

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFFS' RESPONSE OPPOSING *THE GOODYEAR TIRE & RUBBER
COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT***

NOW COME Plaintiffs, Brenda Charcalla, Brock Charcalla and Dalton Charcalla—by and through their attorneys—to file their *Plaintiffs' Response Opposing The Goodyear Tire & Company's Motion for Partial Summary Judgment*.

Plaintiffs respectfully move this Court for entry of the attached (proposed) Order determining that all of Plaintiffs' Pennsylvania state law claims, set forth in Plaintiffs' First Amended Complaint (ECF No. 19), are ripe for jury determination under Pennsylvania law, to wit: (1) Count I (Negligence for Manufacturing Defect, *including all negligent failure to warn claims*); (2) Count II (Strict Liability); (3) Count III (Breach of Express Warranty); (4) Count V (Exemplary (Punitive) Damages); and (5) Second Estate Cause of Action (Survival), in the above-captioned matter.

In support of this Motion, Plaintiff incorporates by reference Plaintiff's *Brief in Support of Plaintiffs' Response Opposing The Goodyear Tire & Company's Motion for Partial Summary Judgment*.

WHEREFORE, premises considered, Plaintiffs respectfully request that this Honorable Court deny *The Goodyear Tire & Company's Motion for Partial Summary Judgment*, with prejudice.

Date: October 9, 2017

Respectfully submitted,

PRIBANIC & PRIBANIC, LLC

By: /s/ *Victor H. Pribanic*

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**On the Response.*

(Counsel for Plaintiffs.)

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ORDER

AND NOW, this _____ day of _____, 2017, upon
consideration of Defendant The Goodyear Tire & Rubber Company's Motion for Partial
Summary Judgment, and Plaintiffs' response thereto, it is hereby **ORDERED** and **DECREED** that
the motion is **DENIED**, with prejudice, and that Plaintiff's Pennsylvania state law claims are ripe
for jury determination under Pennsylvania law.

BY THE COURT:

Joy Flowers Conti
Chief U.S. District Judge

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Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**BRIEF IN SUPPORT OF PLAINTIFFS' RESPONSE OPPOSING THE GOODYEAR TIRE
& RUBBER COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

NOW COME Plaintiffs, Brenda Charcalla, Brock Charcalla and Dalton Charcalla—by and through their undersigned attorneys—to file their within *Brief in Support of Plaintiffs' Response Opposing The Goodyear* (“Goodyear”) *Tire & Rubber Company's Motion for Partial Summary Judgment* (“MPSJ”), in accordance with Local Rules 56.1 and Rule 56 of the Federal Rules of Civil Procedure. Before this Court is Goodyear's instant *Motion for Partial Summary Judgment* (ECF No. 127), *Proposed Order* (ECF No. 127-1), *Memorandum of Law* (ECF No. 128), and *Concise Statement of Facts* (ECF No. 128). Also pending before this Court is Goodyear's *Motion for Choice of Law Determination* (ECF No. 125), the outcome of which will have direct bearing on the instant MPSJ.¹ Genuine issues of material fact raise significant jury questions, precluding partial summary judgment, for the reasons that follow.

¹ Goodyear's Proposed Order asks this Court to dismiss Plaintiffs claims for: “All negligent failure to warn claims; (2) Count II of the Amended Complaint (Strict Liability); (3) Count III of the Amended Complaint (Breach of Express Warranty); (4) Count V of the Amended Complaint (Exemplary (Punitive) Damages); and (5) Second Estate Cause of Action (Survival).” (Proposed Order (ECF No. 127-1).)

COUNTER-STATEMENT OF FACTS

The Incident: “*Plaintiffs’ Responsive Concise Statement of Material Facts in Opposition to Goodyear’s Motion for Partial Summary Judgment*” (hereafter “Plaintiffs’ Concise Facts”) filed concurrently with this Brief, sets forth, *inter alia*, the following facts: This lawsuit concerns a single vehicle accident that occurred on July 15, 2011 in New Kent County, Virginia. (Plaintiffs’ Concise Facts, ¶ 1.)² The vehicle involved in the accident was a used 2000 Freightliner FL60 truck (“Vehicle”), and it was towing a 2003 Alfa Toyhouse camper. (Plaintiffs’ Concise Facts, ¶ 2.) The front left tire sustained a tread separation during the Vehicle’s operation. The subject tire was a Goodyear G647 all-steel commercial truck tire, a 2003 G647 RSA 245/70R19.5, Load Range G, “bearing original serial #MJ 93 WFAW 0203,” manufactured at Goodyear’s plant in Topeka, Kansas in the 2nd week of 2003. The Virginia State Police Report states: “The contributing defect to the crash appeared to be the [front] left tire which blew out.” (Goodyear, Ex. A, at VASP 05.) (Plaintiffs’ Concise Facts, ¶ 3.)

Injury and Death: After the front left tire experienced a tread separation, the driver lost control of the Vehicle. The Vehicle veered to the left, exited the highway, and struck three trees before the Vehicle landed on its side. (Plaintiffs’ Concise Facts, ¶ 6.) Mr. Charcalla was killed. One witness testified that he thought that Mr. Charcalla may still have been alive, although unresponsive. (See Deposition of Edgar Esquivel, 67:5–25; 68:1–25; 69:1–11; 118:5–25; 119:1–25; 120:1–16, attached to Plaintiff’s Appendix as Exhibit 1.) Brenda Charcalla (Gary’s wife), and her sons, Brock Charcalla and Dalton Charcalla, were each traveling in either the Vehicle or Camper at the time of the accident and sustained various injuries. (Plaintiffs’ Concise Facts, ¶ 7.) Brenda

² Prior to the accident, plaintiffs were vacationing in Virginia, having stayed at Virginia Beach campground for six days. (Plaintiffs’ Concise Facts, ¶ 4.) At the time of the accident, Plaintiffs had just begun their return trip to Erie, Pennsylvania. (Plaintiffs’ Concise Facts, ¶ 5.)

Charcalla, Brock Charcalla, and Dalton Charcalla each received medical treatment at the Virginia Commonwealth University Medical Center at Richmond, Virginia. (Plaintiffs' Concise Facts, ¶ 8.)

Purchase of Subject Vehicle/Goodyear Tire: On August 18, 2003, the Vehicle was purchased in Ohio by "Gilby" Kosko, a family friend of the Charcallas and used car dealer, who purchased the Vehicle on the Charcallas' behalf. (The Vehicle and subject tire was owned by the "Seller," i.e. "Fifth Third Bancorp and/or its affiliates, including Fifth Third Leasing Company," as documented in the "Bill of Sale" dated August 18, 2003. (See Goodyear's Appendix, Exhibit D.)³) The tire was installed at the time of purchase. (Deposition of Brenda Charcalla, 22:8–19, 49:2–7, relevant excerpts attached to Goodyear's Appendix as Exhibit B.) Brenda Charcalla testified that the Freightliner's front tires were "new" at the time of purchase.⁴ (See Deposition of Brenda Charcalla, 49:2–25; 50:1–7; 133:19–22, attached to Plaintiff's Appendix as Exhibit 2.) (Plaintiffs' Concise Facts, ¶ 9.) In 2005, plaintiffs purchased the Camper in Florida. (Plaintiffs' Concise Facts, ¶ 10.) During their six (6) years of use, Plaintiffs did not have any operational or mechanical problems with the Vehicle or the Subject Tire. *Id.* at 23:12–15; 51:6–8. (Plaintiffs' Concise Facts, ¶ 11.) According to the Affidavit of Jack "Mel" Stein, proprietor of J & C Enterprises, the subject

³ That said, the ownership history prior to the Seller's acquisition of the subject Freightliner is not known, except that that the Freightliner was repossessed and then sold: "The truck was actually a repossession and it was missing the hitch." (See Deposition of Brenda Charcalla, 49:17–18, Plaintiff's Appendix, Exhibit 2.) (Plaintiffs' Concise Facts, ¶ 12.) If the subject tire "was installed at the time of purchase" as a new tire—as Brenda Charcalla has testified and further averred by way of her affidavit (see Plaintiff's Appendix, Exhibit 3)—then the Seller evidently purchased the subject tire, presumably from a Goodyear dealer, prior to installing the two new front tires on the subject Freightliner. (Plaintiffs' Concise Facts, ¶ 13.)

⁴ Brenda Charcalla testified:

When my husband, Gary L. Charcalla and I purchased the 2000 Freightliner FL 60 (that was involved in the accident on July 15, 2011) the two front tires on the truck looked new. Gary L. Charcalla told me he was "glad to see the two steer tires were brand new." I noticed that the tires had what I refer to as "nipples" or the rubber pieces that stick out and fall off with use. I also noticed that the tire had plenty of tread like a new tire would have. (See *Affidavit of Brenda Charcalla*, attached to Plaintiff's Appendix as Exhibit 3.)

Freightliner was maintained and inspected annually from the time of purchase through July 2011. (See Plaintiff's Appendix, Exhibit 4, previously filed as ECF No. 80-7.)⁵

The Subject Goodyear Tire's Mileage: On August 18, 2003, when Gary Charcalla purchased the subject Freightliner, the odometer reading was documented as "72,495" miles. (See the "Bill of Sale," Goodyear's Appendix, Exhibit D, ECF No. 129-4.) (Plaintiffs' Concise Facts, ¶ 16.) On July 15, 2011, at the time of the accident, the subject Freightliner's odometer reading was documented as "Odometer 99442 Readable." (See Copart Inventory, attached to Plaintiff's Appendix as Exhibit 7, previously filed as ECF No. 114-2, p. 4 of 14.) A photograph of the odometer is attached to Plaintiff's Appendix as Exhibit 8, from the Deposition of Justin Vanderschaaff, Exhibit 1, p. 21 of 80 pp.) (Plaintiffs' Concise Facts, ¶ 17.) The mileage usage of the subject Goodyear tire, at the time it failed on July 15, 2011, was **26,947 miles** (99,442 minus 72,495). (Plaintiffs' Concise Facts, ¶ 18.) On December 2, 2002, Goodyear issued a press release announcing the G647 RSA tire. The subject tire was perforce not more than eight months old when installed on the Vehicle. (Plaintiffs' Concise Facts, ¶ 19.)

Manufacturing Practices at Goodyear's Topeka Plant: In the case captioned, *United States ex rel. Orlando Guadalupe Bringing This Action on Behalf of the United States of America, Plaintiffs, v. The Goodyear Tire & Rubber Company, Defendant* (Civil Action Number 5:01 CV 2007, United States District Court, Northern Western District of Ohio, Eastern Division), the oral/video deposition of Plaintiff, Orlando Guadalupe, was taken on September 22, 2003. ("Guadalupe

⁵ As further documentation of the maintenance of the subject tire, please see Plaintiff's Appendix, Exhibit 4, which is a document showing the "Semi-Annual" Pennsylvania State inspection of the subject Freightliner on April 27, 2011. Note that the box, "Tires, Wheels," is checked. The condition of the tires is one of the routine tasks to be performed during a Pennsylvania state inspection, as required by statute. See Commonwealth of Pennsylvania, Vehicle Equipment and Inspection Regulations (2014), § 175.65 and §175.80. (Plaintiffs' Concise Facts, ¶ 13.) The condition prior to purchase was that the subject tire was new. Brenda Charcalla testified that the tires were new at the time of purchase. (See *Deposition of Brenda Charcalla*, 49:2–25; 50:1–12; 133:19–22, attached to Plaintiff's Appendix as Exhibit 2.) (Plaintiffs' Concise Facts, ¶ 15.)

Depo” and “Id.”) (See *Deposition of Orlando Guadalupe*, attached to Plaintiff’s Appendix as Exhibit 9.) (Plaintiffs’ Concise Facts, ¶ 20.) Orlando Guadalupe was hired by Goodyear at the Topeka, Kansas, plant on November 28, 1994. (Guadalupe Depo, 46:5–7; 51:4, Exhibit 9.) He was terminated in March 2002. (Id., 148:14–16.) This was less than a year before the subject Goodyear G647 RSA tire was made in January 2003.⁶

In Department 5430, which was the truck tire division where all radial truck tires (including the subject G647 RSA line of tires was made), there was an incident where “a supervisor by the name of Larry Sumpter disciplined me and the entire crew for running bad stock on a conveyor belt.” (Id., 54:1–4.)⁷ According to Guadalupe, there were defects in the two-and-a-half ton truck tires and the Hummer tires, which he reported. Inspectors from Goodyear’s Quality Control team “inspected the tires, found them to be defective and informed the manager about them.” Then the “Area Manager, Tim Brock, said to pass them through.”⁸ The scrap tires were then sanded down, extra rubber added, and the defective tires cured again, such that “Goodyear sold

⁶ Guadalupe first worked in Department 5430, which manufactured tires for “the regular trucks.” He had two job titles: “Our title was two: component processors. We were tubers.” (Id., 47:6–8.) He was also called an “operator” of the “tubers.” (Id., 192:8.) At some point later on, Guadalupe was hired in Department 1540, which made “[f]rom 57-inch Earthmover tires out to the reg — regular truck tires.” (Id., 47:18–20.) He then worked in Department 1540, F-Line as a “tire layer” (i.e. “curer”) where he made “the military tires” and “some farm tires.” (Id., 48:3–5.) His last job at Goodyear in that same department was as an “inserter.” (Id., 49:16–25.) Here, the term “inserter” refers to “production as the actual curing or inserting of a tire,” which also included “bladder changing” and “assembling the bladders.” (Id., 54:10–25.)

⁷ A plain reading of this statement indicates that “bad stock” refers to an unspecified problem in the production of components for truck tires. At the Topeka plant there were contaminants, such as asbestos. While in the Earthmovers division, Guadalupe reported seeing “oil falling from the hoist and the rafters on [onto] the floor.” (Id., 94:25; 95:1–2.) The work area was one of “extreme heat.” (Id., 95:3.) (Plaintiffs’ Concise Facts, ¶ 20.)

⁸ On another occasion, Guadalupe asked a Quality Control worker about a tire that was lacking a lot of “porcupines” on one side after curing. The lack of “porcupine needles” was a clear sign that “the air didn’t completely siphon out of the tire while it was curing” which would result in “a defective cir.” (Id., 172:10–13.) The answer was: “Scrap it. Don’t lay it until we get it fixed.” But supervisor Tim Brock, having overheard this conversation, ordered Guadalupe: “Keep curing the tires.” (Id., 150:2–24.)

repair tires as new, quality tires.” (Id., 136:25; 137:1–25.) He testified: “I saw rubber added to the inside of the tire itself.” (Id., 179:21–22.) He personally witnessed what was going on in the Inspect and Repair Department. (Id., 140:12–25; 141:1–8.) Guadalupe testified that “I’ve learned and was trained by Goodyear, you know, what constitutes a good or bad tire.” (Id., 172:18–19.) (Plaintiffs’ Concise Facts, ¶ 20.)

Not only were there problems in the curing process involving Goodyear’s radial truck tires, there were serious issues with making the components as well.⁹ Guadalupe was therefore concerned “about tread separations and blowouts.” (Id., 199:19–23.) The end result, according to Guadalupe, was that “Goodyear was selling defective tires.” (Id., 284:4–5.) Orlando Guadalupe clearly testified that he, and presumably Goodyear’s managers, knew that defective tires could lead to a catastrophic “blowout”: “If those sidewalls has any foreign material in it, you can’t use them. If you use them, you’re going to have yourself either a blowout or a flat or—or—or—or a bad tire.” (Guadalupe Depo, 198:24–25.) Guadalupe further testified to such comments by Goodyear’s Topeka plant managers as the following: “It’s not asbestos. Keep working.” (Guadalupe Depo, 65:16–25.) “Keep curing the tires.” (Id., 150:2–24.) “Keep going.” (Id., 192:8–25; 193:1–24.) (Plaintiffs’ Concise Facts, ¶ 20; see also)

SUMMARY JUDGMENT STANDARD

Jury questions preclude summary judgment. This Court has succinctly stated the summary judgment standard.¹⁰

⁹ Although the main focus of his testimony was production of defective Humvee tires for the U.S. military in Iraq (Id., 200:9–10), Orlando Guadalupe, as an Operator, was making components for Goodyear’s radial truck tires at the very same time. “Components” included not only treads, but belts and sidewalls. Here, Guadalupe testified that, whenever various components were “out of specification,” he would report the problem, “Every time.” (Id.) Yet he was routinely told: “Keep going.” (Id.) (Plaintiffs’ Concise Facts, ¶ 20.)

¹⁰ See *Trinity Indus. v. Greenlease Holding Co.*, 35 F. Supp. 3d 698, 707 (W.D. Pa. 2014) (opinion by Joy Flowers Conti, Chief United States District Judge) (citations omitted).

Use of Prior Deposition Testimony: The U.S. Supreme Court has clarified the nature and scope of evidence that may be adduced by the nonmoving party to preclude summary judgment, adding that: “We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does not require the nonmoving party to depose her own witnesses.”¹¹

This Court has stated that the general rule that “hearsay statements can be considered on a motion for summary judgment if they are capable of admission at trial.” (*Veolia Water Solutions & Techs. N. Am., Inc. v. Aquatech Int’l Corp.*, 123 F. Supp. 3d 695, 701 (W.D. Pa. 2015) (citations omitted).) A deposition taken in another case is hearsay. But there is an exception, permitting its use as evidence under the following requirements: FRCP Rule 32 (“Using Depositions in Court Proceedings”) provides that “all or part of a deposition may be used against a party” at a court proceeding (whether “a hearing or trial”) if “the party was present or represented at the taking of the deposition,” and if “it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying,” and if its “use is allowed by Rule 32(a)(2) through (8).” (FRCP 32(a)(1)(A)–(C).)

Cross-referencing, FRE 804 permits former testimony that “was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one” and “is now offered against a party” who had “an opportunity and similar motive to develop it by direct, cross-, or redirect examination” is not excluded by the rule against hearsay. (FRE 804(b)(1) (A) and (B).) Alternatively, as for an “Unavailable Witness,” FRCP Rule 32 further provides that a “party may use for any purpose the deposition of a witness, whether or not a party, if the court

¹¹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). And further: “Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred.” (*Id.*)

finds ... that the witness is more than 100 miles from the place of hearing or trial.” (FRCP 32(a)(4) and 8.) FRCP Rule 32 further provides: “A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.” (FRCP 32(a)(8).)

PUBLIC POLICY STANDARD

Pennsylvania’s leading products liability case is *Tincher v. Omega Flex*, 104 A.3d 328 (Pa. 2014).¹² Although *Tincher* overruled *Azzarello*, Pennsylvania’s public policy on safety in manufacturing remains the same: “Strict liability in tort for product defects is a cause of action which implicates the social and economic policy of this Commonwealth.” (*Tincher*, 104 A.3d at 381.) And further: “[T]hose who sell a product (i.e., profit from making and putting a product in the stream of commerce) are held responsible for damage caused to a consumer by the reasonable use of the product. ... The risk of injury is placed, therefore, upon the supplier of products.” (*Tincher*, 104 A.3d at 385–86.) Put more simply:

Pennsylvania’s public policy is such that manufacturers of products are encouraged to make them *as safe as possible, as soon as possible*. In *Azzarello v. Black Bros. Co.*, 480 Pa. 547, 391 A.2d 1020, 1024 (Pa. 1978), the Pennsylvania Supreme Court stated that the supplier of a product is the guarantor of its safety. [...] As stated above, Pennsylvania’s public policy is to encourage manufacturers to make their products *as safe as possible, as soon as possible*. (*Habecker v. Clark Equip. Co.*, 36 F.3d 278, 285–286 (3d Cir. Pa. 1994) (emphasis added).)

This public policy consideration is relevant to the Court’s choice-of-law and exemplary damages considerations.

¹² *Tincher v. Omega Flex*, 104 A.3d 328 (Pa. 2014) (overruling *Azzarello v. Black Brothers Company*, 391 A.2d 1020 (Pa. 1978) and declining to adopt the Restatement (Third) of Torts: Products Liability §§ 1 et seq.) (“[W]e hold that, in Pennsylvania, the cause of action in strict products liability requires proof, in the alternative, either of the ordinary consumer’s expectations or of the risk-utility of a product.” (*Tincher*, 104 A.3d at 401).)

QUESTIONS PRESENTED

- I. DO JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS' EXEMPLARY DAMAGES CLAIM (COUNT V)?

Recommended Answer: Yes, under both Pennsylvania law and Virginia law (but with an exemplary damages cap).

- II. DO JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS' BREACH OF EXPRESS WARRANTY OF MERCHANTABILITY CLAIM (COUNT III)?

Recommended Answer: Yes, under both Pennsylvania law and Virginia law.

- III. DO JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS' FAILURE TO WARN CLAIM (COUNT I: NEGLIGENCE FOR MANUFACTURING DEFECT)?

Recommended Answer: Yes, under both Pennsylvania law and Virginia law.

- IV. ALTHOUGH, UNDER VIRGINIA LAW, PLAINTIFFS' STRICT LIABILITY FOR MANUFACTURING DEFECT CLAIM (COUNT II) IS NOT VIABLE, SHOULD SUMMARY JUDGMENT BE PRECLUDED DUE TO PENNSYLVANIA'S SUPERIOR STATE INTEREST?

Recommended Answer: Yes.

- V. ALTHOUGH, UNDER VIRGINIA LAW, PLAINTIFFS' SURVIVAL CLAIM (SECOND ESTATE CAUSE OF ACTION) IS NOT VIABLE, SHOULD SUMMARY JUDGMENT BE PRECLUDED DUE TO PENNSYLVANIA'S SUPERIOR STATE INTEREST?

Recommended Answer: Yes.

ARGUMENT

- I. JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS' EXEMPLARY DAMAGES CLAIM (COUNT V).

- A. Elements under Pennsylvania (PA) Law: (1) *Reckless indifference to the rights of others*; (2) *Punitive damages against a principal*; and (3) *"Reckless Disregard of Safety"* Restatement (Second) of Torts, § 500.

1. The "Reckless Indifference to the Rights of Others" Standard.

The Supreme Court of Pennsylvania held that exemplary damages may be awarded based on a showing that the defendant's conduct, *inter alia*, exhibited a "reckless indifference to the rights of others."¹³ For awarding exemplary damages, Pennsylvania has adopted Restatement (Second) of Torts §908(2), "Punitive Damages," which sets forth a three-part inquiry for a jury award.¹⁴

As for the requisite liability, this Court has set forth the elements of exemplary damages under Pennsylvania law, in which punitive damages must be based on "outrageous" behavior, with either ill motive or "wanton misconduct," more often referred to as "reckless indifference to the interests of others," in which the actor intentionally disregarded either a known risk (of which the actor was aware) or an obvious risk (of which the actor should have been aware) creating a high probability that harm would follow. Two elements are required for this analysis: "[I]n Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk."¹⁵

¹³ The Supreme Court of Pennsylvania states:

This Court has embraced the guideline of Section 908(2) of the Restatement (Second) of Torts regarding the imposition of punitive damages: "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Punitive damages must be based on conduct which is "malicious,' 'wanton,' 'reckless,' 'willful,' or 'oppressive' ... " ... The state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious. (*Feld v. Merriam*, 485 A.2d 742, 747–748 (Pa. 1983) (citations omitted).)

¹⁴ Restatement (Second) of Torts §908(2) provides:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. (Restat 2d of Torts, § 908 (2) (2nd 1979).)

¹⁵ See *Keifer v. Reinhart Foodservice, LLC*, 2013 U.S. Dist. LEXIS 82025 at *52–53 (W.D. Pa. 2013) (opinion by the Hon. Joy Flowers Conti, United States District Judge) (citing *Weston v. Northampton Personal Care, Inc.*, 62 A.3d 947, 961 (Pa. Super. 2013) (other citations omitted)).

2. The “Punitive Damages Against a Principal” Standard.

Pennsylvania law, moreover, allows for punitive damages against a principal,¹⁶ if the actions of the agent(s) were “clearly outrageous.”¹⁷ Three elements must be met:

Punitive Damages Against a Principal: You may also award punitive damages against [name of principal], if you find that the actions of [name of agent]: First, were outrageous; Second, occurred during and within the scope of [name of agent’s] duties; and Third, were not committed to satisfy [name of agent’s] personal ill will or malice, but instead were committed with the intent to further [name of principal’s] interests. (Pennsylvania Suggested Standard Civil Jury Instructions, Fourth Edition, § 8.10 (Civ).)¹⁸

3. The “Reckless Disregard of Safety” Standard.

Under Pennsylvania law, the applicable standard for awarding punitive damages is “reckless disregard of safety.” In 1949, the Pennsylvania Supreme Court adopted Restatement (Second) of Torts, § 500. (*Tayar v. Camelback Ski Corp.*, 47 A.3d 1190, 1200–1201 (Pa. 2012), citing *Fitsko v. Gaughenbaugh*, 69 A.2d 76 (1949).) “Reckless disregard of safety” is defined as follows:

¹⁶ “Punitive damages may be awarded on the basis of vicarious liability. In Pennsylvania, there is no requirement that an agent commit a tortious act at the direction of his principal, nor must the principal ratify the act, in order for punitive damages to be imposed on him.” (*Shiner v. Moriarty*, 706 A.2d 1228, 1240 (Pa. Super. 1998) (citation omitted).)

¹⁷ “Under Pennsylvania law a principal may be held vicariously liable for the punitive damages of its agents if the actions of the agent were “clearly outrageous,” were committed during and within the scope of the agent’s duties, and were done with the intent to further the principal’s interests.” (*Loughman v. Consol.-Pennsylvania Coal Co.*, 6 F.3d 88, 101 (3d Cir. 1993) (citation omitted).)

¹⁸ The “Subcommittee Note adds: “This instruction is taken from *Loughman v. Consol.-Pennsylvania Coal Co.*, 6 F.3d 88, 101 (3d Cir. 1993), citing *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243, 1264 (Pa. Super. 1983).) Pennsylvania, however, has not adopted Restatement (Second) of Torts § 909 (“Punitive Damages Against a Principal”). See *Dean Witter Reynolds Inc. v. Genteel*, 499 A.2d 637, 643 (Pa. Super. 1985). See also *Skeels v. Universal C. I. T. Credit Corp.*, 335 F.2d 846, 852 (3d Cir. 1964).

§ 500 Reckless Disregard of Safety Defined

The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. (Restat 2d of Torts, § 500 (2nd 1979).)¹⁹

B. Analysis under PA Law: *The elements of Plaintiffs' exemplary damages claim are met.*

Applying the facts regarding the egregious manufacturing practices at Goodyear's Topeka, Kansas plant, as testified to by the whistleblower, Orlando Guadalupe (recited in the "COUNTER-STATEMENT OF FACTS" section above), Plaintiffs offer the following analysis:

1. The "Reckless Indifference to the Rights of Others" Standard.

As applied to the instant facts, a reasonable jury could find that: (1) Goodyear's Topeka plant managers had a subjective appreciation of the risk of harm (tire "blowouts") to which the plaintiff (in the class of intended and foreseeable consumers of Goodyear tires) was exposed; and (2) Goodyear's managers oversaw, and permitted, the production of defective Goodyear tires, in conscious disregard of that risk.

¹⁹ The Pennsylvania Supreme Court later elaborated on which of the two mental states of the actor, as set forth in Restatement (Second) of Torts, § 500, can justify punitive damages:

Comment a to Section 500 describes two distinct types of reckless conduct which represent very different mental states: (1) where the "actor knows, or has reason to know, ... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk;" and (2) where the "actor has such knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable man in his position would do so." ... This distinction is particularly important in determining what facts justify punitive damages

Under Pennsylvania law, only the first type of reckless conduct described in comment a to Section 500, is sufficient to create a jury question on the issue of punitive damages." Chambers v. Montgomery, 411 Pa. 339, 344, 192 A.2d 355, 358 (1963) (quoting comment b to Section 908[1] of the Restatement of Torts) (emphasis added). (SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702, 704–705 (Pa. 1991).)

2. The “Punitive Damages Against a Principal” Standard.

As applied to the instant facts, a reasonable jury further could find that punitive damages may be awarded against the principal (i.e. Defendant, Goodyear), in finding that the actions of Goodyear’s managers were: (1) outrageous (i.e. recklessly indifference to the rights of Goodyear’s foreseeable consumers); (2) where such recklessly indifferent actions occurred during and within the scope of Goodyear’s managers’ duties to manufacture safe Goodyear tires (applying Pennsylvania’s “*as safe as possible as soon as possible*” public policy); and (3) which actions were not committed to satisfy Goodyear’s managers’ personal ill will or malice, but instead were committed with the intent to further Goodyear’s commercial interests (i.e. to maximize Goodyear’s profit margins).

3. The “Reckless Disregard of Safety” Standard.

A reasonable jury further could find that the conduct of Goodyear’s Topeka plant managers were in reckless disregard of the safety of Goodyear’s intended and foreseeable consumers (including Plaintiffs), since Goodyear’s managers intentionally acted and fail act in meeting their duty to Goodyear’s intended and foreseeable consumers (including Plaintiffs), knowing or having reason to know of facts which would lead a reasonable tire manufacturer (i.e. Defendant, Goodyear) to realize, not only that these Goodyear managers’ conduct created an unreasonable risk of physical harm to another (i.e. defective Goodyear truck tires increase the risk of “blowouts”, and that such risk is substantially greater than that which is necessary to make Goodyear’s conduct merely negligent.

C. Conclusion under PA Law: *Therefore jury questions preclude summary judgment on Plaintiffs’ exemplary damages claim.*

D. Elements under Virginia (VA) Law:

Virginia law is similar to Pennsylvania law. Similar to Pennsylvania, the Supreme Court of Virginia law recognizes Restatement (Second) of Torts § 500. See *Infant C. v. Boy Scouts of*

America, Inc., 391 S.E.2d 322, 327 (Va. 1990).²⁰ The only major difference between Pennsylvania law and Virginia law as regards punitive damages possess such damages are capped in Virginia. The U.S. Supreme Court has summarized Virginia's punitive damages laws follows:

Many States have gone further by imposing statutory limits on punitive awards, in the form of absolute monetary caps, see, e.g., Va. Code Ann. § 8.01-38.1 (Lexis 2007) (\$ 350,000 cap), a maximum ratio of punitive to compensatory damages, see, e.g., Ohio Rev. Code Ann. § 2315.21(D)(2)(a) (Lexis 2001) (2:1 ratio in most tort cases). (*Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2623 (U.S. 2008).)

Therefore the Restatement (Second) of Torts § 500 “Reckless Disregard of Safety” Standard” is a basis for the award of punitive damages under both Pennsylvania and Virginia law (with the primary difference being that punitive damages in Virginia are capped, but not in Pennsylvania).

E. Analysis under VA Law: *The elements of Plaintiffs’ exemplary damages claim are met.*

The facts recited in § IV. B., *supra*, apply here. The analysis provided in applies to Virginia principles underlying the issue of exemplary damages.

F. Conclusion under VA Law: *Therefore jury questions preclude summary judgment on Plaintiffs’ exemplary damages claim.*

²⁰ The Virginia Supreme Court has stated:

In *Booth v. Robertson*, 236 Va. 269, 273, 374 S.E.2d 1, 3 (1988), we held that punitive damages are warranted not only by malicious conduct, but also by “negligence which is so willful or wanton as to evince a conscious disregard of the rights of others” In *Booth*, we followed *Friedman v. Jordan*, 166 Va. 65, 184 S.E. 186 (1936), where we said, “Wilful or wanton conduct imports knowledge and consciousness that injury will result from the act done. The act done must be intended or it must involve a reckless disregard for the rights of another and will probably result in an injury. Ill will is not a necessary element....” Id. at 68, 184 S.E. at 187. ... “[R]eckless disregard of the safety of another.” Restatement (Second) of Torts § 500 (1965). However they may be phrased, the foregoing labels all designate tortious conduct of a single species. (*Infant C. v. Boy Scouts of America, Inc.*, 391 S.E.2d 322, 327 (Va. 1990) (emphasis added).)

II. JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS' BREACH OF EXPRESS WARRANTY OF MERCHANTABILITY CLAIM (COUNT III).

A. Elements under Pennsylvania (PA) Law:

Goodyear asserts that "Plaintiffs' breach of express warranty claim fails under Pennsylvania law because plaintiffs have no evidence of an express warranty." (ECF No. 128, p. 18 of 21.) § 2313. Plaintiffs' Count III invokes 13 Pa. Cons. Stat. Ann. § 2313 ("Express warranties by affirmation, promise, description or sample."). (Am. Compl. ¶ 119, ECF No. 19.) This statute provides, in part:

(a) *General rule.*—Express warranties by the seller are created as follows: (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise. ... (b) *Formal words or specific intent unnecessary.*—It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty." (13 Pa. Cons. Stat. Ann. § 2313.)

B. Analysis under PA Law: *The elements of Plaintiffs' breach of express warranty claim are met.*

Goodyear's express warranty is publicly available as "Goodyear Commercial Truck Tire Limited Warranty."²¹ Since the subject Goodyear tire was a medium commercial truck tire

²¹ Goodyear's warranty provides, in pertinent part: "You are eligible for the benefits of this warranty if you meet all the following criteria: You are the owner or authorized agent of the owner of new Goodyear Unisteel® radial light truck or medium radial truck tires, including mud and snow and on/off road tires; ... Your Goodyear truck tires have been used only on the vehicle on which they were originally installed according to the vehicle manufacturer's or Goodyear's recommendations; Your tires were purchased on or after September 1, 2002." (See "Goodyear Commercial Truck Tire Limited Warranty" (2003) attached to Plaintiff's Appendix as Exhibit 11.) See "Goodyear Commercial Truck Tire Limited Warranty," available online at <https://web.archive.org/web/20040615113109/http://www.goodyear.com:80/truck/pdf/CommTruckWarrStd.pdf>. (Attached to Plaintiff's Appendix as Exhibit 11.)

purchased after 2002, this express warranty applies. Although the time-limited (four-year) terms had expired, the casing warranty was not time barred: “Casings may continue to be warranted beyond the new tire coverage.” (Id. at p. 5.) On December 2, 2002, Goodyear issued a press release announcing the G647 RSA tire, which stated, in part:

According to Ted J. Fick, vice president of Goodyear’s commercial tire division, the G647 RSA/RSS and G614 RST tires provide high mileage, consistent treadwear, durability and long casing life. ... Special compounds found in the G647 RSA/RSS extend tire life even longer by combating ozone exposure, which can deteriorate the rubber in tires ... to increase tire life based on age versus mileage.”²²

Given that the subject tire was relatively new and newly installed at the time of purchase, and that the mileage of the subject Goodyear tire, at the time it failed on July 15, 2011, was 26,947 miles (99,442 minus 72,495), the tire fell far below Goodyear’s express warranty of “high mileage, consistent treadwear, durability and long casing life.”

C. Conclusion under PA Law: *Therefore jury questions preclude summary judgment on Plaintiffs’ breach of express warranty claim.*

D. Elements under Virginia (VA) Law:

Similarly, Goodyear also asserts that “Plaintiffs’ express warranty claim fails because they have failed to produce evidence of the warranty allegedly at issue.” (ECF No. 128, p. 13 of 21.) Goodyear cites to Va. Code Ann. § 8.2-313 (“Express warranties by affirmation, promise, description, sample” which has the same title as—and is almost identical to—its Pennsylvania statutory counterpart, 13 Pa. Cons. Stat. Ann. § 2313 (“Express warranties by affirmation,

²² See “Goodyear Offers 2 New Tires For P&D Applications,” available online at <http://www.truckinginfo.com/channel/aftermarket/news/story/2002/12/goodyear-offers-2-new-tires-for-p-and-d-applications.aspx>. (Attached to Plaintiff’s Appendix as Exhibit 12.)

promise, description or sample”). This similarity is because both Pennsylvania and Virginia statutes codify the Uniform Commercial Code.

E. Analysis under VA Law: *The elements of Plaintiffs’ express warranty claim are met.*

See the analysis in § III. B., *supra*.

F. Conclusion under VA Law: *Therefore jury questions preclude summary judgment on Plaintiffs’ express warranty claim.*

III. JURY QUESTIONS PRECLUDE SUMMARY JUDGMENT AS TO PLAINTIFFS’ FAILURE TO WARN CLAIM (COUNT I: NEGLIGENCE FOR MANUFACTURING DEFECT).

A. Elements under Pennsylvania (PA) Law: *(1) supplier knows chattel “likely to be dangerous” for intended use; (2) knows users are unaware of its dangerous condition; (3) “fails to exercise reasonable care” to warn users (established by expert opinion).*

Expert testimony is required to support a negligent failure to warn claim.²³ Pennsylvania, moreover, has adopted Restatement (Second) of Torts § 388,²⁴ under which a manufacturer is “subject to liability” for “physical harm caused by the use of the chattel” if the manufacturer (“supplier”): (a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and (c) fails to exercise reasonable care to inform

²³ “Under Pennsylvania law, expert testimony must be presented to establish the design defect and failure to warn claims. See *Oddi v. Ford Motor Co.*, 234 F.3d 136, 159 (3d Cir. 2000) (stating that expert testimony ‘is generally required in a products liability case where a defect is alleged’ unless the defect is obvious and within the comprehension of the average juror).” (*Kline v. Zimmer Holdings, Inc.*, 2015 U.S. Dist. LEXIS 87440, at *4 (W.D. Pa. July 6, 2015) (opinion by Joy Flowers Conti, Chief United States District Judge).)

²⁴ See *Mazur v. Merck & Co.*, 964 F.2d 1348, 1353–54 (3d Cir. Pa. 1992); *Overbeck v. Cates*, 700 A.2d 970, 972 (Pa. Super.1997). Goodyear has not noted the relevance of Restatement (Second) of Torts § 388 in the context of Pennsylvania law (ECF No. 128, pp. 17–18 of 21), although Goodyear has cited Restatement (Second) of Torts (but without specifying § 388) under its discussion of Virginia law. (*Id.* At p. 11 of 21.) Under Pennsylvania law, negligent manufacturing defects are governed under Restatement (Second) of Torts § 395. (*Lance v. Wyeth*, 85 A.3d 434, 445 n. 13 (2014).)

them of its dangerous condition or of the facts which make it likely to be dangerous.” (Restatement (Second) of Torts § 388.)

B. Analysis under PA Law: *The elements of Restatement (Second) of Torts § 388 are met.*

Goodyear states that none of Plaintiffs’ experts have opined on the negligent failure to warn claim. (ECF N. 128, p. 17 of 21.) Plaintiffs now rely on the expert opinion of Dennis Carlson, P.E. (See *Affidavit of Dennis Carlson*, attached to Plaintiff’s Appendix as Exhibit 10.)

(1) *Duty to warn:* Mr. Carlson opines that Goodyear had a duty to warn the consumer about the effects of aging, or to advise the consumer to replace the tire after six years, as advised by many other companies in the automobile industry; (2) *Breach of Duty to Warn:* Mr. Carlson knows of no warnings that Goodyear provides advising consumers of the risks of aged tires; (3) *Causation:* The subject tire was approximately 8.5 years old at the time of the incident on July 15, 2011. The failure to warn consumers of such risks likely contributed to this incident, because the failure of the tire occurred in a similar manner to the failure of other “aged” tires. The catastrophic failure of the subject Goodyear tire caused the loss of vehicle control that resulted in fatal and serious injuries. (See *Affidavit of Dennis Carlson*, attached to Plaintiff’s Appendix as Exhibit 10.)

C. Conclusion under PA Law: *Therefore jury questions, supported by expert opinion, preclude summary judgment on Plaintiffs’ failure to warn claim.*

Since a failure to warn claim is a type of products liability claim, and since Dennis Carlson has been admitted as an expert by this Court, Mr. Carlson’s testimony should be heard by the jury at trial. (See *Affidavit of Dennis Carlson*, attached to Plaintiff’s Appendix as Exhibit 10.) Therefore summary judgment should be precluded on this issue.

D. Elements under Virginia (VA) Law: (1) *supplier knows chattel “likely to be dangerous” for intended use;* (2) *knows users are unaware of its dangerous condition;* (3) *“fails to exercise reasonable care” to warn users (established by expert opinion).*

See analysis in § I. A., *supra*.

- E. Analysis under VA Law: *The elements of Restatement (Second) of Torts § 388 are met.*

See analysis in § I. B., *supra*.

- F. Conclusion under VA Law: *Therefore jury questions, supported by expert opinion, preclude summary judgment on Plaintiffs' failure to warn claim.*

See analysis in § I. C., *supra*.

IV. ALTHOUGH, UNDER VIRGINIA LAW, PLAINTIFFS' STRICT LIABILITY FOR MANUFACTURING DEFECT CLAIM (COUNT II) IS NOT VIABLE, SUMMARY JUDGMENT SHOULD BE PRECLUDED DUE TO PENNSYLVANIA'S SUPERIOR STATE INTEREST.

Goodyear states that “Virginia does not recognize a cause of action for strict liability.” (ECF. No. 128, p. 13 of 21.) Goodyear then cites to two district court cases—one in Virginia and the other Pennsylvania—without offering any analysis.²⁵ However, Plaintiffs concede Goodyear's point of law here: “Virginia law has not adopted § 402A of the Restatement (Second) of Torts and does not permit tort recovery on a strict-liability theory in products-liability cases.” (*Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.*, 374 S.E.2d 55, 57 n. 4 (1988).) That said, summary judgment should be precluded due to Pennsylvania's superior public policy interest. (See **PUBLIC POLICY STANDARD**, *supra*.)

²⁵ (1) *Sanyal v. Toyota Motor N. Am.*, No. 14-960, 2015 WL 236649 (E.D. Va. Jan. 15, 2015); and (2) *Brown v. Kia Motors Corp.*, No. 06-804, 2009 WL 866846, at *12 (W.D. Pa. Mar. 30, 2009). (ECF. No. 128, p. 13 of 21.) Being federal district court decisions, they are non-binding, of course. The *Brown* Court, moreover, has no persuasive value whatsoever, as the Hon. Terrence M. McVerry, United States District Judge, simply dismisses the strict liability claim, with no legal analysis whatsoever. The *Sanyal* Court, however, states: “Virginia does not permit tort recovery on a strict-liability theory in products liability cases.” (*Sanyal v. Toyota Motor N. Am., Inc.*, 2015 U.S. Dist. LEXIS 5667 [= 2015 WL 236649], at *5 (E.D. Va. 2015) (citations omitted).)

V. ALTHOUGH, UNDER VIRGINIA LAW, PLAINTIFFS' SURVIVAL CLAIM (SECOND ESTATE CAUSE OF ACTION) IS NOT VIABLE, SUMMARY JUDGMENT SHOULD BE PRECLUDED DUE TO PENNSYLVANIA'S SUPERIOR STATE INTEREST.

Goodyear states that "Virginia law does not permit concurrent recovery for both wrongful death and survival. See Va. Code §§ 8.01-25, 8.01-56." (ECF. No. 128, p. 16 of 21.) Goodyear then cites to *Hendrix v. Daugherty*, 457 S.E.2d 71, 75 (Va. 1995) ("The plain language contained in Code §§ 8.01-25 and -56 unequivocally mandates that a person may not recover for the same injury under the survival statute and the wrongful death statute."). However, Plaintiffs concede Goodyear's point of law here: "Accordingly, plaintiffs cannot bring both their wrongful death and survival claims to trial." (ECF. No. 128, p. 17 of 21.) That said, summary judgment should be precluded due to Pennsylvania's superior public policy interest. (See **PUBLIC POLICY STANDARD**, *supra*.)

WHEREFORE, premises considered, Plaintiffs respectfully request that this honorable Court deny *The Goodyear Tire & Company's Motion for Partial Summary Judgment*.

Date: October 9, 2017

Respectfully submitted,

PRIBANIC & PRIBANIC, LLC

By: /s/ *Victor H. Pribanic*

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** On Plaintiffs' Brief Opposing
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Associate Attorney

Counsel for Plaintiffs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla, *Plaintiffs*,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY**, *Defendant*.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF’S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

NOW COME Plaintiffs, Brenda Charcalla, Brock Charcalla and Dalton Charcalla—by and through their attorneys—to file their within “*Plaintiffs’ Responsive Concise Statement of Material Facts in Opposition to Goodyear’s Motion for Partial Summary Judgment*” pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.C.1. Genuine issues of material fact preclude the entry of partial summary judgment in Goodyear’s favor. Plaintiffs request that the Court deny Goodyear’s motion and enter judgment in favor of Plaintiffs and against Goodyear.

PLAINTIFF’S RESPONSES TO GOODYEAR’S AVERMENTS

1. *This lawsuit concerns a single vehicle accident that occurred on July 15, 2011 in Kent County, Virginia.*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact. By way of clarification, the accident took place in “New Kent” in “New Kent County.” (Id. at VASP 05.)

2. *The vehicle involved in the accident was a used 2000 Freightliner FL60 truck (“Vehicle”), and it was towing a 2003 Alfa Toyhouse camper (“Camper”).*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact.

3. *The front left tire, which allegedly sustained a tread separation during the Vehicle’s operation,*

was a Goodyear G647 all-steel commercial truck tire (the “Subject Tire”), which was manufactured at a plant located in Topeka, Kansas in the 2nd week of 2003 – over 8 1/2 years before the accident occurred.

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact. By way of clarification, the Virginia State Police Report states: “The contributing defect to the crash appeared to be the [front] left tire which blew out.” ... As further clarification, the subject Goodyear tire was a 2003 G647 RSA 245/70R19.5, Load Range G, “bearing original serial #MJ93 WFAW 0203.”

4. *Prior to the accident, plaintiffs were vacationing in Virginia, having stayed at Virginia Beach campground for six days.*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact.

5. *At the time of the accident, plaintiffs had just begun their return trip to Erie, Pennsylvania.*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact.

6. *After the front left tire experienced a tread separation, the Vehicle’s operator, Gary Charcalla, steered the Vehicle to the left, exited the highway, lost control of the Vehicle, and struck several trees before the Vehicle landed on its side.*

Plaintiff’s Response: Admitted, in part. Denied in part. Admitted that Gary Charcalla “lost control of the Vehicle, and struck several trees before the Vehicle landed on its side.” Denied that “the Vehicle’s operator, Gary Charcalla, steered the Vehicle to the left.” Plaintiffs’ experts opine that, immediately after the front left tire experienced a tread separation, the driver lost steering (and braking) control of the Vehicle. See *Expert Report of William C. Wilson* (Forensic Mechanics), attached to Plaintiff’s Appendix as Exhibit 14 (at p. 3), and *Expert Report of Daniel Lee, Ph.D.* (Accident Reconstruction), attached to Plaintiff’s Appendix as Exhibit 15 (at p. 10). By way of further clarification, the subject Freightliner “struck three trees” in the median, according to the police report. (See Goodyear, Ex. A, at VASP 05.)

7. *Mr. Charcalla was killed instantly. Brenda Charcalla (Gary's wife), and her sons, Brock Charcalla and Dalton Charcalla, were each traveling in either the Vehicle or Camper at the time of the accident and allegedly sustained various injuries.*

Plaintiff's Response: Admitted in part; denied in part. Whether the driver died instantly is a genuine issue of material fact. Goodyear has misconstrued the word "Instantly" in ¶ 38 of the First Amended Complaint, which reads: "Instantly, this incident caused the death of the driver, Gary Charcalla, Decedent." Here, "Instantly" refers to the case at bar, i.e. "this incident," not that Gary Charcalla, the driver, died "instantly." One witness testified that he thought that Mr. Charcalla may still have been alive, although unresponsive. (See Deposition of Edgar Esquivel, 67:5-25; 68:1-25; 69:1-11; 118:5-25; 119:1-25; 120:1-16, attached to Plaintiff's Appendix as Exhibit 1.) Subject to this qualification, admitted as material fact.

8. *Brenda Charcalla, Brock Charcalla, and Dalton Charcalla each received medical treatment at the Virginia Commonwealth University Medical Center in Richmond, Virginia.*

Plaintiff's Response: Admitted as an undisputed fact. Admitted as a material fact.

9. *On August 18, 2003, the Vehicle was purchased from an auction in Ohio by "Gilby" Kosko, a family friend of the Charcallas and used car dealer, who purchased the Vehicle on the Charcallas' behalf in 2003. ... The tire was installed at the time of purchase.*

Plaintiff's Response: Admitted as an undisputed fact. Admitted as a material fact. By way of further clarification as the Goodyear's statement that the subject tire "was installed at the time of purchase," Brenda Charcalla testified that the Freightliner's front tires were "new" at the time of purchase. (See Deposition of Brenda Charcalla, 49:2-25; 50:1-7; 133:19-22, attached to Plaintiff's Appendix as Exhibit 2.) Brenda Charcalla, in her supporting Affidavit, further avers:

When my husband, Gary L. Charcalla and I purchased the 2000 Freightliner FL 60 (that was involved in the accident on July 15, 2011) the two front tires on the truck looked new. Gary L. Charcalla told me he was "glad to see the two steer tires were brand new." I noticed that

the tires had what I refer to as “nipples” or the rubber pieces that stick out and fall off with use. I also noticed that the tire had plenty of tread like new tire would have. (See *Affidavit of Brenda Charcalla*, attached to Plaintiff’s Appendix as Exhibit 3.)

10. *In 2005, plaintiffs purchased the Camper in Florida.*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact.

11. *During their six (6) years of use, plaintiffs did not have any operational or mechanical problems with the Vehicle or the Subject Tire.*

Plaintiff’s Response: Admitted as an undisputed fact. Admitted as a material fact.

12. *There is no evidence of the Subject Tire’s ownership history before it was installed on the Vehicle, and it is unknown who owned the Subject Tire or whether it had been sold (and resold) prior to its installation on the Vehicle.*

Plaintiff’s Response: Denied as stated. The subject tire was obviously owned by the “Seller,” i.e. “Fifth Third Bancorp and/or its affiliates, including Fifth Third Leasing Company,” as documented in the “Bill of Sale” dated August 18, 2003. (See Goodyear’s Appendix, Exhibit D.) That said, the ownership history prior to the Seller’s acquisition of the subject Freightliner is not known, except that that the Freightliner was repossessed and sold at auction: “The truck was actually a repossession and it was missing the hitch.” (See Deposition of Brenda Charcalla, 49:17–18, Plaintiff’s Appendix, Exhibit 2.)

13. *There is no evidence of the Subject Tire’s maintenance history prior to the purchase of the Vehicle.*

Plaintiff’s Response: Denied as stated. If the subject tire “was installed at the time of purchase” as a new tire—as Brenda Charcalla has testified and further averred by way of her affidavit (see Plaintiff’s Appendix, Exhibit 3)—then the Seller evidently purchased the subject tire, presumably from a Goodyear dealer, prior to installing the two new front tires on the subject Freightliner.

14. *There is no documentation evidencing the Subject Tire's maintenance history after the purchase of the Vehicle, beyond Brenda Charcalla's testimony that Gary Charcalla was solely responsible for the maintenance and upkeep of tires.*

Plaintiff's Response: Denied, as stated. According to the Affidavit of Jack "Mel" Stein, proprietor of J & C Enterprises, the subject Freightliner was maintained and inspected annually from the time of purchase through July 2011. (See Plaintiff's Appendix, Exhibit 4, previously filed as ECF No. 80-7.) As further documentation of the maintenance of the subject tire, please see Plaintiff's Appendix, Exhibit 4, which is a document showing the "Semi-Annual" Pennsylvania State inspection of the subject Freightliner on April 27, 2011. Note that the box, "Tires, Wheels," is checked. The condition of the tires is one of the routine tasks to be performed during a Pennsylvania state inspection, as required by statute. See Commonwealth of Pennsylvania, Vehicle Equipment and Inspection Regulations (2014), attached to Plaintiff's Appendix as Exhibit 5 (at E-1 to E-2).¹

15. *There is no evidence of the Subject Tire's usage history either before after the purchase of the Vehicle, e.g., evidence showing its mileage and the conditions to which it was subjected.*

Plaintiff's Response: Denied as stated. The condition prior to purchase was that the subject tire was new. Brenda Charcalla testified that the tires were new at the time of purchase. (See Deposition of Brenda Charcalla, 49:2–25; 50:1–12; 133:19–22, attached to Plaintiff's Appendix as Exhibit 2.)

¹ These regulations command: "175.65. Tires and Wheels. (a) Condition of Tires and Wheels —Tires and wheels shall be in safe operating condition as described in §175.80 (relating to inspection procedure); ... (g) Tires and Rims – The axles of a vehicle specified under this subchapter shall be equipped with the number and type of tires and rims with a voting rating equal to or higher than those offered by the manufacturer." (67 Pa. Code § 175.65(a) and (e); see also §175.80(e) and (g), "Beneath the Vehicle Inspection" at E-12.) (Id.)

PLAINTIFF'S STATEMENT OF SUPPLEMENTAL FACTS

16. On August 18, 2003, when Gary Charcalla purchased the subject Freightliner, the odometer reading was documented as "72,495" miles. (See the "Bill of Sale," Goodyear's Appendix, Exhibit D, ECF No. 129-4.)
17. On July 15, 2011, at the time of the accident, the subject Freightliner's odometer reading was documented as "Odometer 99442 Readable." (See Copart Inventory, attached to Plaintiff's Appendix as Exhibit 7, previously filed as ECF No. 114-2, p. 4 of 14.) A photograph of the odometer attached to Plaintiff's Appendix as Exhibit 8, from the Deposition of Justin Vanderschaaff, Exhibit 1, p. 21 of 80 pp.)
18. Given that the subject tire was relatively new and newly installed at the time of purchase, the mileage of the subject Goodyear tire, at the time it failed on July 15, 2011, was 26,947 miles (99,442 minus 72,495).
19. On December 2, 2002, Goodyear issued a press release announcing the G647 RSA tire, which states, in pertinent part:

According to Ted J. Fick, vice president of Goodyear's commercial tire division, the G647 RSA/RSS and G614 RST tires provide high mileage, consistent treadwear, durability and long casing life. ... Special compounds found in the G647 RSA/RSS extend tire life even longer by combating ozone exposure, which can deteriorate the rubber in tires. "Goodyear tires offer a high level of anti-oxidants and anti-ozonants in the sidewall compound, which reduces cracking," said Fick. "The compounds also add protectants to the tire casing so that they slowly migrate to the surface as the tire ages." (See "Goodyear Offers 2 New Tires For P&D Applications" (December 2, 2002), available online at <http://www.truckinginfo.com/news/print/story/2002/12/goodyear-offers-2-new-tires-for-p-and-d-applications.aspx>. (Accessed September 23, 2017, attached to Plaintiff's Appendix as Exhibit 12.)

The subject tire was perforce not more than eight months old when installed on the Vehicle.

20. In the case captioned, *United States ex rel. Orlando Guadalupe Bringing This Action on Behalf of the United States of America, Plaintiffs, v. The Goodyear Tire & Rubber Company, Defendant*, (Civil Action Number 5:01 CV 2007, United States District Court, Northern Western District of Ohio, Eastern Division), the oral/video deposition of Plaintiff, Orlando Guadalupe, was taken on September 22, 2003.² (“*Guadalupe Depo*” and “*Id.*”) (See *Deposition of Orlando Guadalupe*, attached to Plaintiff’s Appendix as Exhibit 9.)

Guadalupe was hired by Goodyear at the Topeka, Kansas, plant on November 28, 1994. (*Guadalupe Depo*, 46:5–7; 51:4, Exhibit 9.) He was terminated in March 2002. (*Id.*, 148:14–16.) This was less than a year before the subject Goodyear G647 RSA tire was made in January 2003. Guadalupe first worked in Department 5430,³ which manufactured tires for “the regular trucks.” He had two job titles: “Our title was two: component processors. We were tubers.” (*Id.*, 47:6–8.) He was also called an “operator” of the “tubers.” (*Id.*, 192:8.) In the truck tires division, Guadalupe operated an “8-8 [8-by-8] machine, tubing machine.” (*Id.*, 65:19.) This machine made the belts for Goodyear’s radial truck tires. He also operated a “ten-by-eight-by-six tuber.” (*Id.*, 67:5–6.) Guadalupe testified that, at the Topeka plant, an employee was considered a “good worker,” even if that worker “was late for work every day” or even if “drunk” as long as that worker could “produce”: “As long as you meet your quota, as long as you got production and the boss has got his numbers, then you’re okay. You’re a good worker.” (*Id.*, 57:17–25, Plaintiff’s Appendix, Exhibit 9.) At some point later on, Guadalupe was hired in Department 1540, which made “[f]rom 57-inch Earthmover tires out to the reg — regular truck tires.” (*Id.*, 47:18–20.) He then worked in

² The transcript was unsealed, and is now archived in the Federal Records Center in Chicago (Identifiers: FRC Location 856734-7195, Accession No. 021-07-0150), from where this transcript was ordered by counsel for Plaintiff.

³ Jane Stotts was Guadalupe’s “first supervisor in Department 5430.” (*Id.*, 55:21–22.) After that, Lance Sumpter was his supervisor. (*Id.*, 54:1–2.) In Department 1540, “Deanna [*sic*: read: “Dena”] Ballard” was his supervisor. (51:21–22; 109:13–14.) Guadalupe was a member of the United Steelworkers of America, Local 307. (*Id.*, 83:15–18; 101:2–3.)

Department 1540, F-Line as a “tire layer” (i.e. “curer”) where he made “the military tires” and “some farm tires.” (Id., 48:3–5.) His last job at Goodyear in that same department was as an “inserter.” (Id., 49:16–25.) Here, the term “inserter” refers to “production as the actual curing or inserting of a tire,” which also included “bladder changing” and “assembling the bladders.” (Id., 54:10–25.) The time frames for each of these positions is not entirely clear from the deposition testimony: “I’m just not sure of the time frame.” (Id., 48:18.) He worked “12-hour days.” (Id., 59:16.)

In Department 5430, which was the truck tire division where all radial truck tires (including the subject G647 RSA line of tires was made), there was an incident where “a supervisor by the name of Larry Sumpter disciplined me and the entire crew for running bad stock on a conveyor belt.” (Id., 54:1–4.) A plain reading of this statement indicates that “bad stock” refers to an unspecified problem in the production of components for truck tires. In the Earthmovers section, Guadalupe “was responsible for ... 11 or 12 presses, and two of them were military tires. The others were for radial tires, and we had a few bias tires that we had to cure as well.” (Id., 143:9–17.) He cured “[h]alf a dozen” different kinds of tires. (Id. 142:22–25; 143:1.) Taking his combined experience in the truck tires division (Department 5430) and the Earthmovers division (Department 1540), Orlando Guadalupe had experience making components (belts, tread and sidewalls) for Goodyear’s radial truck tires, and had experience in curing them as well. Obviously this would have included production of Goodyear’s G647 RSA line of tires. (Plaintiff’s Appendix, Exhibit 9.) One problem at the Topeka plant was asbestos.⁴ While in the Earthmovers division,

⁴ Orlando Guadalupe testified:

Q. When did you file a complaint with OSHA on asbestos?

A. We were working in Department 5430 on—on the 8-8 machine, tubing machine. And right next to it, there is a—a roller machine that rolls. And on the piping, it was exposed and asbestos was coming out of it. The manager says, “It’s not asbestos. Keep working.” It was a hot area. We had fans blowing, and asbestos was flaring [sic: read “flying”] everywhere. I told the manager, “We got asbestos. Let’s get somebody to cover this up.” (*Guadalupe Depo*, 65:16–25, Plaintiff’s Appendix, Exhibit 9.)

Guadalupe reported seeing “oil falling from the hoist and the rafters on [onto] the floor.” (Id., 94:25; 95:1–2.) The work area was one of “extreme heat.” (Id., 95:3.)

According to Guadalupe, there were defects in the two-and-a-half ton truck tires and the Hummer tires, which he reported. Inspectors from Goodyear’s Quality Control team “inspected the tires, found them to be defective and informed the manager about them.” Then the “Area Manager, Tim Brock, said to pass them through.” On another occasion, Guadalupe asked a Quality Control worker about a tire that was lacking a lot of “porcupines” on one side after curing. The lack of “porcupine needles” was a clear sign that “the air didn’t completely siphon out of the tire while it was curing” which would result in “a defective cir.” (Id., 172:10–13.) The answer was: “Scrap it. Don’t lay it until we get it fixed.” But supervisor Tim Brock, having overheard this conversation, ordered Guadalupe: “Keep curing the tires.” (Id., 150:2–24.) The scrap tires were then sanded down, extra rubber added, and the defective tires cured again, such that “Goodyear sold repair tires as new, quality tires.” (Id., 136:25; 137:1–25.) He testified: “I saw rubber added to the inside of the tire itself.” (Id., 179:21–22.) He personally witnessed what what going on in the Inspect and Repair Department. (Id., 140:12–25; 141:1–8.)

When asked if he had personally witnessed repairs to defective tires, Guadalupe answered:

Q. Directing your attention to the second to the last sentence about the tires being sanded down, extra rubber being added, and the defective tire being cured again, what is your basis for believing that that happened?

A. I saw it.

Q. Where did it happen in the plant?

A. From my work area, you—you can see the Inspect and Repair Department, which is part of [Department] 1504 (sic: read “1540”). And there are, that’s where they repair and inspect—pretty much inspect and repair the tires. There when I—That’s when I saw the employees taking care of not just the military tires, *but all the tires as well.* (Id.,

138:1–13, emphasis added, Plaintiff’s Appendix, Exhibit 9.)

A plain reading of “*but all the tires as well*” would include the radial truck tires produced at Goodyear’s Topeka plant at that time. Guadalupe testified that “I’ve learned and was trained by Goodyear, you know, what constitutes a good or bad tire.” (Id., 172:18–19.) Not only were there problems in the curing process involving Goodyear’s radial truck tires, there were serious issues with making the components as well.⁵ Orlando Guadalupe testified:

A. As an operator, I had a specification book right in front of me. I need that book to push my buttons to make my rubber go down through the extruder and come out the heads. And when it’s coming through the—on the conveyor belt, I need to monitor that the weight of it, the width of it, and if—if I don’t meet those tolerance levels, at that point, I have to adjust my speed on the conveyor belts, my speed on the extruder, in order to meet my weight and with as well. And it doesn’t stop there. About 30—maybe 40, 50 feet down, you got the skiver, and that’s where it cuts the tires, and there they’ll—Normally the—the gum stripper will monitor that to see—see if it’s cutting right. ...

Q. Okay. Is it—is it—Is it your allegation that you produced treads that were outside the weight specifications?

A. Yes.

Q. When you made treads, with a overweight or underweight or both?

A. Some of them were underweight. Some of them were over—overweight, or they were—were heavy, should I say. ...

Q. When you produced components that—that were, according to you, out of specification, did you report to anybody that they were out of specification?

A. Every time.

Q. And—And what were you told?

A. “Keep going.”

Q. And who—who in—In other words, you were told to continue making—

A. Yes.

Q. —components that didn’t meet specification—

A. Yes. (Guadalupe Depo, 192:8–25; 193:1–24, Plaintiff’s Appendix, Exhibit 9.)

Although the main focus of his testimony was production of defective Humvee tires for the U.S. military in Iraq (id., 200:9–10), Orlando Guadalupe, as an Operator, was making components for Goodyear’s radial truck tires at the very same time. “Components” included not only treads, but belts and sidewalls. Here, Guadalupe testified that, whenever various components were “out of specification,” he would report the problem, “Every time.” (Id.) Yet he was routinely told: “Keep going.” (Id.) He would report these problems to the responsible managers, one of whom was Jane Stotts, the other being Larry Sumpter. (Id., 194:1–4.) Both gave Guadalupe the instructions to “Keep going.” (Id.)

Another manager, Alan Stueve, who was Jane Stotts’ supervisor, knew of this problem. (Id., 194:6–12.) One witness to “the production of treads that did not meet specification” was coworker Sam Mitchell, along with “Art,” who was the operator of the 8-8 tuber (which produced the steel belts for the radial truck tires) at that time, which was right next to the 10-8 tuber. (Id., 194:13–24.) Guadalupe also operated the 8-8 tuber that produced belts for the radial truck tires: “We were working in Department 5430 on—on the 8-8 machine, tubing machine.” (Id., 65:18–19.) This machine was manned by a team of several workers. Guadalupe was the Operator. He testified that there was a “gum stripper” at the “skiver” as well. (Id., 192:8–21.) He had also had prior experience as a gum stripper. (Id. 276:4–12.) At the end of an extruder is the “booking station.” (Id., 195:8–10.) The booking station would be manned by a “booker” who was “the last man at the end” of the extruder (or “tuber”). (Id., 189:20–22.) These components would then go

to the tire builders in the regular truck tires department i.e. the “Tire Department.” (Id., 195:25; 196:1.) Guadalupe testified that the tire builders in the Tire Department did not know that they were being given defective components.⁶ Every time Guadalupe reported these problems, Goodyear’s managers would instruct him to keep on producing: “But if management says, ‘Continue,’ we have no choice. We have to continue. If not, that will be grounds for termination for disobeying an order.” (Id., 196:9–12.)

Another problem that Guadalupe testified to was “foreign material” in the belts, sidewalls and tread, and of “cured rubber in the rubber itself” (id., 188:24).⁷ This “scrap rubber” or “cured rubber” that did not meet “the tolerance level” reached the skiver, then the booker would place the defective component in a set of slanted shelves called a “trap.” (Id., 189:14–25.)⁸ In other words, this “hard cure” would routinely be send back to be re-milled by the milling machine, and

⁶ Orlando Guadalupe testified:

Q. What steps do you allege were not being followed?

A. If the component itself that comes out of my extruder and gets down to the end of the—of the conveyor belt where the booking station is at, if it didn’t meet their weight requirement, if it doesn’t meet their width requirement, then technically it is a scrap piece of component you can’t use. But if you book the component, the tire builder doesn’t know anything. He just knows that he’s got a trap with components and he’s going to use. And he’ll find out the hard way by it when he begins to build his tire. So on—on—on—on that part, Goodyear didn’t—didn’t maintain their—their standard, which says, “*Protect thy good name.*” (Id., 195:6–20, Plaintiff’s Appendix, Exhibit 9; emphasis added to highlight Goodyear’s motto.)

⁷ Orlando Guadalupe testified:

A. Sometimes we get lumpy rubber, ... and I won’t even be ... able to recognize it because it’s on the skid. It looks good to me. So once it gets out of the head, if it comes out lumpy, then I cut off and explain to the manager. ... And normally we would change the skid and things would run fine. And then halfway through the skid, you got ... more cured rubber coming through. (Id., 189:4–14, Plaintiff’s Appendix, Exhibit 9.)

⁸ Orlando Guadalupe further testified:

A. If that rubber comes through and it’s lumpy, it’s a bad cure really. Because Goodyear has a ... terminology and one of them is “soft cure,” “hard cure.” A soft cure will be acceptable to pass through. A hard cure will be one that probably you want to pass through, so cut it off and send it back to re-mill. (Id., 190:5–10.)

then fed back into the extruder, unless the “hard cure” was “too lumpy,” in which case whether or not to re-mill was a decision left the manager. (Id., 190:16–19). The mill machine would melt the scrap, and then cut the scrap into utility pieces, which routinely would be fed backer into the extruder. Although Guadalupe did not go into detail, the “scrap” would be exposed to contamination by foreign material, whether in the trap at the booking station, or if thrown onto a palette by the Operator (or his assistant). The result of this contamination of the green rubber compound with “foreign material” is that this, in and of itself, would render the tire “defective.”⁹ Here, Guadalupe refers to “my components.” In other words, he knew full well that he was producing defective components with “foreign material” that was compromising the quality of the tires that would be cured using these defective components.

Guadalupe mentioned other problems that could result in tire defects as well, such as a “bad bladder” being used to cure tires. He had prior experience “working as a bladder changer before I cured tires.” (Id., 274:9.) When that happens, “then you got yourself a bad tire inside.” (Id., 273:3–24.) Guadalupe also testified that “fast cooking” (speeding up curing times) “caused problems on —on the tires.” (Id. 157:12–16.) The purpose of shortening the curing time (by increasing the temperature to approximately 300° in the vulcanizing process, id., 160:20–24) was “let’s get more —so we can get more tires within the shift and make more money.” (Id., 157:12–25; 158:1–3.) As a result, Guadalupe further testified: “And if you cure these tires faster, sooner or later you’re going

⁹ Orlando Guadalupe testified:

- A. If those sidewalls has any foreign material in it, you can’t use them. If you use them, you’re going to have yourself either a blowout or a flat or—or—or—or a bad tire. ... If a tire has foreign material in it and—and the weight looks good and the width looks good and the cut at the skiver looks good, you still got yourself a bad tire because you got a bad component with foreign materials in it. And once the tire builder builds it, he’s not gonna know because he’s just going to go by the width, length and weight of that tire. ... But whatever defects we have on my components, it’s going to come up on the—on the tire itself when it’s cured. (Id., 198:24–25; 199:1–21, Plaintiff’s Appendix, Exhibit 9.)

to have yourself a bad tire.” (Id., 158:6–9.)¹⁰ Guadalupe was therefore concerned “about tread separations and blowouts.” (Id., 199:19–23.)¹¹ At the Topeka plant, there was a tension between meeting specifications and tolerations and meeting quotas. Obviously scrapping defective components and defective cured (“scrap”) tires significant adds to production costs and reduces production. So, in order to keep up with management demands and to meet or exceed production quotas, some of Goodyear’s tire builder tire would build tires with defective components anyway, to meet or exceed production quotas: “A: And a lot of tire builders, ... they won’t even allow it. ... They try to scrap that out. But due to production demand, get these tires in, meet your quota, which is fine.” (Id., 191:22–25.)

The end result, according to Guadalupe, was that “Goodyear was selling defective tires.” (Id., 284:4–5.) Orlando Guadalupe further testified:

A. Now, for the—for the percentage of tires that was worked on, when I was there, for every five tires that I cured, three of them would get repaired, two of them would go. So a—a rough number—to put a rough number, out of a hundred percent of Goodyear tires that was cured in the time frame that I was there, for four or five percent of it were defective for the purpose it didn’t meet Goodyear standards, the standards that Goodyear set forth for the employees to—to follow by. (Id., 176:9–22 (emphasis added), Plaintiff’s Appendix, Exhibit 9.)

¹⁰ There were problems with balancing the “two-and-a half-ton truck tires” tires as well as the radial truck tires. Coworker Darlene Adams, who was “the first African American female to come to work in Earthmovers, also worked “on the radial side” as well. In order to meet production quotas, Goodyear workers were placing color-coded tags on unbalanced tires and letting them go through. Adams then reported the balancing problems to management. (Id., 169:9–25; 170:1–14.) There were also tires exceeding width and weight specifications and tolerances. (Id., pp. 276–282.)

¹¹ Orlando Guadalupe testified:

A. As an operator, I have to meet those weight ... and width tolerance level. ... And if they don’t conform and you use them, what’s going to happen is the Tire department right next door to me will build the tire and you risk having ... with a press separation from the tread itself or ... from the sidewall itself ... from the tread. (Id., 191:11–21.)

Orlando Guadalupe clearly testified that he, and presumably Goodyear's managers, knew that defective tires could lead to a catastrophic "blowout": "If those sidewalls has any foreign material in it, you can't use them. If you use them, you're going to have yourself either a blowout or a flat or—or—or—or a bad tire." (*Guadalupe Depo*, 198:24–25.) Guadalupe further testified to such comments by Goodyear's Topeka plant managers as the following: "It's not asbestos. Keep working." (*Guadalupe Depo*, 65:16–25.) "Keep curing the tires." (*Id.*, 150:2–24.) "Keep going." (*Id.*, 192:8–25; 193:1–24.)

Guadalupe clearly pointed his finger at Goodyear's managers, who ultimately made the decisions to "get away with" all of these manufacturing defects that Mr. Guadalupe testified to at length: "After that, it's up to the ... powers to [*sic*: read "that"] be ... at the plant area where the big bosses are at, and they decide whether we can get away with it or we can go on with it or we need to stop and change things." (*Id.*, 167:12–16.)

WHEREFORE, premises considered, Plaintiffs respectfully request that this honorable Court deny *The Goodyear Tire & Company's Motion for Partial Summary Judgment*.

Date: October 9, 2017

Respectfully submitted,
PRIBANIC & PRIBANIC, LLC
 By: /s/ *Victor H. Pribanic*

Victor H. Pribanic, Esq.
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 * *On Plaintiff's Concise Statement of Facts.*
 PA Bar ID: #205265
Associate Attorney
Counsel for Plaintiffs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**APPENDIX
TO PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBITS

- Exhibit 1 Deposition of Edgar Esquivel.
- Exhibit 2 Deposition of Brenda Charcalla.
- Exhibit 3 Affidavit of Brenda Charcalla.
- Exhibit 4 Affidavit of Mel Stein.
- Exhibit 5 PA Inspection.
- Exhibit 6 PA Inspection Regulations.
- Exhibit 7 Freightliner Odometer.
- Exhibit 8 Freightliner Odometer Photo.
- Exhibit 9 Orlando Guadalupe Deposition.
- Exhibit 10 Dennis Carlson, Affidavit.

- Exhibit 11 “Goodyear Commercial Truck Tire Limited Warranty” (2003).
- Exhibit 12 “Goodyear Offers 2 New Tires For P&D Applications” (December 2, 2002).
- Exhibit 13 Goodyear, “Radial Truck Tire And Retread Service Manual.”
- Exhibit 14 Expert Report of William C. Wilson (Forensic Mechanics).
- Exhibit 15 Expert Report of Daniel Lee, Ph.D. (Accident Reconstruction).

Date: October 9, 2017

Respectfully submitted,

PRIBANIC & PRIBANIC, LLC

By: /s/ *Victor H. Pribanic*

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Lead Attorney

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Counsel for Plaintiffs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
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*The Honorable Joy Flowers Conti,
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Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 1

In The Matter Of:

Brenda Charcalla

vs.

The Goodyear Tire & Rubber Co.

Edgar Esquivel

May 13, 2014

MERRILL CORPORATION

Legalink, Inc.

311 South Wacker Drive
Suite 300
Chicago, IL 60606
Phone: 312.386.2000
Fax: 312.386.2275

Edgar Esquivel May 13, 2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - - - -

BRENDA CHARCALLA, CIVIL ACTION NO.
individually and as 1:13-CV-00204-JFC
personal representative of the
Estate of Gary Charcalla and as
guardian of her minor sons,
Brock Charcalla and Dalton
Charcalla,
Plaintiffs,

vs.

THE GOODYEAR TIRE & RUBBER
COMPANY,
Defendant

- - - - -

Tuesday, May 13, 2014

- - - - -

Oral Deposition of EDGAR ESQUIVEL,
taken at the law offices of DLA Piper, LLP, One
Liberty Place, 1650 Market Street, Suite 4900,
Philadelphia, Pennsylvania, commencing at 10:36
a.m., by and before Robin L. Clark, Registered
Professional Reporter and Notary Public in and
for the Commonwealth of Pennsylvania.

- - - - -

1 APPEARANCES:

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Appearing via

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7
8 DLA PIPER US, LLP

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For the Defendant

12
13 - - - - -

I N D E X

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EDGAR ESQUIVEL	
BY MR. RETHORE:	5, 134
BY MR. BUCK:	116, 137

E X H I B I T S

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Exhibit 2	Statement	98
Exhibit 3	Letter dated 5/2/14	99
Exhibit 4	Text Message Photographs	147

1 A. Because the truck kind of, you
2 know, I don't remember exactly how bad it was,
3 but I know it was all crushed, you know, into
4 it.

5 Q. And you were saying he wasn't --
6 you said it wasn't movement and you moved your
7 arms. You didn't see his arms move at any
8 point in time?

9 A. No. He didn't move his body at
10 all. Just his, you know, his skin, you can see
11 like he was breathing or something. You know
12 what I mean.

13 Q. Do you know if he was breathing?

14 A. I didn't -- I put my head on it,
15 but I, you know, his face was like moving
16 toward his body like that. And I saw his, you
17 know, his stomach and his shirt and his chest
18 was moving like, you know, like when, like when
19 you vibrate, you know, like when they put a
20 picture of the heart there you can see. So I
21 knew, he was still alive when I, when we got
22 there, but there was nothing we can do about
23 it.

24 Q. Did you do anything to check to see
25 if he was still alive, check for his pulse or

1 anything along those lines?

2 A. To tell you the truth, I didn't
3 want to put my hands on him, because, you know,
4 once I put my head into the cabin where the
5 glass that we broke, you know, I can get in and
6 as soon as I saw his legs, you know and the
7 shoes out of his foot, you know what I mean and
8 all the instrument from the brake and the
9 accelerator, you know, pressing it up, I didn't
10 want to, you know, I didn't want to touch
11 anything. I said I'll just say are you okay
12 and he don't react, so automatically I didn't
13 want to, I felt, you know, not, not to touch
14 anything in there.

15 Q. Okay. Did you see any indication
16 from his face that he was breathing, his mouth
17 or his nose?

18 A. No, no, I didn't see his face at
19 all.

20 Q. Is it possible the movement you saw
21 was a spasm?

22 A. Probably, yeah. You know, probably
23 on the side of his stomach was like vibrating
24 like when you see a jelly moving like this. So
25 his stomach was like this.

1 Q. Okay. And you said his head was --

2 A. His head was turned --

3 Q. -- facing forward?

4 A. -- his head was turned toward his
5 chest on the side.

6 Q. Okay. And you didn't hear him say
7 anything?

8 A. He didn't say anything. He
9 didn't -- I didn't see him breathing. I just
10 saw, you know, that part of his body, but, you
11 know, everything was like crushed into him.

12 Q. Okay. So when you're doing this,
13 you're checking on the driver, then you hear
14 this --

15 A. Yes.

16 Q. -- call for help from the woods you
17 said?

18 A. Exactly. I had my head inside the
19 truck when I hear somebody help me, that's when
20 I say, oh, somebody is on the other side.

21 Q. That was a female voice?

22 A. That was a -- I recognized that was
23 a female voice.

24 Q. Okay. How far was she from the
25 vehicle when you got to her?

1 the piece of plastic was and you're saying that
2 you think maybe it was a piece of the fender?

3 A. Yes, correct, from my knowledge,
4 yes.

5 Q. Now, you earlier testified, again,
6 correct me if I am wrong, that you saw the
7 driver's body moving?

8 A. Yes, correct.

9 Q. Okay. Then counsel had asked you
10 if you thought he was alive and you said, you
11 thought he was alive, correct?

12 A. Yes, correct. You know, he was
13 like, you know, part of his stomach, you know,
14 was moving like, you know what I mean.

15 Q. Okay. And then counsel had asked
16 you if possibly this could have been the result
17 of a spasm; is that correct?

18 MR. RETHORE: Objection.

19 MR. BUCK: Do you recall
20 that question?

21 THE WITNESS: Yes, it has
22 got to be intestine or something was
23 moving, you know, in order or the
24 nerve, you know, on the skin was like,
25 you know, shaking, but I didn't see

1 him, you know, personally, I didn't see
2 his face. I didn't see him breathing.
3 And I didn't see him moving his body at
4 all. Just the, just the blunt part of
5 his body, you know, because I saw his
6 shirt was up.

7 BY MR. BUCK:

8 Q. Okay. So you didn't see what, you
9 didn't see his stomach move by way of
10 breathing, did you?

11 A. Not really. It's hard to tell,
12 because I'm not a doctor. I only saw that the
13 body was moving, you know, that the stomach got
14 like a little shaking so, so.

15 Q. So was that the only part of the
16 body that you saw movement?

17 A. Yes, correct, yeah.

18 Q. Now, did you earlier testify that
19 you asked the driver a question, is that the
20 case?

21 A. I asked what?

22 Q. Did you ask the driver if he needed
23 help, something like that?

24 A. When I stick my head, when I stick
25 my head underneath the, you know, in the

1 wreckage, I said, are you okay? And he didn't
2 move at all. And that's when I saw his, his,
3 you know, his body, you know, like, you know,
4 was moving. So I didn't know if he was alive
5 or something. But the way I told the lawyer
6 here, I said when I went and saw everything
7 inside, you know, I thought about it. He was
8 not going to leave, because, you know, his leg
9 was caught up into the panels of the brake.
10 And I saw his white sneaker, you know, on the
11 side, so, so everything was crushing into the,
12 you know, his body was crushed from the truck,
13 so.

14 Q. There was no visible response to
15 your questions to the driver?

16 A. No, no, nothing at all.

17 Q. Can you tell me or let me rephrase
18 the question. So before observing the driver,
19 you had rescued the kid from the back of the
20 truck's cabin, correct?

21 A. Yes, we had the kid out of the
22 truck first. He was the first one out of
23 there. Out of the, you know, the truck.

24 Q. Can you tell me approximately how
25 much time between when you pulled over to

**IN THE UNITED STATES DISTRICT COURT
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BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 2

In The Matter Of:

Brenda Charcalla

vs.

The Goodyear Tire & Rubber Co.

Brenda Charcalla

March 28, 2014

MERRILL CORPORATION

Legalink, Inc.

311 South Wacker Drive
Suite 300
Chicago, IL 60606
Phone: 312.386.2000
Fax: 312.386.2275

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

BRENDA CHARCALLA,	*
individually and as	* Civil Action No.
personal representative	* 1:13-CV-00204-JFC
of the Estate of Gary	*
Charcalla and as guardian	*
of her minor sons, Brock	*
Charcalla and Dalton	*
Charcalla,	*
Plaintiffs	*
vs.	*
THE GOODYEAR TIRE &	*
RUBBER COMPANY,	*
Defendant	*

* * * * *

DEPOSITION OF
BRENDA CHARCALLA
March 28, 2014

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is prohibited without authorization
by the certifying agency.

Brenda Charcalla March 28, 2014

2

1 DEPOSITION
2 OF
3 BRENDA CHARCALLA, taken on behalf of the
4 Defendant herein, pursuant to the Rules of Civil
5 Procedure, taken before me, the undersigned,
6 Danielle S. Ohm, a Court Reporter and Notary
7 Public in and for the Commonwealth of
8 Pennsylvania, at the law offices of Dickie,
9 McCamey & Chilcote, PC, Two PPG Place, Suite
10 400, Pittsburgh, Pennsylvania, on Friday, March
11 28, 2014 beginning at 10:00 a.m.
12
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25

A P P E A R A N C E S

CHRISTOPHER BUCK, ESQUIRE

Pribanic & Pribanic

1735 Lincoln Way

White Oak, PA 15131

COUNSEL FOR PLAINTIFFS

FREDERICK W. BODE, III, ESQUIRE

KRISTEN HOCK PREX, ESQUIRE

Dickie, McCamey & Chilcote, P.C.

Two PPG Place

Suite 400

Pittsburgh, PA 15222-5402

COUNSELS FOR DEFENDANT

Brenda Charcalla March 28, 2014

4

I N D E X

WITNESS: BRENDA CHARCALLA

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OBJECTION PAGE

ATTORNEY

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1 Fort Wayne, Indiana.

2 Q. Now, the tire that was on the freightliner,
3 and I'm talking about the front two tires, did
4 they come with the vehicle when you purchased
5 the vehicle?

6 A. Yes, but they were brand new tires that had
7 just been put on.

8 Q. And how do you know that?

9 A. That's what the person that we purchased it
10 from told us.

11 Q. So when he or she said, brand new tires ---?

12 A. Well, he ---.

13 Q. Was that the owner of the vehicle, or the
14 --- I thought you bought it at an auction?

15 A. Well, the gentleman goes to auctions, I
16 said, and he purchases vehicles. And this was
17 actually a repossession. The truck was actually
18 a repossession and it was missing the hitch. So
19 that's all we had to put on it. But the
20 gentleman that sold it to our friend that goes
21 to auctions, he's a dealer is what I said. Not
22 that he --- we didn't buy it at an auction. The
23 gentleman that he purchased it from said that he
24 had put new tires on it, and you could tell by
25 visually inspecting them that they were new at

1 the time.

2 Q. So the tires that were on the freightliner
3 when you bought it, according to you, were brand
4 new tires?

5 A. Correct.

6 Q. Correct?

7 A. Correct.

8 Q. And is that all the tires or the front two
9 tires?

10 A. Just the front two tires. They were
11 Goodyear, and the other ones were --- I can't
12 think of the name. They were some Chinese name,
13 I do believe.

14 Q. Kumho?

15 A. Yeah. That's --- I don't know, maybe. I
16 don't know. You'd have to look at the pictures.
17 I can't remember.

18 Q. Do you have the police report? Have you
19 looked at the pictures?

20 A. I haven't seen the pictures from the police
21 report.

22 Q. Okay. Have you seen other pictures?

23 A. I have other pictures, yes. My
24 brother-in-law had taken pictures right after it
25 happened.

1 of rolling, I could see a little bit. And then
2 it was just like, boom, everything went black.

3 Q. You were unbelted at the time?

4 A. Yes.

5 Q. During the process of rolling, were you
6 somehow moved away from your seat?

7 A. Yes.

8 Q. All right. Can you describe that?

9 A. I was just thrown forward. I don't remember
10 where I ended up or anything. I mean, I know
11 the transmission was on top of me and
12 everything, but I don't know exactly where I was
13 at. I just know from what people --- you know,
14 like Edgar had told me. That was it.

15 Q. Do you recall striking anything inside the
16 cab?

17 A. No, I just remember feeling pinned and
18 trapped and I couldn't move.

19 Q. To the best of your knowledge, were the
20 front two tires, at the time you purchased the
21 freightliner, brand new tires?

22 A. Yes.

23 ATTORNEY BODE:

24 Object to form.

25 ATTORNEY BUCK:

1 On what ground?

2 ATTORNEY BODE:

3 I mean, she --- number one, it's

4 asked and answered, because she already

5 testified about it. She doesn't know who

6 purchased them, but she thought they were new.

7 And number two, it's leading. And you know,

8 she's your witness, so you really shouldn't be

9 leading her. So that's why I objected.

10 ATTORNEY BUCK:

11 Thank you, Counsel.

12 ATTORNEY BODE:

13 Uh-huh (yes).

14 BY ATTORNEY BUCK:

15 Q. Do you know if those tires were the same

16 make and model?

17 A. Yes, they were both Goodyear tires.

18 Q. Do you know if they were produced in the

19 same year?

20 A. I do not.

21 Q. Let me ask you about the road conditions,

22 your recollection of the road conditions. So

23 when you drove from the campground up until the

24 time of the accident, did you observe any pot

25 holes or any problems with the road?

1 A. No, I did not.

2 Q. Would you describe the road as in good
3 condition?

4 A. Yes.

5 Q. Did you observe any object on the road
6 during that ---?

7 A. No.

8 Q. Did the truck run over anything?

9 A. No.

10 Q. I just want to ask a very general question.
11 I'm trying to be as sensitive as I can be about
12 this. But can you give a general statement as
13 to how the loss of your husband has affected
14 your life and your family's life?

15 A. It pretty much has turned my whole family
16 upside down. You know, our --- nothing is
17 normal. Nothing will ever be the same. The
18 kids are without a father. I'm without my
19 husband. Financially, it's tough. Whether we
20 got the money or not, I still have a 28 acre
21 property and a house to keep up with, taxes to
22 pay. I mean, I have a lot on my plate. And I
23 struggle everyday. Everyday. And it's even
24 harder for me because my physical capability of
25 my hand, you know. Granted, it's only one

1 hand, but it's enough to affect your entire
2 life. And everyday is tough physically,
3 mentally. And it's tough on my boys. You know,
4 they will never be the same after this. None of
5 us will.

6 Q. Let me ask you about this lawsuit. Did you,
7 at some point after the accident, think that
8 maybe there was something wrong with the left
9 front tire that blew out?

10 ATTORNEY BODE:

11 Object to form.

12 BY ATTORNEY BUCK:

13 Q. Let me ask you this. What motivated you to
14 initiate this lawsuit?

15 A. Because I knew how Gary was about the tires.
16 I knew how he was as far as maintaining the
17 tires, taking care of things, and I don't know
18 what else could've caused it. And I know we
19 didn't hit anything.

20 Q. Did you have the tire inspected before
21 contacting an attorney?

22 A. Progressive had their expert look at it.
23 And according to that report, they came to the
24 conclusion that that's what must have happened.
25 There's no definite proof. There's just a

1 conclusion that that's what must've happened.

2 That we must've hit something, but there's no
3 proof. There is no physical proof.

4 Q. Were you given a copy of Progressive's
5 expert report?

6 A. Yes.

7 Q. So you're saying that you're --- you have a
8 problem with their conclusion?

9 A. I do.

10 ATTORNEY BODE:

11 Well, I'm going to object to form.

12 Leading.

13 BY ATTORNEY BUCK:

14 Q. When you read the report, what was your
15 reaction to it?

16 ATTORNEY BODE:

17 Same objection. Objection to form.

18 BY ATTORNEY BUCK:

19 Q. Go ahead and answer.

20 A. I felt there was a problem with the tire
21 from the beginning. I felt strongly about it
22 and I didn't agree with their report. I didn't
23 think it showed the Burden of Proof that there
24 was a problem and I didn't agree with it.
25 That's why I contacted Jeffrey.

1 Q. Okay. So it was after you read
2 Progressive's report that you contacted Jeffrey
3 Pribanic?

4 A. Yes.

5 Q. Okay. And approximately what time was this,
6 year and month?

7 A. It was in 2011. I want to say it was
8 probably in August or September, somewhere
9 around there.

10 ATTORNEY BUCK:

11 All right. Thank you, Brenda.

12 That concludes my questions.

13 ATTORNEY BODE:

14 Signature?

15 ATTORNEY BUCK:

16 Do you want to read or waive your
17 right to read?

18 A. I'm going to waive my right, because ---.

19 ATTORNEY BUCK:

20 She'll waive.

21 * * * * *

22 DEPOSITION CONCLUDED AT 1:00 P.M.

23 * * * * *

24

25

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
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**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 3

September 9, 2016 ¹⁰ BHC

When my husband, Gary L Charcalla and I purchased the 2000 Freightliner FL60, (that was involved in the accident on July 15, 2011) the two front tires on the truck looked new. Gary L Charcalla, told me he was "glad to see the two steer tires were brand new". I noticed that the tires had what I refer to as "nipples" or the rubber pieces that stick out and fall off with use. I also noticed that the tire had plenty of tread like a new tire would have.

I swear this statement to be true.

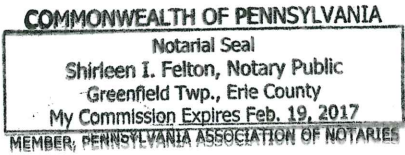
Brenda L Charcalla

Brenda L Charcalla

Comm. of PA
County of Erie
Sworn to and Subscribed before me this 10th
September 2016

Shirleen I. Felton

Notary Public



8247
C

Law Offices of
PRIBANIC & PRIBANIC
A Limited Liability Company

1735 Lincoln Way
White Oak, Pennsylvania 15131

Tel. 412/672-5444

VICTOR H. PRIBANIC
Email: vpribanic@pribanic.com

Fax. 412/672-3715

Additional Offices
Pittsburgh, PA and Brookville, PA

September 20, 2016

Kristen Hock Prex, Esquire
Frederick W. Bode, III, Esquire
Dickie McCamey
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Kevin W. Rethore, Esquire
DLA Piper LLP
1650 Market Street, Suite 4900
Philadelphia, PA 19103-7300

Re: Brenda Charcalla, Individually and as Personal Representative of
the Estate of Gary Charcalla, and as Guardian of her minor sons,
Brock Charcalla and Dalton Charcalla v. The Goodyear Tire &
Rubber Company
Case No.: 1:13-cv-00204-JFC
Our File No.: 8247

Dear Counsel:

Enclosed please find an affidavit of Brenda Charcalla dated September 10, 2016,
which serves as a supplemental response to Request for Production of Documents
number 4.

Thank you for your attention. Please contact me should you have any questions.

Very truly yours,



Greg Dobson,
Paralegal to Victor H. Pribanic

GRD
Enclosure

**IN THE UNITED STATES DISTRICT COURT
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as personal representative of the Estate
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**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 4

J & C ENTERPRISES
3658 WEST 26TH STREET
ERIE PA 16506

7/11/2016

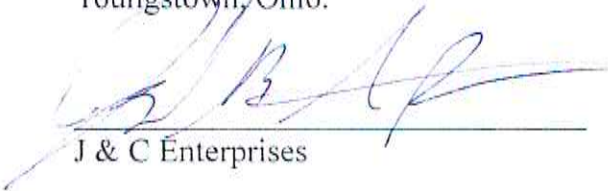
814-833-3663

IN THIS STATEMENT, I SWEAR ALL TO BE TRUE:

J & C Enterprises has provided maintenance and annual state inspections on Gary L Charcallas' 2000 Freightliner, FL-60 from the time he purchased it through July/2011. Records of state inspections performed on vehicles are only required to be kept by servicing inspection stations for a maximum of three years. Due to this requirement mandated by the Department of Transportation, records you are requesting have been destroyed and are not available.

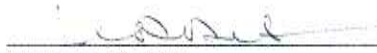
I have provided Ms. Charcallas' attorney with the available records I did have back in 2011 however, the same records are not available any longer.

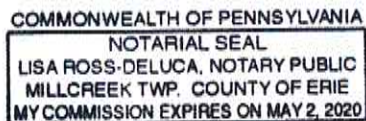
If at anytime I could not service this vehicle beyond my means, Mr. Charcalla was referred to the OH-FYDA Freightliner Dealership @ Youngstown, Ohio.


J & C Enterprises

Commonwealth of PA., County of Erie

Sworn to and subscribed to before me this 11th day of
July, 2016.


Notary Public



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 5

Check one for each type of inspection.

<input type="checkbox"/>	ANNUAL
<input checked="" type="checkbox"/>	SEMI-ANNUAL

Pa. Sticker No.
511 0227296Inspection No.
#46-4435CAR OWNER:
This state requires us to check items below to show you exactly work done to put your car in shape for safe driving.Registration Verified Yes ☒ No ☐

Insurance Co. Name

Expiration Date
6-21-11

Policy # 31279572-3

Odometer Read. on Old Insp. Sticker N/A
Present Odometer Reading

✓ R A

Tires, Wheels 8

Suspension, Steering

Exhaust System

Fuel System

Glazing & Mirrors

Lights, Wiring and Switches

Body, Doors and Latches

Brake System

Left Front 113

Left Rear 73

Right Front

Right Rear 73

Other

Sticker Issued *yes*

Road Test

Yes ☒ No ☐
☐ ATTN: Although the following items currently pass state inspection we believe they may become dangerous prior to the next inspection period.

9-11

PRESENT REPAIRS

Qty.	Part No.	Article	Price
2		1ikes	14.00
TOTAL			

ORIGINAL ESTIMATE \$	Customer's Acceptance Initial Here	AUTHORIZED ADDITIONS \$
DATE		
TIME		
BY		

I hereby authorize the above repair work to be done along with the necessary material, and hereby grant you and / or your employees permission to operate the car or truck herein described on streets, highways or elsewhere for the purpose of testing and / or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs thereto.

X

<input type="checkbox"/> I AUTHORIZE YOU TO COMPLETE REPAIRS WITHOUT AN ESTIMATE	INITIAL YOUR CHOICE
<input type="checkbox"/> I AUTHORIZE REPAIRS NOT IN EXCESS OF \$	
<input type="checkbox"/> I ACCEPT THE ESTIMATE AND AUTHORIZE THOSE REPAIRS	

In the event that you, the customer, authorize commencement but do not authorize completion of a repair or service, a charge will be imposed for disassembly, reassembly, or partially completed work. Such charge will be directly related to the actual amount of labor or parts involved in the inspection, repair or service.

REPLACED PARTS WILL BE RETURNED UNLESS SPECIFIED OTHERWISE. ☐ RETURN PARTS ☐ DISCARD PARTS



J & C ENTERPRISES

"Truck & Trailer Repair"

P.O. Box 8134

Erie, Pennsylvania 16505

Phone: (814) 833-3663

No 16198X

Name	GARY CHARCILLA	Date	4-27-11
Address	PO Box 757 NEAST PA 16428	Promised	A.M. P.M.
License No. and State	YMP 4732 PA	Phone	H. W.
Year and Make	00 Ford Inc	Order Written By	16:308

Oper. No.	Description of Work	Labor Charge
State Inspection <input type="checkbox"/>	Lubri-cate <input type="checkbox"/>	Change Oil <input type="checkbox"/>
	Flush Tran. & Diff. <input type="checkbox"/>	Wash <input type="checkbox"/>

PA Insp.

CK
Paid
4-27-11

Not Responsible For Loss Or Damage To Cars Or Articles Left In Cars In Case Of Fire, Theft Or Any Other Cause Beyond Our Control.		Inspection Fee	68.00
		Sticker Fee	1.00
		Total Labor	
		Total Parts	14.00
		Gas, Oil, Grease	
		Accessories	
		Outside Repairs	
		Total	83.00
		Tax	4.98
		Grand Total	87.98

**IN THE UNITED STATES DISTRICT COURT
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as personal representative of the Estate
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**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
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EXHIBIT 6

Vehicle Equipment and Inspection Regulations

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Subchapter E

PASSENGER CARS AND LIGHT TRUCKS

175.61. Application of Subchapter.

Equipment standards set forth in this subchapter apply to passenger cars and light trucks driven on highways.

175.62. Suspension.

Every suspension component shall be in safe operating condition as described in §175.80 (relation to inspection procedure).

175.63. Steering.

- (a) **Condition of Steering Components** - The steering assembly and steering mechanism shall be in safe operating condition as described in §175.80 (relating to inspection procedure).
- (b) **Steering Wheel** - The steering wheel, except if specially designed for handicapped drivers, shall be equivalent to original equipment in material strength and have minimum outside diameter of 13 inches.

175.64. Braking Systems.

- (a) **Condition of Braking Systems** - Braking systems and components shall be in safe operating condition as described in §175.80 (relating to inspection procedure).
- (b) **Service Brakes** - A vehicle specified under this subchapter shall be equipped with a service brake system. See 75 Pa.C.S. §4502 (relating to general requirements for braking systems).
 - (1) The service brakes shall act on all wheels upon application and shall be capable of stopping a vehicle in not more than the maximum stopping distance prescribed in Table I (relating to brake performance), except on a vehicle being transported in driveaway-towaway operation.
 - (2) The brake lining and brake fluids shall be of type approved by the vehicle manufacturer, or shall meet the Society of Automotive Engineers (SAE) standards Appendix A (relating to minimum requirements for motor vehicle brake lining - SAE J998).
 - (3) A passenger car manufactured or assembled after June 30, 1967, and designated as a 1968 or later model shall be equipped with a service brake system of a design that rupture or failure of either the front or rear

brake system will not result in the complete loss of braking function. Braking function may be obtained by hydraulic or other means through a normal brake mechanism. In the event of a rupture or failure of actuating force component, the unaffected brakes shall be capable of applying adequate braking force to vehicle.

- (4) Metal from a shoe may not contact the brake drums or rotors.
- (5) Brake lines shall be approved for use as brake lines.
- (c) **Parking Brake System** - A vehicle specified under this subchapter shall be equipped with a parking brake system. See 75 Pa.C.S. §4502.
 - (1) A parking brake system shall be adequate to hold the vehicle on a surface free from ice or snow on a 20% grade with vehicle in neutral.
 - (2) The parking brakes shall be separately actuated so that failure of any part of the service brake actuation system will not diminish the vehicle's parking brake holding capability.

175.65. Tires and Wheels.

- (a) **Condition of Tires and Wheels** - Tires and wheels shall be in safe operating condition as described in §175.80 (relating to inspection procedure).
- (b) **Tire Standards** - A vehicle specified under this subchapter shall have tires manufactured in conformance with standards in Chapter 159 (relating to new pneumatic tires). See 75 Pa.C.S. §4525 (relating to tire equipment and traction surfaces). Tires with equivalent metric size designations may be used.
- (c) **Radial Ply Tires** - A radial ply tire may not be used on same axle with a bias or belted tire.
- (d) **Different Types of Tires** - Tires of different types, such as one snow tire and one regular tire or bias, belted or radial tire, may not be used on same axle, except in an emergency.
- (e) **Non-Pneumatic Tires** - A passenger car or light truck operated on highway may not be equipped with nonpneumatic tires except an antique vehicle with nonpneumatic tires if originally equipped by the manufacturer.
- (f) **Ice Grips or Studs** - A tire may not be equipped with ice grips or tire studs or wear-resisting material which have projections exceeding 2/32 inches beyond the tread of the traction surface of the tire.

Subchapter E - Passenger Cars and Light Trucks

- (g) **Tires and Rims** - The axles of a vehicle specified under this subchapter shall be equipped with the number and type of tires and rims with a load rating equal to or higher than those offered by the manufacturer.
- (h) **Spacers** - Spacers or similar devices thicker than 1/4 inch may not be installed to increase wheel track.

175.66. Lighting and Electrical Systems.

- (a) **Condition of Lamps and Switches** - Every required lamp or switch shall be in safe operating condition as described in §175.80 (relating to inspection procedure).
- (b) **Lighting Standards** - A lamp shall comply with vehicle lighting equipment requirements of this title. See Tables II-IV Chapter 153 and 75 Pa.C.S. §4301.
- (c) **Headlamp System** - A vehicle specified under this subchapter which is driven on highway shall have two- or four-headlamp system. See 75 Pa.C.S. §4303 (a) (relating to general lighting requirements).
- (1) Both lamps in the two-headlamp system shall be of Type II construction consisting of high beam and low beam. One lamp shall be located on each side of front of motor vehicle.
 - (2) In the four-headlamp system, two lamps shall be of Type II construction and two lamps shall be of Type I construction. Type I lamps consist of a high beam only. One of each type shall be located on each side of front of the motor vehicle.
 - (3) The headlamp low beam minimum candlepower shall not be less than 7,500.
 - (4) The headlamp high beam minimum candlepower shall not be less than 10,000.
 - (5) A headlamp shall be aimed to comply with inspection procedure of this subchapter.
 - (6) A vehicle specified under this subchapter shall be equipped with manual dimmer switch conveniently located for use by the driver while in normal operating position. An automatic dimming device may be used in addition to the manual switch.
 - (7) A vehicle specified under this subchapter shall be equipped with a beam indicator, which shall be lighted whenever high beam of light from the headlamp is in use and shall not otherwise be lighted. An indicator shall be located so that when lighted it is readily visible without glare to operator of vehicle.
- (d) **Total Candlepower** - The total candlepower for headlamps and auxiliary lamps shall not exceed 150,000.
- (e) **Other Required Lamps** - A vehicle specified under this subchapter shall have at least one red stop lamp on each side of rear of vehicle, which shall be illuminated immediately upon application of the service brake.
- (f) **Illumination, Except Headlamps, Fog Lamps, and Auxiliary Driving Lamps** - A vehicle specified under this subchapter shall be equipped with parking lamps, stop lamps, tail lamps, turn signal lamps and hazard warning lamps designed for that specific function, which under normal atmospheric conditions shall be capable of being seen and distinguished during nighttime operation at a distance of 500 feet. See 75 Pa.C.S. §4303(b)—(d).
- (1) Stop lamps, turn signals and hazard warning lamps shall be visible at distance of 100 feet during normal sunlight.
 - (2) Rear lamps shall be lighted whenever head lamps, fog lamps or auxiliary driving lamps are in operation.
 - (3) A vehicle specified under this subchapter shall be equipped with hazard warning lamps unless the lamps were not included as original equipment.
 - (4) The turn signals shall have a frequency of flash between 60-120 flashes per minute.
- (g) **Condition and Position of Lamps** - Lamps shall be properly fastened; direct light properly; be of a color not contrary to Tables II-IV and not be so obstructed by a screen, bar, auxiliary equipment or a device as to obscure, change the color of or obstruct beam.
- (h) **Ornamental Lamps** - A lamp not enumerated in this section and not located as described in Tables III, IV and V of this chapter, is prohibited unless it is available as original equipment. An illuminated sign is prohibited except on taxicabs, ambulances and trucks. Flashing or revolving lights are not ornamental lamps. Provisions relating to flashing or revolving lights are in Chapters 15 and 173 (relating to authorized vehicles and special operating privileges; and flashing or revolving lights on emergency and authorized vehicles).
- (i) **[Reserved]**
- (j) **Back-Up Lamps** - Back-up lamps are not permitted to be lighted when the vehicle is in forward motion. Back-up lamps shall turn off automatically when the vehicle goes forward.

Subchapter E - Passenger Cars and Light Trucks

- (ii) The power brake lines or hydraulic hoses or lines leak or are disconnected, flattened, or restricted.
- (iii) The hydraulic booster for power brake system is leaking or inoperative or has excessively worn belts that would prevent proper operation of the pump.

- (6) Check the battery and **REJECT IF** the battery is not securely fastened with a device specifically designed for that function.

(d) Visual Inspection of Emission Control System.

Vehicles registered in counties where there is not an emission inspection program under 67 Pa. Code, Chapter 177 (relating to emission inspection program), shall be checked visually for the presence of emission control components. These components may be original vehicle equipment or an equivalent aftermarket replacement component meeting the same standards. In addition to the exceptions under § 175.4, this subsection shall not apply to vehicles registered as collectible or classic motor vehicles as defined in 75 Pa.C.S. § 102

- (1) The visual inspection shall be performed through direct observation or through indirect observation, using a mirror or other visual aid.
- (2) Provided that the make and model year of the vehicle would have originally been equipped with the device, reject if one or more of the following apply:
 - (i) The catalytic converter has been removed, disconnected or is the wrong type for the certified vehicle configuration.
 - (ii) Exhaust gas recirculation (EGR) valve has been removed, disconnected or is the wrong type for the certified vehicle configuration.
 - (iii) Positive crankcase ventilation (PCV) valve has been removed, disconnected or is the wrong type for the certified vehicle configuration.
 - (iv) Fuel inlet restrictor has been removed, disconnected or is the wrong type for the certified vehicle configuration.
 - (v) Air pump has been removed, disconnected or is the wrong type for the certified vehicle configuration.

- (vi) Evaporative control system components have been removed, disconnected or is the wrong type for the certified vehicle configuration.

(e)

Beneath the Vehicle Inspection - A beneath the vehicle inspection shall be performed as follows:

- (1) Inspect tires and wheels and **REJECT IF** one or more of the following apply:
 - (i) A tire has two adjacent treads with less than 2/32-inch tread remaining at any point - less than 4/32-inch tread on front tires of the vehicles having a gross weight in excess of 10,000 pounds.
 - (ii) A tire is worn so that the tread wear indicators contact the road in any two adjacent grooves.
 - (iii) A part of ply or cord is exposed.
 - (iv) A tire has been repaired with a blowout patch or boot.
 - (v) There is a bump, bulge or separation.
 - (vi) A tire is marked "not for highway use," "for racing purposes only" or "unsafe for highway use" or has a similar designation.
 - (vii) There are other conditions or markings reasonably believed to render the tire unsafe for highway use.
 - (viii) A tire has been regrooved or recut below original tread design depth except special taxicab tires which are identified as having extra undertread rubber.
 - (ix) A tire's tread extends beyond the outer edge of the wheel housing inclusive of fender flares.
 - (x) The tires used on the same axle are not the same size or type of construction—bias, belted, radial or snow.
 - (xi) The wheel nuts or bolts are missing, loose or have improper thread engagement.
 - (xii) The stud or bolt holes are worn out of round.
 - (xiii) Part of wheel is bent, cracked, welded or damaged so as to affect safe operation of vehicle.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 7

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant)
)
)
)
)
)
)

Civil Action No. _____

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

(Name of person to whom this subpoena is directed)

☐ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*_____
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AS111E1 COPART 10/19/16
JSWRIGHT Case 1:13-cv-00204-JFC Document 125-2 Filed 02/09/17 Page 2 of 14 09:17:48
700 CORP-DALLAS Assignment Entered
Title Procurement N (Y/N) LEGAL DEPT HOLD
Lot# 27271423 E 162 VA - HAMPTON Assignment 09/24/13 12:33:10 ET
Description 00 FRHT MED CONV F WHITE Delivered 09/24/13
Loss Date 07/15/11 VIN# 1FV3GJCC4YHG50992
Loss Type COLLISION Veh Type MEDIUM DUTY/BOX TRUCKS
Damage ALL OVER Selr Ref. No 115031398
Adjuster MEGHANN PRESEREN Phone# (440) 603-2505 x
Seller P046 PROGRESSIVE CASUALTY INS Insured PROGRESSIVE INS
6055 PARKLAND BLVD Owner PROGRESSVIE INS
MAYFIELD HEIGHTS, OH USA 44124 OwnPh (000) 000-0000 x
(888) 330-4182 Clm# 115031398 Policy# PG592587
Loss Cd
PICKUP: Phone (000) 000-0000 Deliver 162 VA - HAMPTON
Name (757) 766-2750
Address
City
Cross Street (000) 000-0000 Cleared for Pickup 00/00/00
Cleared for Charges 00/00/00
Promised Pickup 00/00/00
F3=Exit F6=Notes F10=Dates F11=VS Yard F12=Previous

Lot # 27271423 E 00 FRHT MED CONV F WHITE		LEGAL DEPT HOLD	
1. Date of Loss	7/15/11	19. Sale.	
2. Date of recovery . .		20. Member invoice. . . .	
3. Assignment	9/24/13	21. Member Stg billedthru	
4. Cleared for pickup .		22. Member final paid . .	
5. Cleared for charges.		23. Lot left yard	
6. Picked up.	9/24/13	24. Cert. sent to buyer .	
7. Promised pickup. . .		25. Eligible for relist .	
8.		26. Eligible for late fee	
9. Orig title received.		27. NICB reported date. .	
10. XFER title received.		28. File closed	
11. Submitted to DMV . .		29.	
12. Title reject		30. Pickup hold action. .	
13. Cert. received . . .		31. Hold for sale action.	1/20/14
14. Seller stg bill thru	6/17/16	32.	
15. Last seller invoice.		33. California only . . .	
16. Last Pmt from seller		34. Release of liability.	
17. Seller settlement. .		35. License plate destroy	
18. Proceeds cut		36. Vlf applied for . . .	
F3=Exit	F6=Notes	F12=Previous	

LEGAL DEPT HOLD
Yard 162 VA - HAMPTON Row HVY

Lot # 27271423 E 00 FRHT MED CONV F WHITE
VIN 1FV3GJCC4YHG50992

Delivered 09/24/13
Inventoried By BENJAMIN L. RIGEL
Vehicle Type MEDIUM DUTY/BOX TRUCKS
Primary Damage AO ALL OVER
Secondary Damage
NMVTIS Status Y REPORTED TO DOJ
HEAVY TOW N

Odometer 99442 Readable Y
Yard Lot Count# 23
Lot ACV 0
Book Value

DOES IT RUN? N
TOWABLE? U
VIN Plate N
Keys E
Engine Y
Transmission Y
Plates
Personal Plates N
Lic # Exp 0/00

F3=Exit F6=Notes F10=Dates F12=Previous

**IN THE UNITED STATES DISTRICT COURT
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BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

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COMPANY,**

Defendant.

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Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 8



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
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*The Honorable Joy Flowers Conti,
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Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 9

Orlando Guadalupe

San Antonio, TX

September 22, 2003

Page 1

1 UNITED STATES DISTRICT COURT
 2 NORTHERN WESTERN DISTRICT OF OHIO
 3 EASTERN DIVISION

4 United States ex rel.)

5 ORLANDO GUADALUPE)

6 BRINGING THIS ACTION ON)

7 BEHALF OF THE)

8 UNITED STATES OF AMERICA)

9 Plaintiffs)

10 V.)

11 THE GOODYEAR TIRE)

12 & RUBBER COMPANY)

13 Defendant)

14 * * * * *

15 ORAL/VIDEO DEPOSITION OF ORLANDO GUADALUPE
 16 SEPTEMBER 22, 2003

17 * * * * *

18 ORAL/VIDEO DEPOSITION of ORLANDO GUADALUPE,
 19 produced as a witness duly sworn by me at the instance of
 20 the DEFENDANT, taken in the above-styled and numbered
 21 cause on the 22nd day of September, 2003, from 9:45 a.m.
 22 to 12:52 p.m. and from 1:27 p.m. to 5:19 p.m. before
 23 NATALIE HUNSUCKER, Certified Court Reporter No. 4279 in
 24 and for the State of Texas, at the offices of JENKENS &
 25

Orlando Guadalupe

San Antonio, TX

September 22, 2003

<p style="text-align: right;">Page 2</p> <p>1 GILCHRIST, 100 W. Houston Street, Suite 1400, San Antonio, 2 Texas 78205, pursuant to the Federal Rules of Civil 3 Procedure and the provisions stated on the record or 4 attached therein.</p> <p style="text-align: center;">S T I P U L A T I O N S</p> <p>6 It is stipulated and agreed by and between 7 counsel for the respective parties hereto and the witness 8 that the original of the deposition of ORLANDO GUADALUPE 9 shall be sent to John H. Murphy, The Law Office of John F. 10 Murphy, 1324 Asylum Avenue, Hartford, Connecticut 06105, 11 Texas, for the purpose of obtaining the signature of the 12 witness thereon before any Notary Public.</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 ORLANDO GUADALUPE, 2 The Witness; and 3 NATALIE HUNSUCKER, 4 Certified Court Reporter 5 ALSO PRESENT: 6 Videographer Vitaly Altoiz</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 FOR THE PLAINTIFF: 2 MR. JOHN F. MURPHY 3 THE LAW OFFICE OF JOHN F. MURPHY 4 Attorney at Law 5 1324 Asylum Avenue 6 Hartford, Connecticut 06105 7 Phone: (860) 233-9946 8 Fax: (860) 523-5065 9 AND 10 MR. OLIVER B. DICKINS 11 Attorney at Law 12 One Phelps Lane 13 Simsbury, Connecticut 06070 14 Phone: (860) 658-4100 15 Fax: (860) 658-9200 16 FOR THE DEFENDANT: 17 MR. STEPHEN P. ANTHONY and MR. ELIE HONIG 18 COVINGTON & BURLING 19 Attorneys at Law 20 1201 Pennsylvania Avenue NW 21 Washington, D.C. 20004-2401 22 Phone: (202) 662-5105 23 Fax: (202) 778-5105 24 E-mail: ehonig@cov.com</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">I-N-D-E-X</p> <p>1 WITNESS: ORLANDO GUADALUPE 2 PAGE 3 4 Stipulations. 2 5 Appearances 3-4 6 Index 5-9 7 Examination By Mr. Anthony. 10 8 Witness' Signature Page 286 9 Reporter's Jurat. 287</p> <p style="text-align: center;">D E S C R I P T I V E E X H I B I T I N D E X</p> <p>11 12 13 Exhibit 1 14 Plaintiffs' Answers to 15 Defendant Goodyear Tire & 16 Rubber Company's First Set of 17 Interrogatories 18 Exhibit 2 19 Amended Complaint and Jury Demand 20 Exhibit 3 21 2/24/96 Report by Jane Stotts 22 Exhibit 4 23 7/15/96 Letter to Orlando 24 Guadalupe from Lance Sumpter 25 and Alan Stueve</p>

2 (Pages 2 to 5)

Orlando Guadalupe

September 22, 2003

San Antonio, TX

<p style="text-align: right;">Page 46</p> <p>1 Q. -- concern that you already described?</p> <p>2 A. Yes.</p> <p>3 Q. Let's talk about your employment with Goodyear.</p> <p>4 A. Okay.</p> <p>5 Q. Did you begin your employment with Goodyear on</p> <p>6 November 28th, 1994?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. What was -- Can -- Can you tell me, as</p> <p>9 best you can recall, in sequence, each of the jobs that</p> <p>10 you performed during your tenure at Goodyear starting at</p> <p>11 the beginning?</p> <p>12 A. Okay. After I was released from a week of</p> <p>13 classroom training, I was assigned to Department 5430.</p> <p>14 There, they gave me a labor trainer. The labor trainer</p> <p>15 instructed me the duties that I'll be required to do. And</p> <p>16 from there, he assigned me to a -- my own labor training</p> <p>17 to -- to do that, to perform that task, to learn that</p> <p>18 task.</p> <p>19 From there, 5430, I went on to Department</p> <p>20 1504, became a bladder changer, and there they gave me a</p> <p>21 labor trainer.</p> <p>22 Q. Do these departments, in addition to having</p> <p>23 numbers, have other names sort of in layman's language --</p> <p>24 A. Okay.</p> <p>25 Q. -- or are they just departments that have</p>	<p style="text-align: right;">Page 48</p> <p>1 trainers trained me. From there, I was put on a shift and</p> <p>2 worked in 1504 F-Line as a tire layer.</p> <p>3 Q. What kind of tires does F-Line make?</p> <p>4 A. We were -- Let me see. We made -- we -- We made</p> <p>5 the military tires. We made some farm tires, I think. I</p> <p>6 can't remember their -- their actual name, what -- what</p> <p>7 they were used for.</p> <p>8 Q. Is this on the Earthmovers side of the business</p> <p>9 or the radial light truck side of the business?</p> <p>10 A. Well, it was all Earthmovers. But the only thing</p> <p>11 that was separating the 57-inch tires, where they built</p> <p>12 those big tires, was just a -- a wall. And in between the</p> <p>13 wall, you have Inspect and Repair, then we had our -- our</p> <p>14 machines there.</p> <p>15 Q. All right. When did you start working on an</p> <p>16 F-Line?</p> <p>17 A. I can't remember. I want to say maybe '98, early</p> <p>18 '99. I'm just not sure of the time frame.</p> <p>19 Q. What was your next job within Goodyear after you</p> <p>20 began working on F-Line? What was the next job?</p> <p>21 A. After I -- There was a -- a job opening in 1504,</p> <p>22 Earthmover, and I bidded on it. It was a paint shack.</p> <p>23 From there, I was terminated and then came back and found</p> <p>24 me another job and became what they call an inserter on</p> <p>25 number -- Number 3 post.</p>
<p style="text-align: right;">Page 47</p> <p>1 numbers?</p> <p>2 A. Let me see. At the time that I went to work for</p> <p>3 Goodyear in 1994, Department 5430 was part of a mixed</p> <p>4 business center. But they -- they -- I guess they</p> <p>5 broke -- they got rid of that, the division part, and just</p> <p>6 put it on the regular trucks. We were -- we -- Our title</p> <p>7 was two component processors. We were tubers. I guess</p> <p>8 that's what they call it.</p> <p>9 Q. Okay. And -- And I'm sorry, continue. What was</p> <p>10 your next job?</p> <p>11 A. From -- From there, I went to -- I bidded on a</p> <p>12 job in Department 1540, was awarded the job and went to</p> <p>13 work in the bladder changers' area. I was given a labor</p> <p>14 trainer.</p> <p>15 Q. What was your next job after that?</p> <p>16 A. After that, I bid into a job in the same</p> <p>17 department, the 1504, became a helper.</p> <p>18 Q. What kind of tires did Department 1540 make?</p> <p>19 A. From 57-inch Earthmover tires out to the reg --</p> <p>20 regular truck tires.</p> <p>21 Q. What was your next job after helper?</p> <p>22 A. I was surplused from Department 1540,</p> <p>23 Earthmovers. And I saw a job in Department 1540 F-Line,</p> <p>24 and I bidded on that job and was awarded that job and went</p> <p>25 on first shift for training. And my labor -- labor</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. And when was that that you were terminated from</p> <p>2 the paint shack position and moved into the Number 3 post?</p> <p>3 A. Let's see. I -- I'm trying to remember. I can't</p> <p>4 remember when I actually left the paint shack -- from</p> <p>5 F-Line to the paint shack and when I left the paint shack.</p> <p>6 I just remember that the job that I was supposed to get</p> <p>7 back was the paint shack. That -- That was the only</p> <p>8 vacancy there. And they put someone else in my place to</p> <p>9 take that job. No one wanted to do number three inserts,</p> <p>10 so they put me in number three inserts.</p> <p>11 And after I was in number three inserts, my</p> <p>12 labor trainer gave me someone to train me on -- on the</p> <p>13 number three insert with the understanding that I still</p> <p>14 have to learn all the other inserts from number one, two,</p> <p>15 three, four and five inserters. And number three insert's</p> <p>16 the same as number one inserter. So after that, I</p> <p>17 think -- I think that was the last job I had with -- with</p> <p>18 Goodyear in that -- in that department as inserter.</p> <p>19 Q. All right. After -- After that, did you have</p> <p>20 other jobs for Goodyear Tire & Rubber?</p> <p>21 A. No.</p> <p>22 Q. So is that the position that you held ultimately</p> <p>23 when you were terminated --</p> <p>24 A. Yeah.</p> <p>25 Q. -- in 2002?</p>

13 (Pages 46 to 49)

Orlando Guadalupe

San Antonio, TX

September 22, 2003

<p style="text-align: right;">Page 50</p> <p>1 A. Uh-huh.</p> <p>2 Q. Okay.</p> <p>3 (Exhibit 1 marked)</p> <p>4 Q. (BY MR. ANTHONY) Mr. Guadalupe, I'm showing you</p> <p>5 what's been marked for identification as Exhibit 1, which</p> <p>6 is a multipage document entitled "Plaintiffs Answers to</p> <p>7 Interrogatories." Have you seen -- And -- And the -- the</p> <p>8 last page indicates it's dated July 30th, 2003. You've</p> <p>9 reviewed this document before, have you not? Take</p> <p>10 whatever time you need.</p> <p>11 A. Yes, I have.</p> <p>12 Q. And you signed a signature page indicating that</p> <p>13 the answers in this Exhibit 1 are true and correct to the</p> <p>14 best of your knowledge; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Let me direct your attention to the Page 9. And</p> <p>17 under the heading "Interrogatory Number 11," if you look</p> <p>18 under the second -- the second paragraph there begins with</p> <p>19 the word "Answer" in bold. And the first sentence of the</p> <p>20 paragraph says: "Before the Relator complained about the</p> <p>21 defects in the tires, no manager ever wrote him up on</p> <p>22 production"? Do you see where it says that?</p> <p>23 A. Yes.</p> <p>24 Q. Is that a true statement?</p> <p>25 A. Pretty much.</p>	<p style="text-align: right;">Page 52</p> <p>1 can probably refresh my memory.</p> <p>2 Q. Did -- Did Deanna Ballard write you up for that</p> <p>3 incident?</p> <p>4 A. I think she did. I think she did, because she</p> <p>5 told me that she had to write me up. So she wasn't about</p> <p>6 to undermine Kenny Jordan's authority.</p> <p>7 Q. There was a time when Deanna Ballard wrote a -- a</p> <p>8 handwritten note about you, which your attorney's produced</p> <p>9 to Goodyear and, of course, at this litigation. Was that</p> <p>10 around the same time of this incident?</p> <p>11 MR. DICKINS: What incident are you talking</p> <p>12 about?</p> <p>13 Q. (BY MR. ANTHONY) The incident with the bent pipe</p> <p>14 and the green tire.</p> <p>15 A. I don't -- I don't think it was. I just know</p> <p>16 that from October 2000 to November -- to December 2000,</p> <p>17 I'm spending a lot of time in the office with Deanna.</p> <p>18 And -- And it was concerning absenteeism. And when it</p> <p>19 came to providing documentations, that she would have to</p> <p>20 put me according to their rules and regs.</p> <p>21 They had to put me on a disciplinary step</p> <p>22 until I provide documentation, then they'll take the step</p> <p>23 back. But they -- they had a process: take me to the</p> <p>24 office, counsel me, once I provide documentation, take me</p> <p>25 back to the office, we removed it, and so forth and so</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Well, is it -- is it -- is it actually true or is</p> <p>2 it only pretty much true?</p> <p>3 A. I can answer that but with -- with -- with an</p> <p>4 explanation. At the Topeka plant, a written up may --</p> <p>5 may -- may be me being taken to the office, "You forgot A,</p> <p>6 B, and C. Secure your tire. Don't go do it again," or on</p> <p>7 the floor, "Look, you messed up. Correct it." That's</p> <p>8 what they consider a written up.</p> <p>9 The only time that I remember that I</p> <p>10 actually received an actual write-up for production was</p> <p>11 when the pot heater, E-16, I failed to close a -- the pot</p> <p>12 heater while the inserter was still up. Therefore, when</p> <p>13 the pot heater closed, the inserter pipe bent, broke, the</p> <p>14 tire was gone. The green tire was ruined. And Kenny</p> <p>15 Jordan want -- wanted to have me disciplined for that, for</p> <p>16 production.</p> <p>17 Q. And that was prior to your making any complaints</p> <p>18 to TACOM?</p> <p>19 A. I can't remember when he made that -- when I --</p> <p>20 when he made the steps of trying to write me up for that</p> <p>21 incident. But I remember when I came on shift, Deanna</p> <p>22 Ballard informed me that she has to write me up. And I</p> <p>23 told her I took full responsibility for it because it was</p> <p>24 my fault for that bad tire. But I can't remember if it</p> <p>25 was before or after. If they can remember a date, then I</p>	<p style="text-align: right;">Page 53</p> <p>1 forth.</p> <p>2 Q. And when you're talking about the time frame of</p> <p>3 October/November 2000 forward, you're talking about the</p> <p>4 time frame when you had already begun talking to TACOM; is</p> <p>5 that right?</p> <p>6 A. I think so. I think so.</p> <p>7 Q. But -- But before you ever talked to TACOM, it is</p> <p>8 the case, isn't it, that managers would reprimand you for</p> <p>9 mistakes that you were making in production?</p> <p>10 A. No. They would reprimand me because they were</p> <p>11 either racist or just didn't like me.</p> <p>12 Q. Let's break it down into two things.</p> <p>13 A. Okay.</p> <p>14 Q. Okay. Before October 2000, you did receive</p> <p>15 reprimands from managers, correct? I'm including when</p> <p>16 they -- when they reprimand you on the floor.</p> <p>17 A. On the floor --</p> <p>18 MR. MURPHY: Object to the form of the</p> <p>19 question. For production? Do you -- Do you want to put</p> <p>20 the word "for production" in there, Mr. Anthony?</p> <p>21 MR. ANTHONY: Fine. We can put "for</p> <p>22 production."</p> <p>23 MR. MURPHY: Because I think that's what --</p> <p>24 Q. (BY MR. ANTHONY) Sure.</p> <p>25 A. For production, they -- I'm trying to think.</p>

14 (Pages 50 to 53)

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<p>1 Production -- I know when I was in the -- in Department 2 5430, a supervisor by the name of Lance Sumpter 3 disciplined me and the entire crew for running bad stock 4 on a conveyor belt. And the union explained to him you 5 can't discipline the entire crew. You have to go to the 6 person responsible. He was yelling, and he didn't know 7 the contract. So that stood in all of our records, and 8 the chief steward had to come in and try to re -- have 9 that removed from our records.</p> <p>10 We say production. I -- I -- I interpret 11 production as the actual curing or inserting of a tire. 12 Is that -- Do you -- Is that what you mean, or do you mean 13 more than just the curing and the inserting of a tire? 14 Because we had production in bladder changing in -- in 15 assembling the bladders.</p> <p>16 Q. Why don't you use -- Why don't you use the term 17 "production" the way you meant it in the first sentence in 18 the answer to Interrogatory Number 11. How do you -- 19 Let -- Let me ask you this question.</p> <p>20 A. Okay. On production?</p> <p>21 Q. How -- How do you define "on production" as you 22 used it in that first sentence of the answer to 23 Interrogatory 11?</p> <p>24 A. This would be on -- on the tires that -- that I 25 cure, on -- on the actual components, not on the bladders.</p>	<p>1 didn't you?</p> <p>2 A. Well, Lance Sumpter terminated me on a Step IV 3 and a Step V of the positive disciplinary proceedings 4 that -- that -- that's covered in our contract. And I 5 smiled and said, "Thank you," and went on vacation for two 6 weeks, came back and asked the union president, "Do I go 7 back to work or do I look for -- for work?" And he 8 informed me, "You go back to work."</p> <p>9 Q. And that was before you ever went to TACOM?</p> <p>10 A. That was before I ever went to -- to TACOM. I 11 didn't even know who TACOM was at that time.</p> <p>12 Q. Okay. Who was the union president? Who -- Who 13 are you referring to?</p> <p>14 A. At that time, I want to say it was -- man -- 15 either Workman -- I don't know his first name -- Workman 16 or Leiker, Will Leiker.</p> <p>17 (Exhibit 2 marked)</p> <p>18 Q. (BY MR. ANTHONY) You can put that aside for the 19 moment.</p> <p>20 A. Okay.</p> <p>21 Q. And I'm showing you now what's been marked as 22 Depo -- Deposition Exhibit 2, which, for the record, says 23 "Amended Complaint and Jury Demand." It's dated May 14th 24 of 2003. You've seen your amended complaint before, have 25 you not?</p>
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<p>1 The bladders was considered more of a support-type job to 2 support the curers and the tire layers and the hoseman.</p> <p>3 Q. Is it fair to say that while this statement in 4 the first sentence of the answer to Interrogatory 11, "No 5 manager ever wrote him up for production," refers to 6 production as you've explained --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- the meaning of that term?</p> <p>9 There were managers who wrote you up for 10 other disciplinary issues prior to your ever going to 11 TACOM; isn't that true?</p> <p>12 A. For absenteeism, wrote me up for that. And then 13 it was removed. That was their policy. If it was an 14 absences problem, they bring you into the office, they 15 have to write me up because that's their policy pending me 16 submitting documentation to confirm that my absence was -- 17 was a -- a legitimate absence. Then I would have to go 18 back to the office and explain to them, "This is my 19 documentation. This is why I was absent." So yes, 20 they -- they wrote me on absenteeism since -- I'm trying 21 to think -- since Jane Stotts, since she was my first 22 supervisor in Department 5430, on absenteeism.</p> <p>23 Q. And you had disciplines -- During the time period 24 prior to when you first went to TACOM, you received other 25 type of discipline from Goodyear besides just absenteeism,</p>	<p>1 A. I'm sure I have.</p> <p>2 Q. Did you, at some point, review it before it was 3 filed?</p> <p>4 A. I want to say yes, but I can't actually remember.</p> <p>5 Q. Have you at any time read through the -- the 6 entire amended complaint and reached a conclusion as to 7 whether it accurately states matters as you recall and 8 understand them?</p> <p>9 A. I read through the original complaint in its 10 entirety.</p> <p>11 Q. Let me direct you to Page 24 and paragraph Number 12 110. And, in particular, let me direct your attention to 13 the first sentence of 110, which says "Prior to his having 14 reported fraud on the U.S. Army in the manufacture of 15 tires, Mr. Guadalupe had a very good work history at 16 Goodyear." Is that an accurate statement?</p> <p>17 A. Work history, how would you define work history? 18 Because work history at the Topeka plant's different. 19 And -- And I'm not trying to be difficult, but it -- it 20 was. You can -- you can miss any -- You can be late for 21 work every day. As long as you meet your quota, as long 22 as you get production and the boss has got his numbers, 23 then you're okay. You're a good worker.</p> <p>24 It's been employees there that's come in 25 there drunk, and "I'm okay. I can produce." So he's</p>

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<p style="text-align: right;">Page 58</p> <p>1 okay. So if you're talking a good work history, I've</p> <p>2 always put out as much as I can, maxed out my -- my -- my</p> <p>3 production as much as I can.</p> <p>4 Q. So given the way you understand the -- the -- the</p> <p>5 term "good work history," then this statement is accurate?</p> <p>6 A. Yes.</p> <p>7 Q. You had received discipline, though, for issues</p> <p>8 other than absenteeism, had you not, prior to the time</p> <p>9 that you first went to TACOM?</p> <p>10 A. I can't remember if I received discipline for</p> <p>11 other than my disciplinary on absenteeism or -- or</p> <p>12 lateness or anything else. I just know that one of the</p> <p>13 major factors was bring him in, write him up, he's absent,</p> <p>14 show me proof, okay, let him go, come back.</p> <p>15 Q. Let me go back to a statement that you made in --</p> <p>16 earlier in your testimony. You said that there were</p> <p>17 managers who wrote you up at times based on racism or</p> <p>18 based on their simply not liking you. Did I understand</p> <p>19 that correctly?</p> <p>20 A. That is correct.</p> <p>21 Q. Who wrote you up, in your view, based on racism?</p> <p>22 A. Lance Sumpter was one of them.</p> <p>23 Q. Anyone else?</p> <p>24 A. John Blocker.</p> <p>25 Q. Anyone else?</p>	<p style="text-align: right;">Page 60</p> <p>1 that I'll call.</p> <p>2 And one time I lied to the gate guard, told</p> <p>3 him, "I'm running late. I've gotta get me a cab." And my</p> <p>4 supervisor, Jane Stotts, asked me, "Were you really</p> <p>5 getting -- trying to get a cab?" And I explained to her,</p> <p>6 "I had diarrhea. You want me to tell you that I had</p> <p>7 diarrhea, so I'm going to be late," you know? And she</p> <p>8 goes -- And she said, "No, no, but that's fine," and we --</p> <p>9 we moved on.</p> <p>10 Q. My question was, though, what's your basis for</p> <p>11 saying that this supervisor named Snyder or Schneider</p> <p>12 acting against you based on racism?</p> <p>13 A. Well, because we had very few minorities in the</p> <p>14 plant in the first place. And when minorities would --</p> <p>15 would do the same work that a White employee would do,</p> <p>16 they shouldn't be -- there shouldn't have been any reason</p> <p>17 why an employee would be punished for this work not</p> <p>18 getting done when it was according to our -- our</p> <p>19 Goodyear's procedures of curing a tire or doing their</p> <p>20 jobs. One White male, if he -- if he mess -- messes up,</p> <p>21 they'll probably slap him on the hand. If I mess up the</p> <p>22 way this one employee did, I'll be disciplined</p> <p>23 immediately, no questions asked.</p> <p>24 Q. But you testified about a particular incident</p> <p>25 with a particular person, Mr. Snyder --</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I can't remember their names. There was one</p> <p>2 supervisor, but I can't remember his name. I think his</p> <p>3 last name was Snyder. He was an area manager, and he was</p> <p>4 trying to write me up for not -- not wanting to cut sticks</p> <p>5 on the other side of the bladder changers' area and</p> <p>6 buff -- and buff bladders. And I told him, "I'm not</p> <p>7 trained to do that. And if you make me do that and</p> <p>8 something goes wrong, it's my butt that gets burned, not</p> <p>9 yours." So I don't know if he documented that. But if he</p> <p>10 did, you know, that's fine.</p> <p>11 Q. What's your basis for believing that he was</p> <p>12 acting based on racism?</p> <p>13 A. Because you would have to go back to the history</p> <p>14 of the -- the Topeka plant. It's second and</p> <p>15 third-generation of clansmen. And when you have an</p> <p>16 employee who -- who's there every day, 12-hour days, or</p> <p>17 work who's not -- who's not afraid to work overtimes and</p> <p>18 is there, you know, and then you have an employee's either</p> <p>19 on drugs, because he's -- he's the manager's pet, he can</p> <p>20 get away with things, and he can come in two or three days</p> <p>21 without calling and still have a job. I try to pull a</p> <p>22 stunt like that, I'm out of a job.</p> <p>23 So I've always made an attempt to make sure</p> <p>24 if I'm going to be sick, if I'm not going to make it in, I</p> <p>25 will call. And all the employees that work with me know</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- or Schneider. And, again, my question to you</p> <p>3 is, what's your basis for believing that that person on</p> <p>4 that occasion was motivated by racism?</p> <p>5 A. Because Mr. Snyder, I -- I want to give him the</p> <p>6 benefit of the doubt and say that he is a -- an</p> <p>7 intelligent man, and he does know the contract that we</p> <p>8 have. He knows that he can't take one of his employees</p> <p>9 and put them in another department to do a job -- somebody</p> <p>10 else's job that he's not trained for.</p> <p>11 Because what they can do is, one, that</p> <p>12 will -- that will cause the employee to be put in -- in</p> <p>13 harm's way because he don't know how to do the job. He</p> <p>14 can cause machinery malfunctions or -- or defects on</p> <p>15 the -- on the material that you have. And he made it</p> <p>16 very, very clear that, you know, he wanted me to get this</p> <p>17 job done. We had other employees who had less time than</p> <p>18 me. If you want to use the seniority, he can put them to</p> <p>19 work. Or there were other employees who worked in that</p> <p>20 area with more years of service than I had. He could have</p> <p>21 just returned -- asked them, "You're more experienced to</p> <p>22 do the -- the buffing and -- and cutting of -- of -- of --</p> <p>23 of sticks there. You can do the work, and we'll have</p> <p>24 Orlando to do your job on the floor as a helper because</p> <p>25 he's qualified as a helper."</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. Is that your complete answer to my 2 question: What is it that Mr. Snyder did or said on that 3 occasion to make you conclude that was based -- his 4 actions were based on racism? 5 A. My -- My conclusion, based on racism, was on his 6 action towards -- towards minority workers there. We 7 had -- The Topeka plant, the F-Line Department had the 8 first -- I guess one of the first female employees in that 9 particular department. Normally, it was all run by men. 10 And when we had a employee come from the warehouse who 11 happens to be African-American, there was talk all over 12 that plant, all over our department. She -- They made her 13 job very difficult. And that made -- led me to believe 14 that this isn't about work performance because the young 15 lady can actually do the job. And -- And the work that we 16 did was hard work. 17 Q. So is it essentially that based on the background 18 and the history you're talking about -- 19 A. Uh-huh. 20 Q. How does that relate to what Mr. Snyder told you 21 to do on one particular occasion -- 22 A. If -- if -- if -- 23 Q. -- and you didn't want to do? 24 A. He shouldn't have even approached me because he 25 knows I can't do the job. I'm not qualified to do the</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Uh-huh. 2 Q. -- prior to -- 3 A. Uh-huh. 4 Q. -- October 2000. So let -- let me ask my 5 question again. 6 A. Okay. 7 Q. It's true, is it not, that long before 8 October 2000 -- 9 A. Uh-huh. 10 Q. -- when you went to TACOM, you had been written 11 up for making threats against other employees of the 12 plant? 13 A. I was written up for anything you can think of in 14 that plant. And I -- And I'm not trying to be coldhearted 15 in here. But when Orlando Guadalupe came into his -- his 16 department to do his job, that's exactly what he came to 17 do, his job. My way of thinking at that time was I'm 18 Army, get the job done, get it done, get it done right the 19 first time, move on. When managers in -- inter -- 20 intervene and disrupt my duties, that's fine. They can do 21 that as long as they understand don't write me up for lack 22 of production. Don't write me up because you got chewed 23 out from your supervisor and blame it on me, like it has 24 happened in the past. 25 So the threats of bodily harm to any</p>
<p style="text-align: right;">Page 63</p> <p>1 job. He tried to approach me and -- and order me to do a 2 job knowing that if I refuse, he can fire me on the spot. 3 And if he knows contract, he knows that you can only send 4 someone who's qualified to do a job. 5 Q. You had been written up for making threats 6 against fellow employees long before you went to TACOM; 7 isn't that true? 8 A. That's what I heard. 9 Q. Okay. I asked you earlier about incidents other 10 than absenteeism -- 11 A. Uh-huh. 12 Q. -- prior to your visit to TACOM. Is there any 13 reason why you didn't mention then the fact that you had 14 been written up on violations relating to threats of harm 15 to other employees? 16 A. The reason I didn't mention it is because I never 17 made them. 18 Q. But you'd been written up for them, had you not? 19 A. Of course. I -- I -- I wouldn't -- I would 20 expect them to do a lot better -- better job than that. 21 Q. Okay. But my question was -- was -- We were 22 asking about how many times you'd been written up by 23 Goodyear -- 24 A. Uh-huh. 25 Q. -- for various disciplinary problems --</p>	<p style="text-align: right;">Page 65</p> <p>1 individual at that plant, I've never made. I have -- I 2 have made a comment to a -- a -- one individual, a union 3 steward of the name of James -- James Morris. And I told 4 him, "With your attitude, one of these days somebody's 5 going to kick your ass." And -- And I said it to him in 6 the break room in front of, oh, maybe 10 or 12 employees. 7 Now, if I got written up for that, I -- I wouldn't be 8 surprised. 9 Q. Your problem of getting written up by Goodyear 10 for, as you put it, anything you can think of -- 11 A. Uh-huh. 12 Q. -- is something that was happening long before 13 you went to TACOM in October of 2000; isn't that true? 14 A. Yeah, before I went to TACOM. I think it begun 15 when I filed a complaint with OSHA on asbestos. 16 Q. When did you file a complaint with OSHA on 17 asbestos? 18 A. We were working in Department 5430 on -- on the 19 8-8 machine, tubing machine. And right next to it, 20 there's a -- a roller machine that rolls. And on the 21 piping, it was exposed and asbestos was coming out of it. 22 The manager says, "It's not asbestos. Keep working." It 23 was a hot area. We had fans blowing, and asbestos was 24 flaring everywhere. I told the manager, "We got asbestos. 25 Let's get somebody to cover this up."</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. But my question was, when did you report to OSHA 2 about asbestos at the Topeka plant?</p> <p>3 A. When they refused to cover it up, I -- I think it 4 was either the day or two days afterwards, I decided to 5 call OSHA and inform them of the asbestos and where the 6 asbestos was located at and in what department.</p> <p>7 Q. When I ask when, I mean what date or what year --</p> <p>8 A. Oh.</p> <p>9 Q. -- if you don't remember the exact date.</p> <p>10 A. I can't -- I -- I can't remember the date. I 11 know when I was still in the tubers, Department 5430. So 12 I would say -- Let me see. I started there in 1994. 13 '94/'95, sometime around there.</p> <p>14 Q. And what, if anything, did OSHA do about your 15 complaint that you made in the -- in the '94 or '95 time 16 frame?</p> <p>17 A. They wrote a letter to the company. The letter 18 was posted on the -- on the board for the employees to 19 see. And about, oh, less than a month later, they had a 20 contractor come in and start cleaning up that asbestos 21 area.</p> <p>22 (Exhibit 3 marked)</p> <p>23 Q. (BY MR. ANTHONY) Let me show you what's been 24 marked as Deposition Exhibit 3, which is a document dated 25 February 24th, 1996, signed by Jane Stotts, Area Manager.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Did Jane Stotts reprimand you in regard to this 2 incident?</p> <p>3 A. I can't remember if Jane Stotts did. There was a 4 time frame there where Jane Stotts lost her husband, and 5 she took a leave of absence, and we had a rotation of 6 managers coming by to handle the operation of -- of the 7 tubers.</p> <p>8 Q. Did one of the Goodyear managers speak to you 9 about that incident?</p> <p>10 A. Not about this incident in the parking lot.</p> <p>11 Q. Was there another incident in -- involving James 12 Morris that you did get written up for?</p> <p>13 A. The only incident that I remember that I 14 mentioned to James Morris in the break room, and I 15 informed him, "With your attitude, one of these days 16 somebody's going to kick your ass." And I said it in 17 front of about 10 -- 10 or 12 employees in the break room.</p> <p>18 And then Lance Sumpter, he took me in with a 19 union steward. He had to get another union steward 20 because James Morris was a union steward for our 21 department. And he told me that he was going to put me on 22 Step 4 of the positive disciplinary step proceedings and 23 Step 5 of the positive -- of the disciplinary step 24 proceedings, and I said, "Okay," go on vacation. So I was 25 gone for two weeks, then I came back.</p>
<p style="text-align: right;">Page 67</p> <p>1 Take a moment to read that, if you would, please.</p> <p>2 A. (Complies.)</p> <p>3 Q. Okay. According to this document, James Morris 4 alleged that you said that if you didn't get to operate 5 that night on February 24th, 1996, meaning operate the 6 ten-by-eight-by-six tuber, that you would see Morris in 7 the parking lot after work. Did you say that?</p> <p>8 A. No.</p> <p>9 Q. When James Morris alleged that you did, was -- 10 was he retaliating against you for making complaints about 11 asbestos?</p> <p>12 A. No.</p> <p>13 Q. Do you know of any reason he would say it if it 14 weren't true?</p> <p>15 A. Yes.</p> <p>16 Q. What's that?</p> <p>17 A. James Morris was a very disgruntled employee. He 18 was unhappy when he got transferred from the other 19 Goodyear plant to the Topeka plant. And I think he had 20 about 20-plus years of service, but he couldn't bring that 21 service with him. He could only use his seniority for 22 retirement purposes, not for plant seniority, while other 23 employees in the warehouse that came over kept their 24 seniorities. So he was a very disgruntled employee. He 25 always had difficulties with all employees.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Did you view being -- Now, you had to leave the 2 plant for two weeks because --</p> <p>3 A. Well, Step IV --</p> <p>4 Q. -- of that?</p> <p>5 A. No. Step IV is a one-day with pay. A Step II is 6 a two-day with pay. And since I already put in my 7 vacation request I think, if I'm not mistaken, I was 8 supposed to work that -- that weekend and then go on 9 vacation.</p> <p>10 Q. So --</p> <p>11 A. So it kind of worked out pretty good that they 12 went ahead and -- and put me off for two or three days 13 with pay and -- and -- and it kind of coincided with my 14 vacation.</p> <p>15 Q. So you viewed that as an opportunity to have just 16 a little bit longer vacation?</p> <p>17 A. A great opportunity to go -- go see my daughter.</p> <p>18 (Exhibit 4 marked)</p> <p>19 Q. (BY MR. ANTHONY) I'm showing you what's been 20 marked for identification as Deposition -- Deposition 21 Exhibit 4, which is Bates number G-165 and there's a date 22 of July 15, 1996.</p> <p>23 A. Okay.</p> <p>24 Q. It's addressed to Orlando Guadalupe signed by 25 Lance Sumpter and Alan Stueve. Would you take a moment</p>

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<p>1 that.</p> <p>2 Q. And so you don't know whether that individual has</p> <p>3 a medical problem or not or -- or some --</p> <p>4 A. He has some bad knees.</p> <p>5 Q. And you don't know what kind of document he</p> <p>6 submits?</p> <p>7 A. No. He just knows -- He just -- He told, oh,</p> <p>8 just about all the guys in the -- in the break room all he</p> <p>9 has to do is get his doctor's note, "Look, he's going to</p> <p>10 be working on -- on -- This summer, we're going to cut him</p> <p>11 open, and he's going to be gone for two, four, five</p> <p>12 weeks," whatever time frame it is, and that's all. But</p> <p>13 with me, it was certain procedures, fill out the</p> <p>14 paperwork, Goodyear's paperwork, take it to the doctor,</p> <p>15 they sign it, sign off on it, take it back to Dannette</p> <p>16 Jackson, she makes the final determination.</p> <p>17 Q. When Goodyear was requiring you to follow this</p> <p>18 new policy and provide documentation in advance, is it</p> <p>19 your contention that at that point they were retaliating</p> <p>20 against you for something?</p> <p>21 A. When they asked me to follow the procedures, I</p> <p>22 agreed to. And I did exactly what they asked me to do,</p> <p>23 supply documentation. And I informed them, "Because of</p> <p>24 the -- the doctor's schedule, I won't know if I -- if my</p> <p>25 appointment's going to be on a Monday or Thursday of the</p>	<p>1 numerous occasions for absenteeism.</p> <p>2 Q. And would one of those have been back in -- in</p> <p>3 late 1998, as far as you can recall?</p> <p>4 A. I want to say -- '98, could have been. Could</p> <p>5 have been. Because I know my son had to make either his</p> <p>6 monthly or bimonthly appointments, which was up in Kansas</p> <p>7 City. So it -- it could have been for something that</p> <p>8 happened in '98.</p> <p>9 Q. Was the subject of these grievances basically</p> <p>10 your disagreement with the company about whether you were</p> <p>11 or were not entitled to Family Medical Leave Act or FMLA</p> <p>12 leave?</p> <p>13 A. My grievance was -- Could -- Could you repeat the</p> <p>14 question? Let me make sure I -- I'm understanding</p> <p>15 correctly.</p> <p>16 Q. Sure. Well, I'll -- I'll ask it in a different</p> <p>17 way. What was the nature of these grievances that -- that</p> <p>18 you filed with the union about your absenteeism charges?</p> <p>19 A. Oh, they put me on Step II and III after they</p> <p>20 know of my -- of my son's medical condition and I've</p> <p>21 submitted the documentation before. So I was kind of</p> <p>22 upset, like, "Why keep stepping me when you already know</p> <p>23 what's going on?"</p> <p>24 Q. So your position was you were entitled to FMLA</p> <p>25 and -- and that you weren't getting it?</p>
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<p>1 following month. But as soon as I get documentation when</p> <p>2 I have my next appointment, I'll let you know." And so I</p> <p>3 didn't have any problems with their policies. I just</p> <p>4 wanted them to abide by the policies.</p> <p>5 Q. I don't think you answered my question. My</p> <p>6 question is, when they were requiring you to follow this</p> <p>7 policy, is it your position that Goodyear was retaliating</p> <p>8 against or, in other words, was getting back at you for</p> <p>9 something?</p> <p>10 A. When they -- When they wanted me to follow this</p> <p>11 policy, I followed the policy. Whether it was retaliation</p> <p>12 or not, I don't think so.</p> <p>13 (Exhibit 7 marked)</p> <p>14 Q. (BY MR. ANTHONY) I'm showing you what's been</p> <p>15 marked as Deposition Exhibit 7. It's a letter on Goodyear</p> <p>16 letterhead to the United Steelworkers of America, Local</p> <p>17 307, and signed by Ken Jordan. It's dated March 15th,</p> <p>18 1999. Have you seen this document before?</p> <p>19 A. I don't remember if I did.</p> <p>20 Q. Okay. This refers to a grievance filed by the</p> <p>21 union against Goodyear in regard to -- in regard to a</p> <p>22 disciplinary proceeding for absenteeism. Do you -- Do you</p> <p>23 remember filing a union grievance arising out of your --</p> <p>24 your receiving discipline for absenteeism?</p> <p>25 A. I remember filing a grievance with the union on</p>	<p>1 A. Yes, I was entitled to it.</p> <p>2 Q. When were you first diagnosed with multiple</p> <p>3 sclerosis?</p> <p>4 A. July -- I think it was July 6th of 2000.</p> <p>5 Q. After that diagnosis, were there occasions in</p> <p>6 which you requested FMLA leave as a result of your MS?</p> <p>7 A. Yes.</p> <p>8 Q. And there were occasions when you and the company</p> <p>9 had disagreements between you as to what kind of</p> <p>10 documentation you have to submit; is that correct?</p> <p>11 A. Disagreement of what kind of documents I have to</p> <p>12 submit, is -- is that what you're saying?</p> <p>13 Q. Right. In other words, that -- that -- that you</p> <p>14 had some disagreements with people in HR about what --</p> <p>15 what level -- what types of documents you were supposed to</p> <p>16 turn in; is that correct?</p> <p>17 A. No. That -- I wasn't -- That -- That's not</p> <p>18 correct at all. I didn't have any -- any disagreement</p> <p>19 with the -- the documentation. I only had -- I was</p> <p>20 disagreeing with them going through the process of telling</p> <p>21 me, "Get me documentation" when they already had it. So I</p> <p>22 didn't -- I didn't -- I didn't dis -- I wasn't disagreeing</p> <p>23 about the documentation that they wanted, just disagreeing</p> <p>24 of them going about telling me "Go get it" when they</p> <p>25 already have it.</p>

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<p>1 a safety issue here is the responsibility of the safety 2 rep and the management team there. And if I transfer to 3 another department, the safety issues there are the 4 concerns of the safety rep there and the management of 5 that department. 6 Q. Okay. We're going to have to stick with the rule 7 where you just answer my question. 8 A. Oh, okay. 9 Q. Okay? 10 A. Okay. I'm sorry. 11 Q. You -- you -- The letter refers to complaints -- 12 the hazards you complained about. 13 A. Uh-huh. 14 Q. That's from OSHA to you. So you complained to 15 OSHA about certain hazards, right? 16 A. (Nods.) 17 Q. Fair to say? 18 A. Yes. 19 Q. Okay. Other than whatever hazards are referred 20 to in that letter and the asbestos issue that you've 21 testified earlier about in the deposition -- 22 A. Uh-huh. 23 Q. -- are there any other occasions when you 24 submitted complaints to OSHA against Goodyear? 25 A. I probably have concerning -- in the bladder</p>	<p>1 Q. Did you ever receive any discipline or be told 2 that you would receive discipline on the same day that you 3 visited the dispensary? Was there ever a day -- You seem 4 to have trouble, so I'll try to rephrase it. 5 A. I'm trying -- Yes. 6 Q. Was there ever a day when you -- when you were 7 told that you would receive discipline on just -- on 8 returning from -- just after coming back from the 9 dispensary? Do you remember any incident like that? 10 A. I'm trying to think. The last time I went to the 11 dispense -- yes. The answer is yes. 12 Q. Okay. Tell me in your own words what happened. 13 A. Okay. The last time I went to the dispensary, I 14 was having chest pains. I complained to the nurse that I 15 have MS and I was having chest pain and I -- I'm have a 16 major headache. The nurse looked at me, told me to stop, 17 told me, "Tell you what" -- she checked me out -- "Your 18 pressure's high. Here's your pass. Go straight to the 19 hospital." I said, "Okay." 20 According to Goodyear's policy, when the 21 dispensary nurse tells me that, I'm supposed to leave from 22 the dispensary to the gatehouse, out -- out to -- to 23 whatever -- wherever the place she wants me to go, to the 24 doctor or the hospital. When that was happening, I was 25 confronted by a manager, a night operator, and he informed</p>
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<p>1 area, concerning the oil falling from the hoist and the 2 rafters on the floor, concerning the -- probably the 3 extreme heat. When it's a hoseman, you gotta -- you gotta 4 put -- you gotta put the hoses into the assembly, and that 5 heat is at least a hundred some-odd degrees. So if you 6 don't do it right, you're going to burn your face. 7 Q. Again, but again, just focussing on the 8 question -- 9 A. I'm -- I'm trying -- Okay. 10 Q. You -- you -- you have -- you have -- You have 11 filed other complaints besides the asbestos one and the -- 12 the ones that are referred to in the letter that's in 13 front of you as Exhibit 10? 14 A. I'm sure I have. I'm sure I have. 15 Q. From time to time when you were employed at 16 Goodyear, you visited the dispensary; is that true? 17 A. Yes. 18 Q. Okay. And for what reasons would you go to the 19 dispensary typically? 20 A. Sometimes to pick up aspirin for a headache; 21 sometimes for injuries. 22 Q. Did you -- Did you visit the dispensary more than 23 most Goodyear associates who worked in the -- in the line 24 of work that you worked in? 25 A. I -- I wouldn't know.</p>	<p>1 me what was going on. I told him, "I don't feel good. 2 Got my dispensary pass. I'm going to the hospital." And 3 I started walking. He said, "Orlando, come back here." I 4 says, "I'm going to the hospital." 5 At that time, when I was walking, my 6 immediate supervisor was coming, and the night operator 7 met up with him. The union steward was in the area. He 8 saw. And he came to the area. I asked my immediate 9 supervisor, "This is my hospital pass. Since you're here, 10 are you going to sign it?" And he looked at me. 11 "Are you going to sign my hospital pass?" 12 And he just didn't answer me. And I got upset. "Are you 13 going to sign the fucking pass?" And he -- And he didn't 14 answer me. I said, "The hell with you. I'm going to the 15 hospital." 16 The union steward was there. I told him, 17 "Go walk me to the gate." From there, while I was 18 walking, the night operator ordered me to return. He 19 ordered me to go back to the office, and I -- I just 20 completely ignored him, and I went towards the gate. The 21 union steward walked me out to the gate. The guard took 22 my hospital pass, stamped it, and I went, got in my 23 vehicle, and I went to the hospital, because the company 24 wasn't about to enforce their policy on -- on illnesses. 25 Q. Was that in -- Was that in January of 2002?</p>

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<p style="text-align: right;">Page 134</p> <p>1 year 2000?</p> <p>2 A. I was able to make my mortgage payment. Every</p> <p>3 month, no, not every month.</p> <p>4 Q. And -- And were you and your wife's financial</p> <p>5 problems getting worse as the year 2000 went on?</p> <p>6 A. I wouldn't call it worse because most of the</p> <p>7 creditors would agree to work with me. And a lot of them</p> <p>8 knew Goodyear. They knew that I had the ability to -- to</p> <p>9 make the -- the necessary funds on either a weekly basis</p> <p>10 or monthly basis to get caught up. So they were -- they</p> <p>11 were -- they would work with me.</p> <p>12 Q. You say you wouldn't say your problems weren't</p> <p>13 getting worse. But let me ask you this --</p> <p>14 A. It wasn't getting better. Let's put it that way.</p> <p>15 Q. All right. It wasn't getting better. And I'm</p> <p>16 not trying to embarrass you. It's just I --</p> <p>17 A. Uh-huh.</p> <p>18 Q. I just need -- Since part of your claim is about</p> <p>19 your financial condition, I -- I have to ask these</p> <p>20 questions.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Is it the case that by October of 2000, the</p> <p>23 creditors were not giving you enough breathing room and so</p> <p>24 your wife had to file for personal bankruptcy?</p> <p>25 A. About October 2000, I was pretty much out of</p>	<p style="text-align: right;">Page 136</p> <p>1 when I -- when I come back to work with a work release</p> <p>2 that I can work -- heat does bother me -- I brought the</p> <p>3 documentation on that.</p> <p>4 By October, they knew of my medical</p> <p>5 condition, had all the medical documentation. They knew</p> <p>6 that my extubation may come and go, you know. And if that</p> <p>7 does happen, it can come when I'm at home or when I'm at</p> <p>8 work. So if I don't make it into work, don't be quick to</p> <p>9 judge me and punish me, but that's exactly what they did.</p> <p>10 Q. What I'm trying to understand a little bit about</p> <p>11 is to what extent your financial problems are, as you</p> <p>12 claim, the fault of Goodyear and to what extent they're</p> <p>13 caused by other circumstances in your life. Okay. So</p> <p>14 what I'm trying --</p> <p>15 A. Oh, okay.</p> <p>16 Q. That's why I'm asking you this question. It's</p> <p>17 true, is it not, that you were -- you and your wife were</p> <p>18 way behind in your bills even by the middle of 2000?</p> <p>19 A. Way behind -- I was behind. I'll go as far as to</p> <p>20 say behind on my bills.</p> <p>21 Q. Okay. And behind enough that so by October, your</p> <p>22 wife was filing for bankruptcy, right?</p> <p>23 A. I guess that's -- She -- She did file for --</p> <p>24 for -- for bank -- bankruptcy in October.</p> <p>25 Q. Okay. I'd like to ask you some questions about</p>
<p style="text-align: right;">Page 135</p> <p>1 the -- the financial decision-making.</p> <p>2 Q. Okay.</p> <p>3 A. My wife had to pretty much make all the decisions</p> <p>4 on that. For October 2000, I was going through my own</p> <p>5 little personal battle with MS. And with the depression,</p> <p>6 it -- it made it very difficult for me to even sit down</p> <p>7 with my wife and make a decision on this or that.</p> <p>8 Q. So you became less and less involved in family</p> <p>9 finances for those reasons as the year went on?</p> <p>10 A. I became less and less involved in my regular</p> <p>11 activities that I was accustomed to doing, you know, like</p> <p>12 barbecuing and stuff like that. My MS took a major toll</p> <p>13 on my health, on my mental health, and to the point that I</p> <p>14 had to go seek the help of a psychiatrist. That -- I</p> <p>15 thought I was strong to deal with that, but it -- it</p> <p>16 just -- between the medication -- And I started taking the</p> <p>17 medication in August. It -- It caused me a great deal</p> <p>18 of -- of stress in my life. And with the attacks of</p> <p>19 Goodyear, it just didn't make it any better.</p> <p>20 Q. You -- When you say "the attacks at Goodyear,"</p> <p>21 what are you referring to?</p> <p>22 A. Well, Goodyear knew. I was diagnosed with MS in</p> <p>23 July. And I was -- I didn't have a month worth of</p> <p>24 vacation, so I was off on hospital pass in June. I had to</p> <p>25 submit medical documentation, and they said, "Okay." So</p>	<p style="text-align: right;">Page 137</p> <p>1 your claims regarding what you say are defects in the</p> <p>2 Goodyear tires.</p> <p>3 A. Okay.</p> <p>4 Q. It's your claim, as I understand it, that there</p> <p>5 have been defects in a two-and-a-half-ton truck tire and</p> <p>6 in a Hummer tire; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And -- And let's talk first about the</p> <p>9 two-and-half-ton truck tire.</p> <p>10 A. Okay.</p> <p>11 Q. Let me direct your attention back to Exhibit 2,</p> <p>12 the amended complaint. If you can get through that stack.</p> <p>13 A. Exhibit 2, okay.</p> <p>14 Q. Let me direct your attention to Page 15,</p> <p>15 paragraph 49. It reads: "The inspectors inspected the</p> <p>16 tires, found them to be defective and informed the manager</p> <p>17 about them. The Area Manager, Tim Brock, said to pass</p> <p>18 them through. Mr. Guadalupe then went to the upper level</p> <p>19 managers as well, and instead of getting rid of the tires</p> <p>20 as scrap, the manager sent the tires to repair. The tires</p> <p>21 were sent outside to another department and, in the spots</p> <p>22 where the tire was defective, the tires were sanded down,</p> <p>23 extra rubber was added, and the defective tire was cured</p> <p>24 again. And Goodyear sold repaired tires as new, quality</p> <p>25 tires."</p>

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<p style="text-align: right;">Page 138</p> <p>1 Directing your attention to the second to</p> <p>2 the last sentence about the tires being sanded down, extra</p> <p>3 rubber being added, and the defective tire being cured</p> <p>4 again, what is your basis for believing that that</p> <p>5 happened?</p> <p>6 A. I saw it.</p> <p>7 Q. Where did it happen in the plant?</p> <p>8 A. From my work area, you -- you can see the Inspect</p> <p>9 and Repair Department, which is part of 1504. And there,</p> <p>10 that's where they repair and inspect -- pretty much</p> <p>11 inspect and repair the tires. There when I -- That's when</p> <p>12 I saw the employees taking care of not just the military</p> <p>13 tires, but all the tires as well. And -- And since I</p> <p>14 pretty much work in that same area, it was -- it was easy</p> <p>15 for me to find out which tires were being -- were being</p> <p>16 repaired.</p> <p>17 Q. Who did you -- who -- Who actually did the</p> <p>18 repairs that you claim you saw?</p> <p>19 A. The employee on -- on shift, whoever that -- that</p> <p>20 may be.</p> <p>21 Q. Do you know who that was?</p> <p>22 A. No, because I don't -- There's about 2,000</p> <p>23 employees, and I don't know everyone by name. I just know</p> <p>24 them by face. I know that they're a Goodyear employee.</p> <p>25 Q. And when did these repairs occur? Do -- Do you</p>	<p style="text-align: right;">Page 140</p> <p>1 you if you can tell me --</p> <p>2 A. Okay.</p> <p>3 Q. -- if you can identify for me somebody who -- who</p> <p>4 actually saw what you claim to have seen. In other words,</p> <p>5 if there's some source -- A lot of my questions today are</p> <p>6 going to be if -- if there's any source that can confirm</p> <p>7 what you claim you saw. Okay? So that's -- So who would</p> <p>8 have seen these cured tire repairs that you claim you saw?</p> <p>9 A. The inspectors themselves who are repairing them</p> <p>10 on either second shift or third shift and first shift.</p> <p>11 Q. Do you have any names of people?</p> <p>12 A. I don't know them all by names. But the Inspect</p> <p>13 and Repair on that side of -- of Earthmovers, you have</p> <p>14 maybe -- maybe four or five per shift, with the exception</p> <p>15 of first shift. You might have more because there would</p> <p>16 be a senior employee there. So it's -- it's not too hard</p> <p>17 to find out which employee worked in that -- in 1504</p> <p>18 Inspect and Repair on second shift.</p> <p>19 Q. What was your job -- Were you working in the tire</p> <p>20 presses at the time that these events -- that these</p> <p>21 repairs allegedly took place?</p> <p>22 A. I was curing tires.</p> <p>23 Q. You were curing tires, okay. And did your</p> <p>24 workload enable you to walk over to the repair area and</p> <p>25 watch people making repairs?</p>
<p style="text-align: right;">Page 139</p> <p>1 remember --</p> <p>2 A. Repairs --</p> <p>3 Q. -- what time frame we're talking about?</p> <p>4 A. Repairs occur on -- just about on every shift,</p> <p>5 probably with the exception of maybe Saturday night</p> <p>6 when -- because we worked -- at that time, we worked the</p> <p>7 six and two-thirds schedule, which was you work Sundays</p> <p>8 six -- three shifts per day. And on Sunday, you only work</p> <p>9 two shifts, which was second and third shift. So within</p> <p>10 the time frame when I was a bladder changer, when I became</p> <p>11 a tire layer, from the time I left 1504 F-Line to go to</p> <p>12 1504 Earthmovers.</p> <p>13 Q. What year are we talking about?</p> <p>14 A. We're talking about, let's see, I'd say '99, '98,</p> <p>15 2000, around there when I worked in that department.</p> <p>16 Q. And if I wanted to know who saw these events</p> <p>17 happening besides just you --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- who else would have seen these things</p> <p>20 happening that -- that -- that you say that these --</p> <p>21 A. Any employee --</p> <p>22 Q. -- tire repairs were?</p> <p>23 A. Any employee that worked in the same area where I</p> <p>24 worked at, that did the same job, anyone, anyone.</p> <p>25 Q. We've been through a lot of them. So I'm asking</p>	<p style="text-align: right;">Page 141</p> <p>1 A. My workload, depending on the circumstances,</p> <p>2 whether -- if I had a machine malfunction or if I have a</p> <p>3 shortage of rubber, the material that I need to cure my --</p> <p>4 my tires, depending on those circumstances, either I'm too</p> <p>5 busy and I don't have time to talk to you or I've got</p> <p>6 plenty of time to sit down and have a cup of coffee with</p> <p>7 you. So in those circumstance, I would have time to go</p> <p>8 over there and speak to the inspect and repair people.</p> <p>9 Q. And these repairs that you claim to have seen,</p> <p>10 were these repairs -- were you able to see what kind of</p> <p>11 tire it was that was being repaired?</p> <p>12 A. The ones that -- that I was curing, the military</p> <p>13 tires that I was curing.</p> <p>14 Q. Okay. And was your -- Were -- were you -- During</p> <p>15 that period of time, were there any other tires that you</p> <p>16 were curing besides the -- the tire with the code 2WVCO?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What other tires were you curing?</p> <p>19 A. We had -- I can't remember the codes. It's been</p> <p>20 a while back. I'm trying to think of that -- of that big</p> <p>21 heavy tire on press E-16. I guess they -- I forgot the</p> <p>22 main name of it, but it was a -- it was Bias tire. And I</p> <p>23 had to vent it before I could cure it. Tires like that --</p> <p>24 And that only would lay that tire just one time because it</p> <p>25 was a ten-hour cure or 12-hour cure, if I remember.</p>

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<p style="text-align: right;">Page 142</p> <p>1 Some tires are four-hour cures. So once I 2 start it, it made it easier for me to keep with all the 3 90-minute cures. But the other tires, I can't remember 4 the actual code that -- that -- that I used. I know it 5 was -- Anyway, I -- I've just cured them before. And East 6 13's was my -- my favorite one because it always gave me a 7 hard time because it was as big, long tire. I can't 8 remember any of those codes. 9 Q. How many different tires -- How many different 10 tire codes were you curing during that period when you 11 were working there? 12 A. Let me see. Let me see. I would say I had about 13 13, 14, 15, 16 -- Probably -- At times, I probably had 14 about 11 press -- presses that I was responsible for 15 and -- I think 11 or 12 presses, and two of them were 16 military tires. The others were radial tires, and we had 17 a few Bias tires that we had to cure as well. And then 18 when -- Due to shortage -- shortage of manpower, I would 19 be directed to handle all the other curings that I can. 20 Then that's when I got more military tires to cure as 21 well. 22 Q. Okay. Well, did you -- Were you -- Was it your 23 responsibility when you were working on that particular 24 line to make, say, more than half a dozen different kinds 25 of tires?</p>	<p style="text-align: right;">Page 144</p> <p>1 got -- got sold. 2 Q. Okay. 3 MR. DICKINS: I'm sorry? 4 THE WITNESS: Got sold. 5 Q. (BY MR. ANTHONY) Got sold. 6 A. Got passed through. Got sold. 7 Q. And what was the -- what was the nature of the 8 curing process that you say you saw going on to these -- 9 these tires that you say were being repaired? 10 A. The curing process? 11 Q. Right. 12 A. I was responsible for curing those military tires 13 90 minutes. All the other tires had a different time 14 frame. 15 Q. I'm asking a different question. 16 A. Oh, okay. 17 Q. I'm sorry to interrupt you. But is -- is it -- 18 I'm referring to your statement in paragraph 49 of the 19 complaint that the defective -- that the tires were sanded 20 down, extra rubber was added, and the defective tire was 21 cured again. 22 A. Uh-huh. 23 Q. Okay. When -- when -- When these tires that were 24 being repaired -- 25 A. Uh-huh.</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Half a dozen, I would say yes. 2 Q. All right. Now, you -- you've testified about 3 seeing cured tire repairs being made to military tires. 4 Did -- Did you see that occur on one occasion or more than 5 one occasion? 6 A. Every day I worked there. 7 Q. And did you report that, what you claim to have 8 seen, to anybody at the plant? 9 A. I reported the defect through my chain of 10 command. And my first chain of command that I saw coming 11 in after Tim Brock was a production manager by the name 12 of -- Last name is Jodon. 13 Q. Pat Jodon? 14 A. Pat Jodon. I gave him a note that second shift 15 Inspect and Repair put on my press and informed me not to 16 cure any more tires until you fix the problem. We're 17 getting scrap tires. And I gave him the note, and he said 18 he would look into it. I said, "Okay. I did my part." 19 Q. And do you -- do you know what -- what happened 20 with that note after that? 21 A. I waited. I waited -- I waited two -- I think 22 about two weeks, I waited. And then I was in the break 23 room, and I was speaking to some of the employees. And 24 Deanna Ballard, my supervisor, came in, and we were 25 talking about it. And she informed me that those tires</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. -- according to you, were being cured again, what 2 type of cure do you say that you saw done to these tires? 3 A. The curing for the -- For the repair tire, you 4 had to cure the whole 90 minutes. That's what our machine 5 was -- was set up for. So if -- if -- And if I could 6 explain further. When that military tire that's -- 7 that's -- that needs to be repaired, you repair it. And 8 you have to take that same tire, because it's already 9 cured, and put it right back into the press. That -- 10 That's a challenge in itself. 11 Once we get it in the press, then we have to 12 bring it down. Once we close the press, it -- it sets 13 a -- a time frame kicks in for 90 minutes. And after 9 -- 14 90 minutes, the press comes open, we pull out the tire, 15 and we inspect the tire to see if there's -- if the -- if 16 there's any blemishes or any -- any -- any voids or -- or 17 anything that's kind of out of the ordinary that would 18 cause for the inspectors to come in and -- and -- and 19 double -- double-check me. 20 Q. So your testimony then is that when the tires 21 were -- a cured tire had a defect, they were sanded down, 22 extra rubber was added, then the -- the entire tire was 23 put back in a press and -- and cured for an additional -- 24 another -- 25 A. Sometimes.</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q. -- entire period of cure?</p> <p>2 A. Sometimes.</p> <p>3 Q. Can you name any person who you contend did that,</p> <p>4 actually did the work of doing that?</p> <p>5 A. Of repairing tires?</p> <p>6 Q. Of the -- of the -- of the --</p> <p>7 MR. MURPHY: By "that," do you mean the</p> <p>8 sanding or the -- or the curing?</p> <p>9 Q. (BY MR. ANTHONY) The -- The sanding, the filling</p> <p>10 with rubber and the re-curing.</p> <p>11 A. Well, that's two different jobs.</p> <p>12 Q. All right. Well, can you name me anyone who did</p> <p>13 the -- the sanding part?</p> <p>14 A. The sanding part -- I can't remember their names</p> <p>15 because it's been so -- so -- so long back. Oh, God, I --</p> <p>16 One of them was a female employee on third shift, and she</p> <p>17 was very outspoken. I can't remember her name. Her, I</p> <p>18 can't remember.</p> <p>19 Q. You can't remember. All right.</p> <p>20 Can you tell me the names of any employees</p> <p>21 who cured the tires which had been sanded and had extra</p> <p>22 green rubber added to them?</p> <p>23 A. We would have -- I think his last -- His first</p> <p>24 name was Jack. He was my labor trainer on F-Line. And he</p> <p>25 made putting cured tires back in the press an art.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. These events occurred when I worked in F-Line</p> <p>2 until I was terminated in 2001. From that time to the</p> <p>3 time I was reinstated, I think July 25th by the</p> <p>4 arbitrator, and then didn't come back to work until I</p> <p>5 think -- I don't know if it was September/October -- the</p> <p>6 process still kept happening.</p> <p>7 Q. But you weren't at the plant during that period</p> <p>8 of time?</p> <p>9 A. When I -- when I -- Between March and September,</p> <p>10 no, I was not there.</p> <p>11 Q. Okay. But the -- the incidents you've been</p> <p>12 testifying about in regard to Jack Kozad curing --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- tires a second time occurred before you were</p> <p>15 fired in March of '01?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. As of that time, did you have an</p> <p>18 understanding, in your own mind, that -- that the</p> <p>19 specifications didn't permit any cured tire repairs to</p> <p>20 military tires?</p> <p>21 A. I -- It was in my mind. And Kenny Jordan was the</p> <p>22 man who said it: "We do not sell repaired tires to the</p> <p>23 military. These presses will not go down under any</p> <p>24 circumstances, or heads will roll," something to that</p> <p>25 effect.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. What's -- Do you know Jack's last name?</p> <p>2 A. No, but he got 30 plus years of service.</p> <p>3 Q. His -- Is that Jack Kozad or something like that?</p> <p>4 A. Kozad.</p> <p>5 Q. Kozad, okay.</p> <p>6 A. Kozad.</p> <p>7 Q. So your testimony is that Jack Kozad put cured</p> <p>8 tires that had been sanded down and had green rubber added</p> <p>9 to them into the presses for a second full cure?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anyone else besides him who, according</p> <p>12 to you, did that?</p> <p>13 A. I -- I was put in the position where I had to do</p> <p>14 it because it happened on my shift. And I didn't -- I</p> <p>15 wasn't familiar with -- with how to do it, so I had to</p> <p>16 seek help of other employees who -- who were -- had more</p> <p>17 seniority than I do, could probably help me get it done.</p> <p>18 So we put our heads together and pretty much got it to</p> <p>19 work, and I cured that tire.</p> <p>20 Q. So yourself and Jack Kozad. Anyone else?</p> <p>21 A. There was another old-timer. He was good in</p> <p>22 doing that, but I just can't remember his name.</p> <p>23 Q. Now, are we talking about a -- a time frame that</p> <p>24 was before you were fired in March of 2001 that this --</p> <p>25 that the -- that these events occurred?</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Did you -- Do you have an understanding of -- of</p> <p>2 what specification anywhere, either in any kind of</p> <p>3 military specification or in any contract or in any</p> <p>4 internal Goodyear specification, provides that we do not</p> <p>5 sell repaired tires to the military?</p> <p>6 A. The only specification that I received was</p> <p>7 verbally concerning those. "We don't sell repaired tires</p> <p>8 to the military," that was by Kenny Jordan. The</p> <p>9 specification on the tire itself, I was trained by the --</p> <p>10 by my labor trainers, who made it perfectly clear.</p> <p>11 These porcupine needles that come out serves</p> <p>12 one purpose in a -- in a tire in curing. And what that</p> <p>13 does, it actually provides that tire to air out. So when</p> <p>14 you have a green tire that you are actually starting to</p> <p>15 cure within that curing process and those vents, it allows</p> <p>16 the air to seep out the rubber and eventually creating</p> <p>17 a -- a porcupine effect.</p> <p>18 So when you pop out the tire, you have</p> <p>19 porcupine all around the tire and on the sidewall as well.</p> <p>20 And that alone will tell you whether or not the tire</p> <p>21 was -- was cured correctly or whether the tire was -- was</p> <p>22 cured incorrectly due to a -- a defect, whether it be a</p> <p>23 mechanical defect or -- or whether it be due to a -- a --</p> <p>24 a poor -- poor choice of -- a poor mode of rubber being --</p> <p>25 being added on or -- or built on -- on -- on the green</p>

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<p>1 tire.</p> <p>2 Q. In regard to your -- the -- the porcupine</p> <p>3 needles, you recount in your complaint an incident where</p> <p>4 you believe there were plugged vents in a press, and you</p> <p>5 alerted various people in the plant to it, and Tim Brock</p> <p>6 told you to continue making tires.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Do you recall that incident that's referred to in</p> <p>9 your complaint?</p> <p>10 A. After I got the note, I decided to take it upon</p> <p>11 myself to find out whether this note was accurate. Since</p> <p>12 it was my shift, I'm responsible for my -- for my</p> <p>13 production. I cured the first tire, and a lot of</p> <p>14 porcupines didn't come out on one side of the tires. So I</p> <p>15 figured, well, it's probably just a fluke.</p> <p>16 So I tried it a second time. When the</p> <p>17 second tire was coming out, Quality Control was coming by,</p> <p>18 and I called him and asked him, "What do you think? Is</p> <p>19 this good or bad?" He said, "Scrap it. Don't lay it</p> <p>20 until we get it fixed." I said, "Fine."</p> <p>21 Tim Brock was within feet of me, not far.</p> <p>22 He -- He overheard the conversation because we -- At that</p> <p>23 plant, it's kind of loud, so we have to speak loud. And</p> <p>24 he turned and says, "Keep curing the tires." And when he</p> <p>25 said that, I'm -- I'm obligated to keep curing the tires.</p>	<p>1 changer came along and it was located finally and then</p> <p>2 drilled out the vents?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Yes?</p> <p>5 A. I'm sure a molder changer was -- Because I think</p> <p>6 we -- we did have a mold changer there at that time.</p> <p>7 We're normally supposed to have two.</p> <p>8 Q. Okay. Was -- So was this an incident where</p> <p>9 you -- where -- where you made approximately five tires,</p> <p>10 after Tim Brock told you to keep using the -- the press,</p> <p>11 before the mold changer could come along and -- and drill</p> <p>12 out the vents?</p> <p>13 A. If he came along, he didn't come on my shift.</p> <p>14 Q. You don't remember a mold changer coming along</p> <p>15 and -- and drilling out the vents?</p> <p>16 A. No -- Not on my shift.</p> <p>17 Q. Is -- Is it your understanding that those --</p> <p>18 those tires were marked by Steve Michaels to be held for</p> <p>19 the Cured Tire Committee?</p> <p>20 A. Not that I knew.</p> <p>21 Q. What is your understanding of what happened with</p> <p>22 those tires?</p> <p>23 A. My understanding was -- When I was having a</p> <p>24 conversation in the break room with another associate who</p> <p>25 cures the same tires that I was curing, Dean -- Deanna</p>
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<p>1 If not, then that will be grounds for termination on the</p> <p>2 spot.</p> <p>3 Q. Let me ask you a question about that.</p> <p>4 A. Uh-huh.</p> <p>5 Q. The quality assurance person --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- who came by and saw this, was that Steve</p> <p>8 Michaels?</p> <p>9 A. Michaels.</p> <p>10 Q. Okay.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And -- And these tires that you made after Tim</p> <p>13 Brock told you to keep making tires, did they have tread</p> <p>14 lights? Did you understand those -- that condition to be</p> <p>15 called a tread light, where they don't have -- an area</p> <p>16 where they don't have porcupine needles?</p> <p>17 A. Well, they had -- They didn't have just -- just</p> <p>18 tread lights. They had voids in them. And when you got</p> <p>19 voids in them, the Inspect and Repair has to repair them.</p> <p>20 And they got mad at me. I -- And I made it clear, "Brock</p> <p>21 told me to keep laying them." And then they backed down</p> <p>22 and says, "Well, fine. We'll call our supervisor and let</p> <p>23 him put a stop to this because you're -- you're giving me</p> <p>24 scrap."</p> <p>25 Q. And did there come a time when -- when a mold</p>	<p>1 Ballard was there, and she stepped in, and we were talking</p> <p>2 about it, "What happened to the tires?" And she says,</p> <p>3 "Technology leader passed it on." I said, "Okay."</p> <p>4 Q. Do you know what was done to the tires, if</p> <p>5 anything, in terms of -- of whether the area around the --</p> <p>6 the voids or the area without the porcupine needles was</p> <p>7 buffed or in any other way underwent any procedure --</p> <p>8 A. Oh.</p> <p>9 Q. -- before the tires went out?</p> <p>10 A. Oh, okay. Those tires that was pushed to the</p> <p>11 side normally was -- was sent over to Inspect and Repair.</p> <p>12 And it was up to them to repair them, so . . .</p> <p>13 Q. So -- But these particular tires that --</p> <p>14 Focussing you on the -- on the incident where Steve</p> <p>15 Michaels came along and noticed that you were making tires</p> <p>16 that had areas that lacked porcupine needles, that</p> <p>17 incident, do you know what happened, if anything, to those</p> <p>18 tires in terms of being buffed or not?</p> <p>19 A. Those tires got picked up from the trucker -- our</p> <p>20 trucker and was sent over to Inspect and Repair.</p> <p>21 Q. And -- And then I guess my next question is, once</p> <p>22 they went to Inspect and Repair, do you know what happened</p> <p>23 to them in terms of any -- any inspections or repairs that</p> <p>24 were done to them?</p> <p>25 A. They repaired them. That was it.</p>

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<p>1 Q. Did you -- Did you watch those tires being 2 repaired?</p> <p>3 A. No. I just got chewed out by the guys who -- who 4 was repairing them, because they -- they said I was 5 scrapping them out. I says, "Boss told me to keep doing 6 it. And I -- I told them, "I told Michaels about it." 7 And they said, "Okay. I'll take care of it. I'll tell my 8 boss."</p> <p>9 Q. Who's the guy who chewed you out?</p> <p>10 A. An old-timer came in on -- on overtime. He came 11 in at three in the morning. He was the first shift. And 12 I don't know his name. I know him by face. But he told 13 me, "You're -- you're -- You're curing scrap." And when I 14 told him that Brock told me I gotta keep doing it, you 15 know, curing these tires, he side, "Fine. I'll -- I'll 16 speak to my boss and see if he can put a stop to it." And 17 that was it.</p> <p>18 Q. You mentioned that Deanna Ballard at some point 19 made a statement to the effect that the tires had been 20 sold?</p> <p>21 A. Yes.</p> <p>22 Q. So part of what I'm trying to do with these 23 questions is --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- is find out what -- what happened to the</p>	<p>1 it got sold.</p> <p>2 And what I mean by sold, it got sold from us 3 towards the warehouse. It's up to the warehouse to do 4 whatever they want to do with it.</p> <p>5 Q. One of the issues that you raise in your 6 complaint, in your answers to interrogatories, is -- has 7 to do with curing times and temperatures. Okay. I want to 8 ask you some questions about that.</p> <p>9 A. Okay.</p> <p>10 Q. Do you know what a thermocouple test is?</p> <p>11 A. I've heard of something like that, but I cannot 12 actually say I know what -- what it is.</p> <p>13 Q. Were you aware that Goodyear, from time to time, 14 would change its cure times based on thermocouple tests?</p> <p>15 A. If they did, they didn't fill me in on it.</p> <p>16 Q. All right.</p> <p>17 (Exhibit 15 marked)</p> <p>18 Q. (BY MR. ANTHONY) Let me show you what's been 19 marked for identification as Exhibit 15. This is a 20 document Bates number -- the first Bates number is 21 G-03038. And it's headed "Specification Change Control." 22 And a little ways down, it says "Date Effectivity, 23 10/27/2000." And under a heading, it says "Descriptive 24 Test" -- "Text," and it says, "New cures for military 25 tires."</p>
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<p>1 tires. If I want to know what happened to the tires, 2 Deanna Ballard is the one person -- is one person who 3 knows about what happened to the tires?</p> <p>4 A. If you want to know what happened to those tires, 5 you need to speak to -- and this is just a -- a -- a -- a 6 guess on my part -- the technology leader, Dallas Olson, 7 who was the technology leader there at that time. If 8 anybody should -- would know it, would be him or the 9 business center manager. Definitely he would have to know 10 because he's -- he runs the entire department.</p> <p>11 Q. All right. But you don't personally know what 12 ultimately happened to those tires? In other words, the 13 tires we're talking about, the -- the ones that you made 14 when Steve Michaels came by and commented on the lack of 15 porcupines, those tires, you don't know personally whether 16 those ultimately were buffed or were not buffed or were 17 sold to the customer or not sold; is that right?</p> <p>18 A. I just know that the tires that I cured that was 19 bad or that had the -- the -- the porcupine needles 20 missing or the voids were back on the -- on the trailer. 21 And we had a metal trailer, conveyor, so to speak. And 22 once those tires gets put on it, it goes towards the 23 warehouse. So if those tires that I cured were repaired 24 on that shift, on my shift or -- or towards the end of my 25 shift, and got put on the -- on that conveyor belt, then</p>	<p>1 A couple of lines down, it says: "Change 2 cure in 2WVCO to MDUBO21 (82 minutes) from MDUB018 (86 3 minutes)." And then further down the page, it says: "Ref 4 Thermo Tests 3857, 3831, 3417. Reason: Reducing cures 5 based on thermocouple data."</p> <p>6 Were you -- Is -- Is the change in curing 7 time from 86 to 82 minutes one part of your allegations 8 against Goodyear in this lawsuit?</p> <p>9 A. It was changed from the original 90 minutes to 86 10 minutes, down to 82 minutes, up to 86 minutes, for the 11 purpose of putting out one more tire per shift.</p> <p>12 Q. And -- And it's your contention that that made -- 13 those changes in curing times caused the tires to be 14 defective?</p> <p>15 A. With my experience there, fast cooking only 16 caused problems on -- on the tires. If -- We had a saying 17 at the plant, "If it ain't broke, leave it alone." We -- 18 We cure the tire for 90 minutes. And if it worked out 19 okay, fine. If we had some -- some -- some discrepancies 20 on the -- on the machinery itself, we stop, get 21 Maintenance, fix it. Once they fix it, we try it out. 22 We'll try it out the first time. If it comes out okay, we 23 keep rolling.</p> <p>24 The purpose of the 86 minute -- And it was 25 all the -- the -- what they call the -- the -- the -- the</p>

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<p style="text-align: right;">Page 158</p> <p>1 scuttlebutt of the plant -- let's get more -- so we can 2 get more tires within the shift and make more money. 3 Well, that's all fine. I'm -- I'm all for that. But we 4 can't be on Press 13, where you have military tires being 5 built, for 86 minutes or 82 minutes when you have other 6 responsibilities. And if you want to cure these tires 7 faster, sooner or later you're going to have yourself a 8 bad tire. And if you miss it, sooner or later the other 9 guy's going to have a bad tire. And -- And it's like 10 the -- the domino effect. If you don't take care of it on 11 first shift, it's going to pass on to second and third 12 shift and keep going until someone takes care of it. 13 Q. Do you -- Do you know anyone at Goodyear who 14 conducts the thermocouple tests in order to make decisions 15 about changing specifications? 16 A. I don't know most -- the member of management by 17 their names. 18 Q. And -- And -- And you don't conduct those tests 19 or monitor the results of those thermocouple tests? 20 A. I just cure them. I just cure them. 21 Q. You just cure tires. 22 Do you know of any Government specification 23 that you contend that Goodyear violated by changing cure 24 times for these tires? 25 A. At that time, I wasn't privy to that information.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. I'm sorry. I -- I'm asking you to -- I'm sorry, 2 not Exhibit 4. 3 A. Not Exhibit 4, okay. 4 Q. Exhibit 1 -- 5 A. Exhibit 1, okay. 6 Q. -- Interrogatory Number 4. 7 A. Exhibit 1. 8 Q. It starts on Page 3. 9 A. Page 3, okay. 10 Q. It's toward the bottom there and it says 11 "Answer." And the first sentence of the answer is: "The 12 tires for the 2 and 1/2 to 5 ton truck were developing 13 voids and blemishes." When you said "voids and 14 blemishes," is that the kind of phenomenon you were 15 talking about in your testimony a few minutes ago? 16 A. Yes. 17 Q. Okay. And then turning your attention to the 18 next page, or actually the sentence that begins at the 19 very bottom of Page 3, it -- it spills over to the fourth 20 page: "When the new production team came in, with Pat 21 Jodon as Manager, the time for curing was reduced to from 22 between 82 to 86 minutes to get the production to 6 tires 23 per shift, and the temperature was increased to 300 24 (approximate) degree." 25 A. Excuse me. Where -- Are you reading this on Page</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. As you sit here now, do you -- can you identify 2 any Government specification of any kind that Goodyear 3 violated by changing those cure times? 4 A. I haven't read the contract in itself, so I -- I 5 can't quote contract that -- that -- that states one thing 6 or another. 7 Q. So you -- you simply don't know? 8 A. No. 9 Q. Okay. Let me -- Let me direct your attention to 10 Exhibit 1, which is the interrogatory responses. And let 11 me direct you to Interrogatory Number 4 and your answer to 12 Interrogatory Number 4. Okay. The first sentence of the 13 first paragraph. 14 MR. DICKINS: Excuse me a minute. Did you 15 make that into an Exhibit? 16 MR. MURPHY: Yeah, he did, 15. 17 MR. ANTHONY: I did, 15. 18 MR. DICKINS: Okay. Excuse me. 19 Q. (BY MR. ANTHONY) The first sentence of your 20 answer to Interrogatory Number 4 says: "The tires for the 21 2 and 1/2 to 5 ton truck were developing voids and 22 blemishes." And is that -- 23 A. This -- 24 Q. -- is that the phenomenon -- 25 A. Excuse me.</p>	<p style="text-align: right;">Page 161</p> <p>1 4? 2 Q. Right there at the very top of the page. And 3 we've covered that, I think, in -- in -- in my earlier 4 question. So let me go on. I don't have a question on 5 that. 6 A. Okay. 7 Q. Let me direct your attention to the next 8 paragraph following that, which says: "The Relator was 9 told to follow the ISO book and regulations. ISO, as well 10 as other standards followed by the contract, on 11 information and belief called for curing at the times and 12 temperatures that were overridden by Pat Jodon." 13 What is -- What is the ISO book and 14 regulations that you're referring to? 15 A. ISO book was the one that we had, you're always 16 supposed to have. And if we have any questions concerning 17 the production of a tire on the temperature or -- or -- or 18 anything else, we would relate -- refer to that book. And 19 if we don't have the book, we'll refer to the quality 20 control people or -- or -- or -- or the quality assurance 21 people, and they will answer our questions. And those 22 were the -- normally our -- our two points of -- of 23 reference that we use in order to continue with our curing 24 process. 25 Q. Did you have an understanding, in your own mind,</p>

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<p>1 as to whether Goodyear could or could not change something</p> <p>2 like the cure time of a tire while it had a contract in</p> <p>3 place with the Government? Did you think that cure</p> <p>4 tires -- cure times could not be changed by Goodyear</p> <p>5 during the contract?</p> <p>6 A. I thought, at that time, Goodyear could do</p> <p>7 whatever they wanted to do. And -- and -- And the reason</p> <p>8 I say it like this is because the Topeka plant -- Well,</p> <p>9 you must know the history of it. At the Topeka plant, if</p> <p>10 it ain't fixed, don't -- don't -- don't mess with it. If</p> <p>11 it's broken, fix it. A little common sense, that part,</p> <p>12 okay. But if we want to make more money, let's -- let's</p> <p>13 try to change things around like our Earthmover -- the</p> <p>14 57-inch Earthmover tire, which was, I mean, probably</p> <p>15 you -- you lay it one time and that's it. You don't have</p> <p>16 to see it again until the next day.</p> <p>17 But because the purpose of coming down in</p> <p>18 curing time, we -- we had more scraps, 57-inch tires. And</p> <p>19 my understanding from John Blocker, those ones went to the</p> <p>20 Government, which was, you know -- it ain't our</p> <p>21 government, so I'm fine with that.</p> <p>22 But the -- the curing process caught</p> <p>23 management off guard and told them, hey, and pretty much</p> <p>24 let them know that the curing process, if you change the</p> <p>25 time frame for something that's not -- that -- that's</p>	<p>1 and the Government that specifies inspections and testing</p> <p>2 for these -- for these tires?</p> <p>3 A. No, I can't. I can't. I'm sorry. I can't. I</p> <p>4 can't think of any problems concerning the specification</p> <p>5 part on the Government contract.</p> <p>6 Q. Is -- is there -- Well, let me -- let me continue</p> <p>7 a little bit. Let me direct your attention to the second</p> <p>8 to the last paragraph on Page 4, which says: "Goodyear</p> <p>9 published testing documents which stated that Goodyear had</p> <p>10 tested its tires according to the testing mandated by</p> <p>11 Military Standards. Goodyear certified to its military</p> <p>12 and defense contractor consumer - TACOM and the U.S. Army</p> <p>13 - that its products had been tested, when in fact it</p> <p>14 knowingly failed to complete the required testing and</p> <p>15 lacked the equipment and personnel necessary to perform</p> <p>16 the required tests."</p> <p>17 My question to you about that paragraph is</p> <p>18 this: Where were -- What you claim to be the testing</p> <p>19 mandated by the military standards, where in the military</p> <p>20 standards is that mandated? Can you identify any?</p> <p>21 A. Any?</p> <p>22 Q. Any military standard that requires a specific</p> <p>23 kind of testing.</p> <p>24 A. I can identify what the military policy is. They</p> <p>25 have an SOP, like the -- the entire Armed Forces have an</p>
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<p>1 working, it's going to cause more problems. And we had a</p> <p>2 lot of scrap tires.</p> <p>3 Q. So those --</p> <p>4 A. That's what I'm saying.</p> <p>5 Q. Those are tires that are different, though, from</p> <p>6 the tires in -- in this lawsuit, right?</p> <p>7 A. Yes --</p> <p>8 Q. Okay.</p> <p>9 A. -- those are.</p> <p>10 Q. All right. Well, let me just keep going --</p> <p>11 A. Okay.</p> <p>12 Q. -- because we still have a somewhat limited</p> <p>13 amount of time --</p> <p>14 A. I'm sorry.</p> <p>15 Q. -- and I want to make sure that we focus on the</p> <p>16 issues in this lawsuit.</p> <p>17 On Page 4, the -- the fourth paragraph down,</p> <p>18 you say: "The inspections and testing did not occur in</p> <p>19 the manner specified under the contract, but rather in the</p> <p>20 manner noted in the complaint." Do you see where it says</p> <p>21 that? There --</p> <p>22 A. Oh, the inspection, okay.</p> <p>23 Q. -- "The inspections and testing did not occur in</p> <p>24 the manner specified under the contract . . ." Can you</p> <p>25 identify any part of -- of the contract between Goodyear</p>	<p>1 SOP, Standard Operating Procedure. And when it comes to</p> <p>2 testing any kind of equipment, whether it be tires or</p> <p>3 tanks, they have to go through a certain format. And</p> <p>4 after that, they have to meet certain standards, certain</p> <p>5 levels of -- of, I guess, abuse because this being the --</p> <p>6 the Armed Forces, so they can be able to pass a certain --</p> <p>7 a certain level of expectation that the military wants.</p> <p>8 And --</p> <p>9 Q. But what's the test that -- that --</p> <p>10 MR. MURPHY: He's still -- Excuse me.</p> <p>11 You're interrupting his answer. He's -- He's still</p> <p>12 describing how he knows that there's testing.</p> <p>13 Q. (BY MR. ANTHONY) Are you still answering the</p> <p>14 question?</p> <p>15 MR. MURPHY: He said -- He said, "And a,"</p> <p>16 and you --</p> <p>17 MR. ANTHONY: Okay.</p> <p>18 MR. MURPHY: -- you --</p> <p>19 THE WITNESS: And my -- Me being in the</p> <p>20 military, everything, everything has an SOP, whether it's</p> <p>21 SOP on how to cook turkey or SOP on how to repair a -- a</p> <p>22 Humvee truck or SOP on -- on how to remove or ex -- or</p> <p>23 replace a -- a two-and-a-half-ton truck tire. Everyone</p> <p>24 have an SOP. That's what -- I'm going by what the</p> <p>25 military has pretty much taught all of us for in service.</p>

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<p style="text-align: right;">Page 166</p> <p>1 We had -- Everything has a SOP.</p> <p>2 Q. (BY MR. ANTHONY) What's the procedure that was</p> <p>3 required for the two-and-half-ton truck tires?</p> <p>4 A. The procedure for the testing?</p> <p>5 Q. Rights.</p> <p>6 A. I -- I'm not aware whether -- whether Goodyear</p> <p>7 did the testing. If they did, I wasn't privy to it.</p> <p>8 Q. But my question is, what is the standard?</p> <p>9 A. The -- the -- the standard for?</p> <p>10 Q. You -- You said the -- the military has a -- an</p> <p>11 SOP for everything.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And your lawsuit claims, among other things, that</p> <p>14 there was a standard required testing procedure required</p> <p>15 by military standards that was supposed to be run on these</p> <p>16 two-and-a-half-ton truck tires.</p> <p>17 A. Okay.</p> <p>18 Q. And my question to you is, what is the procedure</p> <p>19 that was supposed to be run?</p> <p>20 A. Okay. The -- the testing -- The first -- The</p> <p>21 first test that was taken was by the tire layers, the</p> <p>22 first line -- your first line of defense. That's what the</p> <p>23 management official calls it. We're the first line of</p> <p>24 defense.</p> <p>25 We cure the tire. When the tire comes out</p>	<p style="text-align: right;">Page 168</p> <p>1 can't.</p> <p>2 Q. Let me direct your attention back to Exhibit 2,</p> <p>3 which is the complaint. I may be flipping back and forth</p> <p>4 between the complaint and interrogatories.</p> <p>5 A. Okay.</p> <p>6 Q. So 1 and 2 are going to be among the exhibits I'm</p> <p>7 going to use.</p> <p>8 A. Okay.</p> <p>9 Q. Directing your attention to Page 16 of Exhibit 2</p> <p>10 in paragraph 52, the first sentence of that paragraph</p> <p>11 says: "These defective tires were not balanced, and an</p> <p>12 unbalanced tire will cause the tire to waste away a lot</p> <p>13 faster than a balanced tire." My question to you is, on</p> <p>14 what basis do you believe that the two-and-a-half-ton</p> <p>15 truck tires were not balanced?</p> <p>16 A. The balance of the tires, there was a little</p> <p>17 machine in the plant and each shift, whether it's run by</p> <p>18 one or two employees, they put the time on the balancer to</p> <p>19 balance it out. And you have someone else that comes in</p> <p>20 and marks it with a -- a blue tag or a red tag or whatever</p> <p>21 markings that they have. That way management knows it's</p> <p>22 been balanced or it's been checked. That was just being</p> <p>23 punched the -- that it's been checked, with the markings.</p> <p>24 And in our department where the -- where the</p> <p>25 Inspect and Repair's at and they check these tires, you</p>
<p style="text-align: right;">Page 167</p> <p>1 of cure, we visually inspect these tires. If there are</p> <p>2 any blemishes or anything out of the ordinary that doesn't</p> <p>3 look like it's supposed to be there, we -- we let Quality</p> <p>4 Control and then we let our -- our -- the manager know.</p> <p>5 The second line of defense would be at</p> <p>6 Quality Control Assurance, for them to double-check</p> <p>7 whether that tire is -- is -- has met the standard or --</p> <p>8 or there's something wrong with it. They'll touch base</p> <p>9 with the area manager. From that time, the area manager</p> <p>10 either makes the decision, "It's okay. Cure it" or "It's</p> <p>11 not okay. Don't cure."</p> <p>12 After that, it's up to the -- the pow --</p> <p>13 powers to be up there in -- in -- in -- at the plant area</p> <p>14 where the big bosses are at, and they decide whether we</p> <p>15 can get away with it or we can go on with it or we need to</p> <p>16 stop and change things.</p> <p>17 Q. Okay. But if I were to ask you if you can point</p> <p>18 us to a particular military standard that requires</p> <p>19 particular types of testing and say, "Look, here's a</p> <p>20 military standard that says the company has to do A, B, C,</p> <p>21 D and E" --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- "and -- and these are the steps that Goodyear</p> <p>24 left out," would you be able to do that?</p> <p>25 A. Would I be able to do it? Not right now, I</p>	<p style="text-align: right;">Page 169</p> <p>1 have time to get them out; sometimes you don't. So</p> <p>2 depending on -- on -- on -- on production requirements, if</p> <p>3 you can balance your tire, if that department can balance</p> <p>4 the -- the amount of tires that they have there or if they</p> <p>5 can't do it, then it goes on to the next shift. But we --</p> <p>6 we were supposed to have machines there to balance tires.</p> <p>7 Q. Was it part of your job to balance tires?</p> <p>8 A. No.</p> <p>9 Q. Did you -- Did you monitor the -- the work of the</p> <p>10 people whose job it was to balance tires?</p> <p>11 A. At first, no.</p> <p>12 Q. Was there a time after at first when -- when you</p> <p>13 did monitor their work?</p> <p>14 A. I went and asked questions --</p> <p>15 Q. And -- and --</p> <p>16 A. -- and -- and asked, "What does this do?"</p> <p>17 "They balances tires."</p> <p>18 "Oh, okay."</p> <p>19 Q. Who did you ask those questions of?</p> <p>20 A. One question I asked was a -- I want -- I want to</p> <p>21 call -- I think her name was Diane. Diane, I think that's</p> <p>22 her name. She was a third shift employee. She was the</p> <p>23 first African-American female to come to work in</p> <p>24 Earthmovers. It mainly was operated by men just because</p> <p>25 of the heavy work. And she was pretty much doing that</p>

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<p>1 kind of work on -- on the radial side.</p> <p>2 And she was in -- the one that brought it to</p> <p>3 my attention that you can balance your tire, then the</p> <p>4 process is after you balance your tire, you're supposed to</p> <p>5 tag a -- what you call a -- tag it or -- with a -- with a</p> <p>6 color-coded ink or whatever. And sometimes some of the</p> <p>7 guys or employees there would just tag it and move on.</p> <p>8 That way they'll get the manager off their backs and begin</p> <p>9 production, so . . .</p> <p>10 Q. Was this African-American employee Darlene Adams?</p> <p>11 A. Darlene Adams.</p> <p>12 Q. She was the one?</p> <p>13 A. I said she's the one who brought that up.</p> <p>14 Uh-huh.</p> <p>15 Q. Other than Darlene Adams, is -- is there anyone</p> <p>16 else who you can name who worked in the pro -- the process</p> <p>17 of balancing the two-and-a-half-ton truck tires?</p> <p>18 A. Not that I know of by name.</p> <p>19 Q. Does the term "commercial acquisition contract"</p> <p>20 or "commercial item acquisition contract" have any meaning</p> <p>21 to you?</p> <p>22 A. Commercial acquisition contract, I've heard of it</p> <p>23 before, but it -- it doesn't ring a bell.</p> <p>24 Q. Okay. Do you -- Do you have an understanding</p> <p>25 that in regard to the two-and-a-half-ton truck tires, as</p>	<p>1 specifications? Do you know the answer to that question?</p> <p>2 A. Yes. Can I explain?</p> <p>3 Q. Sure.</p> <p>4 A. Specification goes back to the training of the</p> <p>5 labor trainer, the -- the quality assurance and the</p> <p>6 engineers on duty. Pretty much you ask the question: Is</p> <p>7 this a good question? Is this a bad tire? And they'll</p> <p>8 answer yes or no. You ask the question: What constitutes</p> <p>9 a bad tire? Well, see these voids, this is a bad tire.</p> <p>10 When the porcupine needles doesn't come out of a tire,</p> <p>11 that means that the air didn't completely siphon out of</p> <p>12 the tire while it was curing. So you have two things</p> <p>13 you -- you got to -- to deal with: a -- a defective tire</p> <p>14 due to voids, which can be corrected by venting out the --</p> <p>15 the molds and trying it out the -- the second time. And</p> <p>16 if it functions well, then you move on.</p> <p>17 So, in essence, it's -- it's what -- what</p> <p>18 I've learned and was trained by Goodyear, you know, what</p> <p>19 constitutes a good or bad tire. And pretty if -- if</p> <p>20 they -- if their standards are -- this is the standard</p> <p>21 that we set, okay, I'll go by those standards. But if</p> <p>22 you're telling me that we don't sell defective tires or</p> <p>23 repaired tires to the military, then you haven't met --</p> <p>24 met the standards. And if I'm the one who's curing the</p> <p>25 tires, I'm the one who -- who's going to have to answer to</p>
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<p>1 well as the Humvee tires, that the -- when the -- that the</p> <p>2 Government was essentially ordering a particular part</p> <p>3 number, a particular Goodyear part number, a particular</p> <p>4 Michelin part number --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- and what -- what the Government is ordering</p> <p>7 is -- is that -- is that manufacturer's existing product?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Do you -- Do you have any knowledge as to whether</p> <p>10 the contract covering the two-and-a-half-ton truck tires</p> <p>11 was that kind of a contract?</p> <p>12 A. The only knowledge that I have concerning those</p> <p>13 military tires on -- on the contractual part of it is the</p> <p>14 words that Kenny says: "We don't sell defective tires to</p> <p>15 the military. And if you do, you'll be in hot water."</p> <p>16 So -- And we weren't about to piss him off, and so we</p> <p>17 covered all of our bases.</p> <p>18 Q. Your lawsuit alleges in your complaint several</p> <p>19 times that the -- that the two-and-a-half-ton truck tires</p> <p>20 were not made according to specifications.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Is it your understanding that there's a -- a set</p> <p>23 of U.S. Government specifications for the</p> <p>24 two-and-a-half-ton truck tires or that Goodyear is</p> <p>25 required to produce the tires according to its own</p>	<p>1 my boss who says, "Why didn't you tell me about it?"</p> <p>2 "Well, I've been doing it for a long time."</p> <p>3 Q. I -- I -- I understand that you were trained</p> <p>4 to -- to produce first-quality tires. My question goes</p> <p>5 to -- to what the specifications are for the tires,</p> <p>6 essentially the -- the recipe for the tires.</p> <p>7 A. Oh.</p> <p>8 Q. And the question is this, it -- Well, let me --</p> <p>9 let me -- let me preface it by asking --</p> <p>10 A. Okay.</p> <p>11 Q. -- by directing your attention to a part of the</p> <p>12 complaint which is in front of you. If you flip back to</p> <p>13 Page 8 --</p> <p>14 MR. DICKINS: Page 8.</p> <p>15 Q. (BY MR. ANTHONY) -- of the complaint -- amended</p> <p>16 complaint --</p> <p>17 MR. DICKINS: Exhibit 1?</p> <p>18 Q. (BY MR. ANTHONY) -- which is Exhibit 2. And</p> <p>19 paragraph Number 10 says: "The United States Department</p> <p>20 of Defense has promulgated Military Standards that govern</p> <p>21 the manufacture of tires for use in military vehicles, and</p> <p>22 it sets out detailed requirements which must be satisfied</p> <p>23 by the manufactured tires, and certified as meeting those</p> <p>24 standards."</p> <p>25 My question to you is this: In determining</p>

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<p style="text-align: right;">Page 174</p> <p>1 whether the two-and-a-half-ton truck tires manufactured by</p> <p>2 Goodyear meet the requisite standards --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- do you know whether the proper place to look</p> <p>5 is -- is at some kind of U.S. Government document that</p> <p>6 sets out standards --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- or whether it's Goodyear's own specification,</p> <p>9 or do you not know the answer?</p> <p>10 A. It's Goodyear specification. We had our -- We</p> <p>11 got a book there. Every department is supposed to have a</p> <p>12 book on -- on -- on certain requirement specifications on</p> <p>13 tolerance level. And in the curing process, pretty much</p> <p>14 you go through the book, it tells you what a 7-inch tire</p> <p>15 is cured for and what a -- a military tire, whether it's</p> <p>16 36-inch size tire is cured for.</p> <p>17 So if -- if the specification says it's</p> <p>18 cured for ten hours, then that's how it's going to be</p> <p>19 cured, for ten hours. And if anything -- and if -- And if</p> <p>20 that -- the curing process change, then management must</p> <p>21 be -- be able to document that so we can know, so when we</p> <p>22 go to cure that same tire, the -- the next tire, we know</p> <p>23 that we're not going to be curing a bad tire nine hours.</p> <p>24 We know that in nine hours it's going to be cured because</p> <p>25 management already checked it out, they -- they signed off</p>	<p style="text-align: right;">Page 176</p> <p>1 because Goodyear --</p> <p>2 Q. I meant to say green rubber. I -- I misspoke.</p> <p>3 A. Because the -- See, the green rubber is -- has</p> <p>4 its own cure process. But the regular tire on the regular</p> <p>5 rubber, they have a -- a -- I guess they -- they buy them,</p> <p>6 a little section of -- of rubber. It's like a -- a</p> <p>7 intertube patch, and they can tag it on and work it like</p> <p>8 that.</p> <p>9 Now, for the -- for the percentage of tires</p> <p>10 that was worked on, when I was there, for every five tires</p> <p>11 that I cured, three of them would get repaired, two of</p> <p>12 them would go. So you figure I had two to three presses</p> <p>13 of curing military tires. My partner had five to six</p> <p>14 presses of curing military tires. He had more voids in</p> <p>15 his department in his five presses because he had more</p> <p>16 presses than I did with -- with my presses.</p> <p>17 So a -- a rough number -- To put a rough</p> <p>18 number, out of a hundred percent of -- of -- of Goodyear</p> <p>19 tires that was cured in the time frame that I was there,</p> <p>20 four or five percent of it were defective for the purpose</p> <p>21 it didn't meet Goodyear standards, the standards that</p> <p>22 Goodyear set forth for the employees to -- to follow by.</p> <p>23 Q. And your testimony is that there -- as to certain</p> <p>24 tires, they were sanded down, green rubber was added to</p> <p>25 the cured tire --</p>
<p style="text-align: right;">Page 175</p> <p>1 on it. So the responsibility won't fall on me now if the</p> <p>2 tire comes out -- comes back defective.</p> <p>3 Q. So then when Goodyear makes these tires for the</p> <p>4 Government then, it -- it's required to meet its own</p> <p>5 specifications for the tires; is that correct?</p> <p>6 A. That's the specification that -- that we were</p> <p>7 using.</p> <p>8 Q. And in regard to your allegation about the voids</p> <p>9 in the tires --</p> <p>10 A. Uh-huh.</p> <p>11 MR. ANTHONY: Do we have to stop because of</p> <p>12 the change of the tape? I'll stop.</p> <p>13 THE VIDEOGRAPHER: Off the record, 2:33 p.m.</p> <p>14 (Off the record)</p> <p>15 THE VIDEOGRAPHER: Back on the record,</p> <p>16 2:37 p.m.</p> <p>17 Q. (BY MR. ANTHONY) Turning back to these -- these</p> <p>18 Goodyear specifications that Goodyear was required to</p> <p>19 abide by --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- when -- when you contend that Goodyear was</p> <p>22 sanding out and adding green rubber to and then recuring</p> <p>23 tires, what portion, if you know, of Goodyear's own</p> <p>24 specifications was that violating?</p> <p>25 A. I don't think I said green tires. I said rubber,</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- and then the tire was re-cured? Did I get</p> <p>3 that right?</p> <p>4 A. Okay. On the green tire, depending on where</p> <p>5 the -- where the -- the repair's being used. If the</p> <p>6 repair is on the sidewall itself, you may need to get --</p> <p>7 put in some rubber in there. If it's repair, the repair</p> <p>8 might be, let's say example like inside the tire itself by</p> <p>9 the -- underneath the tread, then you can put a pad -- a</p> <p>10 patch -- what I call a patch of rubber. Whether it's</p> <p>11 considered green rubber, I don't know. But it -- it looks</p> <p>12 black, and it looks already cured. And they use that to</p> <p>13 cove up that void and blend that rubber into it.</p> <p>14 And they can sand it down and make it look</p> <p>15 nice. Or if it gets time to curing, they can cure it with</p> <p>16 what they call run -- run relay, which put it back in the</p> <p>17 press or Vyta-Cap it, which is setting those tires on top</p> <p>18 of each other in the pot heater so they -- they can</p> <p>19 actually cure by steam.</p> <p>20 Q. What portion of the tires did you actually see</p> <p>21 with your own eyes green rubber being added to?</p> <p>22 A. What portions of the tire?</p> <p>23 Q. Or uncured rubber added to?</p> <p>24 A. All the tires that was -- that was in Inspect and</p> <p>25 Repair were being -- were being used, were being repaired.</p>

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<p style="text-align: right;">Page 178</p> <p>1 And I, for myself, my own eyes, I actually saw what --</p> <p>2 When I walked over there, I saw an employee working on one</p> <p>3 already at the time that I walked to that -- to that</p> <p>4 station. The employee informs me this is a piece of</p> <p>5 rubber that they use. Goodyear doesn't make them. They</p> <p>6 order it. It comes in boxes, and they can use that. I</p> <p>7 said, "That's fine."</p> <p>8 Q. What part of the tire was the employee applying</p> <p>9 the rubber to?</p> <p>10 A. They were applying the rubber to a -- a -- The</p> <p>11 sidewalls are here. The tread on the inside of the tire,</p> <p>12 the way -- where the -- where the voids were coming out,</p> <p>13 they were applying it there. And from there, the -- the</p> <p>14 employee tells me that this rubber is normally used for</p> <p>15 this particular minor -- minor defect just to fill up the</p> <p>16 voids, get the rubber in, cure it, and you're good to go.</p> <p>17 Q. You say this is inside the tire?</p> <p>18 A. Uh-huh.</p> <p>19 Q. So literally it's in the part of the tire that</p> <p>20 the pressurized air would be against like the in --</p> <p>21 literally the inside of the tire?</p> <p>22 A. The inside of the tire that you and me don't</p> <p>23 normally see.</p> <p>24 Q. Right. The inside of the tire that you wouldn't</p> <p>25 see if it was mounted on a wheel?</p>	<p style="text-align: right;">Page 180</p> <p>1 been a little section. Some of them could have been a few</p> <p>2 sections of that tread itself.</p> <p>3 So depending on where the -- the -- the</p> <p>4 defect occurred in the -- in the press, that's where the</p> <p>5 employee worked on. And sometimes you have to -- Like a</p> <p>6 dentist, you got to pull a tooth out to -- to get to</p> <p>7 the -- the false teeth up there, and that's pretty much</p> <p>8 what a -- a -- a Inspect and Repair person was -- was</p> <p>9 pretty much doing, trying to repair a little section. And</p> <p>10 you may have to sand off a little section more just to get</p> <p>11 that area.</p> <p>12 Q. And I think I've already asked you if you -- if</p> <p>13 you know the names of anyone who you saw adding this</p> <p>14 uncured rubber to a cured tire.</p> <p>15 A. I don't remember any of the names. But easy</p> <p>16 to -- it's easy to get ahold of -- If they still work</p> <p>17 there, they're responsible for -- unless they changed</p> <p>18 their -- their -- their process.</p> <p>19 Q. And it was your understanding -- Was it your</p> <p>20 understanding that the Goodyear specifications did not</p> <p>21 allow any uncured rubber to be added to a cured military</p> <p>22 tire?</p> <p>23 A. It was my understandings that Goodyear does not</p> <p>24 sell defective tires or repaired tires to the military.</p> <p>25 So if a tire comes out of my press and it's -- it needs to</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Right.</p> <p>2 Q. Okay. That's where they were putting rubber?</p> <p>3 A. That's one place where they were putting rubber.</p> <p>4 That's one place that I saw they were putting rubber.</p> <p>5 Q. Okay. Were there other places on the tires where</p> <p>6 you, with your own eyes, saw Goodyear employees putting</p> <p>7 uncured rubber on a cured tire?</p> <p>8 A. They would put it on the sidewalls. And I don't</p> <p>9 know how they do it. But it's more -- more of a talent</p> <p>10 that they got putting rubber on a -- on a sidewall of the</p> <p>11 tire. Sand it down, make it look pretty, cure it, good as</p> <p>12 new.</p> <p>13 Q. Were there any other places, any other parts of</p> <p>14 the tire that you saw with your own eyes Goodyear</p> <p>15 employees adding additional uncured rubber?</p> <p>16 A. On the tread.</p> <p>17 Q. And in regard to the tread, is it your testimony</p> <p>18 that you -- you saw voids where rubber was added --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- to the -- to the grooved portion of the tire?</p> <p>21 A. I saw rubber added to the inside of the tire</p> <p>22 itself. I saw repairs being made and rubber added on</p> <p>23 those -- on top -- on top of those repairs on the</p> <p>24 sidewalls and as well as some of the -- of the -- the</p> <p>25 section of the tread of the tire. Some of them could have</p>	<p style="text-align: right;">Page 181</p> <p>1 be repaired, then it's a scrap tire. And I was going on</p> <p>2 what pretty much Goodyear's taught me.</p> <p>3 Q. So your understanding was if it needed any kind</p> <p>4 of a repair, even -- even a minor procedure such as</p> <p>5 buffing the tire, would -- would -- would -- was it your</p> <p>6 understanding that that tire could not be sold to the</p> <p>7 military --</p> <p>8 A. A cosmetic --</p> <p>9 Q. -- unless it --</p> <p>10 A. A cosmetic defect is -- is like when you put the</p> <p>11 tire inside the press and you add too much rubber and the</p> <p>12 press closes and then when it pops out, you may have a</p> <p>13 round ring around the tread itself. That's not a de --</p> <p>14 defective at all. That's just excess rubber. So what</p> <p>15 Inspect and Repair do, they cut it off, and they sand it</p> <p>16 down to small bits to make it look nice. And porcupines,</p> <p>17 they just cut off the -- the pines. That's -- that's --</p> <p>18 That's what they do on their part. So the extra rubber,</p> <p>19 you know, you do find that.</p> <p>20 Q. So with the, for example -- All right. So</p> <p>21 that -- that was -- to your understanding, that was</p> <p>22 permissible under the Goodyear specifications?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is that a "yes"?</p> <p>25 A. Because -- Yes, because it didn't affect -- it</p>

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<p style="text-align: right;">Page 182</p> <p>1 doesn't affect the tire itself.</p> <p>2 Q. Did you have -- Did you have an understanding, in</p> <p>3 your mind, as to whether buffing the tread area around the</p> <p>4 area of a tread light or where there was no porcupine</p> <p>5 needles, whether that was permitted or not permitted in</p> <p>6 the Goodyear specs?</p> <p>7 A. If they -- I don't -- I -- To be honest with you,</p> <p>8 I -- I go back to what -- what they trained me to do and</p> <p>9 what to look for. When it came to the buffing part, that</p> <p>10 was considered a repaired tire. The only thing that --</p> <p>11 that's considered a cosmetic blemish on the tire itself</p> <p>12 was the porcupines. We -- we have -- You have to cut the</p> <p>13 porcupines off so the tire can look pretty and the excess</p> <p>14 rubber around the -- the tire itself, which you can just</p> <p>15 cut off.</p> <p>16 Q. Have you ever yourself been employed in the -- in</p> <p>17 the quality assurance portion of Goodyear's operation?</p> <p>18 A. Goodyear's, no.</p> <p>19 Q. Okay.</p> <p>20 A. Well, I -- I'd like to rephrase that, because</p> <p>21 we're considered first line of defense in the curing</p> <p>22 process as tire layers. As the tire comes out and -- and</p> <p>23 we do a visual inspection. So those are not the experts,</p> <p>24 but we see the visual inspection. If there's any problems</p> <p>25 to it, we -- we turn -- we turn it on to the quality</p>	<p style="text-align: right;">Page 184</p> <p>1 toward that contract, you -- you don't maintain those</p> <p>2 numbers?</p> <p>3 A. I don't maintain those numbers.</p> <p>4 Q. If -- If one or more of the two-and-a-half-ton</p> <p>5 truck tires were to fail in the field, would you receive</p> <p>6 any kind of information about that happening?</p> <p>7 A. Not us. We're tire layers.</p> <p>8 Q. As you sit here now, can you say whether you have</p> <p>9 any data about the performance of the Goodyear</p> <p>10 two-and-a-half-ton truck tires in the field?</p> <p>11 A. Have any data?</p> <p>12 Q. (Nods.)</p> <p>13 A. Physical data, paperwork, no.</p> <p>14 Q. Have you -- Have you tried to obtain those data</p> <p>15 from anyone?</p> <p>16 A. Goodyear doesn't allow me to see their documents.</p> <p>17 Q. Have you requested that information from the</p> <p>18 Government or anyone else in all -- in all your dealings</p> <p>19 with the Government?</p> <p>20 A. No.</p> <p>21 Q. If I were to ask you the same questions regarding</p> <p>22 the Hummer tire and performance data for the Hummer</p> <p>23 tires --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- you don't have that either?</p>
<p style="text-align: right;">Page 183</p> <p>1 control people, and they take it from there.</p> <p>2 Q. I see your point. You're the first line of</p> <p>3 defense, but then there are other steps in the process</p> <p>4 after the tire leaves your hands, right?</p> <p>5 A. Yes. Yes.</p> <p>6 Q. And -- and -- Including the steps that are</p> <p>7 performed by people whose -- whose job title and</p> <p>8 description is that they're quality control people, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And -- And in your work on a day-to-day</p> <p>11 basis, you don't follow a tire through the factory after</p> <p>12 you've performed whatever function your function is on</p> <p>13 that tire and -- and follow it to the quality control and</p> <p>14 ultimately the warehouse, right?</p> <p>15 A. No. We -- I don't follow it all the way to the</p> <p>16 warehouse.</p> <p>17 Q. And I assume you don't keep records of -- of how</p> <p>18 many two-and-a-half-ton truck tires are made every month</p> <p>19 or how many Hummer tires are made every month, right?</p> <p>20 A. I don't keep records of that.</p> <p>21 Q. And you don't keep records of how many of those</p> <p>22 kinds of tires are sold to take on TACOM?</p> <p>23 A. The only knowledge that I have, they were issued</p> <p>24 a 27,000 tire for the -- for that particular contract.</p> <p>25 Q. But in terms of the -- the monthly production</p>	<p style="text-align: right;">Page 185</p> <p>1 A. The documents for the Hummer tire?</p> <p>2 Q. Right, or information about how the tires have</p> <p>3 performed in the field, either in documents or any other</p> <p>4 form.</p> <p>5 A. I don't have any documents concerning the -- the</p> <p>6 Hummer tire.</p> <p>7 MR. MURPHY: Or any other form, did you say?</p> <p>8 Q. (BY MR. ANTHONY) Do you -- Right. Do you have</p> <p>9 any other kind of information that's not -- maybe not</p> <p>10 contained in paper documents? Do you have any other kind</p> <p>11 of information about how the Hummer tires have performed</p> <p>12 in the field?</p> <p>13 A. The only information I have concerning Hummer</p> <p>14 tires like that were from one of the associates who -- who</p> <p>15 was in the United States Army. He was in supply. And he</p> <p>16 used to tell me that he used to see all these tires coming</p> <p>17 in -- military tires coming in, and they all would -- they</p> <p>18 would always run out because they was always having to</p> <p>19 change the tires out. And I'm like, you know, "You're on</p> <p>20 a military reservation and you can't keep up with tires?"</p> <p>21 He says, "A lot of these tires, they -- they run them</p> <p>22 hard. So either they don't maintain the -- the structural</p> <p>23 damage that -- that they're supposed to maintain or these</p> <p>24 tires are just walking out the window."</p> <p>25 Q. Who was it that told you that?</p>

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<p>1 A. The person that told me that, he used to work 2 with me in curing F-Line tires. His name, I think it was 3 Mike -- Mike Steward. I think that -- I think that's his 4 last name, Steward. But he -- he was a supply sergeant. 5 And he was the one who informed me that he always had 6 these problems that they couldn't keep up with the tires 7 because they would always have -- have to change out the 8 tires out there.</p> <p>9 Q. Was he talking about a particular size of tire?</p> <p>10 A. Not really. Pretty much in -- in general, he 11 would use the tires.</p> <p>12 Q. So he wasn't specifying that it was the 2WVCO 13 tire as opposed to the Hummer tire as opposed to some 14 third kind of military tire; he was talking about tires 15 generally?</p> <p>16 A. Yes.</p> <p>17 Q. Let me ask you about your experience in regard to 18 Hummer tires.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Do you call them Hummer tires or Humvee tires?</p> <p>21 A. I call them Hummer.</p> <p>22 Q. Okay. There was a point in time when you worked 23 on the extruder; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. During what time frame did you work on the</p>	<p>1 response -- it begins on Page 5 -- to Interrogatory Number 2 5. The -- Focussing your attention on the fourth 3 paragraph, under the answer there, it's about two-thirds 4 away down the page, it says: "Scrap components are 5 prohibited from going into the tire, but on a routine 6 basis, Mr. Guadalupe saw scrap components being used to 7 build Humvee tires from 1994 to 1997" --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- "when he was working in Department 5430." 10 In what respect were these components scrap 11 components?</p> <p>12 A. Excuse me. Can I explain?</p> <p>13 Q. Sure.</p> <p>14 A. Okay. The Humvee tire runs at between 1 foot a 15 minute, the conveyor belt, and you have your -- your tread 16 that comes out of the head of the -- of the extruder. And 17 when it goes up the conveyor belt and it turns, it goes -- 18 keeps going down and turns again to the point where it 19 goes down to the skiver, which cuts the tread to its -- to 20 its width -- to its width -- I mean, to its length. At 21 600 feet of -- of -- of tread being on the -- on the 22 conveyor belt, the problem that I encountered was either 23 the tolerance level, width, weight, or what they call a 24 cured rubber in the rubber itself.</p> <p>25 And in order for me to use any of the rubber</p>
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<p>1 extruder that made components for the Hummer tire?</p> <p>2 A. From the time I started in 1994 to the time I 3 left Department 5430 to 1504 Earthmovers. Probably, I 4 think Earthmovers -- The Humvee tire left the Topeka plant 5 in, I want to say, either early 1996 or late 1995 down to 6 the -- they went over to the Mexico plant. So then -- And 7 we didn't have to cure them anymore.</p> <p>8 Q. Okay. To -- To a Goodyear plant that is located 9 in Mexico?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. And in '98, they came back.</p> <p>13 Q. And when they came back to Topeka, did you then 14 resume working --</p> <p>15 A. No.</p> <p>16 Q. -- on Hummer tires?</p> <p>17 A. No.</p> <p>18 Q. So when -- when the -- when the Hummer tires 19 started being manufactured in Mexico, that's -- that's the 20 last time when -- that's the time when you stopped being 21 involved in manufacturing Hummer tires?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, let me direct your attention back to 24 Exhibit I, which is your answers to the interrogatories. 25 And let me direct your attention particularly to your</p>	<p>1 on the skid, it has to be stamped. I will always check 2 the stamp. And if it's not stamped, I can't use it. At 3 least, that was -- that was what they taught me to do.</p> <p>4 Sometimes we get lumpy rubber, and I won't 5 even -- and I -- and I won't even be -- be able to 6 recognize it because it's on the skid. It looks good to 7 me. So once it gets out of the head, if it comes out 8 lumpy, then I cut off and explain to the manager, "This is 9 what's going on. Should I continue or stop?" It's up to 10 the manager to tell me "Go" or -- or -- or "Change -- 11 Change the skid."</p> <p>12 And we normally would change the skid and 13 things would run fine. And then halfway through the skid, 14 you got more -- more cured rubber coming through. So 15 either we bought a batch of rubber that just didn't 16 conform right and -- and now this is what we have to pay 17 for it by -- with the scrap rubber or the cured rubber 18 or -- or the tolerance level on that rubber not being -- 19 not being met when it's going -- when it goes through -- 20 through the skiver. And the last man at the end is the 21 booker, and he has to book that piece of tread into a -- 22 what they call a -- a trap.</p> <p>23 Q. Okay. And -- and the -- and -- And the trap is 24 essentially a set of -- of slanted shelves where the tread 25 is -- is placed in them?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. The -- If -- If rubber comes through and</p> <p>3 it's lumpy, then that rubber at that point in the process</p> <p>4 has not been cured yet; is that right?</p> <p>5 A. If that rubber comes through and is lumpy, it's a</p> <p>6 bad cure really. Because Goodyear has a -- a -- a -- a</p> <p>7 terminology and one of them is soft cure, hard cure. A</p> <p>8 soft cure will be acceptable to pass through. A hard cure</p> <p>9 will be one that probably you don't want to pass through,</p> <p>10 so cut it off and send it back to re-mill.</p> <p>11 Q. Okay. So -- But at that point in the process, if</p> <p>12 it's lumpy, it -- it -- it can be sent to be re-milled,</p> <p>13 correct? It doesn't have to be -- it -- It doesn't have</p> <p>14 to be discarded; it can be actually re-milled; is that</p> <p>15 correct?</p> <p>16 A. My -- My understanding, if it's too lumpy, they</p> <p>17 actually scrap it out. They won't use it. They won't</p> <p>18 take a chance sometimes and depending, again, who's</p> <p>19 managing that area.</p> <p>20 Q. Okay. The next paragraph in your -- Well, let me</p> <p>21 ask you this. Have you -- Have you finished your answer</p> <p>22 to my question of what you mean in that -- in this</p> <p>23 sentence that I read to you earlier that "Mr. Guadalupe</p> <p>24 says scrap components being used to build Humvee tires"?</p> <p>25 Have you finished your answer to that question?</p>	<p>1 once -- Once I -- I cure it and they get it, it's up to</p> <p>2 them to say yea or nay.</p> <p>3 Q. Now, in -- in what respects -- what -- What</p> <p>4 specifications do you allege were violated in the</p> <p>5 manufacture of the Humvee tires? You mentioned width</p> <p>6 specifications. What was the nature of Goodyear's</p> <p>7 violation of that, according to your allegations?</p> <p>8 A. As an operator, I had a specification book right</p> <p>9 in front of me. I need that book to push my buttons to</p> <p>10 make my rubber go down through the extrude and come out</p> <p>11 the heads. And when it's coming out through the -- on the</p> <p>12 conveyor belt, I need to monitor that the weight of it,</p> <p>13 the width of it, and if -- if I don't meet those tolerance</p> <p>14 levels, at that point, I have to adjust my speed on the</p> <p>15 conveyor belt, my speed on the extruder, in order to meet</p> <p>16 my weight and width as well.</p> <p>17 And it doesn't stop there. About 30 --</p> <p>18 maybe 40, 50 feet down, you got the skiver, and that's</p> <p>19 where it cuts the tires. And there they'll -- Normally,</p> <p>20 the -- the gum stripper will monitor that to see -- see if</p> <p>21 it's cutting right. And if it is, then I just keep going</p> <p>22 and monitoring my section and making sure that I'm -- I'm</p> <p>23 within tolerance level that Goodyear set forth for me to</p> <p>24 do.</p> <p>25 Q. Okay. Is it -- is it -- Is it your allegation</p>
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<p>1 MR. MURPHY: I didn't understand your</p> <p>2 question.</p> <p>3 Q. (BY MR. ANTHONY) Okay. My question was, what --</p> <p>4 what does -- what does scrap mean? And -- And have you</p> <p>5 answered that?</p> <p>6 A. Scrap means something that -- that doesn't</p> <p>7 conform to the standard that Goodyear sets forth.</p> <p>8 Q. Okay.</p> <p>9 A. I guess -- And I guess that -- that's probably</p> <p>10 as -- as short and easy as I can make it for someone to</p> <p>11 understand. Because we do as -- As an operator, I have to</p> <p>12 meet those weight and -- and width tolerance level. And</p> <p>13 although I'm not quality inspection, we are the first</p> <p>14 line -- line of defense. So once it comes on my section,</p> <p>15 I have to meet weight level, we have to meet length level</p> <p>16 as well as weight -- as well as width levels. And if they</p> <p>17 don't conform and you use them, what's going to happen is</p> <p>18 the Tire Department right next door to me will build the</p> <p>19 tire and you risk having a -- a -- either a press</p> <p>20 separation from the tread itself or from the -- from the</p> <p>21 sidewall itself from -- from the tread.</p> <p>22 And a lot of the tire builders, they -- they</p> <p>23 won't even allow it. They -- They try to scrap that out.</p> <p>24 But due to production demand, get these tires in, meet</p> <p>25 your quota, which is fine. So once -- once they get it --</p>	<p>1 that you produced treads that were outside the weight</p> <p>2 specifications?</p> <p>3 A. Yes.</p> <p>4 Q. When you -- When you made treads, were they</p> <p>5 overweight or underweight or both?</p> <p>6 A. Some of them were underweight. Some of them were</p> <p>7 over -- overweight, or they were -- were heavy, should I</p> <p>8 say. And -- And that's due to either the extruder being</p> <p>9 sped up and you got too much rubber coming out or the</p> <p>10 extruder being slowed down and you don't have enough</p> <p>11 rubber coming out or you have a -- your conveyor belt is</p> <p>12 acting up and you gotta speed up your conveyor belt in</p> <p>13 order to meet your tolerance level on -- on -- on weight.</p> <p>14 Q. When you produced components that -- that were,</p> <p>15 according to you, out of specification, did you -- did you</p> <p>16 report to anybody that they were out of specification?</p> <p>17 A. Every time.</p> <p>18 Q. And -- And what were you told?</p> <p>19 A. "Keep going."</p> <p>20 Q. And who -- who in -- In other words, you were</p> <p>21 told to continue making --</p> <p>22 A. Yes.</p> <p>23 Q. -- components that didn't meet specification --</p> <p>24 A. Yes.</p> <p>25 Q. -- is your testimony?</p>

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<p>1 Who was it who gave you that instruction?</p> <p>2 A. Jane Stotts was one.</p> <p>3 Q. Jane? I'm sorry, Jane?</p> <p>4 A. Jane -- Jane Stotts, she was one manager. A</p> <p>5 Lance Sumpter was another.</p> <p>6 Q. Who else besides Jane Stotts and Lance Sumpter</p> <p>7 would know about these facts that you're alleging, that</p> <p>8 you -- that you made treads that didn't meet</p> <p>9 specifications?</p> <p>10 A. Maybe Jane Stotts' supervisor.</p> <p>11 Q. Who was that?</p> <p>12 A. At that time, I think it was Alan Stueve.</p> <p>13 Q. Who else, if anyone, would know about the</p> <p>14 allegations that you're making?</p> <p>15 A. Besides -- Some -- Some -- Some of the guys on</p> <p>16 the floor.</p> <p>17 Q. Can you give me any names of people who -- who</p> <p>18 you believe witnessed the production of treads that did</p> <p>19 not meet specification?</p> <p>20 A. Let me see. I would say Sam Mitchell. I forgot</p> <p>21 the guy's last name, but his -- his name's -- his first</p> <p>22 name's Art, and he was the operator 8-8 tuber. And it was</p> <p>23 right next to the 10-8, so it was easy for him to see from</p> <p>24 a distance.</p> <p>25 Q. You allege in your response to Interrogatory</p>	<p>1 Department for building.</p> <p>2 Q. And -- And is a builder also held responsible if</p> <p>3 the tire gets past him with defects in it?</p> <p>4 A. One manager made a comment. I'm trying to</p> <p>5 remember his name. He says, "Everyone in the process is</p> <p>6 held responsible." So the -- the first guys are your</p> <p>7 first line of defense. We're your quality assurance.</p> <p>8 We're your visual inspectors. We see a problem, we stop</p> <p>9 it, then we trash and try and get it corrected. But if</p> <p>10 management says "Continue," we have no choice. We have to</p> <p>11 continue. If not, that will be grounds for termination</p> <p>12 for disobeying an order.</p> <p>13 Q. The -- If -- if -- If the tread is cut too short</p> <p>14 by the skiver, what does that mean for the tire builder?</p> <p>15 How -- How does that affect what the tire builder does?</p> <p>16 A. You gotta fight. You actually gotta force</p> <p>17 yourself to turn that tread over. And sooner or later</p> <p>18 you're going to get tired and say, "This tread is -- is</p> <p>19 too short, and we'll scrap it out." If the tread is too</p> <p>20 long, then -- then scrap it out. It's too big.</p> <p>21 Q. And -- And after the tire builder puts together</p> <p>22 the -- the -- the components, then the tire, after that,</p> <p>23 is cured, is it not?</p> <p>24 A. It's my understanding, yes.</p> <p>25 Q. Right. Okay. Were you -- Were you involved in</p>
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<p>1 Number 5 that -- If you look at Page 6, the -- the -- the</p> <p>2 last sentence of the third paragraph on the page says:</p> <p>3 "The steps to check the Humvee tire for balance, even at</p> <p>4 the present time in the Topeka Goodyear plant, are not</p> <p>5 being followed."</p> <p>6 What steps do you allege are not being</p> <p>7 followed?</p> <p>8 A. If the component itself that comes out of my</p> <p>9 extruder and gets down to the end of the -- of the</p> <p>10 conveyor belt where the booking station is at, if it</p> <p>11 didn't meet their weight requirement, if it doesn't meet</p> <p>12 their width requirement, then technically it is a scrap</p> <p>13 piece of component that you can't use. But if you book</p> <p>14 the component, the tire builder doesn't know anything. He</p> <p>15 just knows that he got a trap with components and he's</p> <p>16 going to use.</p> <p>17 And he'll find out the hard way by it when</p> <p>18 he begins to build his tire. So on -- on -- on -- on that</p> <p>19 part, Goodyear didn't -- didn't maintain their -- their</p> <p>20 standard, which says protect thy good name. If it</p> <p>21 didn't -- If it didn't conform to Goodyear's standard,</p> <p>22 then -- and we brought it to their attention that we</p> <p>23 shouldn't -- we shouldn't be, I guess, held responsible</p> <p>24 because we were the first line of defense -- to be held</p> <p>25 responsible if it gets past us to the tire -- to the Tire</p>	<p>1 the process of curing Hummer tires?</p> <p>2 A. No.</p> <p>3 Q. Were you -- Did you ever build Hummer tires?</p> <p>4 A. No.</p> <p>5 Q. After it's cured, it -- it goes through Quality</p> <p>6 Control, does it not?</p> <p>7 A. I -- I presume so.</p> <p>8 Q. And -- And do you know what procedures Quality</p> <p>9 Control runs on the Hummer tires after they've been built</p> <p>10 and cured?</p> <p>11 A. In -- in the --</p> <p>12 Q. In the --</p> <p>13 A. In the Topeka plant?</p> <p>14 Q. In the Topeka plant.</p> <p>15 A. I don't know if they're -- if they even have a --</p> <p>16 a procedure for that.</p> <p>17 Q. You don't know if there is a procedure for</p> <p>18 quality control?</p> <p>19 A. For the Humvee tires.</p> <p>20 Q. Who -- who would -- Who would know whether there</p> <p>21 is or is not a procedure for quality control?</p> <p>22 A. I'm sure that the management at Goodyear would</p> <p>23 know.</p> <p>24 Q. But in any event, that's not something that was</p> <p>25 part of your job responsibilities when you worked on</p>

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1 components for Humvee tires?

2 A. No.

3 Q. Let me direct your attention to -- still on Page

4 6 -- a little further down the page, about halfway down.

5 And I'll count one, two, three, four, five -- The sixth

6 paragraph on Page 6.

7 MR. DICKINS: What's the first word or two?

8 MR. ANTHONY: It says, "The inspections."

9 THE WITNESS: Uh-huh.

10 Q. (BY MR. ANTHONY) It says: "The inspections and

11 testing did not occur in the manner specified under the

12 contract, but rather in the manner noted in the

13 complaint."

14 What -- What inspections and testing were

15 specified under the contract, if you know, for the Hummer

16 tires?

17 A. Under the -- the contract, the Government

18 contract that was issued to Goodyear?

19 Q. For the Hummer tires, yes.

20 A. I don't know on -- on the -- on the Government

21 contract. I just know on our -- our procedures and

22 standards that if -- And when it comes to Hummer tires,

23 I've cured not -- not only tread, but also the -- the

24 sidewalls as well. If those sidewalls has any foreign

25 material in it, you can't use them. If you use them,

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1 you're gonna have yourself either a blowout or a flat

2 or -- or -- or -- or a bad tire.

3 And we use three different rubbers to make

4 sidewalls, or two or three different rubbers to make

5 sidewalls and one or two to make tread. So if those -- if

6 those -- if -- If a tire has foreign material in it and --

7 and the weight looks good and the width looks good and the

8 cut at the skiver looks good, you still got yourself a bad

9 tire because you got a bad component with foreign

10 materials in it. And once the tire builder builds it,

11 he's not gonna know because he just going to go by the

12 width, length and weight of that tire, or at least width,

13 width, length.

14 And once -- once it gets past him, you don't

15 know until after it's cured, in which case you have to

16 send it to a -- My understanding -- Well, I think you --

17 We have an X-ray machine there that we send some tires

18 through. And I'm trying to remember if Hummer's tires go

19 through that same process. I'm not sure. But whatever

20 defects we have on my components, it's going to come up on

21 the -- on the tire itself when it's cured.

22 Q. So turning to your concern about tread

23 separations and blowouts, do you have any information

24 about whether the frequency of tread separations in the

25 Hummer tires that Goodyear sold to the Government exceeded

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1 what would be normally expected for a -- a first-quality

2 tire?

3 A. If I have any information on it?

4 Q. Right.

5 A. Is what you're saying?

6 Q. Correct.

7 A. The only information that I've heard of, which

8 was recently, I think it was on a -- on the Sunday news on

9 channel -- Channel 12, they talked about an Austin soldier

10 in Iraq was changing his tire, and the tire blew. Now,

11 whether it was a -- a -- a bomb under the tire or whether

12 someone shot him or he blew up, I -- I don't know. I was

13 trying to find out what -- what was it. But I didn't get

14 all that information.

15 And most soldiers won't change a big giant

16 truck tire. They don't -- They get help if it was one

17 soldier. And I -- I was under the impression that it was

18 a -- it was a -- probably a Humvee because that's probably

19 the vehicle now that we use.

20 Q. All right. You -- You don't know for sure what

21 kind of vehicle it was, though?

22 A. No. I -- I was under the impression -- Like I

23 said, if it was one soldier changing the tire, it was

24 probably a Humvee tire.

25 Q. Do you have any data or any information of any

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1 kind about whether the frequency of blowouts of the Hummer

2 tires that Goodyear sold to the Government differed in any

3 way from the frequency of blowouts that would be expected

4 for a first-quality tire?

5 A. No, I have no data.

6 Q. Do you know -- Do you have any information about

7 whether TACOM returned or rejected any of the Hummer

8 tires?

9 A. I have no information on that.

10 Q. Do you know -- Do you have any information on

11 whether TACOM returned or rejected any of the

12 two-and-a-half-ton truck tires?

13 A. No, I don't have any information on that.

14 Q. If I were looking for any information supporting

15 your claim about the manufacture of defective tires,

16 besides your account of what --

17 A. Uh-huh.

18 Q. -- you say you saw and heard at the plant and the

19 people whose names you've given during your deposition and

20 in your answers to interrogatories, can you identify any

21 other supporting data or documents that support your claim

22 that either the two-and-a-half-ton truck tires or the

23 Hummer tires were defective?

24 A. When it comes to the Hummer tire, if Goodyear

25 keeps good records, they'll -- they'll -- they should have

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<p style="text-align: right;">Page 270</p> <p>1 to -- to Tech Support or engineers and have them make 2 their decision what they want to do with the tire or 3 repair the tire and send it on its way again. 4 So I can -- To explain it better, I can -- 5 If you got a hole in your -- in your screen door and you 6 put a little tape on it, it will -- it will -- it will -- 7 it will prevent the bugs from getting in. But after a 8 while, that's -- that -- that tape's going to fall off. 9 And you have to either replace the screen itself or put in 10 an extra bigger, stronger tape to cover that -- that hole 11 up. 12 Q. Well, is it your contention then that Goodyear 13 employees did second cured repairs? 14 A. That -- That has happened. It has happened. I 15 have seen that happen. As a matter of fact, I -- I 16 participated in -- in curing some of these -- some of 17 those tires on Vyta-Cap. Because when it has to get 18 repaired and depending on what job I'm holding, whether 19 I'm a tire layer or a hoseman or a -- or a part-time -- 20 what they call a hoseman -- hoistman, then I would -- I 21 will participate in that process. 22 And the head heater makes his -- his final 23 call when it comes to sending his Vyta-Cap tires. After 24 that, if it comes back -- if the tire comes out in a few 25 hours or the next -- next -- next day and that tire is</p>	<p style="text-align: right;">Page 272</p> <p>1 A. And it starts off: "Voids which appear worse 2 than 'light' should be held for CTC. Tires with voids 3 that are not considered 'light' will be scrapped by 4 Technology." This process alone, I had voids on my tires 5 and, instead of being scrapped, was repaired and sent out. 6 Mike Steward, who was my -- my partner at 7 the tire layer doing these same tires, had more voids in 8 his tire -- on his machines. And his tires went for 9 repair and sent forward. So if this is their policy, this 10 is one policy or this is one rule -- rule alone that 11 they -- that they went ahead and -- and overlooked. 12 Q. Who besides you knows about that? 13 A. About the voids? 14 Q. About the condition you just described. 15 A. The voids in the tires, myself and every manager 16 in Earthmovers that was within my chain of command. So 17 from Deanna Ballard, John Cowan, the former business 18 center manager, the last two former business center 19 managers, the recent one before I left, the production 20 manager, and a few other people within -- within the 21 plant. 22 Q. Now, but -- Okay. So -- And that -- And you're 23 referring to the paragraph B under -- about halfway down 24 Page 5? 25 A. Yeah, paragraph B --</p>
<p style="text-align: right;">Page 271</p> <p>1 completely cured, then they have to throw that to the side 2 and either let engineers make their decision what they 3 want to do with that, whether buff it out again or repair 4 it again or scrap it out. 5 Q. But -- But is your -- Is it your understanding 6 that doing a second round of cured tire repairs is 7 contrary to spec? 8 A. Pretty much if you're doing it on the same place. 9 I mean, it's -- it's like you getting a flat tire on your 10 bike and you repair it with a patch. And then you get 11 a -- a flat tire and getting on your bike and you got the 12 same hole. Like, well, I guess it -- it didn't work the 13 first time. The patch didn't work the first time, so 14 you're going to put a bigger patch. And if it works, 15 that's fine. But the thing is the tire still has a hole. 16 Q. Do you know what the -- the -- My question is, do 17 you know of a specification that says that doing a second 18 cured repair is forbidden? 19 A. No. 20 Q. Okay. Would you be able to go through Exhibit 21 21 and identify any other respects in which you contend that 22 Goodyear made tires that were contrary to specification? 23 A. Well, in here, in -- in Page 5, 4.1.5.4, Liner, 24 and this is a -- I guess paragraph B. 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 273</p> <p>1 Q. Okay. 2 A. -- about halfway down. 3 Q. Are you able to identify anything else in Exhibit 4 21 that you contend Goodyear violated? 5 A. Now, here on Page 9, a little section, 080, 6 Bladder Defect, which reads: "Chipped bladder, bad 7 register, bad grind, defective Id plug, bladder mark," 8 there, what that -- what that entails is when -- when you 9 have a bad bladder and you use that same bladder to cure a 10 tire, it's like a -- it's like your bladder being a 11 fingerprint. You put that finger on -- on the window and 12 when you take it out, your print is still there. So that 13 bad bladder will show on your tire. 14 And you either remove the -- the bladder, 15 replace the bladder, or grind it down, buck -- buck it 16 down to the point where it won't make that distortion 17 inside the tire. And when it makes the distortion, then 18 you either have a -- a light void or -- or depending on 19 how big the -- the -- the chip was, a big void. And if 20 the chip is any -- any bigger and depending on the -- the 21 bladder itself, with the pressure in that bladder itself, 22 you can actually blow the bag inside a tire. And when 23 that happens, then -- then you got yourself a bad tire 24 inside. 25 Q. But problems with the -- the bladder and the</p>

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Orlando Guadalupe

San Antonio, TX

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<p style="text-align: right;">Page 274</p> <p>1 liner of the tire are not part of your allegations in this 2 lawsuit, right?</p> <p>3 A. My -- My allegation was -- was the defects in the 4 tire. And if I were to say it takes a machine, raw 5 material, the assemblies that make a tire to cause a 6 defect, I -- I -- I would -- I would come to think that 7 the bladder itself is part of the -- of the -- of the -- 8 of the whole allegation. Because as a bladder changer, 9 working as a bladder changer before I cured tires and then 10 when I learned -- when I started to learn to cure tires, I 11 already knew what -- what the effect was on a bladder -- 12 on a bad bladder on a tire.</p> <p>13 So when I see those -- those -- those 14 defects on the tires itself, I can catch it right away and 15 report it to QA or -- or Quality Assurance so they can 16 take the necessary actions.</p> <p>17 Q. But your -- your complaint in this case and your 18 answer, which is Exhibit 2, and the answers to 19 interrogatories, which are Exhibit 1, don't say anything 20 about bad bladders, do they?</p> <p>21 A. No.</p> <p>22 Q. Okay. Is there anything else in Exhibit 21 23 that -- that you can see that identifies specifications 24 that you contend Goodyear violated?</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 276</p> <p>1 A. Now, on Page 5 of this exhibit, 4.6, "Contours of 2 extruded components" --</p> <p>3 Q. Right.</p> <p>4 A. -- I'm familiar with this. As a gum stripper, my 5 job was to cut a piece of tread, put it on a machine and 6 draw a contour on it -- on it. And at -- at one time, 7 there was a -- a reference. The contour that you draw 8 from that piece of tread, you can compare it with the 9 actual specs. And if it didn't meet tolerance level, then 10 you inform management, what action they want to take, 11 whether they want to scrap it out, start all over again, 12 or whatever.</p> <p>13 Q. My question is, once you've reviewed this, can 14 you identify that there are any aspects that this 15 specification that you contend Goodyear violated in making 16 Hummer tires?</p> <p>17 A. No, not that I know, not that I see.</p> <p>18 MR. ANTHONY: Can we go off the record and 19 off the video record, please.</p> <p>20 THE VIDEOGRAPHER: Off the record, 5:18 p.m. 21 (Discussion off the record)</p> <p>22 THE VIDEOGRAPHER: Back on the record, 23 5:19 p.m.</p> <p>24 Q. (BY MR. ANTHONY) Let me refer you back to Exhibit 25 1, which is the interrogatory answers.</p>
<p style="text-align: right;">Page 275</p> <p>1 Q. Okay. Is there -- Is there anything you have to 2 add to your previous answer?</p> <p>3 A. No. 4 (Exhibit 22 marked)</p> <p>5 Q. (BY MR. ANTHONY) Okay. Let me show you 6 Deposition Exhibit 22 --</p> <p>7 A. Okay.</p> <p>8 Q. -- which also says "Goodyear-Topeka" at the top. 9 And under "Procedure Title," it says: "Tolerances - 10 Component." And it says -- Under "Scope," it says: 11 "Applies to all components for" and then it lists a number 12 of types of tires. The Bates number begins with a 13 G-02097.</p> <p>14 Could you take a look through this and tell 15 me if you -- Let me make one other comment for the record. 16 It says the implementation date is January 19, 2001. So 17 it may not relate to the -- the time period when you were 18 making Hummer tire components.</p> <p>19 A. Okay.</p> <p>20 Q. But my question is, can you look through this 21 and -- and see if you recognize either this document or an 22 earlier version of it. And then I'm going to ask you the 23 same questions about this with regard to the Hummer tires 24 that I did with the other document about the 25 two-and-a-half-ton truck tires.</p>	<p style="text-align: right;">Page 277</p> <p>1 A. Okay.</p> <p>2 Q. And in particular to your answer to interrogatory 3 Number 5 on Page 5.</p> <p>4 A. Okay.</p> <p>5 Q. The second to the last paragraph on Page 5, 6 towards the bottom, the second sentence says: "The 7 acceptable level of tolerance for the width in the Humvee 8 tire was a two-tenths over the specification, and the 9 weight was allowed to be two pounds over or under." And 10 your testimony earlier was that you personally produced 11 treads that were out of compliance with that 12 specification. Am I right?</p> <p>13 A. Yes.</p> <p>14 Q. How far out of compliance with the two-tenths 15 over width specification were the -- were the tires 16 that -- were the treads that you made? Let me start all 17 over again.</p> <p>18 A. Okay.</p> <p>19 Q. Okay. What I want to find out is how far you 20 claim the treads that you made deviated from the 21 two-tenths over and under width specification.</p> <p>22 A. How much tread that -- that didn't meet the specs 23 or --</p> <p>24 Q. No. What I mean is this. There were up to 25 two -- up to two-tenths of an inch over or under the width</p>

70 (Pages 274 to 277)

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 10

<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p>	
<p>BRENDA CHARCALLA, individually and as personal representative of the Estate of Gary Charcalla and as guardian of her minor sons, Brock Charcalla and Dalton Charcalla,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>THE GOODYEAR TIRE & RUBBER COMPANY,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p>Civil Action No.: 1:13-cv-00204- JFC</p> <p><i>The Honorable Joy Flowers Conti,</i> <i>Chief District Judge, presiding.</i></p> <p>Electronically Filed</p>
<p>AFFIDAVIT OF DENNIS CARLSON IN SUPPORT OF PLAINTIFFS' RESPONSE OPPOSING THE GOODYEAR TIRE & RUBBER COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT</p>	

STATE OF ARIZONA §
 §
COUNTY OF PIMA §

BEFORE ME, the undersigned notary, on this day personally appeared Dennis Carlson,
known to me to be a credible person and of lawful age, who being by me first duly sworn, on his
oath, deposes and says:

My name is Dennis Carlson. I am over eighteen (18) years of age and I am competent to testify. I have personal knowledge regarding the matters stated in this affidavit. If called to testify, I could and would testify consistently with the statements in this affidavit.

I have been retained by the Plaintiffs in the present case to provide opinions about the cause of the tire failure and issues related to that failure. I have prepared this affidavit to address possible, if not likely, ways in which the alleged manufacturing defects in the subject Goodyear tire may have come about, based on the first-hand testimony of Orlando Guadalupe, whose deposition has been provided to me by Plaintiffs' counsel.

1. As set forth in my reports and in my deposition and court testimony, it is my opinion that the subject Goodyear G647 RSA 245/70R19.5 Load Range G tire — made in Goodyear's Topeka, KS plant during the 2nd week of 2003 — failed after low-service mileage during its original tread life as a result of an inter-ply separation between the working tread belts 2 and 3. The defects in the subject tire, which consist of inadequate inner liner gauge, reduced adhesion between the tread belts, and improper placement of the steel belts, caused the separation to form and progress, culminating in a catastrophic tread-belt detachment and blowout. At the time of its failure, the subject tire exhibited good tread depth of approximately 10/32nds of an inch. This tire had 16.5/32nds when new, meaning that it was less than ½ worn. Truck tires such as this are designed for multiple retreads, so the subject tire failed at a small percentage of its design life.

2. From the time the Charcallas purchased the subject truck on August 18, 2003 (see "Bill of Sale," ECF No. 129-4) until the time of the accident on July 15, 2011, the truck was driven approximately 27,000 miles. It is Brenda Charcalla's recollection that the front tires, including the subject tire, appeared new at the time of the vehicle purchase; she specifically noted that they exhibited "porcupines," i.e. mold vents, on the tread consistent with a new tire. (Brenda Charcalla

Affidavit, September 10, 2016, ECF No. 114-1). Mold vents wear off of tires very rapidly, so the mileage at the time of the vehicle sale essentially indicates very close to the mileage at the time of the tire install.

3. A medium truck tire delivers a front tire treadwear life of anywhere between 25,000 miles to 200,000 miles. The shorter mileage is seen in dump trucks driven mostly in a city environment, while the longer mileage is achieved in cross-country highway use. From the wear seen on the subject tire, it is estimated that this tire would have lasted approximately 75,000 miles for the original tread. Truck tires are designed to be retreaded multiple times. The carcass life of a truck tire is designed to be at least twice the mileage of the original tread life in order to allow for retreading. Indeed, Goodyear's warranty covers its tire casings through their first retread. (See Goodyear Commercial Truck Tire Limited Warranty). In a press release concerning the subject G647 RSA, Goodyear's vice president, Ted J. Fick, described this tire line as providing "significant advantages including sidewall impact resistance, overall durability, tread life and retreadability." (See "Goodyear Offers 2 New Tires for P&D Applications," 12/02). Mr. Fick further offered that the G647 RSA featured certain anti-oxidants intended "to increase tire life based on age versus mileage." (Id.).

4. Historically, consumers have been advised by tire makers that visual inspections that include a review of the overall tire condition and tread depth are the proper means for determining tire service life. Tire manufacturers recommend removing truck tires from service when the tread is worn down to 2/32nds of an inch, or 4/32nds in the case of steer tires. At 10/32nds, the subject tire was nowhere near worn out. Further, there is no evidence to suggest that the tire exhibited any conditions that were visually apparent prior to its failure that would have warranted its removal. Standards for inspecting tires such as the subject tire are regulated by the

state and federal governments and are identified in Goodyear's Radial Truck Tire and Retread Service Manual. The state of Pennsylvania required a similar "Semi-Annual" inspection of the subject truck and tires which was performed less than three months prior to the accident.

5. The failure in the subject tire occurred at approximately 17 percent of the design carcass life which is unusual considering the absence of abuse or misuse of the tire. The manufacturing defects that exist in the subject tire combined with the aging degradation are the only factors that explain the tire's extremely short life, and are in my opinion the only factors responsible for the tire's failure. The subject tire was approximately 8.5 years old at the time of failure. While it is the responsibility of tire manufacturers to inform tire service providers and consumers that tire service life does not end with the tread depth, Goodyear has ignored this problem by not publishing any aging warnings or maximum life recommendations, as have most other vehicle and tire manufacturers. Given the grave risks presented by catastrophic belt separation failures, and the fact that tire aging is a known and proven factor for rubber degradation, fatigue and ultimate failure, it is axiomatic that appropriate instructions and warnings concerning the hazards of tire aging are required for the safe operations of tires.

6. I have reviewed the testimony of Orlando Guadalupe, a former Goodyear Topeka plant worker. He testified about certain abnormalities that occurred in the tire manufacturing process throughout his employment between 1994 and 2003. His testimony is helpful in shedding light on and in fact supporting my opinions concerning the causes of the manufacturing defects that exist in the subject tire. The abnormalities he witnessed indicate a corporate climate of sacrificing quality over quantity and reckless indifference for the motoring public.

7. One abnormality that deeply concerned him was decreasing curing time by increasing cure temperature in order to increase production. (Guadalupe Depo, 157:12-25;

160:20–24; 158:1–9.) Curing is known as the bottleneck in all tire manufacturing plants, but attempting to speed it up is in my opinion a risky procedure that can have adverse effects on tire durability. While the thermocouple test which was shown to Mr. Guadalupe in his deposition appeared to show a similar result in the curing of the rubbers, there are other effects that do not readily appear such as blooming of the antidegradants and sulfur. When bloomed to the surface, these ingredients can cause loss of adhesion which can be evidenced by liner pattern (process) marks in a cured tire. Liner pattern marks are indeed evident to a significant degree in the subject tire and the lack of adhesion that their presence indicates was a contributing cause of the belt separation failure in the subject tire.

8. In my deposition in this matter, I testified that “curing anomalies” would explain the widespread presence of the liner pattern marks (at three different layers) in the subject tire. (Carlson Depo, 215:2–8.) Mr. Guadalupe’s testimony with regard to Goodyear speeding up the curing process is helpful and relevant in supporting my opinion regarding the specific causes of this adhesion defect in the subject tire.

9. Mr. Guadalupe also related instances of contamination such as asbestos and oil. (Guadalupe Depo, 65:16–25.) Any contaminants on the surface of a green tire component can result in reduced adhesion between the contaminated components and its adjacent components, which can be evidenced by liner pattern marks such as what is seen on the separated surfaces of the subject tire. Mr. Guadalupe’s testimony in this regard provides support for my opinion that contamination is another potential cause of the adhesion defect in the subject tire.

10. Mr. Guadalupe further related occurrences where extruded components, such as the tread, were being produced out of tolerance. When he would bring this to the attention of management, he was told to “keep going” which lead to the out-of-spec components being passed

through to the tire builders. (Guadalupe Depo, 193-196.) If used to build a tire, these out-of-spec green components would unquestionably result in an out-of-spec cured tire. It is my opinion that the subject tire in this matter has an inner liner that is out-of-spec in that the gauge is too thin which accelerated the aging degradation of the tire thus contributing to the belt separation failure. As I explained in my affidavit prepared in response to Goodyear's motion to exclude my testimony, Goodyear has produced no information to indicate that it was monitoring the inner liner gauge in cured tires built to the subject specification, either during pre-production or as part of its quality assurance processes. This fact alone is egregious and highly unusual conduct for a tire manufacturer. However, when considering the lack of monitoring of cured tire components coupled with management's refusal to prevent out-of-spec green components from being used in the building process, it is unquestionably a recipe for disaster. As Mr. Guadalupe put it, he was the "first line of defense" and, as part of fulfilling his duties, was trying to ensure that out-of-spec components were not going to cause a bigger problem further down the line. Instead, his attempts to correct problems were continually vetoed by management, and he felt that if he did not continue to produce out-of-spec components, his job would be terminated (Id. 196:2-12).

11. As another example of steps being skipped in the quality assurance processes, Mr. Guadalupe described how workers responsible for checking the balance of the finished tires would "just tag it and move on" in order to keep up with production and "get the manager off their backs..." (Id. 170:2-9). Checking the uniformity of tires using the "balance" machine described by Mr. Guadalupe is one of the last lines of defense in quality assurance. It measures the variation of forces generated in the rolling tire which can signal a durability related problem such as misplaced belts or other components. This is a quality assurance process that is used by all tire manufacturers on every automotive tire produced. In the case of the subject tire, the misplaced

belts, once cured into the tire, could have only been detected through x-ray and/or uniformity testing. It is unknown whether either of these procedures were performed on the subject tire prior to it leaving the Topeka plant. It is my opinion that the misplaced belts in the subject tire contributed to the belt separation failure.

12. The manufacturing practices that were occurring at the Topeka plant as described by Mr. Guadalupe leading up to the time of manufacture of the subject tire created an environment that enabled the occurrence of each of the above described manufacturing defects—inadequate adhesion, inadequate inner liner gauge and misplaced belts—all of which could have easily been prevented. Goodyear's lack of warning or recommendation concerning tire aging further enabled the subject tire to remain on the road up until the time of its failure. In these regards, Goodyear created an extremely hazardous situation which lead to the Charcalla's accident and the death of Mr. Gary Charcalla.

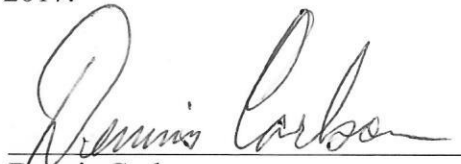
13. These manufacturing anomalies were known to the corporate management at the Topeka plant according to Guadalupe. Whenever he brought various manufacturing problems to their attention, Goodyear's Topeka plant managers would ignore these reported problems in order to maintain productivity. Guadalupe testified that plant managers would tell him to keep working, no matter what problem he reported: "It's not asbestos. Keep working." (Guadalupe Depo, 65:16–25.) "Keep curing the tires." (Id., 150:2–24.) "Keep going." (Id., 192:8–25; 193:1–24.) To make matters worse, Guadalupe further testified that there were serious issues with making the components as well, thereby compounding problems in the curing process involving Goodyear's radial truck tires. As an experienced tire curer and builder, Guadalupe knew — and presumably Goodyear's managers also knew — that each defective tire could lead to a catastrophic and even fatal "blowout": "If those sidewalls has any foreign material in it, you can't use them. If you use

them, you're going to have yourself either a blowout or a flat or—or—or—or a bad tire” (Guadalupe Depo, 198:24–25). The end result was that “Goodyear was selling defective tires.” (Id., 284:4–5.) Guadalupe was therefore concerned “about tread separations and blowouts.” (Id., 199:19–23.) This shows a reckless disregard for the safety of consumers/users, and a callous, even wanton and willful indifference to foreseeable drivers, passengers, and possibly other victims of catastrophic tire failures — such as what happened in the case of the subject G647 RSA, which caused the death of the driver, Gary Charcalla, and serious injuries to his wife, Brenda — manifesting a corporate contempt for maintaining strict, safe manufacturing standards, due to an overriding profit incentive.

My opinions in this case are based on the methodology described above and are formed to a reasonable degree of engineering probability.

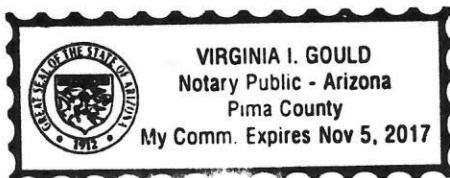
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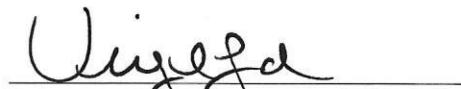
SIGNED this 7 day of October, 2017.


Dennis Carlson

STATE OF ARIZONA §
 §
COUNTY OF PIMA §

Subscribed to and sworn before me, this 7th day of October, 2017, to certify which witness my hand and seal of office.




Notary Public, State of Arizona

My Commission Expires: Nov 5, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 11

L I M I T E D W A R R A N T Y

GOODYEAR
COMMERCIAL
TRUCK TIRE
LIMITED
WARRANTY

O N T H E W I N G S O F



HOW DO YOU OBTAIN AN ADJUSTMENT?

- A. You must present the tire to be adjusted to a Goodyear Commercial Tire Retailer. (Please consult your telephone directory for locations.) Tires replaced on an adjustment basis become the property of Goodyear.
- B. You must pay for taxes or any additional services you order at the time of adjustment.
- C. No claim will be recognized unless submitted on a Goodyear claim form (supplied by the Goodyear Commercial Tire Retailer) completely filled out and signed by you, the owner of the tire presented for adjustment, or your authorized agent.

SAFETY WARNINGS:

Serious injury or property damage may result from:

- **TIRE FAILURE DUE TO UNDERINFLATION/OVERLOADING.**
Follow the vehicle owner's manual or tire placard in vehicle.
- **EXPLOSION OF TIRE/RIM ASSEMBLY DUE TO IMPROPER MOUNTING.**
Only specially-trained persons should mount tires.
- **FAILURE TO MOUNT RADIAL TIRES ON APPROVED RIMS.**
- **FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING.**
- **TIRE SPINNING.** On slippery surfaces such as snow, mud, ice, etc., do not spin tires in excess of 35 mph (55 kph), as indicated on the speedometer. Personal injury and severe damage may result from excessive wheel spinning, including tire disintegration or axle failure.

FOR SERVICE ASSISTANCE OR INFORMATION:

1. First contact the nearest Authorized Goodyear Commercial Truck Tire Retailer.
2. If additional assistance is required:
 - E-mail The Goodyear Consumer Relations Department at consumer_relations@goodyear.com or
 - Write to -
Goodyear Customer Assistance Center
Department 728
1144 East Market St.
Akron, OH 44316

WHO IS ELIGIBLE FOR WARRANTY COVERAGE?

You are eligible for the benefits of this warranty if you meet all the following criteria:

- You are the owner or authorized agent of the owner of new Goodyear Unisteel® radial light truck or medium radial truck tires, including mud and snow and on/off road tires.
- Your tires bear Department of Transportation (DOT) prescribed tire identification numbers and are not branded "NA" (Not Adjustable).
- Your Goodyear truck tires have been used only on the vehicle on which they were originally installed according to the vehicle manufacturer's or Goodyear's recommendations.
- Your tires were purchased on or after September 1, 2002.

WHAT IS COVERED AND FOR HOW LONG?

1. **FREE TIRE REPLACEMENT** – Goodyear truck tires covered by this warranty that become unserviceable due to a covered warranty condition during the first 2/32" treadwear or twelve months from date of purchase, whichever comes first, will be replaced with a comparable new Goodyear tire without charge. You pay only for the mounting and balancing. (Without proof of purchase, date of manufacture will be used to determine age.)
2. **PRORATED TIRE REPLACEMENT** – Tires worn beyond the first 2/32" treadwear that become unserviceable due to a covered warranty condition will be replaced on a prorated basis. You are responsible for mounting and balancing charges.

HOW WILL THE PRORATED CHARGES BE CALCULATED?

The replacement price will be calculated by multiplying the current Goodyear "predetermined price for adjustment" or current advertised selling price at the adjustment location (whichever is lower) by the percentage of usable original tread that has been worn off at the time of adjustment. You pay for mounting, balancing, an amount equal to the full current Federal Excise Tax and any other applicable taxes for the comparable new Goodyear replacement tire.

EXAMPLE:

If your disabled tire had an original 16/32" of usable tread depth and is worn to 8/32" of usable tread remaining you have used 50% and therefore must pay 50% of the predetermined price for adjustment or advertised selling price of a comparable tire, plus an amount equal to the full current Federal Excise Tax applicable to the comparable new replacement tire at the time of adjustment. If the price of the comparable tire is \$400.00, the cost to you would be \$200.00 plus Federal Excise Tax, mounting, balancing and any other applicable taxes.

WHAT IS A COMPARABLE TIRE?

A "comparable" new Goodyear tire may either be the same line of tire or, in the event that the same tire is not available, a tire of the same basic construction and quality with a different sidewall or tread configuration. If a higher priced tire is accepted as replacement, the difference in price will be at an additional charge to you.

Any replacement tire provided pursuant to this warranty will be covered by the Goodyear warranty in effect at the time of replacement.

WHAT IS NOT COVERED BY THIS WARRANTY?

- Irregular wear or tire damage due to:
 - Road hazards (including punctures, cuts, snags, impact breaks, etc.)
 - Wreck, collision, or fire.
 - Improper inflation, overloading, high speed spinup, misapplication, misuse, negligence, racing, chain damage, or improper mounting or demounting.
 - Mechanical condition of the vehicle.
- Ride disturbance after the first 2/32" treadwear or due to damaged wheels or any vehicle condition.
- Any tire intentionally altered after leaving a factory producing Goodyear tires to change its appearance (example: white inlay on a black tire).
- Tires with weather cracking which were purchased more than four (4) years prior to presentation for adjustment. If you have no proof of purchase date, tires manufactured four (4) or more years prior to presentation are not covered.

- Material added to a tire after leaving a factory producing Goodyear tires: (example: tire fillers, sealants, or balancing substances). If the added material is the cause of the tire being removed from service, the tire will not be adjusted.
- Loss of time, inconvenience, loss of use of vehicle, incidental or consequential damage.

WHAT IS THE RADIAL CASING PROVISION?

Casings will be warranted against covered warranty conditions through 100% of the first retread for a period of four (4) years from the date of the casing DOT serial number or proof of purchase, if available.

Standard casing values will apply through the original tread. During the first retread, standard casing values apply through the first 25% wear and reduced casing values apply for the remainder of the first retread.

GOODYEAR CASING VALUES	ORIGINAL TREAD & THROUGH FIRST 25% OF FIRST RETREAD LIFE CASING VALUES GY	AFTER 25% OF FIRST RETREAD LIFE CASING VALUES GY
UNISTEEL LIGHT TRUCK		
7.50R16	\$15.00	\$10.00
225/75R16	15.00	10.00
215, 235/85R16	15.00	10.00
8.75, 9.50R16.5	15.00	10.00
8, 8.5R17.5	15.00	10.00
8R19.5	15.00	10.00
TUBELESS		
9, 10, 11R17.5	\$20.00	\$15.00
9, 10R22.5	40.00	35.00
11R22.5, 24.5	70.00	60.00
12R22.5, 24.5	70.00	60.00
TUBELESS LOW PROFILE		
215, 235/75R17.5	\$15.00	\$10.00
225, 245, 265, 285/70R19.5	30.00	20.00
245, 265/75R22.5	15.00	10.00
255, 275/70R22.5	30.00	20.00
275/80R22.5	60.00	50.00
295/75R22.5	65.00	55.00
295/80R22.5	65.00	55.00
285/75R24.5	50.00	40.00
315/80R22.5	70.00	60.00
385, 425, 445/65R22.5	70.00	60.00
435/50R22.5	40.00	30.00
TUBE TYPE		
8.25, 10.00R15	\$15.00	\$10.00
8.25, 9.00R20	15.00	10.00
10.00R20	70.00	60.00
11.00R20, 22, 24	65.00	55.00
12.00R20	20.00	15.00
12.00R24	80.00	60.00
365/80R20	20.00	15.00
14.00R20	20.00	15.00

WHAT ARE YOUR LEGAL RIGHTS?

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

No representative or dealer has authority to make any representation, promise, or agreement on behalf of Goodyear, except as stated herein.

Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this warranty a representation that a tire failure cannot occur.

This warranty gives you specific legal rights, and you may also have other rights that vary from state to state.

This limited warranty is applicable only in the United States.

WHEN DOES THE WARRANTY END?

A tire has delivered its full original tread life and the new tire coverage of this warranty ends when the treadwear indicators become visible, or four (4) years from the date of original tire manufacture or new tire purchase date. (Without proof of purchase, date of manufacture will be used to determine age.)

Casings may continue to be warranted beyond the new tire coverage. Please refer to the "WHAT IS THE RADIAL CASING PROVISION?" section for warranty details on casings.



The Goodyear Tire & Rubber Company
1144 East Market St.
Akron, OH 44316

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
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Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 12

Truckinginfo

the web site of Heavy Duty Trucking magazine

Goodyear Offers 2 New Tires For P&D Applications

December 02, 2002

Goodyear has announced two new all-position tire lines that meet the demands of the Class 3-5 pick-up and delivery market.

According to Ted J. Fick, vice president of Goodyear's commercial tire division, the G647 RSA/RSS and G614 RST tires provide high mileage, consistent treadwear, durability and long casing life. "They meet the needs of a wide variety of P&D applications," said Fick. "Initial response from our customers has been excellent."

The G647 RSA/RSS tires have an M+S rating (mud and snow) and provide excellent wet traction through circumferential grooves and lateral blading. "The tires also feature an optimized tread radius -- we did this to maximize tread life and to reduce tread 'scrubbing,'" said Fick. "When compared to fabric ply/steel belt tires of the same size, the steel ply/steel belt construction of the G647 RSA/RSS provides significant advantages including sidewall impact resistance, overall durability, tread life and retreadability."

According to Fick, both the RSS and RSA feature a unique tire design and footprint shape that help minimize shoulder wear conditions caused by tighter and more frequent turning in regional applications.

Special compounds found in the G647 RSA/RSS extend tire life even longer by combating ozone exposure, which can deteriorate the rubber in tires. "Goodyear tires offer a high level of anti-oxidants and anti-ozonants in the sidewall compound, which reduces cracking," said Fick. "The compounds also add protectants to the tire casing so that they slowly migrate to the surface as the tire ages."

For more extreme P&D applications, such as package delivery -- where there is more turning, backing and braking in daily operations -- the G647 RSS (Regional Severe Service) tire is offered. "It has an exclusive tread compound to handle high scrub applications," said Fick.

The G647 RSA (Regional Service All Position) comes in nine tire and load range combinations (for 16- to 19.5-inch wheels) to fit most applications. The G647 RSS is available in five size and load combinations.

Goodyear's G614 RST (Regional Service Trailer) tire was designed specifically to handle the demands of trailer applications. "Thanks to a stiff, solid shoulder and shallow tread for even wear and performance, it's the tire of choice when trailers are loaded to a higher capacity," said Fick. "It features a load range G rating that allows up to 3,750 pounds in a single application (as compared to 3,042 pounds with a load range E)."

According to Fick, the G614 RST features steel belt construction for strength and durability, plus it has rounded shoulder ribs that increase "rib" stability. "That's a key feature in the resistance of uneven wear in trailer applications," said Fick. "In addition, it features the same anti-oxidants and anti-ozonants in the sidewall and casing as our G647 RSA to increase tire life based on age versus mileage."

The G614 RST, a steel belt/steel ply tire, is available in LT235/85R16, load range G.

Goodyear, headquartered in Akron, Ohio, manufactures tires, engineered rubber products and chemicals in more than 90 facilities in 28 countries. Goodyear employs more than 95,000 people worldwide, and more than 35,000 in its North American Tire operations.

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**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 13



Radial Truck Tire
And Retread
Service Manual

GOODYEAR

SECTION THIRTEEN

Standards & Regulations

Standards & Regulations

Both truck tire manufacturers and truck tire users are covered by a number of federal and state regulations designed to assure the safety of the motoring public. Some of the more important requirements of these regulations are discussed in the following section, including Federal Motor Carrier Safety Regulations, Commercial Vehicle Safety Alliance and regrooving/tire siping regulations.

SECTION THIRTEEN

FEDERAL MOTOR VEHICLE SAFETY
STANDARDS TESTING AND CERTIFICATION

The federal regulations which pertain to the performance and safety of truck tires fall generally into two categories. Those regulations which affect the testing, certification, and marking of newly manufactured tires are contained in Volume 49 of the Code of Federal Regulations (CFR), Part 571, and are referred to as "Federal Motor Vehicle Safety Standards." Those which cover over-the-highway usage and application are contained in Volume 49 of the same Code, but in Parts 350 through 399, and are called "Federal Motor Carrier Safety Regulations."

The differentiation between newly manufactured items and over-the-highway usage is quite clear. Thus, a tire manufacturer is concerned with complying with the Motor Vehicle Safety Standards regarding testing, certification and markings, while the owner or operator of a vehicle who is using the tires in service must be in compliance with the Motor Carrier Safety Standards in regard to the application, usage and condition of those tires.

Standard 119 makes demands beyond simply testing. For one thing, the tire must carry a serial code of up to eleven digits or characters on one sidewall indicating the name of the manufacturer, the producing plant, the tire size, the tire type (brand name, load range, sidewall description, etc.), and the week and year of production. This information becomes especially important for record keeping and recall work. For another, the tire must carry information clearly molded into the sidewall to give the consumer a variety of facts about the product, such as size, type, load range, generic names of materials, construction type, whether for single or dual usage, maximum load and inflation data, and of course the DOT symbol and serial code. The manufacturer must also include treadwear indicators evenly spaced around the circumference of the tire to indicate visually when the tire has worn to a tread depth of 2/32".

The regulations encompassed by the Federal Motor Vehicle Safety Standards for newly manufactured products are administered by the National Highway Traffic Safety Administration (NHTSA), a branch of the U. S. Department of Transportation (DOT). Those laws contained within the Federal Motor Carrier Safety Regulations are administered by the Federal Highway Administration (FHWA), also a branch of the DOT, and enforced by the Bureau of Motor Carrier Safety (BMCS), a sub-agency of the FHWA and one of the few true enforcement arms within the DOT.

Part 571.119 of Volume 49 of the Code of Federal Regulations, known as Federal Motor Vehicle Safety Standard 119 (FMVSS 119), requires that a variety of tests be performed by a tire manufacturer to certify that a specific size of a tire line meets Federal safety requirements. The main purpose of this law is to ensure tire testing and certification to specific performance parameters in the areas of endurance and strength. By randomly sampling and laboratory testing tires in this manner during production periods, a tire manufacturer certifies that his product meets the minimum safety requirements established by law. He also properly qualifies his tires to carry the "DOT" stamping on the sidewall. Since this DOT marking must appear on any tire legally sold for over-the-highway use in the U.S., it becomes essential for a manufacturer to test and certify his tires to Motor Vehicle Safety Standard 119.

The other Federal Motor Vehicle Safety Standard which effects truck tires is FMVSS 120, which spells out tire and rim selection and matching requirements for vehicle manufacturers. This standard is intended to ensure that when a consumer purchases a new vehicle, the total maximum load capacities on any axle are at least as great as the gross weight rating of that axle, so that the load carrying capacity of the tires is not exceeded so long as the vehicle is properly loaded.

Federal Motor Carrier
SAFETY
REGULATIONSTITLE 49 CODE OF FEDERAL REGULATIONS
PARTS 40, 325, 383, 385, 386, 387, 390-397, 399U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SEPTEMBER, 1993



American Trucking Associations

SUBPART G — MISCELLANEOUS
PARTS AND ACCESSORIES

§393.75 Tires.

(a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.

(b) Any tire on the front wheels of a bus, truck, or truck tractor shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located.

(c) Except as provided in paragraph (b) of this section, tires shall have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps or fillets are located.

(d) No bus shall be operated with regrooved, recapped or retreaded tires on the front wheels.

(e) No truck or truck tractor shall be operated with regrooved tires on the

SECTION THIRTEEN

INSPECTION

front wheels which have a load carrying capacity equal to or greater than that of 8.25-20 8 ply-rating tires.

(f) Tire loading restrictions (except on manufactured homes). No motor vehicle (except manufactured homes, which are governed by paragraph (g) of this section) shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g)(1) Tire loading restrictions for manufactured homes built before January 1, 2002. Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) before January 1, 2002, must not be transported on tires that are loaded more than 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes labeled before January 1, 2002, transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph).

(2) Tire loading restrictions for manufactured homes built on or after January 1, 2002. Manufactured homes that are labeled pursuant to 24 CFR 3282.362 (c)(2)(i) on or after January 1, 2002, must not be transported on tires loaded beyond the load rating marked on the



sidewall of the tire or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)).

(h) Tire inflation pressure. (1) No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(2) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table 1 from the measured inflation pressure.

Table I — Inflation pressure measurement correction for heat

Average speed of tire in previous hour	Minimum inflation pressure buildup	
	Tires with 4,000 lbs. (1,814 kg) maximum load rating or less	Tires with over 4,000 lb. (1,814 kg) load rating
41 to 55 mph (66 to 88.5 km/hr)	5 psi (34.5 kPa)	15 psi (103.4 kPa)

A regular program of tire inspection is essential for the prevention of rapid air loss failures. At a minimum, tires should be inspected at the time of the regular preventive maintenance checks.

The Bureau of Motor Carrier Safety recommends an inspection by the driver prior to every trip in its "Truck Driver's Pre-trip Check List."

In any tire inspection routine, tires should be inspected for the following conditions. If any are found, the tire should be removed and repaired, retreaded or scrapped as the condition indicates.

- Any blister, bump or raised portion anywhere on the surface of the tire tread or sidewall (other than a bump made by a repair). These indicate the start of internal separation.
- Any cut that reaches to the belt or ply cords, or any cut that is large enough to grow in size and depth.
- Any nail or puncturing object.
- If any stone or object is held by a tread groove and is starting to drill into the tread base, remove the object.
- Look for skid spots and irregular wear conditions and refer to the chapter on alignment, irregular wear, and rotation.

The owner or operator should also be aware that the use of recapped, retreaded, or regrooved tires is restricted by the BMCS, Federal Motor Carrier Safety Regulations, and some state regulations, and that the Rubber Manufacturers Association recommends against their use in certain applications.

In addition to the routine type of common-sense, owner-performed tire inspection just described, there are mandatory inspections which involve agents and agencies of the federal government. For example, the inspection of tires for defects is required by NHTSA Vehicle In Use Inspection Standards, and by BMCS, Federal Motor Carrier Safety Regulations.

Part 396 of the Federal Motor Carrier Safety Regulations authorizes special agent personnel of the Federal Highway

SECTION THIRTEEN

MINIMUM
TREAD DEPTHS

Administration, including Bureau of Motor Safety inspectors, to perform inspections of a motor carrier's vehicles which are currently in operation. These inspections may be performed at a facility of the motor carrier (such as a terminal) or at some other location (such as on-highway) at the discretion of the inspector. The results of these inspections are recorded in a Driver-Equipment Compliance Check report. If the check is done at a location other than one of the motor carrier's facilities, the driver is required to deliver this report to the motor carrier upon his arrival at the carrier's next terminal, or to mail it to the carrier if he is not scheduled to be in a terminal within 24 hours after the time of the inspection. The motor carrier then has 15 days from the inspection date to correct any violations or defects, certify any action taken using Form MCS-63, and return the form to the BMCS office address indicated on the report.

Part 397 of the same regulation requires that for the transport of hazardous materials, vehicles equipped with duals on any axle must have the tires inspected every two hours or 100 miles, whichever occurs first, for the duration of the trip.



Minimum tread groove depths are specified for tire manufacturers under Federal Motor Vehicle Safety Standard 119, and for in-use applications by Federal Motor Carrier Safety Regulations, part 393.75. Under FMVSS 119, manufacturers must include tread depth indicators, commonly called "wear bars", in six locations evenly spaced around the circumference of a highway truck tire, so that they become visible when 2/32" of tread groove depth is remaining.

COMMERCIAL VEHICLE
SAFETY ALLIANCE
(CVSA)

Under FMCSR Part 393.75, operators are required to maintain at least 4/32" of tread groove depth on the front tires of any bus, truck, or truck tractor covered by that law, and the standard 2/32" remaining tread depth on the other wheel positions.

In conjunction with the federally required tire inspections previously mentioned, much work has been done to promote commonly performed and recognized tire inspection criteria within the scope of the total vehicle inspection program in use by the Commercial Vehicle Safety Alliance (CVSA).

The CVSA is a voluntary organization made up of states and provinces which have responsibility for commercial vehicle safety operations and which perform vehicle inspections and conduct other safety related programs. The aims of the organization are to maximize the utilization of commercial vehicle, driver and cargo inspection resources, to avoid duplication of effort, to expand the number of inspections performed on a regional basis, to advance uniformity of inspection, and to minimize delays in industry schedules which could result from this type of enforcement activity.

The CVSA does not supersede or countermand any legally required inspection process or any state laws. It is simply a working agreement among member jurisdictions to use standardized procedures. It has gained widespread acceptance and has made great progress toward providing a common inspection program.

CVSA members inspect vehicles on-highway and in terminals. Areas covered by a CVSA vehicle inspection are the driver (license, hours-of-service records, medical certificate), steering mechanism, brakes, brake lights/turn signals, drawbars, suspension, fifth wheels, air loss and warning, wheels and tires. Vehicles which pass the inspection are issued a CVSA decal, colored differently for each quarter of the year, and honored for the month of issuance plus the

SECTION THIRTEEN

following two months by all participating states and provinces.

Criteria for the tire inspection portion of the CVSA inspection program recommends replacement of a tire with any of the following conditions:

Steering Axle of Power Unit

- Less than 2/32-inch tread depth at two, adjacent, major tread grooves anywhere on the tire.
- Portion of breaker strip or casing ply visible in tread.
- Sidewall is cut, worn, or damaged thereby exposing ply cord.
- Labeled "Not for Highway Use" or other marking excluding current application (Excluding farm/off-road vehicles briefly on the road).
- Bulge suggesting tread/sidewall separation. *Exception: Bulge from section repair (sometimes identified by adjacent blue, triangular label) is not a defect unless higher than 3/8 inch.*
- Tire flat or has leak that's felt or heard.
- Mounted/inflated so tire contacts part of vehicle.
- Tire overloaded, including overload resulting from under-inflation. *Exception: Does not apply to special permit vehicle operated at a speed low enough to compensate for underinflation.*

Drive/Trail Tires Out of Service

- 75 percent or more tread width loose or missing, in excess of 12 inches of tire's circumference.
- Less than 1/32 inch tread depth at two adjacent, major tread grooves at three separate locations on tire. With duals, both tires must have listed defect to warrant out-of-service judgement.
- Tire flat or has leak that can be felt or heard.
- Bias-ply tire with more than one ply exposed in tread area or sidewall, or when exposed area of top ply exceeds 2 square inches. With duals, both tires must have listed defect to warrant out-of-service judgement.
- Radial tire with two or more plies exposed in tread area, or damaged cords evident in sidewall or exposed area on sidewall exceeding 2 square inches. With dual, both tires must have listed defect to warrant out-of-service judgement
- Bulge suggesting tread/sidewall separation. *Exception: Bulge from section repair (sometimes identified by adjacent blue, triangular label) is not a defect unless higher than 3/8 inch.*
- Mounted or inflated so tire contacts part of vehicle or in the case of a dual assembly, its mate.
- Tire overloaded, including overload resulting from under-inflation. *Exception: Does not apply to special permit vehicle operated at a speed low enough to compensate for underinflation.*

REGROOVING/TIRE SIPING

Regrooving is used in certain types of service to extend the mileage obtainable from the original tire tread. Tires designed with sufficient undertread depth to permit regrooving are labeled on the sidewalls as regroovable. Undertread depth refers to the thickness of tread compound between the bottom of the original tread grooves and the top of the uppermost breaker or belt. The use of regrooving is more common in intra-state bus service than in trucking fleets.

Goodyear recommends retreading radial tires for truck use rather than regrooving. If retreading is not practical, front tires can be regrooved and moved to trailers. Drive tires should be taken off when about 80 percent worn, the non-skid depth increased by regrooving, and then reapplied to the drive axle.

Regrooving requires probing the depth of the undertread so that a minimum undertread depth of 3/32 inch remain below the newly cut groove. It is recommended that the local Goodyear representative be contacted for information if regrooving is being considered.

Tire Siping For Traction

Adding tire siping to new or partially worn rib tires for additional traction (as differentiated from regrooving worn tread for additional mileage) is an accepted practice for trucking fleets operating on and off the road.

Partially worn radial lug tires can also benefit from regrooving the tread pattern down to 80% of the deepest portion of the original non-skid depth for added traction.

SECTION THIRTEEN

**DOT Regulations On
Regrooved Tire****Purpose and Scope**

This part sets forth the conditions under which regrooved and regroovable tires manufactured or regrooved after the effective date of the regulation may be sold, offered for sale, introduced for sale or delivered for introduction into interstate commerce.

Definitions

(A) Regroovable tire means a tire, either original tread or retread, designed and constructed with sufficient tread material to permit renewal of the tread pattern or the generation of a new tread pattern in a manner which conforms to this part.

(B) Regrooved tire means a tire, either original tread or retread, on which the tread pattern has been renewed or a new tread has been produced by cutting into the tread of a worn tire to a depth equal to or deeper than the molded original groove depth.

Applicability

(A) General. Except as provided in paragraph (B) of this section, this part applies to all motor vehicle regrooved or regroovable tires manufactured or regrooved after the effective date of the regulation.

(B) Export. This part does not apply to regrooved or regroovable tires intended solely for export and so labeled or tagged.

Requirements

(A) *Regrooved tires.* (1) Except as permitted by paragraph (A)(2) of this section, no person shall sell, offer for sale, or introduce or deliver for introduction into interstate commerce regrooved tires produced by removing rubber from the surface of a worn tire tread to generate a new tread pattern. Any person who

regrooves tires and leases them to owners or operators of motor vehicles and any person who regrooves his own tires for use on motor vehicles is considered to be a person delivering for introduction into interstate commerce within the meaning of this part.

(2) A regrooved tire may be sold, offered for sale, or introduced for sale or delivered for introduction into interstate commerce only if it conforms to each of the following requirements:

- (a) The tire being regrooved shall be a regroovable tire;
- (b) After regrooving, cord material below the grooves shall have a protective covering of tread material at least 3/32 inch thick;
- (c) After regrooving, the new grooves generated into the tread material and any residual original molded tread groove which is at or below the new regrooved depth shall have a minimum of 90 linear inches of tread edges per linear foot of the circumference;
- (d) After regrooving, the new groove width generated into the tread material shall be a minimum of 3/16 inch and a maximum of 5/16 inch;
- (e) After regrooving, all new grooves cut into the tread shall provide unobstructed fluid escape passages; and
- (f) After regrooving, the tire shall not contain any of the following defects, as determined by a visual examination of the tire either mounted on the rim, or dismounted, whichever is applicable:
 - (i) Cracking which extends to the fabric.
 - (ii) Groove cracks or wear extending to the fabric, or
 - (iii) Evidence of ply, tread or sidewall separation.

(g) If the tire is siped by cutting the tread surface without removing rubber, the tire cord material shall not be damaged as a result of the siping process, and no sipe shall be deeper than the original or retread groove depth.

(B) *Siped regroovable tires.* No person shall sell, offer for sale, or introduce for sale or deliver for introduction into interstate commerce a regroovable tire that has been siped by cutting the tread surface without removing rubber if the tire cord material is damaged as a result of the siping process, or if the tire is siped deeper than the original or retread groove depth.

**Labeling of
Regroovable Tires**

Each tire designed and constructed for regrooving shall be labeled on both sidewalls with the word "Regroovable" molded on or into the tire in raised or recessed letters 0.025 to 0.040 inch. The word "Regroovable" shall be in letters 0.38 to 0.50 inch in height and not less than 4 inches and not more than 6 inches in length. The lettering shall be located in the sidewall of the tire between the maximum section width and the bead in an area which will not be obstructed by the rim flange.

See Page 102 (Subpart G - Miscellaneous Parts and Accessories) for the Federal Motor Carriers Safety Regulations regarding regrooved tires.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 14

Investigative Mechanics, Inc.
13925 Main Street
P.O. Box 340
Bath, Michigan 48808-0340
517/641-6600 Office
517/641-7300 Facsimile
517/256-1600 Cell Phone
bwilson@investigativemechanics.com

April 29, 2015

Mr. Victor Pribanic
Dr. Christopher Buck
Pribanic & Pribanic
1735 Lincoln Way
White Oak, PA 15131

Matter: Charcalla v Goodyear

Dear Mr. Pribanic and Dr. Buck:

Assignment

In November of 2014, I was contacted by Dr. Dan Lee, Ph.D., to procure an exemplar 2000 Freightliner FL60 Tractor for testing purposes involving a failed left front steer tire/wheel assembly. Subsequently I was asked to review a 2000 Freightliner FL60 Tractor towing a 2003 ALFA Trailer, both of which were involved in an accident. Specifically, I was asked to determine whether or not there was a loss of braking and steering control of the subject vehicle that contributed to the accident. The following report contains my expert observations and opinions regarding this matter. My education, knowledge of braking and steering systems, inspection of subject vehicle service parts, test performed on exemplar vehicle, reference and research material can be reviewed in the tabbed sections of this report. The references listed in this report are presented as factual information and are the basis of my opinions, which are set forth within a reasonable degree of engineering certainty.

Incident

This incident took place on July 15, 2011 at 9:30 a.m. while traveling on Interstate 64 westbound within the left lane. The subject unit consists of a 2000 Freightliner FL60 Tractor identified by the VIN #1FV3GJCC4YHG50992 pulling a 40-foot Alfa Toyhouse Trailer (fifth wheel) Model THF39SCW with an assigned VIN #1AU2660343A011808. The model year of the coach has not been verified as yet. The chassis is a 2003 model year which incorporates 3 axles with electric type brakes. There was a catastrophic failure within the left front tire/wheel assembly. The operator, Mr. Gary Charcalla, lost control of the vehicle resulting in the subject unit impacting three trees. The subject tractor/trailer drove off the side of the left travel lane and drove at a high

rate of speed into trees located approximately 35 feet bordering the westbound left lanes resulting in the death of the operator.

Research and Examination

Examined and Photographed Subject 2000 Freightliner FL60 Tractor service parts:

- Left Front Wheel Rotor Hub Assembly
- Pitman Arm/Drag Link Assembly
- Goodyear Tire Tread and Fragments
- Vehicle Hood and Headlight Assembly

Research:

- Alfa Toyhouse Trailer
- Freightliner FL60 Hydraulic Braking System
- Proportional Brake Controller
- Arvin – Meritor Braking System
- Bendix Hydraulic Brake System
- Electric Trailer Brakes

Critiqued Case Material and Photographs:

- 11 Photograph CDs containing photographs of the scene and subject vehicle
- 1 Video File
- 3 iPad Photograph Files
- Virginia State Trooper J. D. Miles statement (Exhibit 3)
- William Woehrle Expert Opinion
- Freightliner Registration for subject Tractor
- Sportchassis, LLC
- Alfa Model THF39SCW Trailers
- Freightliner Major Components
- 2000 Freightliner FL60 Tractor (Toyhauler)

Test and Inspection

Procured an exemplar 2000 Freightliner FL60 tractor/truck for purposes of instruction to demonstrate how the steering system components operate in performing steering maneuvers.^(Ref. Tab 6) In addition, tests were performed using the subject failed 6-foot, 10-inch tire tread section from the failed left front Goodyear steer tire to show its relationship to and involvement in interference with the left front upper steering arm.

Education, Training, and Experience

CEO of Investigative Mechanics, Inc.: Our firm includes experts in the field of Heavy Truck, Front End Alignment and (Electronics) Sudden Deceleration Imaging Reporting as well as Computer Animation. Investigative Mechanics specializes in independent investigations of

motor vehicles including, but not limited to, complete analysis of braking systems, Crash Data Retrieval Imaging Download Reporting from Air Bag Modules, carbon monoxide poisoning, sudden acceleration in cruise control, research and development to determine cause of failure, and electrical failures in automotive, heavy truck, bus, farm machinery and off-road heavy equipment and motorized lift equipment. I have testified as an expert witness in Federal and State courts throughout the United States.

I hold multiple training certificates in the field of Traffic Accident Reconstruction through Michigan State University and the Collision Safety Institute, Air Bag/Passive Restraint Systems from PACT Autotech, Crash Data Retrieval Systems through Bosch/Vetronix Corporation (and I am a CDR System Analyst). Additionally, until 2006 I held a Michigan Mechanics License and National Institute of Automotive Service Excellence certificates.

30 years at Investigative Mechanics: I became involved in the field of Accident Reconstruction and Origin and Cause of Fire Investigations in 1985. By bringing my expertise in the field of automotive mechanics to the field of Accident Reconstruction and Origin and Cause of Fire Investigations, I developed and presented conference seminars in Accident Reconstruction—New Technologies; Use of Forensic Techniques and Procedures of Multi-Vehicle Accidents—Causation; Use of Video to Capture Testing Results; Spoliation of Evidence; and Braking and Air Bag (Supplemental Restraint) Systems. I am also an Instructor for Highway Traffic Safety Programs through Michigan State University.

In addition to auto repair and shop management, through Sun Electric Corporation I wrote and taught courses for the State of Michigan, Department of Transportation on electrical theory, computer diagnosis, advanced automotive testing, carburetion, fuel injection systems testing and diagnosis and taught at the Ford Motor Company Lansing, Michigan Training Center.

Focus of Inspection and Testing

There were two service component failures as a result of the left front Goodyear steer tire failure:

1. Loss of steering control to turn right.
2. Loss of braking effort to create effective braking.

The subject Goodyear tire failure – tread separation/blow out – caused the tire tread to tear from the outer circumference of the tire. The large tread section (6 feet, 10 inches in length)^(Ref. Tab 1, Photo 6) upon releasing from the tire stock, cut the left front brake hydraulic flex hose as it wrapped around the upper left steering arm and front axle. This created an unsafe condition (extending stopping distance).

- a. The steering of the vehicle to the right was inhibited by the tread wrapped around the axle and upper steering arm. This resulted in the subject vehicle making a violent jerk to the left. The operator would not be able to turn the restricted steering wheel to the right.
- b. The unintended release of brake hydraulic fluid would cause a secondary subsystem (front brake) failure. There would be no braking effort at the front steer tire/wheel

assemblies. This loss of brake fluid would also prevent the Antilock Brake System from functioning. (Ref. Tab 3, Page 050/4)

As the brake pressure in the brake hydraulic tubes (lines) drops, the pressure differential switch on the master cylinder closes due to the drop in pressure within the front brake system. The fluid level switch on the master cylinder reservoir would close to prevent further loss of brake fluid. (Ref. Tab 3, Page 050/8)

The braking system now operates on the rear axle—primary subsystem within the master cylinder (rear brakes). The operator will have to allow the brake pedal to return to the rest position (up) and pump the brake pedal to capture more brake fluid within the primary piston within the master cylinder to create braking effort at the rear axle of the tow vehicle. (Ref. Tab 3, Page 050/4 and 050/2)

During the first braking effort applied, the brake pedal stop switch will be actuated, sending an electrical signal to the auxiliary trailer brake controller. The brake controller is a proportional inertia-type controller. This means that the trailer brake controller will sense how the subject tow vehicle is slowing down and will apply the trailer brakes with the same intensity. (Ref. Tab 1, Photo 14)

With the subject tow vehicle brake pedal being pushed to the floorboard, there is no braking effort sensed by the inertia sensor switch and there will not be an increased braking effort at the trailer brakes. This would be the result of the proportional braking.

The proportional brake controller senses how the tow vehicle is slowing or stopping and applies the trailer brakes with the same intensity. (Ref. Tab 10)

Proportional style controllers send an electrical signal from the brake stop switch (tow vehicle) when the brake pedal is depressed and slows the trailer at the same rate the tow vehicle is slowing. If the brakes are applied quickly in the tow vehicle, so will the brakes on the trailer. This is called proportional braking – the tow vehicle and trailer brake at the same rate.

During the loss of braking control for the subject tow vehicle and trailer, the closing distance to the trees is shortened. If the left lane travel speed of the subject vehicle is 70 mph, the distance traveled would be 103 feet per second.

Virginia State Trooper J. D. Miles wrote in his report that the distance measured from the tire/wheel mark on the westbound left lane of travel seen in Photograph 1 (Ref. Tab 1) is 503 feet to the tree or the left front steer tire/wheel that was displaced during impact into the tree. This leaves 400 feet of travel before impact into the tree. (Ref. Tab 7, Exhibit 3)

I will defer to Dr. Dan Lee's calculations as to the speed of the subject vehicle as it proceeded off road to the left.

If the subject vehicles were traveling 65 mph, the traveled distance in that second second would be 96 feet of travel, thereby leaving 304 feet to the impact with the tree. The next speed range of

60 to 55 mph distance traveled in one second would be 88 to 80 feet thus leaving 220 feet remaining in closing distance to impact with the tree.

In this projection of time and distance, three seconds are used up. Perception and reaction of the driver will use up 1.5 to 2 seconds. The latent reaction of the vehicle will use up one second. This would be 3 seconds or 284 feet used up before the operator would begin his attempt to gain control of the vehicle speed and direction using the failed braking system.

Photographs 1, 2, 3, and 4_(Ref. Tab 1) of the left lanes of travel do not show tire tread braking (skid)-(yaw) marks on the pavement surface that would support evidence of braking effort for either the subject tow vehicle or the trailer. Photograph 1 shows where the tire/wheel mark is seen in the left lane. Ten to fifteen feet prior to the tire/wheel mark on the pavement, the brake hydraulic flex hose was cut by the failed tire, causing a front brake failure. The application of the brake pedal by the operator would be 125 to 150 feet past this tire/wheel mark on the pavement. If the failed tire was making a flat flap noise, it could have alerted the operator of the problem and made him aware of the need to slow the tow vehicle.

What should be seen are trailer tire marks on the road surface if the brakes on the trailer were applied. The tow vehicle and trailer are about 59 to 62 feet in length. The length of the trailer and tow vehicle in combination are unknown. The trailer is a fifth wheel type with an overhang onto the tow vehicle. The trailer is 40 feet long and the tow vehicle's wheel base is 186 inches. If the brakes were working, then we should see tire marks showing braking effort. The right side tire/wheels left the paved left lane 180 feet past the mark on the pavement._(Ref. Tab 1, Photos 1,2,3,4)

Photograph 3 shows the travel tire/wheel mark going across the rumble strip onto the shoulder of the road with no tire marks indicating braking effort for the rear axle on the tow vehicle or trailer tires.

Photograph 4 shows the trail marks on the grassy shoulder of the road. Both tire/wheel trail marks do not show braking effort for either the subject vehicle or trailer. There are 6 tire/wheels on each side of these vehicles. The left front steer wheel/tire assembly is riding on the failed tire and wheel rim followed by 5 tires: 1 set of dual tire/wheels on the tow vehicle and 3 tires on the left side of the trailer—3 axles.

Photograph 5 shows the trail marks on the side shoulder—both left and right side tire/wheels are in contact with the ground. There are no ruts or plowing of the ground-sod-dirt indicating no braking effort.

Dr. Dan Lee has worked up the speed traveled over the traveled distance from the mark on the left lane pavement surface to the tree and the point of rest. I have studied the road surface of the left lane in the photographs I received and the trail marks produced by the subject vehicles and to a reasonable degree of engineering certainty that there was very insignificant braking produced by the subject vehicle (2000 Freightliner FL60 Tractor) and the Alfa Toyhouse Trailer.

There was significant distraction for the operator due to the closing distance to the tree line and the fact that the vehicle couldn't be steered to the right. This distraction in thought prevented the operator from applying the manual lever for the Tekonsha Sentinel Proportional Brake to cause braking effort at the trailer's three axles.^(Ref. Tab 1, Photo 14) The emergency brake application was also an option. With 2.5 to 3 seconds left before impact with the tree, it would take an exceptional trained operator to respond to make use of the two aforementioned options to slow the vehicle.

Photograph 6 shows the failed Goodyear tire tread stock resting on the ground before the first tree impacted.^(Ref. Tab 1) This tire tread stock was wrapped around the left upper steer arm and front axle, preventing steering input to the right. That this tire tread stock was carried from the area of failure within the left westbound lane of travel to over 400 feet to the trees supports the facts that the Goodyear tire tread stock had wrapped around the steering arm and axle, causing the hydraulic brake fluid failure and loss of steering control.

Time and distance can be worked out with Dr. Lee's calculations and his reconstruction.

Description of Damaged Service Component Parts

Front Axle – The left front steer tire was dislodged from the front axle on the left side. The third tree impact acted like an immovable barrier. This caused the energy to recoil back into the tow vehicle as the energy of the trailer was pushing from the rear. The result was the center crush to the front bumper 3 feet into the radiator and air conditioning condenser seen in Photograph 11.^(Ref. Tab 1) The front axle was sheared off the leaf spring U-bolt clamps on the right front frame rail. The left front leaf springs broke in two, the steering gear Pitman arm sheared off with the drag link still mounted in place, but the upper left steering arm broke free of the drag link.

Most interesting is the fact that the failed Goodyear tire and the wheel assembly were displaced from the front axle upon impact into the tree seen in Photograph 8.^(Ref. Tab 1) The tow vehicle impacted the tree at center of the front end, but the energy moved back into the tow vehicle, causing the left front steering knuckle spindle to break off at the end, which released the left front tire/wheel with disc brake rotor and hub. Photograph 12 shows that the front axle is separated from the tow vehicle's chassis. The left front steer tire/wheel is not attached.

Photograph 16^(Ref. Tab 1) shows the left front steering knuckle with the spindle marked. The end of the spindle broke off during impact releasing the left front steer tire/wheel.

Photograph 17^(Ref. Tab 1) shows the left front axle steering knuckle with the upper steering arm. The 6-foot, 10-inch Goodyear tire tread stock wrapped around the upper steering arm and axle, preventing the operator from turning the wheels to the right.

Photograph 17^(Ref. Tab 1) also shows the broken mount for the left front brake caliper (missing). Photograph 18^(Ref. Tab 1) shows what the mounting position looks like with the right front brake caliper mounted in its proper position.

Photographs 24 and 26^(Ref. Tab 1) show the center hub with the outer wheel bearing intact within the wheel hub of the brake disc rotor. When the end of the spindle broke off (nut and flange washer), the left wheel during impact was forced off. The related service component parts also broke off.

This was a dynamic impact and crush to the tow vehicle. The energy of the trailer and weight caused the crush and displacement of the component parts as the tow vehicle rotated around the tree with the trailer pushing it.

The photographs with narration will explain in detail these descriptions of crush and breakage to the service component parts.

Significance of Trail Marks


Photograph 13^(Ref. Tab 1) shows parallel trail wheel marks on the westbound side of the I64 highway. These tire/wheel marks show an almost straight line to the tree line 34 to 35 feet off the shoulder of the road. The operator would be attempting to turn the steering to the right to avoid the tree line. There is no evidence of braking effort being produced which resulted in the impact into the trees.

Conclusion

After review, examination, tests and critique of all the photographs supplied and the service components, it is my professional opinion to a reasonable degree of engineering certainty, that the cause of failure within the hydraulic brake system and the failure within the steering system components is the direct result of the Goodyear tire tread tearing off the circumference of the tire stock. I reserve the right to supplement my opinion if new evidence and information becomes available. That said, the cause of this accident is the failed left front steer tire tread separation and blow out.

If you have further questions, in regard to my opinions or any part of this report do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Wilson", written in dark ink on a light background.

William C. Wilson

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRENDA CHARCALLA, individually and
as personal representative of the Estate
of Gary Charcalla and as guardian of her
minor sons, Brock Charcalla and Dalton
Charcalla,

Plaintiffs,

v.

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

Defendant.

Civil Action No.: 1:13-cv-00204-JFC

*The Honorable Joy Flowers Conti,
Chief District Judge, presiding.*

Electronically Filed

**PLAINTIFF'S RESPONSIVE CONCISE STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO GOODYEAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT 15

DANIEL LEE, Ph.D.
ACCIDENT RECONSTRUCTION, INC.

5445 N. Okemos Road | East Lansing, Michigan 48823-2924
Telephone: (517) 349-7070 | Facsimile: (517) 349-3988 | Cellular: (517) 881-7070
Email: danleephhd@msn.com

~ FINAL REPORT ~

May 1, 2015

Victor H. Pribanic, Esq.
Jeffrey A. Pribanic, Esq.
Christopher Buck, Ph.D., Esq.
PRIBANIC & PRIBANIC
1735 Lincoln Way
White Oak, PA 15131

RE: Brenda Charcalla v. Goodyear Tire & Rubber Company
Case No: 1:13-CV-00204-JFC

Gentlemen:

You asked me to review the available information related to a Freightliner Sport Truck pulling a 40-foot tri-axle fifth wheel Toyhouse. This combination recreation vehicle belonged to Mr. and Mrs. Gary and Brenda Charcalla. They were traveling westbound on I-64 in the state of Virginia in New Kent County. Mr. and Mrs. Charcalla were returning from a camping vacation in Virginia Beach and traveling back to their home in the Erie Pennsylvania area. Two of their sons and a friend of the one son went on the vacation with them.

While travelling on I-64 at a reported speed of 65 to 70 miles per hour (mph) in a 70 mph zone, the left front tire on the Freightliner failed, causing the Freightliner and Toyhouse to crash. The crash resulted in the death of Gary Charcalla and serious injuries to Brenda Charcalla. The three young boys, one riding in the rear seat of the Freightliner, and the other two were riding in the Toyhouse, all received minor injuries.

The accident occurred at approximately 9:30 a.m. The unit was travelling in the left lane (WB I-64), just west of mile marker 110. After the tire failure, the truck and trailer travelled to the left off of the road, struck an embankment, some trees and rolled over.

BASIS OF FINDINGS AND OPINIONS

1. My findings and opinions identified in this report are based upon my professional experience, education, training and research in both accident reconstruction and as a driving safety expert. My career as a driving and traffic safety expert and accident reconstructionist started 40+ years ago. I was a police officer in Pennsylvania, received B.S. and M.S. degrees from The Pennsylvania State University and was a faculty member in the School of Criminal Justice at The Pennsylvania State University. I am a faculty member at Michigan State University where I obtained my Ph.D. in Driver and Traffic Safety. The field work for the Ph.D. required many hours of evaluating drivers in terms of driver perception, performance and reactions to various operational conditions on and off the driving range. I have attended over 1500 hours of specialized programs in Accident Reconstruction, Traffic Safety and related fields. For the past 15 years I have served as the Director of the Traffic Safety Programs, College of Engineering at Michigan State University.

I conduct extensive research in the discipline of traffic safety. I have coordinated and developed 26 different levels of Accident Reconstruction Training Programs from basic, technical, and computer reconstruction which are presented to various states and countries. My research and teaching in traffic safety has extended to the Michigan Secretary of State, Michigan Legislature, all levels of Michigan Law Enforcement, and the National Committee for Motor Fleet Safety. See attached MSU Training list which are all MSU publications which identifies the topics covered within the 26 levels of training, i.e., two wheel vehicles to 42 wheel vehicles. Extensive research has been done on acceleration and deceleration on all types of vehicle combinations. Recently, I was appointed to the National Congress on School Transportation Safety Writing Committee which is part of NHTSA. The Committee evaluates bus safety factors in terms of training, equipment and procedures concerning school bus safety in order to make recommendation to Congress.

The MSU College of Engineering, Highway Traffic Safety Program has thousands of students throughout the country for whom we have provided training in all levels of traffic safety, alcohol enforcement, crash reconstruction, radar operation, motorcycle operation, emergency vehicle operation. (i.e., Police Cars, Ambulance and Fire).

Currently, I serve as the MSU instructor, evaluator and examiner of University students who have need to transport their custom-made research race cars, solar cars, etc. to other Universities throughout the United States and Canada. They must certify in this course prior to operating the University's one-ton dual-wheel vehicles required to pull trailers and fifth wheels to participate in out of state University competitions. Training consists of class room, range and highway driving.

CONTINUED BASIS OF FINDINGS AND OPINIONS
DIRECTLY RELATED TO THE CHARCALLA CRASH

1. Review and analysis of the Virginia State Police Traffic Crash Report, crash measurements, various reports and photographs of the crash scene and related environment factors, Freightliner Sports Cab, 40 foot Fifth Wheel Toyhouse Alfa.
2. Review of Depositions of: Brenda Charcalla, Brock Charcalla, Trooper Jonathan Miles, Dalton Charcalla, Kyle Giewont, Edgar Esquivel, Thomas Knob.
3. Examination of a similar (exemplar) Freightliner to look at various dimensions, steering components and braking system.
4. Review of Witness Statements and Insurance Statements pertaining to the Charcalla family.
5. Inspections Performed:
 - 5A. Round trip travel to Virginia to observe the I-64 crash location, continue to Hampton, Virginia to evaluate the Freightliner and fifth wheel operated by Mr. Charcalla.
 - 5B. Travel to Beck's Trailer Manufacturer Sales and Service in St. Johns, Michigan with William Wilson to obtain information on trailer brake controls and operation.
6. Prepare preliminary scale drawing of the crash location and off roadway surface marks, tree damage evidence and final resting position of truck and trailer with use of police measurements and photographs.
7. Meetings and telephone conversations with William Woehrle and William Wilson.

8. Review design specifications of the fifth wheel Toyhouse Alfa to evaluate possible contents to estimate the operating weight of the unit.
9. Obtain dimensions of the Freightliner through the manufacturer in conjunction with William Wilson.
10. Review medical records and on scene medic statements related to the Charcalla injuries.
11. Review:
 - Federal Motor Carrier Rule Book as it relates to required stopping distance, skills standards for Tractor-Trailer Drivers
 - Professional Truck-Driver Training Institute of America Operation Standards
 - SAE Paper: 7007-01-0733 Vehicle Response Comparison to Tread Separation
12. Mathematical and Computer analysis to evaluate the speed of the Charcalla vehicle using computer programs REC-TEC, RecForms and Visual Statements.
13. Review of Expert Tire report provided by William Woehrle.
14. Review of Expert Report by William Wilson of Investigative Mechanics which describes the braking and steering failure resulting from the tread separating from the Goodyear tire.

FINDINGS AND OPINIONS

I have received the William Woehrle tire failure report and the William Wilson report describing what the failed tire's effect was on the steering control and the braking system on the Charcalla Freightliner truck. There is both physical evidence and witness statements that support the tire failure, brake system failure and interference with the steering control on the Freightliner. The three items that failed had an immediate effect on the Charcalla family, their Freightliner and attached 40-foot fifth wheel Toyhouse RV. The tire failure and related steering and braking limitations was the cause of the crash which was fatal to Gary Charcalla, caused serious injuries to Brenda Charcalla plus injuries to Brock Charcalla, Dalton Charcalla and their family friend, Kyle Giewant.

SPEED ESTIMATE OF CHARCALLA VEHICLE WHEN THE TIRE FAILED

Trooper Miles listed on his report 70 mph and testified at his deposition:

17 ... So you can have
18 that amount of crush depth at 70 miles an hour. So I
19 think I even listed on the accident report it was around
20 70.

[Trooper Miles Deposition, page 152, lines 17-20]

Trooper Miles also indicated during his deposition that:

21 We never got any calls. We usually get
22 calls with those size vehicles traveling at a high rate
23 of speed. We get them all the time. This person is
24 driving extremely fast. People will complain because
25 it's a large vehicle or they're fast. We had never

[Trooper Miles Deposition, page 152, lines 21-25]

1. received the first call. The only call we received was
2. that the vehicle had wrecked.

[Trooper Miles Deposition, page 153, lines 1-2]

Additionally, the witness, Edgar Esquivel, who followed the Charcalla vehicle for quite a long distance, testified during his deposition that:

13. A. Probably he was on the 65 miles or
14. a little bit more probably.

[Edgar Esquivel Deposition, page 42, lines 13-14]

Brenda Charcalla testified during her deposition that:

- 20 was 70, and it was incorrect because we were not
- 21 doing — we were doing about 60.

[Brenda Charcalla Deposition, page 42, lines 20-21]

Trooper Miles further testified during his deposition that there were no complaints of any hazardous road conditions or objects causing tire damage.

17 That was not the case here. We did not
18 have any other calls about tires being affected by
19 anything in particular. I did not see anything that

20 appeared to have been struck before this had happened, so
 21 there were no road issues that I could say definitively
 22 were present at the scene of this.

[Trooper Miles Deposition, page 152, lines 17-22]

Edgar Esquivel was behind the Charcalla vehicle and he stated in his deposition that he saw:

11. I saw
 12. something blew, like a piece of plastic blew
 13. out of the front left of the particular trailer
 14. or truck. ...

[Edgar Esquivel Deposition, page 46, lines 11-14]

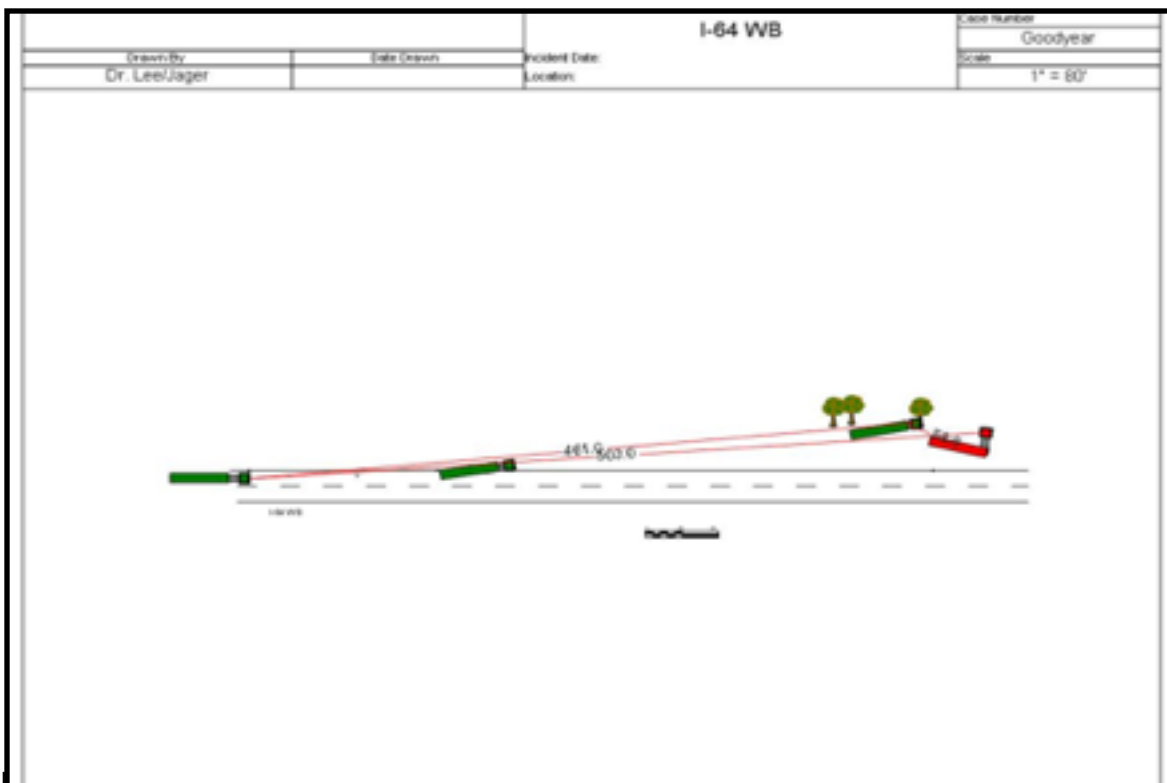
24. So I saw them going toward the left, went into
 25. The hill, the little hill that divides the, you

[Edgar Esquivel Deposition, page 46, lines 24-25]

1. know, the highway, hit a tree. ...

[Edgar Esquivel Deposition, page 47, line 1]

The following scale drawing of the I-64 WB lane and the South shoulder show the movement of the Freightliner and Toyhouse from first tire mark to final rest:



SPEED CALCULATION - PART 1

My speed calculation is in three parts. Part one deals with the 460 feet of travel from the start of the tire mark in the left lane and ending at the impact with the third tree. I have attached three photographs of the shoulder area where the vehicle traveled.

Photograph VASP 104^[Ref. Photograph 3] shows the shoulder area from where the truck first left the roadway. There are various tire marks in the grass, but no obvious brake marks. From the first tire mark area on the roadway at the pavement edge south to the shoulder close to the tree line is about 30 feet and no grass disturbance can be seen in the West direction for about 310 feet. To compute a speed loss on this section of shoulder I used a 0.10 rolling resistance drag factor.

The second shoulder photograph VASP 105^[Ref. Photograph 6] shows an area where the truck is very close to the tree line and there are some depression marks in the grass. This distance is about 90-feet long and to work up a speed loss I used a friction factor range of 0.25.

The third photograph, VASP 45^[Ref. Photograph 7], shows considerable ground disturbance as the truck and trailer encounter the positive embankment to its left. This distance is about 60 feet long and to determine a speed loss I used a factor of 0.35. Also in Photograph VASP 106^[Ref. Photograph 8] there is a smooth imprint in the distributed dirt which most likely occurred as the Freightliner traveled up the left side of the embankment, the left side of the Toyhouse made contact with the dirt surface.

The photograph represents a total of 460 feet, or the total distance from first roadway mark to the third tree impact. The attached computer form shows a final speed of 46.46 using drag factor of 0.15 to 0.20 creates a range of 38 to 53 mph when the truck makes contact with the tree assuming an initial speed of 65 mph.

RECFORMS (Imperial) Freeware from DYNAMICRO FORENSIC ANIMATIONS

File Edit Speed/Vel Distance Time Factor/Rate Momentum Ped/Cycl Trucks Alcohol Misc Help

SKID VELOCITY WITH KNOWN INITIAL VELOCITY / RATE AND DISTANCE

Known Quantities		Calculated Results	
Distance	d 460 ft	Final Velocity	V 68.14 fps
Initial Speed	So 65 mph	Final Speed	46.46 mph
Initial Velocity	Vo 95.33 fps		
Drag Factor	f .15	Time	5.62 seconds
Accel Rate	a 4.83 f/s/s		

FORMULA

d : Distance
 Vo : Initial Velocity
 a : Acceleration Rate
 V : Velocity at given Distance in a Skid

$$V = \sqrt{Vo^2 - 2 a d}$$

The skid estimate in Part 1 did not include skid mark information. The drag factors are based upon rolling resistance of 12 tires plus the left side of the truck and trailer contacting the embankment.

Based upon the testimony of Edgar Esquivel, Mr. Charcalla was most likely trying to or applying the truck brakes. Mr. Esquivel was first on the scene and the first to check on Mr. Charcalla.

16 A. And I saw the driver. I saw
 17 clearly, you know, inside the car and I saw the
 18 driver. The driver right on his, on his, on
 19 his, you know, seat. And his leg caught up on
 20 all the metal and the brakes. You know, I saw
 21 the brakes and I saw his sneaker got caught up
 22 between the brake and the accelerator.

[Edgar Esquivel Deposition, page 65, line 16-22]

SPEED ANALYSIS - PART 2/ CROSS-CHECK

The speed analysis in Parts 2 and 3 are a cross check of Part 1. Parts 2 and 3 will be added to compare to the impact speed range determined in Part 1. Part 2 based upon weight and crush dimension determine the delta V.

RECFORMS (Imperial) Freeware from DYNAMICRO FORENSIC ANIMATIONS

File Edit Speed/Vel Distance Time Factor/Rate Momentum Ped/Cycl Trucks Alcohol Misc Help

Stiffness coefficients and Equivalent Barrier Speed from Crush data

Test Vehicle		Subject Crash Vehicle	
Impact Speed		Number of Measurements (2 or 6)	6
Max impact speed w/o damage		C1 Measurement	0 in
Average crush		C2 Measurement	24 in
Damage width		C3 Measurement	48 in
Vehicle Weight **	28000 lbs	C4 Measurement	48 in
		C5 Measurement	24 in
		C6 Measurement	0 in
Stiffness coefficients A: 600 B: 300 G: 300 ** Must enter weight of vehicle if using known stiffness coefficients		Average crush	24 in
		Damage Width	48 in
		Impact Angle (degrees)	0 degrees
Approximate Equivalent Barrier Speed			
Change in Speed		27.65 mph	
Change in Velocity		40.56 fps	
See HELP for instructions and general explanation of this form.			

SPEED ANALYSIS - PART 3/ CROSS CHECK

Part 2 and Part 3 fall in the range of Part 1 speed. The truck and trailer did not stop at the tree. Due to the weight and angle of the trailer to the tractor, both units moved forward, rotated, and rolled over. This movement equals a post impact movement or post impact speed. Based upon the approximate distance of 58 feet, and average drag factor or 0.2G equals a post impact speed of approximately 18 mph.

FAILED TIRE EFFECT ON THE CHARCALLA VEHICLE STEERING

When a left front tire fails, the vehicle will start to pull to the left. The pull is created as the tire deflates, the left front can be lowered by 3 to 5 inches plus there is no tread on the tire for directional control and a flat tire creates more drag than a properly inflated tire.

The tire failure and tread separation created an additional problem for Mr. Charcalla. Based upon the reports of Mr. Woehrle and Mr. Wilson, the tire separating parts also interfered with steering and contributed to a more severe pull to the left and the vehicle could not be turned back to the right to keep it on the road. Mrs. Charcalla, in an interview with Progressive Insurance on page 4 line 12, described a loud noise and indicates her husband lost complete control of the vehicle. He could not keep it on the road, it veered left into the median and hit a bunch of pine trees.

The investigating Trooper from the Virginia State Patrol measured tire marks on and off the roadway in addition to the location of the tire pieces. In his report and scene photograph VASP 19^[Ref. Photograph 1], he shows and measures the first mark left on the pavement from the failed tire. In 128 feet, or 1.2 seconds from where Trooper Miles is standing in the photograph, the Charcalla Freightliner and Toyhouse has been pulled sufficiently to the left to be traveling off of the roadway onto the shoulder. He also measured evidence and determined that within 180 feet or 1.7 seconds, the entire front of the truck is off the paved road.

Trooper Miles describes in his deposition that pieces of tire rubber and parts were found predominately along the path of the left front tire. He also testified *[page 139, lines 12-14]* that the largest piece of tread stock, 6-feet , 10-inches long, was located 320-feet, 8 inches beyond the area of the first mark on the roadway that indicates a tire failure area. That mark is in the left wheel track of the left lane of I-64. This tire piece is shown in Photograph VASP 41^[Ref. Photograph 2].

This large piece of tread stock remained under the left front fender for over half the distance while the truck traveled off road and to the location that it struck three trees in the median. SAE Report #7007-01-0733 "Vehicle Response Comparison to Tread Separation." Woehrle and Wilson reports also identify steering problems related to tire tread interference with steering.

The Freightliner and Alfa Toyhouse traveled to the left into the shoulder and median area for 35 plus feet to the left and, at the same time, continued forward for 460 feet and struck a large tree. Despite the distance forward and to the left, Mr. Charcalla was not able to control the direction of his vehicle.

FAILED TIRE EFFECT ON THE CHARCALLA VEHICLE BRAKING

William Wilson – Investigative Mechanics and myself are of opinion that the failed tread stock as it separated from the tire and under fender parts also partly disabled or reduced the braking efficiency of the Freightliner. See Wilson's report for details. The truck left the roadway, crossed the shoulder and down a 30–35-foot wide grass area, and continued forward for 460 feet and had a major crash with a large tree. During this total travel distance, there were not visible or obvious skid marks or soft material rutting which would occur from a truck or trailer tire decelerating from normal brake application. See VASP 104^[Ref. Photograph 3] for shoulder without skid marks.

Photograph VASP 67^[Ref. Photograph 4] and VASP 54^[Ref. Photograph 5] show the tires on the Toyhouse; all show rotation and no braking. Note that the roadside material is the whole way around the tire with no dirt embedded in the tread from skidding.

The discipline or study of Human Factors and my own research at MSU on the driving range and driving track clearly show that the primary reaction to most vehicle emergencies by the driver is to push the brake pedal. The Charcalla vehicle did not leave evidence of braking or deceleration for a distance of 460 feet. Based upon accepted speed, time and distance formulas, on I-64, this truck and trailer combination using maximum brakes at 70 mph would stop in 240 feet in 4.7 seconds. This time and distance does not include perception and reaction. On dry grass, considering grade and/or slope, this Freightliner and Toyhouse should stop in 327 feet and in 6.4 seconds, if the tires stay on top of the grass.

Exhibit 9-5
COEFFICIENTS OF FRICTION OF VARIOUS ROADWAY SURFACES

DESCRIPTION OF ROAD SURFACE	DRY				WET			
	Less than 30 mph		More than 30 mph		Less than 30 mph		More than 30 mph	
	From	To	From	To	From	To	From	To
PORTLAND CEMENT								
New, Sharp	.80	1.20	.70	1.00	.50	.80	.40	.75
Travelled	.60	.80	.60	.75	.45	.70	.45	.65
Traffic Polished	.55	.75	.50	.65	.45	.65	.45	.60
ASPHALT or TAR								
New, Sharp	.80	1.20	.65	1.00	.50	.80	.45	.75
Travelled	.60	.80	.55	.70	.45	.70	.40	.65
Traffic Polished	.55	.75	.45	.65	.45	.65	.40	.60
Excess Tar	.50	.60	.35	.60	.30	.60	.25	.55
GRAVEL								
Packed, Oiled	.55	.85	.50	.80	.40	.80	.40	.60
Loose	.40	.70	.40	.70	.45	.75	.45	.75
CINDERS								
Packed	.50	.70	.50	.70	.65	.75	.65	.75
ROCK								
Crushed	.55	.75	.55	.75	.55	.75	.55	.75
ICE								
Smooth	.10	.25	.07	.20	.05	.10	.05	.10
SNOW								
Packed	.30	.55	.35	.55	.30	.60	.30	.60
Loose	.10	.25	.10	.20	.30	.60	.30	.60

Trooper Miles confirmed there were no brakes being applied by Charcalla. In his deposition, page 152, lines 5-6:

5 ... I would say, because there is no indication that he
6 applied the brakes or tried to apply, ...

[Trooper Miles Deposition, page 152, lines 5-6]

Capture Image | Print Image | Report Form | eGraphics [W/2] | Vehicle Specs | Cycle Windows | AutoLoad [On]

Time Distance - Deceleration

Mu Surface:
 Grade Test:
 Grade Scene:
 Braking %:

Inputs: (2 of 4)

Distance ft:
 Time seconds:
 Speed (Initial) M/H:
 Speed (Final) M/H:

Optional Input Data

Lateral Distance ft:

Output

Mu (Surface): .2
 Grade (Test): 0
 f (Level): .2
 Grade (Scene): 0
 Braking (%): 100
 f (Drag): .2
 Rate: 4.3909 M/H/s
 Rate: 6.44 f/s/s
 Distance (Event): 58 ft
 Distance (Stop): 58 ft
 Time (Event): 4.2441 seconds
 Time (Stop): 4.2441 seconds
 Speed (Initial): 18.6354 M/H
 Speed (Initial): 27.332 f/s
 Speed (Final): 0 M/H
 Speed (Final): 0 f/s

Tables and Graphics/Animation

Iteration / Finite Difference Analysis Menu

Animation | Graphics
 Formulae | Formulae*
 Open .TDD File | Save .TDD File

The second part of the speed analysis is based upon the truck's impact to the tree. The total weight of the Freightliner and Toyhouse is approximately 28,000 lbs. as described above. This weight is based upon manufacturer reported weight of the truck, plus the actual trailer weight, plus contents (propane, water, two occupants, bicycles, generator, air conditioner, gas, cooking supplies and clothing).

The RecForms sheet shown identifies the stiffness coefficients, damage width and average crush. Since this is a centered impact, I have computed the speed change to the unit resulting from the impact, which is shown on the section called "Change in Speed": 27.65 mph.

Part 3 of the speed cross-check is the post-impact speed analysis. To determine the speed in the cross-check, since the second part was a delta V speed and a center impact, speed two and three can be added. Speed two was 18.63 and Speed three was 27.5 to 28. The cross-check speed is 46 mph. Speed one was the ending speed of the truck and trailer after deceleration for 460 feet. Based upon 65 mph, initial speed and using a range-of-friction factor, the speed range was 38 to 53 mph.

This means that Charcalla vehicle was traveling between 38 to 53 mph at impact. The cross-check speed of 46 fits within the range of a low of 38 and a high of 53 mph.

SUMMARY AND CONCLUSION

My opinion is that Mr. Gary Charcalla did not contribute in any way to this Freightliner Toyhouse crash that took his life and severely injured his wife, Brenda, and caused minor physical injuries to his two sons and a friend of the family. There is no evidence that the speed of the unit was excessive or that he was operating in a careless fashion. The family was only a few hours into the trip, so driver fatigue is not a factor. Edgar Esquivel, who was following the Charcalla vehicle, made no observation of unsafe operation.

Mr. Charcalla was not a novice camper or operator of tow vehicles and large trailers. He owned previous one ton trucks and pulled fifth wheels. He was towing a large (40-foot fifth wheel) but he was doing it with a top rate, popular truck specifically designed for tow/hauling large fifth wheels. His wife testified that a smaller dual wheel truck was sold to purchase the Freightliner Sport.

When the unexpected occurred (left front Goodyear tire failure), his wife described his reaction to the emergency. He tried to slow down and maintain the vehicle in its lane of travel. Due to the tire failure while traveling the legal speed, he was placed into a situation where he

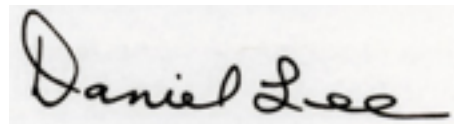
could not slow the vehicle or make corrective steering maneuver to keep the vehicle on the road or make a normal slow down and move the vehicle to the side of the road or other safe location.

Many questions were asked of the family about checking tire pressure. Obviously tire pressure is critical, but it is very different for a tire novice to determine if a tire is defective based on tire pressure checks.

I identified in my report that, under normal circumstances, this combination vehicle could stop on dry pavement fully loaded in 240 feet or 327 feet on a hard grass surface. If the tire would not have failed and interfered with the steering and would not have eliminated or reduced part of the braking system, the truck and trailer were capable of handling normal emergencies.

The speed of the Charcalla vehicle, which I have determined, was in the range identified by his wife, a witness and the investigating trooper. My speeds are all within a reasonable range using scientifically accepted procedures and formulas. The Virginia State Patrol obtained some measurement but more could have been taken. The quality and number of photographs allowed reasonable reconstruction efforts.

This is a summary of my current findings and opinions. My opinions are set forth within a reasonable degree of engineering certainty. If additional information becomes available, I reserve the right to review that information and adjust the above opinions if necessary.

A handwritten signature in black ink that reads "Daniel Lee". The signature is written in a cursive, flowing style.

Daniel Lee, Ph.D.

Accident Reconstruction and
Safe Vehicle Operation Analysis