s senior management and directors in the G159 cover-up:

- a. Goodyear’s General Counsel – who attended all Board meetings – approved requests for settlements in the G159 tire litigation.
- b. From 2000 through 2010, Deborah Okey, Goodyear’s Associate General Counsel, supervised all G159 lawsuits for the Company. Okey was the same attorney sanctioned in *Haeger* for making false and misleading statements to the Court.
- c. In one case, Okey was provided with information about the status of a case for a meeting with Kramer in 2008, the then head of Goodyear’s North American operations and current CEO. These communications would have disclosed that although the G159 would satisfy tests for the 65 MPH speed rating, it would not satisfy the 75 MPH speed rating.
- d. The Board was directly aware of the problems with the G159 tires because in 2010 Okey made a presentation to the Board, including Kramer, regarding the G159 tire litigation.
- e. Goodyear’s knowledge that the G159 did not satisfy its standard for qualifying for the 75 mph rating was also confirmed in a March 2008 settlement memo sent to Kramer requesting settlement authority to resolve pending litigation. These speed tests were known to Goodyear as early as August 1996. The settlement memo also stated:

Unfortunately, [the plaintiffs] will likely be able to introduce evidence of the numerous other lawsuits involving this tire on RVs, and the over four hundred property damage and bodily injury claims which Goodyear has received with respect to this tire while being used on Class A recreational vehicles.



PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION  
ATTORNEY WORK PRODUCT

REQUEST FOR SETTLEMENT AUTHORITY

March 31, 2008

*Increased to \$3,625,000  
Kramer agrees with 5/12/08  
D.A. Okey  
CT Harvie  
J.A. Davis  
J.D. Andia*

CLAIMANT: Billy Wayne Woods, et al. *thio*  
CLAIM NO.: 000417343  
ACCIDENT: October 18, 2003  
COURT: Alabama State Court, Hale County  
Civil Action CV-04-45  
ATTORNEY: John D. Watson/Basil J. Musnuff

*Clay 14/2/08 D.Okey  
D.A. Okey 1/4/08  
D.A. Okey 1/4/08  
D.A. Okey 1/4/08*

f. Kramer approved a multi-million dollar settlement for the plaintiff in the spring of 2008. The settlement memo was also signed off on by Goodyear’s General Counsel:

70. Just as defects in the G159 began to emerge, Goodyear was keenly aware of the potential harm that could result to the Company if the defect in the G159 tires were to be admitted and disclosed. In 2000, Firestone became the subject of significant attention after reports of a high incidence of tire failures and accidents of Ford Explorers and other light trucks and SUV’s fitted with Firestone tires. The controversy resulted in a recall and replacement of 23 million tires, cut the market value of Firestone in half, caused the closure of a Firestone factory, caused the firing of several executives at Firestone and Ford, and led Congress to pass the TREAD Act. Goodyear noted this outcome in its 2000 Annual Report:

Overnight tires became front page news. Journalists, attorneys, politicians, automakers and government officials scrutinized the entire industry and its products.

71. Indeed, although the G159 involved 160,000 tires rather than 23 million, the failure rate on the G159 was significantly higher than the failure rate on the Firestone tires which NHTSA found to be defective.

72. Had Goodyear recalled or even reported known issues with the G159 tire, it could be subject to significant cost, scrutiny by regulators, and brand and reputational damage.

73. Even to this day, Goodyear has never fully disclosed why the G159 was discontinued, the safety risks it poses, and has not acknowledged that the G159 tire is defective.

74. In July 2018, indications that the Office of the Inspector General of the Department of Transportation was also investigating Goodyear surfaced.

75. Only in 2018 has NHTSA confirmed that Goodyear also underreported the number of crashes associated with the G159 tire.

76. Notwithstanding Defendant Kramer's central role in failing to ensure that Goodyear complied with legal and regulatory requirements and operated the Company in an ethical manner, Goodyear's Board has continued to award Kramer and the other Individual Defendants with lavish compensation at the expense of the Company, Plaintiff, and other shareholders.

77. For example, Defendant Kramer, who holds the positions of director and CEO of Goodyear, in 2017 was compensated \$10,845,759 million per year to provide services to the Company and other Individual Defendants Firestone, Hellman, McCollough, Streeter, Weidemeyer and Wessel, who hold the position of director are compensated between \$297,213 and \$354,443 per year to provide services to the Company.

## **VI. INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTIES**

78. In breach of both their fiduciary duty of good faith and, as to the members of the Audit Committee and the Committee on Corporate Responsibility and

Compliance, their responsibilities pursuant to the committee charters, the Individual Defendants willfully ignored the obvious and pervasive problems with Goodyear's internal policies and controls related to the safety of its products.

79. The Individual Defendants made no effort to establish and maintain adequate internal controls for the Company to ensure that the Company had systems in place to prevent and report safety defects associated with its products like the G159 tire including, without limitation:

- a. Goodyear has no internal policy regarding the number of injuries or deaths that would trigger a report about a product to the Corporate Safety Committee to evaluate a product for recall or reporting.
- b. Goodyear has no internal policy setting the threshold for reporting potential safety issues to the General Counsel or Board whether based on the number of adjustments, property damage claims, injury claims, or death claims.
- c. Goodyear has no internal policy or controls for analyzing product performance data.
- d. Goodyear has no internal policy or controls which set an acceptable adjustment rate for its products.
- e. Goodyear has no internal policy or controls for comparing the rate of damage claims from one product to another.
- f. Goodyear has no internal policy for determining when a product should be recalled.
- g. Goodyear has no internal policy for determining when a product presents an unreasonable risk of harm.
- h. Goodyear has no internal policy or data production capabilities to compare the number of injury or damage claims to the number of products manufactured.
- i. Goodyear has no internal policy or controls for involving senior managers with compliance responsibilities in product performance evaluation.

80. The foregoing misconduct of the Individual Defendants caused Goodyear to sustain damages, including, but not limited to, damages associated with the Company's corporate liability, federal regulatory investigations of the Company, and loss of credibility in the market.

## **VII. FRAUDULENT CONCEALMENT**

81. Until the publication of information obtained from sealed records in April 2018, Plaintiff had no knowledge of the Individual Defendants' conduct and the breaches alleged in this Complaint. Furthermore, until this disclosure, Plaintiff could not have discovered the Individual Defendants' conduct or breaches by the exercise of reasonable diligence because, among other things, Individual Defendants took active steps to conceal and avoid disclosure of their involvement in the G159 cover-up, the underreporting of crash data to federal authorities, and the harm to which they exposed the Company.

82. Despite reasonable and diligent efforts Plaintiff could not have learned of the extent of the Individual Defendants' involvement in the G159 cover-up. Indeed, even today, the full scope of the Individual Defendants' conduct is unclear and requires document and testimonial discovery.

83. In fact, the Individual Defendants concealment of their knowledge and conduct was consistent with, and a continuation of, their decade's-long, intentional concealment of the defective G159 tire from the public, shareholders, litigants, and federal government regulators.

84. Recent proceedings in Maricopa County, Arizona, in which certain parties attempted to unseal the records mentioned above, indicate the extent to which

Goodyear went to conceal its misconduct and the importance of releasing this information to the public for the first time:

- a. As a result of the protective orders obtained by Goodyear, until April of 2018, “no court has been in a position to assess adequately the risk to public safety that the tire may pose or the degree to which Goodyear’s assurances of safety can be trusted.” *Haeger v. Goodyear Tire & Rubber Company*, Superior Court of Arizona, Maricopa County, Case No. CV 2-13-0527, ¶37 (April 4, 2018).
- b. “Goodyear has gone to great lengths to keep [ ] information [about the G159 tire] confidential.” *Id.* at ¶46.
- c. “The public has an interest in access to Goodyear’s confidential information to the extent that such access will help the public ‘understand the risks to the public health and welfare’ that may be posed by Goodyear’s product.” *Id.* at ¶58.
- d. Goodyear was able to cover-up the G159 problems “because its protective orders prevented plaintiffs from communicating or sharing information among themselves. Thus Goodyear could control the information available to each plaintiff. In some cases Goodyear disclosed the tests showing how much heat the G159 tire can tolerate before it loses its structural integrity. In other cases Goodyear disclosed the tests showing that the tire does in fact generate that much heat at highway speeds. But this case appears to be the first in which Goodyear disclosed both sets of tests.” *Id.* at ¶66.
- e. “Even in the last stage of this case, after years of litigation over its practices concerning protective orders, Goodyear tried to use the Protective Order improperly for litigation advantage.” *Id.* at ¶68.

85. After some claims related to the G159 tire began to emerge in lawsuits, Goodyear concealed the extent of its knowledge of the G159 tire defects by evasive discovery responses and protective orders. It was not until late 2016 that Goodyear revealed a more detailed – but still incomplete -- list of adjustments, property damage and injury claims. Even then, that disclosure was subject to a protective order.

86. Throughout this time, Goodyear continued to experience a significant number of property damage and personal injury claims related to the G159 tire. In each instance, Goodyear continued to conceal the extent of its knowledge of the G159 defect.

87. It was not until January 2018 that NHTSA opened its inquiry on the G159 tire defect and Goodyear's reporting of the extent of the problems experienced with the tire.

88. The actions by the Individual Defendants, as alleged in this Complaint, were wrongfully and intentionally concealed for the express purpose of precluding detection and disclosure. Individual Defendants carried out the conduct described in this Complaint in a manner that, in fact, prevented disclosure to and discovery by, the public, shareholders, litigants, and federal government regulators until April 2018.

89. By virtue of Individual Defendants' fraudulent concealment, the statute of limitations has been tolled with respect to any claims that Plaintiff has as a result of the conduct alleged in this Complaint.

#### **VIII. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

90. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress injuries suffered and to be suffered by the Company as a result of the breaches of fiduciary duty and other violations of law by the defendants. This is not a collusive action to confer jurisdiction on this Court which it would not otherwise have.

91. Plaintiff is and owner of Goodyear common stock and was an owner of Goodyear common stock at all times relevant hereto.

92. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

93. As a result of the facts set forth herein, Plaintiff has not made any demand on the Board to institute this action against the Individual Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

94. At the present time, Goodyear's Board consists of twelve members. Demand on the Board would be useless and futile since seven of the directors are either interested or not independent. As explained more fully below, all twelve of Goodyear's current directors are interested for purposes of demand futility because they committed *ultra vires* and illegal acts dating back well before 2015 when the last current director was elected. In fact, the improper and illegal conduct alleged in this Complaint dates back to a time before even the longest serving director was elected in 2004.

95. Alternatively, all twelve directors are interested because they face a substantial likelihood of liability for failure to properly exercise their oversight responsibilities in good faith and, and as a direct result of their control as interested directors, they lost their independence due to their ability to reap substantial financial benefits from failing to comply with the law and government regulation.

96. As alleged herein, the Board has exhibited a sustained and systematic failure to fulfill its fiduciary duties, which could not have been an exercise of good faith business judgment. There is a substantial likelihood that the Individual Defendants, particularly defendant Kramer, and the members of the Audit and Corporate Responsibility and Compliance committees will be held liable for their breaches of fiduciary duties.

97. Demand on a board of directors is excused when at least one-half of a corporate board of directors approves or engages in *ultra vires* actions and those same individuals remain on the board at the time the derivative litigation is commenced.

98. Goodyear's Business Conduct Manual and Code of Ethics require its Directors to:

- a. follow "the highest ethical and legal standards in doing business"
- b. "recognize and do the 'right' thing"
- c. "learn the policies, laws and regulations that apply to your job and Goodyear . . . and comply with them"
- d. report "whenever you know or suspect that there has been a violation"
- e. comply "with the legal requirements imposed on [Goodyear] and with the policy and ethical standards we have adopted is vital [Goodyear's] success and maintaining [its] reputation as an ethical, responsible company"
- f. "act in accordance with the highest standards of personal and professional integrity in all aspects of their activities, to comply with all applicable laws, rules and regulations, to deter wrongdoing and abide by the Goodyear Business Conduct Manual and other policies and procedures adopted by Goodyear that govern the conduct of its employees"; and,
- g. "[c]omply with applicable governmental laws, rules and regulations."

99. As alleged in this Complaint, a majority of the Board pursued actions that were patently unlawful and therefore *ultra vires* under the Company's mandatory policies. In addition, a conscious decision to violate federal or state law does not fall within the protections of the business judgment rule.

### ***Ultra Vires Acts***

100. Seven of the current directors were directors when a presentation on the G159 tire litigation was made to the Board in 2010. At least since this time, a majority of



the Board knew or with reasonable care should have known of the defective G159 tire and either knew or should have known that the defect had not been reported to government agencies and officials as required by existing law.

101. The fact that the Individual Defendants did not acknowledge the cover-up of the defective G159 tire and permitted that to continue until at least 2017, is evidence of a total lack of due diligence on their part and of willful blindness. Consequently, the Individual Defendants have caused the Company to engage in illegal activities and violate federal law.

102. Despite unambiguous federal law and the Company's own Business Conduct Manual and Code of Conduct, the Individual Defendants knowingly continued to hide and cover-up the defective nature of the G159 tire without exercising sufficient oversight, control and due diligence or, at best, turned a blind eye to the widespread misconduct. These *ultra vires* and illegal actions have caused significant damage to the Company in loss of reputation, consumer confidence, and may lead to the imposition of a fine of \$105 million. Since *ultra vires* actions cannot receive business judgment protection, demand is excused.

### **Substantial Likelihood of Liability**

103. As a result of the unlawful and *ultra vires* acts described above, because all of the Individual Defendants were on the Board during the time that Goodyear concealed the G159 defect from federal authorities, all face a substantial likelihood of liability by virtue of their knowing failure to fulfill their duty of oversight in good faith. During the tenure of all Individual Defendants on the Board, Goodyear engaged in a knowing cover-up of a significant safety defect in its G159 tire directed out of its headquarters in this County.

104. These and other wrongful acts directly resulted in ongoing NHTSA and DOT OIG investigations of Goodyear as well as significant, continuing legal fees and numerous other investigation-related costs. They also resulted in considerable harm to the Company's business reputation. Several factors compel the conclusion that Individual Defendants knew or in the exercise of reasonable care should have known of these wrongful acts and approved, acquiesced, and/or consciously turned a blind eye to them, and therefore creating a substantial likelihood of liability:

- a. The misconduct alleged herein was so pervasive and of such long duration that it could not have been the result of an isolated failure of oversight. The wrongdoing in question -- including engaging in improper conduct in litigation -- is strongly suggestive of a corporate culture that actively encouraged unlawful and unethical activity. The facts compel the conclusion that the Individual Defendants knew of this misfeasance, but did nothing to prevent it.
- b. A majority of Goodyear's directors were briefed in a Board meeting on the problems with the G159 and the litigation arising out of it.
- c. Goodyear's General Counsel attended Board meetings and was fully aware of the cover-up of the defective G159 tire.
- d. The Board, as well as the Audit Committee and Committee on Corporate Responsibility and Compliance held frequent meetings and Courts have recognized that directors face a substantial likelihood of liability for ignoring information concerning repeated violations of law that would have been discussed at Board meetings pursuant to appropriate corporate governance procedures.
- e. The Individual Defendants' possess unique knowledge regarding the tire and automotive industry and its practices. It is the responsibility of the Individual Defendants to "act in accordance with the highest standards of personal and professional integrity in all aspects of their activities, to comply with all applicable laws, rules and regulations, to deter wrongdoing and abide by the Goodyear Business Conduct Manual and other policies and procedures adopted by Goodyear that govern the conduct of its employees."
- f. Seven of the Individual Defendants -- Firestone, Geissler, Hellman, Koellner, Morell, Palmore, Weidemeyer, and Wessel -- are also interested by virtue of their service on the Audit Committee and the

Committee on Corporate Responsibility and Compliance. Despite the importance of producing a safe product and complying with federal law regarding the reporting of injuries resulting from its products, these committees failed to ensure the implementation of either an adequate internal reporting system or a system of corporate checks and balances designed to safeguard Goodyear from unethical and illegal conduct.

105. The substantial financial benefits derived from the conduct alleged in this Complaint were of significant material importance in the context of both the economic circumstances of the Individual Defendants -- who are considered to be independent -- and in terms of reputation, that it was improbable that the Individual Defendants could perform their fiduciary duties without being influenced. Because the unethical and illegal practices were so widespread and permeated every level of Goodyear's management, the Individual Defendants who were considered to be independent did not merely fail to discover the illegal conduct, but, as shown throughout this Complaint, they deliberately turned a blind eye to the conduct so they could continue to reap the financial benefits. Consequently, there was a loss of independence due the control of interested directors.

106. This is not a case in which the Individual Defendants should have been aware of "red flags" pointing to the unethical and illegal conduct. Seven of twelve of the Individual Defendants were directors in 2010 when the Board was briefed on the G159 tire and resulting litigation. The current CEO and COB was directly responsible for oversight of North American operations while the defect was being investigated, while litigation was pending, and while the defect was being actively concealed. In addition, he was directly involved in meetings regarding the defective tire and approved settlements to resolve litigation resulting from the defective tire.

**FIRST CLAIM FOR RELIEF**  
**(Duty of Care – Individual Defendants)**

107. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

108. Under Ohio law, as directors of the Company, the Individual Defendants owed a fiduciary obligation to the Company and its shareholders, which included the duty of care.

109. The Individual Defendants were reckless and/or grossly negligent in that they knew or should have known about the wrongful conduct. As a result, the Individual Defendants knew about the wrongful conduct or completely abandoned and abdicated their fiduciary duty to the Company.

110. As a direct and proximate result of the Individual Defendants' reckless or gross negligent conduct, the Company has sustained significant damage.

111. As a direct and proximate result of the Individual Defendants' breach of their duty of care to the Corporation, the Individual Defendants are liable to the Corporation.

112. Plaintiff, on behalf of the Company, has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF**  
**(Duty of Loyalty – Individual Defendants)**

113. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

114. Under Ohio law, as directors of the Company, the Individual Defendants owed a fiduciary obligation to the Company and its shareholders, which included the duty of loyalty. The duty of loyalty required the Individual Defendants to act in the best interest of the Company.

115. The Individual Defendants either participated in the wrongful conduct or grossly failed to prevent the conduct of which they were aware or should have been aware. As a result, the Individual Defendants' knew of, or consciously disregarded the wrongful conduct yet failed to take any action to prevent injury or harm to the Company. By participating in or allowing the wrongful conduct to occur the Individual Defendants acted contrary to, and directly against, the best interests of the Company. The Individual Defendants' conduct or inaction constituted a breach of their duty of loyalty to the Company.

116. As a direct and proximate result of the Individual Defendants' breach of their duty of loyalty, the Company has sustained significant damage.

117. As a direct and proximate result of the Individual Defendants' breach of their duty of loyalty to the Corporation, the Director Defendants are liable to the Corporation.

118. Plaintiff, on behalf of the Company, has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF**  
**(Duty of Care – Kramer (as an Officer))**

119. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

120. Under Ohio law, as an officer of the Company, Defendant Kramer, as an Officer, owed a fiduciary obligation to the Company and its shareholders, which included the duty of care.

121. Defendant Kramer was grossly negligent in that he participated in the wrongful conduct or ignored the conduct of which he was aware or should have been

aware. As a result, the Defendant Kramer participated in the wrongful conduct or completely abandoned and abdicated his fiduciary duty to the Company.

122. As a direct and proximate result of Defendant Kramer's gross negligence the Company has sustained significant damage.

123. As a direct and proximate result of Defendant Kramer's breach of his duty of care to the Corporation, Defendant Kramer is liable as an Officer of the Corporation.

124. Plaintiff, on behalf of the Company, has no adequate remedy at law

**FOURTH CLAIM FOR RELIEF**  
**(Duty of Loyalty – Defendant Kramer (as an Officer))**

125. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

126. Under Ohio law, as an officer of the Company, the Defendant Kramer (as an Officer) owed a fiduciary obligation to the Company and its shareholders, which included the duty of loyalty. The duty of loyalty required Defendant Kramer to act in the best interest of the Company.

127. Defendant Kramer participated in the wrongful conduct and grossly failed to prevent the conduct of which he was aware or should have been aware. As a result, Defendant Kramer knew of, or consciously disregarded the wrongful conduct yet failed to take any action to prevent injury or harm to the Company. By participating in or allowing the wrongful conduct to occur, Defendant Kramer acted contrary to, and directly against, the best interests of the Company. Defendant Kramer's conduct or inaction constituted a breach of his duty of loyalty to the Company.

128. As a direct and proximate result of Defendant Kramer's breach of his duty of loyalty the Company has sustained significant damage.

129. As a direct and proximate result of Defendant Kramer's breach of his duty of loyalty to the Corporation the Director Defendants are liable to the Corporation.

130. Plaintiff, on behalf of the Company, has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF**  
**(Waste of Corporate Assets – All Defendants)**

131. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

132. By failing to prevent or stop the wrongful conduct Defendants undertook actions that lacked any corporate purpose and have caused the Company to waste valuable corporate assets.

**SIXTH CLAIM FOR RELIEF**  
**(Fraudulent Concealment– All Defendants)**

133. Plaintiff incorporates by reference all the allegations contained in the foregoing paragraphs as if fully restated herein.

134. The Individual Defendants have a duty to make sure that material facts are not concealed from Goodyear's shareholders.

135. As a result of the concealment of the defects with G159 from the public, the Individual Defendants have participated in conduct or recklessly disregarded information which prevented the disclosure and discovery of material facts related to the G159 tires.

136. The public statements and the concealment of material facts relating to the G159 by Defendants were false and materially misleading and made with the intent to mislead or with utter disregard or recklessness as to whether the statements were true at the time they were made.

137. As a direct and proximate result of the foregoing, the shareholders of Goodyear, including Plaintiff, relied upon the integrity of Individual Defendants as corporate officers and directors.

138. By reason of the foregoing, Goodyear has sustained, and will continue to sustain injury.

WHEREFORE, Plaintiff demands judgment as follows:

A. Authorizing Plaintiff to prosecute this action for the benefit of Goodyear as a derivative action;

B. Determining that the Individual Defendants have violated their fiduciary duties to the Company, grossly mismanaged the business of the Company, wasted corporate assets and committed fraud by misrepresenting and/or omitting to disclose material facts;

C. Awarding Goodyear the amount of damages sustained by the Company as a result for the Individual Defendants wrongful conduct alleged herein;

D. Awarding Plaintiff costs and disbursements of this action, including attorneys' fees, costs and expenses;

E. That Goodyear allow Goodyear shareholders to vote on proposals to strengthen supervision of operation and internal controls; and

F. Any other appropriate legal or equitable relief.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.



Dated: October 24, 2018

STRAUSS TROY CO., LPA

/s/Richard S. Wayne

Richard S. Wayne (0022390)  
Robert R. Sparks (0073573)  
150 E. Fourth Street  
Cincinnati, OH 45202-4018  
(513) 621-2120 – Telephone  
(513) 629-9426 – Facsimile  
E-mail: rswayne@strausstroy.com  
E-mail: rrsparks@strausstroy.com

CIANO & GOLDWASSER, LLP

/s/Andrew S. Goldwasser

Andrew S. Goldwasser (#0068397)  
Phillip A. Ciano (#0066134)  
Robert A. West (#0078379)  
1610 Midland Building  
101 Prospect Avenue, West  
Cleveland, OH 44115-1093  
(216) 658-9900 – Telephone  
(216) 658-9920 – Facsimile  
E-mail: asg@c-g-law.com  
E-mail: pac@c-g-law.com  
E-mail: rwest@c-g-law.com

*Attorneys for Plaintiff*

12950771

**VERIFICATION**

I, Steven A. Ettinger, on behalf of the Steven A. Ettinger Inc. Profit Sharing Plan (the "Ettinger Profit Sharing Plan"), am the named Plaintiff in this action. The Ettinger Profit Sharing Plan is a shareholder of The Goodyear Tire & Rubber Company, and has been, at the relevant times alleged in the Complaint, and I approve the filing of the Complaint.

I have read the foregoing Verified Shareholder Derivative Complaint and state that the matters alleged in the Complaint about which I have personal knowledge are true, and that other matters therein are true and accurate to the best of my personal knowledge, information and belief, based upon the investigation conducted by counsel.

I hereby declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

Executed this 19, day of October, 2018.

*Steven A Ettinger*  
\_\_\_\_\_  
Steven A. Ettinger