IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Leroy Haeger, et al., Plaintiffs, vs. Goodyear Tire and Rubber Co., et al., Defendants.	No. CV-05-02046-PHX-ROS **ORDER**

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

[1] *See Nix v. Whiteside*, 475 U.S. 157, 166 (1986) (lawyer's "duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth").

Next, as of February 2007 Mr. Hancock knew Goodyear had the High Speed tests and, as acknowledged in his own email, those tests were important in response to Plaintiffs' expert's report. Long before that expert's deposition, Mr. Hancock knew Plaintiffs and the expert had been materially misled regarding the scope of Goodyear's testing. Despite this knowledge, Mr. Hancock proceeded with the deposition of Mr. Osborne and only produced the High Speed tests after the deposition was complete. At best, this behavior was aimed at prolonging the litigation. At worst, this behavior was meant to prevent Plaintiffs from obtaining information which would help their case until it was too late for them to do anything with it.

And finally, Mr. Hancock's testimony that he had "never heard . . . of a heat rise durability test" before the present sanctions proceedings was false. As evidenced by the emails from *Bogaert*, Mr. Hancock was informed in 2008 that Goodyear had produced "heat-rise test data" in another G159 case. It is possible Mr. Hancock merely forgot about the *Bogaert* emails but, in the context of this case, it appears more likely that Mr. Hancock was not expecting Plaintiffs to gain access to the *Bogaert* emails and his testimony was an attempt to paint himself in a sympathetic light.

ANALYSIS

> What above all else is eroding public confidence in the Nation's judicial system is the perception that litigation is just a game, that the party with the most resourceful lawyer can play it to win, that our seemingly interminable legal proceedings are wonderfully self-perpetuating but incapable of delivering real-world justice.

Caperton v. A.T. Massey Coal Co., Inc., 129 S. Ct. 2252, 2274 (2009) (Scalia, J., dissenting).

Mr. Hancock, Mr. Musnuff, and Goodyear engaged in repeated and deliberate attempts to frustrate the resolution of this case on the merits. From the very beginning, Mr. Hancock, Mr. Musnuff, and Goodyear adopted a plan of making discovery as difficult as possible, providing only those documents they wished to provide, timing the production of the small subset of documents they were willing to turn over such that it was inordinately difficult for Plaintiffs to manage their case, and making false statements