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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

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.

CIVIL ACTION No.

05-1360BLS

**SECOND SUPPLEMENTAL ANSWER OF AIG DOMESTIC CLAIMS, INC. AND  
 NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA  
 TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant, AIG Domestic Claims, Inc. and National Union Fire Insurance Company of Pittsburgh, PA submits this Supplemental Answer to Plaintiffs' First Set of Interrogatories. This Supplemental Answer restates and incorporates by reference the General Objections and all of the specific objections set forth in these defendants previous Answers to Interrogatories.

**INTERROGATORY NO. 5:**

Identify by name, employer, address and qualifications, each person you expect to call as an expert witness at the trial of this action and for each such person:

- a. State the subject matter on which such person is expected to testify;
- b. State the substance of the facts and opinions to which each such person is expected to testify; and
- c. Provide a summary of the grounds and the materials relied upon for each such opinion.

**SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 5:**

**Objection and Answer.** Interrogatory No. 5 seeks information about expert witnesses beyond that authorized by Mass. R. Civ. P. 26. Subject to and without waiving this objection and the General Objections incorporated herein, AIG Domestic Claims, Inc. and National Union Fire Insurance Company of Pittsburgh, PA expect to call J. Owen Todd and William T. Cormack as expert witnesses at trial. The qualifications of these witnesses are set forth through their Curricula Vitae which are submitted herewith.

**J. Owen Todd, Todd & Weld LLP, 28 State Street, Boston, Massachusetts.**

Mr. Todd will offer testimony concerning the respective efforts of the plaintiffs and defendants to effectuate settlement in the underlying case. Mr. Todd is a mediator, a former associate justice of the Superior Court and an attorney with more than forty years of experience. While a Superior Court judge, Mr. Todd often sat in Norfolk County Superior Court and he has tried many cases in that court. His Curriculum Vitae has been provided previously.

In addition to the information set forth in the prior disclosure of Mr. Todd's expert opinions, by letter dated January 26, 2007, plaintiffs were informed:

[Mr. Todd] will testify that he regularly reviews Massachusetts Lawyers Weekly verdict and settlement reports and that he subscribes to two other publications that collect and report on verdicts and settlements: *The Massachusetts, Connecticut, Rhode Island Verdict Reporter*, Verdict Research Group, Crestwood, KY; and *JVR Personal Injury Valuation Handbook*, Jury Verdict Research, Inc., Solon, OH. Mr. Todd also has a proprietary database of verdict and settlement information which he has collected from various sources, including attorneys.

Following the identification of these sources of settlement value and jury verdict information, on January, 30, 2007, Mr. Todd was informed by counsel for AIGDC and National Union that the Court (Judge Gants) had indicated that expert testimony concerning specific cases that could be compared with the Rhodes case in terms of settlement valuation would be helpful. Mr. Todd will testify that prior to this time, he had not done any verdict or settlement research into specific cases that were comparable, for settlement evaluation purposes, to the Rhodes' claim, though as part of his practice as an attorney and mediator, he continually reviews settlement and jury verdict reports and maintains a personal database of such information. His opinions, as set forth in AIGDC's and National Union's prior expert disclosure, are based on his general experience, which, of course, involves his experience with many specific cases as an attorney, judge, mediator, and arbitrator.

As reflected in the prior expert disclosure, Mr. Todd had not planned on discussing settlements and verdicts in any specific case other than the Rhodes case. However, since his discussion with counsel, following the Court's January 30, 2007 conference, he has reviewed and considered reports about verdicts and settlements in specific cases that were

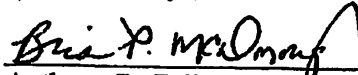
compiled from sources he regularly reviews. Copies of these reports are attached hereto as Exhibit 1. Among the verdicts and settlements bearing readily discernible similarities to the Rhodes' underlying case, are the verdict report published by Lawyers Weekly for the case captioned Cooper, et al. v. Waste Management, Inc., and the settlement report published by JAS Publications for the case captioned Anonymous Father and Son, et al. v. Anonymous Motorist, Anonymous Fast Food Franchises, et al.

Mr. Todd will testify that all of the cases discussed in these reports have dissimilarities with the Rhodes case, though there are also similarities that, in his opinion, make these cases relevant to the determination of what was the reasonable settlement value of the Rhodes case. Based on his experience, Mr. Todd will testify that his review of specific comparable cases provided no more certainty or clarity of a reasonable settlement range than does his extensive experience as a trial lawyer, a judge, and a mediator. He will explain that even the most similar cases are of limited value, because there are always going to be significant dissimilarities, as well, and every case is unique. There are so many subtle, often unknowable factors that go into a jury's determination of damages, which to the extent possible insurance adjusters must attempt to discern, that the best one can do in any case is establish what would be a reasonable settlement range. Mr. Todd will testify that based on his personal experience, and supported by the research recently undertaken into specific cases, it is his opinion that the reasonable settlement value of the Rhodes case was between \$4 and \$6 million.

Respectfully Submitted,

**AIG Domestic Claims, Inc. and National Union  
Fire Insurance Company of Pittsburgh, PA**

By its attorneys,



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**VERIFICATION**

Kenneth P. Horenstein, for Defendants, AIG Domestic Claims, Inc. and National Union Fire Insurance Company of Pittsburgh, PA, verifies and says that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information, and belief.

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Kenneth P. Horenstein

**CERTIFICATE OF SERVICE**

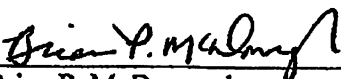
I, Brian P. McDonough, certify that on this <sup>6<sup>th</sup></sup> day of February, 2007, I caused a copy of the foregoing to be served by ~~hand~~ <sup>email</sup> upon the following:

M. Frederick Fritsker, Esq.  
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*Counsel for Zurich American Insurance  
Co.*

  
\_\_\_\_\_  
Brian P. McDonough