

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, KERRY L HOLMAN
et al.

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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30. Aside from *Bogaert*, the only G159 case in which the protective order contains a finding that Goodyear's information constitutes a trade secret or commercially sensitive information is *Schalmo v. The Goodyear Tire and Rubber Company*, Circuit Court of the Sixth Judicial District in and for Pasco County, Florida No. 51-2006-CA-2064-WS ("*Schalmo*"). In *Schalmo* the parties stipulated that all of the documents and things for which Goodyear sought protection were "in fact trade secrets, the disclosure of which will cause Goodyear economic harm and/or place Goodyear at a competitive disadvantage." The stipulation "substantially obviated the need for the court to address the proof of trade secret" when entering a protective order during the discovery phase of the litigation. *Id.*, Exhibit K ("Order on Plaintiffs' Motion to Compel and Associated Protective Order" entered August 27, 2008, at 1-2).

31. No court that has entered a protective order in a G159 case has conducted an adversary proceeding on the question whether information disclosed by Goodyear constitutes a trade secret or commercially sensitive information. No court has had occasion to make a critical assessment of Goodyear's claim that the information must be kept from public disclosure.

32. To the Court's knowledge, the question of risk to public safety has been directly addressed in only one G159 case, *Schalmo*.

33. The *Schalmo* order adopting Goodyear's protective order refers to a separate order in which the court found pursuant to Fla. Stat. § 69.081 that "no public hazard that would be concealed" by the protective order. *Id.*, Exhibit K ("Order on Plaintiffs' Motion to Compel and Associated Protective Order" entered August 27, 2008, at 3). The order in which the finding was actually made is not part of the record in this case. This Court has no information about what the *Schalmo* court considered when making the finding.

34. In *Schalmo* a jury entered a verdict for the plaintiffs. Based on the verdict, the court denied Goodyear's motion to seal post-trial filings and vacated the protective order effective 45 days after the verdict date. *Id.*, Exhibit K ("Order Vacating July 21, 2010 Order" at 3). Before entry of judgment, however, the parties settled the case.

35. Following the settlement, the *Schalmo* court re-imposed the protective order, finding that "the verdict, whose validity is disputed, does not provide a basis for the Court to overturn its August 27, 2008 protective order and subsequent pretrial rulings on confidentiality." *Id.*, Exhibit K ("Order Vacating July 21, 2010 Order" at 3). Whether the *Schalmo* plaintiffs opposed the re-imposition of the protective order is unknown. Nothing in the record of the present case suggests that they did. They had no financial incentive to do so. They could have agreed not to do so in their settlement agreement (which is not part of this record).