

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.	)

**RESPONSE TO DEFENDANT ZURICH AMERICAN INSURANCE  
COMPANY'S REQUEST FOR PRODUCTION OF DOCUMENTS  
TO PLAINTIFF HAROLD RHODES**

Pursuant to Rule 34 of the Massachusetts Rules of Civil Procedure, Harold Rhodes hereby responds to Defendant AIG Domestic Claims, Inc.'s Request for Production of Documents Request for Production of Documents. The documents indicated below will be made available for inspection and copying at the offices of Brown Rudnick Berlack Israels LLP, One Financial Center, Boston, MA 02111 at a mutually convenient.

The statements below which indicate that Plaintiffs "will produce" documents do not constitute a representation that such documents exist but only that Plaintiffs will produce those documents that are in their possession, custody or control, that are not privileged, that are not confidential and that are not otherwise immune from disclosure by any reason of the objections set forth therein.

## DEFINITIONS

As used herein, the term “the Accident” shall mean the crash that occurred on January 9, 2002 involving Marcia Rhodes and Carlo Zalewski.

As used herein, the term “AIGDC” shall mean and refer to AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc., and any business entity owned, operated, or managed by, AIG Domestic Claims, Inc. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, predecessors, agents, counsel, attorneys, and other representatives of each such entity.

As used herein, the term “burdensome” means that it would be unduly burdensome, oppressive, annoying, time consuming and expensive to compile and furnish the documents called for in view of the degree of their relevance and materiality, if any.

As used herein, the term “compound” means that a request contains multiple, unrelated requests that are improperly combined together.

As used herein, the term “confidential” means the documents requested are retained in confidence at the express or implied request of a third party or that it is the custom of the trade to retain such records in confidence.

As used herein, the term “National Union” shall mean and refer to National Union Fire Insurance Company of Pittsburgh, PA, and any business entity owned, operated, or managed by, National Union Fire Insurance Company of Pittsburgh, PA and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

As used herein, the term “overly broad” means that a request is unreasonably general, vague and nonspecific.

As used herein, the term “Personal Injury Defendants” shall mean and refer collectively to Carlo Zalewski, GAF, Driver Logistics and Penske.

As used herein, the term “privileged” means that the documents requested are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege against disclosure.

As used herein, the term “Underlying Action” shall mean the personal injury action filed by Plaintiffs against GAF, Driver Logistics, Carlo Zalewski and Penske on or about July 12, 2002.

As used herein, the term “Zurich” shall mean, Zurich American Insurance Company and any business entity owned, operated, or managed by Zurich American Insurance Company, any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Zurich American Insurance Company and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

#### **REQUESTS TO WHICH NO OBJECTION IS MADE**

Where it is indicated that no objection is made to producing the documents requested, no inference should be drawn that Plaintiffs have such documents in their possession or control, but only that they do not object to endeavoring to locate and produce such documents. In addition, if any confidential or privileged document is produced, whether intentionally or inadvertently, such production shall not waive the right of Plaintiffs to decline to produce a like document on grounds of confidentiality or privilege, and plaintiffs reserve the right to demand the return of any confidential or privileged document that was produced inadvertently.

#### **GENERAL OBJECTIONS**

The following objections are incorporated by reference into each Response to the

individual Requests below.

Plaintiffs object to any request for documents that are protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege or the attorney work-product doctrine.

Plaintiffs object to any request for documents that are restricted in their disclosure under any state or federal law, rule or regulation or which would otherwise potentially subject them to any regulatory liability.

Plaintiffs object to any request or instruction for documents or information that is not discoverable under the Massachusetts Rules of Civil Procedure or otherwise.

Plaintiffs object to any request for documents that are confidential.

Plaintiffs object to any request for documents that are not in their possession, custody or control.

Plaintiffs object to producing any documents that were not specifically requested by Defendant and that do not fall within the scope of the Definitions and Instructions set forth by Defendant.

## **DOCUMENT REQUESTS AND RESPONSES**

### **REQUEST NO. 1.**

All documents constituting or concerning the communications you identified in response to Zurich's Interrogatory No. 1 to Harold Rhodes.

### **RESPONSE**

Mr. Rhodes' deposition transcript has previously been made available. His trial testimony will be made available to the defendants at a mutually convenient time.

### **REQUEST NO. 2.**

All documents constituting or concerning the communications you identified in response

to Zurich's Interrogatory No. 2 to Harold Rhodes.

**RESPONSE**

Mr. Rhodes is not in possession, custody or control of responsive documents.

**REQUEST NO. 3.**

All documents concerning the "actual damages" you described in response to Zurich's Interrogatory No. 3 to Harold Rhodes.

**RESPONSE**

Responsive documents will be made available at a mutually convenient time.

**REQUEST NO. 4.**

All documents reflecting the sources of income you identified in response to Zurich's Interrogatory No. 4 to Harold Rhodes.

**RESPONSE**

Harold Rhodes objects to this request as seeking the production of private, confidential documents which are not relevant and will not lead to the discovery of relevant evidence regarding Plaintiffs' claim that the Defendants failed to effectuate a fair and reasonable settlement once liability became reasonably clear. Without waiving such objections, responsive documents will be made available at a mutually convenient time.

**REQUEST NO. 5.**

All documents identified in your response to Zurich's Interrogatory No. 5 to Harold Rhodes.

**RESPONSE**

Harold Rhodes objects to this request as overly broad and unduly burdensome, seeking the production of private, confidential documents which are not relevant and will not lead to the discovery of relevant evidence regarding Plaintiffs' claim that the Defendants failed to effectuate

a fair and reasonable settlement once liability became reasonably clear.

**REQUEST NO. 6.**

All documents concerning the debts and other financial liabilities you identified in response to Zurich's Interrogatory No. 6 to Harold Rhodes.

**RESPONSE**

Responsive documents will be made available at a mutually convenient time.

**REQUEST NO. 7.**

All documents you reviewed in preparing your answers to Zurich's First Set of Interrogatories to Harold Rhodes.

**RESPONSE**

Responsive documents will be made available to the defendants at a mutually convenient time.

**REQUEST NO. 8.**

Your federal income tax returns for tax years 1999 through 2004, including all forms and schedules filed with such returns.

**RESPONSE**

Harold Rhodes objects to this request as overly broad and unduly burdensome, seeking the production of private, confidential documents which are not relevant and will not lead to the discovery of relevant evidence regarding Plaintiffs' claim that the Defendants failed to effectuate a fair and reasonable settlement once liability became reasonably clear.

**REQUEST NO. 9.**

All documents constituting or concerning communications between you, your attorneys, or other representatives and any employee or agent of or legal counsel for any of the Personal Injury Defendants concerning:

- (a) Plaintiffs' claims against any of the Personal Injury Defendants;
- (b) The nature or value of Plaintiffs' injuries and damages allegedly caused by the Accident;
- (c) Any settlement demand made by or on behalf of Plaintiffs prior to or during the course of the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action; and
- (d) Any settlement offer made to Plaintiffs during the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action.

**RESPONSE**

Responsive documents were previously made available to Zurich on December 21, 2005.

**REQUEST NO. 10.**

All documents constituting or concerning communications between you, your attorneys, or other representatives and any employee, agent or representative of Crawford concerning:

- (a) Plaintiffs' claims against any of the Personal Injury Defendants;
- (b) The nature or value of Plaintiffs' injuries and damages allegedly caused by the Accident;
- (c) Any settlement demand made by or on behalf of Plaintiffs prior to or during the course of the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action;
- (d) Any settlement offer made to Plaintiffs during the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action; and
- (e) Any settlement demand made by or on behalf of Plaintiffs during or after the Underlying Action pertaining to the claims asserted in this action.

**RESPONSE**

Responsive documents were previously made available to Zurich on December 21, 2005.

**REQUEST NO. 11.**

All documents constituting or concerning communications between you, your attorneys, or other representatives and any employee, agent or representative of Zurich concerning:

- (a) Plaintiffs' claims against any of the Personal Injury Defendants;

- (b) The nature or value of Plaintiffs' injuries and damages allegedly, caused by the Accident;
- (c) Any settlement demand made by or on behalf of Plaintiffs prior to or during the course of the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action;
- (d) Any settlement offer made to Plaintiffs during the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action; and
- (e) Any settlement demand made by or on behalf of Plaintiffs during or after the Underlying Action pertaining to the claims asserted in this action.

**RESPONSE**

Responsive documents were previously made available to Zurich on December 21, 2005.

**REQUEST NO. 12.**

All documents constituting or concerning written communications you sent to or received from any lawyer or employee of Brown Rudnick Berlack & Israels relating to any of the following topics, which documents were also sent to or reviewed by any person other than Harold or Rebecca Rhodes:

- (a) Plaintiffs' claims against any of the Personal Injury Defendants;
- (b) The nature or value of Plaintiffs' injuries and damages allegedly caused by the Accident;
- (c) Any settlement demand made by or on behalf of Plaintiffs prior to or during the course of the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action;
- (d) Any settlement offer made to Plaintiffs during the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action; and
- (e) Any settlement demand made by or on behalf of Plaintiffs during or after the Underlying Action pertaining to the claims asserted in this action.

**RESPONSE**

Harold Rhodes objects to this request as it seeks the production of documents protected by the attorney client privilege.



**REQUEST NO. 13.**

All documents, notes, reports, memoranda and other documents concerning:

- (a) Any settlement demand made by or on behalf of Plaintiffs prior to or during the course of the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action;
- (b) Any settlement offer made to Plaintiffs during the Underlying Action pertaining to the claims asserted by Plaintiffs in the Underlying Action; and
- (c) Any settlement demand made by or on behalf of Plaintiffs during or after the Underlying Action pertaining to the claims asserted in this action.

**RESPONSE**

Harold Rhodes objects to this request to the extent it seeks the production of attorney work product. Responsive documents that are not privileged or otherwise protected from disclosure were previously made available to Zurich on December 21, 2005.

**REQUEST NO. 14.**

All documents reflecting any assessment or computation of the actual or potential value of Plaintiffs' tort claims against the Personal Injury Defendants in the Underlying Action (other than those that may be reflected in documents produced by the Defendants during discovery in this action).

**RESPONSE**

Harold Rhodes objects to this request to the extent it seeks the production of attorney client communications or attorney work product. Responsive documents that are not privileged or otherwise protected from disclosure were previously made available to Zurich on December 21, 2005.

Respectfully submitted,

HAROLD RHODES,

By his attorneys,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Response To Defendant Zurich American Insurance Company's Request For Production Of Documents To Plaintiff Harold Rhodes upon all counsel of record via first class mail to:

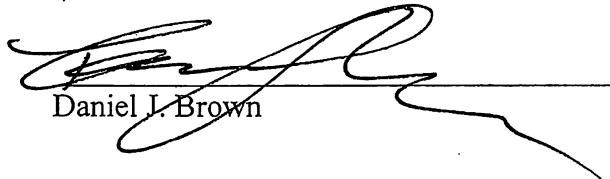
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DATED: May 18, 2006



Daniel J. Brown