

6/3/2005

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No.: 05-1360-BLS

Marcia Rhodes, Harold Rhodes, Individually,)
Harold Rhodes, on Behalf of his Minor Child)
and Next Friend, Rebecca Rhodes)
Plaintiffs,)
)
v.)
)
AIG Domestic Claims, Inc. f/k/a AIG Technical)
Services, Inc., National Union Fire Insurance)
Company of Pittsburgh, PA, and Zurich American)
Insurance Company)
Defendants.)

**ANSWER OF ZURICH AMERICAN INSURANCE COMPANY
TO PLAINTIFF'S COMPLAINT**

The defendant, Zurich American Insurance Company ("Zurich") answers the plaintiff's complaint as follows:

INTRODUCTION

The allegations contained underneath the heading "introduction" appear to be a preamble and are not specific allegations to which Zurich is obligated to respond. To the extent that any sentence under the heading "introduction" is intended to be an allegation to which Zurich is obligated to respond, Zurich denies the same.

PARTIES

1. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 and, therefore, denies the same.
2. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2 and, therefore, denies the same.

3. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 and, therefore, denies the same.
4. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 and, therefore, denies the same.
5. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 and, therefore, denies the same.
6. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 and, therefore, denies the same.
7. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 and, therefore, denies the same.
8. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8 and, therefore, denies the same.
9. Zurich admits that it is a New York corporation with a principal place of business in Schaumburg, Illinois. Zurich further admits that it issued an insurance policy to Building Materials Corp. of America d/b/a GAF Materials Corp. ("GAF").
Zurich denies the remaining allegations in paragraph 9.
10. Admitted.
11. Admitted.

THE ACCIDENT

12. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 and, therefore, denies the same.
13. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 and, therefore, denies the same.

14. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14 and, therefore, denies the same.
15. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15 and, therefore, denies the same.
16. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16 and, therefore, denies the same.
17. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17 and, therefore, denies the same.
18. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 18 and, therefore, denies the same.
19. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 19 and, therefore, denies the same.

LIABILITY FOR THE ACCIDENT WAS REASONABLY CLEAR

20. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20 and, therefore, denies the same.
21. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21 and, therefore, denies the same.
22. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 22 and, therefore, denies the same.
23. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 23 and, therefore, denies the same.
24. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24 and, therefore, denies the same.

25. Admitted.
26. Denied.
27. Zurich neither admits nor denies the allegations in paragraph 27 and states that the complaint in the Underlying Action speaks for itself.
28. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28 and, therefore, denies the same.
29. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29 and, therefore, denies the same.
30. Denied.
31. The allegations contained in paragraph 31 call for legal conclusion and, therefore, Zurich is not obligated to respond. To the extent that paragraph 31 contains any factual allegations, Zurich denies the same.
32. The allegations contained in paragraph 32 call for legal conclusion and, therefore, Zurich is not obligated to respond. To the extent that paragraph 32 contains any factual allegations, Zurich denies the same.
33. Denied.

DEFENDANTS' UNFAIR SETTLEMENT PRACTICES

34. Admitted.
35. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 35 and, therefore, denies the same.
36. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 36 and, therefore, denies the same.

37. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 37 and, therefore, denies the same.
38. The allegations contained in paragraph 38 call for a legal conclusion to which Zurich is not obligated to respond. To the extent that Zurich is obligated to respond, Zurich states that it provided Mr. Zalewski and Driver Logistics Services with defense and indemnity coverage under its policy identified in paragraph 34. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations with respect to National Union's insurance and, therefore, denies the same.
39. The allegations contained in paragraph 39 call for a legal conclusion to which Zurich is not obligated to respond.
40. Zurich admits only that Morrison, Mahoney & Miller represented Driver Logistics Services and Zalewski and that Nixon Peabody represented GAF. Zurich denies the remaining allegations in paragraph 40.
41. Denied.
42. Zurich admits that Mr. and Mrs. Rhodes at some time responded to GAF's initial discovery requests. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 42 and, therefore, denies the same.
43. Zurich neither admits nor denies the allegations in paragraph 43 and states that the documents identified in paragraph 43 speak for themselves.
44. Zurich admits that at some time plaintiffs further responded to discovery. Zurich is without sufficient knowledge or information to form a belief as to the truth of

the remaining allegations contained in paragraph 44 and, therefore, denies the same.

45. Zurich admits that it did not extend a settlement offer in the summer of 2003. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 45 and, therefore, denies the same.
46. Zurich admits only that it received a settlement demand dated August 13, 2003 from plaintiffs to the attorneys at Nixon Peabody and Morrison, Mahoney & Miller that included documents. Zurich denies the remaining allegations contained paragraph 46.
47. Zurich neither admits nor denies the allegations in paragraph 47 and states that the documents identified in paragraph 47 speak for themselves.
48. Zurich neither admits nor denies the allegations in paragraph 48 and states that the documents identified in paragraph 47 speak for themselves.
49. Denied.
50. Paragraph 50 calls for a legal conclusion to which Zurich is not obligated to respond. To the extent that paragraph 50 contains any factual allegations, Zurich denies the same.
51. Denied.
52. Zurich admits that Jane Mattson, Ph.D. had a meeting with Mrs. Rhodes on or around September 24, 2003. Zurich denies the remaining allegations in paragraph 52.

53. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 53 and, therefore, denies the same.
54. Zurich admits that at some time it received a copy of a report issued by Jane Mattson, Ph.D. Zurich denies the remaining allegations contained in paragraph 54.
55. Zurich admits that at some point it received a December 1, 2003 letter from plaintiffs to the attorneys from Nixon Peabody and Morrison, Mahoney and Miller. Zurich further states that the document speaks for itself.
56. Denied.
57. Zurich admits that at some point it received a report from Jane Mattson, Ph.D. Zurich further admits that the report speaks for itself. Zurich denies the remaining the allegations contained in paragraph 57.
58. Denied.
59. Denied.
60. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 60 and, therefore, denies the same.
61. Zurich admits that counsel for defendants tendered its \$2,000,000.00 Zurich policy limit to the plaintiffs in late March 2004. Zurich denies the remaining allegations contained in paragraph 61.
62. Denied.
63. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 63 and, therefore, denies the same.

64. Zurich admits that the parties attended a pre-trial conference on April 1, 2004 and that a trial date was scheduled for September 7, 2004. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 64 and, therefore, denies the same.
65. It is Zurich's understanding that Attorney Russell Pollock attended the pre-trial conference. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 65 and, therefore, denies the same.
66. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 66 and, therefore, denies the same.
67. Denied.
68. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 68 and, therefore, denies the same.
69. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 69 and, therefore, denies the same.
70. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 70 and, therefore, denies the same.
71. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 71 and, therefore, denies the same.
72. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 72 and, therefore, denies the same.
73. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 73 and, therefore, denies the same.

74. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 74 and, therefore, denies the same.
75. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 75 and, therefore, denies the same.
76. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 76 and, therefore, denies the same.
77. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 77 and, therefore, denies the same.
78. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 78 and, therefore, denies the same.
79. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 79 and, therefore, denies the same.
80. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 80 and, therefore, denies the same.
81. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 81 and, therefore, denies the same.
82. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 82 and, therefore, denies the same.
83. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 83 and, therefore, denies the same.
84. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 84 and, therefore, denies the same.

85. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 85 and, therefore, denies the same.
86. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 86 and, therefore, denies the same.
87. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 87 and, therefore, denies the same.
88. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 88 and, therefore, denies the same.
89. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 89 and, therefore, denies the same.
90. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 90 and, therefore, denies the same.
91. Zurich admits that the jury returned a verdict \$9,412,000.00 on or around September 15, 2004. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 91 and, therefore, denies the same.
92. Zurich understands that the Personal Injury Defendants have filed an appeal. Zurich is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 92 and, therefore, denies the same.
93. Zurich admits that it received the document attached hereto as Exhibit A.
94. Zurich admits that its counsel wrote the two letters attached as Exhibit B and C to plaintiffs' complaint.

95. Zurich neither admits nor denies the allegations contained in paragraph 95 and states that the document attached as Exhibit D speaks for itself.
96. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 96 and, therefore, denies the same.
97. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 97 and, therefore, denies the same.
98. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 98 and, therefore, denies the same.
99. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 99 and, therefore, denies the same.
100. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 100 and, therefore, denies the same.
101. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 101 and, therefore, denies the same.
102. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 102 and, therefore, denies the same.
103. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 103 and, therefore, denies the same.

104. Zurich is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 104 and, therefore, denies the same.

COUNT I
(G.L. c. 176D and G.L. c. 93A)
(National Union)

105. Zurich realleges and incorporates by reference its responses to paragraphs 1 through 104 as fully set forth herein.

106-114 The allegations contained in paragraph 106 through 114 are not asserted against Zurich and, therefore, Zurich is not obligated to respond. To the extent a response is required, Zurich denies the allegations in paragraphs 106 through 114.

COUNT II
(G.L. c. 176D and G.L. c. 93A)
(AIGDC)

115. Zurich realleges and incorporates by reference its responses to paragraphs 1 through 114 as fully set forth herein.

116-125. The allegations contained in paragraph 115 through 125 are not asserted against Zurich and, therefore, Zurich is not obligated to respond. To the extent a response is required, Zurich denies the allegations in paragraphs 116 through 125.

COUNT III
(G.L. c. 176D and G.L. c. 93A)
(Zurich)

126. Zurich realleges and incorporates by reference its responses to paragraphs 1 through 125 as fully set forth herein.

127. The allegations contained in paragraph 127 contain legal conclusions to which Zurich is not obligated to respond. To the extent that paragraph 127 contains any factual allegations Zurich admits that it is licensed to conduct a business in the Commonwealth of Massachusetts.
128. The allegations contained in paragraph 128 call for a legal conclusion to which Zurich is not obligated to respond.
129. The allegations contained in paragraph 129 call for a legal conclusion to which Zurich is not obligated to respond.
130. Denied.
131. Denied.
132. Denied.
133. Zurich admits that it received the letter attached as Exhibit A.
134. Zurich denies the remaining allegations contained in paragraph 133.
135. Denied.

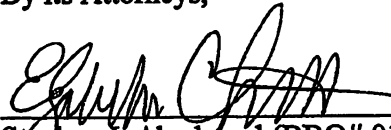
AFFIRMATIVE DEFENSES

1. Plaintiffs' complaint fails to state a claim against Zurich upon which relief may be granted.
2. The plaintiffs' fail to comply with the requirements of Chapter 93A in their demand letter to Zurich and, therefore, their claims under Chapter 93A are barred.
3. The plaintiffs' suffered no injury as a result of Zurich's conduct and, therefore, the plaintiffs' are not entitled to recover damages under Chapter 93A against Zurich.

4. The damages alleged by plaintiffs were caused, if at all, by the conduct of third-parties for whom Zurich is not legally responsible.
5. The 1989 amendment to M.G.L. c. 93A, Section 9 is unconstitutional to the extent that it imposes punitive damages in an amount prohibited *State Farm Mutual Automobile Ins. Co. v. Campbell*, 123 S. ct. 1513 (U.S. 2003).

WHEREFORE, Zurich respectfully requests that the court enter judgment in favor of Zurich and award Zurich any other such relief as the court may deem fair and proper.

Respectfully Submitted,
Zurich American Insurance Company
By its Attorneys,



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Dated: June 3, 2005

CERTIFICATE OF SERVICE

I, Elizabeth C. Sackett, certify that on this 3 day of June, 2005, I caused a copy of the foregoing to be served by first class mail, postage prepaid upon:

M. Frederick Pritzker
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Elizabeth C. Sackett