No. 15-1406

IN THE
Supreme Court of the United States

THE GOODYEAR TIRE & RUBBER COMPANY,

Petitioner,

v.

LEROY HAEGER, *ET. AL*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF OF PETITIONER

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the opening brief for Petitioner remains accurate.

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INTRODUCTION

Plaintiffs readily concede that courts must apply a causation requirement when sanctioning parties pursuant to their inherent authority. In fact, they go so far as to endorse "proximate causation," which this Court has defined as requiring "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes* v. *Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). Because neither the district court nor the Ninth Circuit majority adhered to such a causation requirement, Plaintiffs' concession is tantamount to a confession of error.

Seeking to avoid that fate, Plaintiffs insist that the district court and Ninth Circuit majority applied some type of causation standard. But those courts disavowed the causation test that courts commonly employ in sanctions and fees-related cases. Under that standard, when a court invokes its inherent authority, it must limit any monetary sanction to those fees and costs incurred only as a direct result of bad-faith conduct. The sanction may include incremental fees incurred solely because of the misconduct—but nothing more. And when misconduct is intertwined with the rest of the litigation, the sanction cannot include fees that would have been incurred anyway.

Purporting to apply *Chambers*, Plaintiffs offer a two-tiered approach where direct causation would govern sometimes, but not always. In the first tier, direct causation would be required for "discrete" misconduct; but in the second tier, courts would be freed from causation's restraint and allowed

unbridled discretion to fashion fee awards so long as they labeled the conduct "frequent," "egregious," or "pervasive." Invoking such vague phrases does not create a workable approach, and Plaintiffs' "standard" would provide no meaningful guidance to district courts or parties. The only certainty about their standard is that it will erode the vestiges of restraint around inherent authority and insulate any fee award from appellate scrutiny. This is inimical to due process and separation of powers principles.

The blanket fee award here does not satisfy causation. Accepting the district court's misconduct findings, it failed to apply the correct legal test to determine the appropriate fee award. Many issues in the litigation had nothing to do with any misconduct, taking this case far outside the boundaries of *Chambers*. This Court should accordingly reverse and remand for application of the direct causation standard.

ARGUMENT

I. This Court Should Enforce a Direct Causation Requirement for Inherent Authority Sanctions

A. The District Court And Ninth Circuit Refused To Apply Any Proper Causation Requirement

Plaintiffs attempt to forge a distinction between "causation" and "direct causation," but such efforts cannot obscure that, regardless of how they label what the Ninth Circuit and the district court did, both courts refused to apply a causation analysis.

Repackaging their brief in opposition to *certiorari*, Plaintiffs insist that the lower courts in this case applied a causation standard and paint this dispute as little more than factual squabbling. That was Plaintiffs' sole argument in resisting *certiorari* on this question. *See* Br. in Opp. 13. In accepting review of Goodyear's question presented, this Court presumably considered and rejected that argument as a basis for denying review. *See United States* v. *Williams*, 504 U.S. 36, 40 (1992) ("In granting certiorari, we necessarily considered and rejected that contention as a basis for denying review.").

Beyond the consequences of the Court's *certiorari* determination, Plaintiffs fail to reconcile their argument with the lower courts' analyses. The district court interpreted *Chambers* v. *NASCO, Inc.*, 501 U.S. 32 (1991) as "reject[ing] … the position that only monetary harms incurred as a direct result of sanctionable conduct can be remedied." Pet. App. 157a. The court concluded that "*usually*" it must find a "direct causal link between the sanctionable conduct and the alleged harm." *Id.* But under its invented test, all fees may be awarded "when the sanctionable conduct rises to a truly egregious level." *Id.* Only "[i]n less egregious cases," must a court "tailor its award more carefully." *Id.* at 158a. Further proving the point, the district court proposed a "contingent" award to be applied if a "direct link[]" were required—a superfluous exercise if the court were applying causation. *Id.* at 180a.

The Ninth Circuit majority embraced the district court's analysis. *Id.* at 28a ("[U]nder *Chambers*, the district court did all it was required to do[.]"). It held that requiring "the specific amount of attorneys' fees

and costs awarded …[to] be directly linked to the bad faith conduct … *flouts controlling United States Supreme Court case law*." *Id.* (emphasis added). Although the majority noted that "bad faith conduct caused significant harm," *id.* at 30a, it never evaluated *how much* harm was actually caused. Instead, it ruled that no direct linkage is required to shift all fees incurred once a party begins "engaging in frequent and severe abuses of the judicial system." *Id.* at 32a.

Plaintiffs thus go astray by claiming that the majority and dissent saw eye-to-eye "on whether a causal link was required." Resp. Br. 13. The majority's failure to require causation precipitated Judge Watford's dissent: "The majority does not contend that a causal connection between Goodyear's misconduct and the fees awarded has been shown here, as required for the sanctions to be deemed compensatory." Pet. App. 46a-47a. The lower courts simply made no effort to find any causal linkage between particular fees and specific misconduct.

B. The Direct Causation Standard Comports with Existing Sanctions Jurisprudence and the Policies Behind Inherent Powers

1. Plaintiffs acknowledge that causation, and even proximate causation, should apply to an inherent authority sanctions analysis. *See* Resp. Br. 30-31. Yet notwithstanding this concession, Plaintiffs resist a "direct-linkage" requirement, insisting that Goodyear "offers no definition of what it means by 'direct' in this context." *Id.* at 30, 32. Goodyear explained in its opening brief, however, that a direct causation standard does not allow the

impacted party to recover "*more* fees than it incurred in response to the misconduct." Pet. Br. 35. Goodyear also explained that this standard requires awards to be "tailored" in a "non-speculative way." *Id.* at 34, 36 (internal quotations omitted). This is not some type of "heightened" causation, but rather how courts normally apply causation in similar contexts. *Id.* at 27-32, 36 (describing causation standards from the discovery rules, Rule 11, and 18 U.S.C. §1927 and 42 U.S.C. §1988). Rather than grapple with these points, Plaintiffs largely disregard them.

Stated concisely: When a court acts under its inherent power, a monetary sanctions award should include only those fees and costs incurred as a direct result of bad-faith conduct. Under this test, the incremental fees and costs incurred solely because of the misconduct are recoverable. But fees and costs that would have been incurred in the absence of the misconduct are not. As further discussed below, this standard simplifies a court's initial sanctions award and subsequent appellate review by arming courts with a test that they already apply in similar circumstances. And this standard generates a compensatory award even where misconduct is intertwined with the rest of the litigation. *See Fox* v. *Vice*, 563 U.S. 826, 840-41 (2011).

Plaintiffs acknowledge that something like direct causation should apply often, but not always. *See* Resp. Br. 20. But eroding a causation requirement for certain sanctionable conduct does not remain faithful to *Int'l Union* v. *Bagwell*, 512 U.S. 821 (1994). Although Plaintiffs argue that *Bagwell* does not support direct-linkage, *Bagwell* recognizes that

courts must "calibrate" a civil sanction to actual damages "caused by" misconduct. 512 U.S. at 834. A looser standard than direct causation fails to "calibrate" an award to actual "'losses sustained.'" *Id.* (quoting *United States* v. *Mine Workers*, 330 U.S. 258, 303-04 (1947)). Such a standard also obscures the difference between what compensates for misconduct, and what strays into the punitive realm. *See id.* at 847 (Ginsburg, J., concurring in part and in the judgment).

Stripping away direct causation (at least some of the time) inevitably expands inherent authority beyond previously recognized limits. These limits aid courts in exercising their inherent powers with the necessary "restraint and discretion." *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 764 (1980). Direct causation offers a tangible check on the single judge "solely responsible for identifying, prosecuting, adjudicating, and sanctioning." *Bagwell*, 512 U.S. at 831. It also provides courts with a benchmark to ensure their sanctions are proportionate and tailored to misconduct. *See* Pet. Br. 12-15 (discussing *Degen* v. *United States*, 517 U.S. 820 (1996); *Dietz* v. *Bouldin*, 136 S. Ct. 1885 (2016); and related authority). And direct causation deters courts from resorting to inherent powers to evade the causation requirements of other sanctions. *See Chambers*, 501 U.S. at 50 (noting that "the court ordinarily should rely on the Rules rather than the inherent power" when the Rules might control).

Exemplifying these principles, the Eighth Circuit underscored causation's importance in the inherent authority context, rejecting a sanction that "[did] not compensate … for fees incurred as a direct result of

Moll's conduct," "[did] not show the $50,000 sanction relates concretely to costs … directly incurred because of Moll's actions," and was "not concretely tailored to compensate the court for actual costs resulting from the misconduct." *Baycol Steering Comm.* v. *Bayer Corp.*, 419 F.3d 794, 808-09 (8th Cir. 2005). Though Goodyear featured *Baycol*, Pet. Br. 34, Plaintiffs elect not to discuss this example of the direct causation test in practice.

2. Plaintiffs' argument that direct causation would prove unworkable for the lower courts is belied by both *Fox* and the myriad cases where courts have applied a similar standard to a sanctions award. Confronting "a mix of frivolous and non-frivolous claims," *Fox* invoked basic principles of direct causation:

> [A] defendant may recover the reasonable attorney's fees he expended *solely* because of the frivolous allegations. *And that is all*…. [T]he defendant may not receive compensation for any fees that he would have paid in the absence of the frivolous claims.

Fox, 563 U.S. at 835, 840-41 (emphasis added). Balancing Section 1988's compensatory purpose with the American Rule, the Court recognized that "if the defendant would have incurred those fees anyway, to defend against *non*-frivolous claims, then a court has no basis for transferring the expense to the plaintiff." *Id.* at 832-36.

Plaintiffs refuse to address *Fox*'s causation test, quoting only its admonition that trial judges should not be rendered "green-eyeshade accountants." Resp. Br. 38-39 (quoting 563 U.S. at 838). But *Fox* did not

shy away from a meaningful causation test despite the reality that "litigation is messy." 563 U.S. at 834. Instead, the Court emphasized that only "*incremental harm* from the frivolous claim" is recoverable. *See id.* at 836 (emphasis added). By way of example, *Fox* explained that fees cannot be recovered for "a deposition on matters relevant to both a frivolous and a non-frivolous claim" if "the lawyer would have taken and committed the same time to this deposition even if the case had involved only the non-frivolous allegation." *Id.* But if a claimant "could prove" that particular litigation expenses were increased by the conduct, "then the court may reimburse the defendant for the increased marginal cost." *Id.* at 838. The burden falls on the fee applicant to untangle intertwined fees and costs. *See id.*

Deeming misconduct "interrelated" with the rest of the case, the district court in *Fox*, much like the district court here, "suggested that the close relationship between [frivolous and non-frivolous] claims supported Vice's request to recover *all* of his attorney's fees." *Id.* at 839-40. This Court disagreed: "That reasoning stands the appropriate analysis on its head." *Id.* Because only the costs of *frivolous* litigation may be shifted, recovery for fees and costs that "overlap between the frivolous and non-frivolous claims" is impermissible. *Id.* at 839-40. The Court therefore vacated an award of "full attorney's fees" for intertwined claims. *Id.* at 839, 841.

3. *Fox*'s guidance comports with various sanctions regimes, including Rule 11. *See* Pet. Br. 28-29, 34 (discussing *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384 (1990)). Indeed, Plaintiffs

appear to concede that the standard here should be informed by causation principles for other types of sanctions, including Rule 11. *See* Resp. Br. 31.

A few pages later, however, Plaintiffs reverse course and dismiss the Rule 11 analogy because "the purpose of Rule 11 sanctions is to deter." Resp. Br. 36. But "compensating the victim and deterring the perpetrator of Rule 11 violations are not mutually exclusive." *Rentz* v. *Dynasty Apparel Indus.*, 556 F.3d 389, 400 (6th Cir. 2009). On the contrary, Rule 11 recognizes that compensation of attorney's fees may sometimes be "warranted for effective deterrence," and authorizes an award of "part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Fed. R. Civ. P. 11(c)(4). Thus, when a court desires to compensate an affected party under Rule 11, a direct causation test is required.

Under Rule 11, this Court rejected an expansive interpretation of causation that would "extend indefinitely," and instead limited fee awards to that "directly caused" by the improper filing. *Cooter & Gell*, 496 U.S. at 406; *see* Fed. R. Civ. P. 11(c)(4) & advisory committee's 1993 note. The Seventh Circuit provided practical guidance in *Divane* v. *Krull Electric Company*, 200 F.3d 1020 (7th Cir. 1999). It overturned a "blanket award of attorneys' fees" for misconduct despite the district court's finding that the misconduct "'infected' the entire proceeding." *Id.* at 1030-31. In a "cautionary note," the Seventh Circuit explained that, under a direct causation standard, a fee award must be "limited to fees incurred as a direct result of the response and counterclaim filed by" the attorney. *Id.* at 1031. The

award "would naturally include any research conducted into the sole issue raised in [the improper] counterclaim." *Id.* But it "cannot include such activities as the cost of deposing witnesses … who [plaintiffs] would have deposed without regard to the frivolous counterclaim…." *Id.* Such guidance illustrates how the test can be applied in practice, and largely tracks the *Fox* analysis.

Plaintiffs do not explain why a direct causation standard would breed "extensive and needless satellite litigation," *Chambers*, 501 U.S. at 51, in the inherent powers context but not under other sanctions and fee-shifting regimes. *See* Resp. Br. 37. Courts have long demonstrated their ability to review and assess fee applications for direct causation. *See* Pet. Br. 28-32. And if parties must tailor fee applications based on causation, then this will simplify the district court's reviewing task compared to the situation here where Plaintiffs submitted a stack of billing records and forced Goodyear and the court to unravel everything.

4. Perhaps inadvertently, Plaintiffs lend support to the direct causation standard. They concede that at least *proximate* causation should limit inherent powers sanctions but elide what that standard means. Resp. Br. 30-31 & n.7. In the very authority Plaintiffs offer, however, the Court defines proximate cause to require "some *direct* relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268 (emphasis added). Proximate cause excludes recovery for injuries that are "too remote," "purely contingent," or "indirect[]." *Id.* at 268-69, 271.

This articulation of causation, which requires "directness of relationship," *id.* at 269, stands far closer to the "direct causation" test than to Plaintiffs' alternative.[1] Plaintiffs also concede that something like direct causation applies in certain situations. *See* Resp. Br. 20. As explained below, their effort to create a two-tiered causation standard is neither workable nor consistent with the purposes of inherent powers.

C. Plaintiffs' "Standard" Would Impermissibly Expand the Inherent Authority

Plaintiffs struggle to define their suggested causation standard with any precision. At various times they indicate that causation would be satisfied if misconduct "affect[s] the entire litigation," Resp. Br. 20 (emphasis omitted); is "severe and pervasive," *id.* at 24; or if it renders the litigation a "sham," *id.* at 22. Such amorphous and imprecise descriptions suffer the same flaws as the "ad hoc … standardless judicial lawmaking" rejected in the Section 1927 context by *Roadway Express*, 447 U.S. at 762 (refusing to adopt a "two-tier system of attorney sanctions"). These substitutes for causation do not assist courts in exercising their inherent powers "with restraint and discretion." *Id.* at 764. And they

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[1] Proximate causation, which developed in the tort context, does not apply neatly in the sanctions realm. Among other things, where much of the "injury" (*i.e.,* attorney's fees) would have been incurred regardless, "the [American] Rule provides that the prevailing party ordinarily cannot recover its own attorney's fees against the adverse party." *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 271 (1975).

extend inherent authority sanctions well beyond any "narrowly defined circumstances." *Id.* at 765.

In short, Plaintiffs' standard "is in truth no standard at all." *Fox*, 563 U.S. at 835. They would replace *causation* with some loose *association* between fees and alleged misconduct. Like the "fairly attributable" standard rejected in *Fox*, Plaintiffs' formulation "would leave to each and every trial court not only the implementation, but also the invention, of the applicable legal standard." *Id.* at 835-36. More importantly, their standard offers no means of ensuring that fee awards imposed under inherent powers are compensatory and, therefore, compliant with due process.

1. "Affecting" litigation (a description Plaintiffs frequently invoke, *see* Resp. Br. 14, 20, 22) is not the same as "causing" litigation. A true compensatory award would grant only the "increased marginal cost[s]" that the sanctioned party caused the other side to incur, *Fox*, 563 U.S. at 838, rather than reimburse all fees related to the litigation. *See Cooter & Gell*, 496 U.S. at 406 (rejecting "overbroad" causation and limiting fee award to "those expenses directly caused by the filing").

Likewise, causation is not established by finding that misconduct "permeated" the litigation, as the district court indicated in its later fee award, Pet. App. 180a, or that it was "pervasive," in Plaintiffs' words, Resp. Br. 20, 22. When misconduct is "interrelated" with other conduct, only those fees "solely" caused by the misconduct are compensatory. *Fox*, 563 U.S. at 839-41. If a party "would have incurred the expense in any event," awarding that expense is not compensatory because the party "has

suffered no incremental harm." *Id.* at 836; *see also Divane*, 200 F.3d at 1030 (refusing to award all fees notwithstanding finding that the misconduct "infected" the entire proceeding); *Cooter & Gell*, 496 U.S. at 407 (rejecting award of anything that can "ultimately be traced" to misconduct).

Echoing the Ninth Circuit majority, Plaintiffs attempt to shoehorn this case into *Chambers* by describing the litigation as a "sham." Resp. Br. 15, 30-31; Pet. App. 30a. But they do not explain what "sham litigation" means or what suffices to prove it. Regardless, the district court never called the litigation a "sham"—it just indicated that misconduct made the case "far more complicated." Pet. App. 151a. Nor did the court deem the Heat Rise test conclusive either of a tire defect or the cause of Plaintiffs' accident. *Id.* at 52a n.1, 67a. As explained below, the fact that Goodyear had good faith defenses sets this case apart from *Chambers*. *See* Part D, *infra*.

Vague concepts like "frequency" and "severity" would create a similarly subjective standard that would encourage courts to take short-cuts. Plaintiffs would permit an award of all fees for any misconduct beyond "a single, discrete instance" or perhaps "a few instances." Resp. Br. 20. Such an ill-defined exit ramp from a meaningful causation standard would leave courts without adequate guidance and pave the way for abuse.

2. Plaintiffs also rely on the district court's statements that misconduct continued throughout the litigation, and that the case would have settled sooner. Resp. Br. 20. Similarly, the Ninth Circuit majority drew a temporal line in the sand,

substituting a *temporal* link for a *causal* one. It affirmed all fees incurred "once the Sanctionees began" their misconduct, or "during the time" when there was misconduct. Pet. App. 32a-33a, 37a. But a chronological sequence suffers from the *post hoc ergo propter hoc* fallacy. BLACK'S LAW DICTIONARY 1355 (10th ed. 2014) ("[A]fter this, therefore resulting from it[.]"). "It is called a fallacy because it makes an assumption based on the false inference that a temporal relationship proves a causal relationship." *McClain* v. *Metabolife Int'l, Inc.*, 401 F.3d 1233, 1243 (11th Cir. 2005).

The fallacy confirms the inherently speculative, and, therefore, arbitrary nature of the sanctions award. Such an award can hardly be called compensatory, nor consistent with due process. *See Holmes*, 503 U.S. at 268, 271 (excluding from proximate cause that which is "purely contingent"); *Topalian* v. *Ehrman*, 3 F.3d 931, 938 (5th Cir. 1993) (rejecting court's adoption of an "apparently arbitrary figure" for sanctions).

The district court's conclusion that the case "more likely than not would have settled much earlier" represents nothing but speculation. Resp. Br. 26; *see* Pet. App. 45a (Watford, J., dissenting) ("It's anyone's guess how the litigation would have proceeded if Goodyear had disclosed all responsive test results from the start."). Courts are ill-equipped to guess retrospectively when a case would have settled in light of the many collateral issues impacting settlement. *See Wong* v. *Luu*, 34 N.E.3d 35, 46-47 (Mass. 2015) ("[A] judge's inherent powers do not authorize the judge to determine who was responsible for the breakdown of negotiations, and

order the attorney responsible to pay the attorney's fees incurred by the other parties in the thwarted negotiations."). Settlement is a subjective (and not necessarily rational) choice made by the parties, which does not always hinge on the case's merits. Even if the court thinks settlement wise, "there is no legal duty to settle litigation…. If parties want to duke it out, that's their privilege." *Goss Graphics Sys., Inc.* v. *DEV Indus.*, 267 F.3d 624, 626, 628 (7th Cir. 2001).

In light of the historic restraints on inherent powers, and the requirement that courts exercise these powers narrowly, speculation about settlement is fundamentally an improper foundation for awarding compensatory fees. Regardless, the conclusion that Goodyear would have settled "earlier" finds no mooring in the record. Goodyear pointed to the examples of the *Schalmo* and *Woods* cases.[2] In response, Plaintiffs refuse to discuss *Woods* and insist that *Schalmo* is distinguishable. Resp. Br. 26-27. But this misses the point. These examples in the record where Goodyear produced the Heat Rise test did not trigger immediate settlements—the cases went to, or through, trial. Pet. Br. 7, 37. There is thus no record support for the notion that Goodyear would have immediately settled. Pet. App. 46a (Watford, J., dissenting) ("[T]he only relevant data point in the record supports the opposite conclusion."). And when challenged on this point, Plaintiffs offer the Court no citation to the contrary.

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[2] Goodyear also produced the test in two other cases, although the record of those examples is less developed. ER125.

3. Plaintiffs contend that a direct causation standard is unnecessary because of other "protection[s]," such as the bad faith requirement. Resp. Br. 39. But this requirement does not constrain the sanction's *amount*. *See* Pet. Br. 42-43. And its effectiveness as a check will be enhanced if courts are required to focus on specific misconduct, and its consequences, to satisfy direct causation. *See id.* Another of Plaintiffs' purported protections is the "right to object." *See* Resp. Br. 40. But the "right" to object to lack of causation is meaningless if, as Plaintiffs contend, courts are not actually required to comply with causation (and this case proves that point).

Plaintiffs also try to salvage the award by claiming that it was "intended to make the Haegers whole for losses incurred because of Goodyear's misconduct." *Id.* at 34. But the district court's subjective intent does not dictate whether the sanctions were compensatory or punitive. *See Bagwell*, 512 U.S. at 828 ("[C]onclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from 'the subjective intent of … laws and … courts,' but 'from … the character of the relief itself.'") (citation omitted). Moreover, the lower courts made clear they intended to award more than could be "directly linked" to misconduct. *See* Pet. App. 28a.

Finally, Plaintiffs try to distinguish examples of punitive inherent powers sanctions on the grounds that they were payable to the court. But this overlooks the broader point. To be compensatory, fees must be not only payable to harmed parties but *also* tailored to actual losses from misconduct. *See, e.g.*, *Bradley* v. *Am. Household, Inc.*, 378 F.3d 373,

378 (4th Cir. 2004) (vacating sanctions in part because "amounts of the fines were not determined by reference to any losses incurred … as a result of" misconduct); *Crowe* v. *Smith*, 151 F.3d 217, 227 (5th Cir. 1998) (holding fines criminal because, in addition to being payable to the court, they were "flat" and without opportunity to purge).[3]

These "protections" do not adequately restrain district court discretion in the exercise of powers that are "uniquely … 'liable to abuse.'" *Bagwell*, 512 U.S. at 831. Direct causation, by contrast, ensures that inherent powers sanctions are appropriately tailored by affording an appropriate ceiling. *See Spallone* v. *United States*, 493 U.S. 265, 280 (1990) (obligating courts to sanction under "the least possible power adequate to the end proposed") (internal quotations omitted). Particularly under abuse-of-discretion review, a uniform causation standard is needed to protect parties from unfairly punitive awards, consistent with due process.

Without it, courts have incentives to resort to inherent authority to impose more severe sanctions than other regimes allow, even when other statutes or Rules are "up to the task." *Chambers*, 501 U.S. at 50. Litigants of all stripes are harmed by the use of inherent authority to sidestep procedural requirements in the Rules. *See* Danielle K. Hart, *Happy (?) Birthday Rule 11: And The Chill Goes On—Federal Civil Rights Plaintiffs Beware*, 37 LOY.

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[3] Plaintiffs characterize various circuit cases as "not support[ing] [Goodyear's] direct-linkage argument," Resp. Br. 34. While Goodyear cited these cases for another purpose—to show that *Bagwell* applies to non-contempt sanctions, Pet. Br. 21-22—they also affirm the role of causation.

L.A. L. REV. 645, 647, 675-76 (2004) (explaining that civil rights plaintiffs are most likely to be chilled by resort to inherent powers). By recognizing a direct causation standard, this Court can impose meaningful restraints consistent with the historical treatment of inherent powers.

D. Reversal Is Required Under Any Causation Standard

Viewed through the correct legal lens, the sanction in this case fails to satisfy causation. Plaintiffs' clear error arguments, Resp. Br. 20-22, miss the mark because application of the wrong legal standard necessarily constitutes an abuse of discretion. *Cooter & Gell*, 496 U.S. at 405 ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law…."). From the outset, Goodyear has challenged the district court's rejection of a direct causation test, which tainted the court's consideration of the record evidence and now necessitates reversal. *See Maynard* v. *Nygren*, 332 F.3d 462, 467 (7th Cir. 2003) ("[W]hile factual findings are generally reviewed only for clear error, findings which are tainted by the application of an inapposite standard are subject to fuller review.").

1. Beyond the points above, the district court erred by invoking *Chambers* to avoid causation. *Chambers* does not carve an exception to causation for "egregious" misconduct, as the district court surmised. Pet. App. 157a-158a. *Chambers* held that an award of all fees satisfied causation when the "*entire course of conduct throughout the lawsuit* evidenced bad faith and an attempt to perpetrate a fraud on the court." 501 U.S. at 50 (emphasis added). The sanctioned defendant "never had a

good-faith basis" to defend the case, resulting in an unnecessary lawsuit prolonged by frivolous defenses. Pet. App. 48a (Watford, J., dissenting, discussing *Chambers*).

This case bears no resemblance to *Chambers*. Although the district court characterized the misconduct as frequent and severe, its actual findings show the following instances during the underlying litigation: (1) counsel's failure to produce certain tests in a timely manner, Pet. App. 88a-96a; (2) the failure to produce the Heat Rise test at all, *id.* at 75a-76a; (3) statements to the court by local counsel about the status of document production, *id.* at 97a-101a; and (4) testimony by the corporate representative regarding the existence of test records, *id.* at 107a-110a.[4] These findings do not support (and the court never found) that Goodyear's "entire course of conduct" was in bad faith, nor that it lacked a good-faith basis to defend the case.

None of this is to belittle the seriousness of these matters, but rather to illustrate their focus on one aspect of the litigation. The Heat Rise test may have implicated Plaintiffs' design defect claim against Goodyear—but even then, the district court made no finding that it was dispositive on that issue (nor could it have, in light of the testimony by Goodyear's engineers that Plaintiffs did not rebut, *see, e.g.*, ER559-60). If the test had been produced, Goodyear still would have been able to contest the design defect claim in good faith.

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[4] The remaining instances of alleged misconduct occurred after the litigation's conclusion.

But setting that aside, Goodyear had good faith defenses to liability that were wholly independent of the design defect issue. For instance, the issue of what caused the accident was hotly disputed (even assuming a defective tire), and the district court admitted, "[t]he cause of the accident was never determined." Pet. App. 52a n.1. Goodyear could have presented evidence at trial that the tire was already damaged from a prior impact, that driver error caused the accident, and that a failure to wear seat-belts contributed to the injuries. Dkt. 838,[5] at 4-5; Dkt. 842, at 4. The parties also debated how underinflation and overloading affected liability. Dkt. 838; Dkt. 807.

Thus, it is undisputed that Goodyear, unlike the party in *Chambers*, had good faith defenses that it could have presented at trial. Goodyear provided similar examples from other sanctions contexts to show that a blanket sanctions of "all" fees does not comply with causation. Pet. Br. 29, 35. While Plaintiffs claim some of this authority supports their position, Resp. Br. 35, these cases reject sanctions of all fees unless "*every* facet of th[e] litigation was patently meritless." *Browning* v. *Kramer*, 931 F.2d 340, 345 (5th Cir. 1991) (Section 1927 sanctions); *see Maynard*, 332 F.3d at 471 (same, for Rule 37 sanctions). Here, Goodyear's good-faith defenses confirm that much of the litigation would have occurred regardless of any misconduct.

2. As discussed above, under a direct causation standard, only those fees directly caused by

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[5] "Dkt." references the district court's docket entries. A few of the filings cited herein are sealed, but we avoid discussing any confidential information from those filings.

misconduct should be recoverable. *See Cooter & Gell*, 496 U.S. at 406. Where misconduct is "interrelated" with the rest of the litigation, the award should be limited to those fees incurred "solely because of" the misconduct. *See Fox*, 563 U.S. at 839-41. But the district court never required Plaintiffs to show causation, instead permitting an award of nearly all fees based on a three-page application. J.A. 54-56.

The docket and time entries (Dkt. 1100-1, 1100-2) confirm that the vast majority of the litigation would have occurred even without any misconduct. Examples of such matters include: (1) The depositions of parties, experts, first responders, and other witnesses. *See, e.g.*, Dkt. 110-15, 154-60, 167-170, 178-89, 193-98, 202-07, 227-231, 281-90, 521-26. (2) The summary judgment briefing on Plaintiffs' theories of manufacturing defect, failure to warn, and failure to recall. *See* Dkt. 651 at 24-26; Dkt. 864, Tr. at 29:8-17. (3) The briefing regarding Goodyear's *Daubert* challenges to Plaintiffs' experts. *See* Dkt. 651. (4) The briefing on more than twenty motions in *limine*. *See, e.g.*, Dkt. 679-701, 703-19, 730-31, 733-45, 747-56, 758-78. (5) A host of other motions, such as disputes over choice of law, Dkt. 453-56, 459-62, and motions to strike, Dkt. 408, 425, 463, 724. (6) Plaintiffs' efforts to establish their own medical damages. *See* Dkt. 866-67; *Divane*, 200 F.3d at 1031 (sanction "cannot include such activities as the cost of deposing witnesses" who would have been deposed anyway).

Apart from all of this, Plaintiffs pursued two other defendants separate from Goodyear—Spartan Motors and Gulf Stream Coach. ER778. Spartan built a chassis using tires purchased from Goodyear, and Gulf Stream then built the motor home on top of

the chassis. J.A. 37. Needless to say, the failure to produce the Heat Rise test could not have impacted Plaintiffs' independent claims against these other defendants premised on theories other than a defective tire.

To be sure, the litigation was contentious and "messy." *Fox*, 563 U.S. at 834. But it is by no means "impossible," Pet. App. 170a, to draw the necessary causal connection between the misconduct and certain fees. Nor is it of any moment if the appropriate fee award does not rise to the level sufficient to punish Goodyear (in the district court's eyes) because non-compensatory punishment is the domain of criminal contempt.

To the extent that any other remedies are appropriate, that is the province of tort law, not inherent authority sanctions. Plaintiffs are currently pursuing fraud-based and abuse-of-process claims, while seeking a substantial recovery including punitive damages. Their state court complaint in *Estate of Haeger* v. *Goodyear Tire & Rubber Co.*, No. 2013-052753, Compl. at 77-79, 81 (Maricopa Co., Ariz., Sup. Ct.), requests both fee shifting under state law *and* the "fees and costs" as damages "incurred as a result of the wrongful acts and omissions of Defendants." Based on their expert report and discovery responses, Plaintiffs apparently seek an aggregate recovery in excess of $100 million in that litigation (which Goodyear is vigorously defending).

E. The "Contingent" Award Cannot Avert a Remand

Plaintiffs seek to forestall a remand by pointing to the district court's "contingent" award. Resp. Br. 41-

44; Pet. App. 180a, 185a. If this Court agrees with Goodyear, however, then the district court will need to consider what fees were directly caused by the misconduct at issue since it never attempted to undertake that task. The contingent reduction of $722,406.52 reflects only fees related to other defendants and medical damages, and thus it captures a subset of the improperly-awarded fees. ER1352-54.

Nor can Plaintiffs avoid a remand by arguing that Goodyear waived its causation argument regarding the contingent award. Before the district court imposed sanctions, Goodyear raised the exact causation argument that it advances here. ER1077-79. In the face of Plaintiffs' request for all fees, Goodyear cited *Chambers* and other related authority to argue that sanctions should "compensate for the loss caused by the sanctioned conduct." ER1077. Goodyear further explained that courts must show a "connection between the amount of monetary sanctions" and the "sanctionable conduct." ER1078 (citation omitted).

As it imposed sanctions, the district court rejected Goodyear's arguments, awarding all attorney's fees, as described above. Pet. App. 152a. The court also deemed Ninth Circuit authority recognizing a direct causation requirement as inconsistent with this Court's precedent. *Id.* at 156a-158a (discussing *Miller* v. *City of Los Angeles*, 661 F.3d 1024 (9th Cir. 2011)).

In the wake of the district court's ruling, Goodyear specifically preserved these arguments when it opposed Plaintiffs' fee request, J.A. 58 n.1, 68-69, citing *Miller*'s causation requirement. This was everything necessary to preserve the issue.

Goodyear then proceeded to make a fallback argument, highlighting certain categories of fees that had nothing to do with Goodyear. J.A. 69-71. The contingent reduction of $722,406.52 represents a *subset* of the fees that bear no relation to sanctionable misconduct, but does not comprise the entire universe. The Ninth Circuit certainly never suggested that Goodyear waived this argument. *Compare* Goodyear Ninth Cir. Br. in Case No. 13-16801, at 16-31 (Dec. 16, 2013), *with* Pet. App. 26a-39a. A remand will accordingly be necessary for the district court to apply the correct causation test.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that the Court reverse the Ninth Circuit, vacate the award of attorney's fees, and remand with instructions to apply a direct causation standard as set forth in this Court's opinion.

Respectfully submitted,

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