

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tyler Armstrong, as Trustee for the Next-of-Kin of Terrance W. Armstrong, Deceased, and Joshua McCaskey, as Trustee for The Next-of-Kin of Kari Jo Armstrong, Deceased,

Wrongful Death

Court File No.

NOTICE OF REMOVAL

Plaintiffs,

vs.

Sumitomo Rubber USA, LLC f/k/a Goodyear Dunlop Tires North America, Ltd.; The Goodyear Tire & Rubber Company; and Harley Davidson, Inc.,

Defendants.

Sumitomo Rubber USA, LLC f/k/a Goodyear Dunlop Tires North America, Ltd. (“GDTNA”) and The Goodyear Tire & Rubber Company (“Goodyear”) (collectively “Defendants”), give notice of the removal of this action to the United States District Court for the District of Minnesota, pursuant to 28 U.S.C. §§ 1332 and 1441. As grounds for removal, Defendants state as follows:

1. Plaintiffs have served a Complaint venued in the District Court, Fourth Judicial District, Hennepin County, Minnesota, against Defendants, styled *Tyler Armstrong, as Trustee for The Next-of-Kin of Terrance W. Armstrong, Deceased, and Joshua McCaskey, as Trustee for The Next-of-Kin of Kari Jo Armstrong, Deceased vs. Sumitomo Rubber USA, LLC f/k/a Goodyear Dunlop Tires North America, Ltd.; The Goodyear Tire and Rubber Company, and Harley-Davidson, Inc.* Plaintiffs’ Complaint

asserts eleven causes of action, including claims based on allegations of manufacturing, marketing, and design defects, negligence, breach of warranties, misrepresentation, and common law and statutory fraud arising from an accident that occurred along Interstate 35 in Pine County, Minnesota on July 4, 2013.

2. Goodyear was served with the Summons and Complaint on July 5, 2016, and GDTNA was served with the Summons and Complaint on July 6, 2016. Copies of the pleadings and process served are attached as **Exhibit A**, as required by 28 U.S.C. § 1446(a), and incorporated herein by reference.

3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), as it is filed within thirty days of Goodyear's receipt of the Complaint, which is the initial pleading setting forth the claim for relief upon which this action or proceeding is based.

4. This Notice of Removal is being filed in the United States District Court of Minnesota pursuant to 28 U.S.C. § 1441(a), as the District Court of Minnesota is the federal judicial district encompassing the Hennepin County District Court.

5. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and the matter is between citizens of different states, and the parties are completely diverse.

6. The amount in controversy exceeds \$75,000. This is a civil action relating to Plaintiffs' claims for damages arising from a motorcycle accident that resulted in the deaths of Terrance W. Armstrong and Kari Jo Armstrong. Plaintiffs' Complaint alleges

they “are entitled to recover all of the monies paid for the product; to be compensated for the cost of the last medical care and treatment of the Armstrongs and funeral expenses arising out of the use of the product; together with any and all consequential damages recoverable under the law including, but not limited to, past medical and funeral expenses, and loss of future earnings or earning capacity as would have been occasioned by the continued life of the Armstrongs.” (Exh. A, Compl. ¶ 78.) Further, Plaintiffs allege they “have suffered a permanent and substantial personal and pecuniary loss, including the deprivation of advice, counsel, aid, comfort, assistance, guidance, protection, support, and companionship of the decedent, monies, income, goods and services, and the reasonable expectation of such pecuniary loss in the future as would have been occasioned by the continued life of the decedents, the Armstrongs; and have incurred expenses for the Armstrongs’ last care and treatment and funeral and burial expenses; and have otherwise suffered other damages and pecuniary losses. . . all to their damage.” (*Id.* ¶ 81.)

7. In addition to these amounts, Plaintiffs seek attorneys’ fees (Exh. A, Compl. ¶ 79), which must also be included in the calculation of the amount in controversy. *See Peterson v. BASF Corp.*, 12 F. Supp. 2d 964, 968 (D. Minn. 1998).

8. Plaintiffs allege that Defendants, “each of them, jointly and severally,” are liable for damages in excess of \$50,000. (Exh. A, Compl. ¶ 81.) The nature of their claims and the types of damages sought reveal the amount in controversy exceeds \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554,

190 L. Ed. 2d 495 (2014) (“a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

9. Complete diversity of citizenship exists between the parties.

10. Plaintiffs Tyler W. Armstrong and Joshua McCaskey are residents and citizens of the State of Minnesota. (Exh. A, Compl. ¶¶ 1-2.)

11. Plaintiffs’ decedents, Terrance W. Armstrong and Kari Jo Armstrong, were residents and citizens of the State of Minnesota at the time of their death. (*Id.* ¶ 4.)

12. Goodyear is an Ohio corporation whose principal place of business is in Akron, Ohio. Goodyear is thus a citizen of Ohio.

13. Sumitomo Rubber USA, LLC is the successor to the entity formerly known as Goodyear Dunlop Tires North America, Ltd. Sumitomo Rubber USA, LLC is a limited liability company organized and existing under the laws of Ohio with its principal place of business in New York.

14. Sumitomo Rubber USA, LLC’s members are SRI America, Inc. and SRI USA, Inc. SRI America, Inc. is a Delaware corporation with its principal place of business in California. SRI USA, Inc. is a Delaware corporation with its principal place of business in Delaware. Sumitomo Rubber USA, LLC is thus a citizen of Delaware and California.

15. Upon information and belief, Harley-Davidson Motor Company Group, LLC¹ is a limited liability company organized and existing under the laws of Wisconsin.

16. Upon information and belief, Harley-Davidson, Inc. is the sole member of Harley-Davidson Motor Company Group, LLC. Harley-Davidson, Inc. is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. Harley-Davidson Motor Company Group, LLC is thus a citizen of Wisconsin.

17. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Harley-Davidson has consented to the removal of the action. (Consent to Removal by Harley-Davidson, attached hereto as **Exhibit B** and incorporated herein.)

18. Accordingly, because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and there is diversity of citizenship between Plaintiffs and all Defendants, the Court has original jurisdiction over the above-styled action pursuant to 28 U.S.C. § 1332, and this action may be removed pursuant to 28 U.S.C. § 1441.

19. The undersigned counsel is simultaneously serving notice of this removal upon the Plaintiffs and filing a copy of this Notice of Removal with the Clerk of the Hennepin County District Court as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants respectfully remove the above action from the Hennepin County District Court, Minnesota, to the United States District Court for the

¹ Plaintiff has named as a Defendant "Harley-Davidson, Inc." As indicated in Harley-Davidson's Consent to Removal (see Exhibit B), the correct name for the entity in Plaintiffs' Complaint is Harley-Davidson Motor Company Group, LLC.

District of Minnesota, submit that no further proceedings be had in state court, and request such other relief as is necessary and proper.

Date: July 25, 2016

LARSON • KING, LLP

By: s/Mark A. Solheim

Mark A. Solheim (213226)

Anthony J. Novak (351106)

2800 Wells Fargo Place

30 E. Seventh Street

St. Paul, MN 55101

Tel: (651) 312-6500

Fax: (651) 312-6618

msolheim@larsonking.com

tnovak@larsonking.com

and

Edward S. Bott, Jr.*

Clark W. Hedger*

Juliane M. Rodriguez*

Greensfelder, Hemker & Gale, P.C.

10 S. Broadway, Ste. 2000

St. Louis, MO 63102

Tel: (314) 241-9090

Fax: (314) 241-8624

*pro hac vice to be filed

***Attorneys for Defendants Sumitomo Rubber
USA, LLC f/k/a Goodyear Dunlop Tires North
America, Ltd., and The Goodyear Tire &
Rubber Company***

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Tyler Armstrong, as Trustee for The Next-
of-Kin of Terrance W. Armstrong,
Deceased, and Joshua McCaskey, as Trustee
for The Next-of-Kin of Kari Jo
Armstrong, Deceased,

Wrongful Death

Court File No.

SUMMONS

Plaintiffs,

vs.

Sumitomo Rubber USA, LLC f/k/a
Goodyear Dunlop Tires North America,
LTD.; The Goodyear Tire & Rubber
Company; and Harley Davidson, Inc.,

Defendants.

TO: THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

1. **YOU ARE BEING SUED.** The Plaintiffs have started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no Court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at Yira Law Office, Ltd., 102 Main Street South, Suite 201, P.O. Box 518, Hutchinson, MN 55350.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the

Complaint, you do not need to respond. A Default Judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 7-1-16

YIRA LAW OFFICE, LTD.

BY: 

Markus C. Yira, ID. 0271469

Attorneys for Plaintiff

102 Main St. S, Suite 201

P.O. Box 518

Hutchinson, MN 55350

Telephone: (320) 587-0305

Fax: (320) 587-0557

E-mail: myira@yiralaw.com

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Wrongful Death

Court File No. _____

COMPLAINT

Tyler Armstrong, as Trustee for
The Next-of-Kin of Terrance W.
Armstrong, Deceased, and
Joshua McCaskey, as Trustee for
The Next-of-Kin of Kari Jo
Armstrong, Deceased

Plaintiffs,

-VS-

Sumitomo Rubber USA, LLC f/k/a;
Goodyear Dunlop Tires North
America, Ltd.; The Goodyear Tire and Rubber
Company; and Harley-Davidson, Inc.

Defendants.

Come now the plaintiffs by and through their attorneys and for their causes of action
against the Defendants above-named, state and allege as follows:

1. On May 19, 2014, in Hennepin County District Court, plaintiff Tyler Armstrong was duly
appointed to act and serve as trustee for the next-of-kin of Terrance W. Armstrong and plaintiff
Joshua McCaskey was duly appointed to act and serve as trustee for the next-of-kin of Kari Jo
Armstrong. Exhibit 1.

2. At all times relevant herein, Plaintiff Tyler W. Armstrong was a resident and citizen of
the State of Minnesota, currently residing at 5933 Gettysburg Ave. North, New Hope, MN
55428.

3. At all times relevant herein, Plaintiff Joshua McCaskey was a resident and citizen of the
State of Minnesota, currently residing at 20750 Butternut St. NW, Oak Grove, MN 55011.

4. At all times relevant herein, Terrance W. Armstrong and Kari Jo Armstrong (the "Armstrongs"), deceased, were residents and citizens of the State of Minnesota, and at the time of their death on July 4, 2013, resided at 13928 Garnet Terrace NW, Ramsey, MN 55303. Terrance W. Armstrong, deceased, was born on March 29, 1956, and Kari Jo Armstrong, deceased, was born on November 30, 1965.

5. That the defendants are foreign corporations that do business in Hennepin County, Minnesota.

6. At all times relevant herein, Defendant The Goodyear Tire and Rubber Company ("Goodyear"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 200 Innovation Way, Akron, OH 44316-0001.

7. At all times relevant herein, Defendant Sumitomo Rubber USA, LLC, f/k/a Goodyear Dunlop Tires North America, Ltd. ("Dunlop"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 10 Sheridan Drive, Tonawanda, NY 14150.

8. At all times relevant herein, Defendant Harley-Davidson, Inc. ("Harley-Davidson"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 3700 Juneau Avenue, Milwaukee, WI 53208.

9. At all times relevant herein, Defendants Goodyear and Dunlop created, designed, manufactured, tested, labeled, distributed, supplied, marketed, sold, advertised, promoted and distributed in interstate commerce motorcycle tires, including the Dunlop D402, model number MT90B16, part number 301891, rear tire (the "Subject Tire") purchased and used by the

Armstrongs on their 2000 Harley-Davidson Ultra Classic touring motorcycle, (the "Motorcycle").

10. At all times relevant herein, Defendant Harley-Davidson created, designed, manufactured, tested, labeled, distributed, supplied, marketed, sold, advertised, promoted and distributed in interstate commerce motorcycles, including the Armstrongs' 2000 Harley-Davidson Ultra Classic touring motorcycle (the "Motorcycle").

11. Defendants Goodyear and Dunlop widely and successfully marketed the D402 tires in the United States. Defendants undertook an advertising campaign extolling the virtues of the D402 tires. Defendants issued or published representations and advertisements to riding and motorcycling enthusiasts and the general public, including but not limited to, catalogs, prices, specifications, dimensions, features, and photographs of models, the thrust of which were that the D402 tire was the ultimate in quality. Said representations and advertisements were also provided to and issued to authorized D402 tire distributors or suppliers, including Pig Trail Harley-Davidson in Rogers, Arkansas, for distribution to the public.

12. Defendant Harley-Davidson widely and successfully marketed the 2000 Ultra Classic in the United States. Defendant undertook an advertising campaign extolling the virtues of the 2000 Ultra Classic. Defendant issued or published representations and advertisements to riding and motorcycling enthusiasts and the general public, including but not limited to, catalogs, prices, specifications, dimensions, features, and photographs of models, the thrust of which were that the 2000 Ultra Classic was the ultimate in quality, and were particularly suited for touring rides carrying two adult passengers. Said representations and advertisements were also provided to and issued to authorized 2000 Ultra Classic distributors or suppliers, including Zylstra Harley-Davidson in Elk River, MN, for distribution to the public.

13. At all times material herein, each and all the Defendants all had sufficient contacts with Minnesota to be subject to the jurisdiction of the state's courts pursuant to Minnesota Statute Section 543.19.

14. At all relevant times, the Dunlop D402 tire was the only tire approved for use by Harley Davidson as an OEM replacement tire for the 2000 Harley Davidson Ultra Classic.

15. The Subject Tire was built at Defendants Goodyear and Dunlop's Tonawanda, New York plant on or during the 34th week of 2007.

16. The Subject Tire was designed, engineered, inspected, manufactured, marketed, distributed, and sold by Goodyear and Dunlop from their North American headquarters in Tonawanda, New York.

17. The Subject tire was the manufacturer's recommended size for the rear of the Motorcycle. Pursuant to all Defendants' design and installation specifications, the Subject Tire had been purchased and installed at Big Trail Harley Davidson on or about April 10, 2009, located at 2409 Hudson Road, Rogers, Arkansas 72756.

18. On or about July 4, 2013, Ferrance W. Armstrong was operating and Kari Jo Armstrong was a passenger on the Motorcycle. They were taking a day trip along Interstate 35 in Pine County, Minnesota, with appropriate cargo for such a tour and in a manner that was foreseeable and expected by Defendants.

19. While on this day trip, without any obstruction or moisture on the road, the Subject Tire catastrophically deflated, causing a loss of control and crash of the Motorcycle. Mr. and Mrs. Armstrong were thrown from the Motorcycle and passed away from their injuries (the "Accident"). The Accident directly resulted in Mr. and Mrs. Armstrong's deaths.

20. The Armstrongs were not warned, nor otherwise had notice, that the Subject Tire was experiencing a loss of air.

21. The Armstrongs were not warned, nor otherwise had notice, of the propensity of the Dunlop D402 motorcycle tires to experience a sudden loss of pressure resulting in a catastrophic tire failure.

22. Reasonable, safer alternative designs were available that, if used, would have made the Motorcycle equipped with the Subject Tire safe for its intended and reasonably foreseeable use.

23. Goodyear and Dunlop's conduct in knowingly designing, engineering, manufacturing, inspecting, distributing, and selling the D402 tire for use on the 2000 Ultra Classic with the knowledge that it was unfit for use by reasonably expected riders and passengers, failure to recall the tire or warn of the dangerous propensities of D402 tires when used on 2000 Ultra Classics after it knew or should have known of the defects and dangers, failure to manufacture the D402 tires free of defects, and failure to exercise reasonable care to discover the defect all exhibit an entire lack of care and conscious disregard for the safety of humans who use Goodyear and Dunlop's products.

24. Defendant Harley-Davidson's conduct in knowingly and intentionally marketing the 2000 Ultra Classic as a touring motorcycle engineered and designed to carry two adult persons with cargo, and in approving the D402 tires as the only approved OEM tires for the Motorcycle, with the knowledge that it was unfit for use by reasonably expected riders and passengers, its failure to warn of the dangerous propensities of the Motorcycle when equipped with the defective and dangerous D402 tires after it knew or should have known about the dangers and defects, failure to exercise reasonable care to discover the defect and dangers, before and after

the sale of the Motorcycle, all exhibit an entire lack of care and conscious disregard for the safety of humans who use Harley-Davidson's products.

FIRST CAUSE OF ACTION

(Strict Products Liability – Design Defect – Against Defendants Goodyear and Dunlop)

25. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

26. The Subject Tire was defective in design or formulation, in that, when it left the hands of the manufacturer and/or distributor or supplier, it was defective for one or more or all of the following reasons:

- a. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the rubber skim stock being properly bonded to the carcass ply, resulting in the rubber failing to properly adhere to the cords;
- b. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the proper amount or proper type of rubber being applied over the cords;
- c. The Subject Tire was designed, manufactured, inspected, distributed, and sold without proper adhesion of the polyester carcass to the rubber;
- d. The Subject Tire was designed, manufactured, inspected, distributed, and sold with excessive mold flashing at the bead that was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds;
- e. too much rubber covering the bead which resulted in a flash;
- f. The Subject Tire was designed, manufactured, inspected, distributed, and sold with cavities in the bead region where air can pass through that were exacerbated

by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; and

- g. The Subject Tire was designed, manufactured, inspected, distributed, and sold with too little rubber-coated fabric (a.k.a. "chafing rubber") surrounding the bead to protect against chafing, which was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds;

27. Alternatively, the Subject Tire was defective in design or formulation, in that, when it left the hands of the manufacturer and/or distributor or supplier, the Subject Tire was unreasonably dangerous; it was more dangerous than an ordinary consumer would expect.

28. The Subject Tire was defective due to inadequate warnings or instructions because the manufacturer knew or should have known through testing or otherwise that the defects in the tire created a high risk of bodily injury and serious harm, and even death, about which Defendants Goodyear and Dunlop failed to warn.

29. The Subject Tire was defective due to inadequate post-marketing warnings or instructions because, after the manufacturer and/or supplier knew or should have known of the increased risk of catastrophic pressure loss, and other risks, it failed to provide adequate warnings to users or purchasers or timely recall such tires, and instead continued to sell and distribute D402 tires without the precautions.

30. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

SECOND CAUSE OF ACTION

(Strict Products Liability – Manufacturing Defect –

Against Defendants Goodyear and Dunlop)

31. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

32. The Subject Tire was not reasonably safe for its intended use and was defective with respect to its manufacture, as described herein, in that Defendants Goodyear and Dunlop deviated materially from their design and manufacturing specifications and/or such design and manufacture created an unreasonable foreseeable risk of harm to foreseeable motorcycle riders, including the Armstrongs;

33. The Subject Tire is inherently dangerous and defective, unfit and unsafe for its ordinary and reasonably foreseeable uses;

34. At all times relevant hereto, the Subject Tire was defective and unreasonably dangerous for its intended use and was defectively manufactured as described herein for one or more or all of the following reasons:

- h. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the rubber skin stock being properly bonded to the carcass ply, resulting in the rubber failing to properly adhere to the cords;
- i. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the proper amount or proper type of rubber being applied over the cords;
- j. The Subject Tire was designed, manufactured, inspected, distributed, and sold without proper adhesion of the polyester carcass to the rubber;

k. The Subject Tire was designed, manufactured, inspected, distributed, and sold with excessive mold flashing at the bead that was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; too much rubber covering the bead which resulted in a flash;

m. The Subject Tire was designed, manufactured, inspected, distributed, and sold with cavities in the bead region where air can pass through that were exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; and

n. The Subject Tire was designed, manufactured, inspected, distributed, and sold with too little rubber-coated fabric (a.k.a. "chafing rubber") surrounding the bead to protect against chafing, which was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds.

35. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

THIRD CAUSE OF ACTION

(Breach of Express Warranty Against Defendants Goodyear and Dunlop)

36. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

37. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, expressly warranted to users and consumers, including the Armstrongs, D402 tires were safe and that such safety had been shown by use of the best available materials and the

most conscientious craftsmanship, and by meeting or exceeding applicable standards and regulations.

38. The D402 tires do not conform to these express representations because they are not safe and have a high degree of probability of causing serious bodily harm, even death, because the D402 tires suffer catastrophic pressure loss.

39. As a direct and proximate result of the breach of said warranties, the Armstrongs were caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty Against Defendants Goodyear and Dunlop)

40. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

41. At the time Defendants Goodyear and Dunlop marketed, sold and distributed D402 tires, Defendants Goodyear and Dunlop knew of the use for which the D402 tires were intended and Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, impliedly warranted the product to be of merchantable quality and safe and fit for such use.

42. Users and consumers, including the Armstrongs, reasonably relied upon the skill and judgment of Defendants Goodyear and Dunlop as to whether the D402 tires were of merchantable quality and safe and fit for intended use.

43. Contrary to such implied warranties, the D402 tires were not of merchantable quality or safe or fit for their intended use, because the product was and is unreasonably dangerous and unfit for the ordinary purposes for which the D402 were used.

44. As a direct and proximate result of the breach of implied warranties by Defendants Goodyear and Dunlop, the Armstrongs were caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

FIFTH CAUSE OF ACTION

(Negligence Against Defendants Goodyear and Dunlop)

45. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

46. At all times relevant herein, Defendants Goodyear and Dunlop had a duty to exercise reasonable care in all aspects of the formulation, design, manufacture, compounding, testing, inspection, labeling, distribution, marketing, sale, withdrawal and recall of the D402 tires due to the propensity of these tires to suffer catastrophic pressure loss to insure that the consuming public, including the Armstrongs, obtained accurate information, warnings, and instructions for the safe use of the D402 tires, if any such use was possible.

47. At all times relevant herein, Defendants Goodyear and Dunlop knew or in the exercise of reasonable care should have known that the D402 tires were not properly manufactured, formulated, designed, compounded, tested, inspected, labeled, distributed, marketed, examined, maintained, sold, prepared, withdrawn, retrofitted, or recalled.

48. Each of the following acts and omissions herein alleged were negligently and carelessly performed by Defendants Goodyear and Dunlop, resulting in a breach of the duties as set forth above. These acts and omissions include, but are not limited to, negligent and careless research and testing of said product; negligent and careless design or formulation of said product; negligent and careless manufacture of said product; negligent and careless inspection of said product; negligent and careless failure to give adequate instructions, information, and warnings.

for the safe use of said product; negligent and careless failure to give adequate warnings to consumers, the Armstrongs, and the public in general of the potentially dangerous, defective, unsafe, and deleterious propensity of said product and of the risks associated with its use; and negligent and careless conduct with respect to withdrawal or recall of the D402 tires from the market.

49. As a direct and proximate result of the negligence of Defendants Goodyear and Dunlop, the Armstrongs were directly caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

SIXTH CAUSE OF ACTION

(Misrepresentation Against Defendants Goodyear and Dunlop)

50. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

51. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, falsely represented to consumers, riders and motorcycle enthusiasts, and to the general public, that D402 tires were safe when used as instructed, when, in fact, they were dangerous to such consumers.

52. Defendants Goodyear and Dunlop failed to exercise reasonable care and competence in obtaining or communicating information regarding the safe use of D402 tires and otherwise failed to exercise reasonable care in transmitting important and necessary information to the Armstrongs.

53. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, made the aforesaid representations in the course of Defendants' business as designers, manufacturers, and distributors of the D402 tires, despite having no reasonable basis for their

assertion that these representations were true and/or without having accurate or sufficient information concerning the aforesaid representations, Defendants Goodyear and Dunlop were aware that, without such information, they could not accurately make the aforesaid representations.

54. At the time the aforesaid representations were made, Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, intended to induce the Armstrongs to rely on such representations.

55. At the time the aforesaid representations were made by Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, and at the time the Armstrongs received the D402 tires for purchase, they were ignorant of the falsity of Defendants' representations and reasonably believed them to be true. In reasonable reliance upon said representations, the Armstrongs purchased D402 tires.

56. As a direct and proximate result of reliance upon Defendants Goodyear and Dunlop's misrepresentations, the Armstrongs purchased D402 tires and were directly caused to suffer injury and die prematurely as a result of the use of said tires.

SEVENTH CAUSE OF ACTION

(Fraud Against Defendants Goodyear and Dunlop)

57. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

58. Defendants Goodyear and Dunlop, either solely or by and through Defendant Pig Trail Harley-Davidson, falsely and fraudulently represented to the Armstrongs and other members of the general public that D402 tires were safe, durable, made from the best available materials, and met or exceeded applicable standards. The representations made by Defendants were in fact

false, the true facts being that the D402 tires, and possibly other models, were in fact dangerous to the health and safety of the Armstrongs and other consumers.

59. When Defendants Goodyear and Dunlop, either solely or by and through Defendant Pig Trail Harley Davidson, by persons speaking on their behalf, made the aforesaid representations, Defendants knew the representations to be false. Alternatively, Defendants made such representations recklessly without regard to the truth or falsity of such representations.

60. Said representations were made with the intent to defraud and deceive the Armstrongs and other consumers with the intent to induce them to purchase and use D402 tires.

61. The Armstrongs, at the time the representations were made, were ignorant of their falsity and believed them to be true. In reasonable reliance thereon, the Armstrongs purchased the D402 tires and were directly caused to suffer injury and die prematurely as a result of the use of said tires.

EIGHTH CAUSE OF ACTION

(Failure to Warn and Post-Sale Failure to Warn Against Defendant Harley-Davidson)

62. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

63. The Motorcycle, manufactured for and/or supplied to the Armstrongs by Defendant Harley-Davidson was defective due to inadequate warnings or instructions because the manufacturer knew or should have known through testing or otherwise that the D402 tires it approved for use on the Motorcycle created a high risk of bodily injury and serious harm, and even death, about which Defendant Harley-Davidson failed to warn.

64. The Motorcycle, manufactured for and/or supplied to the Armstrongs was defective due to inadequate post-marketing warnings or instructions because, after the manufacturer and/or

supplier knew or should have known of the increased risk of the D402 tires catastrophically losing pressure, and other risks, it failed to provide adequate warnings to users or purchasers or timely recall or retrofit the Motorcycle and others like it, and instead continued to sell and distribute the Motorcycle to be used with Defendant Harley-Davidson's approved D402 tires, without the precautions.

65. As a direct and proximate result of Defendant Harley-Davidson's conduct, the defective nature of the Armstrong's Motorcycle equipped with the D402 tires, was the direct cause of and/or substantial contributing factor in causing the death of the Armstrongs.

NINTH CAUSE OF ACTION

(Marketing Defect Against Defendant Harley-Davidson)

66. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

67. At all times relevant hereto, Defendant Harley-Davidson marketed, sold, advertised, presented, or otherwise held out the 2000 Ultra Classic as the preeminent touring motorcycle, particularly for long-distance rides carrying a driver, a passenger, and their cargo.

68. At all times relevant hereto, Defendant Harley-Davidson knew or should have reasonably expected that its listed gross vehicle weight for the Motorcycle would or could be exceeded during normal, reasonable, and reasonably anticipated use of the Motorcycle. Defendant Harley-Davidson knew or should have known that when equipped with the very tires it approved for OEM use, the D402s, the Motorcycle posed an unreasonably high risk of serious bodily harm or death. Despite such knowledge, such knowledge, Defendant Harley-Davidson failed to recall the Motorcycle and others like it, to issue warnings to the public and to owners of motorcycles

equipped with the D402s and to the Armstrongs specifically, and to test and approve a safer alternative tire for use on its motorcycles, including the Motorcycle.

69. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

TENTH CAUSE OF ACTION

(Negligence Against Defendant Harley-Davidson)

70. Plaintiffs reallege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

71. At all times relevant herein, Defendant Harley-Davidson had a duty to exercise reasonable care in all aspects of the formulation, design, manufacture, compounding, testing, inspection, labeling, distribution, marketing, sale, withdrawal and recall of the Motorcycle when equipped with D402 tires due to the propensity of these tires to suffer catastrophic pressure loss to insure that the consuming public, including the Armstrongs, obtained accurate information, warnings, and instructions for the safe use of the Motorcycle equipped with the only Harley-Davidson approved OEM tires, the D402 tires, if any such use was possible.

72. At all times relevant herein, Defendant Harley-Davidson knew or in the exercise of reasonable care should have known that the Motorcycle equipped with D402 tires was not properly manufactured, formulated, designed, compounded, tested, inspected, labeled, distributed, marketed, examined, maintained, sold, prepared, withdrawn, retrofitted, or recalled.

73. Each of the following acts and omissions herein alleged were negligently and carelessly performed by Defendant Harley-Davidson, resulting in a breach of the duties as set forth above. These acts and omissions include, but are not limited to, negligent and careless research and

testing of said product; negligent and careless design or formulation of said product; negligent and careless manufacture of said product; negligent and careless inspection of said product; negligent and careless failure to give adequate instructions, information, and warnings for the safe use of said product; negligent and careless failure to give adequate warnings to consumers; the Armstrongs, and the public in general of the potentially dangerous, defective, unsafe, and deleterious propensity of said product and of the risks associated with its use; and negligent and careless conduct with respect to withdrawal or recall of the Motorcycle equipped with D402 tires from the market.

74. As a direct and proximate result of the negligence of Defendant Harley-Davidson, the Armstrongs were directly caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

ELEVENTH CAUSE OF ACTION

(Violation of False Advertising Act, Consumer Fraud Act, Unlawful Trade Practices Act, and the Uniform Deceptive Trade Practices Act Against All Defendants)

75. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

76. By reason of the conduct as alleged herein, and by inducing the Armstrongs to purchase and use the Motorcycle and the D402 tires through the use of false and/or misleading advertising, information, representations, and statements, Defendants violated the provisions of Minn. Stat. §§ 325F.67, 325F.69, 325D.13, and 325D.44.

77. As a direct and proximate result of Defendants' statutory violations, the Armstrongs were induced to purchase and use the Motorcycle with the D402 tires, which would not have been used or purchased had Defendants not issued false and/or misleading advertising,

representations, information, and statements to induce the Armstrongs to use or purchase the products.

78. By reason of such violations and pursuant to Minn. Stat. §§ 8.31, subd. 3a, 325D.44, 325F.67, and 325F.68-70, Plaintiffs are entitled to recover all of the monies paid for the product; to be compensated for the cost of the last medical care and treatment of the Armstrongs and funeral expenses arising out of the use of the product; together with any and all consequential damages recoverable under the law including, but not limited to, past medical and funeral expenses, and loss of future earnings or earning capacity as would have been occasioned by the continued life of the Armstrongs;

79. Pursuant to Minn. Stat. § 8.31, Plaintiffs are entitled to recover costs and disbursements, including costs of investigation and reasonable attorneys' fees, and any other equitable relief the Court deems just and proper.

DAMAGES

80. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

81. As a direct and proximate result of the Defendants' acts and conduct, Plaintiffs Tyler Armstrong as trustee for the next-of-kin of Terrance W. Armstrong and Joshua McCaskey as trustee for the next-of-kin of Kari Jo Armstrong, deceased, have suffered a permanent and substantial personal and pecuniary loss, including the deprivation of advice, counsel, aid, comfort, assistance, guidance, protection, support, and companionship of the decedent, monies, income, goods and services, and the reasonable expectation of such pecuniary loss in the future as would have been occasioned by the continued life of decedents, the Armstrongs; and have incurred expenses for the Armstrongs' last care and treatment and funeral and burial expenses;

and have otherwise suffered other damages and pecuniary losses within the meaning of Minn. Stat. § 573.02, all to their damage in a sum exceeding Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, Plaintiffs pray for damages and demand Judgment against the Defendants, and each of them, jointly and severally, for a reasonable amount in excess of Fifty Thousand Dollars (\$50,000.00), together with the costs and disbursements of this action incurred herein, including reasonable attorneys' fees, interest on the Judgment as allowed by law, and injunctive relief enjoining Defendants from selling or marketing Ultra Classic or other motorcycles, with D402 tires, or selling or marketing D402 tires as OEM tires for such motorcycles, until such time as a recall program designed to alert existing owners/consumers is either mandated or entered voluntarily by Defendants, to prevent further harm to the public.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL.

Dated: 7/1/16

YIRA LAW OFFICE, LTD.

BY: Markus C. Yira

Markus C. Yira, I.D. 0271469

102 Main St. S., Suite 201

P.O. Box 518

Hutchinson, MN 55350

Telephone: (320) 587-0305

Facsimile: (320) 587-0557

Email: myira@yiralaw.com

ATTORNEYS FOR PLAINTIFFS

-and-

Dated: 7/1/16

HILLIARD MUNOZ GONZALES, LLP

By: [Signature]

Robert C. Hilliard (*pro hac vice*)
Texas Bar No. 09677700
bobh@hmglawfirm.com
Catherine Tobin (*pro hac vice*)
Texas Bar No. 24013642
catherine@hmglawfirm.com
Rob George (*pro hac vice*)
Texas Bar No. 24067623
rgeorge@hmglawfirm.com
Bradford Klager (*pro hac vice*)
Texas Bar No. 24012969
brad@hmglawfirm.com

719 S. Shoreline Dr., Suite 500
Corpus Christi, Texas 78401
(361) 882-1612 ph.
(361) 882-3015 fax
New Hope, MN 55427
(763) 540-9992

ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded pursuant to Minn. Stat. § 549.211, Subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: 7/1/14


Markus C. Yira

Dated: 7/1/14


Rob George

27-CV-147332

Filed in Fourth Judicial District Court
5/19/2014 11:24:50 AM
Hennepin County, Civil, MN

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

27-CV-14-7332

In the Matter of the Appointment
of a Trustee for the Next-of-Kin
of Kari Jo Armstrong, Deceased

ORDER APPOINTING TRUSTEE
FOR THE NEXT-OF-KIN OF
KARI JO ARMSTRONG

WRONGFUL DEATH

The foregoing petition having been duly considered:

IT IS HEREBY ORDERED that, upon the filing of an oath pursuant to M.S.A.
§358.06, Joshua McCaskey be appointed Trustee for the Next-of-Kin of Kari Jo Armstrong,
to maintain the action described in said petition, and that he serve without bond.

Dated: 5-19-2014

BY THE COURT

Theresa M. Galt
Judge of the District Court



27-CV-14-7331

Filed in Fourth Judicial District Court
5/9/2014 3:14:08 PM
Hennepin County Civil, MN

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In the Matter of the Appointment
of a Trustee for the Next of Kin
of Terrance W. Armstrong, Deceased

ORDER APPOINTING TRUSTEE
FOR THE NEXT OF KIN OF
TERRANCE W. ARMSTRONG

WRONGFUL DEATH

The foregoing petition having been duly considered

IT IS HEREBY ORDERED that, upon the filing of an oath pursuant to M.S.A.

§358.06, Tyler Armstrong be appointed Trustee for the Next of Kin of Terrance W.
Armstrong to maintain the action described in said petition, and that he serve without bond.

Dated: 5/9/14 2014

BY THE COURT


Judge of the District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Tyler Armstrong, as Trustee for the Next-
of-Kin of Terrance W. Armstrong,
Deceased, and Joshua McCaskey, as
Trustee for The Next-of-Kin of Kari Jo
Armstrong, Deceased,

Plaintiffs,

vs.

Sumitomo Rubber USA, LLC f/k/a
Goodyear Dunlop Tires North America,
Ltd.; The Goodyear Tire & Rubber
Company; and Harley Davidson, Inc.,

Defendants.

Wrongful Death

Court File No.

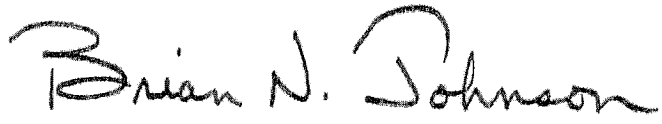
**CONSENT TO REMOVAL BY
HARLEY-DAVIDSON MOTOR
COMPANY GROUP, LLC
(IMPROPERLY NAMED IN
PLAINTIFFS' COMPLAINT AS
"HARLEY DAVIDSON, INC.")**

Harley-Davidson Motor Company Group, LLC (improperly named in Plaintiffs' Complaint as "Harley Davidson, Inc.") ("Harley-Davidson"), by and through its undersigned attorney, hereby consents to the Notice of Removal of Sumitomo Rubber USA, LLC, f/k/a Goodyear Dunlop Tires North America, Ltd. and The Goodyear Tire & Rubber Company pursuant to 28 U.S.C. § 1446(a)(2)(A). Harley-Davidson was served with the lawsuit on July 5, 2016, and has not filed an answer to Plaintiffs' Complaint.

Dated: July 25, 2016

NILAN JOHNSON LEWIS PA

By:



Brian N. Johnson, Reg. No. 132767
120 South Sixth Street, Suite 400
Minneapolis, MN 55402-4501
(612) 305-7500

And

Exhibit B

RUMBERGER KIRK & CALDWELL

E.H. "Skip" Eubanks, Jr. (*pro hac vice to be submitted*)

Steve Klein (*pro hac vice to be submitted*)

Lincoln Plaza, Suite 1400

300 South Orange Avenue

Orlando, FL 32801

(407) 872-7300

Attorneys for Defendant Harley-Davidson Motor
Company Group, LLC

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Tyler Armstrong, as Trustee for the Next-of-Kin of Terrance W. Armstrong, Deceased, and Joshua McCaskey, as Trustee for The Next-of-Kin of Kari Jo Armstrong, Deceased,

Court File No.: _____

Case Type: _____

Judge: _____

Plaintiffs,

**NOTICE OF FILING
NOTICE OF REMOVAL**

vs.

Sumitomo Rubber USA, LLC f/k/a
Goodyear Dunlop Tires North America,
Ltd.; The Goodyear Tire & Rubber
Company; and Harley Davidson, Inc.,

Defendants.

TO: PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEYS, Markus C. Yira, Yira Law Office, Ltd., 102 Main St. S, Suite 201, P.O. Box 518 Hutchinson, MN 55350; and Robert C. Hilliard, Catherine Tobin, Rob George and Bradford Klager, Hilliard Munoz Gonzales, LLP, 719 S. Shoreline Dr., Suite 500, Corpus Christi, TX 78401:

PLEASE TAKE NOTICE that on the 25th day of July, 2015, Defendants, Sumitomo Rubber USA, LLC, f/k/a Goodyear Dunlop Tires North America, Ltd., and The Goodyear Tire & Rubber Company, will file a Notice of Removal of the above-entitled action in the United States District Court for the District of Minnesota. A true copy of the Notice of Removal is attached and is filed with the Court in accordance with 28 U.S.C. § 1446. A copy of the Summons and Complaint is also attached.

Date: July 25, 2015

LARSON • KING, LLP

By: s/Mark A. Solheim

Mark A. Solheim (213226)

Anthony J. Novak (351106)

2800 Wells Fargo Place

30 E. Seventh Street

St. Paul, MN 55101

Tel: (651) 312-6500

Fax: (651) 312-6618

msolheim@larsonking.com

tnovak@larsonking.com

***Attorneys for Defendants Sumitomo Rubber
USA, LLC f/k/a Goodyear Dunlop Tires North
America, LTD., and The Goodyear Tire &
Rubber Company***

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Tyler Armstrong, as Trustee for The Next-
of-Kin of Terrance W. Armstrong,
Deceased, and Joshua McCaskey, as Trustee
for The Next-of-Kin of Kari Jo
Armstrong, Deceased,

Wrongful Death

Court File No.

SUMMONS

Plaintiffs,

vs.

Sumitomo Rubber USA, LLC f/k/a
Goodyear Dunlop Tires North America,
LTD.; The Goodyear Tire & Rubber
Company; and Harley Davidson, Inc.,

Defendants.

TO: THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

1. **YOU ARE BEING SUED.** The Plaintiffs have started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no Court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at Yira Law Office, Ltd., 102 Main Street South, Suite 201, P.O. Box 518, Hutchinson, MN 55350.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the

Complaint, you do not need to respond. A Default Judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 7-1-16

YIRA LAW OFFICE, LTD.

BY: 

Markus C. Yira, I.D. 0271469

Attorneys for Plaintiff

102 Main St. S, Suite 201

P.O. Box 518

Hutchinson, MN 55350

Telephone: (320) 587-0305

Fax: (320) 587-0557

E-mail: myira@yiralaw.com

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Wrongful Death

Court File No. _____

COMPLAINT

Tyler Armstrong, as Trustee for
The Next of Kin of Terrance W.
Armstrong, Deceased, and
Joshua McCaskey, as Trustee for
The Next of Kin of Kari Jo
Armstrong, Deceased

Plaintiffs,

-VS-

Sumitomo Rubber USA, LLC f/k/a;
Goodyear Dunlop Tires North
America, Ltd.; The Goodyear Tire and Rubber
Company; and Harley-Davidson, Inc.

Defendants.

Come now the plaintiffs by and through their attorneys and for their causes of action
against the Defendants above named, state and allege as follows:

1. On May 19, 2014, in Hennepin County District Court, plaintiff Tyler Armstrong was duly
appointed to act and serve as trustee for the next-of-kin of Terrance W. Armstrong and plaintiff
Joshua McCaskey was duly appointed to act and serve as trustee for the next-of-kin of Kari Jo
Armstrong. Exhibit L.

2. At all times relevant herein, Plaintiff Tyler W. Armstrong was a resident and citizen of
the State of Minnesota, currently residing at 5933 Gettysburg Ave. North, New Hope, MN
55428.

3. At all times relevant herein, Plaintiff Joshua McCaskey was a resident and citizen of the
State of Minnesota, currently residing at 20750 Butternut St. NW, Oak Grove, MN 55011.

4. At all times relevant herein, Terrance W. Armstrong and Karl Jo. Armstrong (the "Armstrongs"), deceased, were residents and citizens of the State of Minnesota, and at the time of their death on July 4, 2013, resided at 13928 Garnet Terrace NW, Ramsey, MN 55303. Terrance W. Armstrong, deceased, was born on March 29, 1956, and Karl Jo. Armstrong, deceased, was born on November 30, 1965.

5. That the defendants are foreign corporations that do business in Hennepin County, Minnesota.

6. At all times relevant herein, Defendant The Goodyear Tire and Rubber Company ("Goodyear"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 200 Innovation Way, Akron, OH 44316-0001.

7. At all times relevant herein, Defendant Sumitomo Rubber USA, LLC, f/k/a Goodyear Dunlop Tires North America, Ltd. ("Dunlop"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 10 Sheridan Drive, Tonawanda, NY 14150.

8. At all times relevant herein, Defendant Harley-Davidson, Inc. ("Harley-Davidson"), was a corporation or other business organization regularly and consistently doing business in the State of Minnesota, with its principal place of business at 3700 Juneau Avenue, Milwaukee, WI 53208.

9. At all times relevant herein, Defendants Goodyear and Dunlop created, designed, manufactured, tested, labeled, distributed, supplied, marketed, sold, advertised, promoted and distributed in interstate commerce motorcycle tires, including the Dunlop D402, model number MT90B16, part number 301891, rear tire (the "Subject Tire") purchased and used by the

Armstrongs on their 2000 Harley-Davidson Ultra Classic touring motorcycle, (the "Motorcycle").

10. At all times relevant herein, Defendant Harley-Davidson created, designed, manufactured, tested, labeled, distributed, supplied, marketed, sold, advertised, promoted and distributed in interstate commerce motorcycles, including the Armstrongs' 2000 Harley-Davidson Ultra Classic touring motorcycle (the "Motorcycle").

11. Defendants Goodyear and Dunlop widely and successfully marketed the D402 tires in the United States. Defendants undertook an advertising campaign extolling the virtues of the D402 tires. Defendants issued or published representations and advertisements to riding and motorcycling enthusiasts and the general public, including but not limited to, catalogs, prices, specifications, dimensions, features, and photographs of models, the thrust of which were that the D402 tire was the ultimate in quality. Said representations and advertisements were also provided to and issued to authorized D402 tire distributors or suppliers, including Pig Trail Harley-Davidson in Rogers, Arkansas, for distribution to the public.

12. Defendant Harley-Davidson widely and successfully marketed the 2000 Ultra Classic in the United States. Defendant undertook an advertising campaign extolling the virtues of the 2000 Ultra Classic. Defendant issued or published representations and advertisements to riding and motorcycling enthusiasts and the general public, including but not limited to, catalogs, prices, specifications, dimensions, features, and photographs of models, the thrust of which were that the 2000 Ultra Classic was the ultimate in quality, and were particularly suited for touring rides carrying two adult passengers. Said representations and advertisements were also provided to and issued to authorized 2000 Ultra Classic distributors or suppliers, including Zylstra Harley-Davidson in Elk River, MN, for distribution to the public.

13. At all times material herein, each and all the Defendants all had sufficient contacts with Minnesota to be subject to the jurisdiction of the state's courts pursuant to Minnesota Statute Section 543.19.

14. At all relevant times, the Dunlop D402 tire was the only tire approved for use by Harley Davidson as an OEM replacement tire for the 2000 Harley Davidson Ultra Classic.

15. The Subject Tire was built at Defendants Goodyear and Dunlop's Tonawanda, New York plant on or during the 34th week of 2007.

16. The Subject Tire was designed, engineered, inspected, manufactured, marketed, distributed, and sold by Goodyear and Dunlop from their North American headquarters in Tonawanda, New York.

17. The Subject tire was the manufacturer's recommended size for the rear of the Motorcycle. Pursuant to all Defendants' design and installation specifications, the Subject Tire had been purchased and installed at Big Trail Harley Davidson on or about April 10, 2009, located at 2409 Hudson Road, Rogers, Arkansas 72756.

18. On or about July 4, 2013, Terrance W. Armstrong was operating and Kari Jo Armstrong was a passenger on the Motorcycle. They were taking a day trip along Interstate 35 in Pine County, Minnesota, with appropriate cargo for such a tour and in a manner that was foreseeable and expected by Defendants.

19. While on this day trip, without any obstruction or moisture on the road, the Subject Tire catastrophically deflated, causing a loss of control and crash of the Motorcycle. Mr. and Mrs. Armstrong were thrown from the Motorcycle and passed away from their injuries (the "Accident"). The Accident directly resulted in Mr. and Mrs. Armstrong's deaths.

20. The Armstrongs were not warned, nor otherwise had notice, that the Subject Tire was experiencing a loss of air.

21. The Armstrongs were not warned, nor otherwise had notice, of the propensity of the Dunlop D402 motorcycle tires to experience a sudden loss of pressure resulting in a catastrophic tire failure.

22. Reasonable, safer alternative designs were available that, if used, would have made the Motorcycle equipped with the Subject Tire safe for its intended and reasonably foreseeable use.

23. Goodyear and Dunlop's conduct in knowingly designing, engineering, manufacturing, inspecting, distributing, and selling the D402 tire for use on the 2000 Ultra Classic with the knowledge that it was unfit for use by reasonably expected riders and passengers, failure to recall the tire or warn of the dangerous propensities of D402 tires when used on 2000 Ultra Classics after it knew or should have known of the defects and dangers, failure to manufacture the D402 tires free of defects, and failure to exercise reasonable care to discover the defect all exhibit an entire lack of care and conscious disregard for the safety of humans who use Goodyear and Dunlop's products.

24. Defendant Harley-Davidson's conduct in knowingly and intentionally marketing the 2000 Ultra Classic as a touring motorcycle engineered and designed to carry two adult persons with cargo, and in approving the D402 tires as the only approved OEM tires for the Motorcycle, with the knowledge that it was unfit for use by reasonably expected riders and passengers, its failure to warn of the dangerous propensities of the Motorcycle when equipped with the defective and dangerous D402 tires after it knew or should have known about the dangers and defects, failure to exercise reasonable care to discover the defect and dangers, before and after

the sale of the Motorcycle, all exhibit an entire lack of care and conscious disregard for the safety of humans who use Harley-Davidson's products.

FIRST CAUSE OF ACTION

(Strict Products Liability – Design Defect – Against Defendants Goodyear and Dunlop)

25. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

26. The Subject Tire was defective in design or formulation, in that, when it left the hands of the manufacturer and/or distributor or supplier, it was defective for one or more or all of the following reasons:

- a. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the rubber skim stock being properly bonded to the carcass ply, resulting in the rubber failing to properly adhere to the cords;
- b. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the proper amount or proper type of rubber being applied over the cords;
- c. The Subject Tire was designed, manufactured, inspected, distributed, and sold without proper adhesion of the polyester carcass to the rubber;
- d. The Subject Tire was designed, manufactured, inspected, distributed, and sold with excessive mold flashing at the bead that was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds;
- e. too much rubber covering the bead which resulted in a flash;
- f. The Subject Tire was designed, manufactured, inspected, distributed, and sold with cavities in the bead region where air can pass through that were exacerbated

by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; and

- g. The Subject Tire was designed, manufactured, inspected, distributed, and sold with too little rubber-coated fabric (a.k.a. "chafing rubber") surrounding the bead to protect against chafing, which was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds;

27. Alternatively, the Subject Tire was defective in design or formulation, in that, when it left the hands of the manufacturer and/or distributor or supplier, the Subject Tire was unreasonably dangerous; it was more dangerous than an ordinary consumer would expect.

28. The Subject Tire was defective due to inadequate warnings or instructions because the manufacturer knew or should have known through testing or otherwise that the defects in the tire created a high risk of bodily injury and serious harm, and even death, about which Defendants Goodyear and Dunlop failed to warn.

29. The Subject Tire was defective due to inadequate post-marketing warnings or instructions because, after the manufacturer and/or supplier knew or should have known of the increased risk of catastrophic pressure loss, and other risks, it failed to provide adequate warnings to users or purchasers or timely recall such tires, and instead continued to sell and distribute D402 tires without the precautions.

30. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

SECOND CAUSE OF ACTION

(Strict Products Liability – Manufacturing Defect)

Against Defendants Goodyear and Dunlop)

31. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

32. The Subject Tire was not reasonably safe for its intended use and was defective with respect to its manufacture, as described herein, in that Defendants Goodyear and Dunlop deviated materially from their design and manufacturing specifications and/or such design and manufacture created an unreasonable foreseeable risk of harm to foreseeable motorcycle riders including the Armstrongs;

33. The Subject Tire is inherently dangerous and defective, unfit and unsafe for its ordinary and reasonably foreseeable uses;

34. At all times relevant hereto, the Subject Tire was defective and unreasonably dangerous for its intended use and was defectively manufactured as described herein for one or more or all of the following reasons:

- h. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the rubber skim stock being properly bonded to the carcass ply, resulting in the rubber failing to properly adhere to the cords;
- i. The Subject Tire was designed, engineered, manufactured, inspected, distributed, and sold without the proper amount or proper type of rubber being applied over the cords;
- j. The Subject Tire was designed, manufactured, inspected, distributed, and sold without proper adhesion of the polyester carcass to the rubber;

k. The Subject Tire was designed, manufactured, inspected, distributed, and sold with excessive mold flashing at the bead that was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; too much rubber covering the bead which resulted in a flash;

m. The Subject Tire was designed, manufactured, inspected, distributed, and sold with cavities in the bead region where air can pass through that were exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds; and

n. The Subject Tire was designed, manufactured, inspected, distributed, and sold with too little rubber-coated fabric (a.k.a. "chafing rubber") surrounding the bead to protect against chafing, which was exacerbated by the use of the tire with foreseeable expected loads of a touring motorcycle at highway speeds.

35. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

THIRD CAUSE OF ACTION

(Breach of Express Warranty Against Defendants Goodyear and Dunlop)

36. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

37. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, expressly warranted to users and consumers, including the Armstrongs, D402 tires were safe and that such safety had been shown by use of the best available materials and the

most conscientious craftsmanship, and by meeting or exceeding applicable standards and regulations.

38. The D402 tires do not conform to these express representations because they are not safe and have a high degree of probability of causing serious bodily harm, even death, because the D402 tires suffer catastrophic pressure loss.

39. As a direct and proximate result of the breach of said warranties, the Armstrongs were caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty Against Defendants Goodyear and Dunlop)

40. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

41. At the time Defendants Goodyear and Dunlop marketed, sold and distributed D402 tires, Defendants Goodyear and Dunlop knew of the use for which the D402 tires were intended and Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, impliedly warranted the product to be of merchantable quality and safe and fit for such use.

42. Users and consumers, including the Armstrongs, reasonably relied upon the skill and judgment of Defendants Goodyear and Dunlop as to whether the D402 tires were of merchantable quality and safe and fit for intended use.

43. Contrary to such implied warranties, the D402 tires were not of merchantable quality or safe or fit for their intended use, because the product was and is unreasonably dangerous and unfit for the ordinary purposes for which the D402 were used.

44. As a direct and proximate result of the breach of implied warranties by Defendants Goodyear and Dunlop, the Armstrongs were caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

FIFTH CAUSE OF ACTION

(Negligence Against Defendants Goodyear and Dunlop)

45. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

46. At all times relevant herein, Defendants Goodyear and Dunlop had a duty to exercise reasonable care in all aspects of the formulation, design, manufacture, compounding, testing, inspection, labeling, distribution, marketing, sale, withdrawal and recall of the D402 tires due to the propensity of these tires to suffer catastrophic pressure loss to insure that the consuming public, including the Armstrongs, obtained accurate information, warnings, and instructions for the safe use of the D402 tires, if any such use was possible.

47. At all times relevant herein, Defendants Goodyear and Dunlop knew or in the exercise of reasonable care should have known that the D402 tires were not properly manufactured, formulated, designed, compounded, tested, inspected, labeled, distributed, marketed, examined, maintained, sold, prepared, withdrawn, retrofitted, or recalled.

48. Each of the following acts and omissions herein alleged were negligently and carelessly performed by Defendants Goodyear and Dunlop, resulting in a breach of the duties as set forth above. These acts and omissions include, but are not limited to, negligent and careless research and testing of said product; negligent and careless design or formulation of said product; negligent and careless manufacture of said product; negligent and careless inspection of said product; negligent and careless failure to give adequate instructions, information, and warnings.

for the safe use of said product; negligent and careless failure to give adequate warnings to consumers, the Armstrongs, and the public in general of the potentially dangerous, defective, unsafe, and deleterious propensity of said product and of the risks associated with its use; and negligent and careless conduct with respect to withdrawal or recall of the D402 tires from the market.

49. As a direct and proximate result of the negligence of Defendants Goodyear and Dunlop, the Armstrongs were directly caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

SIXTH CAUSE OF ACTION

(Misrepresentation Against Defendants Goodyear and Dunlop)

50. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

51. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, falsely represented to consumers, riders and motorcycle enthusiasts, and to the general public, that D402 tires were safe when used as instructed; when, in fact, they were dangerous to such consumers.

52. Defendants Goodyear and Dunlop failed to exercise reasonable care and competence in obtaining or communicating information regarding the safe use of D402 tires and otherwise; failed to exercise reasonable care in transmitting important and necessary information to the Armstrongs.

53. Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, made the aforesaid representations in the course of Defendants' business as designers, manufacturers, and distributors of the D402 tires, despite having no reasonable basis for their

assertion that these representations were true and/or without having accurate or sufficient information concerning the aforesaid representations. Defendants Goodyear and Dunlop were aware that, without such information, they could not accurately make the aforesaid representations.

54. At the time the aforesaid representations were made, Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, intended to induce the Armstrongs to rely on such representations.

55. At the time the aforesaid representations were made by Defendants Goodyear and Dunlop, either solely or by and through Pig Trail Harley-Davidson, and at the time the Armstrongs received the D402 tires for purchase, they were ignorant of the falsity of Defendants' representations and reasonably believed them to be true. In reasonable reliance upon said representations, the Armstrongs purchased D402 tires.

56. As a direct and proximate result of reliance upon Defendants Goodyear and Dunlop's misrepresentations, the Armstrongs purchased D402 tires and were directly caused to suffer injury and die prematurely as a result of the use of said tires.

SEVENTH CAUSE OF ACTION

(Fraud Against Defendants Goodyear and Dunlop)

57. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

58. Defendants Goodyear and Dunlop, either solely or by and through Defendant Pig Trail Harley-Davidson, falsely and fraudulently represented to the Armstrongs and other members of the general public that D402 tires were safe, durable, made from the best available materials, and met or exceeded applicable standards. The representations made by Defendants were in fact

false, the true facts being that the D402 tires, and possibly other models, were in fact dangerous to the health and safety of the Armstrongs and other consumers.

59. When Defendants Goodyear and Dunlop, either solely or by and through Defendant Pig Trail Harley-Davidson, by persons speaking on their behalf, made the aforesaid representations, Defendants knew the representations to be false. Alternatively, Defendants made such representations recklessly without regard to the truth or falsity of such representations.

60. Said representations were made with the intent to defraud and deceive the Armstrongs and other consumers with the intent to induce them to purchase and use D402 tires.

61. The Armstrongs, at the time the representations were made, were ignorant of their falsity and believed them to be true. In reasonable reliance thereon, the Armstrongs purchased the D402 tires and were directly caused to suffer injury and die prematurely as a result of the use of said tires.

EIGHTH CAUSE OF ACTION

(Failure to Warn and Post-Sale Failure to Warn Against Defendant Harley-Davidson)

62. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

63. The Motorcycle, manufactured for and/or supplied to the Armstrongs by Defendant Harley-Davidson was defective due to inadequate warnings or instructions because the manufacturer knew or should have known through testing or otherwise that the D402 tires it approved for use on the Motorcycle created a high risk of bodily injury and serious harm, and even death, about which Defendant Harley-Davidson failed to warn.

64. The Motorcycle, manufactured for and/or supplied to the Armstrongs was defective due to inadequate post-marketing warnings or instructions because, after the manufacturer and/or

supplier knew or should have known of the increased risk of the D402 tires catastrophically losing pressure, and other risks, it failed to provide adequate warnings to users or purchasers or timely recall or retrofit the Motorcycle and others like it, and instead continued to sell and distribute the Motorcycle to be used with Defendant Harley-Davidson's approved D402 tires, without the precautions.

65. As a direct and proximate result of Defendant Harley-Davidson's conduct, the defective nature of the Armstrong's Motorcycle equipped with the D402 tires, was the direct cause of and/or substantial contributing factor in causing the death of the Armstrongs.

NINTH CAUSE OF ACTION

(Marketing Defect Against Defendant Harley-Davidson)

66. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows.

67. At all times relevant hereto, Defendant Harley-Davidson marketed, sold, advertised, presented, or otherwise held out the 2000 Ultra Classic as the preeminent touring motorcycle, particularly for long-distance rides carrying a driver, a passenger, and their cargo.

68. At all times relevant hereto, Defendant Harley-Davidson knew or should have reasonably expected that its listed gross vehicle weight for the Motorcycle would or could be exceeded during normal, reasonable, and reasonably anticipated use of the Motorcycle. Defendant Harley-Davidson knew or should have known that when equipped with the very tires it approved for OEM use, the D402s, the Motorcycle posed an unreasonably high risk of serious bodily harm or death. Despite such knowledge, such knowledge, Defendant Harley-Davidson failed to recall the Motorcycle and others like it, to issue warnings to the public and to owners of motorcycles

equipped with the D402s and to the Armstrongs specifically, and to test and approve a safer alternative tire for use on its motorcycles, including the Motorcycle;

69. As a direct and proximate result of Defendants Goodyear and Dunlop's conduct, the defective nature of the Subject Tire was the direct cause of and/or a substantial contributing factor in causing the death of the Armstrongs.

TENTH CAUSE OF ACTION

(Negligence Against Defendant Harley-Davidson)

70. Plaintiffs reallege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

71. At all times relevant herein, Defendant Harley-Davidson had a duty to exercise reasonable care in all aspects of the formulation, design, manufacture, compounding, testing, inspection, labeling, distribution, marketing, sale, withdrawal and recall of the Motorcycle when equipped with D402 tires due to the propensity of these tires to suffer catastrophic pressure loss to insure that the consuming public, including the Armstrongs, obtained accurate information, warnings, and instructions for the safe use of the Motorcycle equipped with the only Harley-Davidson approved OEM tires, the D402 tires, if any such use was possible.

72. At all times relevant herein, Defendant Harley-Davidson knew or in the exercise of reasonable care should have known that the Motorcycle equipped with D402 tires was not properly manufactured, formulated, designed, compounded, tested, inspected, labeled, distributed, marketed, examined, maintained, sold, prepared, withdrawn, retrofitted, or recalled.

73. Each of the following acts and omissions herein alleged were negligently and carelessly performed by Defendant Harley-Davidson, resulting in a breach of the duties as set forth above. These acts and omissions include, but are not limited to, negligent and careless research and

testing of said product; negligent and careless design or formulation of said product; negligent and careless manufacture of said product; negligent and careless inspection of said product; negligent and careless failure to give adequate instructions, information, and warnings for the safe use of said product; negligent and careless failure to give adequate warnings to consumers, the Armstrongs, and the public in general of the potentially dangerous, defective, unsafe, and deleterious propensity of said product and of the risks associated with its use; and negligent and careless conduct with respect to withdrawal or recall of the Motorcycle equipped with D402 tires from the market.

74. As a direct and proximate result of the negligence of Defendant Harley-Davidson, the Armstrongs were directly caused to suffer injury and die prematurely from being propelled off of the Motorcycle while driving on Interstate 35.

ELEVENTH CAUSE OF ACTION

(Violation of False Advertising Act, Consumer Fraud Act, Unlawful Trade Practices Act, and the Uniform Deceptive Trade Practices Act Against All Defendants)

75. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

76. By reason of the conduct as alleged herein, and by inducing the Armstrongs to purchase and use the Motorcycle and the D402 tires through the use of false and/or misleading advertising, information, representations, and statements, Defendants violated the provisions of Minn. Stat. §§ 325F.67, 325F.69, 325D.13, and 325D.44.

77. As a direct and proximate result of Defendants' statutory violations, the Armstrongs were induced to purchase and use the Motorcycle with the D402 tires, which would not have been used or purchased had Defendants not issued false and/or misleading advertising,

representations, information, and statements to induce the Armstrongs to use or purchase the products.

78. By reason of such violations and pursuant to Minn. Stat. §§ 8.31, subd. 3a, 325D.44, 325F.67, and 325F.68-70, Plaintiffs are entitled to recover all of the monies paid for the product, to be compensated for the cost of the last medical care and treatment of the Armstrongs and funeral expenses arising out of the use of the product, together with any and all consequential damages recoverable under the law including, but not limited to, past medical and funeral expenses, and loss of future earnings or earning capacity as would have been occasioned by the continued life of the Armstrongs.

79. Pursuant to Minn. Stat. § 8.31, Plaintiffs are entitled to recover costs and disbursements, including costs of investigation and reasonable attorneys' fees, and any other equitable relief the Court deems just and proper.

DAMAGES

80. Plaintiffs re-allege the preceding paragraphs of this Complaint as though the same were fully set forth herein, and further allege as follows:

81. As a direct and proximate result of the Defendants' acts and conduct, Plaintiffs Tyler Armstrong as trustee for the next-of-kin of Terrance W. Armstrong and Joshua McCaskey as trustee for the next-of-kin of Kari Jo Armstrong, deceased, have suffered a permanent and substantial personal and pecuniary loss, including the deprivation of advice, counsel, aid, comfort, assistance, guidance, protection, support, and companionship of the decedent, monies, income, goods and services, and the reasonable expectation of such pecuniary loss in the future as would have been occasioned by the continued life of decedents, the Armstrongs; and have incurred expenses for the Armstrongs' last care and treatment and funeral and burial expenses;

and have otherwise suffered other damages and pecuniary losses within the meaning of Minn. Stat. § 573.02, all to their damage in a sum exceeding Fifty Thousand Dollars (\$50,000.00).

WHEREFORE, Plaintiffs pray for damages and demand Judgment against the Defendants, and each of them, jointly and severally, for a reasonable amount in excess of Fifty Thousand Dollars (\$50,000.00), together with the costs and disbursements of this action incurred herein, including reasonable attorneys' fees, interest on the Judgment as allowed by law, and injunctive relief enjoining Defendants from selling or marketing Ultra Classic or other motorcycles, with D402 tires, or selling or marketing D402 tires as OEM tires for such motorcycles, until such time as a recall program designed to alert existing owners/consumers is either mandated or entered voluntarily by Defendants, to prevent further harm to the public.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL.

Dated: 7/1/16

YIRA LAW OFFICE, LTD.

BY: Markus C. Yira

Markus C. Yira, I.D. 0271469

102 Main St. S., Suite 201

P.O. Box 518

Hutchinson, MN 55350

Telephone: (320) 587-0305

Facsimile: (320) 587-0557

Email: myira@yiralaw.com

ATTORNEYS FOR PLAINTIFFS

-and-

Dated: 7/1/16

HILLIARD MUNOZ GONZALES, LLP

By: [Signature]

Robert C. Hilliard (*pro hac vice*)
Texas Bar No. 09677700
bobh@hmglawfirm.com
Catherine Tobin (*pro hac vice*)
Texas Bar No. 24013642
catherine@hmglawfirm.com
Rob George (*pro hac vice*)
Texas Bar No. 24067623
rgeorge@hmglawfirm.com
Bradford Klager (*pro hac vice*)
Texas Bar No. 24012969
brad@hmglawfirm.com

719 S. Shoreline Dr., Suite 500
Corpus Christi, Texas 78401
(361) 882-1612 ph.
(361) 882-3015 fax
New Hope, MN 55427
(763) 540-9992

ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded pursuant to Minn. Stat. § 549.211, Subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: 7/1/14


Markus C. Yira

Dated: 7/1/14


Rob George

27-CV-14-7332

Filed in Fourth Judicial District Court
5/19/2014 11:24:50 AM
Hennepin County, Civil, MN

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In the Matter of the Appointment
of a Trustee for the Next-of-Kin
of Kari Jo Armstrong, Deceased

27-CV-14-7332
ORDER APPOINTING TRUSTEE
FOR THE NEXT-OF-KIN OF
KARI JO ARMSTRONG

WRONGFUL DEATH

The foregoing petition having been duly considered:

IT IS HEREBY ORDERED that, upon the filing of an oath pursuant to M.S.A.
§358.06, Joshua McCaskey be appointed Trustee for the Next-of-Kin of Kari Jo Armstrong,
to maintain the action described in said petition, and that he serve without bond.

Dated: 5-19-2014

BY THE COURT

Theresa M. Galt
Judge of the District Court



27:CV:14-7331

Filed in Fourth Judicial District Court
5/9/2014 3:14:08 PM
Hennepin County, MN

STATE OF MINNESOTA
COUNTY OF HENNEPIN

IN DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In the Matter of the Appointment
of a Trustee for the Next of Kin
of Terrance W. Armstrong, Deceased.

ORDER APPOINTING TRUSTEE
FOR THE NEXT OF KIN OF
TERRANCE W. ARMSTRONG

WRONGFUL DEATH

The foregoing petition having been duly considered:

IT IS HEREBY ORDERED that, upon the filing of an oath pursuant to M.S.A.
§358.06, Tyler Armstrong be appointed Trustee for the Next of Kin of Terrance W.
Armstrong to maintain the action described in said petition, and that he serve without bond.

Dated: 5/9/14 2014

BY THE COURT


Judge of the District Court

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tyler Armstrong, as Trustee for the Next-of-Kin of Terrance W. Armstrong, Deceased, and Joshua McCaskey, as Trustee for the Next-of-Kin of Kari Jo Armstrong, Deceased

(b) County of Residence of First Listed Plaintiff Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Markus C. Yira, Yira Law Office, Ltd., 102 Main St. S, Ste. 201, P.O. Box 518, Hutchinson, MN 55350; Ph: 320/587-0305

DEFENDANTS

Sumitomo Rubber USA, LLC f/k/a Goodyear Dunlop Tires North America, Ltd.; The Goodyear Tire & Rubber Company; and Harley Davidson, Inc.

County of Residence of First Listed Defendant OHIO/NEW YORK
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Mark A. Solheim, Anthony J. Novak, Larson King, LLP, 30 E. Seventh Street, Ste. 2800, St. Paul, MN 55101; Ph: 651-312-6500

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Sec. 1332(a)

Brief description of cause:
Wrongful death

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/25/2016

SIGNATURE OF ATTORNEY OF RECORD

s/ Mark A. Solheim

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.