



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**

Brought under the *Class Proceedings Act*

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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AMENDED this 21st day of June 2018 Pursuant to Rule 3.62,
 Dated the 21 day of June, 2018

CLERK OF THE COURT

NOTICE TO DEFENDANT

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of Facts:

1. The Plaintiff is an individual resident in Calgary, Alberta.
2. The Defendant The Goodyear Tire & Rubber Company is incorporated pursuant to the laws of Ohio and manufactures automobile tires and other rubber products for profit.
3. The Defendant Goodyear Canada Inc. is an Ontario company registered to carry on business in Alberta and elsewhere in Canada as a distributor of automobile tires manufactured by The Goodyear Tire & Rubber Company.
4. Goodyear Canada Inc. is a wholly owned subsidiary of The Goodyear Tire & Rubber Company. Both Defendants are collectively referred to as Goodyear.

Wrangler SilentArmor Tires

5. The Goodyear Tire & Rubber Company designs, manufactures and distributes a particular model of automobile tire known as Wrangler SilentArmor (the "Tires"). The Tires are marketed for sale in Canada by Goodyear Canada Inc. through licensed dealers of Goodyear products.
6. Goodyear was at all material times aware that the Tires contain an inherent defect and are prone to tread separation during use, which can lead to a serious motor vehicle crash and resulting harm to persons and property, including death.
7. Goodyear issued a voluntary recall of defective Tires manufactured between the 9th and 22nd weeks of the 2009 calendar year (the "Recall"). Defective Tires manufactured outside of this period have not been recalled and remain in widespread use.

Class Members

8. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, R.S.A. 2003, c. C-16.5 on his own behalf and on behalf of all consumers in Alberta, or elsewhere in Canada, who [^] purchased or acquired the Tires (the "Class Members").
9. For the purpose of this action, the Class Members include individual claimants comprising the following subclasses:
 - (a) consumers [^] whose Tires were not subject to the Recall; and
 - (b) consumers [^] whose Tires were subject to the Recall.
10. Insofar as Class Members suffered damage outside of the jurisdiction, Alberta is an appropriate forum to resolve the claims of all non-resident Class Members and there is no other clearly more appropriate forum in which to advance their claims.

Loss to the Plaintiff

11. On or about April 27, 2009, the Plaintiff purchased four of the Tires for use on his motor vehicle, a 2008 Nissan Titan pick-up truck.

12. The Tires were purchased from and installed by a licensed dealer of Goodyear's products for a unit price of \$335.99 per Tire.
13. The Tires were at all material times utilized by the Plaintiff as intended under normal operating conditions.
14. The Plaintiff received notice of the Recall from Goodyear and attended a local Goodyear dealer to have the Tires replaced. He was told the Tires did not qualify, having been manufactured three weeks before commencement of the Recall period.
15. On March 30, 2012, the Plaintiff was involved in a horrific motor vehicle crash caused by the separation of tread from the inner liner and sidewall of one of the Tires (the "Accident").
16. The Accident occurred suddenly and without warning, as a direct result of a defect that was or ought to have been known to Goodyear through the exercise of reasonable diligence and for which it issued the Recall.
17. The Plaintiff's motor vehicle was severely damaged and rendered inoperable as a result of the Accident. The cost to replace the vehicle was approximately \$45,000.
18. The Plaintiff suffered personal injuries in the Accident for which he has suffered damage and incurred out-of-pocket expenses for medical treatment.

Liability of Goodyear

19. At all material times, Goodyear was or ought to have been ^ aware that the Tires were defective and dangerous, prone to failure by tread separation and posed a serious risk to persons and property during normal use.
20. Goodyear owed a duty of care to the Plaintiff and the Class Members to exercise reasonable care in designing, manufacturing and marketing the Tires for sale, investigate the cause of a defect in the Tires making them prone to failure by tread separation, and to warn the Plaintiff and the Class Members of a known defect giving rise to a risk of harm and danger to their person and property.

21. Goodyear negligently breached its duties to the Plaintiff and the Class Members by:
- (a) failing to use a reasonable degree of care in designing and manufacturing the Tires;
 - (b) failing to design and manufacture the Tires in a good and workmanlike manner in accordance with generally accepted standards;
 - (c) designing, manufacturing, and distributing Tires it knew or ought reasonably to have known were unsafe and unfit for use;
 - (d) failing to comply with industry or legislative standards for design and manufacture of the Tires, and to give public notice of the defect;
 - (e) failing to diligently investigate the cause of and remedy a defect in the Tires;
 - (f) deliberately limiting the scope of its investigation to ascertain the cause of a defect in the Tires, despite having knowledge that the Tires were prone to failure by tread separation and posed a serious risk to consumers;
 - (g) failing to warn the Plaintiff and Class Members that the Tires were unfit for and posed a serious danger during use;
 - (h) failing to recall all of the Tires that it knew, or ought reasonably to have known were defective and susceptible to tread separation; and
 - (i) such further particulars of Goodyear's negligence as will be proven at trial.
22. Goodyear's negligence was the direct cause of the Accident, and damage suffered by the Plaintiff was the foreseeable result of the Accident.
23. The Class Members have also suffered loss and damage caused by failure of the Tires resulting in a motor vehicle accident, or loss and expense incurred to avoid a risk of harm to their person and property by replacement of defective Tires.
24. Goodyear continued to market the Tires for sale with knowledge that the Tires were defective and posed a risk to the Plaintiff, the Class Members and the general public,

and deliberately limited the scope of the Recall to minimize the cost of replacing the defective Tires.

25. Goodyear has been unjustly enriched by profit earned from the sale of Tires it knew were defective, dangerous and unfit for use, to the deprivation of the Plaintiff and Class Members and at risk to the general public, and there is no juristic reason for Goodyear's enrichment.
26. The Plaintiff and the Class Members expressly plead and rely on provisions of the *Motor Vehicle Safety Act*, R.S.C. 1993, c. 16, s. 10 and *Motor Vehicle Tire and Safety Regulations*, 1995, SOR/95-148, s. 13, as amended.

Service of Process

27. This claim relates to a tort committed in Alberta. A real and substantial connection exists between the facts on which the claim is based and the Province of Alberta, as to permit service of process outside of the jurisdiction.

Remedy Sought

28. The Plaintiff and Class Members seek from and against the Defendants:
 - (a) certification this action as a class proceeding under the *Class Proceedings Act* and appointing the Plaintiff as representative of the Class Members;
 - (b) 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, estimated in respect of the Plaintiff in the amount of \$50,000;
 - (ii) damages for loss to a motor vehicle, estimated in respect of the Plaintiff in the amount of \$45,000;
 - (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;
- (c) an Order directing an aggregate monetary award and other administrative or procedural relief available under the *Class Proceedings Act*;
- (d) interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c J-1;
- (e) costs of this action on a substantial indemnity basis; and
- (f) such other relief as this Honourable Court deems appropriate.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.

Amendments consented to this 20 day of June, 2018.

DENTONS CANADA LLP

Per: 

Sara E. Hart, Counsel for the
Defendants