



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th STREET, N.W., SUITE 980
WASHINGTON, DC 20036-3457

Phone: (202) 606-5400
Fax: (202) 606-5050

Secretary of Labor,
Complainant,
v.

Goodyear Tire & Rubber Company,
Respondent.

Region 6
OSHRC Docket Nos. 09-0574 & 09-1868

**Notice Of Docketing
Of Administrative Law Judge's Decision**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on 12/3/2010. The decision of the Judge will become a final order of the Commission on 1/3/2011 unless a Commission member directs review of the decision on or before that date.

Any party desiring review of the judge's decision by the Commission must file a petition for discretionary review. Any such petition shall be received by the Executive Secretary on or before 12/23/2010 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91. All further pleadings or communications regarding this case shall be addressed to the Executive Secretary with a copy to the DOL Solicitor at the address below.

Executive Secretary
Occupational Safety and Health Review Commission
1120 20th St., N.W., Suite 980
Washington, D.C. 20036-3419

Charles F. James, Counsel for Appellate Litigation
Heather R. Phillips, Counsel for Appellate Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If Directed for Review by the Commission, then the Counsel for Appellate Litigation will represent the Department of Labor. If you have questions, please call me at (202) 606-5400.

Date: December 3, 2010

Ray H. Darling, Jr.
Executive Secretary

This notice has been sent to:

For the Secretary of Labor:
Tina D. Juarez, Esq. / Clara Saafir, Esq.
Office of the Solicitor, U.S. DOL
525 South Griffin Street, Suite 501
Dallas, TX 75202-5020

For the Employer:
John T. Billick, Esq.
Littler Mendelson P.C.
1100 Superior Avenue
20th Floor
Cleveland, OH 44114



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
United States Customs House
721 19th Street, Room 407
Denver, Colorado 80202-2517

Phone: (303) 844-3409

Fax: (303) 844-3759

NOTICE OF ORDER

IN REFERENCE TO:

Secretary of Labor v. GOODYEAR TIRE & RUBBER COMPANY, and its successors, and its successors

OSHRC Docket NO.: 09-0574
09-1868
(Consolidated)

Enclosed is a copy of my order issued in this case. This order and the entire case file have been submitted on this date to the Commission's Executive Secretary for docketing.

Any request for the correction of clerical mistakes or errors in the order arising from oversight or omission should be directed to the Review Commission as follows:

Executive Secretary
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, NW, Room 900
Washington, D.C. 20036-3457

This order shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review of the order is directed by a Commission member within that time.

Patrick B. Augustine
Judge, OSHRC

Dated: November 18, 2010



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SECRETARY OF LABOR,
Complainant,

v.

GOODYEAR TIRE & RUBBER COMPANY,
and its successors,
Respondent.

OSHRC DOCKET
NO.: 09-0574
09-1868
(Consolidated)

ORDER APPROVING SETTLEMENT

The Commission has jurisdiction over the subject matter of the case and over the parties by virtue of the filing of a timely notice of contest.

The Settlement Agreement ("Agreement") between the parties filed on November 5, 2010, has been considered. The Agreement has been served on all parties and authorized employee representatives and posted in the manner prescribed by Commission Rule 7(g).¹ Ten (10) days have passed since service and posting and no objection to the Agreement has been filed.

The Agreement is approved under 5 U.S.C. §554(c)(1) and Commission Rule 100(c) as in compliance with those sections. The terms of the Agreement are incorporated, in their entirety, by reference in this order.

The order shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. §661(j).

SO ORDERED.

Dated: November 18, 2010
Denver, Colorado

Patrick B. Augustine
Judge, OSHRC

¹Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §2200.1 -.212, as amended, 55 Fed. Reg. 22780-4 (June 4, 1990).



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Dated: November 18, 2010
Denver, Colorado

Patrick B. Augustine
Judge, OSHRC

¹Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §2200.1 -.212, as amended, 55 Fed. Reg. 22780-4 (June 4, 1990).

CERTIFICATE OF SERVICE

CASE	OSHRC DOCKET
NAME: GOODYEAR TIRE & RUBBER	NO.: 09-0574
COMPANY, and its successors.	09-1868
	(Consolidated)

I hereby certify that a copy of the Order in this case has been served by first class mail upon the parties whose names and addresses appear on this matter.

For the Complainant

Tina D. Juarez, Esq.
Clara Saafir, Esq.
U.S. Department of Labor
Office of the Solicitor
525 South Griffin Street, Suite 501
Dallas, Texas 75202

For the Respondent

John T. Billick, Esq.
Patrick H. Lewis, Esq.
Little Mendelson, P.C.
1100 Superior Avenue, 20th Floor
Cleveland, Ohio 44114

Sharon M. Hall
Legal Assistant
OSHRC
Phone: (303) 844-0418
Fax: (303) 844-3759

Dated: November 18, 2010

3. Respondent will abate the conditions described in the citations as set forth in paragraph 4 below.

4. For abatement, Respondent agrees to the following:

a. The parties agree that for the purposes of this Settlement Agreement, the portions of the Automatic Radial Fullstage (hereinafter "ARF") tire machine involved include the front and rear areas of stations 2 and 3, and the hazard(s) to be abated, excluding those already abated, are the hazard of an operator being struck by the downward moving tire retrieval chuck (hereinafter "TRC") and being caught in and crushed between the TRC and belt and tread drum (hereinafter "B& T Drum"). The parties agree that for purposes of this Agreement, the TRC will be interpreted to include the metal, cylindrical chuck as well as any component of the ARF tire machine that is related to the movement of that chuck, including, but not limited to, the arm to which the chuck is attached, the pneumatic components that control the movement, and the ball screw. The parties further agree that for purposes of this Agreement, the Belt & Tread ("B&T") Drum will be interpreted to include the drum itself, the spindle on which it moves, and the pneumatic hoses that control the drum's movement.

b. Within 180 days from the date of the last signature to this Agreement, Respondent will design and install a barrier guard to prevent access to the Ball Screw Area, TRC elevator, and other portions of the TRC and B&T Drum from the rear of the ARF tire machine on all ARF machines owned by Respondent.

c. Within 180 days from the date of the last signature to this Agreement, Respondent will design and install bump switch/guards to remediate hazards of employees being struck by the downward moving TRC and from being caught in and crushed between the TRC and B&T Drum on all ARF machines owned by Respondent. Respondent will include the bump

switch guards into its "first tire check list" performed by associates at the beginning of each shift to insure that the bump switch guards are fully functioning.

5. The abatements as described in paragraphs 3 and 4 of this Agreement are intended to apply to Respondent's worksite located in Lawton, Oklahoma and although this matter does not include a citation at any location except its Lawton, Oklahoma plant, will be voluntarily applied pursuant to the same Paragraphs 3 and 4 at, Respondent's Gadsden, Alabama plant.

6. Respondent will comply with all applicable abatement verification provisions of 29 C.F.R. § 1903.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification shall be accomplished within 10 calendar days after the abatement date, by mailing a letter to Occupational Safety and Health Administration, Oklahoma City OSHA Area Office, 55 North Robinson, Suite 315, Oklahoma City, Oklahoma 73102-9560, stating that abatement has been completed, the date and method of abatement, and that affected employees and their representatives have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.

7. The citations are amended to include the specific abatement measures set forth in paragraph 4 of this Agreement. The parties agree that the citation as amended and the specific abatement measures set forth in paragraph 4 this Agreement shall be considered required abatement of the cited conditions and that the failure to perform any measures required in the Agreement may be cited as failure to abate under Section 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. ("the Act"), 29 U.S.C. § 659(b), to the same extent as if these abatement measures had been set forth from the outset in the Citations issued in this matter.

8. Respondent agrees that failure to implement the abatement measures set forth in paragraph 4 of this Agreement may be subject to an enforcement action brought by Complainant pursuant to Section 11(b) of the Act, 29 U.S.C. § 660(b), to the same extent as if these abatement measures had been set forth from the outset in the Citations issued in this matter. Respondent agrees that it will not oppose the entry of such an order of enforcement by the United States Court of Appeals to which Complainant presents this Agreement and supporting documents.

9. Respondent withdraws its Notice of Contest.

10. Neither this Settlement Agreement nor Respondent's consent to entry of a final order by the Commission pursuant to this Agreement constitutes any admission by Respondent of violation of the Occupational Safety and Health Act or regulations or standards promulgated there under. Neither this Settlement Agreement nor any order of the Commission entered pursuant to this Agreement shall be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal, except for proceedings and matters brought by the United States Government. Respondent is entering into said Agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before this Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation, the citation as amended or the complaint do not violate the Occupational Safety and Health Act or any standard promulgated there under. By entering into this Agreement Respondent does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged conduct or any of the conclusions set forth in the citation or amended citations issued in this matter.

11. Respondent promises to permit Complainant access to the workplace at issue herein subsequent to the date fixed for abatement for the specific and limited purpose of determining if the conditions described in the citations at issue herein have been corrected.

12. Respondent certifies that the affected employees in the above-style case are not represented by an authorized employee representative.

13. Respondent certifies that a copy of this Settlement Agreement has been served upon the unrepresented affected employees in the manner set forth in Rule 2200.100 of the Commission's Rules of Procedure, by posting same on the 8th day of Novemer, 2010.

14. This Agreement shall expire two (2) years from the date it becomes a final order of the OSHRC. Respondent expressly agrees that all duties and obligations relating to its specific abatement actions required herein shall be fully completed and implemented prior to the expiration of this Agreement. In the event Respondent fails to timely abate and comply with the terms of this Agreement, Respondent will not assert that this expiration date in any way affects Respondent's duty to fully comply with the Agreement.

15. Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-captioned proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

Respectfully submitted,

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

THE GOODYEAR TIRE & RUBBER CO.

MADELEINE T. LE
Counsel for Occupational Safety & Health

By: _____
PATRICK L. LEWIS
Attorney

By: _____
TINA D. JUAREZ
CLARA H. SAAFIR
Attorneys

Signed this 5TH day of
November, 2010.

Signed this 5th day of
November, 2010.

Little Mendelson, PC
1100 Superior Avenue, 20th Floor
Cleveland, Ohio 44114
Telephone: (216) 696-7600
Facsimile: (216) 696-2038

Attorneys for Complainant
U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202
Telephone: (972) 850-3100
Facsimile: (972) 850-3101

NOTICE TO AFFECTED EMPLOYEES NOT REPRESENTED
BY A LABOR ORGANIZATION

EACH AFFECTED EMPLOYEE WHO IS NOT REPRESENTED BY A LABOR ORGANIZATION HEREBY IS GIVEN NOTICE THAT ANY OBJECTIONS TO THE ENTRY OF AN ORDER APPROVING THIS SETTLEMENT AGREEMENT MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE THAT THIS SETTLEMENT AGREEMENT IS POSTED. SUCH OBJECTIONS MUST BE SET FORTH IN WRITING AND MAILED TO THE HONORABLE PATRICK B. AUGUSTINE, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 721 19TH STREET, SUITE 407, DENVER, COLORADO 80202, WITH COPIES TO COMPLAINANT AND RESPONDENT.

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