

In Center for Auto Safety v. Goodyear Tire & Rubber Co., 2019 WL 6317762 (Ariz. Ct. App. Nov. 26, 2019), the Arizona Court of Appeals held that a lower court abused its discretion in ordering disclosure of Goodyear tire trade secrets as being in the public interest without addressing the specific provisions of the Arizona Uniform Trade Secrets Act.

This case involved an intervenor's attempt to unseal records produced by Goodyear Tire & Rubber Co. (Goodyear) in products-liability litigation regarding the suitability of its G159 tire for highway use by motorhomes. In 2005, a family (the Haegers) filed a products-liability action in Arizona federal district court against Goodyear, alleging that the company's model G159 tire was defective when used by motorhomes on highways. In that action (Haeger I), Goodyear produced a number of documents designated "confidential" and subject to a stipulated protective order. The Haegers did not challenge Goodyear's production or the confidentiality designations before settling. Shortly thereafter, a second family (the Schalmos) filed a nearly identical products-liability action in Florida. That case was also subject to a protective order regarding Goodyear's trade secrets and the jury ultimately found that the G159 was defective in design and unsuitable for highway use by motorhomes.

After the jury ruled for the Schalmos, the Haegers' counsel learned that Goodyear had produced documents in the Schalmos' case that it had withheld in the Haegers' case. The Haegers filed an action in superior court, claiming settlement fraud and abuse of process (Haeger II). The court ordered Goodyear to produce the transcript of the Schalmos trial and eventually directed the company to produce more than 30,000 documents. Both parties filed their documents under seal in Haeger II and the Haegers never challenged the protective order itself or the Goodyear's document confidentiality designations before settling this second case.

The Haegers also sought discovery sanctions in the original federal court proceeding in a case that went to the U.S. Supreme Court. See *Goodyear Tire & Rubber Co. v. Haeger* 137 S.Ct. 1178 (2017).

During the Haeger II settlement negotiations, Goodyear's co-defendant in Haeger I, Spartan Chassis, Inc., moved to intervene and obtain documents designated "confidential" in Haeger II under the protective order issued in that case. Shortly thereafter, a third party, the Center for Auto Safety (CAS), intervened and moved to unseal all court records in the case and vacate the court's blanket protective order. CAS argued that the public had a right to access the sealed record because it contained evidence that could demonstrate an ongoing risk to public safety. After an in camera review, the superior court concluded that many of the documents Goodyear sought to protect were, in fact, trade secrets, but found that Goodyear's interest in protecting the information "did not outweigh the public's need for access." *Id.* at *3. The court held that Goodyear had not stated its interest in protecting the secrets with sufficient particularity and that the "continued need for confidentiality was reduced by the fact that the G159 tire had been discontinued." The court stayed its order pending appeal.

The Arizona Court of Appeals held, as an initial matter, that the superior court applied the wrong legal standard to CAS's motion to vacate the protective order. *Id.* at *4. The appellate court noted that although federal case law imposes no specific standard on a party that moves to unseal documents, Arizona Rule 5.4 requires a court "to analyze the same factors to unseal a document

as it [would] to seal it.” Id. at *6. Thus, a party that wishes to unseal documents bears the burden of establishing good cause for disclosure and the superior court’s use of a complex balancing test rather than a straightforward application of Rule 5.4 was an abuse of discretion. Id. at *5 (“CAS, as a third-party intervenor, must meet a heavy burden to show why the public needs access to confidential trade secrets”).

After a thorough analysis of the Uniform Trade Secrets Act (UTSA), the court of appeals rejected the superior court’s conclusion that public interest considerations justified unsealing Goodyear’s trade secrets. It held that “[g]iven the inflexible command in the UTSA that courts shall preserve the secrecy of an alleged trade secret, we see nothing in the court’s findings to justify the unsealing order.” Id. at *6 (internal quotation marks and citation omitted). The court’s holding rested on its conclusion that “a court may expose trade secrets only in extraordinary circumstances, such as when the information has lost the independent economic value created by its secrecy, or when secrecy represents a significant threat to the public welfare.” Id. at *5.

The court of appeals acknowledged that the public had a strong interest in road safety and prompt removal of a safety hazard, but concluded that this interest had already been largely vindicated by the information available about the Goodyear tire. This information included a letter sent by Haeger’s counsel to the National Transportation Safety Board, along with copies of a number of documents containing trade secrets, and then filed under seal with the court. The Haeger letter had been mistakenly given by a court clerk to a journalist who, not being bound by the court’s protective order, wrote a news story about the letter and published the letter and its contents, including some of the trade secrets at issue. Id. at *3. As a result of this and other information in the public domain, the court of appeals found that the public was already sufficiently on notice about the dangers of the tire and concluded there would be marginal value in unsealing the remaining documents. Id. at *6.

The court further rejected the superior court’s determination that Goodyear’s interest in confidentiality was reduced because the tire model was outdated, noting that “old trade secrets are still protectable” to same extent as new secrets. Id. at *5.

Significantly, the court also held that Goodyear’s prior misconduct during discovery did not alter the court’s analysis about whether the company’s trade secrets should remain protected: “[i]t is true that Goodyear’s conduct during previous discovery has been anything but admirable, but a party’s discovery misconduct (which harms a party to the litigation) is not effectively redressed by the public disclosure of secrets at the request of a third-party intervenor.” Id. at *7.

The court of appeals rejected Goodyear’s claims that the trial court’s actions violated the Full Faith and Credit Clause of the U.S. Constitution and principles of comity by failing to follow the Schalmo court regarding the protective order and the sealed documents. It ruled that the Full Faith and Credit Clause applies only to final judgments, not protective orders, and comity was not at issue because the protective orders in both the Florida and Arizona proceedings had been entered without objection of either party. The court of appeals reversed the ruling of the superior court terminating the protective order and unsealing the documents and remanded the case for further proceedings.