

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No. 02-01159A

21

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 [BMCA] MATERIALS
CORP.

Defendants.

**BUILDING MATERIALS CORPORATION OF AMERICA D/B/A/ GAF
MATERIALS CORPORATION’S RESPONSE TO PLAINTIFF’S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Massachusetts Rules of Civil Procedure, Defendant, Building Materials Corp. of America d/b/a GAF Materials Corporation (“BMCA”), hereby responds to Plaintiff, Marcia Rhodes, et al.’s First Request for Production of Documents (the “Requests”) as follows:

PRELIMINARY STATEMENT

The General Objections set forth below are applicable to the Requests in their entirety, as well as to each individual Request. By reference, BMCA incorporates each General Objection into its objections to each of the individual Requests. To the extent

that specific objections are cited in response to specific Requests, those objections are provided because they are believed to be applicable to the specific Request, and are not to be construed as a waiver of any of these General Objections.

GENERAL OBJECTIONS

1. BMCA objects generally to the Requests on the grounds that they are vague, ambiguous, and overly broad, and to the extent they require a search that is oppressive, unduly burdensome and prohibitively expensive.
2. BMCA objects generally to the Requests to the extent that they seek the disclosure of information and/or documents not relevant to the issues raised in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
3. BMCA objects generally to the Requests to the extent that they seek information and/or documents protected from disclosure by the attorney/client privilege or the work product doctrine, without the showing required by the Massachusetts Rules of Civil Procedure.
4. BMCA objects generally to the Requests to the extent that they purport to require BMCA to search for information not within its possession, custody, or control.
5. BMCA objects generally to the Instructions and Definitions accompanying the Requests to the extent they seek to impose obligations different from or in addition to the requirements of the Massachusetts Rules of Civil Procedure. BMCA further objects to the Instructions and Definitions on the grounds that they are vague, ambiguous, overly broad and unduly burdensome.
6. These responses are given without waiver of and with specific preservation of:

- (a) All objections as to competency, relevancy, materiality, privilege and admissibility of the information or the subject matter thereof, as evidence for any purpose and any proceeding in this action (including trial) and in other actions;
- (b) The right to object on any grounds at any time to a demand for further responses to these or any other discovery Requests or other discovery proceedings involved or related to the subject matter of the discovery to which information or documents are provided; and
- (c) The right at any time to review, correct, add to, supplement or clarify any of these responses.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 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.

RESPONSE TO REQUEST NO. 1

BMCA states that it does not have any such documents in its possession, custody or control. BMCA expressly reserves the right to amend this response.

REQUEST NO. 2

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

RESPONSE TO REQUEST NO. 2

BMCA objects to this Request on the grounds that the term “any business relationship or course of dealings” is vague, ambiguous, and over broad. Subject to and without waiving its objections, BMCA states that it does not have any such documents in its possession, custody or control. BMCA expressly reserves the right to amend this response.

REQUEST NO. 3

All documents referring or relating to any Agreement or contract between Penske and GAF [BMCA], including but not limited to, subrogation or indemnification agreements.

RESPONSE TO REQUEST NO. 3

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 4

All documents referring or relating to any business relationship or course of dealings between Penske and GAF [BMCA].

RESPONSE TO REQUEST NO. 4

BMCA objects to this Request on the grounds that the term “any business relationship or course of dealings” is vague, ambiguous, and over broad. BMCA further objects to this Request on the grounds 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 or vehicle at issue in this action. Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 5

All documents referring or relating to any Agreement or contract between GAF [BMCA] and Driver Logistics, including but not limited to, subrogation or indemnification agreements.

RESPONSE TO REQUEST NO. 5

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 6

All documents referring or relating to any business relationship or course of dealings between GAF [BMCA] and Driver Logistics.

RESPONSE TO REQUEST NO. 6

BMCA objects to this Request on the grounds that the term “business relationship or course of dealings” is vague, ambiguous, and over broad. Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 7

All documents describing the services provided by Penske to GAF [BMCA], including but not limited to current and past brochures, promotional materials, videos, etc.

RESPONSE TO REQUEST NO. 7

BMCA objects to this Request on the grounds that it is vague, ambiguous, over broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that it does not have any such documents in

its possession, custody or control. BMCA expressly reserves the right to amend this response.

REQUEST NO. 8

All documents describing the services provided by Driver Logistics to GAF [BMCA], including current and past brochures, promotional materials, videos, etc.

RESPONSE TO REQUEST NO. 8

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 9

All documents referring or relating to GAF [BMCA]'s control over the daily activities of any employee of Driver Logistics.

RESPONSE TO REQUEST NO. 9

BMCA objects to this Request on the grounds that the term "control over the daily activities of any employee" is vague, ambiguous and over broad.

REQUEST NO. 10

All documents referring or relating to Driver Logistics' control over the daily activities of its employees, including but not limited to, Carlo Zalewski.

RESPONSE TO REQUEST NO. 10

BMCA objects to this Request on the grounds that the term "control over the daily activities of its employees" is vague, ambiguous and over broad. Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 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.

RESPONSE TO REQUEST NO. 11

BMCA states that it does not have any such documents in its possession, custody or control. BMCA expressly reserves the right to amend this response.

REQUEST NO. 12

All documents referring or relating to Carlo Zalewski, including but not limited to personnel records, driving records and trip logs.

RESPONSE TO REQUEST NO. 12

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 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 [BMCA], Driver Logistics, Zalewski, or covering the Tractor-Trailer.

RESPONSE TO REQUEST NO. 13

Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 14

All documents referring or relating to Carlo Zalewski's supervisor, assignments, routes and activities.

RESPONSE TO REQUEST NO. 14

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 15

All documents referring or relating to the registration of the Tractor-Trailer.

RESPONSE TO REQUEST NO. 15

BMCA states that it does not have any such documents in its possession, custody or control. BMCA expressly reserves the right to amend this response.

REQUEST NO. 16

All documents referring or relating to GAF [BMCA] employee policies, procedures and discipline guidelines.

RESPONSE TO REQUEST NO. 16

BMCA objects to this Request on the grounds that it is vague, ambiguous, over broad and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 17

All documents referring or relating to Driver Logistics' employee policies, procedures and discipline guidelines.

RESPONSE TO REQUEST NO. 17

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 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.

RESPONSE TO REQUEST NO. 18

BMCA objects to this Request on the grounds that it calls for the disclosure of documents protected by the attorney-client privilege and work product doctrine. BMCA further objects to this Request on the grounds that it has not yet determined who it will call as expert witnesses and it is beyond the scope of permissible expert discovery pursuant to Mass. R. Civ. P. 26(b)(4). Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 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 or such load or contents.

RESPONSE TO REQUEST NO. 19

BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 20

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

RESPONSE TO REQUEST NO. 20

BMCA objects to this Request on the grounds that it is vague, ambiguous, over broad and not reasonably calculated to lead to the discovery of admissible evidence. BMCA further objects to this Request on the grounds that it seeks irrelevant and confidential documents concerning Driver Logistics employees other than the employee at issue in this action. Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

REQUEST NO. 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.

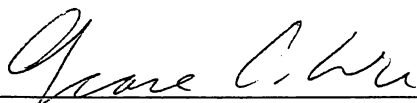
RESPONSE TO REQUEST NO. 21

BMCA objects to this Request on the grounds that it is vague, ambiguous, over broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, BMCA states that it will produce the documents within its possession, custody, or control that are responsive to this Request.

Respectfully Submitted,

Building Materials Corporation of America
d/b/a GAF Materials Corporation,

By its attorney,



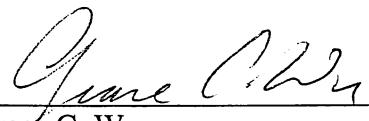
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101 Federal Street
Boston, MA 02110
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Dated: November 22, 2002

CERTIFICATE OF SERVICE

I, Grace C. Wu , hereby certify that on Nov. 22, 2002 I served the foregoing Responses to Plaintiff's First Set of Request for Production of Documents upon all interested parties by forwarding the same via U.S. Mail Postage pre-paid to the following:

Margaret M. Pinkham, Esq.
BROWN RUDNICK BERLACK ISRAELS LLP
One Financial Center
Boston, MA 02111



Grace C. Wu