

COURT FILE NUMBER 1401-03496
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF CHRISTOPHER COLE SPRING
DEFENDANTS GOODYEAR CANADA INC. and THE GOODYEAR TIRE & RUBBER COMPANY
DOCUMENT ORDER



602571

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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DATE AND PLACE THIS ORDER WAS PRONOUNCED: April 14, 2020, at Calgary, AB

NAME OF JUSTICE WHO MADE THIS ORDER: G.A. Campbell

UPON THE APPLICATION of the Plaintiff pursuant to the *Class Proceedings Act*, SA 2000, c C-16.5 (the "Act") for an order certifying this proceeding as a class proceeding and for other relief set out in the Amended Amended Application By Christopher Cole Spring filed September 11, 2019;

AND UPON READING the Affidavit of Christopher Cole Spring sworn on July 9, 2015, filed July 10, 2015; the Affidavit of Christopher Cole Spring affirmed, and filed, on January 26, 2016; the Affidavit of Jay K. Lawrence sworn on October 5, 2015, filed October 7, 2015; the Affidavit of Jim Henderson, sworn on October 2, 2015, filed October 7, 2015; and the Affidavit of Colleen Chandler affirmed on April 8, 2016, filed April 8, 2016; **AND UPON READING** the transcripts of cross-examinations of Messrs. Spring, Lawrence and Henderson on their afore-mentioned Affidavits, filed; **AND UPON READING** the Exhibits to the cross-examination of Jay K. Lawrence *not subject* to the Restricted Court Access Order filed December 4, 2018, filed January 18, 2019; **AND UPON READING** the Defendants' answers to questions on cross-examination *subject* to the Restricted Court Access Order filed December 4, 2018, filed January 18, 2019; **AND UPON**

READING the Defendants' answers to questions on cross-examination *not subject* to the Restricted Court Access Order filed December 4, 2018, filed January 18, 2019; **AND UPON READING** the briefs of the Plaintiff and of the Defendants, filed; **AND UPON HEARING** submissions from counsel for the Plaintiff and for the Defendants; **AND UPON READING** the written Submission of the Respondents re: Their Refusal, Upheld by the Court, to Disclose Certain Information; **AND UPON NOTING** that the Defendants' application filed February 12, 2016 for an order striking the Plaintiff's certification application as an abuse of process and for other relief set out therein is moot; **AND UPON THE ADJOURNMENT** of the Plaintiff's application in so far as concerns notice to the class, costs of notice, and the manner in which and the time within which a class member may opt out; **AND UPON NOTING** the agreement of the parties to address the Plaintiff's proposed Litigation Plan following this Order;

IT IS HEREBY ORDERED THAT:

1. This proceeding is certified as a class proceeding.
2. The class in respect of which this Order is made consists of all consumers in Alberta, or elsewhere in Canada, who purchased or acquired a model of automobile tire known as Wrangler Silent Armor ("Tire") (the "Class").
3. The Applicant, Christopher Cole Spring, is appointed Representative Plaintiff for the Class.
4. The claims asserted on behalf of the Class sound in negligent design and manufacturing, breach of a duty to warn and unjust enrichment or a waiver of tort, and are further set out in the Amended Statement of Claim
5. The relief sought by the Class is the following:
 - (a) an award of damages in an amount to be proven at trial comprised of one or more of the following:
 - (i) damages arising from personal injury,
 - (ii) damages for loss to a motor vehicle,
 - (iii) damages for the full cost to replace the Tires incurred or to be incurred by Class Members, based on a per unit price of approximately \$350 - \$400 before applicable tax and service;
 - (iv) restitution and disgorgement of profits wrongfully earned or retained by Goodyear from the sale of defective Tires, and

- (v) aggravated, exemplary or punitive damages in amounts the Court deems appropriate.
 - (b) an Order directing an aggregate monetary award and other administrative or procedural relief available under the *Class Proceedings Act*;
 - (c) interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c J-1;
 - (d) costs of this action on a substantial indemnity basis; and
 - (e) such other relief as this Honourable Court deems appropriate.
6. The issues common to members of the Class are listed in Schedule "A" to this Order.
7. In the event the parties do not agree on the matter of costs, the parties may make arrangements for submissions on costs with the Court.


Justice of the Court of Queen's Bench of Alberta

Agreed as to form and content.

Dentons Canada LLP

Per:



Sara E. Hart

Code Hunter LLP

Per:



Chad Babiuk

Schedule "A"

The following are certified as common issues:

1. Did The Goodyear Tire & Rubber Company ("Goodyear US") owe a duty to Class Members to exercise reasonable care in designing and manufacturing the Wrangler Silent Armor (WSA) Tires?
2. If so, what is the standard of care expected in designing and/or manufacturing the WSA Tires?
3. Did Goodyear US breach the standard of care in designing or manufacturing the WSA Tires?
4. Is there a defect in the design of the WSA Tires making them susceptible to tread separation during normal use?
5. Is there a defect in the WSA Tires caused by Goodyear US's manufacturing processes, or conditions prevalent at its manufacturing plants?
6. Is there a difference in design or processes used to manufacture WSA Tires within or outside of the Recall?
7. Did a breach of duties on the part of Goodyear US cause or contribute to loss or harm to Class Members?
8. Did either or both of the Defendants owe a duty to warn Class Members that the WSA Tires are defective and prone to tread separation during normal use?
9. What was the scope and extent of the Defendants' review of early warning data disclosing heightened incidence of tread separation?
10. What was the scope and extent of the Defendants' inspection of returned WSA Tires?
11. Did either or both of the Defendants take reasonable steps to diligently investigate the cause of a defect in the WSA Tires?
12. Did either or both of the Defendants have knowledge that the WSA Tires pose an unreasonable risk of harm to Class Members based on the review of early warning data and information acquired in the course of investigating the cause of a potential defect?
13. Have either or both of the Defendants breached duties to Class Members by limiting the scope of the Recall, or failing to recall WSA Tires they knew or ought to reasonably have known were defective?
14. Did a breach of a duty to warn on the part of either or both of the Defendants cause or contribute to harm or loss to Class Members?
15. Did either or both of the Defendants deliberately limit the scope of an investigation to ascertain the cause of a potential defect in the WSA Tires?

16. Did either or both of the Defendants deliberately limit the scope of the Recall to avoid the cost of replacing defective WSA Tires?
17. Did either or both of the Defendants continue to market potentially defective WSA Tires for sale in Canada after they knew the WSA Tires contained a defect that rendered them dangerous and/or unfit for their purpose?
18. Were either or both of the Defendants enriched by the marketing and sale of defective WSA Tires?
19. Have Class Members suffered a corresponding deprivation due to enrichment of the Defendants?
20. If so, is there any juristic reason for the Defendants' enrichment?
21. Are either or both of the Defendants liable, on a restitutionary basis, to account and disgorge to the Class any profits earned on the sale of the WSA Tires?
22. What is the appropriate measure of damages in tort, for negligent design, manufacture or sale of WSA Tires the Defendants knew, or ought to have known, were defective?
23. What is the appropriate measure of damages for restitution and disgorgement of profits wrongfully earned by the Defendants from the sale of defective WSA Tires?
24. Is an award of exemplary or punitive damages appropriate having regard to the nature of established breaches on the part of the Defendants?