

3/19/2003

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.)
 _____)

**DEFENDANT BUILDING MATERIALS CORPORATION OF AMERICA D/B/A/ GAF
 MATERIALS CORPORATION'S ANSWERS TO PLAINTIFF MARCIA RHODES'
 FIRST SET OF INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 26 and 33 of the Massachusetts Rules of Civil Procedure, defendant Building Materials Corporation of America d/b/a GAF Materials Corporation ("BMCA") hereby responds to the plaintiff Marcia Rhodes' First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Each interrogatory is responded to subject to the General Objections set forth below. These limitations and objections form a part of the response to each interrogatory. The failure to specifically incorporate a General Objection is not a waiver of the General Objection.

1. BMCA objects to the interrogatories to the extent that they call for the disclosure of information protected by the attorney-client privilege, or the work product doctrine, or information which is otherwise not discoverable under the Massachusetts Rules of Civil Procedure.
2. BMCA objects to the interrogatories to the extent that they call for the disclosure of materials or information prepared in anticipation of litigation and/or trial preparation materials.
3. BMCA objects to the interrogatories to the extent that they seek information or documents not relevant to the issues raised in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
4. BMCA objects to the interrogatories to the extent that they are vague, ambiguous and overly broad, and to the extent that they require a search for information that is oppressive, unduly burdensome and prohibitively expensive.
5. BMCA objects to the interrogatories to the extent that they request disclosure of confidential and sensitive business information.
6. BMCA objects to the interrogatories to the extent that they seek to impose obligations different from or in addition to the requirements of the Massachusetts Rules of Civil Procedure.
7. BMCA objects to the interrogatories to the extent that they seek information or material from entities other than BMCA, and to the extent that they purport to encompass each of BMCA's predecessors or affiliates, and all present and former officers, partners, directors, employees, agents, representatives, servants or attorneys, who are not parties to

this litigation or have not had any dealings with Plaintiff that are the subject of this litigation.

8. These responses are based on BMCA's present knowledge. BMCA reserves the right to supplement, amend or otherwise change these responses in the event that discovery reveals facts that would justify such supplementation, amendment or change.

INDIVIDUAL OBJECTIONS AND RESPONSES

Subject to its objections, BMCA specifically responds to the individual interrogatories as follows:

Interrogatory No. 1

Identify all facts upon which you rely for your affirmative defenses claiming:

- a. Plaintiff's injuries were caused by persons over whom BMCA/GAF had no control;
- b. Plaintiff's claim for damages is either reduced or completely barred by contributory negligence;
- c. Plaintiff's injuries were caused by intervening/superseding acts.

Response No. 1

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that Drivers Logistic Services ("DLS") employed Carlo Zalewski ("Zalewski") and Zalewski's relationship with BMCA was only as an independent contractor. Mike Kelly ("Kelly"), another DLS employee, supervised Zalewski's daily activities. In addition, Plaintiff's injuries were caused by the intervening/superseding actions of Zalewski, who drove the other vehicle involved in the

accident. Additional intervening/superseding causes include Penske Truck Leasing Corporation's failure to properly maintain the brakes on Zalewski's vehicle, Professional Tree Service, Inc.'s tree stump grinding operations that affected the flow of traffic at the accident site, and the town of Medway police officer who directed traffic at the accident. In further response, BMCA states that discovery is ongoing and it expressly reserves the right to amend this response.

Interrogatory No. 2

Identify all facts upon which you rely in denying the allegations contained in paragraph 7 of the Complaint, i.e., that the defendant, GAF, directed Carlo Zalewski's daily driving activities.

Response No. 2

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states Zalewski is an employee of DLS and acted as an independent contractor for BMCA. Kelly, another DLS employee, directed Zalewski's daily driving activities for BMCA.

Interrogatory No. 3

Identify the person who instructed, dispatched or otherwise assigned Zalewski to drive on GAF routes or deliver GAF loads. Your response should encompass all time frames in which Carlo Zalewski drove a GAF route or otherwise delivered GAF loads.

Response No. 3

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that Kelly, another DLS

employee, instructed, dispatched or otherwise assigned Zalewski to drive on BMCA routes or deliver BMCA loads for the entire time period that Zalewski was an independent contractor for BMCA.

Interrogatory No. 4

Identify every date on which the defendant, Carlo Zalewski, drove a route for GAF. Your response should include all dates, including those preceding Zalewski's employment by DL and all dates on which Zalewski was employed by VanGuard Services in connection with employee leasing services provided by VanGuard to GAF.

Response No. 4

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that, upon information and belief, Zalewski drove for DLS between April 2001 and January 2002. He drove, upon information and belief, for Vanguard Services from June 1997 through April 2001.

Interrogatory No. 5

Describe initial orientation or subsequent meetings conducted with the assistance, support or participation of Rollins/Penske. Your response should include the date, location, time, attendees and presenters, agenda and substance of meetings.

Response No.5

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad. BMCA further objects to this interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents that do not relate to the accident, vehicle, or driver at issue in this matter. Subject to and without waiving its

objections, BMCA states that meetings conducted with the assistance, support or participation of Rollins/Penske occurred on an as needed basis. BMCA further states that any meetings in which Zalewski may have attended took place in Linden and/or Wayne, New Jersey.

Interrogatory No. 6

Identify all individuals GAF/BMCA "removed" from operating Rollins/Penske-owned tractors or trailers in response to any written or oral complaint from Rollins/Penske. Your response should include name of driver, date of complaint, substance of complaint, and date of removal.

Response No. 6

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that it has not received any written or oral complaints from Rollins/Penske requesting it to remove individuals from Rollins/Penske-owned tractors or trailers.

Interrogatory No. 7

Identify all claims, causes of action or suits in which BMCA/GAF has defended or indemnified Rollins/Penske for death or injury or property damage arising out of use or operation of any tractor or trailer owned by Rollins/Penske.

Response No. 7

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that it has not defended or indemnified Rollins/Penske in connection with any claim, causes of action or suites for death or

injury or property damage arising out of use or operation of any tractor or trailer owned by Rollins/Penske.

Interrogatory No. 8

Identify all safety meeting conducted by Driver Logistics at GAF/BMCA locations, including date, time, location, presenters and attendees, agenda and substance of meetings.

Response No. 8

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, overly broad and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. BMCA further objects to this interrogatory to the extent that it seeks information regarding meetings other than those that Zalewski may have attended. Subject to and without waiving its objections, BMCA states that Driver Logistic conducted, on average, three to four safety meetings a year at BMCA's Linden and/or Wayne, New Jersey site. BMCA does not retain records of such meetings and, therefore, does not have any other information regarding meetings that Zalewski may have attended.

Interrogatory No. 9

Identify the person(s) who approved any request by DL drivers, including Carlo Zalewski, for vacation, holiday, personal and sick time.

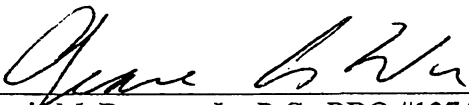
Response No. 9

BMCA objects to this interrogatory to the extent that it is vague, ambiguous, and overly broad. BMCA further objects to this interrogatory on the grounds that it is over broad and not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents that do not relate to the accident, vehicle, or driver at issue in this action. Subject to and without waiving its objections, BMCA states that Kelly, a DLS employee, approved such requests.

As to objections,

BUILDING MATERIALS CORP. OF AMERICA,

By its attorneys,



Dennis M. Duggan, Jr., P.C., BBO #137460
Gregory P. Deschenes, BBO # 550830
Grace C. Wu, BBO # 650926
NIXON PEABODY LLP
101 Federal Street
Boston, MA 02110-1832
617/345-1000

Dated: March 19, 2003

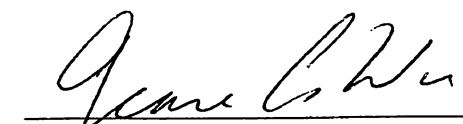
CERTIFICATE OF SERVICE

I, Grace C. Wu, hereby certify that on March 19, 2003, I served the foregoing Responses to Plaintiff's First Set of Interrogatories upon all interested parties by forwarding the same via First Class Mail Postage pre-paid to the following:

Margaret Pinkham, Esq.
Brown, Rudnick, Freed & Gesmer
One Financial Center
Boston, MA 02111

Tim Corrigan, Esq.
Corrigan Johnson & Tutor, PA
141 Tremont Street
Boston MA 02111

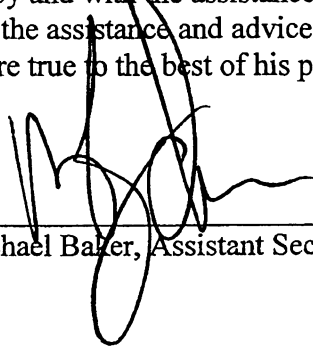
Steven W. Leary, Esq.
95 State Street
Springfield MA 01103



Grace C. Wu

VERIFICATION

The undersigned does hereby, under the penalties of perjury of this 15 day of March 2003, state that he is an Assistant Secretary of Building Materials Corporation of America d/b/a GAF Materials Corporation ("BMCA"), authorized to sign the foregoing on behalf of BMCA, defendant in this matter, and that he has read the contents of the foregoing responses to interrogatories, and that said responses were prepared by and with the assistance of the corporation's employees and representatives, and with the assistance and advice of counsel, upon which he has relied, and that the foregoing responses are true to the best of his present knowledge, information and belief.



Michael Baker, Assistant Secretary of BMCA