

FIRST FULL FORMAL REPORT

January 30, 2002


Crawford[®]
Stephen C. Penick, AIC
Branch Manager
Risk Management Services

Mr. Robert Manning (by mail and facsimile)
ISP/GAF Corporation
Risk Management Department
1361 Alps Road, Bldg. 3
Wayne, NJ 07470

Re: **Our File** 82-37641
Date of Loss January 9, 2002
Client Zurich American Insurance Company
Insured ISP/GAF Corporation
Claimant Marcia Rhodes

Dear Mr. Manning:

This work product is intended as privileged communication to our client in anticipation of litigation.

Please allow this to serve as our first full formal report on this catastrophic claim file.

RESERVES:

Claim: \$15,000

Expense: \$7,500

These reserves are significantly low, in our view, and we invite your, and Zurich's comments for fixing reserves for the next six months. We do not yet have a recommendation, as GAF's role is not yet defined.

COVERAGE:

The carrier is Zurich American Insurance Company, November 1, 1996 to October 31, 2002. Automobile Liability Policy BAP2165692-03. We understand this policy limit is \$2,000,000. We are currently unaware of the identity of excess carrier. We have requested full copies of coverage.

AUTHORITY AND HANDLING REQUIREMENTS:

Check Authority: \$10,000, Settlement Authority: \$10,000, Reserve Authority: \$10,000. Due to the nature of the claimant's injury, this claim is classified as catastrophic, and will be reportable to both GAF and Zurich. All correspondence is to be carbon copied to Mr. Robert Flugger, Vice President, Risk Management, Building Materials Corporation of America, address as above.

LOCUS/JURIS:

This loss occurred on Route 109, east-bound, in Medway, Massachusetts. Massachusetts is a modified comparative negligence state, and has a no-fault statute with a \$2,000 tort threshold. There is a 3 years statute of limitation on PD, BI, and wrongful death. It would be most likely that any litigation would be filed in Norfolk Superior Court, a comparatively conservative jurisdiction. Because of the possible multiple state implications, Federal District Court may also be an option for plaintiffs.

GENERALIZED DESCRIPTION OF ACCIDENT:

A tractor with tank trailer, owned by Penske Truck Leasing Co., and leased to GAF, marked with GAF graphics, driven by a contract driver employed by Driver Logistics Services, traveling east on Rt. 109, Medway, Ma., rear-ended a stopped passenger car owned and operated by Marcia Rhodes, at approximately 1 PM, January 9, 2002.

TRACTOR/TRAILER OWNERS AND OPERATOR:

The involved tractor is described as a 1999 Freightliner, VIN 1FUZYDCYB9XLB63880, NJ license number AD870W. The trailer is a tanker used to haul liquid cargo, NJ license number T76H6V. The owner is Penske Truck Leasing Co. The operator was Carlo Zalewski, 50 Beacon Light Avenue, Keansburg, NJ 07734, License Number Z02751100004442, NJ, SSN: 146-34-1971. Date of Birth: April 23, 1944. He is employed by Driver Logistic Services.

CLAIMANT VEHICLE OWNER/OPERATOR:

The claimant vehicle is described as a blue 1997 Toyota Corolla, Registration 787ELO, Ma., VIN 2T1BA02E9VC178274. Operator Marcia Rhodes, 11 Jancock Road, Milford, Ma. 01757. DOB June 22, 1955. License Number 158-50-2605. Her SSN is the same.

TRACTOR OPERATOR'S ACCOUNT OF THE ACCIDENT:

We took operator Zalewski's statement by phone at approximately 4:30 PM on January 10, 2002, by this writer. Mr. Zalewski stated that he has operated similar vehicles for several years, and for DLS for the past three. He offered that he has not had a reportable prior accident, has a clean driving record, and that drug nor alcohol were involved in this accident. He does not wear glasses, and his license is not restricted in any way. He has made this run from New Jersey to the GAF facility in Medway several times using this route. He commented that he had a problem assigning distance definitions when discussing things that happen in the roadway, but said that he was traveling east on Route 109 in Medway, and that he was descending a long straight gradual hill, traveling approximately 35 MPH. In his word, he was 20 to 30 feet from the intersection with

Trotter Drive to the right. Just then, an unidentified car popped out of Trotter Drive across his path, and headed west. As this began, he went to his brake vigorously, followed this vehicle across his path, and continued to do so in his left mirror. When he was satisfied this car was well past, he came off the brake to the gas pedal, and returned his eyes forward. He then saw the claimant vehicle stopped in the road 20-30 feet ahead of him, and went back to the brake. As the brakes locked up, he realized he did not have sufficient space to stop, and his vehicle swerved slightly to the left. The right front of the truck struck the rear center of the claimant vehicle, sending it off the roadway, into the woods to the right. He was a little unclear as to what exactly he saw in these few seconds, but did say he thought he saw the officer ahead of the car controlling the traffic. He did say he had just traveled this long stretch of straight road, but his first knowledge of this work area was just seconds before the accident occurred. He said he saw no warning signs of work being done on or near the road as he approached this intersection, but later learned there was a stump grinding operation going on adjacent to the east bound lane. He then said he went to the claimant's vehicle to see if he could help, and noted considerable damage to that vehicle, and the claimant trapped inside. Police and EMT's came at once, but the claimant had to be extricated by cutting the car's roof, and removing the windshield. He admitted to being cited with Operating Negligently so as to Endanger, citations number K1767615. This is a criminal citation. He was taken for an alcohol and drug test. To his knowledge, the alcohol test was negative, and the drug test had not yet been processed. We have no further word on that. It is his understanding of the governing speed limit in the area being 35 MPH. He said he was, at the time, unaware of any defects in his machinery. When we spoke with him, he was understandably upset, often near tears. His comments were mostly open, and seemed genuine, but he was also often guarded. He also mumbled and slurred his words, and gave the impression he had been drinking. We spoke with him at his home, and that he had earlier given a statement to someone, but couldn't remember who. Based upon this writers limited view and exposure to this operator, we would be wary of relying on his testimony.

COMMONWEALTH OF MASSACHUSETTS MOTOR VEHICLE CRASH POLICE REPORT:

This report was completed by Patrolman #84, William Kingsbury, Medway Police department. He reports being summoned to the site shortly after it occurred, and saw the Tractor/trailer in the eastbound roadway, a little over the double yellow line in the center of the roadway. The roadway is described as two lanes, asphalt, state controlled, with a governing speed limit of 40 MPH. He further noted the blue Corolla off the road in the woods to the right. He noted the sole occupant's condition to be serious, and called for backup, an ambulance and airlift. The airlift, he was advised, could not come due to poor weather. Further technicians were called as the vehicle had to be cut open to extricate the victim inside. He reports she was taken to Milford Hospital, and then to the University of Massachusetts Hospital in Worcester. He interviewed Sergeant Boultenhouse, the officer already at the scene directing traffic. He reports that Professional Tree Service (Actually just Professional Tree) had a pick-up truck partly in the eastbound roadway with a stump grinding apparatus attached to the rear, performing stump grinding operations adjacent to

the east bound roadway. He said Sgt. Boultenhouse had stopped the traffic in the eastbound lane right at the intersection of Trotter Drive, the Carrola was stopped right across the intersection of Trotter Drive, had his left hand up to that line of traffic, was waving the west bound traffic on, and had his head turned easterly. Boultenhouse then heard the crash, turned and saw the truck headed right for him, so he took to the woods. The report notes the prior roadway to be slightly down hill to the accident scene, and providing at least 800' feet of strait clear visibility. He further implied that visibility might have been even further, given the truck height and the low hill. He further noted the driver being distracted by the alleged cross cutting vehicle. He opined that the brakes on the truck found inoperative were not a factor in the accident, and that speed appeared also not to be a factor. He made no mention of any warning signs on the prior roadway. He went on to refer to reports of: MVA report of officer Kingsbury; Report of Sgt. Boultenhouse; Report of Trooper Jaworek; Report of Trooper O'Hara; and See Photographs of Officer Boyan. None of this material was included. State police truck squad and DOT team were called, and the vehicles were towed away by John's Auto of Medway. The destination of the claimant's vehicle is unknown. The truck was towed to the GAF facility in Millis, where it was inspected, and found to have some administrative violations, and one inoperative brake. He described the weather as follows: "The sky at the time of the accident was overcast. Light rain ad sleet had been falling on and off during the day making the pavement wet." (We have verified this weather with the local newspaper) Three lights were removed from the claimant vehicle, and deemed to have been operating at the time of the accident, and are now in evidence at the Medway Police Département. There were two witnesses reported: Santos Ramirez, and Ramon DeBriac, both of Milford, Ma. Their phone numbers are unreadable. They report the truck rear-ended the claimant. We are not sure what value their testimony would have to this accident.

STATE POLICE REPORT:

Not yet available.

SITE INSPECTION:

This writer traveled to the scene two days after the accident, and under similar weather conditions, and found the roadway as described. We noted a number of stumps ground down adjacent to the eastbound lane, just east of Trotter drive, with the one furthest away only partially ground. We found much debris and glass on the roadside, but no skid marks at all. We found only one home with a view of the roadway, right at the corner, but there was no one home. We left our card. We also went to two businesses just up the road on Trotter, and canvassed for witnesses, but none were found. We were granted permission to engage an accident reconstruction expert, and we did so, engaging XYZ, and we will provide you with his resume shortly. We returned to the accident scene with engineer Henry Poydar, the expert and former Professor of Tufts University and Wentworth Institute. We listened to the operator's statement together, photographed the scene, and took measurements. Further inspections will be needed.

PENSKE TRUCK LEASING:

Contact person is Edmund Hafner, 2256 Rt. 130N, Dayton New Jersey, 08810. They lease the truck and tractor to GAF, and are responsible for maintenance. They have a mechanic on site in Millis at the GAF facility, named Mike Kelley, and he was dispatched to the accident for real time photos of the scene. We have the negatives of these photos, and have surrendered them to defense council. These photos show the claimant vehicle literally demolished and off the road; some comparatively minor front damage to the tractor, and skid marks in the roadway. Mr. Kelly removed the offending inoperative brakes from the 5th axle, and surrendered them to GAF management for safe-keeping. We will be inspecting and measuring these brake parts later today with our engineer. Penske towed the trailer off site the day after the accident, but the tractor remains at the GAF facility. We noted the mileage of the tractor to be 70357. There has been some discussion of a preventative maintenance schedule that had not been met by Penske.

DRIVER LOGISTIC SERVICES:

Our contact is Mark McLeish, VP of operations, 134 Main Street, West Springfield, Ma. 01089. Drivers are provided by this entity via contract, and they pay the drivers salary. We have only viewed a part of the contract governing this time period, and note that GAF is required to provide at least \$1 million in automobile coverage. We do not see that GAF is required to defend or indemnify DLS for their own negligence.

PROFESSIONAL TREE:

64 Merriam Lane, Sutton, Ma. 01159, 508 865-6767. We do not know the identity of their technicians working the scene at the time of the accident. We do know, however, they are a large operation, and do much work for the state, local municipalities, and the private sector.

CLAIMANT REPRESENTATION:

The claimant is represented by attorney M. Frederick Pritzker of Brown Rudnick Freed & Gesmer, PC. One Financial Center, Boston, Ma, 02111. 617 856-8260. Attorney Pritzker is well know locally as being one of the attorneys involved in a successful multi-billion dollar tobacco litigation case. To our knowledge, Attorney Pritzker is not know to be a personal injury specialist, but we do not see this as an impediment to his case, since he is partner to a large, well known firm, with many attorneys of various specialties.

DEFENSE COUNCIL:

At GAF's suggestion, we engaged attorneys Melissa Tyrney and Dennis M. Duggan, Jr., of Nixon Peabody, LLP. 101 Federal Street, 13th Floor, Boston, Ma. 02110. 617 345-

1000. This firm is equal to the task, and is a long established tort defense firm. We are not familiar with Attorney Tyrney, but know Attorney Duggan to be well experienced and tenacious in defense of his clients. It is our understanding he has represented GAF matters for some time. We met with council yesterday, and turned over all of our file material to them. We asked they write "Defend and Indemnify" letters to Penske, DLS, and Professional Tree on behalf of GAF. We also asked them to clarify GAF's contractual position with regard to: applicability of GAF's coverage; exposure to indemnify DLS and Penski, and otherwise comment on liability issues. Tentatively council sees that GAF did nothing wrong in this accident, and their involvement may only be the contractual Insurance issue. They will advise. We also advised them to direct all communication to this writer, with copies to GAF, and Zurich.

LIABILITY:

REDACTED

DAMAGES:

We are not fully aware of the extent of the claimant's injuries, except that we know she remains in life threatening condition at Umass Medical Center, is paralyzed, suffers currently from pneumonia and pancreatic infection. To estimate the ultimate exposure is premature, but we are aware this case will carry a high value.

LITIGATION:

We fully expect suit to be filed soon, since it appears claimants would have a good case against someone. We presume they will want to get the interest clock running right away, and that is currently 12% per annum in this state, running from the date of filing.

INSURANCE:

By copy of this report, we are noticing Zurich American Insurance Company of this significant claim. We further ask GAF to determine and notify the excess carrier.

MEDIA COVERAGE:

We have in file two newspaper article of the accident. We note that the accident had some local TV coverage as well. The initial reports did not mention GAF.

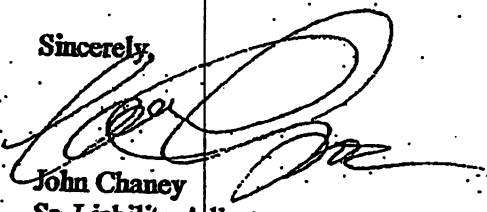
FURTHER INVESTIGATION:

We intend to follow with our expert for his reconstruction report, attempt to interview the tree technicians and police officer. We need to acquire the State Police Report and drug test results when they become available. We will also inquire of defense for their recommendations.

ACTION PLAN:

1. Follow for investigation completion.
2. Follow with engineering report.
3. Follow with council for legal issues and indemnification issues.
4. Review in 30 days.
5. Report in 60 days.

Sincerely,



John Chaney
Sr. Liability Adjuster
Crawford and Company

CC: Mr. Robert Flugger, VP, Risk Management
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