



IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

ELAINE CALLENDER, as Personal Representative of the Estate of EUSTACIA CALLENDER, Deceased,

06CA002872MB
CONSOLIDATED WITH FOLLOWING CASES FOR DISCOVERY ONLY
05 CA 011644 AE
05 CA 011667 AE
06 CA 000428 AE
05 CA 012016 AE
06 CA 000895 AE

MICHAEL AND PAULINE SEVILLE, As co-personal representative of the Estate of MARSHA SEVILLE, deceased,

MICHAEL AND PAULINE SEVILLE, As co-personal representative of the Estate of MICHELLE SEVILLE, deceased,

CERENA JACKSON, Individually and as the parent and natural guardian of MELVIN JACKSON, TASIA JACKSON, REGINALD JACKSON, KASHIE EDWARDS, MALCOLM EDWARDS, MUHAMMAD KNIGHT, and JORDAN CABRAL PEREZ, deceased,

TERRY JACKSON, OLGA JACKSON, his wife, Individually and as the parents and natural guardians of TAHILA JACKSON, a minor,

MARCUS ASHLEY, as personal representative of the Estate of VALERIE JACKSON LYNCH, deceased,

Plaintiffs,

vs.

COOPER TIRE & RUBBER COMPANY, a foreign corporation, and LAKE PARK AUTO REPAIR SERVICE, INC., a Florida corporation, Defendants

ORDER ON PLAINTIFFS' MOTION TO COMPEL

THE COURT enters the following Order and makes the following findings:

(14)

1. Pursuant to this Court's prior Order of April 26, 2007, certain documents generated by defendant Cooper Tire & Rubber Company ("Cooper") were inspected by this Court *And on May 29, 2007 as well.* *in camera* during a hearing held on May 7, 2007, Counsel for plaintiffs and counsel for Cooper were given opportunity to explain their position relative to each document in light of plaintiffs' request that all of the documents be ordered produced in this case. The Court made detailed and specific findings and rulings during the hearing on these matters, which are summarized below. This Order is intended to summarize, not supplant, the more detailed statements of the Court during the hearing.

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2. The Court finds and Orders as follows:

- A. The documents reviewed by the Court during the course of the May 7, 2007 hearing – and identified below *and document Seville 000012 et seq* – are highly relevant and discoverable in this matter;
- B. The plaintiffs have made a showing of reasonable necessity for the production of the identified materials even if some or all contain trade secrets or other confidential information;
- C. As such, the following documents – those reviewed in detail by the Court during the hearing, represented as tabs 1 through 13 in the notebook prepared by plaintiffs' counsel – shall be produced to all counsel for plaintiffs by Cooper *Ex 20 1921, *1* within 15 days of May 7, 2007: Seville 0000311-312/CT-JCCP-

**1 18, within 15 days of May 29, 2007, defense counsel filed a petition for writ of certiorari, a stay shall thereupon*
Aut. Received Time May 29. 1:22PM; defense counsel have stipulated to this

4292_0025690-25691, Seville0000196-199/CT-JCCP-4292_0024363-24366;
 Seville0000282/CT-JCCP-4292_0022828; Seville0000301-302/CT-JCCP-
 4292_000001-2; Seville0000147-150/CT-JCCP-4292_0026899-902;
 Seville0000200-206/CT-JCCP-4292_0024498-24504; Seville0000321-
 323/CT-JCCP-4292_0006450; Seville0000303-308/CT-JCCP-
 4292_0024751-24756; Seville0000316/CT-JCCP-4292_0024901;
 Seville0000313-315/CT-JCCP-4292_0025110-112; Seville0000319/CT-
 JCCP-4292_0025392; Seville0000062-86/CT-JCCP-4292_0025981-26005;
 Seville0000299/CT-JCCP-4292_0027050-51; *Seville 0000012 et seq.*

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3.

The Court specifically rejects Cooper's assertion that discovery should be limited in this case to materials referencing the specification of the tire that failed on the asserted basis that documents or other materials not referencing the subject tire specification are not or could not be relevant or admissible at trial. In this regard, the Court has reviewed in detail the affidavit of Cooper's expert and former employee Lyle Campbell in support of this position, and heard lengthy argument on Cooper's position from Cooper's counsel. The Court finds the Campbell affidavit is self-serving and unpersuasive, and that the documents themselves belie the position of Mr. Campbell and Cooper. The documents reviewed by the Court ~~on~~ ~~May 29, 2007~~ show that Cooper studied entire tire lines together, including both passenger and radial light truck tires, and in some instances medium truck tires, for purposes of determining the cause of increasing tread separation rates in Cooper tires at times relevant to this case. Many of the documents state on their face that design issues related to tread separations were common across all of these tire lines and

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studied by Cooper as such. Further, for a variety of reasons addressed during the hearing the documents appear highly relevant to the claims and defenses of the parties in this case, including central issues such as notice of a potential defect. It would thus be a flagrant abuse of the Court's discretion to limit discovery to documents that reference the tire that failed in this case, or to employ a similar artificially narrow definition of relevance as urged by Cooper, which would exclude these documents.

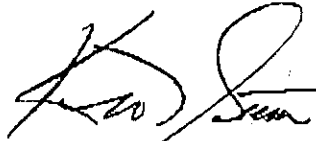
4. Cooper Tire has additionally requested that the Court enter an Order finding that all of the documents reviewed constitute trade secrets. On this subject, the plaintiffs indicated that they did not wish to delay matters by challenging the trade secret status of any of these materials at the present time, but reserve the right to do so at a later time, which right is appropriately reserved. Should plaintiffs decide to challenge Cooper's assertions of trade secret, such challenge shall be made by written motion with reasonable notice to Cooper Tire. In the interim, Cooper has made sufficient showing at present that the documents contain materials which are appropriately protected, so the materials to be produced by Cooper shall until further notice remain subject to the previously entered protective order in this case.
5. The Court ~~will review~~ ^{has reviewed} in camera the remaining documents presented to the Court on May 7, 2007 that were not reviewed on that date due to time constraints, ^{and the provisions} ~~A further~~ ^{of this Order apply equally to such remaining documents.} ~~Order will follow regarding those materials.~~
6. In light of the findings in paragraph 4, the Court will direct that the transcript of the subject hearing shall not be published outside of this case in its entirety. If any party wishes to utilize the transcript in its entirety in another matter, the party should make

a request to the Court with notice to Cooper. However, the specific portion of the transcript in which the Court made its findings and announced its rulings at the conclusion of the hearing is not to be considered confidential, and is incorporated

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herein by reference. *No documents may be filed under seal, or offered in filing under seal, without written permission of the Court.*
DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, *Court,*

Florida, on this 29 day of May, 2007.



HONORABLE KENNETH STERN
CIRCUIT ~~COURT~~ JUDGE

Copies furnished to:

- Douglas Horelick, Esq. *by telefax and mail*
- Lance C. Ivey, Esq. *by telefax and mail.*
- Anthony J. Soto, Esq.
- Christopher J. Roberts, Esq. *by mail*
- Ana Aramante, Esq.
- D.P. Delany, Esq.
- Julie Kane, Esq.