

9/24/2003

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT OF THE
TRIAL DEPARTMENT
CIVIL ACTION NO. 02-01159A

MARCIA RHODES, HAROLD RHODES,
INDIVIDUALLY, HAROLD RHODES,
ON BEHALF OF HIS MINOR CHILD
AND NEXT FRIEND, REBECCA
RHODES

Plaintiffs

- v -

CARLO ZALEWSKI, DRIVER
LOGISTICS, PENSKE TRUCK LEASING
CORP., AND BUILDING MATERIALS
CORP. OF AMERICA, D/B/A GAF
MATERIALS CORP.

Defendants.

**SUPPLEMENTAL ANSWER TO BUILDING MATERIALS CORPORATION
OF AMERICA'S FIRST SET OF INTERROGATORIES
TO PLAINTIFF HAROLD RHODES**

Pursuant to Rule 33 of the Massachusetts Rules of Civil Procedure, Plaintiff Harold Rhodes, makes the following Answers to Building Materials Corporation of America's First Set of Interrogatories to Plaintiff Harold Rhodes within forty-five (45) days after service.

GENERAL OBJECTIONS

1. Harold Rhodes objects to the disclosure of any information protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine.

2. Harold Rhodes objects to any interrogatory that purports to require anything beyond that which is required by Rule 33 of the Massachusetts Rules of Civil Procedure.

3. Harold Rhodes objects to any interrogatory that requires one or more conclusions of law.

4. Harold Rhodes objects to any interrogatory that calls for confidential information.

DEFINITIONS

As used herein, the term "irrelevant" means that a request calls for documents which are not relevant to the subject matter of this action and which are not reasonably calculated to lead to the discovery of admissible evidence.

As used herein, the term "burdensome" means that it would be unduly burdensome, oppressive, annoying, time consuming and expensive to compile and furnish the documents called for in view of the degree of their relevance and materiality, if any.

As used herein, the term "overly broad" means that a request is unreasonably general, vague and nonspecific.

As used herein, the term "compound" means that a request contains multiple, unrelated categories of documents that are improperly combined together.

As used herein, the term "confidential" means the documents requested are retained in confidence at the express or implied request of a third party or that it is the custom of the trade to retain such records in confidence.

As used herein, the term "privileged" means that the documents requested are subject to either the attorney-client privilege, the attorney work product doctrine or any other recognized privilege against disclosure.

ANSWERS

Subject to the foregoing definitions and objections, and without waiving the right of Harold Rhodes to object to the admissibility, publication or other use of any response or information derived therefrom, Harold Rhodes responds as follows:

INTERROGATORY NO. 1

Please identify each person involved in answering these interrogatories on your behalf (i) stating each interrogatory that each such person assisted in answering, and (ii) identifying all persons or entities you consulted in responding to these interrogatories, including information that each person or entity provided.

ANSWER

Harold Rhodes, assisted by counsel.

INTERROGATORY NO. 2

Please identify each person who has knowledge of the facts and circumstances relevant to the subject matter of this case; and, for each such person identified, please state:

- (a) summary of the knowledge possessed by the person;
- (b) whether you have taken any statement from such person; and
- (c) the date and subject matter of each statement identified in subparagraph (b) of this interrogatory.

ANSWER

Harold Rhodes objects to this Interrogatory as it impossible for him to identify every person with knowledge of relevant facts, especially as to those agents, employees and representatives of the corporate defendant. Without waiving such objection, Harold Rhodes responds as follows:

- (a) Marcia Rhodes is aware of the facts of the accident, her injuries and the effect on her and her family.

Harold Rhodes is aware of the accident scene after he arrived, Marcia's injuries, her medical treatment and the damages suffered by the entire Rhodes family.

Rebecca Rhodes is aware of the extent of her mother's injuries, her medical treatment, and the effect that Marcia's injuries have had on her relationship with her mother and the entire family.

Sergeant Boltenhouse, Medway Police, has knowledge of the accident scene, police and emergency response at the scene and the path of the tractor trailer after it struck Marcia Rhodes' car.

Carlo Zalewski has knowledge of his conduct in causing the accident, of the accident scene and the response of both the police and medical personnel.

Massachusetts State Police representatives. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5.

Medway Police Dept. representatives. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5.

Various medical personnel. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5 and Request No. 8.

Jerry McMillan was grinding stumps at the scene and is aware of the accident scene. He heard the crash and saw the tractor trailer push Marcia Rhodes' car into the woods.

Santos Ramirez was a witness driving the car behind the tractor trailer and observed the truck and police officer in the road, and the accident scene.

Ramon DeBriac, a passenger in car driven by Ramirez, saw the officer directing traffic and the truck on the side of the road. He also saw the police officer running to get away from the tractor trailer as it pushed my automobile into the woods.

(b) Harold Rhodes objects to this Interrogatory, as it seeks the production of attorney work product.

(c) Harold Rhodes objects to this Interrogatory, as it seeks the production of attorney work product.

INTERROGATORY NO. 3

Please identify each person you expect to call as a witness at trial, describe the substance of his or her testimony, and identify any documents concerning that testimony.

ANSWER

Harold Rhodes objects to this Interrogatory as it seeks the production of attorney work product. Without waiving this objection, Harold Rhodes states that there have been no decisions made as to which witnesses will testify at trial.

INTERROGATORY NO. 4

Please identify each person you expect to call as an expert witness at trial, and state for each:

- (a) the subject matter on which the expert is expected to testify;
- (b) the substance of the facts and opinions to which the expert is expected to testify;

- (c) his or her education and qualifications; and
- (d) a summary of the grounds for each opinion.

ANSWER

- (a) Adele M. Pollard, R.N., B.A., M.S., L.R.C., C.C.M., Case Management Associates, Inc. Please refer to the curriculum vitae of Ms. Pollard previously produced for education and experience. Based upon a review of Marcia's medical records, a review of literature, contact with the Rhodes family and her education, training and experience, Ms. Pollard is expected to testify as to a life care plan for Marcia Rhodes. She is expected to testify regarding Marcia's future needs as a result of her T-12 paraplegia and complications arising therefrom resulting from the crash on January 9, 2002. Ms. Pollard also is expected to testify regarding the costs associated with Marcia Rhodes' annual needs, episodic needs and potential complications. Ms. Pollard also is expected testify as to Marcia Rhodes' life expectancy as a result of her T-12 paraplegia based upon the CDC Vital Statistics Life Table and a possible reduced life expectancy according to SCI Model Systems due to the crash. Please refer to the cost projections previously produced, which were prepared by Ms. Pollard. Plaintiff reserves the right to supplement this interrogatory with additional opinions from a life care plan or otherwise.

- (b) Dana C. Hewins, B.A., M.A., Ph.D., Economic Consultant. Please refer to the curriculum vitae of Dr. Hewins previously produced for education and experience. Based upon a review of documents filed in the case, Ms. Pollard's opinions, contact with Ms. Pollard, a review of literature, the standard methodology used by economists and his education and experience, Dr. Hewins is expected to testify as to the economic loss sustained by Marcia Rhodes as a result of the crash of January 9, 2002. Dr. Hewins is expected to testify regarding the economic value of the loss of household services of Marcia Rhodes and the present value of the future costs associated with the medical and personal needs of Marcia Rhodes as a result of the crash. Dr. Hewins is expected to testify based upon Ms. Pollard's assessment of Marcia Rhodes' needs as set forth in a Life Care Plan and by using both life expectancies referred to by Ms. Pollard. Please refer to Dr. Hewins' opinions previously produced. Plaintiff reserves the right to supplement this interrogatory as additional information comes available.

INTERROGATORY NO. 5

Please state the basis for any and all damages you allege you suffered as a result of BMCA's conduct and, further, please state the following:

- (a) the total amount of the claimed damages (in dollars) which you contend BMCA has caused you to suffer;

- (b) the basis for the claim that BMCA has caused you to suffer the damages stated in your answer to subparagraph (a) of this interrogatory;
- (c) describe in detail each item of claimed damages and the manner in which such damages were calculated;
- (d) identify each and every person with knowledge of the facts contained in your answers to subparagraphs (a) through (c) of this interrogatory; and
- (e) identify all documents that concern your answers to subparagraphs (a) through (c) of this interrogatory.

ANSWER

(a) Harold Rhodes cannot estimate the dollar value of his loss of consortium claim, as it is based on the devastating effect of his wife's injuries on their relationship and lifestyle in addition to the harm suffered by their family as a whole.

(b) As alleged in the Complaint, BMCA, through GAF, exercised sufficient control over Zalewski that he was acting as BMCA's agent while driving the tractor trailer and causing the accident that resulted in all of the damages referenced in subparagraph (a) of this response.

(c) Please refer to subparagraph (a) of this response and to documents produced in response to BMCA's First Request for Production of Documents to Marcia Rhodes, Request No. 4.

(d) Harold Rhodes.

(e) Please refer to subparagraph (a) of this response and to documents produced in response to BMCA's First Request for Production of Documents to Marcia Rhodes, Request No. 4.

INTERROGATORY NO. 6

Please state all fact(s) you became aware of concerning the accident on January 9, 2002, for each fact, please state:

- (a) when you became aware of the fact;
- (b) the person(s) who became aware of the fact;
- (c) identify each and every person with knowledge of the facts contained in subparagraphs (a) and (b) of this interrogatory; and
- (d) identify all documents that concern your answers to subparagraphs (a) and (b) of this interrogatory.

ANSWER

(a) I became aware of the accident when I received a phone call from the Medway Police who were at the scene. When I arrived at the scene, I comforted Marcia who was trapped in the car. She was in pain and said she could not feel her legs. I was told that the tractor trailer hit her car while she was stopped and pushed her into the woods and I saw the police speaking with a man near the tractor trailer.

(b) Harold Rhodes.

(c) Harold Rhodes, Marcia Rhodes, Medway Police representatives.

(d) Please refer to the accident report prepared by Medway Police produced in response to Request No. 5 of BMCA's Request for Production of Documents to Marcia Rhodes.

INTERROGATORY NO. 7

Please state the basis for your contention, contained in Paragraphs 30 and 31 of the Complaint, that:

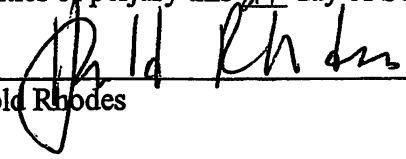
(a) BMCA exercised control over the contractors; and

(b) BMCA failed to use reasonable care in its exercise of control over the manner in which the tractor-trailer was operated.

ANSWER

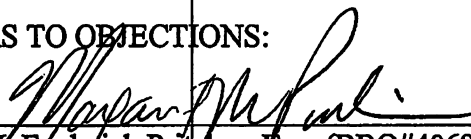
Please refer to our response to Interrogatory No. 5(b). By way of further answer, Zalewski drove exclusively for BMCA/GAF for years and was dispatched by BMCA/GAF to drive the tractor trailer to Millis, MA on January 9, 2002. While he was driving the load to Millis on behalf of BMCA/GAF, he drove into my wife's stopped car and caused her devastating injuries. BMCA is responsible for the conduct of its driver, its agent, Carlo Zalewski, who failed to use reasonable care while operating the tractor trailer on behalf of BMCA/GAF.

SIGNED under the pains and penalties of perjury this 24th day of September, 2003.



Harold Rhodes

AS TO OBJECTIONS:



M. Frederick Pritzker, Esq. (BBO#406940)
Margaret M. Pinkham, Esq. (BBO#561920)
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CERTIFICATE OF SERVICE

I, Carlotta M. Patten, counsel for plaintiffs, hereby certify that I have this day served a copy of the foregoing Supplemental Answer To Building Materials Corporation Of America's First Set Of Interrogatories To Plaintiff Harold Rhodes in the manner indicated below:

By First Class Mail
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Morrison, Mahoney & Miller
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Carlotta M. Patten

DATED: September 24, 2003