

# THE KURTZ LAW FIRM

**David L. Kurtz**  
Telephone: (480) 585-1900  
Facsimile: (480) 585-9910

Email: [dkurtz@kurtzlaw.com](mailto:dkurtz@kurtzlaw.com)

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

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

Dear Counsel:

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>4</sup> The protective orders in each G159 case are available at my office.

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

**Heat:**

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

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

**(Exhibit 41)**

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

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

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

**(Exhibit 42, Gardner Deposition.)**

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

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

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

**(Exhibit 43, Olsen Deposition.)**

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

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

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

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

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

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

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

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