

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PUTNAM COUNTY

CASE NO. 09-494-CA52

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)
LEO HENDRICKS, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
JERUSHA HENDRICKS, DECEASED,)
)
)
Plaintiffs,)
)
vs.)
)
COOPER TIRE & RUBBER COMPANY,)
FORD MOTOR COMPANY, ROCKY'S TIRE)
CENTER AND OASIS AUTO SALES)
)
)
Defendants.)
)
-----)

Oral, videotaped deposition of MR. DESMOND PEGLER
held at MWB Bank, St. Clements House,
27-28 Clements Lane, London EC4N 7AE,
England, United Kingdom,
on Thursday, February 3, 2011 at 10.32 a.m.
before Miss Leah Willersdorf,
Member of the British Institute of
Verbatim Reporters,
Qualified Realtime Reporter

Desmond Pegler
February 3, 2011

Page 2

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 09-CA-1928

-----)
)
JOHNNIE MAE UPSHAW, as Personal)
Representative of the Estate of LARRY)
DONNIEL UPSHAW, deceased, DIANNE)
E. MILLER, SHENIKA STEPHENS, SHERANDA)
KELLEY, and COLIN EDWARDS)
)
Plaintiffs,)
vs.)
)
COOPER TIRE & RUBBER COMPANY, a)
foreign corporation; THE PEP)
BOYS-MANNY, MOE & JACK, INC., a)
foreign corporation; and DARRYL HALL)
d/b/a HALL'S TIRE & MUFFLER CENTER,)
)
Defendants.)
-----)

Page 4

APPEARANCES

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Page 3

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY FLORIDA

CASE NO. 04-12810 CA 22
General Jurisdiction Division

-----)
)
SANDRA RODRIGUEZ,)
)
)
Plaintiff,)
vs.)
)
COOPER TIRE & RUBBER COMPANY, a)
foreign corporation; FORD MOTOR)
COMPANY, a Delaware corporation;)
MIAMI WHOLESALE SPORTS CAR CORP., a)
Florida Corporation, and ALLSTATE)
INSURANCE COMPANY,)
)
Defendants.)
-----)

Page 5

APPEARANCES

(continued)

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(Via telephone link)

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ALSO PRESENT

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2 (Pages 2 to 5)

Stratos Legal Services
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Desmond Pegler
February 3, 2011

	Page 6	Page 8
1 APPEARANCES 2 (continued) 3 THE VIDEOGRAPHER 4 MR. PAT KIRK 5 (Anglo-American Court Reporters Ltd) 6 On behalf of Stratos Legal Services, LP 7 (See details above)	EXHIBITS PRODUCED PAGE Exhibit No. 1 12 (Notice of Deposition) Exhibit No. 2 16 (Letter from Cooper Tires to Mr. Pegler, dated October 4, 2010) Exhibit No. 3 17 (Letter from Nabarro to Mr. Pegler, dated October 4, 2010) Exhibit No. 4 21 (Unsigned confidentiality agreement, dated October 2010) Exhibit No. 5 22 (Letter from Nabarro to Mr. Pegler, dated October 8, 2010) Exhibit No. 6 24 (Letter from Lyons Davidson Solicitors to Nabarro Solicitors, dated October 8, 2010) Exhibit No. 7 25 (Letter from Nabarro Solicitors to Lyons Davidson Solicitors, dated October 8, 2010) Exhibit No. 8 63 (Cooper Tires Advertisement, "The 4WD Tyres Still Made To Last") Exhibit No. 9 105 (Photocopy of Mr. Pegler's train ticket for today, February 3, 2011)	
1 EXAMINATIONS CONDUCTED: 2 PAGE 3 Direct Examination by Mr. Ball 10 4 5 Direct Examination by Mr. Kaster 73 6 Cross-Examination by Mr. Horelick 89 7 Re-Direct Examination by Mr. Kaster 182 8 9 Re-Cross-Examination by Mr. Horelick 191 10 Re-Re-Direct Examination by Mr. Kaster 191	Page 7	Page 9
		1 (On the record at 10.32 a.m.) 2 THE VIDEOGRAPHER: Okay. We're now starting 3 roll 1 in the deposition of Des Pegler in the matter 4 Hendricks versus Cooper Tires. The date today is 5 February 3, 2011. The time on the video monitor is 6 10.32 a.m. This deposition is taking place at No. 27 7 Clements Lane in London, the UK. The court reporter 8 today is Leah Willersdorf. The videographer today is 9 Pat Kirk, both of Anglo-American Court Reporters of 10 London, on behalf of Stratos Legal in the US. 11 We have a notary here today. Would the 12 notary please identify himself on the record? 13 THE NOTARY: Richard Saville. 14 THE VIDEOGRAPHER: Thank you. Would all 15 lawyers in the room please identify themselves on the 16 record stating whom they represent. 17 MR. KASTER: Bruce Kaster on behalf of the 18 Plaintiffs. 19 MR. BALL: Wesley Ball on behalf of the 20 Plaintiffs as well. 21 MR. HORELICK: Doug Horelick for Cooper 22 Tire. 23 THE VIDEOGRAPHER: Thank you. We also 24 have ---- 25 MR. CROFTCHIK: Todd Croftchik for Ford.

Desmond Pegler
February 3, 2011

Page 10	Page 12
<p>1 THE VIDEOGRAPHER: Sorry. Hang on a second. 2 We also have some lawyers appearing by phone. Could you 3 please identify yourself on the record, stating who you 4 represent? Thank you. 5 MR. CROFTCHIK: Sure. Todd Croftchik for 6 Ford Motor Company. 7 THE VIDEOGRAPHER: Thank you. Would the 8 notary please now swear in the witness and then the 9 court reporter can carry on, I guess. 10 THE NOTARY: Would you please state your 11 full name and address? 12 THE WITNESS: Desmond Kenneth Pegler, 13 125 Fell Road, Westbury, Wilts. 14 THE NOTARY: Do you solemnly and sincerely 15 truly declare and affirm that the evidence that you will 16 give will be the truth, the whole truth and nothing but 17 the truth? 18 THE WITNESS: I do. 19 THE NOTARY: Thank you. 20 MR. DESMOND PEGLER, having been duly affirmed, testified 21 as follows: 22 DIRECT EXAMINATION: 23 BY MR. BALL: 24 Q. If you would, please state your name for the 25 benefit of the jury?</p>	<p>1 videotape in the United States, they might not 2 understand where we are. About how long does it take 3 you to get in from where you live to London? 4 A. It's about a one-hour-forty-minute train 5 ride. 6 Q. I appreciate ---- 7 A. ---- plus on the Tube. 8 Q. I appreciate you coming today. Thank you 9 for doing that. We're here today to speak to you about 10 your experience and the events that surrounded your 11 employment with Avon Tyres and with Avon -- or 12 Cooper Avon; do you understand that? 13 A. Yes. 14 Q. Okay. I'm going to show you what I have 15 marked as Exhibit No. 1. This is the Notice for your 16 deposition. You've seen this before? 17 (Exhibit No. 1 marked for identification) 18 A. No, I haven't. 19 Q. Okay. 20 A. No. 21 Q. You understand -- I think my office had 22 asked you, called you and asked if you could come and 23 provide another deposition; is that correct? 24 A. That's correct, yes. 25 Q. And in doing so, I think we'd said we were</p>
Page 11	Page 13
<p>1 A. Desmond Kenneth Pegler. 2 Q. Mr. Pegler, do you understand that you're 3 sitting here today on video and someone's also taking 4 down your testimony via transcript; correct? 5 A. Correct. 6 Q. Okay. And, Mr. Pegler, do you understand 7 that you've taken an oath to tell the truth, the whole 8 truth and nothing but the truth? 9 A. Yes. 10 Q. Okay. And in doing so, in providing your 11 testimony today under that stipulation, do you 12 understand that at some point in the future, in a legal 13 proceeding in the United States, your testimony today, 14 how you're giving it today is as though you are giving 15 it in a court of law if and when your testimony is 16 played during that court of law? 17 A. Yes, I do. 18 Q. Or during that case, should I say. Okay. 19 Mr. Pegler, where do you reside? 20 A. In Westbury, Wiltshire. 21 Q. And that is about how far away from London? 22 A. It's about 100 miles west of London. 23 Q. And we're in London today; correct? 24 A. That's correct. 25 Q. Okay. For the people who might see this</p>	<p>1 sending that but maybe it got lost in the mail; is that 2 what happened? 3 A. That's right. 4 Q. Okay. 5 A. I think you may have had a different 6 address. 7 Q. Okay. You understood that that Notice was 8 being sent to you, that it was being served upon you and 9 that it had been issued; correct? 10 MR. HORELICK: Form. 11 THE WITNESS: That's correct. 12 BY MR. BALL: 13 Q. Okay. And in doing so, Mr. Pegler, do you 14 understand the legal effect of that Notice? 15 A. Yes, I do. 16 Q. Okay. And do you understand that to mean 17 that you were to show up to today to provide your 18 testimony? 19 MR. HORELICK: Form. 20 THE WITNESS: Yes. 21 BY MR. BALL: 22 Q. Mr. Pegler, do you travel to the United 23 States ever? 24 A. No, I haven't. 25 Q. Okay. I would imagine that you would like</p>

4 (Pages 10 to 13)

Desmond Pegler
February 3, 2011

Page 54

1 ever come up?
2 MR. HORELICK: Form.
3 THE WITNESS: Yes, but usually they were
4 there already.
5 BY MR. BALL:
6 Q. Okay. That was going to be my next
7 question. With these tire designs that Avon would give
8 these various companies over these countries that we've
9 spoken about, did these tire designs ever include nylon
10 overlays?
11 A. Yes, they did.
12 Q. Is that something that you personally are
13 aware of?
14 A. Yes.
15 Q. Did you see those -- did you understand that
16 there were nylon overlays based upon a review of the
17 design specifications?
18 A. Could you repeat that, please?
19 Q. Yes. Did you understand there to be nylon
20 overlays in those tires based upon your review of the
21 design specification?
22 MR. HORELICK: Form.
23 BY MR. BALL:
24 Q. Let me ask it another way. Would the design
25 specification of these tires reveal or state in any way

Page 55

1 that a nylon overlay was being utilized?
2 MR. HORELICK: Form.
3 THE WITNESS: Yes.
4 BY MR. BALL:
5 Q. Okay. Is that something that you were
6 taught reading tire -- or reading tire specifications,
7 tire design specifications, is that something that you
8 were taught to do by Avon?
9 MR. HORELICK: Yes.
10 THE WITNESS: Yes.
11 BY MR. BALL:
12 Q. Okay. Understanding a design, a tire design
13 specification, is that something that you were taught to
14 do by Avon?
15 MR. HORELICK: Form.
16 THE WITNESS: Yes.
17 BY MR. BALL:
18 Q. Was that required of you per your duties as
19 a consultant technologist?
20 A. Yes, it was.
21 Q. Why is it, sir -- tell me this: were you
22 ever explained the reason for adding or including a
23 nylon overlay in the design of a tire?
24 MR. HORELICK: Form.
25 THE WITNESS: Yes.

Page 56

1 BY MR. BALL:
2 Q. Did Avon give you this information?
3 MR. HORELICK: Form.
4 THE WITNESS: Yes.
5 BY MR. BALL:
6 Q. And what information did Avon give you about
7 the reasons for using a nylon overlay in a tire?
8 MR. HORELICK: Form.
9 THE WITNESS: To reduce the possibility of
10 tread separations.
11 BY MR. BALL:
12 Q. And based upon your training and experience
13 and observations while at Avon, did a nylon overlay
14 reduce tread separations?
15 MR. HORELICK: Form.
16 THE WITNESS: It did.
17 BY MR. BALL:
18 Q. Did you have an understanding of how widely
19 used nylon overlays were or were not at Avon while you
20 were there?
21 A. Yes, I think so.
22 Q. Can you give me an estimate, percentage-wise,
23 of the number of -- a percentage number of tires that
24 Avon used nylon overlays in?
25 A. No, I can't because I don't know.

Page 57

1 Q. Sure. Were nylon overlays used in the
2 majority of tires?
3 A. I believe so, yes.
4 Q. Okay. Were nylon overlays used in the
5 majority of tires that Avon -- strike that. Let me ask
6 it a better way.
7 With these designs that Avon would provide to
8 these other companies in these other countries that
9 we've spoken about, were nylon overlays used in the
10 majority of those designs?
11 MR. HORELICK: Form.
12 THE WITNESS: Yes, they were.
13 BY MR. BALL:
14 Q. Were they used in more than 75% of the
15 designs?
16 A. Yes.
17 Q. Were they used in more than 90% of the
18 designs?
19 A. Yes.
20 Q. Were they used in every one of the designs?
21 A. As far as my memory goes, yes.
22 Q. Okay. And, sir, why were they used in the
23 design of those tires based upon ----
24 MR. HORELICK: Form.
25 BY MR. BALL:

15 (Pages 54 to 57)

Desmond Pegler
February 3, 2011

Page 58

1 Q. Strike that. Did Avon ever tell you why
2 the nylon overlay was used in those tires?
3 MR. HORELICK: Form.
4 THE WITNESS: Not in those specific tires,
5 but I have been told why nylon overlays are used, yes.
6 BY MR. BALL:
7 Q. And when you say you have been told, have
8 you been told by someone at Avon?
9 MR. HORELICK: Form.
10 THE WITNESS: Yes.
11 BY MR. BALL:
12 Q. Okay. What was Avon -- what did Avon tell
13 you about the reason for using these nylon overlays in
14 more than 90% of the tires made in these other
15 countries?
16 MR. HORELICK: Form.
17 THE WITNESS: It reduces tread separation.
18 BY MR. BALL:
19 Q. Is a tread separation something that Avon
20 and the -- let me ask it separately. Is tread
21 separation something that Avon wants to -- wanted to
22 avoid, based upon your understanding and experience and
23 training while at Avon?
24 MR. HORELICK: Form.
25 THE WITNESS: Yes.

Page 59

1 BY MR. BALL:
2 Q. Is it something that Avon wanted to avoid in
3 providing their technology to these other countries that
4 we've spoken about?
5 MR. HORELICK: Form.
6 THE WITNESS: Yes.
7 BY MR. BALL:
8 Q. When I say "countries", I mean the actual --
9 I don't mean the country of India.
10 A. Yes.
11 Q. But the companies within that you would
12 consult with.
13 A. Yes.
14 Q. Why is it that Avon -- strike that.
15 Did Avon consider a tread separation a safety
16 issue?
17 MR. HORELICK: Form.
18 THE WITNESS: Yes.
19 BY MR. BALL:
20 Q. Why is it -- and is that based upon your
21 personal knowledge and understanding obtained while
22 working at Avon from Avon?
23 MR. HORELICK: Form.
24 THE WITNESS: Yes.
25 BY MR. BALL:

Page 60

1 Q. Why is it that Avon believed that tread
2 separations were a safety issue?
3 MR. HORELICK: Form.
4 THE WITNESS: With a severe, excuse me,
5 with a severe tread separation, you can -- actually the
6 tire will completely destruct and ----
7 BY MR. BALL:
8 Q. And ----
9 A. ---- and lose its pressure.
10 Q. And why is that a safety issue, sir?
11 MR. HORELICK: Form.
12 THE WITNESS: You might have an accident.
13 BY MR. BALL:
14 Q. Okay. It seems counterintuitive, but my
15 question, in following up on that, is did Avon recognize
16 that a tread separation could lead to an accident?
17 MR. HORELICK: Form.
18 THE WITNESS: Yes.
19 BY MR. BALL:
20 Q. And when I say "Avon", I mean the people
21 that you spoke with within Avon (the engineers, the
22 technical people and even management), did those people
23 have an understanding of tread separations being a
24 safety issue that could potentially cause an accident?
25 MR. HORELICK: Form.

Page 61

1 THE WITNESS: Yes.
2 BY MR. BALL:
3 Q. Okay. Did Avon -- are you aware of whether
4 Avon tracked adjustment data?
5 A. I believe they did, yes.
6 Q. Once you became a consultant technologist
7 for Avon Technical Services, did you ever work within
8 the Avon plant here in the UK?
9 A. What do you mean by "Avon plant"?
10 Q. Well, let me get my thoughts straight here.
11 It seems that Avon technology -- Avon Technical Services
12 was somewhat separate from Avon Tyres.
13 A. As a company, yes.
14 Q. Okay. However, if they -- since they were
15 separate as a company, were they still closely working
16 with each other?
17 A. Yes, they were.
18 Q. Did Avon Technical Services work out of
19 the same office building or administration building or
20 what-not that Avon Tyres worked out of?
21 A. Yes.
22 Q. Okay. So would it be fair to say that they
23 were -- while they may be legal separate companies, they
24 were still the same company?
25 A. Yes.

16 (Pages 58 to 61)

Desmond Pegler
February 3, 2011

Page 62

1 Q. Okay. Would people from Avon Tyres exchange
2 ideas with people at Avon Technical Services?
3 A. Yes.
4 Q. And vice versa?
5 A. And vice versa, yes.
6 Q. Within Avon, was there any real separation
7 of Avon Tyres from Avon Technical Services when it came
8 to the design and know-how and knowledge in making
9 tires?
10 A. No.
11 Q. Sir, have you ever -- one second.
12 MR. BALL: (To the court reporter) Do you
13 have the exhibits from yesterday?
14 THE COURT REPORTER: Yes.
15 MR. BALL: I am going to need those.
16 BY MR. BALL:
17 Q. Sir, have you ever heard the term "tread
18 separation countermeasure"?
19 A. I believe so, yes.
20 Q. Do you understand what I mean by "tread
21 separation countermeasure"?
22 A. Something to prevent tread separation.
23 Q. Okay. That's your understanding of it?
24 A. That's my understanding.
25 Q. Did Avon have an understanding or were you

Page 63

1 ever taught by Avon about tread separation
2 countermeasures?
3 MR. HORELICK: Form.
4 THE WITNESS: Yes.
5 BY MR. BALL:
6 Q. Okay. Was one of those tread separation
7 countermeasures a nylon overlay, the use of?
8 MR. HORELICK: Form.
9 THE WITNESS: Yes.
10 BY MR. BALL:
11 Q. Okay. Sir, I am going to show you an
12 exhibit that ----
13 MR. BALL: Do you have a copy of that?
14 MR. HORELICK: I do.
15 MR. BALL: Can I mark it for this because
16 I've got this marked as 6?
17 MR. HORELICK: I've drawn on this one, but
18 you can have it.
19 MR. BALL: Thank you.
20 MR. HORELICK: Sure.
21 MR. BALL: I'll tell you what I'll do, I'll
22 mark it as this exhibit and since you ----
23 MR. HORELICK: I don't mind. I don't mind.
24 MR. BALL: Okay. Okay.
25 (Exhibit No. 8 marked for identification)

Page 64

1 BY MR. BALL:
2 Q. Sir I'm going to hand you what I've marked
3 as Exhibit No. 7 [sic]. Have you ever seen this
4 advertisement before?
5 A. Yes, I have.
6 Q. It's an advertisement for a four-wheel drive
7 tire; do you see that, sir?
8 A. Yes.
9 Q. And I want to ask you a question about this
10 advertisement. I'm going to read something to you and
11 then ask you the question, okay. It states under
12 "Increased cut, chip and lug tear resistance", this
13 paragraph:
14 "A nylon overlay increases tread pattern strength
15 and reduces belt separations - the nylon acts as a
16 protective layer making it harder to cut through to the
17 steel belts."
18 Sir, do you agree with -- do you agree or
19 disagree with that sentence?
20 MR. HORELICK: Form.
21 THE WITNESS: I agree with it.
22 BY MR. BALL:
23 Q. That a nylon overlay reduces belt
24 separations, is that something that Avon knew?
25 MR. HORELICK: Form.

Page 65

1 THE WITNESS: Yes.
2 BY MR. BALL:
3 Q. Is that something that Avon relayed to you
4 information-wise concerning the design of tires?
5 MR. HORELICK: Form.
6 THE WITNESS: Yes.
7 BY MR. BALL:
8 Q. Is that something you were taught at Avon?
9 MR. HORELICK: Form.
10 THE WITNESS: Yes.
11 BY MR. BALL:
12 Q. Was that knowledge readily available within
13 Avon?
14 MR. HORELICK: Form.
15 THE WITNESS: Yes, it was.
16 BY MR. BALL:
17 Q. To the best of your understanding, did the
18 engineers and tire designers at Avon understand that to
19 be the case?
20 MR. HORELICK: Form.
21 THE WITNESS: Yes.
22 BY MR. BALL:
23 Q. At Avon, sir, were you ever permitted to use
24 tire designs that did not, in some way or another,
25 incorporate a tread separation countermeasure?

17 (Pages 62 to 65)

Desmond Pegler
February 3, 2011

<p style="text-align: right;">Page 66</p> <p>1 MR. HORELICK: Form. 2 BY MR. BALL: 3 Q. Let me ask that a better way because "use" 4 is a very vague word. At Avon, sir, when you worked 5 with the technical services division -- or, excuse me, 6 when you were a consultant technologist, did Avon permit 7 you to propose or implement tire designs within these 8 various other companies in these countries we've spoken 9 about which did not use some time of tread separation 10 countermeasure? 11 A. No. 12 Q. And why is that? 13 A. Because nylon overlays reduce tread 14 separation. 15 Q. Sir, were you -- did you ever become 16 familiar with testing that Avon did -- strike that. 17 Did Avon ever do any type of testing concerning 18 the effectiveness of nylon in reducing tread separation 19 for its tires? 20 A. Not specifically that I'm aware of. 21 Q. Okay. And with nylon overlays, sir, did you 22 incorporate or did Avon and these other various 23 companies that Avon gave its technology to, did -- well, 24 let me say this first off: when I say "Avon" from now 25 on in this deposition, unless I tell you otherwise I'm</p>	<p style="text-align: right;">Page 68</p> <p>1 nylon overlays only in high-speed-rated tires? 2 MR. HORELICK: Form. 3 THE WITNESS: Sorry, what do you mean by 4 "high-speed-rated"? 5 BY MR. BALL: 6 Q. Sure. A speed rating of -- well, tell me 7 this, this is a better way to ask it: was there any 8 restriction on the speed rating of a tire that Avon 9 believed a nylon overlay could or could not be used in? 10 MR. HORELICK: Form. 11 THE WITNESS: Not that I'm aware of. 12 BY MR. BALL: 13 Q. Okay. So Avon -- would Avon use a nylon 14 overlay in a low-speed-rated tire and high-speed-rated 15 tires? 16 MR. HORELICK: Form. 17 THE WITNESS: If, by "low", you mean perhaps 18 S-rated or something like that, and then high speed V or 19 HV, yes. 20 BY MR. BALL: 21 Q. There were no restrictions on a speed rating 22 for what -- there were no restrictions on the use of a 23 nylon overlay based upon the speed rating of the tire; 24 is that fair? 25 A. Not that I'm aware of.</p>
<p style="text-align: right;">Page 67</p> <p>1 referring both to Avon and the other companies that 2 we've spoken about from Indonesia, Sri Lanka, India, 3 things of that nature; okay? 4 A. Okay. 5 Q. So it's now, I say "Avon and then all those 6 other companies", we can agree that Avon includes all of 7 that; okay? 8 A. Okay. 9 Q. All right. Did Avon incorporate nylon 10 overlays into passenger tires? 11 MR. HORELICK: Form. 12 THE WITNESS: Yes. 13 BY MR. BALL: 14 Q. Did Avon incorporate nylon overlays into 15 light-truck tires? 16 MR. HORELICK: Form. 17 THE WITNESS: Yes. 18 BY MR. BALL: 19 Q. Were nylon overlays used only in speed-rated 20 tires? 21 MR. HORELICK: Form. 22 THE WITNESS: What do you mean by 23 "speed-rated" tires? 24 BY MR. BALL: 25 Q. Thank you for clearing that. Did Avon use</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. When did Avon begin incorporating nylon 2 overlays into its tires, sir? 3 MR. HORELICK: Form. 4 THE WITNESS: I don't know. 5 BY MR. BALL: 6 Q. Was Avon incorporating nylon overlays into 7 its tires when you left in 2000? 8 A. Yes. 9 Q. Did Avon ever create a tire design that 10 omitted a nylon overlay and then later come back and 11 revise that tire design to include a nylon overlay, that 12 you're aware of? 13 A. Not that I'm aware of. 14 Q. Okay. So the only time you're familiar with 15 Avon using a nylon overlay is when it was included in 16 the design from the onset? 17 A. Yes. 18 Q. Was there ever a time where any of the other 19 companies in these other countries would -- was there 20 ever an occasion where you would add a nylon overlay to 21 any of those tires? 22 A. No. They already had them. 23 Q. At the time between -- when you became a 24 consultant technologist up until 2000, were Avon's 25 competitors using nylon overlays?</p>

18 (Pages 66 to 69)

Desmond Pegler
February 3, 2011

Page 70

1 MR. HORELICK: Form.
2 THE WITNESS: I don't know about all of
3 them. The ones I knew about, yes.
4 BY MR. BALL:
5 Q. Okay. Is whether a nylon overlay being used
6 or -- strike that.
7 Is it easily ascertainable information as to
8 whether a nylon overlay is being used in the design of
9 a tire?
10 A. Yes.
11 Q. How is that?
12 A. It's written on the side of the tire.
13 Q. In addition to written on the side of the
14 tire, can it also be ascertainable through cutting a
15 cross-section of the tire?
16 A. That's correct, yes.
17 Q. Could it ever be a secret as to whether a
18 tire does or does not have a nylon overlay in it?
19 MR. HORELICK: Form.
20 THE WITNESS: A secret? No.
21 BY MR. BALL:
22 Q. Unless the tire itself is a secret?
23 A. The moment that you see it or can cut it,
24 as you said ----
25 Q. Yes.

Page 71

1 A. ---- then it's possible to tell.
2 Q. Did you ever draft any documents while a
3 consultant technologist that recommended the use of
4 nylon overlays and certain design of tires?
5 A. What do you mean by "draft" a document?
6 Q. Did you ever recommend to Avon, "Hey, we've
7 got this design here" or "We're creating this design and
8 I'd like or I think a nylon overlay should be used in
9 the design"?
10 A. No.
11 Q. Okay. Is that because they would already
12 have nylon overlay in them?
13 MR. HORELICK: Form.
14 THE WITNESS: Usually, yes.
15 BY MR. BALL:
16 Q. Okay.
17 A. In fact I think all times, yes.
18 Q. Sir, all the information that you've given
19 me today concerning what components were or were not
20 used and the utility of those components one way or the
21 other, is that information that you became aware of
22 based upon your employment with Avon?
23 MR. HORELICK: Form.
24 THE WITNESS: Yes.
25 BY MR. BALL:

Page 72

1 Q. Is that information that was relayed to you
2 by Avon during your employment?
3 MR. HORELICK: Form.
4 THE WITNESS: Yes.
5 BY MR. BALL:
6 Q. Was it expected of you by Avon to possess
7 and have that information?
8 A. Yes.
9 THE VIDEOGRAPHER: We have about three or
10 four minutes until the tape change. Thank you.
11 BY MR. BALL:
12 Q. We're going to take a break. I am going to
13 look at my notes. I don't know that I've got any more
14 questions for you, but I'm going to consult with my
15 co-counsel and, if I do, there should be very few. If
16 I do not, then I'm going to let this fine gentleman here
17 ask you a few questions, okay?
18 A. Okay.
19 MR. KASTER: He must be talking about me!
20 MR. HORELICK: I thought he was talking
21 about me!
22 THE VIDEOGRAPHER: Okay. Going off the
23 record at 11.38 a.m. End of roll 1.
24 (Off the record at 11.38 a.m.)
25 (Mr. Ball left the deposition)

Page 73

1 (Back on the record at 11.48 a.m.)
2 THE VIDEOGRAPHER: Okay. We're now starting
3 roll 2 in the deposition of Des Pegler. Going back on
4 the record at 11.48 a.m.
5 DIRECT EXAMINATION:
6 BY MR. KASTER:
7 Q. Morning, Mr. Pegler.
8 A. Good morning.
9 Q. I'm Bruce Kaster. We've not met before,
10 have we?
11 A. No, we haven't.
12 Q. You and I have never had an opportunity to
13 talk before this morning when you showed up here?
14 A. No.
15 Q. Okay. My instructions are the same you
16 heard from Mr. Ball: I'm going to ask you some
17 questions. If you don't understand them, you tell me
18 and I'll clarify it, okay?
19 A. Okay.
20 Q. But as he explained to you, we may very well
21 play this to a jury and it will be just like you're in a
22 courtroom so we need to treat it that way; is that fair?
23 A. Okay, that's fair.
24 Q. Something I was a little bit curious about
25 in your discussions with Mr. Ball was the work that you

19 (Pages 70 to 73)

Desmond Pegler
February 3, 2011

Page 78	Page 80
<p>1 communication you got from Cooper that you characterized 2 as attempts to intimidate you; do you remember those 3 questions? 4 MR. HORELICK: Form. 5 THE WITNESS: Yes, I do. Yes. 6 BY MR. KASTER: 7 Q. Did Cooper or Cooper Avon approach any of 8 your family members about your potentially giving 9 testimony in deposition such as you are doing today? 10 MR. HORELICK: Form. 11 THE WITNESS: In a previous deposition, yes. 12 BY MR. KASTER: 13 Q. Tell me about that, please, sir. What 14 happened? 15 A. As you will see from what I said earlier 16 when I was shown a letter, I said that I didn't actually 17 receive that particular letter which it referred to. 18 That is because the original letters never got to me and 19 were actually given to my brother to pass on to me. 20 Q. Well, how were they given to your brother? 21 A. My brother works for Avon. 22 Q. Avon Cooper? 23 A. Sorry, sorry. Cooper now, isn't it, 24 I believe? 25 Q. Okay. Your brother works for Cooper in</p>	<p>1 THE WITNESS: Yes. She was very upset 2 actually. 3 BY MR. KASTER: 4 Q. And how did you know that? How did you know 5 she was upset? 6 A. Well, she asked me not to do the deposition. 7 Q. Why? Did she explain why? 8 MR. HORELICK: Form. 9 THE WITNESS: She did. She said, "Don't go 10 against Cooper. They're nasty." 11 BY MR. KASTER: 12 Q. Did she indicate to you in any way that she 13 felt threatened or that she was frightened by this? 14 MR. HORELICK: Form. 15 THE WITNESS: Not herself personally. 16 BY MR. KASTER: 17 Q. Did she offer to assist you in any way? 18 MR. HORELICK: Form. 19 THE WITNESS: She actually offered me money 20 not to do it, yes. 21 BY MR. KASTER: 22 Q. Because she was afraid for you? 23 A. Yes. 24 MR. HORELICK: Form. 25 BY MR. KASTER:</p>
Page 79	Page 81
<p>1 England now? 2 A. That's correct, yes. 3 Q. Okay. And tell me what happened. 4 A. So he was called to the HR Department and 5 given a letter or an envelope to pass on to me. 6 Q. Is that Human Resources Department? 7 A. Yes. 8 Q. Did Avon know how to get ahold of you or 9 Cooper know how to get ahold of you? 10 MR. HORELICK: Form. 11 THE WITNESS: They had a very old address 12 apparently. 13 BY MR. KASTER: 14 Q. Okay. 15 A. I didn't realize at the time but I found out 16 afterwards. 17 Q. All right. So they gave it to your brother? 18 A. Mmm. 19 Q. And then what happened? 20 A. And then, because my brother wasn't seeing 21 me, then he gave it to my mother to pass on to me. 22 Q. All right. And did your mother do that? 23 A. Yes, she did. 24 Q. Did it have any adverse effect on your mom? 25 MR. HORELICK: Form.</p>	<p>1 Q. How old is your mom approximately? 2 A. My mom is 73. 3 Q. I want to ask you a couple of questions 4 about what I will call "tread belt separations", and by 5 that I mean tread belt detachments where the tread and 6 upper belt actually detach from the carcass. 7 A. Okay. 8 Q. Okay. And what I'll actually call it -- 9 most people call it "tread separation". I'm going to 10 call it "tread belt separation" so that you understand 11 it's the tread and the upper belt. 12 A. I would call it the same thing. 13 Q. Okay. While you were at Cooper Avon, did 14 the management of Cooper Avon and the tire design 15 engineers have any concern that tread belt separations 16 would cause vehicular accidents? 17 MR. HORELICK: Form. 18 THE WITNESS: Yes. 19 BY MR. KASTER: 20 Q. While you were at Cooper Avon, did the 21 management and the tire design engineers have any 22 concern that tread belt detachments would result in 23 accidents that could cause people to be killed or 24 seriously injured? 25 MR. HORELICK: Form.</p>

21 (Pages 78 to 81)

Desmond Pegler
February 3, 2011

Page 82

1 THE WITNESS: Yes.

2 BY MR. KASTER:

3 Q. While you were at Cooper Avon, was it
4 generally accepted by the management and the tire
5 designers that some type of tread overlay -- I'm sorry,
6 I'll say that again.

7 While you were at Cooper Avon, was it generally
8 accepted by the management and tire engineers that some
9 type of restrictor belt or nylon cap ply would eliminate
10 or substantially reduce the potential for tread belt
11 detachments in steel-belted radial passenger and
12 commercial tires?

13 MR. HORELICK: Form.

14 THE WITNESS: Yes.

15 BY MR. KASTER:

16 Q. And by "commercial tires", that's what you
17 would refer to here. In America it's called
18 "light-truck tires"?

19 A. That's one of them, yes. Yes, we also have
20 a commercial which is -- I think, drops into a category
21 just below the light truck.

22 Q. Okay. Let me -- I'll give you some
23 categories and you see if this sounds like the same
24 system. I'll ask you to assume that in the United
25 States we have passenger or P tires; we have what's

Page 84

1 Rubber?

2 A. I believe I joined Avon Tyres, yes.

3 Q. Okay. What is the entity known as Avon
4 Rubber?

5 A. Avon Rubber, at the time of joining, is the
6 holding company which actually owns the Avon Tyres part
7 of it.

8 Q. Right.

9 A. So Avon Rubber is a group.

10 Q. Is Avon Rubber still in existence?

11 A. It is.

12 Q. Is it a separate entity from Avon Cooper or
13 the modern Cooper in England?

14 A. It's different.

15 Q. Okay. A separate corporation?

16 A. Separate companies.

17 Q. Okay. And what do they do, Avon Rubber?

18 A. Avon Rubber, many things actually, from
19 automotive components to defense projects.

20 Q. Is there a part of Avon Rubber that is
21 Avon Auto?

22 A. Avon Automotive I believe it is.

23 Q. Okay. So we have -- Cooper comes in and
24 purchases Avon Tyre; that's all they purchase of the
25 entities that you're aware of?

Page 83

1 called "P metric LT tires" which is in the middle; and
2 then we have LT tires; then after that, it becomes
3 medium-truck and heavy-truck tires. I want to
4 concentrate on the P metric passenger, the P metric LT
5 and the light-truck tires.

6 A. Okay.

7 Q. Would that be equivalent in this country to
8 passenger and commercial tires?

9 A. Yes, light commercial. Yes.

10 Q. And did you understand my questions
11 concerning tread belt detachments and restrictor belts
12 or nylon cap plies to apply to what I have defined as
13 passenger up through light-truck tires?

14 A. Yes.

15 Q. To your knowledge, has Cooper Avon ever
16 utilized double restrictor belts or nylon cap plies to
17 reduce the potential for tread belt detachments?

18 A. Yes.

19 Q. There's one other area that I'm a little
20 confused about and maybe you can help me clear it up.
21 I've heard different Avon entities mentioned here today
22 and I want to see if we can just go through it and kind
23 of get that straightened out.

24 A. Okay.

25 Q. You initially worked for Avon Tyre or Avon

Page 85

1 A. That's all I'm aware of, yes.

2 Q. Have you ever heard of the term "liner
3 pattern marks"?

4 A. Yes.

5 Q. Tell me what you understand liner pattern
6 marks to be, based on your experience at Avon and Avon
7 Cooper.

8 A. When some of the components are produced,
9 sometimes on the calenders, they're actually wrapped in
10 a nylon liner to stop them sticking to each other when
11 they're in rolled form. Sometimes when you take the
12 component out of that tire, you'll see a liner mark on
13 it which is the weave of the liner or the cloth.

14 Q. After the tire is cured, gone through the
15 curing process, it's no longer a green tire, now it's a
16 finished tire, if it delaminates, let's say in a tread
17 belt detachment, if the tire is properly cured, should
18 you ever see liner pattern marks?

19 MR. HORELICK: Form.

20 THE WITNESS: No.

21 BY MR. KASTER:

22 Q. Why not?

23 MR. HORELICK: Form.

24 THE WITNESS: Because all the components are
25 designed under the pressure to all bond together. So if

22 (Pages 82 to 85)

Desmond Pegler
February 3, 2011

Page 86	Page 88
<p>1 you see a liner mark, then it's -- we would actually say 2 informally it's never stuck to together in the first 3 place. 4 BY MR. KASTER: 5 Q. Never cured properly; would that be a fair 6 statement? 7 MR. HORELICK: Form. 8 THE WITNESS: It could not -- maybe it 9 wasn't constructed properly. 10 BY MR. KASTER: 11 Q. It could be a variety of reasons? 12 MR. HORELICK: Form. 13 THE WITNESS: It could be, or cured. 14 BY MR. KASTER: 15 Q. Was that -- was the liner pattern mark 16 considered by the management and tire engineers at Avon 17 and Avon Cooper, to your direct knowledge, considered to 18 be a defect that was unacceptable? 19 MR. HORELICK: Form. 20 THE WITNESS: Correct. 21 BY MR. KASTER: 22 Q. In a cured tire? 23 A. Correct. 24 MR. HORELICK: Form. 25 BY MR. KASTER:</p>	<p>1 tire, would it say "nylon cap ply" or "restrictor belt" 2 on the side of the tire? 3 A. Yes. 4 Q. And if you did an Omega section, would it be 5 readily ascertainable? 6 A. Yes, it would, yes. 7 Q. Did you do benchmarking at Cooper or 8 Cooper Avon -- I'm sorry. 9 Was benchmarking conducted at Avon and Avon 10 Cooper to determine the components of competitors' 11 tires? 12 A. By "benchmarking", do you mean comparing a 13 competitor's tire? 14 Q. Yes, sir. 15 A. Yes. 16 Q. Is that a normal course of business? 17 A. Yes. 18 Q. Okay. Sir, that's all the questions I have. 19 I'm sorry to take up your time. Mr. Horelick is going 20 to ask you some questions. I'll move out of the way 21 just so that it will work a little bit better. 22 Thank you. 23 A. Thank you. 24 Q. I'm sorry we both have a cold. 25 A. Yes. Sorry. I'm coping with it.</p>
Page 87	Page 89
<p>1 Q. During the course of time that Cooper and 2 Avon were affiliated while you were still there, did US 3 engineers, tire engineers, or management of Cooper Tire 4 ever come to Cooper Avon plant here in England to -- for 5 any reason? 6 A. Yes. 7 Q. Did they -- was there a free exchange of 8 information between the management and engineers from 9 Cooper US and Avon Cooper? 10 A. I would assume so, yes. 11 Q. Would there be any reason that you can think 12 of that Cooper US would not know that Cooper Avon was 13 using full nylon cap plies or restrictor belts on the 14 vast majority of their passenger and light-truck tires? 15 MR. HORELICK: Form. 16 THE WITNESS: No. 17 BY MR. KASTER: 18 Q. Would that be readily ascertainable? 19 MR. HORELICK: Form. 20 THE WITNESS: Yes. 21 BY MR. KASTER: 22 Q. If you walked in the plant of second stage 23 tire-building, could you see it? 24 A. Yes, you could. Yes. 25 Q. If you looked on the side of a Cooper Avon</p>	<p>1 MR. HORELICK: Do you want to take a minute 2 or two just to shift around ---- 3 THE COURT REPORTER: Could we just have a 4 ten and then we'll go ---- 5 MR. HORELICK: Let's have ten, grab a 6 coffee, Yes. 7 THE COURT REPORTER: Lovely. Thank you. 8 THE VIDEOGRAPHER: Going off the record at 9 12.05 p.m. 10 (Off the record at 12.05 p.m.) 11 (Back on the record at 12.18 p.m.) 12 THE VIDEOGRAPHER: Okay. We're going back 13 on the record 12.18 p.m. 14 CROSS-EXAMINATION: 15 BY MR. HORELICK: 16 Q. Good afternoon, Mr. Pegler. 17 A. Good afternoon. 18 Q. My name's Doug Horelick. I represent 19 Cooper Tire & Rubber Company. I have some questions for 20 you this afternoon. 21 A. Okay. 22 Q. Okay. As I understand it, you have never 23 seen the subject tire involved in the Hendricks case; 24 correct? 25 A. That's correct.</p>

23 (Pages 86 to 89)

Desmond Pegler
February 3, 2011

Page 186

1 BY MR. KASTER:

2 Q. Okay. As a person involved in the design
3 and manufacture of steel-belted radial passenger or
4 light-truck tires, would you not design your tires, if
5 you worked for any tire company, to ensure that they
6 could be operated safely anywhere in the world?

7 MR. HORELICK: Form.

8 THE WITNESS: Could you repeat the question,
9 please?

10 BY MR. KASTER:

11 Q. If you were still involved in the design or
12 manufacturer of steel-belted radial passenger or
13 light-truck tires, would you not want to design your
14 tires to make sure they were capable of being used
15 anywhere?

16 MR. HORELICK: Form.

17 THE WITNESS: Yes.

18 BY MR. KASTER:

19 Q. Now, the Australian tire that you were asked
20 about by both Mr. Ball and Mr. Horelick, would that be
21 considered to be a low-speed-rated tire as opposed to
22 like a high-speed-rated tire, a Z or...

23 A. Low. If you compare to Z, yes. Obviously,
24 yes.

25 Q. Would this be a low-speed-rated tire with

Page 188

1 BY MR. KASTER:

2 Q. Is that what you were trying to avoid at
3 Avon and Avon Cooper when you put on restrictor belts or
4 nylon cap plies?

5 A. Yes.

6 Q. When you were at Cooper and Cooper Avon,
7 was it well-recognized by management and tire engineers
8 at both Cooper and Cooper Avon that cap plies help
9 prevent tread separations?

10 MR. HORELICK: Form.

11 THE WITNESS: I cannot say about Cooper.

12 BY MR. KASTER:

13 Q. Cooper Avon I said.

14 A. You said "Cooper and Cooper Avon".

15 Q. I said it wrong then. Let me start over.

16 I appreciate you catching that. When you were with
17 Cooper Avon and Avon, was it well-recognized by the
18 management and the tire experts that you dealt with that
19 cap plies help prevent tread separation?

20 MR. HORELICK: Form.

21 THE WITNESS: Yes.

22 BY MR. KASTER:

23 Q. Same question: was it well-recognized by
24 the management and tire engineers at Avon and Avon
25 Cooper that liner pattern marks indicated improper or

Page 187

1 cap plies?

2 A. I think so, yes.

3 Q. And the purpose of the nylon cap ply in
4 this, what we call off-the-road tire, would that be to
5 enhance durability and prevent tread belt separation
6 just like it would be in a high-speed tire?

7 MR. HORELICK: Form.

8 THE WITNESS: Yes.

9 BY MR. KASTER:

10 Q. So does it help with off-road impacts and
11 that sort of thing, to make the tire more durable?

12 MR. HORELICK: Form.

13 THE WITNESS: It has some effect, yes.

14 BY MR. KASTER:

15 Q. Now, you were asked a question about the
16 Rodriguez case, the Hendricks case and the Upshaw case.
17 I want to ask you a little different question. I want
18 to ask you to assume, in all three of those cases,
19 someone was terribly injured or killed or both. I want
20 to ask you to assume in all three of those cases it was
21 a Cooper tire without cap plies. If that's true, would
22 you be critical of the design of those tires for failing
23 to include a nylon cap ply or restrictor belt?

24 MR. HORELICK: Form.

25 THE WITNESS: Yes.

Page 189

1 poor adhesion?

2 MR. HORELICK: Form.

3 THE WITNESS: Correct.

4 BY MR. KASTER:

5 Q. As the resident technologist when you were
6 helping startup companies build steel-belted radial
7 tires, were you not Cooper's representative to those
8 companies?

9 A. Cooper Avon, yes.

10 Q. Yes.

11 A. Yes.

12 Q. And did you not speak for Cooper Avon when
13 you told them how they should start up their plant and
14 how they should build tires?

15 MR. HORELICK: Form.

16 THE WITNESS: Correct, yes.

17 BY MR. KASTER:

18 Q. So you did speak for Cooper Avon?

19 MR. HORELICK: Form.

20 THE WITNESS: Yes.

21 BY MR. KASTER:

22 Q. The buck stopped with you, didn't it?

23 MR. HORELICK: Form.

24 THE WITNESS: Yes. No, not necessarily.

25 BY MR. KASTER:

48 (Pages 186 to 189)