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July 10, 2017

Office of General Counsel
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue SE
West Building
Washington, D.C. 20590

Re: Goodyear G159 275/70R 22.5 Medium Radial Truck Tire

Dear Counsel:

In accord with the Order of the Maricopa County Superior Court, this correspondence is provided by me independently, as an officer of the legal system, on behalf of my law firm, David L. Kurtz, P.C. It is not submitted on the behalf of any clients nor on behalf of my family. Its purpose is to set forth from what I discovered in my capacity as counsel for the Haeger Family during 12 years of litigation involving the Goodyear Tire & Rubber Company relating to the G159 275/70R 22.5 tire (G159).

I am submitting two separate versions for NHTSA's consideration. The first is a complete version of this correspondence and supporting exhibits. The second is a redacted version, which deletes any materials previously designated as confidential, pursuant to protective order, and references thereto. Goodyear is being provided a copy of both submittals.

On July 6, 2017, the Maricopa County Superior Court vacated the blanket protective order and Goodyear's confidentiality designations, made pursuant thereto. Goodyear is appealing that decision. Thus, to assure in the interim that Goodyear's right to assert its claims of confidentiality is protected, and in accord with the Court's order, I request NHTSA grant Goodyear 30 days to provide it an opportunity, as the owner of the information, to support its claims of confidentiality pursuant to 49 C.F.R. §512. Each of the documents for which Goodyear asserts claims of confidentiality are clearly marked as:

CONFIDENTIAL. THIS DOCUMENT IS PRODUCED FOR USE IN THE MATTER OF THE ESTATE OF LEROY HAEGER, ET AL., V. THE GOODYEAR TIRE AND RUBBER COMPANY, ET AL., SUPERIOR COURT OF THE STATE OF ARIZONA, MARICOPA COUNTY, CASE NO. CV2013-052753 AND IN ACCORDANCE WITH THE PROTECTIVE ORDER ENTERED IN HAEGER V. THE GOODYEAR TIRE AND RUBBER COMPANY (HAEGER I), CV05-2046-PHX-ROS. THIS DOCUMENT SHALL NOT BE USED FOR ANY PURPOSE INCONSISTENT WITH THE REFERENCED PROTECTIVE ORDER.¹

¹ Exhibits 9 and 12 are summaries prepared by staff. As they address materials Goodyear asserts are confidential, they too have been so designated.

7420 East Pinnacle Peak Road, Building D, Suite 128
Scottsdale, Arizona 85255

Due to the clarity of each such designation, the pages have not been separately marked "confidential" as Goodyear clearly claims the entirety of each such document is entitled to such. Any NHTSA response to or inquiry of Goodyear should be directed to Mark V. Cherveney, Manager, Global Regulations, Standards & Compliance at The Goodyear Tire and Rubber Company, 200 Innovation Way, Akron, OH 44316. I would also request that you acknowledge to my office that you have received these materials.

INTRODUCTION

The G159 is a radial medium truck tire. As such, it has been exempt from the detailed reporting required for passenger and light truck tires, as more fully specified in the TREAD Act. The gap in the statutory scheme, along with claims of confidentiality pursuant to protective orders issued in G159 cases across the nation, has, in my opinion, deprived NHTSA of important information necessary to adequately perform its public safety function. NHTSA remains unaware of thousands of adjustments, more than 700 property damage claims and approximately 98 injuries and deaths alleged to have been caused by G159 failures. Similarly, NHTSA has apparently been deprived of any opportunity to investigate the cause of these hundreds of failures which has left the public at risk of serious injuries or death from G159 tread separations.

The now disclosed failure data reveals that the claims arise from failures occurring at high speeds on motorhomes across the United States. The failure claims commenced in 1996 and have continued through 2015, the last year for which Goodyear has disclosed data.²

Goodyear has kept this failure data from public and regulatory view by claiming it to be "confidential" whenever any portion of it was disclosed in litigation. Any meaningful partial production of failure data or testimony regarding the G159 has remained confidential by Goodyear's designations in accord with protective orders acquired by Goodyear, which have universally prohibited disclosure to other victims, the public and any interested governmental entity.

The data, testimony and documents referenced hereafter are now being disclosed only as a result of a court order issued by the Honorable John Hannah of the Maricopa County Superior Court, who authorized this disclosure in accord with NHTSA Enforcement Guidance Bulletin 2015-01: Recommended Best Practices Protective Orders and Settlement Agreements Civil Litigation: As noted:

NHTSA's ability to identify and define safety related motor vehicle defects relies in large part on manufacturers self-reporting ... given these constraints, safety-related information developed or discovered in private litigation is an important resource for NHTSA.

[I]n order to fully exercise its regulatory authorities and powers, the agency must be made aware of the need to do so in the first instance. Both Agency experience and that of several other commentators provide several examples of a manufacturer failing to accurately and timely report relevant safety-related information to NHTSA. The Agency cannot request such information

² Goodyear has recently disclosed approximately 60 additional claims for property damage, injury or death occurring on other Class Seven Vehicles used in commercial highway applications. The underlying claims submittals have yet to be disclosed.

from the manufacturer if it is not first made aware of potential under the lying safety-related issues.

* * *

NHTSA ... is tasked with, among other things, setting motor vehicle safety standards (FMVSS), identifying and insuring the remedy of safety-related defects, and monitoring and enforcing compliance with new standards to safeguard the well-being of the American public. The only way the Agency can fully achieve these objectives if it has access to all necessary information, including information discovered or identified in private litigation.

This correspondence serves to fill the void crafted by Goodyear in the dozens of suits arising out of alleged G159 failures. Judge Hannah is the only judicial officer that has authorized full disclosure of this public safety-related information to NHTSA to assist in the performance of its regulatory function. Moreover, I believe that my office is the only recipient of complete claim data relating to the G159, a task which was not completed until early 2017.³

Though the Court has now vacated its protective order and confidentiality designations, Goodyear's soon to be filed appeal will address whether all of this information will be released to the public. Separately pending before the Court is a Motion to Intervene and related Motion to Unseal Court Records filed by the Center for Auto Safety on July 7, 2017. (**Exhibit 2**) I expect that the Center for Auto Safety will also be a participant in the appellate proceedings.

BACKGROUND

On behalf of the Haeger Family, I filed suit in the United States District Court for the District of Arizona in the summer 2005, arising out of a G159 tread separation and associated motorhome rollover which occurred in June 2003 on Interstate 25 in New Mexico, which involved serious injuries to the Haeger Family. The case was before the Honorable Roslyn Silver in the United States District Court, for the District of Arizona, until it was settled on the first day of trial in 2010. It was thereafter discovered that Goodyear had concealed requested test documents and presented Goodyear corporate representatives who testified falsely about the existence of such tests. The discovery fraud was brought to the attention of the Federal Court and following substantial discovery, depositions and an evidentiary hearing, the Court entered its order in a published opinion, *Haeger v. Goodyear Tire & Rubber Co.; et al.*, 906 F.Supp.2d 938 (D. Ariz. 2012). (*Haeger I.*) It sets forth dozens of pages of factual findings and associated legal analysis. It chronicles much of the fraud by Goodyear and its lawyers in various G159 cases, including multiple misrepresentations to the Court, false declarations and frivolous pleadings. The Court ultimately awarded \$2.7 million in sanctions against Goodyear and its attorneys for related misconduct.

Goodyear and its attorneys appealed the matter to the Ninth Circuit. The Ninth Circuit affirmed the District Court's opinion and issued a new published decision, *Haeger v.*

³ In June 2014, I received the first compelled partial disclosure of claims arising out of alleged G159 failures. I sought the consent of Goodyear to report these matters directly to NHTSA, requesting it waive the terms of the protective order. Goodyear refused. (**Exhibit 1**)

Goodyear Tire & Rubber Co., 793 F.3d 1122 (9th Cir. 2015). The Ninth Circuit opinion provides an additional scathing review of Goodyear.

Thereafter, Goodyear appealed the matter to the United States Supreme Court. The Supreme Court accepted review to address a legal issue relating to the fee award, but declined any review of the factual findings, well documented by the United States District Court. The Supreme Court reversed and the case has now been remanded to the Federal Court, effective June 30, 2017 to further address sanctions for Goodyear's fraud. I expect those proceedings will continue as much of what is contained in this correspondence, though requested, was never disclosed during the course of the Federal Court Proceedings and the Federal Court remains unaware of the existence of the actual adjustments, property damage claims, injuries and deaths alleged to have occurred as a result of G159 failures as a result of various deceptions (in my opinion). The Ninth Circuit and the Supreme Court were also unaware of this data when the opinions were issued.

Like other courts, Judge Silver entered Goodyear's version of a blanket protective order that provided Goodyear the opportunity to advance claims of confidentiality without setting forth a good cause basis. Goodyear utilized the blanket protective order to assure that critical admissions made by Goodyear's corporate spokesperson and Goodyear's retained tire expert in *Haeger I* would not be revealed to other litigants across the country, nor could such information otherwise be revealed to NHTSA or other interested governmental entities. These "confidential" admissions included acknowledgements that the G159 would be prone to heat-induced failure if exposed to prolonged operation temperatures above 200° F. This "confidential" testimony was never disclosed again, despite repeated requests by attorneys for other families embroiled in G159 motorhome litigation.

The same was true in each of the other G159 cases we have seen. Goodyear's regular practice was to acquire almost identical protective orders in every G159 case. **(Exhibit 3)**⁴ These were utilized in courts across the country to prohibit the dissemination of information Goodyear claimed to be confidential to other litigants, victims, governmental entities or courts with varied interests and responsibilities associated with the G159 failures and related litigation.

Judge Silver declined to reopen the *Haeger* case, advising that I should proceed to pursue the newly discovered fraud claims in a separate action. That suit was filed in May 2013 and has been handled by Judge Hannah (*Haeger II*). It was stayed pending the Ninth Circuit appeal and discovery did not commence in earnest until the late summer 2016. Though Judge Hannah would too adopt Goodyear's form protective order, he also determined that I was entitled to disclosures of what occurred in the other G159 cases and all G159 failure data from 1996 to date.

All of which follows would remain a secret but for the thoughtful efforts of Judge Silver and Judge Hannah. Judge Silver's opinion documents the then known frauds of Goodyear and its attorneys, which span a period of years. Judge Hannah was the first judge in any of the G159 cases who was willing to take control of protective orders issued by other courts to assure that discoverable information was actually disclosed. To the best of my understanding, I am the only attorney in the country who has gathered the universe of relevant data regarding the G159.

⁴ The protective orders in each G159 case are available at my office.

Though this letter will focus upon what has been discovered during *Haeger II*, much of the other information discovered in the Federal Court proceedings (*Haeger I*), is set forth in my Amended Complaint filed in Maricopa County Superior Court in May 2013. **(Exhibit 4)** It sets forth a complete index of the contents and a 400-paragraph tutorial of what we discovered during *Haeger I* regarding Goodyear's conduct. I have not provided the supporting documents regarding the factual expressions contained in the Amended Complaint, but there are hundreds of available documents which substantiate the claims which are available, if requested.

The following pages document the recent *Haeger II* discoveries including, actual G159 failure data and varied Goodyear deceptions.

On June 8, 2017, Goodyear represented to the Maricopa County Superior Court that the G159 is still on the road. NHTSA is well familiar with the serious risks associated with tread separations on motorhomes. The motorhomes which utilize the G159 generally weigh approximately 31,000 pounds. The failure data reveals that the tread separations occur at highway speeds when the tires experience the greatest operational temperatures. The drivers are regularly retired; not trained commercial drivers who face these sudden emergencies. When these motorhomes crash, they literally explode.

It is my opinion that Goodyear has failed to disclose the defective nature of the G159 to NHTSA as otherwise contemplated by the statutory scheme and I ask that NHTSA initiate a Timeliness Query to determine whether Goodyear has complied with applicable law, including Early Warning Reporting, and consider appropriate civil penalties in accord with NHTSA's discretion to address Goodyear's omissions and related deceptions.

G159 FAILURE HISTORY

The appropriate place to begin is to detail what we have only discovered within the last year regarding the G159. You should be advised that I requested disclosure of litigation, adjustments, property damage claims, bodily injury and death claims at the commencement of my lawsuit in 2006 (*Haeger I*). Goodyear did not disclose this information. Rather, Goodyear's practice was to define its own world of relevance. Goodyear limits its discovery responses to the "subject vehicle." In the *Haegers'* case, that was a Gulf Stream Scenic Cruiser motorhome. Goodyear would then direct its efforts to persuading the court that the only relevant failure data would be on other Gulf Stream Scenic motorhomes. The same tactic was utilized in related G159 cases by Goodyear with great success. In *Haeger I*, Goodyear disclosed 14 property damage claims and one injury, when responding to discovery.

In July 2016, Goodyear finally disclosed what was expected to be a complete list of lawsuits, adjustments, property damage claims, bodily injury and death claims in litigation regarding the G159 tire. **(See Exhibits 5 through 7.)** There have been at least 41 G159 lawsuits. There were 3,484 adjustments and hundreds of property damage claims. The "light" highlights on Exhibit 6 represent death and injury claims that were settled outside of litigation. The "dark" highlights represent injury and death claims settled during the course of litigation. According to our estimate, based upon a review of that data, I believe that the exhibit reveals 98 injury or death claims arising out of alleged G159 failures.⁵ 26 of the

⁵ The injury and death claims are estimated as Goodyear continues to refuse to precisely quantify the claims from the documents disclosed in July 2016. In September 2016, Goodyear disclosed a new combined list of property damage, injury and death claims, expanding the prior disclosure by revealing

Injury and death claims were settled outside of litigation and the rest were the subject of various lawsuits across the nation. **(Exhibit 7)**

The preliminary information revealed the following:

Year	Adjustments	Property Damage Claims	Estimated Annual Injury/ Death Claims
1997	62	7	0
1998	110	18	2
1999	165	63	4
2000	436	78	6
2001	462	144	8
2002	962	123	18
2003- 2015	1287	240	57
TOTAL:	3,484	618 (excluding those in litigation)	98 (estimated)

These figures reveal a trend line of continuing death and injuries that was evident years before the Haegers' accident in 2003.

I asked my staff to prepare a chart of the injury and death claims disclosed by Goodyear, which reflects the name of the victim, the loss date and the report date. **(Exhibit 9)**

This data reveals that the Haegers' accident was the 453rd accident involving property damage claims, death or injuries relating to G159 failures. There had been 32 death and injury claims which preceded the Haegers' accident in the summer 2003.

On September 29, 2016, Goodyear produced a new chart which expanded the universe of property damage, injury and death claims. It sets forth the claimant's name, loss date, report date, DOT code, condition code involved in the failure, vehicle make and model. **(Exhibit 8)** This chart has 830 entries. My staff advises there appear to be 51 duplicative entries, leaving a total estimated property damage, death or injury claim count of 779.

Attached as **Exhibit 10** are Goodyear's condition codes. In order to evaluate any claim for property damage, injury or death, Goodyear required the tire be returned to Goodyear. It thereafter ascribed condition codes based upon Goodyear's evaluation of the mode of failure of the tire. The condition codes employed were those for North America

approximately 60 additional claims. It is unknown how many of these new claims are for bodily injury or death, if any. **(Exhibit 8)**

(N AMER), as opposed to codes which may be utilized in Latin America, Europe and Asia. The following "condition 1" North American Condition Codes were utilized by Goodyear:

- CA - Crown separation other;
- QA - Crown separation below the belt;
- QB - Crown separation between the belts.

Goodyear also occasionally specified condition 2, condition 3 and condition 4 on certain tires evaluated. Goodyear's conditions 2, 3 and 4 referenced:

- CA - Crown separation other;
- CV - Belt edge separation;
- CX - Crown separation below or between the belts;
- GC - Sampling crown;
- QA - Crown separation below the belt;
- QB - Crown separation between the belts; and
- CZ - Crown separation above the belt.

Conditions 2 to 4 include an additional 133 conditions observed in the tires which were evaluated.

This most recent disclosure reveals G159 failures in what appear to be 17 different motorhome manufacturers and 39 separate motorhome models commencing July 1996 and continuing through September 2015.⁶

In late 2016, Goodyear disclosed the property damage claim forms which were submitted by customers. **(Exhibit 11)** Those claims reveal the G159 was failing in all positions on the motorhome (front, rear inner, rear outer). They document 173 reported rear end failures. **(See Exhibit 12 attached, Summary of Claim Form Submittals Identifying location of the failures.)** Goodyear originally was compelled to disclose these documents by court order in the matter of *Woods v. Goodyear Tire & Rubber, Inc.; et al.* (requiring disclosure of such claims for G159s on motorhomes). To the best of my understanding, they have never been disclosed in any other G159 case, despite requests for production. Each of the claims provide adequate information to understand the circumstances of the failure. Almost universally all of the failures occur at highway speeds. Notably, many of the claims report multiple different failures of the G159 at different locations on their motorhome, often over a period of days.⁷

⁶ The manufacturers included Americoach, Allegre, Holt, Tradition, Holiday Rambler, Keystone, Coachman, Newmar, International, SMC, Beaver, Safari, Trailking, Monaco, Country Coach, Gulf Stream and Fleetwood.

⁷ Mark Salem was an expert witness in *Haeger I*. He is a certified master mechanic and an owner of a Fleetwood motorhome. He too experienced multiple G159 failures on various positions on his motorhome (one front, two rears over three trips). His coach was weighed. There were no overload

It was not until Goodyear's disclosure of **Exhibit 8** that Goodyear has provided adequate information for me to provide to NHTSA to evaluate Early Warning Reporting compliance.

Goodyear's Manager of Global Product Performance was deposed in August 2016. He testified that Goodyear disclosed seven injuries to NHTSA as part of EWR. (**Exhibit 13**) Goodyear's September 2016 disclosure included approximately 60 more property damage, injury or death claims. The location and existence of the claim forms relating to those failures are presumably in the possession of Goodyear. We have inadequate information to assess whether the failures were consistent with the hundreds of failures involving motorhomes in a high speed highway application.

In August 2000, Firestone recalled approximately 14 million tires which had been utilized on Ford Explorers, to address a defect that related to motor vehicle safety. Firestone reported the tread separation claim rates were below .02% of the tires manufactured. Considering the limited production of the G159, an .02% claim rate for the G159 would have produced 32 such failures, a mere fraction of the actual G159 claims for tread separations.⁸

Following Firestone's recall, NHTSA investigated whether there was a defect related to motor vehicle safety in other Firestone Wilderness AT tires manufactured before May 1998, that were utilized on sport utility vehicles. (**Exhibit 14, Engineering Analysis.**) That investigation compared the performance of those Firestone tires against other "peer" tires utilized on sport utility vehicles. NHTSA determined the tire suitable for comparison with the subject tire was the Goodyear Wrangler RTS.

During this period, Ford used approximately the same number of these Goodyear tires as did Firestone (about 2.4 million tires), yet there has only been one tread separation claim involving a Goodyear tire on an Explorer compared to 486 such claims involving Firestone tires used on Explorers during that time period.

The report set forth tread separation claim frequencies for the previously recalled Firestone tires, the subject tires and the Goodyear Wrangler RTS tires. (**Exhibit 14, Table 5.**) The several recalled Firestone tires had claim failure rates of 35.5 ppm, 62.1 ppm, 93.2 ppm, 253.5 ppm and 700.5 ppm. The Goodyear "peer" tires had a ppm claim rate between 0 and 10.2. The G159 claim rate is exponentially higher.

In September 2000 (one year prior to the EA00-023 report), Goodyear separately documented for Ford the adjustments, tread separations causing property damage and death or injury claims relating to the Goodyear Wrangler RTS tire utilized on the Ford Explorers. (**Exhibit 15**) The contrast between the Goodyear Wrangler RTS and the G159 is telling.

conditions, no left to right weight imbalance and the tires were properly pressurized for the load. Each claim submitted was denied. Goodyear claimed the failures were customer caused. Mr. Salem's auto repair facility sold Goodyear products, including belts and hoses. Ultimately, Goodyear's belt and hose division would provide Salem a credit against future belt and hose purchases in excess of \$3,000.00 for property damage caused by the multiple G159 failures.

⁸ This comment assumes all 160,683 G159's were used in a motorhome application. As later discussed, only a fraction of these tires were used on motorhomes and therefore, the actual equivalent would be substantially less.

Model Name	Tire Production Year	Total Tires Produced	Crown Area Warranty and Goodwill Adjustments
Wrangler RT/S	1994	46,580	23
	1995	1,330,612	409
	1996	1,024,701	291
	1997	470,915	124
Total:		2,872,805	847

G159 Crown Separation Adjustments

Prod. Date	# Produced	Est. # Adj'd
1996	13789	99
1997	11639	48
1998	18745	54
1999	27242	113
2000	24781	72
2001	26233	38
2002	35925	29
2003	2329	0
2004	0	0
2005	0	0
2006	0	0
Totals	160683	453

Maximum adjustment date: Dec. 2006⁹

(Exhibit 16)

⁹ We are unable to as of yet identify the precise number of G159s sold as OE for motorhomes. We know 25,293 of the 86,939 tires produced between 2000-2002 were used as such. Goodyear has yet to disclose the sales of OE for motorhomes for 1996-1999.

Comparisons:

Wrangler RT/S Total Production

2,872,808

G159 Total Production

160,683

Crown Separation Adjustments (warranty returns):

G159: 1 Crown separation adjustment per 354 tires manufactured.

Wrangler RTS: 1 Crown separation adjustment per 3,391 tires manufactured.

Tread Separation Property Damage Claims:

Wrangler RTS: 1 per 718,202 tires manufactured.

G159: To be determined, but appears to be more than 700 per 160,683 tires manufactured.

Injury and/or Death Claims:

Wrangler RTS: 0 per 2,872,808 tires manufactured.

G159: 98 per 160,683 tires manufactured.¹⁰

Lawsuits:

Wrangler RTS: 0 per 2,872,808 tires manufactured.

G159: 41 per 160,683 tires manufactured.

Goodyear admits it cannot identify a single Goodyear tire with death or injury claims that approach those revealed by the G159 on an equivalent production basis. Goodyear cannot identify a Goodyear tire that has property damage claims on a parts per million basis that approaches anything like the G159. Nor can Goodyear identify any Goodyear tire that has injury or death claims on a parts per million basis like the G159.

The definition of a "defect" is set forth in *United States v. General Motor Corp.*, 518 F.2d 430 (D.C. Cir. 1975). The D.C. Circuit Court of Appeals held that a tire is considered to be defective if subject to "a significant number of failures in normal operation." The defect determination does not require any finding of an engineering, metallurgical or mechanical failure, but may be based exclusively on the performance record of the tire. *Id.* at 432. A determination of whether the tire is defective is answered by consideration of the facts and circumstances surrounding the tire. The relevant considerations include the failure rate of

¹⁰ If the Wrangler RTS performed like the G159, there would have been 1,752 injury and/or death claims. When Goodyear discloses to NHTSA the OE G159 sales for motorhomes for the years 1996 - 1999, we expect that it will be discovered that approximately 29% of the G159s were OE on motorhomes. The calculation, if our estimate is correct, would be 98 death or injury claims per 46,598 tires. Stated another way, that would be approximately one death or injury claim for every 465 tires sold versus the Wrangler RTS which had zero injury or death claims from 2,872,808 tires sold.

the tire, the failure rate of other tires, and the importance of the tire to the safe operation of the vehicle. *Id.* at 438. "The number of failures need not normally and, normally, will not be a substantial percentage of the total number of the components produced." *Id.*

The failure rates of the G159 speak for themselves. Considering the operational environment of highway use on 30,000 pound vehicles, a tread separation is, in my opinion, one of the greatest threats to the safe operation of the vehicle that an unexpectant operator can experience. It not only risks the lives of what are usually multiple occupants of a motorhome, but poses serious risks for other highway users as a front end separation pulls the vehicle either left or right. This is exactly what happened to the Haley family in 2006 in Arizona. A left front tread separation caused the motorhome to cross the centerline and cause a head-on collision. Mr. Haley, who was driving a compact car was killed instantly. **(Exhibit 17)** The mass and velocity of a motorhome all but assure devastation in such a circumstance. And even in single vehicle high speed motorhome accidents, injury or deaths are highly likely. **(Exhibit 18)** Motorhomes are not designed to endure any kind of high speed accident and provide almost zero protection from injury for occupants other than the front seat passengers. Even they can experience horrific injuries. **(Exhibit 19, DST re Haeger Injuries.)**

GOODYEAR'S PROCEDURES FOR DEFECT DETERMINATIONS AND RELATED TESTIMONY

Exhibit 20 is Goodyear's Global Procedure for Withdrawal or Recall of Noncompliant Products.

Section 5.3.8 provides:

If a potential quality issue is identified from field or customer reports or adjustments, notify the Director/Manager Government Compliance and Product Performance. (GC&PP) All relevant data is gathered which includes inventories, production history, adjustment data, test data, etc.

Section 5.3.9 provides:

The Director/Manager GC&PP will review all relevant data and confirm that the potential quality issue exists.

A quality issue is defined as following:

Issues where the product may be noncompliant to government regulations, issues which could affect the functional purpose or safety of the product in service, issues that may not meet the specific requirements for Original Equipment, fleet, wholesale or retail customers or issues that may not need internal Goodyear specifications or requirements.

Section 3.1.1 sets forth the key responsibilities. All decisions for product withdrawals determined to be related to motor vehicle safety must be referred to the Corporate Safety Committee.

Section 4.1.1 sets forth the function and membership in the Corporate Safety Committee.

CORPORATE SAFETY COMMITTEE: The only group that has the authority to make a determination that a product contains a defect related to motor vehicle safety ...:

The Committee consists of:

Chairman; Senior Vice President and Chief Technical Officer;

Senior Vice President Global Operations;

General Counsel;

Vice President Product Quality and Plant Technology;

Senior Vice President Public Relations;

SBU President;

Director of Government Compliance and Product Performance.

Thus only senior management is participant in defect determinations. There is no protocol for defect determinations. Regardless, the G159 was never addressed by the Corporate Safety Committee. The deposition testimony of various Goodyear witnesses reveals that at no time was any concern expressed relating to the performance of the G159.

Goodyear's Legal Department is the entity that handles and resolves all property damage claims above \$15,000.00 and all injury and death claims, whether in litigation or not. A different department at Goodyear handles the inconsequential property damage claims. Goodyear's Legal Department is the entity which maintains the totality of the information related to the G159. Goodyear's Legal Department is the entity which determines what data will be disclosed to NHTSA for Early Warning Reporting and controls all data which would be the subject of any Corporate Safety Committee review for a defect determination affecting motor vehicle safety.

When compelled to do so, Goodyear presented former General Counsel Tom Harvie for deposition. Mr. Harvie operated as General Counsel from 1995 to 2009 and attended all Board of Directors meetings, commencing the same year. He retired on December 1, 2009. **(Exhibit 21, Harvie Deposition.)**¹¹

It was Mr. Harvie's admitted obligation to assure Goodyear's compliance with laws, including reporting defects that affected motor vehicle safety and to assure proper reporting regarding Early Warning Reporting. Mr. Harvie acknowledges his awareness of the civil and criminal penalties for misleading the Government regarding the safety related defects and was familiar with the TREAD Act.

During his deposition, Mr. Harvie acknowledged that the Early Warning Reporting presented an opportunity for the manufacturer and the Government to work together to see if a problem existed that needed to be addressed. He understands the purpose was to allow

¹¹ The videos of all Goodyear depositions from *Haeger II* are available. All were taken remotely from Arizona with Goodyear witnesses appearing for deposition in distant states.

NHTSA an opportunity to respond to performance data for public safety if the tire manufacturer failed to do so.

Mr. Harvie testified he presumably knew what was and what was not disclosed to NHTSA regarding the G159 relating to adjustments, property damage claims, personal injury and death claims and lawsuits. Mr. Harvie testified that whatever needed to be disclosed to NHTSA was disclosed. He acknowledges there was no Board meeting where the G159 was ever discussed because from his perspective any issues associated with G159 failures were not significant enough to require Board attention.

Mr. Harvie states he never suggested any personal concern arising from the failure data. Moreover, no one at Goodyear ever expressed to him concerns about potential problems based upon the field performance data.

Mr. Harvie, consistent with the testimony of others, was unaware of any Goodyear policy regarding the number of deaths which required Goodyear to present the tire to the Corporate Safety Committee to evaluate related motor vehicle safety issues and to determine whether the product should be recalled.

Mr. Harvie advised that Deborah Okey operated as Associate General Counsel from 2000 through 2010. Ms. Okey supervised all of the G159 cases during those dates. Ms. Okey kept Mr. Harvie apprised of significant material issues relating to the tire.

Though Ms. Okey was the supervisor of Goodyear's outside counsel in two independent published decisions relating to discovery misconduct, at no time was she reprimanded or disciplined.

Mr. Harvie was replaced by Mr. Bialowsky, who became General Counsel in late 2009. Since that date, he too has attended all Board meetings. **(Exhibit 22, Bialowsky Deposition.)**

Mr. Bialowsky acknowledges Goodyear's obligation to recall tires which display defects affecting motor vehicle safety. Bialowsky testified that no one in the employ of Goodyear brought him up to speed on adjustments, property damage claims, injury or death claims and no one has expressed any concern about the G159 in prolonged highway uses. He has attended the quarterly reviews of failure data since the fourth quarter of 2009, and which address field performance issues. There has never been an issue raised regarding the G159 between 2009 and 2017.

Mr. Bialowsky *does not agree* that NHTSA considers a tire defective if it is the subject of a significant number of failures in normal operation. He *does not agree* that defect determinations may be based exclusively on the performance record of the tire.

When Mr. Bialowsky was presented with the recently disclosed failure data, he testified that he did not know if he would convene the Corporate Safety Committee to evaluate whether the G159 is defective.

Notably both Mr. Harvie and Mr. Bialowsky were specifically told years ago that there were over 400 property damage and injury claims, but took no action whatsoever. **(Exhibit 23, Settlement Authority Requests.)**

On October 4, 2016, Lyn Lovell, the Director of Goodyear's Global Government Compliance and Product Performance, was deposed. **(Exhibit 24)** Her primary responsibility is to monitor field performance data. She was also selected by Goodyear to specify Goodyear policies and procedures, including Goodyear's policies to bring performance problems to the attention of department heads, Goodyear lawyers, General Counsel, officers and the Board of Directors for Goodyear. Ms. Lovell explains that historically Goodyear would meet monthly or quarterly to review performance data from the field. Goodyear *has no requirements* relating to the analysis of performance data. Goodyear *has no acceptable adjustment rate*. Goodyear *has no policy* which requires it to contrast the G159 performance record with any other similar Goodyear tire. Goodyear *has no policy* to contrast property damage claims with property damage claims of other similar tires. Goodyear *has no policy* to contrast injury and death claims in the G159 with other such claims arising from similar tires. Ms. Lovell also states that *there is no standard* for when a tire like the G159 is recalled, regardless of the number of adjustments, property damage claims, deaths or injuries. Goodyear *has no definition* when a tire poses an unreasonable risk of harm. Goodyear's Corporate Safety Committee *never* evaluated the G159.

Ms. Lovell was also separately deposed in her capacity as the Director of Global Government Compliance and Product Performance. **(Exhibit 25)** She testified that the 100 claims of death or injury did not indicate a quality issue with the G159. She testified that she lacked the data to identify any Goodyear tire that had produced 100 death or injury claims per 160,000 tires it manufactured. She similarly was unable to identify any Goodyear tire that produced property damage claims at the rate displayed by the G159. Ms. Lovell acknowledged that Goodyear never disclosed to NHTSA the more than 600 property damage claims relating to the G159, never volunteered the property damage claim information to NHTSA, did not disclose adjustments to NHTSA, but asserts that if NHTSA had any inquiries, Goodyear is fully transparent to report anything the Government requires.

Ms. Lovell was queried about the contrast between Goodyear's Wrangler RTS tire utilized on Ford Explorers as opposed to what has been displayed by the G159. She testified that the failure data does not suggest a performance problem related to motor vehicle safety with the G159.

In January 2017, we took the deposition of Slim Ford. **(Exhibit 26)** Mr. Ford was the Manager of Global Regulations, Standards and Compliance. His duty was to understand the regulations and make sure Goodyear's departments were in compliance. His primary duty was to make sure Goodyear complied with Early Warning Reporting and regulations relating to performance. Although Mr. Ford would relay data to NHTSA, it was collected by others in Goodyear's Legal Department. He was not involved in product performance evaluation.

Mr. Ford states that Dane Taylor of Goodyear's Legal Department was the corporate attorney responsible for government compliance. Mr. Taylor and the Product Performance Group were the people that assembled the data and would decide what Ford would report to NHTSA.

Mr. Ford had never seen any of the failure data associated with the G159. He states that Goodyear's Legal Department and the Product Performance Group had the responsibility to identify death and injury claims that Goodyear was required to disclose to NHTSA as a part of Early Warning Reporting.

During the course of the *Haeger I* litigation, Goodyear had selected Richard Olsen to explain Goodyear's process as to how Goodyear assembles and analyzes failure data.

In 1994 and 2000, Mr. Olsen was the Manager of Goodyear's Customer Engineering Department with responsibility to analyze failure data. (**Exhibit 27, pp. 31-32.**) He had the responsibility starting in 1996 to oversee all reports, all data and all analyses. His department also followed field performance. (**Id., p. 70.**) He would have been aware of any inordinate amount of adjustments, property damage claims or personal injury claims. (**Id. at 428.**) Between 1998 and 2007, there was nothing in the adjustment data that led him to believe there was any problem with the G159. (**Id. at 434-435.**) Similarly, there was nothing in the field performance which suggested a problem. He has never identified a performance problem with the G159 in motorhomes. (**Id. at 435-436.**)

In September 2015, there was a front page article in the Arizona Republic regarding the G159. (**Exhibit 28.**) The reporter submitted 20 written questions to Goodyear, each of which was answered. Goodyear denied that the G159 was responsible for accidents or that it has misled or deceived the customers regarding the tire. "Goodyear prides itself on its commitment to the product performance and places product safety and quality at its highest priorities."

Goodyear's public representations were consistent with its posture in litigation. In each of the 41 lawsuits, Goodyear denied the tire was defective in any way. Yet, when failure data, death and injury claims were requested Goodyear would not be forthcoming. Even in *Haeger II*, Goodyear would not disclose such data until compelled to do by the Court.

By the end of 2006, there had been 87 reported claims of death or injury from G159 failures and more than 600 property damage claims, and thousands of adjustments for this limited production tire. Yet, Goodyear would deny the existence of such data. In the first discovery dispute in January 2007, Goodyear would claim such data did not exist.

Mr. Kurtz: ... And so we have been asking for data after the date of the accident because it is discoverable as to the strict liability defect claim. You know, the volume of failures, there is nothing magical about the accident date. It bears upon the defective design of the tire. Some of these motorhomes have not been used very much. So I might have a thousand of them fail after the date of the accident under the exact circumstances, and that's why we seek the data up until now.

The Court: ... The question is, whether or not documentation needs to be produced after the date of the accident ... and is there such data available Mr. Hancock?

Mr. Hancock: Your Honor, it depends on which of the various discovery requests plaintiffs are talking about. In other words, what Goodyear said generally speaking is this tire is made to a specification. We made changes to the specification but we started making it in 1996. We quit making it in 2003. *We have produced all of the data we had as of the date of the accident so you can say, knew or should have known through negligence, whether that's enough data so if there is some kind of a problem in the production it's obvious.*

(Exhibit 29, Transcript of Proceedings, January 3, 2007, pp. 31-33.)

The Haegers' accident in June 2003 represented the 453rd property damage, injury or death claim arising out of a G159 failure. There had been thousands of adjustments which had not been disclosed to the Court and hundreds of bodily injury and property damage claims which too remained concealed throughout the history of the *Haeger I* litigation.

Internally, Goodyear defense attorneys would report how they deceived Judge Silver that there was not a universal problem with the G159. This document was shared with senior management and General Counsel (both Harvie and Bialowsky).

Plaintiffs hope to use the Fleetwood recall and the Monaco Customer Satisfaction Program (and especially the claims and lawsuits involving those manufacturers) as evidence that the subject tire was not suitable for motor home applications. We have resisted these attempts by explaining that these experiences were isolated instances unique to the vehicles involved, and are not indicative of a universal problem with this tire on all motor homes generally. The presiding judge, Roslyn Silver, has accepted our position and has repeatedly denied plaintiffs' attempts to expand the scope of discovery to include the Fleetwood and Monaco experiences. Presumably, she would similarly hold that the claims and lawsuits related to motor homes manufactured by these companies are not admissible at trial. Goodyear has produced a list of 14 property damage claims involving the subject tire on Gulf Stream motor homes, but we were not required to produce actual claims files themselves.

During the course of *Haeger II*, we were required to identify expert witnesses which would testify about the significance of the failure data and Goodyear's methodology of concealing such information in related judicial proceedings and from NHTSA. Attached are those expert disclosures which set forth the opinions of experts addressing defects in design of the tire, the significance of the failure data, the date it should have been obvious that there were performance problems with the tire which compelled Goodyear to act and the opinions of a retired Arizona Supreme Court Justice regarding the ethical improprieties associated with how Goodyear handled itself in litigation which led Judge Silver to conclude that Goodyear had been deceptive in every G159 case which the Court reviewed. **(Exhibit 30)**¹²

GOODYEAR'S REPRESENTATIONS TO NHTSA IN 2006

The Office of Defect Investigation of NHTSA was conducting an engineering analysis regarding front tire failures that occurred in Country Coach motorhomes utilizing certain Toyo tires. NHTSA sent a peer request to Goodyear in 2006. The inquiry was to:

Determine the approximate "failure rates" due to tire blowout, tread separation, abrupt loss of air, and the like, for front tires manufactured and sold by Goodyear and installed on Class A motorhomes; and to

¹² The expert witness disclosures were made before Goodyear disclosed the much smaller number of G159s used as OE on motorhomes, which was not disclosed until January 2017. That disclosure revealed that percentage of claims was vastly higher than understood at the time of these disclosures.

Determine the approximate comparative failure rate due to tire blowout, tread separation, abrupt loss of air and the like, for equivalent tires manufactured and sold by Goodyear and installed in other (non-model) motorhome vehicle applications.

(Exhibit 31)

NHTSA made clear the scope of its inquiry regarding "failure reports" with an expressed definition:

Reports from all sources, including but not limited to, warranty claims; owner, dealer or manufacturer complaints; and/or reports of a front tire failure caused by an abrupt loss of air, whether driver's side (left) or passenger side (right), whether confirmed or alleged, including but not limited (1) air loss resulting in the inability of the tire to support the wheel load; (2) blow-out; (3) tire rupture; (4) rapid deflation; (5) tread separation; (6) sidewall cracking; and the like.

"Failure reports" should include reports of tire failures that Goodyear has determined in its normal and reasonable investigation of warranty claims, complaints, and/or reports, were caused by normal wear, misuse or abuse, road debris and/or other similar causes, but should provide a short description, explanation or other identifier that distinguishes reports due to these types of causes.

The inquiry was focused upon multiple sizes of Goodyear tires that were suitable for motorhome use. Amongst them was the G159 275/70R 22.5.

The communication made clear that failure to truthfully respond would subject Goodyear to civil penalties pursuant to 49 U.S.C. Section 30165.

On May 30, 2006, Goodyear responded, requesting confidentiality, stating:

The release of this data to the news media and/or others ... would be totally detrimental to Goodyear. Any of the data, standing alone, or in combination with other data submitted to NHTSA could be taken out of context and used by those so inclined to discredit Goodyear's image in the minds of the consuming public.

(Exhibit 32)

By May 2006 (the date of Goodyear's response), there had been 74 death and injury claims submitted to Goodyear and it was defending, unknown to NHTSA, dozens of suits across the nation. It had only disclosed seven (7) injuries from G159 failures to NHTSA. Goodyear's report to NHTSA provided:

(a) Request in 1(b) and 2(b) seeks "failure reports" for tires installed in the front vehicle position and that data we are able to provide contains information for both front vehicle position incidents as well as incidents where the position is not known.

(Exhibit 32)

Goodyear disclosed 48 failure reports on front positions and 10 failure reports (58 total) on unknown positions relating to the 275/70R 22.5 in response to the request for the number of failure reports on 22.5 rim sizes which are original equipment on Class A motorhomes for the 275/70 R 22.5 tire. Of these 58, 16 failures were alleged to be due to normal wear out, misuse or abuse, road debris and/or other similar causes.

The G159 275/70R 22.5 was manufactured from 1996 through January 2003. It was replaced by the G670 275/70 22.5, which was a new tire specifically designed for RV use. It had different tread and utilized different compounds, "To reduce heat buildup in service." **(See Exhibit 33.)**

In 2006, Goodyear disclosed in *Haeger I* total production of the G159 by year. **(See Exhibit 16, 160,683 total.)** The NHTSA disclosure separates which portion of production was as OE for motorhomes and which portion for other applications for the years 2000-2005. By contrasting the NHTSA disclosure with Goodyear's total production numbers we can identify how many G159s were actually put on motorhomes for 2000-2002:

2000 3,492

2001 7,414

2002 14,387

25,293 of 86,939 G159s manufactured.

During the course of *Haeger I*, Goodyear represented it could not identify the number of tires produced annually that went on motorhomes. **(Exhibit 34, Olsen 30(b)(6), pp. 80-81, 84.)** Though requested in 2006, I did not receive these "confidential" NHTSA submittals until January 3, 2017, after the Court compelled Goodyear to disclose these materials.

One would expect Goodyear could identify the same production information for 1996-1999. Understanding the number of tires sold for motorhome use gives new meaning to understanding the property damage, injury and death claims disclosed. Those documents specify the DOT number for each tire and vehicle manufacturer. **(See Exhibit 8.)** If Goodyear were to produce the rest of the data, then NHTSA could determine the actual ppm claim rate for the G159 275/70R 22.5. For instance, assume 40,000 of the G159s were OE for motorhomes and there were 400 property damage claims on motorhomes, such would equal 10,000 ppm. Goodyear states there were over 400 such claims. **(Exhibit 35, Settlement Authority Memo.)**

We do know that Goodyear was aware of 453 crown separations for the G159, 74 injuries and deaths before May 2006 and hundreds of property damage claims. The report, if compliant with NHTSA's directive, should have reflected the "number of failure reports" on all Goodyear 275/70R 22.5 tires sold from January 1, 2000 through the date of the report, which would include responsive adjustments, property damage and injury or death claims arising from front end failures of the tire for "blowout, tread separation, abrupt loss of air, and the like." The data disclosed seems under-inclusive. Goodyear's adjustment chart by production year **(Exhibit 16, GY-HAEGERO11266)** shows 160 crown separations alone for the G159 for the years 2000, 2001 and 2002. Obviously, NHTSA needs to assess the accuracy of Goodyear's disclosures in light of the data now available.

Goodyear's latest complete disclosure of the failure data (**Exhibit 8, GY-HAEGER-12655-12669**) identifies for each of the 779 losses, the vehicle make and model as well as the DOT codes. We have not attempted to quantify precisely the information contained therein, but it appears from review of the DOT codes that there are vastly more than 48 front tire failures within the definition specified by NHTSA.

THE DESIGN PURPOSE, TESTING AND TEMPERATURE LIMITATIONS OF THE G159

The G159 was released for sale in 1996, designed solely as a tire for "stop and go" pickup and delivery service. (**Exhibit 36, Beverage trucks.**) It was listed by Goodyear as a "metro" tire in its publication. (**Exhibit 37**) The tire was released for production with only limited testing. (**Exhibit 38, Release Telex.**) There was no high speed testing required by Goodyear to release the tire. Rather, high speed testing was "optional." (**Exhibit 39, Stroble Deposition.**)¹³ With this limited testing, the tire was sold as a 65 MPH tire.

Chapter 15 of the Pneumatic Tire is titled "Introduction to Tire Safety Durability and Failure Analysis." It was authored by James Gardner (Goodyear's expert in many of the G159 cases). The publication provides:

3.4 Heat ...

Elevated and extended heat generation is a primary factor in the bread down of a tire. Increased heat decreases rubber tear resistance which promotes crack initiation and propagation. Permanent degradation of material properties from exposure to elevated temperatures occurs as well depending on the exposure history.

* * *

3.5 Speed

Tire rotation affects the centrifugal force of frequency of the deflection cycle. Corresponding changes in the stresses and strains developed in the tire components affects the tire's heat buildup characteristics. ...

The publication includes Figure 15.9: (Belt edge temperatures of a tire operated with increasing speed at various inflation pressures.) (**Exhibit 40**) The chart reflects a passenger tire operated significantly underinflated at 11 psi displayed temperatures of 200° F. at 45 MPH and elevated to 240° F. at 75 MPH. The same passenger tire when properly inflated displays temperatures only up to approximately 170° F. at 75 MPH.

During the course of discovery in *Haeger I*, our accident reconstructionist provided a publication titled Heavy Duty Truck Tire Engineering authored by Goodyear Tire & Rubber engineers Thomas Ford and Fred Charles. The publication specified as follows:

Fatigue and separation:

¹³ Stroble believes though optional, high speed tests were performed before releasing the tire. No record of any such tests have ever been discovered and no participant in any pre-release high speed testing has ever been identified.

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

Heat:

Heat is the great enemy of tires. Excessive heat will cause a degradation of material properties. Heat is generated by the tire due to the work expended during operation. An equilibrium temperature is developed continuous operation of a truck tire. The temperature rises very rapidly initially and gradually levels off to an equilibrium temperature. At equilibrium temperature, the heat generated within the tire's structure is equal to the heat dissipated from the tire's surfaces.

Tires are developed to withstand this equilibrium temperature which for radial heavy duty truck tires is a maximum of a 194° F. Exceeding this temperature for short periods of time is not a problem, but exceeding it for long periods of time begins to cause a loss of strength in material components and eventually separation of the tire's structure. (Emphasis supplied)

(Exhibit 41)

Jim Gardner, Goodyear's expert in the *Haeger I* case, generally concurred. Mr. Gardner testified:

A new commercial medium truck tire operating at 75 MPH and properly pressurized would generate an internal shoulder temperature of 140° to 150° F.

Once a tire exceeds a temperature of 200° F., most commercial medium truck tires will begin to experience degradation of material properties that can lead to tread separation.

(Exhibit 42, Gardner Deposition.)

Mr. Gardner's deposition was declared confidential. It was to never be disclosed in any other G159 case.

We subsequently took the deposition of Goodyear's 30(b)(6) corporate spokesman Richard Olsen. Mr. Olsen was a member of Goodyear's Product Analysis Group. Their function is to evaluate failed tires and assist Goodyear in litigation-related matters. Olsen testified:

Goodyear tries to keep the internal truck tire temperatures below 200° F. and a medium truck tire operating above 200° F. for an extended time can lead to a loss of strength in the materials in the tire which can lead to separation of the tire's structure. A temperature in excess of 250° would create a concern about the capability of the tire to even stay together.

(Exhibit 43, Olsen Deposition.)

The testimony of Olsen and Gardner was consistent with Goodyear's internal publications and with other temperature data.

In fact, Goodyear's own publications and communications with Fleetwood advised that the expected temperature of a Goodyear medium truck tire operating at 75 MPH would be "up to" 185° F. (**Exhibits 44, 45 and 46.**) The same representations were to customers between 1998 through at least 2004.

When I requested Goodyear disclose its tests of the G159, Goodyear would originally limit its disclosure to only the FMVSS-119 tests taken at 30 MPH which reflected no temperature data whatsoever. It was not until years later that it was discovered that Goodyear was concealing the vast majority of all other test data (the subject of Judge Silver's Sanction Order).

Later Goodyear would disclose its high speed tests, which revealed that the G159 was developing temperatures well in excess of 250° when tested at speeds of 50 MPH on the 67-inch wheel. (**Exhibit 47**) Although Goodyear suggested that test did not reflect of real world operating conditions, it would later internally admit that the temperatures reflected at 50 MPH in Goodyear's high speed tests were the approximate equivalent of the expected temperature of the tire at 75 MPH. (**Exhibit 48**)

Significantly, Goodyear did not commence its high speed tests of the G159 until eight months after sales commenced. The first two tests were taken in August 1996. Both tires tested failed the 75 MPH leg of the test. Goodyear's corporate representative regarding testing stated that based upon this test, the tire could only be rated as a 65 MPH tire. (**Exhibit 49**) The only other high speed tests which were performed on a tire of like production to that of the Haegers' tire, were performed in December 1996. The two tires tested on that data did not fail until 81 MPH. In June 1998, Goodyear upgraded the tire to approved use at 75 MPH without further testing. Thereafter failure claims skyrocketed.

It was not until after the *Haeger I* case settled that it was discovered that Goodyear was concealing its extended endurance tests, crown durability tests and heat rise testing of the tire performed in 1996. All of those tests were performed between 30 and 40 MPH and revealed temperatures in excess of the admitted design limitations of the G159 and predictive of failure. (**Exhibit 50**) (Heat rise @ 35 MPH/temperatures up to 225° F.; crown durability @ 40 MPH/temperatures up to 255° F.; extended endurance @ 30 MPH/temperatures up to 250° F.)

In spite of Goodyear's repeated avowals that the G159 is a safe tire, its own internal documents reveal that of Goodyear's radial medium truck tires that were even exposed to the optional high speed testing, the G159 stood as a clear outlier, reflecting it was subjected to such testing in multiples of any other Goodyear truck tire. (**Exhibit 51**) There were 66 different high speed tests performed regarding the G159, during the years it was sold, reflecting a secret endeavor to test alternative constructions to explore the design defect.

The few experts which have seen the results of Goodyear's long-concealed heat rise durability, crown durability and extended endurance tests opine that those tests revealed temperatures in excess of the design capabilities of the G159, which would have revealed to Goodyear the risks associated with its utility in a continuous high speed application as opposed to its original stop-and-go design purpose.

Though these tests were what were requested in the various G159 lawsuits across the country, they were only disclosed on two occasions, and then only when the Court compelled the disclosure over Goodyear's objection. What was not disclosed in those cases were the admissions of Goodyear's experts in the *Haeger I* case, who admitted that the tire could not endure exposure to prolonged temperatures in excess of 200° without degradation of material properties and potential tread separation. Those depositions remained concealed and to the best of my understanding have never been disclosed in any other G159 case in the country.

G159 MODIFICATIONS AND ANALYSIS OF RETURNED TIRES

A year after the G159 first went into production, there was a significant design change. On January 13, 1997, there was a "revision to the tread compound that allowed this tire to withstand the heat of high speed operation." **(Exhibit 52)**

On February 15, 1999, Goodyear issued a report regarding return of G159s for evaluation from the failures on Fleetwood motorhomes. Both tires showed evidence of belt separation. Goodyear described the likely cause of failure was overloading, characterized as a "severe service" condition. Goodyear's decision was to modify the belt package geometry and construction to make the tire less prone to belt edge separation from severe service and overload and to thereafter monitor the tire. **(Exhibit 53)**

On March 24, 1999, Goodyear would issue its next return tire report. It evaluated two more failed G159s, both of which displayed belt edge separations. It notes, "Field locations should monitor actual load and speed conditions to make sure the proper tire is being used for these applications. Design changes to the tire are being considered to improve performance in overload conditions." **(Exhibit 54)**

On April 7, 1999, Goodyear told Fleetwood the separations were caused by: "Heat buildup which are a result of overloading and/or underinflating the tire. Heat is the worst enemy of a tire. Excessive heat will cause a degradation of material properties which in turn can impact a tire's endurance and durability." **(Exhibit 55)** Goodyear was telling Fleetwood the failures were caused by customer abuse.

On October 26, 1999, Goodyear would issue an additional return tire report. It evaluated two more failed G159s, each manufactured the fifth week of 1999. Both displayed tread separations caused by belt edge separations. The corrective action states, "The belt edge of the 275 70R 22.5 were narrowed to improve belt edge durability on February 15, 1999. This is just after the production date of the subject tires. Crown area adjustments 'will be followed' to determine if a change in belt width has improved the durability of the tire." **(Exhibit 56)** Even after narrowing the belt edge, catastrophic failures continued while Goodyear sat silent.

Internal communications at Goodyear on January 15, 2001, evaluate five more returned tires. These tires were all manufactured after the implementation of the narrowed belt widths in February 1999. **(Exhibit 57)** Goodyear would again suggest the tire failures are caused by overloading or underinflation. "In general this tire is exposed to relatively severe service, therefore, a program to enhance resistance of this tire to heat generation with flexing has been in process. Implementation in production is expected by the end of January 2001." It was obvious that the prior modifications to the belt package had not cured the performance issues associated with the G159.

Goodyear's reference to "severe service" (overload and underinflation) suggest problems caused by customer abuses. Yet, in none of the documents Goodyear has disclosed has there been *any* discussion about alternative source of heat arising from improper design. Certainly substantial overload or underinflation can cause excess heat in a tire which could lead to its premature failure. Still, nowhere in *disclosed* documents does Goodyear discuss what its tests revealed. That is a properly pressurized G159 operating at design load will create temperatures beyond the design capacity of the G159 leading to the degradation of material properties representing a fully documented and consistent explanation as to why the G159 was failing.

THE FLEETWOOD EXPERIENCE

On October 5, 1999, Fleetwood initiated a recall due to 41 tread separations and two fatalities arising from utilization of the G159 on certain models of Fleetwood motorhomes. Fleetwood had estimated that approximately 40% of those units may be potentially overloaded. **(Exhibit 58)**¹⁴

Fleetwood reported to NHTSA that after its recall, it had only four further reports of G159 failures. **(Exhibit 59)** Though post recall reporting of G159 failures by Fleetwood was limited, we now know G159 failures on Fleetwoods continued to be reported to Goodyear. **(See Exhibit 8.)** Goodyear has now disclosed more than 100 reported G159 failures on various models of Fleetwood motorhomes following the recall, including two reports in 2014.

The Fleetwood recall upsized the 275/70R 22.5 tires on some of its units to 275/80R 22.5. Separately, Fleetwood would utilize this 275/70R 22.5 as a replacement tire for Fleetwood motorhomes utilizing either the 245, 255 or 265/70R 22.5 tires. This utilization of the G159 as a replacement tire served to only compound the failures.

In my opinion, all of this is indicative of heat induced failure. First of all, when Goodyear chose the larger 275 to replace the 245 through 265/75R 22.5 tires, it had selected an arguably more robust tire capable of carrying significantly greater loads in those replacement applications. If the problem was failure due to heat (severe service) from overload, then the problem should have been solved. Second, the repeated rear end failures of the G159 suggest an alternative other than overload or underinflation. There are no true shear forces on the rear end of these motorhomes. Yet, we know of approximately 170 rear end failures resulting in property damage claims (albeit not all on Fleetwoods).

What Goodyear told Fleetwood during the course of its investigation is also important. Goodyear never disclosed what it knew from its tests about the temperature the G159 was generating or disclosed the maximum design temperature of the tire.

On November 23, 1998, Goodyear advised Fleetwood based upon Goodyear's "Commercial Tire and Management" publication that the tire can obtain temperatures "up to" 180° F. running continuously at 75 MPH. At 55 MPH belt edge temperatures average 160° F. **(Exhibit 60)** Thus Goodyear's expressions to Fleetwood are in contrast to what was revealed by Goodyear's own tests about the G159, all of which were undertaken in 1996. In those tests temperatures in excess of 250° F. were generated at 75 MPH.

¹⁴ Admittedly there is evidence of underinflation and overload by some RV operators, but it is distant from any kind of a global explanation for this unprecedented volume of failure.

On November 16, 1998, Goodyear advised Fleetwood regarding "tire blowouts." Goodyear's correspondence stated:

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

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

(Exhibit 61)

This letter quotes directly from Goodyear's Ford and Charles publication which set forth the 194° maximum temperature design limitation of the tire. That sentence is notoriously absent in Goodyear's expressions to Fleetwood. Rather, the same letter goes on to explain, "Tire blowouts can be related to a number of facts, however the key ones being overload, underinflation, vehicle speed and road hazards." Each of these are solely within the control of the motorhome operator and sent a clear message to Fleetwood that failures of the G159 had nothing to do with the tire itself. Rather, Goodyear was blaming the customers.

Privately, Goodyear would acknowledge that Goodyear had taken a pretty good hit on the subject of Fleetwood tread separations and tire blowouts. Goodyear acknowledged "product liability claims are very heavy" regarding Fleetwood. The internal memo concluded, "The product liability claims should probably not be discussed with the vehicle owners." **(Exhibit 62)**

G159 REPLACED AT GOODYEAR'S EXPENSE ON MONACO MOTORHOMES

Although not the subject of a recall, Monaco customers too had extensive failure reports associated with the G159.

In August 2000, Goodyear was in communication with Monaco regarding the G159 issues. Its correspondence stated:

Heat is the worst enemy of tires. Every time a tire flexes it generates heat. Tires are designed to perform at specific flexions and operating temperatures, which are sometimes called "equilibrium temperature." At equilibrium the heat operating within the tire's structure is equal to the heat dissipated from the tire's structure. Exceeding this temperature for short periods of time is not a concern but exceeding it for long periods begins to cause a loss of strength to the material components and eventual separation of the tire's structure.

(Exhibit 63)

Again, Goodyear was quoting from its Ford and Charles publication, but omitting the sentence which would identify the 194° F. design limitation of the G159. Again, Goodyear would not share with Monaco what it knew about the failures, death and injury claims that had been advanced as of that date. Similarly, it would not reveal to Monaco what it knew about the temperatures the G159 was generating from its own tests.

By January 2002, Goodyear agreed to replace the G159 with the 295/80R 22.5 on multiple Monaco motorhomes. Monaco referenced prior communications with Goodyear stating:

As you know, we requested Goodyear's review of the performance of the 275/70R tire. Goodyear's position has since been clearly stated that Goodyear does NOT believe a safety issue exists with the 275/70R tire in its current application. It is our understanding that Goodyear attributes failure of this tire to improper usage by our mutual customers.

(Exhibit 64)

Again, Goodyear was less than forthcoming about what it knew about the performance of the G159 and apparently renewed its blame for G159 failures upon its customers.

On May 10, 2002, Monaco forwarded a letter for Goodyear's approval advising its customers that it would replace the G159 tires on certain Monaco motorhomes.

On June 18, 2002, Goodyear returned the letter, revised to suit its purposes. Goodyear inserted an additional paragraph that expressed:

It has come to our attention that a number of customers are decreasing air pressure in their tires for better comfort and as result are operating the tires in an underinflated overloaded condition.

(Exhibit 65)

The modification to the letter was via Goodyear's legal department and upon information and believe was expressly inserted by Deborah Okey, Goodyear's Associate General Counsel.¹⁵

GOODYEAR COORDINATES THE G159 LITIGATION NATIONALLY

By 2003, the property damage claims, injury and death claims and lawsuits had escalated to such a level that Goodyear decided to retain National Coordinating Counsel. Roetzel & Andress served this function and Basil Musnuff operated as the point person, although other senior management in the Roetzel firm participated in significant detail.¹⁶

¹⁵ Ms. Okey would later retain National Coordinating Counsel commencing in 2003 to handle the G159 cases across the country. As noted in Judge Silver's expressive decision, Ms. Okey acted as the decision-maker in G159 cases.

¹⁶ The redacted Roetzel & Andress bills for these cases are in our possession. They show the regular role of senior supervisory partners at Roetzel working with Mr. Musnuff and the local attorneys who work with National Coordinating Counsel in each of the cases across the country.

The documents in our possession (available upon request), reveal the usual practice of objecting to the production of test and failure related data. Such admitted data would not be disclosed absent court order. In certain cases, data was not disclosed in spite of court order.

As the years rolled on, the claims continued to come in. To the best of my understanding, none of this has ever been disclosed to NHTSA. In fact, the protective orders have prohibited such disclosure.

During the summer 2007, it was brought to my attention that a Goodyear corporate spokesperson had admitted that the G159 was defective when used on motorhomes during the course of a deposition. The deposition was stopped. Goodyear subsequently acquired the court reporter's notes for destruction. No version of the deposition was transcribed and it has literally disappeared.

Although I was led to believe there was not a trace of this deposition as a result of Goodyear's request that it be destroyed, the more recent detailed review of Roetzel & Andress billing records reveal direct communication with the court reporter about her maintenance of electronic data.¹⁷ There are references in those billing records to internal discussions regarding this electronic record. The court reporter is required to maintain an electronic copy of the deposition for a period of five years. Since the deposition took place in 2003, the electronic version was required to be retained and should have existed at the time we issued a subpoena to the court reporter's company in 2007. Her employer responded to the subpoena, advising that the company had no record of the deposition, other than Goodyear's request that the court reporter's notes be sent to counsel for destruction. I have not been able to locate the court reporter in order to actually address this issue with her. In my opinion it is a worthy follow-up because if Goodyear's Legal Department worked with National Coordinating Counsel to suppress disclosure of a deposition which contained admissions regarding the defective nature of the G159, this would certainly be relevant information for NHTSA's consideration relating to Goodyear's duty to report a defect within five days of such a determination.

THE VICTIMS' ATTORNEYS IN HALEY, SCHALMO AND BOGAERT TESTIFY

Attached is my cross-examination during the deposition of two plaintiffs attorneys who were involved in G159 litigation. (**Exhibits 66 and 67.**) Each of the attorneys set forth the varied deceptions experienced during the course of G159 litigation. I have also provided the deposition of Tim Casey, counsel for the Haley family. (**Exhibit 68**) Mr. Casey describes the control exerted by Goodyear's Legal Department in concealing test and failure data.

OTHER AVAILABLE EVIDENCE

I have endeavored to limit disclosure/production so as to not overwhelm NHTSA. *Haeger* I involved more than 1000 filings, 160 motions and multiple hearings. In total, I have at least 35 banker boxes of materials, including 20 4-inch binders of trial exhibits.

¹⁷ Lawyers representing victims in multiple G159 cases intervened in the closed case of *Phillips v. Goodyear*, to modify the protective order to take depositions regarding Goodyear's admission under oath at deposition. Goodyear filed its own complaint against the lawyer who shared this information, asserting he violated the protective order by disclosing what the Goodyear employee expressed.

Haeger II is larger. I have received approximately 400,000 pages of disclosed information. The dispositive motions, filed in January 2017, are supported by an estimated 15,000 pages of exhibits. Attached as **Exhibit 69** is the Supplemental Statement of Facts which identifies most of those documents.

I have separately prepared 11 volumes of the most significant exhibits regarding the G159. They are all available upon request for your review.

I have attached an index of 59 depositions taken in those two cases, which too are available for your inspection. (**Exhibit 70**)

All six of the Haegers' G159 tires are still in Goodyear's possession for your inspection. I believe Goodyear retained other G159s from the various suits as required to avoid claims relating to the failure to retain evidence.

Each of the attorneys retained by Goodyear involved in the G159 cases between 1998 to date (**see Exhibit 5**), have been instructed to retain their files and presumably all of that information is available. I am also in possession of the legal bills for many of the G159 cases, which are also available upon request.

REQUESTS

Since 2005, when the Federal Court entered its protective order, I have been prohibited from disclosing anything to the Government which Goodyear claimed to be confidential. It has been a long road to receiving judicial consent to share with NHTSA that which I have discovered. My wife and I have spent years wondering how many more people will get hurt. We had the same discussion a few weeks ago following Goodyear's acknowledgement in the public courtroom, that the G159 is still on the road in 2017. I have no personal doubt that that is true. The G159 is a regroovable tire. Goodyear advises that its initial tread life is 100,000 miles. The casing is designed itself to last 300,000.

NHTSA is familiar with the limited mileage of RV users, as opposed to commercial trucks. Many of these motorhome owners are uniquely conscientious about their tires. My client, LeRoy Haeger, would place his motorhome on blocks, lifting the tires off the ground surface. The tires would separately be covered with material designed to protect the tires from any elements and ultra violet light. Goodyear has never told any of these folks that the G159 had a limited service life. Internal damage is not evident upon visual inspection and the tires may be in a state of degradation which is not evident.

In my opinion, based upon what I have been advised by other experts in the field, Goodyear should have recalled this tire by no later than the end of 2000. Dozens of lives and injuries would have been avoided and countless "almost" collisions.

I have often wondered what motivates a corporation to leave a tire like the G159 on the road. I have my own opinion. And it is nothing more than that. I know that Goodyear received in excess of \$100 million in revenue as a result of replacing the Firestone tires. I know that Goodyear was suffering tremendous financial losses in 2001, 2002 and 2003 (\$2 billion plus). During the years of G159 production, the stock price fell from \$92.00 per share in July 1998 to \$5.00 per share in February 2003. With the Firestone recall, the public became sensitive to tire issues.

Goodyear knew too. In its 2000 annual report it commented about the Firestone recall:

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

The brand damage suffered by Firestone is estimated to be well in excess of one billion dollars. As a primary replacement manufacturer for the recalled Firestone tires, it was no time for Goodyear to advance a recall for the G159. The decision to not recall a defective product is wrought with risks. The penalties become worse with each passing year and an untimely admission of a defect years after it was manifest, would expose Goodyear to unquantifiable publicity, brand damage, potential shareholder derivative litigation and an almost indefensible tire in the various suits which were filed. It was just simply cheaper to run the tire out than to comply with what the statutory scheme required. I found it uniquely offensive that Goodyear's top five officers received in excess of \$300 million in bonuses while the G159 continued to run on the roadway after it was, in my opinion, clearly evident the tire was defective. **(Exhibit 71)**

Handling this investigation over the last 14 years has caused tremendous personal sacrifice and financial loss for my family. It has required me to work exclusively on this single file since 2011, investing countless thousands of hours pursuing the job NHTSA would have performed if it had been appropriately informed. I am pleased to finally be able to hand it to NHTSA, as I have tirelessly performed the task of chasing the facts down so that the appropriate regulatory response would follow.

I believe that a Timeliness Query is appropriate to evaluate the timing of Goodyear's defect decision-making and reports to NHTSA. I believe the existing data provides a solid foundation to recall the G159. Regardless of expense, there is simply no reason to leave families exposed to unexpected crossover collisions or to the sudden tread separation of a motorhome from the G159. Each of these families is worth saving and protecting. It is certainly an expense that is appropriate for Goodyear to incur.

If NHTSA determines Goodyear failed to comply with applicable law, either by failing to report a defect in the G159 tires; or failure to comply with Early Warning Reporting; or misrepresenting failure data to NHTSA when requested; I ask that NHTSA address such deceptions and penalize Goodyear in accord with the agency's discretion.

Additionally, NHTSA should review Goodyear's approach and process regarding defect determinations to assure it is meeting its public safety obligation. There needs to be an actual standard at Goodyear where some kind of an investigation is mandated, whether it be for adjustments, property damage claims, injury and/or death claims. Goodyear has none.

Similarly, it seems inappropriate to me that only senior management sits on the Corporate Safety Committee. There is no system of checks and balances to assure the defect determinations are appropriately made. There is no methodology for a minority of the Corporate Safety Committee to disclose any disagreement amongst the membership regarding whether a product is defective.

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July 10, 2017
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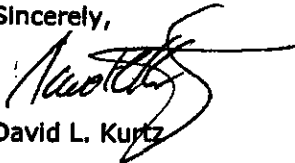
Further, General Counsel for Goodyear takes issue with NHTSA's own expressions regarding when a tire is deemed defective. If the senior legal officer of Goodyear does not know when a tire is defective, then things need to change.

There needs to be a vehicle that assures that the Board of Directors at Goodyear is properly informed of tires which are the subject of the Corporate Safety Committee review, regardless of outcome. The process at Goodyear appears to allow General Counsel to be the sole decision-maker as to what is presented to the Board, though I have evidence that Goodyear's CEO, Richard Kramer, was personally familiar with failures regarding the G159.

I believe there is a vast documented record of deception and misrepresentation by Goodyear to its customers as well as to those who were hurt by G159 tread separations about the safety of the G159. Most of these are the kind of communications that resulted in criminal prosecutions in recent years. To the extent such considerations exceed your authority, I request you refer this letter and related documents to other investigatory governmental entities, including but not limited to the Department of Justice.

I welcome any questions you may have. I appreciate you taking the time to consider that which I have discovered.

Sincerely,



David L. Kurtz

DLK/kc

Enclosures