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HAEGER v. GOODYEAR TIRE AND RUBBER CO.

No. CV-05-02046-PHX-ROS.

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Citing Case

906 F.Supp.2d 938 (2012)

Leroy HAEGER, et al., Plaintiffs, v. GOODYEAR TIRE AND RUBBER CO., et al., Defendants.

United States District Court, D. Arizona.

November 8, 2012.

Attorney(s) appearing for the Case

[Blanca Quintero](#), Cozen O'Connor, San Diego, CA, [David L. Kurtz](#), Kurtz Law Firm, Scottsdale, AZ, [John James Egbert](#), [Michael J. O'Connor](#), Jennings Strouss & Salmon PLC, [James Michael Abernethy](#), Abernethy & Green PLC, Phoenix, AZ, for Plaintiffs.

[George Ian Brandon, Sr.](#), [Kendall Kyle Wilson](#), [Brian Michael McQuaid](#), Squire Sanders (US) LLP, [Graeme Em Hancock](#), Fennemore Craig PC, Phoenix, AZ, [George W. Rooney, Jr.](#), Roetzel & Andress LPA, [Jill G. Okun](#), Squire Sanders & Dempsey LLP, Cleveland, OH, [Walter M. Yoka](#), Yoka & Smith LLP, Los Angeles, CA, for Defendants.

ORDER

ROSLYN O. SILVER, Chief Judge.

Litigation is not a game. It is the time-honored method of seeking the truth, finding the truth, and doing justice. When a corporation and its counsel refuse to produce directly relevant information an opposing party is entitled to receive, they have abandoned these basic principles in favor of their own interests.¹ The little voice in every attorney's conscience that murmurs *turn over all material information* was ignored.

Based on a review of the entire record, the Court concludes there is clear and convincing evidence that sanctions are required to be imposed against Mr. Hancock, Mr. Musnuff, and Goodyear. The Court is aware of the unfortunate professional consequences that may flow from this Order. Those consequences, however, are a direct result of repeated, deliberate decisions by Mr. Hancock, Mr. Musnuff, and Goodyear to delay the production of relevant information, make misleading and false in-court statements, and conceal relevant documents. Mr. Hancock, Mr. Musnuff, and Goodyear will surely be disappointed, but they cannot be surprised.

FINDINGS OF FACT**I. The Accident**

In June 2003, Leroy and Donna Haeger, along with Barry and Suzanne Haeger (collectively "the Haegers"), were traveling in a motor home owned by Leroy and Donna. It was manufactured by Gulf Stream Coach ("Gulf Stream") on a chassis manufactured by Spartan Motors, Inc. ("Spartan"). The motor home had "G159" tires manufactured by Goodyear Tire and Rubber Company ("Goodyear"). While traveling on the highway, one of the motor home's front tires failed, followed immediately by the motor home leaving the road and tipping over.² The Haegers suffered serious injuries as a result. The motor home was insured by Farmers Insurance Company ("Farmers").

II. Initial Proceedings

XIX. Evidentiary Hearing

The Court held an evidentiary hearing on March 22, 2012. At that hearing, Mr. Musnuff and Mr. Hancock testified. Mr. Musnuff's testimony conflicted with the documentary evidence and was not credible. Mr. Hancock's testimony, while more reliable than Mr. Musnuff's, still conflicted with the underlying evidence and was not entirely credible.

A. Mr. Musnuff's Testimony

Mr. Musnuff's testimony covered a variety of topics, including his explanation for when he first received the Heat Rise tests and what he understood the Heat Rise tests to mean. Despite the written declaration by Mr. Taylor that he gave the Heat Rise tests to Mr. Musnuff in January 2007, Mr. Musnuff testified he first learned of the Heat Rise tests sometime in August 2007. (Doc. 1014 at 97). When pressed, Mr. Musnuff explained that Mr. Taylor's representations that the Heat Rise tests were located and provided to Mr. Musnuff in January 2007 was a mistake. (Doc. 1014 at 122). Moreover, according to Mr. Musnuff, the January 24, 2007 date printed on the Heat Rise tests was inaccurate and no one could figure out what it meant.

Next, Mr. Musnuff testified that he determined the Heat Rise tests were not responsive to Plaintiffs' Third Request based on statements made to him by "numerous Goodyear engineers" that the tests had "nothing to do with the durability of

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the tire or its ability to function at highway speeds." (Doc. 1014 at 29). Mr. Musnuff asserted he was "repeatedly told by Goodyear that the only test determined for suitability for 65 and 75 mile an hour highway use was the W84 tests." (Doc. 1014 at 29-30). When asked to explain this in more detail, Mr. Musnuff stated:

As was explained to me by the Goodyear engineers, the heat rise test is not a test to evaluate the tire itself. It's a compounder's test used to evaluate different compounds that might be used in different tires; or if you're trying to improve a compound or such, you might test one and then test another. You have to test them in something so you test them in a tire, but they're really evaluating the compound rather than the tire.

(Doc. 1014 at 34). The Court could not understand this statement and pressed Mr. Musnuff for a more precise explanation:

The Court: If one compound is better than one, but the purpose [of the Heat Rise tests] is to improve the quality of the tire; right?

Mr. Musnuff: I would think that all of the engineering that Goodyear does is to ultimately to try to improve the quality of the products.

The Court: So, then, in essence, then, it does have something to with its endurance or durability because that is, at bottom, what is important to Goodyear; right?

Mr. Musnuff: Well, no. Your Honor, if I can disagree. As it was explained to me, that this is in no way a durability test or an endurance test.... It's just to provide — it's like an information point only....

The Court: So if one of the compounds was found ... to be better than another compound, what would the engineering group do?

Mr. Musnuff: That I don't know.

* * *

The Court: But what was [the Heat Rise test] designed to do?

Mr. Musnuff: Just to provide information that a compounder could look at. The Court: Was it academic or was it for recreation? What was it for?

Mr. Musnuff: No, not academic but there's no qualified — there's no standard that applies to it.... It's just to provide a point of information so that you can compare one compound you're testing versus another compound you're testing.

Mr. Musnuff explained that he talked to Mr. Taylor and Mr. Stroble regarding the Heat Rise tests and they informed him the tests were not responsive because Goodyear had not relied on them when determining the suitability of the G159 for highway use. (Doc. 1014 at 40).

On cross-examination, Mr. Musnuff testified that the Heat Rise tests were not even relevant to Plaintiffs' allegations. (Doc. 1014 at 45). Mr. Musnuff did concede, however, that the Heat Rise tests qualified as "wheel tests" which were requested by Plaintiffs in their First Request. Mr. Musnuff admitted Goodyear never supplemented its responses to the First Request nor did it otherwise alert Plaintiffs that tests were being withheld. (Doc. 1014 at 46, 54). Mr. Musnuff also stated he did not recall questioning why the Heat Rise tests were labeled "durability tests" if they were not, in fact, durability tests. (Doc. 1014 at 50).

Towards the end of the cross-examination, Mr. Musnuff admitted he attended the deposition of Goodyear's expert where that expert expressed the opinion that "heat in excess of 200 degrees for a prolonged period of time ... can lead to tread separations." (Doc. 1014 at 79). Despite the fact that the Heat Rise test established the G159 "was running at 229 degrees," Mr. Musnuff maintained it was utterly irrelevant

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because the Heat Rise test had "nothing to do with measuring the durability of the tire." (Doc. 1014 at 80).

After all counsel concluded their questioning of Mr. Musnuff, the Court asked a series of questions. First, the Court asked why the Heat Rise tests were turned over in *Schalmo* but not in *Haeger*. Mr. Musnuff explained that he came to believe Mr. Kurtz had narrowed his discovery request such that the Heat Rise tests were not responsive to any outstanding request. (Doc. 1014 at 128-29). Next, the Court asked why there were no efforts to locate any testing before January 2007. Mr. Musnuff explained that there had been no case before 2003 that "required... production of further testing beyond the compliance testing" Goodyear routinely produced. (Doc. 1014 at 131). Third, the Court confirmed Mr. Musnuff had been present for the depositions of the various experts. (Doc. 1014 at 133). Mr. Musnuff confirmed that he was present for Goodyear's expert's deposition and that the expert had stated "anything over 200 [degrees] could cause separation." (Doc. 1014 at 134). Despite the Heat Rise tests casting serious doubt on this opinion, Mr. Musnuff stated he had behaved properly because the Heat Rise tests were not responsive to any discovery request. When the Court expressed some confusion how Mr. Musnuff believed it was proper for him to allow Goodyear's expert to provide testimony directly undercut by Goodyear's own testing, Mr. Musnuff repeated that the Heat Rise tests had absolutely no practical application other than providing a "data point" to compare two compounds. (Doc. 1014 at 137). The results of the Heat Rise tests "mean[] nothing, essentially nothing in terms of durability on the road." (Doc. 1014 at 139).