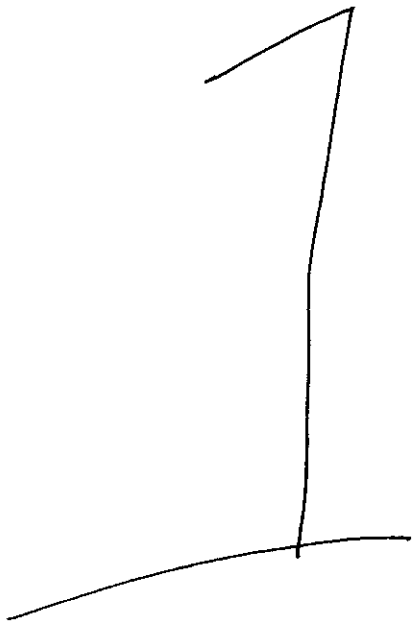
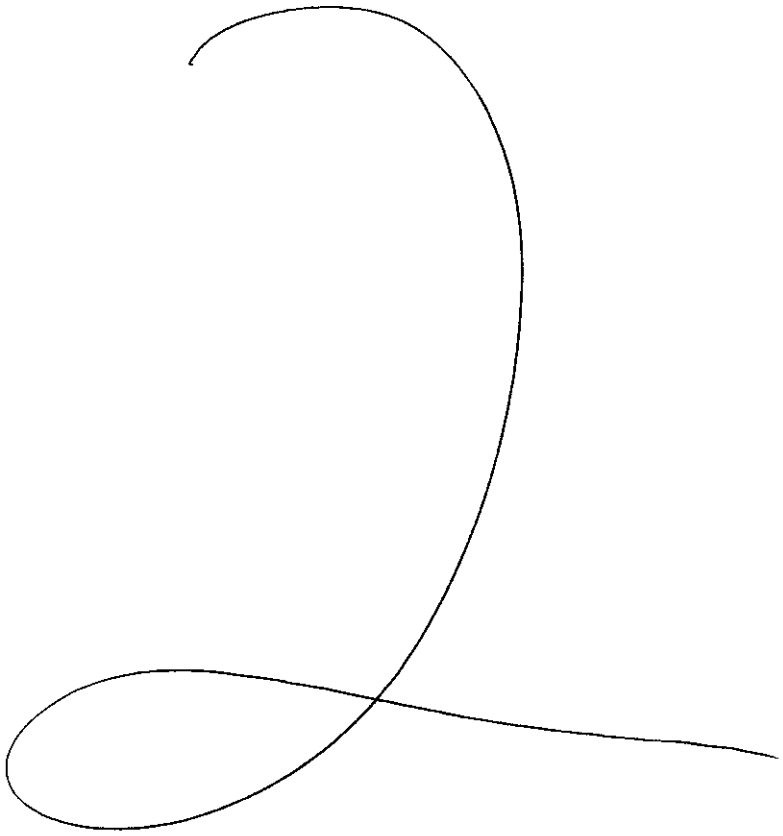
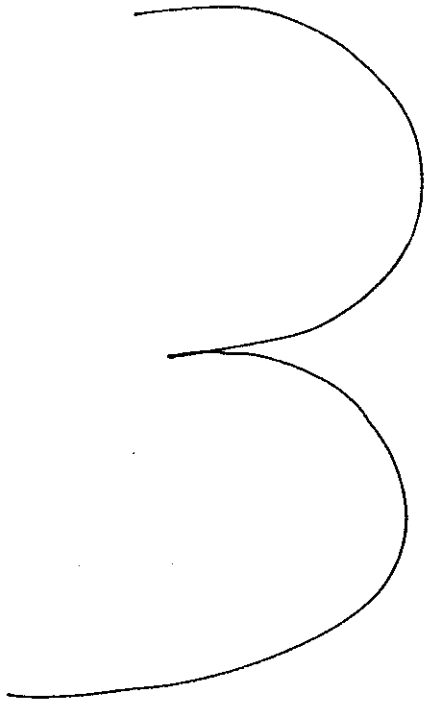






3. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Dayton used for organizing the documents.

Documentation attached.

3a. Consumer Complaint

Customer Name: [redacted]
2003-2006 40 Spoke Radial Lace Motorcycle Wheel:
Complaint: Rim split caused tire to deflate
Cause: Excessive load
Correction: Refunded purchase price to get the wheel back

3b. Consumer Complaint

MXC 1522 70 tooth radial lace 2000 and up:
Customer Name: [redacted]
Sold By: Old West Cycle and Accessories
Pulley Type: MXC-1522
Complaint: Component Failure
Cause: Improper mounting hardware
Correction: Shipped replacement

3c. Consumer Complaint

Automotive wire wheels (all since 02/2002):
Customer Name: [redacted]
Customer Address: [redacted] West Chester, PA [redacted]
Wheel Type: DB60-15x5
Complaint: Broken Spokes
Remedy: Shipped no-cost replacement under standard warranty

Customer Name: [redacted]
Customer Address: [redacted] Plympton, MA [redacted]
Wheel Type: D450-15x4
Complaint: Broken Spokes
Remedy: Shipped no-cost replacement under standard warranty

3a. [redacted] Documentation

To: Chris Jordening pgs: 3+ cover

Fm: [redacted]

REF: 40 Spoke Radial Reimbursement

Following is the signed agreement.

972 937.9281

ATT: Chris

FROM: [redacted]

Waxahachie, TX [redacted]

[redacted]

Longhorn Harley-Davidson
2618 W. Interstate 20
Grand Prairie TX 75052-
Phone: (972)988-1903 Fax: (972)988-1942

WORK ORDER ESTIMATE

Page: 1

Customer: 1082
[redacted]
WAXAHACHIE TX [redacted]
Phone: [redacted] Work: (000)000-0000 Ext.:
Fax: (000)000-0000 Tax Exempt: N
P.O. No.: Tax No:
Comments: FIX FLAT ON REAR

Work Order No.: 35078
Shop Tag: Plate No: [redacted]
Invoice No.: 0 Sold By:
Ref No.:
VIN: 1HD1FRR41WY[redacted]
Model: FLHRC-I Mfg: HD
Color: ANNIV. WINE / CRE Year: 1998
Mileage In: 90000 Out: 90000
Appointment: 2/27/06 1:39 PM
Offered Back: 3/ 4/06 8:19 AM
Ser Adv: MIR

Item Number / *Job Code	Item Description / Labor Description	Del Qty / Hours	Price Ea / Hrly Rate		Ext Amt
Customer States:					
Event Number: 1	Description: FIX FLAT ON REAR TIRE			Type: R	
40558-82	TUBE MT/MU90-16 SIDE	1.00	23.05	0.00	23.05
41010-86B	WHEEL, LACED, REAR,	1.00	430.50	0.00	430.50
43147-40	RIM BAND FITS 16" SI	1.00	1.09	0.00	1.09
95578-41	WHEEL WEIGHT-1/2 OZ	1.00	2.31	0.00	2.31
95582-47	WHEEL WEIGHT	1.00	2.31	0.00	2.31
LABOR Job Code:	Tech:GH	2.00	80.00	0.00	160.00
FIX FLAT					
REPLACE TUBE & SPLIT REAR WHEEL					

This Is An Estimate Only !
Prices Subject To Change !
Not A Receipt !
* Indicates Special Order Item

SO/Layaway Deposit: 0.00
Work Order Deposit: 0.00

Paid CK# 8077 3-4-06

Item Total:	459.26
Labor Total:	160.00
Contract Labor:	0.00
Flat Charge Total:	0.00
Shop Supplies:	5.00
Storage Fee:	0.00
Tax Total:	38.30
Deductible(s) Total:	0.00
Total Amount Due:	662.56

ATT: Chris Jordening.

Following is the estimate for repairs and an invoice for replacement parts for which I have already paid. You have a copy of the other invoice in the amount of 662.56 for the replacement of the rear wheel that I have already purchased

Thank-you.

[redacted]

LONGHORN HARLEY-DAVIDSON
2618 W. I-20
Grand Prairie, TX 75052
www.longhornhd.com
parts@longhornhd.com

ROY BECKER
Metro (972) 988-1903
Fax (972) 988-1942

QUOTE

Quote Number: 105936
Date: 5/20/06 Time: 11:43 AM
Console No: 012 Sold By: REB
Tax I.D: TX Rate: .082500

[redacted]
WAXAHACHIE, TX [redacted]

Phone [redacted]
Work: (000) 000-0000 Ext:
Fax: (000) 000-0000
P.O. No:
Tax Exempt: N No:

Item Number	Description	Delivered Quantity	S.O. Qty	Retail Price	Bin 1 Location	Bin 2 Location	Extended Amount
1061	DRESSER MUFFLER T.HE	1.00		232.67			232.67 X
59579-98TV	RF, FLHR/T, MIDNIGHT	1.00		420.00			420.00
60397-85B	DEBRIS DEFLECTOR	1.00		26.25			26.25

Labor 2.75 x 2
@ 80 per hour
$220 160

Roy Becker

!!THIS IS A QUOTE--NOT A RECEIPT!!
PRICES MAY BE SUBJECT TO CHANGE.
TOTALS ARE FOR DELIVERED ITEMS ONLY.

Item Total:	678.92
Flat Charge Total:	0.00
Tax Total:	56.02
Total Amount Due:	734.94

220.00
Total $ 954.94

Jim's Cycle Shop

P.O Box 155
3789 Hwy 31
Axtell,Texas 76624
(800)373-8930

Invoice

Date	Invoice #
3/22/2006	168

Bill To

[redacted]
WAXAHACHIE, TX [redacted]

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1	1061 THUNDERHEADER SLIP ONS	409.95	409.95T
1	SHIPPING	12.00	12.00
	Sales Tax	6.75%	27.67

Paid Ck# 8196 4-28-06

Total $449.62

TUBE	$23.05
WHEEL	$430.50
RIM BAND	$1.09
WHEEL WEIGHTS (2)	$4.62
SHOP SUPPLIES	$5.00
TAX	$38.30
LABOR (2)	$160.00
40 SPOKE RADIALS (2)	$750.00
REAR FENDER	$420.00
DEBRIS DEFLECTOR	$26.25
TAX	$56.02
LABOR (2)	$160.00
EXHAUST	$409.95
SHIPPING	$12.00
TAX	$27.67
TOTAL:	$2,524.45

3b. Tom Comstock Documentation

American Wire wheel

115 COMPARK ROAD
DAYTON, OH 45459
(937)438-0100
(937)438-1215 FAX

ORDER VERIFICATION

OLD0010

BILL TO
ESALA
OLD WEST CYCLE & ACCESS.
8136 N. LOOP DRIVE
EL PASO TX 79907
USA

SHIP TO
OLD WEST CYCLE & ACCESS.
8136 N. LOOP DRIVE
EL PASO TX 79907
USA

ORDER#	CUST P.O. NUMBER	SHIP VIA	PK	PP	DATE ORDERED	TERMS	VERIF. DATE
A002627	RE-ORDER	UPS-Com COD	1		07/09/07	COD-Co. Check	04/12/10

LINE/REL.	DUE DATE	QTY ORDERED	ITEM	UNIT PRICE/NET AMOUNT
		1.00	MXC-1522	472.00000
	08/08/07	EA		472.00

PULLEY-70 TOOTH RADIAL-LACE Y2K 1 1/8 in

Sale Amount:	472.00
Order Disc (0.0000%):	0.00
SALES TAX:	0.00
	0.00
Fr:	25.27
MC:	0.00
Total:	497.27

Thank you for your business.

3c. [redacted] Documentation

DAYTON WHEEL CONCEPTS, INC.
115 COMPARK ROAD
DAYTON, OH 45459
(937)438-0100
(937)438-1215 FAX

Dayton WIRE WHEELS SINCE 1916

ORDER VERIFICATION

PAGE: 1

ROB0650

BILL TO
[redacted]
WEST CHEASTER PA [redacted]

SHIP TO
[redacted]
WEST CHEASTER PA [redacted]

ORDER#	CUST P.O. NUMBER	SHIP VIA	PK	PP	DATE ORDERED	TERMS	VERIF. DATE
S098391		UPS-Residential			04/28/09	No Charge	04/28/09

LINE/REL.	DUE DATE	QTY ORDERED	ITEM	UNIT PRICE/NET AMOUNT
1		1.0	4075150500372	0.00000
	04/28/09	EA		0.00
			DB60-155 CHROME D3.69 TUBELESS	

CO

Sale Amount:	0.00
Order Disc (0.0000%):	0.00
SALES TAX:	0.00
	0.00
Fr:	0.00
MC:	0.00
Total:	0.00

We appreciate your business.

Packing Slip
From Warehouse: MAIN

Page: 1
Packing Slip: 35307

From:
yton Wheel Concepts

Bill To: ROB0650
[redacted]
WEST CHEASTER PA [redacted]

Ship To: (0)
[redacted]
WEST CHEASTER PA [redacted]

Order Contact:

Pack Date	Order #	Cust PO	Ship Via	Weight	Pkgs #
04/29/09	S098391		UPS-Residential	0.00	0

Line/Rel	Item	U/M	Qty Ordered	Qty To Pack
1	4075150500372 DB60-155 CHROME D3.69 TUBELESS	EA	1.0	1.0

469270 APR 29, 2009 ACT WT 26.0 LBS #PK 1
BILL WT 26.0 LBS
SERVICE GNDRES ALL CURRENCY USD
TRACKING# 1Z4692704255181021
REF 1:ROB0650
REF 2:S098391

DV AMT 400.00
FRT: SHP
SVC 12.96 USD
RS 0.00
SD 0.00
SP 0.00
24.72

HANDLING CHARGE 6.41
SHIPMENT PUB RATE CHARGES:
DV 2.60
DC 2.75
AH 0.00
TOT PUB CHG 18.31

COD 0.00
DG 0.00
PR 0.00
PUB+HANDLING

DAYTON WHEEL CONCEPTS, INC.
115 COMPARK ROAD
DAYTON, OH 45459
(937)438-0100
(937)438-1215 FAX

INVOICE NO: 121085
PAGE: 1
DATE: 09/15/05
INVOICE TYPE: REGULAR INVOICE

REMIT TO
DAYTON WHEEL CONCEPTS
ATTN: ACCOUNTING
115 COMPARK ROAD
DAYTON, OH 45459

BILL TO
SCO0200
SCOTT'S CLASSIC IMPORTS
87-A COUNTY RD.
PLYMPTON MA 02367
USA

SHIP TO
SCOTT'S CLASSIC IMPORTS
87-A COUNTY RD.
PLYMPTON MA 02367
USA

ORDER#	P.O. NUMBER			SHIP VIA	TERMS
S089152	WARRANTY		Y	0.00 UPS - 3 Day Sel	Net Visa

LINE/REL.	QTY. ORDERED	QTY. SHIPPED	QTY. BACK ORDERED	UNIT PRICE	EXTENDED PRICE
1	2.000	2.000	0.000	0.00000	0.00

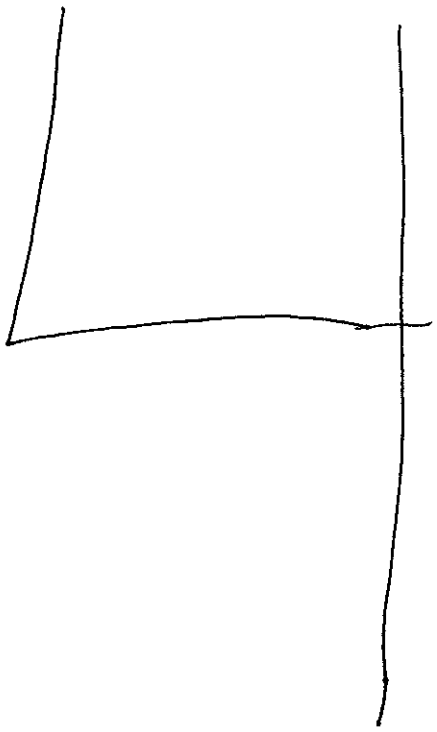
Item: 401515040028
Description: D450 CHROME D2.75
U/M: EA
Date Shipped: 09/15/05

WARRANTY REPLACEMENT

appreciate your business.

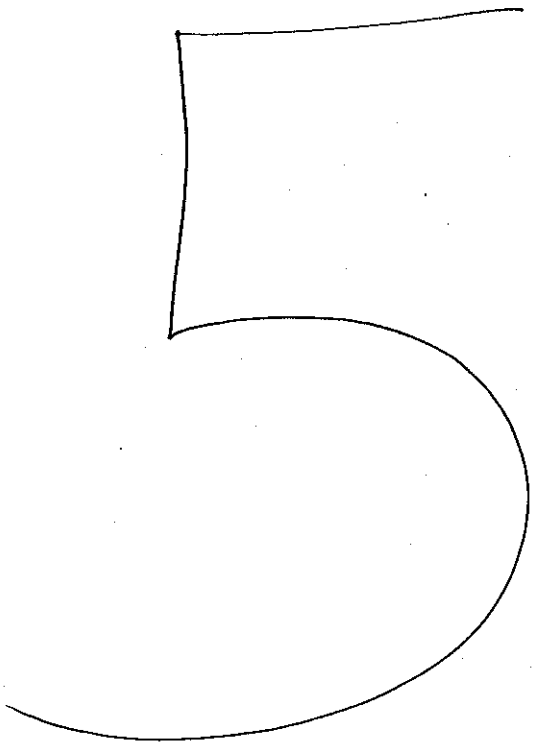
ORIGINAL INVOICE

SALES AMOUNT	0.00
MISC CHG	0.00
FREIGHT	30.46
SALES TAX	0.00
PREPAID	30.46
TOTAL	0.00



4. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by Dayton to date that relate to, or may relate to, the alleged defect: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

   Four items detailed in the response to number three.



5. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect, that Dayton has issued to any entity. This includes, but is not limited to, bulletins, advisories, informational documents, training documents (including those presented at any technician training sessions), or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that Dayton is planning to issue within the next 120 days.

   Standard warranty documentation for Dayton Wire Wheel and American Wire Wheel.

Order Terms and Conditions

All order terms and conditions for Dayton Wheel Concepts, Inc. as described below apply to wheel sales for Dayton Wire Wheel and American Wire Wheel.

Ordering
All wheel orders should be faxed or mailed to Dayton Wheel Concepts, Inc. at 937-438-1215 or sales@dwpco.com. Phone orders may be called in at 1-800-862-6000 from 8AM TO 5PM M-F, EST.

√ Discount
are displayed is US Dollars, subject to change without notice. Any changes will be discussed at the time your order is placed. Prices do not include shipping. All prices in this book are subject to change without notice. Dayton Wheel Concepts, Inc. is not liable for misprints.

Payment: Check or credit card payment is due prior to shipment on all orders. Special order wheels are charged 50% at the time of order and 50% prior to shipment. There is no return or exchange on special order wheels. Cancellation of a special order will result in the loss of deposit.

Drop Ship
Any drop ship orders will be charged a $20 flat fee for special handling.

Return Information
We cannot accept unauthorized returns. Please call us regarding for assistance with an order or return authorization number. Returned parts must be unused, in original condition, and in original packaging and received by Dayton Wheel Concepts, Inc. no later than 30 days after sale for a refund. No return will be accepted without a copy of the original invoice. Returned items are thoroughly inspected prior to determination of credit, replacement or refusal. **There is no refund on special order items. A 20% restocking fee will be charged to all returns not due to our error**. There is no refund for a shipping charge on returned items.

Damaged Items
When Packages appear damaged on arrival, state in writing the condition of the container over your signature on the receipt. If damage is discovered after opening the container, notify the carrier immediately. We provide good merchandise properly packaged to the carrier. Claims for damage must be directed to the carrier, not to Dayton Wheel Concepts, Inc.

Guarantee
Defective merchandise must be returned at customer's expense for replacement. We will replace defective parts, but cannot accept responsibility for inconvenience or losses occasioned by their use or labor involved in their installation and removal. There is no warranty if parts have become defective due to faulty installation or abuse. There is no warranty, expressed or implied, for any parts or work used for competition, or performance driving school events. We reserve the right to withhold refund until defective part has been examined and tested.

Product Use
Many items we sell are for use off-road or in a controlled competition environment. It is the customer's responsibility to ensure that items purchased are legal and safe for their intended use. Motor sports are inherently dangerous. Dayton Wheel Concepts, Inc. is not responsible or liable for any associated injury or damage.

Investigation of previously transacted items
Any investigation or copies requested by a customer that has been determined already submitted will require a handling fee of $50.00 per item net payable in customer agreed f[illegible]s.

Warranty for wheels
All Dayton Wheel Concepts, Inc. wheels are warranted to the original owner for;

- Three (3) years from date of purchase – Dayton Wire Wheels
- One (1) year from date of purchase – American Wire Wheels

for defects in material and/or workmanship under normal and intended use. Dayton Wheel Concepts, Inc. agrees to repair or replace wheels, at the sole discretion of Dayton Wheel Concepts, Inc. Dayton Wheel Concepts, Inc. is not responsible for finish problems due to neglect by the customer. Wheels that have been determined to have been damaged by a tire-mounting machine will be repaired at the customer's expense. Transfer of title of any Dayton Wheel Concepts, Inc. product by the original owner voids the warranty. Dayton Wheel Concepts, Inc. is not responsible for any damage to vehicle or labor cost incurred as a result of failure of warranted items. Dayton Wheel Concepts, Inc.'s warranty is limited to the purchase price of the product. *Wheels returned for warranty inspection must be accompanied by a copy of your receipt.*

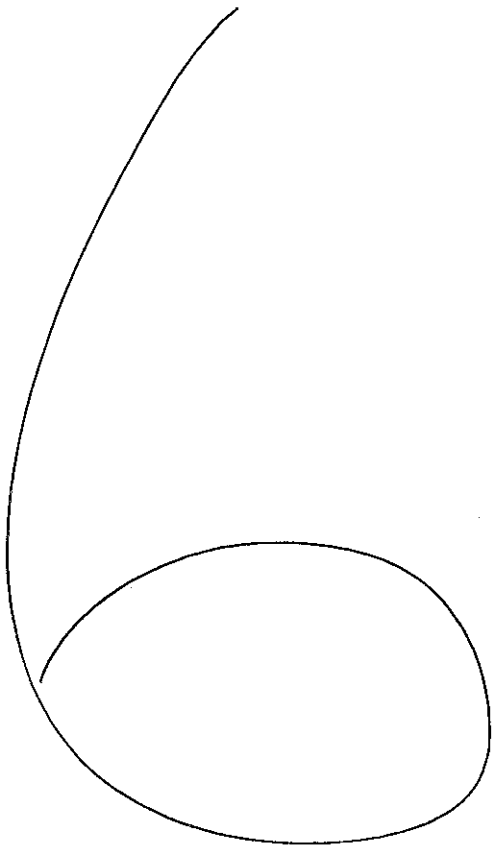
Warranty claims will not be approved until Dayton Wheel Concepts, Inc. inspects the product.

Claims
Claims for damage, shortage or manufacturing error must be made within five (5) business days from the receipt of shipment by calling 1 (800)862-6000. Claims for damage as a result of carrier's negligence must be held at the customer location pending disposition from carrier. Claims not made within this period will not be honored by Dayton Wheel Concepts, Inc. Claims for finish problems must be made prior to installing accessories or mounting tires.

Important
All defective returns will be reviewed by quality control personnel. Any defects not found to be Dayton Wheel Concepts, Inc.'s responsibility will be rejected and returned to the sender at their expense. Defects in finish will not be covered under warranty if:

1. Damage occurred during installation
2. Damage to finish is due to improper care, use of caustic material for cleaning, or neglect
3. The item was sold as a second or blemished product

* Signature Required: _____



6. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect that have been conducted, are being conducted, are planned, or are being planned by, or for, Dayton. For each such action, provide the following information:

   a. Action title or identifier;
   b. The actual or planned start date;
   c. The actual or expected end date;
   d. Brief summary of the subject and objective of the action;
   e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
   f. A brief summary of the findings and/or conclusions resulting from the action.

   For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

STANDARDS TESTING LABS, INC.

1845 Harsh Avenue
Massillon, Ohio 44646
Phone: (330) 833-8548

Our telefax number is (330) 833-7902

Date: February 23, 2006

Number of pages including the cover sheet: 2

Please deliver the following to:

Name: Robert Moore

Firm: Dayton Wheel

Fax #: 937-438-9742

From: Chris Skubiak

Message

This transmittal is strictly intended for delivery only to the person listed above. It may contain confidential or privileged information, the disclosure of which is prohibited. If you have received this facsimile and are not the intended recipient, you are hereby notified that the copying, distribution, or other unauthorized use of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone to arrange for return of this document.

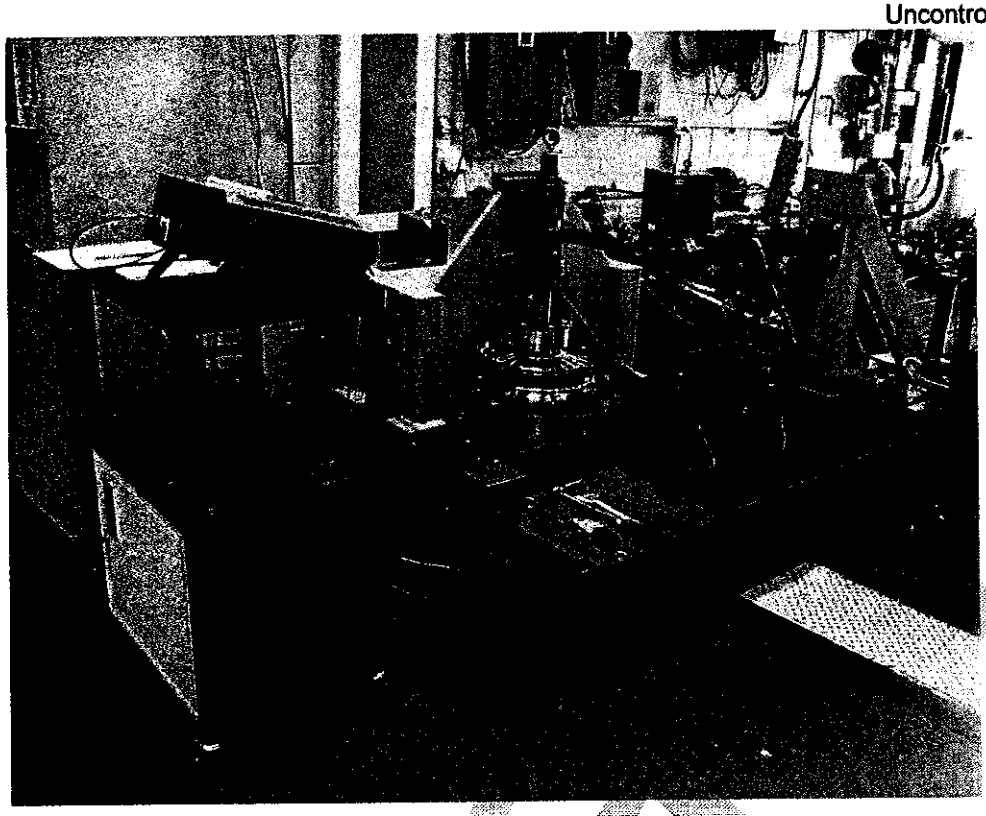


Figure 1. Overall Test Set-up

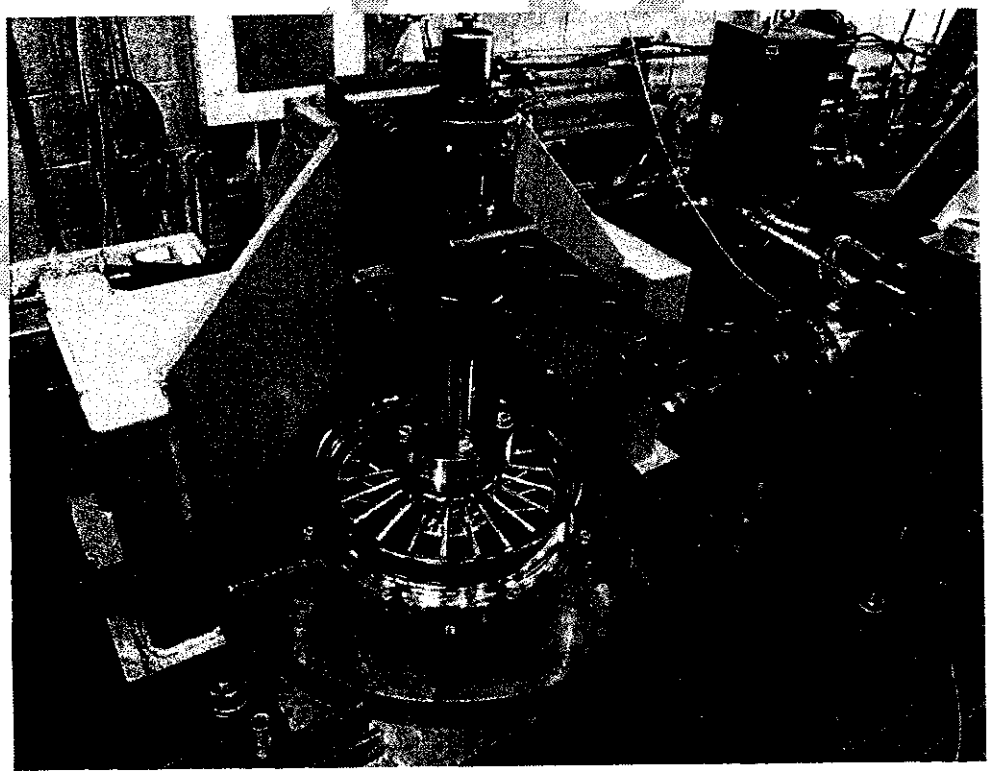
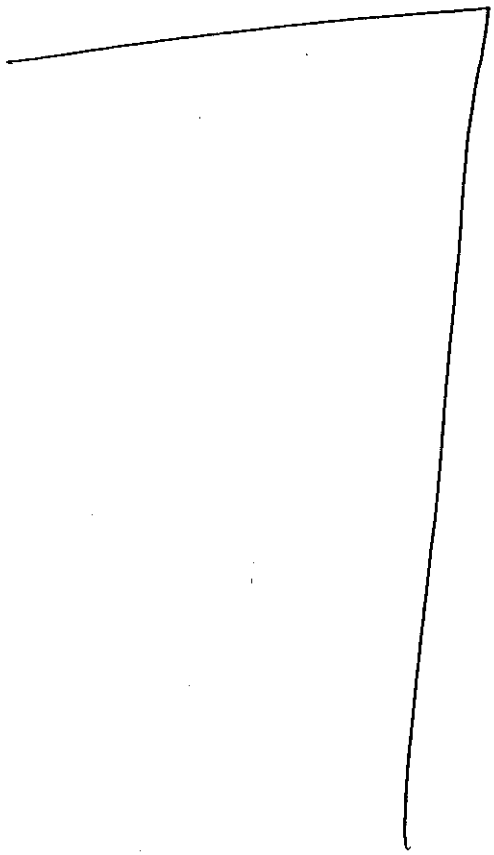


Figure 2. Close-up of Sample and Torque Arm

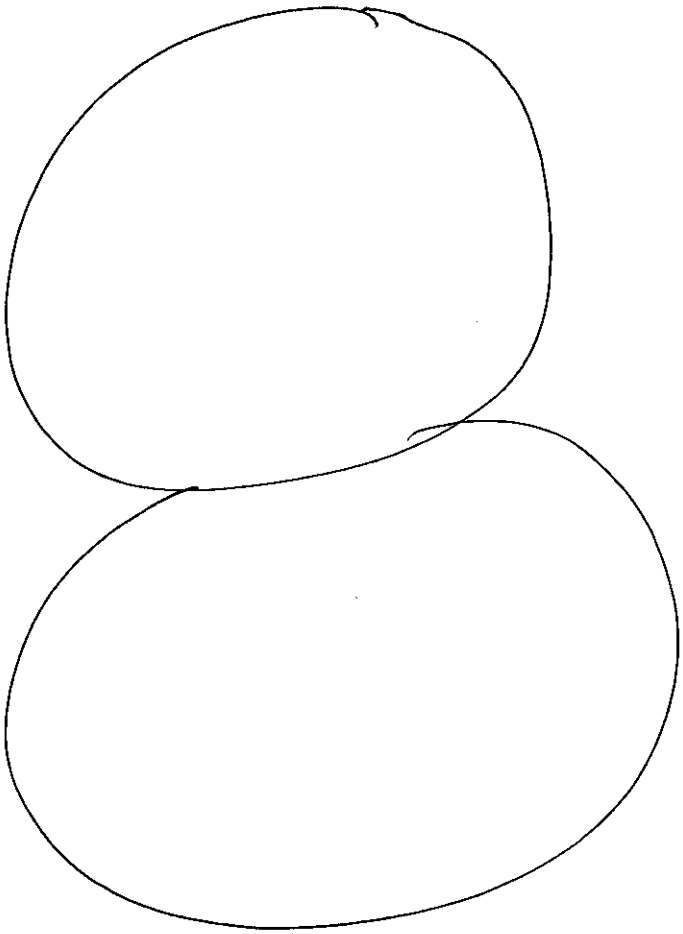


7. Describe all modifications or changes made by, or on behalf of, Dayton, from the start of production to date, which relate to, or may relate to, the alleged defect. For each such modification or change, provide the following information:

   a. The date or approximate date on which the modification or change was incorporated into vehicle production;

   b. The number of incidents, involving the alleged defect, known to Dayton when the modification or change was incorporated into vehicle production;
   c. A detailed description of the modification or change;
   d. The reason(s) for the modification or change;
   e. The part numbers (service and engineering) of the original component;
   f. The part number (service and engineering) of the modified component;
   g. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
   h. When the modified component was made available as a service component; and
   i. Whether the modified component can be interchanged with earlier production components.

   Also, provide the above information for any modification or change that Dayton is aware of which may be incorporated into vehicle production within the next 120 days.



8. Regarding [redacted] v. Dayton Wheel Concepts, Inc., et. Al., Montgomery County Common Pleas Court, Case no. 2008 cv 2300, please provide the following, where possible:
   a. The original and any amended complaints;
   b. Any responses filed by Dayton;
   c. The dismissal; and
   d. Transcripts of any Gisslen depositions.

   Please provide the same information for [redacted] v. Dayton Wheel Concepts, Inc., et. Al., Montgomery County Common Pleas Court, Case no. 2009 cv 8163.

Section 8a.

2008 MAR -7 PM 12:29
GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
23

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

THOMAS GISSLEN **707 Miamisburg-Centerville Rd. # 158** **Dayton, Ohio 45459**	:	**CASE NO.** '08 2300
Plaintiff,	:	**JUDGE:**
vs.	:	
DAYTON WHEEL CONCEPTS, INC. **115 Compark Rd.** **Dayton, Ohio 45459**	:	**COMPLAINT**
and	:	
CHARLES SCHROEDER **4850 Tait Road** **Dayton, Ohio 45429**	:	**JURY DEMAND ENDORSED HEREON**
and	:	
RICHARD H. GRANT, III **4600 Brown Road** **Dayton, Ohio 45440**	:	
Defendants.	:	

NOW COMES the plaintiff, Thomas Gisslen ("Mr. Gisslen"), and for his Complaint against the defendants, Dayton Wheel Concepts, Inc. ("Dayton Wheel"), Charles Schroeder, and Richard H. Grant, III, sets forth the following averments, to-wit:

PARTIES, JURISDICTION & VENUE

1. At all times relevant hereto, Mr. Gisslen was a resident of the state of Ohio and Montgomery County, Ohio. Mr. Gisslen was formerly an employee of Dayton Wheel, in the position of design engineer. At all times relevant hereto, Mr. Gisslen was an "employee" as defined by R.C. § 4113.51(A).

2. Defendant Dayton Wheel is an Ohio for-profit corporation, with its principle place of business located in Montgomery County, Ohio. Dayton Wheel specializes in the manufacture and sale of automotive and motorcycle aftermarket wire wheels and accessories. Dayton Wheel is an "employer" as defined by R.C. § 4113.51(B).

3. Defendant Charles Schroeder ("Mr. Schroeder"), at all times relevant hereto, held the position of President at Dayton Wheel, exercised supervisory authority over Mr. Gisslen, and acted as an agent on behalf of Dayton Wheel. Mr. Schroeder is an "employer" as defined by R.C. § 4113.51(B).

4. Defendant Richard H. Grant, III ("Mr. Grant") is Director Emeritus of Dayton Wheel and, at all times relevant hereto, was involved in the day-to-day operations of Dayton Wheel, exercised supervisory authority over Mr. Gisslen, and acted as an agent on behalf of Dayton Wheel. Mr. Grant is an "employer" as defined by R.C. § 4113.51(B).

5. Jurisdiction of this Court is predicated on R.C. § 2305.01 and R.C. Chapter 4113, providing for subject matter jurisdiction. Venue is proper pursuant to Civil Rule 3(B)(2), (3), and (6), as Dayton Wheel maintains its principal place of business in Montgomery County, Ohio, Mr. Schroeder and Mr. Grant reside in Montgomery County, Ohio, and the activities of Defendants giving rise to this action occurred in Montgomery County, Ohio.

BASIS OF DISPUTE

6. Mr. Gisslen was hired at Dayton Wheel on September 6, 2005 as a mechanical engineer. Dayton Wheel hired Mr. Gisslen, because of the need in the organization for someone with a background in mechanical design. Mr. Gisslen remained employed at Dayton Wheel as a mechanical engineer until his termination on September 11, 2007. As a mechanical engineer, Mr. Gisslen worked on engineering projects from feasibility and concept development through product design, testing, and validation. Mr. Gisslen further wrote design specifications, developed engineering component plans, and wrote raw material specifications. Mr. Gisslen was the only mechanical engineer employed by Dayton Wheel.

7. Within the first month at Dayton Wheel, Mr. Gisslen developed a three dimensional computer model of the "BA" wheel, Dayton Wheel's replacement motorcycle wheel for the SuperSpoke II. The Superspoke II had been recalled after an accident had occurred causing serious personal injury. The National Highway Traffic and Safety Administration ("NHTSA") initiated the recall of the SuperSpoke and SuperSpoke II wheels. Mr. Schroeder and Dayton Wheel falsely represented to NHTSA that "There will be no further production of the SuperSpoke II wheel, nor further distribution of the SuperSpoke wheel or any similar design until Dayton feels confident that it can produce a safe and durable wheel." The BA wheel went into production in late 2003, was based on a similar design as the SuperSpoke II, and was defective and unsafe.

8. When Mr. Gisslen developed the three dimensional computer model of the BA, he was unaware that the SuperSpoke II had been recalled due to safety defect violations, or that the BA shared similar defective design features with the SuperSpoke II. From his analysis of the three dimensional BA wheel computer model, Mr. Gisslen recognized that the design of the BA hub and

spoke interface permitted a concentration of forces acting upon the hub flange sufficient to create a substantial risk of failure. Due to this analysis, Mr. Gisslen recommended to Mr. Schroeder that Dayton Wheel have a torsion test performed on the BA wheel by a test laboratory, to independently evaluate whether the design was defective. Mr. Schroeder would not permit the torsion testing, despite Mr. Gisslen's recommendations.

9. In November, 2005, Mr. Gisslen became aware that Dayton Wheel had depleted its stock of carbon steel spokes, a component of the BA wheel. On November 18, 2005, Mr. Gisslen saw a BA wheel being packaged with stainless steel spokes which had been dispositioned as "NON-CONFORMING." Mr. Gisslen saw the defective the BA wheel by chance, and only by such chance was he able to prevent shipment of the defective wheel to the customer. Mr. Gisslen inspected the wheel and noticed cracking on the hub flange at the spoke interface. The cracked flange of the wheel presented an obvious defect and safety hazard.

10. The cracking on the BA wheel coincided with the design defect Mr. Gisslen had previously reported to Mr. Schroeder and Mr. Grant, based on his analysis of the three dimensional computer model. Due to the observed failure in the BA wheel, Mr. Gisslen again recommended that Dayton Wheel arrange for torsion testing of the wheel by a test laboratory. Mr. Schroeder refused to agree to a torsion test of an actual wheel. However, Mr. Gisslen persuaded Mr. Schroeder to agree to allow a Finite Element Analysis ("FEA") of the three dimensional computer model of the BA wheel.

11. Mr. Gisslen arranged for a FEA of the computer model of the BA wheel to be conducted by RHAMM Technologies ("RHAMM"). Based on the FEA, Brian Barlow at RHAMM concluded that the BA wheel is defective in design and will fail. Upon receiving the final FEA report from

RHAMM, Mr. Gisslen forwarded the report to Mr. Schroeder, in confirmation of his concerns that the BA wheel was defectively designed. After reading the report, Mr. Schroeder handed the report to Mr. Gisslen, and told him to put the report where no one will find it.

12. Mr. Gisslen was shocked that Mr. Schroeder would tell him to put the FEA report where no one would find it. Mr. Gisslen was further shocked to learn that no BA wheel in production had ever successfully completed an alternating torsion. Only thirteen alternating torsion tests had been performed in validation of the entire Dayton Wheel motorcycle wheel product line, and that out of the thirteen tests, only one BA wheel was successful. However, the successful BA wheel was not representative of any BA wheel in production, so no BA wheel in production had successfully passed an alternating torsion test.

13. In approximately February 2006, Mr. Gisslen found out that the BA wheel design was based on the design of a defective prototype. In response to an inquiry, Mr. Gisslen received a picture of the defective prototype, showing the hub with a cracked flange. The cracked flange pictured on the defective BA prototype directly coincided with Mr. Gisslen's previous analysis of the three dimensional computer model of the BA wheel indicating design defect, and was consistent with the cracking in the BA wheel assembled on November 18, 2005. When Mr. Gisslen learned about a field report of another BA wheel failure, he decided to investigate. Concerned as to what whether there may be additional safety issues involving the BA wheel, Mr. Gisslen reviewed BA wheel product safety tests conducted between November 2002 to February 2006.

14. From Mr. Gisslen's review of these records, he was able to determine that only one BA wheel had passed an alternating torsion test, and it was a model that never went into production.

In other words, no BA model in production had ever passed an alternating torsion test. Mr. Gisslen also observed that test data was incomplete, implicating the integrity of the testing procedures used by the test lab. Mr. Gisslen reported his findings to Mr. Schroeder, and concerned over Dayton Wheel's legal responsibilities, prompted Mr. Schroeder to involve legal counsel. Mr. Gisslen had recently learned there had been a NHSTA investigation of the SuperSpoke II. Mr. Gisslen had finally come to realize that Mr. Schroeder had not been forthcoming as to reports of safety issues involving Dayton Wheel products.

15. In 2006, Mr. Gisslen designed a significantly heavier wheel for the BA, under the same name and model, as a replacement wheel for the defective BA wheel. The safety issue was not the reason for the replacement wheel. Instead, Dayton Wheel ran out of carbon steel spokes, and was unable to obtain replacement stock. The new BA wheel was constructed with less aluminum, using threaded stainless steel spokes that screwed directly into steel hub flanges. However, Mr. Gisslen remained concerned that the BA wheels already sold remained a public safety hazard. Despite the findings of RHAMM Technologies that the BA wheel design was defective and would fail, contrary to Mr. Gisslen's recommendations, and regardless of the public safety, Dayton Wheel never recalled the defective BA wheels, and continued selling the defective BA wheels remaining in stock.

16. The reaction of Mr. Schroeder, Mr. Grant, and Dayton Wheel to Mr. Gisslen's reports of defects placed Mr. Gisslen under great pressure and stress. Mr. Gisslen felt responsible to do all he could to persuade Defendants to institute appropriate safety protocols, including a proper testing program, and recall defective products already in the market. Mr. Gisslen's efforts were rejected with hostility, cursing, yelling, and ridicule. The pressures and stress were affecting Mr. Gisslen emotionally and physically. Mr. Gisslen's marriage and his relationship with his family have

suffered, and his health has been adversely affected as a result of Defendants' hostility and reckless indifference to the threat Dayton Wheel products pose to the public safety.

17. Several times during Mr. Gisslen's employment at Dayton Wheel, he reported violations of federal and state statutes, including federal safety standards, to Mr. Schroeder and Mr. Grant, verbally and in writing. Mr. Gisslen also reported product test failures and other suspect design and manufacturing defects, with no indication that Mr. Schroeder or Mr. Grant would take any corrective action. For example, Mr. Gisslen reported that material received from a supplier was excessively brittle, failing to meet specifications. Though Mr. Gisslen recommended that the non-conforming material be returned, the material was used anyway. In another example, Mr. Gisslen reported that wheel rim markings relating to safety specifications, which are required to be displayed by law, were being polished off the wheels. Again, Defendants refused to address the matter, and continued using the same polishing process.

18. While the BA wheel is a prime example, Mr. Gisslen identified and reported numerous additional safety issues regarding other Dayton Wheel products. Initially Mr. Gisslen expected that Dayton Wheel would voluntarily recall the defective products it manufactured and implement appropriate solutions to correct the design and manufacturing defects. Concerned that Dayton Wheel's false representation to NHSTA could result in criminal charges, and that the defective wheels were placing the public safety at risk, Mr. Gisslen continued to warn Dayton Wheel, Mr. Schroeder, and Mr. Grant about the defective design of the BA wheel. Though Mr. Gisslen warned Mr. Schroeder and Mr. Grant that Dayton Wheel's defective products constitute a substantial risk of catastrophic personal injury, Mr. Schroeder and Mr. Grant have recklessly ignored Mr. Gisslen's warnings.

19. In response to Mr. Gisslen's many warnings, Mr. Schroeder and Mr. Grant became more impatient and unwilling to tolerate Mr. Gisslen. On September 11, 2007, Mr. Schroeder terminated Mr. Gisslen's employment with Dayton Wheel for repeatedly reporting safety violations within the company, under the pretext that the termination was a "layoff." Since his termination, Mr. Gisslen has been looking for work suitable to his experience and skills. As a result of the termination of Mr. Gisslen's employment, Mr. Gisslen has suffered emotionally, physically, and financially.

FIRST CLAIM FOR RELIEF
(Whistleblower Violation of R.C. 4113.52)

20. Mr. Gisslen hereby incorporates paragraphs 1 through 19 as if fully rewritten herein and further states that:

21. Ohio's whistleblower statute, Revised Code § 4113.52, requires an employee who becomes aware that his or her employer has violated state or federal law, or a work rule or company policy, to report the violation to the employee's supervisor, or other responsible officer of the employer, if the employee reasonably believes that the violation is a criminal offense likely to cause an imminent risk of physical harm to persons or hazard to the public safety. The employee is also required to provide the employer with a written report providing sufficient detail to identify and describe the violations.

22. Pursuant to Ohio law, Mr. Gisslen reported violations of federal and state statutes, including federal safety standards and company policies to Mr. Schroeder and Mr. Grant to prevent the distribution of dangerous products on public roadways. These defective products violate federal safety standards and constitute a violation of state and federal statutes. Mr. Gisslen reasonably believed these violations constitute criminal offenses, including Defendants' violations of U.S.C.

§ 30170. Mr. Gisslen provided Mr. Schroeder and Mr. Grant oral and written notice of the violations by Dayton Wheel.

23. Revised Code § 4113.52 protects an employee from retaliation, including discharge, where the employee reports to his or her supervisor or other responsible officer a violation of a company work rule or policy, or a violation of a state or federal law which the employee reasonably believes is a criminal offense likely to cause an imminent risk of physical harm to persons, a hazard to public health or safety, or a felony. In violation of R.C. § 4113.52, Defendants, under the direction of Mr. Schroeder and Mr. Grant, terminated Mr. Gisslen's employment for reporting Dayton Wheel's violations of law.

24. As a direct and proximate cause of Defendants' violation of the R.C. § 4113.52, Mr. Gisslen is entitled to reinstatement, back pay, attorney fees, and interest in an amount not yet fully ascertained but in excess of $25,000. Mr. Gisslen's damages include lost base wages of approximately $1,154.00 per week ($60,000 per year) from the date of Mr. Gisslen's discharge to date, insurance benefits, and other employment benefits, costs, and reasonable attorney fees.

SECOND CLAIM FOR RELIEF
(Wrongful Discharge In Violation Of Ohio Public Policy)

25. Mr. Gisslen hereby incorporates paragraphs 1 through 19 as if fully rewritten herein and further states that:

26. The clear public policy of the state of Ohio, as expressed in R.C. 4113.52 and elsewhere, prohibits the retaliatory firing of an employee who reports to his employer a violation of a state or federal statute he reasonably believes is a criminal offense causing a hazard to the public safety. In

violation of the clear public policy of the state of Ohio, Mr. Gisslen's reports of safety violations resulted in the decision by Dayton Wheel, Mr. Schroeder, and Mr. Grant to terminate his employment. The retaliation against Mr. Gisslen in violation of the clear public policy of the state of Ohio was intentional and malicious.

27. Dayton Wheel, Mr. Schroeder, and Mr. Grant lacked any overriding business justification for Defendants' violation of public policy. To permit retaliation against Ohio employees by employers on the basis of reporting motor vehicle safety violations and defective products that threaten the public safety places the public policy in jeopardy.

28. At all times relevant hereto, Mr. Schroeder and Mr. Grant knew that products manufactured by Dayton Wheel were and are defective, violate federal and state statutes, and constitute a hazard to the public safety, or with reckless disregard caused Dayton Wheel to manufacture products that were and are defective, violate federal and state statutes, and constitute a hazard to the public safety. In reprisal against Mr. Gisslen for his reports of product safety violations, Mr. Schroeder and Mr. Grant terminated the employment of Mr. Gisslen, in violation of the public policy of the State of Ohio. In consequence their unlawful activity, Mr. Schroeder and Mr. Grant are personally liable to Mr. Gisslen for direct, consequential, and punitive damages, including costs, expenses, and reasonable attorney fees.

29. As a direct and proximate cause of Mr. Gisslen's wrongful termination in violation of the clear public policy of the State of Ohio, Mr. Gisslen has suffered severe physical and psychological injury, and emotional distress. Mr. Gisslen is entitled to reinstatement, compensatory and punitive damages in an amount not yet fully ascertained but in excess of $25,000. Mr. Gisslen's damages

include lost wages of approximately $1,154.00 per week ($60,000 per year) from the date of his discharge, insurance benefits, other employment benefits, costs, and reasonable attorney fees.

THIRD CLAIM FOR RELIEF
(Wrongful Discharge In Violation Of Ohio and Federal Public Policy)

30. Mr. Gisslen hereby incorporates paragraphs 1 through 19 as if fully rewritten herein and further states that:

31. The clear public policy of several federal statutes enacted by Congress and regulations enacted by NHTSA, as expressed in 49 U.S.C. § 30101 *et seq.*, and specifically 49 U.S.C. § 30170 (providing criminal penalties with respect to NHTSA reporting requirements), 49 C.F.R. § 571.1 *et seq.*, and elsewhere, promote vehicle safety on public roads and highways. Ohio statutes, including R.C. 2307.71, *et seq.*, impose liability upon manufacturers of defective products causing a hazard to the public safety. The dismissal of employees who report defective products violating federal and state laws and federal motor vehicle safety regulations places the public policy in jeopardy. In violation of the clear public policy of the State of Ohio, Mr. Gisslen's reports of safety violations resulted in the decision by Dayton Wheel, Mr. Schroeder, and Mr. Grant to terminate his employment. The retaliation against Mr. Gisslen in violation of the clear public policy of the State of Ohio was intentional and malicious.

32. Dayton Wheel, Mr. Schroeder, and Mr. Grant lacked any overriding business justification for Defendants' violation of public policy. To permit retaliation against Ohio employees by employers on the basis of reporting motor vehicle safety violations and defective products that threaten the public safety places the public policy in jeopardy.

33. At all times relevant hereto, Mr. Schroeder and Mr. Grant knew that products manufactured by Dayton Wheel were and are defective, violate federal regulations, and constitute a hazard to the public safety, or with reckless disregard caused Dayton Wheel to manufacture products that were and are defective, violate federal regulations, and constitute a hazard to the public safety. In reprisal against Mr. Gisslen for reporting product safety violations, Mr. Schroeder and Mr. Grant terminated the employment of Mr. Gisslen, in violation of the public policy of the State of Ohio. In consequence their unlawful activity, Mr. Schroeder and Mr. Grant are personally liable to Mr. Gisslen for direct, consequential, and punitive damages, including costs, expenses, and reasonable attorney fees.

34. As a direct and proximate cause of Mr. Gisslen's wrongful discharge in violation of the clear public policy of state and federal law, Mr. Gisslen has suffered severe physical and psychological injury, and severe emotional distress. Mr. Gisslen is entitled to reinstatement, compensatory and punitive damages in an amount not yet fully ascertained but in excess of $25,000. Mr. Gisslen's damages include lost base wages of approximately $1,154.00 per week ($60,000 per year) from the date of Mr. Gisslen's discharge to date, insurance benefits, and other employment benefits, costs, and reasonable attorney fees.

WHEREFORE, Mr. Gisslen respectfully demands judgment against the defendants in an amount not yet ascertained, but in excess of $25,000, together with pre-judgment interest, interest, costs herein expended, compensatory damages, punitive damages, and reasonable attorney fees, and such other relief as the Court finds just.

Respectfully Submitted,

Weprin Folkerth & Routh LLC

John R. Folkerth, Jr. (0016366)
Kenneth J. Heisele (0078827)
Trial Attorneys for Plaintiff
500 Performance Place
109 North Main Street
Dayton, Ohio 45402
(937)260-4200
(937)260-4201 (facsimile)

JURY DEMAND

Now comes the Plaintiff, Thomas Gisslen, pursuant to Civil Rule 38, and hereby demands a trial by jury herein.

John R. Folkerth, Jr.

TO THE CLERK:

Please cause service of SUMMONS, and a true copy of this COMPLAINT, upon the defendant, in accordance with the INSTRUCTIONS FOR SERVICE filed herewith.

John R. Folkerth, Jr.

Section 8b.

Michael W. Hawkins (0012707)
Elizabeth A. Simmons (0078969)
Trial Attorneys for Defendants

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

THOMAS GISSLEN	:	Case No. 2008 CV 2300
Plaintiff,	:	Judge Langer
vs.	:	**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**
DAYTON WHEEL CONCEPTS, INC. et al.,	:	
Defendants.	:	

Defendants Dayton Wheel Concepts, Inc., Charles Schroeder and Richard H. Grant (hereinafter "Defendants"), by and through their counsel, respond to Plaintiff's (hereinafter "Plaintiff") Complaint as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to Plaintiff's state and county of residence as alleged in Paragraph 1 of Plaintiff's Complaint. Defendants admit the remaining allegations contained in Paragraph 1 of Plaintiff's Complaint.

2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint that Defendant Charles Schroeder held the position of President of Dayton Wheel and exercised supervisory authority over Plaintiff. The remaining allegations contained in Paragraph 3 of Plaintiff's

Complaint state legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendants deny the allegation contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendants deny the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. The allegations contained in Paragraph 5 of Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of Plaintiff's Complaint that Defendants made false representations to the National Highway Traffic and Safety Administration and that their BA wheel was defective and unsafe. Defendants admit the remaining allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants admit the allegations contained in Paragraph 8 of Plaintiff's Complaint that Plaintiff recommended a torsion test performed on the BA wheel. Defendants deny the allegations contained in Paragraph 8 of Plaintiff's Complaint that Defendant Schroeder would not permit the torsion testing. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint that Defendants' products contain any defects or safety hazards. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of Plaintiff's Complaint that Defendant Schroeder agreed to allow a Finite Element Analysis of the three dimensional computer model of the BA wheel. Defendants admit that Plaintiff recommended torsion testing of an

actual wheel, but deny that Defendant Schroeder refused to agree to a torsion test as alleged in Paragraph 10 of Plaintiff's Complaint. Defendants deny the allegations contained in Paragraph 10 of Plaintiff's Complaint that Defendants' product contain any design defect. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. Defendants admit that RHAMM Technologies performed testing on the BA wheel as alleged in Paragraph 11 of Plaintiff's Complaint. Defendants deny the remaining allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint that the BA wheel design contained any design defect. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of Plaintiff's Complaint that Plaintiff reported findings to Defendant Schroeder and prompted Defendant Schroeder to involve legal counsel. Defendants deny that Defendant Schroeder was not forthcoming as to safety issues with Defendants' products as alleged in Paragraph 14 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Defendants admit the allegations contained in Paragraph 15 of Plaintiff's Complaint that Plaintiff designed a significantly heavier wheel for the BA model that used less aluminum and used threaded stainless steel spokes that screwed directly into steel hub flanges. Defendants admit

the allegations contained in Paragraph 15 of the Complaint that the BA wheels remained in stock. Defendants deny the remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Defendants deny that Defendants reacted with hostility, cursing, yelling or ridicule to Plaintiff or that Defendants' product pose any threat to public safety, as alleged in Paragraph 16 of Plaintiff's Complaint. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Defendants admit that Plaintiff reported alleged test failures, alleged suspect design and alleged manufacturing defects to Defendants as alleged in Paragraph 17 of Plaintiff's Complaint. Defendants deny the remaining allegations contained in Paragraph 17 of Plaintiff's Complaint.

18. Defendants admit that Plaintiff reported alleged safety issues and alleged defective design of the BA wheel to Defendants, as alleged in Paragraph 18 of Plaintiff's Complaint. Defendants deny the remaining allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendants admit the allegations contained in Paragraph 19 of Plaintiff's Complaint that on September 11, 2007, Plaintiff's employment with Defendant Dayton was terminated. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19 of Plaintiff's Complaint that Plaintiff has been looking for work or that Plaintiff has suffered emotionally, physically and financially. Defendants deny the remaining allegations in Paragraph 19 of Plaintiff's Complaint.

FIRST CLAIM FOR RELIEF

20. Defendants admit, deny and otherwise respond to the allegations contained in Paragraphs 1 through 19 of the Complaint as stated above.

21. Paragraph 20 of Plaintiff's Complaint states a legal conclusion to which no response is required.

22. Defendants deny the allegations contained in Paragraph 22 of Plaintiff's Complaint that Defendants' products were defective. The remaining allegations contained in Paragraph 22 of Plaintiff's Complaint state legal conclusions to which no response is required.

23. Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Complaint that Defendants terminated Plaintiff for reporting violations of law. The remaining allegations contained in Paragraph 23 of Plaintiff's Complaint state legal conclusions to which no response is required.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiff's Complaint.

SECOND CLAIM FOR RELIEF

25. Defendants admit, deny and otherwise respond to the allegations contained in Paragraphs 1 through 24 of the Complaint as stated above.

26. Defendants deny the allegations contained in Paragraph 26 of Plaintiff's Complaint that Plaintiff was terminated as a result of his reports of safety violations. The remaining allegations contained in Paragraph 26 of Plaintiff's Complaint state legal conclusions to which no response is required.

27. Defendants deny the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of Plaintiff's Complaint.

THIRD CLAIM FOR RELIEF

30. Defendants admit, deny and otherwise respond to the allegations contained in Paragraphs 1 through 29 of the Complaint as stated above.

31. Defendants deny the allegations contained in Paragraph 31 of Plaintiff's Complaint that Plaintiff was terminated as a result of his reports of safety violations. The remaining allegations

contained in Paragraph 31 of Plaintiff's Complaint state legal conclusions to which no response is required.

32. Defendants deny the allegations contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint.

35. Defendants deny all allegations contained in Plaintiff's Complaint not specifically admitted herein.

FIRST DEFENSE

36. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

37. Defendants' actions were taken for legitimate business reasons.

THIRD DEFENSE

38. Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

FOURTH DEFENSE

39. Some or all of Plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

FIFTH DEFENSE

40. Plaintiff has failed to mitigate his alleged damages.

SIXTH DEFENSE

41. Plaintiff's alleged damages are speculative and, thus, unavailable as a matter of law.

SEVENTH DEFENSE

42. Defendants reserve the right to assert additional defenses, as they may become available or apparent during the course of this litigation.

WHEREFORE, Defendants, having fully answered, requests that the Complaint be dismissed with prejudice and it be awarded its costs and fees as well as any other relief to which it is entitled and/or the Court deems appropriate.

Respectfully submitted,

Michael W. Hawkins (0012707)
Elizabeth A. Simmons (0078969)
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
email: michael.hawkins@dinsla w.com
elizabeth.simmons@dinslaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer to Plaintiff's Complaint was served via regular United States mail this 9th day of May, 2008, upon John R. Folkerth, Weprin, Folkerth & Routh LLC, 109 North Main Street, 500 Performance Place, Dayton, Ohio 45402.

Elizabeth A. Simmons, Esq.

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Appendix E (referred to in Loc. R. 1.35, Facsimile Filing)

FACSIMILE FILING

MONTGOMERY COUNTY COMMON PLEAS COURT
GENERAL DIVISION

FACSIMILE PHONE NUMBERS: CRIMINAL 937.496.7581
CIVIL 937.496.7220

CASE INFORMATION:

Case Number	2008 CV 2300	Judge	Langer

Case Caption/Title	Thomas Gisslen, Plaintiff v. Dayton Wheel Concepts, Inc., et al., Defendants
Title of the Document	Answer

TRANSMISSION INFORMATION:

Party Transmitting this Document	Elizabeth A. Simmons
Supreme Court Registration Number (if applicable)	0078969

Office/Firm	Dinsmore & Shohl	Address Telephone No. Fax No. Email	255 East Fifth St., Suite 1900, Cinti, OH 45202 P. 513.977.8200 F. 513.977.8141 E-elizabeth.simmons@dinslaw.com
Number of Pages Including this Page	8	Date of Fax Transmission	5-9-08

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Title of the Document	Answer

TRANSMISSION INFORMATION:

Party Transmitting this Document	Elizabeth A. Simmons
Supreme Court Registration Number (if applicable)	0078969

		Address	

Section 8c.

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2008 OCT 14 P 2:44
GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

THOMAS GISSLEN	:	**CASE NO. 2008 cv 2300**
Plaintiff,	:	
vs.	:	**JUDGE: DENNIS J. LANGER**
DAYTON WHEEL CONCEPTS, INC., et al.	:	
Defendants.	:	

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Now comes the Plaintiff, Thomas Gisslen, by and through counsel, and pursuant to Civil Rule 41(A), hereby dismisses all claims, and the entire action herein, without prejudice to further action/actions on the same claim/claims.

Respectfully Submitted,

Weprin Folkerth & Routh LLC

John R. Folkerth, Jr. (0016366)
Trial Attorney for Plaintiff
500 Performance Place
109 North Main Street
Dayton, Ohio 45402
(937)260-4200
(937)260-4201 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following counsel for Plaintiff:

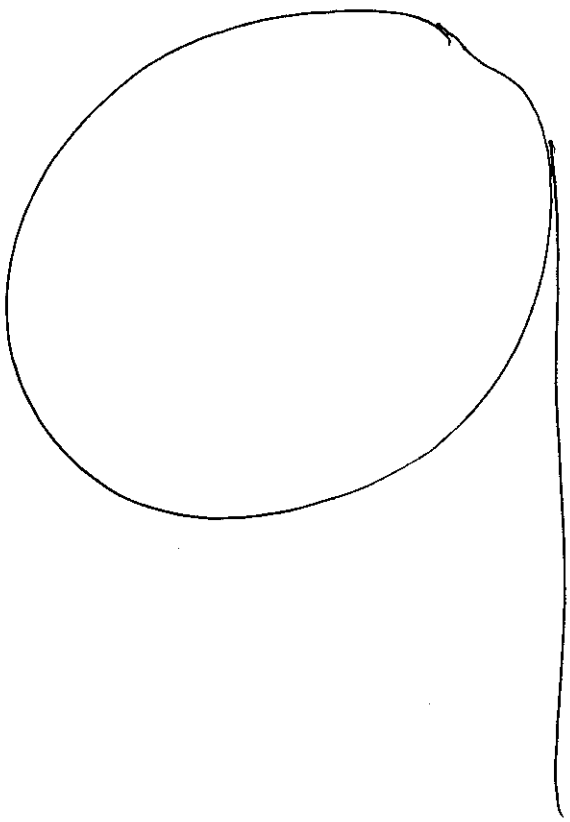
Mr. Michael W. Hawkins
Ms. Elizabeth A. Simmons
Dinsmore & Shohl, LLP
255 East Fifth Street
Suite 1900
Cincinnati, Ohio 45202

all by ordinary United States Mail, postage prepaid, on this 14th day of October, 2008.

John R. Folkerth, Jr.

Section 8d.

Mr. Gisslen has yet to be deposed in this matter.



9. Please provide a comprehensive response to the petitioner's allegations regarding Dayton's "defective design, material, and manufacturing processes in production of [the subject products]."

9. In response to the Petitioner's allegations regarding Dayton Wheel Concepts, Inc. ("DWC"), "defective design, material or manufacturing process" in the production of the Subject Products, DWC notes that it has manufactured hundreds of thousands of the Subject Products over the years and has not had one instance of an "alleged defect" (as that term is being defined by NHTSA in this investigation) which resulted from any defective design, material or manufacturing process. In fact, the only instance of an alleged defect for any of the Subject Products occurred as a result of improper mounting; a cause confirmed by examination of the product.

DWC takes great pride in producing high quality, durable and safe products that it stands behind with the industry's leading warranty. The quality and integrity of DWC's products are supported by its reputation with consumers and through testing protocols conducted by multiple independent labs. Simply stated, the allegations set forth by the Petitioner have no credibility and are not supported by the facts, but rather are a part of Petitioner's litigation strategy for his current pending employment litigation against DWC and others.

Petitioner's primary allegations appear to focus on DWC's design, manufacturing and testing process. DWC employs a rigorous development and testing process for all products. Contrary to the assertions by Petitioner, all materials and components used in the manufacturing process meet or exceed industry standards.[1] DWC develops and tests products, both internally and externally, and this development process was utilized for the Subject Products at issue in Petitioner's Complaint. Specifically, DWC conducts radial fatigue testing as well as alternating torsion testing for all wheels which it develops and manufactures.

With respect to the "BA" wheel, which is one of the primary targets of Petitioner's claims, this wheel was designed and developed in connection with discussions and conversations between DWC and NHTSA. The design and production of the "BA" wheel has at all times complied with the covenants and agreements of Preliminary Evaluation No. PEOT-073 and the Part 573 Report.

The development of the "BA" wheel, which is more fully explained in Response No. 7, involved internal and external testing throughout the development and manufacturing process. Specifically, the "BA" wheels were subject to Met-Stress tests during the development phase to investigate a concern of cracking in the chrome. A full and complete copy of the Met-Stress test report is attached as Appendix A to this Response. Significantly, the Met-Stress testing concluded that, unlike competitor wheels observed by Petitioner, the "BA" wheels did not sustain a loss of integrity or cracking of the sub-surface hub, but rather only reflected cracking in the aesthetic chrome plating.

However, without cause or reason. Petitioner was not satisfied with the Met-Stress testing results and insisted that additional testing take place. As a result, additional testing was done, to the specific parameters approved by Petitioner, by Rhamm (*see* Appendix B). As with the Met-Stress tests, the testing connected by Rhamm confirmed the integrity and design of the wheel.

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[1] Petitioner's reference to the use of "non conforming" materials is erroneous and demonstrates Petitioner's deficiencies in understanding design and component part drawings. Petitioner mistakenly believed that if a part drawing or a design drawing did not call out every specification on the print, then any part manufactured off the drawings were "non conforming." Petitioner is not an engineer and this may explain some of his confusion and misunderstanding.

Finally, along with the other Subject Products developed and manufactured by DWC, the "BA" wheel was subject to numerous additional radial and torsion tests conducted by outside laboratories. The latest of these tests (*see* testing results in Response No. 6) was performed to the TUV standard, the highest testing standard that currently exists in the industry.[2]

The allegations set forth by Petitioner are simply without any factual or engineering basis.[3] In response to a number of the attachments attached to Petitioner's Complaint, DWC offers the following responses:

A. DWC began production of a modified design after complete testing and a conversation with NHTSA representatives. DWC was (and is) confident that it can produce a safe and durable wheel.

B. The wheel was replaced under warranty.

C. Please see Appendix A.

D. After the Rhamm report was reviewed, it was discovered that the results were slightly flawed since the analysis did not account for work-hardening of the spoke material as a result of the cold-heading, bending, and tread-rolling operations.[4] Additionally, the technicians at Rhamm could not define a failure point within the load limits expected in regular on-highway use. The test is relevant to the design and was a contributing factor in DWC's decision to pursue an improved design.

E. [redacted]wheel was exposed to excessive loads beyond the wheel's and the motorcycle's load rating. DWC was not permitted the opportunity to inspect or even view Mr. [redacted]wheel unless it agreed to certain settlement demands. (*see* Response No. 3). After receiving the wheel from Mr. [redacted] it was confirmed that the wheel had been exposed to excessive loads.

F. DWC has no response to opinions expressed in an on-line forum. DWC does not believe that the article is relevant other than a customer who may be dissatisfied with DWC's customer service department.

G. Petitioner alleged that the testing results provided by Standard Test Labs ("STL") were invalid. DWC engaged counsel to determine the appropriate action to determine the validity of the testing results from STL. Petitioner was involved in this process, along with DWC's counsel and

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[2] The "BA" wheel passed. Moreover, contrary to Petitioner's allegations, the 40 spoke radial-lace motorcycle wheel passed certified alternating torsion tests at three separate testing facilities on five separate occasions from December 2002 to June 2007 (*see* Response No. 6).

[3] DWC did modify the polishing process per Petitioner's recommendation to insure legibility of the proper DOT markings (Appendix C).

[4] The parameters for the testing by Rhamm were approved by Petitioner.

Mr. [redacted].[5] Subsequently, the test results from STL were validated and confirmed through testing done by Rexnord Technical Services and Independent Testing Services.

H. Materials and components used by DWC in the manufacture of its products meet or exceed industry standards. Petitioner's allegation that DWC used "non-conforming" materials is derived from his belief that any part or product design drawing not drafted by Petitioner is insufficient. Petitioner has therefore alleged that any part or product manufactured from such drawings must be non-conforming.

I. DWC has no response to the opinions expressed in an on-line forum. DWC does not believe that the article is relevant. The wheel discussed in this article is not identified by manufacturer, DWC has no record of a complaint and the dates do not coincide with any customer correspondence related to such an event.

J. There is no "non-conforming" component in DWC's production wheels. Petitioner's photographs are of a collection of nipple samples from multiple suppliers.

The photograph of the spoke is not properly identified. The spoke in the photo appears to be similar to spokes removed from a BA-B1 development prototype. DWC can confidently state that the spoke in this photo does not resemble the spokes utilized in production.

K. and L. Mr. Petitioner has documented the result of utilizing improper mounting hardware for a motorcycle drive pulley. The pulley pictured was mounted with incorrect hardware as evidenced by the witness marks left in the chrome by the washers. Photo documentation of the witness marks are included as Appendix D of this Section.

M. DWC has manufactured close to 100,000 fasteners of this type and has never had a report of a wheel coming loose.

N. Petitioner has included a photograph of a wheel with broken spokes returned to DWC by Scott's Class Imports. It is impossible for DWC to know what happens to a wheel once it leaves the factory. Some customers participate in vintage racing, others modify their cars in such a way that the weight of the vehicle has changed, exceeding the specified load limit placed on the wheel while others may mount oversized tires.

The wheel Petitioner has photographed was supporting the weight of the car after the spokes had broken. According to the owner/operator of the vehicle, the wheel provided ample warning that spokes had broken: first, vibration, second, audible signal of clanging spokes, and third, tire deflation.

O. Please reference DWC's response to Petitioner's Appendix G.

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[5] The reference to a "wheel failure" in the communications with DWC's counsel refers to the allegation raised by [redacted] (*see* Response No. 3). As noted above, after DWC was able to inspect the wheel from Mr. [redacted] it was able to confirm that the wheel had been subject to excessive loads.

P. Petitioner references a memo written by DWC employee, Rob Moore. Mr. Moore manages quality control and production process. As noted by the last two sentences of the memo, the purpose of this memo was to justify investment in a new motorcycle chucking stand and truing stand.

Q. Please see the actual test results being produced in Response No. 6.

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Section 9

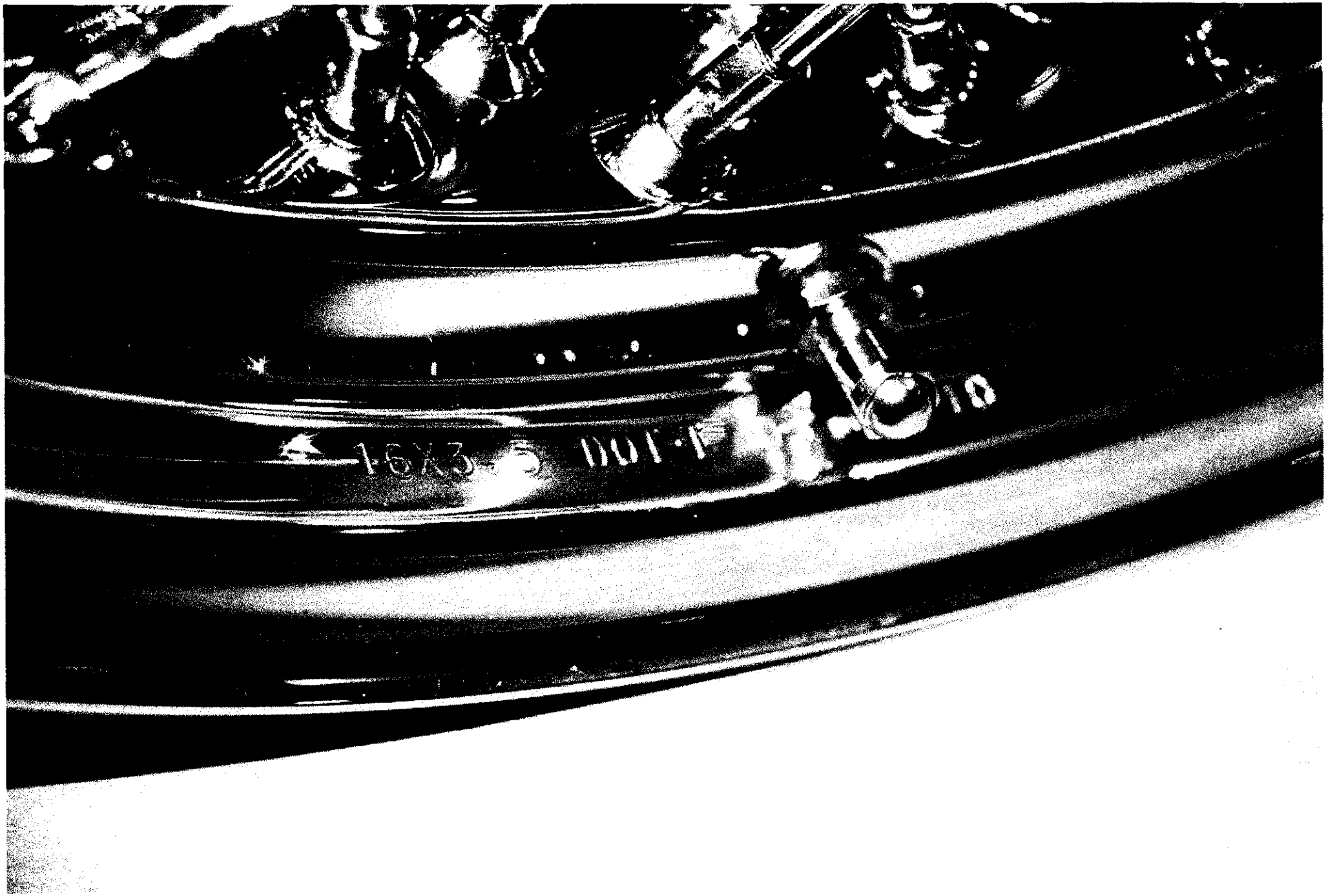
Appendix A

Section 9

Appendix B

Section 9

Appendix C


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Section 9

Appendix D

