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THE SAFETY RECORD

INSIDE THIS ISSUE

Goodyear Destroys Testimony Admitting RV Tire is Defective; Court Rules Deposition is not Protected

SAN DIEGO, CA -- On June 19, 2003, a Goodyear claims administrator allegedly made an admission so rare and startling that the tiremaker's counsel immediately terminated the deposition, negotiated a settlement and arranged for every scrap of the deposition's existence to be destroyed.

The claims administrator, Kim Cox, reportedly admitted that Goodyear knew that its G159 tire – an RV tire model at the center of dozens of lawsuits – did not "perform properly" on Class A motor homes. And a U.S. District Court Judge from San Diego, California has ruled that Cox's deposition is not subject to a Protective Order filed in the 2002 case of *Phillips v. Goodyear*. Judge Magistrate Nita L. Stormes ruled against a motion to modify the Protective Order to allow five plaintiffs in other pending G159 cases to have access to Cox's deposition testimony, because Cox's deposition was never protected to begin with. Lawyers litigating against Goodyear alleging the same defect applauded the ruling.

"This could be the straw that breaks Goodyear's back," says Christopher Roberts, of Smith & Fuller, PA in Belleair Bluffs, Florida, one of the intervenors in this case. "I've never seen any defendant go to such great lengths to destroy sworn testimony."

In June 2002, plaintiffs Harold and Georg-Anne Phillips filed suit against Goodyear, alleging that the manufacturer's G159 275/70R/22.5 tire was defective, after experiencing three tread separations on their Windsor Class A motor home. One week later, Goodyear and Monaco voluntarily recalled the G159 from 1999, 2000 and some 2001 Windsor motor homes.

The Phillipses made their initial complaint in August 2000, when two of the tires on the left rear side of the motor home failed, damaging the rear of the vehicle. Goodyear reimbursed the couple for the cost of replacement tires and for repairs to the motor home. But a year and a half later, the Phillips' were again the victims of a tread separation crash. While traveling on Interstate 10 in Arizona, the motor home's left front tire failed, causing the Phillipses to crash into a roadside embankment resulting in serious injuries and property damage.

While the Phillips's case was swiftly settled on the heels of Cox's aborted deposition, Goodyear has defended or is defending at least 30 other tread separation cases involving G159s on Class A motor homes, based on its claim that the G159 was not defective.

The G159's Troubled History

Motor home manufacturers and Goodyear have known about the problematic combination of a G159 (275/70R22.5) and a Class-A motor home chassis since 1999. In the last decade, there have been two recalls and

(*Cont. on p. 2*)

Child Restraint Misuse Issues Continue to Spur Research

Three new technical papers take on child restraint misuse issues from the sociological, public health and bioinjury perspectives. Child restraint misuse rates, well documented by the National Highway Traffic Safety Administration and others, present a continuing challenge to policymakers, safety advocates and the healthcare community alike.

Researchers from the Cincinnati Children's Hospital Medical Center and the University of Cincinnati Medical Center approached the problem from a socioeconomic angle, examining patterns of restraint use among minority children. They studied the records of all children who were involved in crashes admitted to their Level I Trauma Center over a ten-year period and compared restraint use among African American and white children, and those using federally funded health care versus private health insurance. The study found an alarming number – 80 percent – were improperly restrained (according to NHTSA guidelines). Out of 1,268 patients, overall restraint use was less than half – only 44.8 percent – and less than a quarter were properly restrained – 20.3 percent.

(*Cont. on p. 5*)

Goodyear Destroys Testimony Admitting RV Tire is Defective; Court Rules Deposition is not Protected

(*Cont. from p. 1*)

one "Product Service Bulletin" replacing these tires because of the inadequate load margin. And the Cox deposition aside, Goodyear publicly stated two years ago that these tires were not designed for RVs and has since replaced them with a more robust version.

In June 1999, Fleetwood notified NHTSA that it was recalling 17 Class-A American Heritage motor homes because of inadequate total front tire weight capacity. The company replaced the 275/70R22.5 Goodyear G159s with a larger Michelin XZA 275/80R22.5. By the summer's end, Fleetwood greatly expanded its drive to remove the G159 from its products, with a much larger recall. On October 1, 1999, Fleetwood again initiated a recall for 275/70R22.5 Goodyear G159 tires, this time on some 3,400 Class-A models made from 1996 to 2000 after four accidents involving two fatalities. The accidents Fleetwood reported to NHTSA occurred on September 15, 1998; July 7, August 29 and September 9, 1999.

In its October Safety Defect Report to NHTSA, Fleetwood said "the subject motor homes, when built with a disproportionate front axle weight distribution, fully equipped, loaded with cargo, and operated with improper tire pressures, may experience an overload condition on a front tire. Overloading of a tire can lead to tire failure which can result in loss of vehicle control and result in personal injury and/or vehicle damage."

Fleetwood's remedy was to replace the G159 275/70R22.5 with the larger 275/80R22.5 tires. In January 2000, after receiving two more complaints – of a blowout and of vehicle instability – from owners of the Bounder model, a Fleetwood vehicle outside the recall population, NHTSA opened a Recall Query. In this investigation, NHTSA focused on the potential problem of overloading because of the motor homes' multiple slide-out design. In 2001, NHTSA closed the investigation after meeting with the manufacturer and concluding that these smaller models were not subject to the same problems.

On June 26, 2002, one week after the Phillips filed suit, Goodyear released a Product Service Bulletin announcing that the Monaco Coach Corporation would be issuing a letter to owners of 1999, 2000 and certain 2001 Windsor model Class-A motor homes offering to replace their G159 275/70R22.5 tires with 295/80R22.5 LR H, G391 tires.

"The letter will inform the customer that it has come to Monaco's attention that in a number of instances, it was found that tire air pressure was being reduced in order to gain better ride comfort and in doing so tires were operated in an under-inflated and overloaded condition," the Goodyear bulletin said. "In the interest of customer satisfaction, Goodyear and Monaco are offering to replace the original 275/70R22.5 LR H, G159 with 295/80R22.5 LR H G391 tires. The higher aspect ratio tire will allow customers to operate at a lower inflation pressure that will give a more comfortable ride while maintaining tire loading that is within the operating range of the tire."

Further, Goodyear told its dealers that they needed to stress the importance of knowing the individual weights at each corner of the vehicle.

But other RV manufacturers were apparently were still using the G159 275/70R22 after 2002. The owner of 2003 a Beaver Monterey reported on an enthusiasts' web forum that his G159 suffered a blowout at 20,000 miles. By 2006, Goodyear was not using either the G159 or the G391 tire for RVs. Instead, it was marketing an entirely different model that had been developed for recreational vehicles, the G670 RV. According to Tim Miller, Marketing Communications Manager for Goodyear, the G159 was not an appropriate application for RVs and noted "the G159 was a truck tire that was used on RVs."

This problem is not new for either Goodyear or the RV industry. Since 1998, Goodyear tires have been involved in a total of four recalls. In addition to the Monaco and Fleetwood recalls mentioned above, Goodyear tires were blamed for failures on Newell Class A Coaches. In 2000, Newell noticed "[a] disturbing number of steer axle blowouts on coaches equipped with this low profile tire. Goodyear has introduced redesigned low profile tires to us at least three times since 1998. We have experienced a similar pattern of front tire tread separations and blowouts on each of these redesigned tires, typically after approximately 10,000 to 15,000 miles of accumulated road use. We also manufactured a limited number of Newell motor coaches during this time period with Michelin 315/80R22.5 tires. We have not experienced a similar failure pattern with Michelin tires." Newell replaced the Goodyear tires with Michelins.

The Battle over the Cox Deposition

The deposition of Goodyear's claims administrator Kim Cox was taken in 2003, about a year after the G159 Windsor recall. As part of the settlement in the Phillips case, the deposition was never transcribed, and all the court reporters' notes and recordings of the deposition were returned to Goodyear's counsel John McCormick "for destruction," according to the Phillips' attorney Guy Ricciardulli.

Four years later, Tim Casey, another attorney with a G159-motor home case, learned about the deposition and Cox's admission that Goodyear was aware of the problems with that tire on RVs. On June 28, 2007, Casey and others filed a motion to intervene, petitioning the court to modify its Protective Order and allow them access to the Cox deposition. Over Goodyear's opposition, Judge Magistrate Stormes recommended that presiding District Judge Rudi M. Brewster grant the motion to intervene so that the Court could determine whether its Protective Order should be modified.

Casey argued that Goodyear was using the Protective Order to prevent the truth about Cox's deposition testimony from being revealed and used in other cases. He also argued that for public policy reasons and in the interest of avoiding duplicative discovery, the Protective Order should be modified so that he could access any remaining discovery materials from the 2003 Cox deposition and depose the witnesses to it on the

(*Cont. on p. 7*)

Custom Wheel Market Grows – and So Will the Safety Problems

ATLANTA, GA. -- At the 2007 Specialty Equipment Manufacturers Association (SEMA) Spring Expo, both Ford and General Motors handed out prizes in automotive beauty contests. A Hummer H2 tricked out by RealWheels Accessories nabbed a Creative Styling & Trim Award for Best Overall Interior Passenger Car or Truck, and Kelderman Air Ride won a Ford-sponsored competition for Best Use of Exterior Accessories on a 2005 F-250.

OE auto manufacturers are mixing with the aftermarket crowd because it's big business. Many vehicle manufacturers are not only promoting the customization and showing "pimp-my-ride" versions of their vehicles at auto shows; they are also actively pursuing vehicle customizers who can give their products added cachet. Among the thousands of booths at SEMA showing every possible aftermarket and custom car and truck part, the OEs display their staple vehicles with custom suspension kits, interiors, paint, and the prerequisite plus-size wheels and tires.

According to SEMA, what was once the provenance of the racing industry has gone mainstream. Sales of custom wheels have skyrocketed from $1.265 billion in 1991 to more than $4.5 billion in 2006 and many OEMs have helped to boost the market.

The percentage of vehicles produced with custom wheels has grown from about 40 percent in 1996 to more than 66 percent in 2006, and in light trucks, from 70 to 72 percent. Moreover, as SEMA points out, vehicle manufacturers offer limited accessory choices, encouraging buyers to seek out more unique products. Rent-to-Own Online, for example, reported that investment company Prime Time Group Inc., is opening as many as 50 Wheel Workz rent-to-own custom wheel franchises. ""This could easily be a $100 million venture within a relatively short period of time," said Johnny Ray Arnold, Prime Time's CEO and a Wheel Workz franchisee.

Some automakers have expanded their OE accessories to capture some of the aftermarket sales. Vehicle dealers are packaging

and selling custom content on new vehicles, allowing buyers to finance expensive upgrades and pumping up their profits.

What's missing in the glare of all this aftermarket chrome is any attention to the safety implications of changing vehicle dynamics and putting vehicles on the foundation of poorly constructed and untested wheels. Safety Research & Strategies is examining a growing number of crashes in which aftermarket wheels have played a role.

"We are just on the cusp of this trend," says Sean Kane, president of Safety Research & Strategies. "The lack of standards and the enormous amount of money in this market make for a bad combination."

Cast aluminum is frequently the material of choice for aftermarket wheel makers. The use of cast aluminum wheels began to rise in the early 1970s, due to lower production costs and more flexibility in styling and design. Experts knew, however, that the use of cast aluminum would affect wheel performance and would need to at least, pass the same testing requirements as the current OEM steel wheels.

Nonetheless, there are no federal standards requiring manufacturers to test their wheels prior to delivery of the product to the public. Any testing is left to the discretion of the companies who design, manufacture and distribute these wheels. Many of these wheels, which are designed, marketed and distributed by large companies such as Wheel Pros, are manufactured overseas in China and Korea, and not much is known about the design, testing and quality procedures used to make them.

There are SAE recommended practices for aftermarket wheels. Standard J2350 covers the performance requirements and test procedures for wheels. Also included is the SAE J328 dynamic cornering fatigue and dynamic radial fatigue tests and the SAE J175 impact tests. However, these tests are limited and do not simulate the in service loading conditions of a wheel. Experts say there are more effective tests, particularly for evaluating impact resistance.

These gaps have been recognized in several technical papers. For example, *Destructive Testing of Aluminum Wheels*, a paper written by Roy Richter of Crager Industries, an aluminum wheel manufacturer, acknowledged that the popularity of aluminum wheels created a need for performance testing and for wheels strong enough to pass the same test requirements as OEM wheels. Richter, however, noted that the different physical properties between the two dictated a change in test load and a redesign in some test equipment.

Other technical papers have pointed out that the current dynamic radial and the dynamic cornering fatigue tests are very limited in their capability to simulate service loading conditions. They have also called for more engineering and testing to have current test levels and procedures that accurately relate to the testing of steel wheels, as well as a new impact test and a new severe curb test.

NHTSA Gives Automakers More Time to Comply with EDR Rule; Rejects Public Citizen Petition

WASHINGTON, D.C. – The National Highway Traffic Safety Administration has published a new final rule for Event Data Recorders, pushing back the compliance date two years. The agency also denied a request by Public Citizen to require EDRs, to add more elements to the collection and to toughen the data survivability requirements.

The amended Final Rule gives automakers that include the so-called black boxes in their vehicles until September 2012 to comply to avoid incurring additional costs to redevelop EDR system architectures outside the normal product cycle. The new Final Rule removes the Society of Automotive Engineers J211–1 filter class because, the agency said, current technology EDRs on the market are able to filter data internally, and an additional filtering step was not needed. Finally, the agency clarified some of the definitions of the data elements required under the new standard.

The agency swept aside all of Public Citizen's arguments for wider and more stringent data collection, saying that the advocacy group mounted no new arguments. Its primary request – that the agency require all vehicles to contain EDRs was unnecessary, said the agency, because "given the current level of voluntary EDR installation, and the expected increases in the extent of voluntary installation, we continue to believe that EDRs will yield data of statistical significance even without being mandated," the agency said.

NHTSA also characterized as unnecessary Public Citizen's petition to shelter crashed vehicles to protect them from environmental conditions for the 10-day survivability period, or to stabilize them at room temperature for 24 hours prior to data, because the agency has been collecting data for vehicles stored in tow yards without special handling, and has had no trouble downloading the data from nearly 5,000 crashes to date. It denied the portion of the petition pertaining to increasing the survivability requirements to include data retrievability after high-speed (above 50 mph) and extreme fire and fluid immersion crashes. The agency maintained that the EDR data from such crashes might be useful, but it did not have sufficient information to propose survivability requirements to address those crashes.

The Alliance of Automobile Manufacturers petitioned NHTSA to change the compliance date because the Final Rule would require manufacturers to redesign EDRs and electrical architectures in virtually all vehicles covered by the regulation, and that it was impractical to expect that these product changes could be implemented across the entire vehicle fleet by September 2010. Manufacturers complained that supply chain constraints, and the three to four year development times needed to install EDRs in a vehicle model production run would make it impossible to meet the standard by 2010 without incurring major costs. Specifically, automakers said that they would have to make changes to the EDR data bus architecture, redesign air bag modules or design new EDR hardware architectures.

"We agree that a delay in the rule is needed to prevent manufacturers from incurring significant redesign costs for EDRs," the agency said. "We do not want the final rule to inhibit manufacturers from continuing to include EDRs (in whatever form) in their vehicles between now and the effective date of the final rule."

The agency published its first version of the Final Rule in 2006. It required automakers to program their EDRs to gather 15 different inputs regarding the Delta V, the status of the seat belt, the air bags, and the brake and throttle at the time of the crash. In addition, the agency standardized the recording interval time and the data sample rate per second for another 30 crash elements, if the manufacturer chooses to collect those data. The rule also required manufacturers to alert consumers to the presence of an event data recorder in the owner's manual. To ensure that the device survives a crash, the regulation required that the event data recorder function during and after the vehicle front and side impact tests. Automakers are mandated to make the tools to retrieve the data commercially available. Since the mid- 1990s, some automakers have been installing motor vehicle event data recorders in production vehicles. From a handful in 1994, some 64 percent of 2005 vehicles came equipped with an EDR, similar to the so-called black box aboard an aircraft. These microprocessors, originally developed to research the dynamics of air bag deployment in motor vehicles can now record braking inputs, acceleration at the time of a crash, vehicle speed and seat belt use among other data relevant to piecing together the events that lead to a crash.

At least 10 states have enacted legislation requiring automakers to disclose the presence of a black box in a vehicle. In August 2006, the federal government caught up. Two years after initiating a rulemaking on event data recorders, the agency published a final rule, which dictates what crash data the device will collect and forces manufacturers to tell consumers if their vehicle contains one.

The agency has been studying their use for 15 years. In 1997, the National Transportation Safety Board began urging NHTSA to increase its use of event data recorders and to mandate their inclusion in large public conveyances, such as motor coaches and school buses, and throughout the passenger vehicle fleet. The agency has resisted, because, it said, the industry was voluntarily spreading their application. But in 2002, the agency undertook a rulemaking to standardize what the event data recorders collected and how it is retrieved. The purpose, in part, was to lay the foundation for a future automatic crash notification system, the agency said.

Individuals have been petitioning NHTSA to require them since the early 1990s. In 2001, former NHTSA administrator Ricardo Martinez filed a request for a rulemaking, again asking the agency to mandate event data recorders and to standardize the information they collect. In 2002, NHTSA granted Martinez's request to make automakers collect the same crash information. Predictably, throughout the regulatory process, manufacturers complained that the agency was asking them to collect too much data, while safety advocates griped that the agency asked for too little. Many individuals vehemently opposed their use without the vehicle owner's knowledge.

Child Restraint Misuse Issues Continue to Spur Research

(*Cont. from p. 1*)
Compared with white children, African American children were significantly less likely to be properly restrained (12.7 percent versus 22.2 percent, or to be restrained by any means, 28.8 percent versus 48.7 percent). The greatest disparity between groups was in the use of child seats, with only 16 percent of African American children restrained in a child seat compared to 47 percent of white children. The researchers concluded that race remained a significant predictor of noncompliance after controlling for the effect of insurance status.

A commentary in *Pediatrics* by renowned child restraint researchers Marilyn Bull of Indiana University School of Medicine's Department of Pediatrics and Dennis Durbin of the Center for Injury Research and Prevention at Children's Hospital of Philadelphia raises questions about best practices involving rear-facing infant seats. According to an analysis of rear-facing restraint protection published in *Injury Prevention*, children under the age of 2 years are 75 percent less likely to die or sustain serious injury when they are in a rear-facing seat - regardless of direction of the crash - and even in severe side impact crashes.

Now, say Bull and Durbin, clinicians who work with children are challenged by this evidence to implement a new best practice: "Counsel parents that for best protection, their child should ride in a rear-facing seat to the highest weight or height allowed for use rear-facing by the manufacturer of the convertible seat." That means that children would be restrained in rear-facing seats until age two. While children in Sweden have been riding in rear-facing seats up to age four for many years – with a very low fatality and injury rate – the conventional wisdom in the U.S. is to restrain infants in rear-facing seats up to age one and at least 20 lbs.

Bull and Durbin say that this new evidence begs a change in the advice given to parents. As an infant approaches 20 lbs, and his or her head is within an inch of the top of the seat, health care providers should counsel families to transfer the infant to a convertible seat that is approved for rear-facing use to higher weight and height limits. "Parents may be helped to understand the importance of using the convertible car safety seat in the rear-facing position longer than 1 year if they are counseled that children are 5 times safer than when riding in a forward-facing seat into the second year of life."

In Australia, child restraint researchers Lynne E. Bilston, Michael Yuen and Julie Brown from the Prince of Wales Medical Research Institute and the University of New South Wales Randwick, looked at whether sub-optimally restrained children in real world crashes could be prevented by alternative restraint usage practices. The trio reconstructed real-world crashes in which child occupants sustained significant injuries on a laboratory crash sled using the Hybrid III family of child dummies. Then, the researchers simulated alternative restraint scenarios and cases in which children were not seriously injured to compare dummy kinematics and dynamic responses in optimal restraint configurations.

They found that restraint misuse was associated with greater motion of the dummy torso and head during crashes, which allowed contact between the child and the vehicle interior, resulting in injuries. They also found that poor pre-crash posture for a child inappropriately restrained in an adult belt appeared to worsen the geometry of the shoulder belt, which caused cervical injuries due to direct interaction with the belt.

Dummy kinematics suggest that injuries in which inappropriate use and misuse were a factor were less likely if the most appropriate restraint was used correctly. Adequately controlling the head and upper body of the child occupant was seen to prevent undesirable interactions with the vehicle interior and restraint system, which were associated with injury in the real world.

The researchers noted that the study was limited because they were only able to reproduce a small number of cases, and was not a comprehensive representation of the full spectrum of injuries sustained by child occupants in real-world crashes. Bilston, Yuen and Brown added another caveat: that they attempted to appropriately select cases in which deformation of the occupant space was not a factor, but that there may have been some dynamic motion of the vehicle seats and seatbacks that was not reproduced in the reconstruction.

The researchers concluded that appropriately restraining dummies resulted in reduced head excursion and improved belt placement which may have prevented or minimized the injuries in real-world crashes. The study also highlighted the need for more biofidelic child crash dummies and the limitations of sensor data and injury reference values. Nonetheless, they said, this study fills a gap in the research in which crash reconstruction is used to investigate injury mechanisms involving children, ages 4–8.

Cooper Tire Quality Updates

FINDLAY, OHIO – Cooper Tires has recalled 48,000 Load Range E tires, after a factory inspection discovered bulges in the sidewalls that could lead to sidewall separations.

According to the Defect and Noncompliance Report Cooper filed in late February, on January 14, a plant tire testing technician at Cooper's Albany plant noticed a sidewall anomaly during routine surveillance. Over the next three weeks, Cooper began testing lots of regular production tires in size LT265/75R16 Load Range E. Testing showed that a bulge could occur in the lower sidewall on the white sidewall side, indicating a separation between two lower sidewall components and that the tires would not comply with the requirements of FMVSS 139. After discovering other similarly affected production lots built with the same specification on the same common green tires, Cooper shut down production of those lines. According to the company, further testing revealed that the sidewall problems were confined to specific lots.

The recall covers a total of 48,037 tires, produced between December 2 and February 9, including the following models: Cooper Discoverer ATR/ LT265/75R16; Cooper Discoverer ATR/LT 235/85R16; Dean

(*Cont. on p. 6*)

Cooper Tire Quality Updates

(*Cont. from p. 5*)

Wildcat Radial A/T/ LT265/75R16; Generic Mentor All Terrain Radial SXT/ LT265/75R16; Mastercraft/ Mastercraft Courser A/T 2/ LT265/75R16; Mastercraft/ Mastercraft Courser A/T 2/ LT235/85R16.

In the last three years, Cooper has launched eight other recalls, mostly due to quality control issues. A typical cause was the presence of "unauthorized material in the upper sidewall region of the tire" that Cooper said could precipitate the formation of small, isolated voids, which could result in early life loss of air pressure and cause the tire to run underinflated and fail.

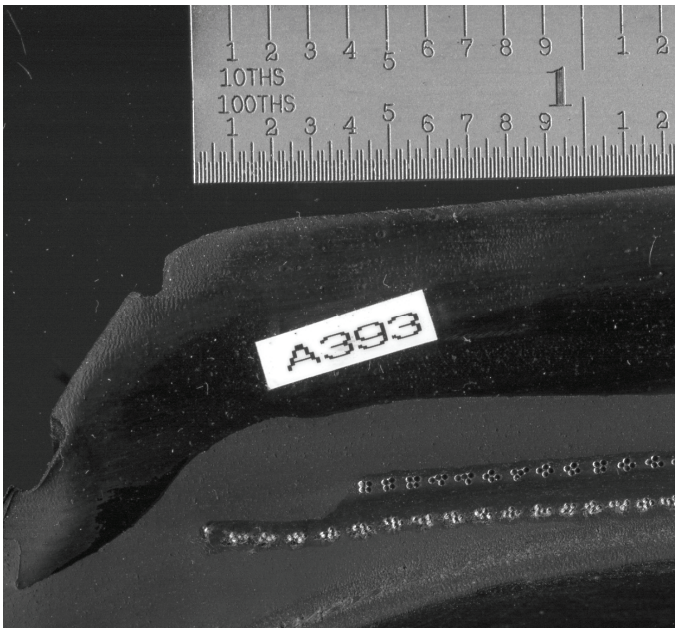
One of the campaigns, in August 2005, involved nearly 49,000 Cooper Trendsetter, Mastercraft A/S IV Steel Belted Radials, Starfire Flite-Line IV, Dean Alpha 365 A/S models, in sizes P195/70R14 and P185/65R14, manufactured by the Chinese company, Hangzhou Zhongce Rubber Company, were recalled because of foreign material contamination.

Tires manufactured by Hangzhou were the subject of a widely publicized recall last June. That campaign covered an estimated 450,000 light truck tires sold under the names Westlake, Telluride, Compass and YKS, imported and distributed by Foreign Tire Sales of Union, N.J. FTS launched the recall after it was sued by the families of three victims in an August 2006 fatal crash. FTS claimed that Hangzhou had left gum strips or wedge – a critical component – out of the tire.

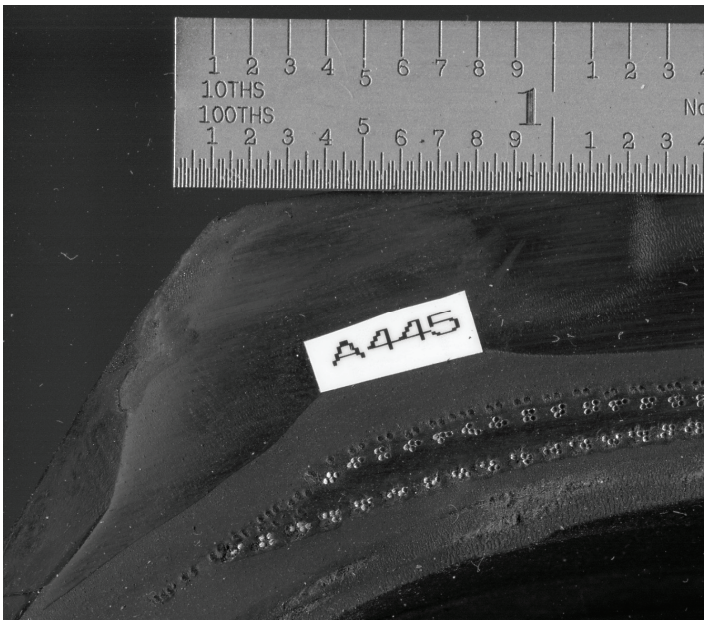
In the meantime, cut section analyses of Cooper Tires made during the last decade show that the wedge was only a sometime feature of their light truck tires. Paul Maurer of NDT & Radiography in Tuscon, Arizona, examined Cooper exemplars dating back to 1995 and documented some critical design changes in its light truck tires. Maurer says that Cooper included the wedge – a component related to long term durability – as early as 1995. Based on his cut tire analysis, it appears Cooper removed the wedge in light truck tires by 1997. After 1997, Maurer was unable to find an exemplar Cooper light truck tire with a wedge until 2005 when it was again added to some of its light truck tire lines. The addition of the wedge is likely related to the revised FMVSS 139 standards which are more severe and have resulted in more robust tire construction. The changes to the standard were published in a NHTSA 2003 Final Rule which increased the stringency of the existing high-speed and endurance tests and added a low-pressure performance test, effective June 1, 2007.

According to Maurer's analyses, Cooper's addition of a wedge is not uniform across all of their lines, nor was Cooper's implementation of cap plies, another design feature that enhances tire robustness, in its light truck line. The manufacturer's LT tires without cap plies are only N- speed rated, meaning that they pass a government indoor road wheel at 87 mph for three minutes. Experts question whether an N-speed rated tire is even adequate for interstate highway driving given its low safety margin. Cooper's LT tires constructed with cap plies have a higher Q speed rating (100 mph).

Cooper made Mickey Thompson Baja MTX
LT 285/75R16 LRD
Manufactured 1st week of 2007
No Wedge or Cap Ply



Cooper Discoverer STT
LT285/75R16 LRD
Manufactured 44th week 2005
Wedge and Full Cap Ply



Appeals Court Lets Buell-Wilson Ruling Stand; Ford on the Hook for $82.6 Million

SAN DIEGO, CA – Ford says that it will appeal to the California State Supreme Court an appellate court decision to let stand an $82.6 million judgment against the automaker in a 2006 roof crush/rollover case that left a 47-year-old mother of two a paraplegic.

The extraordinary 108-page decision was the second time the California appeals court reviewed the punitive damages award in *Buell-Wilson v. Ford Motor Company*.

In January 2002, Benetta Buell-Wilson was at the wheel of a 1997 Ford Explorer on California's Interstate 8, when it fishtailed as she maneuvered around a piece of metal in road. The SUV rolled over four times, crushing the roof and severely injuring Buell-Wilson. At trial she alleged that the Explorer was defective, based on the unstable design of the Bronco II, and that its roof offered inadequate occupant protection. Buell-Wilson's attorneys also argued that Ford knew about the Explorer's inherent design flaws, but declined to fix them to meet production deadlines and budgets.

The civil case was tried in a California Superior Court, where the jury agreed that Ford had ignored the problems. The original verdict included $109.6 million in compensatory damages and $246 million in punitive damages. Buell-Wilson's husband was awarded $13 Million for loss of consortium. The trial judge later reduced Buell-Wilson's damages to $150 million. California's Fourth District Court of Appeals reduced the award further to $82.6 million.

This latest decision to keep intact the $82.6 million judgment, in some legal circles, has been viewed as a thumb in the eye to the U.S. Supreme Court, which ordered the appeals court to take another look at the punitive damages awards in view of *Phillip-Morris USA v. Williams*. In that case, the U.S. Supreme Court ruled that juries could not award punitive damages based on the defendant's harm to third parties. Ford had sought the intervention of the high court after the California Supreme Court denied its petition for review. The U.S. Supreme Court, however, granted Ford certioriari, vacated the judgment and remanded it back to the Court of Appeals to revisit its decision.

In its second review of the case, the Appeals Court found no reason to change its original decision. It asserted that Ford had forfeited the right to argue that there was a significant risk; that the damages verdict was based on improper arguments

(*Cont. on p. 8*)

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(*Cont. from p. 2*)

substance of his testimony. Goodyear opposed any modification, arguing that the potential prejudice to its substantive rights outweighed the public interest and judicial economy.

Goodyear attorney McCormick claimed that Cox's entire deposition testimony was confidential and protected because Mr. Cox was being deposed on confidential information relating to the company's handling and evaluation of a property damage claim. McCormick recalled that Ricciardulli agreed to these terms.

Ricciadulli offered an opposing version of events. In his hearsay declaration, Ricciardulli said that he understood the Protective Order to cover trade secrets, research, development and other proprietary matters: "I did not believe, nor consider, that an admission of liability ... by a Goodyear representative… could be properly treated as a proprietary or confidential business secret, such that it was entitled to protection from disclosure under the Protective Order." He rejected McCormick's contention that he agreed to stipulate the entire deposition as confidential.

The District Court did likewise. Judge Magistrate Stormes pointed out that there were no provisions in the Protective Order to designate entire depositions as protected and that Goodyear had destroyed all of the evidence that would have supported its claims. Stormes also called the destruction of the deposition "particularly risky," given the pending claims against Goodyear in similar cases. She further ruled that even if Goodyear had been able to establish that the deposition was confidential, it had not shown good cause why it should remain protected. Stormes denied the motion to modify the deposition because it was moot and ordered the unsealing of some of the motions and attachments related to the Cox deposition.

Rob Ammons, of the Ammons Law Firm, in Houston Texas, who recently settled a G159 case against Goodyear, says that ultimately the ruling means "very little. It just means that Goodyear takes a black eye for what they did," he said. "Their conduct after the deposition was taken is what is most alarming. I've never seen that before in 20 years of practice. I have heard of sealing testimony, but destroying it is novel."

Roberts, however, sees a glimmer of hope. Roberts represents John and Kelly Schlamo, who, along with three passengers, suffered injuries – some serious and permanent – after their Fleetwood motor home crashed after a G159 tread separation in August 2004. If nothing else, Goodyear has created the appearance of guilt in destroying the deposition. A jury could easily conclude – regardless of what Cox might say in a subsequent deposition – that Goodyear considered his earlier admissions of liability extremely damaging. Goodyear even fought unsuccessfully to have Stormes decision – which set forth the facts of the confidentiality dispute – sealed.

"They went to great lengths to destroy it," Roberts said. "And they have gone to great lengths to keep him from being questioned about it. Assuming [Cox] made an admission and assuming he will lie about it – which is likely – there will be a lawyer testifying against him who has no further stake in the outcome. This will be a breaking point issue for Goodyear."

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Appeals Court Lets Buell-Wilson Ruling Stand; Ford on the Hook for $82.6 Million

(*Cont. from p. 7*)

concerning third party harm because the automaker submitted incorrect and misleading jury instructions of third-party harm; did not raise timely objections to the plaintiff's closing arguments during the punitive damages phase; did not request a limiting instruction during the liability phase; and did not raise the instructional error issue.

"We also conclude our original decision reduced the punitive damages award to a constitutionally permissible amount that does not punish Ford for harm to third parties," the court wrote. "We hold there was no evidence or argument at trial that created a significant risk that the jury, in deciding the amount of punitive damages to award, punished Ford for harm it caused to third parties. Finally, we conclude *Philip Morris* does not require that we change any of the holdings in our original opinion, and thus, with some changes, "we reiterate [our original opinion] in its entirety."

The justices were also careful to observe that these were state procedural grounds and not appropriate for federal review.

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SRS and Tony Di Viesti

Safety Research & Strategies has offered invaluable defect evaluation expertise to the legal community for more than a decade. Centrally located in the Chicago area, Tony is a licensed attorney and degreed mechanical engineer who spent the past 15 years working in the automotive product liability area. He has inspected and evaluated hundreds of cases nationwide. A design engineer who holds seven U.S. patents and a product liability lawyer, Tony can quickly get to the heart the matter. Together, our team of consultants can help you cost-effectively evaluate your case. ***For more detail contact:*** *Sean@safetyresearch.net or Tony@safetyresearch.net*