

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Products Liability

Pe Chi-A Vang, as guardian of Yee X.
Yang, Blong Van, individually and as parent
and natural guardian of Ladani Vang, a
minor,

Court File No: 27-CV-10-13554
The Honorable Deborah Hedlund

Plaintiffs,

ORDER

v.

Cooper Tire & Rubber Company and HVH
Auto Parts, Inc., d/b/a John's Auto,

Defendants.

Defendant Cooper Tire & Rubber Co.'s Motion to Compel Private, Non-Destructive Examination of Physical Evidence having come before this Special Master on November 22, 2010, and the Special Master having considered the arguments and briefs previously submitted to Judge Hedlund and other papers as well as supporting affidavits of the parties, and for good cause shown,

IT IS HEREBY ORDERED that the motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

The Special Master **GRANTS** Cooper Tire's request to nondestructively examine, inspect, and/or test the tire at issue in this case at its facility in Findlay, Ohio, or at another location in the continental U.S. to be determined by Cooper. However, the Special Master **DENIES** Cooper Tire's request to do so without plaintiffs' counsel and/or experts present during this process.

Accordingly, the Special Master hereby **ORDERS** that, on a mutually agreed upon day and time within the next forty-five (45) days, Cooper shall transport the tire from its present location to Cooper's Findlay, Ohio facility or other location for inspection, examination, and/or nondestructive testing by Cooper and/or its consultants. Any such examination, inspection, and/or testing will occur in the presence of and under the observation of other parties' counsel and their experts and shall last no longer than ten (10) hours unless agreed otherwise by all counsel. At the end of the inspection, Cooper will remove the tire and return it to plaintiff's own storage facility, unless all counsel agree upon a different procedure.

Prior to the inspection, all parties and Cooper Tire shall identify to each other all individuals expected to be present. To the extent any party plans anything beyond solely examining, measure, documenting or photographing the tire (such as testing or "stretching" the tire, for example), at least five (5) days prior to the inspection, such party shall provide a protocol of any such testing to the other parties' counsel. If there is objection to such procedure, the objection must be raised within two business days by 5:00 pm CST. If the parties cannot agree upon how to proceed, this Special Master should be notified and will rule before anyone is scheduled to travel.

Any party may record the entire inspection by video camera or by another means agreed upon by all counsel, but must give reasonable prior notice. No audio is permitted unless all parties agree. Once a video recording is commenced, the camera may not be turned off unless all parties agree.

Depositions scheduled for the week of December 13, 2010, shall go forward as scheduled unless continued by mutual agreement.

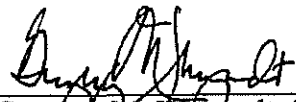
MEMORANDUM

All parties agree the subject tire is the crucial piece of evidence. All parties may have reasonable access to the tire or the other tires on the vehicle at the time of the accident. The above rule and procedures apply to all future inspections by any experts.

Whichever party desires the evidence to be moved from one location to another bears the responsibility for the safety and custody of the evidence. Care should be taken with respect to the evidence. Destruction or alteration of the evidence will lead the Special Master to make recommendations on spoliation to Judge Hedlund that would be onerous with respect to the party responsible for the care of the evidence when it was damaged, altered or lost.

With respect to plaintiff's choice to depose Cooper employees prior to Cooper's inspection of the subject tire, it is plaintiff that risks the possibility that the deposed employees may learn something as a result of the inspection which might change an answer or answers. All parties are represented by sophisticated counsel with significant experience in product liability litigation and understand the risks regarding deposition and other discovery timing.

Dated: November 24, 2010

By 
Gregory M. Weyandt, Special Master
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