

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

FILED

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NORMA GARCIA, as Guardian  
of Jorge Lizandro  
Garcia, an incompetent  
person,

*[Handwritten signature]*  
FLORIDA  
TAMPA

Plaintiff,

v.

CASE NO. 8:99-CV-1611-T-17TGW

KELLY-SPRINGFIELD  
TIRE COMPANY, a foreign  
corporation, and THE GOODYEAR  
TIRE & RUBBER COMPANY,  
a foreign corporation,

Defendants.

ORDER

This cause is before the Court on:

Dkt. 445 Motion in Limine to Exclude Confidential  
Documents  
Dkt. S-35 Response

Defendants move the Court to exclude any reference to or  
comment upon any documents produced by Goodyear in other cases  
containing claims similar to the claims presented in this case.

I. Defendants' Motion

In other cases, Frankl v. Goodyear (New Jersey), Harper v. Goodyear (Illinois) and Dow v. Goodyear (Arizona), Defendants produced confidential internal documents which were protected from disclosure by protective orders. Frankl and Dow involved models and sizes of tires different from the subject tire, which were used on vehicles substantially different from the subject vehicle, and were involved in accidents substantially different

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from the subject accident. Harper is a class action case where the alleged plaintiff class would exclude any person with property damage or personal injury.

Defendants argue that the confidential internal documents related to an internal investigation and testing of various Load Range E tires, and alternate designs and manufacturing techniques. Defendants contend trade secret documents including design specifications, production quantities, adjustment rates and damage claims were also included. Defendants argue that the scope of the internal investigation was more broad than the subject Load Range E tire, and did not deal specifically with the subject tire. Defendants argue that the confidential documents relate to tires substantially different from the subject tire, and the documents are therefore irrelevant. Defendants argue that the documents cannot prove Plaintiff's case, and their admission would confuse the jury and waste time.

One issue in this case is whether the subject tire was defective at the time Defendants sold it. Defendants argue that evidence of internal testing and subsequent changes in other tires, even if those tires are of the same general size, has little or no probative value, and would confuse the jury.

Defendants also argue that the documents are shielded by the self-critical analysis privilege. Defendants argue that Magistrate Judge Wilson found that the self-critical analysis applied, and this ruling is the law of the case. Defendants argue that maintaining the confidentiality of the internal self-critical evaluations is essential to creating an atmosphere in which employees feel free to express ideas and disclose facts and

opinions which are used to maintain and improve product performance and compliance with regulatory requirements.

Defendants argue that the subject documents meet the following requirements to qualify for the self-critical analysis privilege:

1. The information sought must result from an internal self-critical analysis undertaken by the party seeking protection;
2. The public must have a strong interest in preserving the free flow of the type of information sought;
3. The party conducting the review must have intended that the information remain confidential in order to preserve the free exchange of ideas; and
4. The information must be such that permitting discovery of it would curtail that free exchange.

Defendants further argue that the Court denied Plaintiff's Motion to Compel discovery of the documents. Defendants maintain that the only reason Plaintiff has them is that Plaintiff's counsel obtained them through provisions providing for limited sharing of the confidential documents in the other cases' Protective Orders. Defendants argue that counsel was to have returned the documents after the case concluded, and refused to do so, and now states that the documents have been destroyed. However, the documents remain listed on the Exhibit List.

Defendants request the exclusion of the confidential documents because their admission at trial would put before the jury evidence that is irrelevant, inclusive of hearsay and double hearsay, and privileged.

## II. Plaintiff's Response

Plaintiff responds that the documents are not irrelevant, and Defendants have neither filed any supporting affidavit nor specifically identified allegedly irrelevant testimony. Plaintiff states that the evidence will show that: 1) the various tires, although manufactured under different brands, were internally identical; 2) Goodyear Load Range E tires and Kelly-Springfield Load Range E tires were identical to each other; and 3) Goodyear's internal investigation into the tread throw problem, within which the documents were created, did in fact include the Kelly-Springfield Power King LT235/85-R16 Load Range E Tire, the tire involved in this case.

Plaintiff contends that the documents related to other tires that were substantially similar to the subject tire.

Plaintiff contends that the Court has not ruled on the application of the self-critical analysis privilege, and the privilege applies only to discovery, not admissibility. The Court notes that the Magistrate Judge denied Plaintiff's Motion to Compel only on procedural grounds, and made no substantive finding as to the application of the self-critical analysis privilege.

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Plaintiff further argues that Plaintiff's counsel has never been sanctioned by any court with respect to other protective orders, and any enforcement of those orders should be done in the appropriate jurisdictions.

III. Discussion:

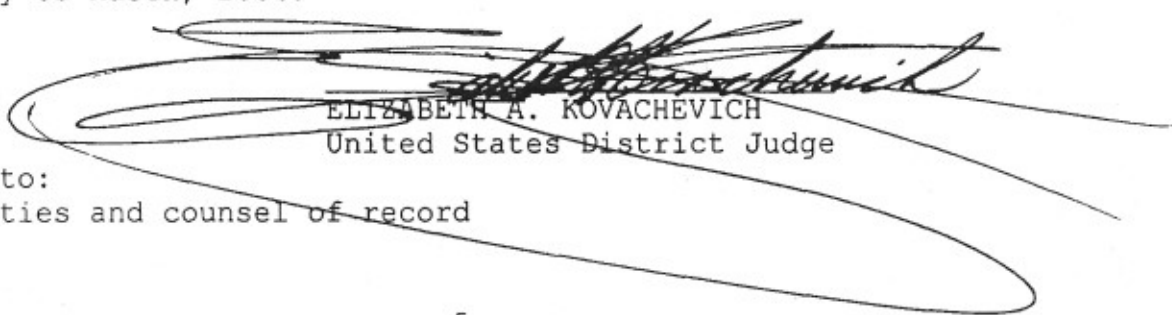
At the outset, the Court notes that it has affirmed the order of the Magistrate Judge relating to the subject documents. In addition, the Court notes that some of the subject documents were introduced into evidence at the evidentiary hearing of April 24, 2003.

In order to assess the relevance of the documents, the Court needs to determine whether they relate to tires that are substantially different or substantially similar to the subject tire. The Court cannot make that determination with any certainty at this time. There are a lot of documents, and Defendants' Motion does not address the documents individually. The Court expects that it will evaluate the evidence as it is sought to be admitted at trial. Accordingly, it is

**ORDERED** that the Motion in Limine (Dkt. 445) is **denied**.

**DONE and ORDERED** in Chambers, in Tampa, Florida on this

*12<sup>th</sup>* day of March, 2004.



ELIZABETH A. KOVACHEVICH  
United States District Judge

Copies to:  
All parties and counsel of record