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").

testing;" it did not argue the tests were withheld because Goodyear had not relied on them to determine suitability for highway purposes. As set forth later, the failure to make this argument is telling.

Finally, Goodyear's opposition to the sanctions motion claimed its behavior during discovery had "unambiguously indicat[ed] that it would not produce *all* test data." (Doc. 948 at 4). The Court is at a loss to determine what Goodyear believed was an "unambiguous" indication that it was withholding certain tests performed on the G159 tire. Both Plaintiffs and the Court were unable to perceive this "unambiguous" indication and Goodyear's statement is incredibly inaccurate. Throughout the numerous discovery dispute filings and hearings, the Court was under the impression that Goodyear had produced *all* test data relevant to Plaintiffs' claims.[19] In fact, at various points the Court became exasperated with Plaintiffs' apparently unsubstantiated claims that additional information must exist. Based on personal observation and discussions with Mr. Hancock during in-court hearings, the Court came to believe Mr. Hancock thoroughly understood his discovery obligations and that he was making every effort to comply with them. There simply was no reason for the Court to question Mr. Hancock's representations and Plaintiffs' repeated attempts to cast aspersions on Mr. Hancock appeared misguided. Of course, now that Goodyear has been forced to admit additional information does exist, that exasperation was misplaced. Suffice it to say, had there ever been an "unambiguous" indication that Goodyear was withholding certain test data, the Court would have immediately addressed it and taken appropriate action.

Before filing their reply, Plaintiffs asked the Court to order Goodyear to produce "the requested tests." (Doc. 949 at 2). Goodyear opposed that motion and argued it should not have to produce the "heat test" documents because "Goodyear has committed no discovery violation." (Doc. 951 at 4). On October 5, 2011, the Court concluded there were "serious questions regarding [Goodyear's] conduct in this case" and, based on the Court's power to

---

[19] According to the Court's calculations, the parties spent approximately sixteen hours in court on discovery matters. This is an extraordinary amount of time.