

2/5/2003

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)
GAF BUILDING MATERIALS CORP.)

Defendants.)

PLAINTIFFS' MOTION TO AMEND COMPLAINT

In accordance with Mass. R. Civ. P. 15(a), the plaintiffs seek leave to amend and file a Second Amended Complaint to assert a claim for negligence against the defendant Penske Truck Leasing Corp. ("Penske"). In further support of this motion, the plaintiffs state as follows:

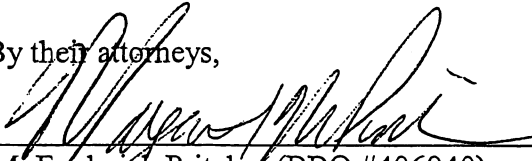
1. The Amended Complaint, Count IV, seeks recovery against Penske under M.G.L. c. 231, § 85A as Penske is the registered owner of the fully-loaded, 70,000 pound tractor-trailer that drove into Marcia Rhodes' car while she was stopped at a work site. Mrs. Rhodes contends that as the vehicle's owner, Penske is liable for the conduct of the vehicle's driver.
2. The documents produced thus far in the discovery process demonstrate that Penske was responsible for maintaining and repairing the tractor-trailer, and that at the time of the accident, one of the brakes on the trailer was inoperable.

3. Plaintiff Marcia Rhodes seeks to amend to assert a direct claim against Penske for its negligence in failing to safely maintain and repair the tractor-trailer, which was a contributing cause to the accident and the severity of her injuries.

WHEREFORE, the plaintiffs respectfully request that the Court allow this Motion to Amend as justice so requires. Attached hereto is the proposed Second Amended Complaint and demand for jury trial.

MARCIA RHODES, HAROLD RHODES,
INDIVIDUALLY, HAROLD RHODES,
ON BEHALF OF HIS MINOR CHILD
AND NEXT FRIEND, REBECCA RHODES,

By their attorneys,


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DATED: February 5, 2003

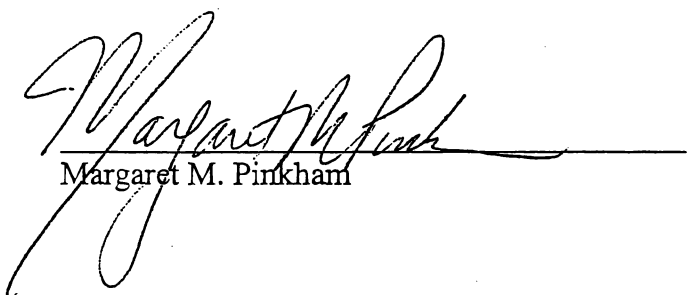
CERTIFICATE OF SERVICE

Counsel for plaintiffs hereby certifies that a copy of the foregoing Motion to Amend Complaint, with attachment, was served via first class mail to the following counsel this 5th day of February, 2003:

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