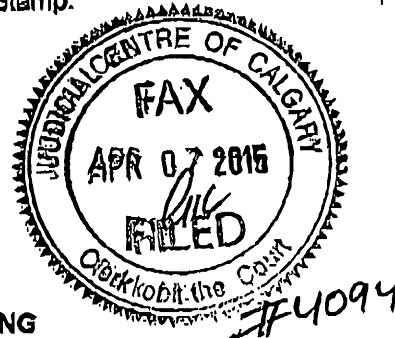
Form 11
[Rule 3.31]

Clerk's Stamp.



COURT FILE NUMBER	1401 03496
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	STATEMENT OF DEFENCE
PARTY FILING THIS DOCUMENT	DEFENDANTS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	SARA E. HART Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Ph. (780) 423-7376 Fx. (780) 423-7276 File No.: 558337-1

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Defendants, Goodyear Canada Inc. and The Goodyear Tire & Rubber Company (hereinafter "the Defendants") admit paragraphs 2, 3 and 4 of the Plaintiff's Statement of Claim, but deny each and every other allegation contained within the Plaintiff's Statement of Claim and put the Plaintiff to the strict proof thereof.

2. The Goodyear Tire & Rubber Company admits that it designs and manufactures a particular model of automobile tire known as Wrangler SilentArmor (hereinafter "the Tires") as set forth in paragraph 5 of the Plaintiff's Statement of Claim.

3. The Defendants admit that they chose to implement a voluntary recall in relation to some of the Tires manufactured between March and May 2009 (hereinafter "the recall period") as part of a customer service campaign. The recall was not issued in relation to any inherent defect in the Tires.

4. The Defendants admit that the date of manufacture of the Tires on the Plaintiff's motor vehicle did not fall within the recall period.

5. The Defendants specifically deny that the Tires that were voluntarily recalled or those Tires that fell outside of the recall period were inherently defective or dangerous and put the Plaintiff to the strict proof thereof.

Any matters that defeat the claim of the Plaintiff:

6. The Defendants deny that they owed any duty of care to the Plaintiff and if such duty of care was owed, that the duty was met.

7. The Defendants deny that they are in any way liable to the Plaintiff for the March 30, 2012 motor vehicle accident. Rather, the Defendants state that the alleged failure of the Plaintiff's Tire(s) occurred due to driver error, road conditions, inappropriate usage or care, or other unrelated damage or harm to the Tire for which these Defendants are not responsible.

8. In the alternative, if the Defendants are in any way liable to the Plaintiff, which is not admitted but specifically denied, the Defendants state that the Plaintiff was contributorily negligent, which negligence includes but is not limited to the following:

   (a) Failing to maintain his Tires and his vehicle appropriately, or at all;

   (b) Improperly overinflating or underinflating the Tires on the Plaintiff's motor vehicle;

   (c) Operating his motor vehicle in such a manner as to negatively impact the Tires and their performance;

   (d) Inappropriately using the Tires in severe conditions which resulted in harm to the Tires;

   (e) Driving over something or driving in such a manner on the roadway which impacted and harmed his Tires; and

   (f) Such further and other allegations of negligence as may be proven at the trial of this action.

9. The Defendants specifically deny that they were in any way negligent or breached any duty to the Plaintiff.

10. The Defendants deny that they purposefully marketed or sold inherently defective and dangerous Tires to the general public.

11. The Defendants deny any allegations of unjust enrichment.

12. The Defendants state that they have complied with the relevant provisions of the *Motor Vehicle Safety Act* and the *Motor Vehicle Tire and Safety Regulations*.

13. The Defendants state that if the Plaintiff, Mr. Spring, sustained any injuries, losses, expenses or damages as alleged, which is not admitted but is specifically denied, the Plaintiff has contributed to his own injuries by failing to wear the available seatbelt and utilize the headrest assembly, properly adjusted or securely fastened, when he knew or ought to have known that the risk and severity of injury would be reduced by utilization of the seatbelt and headrest assemblies.

14. Further, or in the alternative, if the Plaintiff suffered any injuries, losses, expenses or damages a result of the motor vehicle accident on March 30, 2012, which is not admitted but is specifically denied:

    (a) The said injuries, losses or damages were caused or contributed to by the negligence of the Plaintiff, particulars of which are plead in paragraph 8 above;

    (b) The injuries to the Plaintiff consisted of at most mild to moderate soft-tissue/whiplash injuries which required only minimal treatment and minimal time off work and which resolved or should have resolved within weeks or months of this accident;

    (c) Any alleged ongoing mental or physical complaints to the Plaintiff are attributable to pre-accident and post-accident medical conditions and psycho-social stressors unrelated to this accident including but not restricted to the following:

        (i) Pre-existing physical and mental difficulties;

        (ii) Pre-existing physical and mental difficulties arising from prior and subsequent motor vehicle accidents and other unrelated injuries;

        (iii) Psycho-social stressors including stress stemming from work, family, financial and other issues; and

        (iv) Such further and other pre-accident and post-accident medical conditions and psycho-social stressors as may be proven at trial.

    (d) Any injuries, losses, expenses or damages suffered in this accident did not disable the Plaintiff from working or returning to his pre-morbid employment or from carrying out his respective household/domestic duties or recreational activities;

    (e) Such injuries, losses, expenses or damages have not been mitigated in either a medical or financial way; and

(f) Such injuries, losses, expenses or damages are exaggerated and magnified for secondary financial gain.

15. Further, or in the alternative, if the Plaintiff was injured in the accident of March 30, 2012, which is not admitted, but is specifically denied, the Defendants state that the Plaintiff's injuries can be classified as minor injuries as contemplated by the Regulations under the *Insurance Act*, including the *Minor Injury Regulation*, and therefore, non-pecuniary damages to the Plaintiff are limited to no more than $4,641.00, which sum is adjusted for the cost of living inflation.

16. Further, or in the alternative, if the Plaintiff was injured in the accident of March 30, 2012, which is not admitted but is specifically denied, then the Defendants state that the Plaintiff has failed to follow the *Diagnostic and Treatment Protocols Regulation* under the *Minor Injury Regulation* and as such, the non-pecuniary damages to the Plaintiff for any minor injuries will not exceed $4,641.00, which sum is adjusted for the cost of living inflation.

17. Further, or in the alternative, the Defendants state that at most, this accident temporarily aggravated the Plaintiff's extensive pre-existing physical and emotional problems.

18. Further, or in the alternative, the Defendants state that the Plaintiff is not entitled to any of the damages outlined in paragraph 28 of the Statement of Claim and put the Plaintiff to the strict proof of each head of damages outlined therein

19. The Defendants state that this is not an action that is appropriate for certification as a class proceeding pursuant to the *Class Proceedings Act*, S.A. 2003, c. C-16.5.

Remedy sought:

20. The Defendants pray that the Plaintiff's action be dismissed with costs payable to both Defendants.