

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-052753

04/03/2018

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT

W. Tenoever

Deputy

ESTATE OF LEROY HAEGER, et al.

DAVID L KURTZ

v.

GOODYEAR TIRE AND RUBBER COMPANY,
et al.

KERRY L HOLMAN

LISA G LEWALLEN
RICHARD P TRAULSEN
SUSAN M FREEMAN
D&C MATERIALS-CSC

UNDER ADVISEMENT RULING

Intervenor Center for Auto Safety's Motion to Unseal Court Records and Vacate Protective Order has been under advisement. The Court has read all of the filings in connection with the motion, and considered the oral arguments of counsel, in the context of the record in this case. The Court has also had the opportunity to review the documents that are subject to the protective order.

The Court now enters findings of fact concerning relevant factors, and conclusions of law including application of law to the facts. Based on these findings and conclusions, the Center for Auto Safety's motion to vacate the protective order is granted with minor exceptions. The motion to unseal the court records is granted in part and denied in part.

FINDINGS OF FACT

Background and Procedural History

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66. Goodyear was able to get away with this kind of conduct because its protective orders prevented plaintiffs from communicating or sharing information among themselves. Thus Goodyear could control the information available to each plaintiff. In some cases Goodyear disclosed the tests showing how much heat the G159 tire can tolerate before it loses its structural integrity. In other cases Goodyear disclosed the tests showing that the tire does in fact generate that much heat at highway speeds. But this case appears to be the first in which Goodyear disclosed both sets of tests.

67. Protective orders are meant to allow litigants to maintain the confidentiality of trade secrets and confidential business information. Goodyear appears to have been abusing that privilege in the G159 cases. Goodyear arguably used protective orders dishonestly to gain an unwarranted advantage in litigation and to avoid tort liability.

68. Even in the last stage of this case, after years of litigation over its practices concerning protective orders, Goodyear tried to use the Protective Order improperly for litigation advantage.

69. As noted in paragraph 15 supra, Spartan Chassis was granted access to the protected information in this case on the same terms as the Haegers, subject to the Protective Order, pending further proceedings on whether the Protective Order should be vacated. Minute Entry Order (Docket No. 387) filed July 13, 2017. Goodyear then took the position that the Protective Order forbade the Haegers' attorney and Spartan's attorney from talking to each other about protected information to which both had access. The Haegers Motion for Clarification (Docket No. 388) filed July 17, 2017. Goodyear had to propose a tortured reading of the Protective Order to reach that result. Response to Motion for Clarification (Docket No. 395) filed July 28, 2017. Goodyear's argument did not even nod toward the Protective Order's legitimate purpose of keeping confidential information out of the hands of its business competitors.

70. The motion for clarification was granted, in an order observing that Goodyear had "no legitimate interest" in prohibiting communication between its litigation opponents. Minute Entry Order (Docket No. 412). The truth is that Goodyear's position bordered on frivolous.

71. That kind of conduct, like the conduct that resulted in the discovery sanctions in *Haeger I*, weighs in favor of dissolution of the Protective Order.

CONCLUSIONS OF LAW

Discovery Materials Covered by the Protective Order