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Asbestos Litigation Phila. C.C.P.,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	
Plaintiff,	:	October Term, 1986
	:	No. 0001
	:	
v.	:	
	:	ASBESTOS CASE
A.C.&S, Inc., et al.,	:	
	:	
Defendants.	:	

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**Response to Motion of Defendant Goodyear-Canada for Reconsideration to Lift Protective Order**

**Motion Filed: October 26, 2009**

**Response Filed: November 23, 2009**

**Control No. 09103556**

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November 23, 2009

## VIA HAND DELIVERY

The Honorable Sandra Mazer Moss  
Complex Litigation Center  
Philadelphia County Court of Common Pleas  
City Hall, Room 622  
Philadelphia, PA 19107

Attention: Donna Candelora, Esquire/StanThompson

**Re: In re Asbestos Litigation**  
**P.C.C.P., October Term 1986, No. 0001 – CONTROL NO. 09103556**

**Novotny v. DFT Inc., et al., Phila. CCP, November Term 2007, No. 00963**  
**Adamkovic v. DFT Inc., et al., Phila. CCP, December Term 2007, No. 00239**  
**Llewellyn v. DFT, Inc., et al., Phila. CCP, December Term 2006, No. 03591**  
**Ochs v. DFT, Inc., et al., Phila. CCP, December Term 2007, No. 03604**  
**Privito v. DFT, Inc., et al., Phila. CCP, February Term 2007, No. 00011**  
**Smyth v. DFT, Inc. et al., Phila. CCP, December Term 2007, No. 02670**  
**Love v. DFT Inc., et al., Phila. CCP, December Term 2006, No. 03593**  
**Pfeifer v. DFT Inc., et al., Phila. CCP, December Term 2007, No. 04574**

Plaintiffs' Counsel: Benjamin P. Shein, Esquire  
Counsel for Defendant Goodyear-Canada: M. Douglas Eisler, Esquire  
Counsel for Defendants DFT, Inc. and David Moser:  
Andrew J. Trevelise, Esquire and Henry F. Reichner, Esquire

Filing: Response to Motion of Defendant Goodyear-Canada  
for Reconsideration to Lift Protective Order

Dear Judge Moss:

We represent DFT Inc. ("DFT") and David Moser ("Mr. Moser") in these matters and write to oppose the Motion for Reconsideration filed by Goodyear Canada which seeks to lift the Protective Order this Court entered last December, almost a year ago.<sup>1</sup>

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<sup>1</sup> The Court should deny the Motion for Reconsideration for the simple reason that Goodyear Canada filed the motion out of time. See PCCP Civil Practice Manual § 7-3.8 ("a motion for reconsideration should be filed within 10 days of the date of the docketing of the order").

There is no dispute that neither DFT nor Mr. Moser ever manufactured, distributed, or supplied asbestos-containing products. Plaintiffs named them in this litigation solely as the alleged alter egos of Durabla Manufacturing Company (“Durabla Manufacturing”). By Order entered on February 13, 2009 – and upon notice to all defendants – the Court severed those alter ego claims from the underlying personal injury claims. Goodyear Canada did not complain – and has never complained – about the entry of that Order severing the alter ego claims from the underlying asbestos personal injury claims.<sup>2</sup>

Because the alter ego issues involved confidential personal and business information unrelated to the underlying personal injury claims, the parties agreed to – and the Court approved – a Protective Order that the Court entered on December 10, 2008. The Court also entered individual Orders on December 15, 2008, with respect to the Protective Order in each case that named DFT and Moser and the dockets in each case reflect that the parties in the case received copies pursuant to Rule 236(b) of the Pennsylvania Rules of Civil Procedure. At that time, Goodyear Canada did not complain about the Protective Order or seek reconsideration of its entry.<sup>3</sup>

Goodyear Canada’s sudden claim that discovery produced by DFT and Mr. Moser in the alter ego proceedings is somehow relevant to Goodyear Canada’s defense of the underlying personal injury claims against it strains the imagination. Indeed, this Court recently addressed motions for summary judgment filed by DFT and Mr. Moser and those motions make it clear that the focus of discovery in that case had everything to do with the traditional considerations involved in determining whether DFT and Mr. Moser are alter egos of Durabla Manufacturing and nothing to do with any issues between Goodyear and Durabla Manufacturing.

The written discovery served by Plaintiffs amply demonstrates this. See Discovery Served by Plaintiffs, Exhibits A, B, C, D, E, and F hereto. The discovery directed by Plaintiffs at DFT and Mr. Moser focused primarily on recent years, and sought information relating to business transactions involving DFT (which did not even come into existence until 1995), as well as its financial statements and business plans, and personal financial information of Mr. Moser. All of this is highly confidential and of absolutely no use to Goodyear Canada in defending itself against a personal injury claim brought by an asbestos plaintiff.

Indeed, the issues between Goodyear Canada and Durabla Manufacturing all pre-date 1974 – the time at which their business relationship ended. Moreover, Goodyear Canada and Durabla Manufacturing have a long litigation history which has been quite contentious and personal (which may explain the true motive behind Goodyear Canada’s Motion for Reconsideration). There is no dispute that Goodyear has already had occasion to take Mr. Moser’s deposition and ask extensive questions on the issues between

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<sup>2</sup> Indeed, when DFT and Moser filed a Motion to Sever back in the Summer of 2008, Goodyear Canada did not oppose that motion.

<sup>3</sup> Goodyear Canada remained silent even when DFT and Moser notified the Court on September 22, 2009, that court personnel had inadvertently scanned material subject to the Protective Order onto the Court’s electronic docket.

Goodyear Canada and Durabla Manufacturing. For example, Goodyear took Mr. Moser's deposition over a 3 day period in 1997 and at the time addressed Goodyear's relationship with Durabla Manufacturing pre-1974. Nothing in the discovery taken by Plaintiffs in the severed proceedings adds to the wealth of knowledge Goodyear Canada has on the subject. Again, the discovery here focuses on recent years and the alter ego issues.

In point of fact, during the course of Mr. Moser's 718 page deposition in this matter, the limited testimony touching on Goodyear Canada is to the following effect (and Mr. Moser is happy to provide that portion of his transcript now): that Durabla Canada's source of gasket material from its incorporation to 1974 was Goodyear Canada, that, between 1969 and 1974, Goodyear Canada was the exclusive supplier of gasket material to Durabla Manufacturing, that Goodyear Canada ceased supplying material to Durabla Manufacturing and Durabla Canada in 1974, and that Durabla Canada purchased the machinery and technical know-how from Goodyear Canada at about that time. See Deposition of David W. Moser at pages 48-55, Exhibit G hereto. None of this is news to Goodyear Canada. Significantly, this brief line of questioning came to a quick end following this exchange between counsel:

14 MR. REICHNER: John, at some  
15 point I assume you're going to  
16 move on, because I'm not sure how  
17 this is going to relate to the  
18 issues that we're addressing.  
19 MR. KOPESKY: Yeah. I don't  
20 want to spend a lot of time on  
21 this, but I just -- I just want to  
22 make sure I'm clear on some time  
23 frames.

Id. at p. 51. Having now supplied this information to Goodyear herewith, Goodyear's present request (to the extent it has any validity) is moot.

At the end of the day, Goodyear Canada simply cannot establish that it has a right to the alter ego discovery taken by Plaintiffs – there is utterly no basis for its unsupported and vague claim that this discovery is necessary for it to defend an asbestos personal injury. On the other hand, this discovery discloses personal financial information involving Mr. Moser, and confidential financial and business information of DFT. When weighed together, the scales clearly tip in favor of Mr. Moser and DFT and, as such, there is no reason to reconsider the entry of the Protective Order. Accordingly, the Motion for Reconsideration should be denied.

The Honorable Sandra Mazer Moss  
November 23, 2009  
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ReedSmith

Respectfully,



Henry F. Reichner

(Counsel for Defendants DFT Inc. and David Moser)

Enclosures

cc: M. Douglas Eisler, Esquire  
John Kopesky, Esquire

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA

NADINE COLLIER NOVOTNY, : COURT OF COMMON PLEAS OF  
Executrix of the Estate of Edward J. : PHILADELPHIA COUNTY  
Novotny, Deceased, : FIRST JUDICIAL  
: DISTRICT CIVIL TRIAL DIVISION  
: **ASBESTOS CASE**

v. : NOVEMBER TERM 2007

GOODYEAR-CANADA, et al., : NO. 00963

MARY ADAMKOVIC, : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : DECEMBER TERM 2007

GOODYEAR-CANADA, et al., : NO. 00239

JOHN LLEWELLYN, : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : DECEMBER TERM 2007

GOODYEAR-CANADA, et al., : NO. 03591

JOSEPH STONE OCHS : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : DECEMBER TERM 2007

GOODYEAR-CANADA, et al., : NO. 03604

ALBERT PRIVITO, : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : FEBRUARY TERM 2007

GOODYEAR-CANADA, et al., : NO. 00011

JOHN SMYTH,

COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY

v.

DECEMBER TERM 2007

*GOODYEAR-CANADA, et al.,*

NO. 02670

ROY LOVE

COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY

v.

DECEMBER TERM 2006

*GOODYEAR-CANADA, et al.,*

NO. 03593

ALBERT PFEIFER

COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY

v.

DECEMBER TERM 2007

*GOODYEAR-CANADA, et al.,*

NO. 04574

**ORDER**

AND NOW, on, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration for the Motion for Reconsideration to Lift Protective Order of Defendant Goodyear-Canada, and any response thereto, it is hereby **ORDERED AND DECREED** that said Motion is **DENIED**.

BY THE COURT:

\_\_\_\_\_  
Moss, J.

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA

NADINE COLLIER NOVOTNY, : COURT OF COMMON PLEAS OF  
Executrix of the Estate of Edward J. : PHILADELPHIA COUNTY  
Novotny, Deceased, : FIRST JUDICIAL  
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JOHN LLEWELLYN, : COURT OF COMMON PLEAS OF  
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GOODYEAR-CANADA, et al., : NO. 03591

JOSEPH STONE OCHS : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : DECEMBER TERM 2007

GOODYEAR-CANADA, et al., : NO. 03604

ALBERT PRIVITO, : COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

v. : FEBRUARY TERM 2007

GOODYEAR-CANADA, et al., : NO. 00011

JOHN SMYTH,

v.

GOODYEAR-CANADA, et al.,

: COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

:  
: DECEMBER TERM 2007

: NO. 02670

ROY LOVE

v.

GOODYEAR-CANADA, et al.,

: COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

: DECEMBER TERM 2006

: NO. 03593

ALBERT PFEIFER

v.

GOODYEAR-CANADA, et al.,

: COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY

: DECEMBER TERM 2007

: NO. 04574

**ATTORNEY CERTIFICATION OF GOOD FAITH**

The undersigned counsel for respondent hereby certified and attests that he has conferred with opposing counsel and has been unsuccessful in resolving the instant dispute.

CERTIFIED TO THE COURT BY:



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Attorney for David Moser and DFT, Inc.

**CERTIFICATE OF SERVICE**

I, Henry F. Reichner, do hereby certify that a true and correct copy of the attached Reply of David Moser and DFT Inc. to Motion of Defendant Goodyear-Canada for Reconsideration to Lift Protective Order was served on Plaintiff's counsel via hand delivery and United States Mail on November 23, 2009.

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Henry F. Reichner