IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Araceli Luna, Individually, Jesus Salvador)
Torres, Individually and on Behalf of Jeremy)
Torres (Minor), Manuela Valenzuela Galindo,)
Individually, and on Behalf of Cristian Alberto	
Puente Valenzuela (Deceased), Brenda	
Valenzuela Galindo (Deceased, and Vania	
Sagrario Puente Valenzuela (Deceased),	
Plaintiffs,	
V.) C.A. No. N13C-04-241 JRJ
Cooper Tire & Rubber Company, Inc. and General Motors LLC,)))
Defendants.	<i>)</i>)

Date Submitted: February 5, 2014 Date Decided: February 12, 2014

OPINION

Upon Plaintiffs' Motion for Protection – **GRANTED**

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Jurden, J.

I. INTRODUCTION

Before the Court is Plaintiffs' Motion for Protection. Plaintiffs seek to have this Court enter the same inspection protocol the Court entered in *Alvarez v*. *Cooper Tire & Rubber Co.*¹ and *Caballero v. Ford Motor Company*,² rather than the inspection protocol proposed by Defendant Cooper Tire & Rubber Company, Inc. ("Cooper"). Cooper argues that the videotaping provision in Plaintiffs' protocol is unduly burdensome, unnecessary, and exposes Cooper's work product. For the reasons set forth below, Plaintiffs' motion is **GRANTED**.

II. DISCUSSION

This Court has previously addressed the issue of an inspection protocol for allegedly defective tires manufactured by Cooper in *Alvarez*. The same inspection protocol ordered in *Alvarez* was agreed to by the parties, and ordered by this Court, in *Caballero*.

By way of background, in *Alvarez*, the Court held a hearing after the parties could not agree on the terms of an inspection protocol. After reviewing the parties' extensive briefing and carefully considering the parties' arguments, the Court

¹ Ordered Subject and Companion Tire Removal and Inspection Protocol (the "*Alvarez* Inspection Protocol"), Aug. 18, 2011, C.A. No. N10C-13-151 JRJ, Trans. ID 39351369.

² See Stip. Vehicle Glass Particle and Removal Insp. Protocol Between Pls. and Ford, May 23, 2013, C.A. No. N11C-09-170 JRJ, Trans. ID 52040457; Agreed Vehicle Inspection Protocol Between Pls. and Ford, Jan. 15, 2013, C.A. No. N11C-09-170 JRJ, Trans. ID 48873945; Stip. Subject Tire and Companion Tire Removal and Inspection Protocol between Pls. and Michelin, Mar. 9, 2012, C.A. No. N11C-09-170 JRJ, Trans. ID 42998671; Stip. Subject Tire and Companion Tire Removal and Inspection Protocol between Pls. and Ford, Dec. 19, 2011, C.A. No. N11C-09-170 JRJ, Trans. ID 41463380.

entered the inspection protocol proposed by the plaintiffs, which required Cooper to videotape its inspections of the subject tire.

None of the arguments advanced by Cooper in this case persuade the Court that that protocol used in *Alvarez* should not be entered here. The Court does not find that the videotape requirement imposed on Cooper is unduly burdensome when weighed against the risk of potential alteration or destruction during Cooper's testing. As it did in *Alvarez*, Cooper argues that if the Court enters the Plaintiffs' proposed inspection protocol – again, the same inspection protocol the Court entered in *Alvarez* and *Caballero* – then the Court should also require Plaintiffs to notify Defendants every time Plaintiffs view their own evidence and to video each viewing and produce all videos. The Court rejects this argument for the same reasons it did in *Alvarez*.³

Moreover, Plaintiffs' point is well taken that there needs to be some predictability and finality with regard to the inspection protocol that will be utilized by the Court in cases involving alleged defects to Cooper Tires. The Court has previously ruled on this issue and it will not continue to engage in reargument absent good cause. This Court and courts in other jurisdictions have imposed

³ See Pls.' Mot. for Protection ("Mot."), Jan. 30, 2014, Trans. ID 54922612, at 4. As a result of the Court's ruling on Plaintiffs' Motion for Protection, Cooper's Motion to Compel Custodial Inspection of the Subject Tire and Companion Tires (Jan. 14, 2014, Trans. ID 54845850) is **MOOT**. Plaintiffs' Proposed Inspection Protocol shall govern Cooper's inspection(s).

conditions similar to those here.⁴ The Court further notes that even with the Alvarez Inspection Protocol, Cooper was unable to locate the Alvarez tire for a period of time, refused to produce the inspection video, and eventually admitted that it did not record the inspection in direct contravention of this Court's Order.⁵

IT IS SO ORDERED.

Jan R. Jurden, Judg	ge

Prothonotary cc:

⁴ For example, in *Hanson v. Ford Motor Co.*, No. TCO 19911 (Cal. Super. Ct. Dec. 6, 2007) the court required Firestone's tire inspection to be open to attendance by plaintiff's representatives; in Sotenes v. Bridgestone Corp., No. 08-L-7574 (III. Cir. Ct. March 5, 2010) the court granted plaintiffs the right to have their counsel and expert present at Bridgestone's tire inspection. For more examples, see Mot., Ex. 11. 5 Mot., Ex. 17 \P 3.