

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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that issue in its dealings with government regulators and in lawsuits arising from the tire's failure. *See* The Haegers' Notice of Filing Documents Under Seal (Docket No. 460). The Court adopts the contents of that letter as its findings relating to "possible" public safety risks.

62. Goodyear's contention that "there is no safety risk," Opposition at 4, illustrates the public interest in disclosure. Goodyear emphasizes that the allegations of these and other plaintiffs "were never tested at trial," and that no lawsuit has "resulted in a finding of public safety risk." *Id.* The reason, of course, is that Goodyear has settled every G159 case confidentially. Only one case even got as far as a jury verdict. Thus Goodyear has avoided exposure to a finding of public safety risk and spun the outcome as "there is no risk."

63. In his letter Mr. Kurtz expresses the opinion that the G159 tire is so dangerous that NHTSA should order it recalled immediately. It is not necessary for the Court to go that far, and these findings should not be read that way. It is the "possible risk" of harm that the Court must balance against the competing interests outlined in Rule 26. From that point of view, the number of G159 failures, their apparent frequency compared with the failure rates of similar products, the potentially deadly consequences of failure, and the fact that the information has never been analyzed by an outside agency, all weigh in favor of disclosure even if the failures turn out to be attributable to some actor other than Goodyear or nothing more than a statistical anomaly.

The Interests at Stake: Other Relevant Factors

64. In *Haeger I*, Judge Silver found that Goodyear and its attorneys "made repeated, deliberate decisions . . . to delay the production of relevant information, make misleading and false in-court statements, and conceal relevant documents," for the purpose of avoiding liability to the Haegers based on the failure of a G159 tire. *Haeger v. Goodyear Tire and Rubber Co.*, 906 F.Supp.2d 938 (2012). The Ninth Circuit Court of Appeals upheld Judge Silver's findings, including her finding that Goodyear "participated directly in the discovery fraud." *Haeger v. Goodyear Tire and Rubber Company*, 813 F.3d 1233, 1243-1246 (9<sup>th</sup> Cir. 2016), *reversed on other grounds* 137 S.Ct. 1178 (2017).

65. Judge Silver concluded, after hearing evidence, that Goodyear had tried to hide test results showing that the G159 tire becomes dangerously hot when driven for a long period of time at highway speeds. In other litigation Goodyear took the position that those same tests "were responsive to an almost identical discovery request," and that Goodyear had determined from those tests that the G159 was suitable for highway use. *Haeger v. Goodyear Tire and Rubber Co.*, 906 F.Supp.2d at 978. These facts supported Judge Silver's finding of bad faith. *Id.* That finding became the starting place for the fraud allegations in this case.