

IN THE CIRCUIT COURT OF MARSHALL COUNTY, MISSISSIPPI

GIOVANNA CHIRRI, Individually and  
on Behalf of the  
Wrongful Death Beneficiaries  
of FLAVIA FIORENTINO, Deceased,

PLAINTIFFS

v.

CIVIL ACTION NO. CV2012-318

THE GOODYEAR TIRE & RUBBER COMPANY;  
BYHALIA TIRE & BATTERY, INC.;  
THE ESTATE OF CHRISTOPHER P. NORRIS,  
THE ESTATE OF SHERRY ANN TOMLIN,  
and JOHN DOES 1-20

DEFENDANTS

**COMPLAINT**  
**(Jury Trial Demanded)**

The Plaintiff, GIOVANNA CHIRRI, Individually and on behalf of the wrongful death beneficiaries of FLAVIA FIORENTINO, Deceased, files their complaint against the Defendants, THE GOODYEAR TIRE & RUBBER COMPANY, BYHALIA TIRE & BATTERY, INC., THE ESTATE OF CHRISTOPHER P. NORRIS, THE ESTATE OF SHERRY ANN TOMLIN and JOHN DOES 1-20, and, in support thereof, state as follows:

**PARTIES**

1. Plaintiff GIOVANNA CHIRRI is an adult resident citizen of the Italian Republic. GIOVANNA CHIRRI is the surviving mother of FLAVIA FIORENTINO, deceased (hereinafter "Plaintiffs' decedent"), and brings this action on behalf of herself and all wrongful death beneficiaries of FLAVIA FIORENTINO, deceased.

2. The Defendant The Goodyear Tire & Rubber Company (hereinafter "Goodyear") is an Ohio corporation, with its principal place of business located in Akron, Ohio. Goodyear may be served with process of this Court by serving its registered agent, CSC of Rankin County, Inc., Mirror Lake Plaza, 2829 Lakeland Drive, Suite 1502, Flowood, MS 39232. Goodyear manufactured and distributed the tire that is the subject of this lawsuit. At all times pertinent hereto, Goodyear,

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LUCY CARPENTER  
Circuit Clerk, Marshall Co., MS  
BY em D.C.

designed, developed, tested, manufactured, and/or distributed the Kelly Safari P265/75R16 tire with DOT Number PJ7376KR (hereinafter the “subject tire”).

3. Defendant Byhalia Tire & Battery, Inc. is a Mississippi corporation doing business at 8328 Hwy. 178 West, Byhalia, Mississippi 38611 and may be served with process of this Court by serving its registered agent, William D. Hale, at 8328 Hwy. 178 West, Byhalia, Mississippi 38611.

4. Defendant The Estate of Christopher P. Norris is an entity existing in and within Desoto County, Mississippi upon the death of Christopher P. Norris on or about May 30, 2011 in Clarke County, Mississippi. The decedent was a citizen of Desoto County, Mississippi at the time of his death with a fixed residence at 2535 Pemberton Cove, Southaven, Mississippi. As such, The Estate of Christopher P. Norris is an entity existing in the State of Mississippi pursuant to Order of the Chancery Court of Desoto County, Mississippi, Cause No. 12-CV-01625 and may be served with process of this Court upon its Executor/Administrator, Michael T. Norris, at his address of 621 Timber Cove, Hernando, Mississippi.

5. Defendant The Estate of Sherry Tomlin is an entity existing in and within Desoto County, Mississippi upon the death of Sherry Tomlin on or about May 30, 2011 in Clarke County, Mississippi. The decedent was a citizen of Desoto County, Mississippi at the time of her death with a fixed residence at 2535 Pemberton Cove, Southaven, Mississippi. As such, The Estate of Sherry Tomlin is an entity existing in the State of Mississippi pursuant to Order of the Chancery Court of Desoto County, Mississippi, Cause No. 11-06-1125-PL, June 9, 2011, and may be served with process of this Court upon its Administrator, Darrian W. Tomlin, at his address of 2535 Pemberton Cove, Southaven, Mississippi.

6. Defendants John Does 1-20 are those entities, corporations, partnerships, employees, servants, contractors, and individuals whose names are presently unknown to Plaintiffs. Defendants John Does 1-20 also includes those entities, corporations, partnerships, and individuals who have or have had any ownership interest in any of the named Defendants or which played any role in the management of those companies.

### JURISDICTION AND VENUE

7. Jurisdiction is proper in the Circuit Court of Marshall County, Mississippi.

8. Venue is proper in Marshall County, Mississippi pursuant to *Miss. Code Ann. § 11-11-3*.

### FACTS

9. On or about May 30, 2011, Christopher P. Norris, deceased, was operating a 2003 Chevrolet Suburban on State Highway 45 North, approximately one/tenth of a mile North of an off ramp in Clarke County, Mississippi (more accurately described as being approximately located at N 32°03.563/W 088°40.689) with decedent, Flavia Fiorentino, as the second row/left-hand side passenger. As Christopher P. Norris operated the subject Suburban, the subject tire, mounted on the right rear wheel of the vehicle catastrophically failed as a result of a tread belt separation. The tread belt separation resulted from defective design and manufacture of the subject tire. The tire was defectively designed in that it failed to incorporate belt edge wedges and failed to utilize nylon overlays or nylon belt edge layers in the subject tire to reduce or eliminate belt edge separation and tread belt separation. The manufacturing defects of the tire included improper quality control measures, improper plant practices and procedures, and improper adhesion between components. Additionally, Defendant Byhalia Tire & Battery, Inc. serviced the subject tire prior to the subject

crash and, its negligent service and negligent inspection of the subject tire, contributed to the subject incident resulting the death of Plaintiffs' decedent. Also, Defendant Christopher P. Norris, being sued through his surviving estate, negligently failed to maintain control of the vehicle upon the tire failure and his negligence was a further contributing cause of the subject incident that resulted in the death of Plaintiffs' decedent. Defendant Sherry Tomlin, being sued through her surviving estate, was a further contributing cause to the subject incident resulting in the death of the Plaintiffs' decedent through her negligent entrustment of the subject vehicle unto Christopher P. Norris, her teenage son.

10. Plaintiffs' decedent, Flavia Fiorentino, was fatally injured in the May 30, 2011 crash.

**COUNT I**  
**Goodyear's Negligence**

11. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

12. At all times pertinent hereto, Defendant Goodyear owed a duty to Plaintiffs' decedent to properly design, test, manufacture, assemble, label, advertise and market the subject tire and/or to recall and/or retrofit it and/or to make post-sale warnings. At all times pertinent hereto, these Defendants owed a duty to Plaintiffs' decedent to inform them of what they knew about the dangerous condition, de-tread propensity, and all accident, injury and death information concerning the subject tire.

13. Defendant Goodyear designed, manufactured, tested, inspected, distributed, and sold the subject tire for use on sport utility vehicles, such as the subject tire.

14. Defendant Goodyear breached the duty of reasonable care owed to Plaintiffs' decedent in that Defendant negligently designed, constructed, manufactured, tested or inspected the subject

tire, failed to consider the result of testing, and/or failed to inspect the subject tire for defects, and/or failed to heed the results of warranty claims and/or adjustment records.

15. Defendant Goodyear also negligently warned or failed to warn Plaintiffs' decedent of defects in the subject tire and the effect of said defects, which Defendant Goodyear either knew or should have known existed.

16. Following the sale of the subject tire, Goodyear negligently failed to warn the Plaintiffs' decedent of said tire that the tire has a high potential for tread belt separation and of the effect of such separation.

17. As a direct and proximate result of the defects in the subject tire and Goodyear's negligence, Plaintiffs' decedent was fatally injured.

**COUNT II**  
**Strict Liability as to Defendant Goodyear**

18. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

19. At all times relevant, Goodyear was engaged in the business of designing, manufacturing, constructing, selling, distributing and monitoring the performance of Kelly tires, including the tire involved in this incident.

20. The subject tire, which was manufactured and/or distributed by Defendant Goodyear, was unfit and unsafe for its intended uses and purposes because of design, manufacturing, and inspection defects that caused the tire to suddenly fail.

21. The subject tire was manufactured by Goodyear without adequate quality control measures and inappropriate manufacturing procedures and processes, including, but not limited to, the use of over-age rubber stock, inappropriate exposure of materials to moisture during the

manufacturing process, the swabbing of rubber materials with solvent, improper material handling of belt wire, curing components with trapped air, gas or water, improper final inspection, and improper repairs. Said inappropriate quality control measures and inappropriate manufacturing practices and procedures contribute to in-service failure and tread belt separation such as that which occurred in the subject tire.

22. Goodyear negligently monitored the performance of or failed to heed the results of monitoring the performance of steel-belted radial tires that it manufactured, including the subject tire.

23. The subject tire was defective in manufacture in that it lacked proper adhesion of the steel belts to surrounding material resulting in tread belt separation and catastrophic failure during normal use.

24. The subject tire failed to incorporate belt edge wedges, gum edge strips, nylon overlays, nylon belt edge layers, or nylon safety belts to reduce the hazard of tread belt separation constituting a design defect.

25. As a direct and proximate result of the defects in the subject tire, Plaintiffs' decedent was fatally injured.

**COUNT III**  
**Breach of Warranty as to Goodyear**

26. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

27. At all times pertinent hereto, Defendant Goodyear warranted that the subject tire was in a defect-free and reasonably safe condition, yet, in fact, it was not. The tire's defective and unreasonably dangerous condition was inconsistent with said warranties. Therefore, Goodyear breached said warranties.

28. As a direct and proximate result of Goodyear's breach of warranty, Plaintiffs' decedent was fatally injured.

**COUNT IV**  
**Misrepresentation as to Goodyear**

29. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

30. At all times pertinent hereto, Goodyear negligently and/or intentionally represented to the public that the subject tire was safe for its intended purposes and it failed to disclose material facts concerning the tire's defects and safety. Yet, in fact, the subject tire was not safe for its intended purposes.

31. As a direct and proximate result of Goodyear misrepresentations, Plaintiffs' decedent was fatally injured.

**COUNT IV**  
**Failure to Warn as to Goodyear**

32. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

33. At all times pertinent hereto, Defendant Goodyear owed Plaintiffs' decedent a duty to warn of potential dangers in foreseeable use of the subject tire.

34. Defendants Goodyear failed to warn Plaintiffs' decedent of potential dangers that it knew or should have known existed.

35. As a direct and proximate result of Goodyear's failures, Plaintiffs' decedent was fatally injured.

**COUNT V**  
**Byhalia Tire and Battery Inc.'s Negligence**

36. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

37. At the times relevant herein, Defendant Byhalia Tire and Battery, Inc. (hereinafter referred to as "Byhalia Tire") performed service to the subject tire. At the times of service, Defendant Byhalia Tire owed a duty to Plaintiffs' decedent to inspect the condition of the Subject Tire prior to use for defects and dangerous conditions that Defendant Byhalia Tire could have discovered through the exercise of reasonable care, and to replace the Subject Tire, or to warn of the defect and dangers that existed while operating the vehicle with a defective tire or tire in a dangerous condition.

38. At the time Defendant Byhalia Tire serviced the Subject Tire, they knew or should have known that the Subject Tire was defective or in a dangerous condition and that because it was in such a condition that separation of the tread was imminent, and Defendant Byhalia Tire knew or should have known that these conditions constituted defects or dangers that posed an unreasonable risk of harm to users, including Plaintiffs' decedent, during ordinary and foreseeable driving maneuvers.

39. Defendant Byhalia Tire owed a duty to Plaintiffs' decedent to inspect the condition of the Subject Tire for defects and dangerous conditions, such as improper repairs, that Defendant Byhalia Tire could have discovered through the exercise of reasonable care, and to scrap and replace the Subject Tire, or to warn of the defect and dangers that existed while operating the vehicle with a tire that was defective and in a dangerous condition.

40. At the time Defendant Byhalia Tire serviced the Subject Tire, they knew or should have known, that it required replacement, because it was in a condition such that separation of the



tread was imminent, and Defendant Byhalia Tire knew or should have known that these conditions constituted defects or dangers that posed an unreasonable risk of harm to users, including Plaintiffs' decedent, during ordinary and foreseeable driving maneuvers.

41. Defendant Byhalia Tire, at the times relevant thereto, negligently serviced and repaired the subject tire and was further negligent in failing service the subject vehicle by replacing said defective tire.

42. As a direct and proximate result of the defects in the subject tire and Defendant Byhalia Tire's negligence, Plaintiffs' decedent was fatally injured.

**COUNT VI**  
**Negligence of Christopher P. Norris**

43. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

44. Christopher P. Norris, deceased, being sued through his surviving estate, The Estate of Christopher P. Norris, was the driver of the Suburban and he negligently failed to maintain proper control of the vehicle on March 30, 2011 and allowed the Suburban to crash.

45. The negligence of Christopher P. Norris in failing to maintain proper control of the Suburban was a proximate contributing cause of the damages described herein.

**COUNT VII**  
**Negligent Entrustment by Sherry Tomlin**

46. Plaintiffs adopt and incorporate by reference herein the allegations contained in the foregoing paragraphs.

47. Sherry Tomlin, deceased, being sued through her surviving estate, The Estate of Sherry Tomlin, perpetrated harm in a negligent and intentional manner unto Plaintiffs' decedent

through the acts of Christopher P. Norris. Defendant Tomlin had an affirmative duty to monitor the activities of Defendant Norris, who was acting within the scope of Defendant Tomlin's permission and/or authorization, to prevent harm unto Plaintiffs' decedent through the negligent, intentional, and purposeful misuse of the vehicle of Defendant Tomlin. Defendant Tomlin authorized Defendant Norris to act in such a manner as to cause harm unto Plaintiffs' decedent as shown through allowing Defendant Norris the use and possession of the vehicle of Defendant Tomlin at the time of the incident described herein that occurred on May 30, 2011.

**COUNT VIII**  
**Punitive Damages**

48. Plaintiffs adopt by reference and incorporate herein the allegations contained in the foregoing paragraphs.

49. Each and every one of the Defendants', both jointly, collectively and severally, omissions, conduct, breaches, failures, and negligence were grossly negligent and/or were in conscious, willful, wanton, and reckless disregard of the safety of consumers and/or passengers, including Plaintiffs' decedent, therefore justifying an award of punitive damages against the Defendants, jointly, collectively and severally, pursuant to Miss. Code Ann. § 11-1-65.

**DAMAGES**

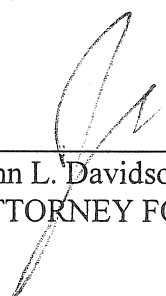
50. As a direct and proximate result of the Defendants' negligence, breaches, failures to warn, misrepresentations and conduct, Plaintiffs' decedent was severely injured and suffered physical and mental pain and wrongful death, and incurred loss of earnings, loss of earnings capacity, and loss of enjoyment of life. Plaintiffs have incurred funeral expenses, suffered severe and permanent emotional distress, loss of love and society, loss of relationship, and loss of their daughter.

Consequently, Plaintiffs' representative and the wrongful death beneficiaries of Flavia Fiorentino are entitled to monetary compensation for the foregoing damages and all damages allowed under Mississippi law.

*WHEREFORE, PREMISES CONSIDERED*, Plaintiff, Giovanna Chirri, Individually and on behalf of the wrongful death beneficiaries of Flavia Fiorentino, deceased, demands a trial by jury and judgment against Defendants The Goodyear Tire & Rubber Company, Byhalia Tire & Battery, Inc., The Estate of Christopher P. Norris, The Estate of Sherry Tomlin and John Does 1-20, for compensatory damages in an amount in excess of the jurisdictional limits of this Court and to be determined by the jury, and for all costs and expenses, along with all interest allowed under law, and additionally for punitive damages against the Defendants in an amount to be determined by the jury.

Dated: August 21<sup>st</sup> 2012.

Respectfully submitted:



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John L. Davidson, Esquire  
ATTORNEY FOR PLAINTIFFS

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