

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
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. )  
\_\_\_\_\_)

**MARCIA RHODES' FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS  
DIRECTED TO DEFENDANT CARLO ZALEWSKI**

Pursuant to Rule 26 of the Massachusetts Rules of Civil Procedure, Plaintiff Marcia Rhodes by her attorneys, Brown Rudnick Berlack Israels LLP, hereby requests that Carlo Zalewski ("Zalewski") produce for examination, inspection, and copying the documents or things requested below in its possession, custody, or control and further requests that production take place at the offices of Brown Rudnick Berlack Israels LLP, One Financial Center, Boston, Massachusetts 02111, within thirty (30) days after service hereof.

This request is to be deemed continuing and any information secured subsequent to the service of the response hereto must be furnished with supplemental responses immediately upon receipt of such information.

## DEFINITIONS

A. As used herein, the term “communication” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).

B. As used herein, the term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Mass. R. Civ. P. 26. A draft or non-identical copy is a separate document within the meaning of this term.

C. As used herein, the term “person” is defined as any natural person or any business, legal, or governmental entity or association.

D. As used herein, the term “concerning” means referring to, describing, evidencing or constituting.

E. As used herein, the term “Driver Logistics” shall mean and refer to Driver Logistics and/or Driver Logistics Services, any business entity owned, operated, or managed by Driver Logistics, and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

F. As used herein, the term “Penske” shall mean and refer to Penske Truck Leasing Corporation, and any business entity owned, operated, or managed by Penske Truck Leasing Corporation, and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity including Penske Truck Leasing Co. LP.

G. As used herein, the term “GAF” shall mean and refer to Building Materials Corp. of America d/b/a GAF Materials Corp., any business entity owned, operated, or managed by GAF Materials Corp., any parent, subsidiary, division, affiliate, or predecessor-in-interest of, GAF Materials Corp. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity including Penske Truck Leasing Co. LP.

H. As used herein, the term “agreement” shall mean each and every agreement, contract arrangement or understanding, oral or written, made or proposed, whenever and by whomever made or proposed, of whatever kind or character, concerning a specified subject matter.

I. As used herein, the term “Tractor-Trailer” shall refer to both the Tractor or cab, Registration No. NJ AD870W, and the Trailer, Registration No. NJ T76H6V, that was driven by Zalewski on January 9, 2002.

J. As used herein, the term “representative” shall mean any present or former partners, directors, officers, attorneys, agents or employees, as applicable, and all other persons acting on behalf of any particular person.

K. Any word written in the singular shall include the plural and vice versa.

L. Each document request refers to all documents in the possession, custody, or control, of you, your agents, and representatives.

M. The term “discussions” shall mean any communication, whether oral, written, or implied.

- N. As used herein, the term “any” means “any and all.”
- O. As used herein, the term “or” and the term “and” shall mean “and/or.”
- P. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.

### INSTRUCTIONS

- A. This Document Request shall be deemed continuing, so as to require the immediate production of additional answers and documents if you obtain further information or documents between the time this Document Request is served and the time of trial of this action.
- B. When an objection is made to any request or any subpart thereof, state with specificity all grounds for the objection.
- C. If any document sought by this Request has been destroyed, you are requested to state, as to each such document, its date, author(s), recipient(s) and the date and circumstances of its destruction.
- D. Unless otherwise indicated, the time period for each document request shall be from January 1, 1997 to the date of the response, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period.

E. With respect to each document that is withheld from production for any reason, or any portion of a document that has been redacted in connection with the production for any reason, provide a statement setting forth:

- (i) the name and title of the document's author(s);
- (ii) the name and title of the person(s) to whom the document was addressed;
- (iii) the name and title of the person(s) to whom copies of the document were sent;
- (iv) the dates on which the document was written or otherwise produced, and the date on which it was mailed, sent, or otherwise delivered to its addressee(s);
- (v) the number of pages;
- (vi) a brief description of the document's nature and subject matter;
- (vii) all grounds on which the document, or portion of the document, is being withheld;
- (viii) the present location of the document and all copies thereof.

**DOCUMENTS AND THINGS TO BE PRODUCED**

1. All documents referring or relating to any Agreement or contract between Penske and Driver Logistics, including but not limited to, subrogation or indemnification agreements.

2. All documents referring or relating to any business relationship or course of dealings between Penske and Driver Logistics.

3. All documents referring or relating to any Agreement or contract between Penske and GAF, including but not limited to, subrogation or indemnification agreements.
4. All documents referring or relating to any business relationship or course of dealings between Penske and GAF.
5. All documents referring or relating to any Agreement or contract between GAF and Driver Logistics, including but not limited to, subrogation or indemnification agreements.
6. All documents referring or relating to any business relationship or course of dealings between GAF and Driver Logistics.
7. All documents describing the services provided by Penske to GAF, including but not limited to current and past brochures, promotional materials, videos, etc.
8. All documents describing the services provided by Driver Logistics to GAF, including current and past brochures, promotional materials, videos, etc.
9. All documents referring or relating to GAF's control over the daily activities of any employee of Driver Logistics.
10. All documents referring or relating to Driver Logistics' control over the daily activities of its employees, including but not limited to, Carlo Zalewski.
11. All documents referring or relating to the maintenance of the Tractor-Trailer, including but not limited to, the party(ies) responsible for routine and emergency maintenance and the complete record of any maintenance performed on the Tractor-Trailer.

12. All documents referring or relating to Carlo Zalewski, including but not limited to personnel records, driving records and trip logs.
13. All insurance policies under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy judgment, including but not limited to any umbrella or excess policies issued to Penske, GAF, Driver Logistics, Zalewski, or covering the Tractor-Trailer.
14. All documents referring or relating to Carlo Zalewski's supervisor, assignments, routes and activities.
15. All documents referring or relating to the registration of the Tractor-Trailer.
16. All documents referring or relating to GAF employee policies, procedures and discipline guidelines.
17. All documents referring or relating to Driver Logistics' employee policies, procedures and discipline guidelines.
18. All documents referring to or relating to any investigation of the January 9, 2002 accident that is the subject of this suit, including but not limited to witness statements, reports, and/or inspections or testing of the Tractor-Trailer, including expert reports.
19. All documents referring to or relating to documents dealing with use of Tractor-Trailer from January 1, 2001 – January 9, 2002 including trip logs identifying: the

driver; route, when the trip began; when the load was delivered; the load or contents and weight of such load or contents.

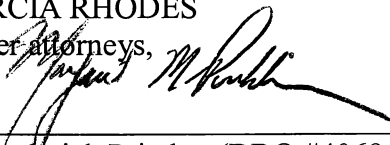
20. All documents referring or relating to traffic, operational or speeding violations of all Driver Logistics employees who drove routes for GAF.

21. All documents concerning your document retention or destruction practices or policies, including but not limited to, all documents concerning your policies or practices for the back-up, storage, archiving, retrieval, or destruction of Tractor-Trailer maintenance records and driver logs.

Dated: September 27, 2002

MARCIA RHODES

By her attorneys,



M. Frederick Pritzker (BBO #406940)

Margaret M. Pinkham (BBO#561920)

BROWN RUDNICK BERLACK ISRAELS LLP

One Financial Center

Boston, MA 02111

(617) 856-8200



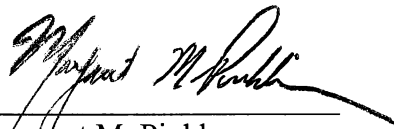
**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served on all counsel of record by mail on September 27, 2002:

Melissa Bayer Tearney, Esq.  
Nixon Peabody LLP  
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95 State Street  
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Margaret M. Pinkham