

January 21, 2003

Grace Wu, Esq.
Nixon Peabody LLP
101 Federal Street
Boston, MA 02110-1832

RE: *Marcia Rhodes, et al. v. Carlo Zalewski, et al.*
Norfolk Superior Court – Civil Action No. 02-01159

Dear Grace:

I am writing to follow up on our conversation this morning regarding Building Materials Corporation of America (“BMCA”) d/b/a GAF Materials Corporation’s response to Mrs. Rhodes’ First Request for Production of Documents.

I described that in Request No. 9, Mrs. Rhodes seeks documents in BMCA’s possession regarding the assignment or dispatching of Driver Logistics drivers to BMCA/GAF routes, changes to driving assignments, communications regarding deadlines for deliveries and/or when Driver Logistics employees have to report to work, can take vacations or other time off, etc. Request No. 10 seeks the same kind of documents specifically referring or relating to Carlo Zalewski. I would like to know whether the six months of driving logs previously produced represent all of the documents BMCA has in its possession relating to Carlo Zalewski, or whether there are other documents responsive to Request No. 9.

I have reviewed the insurance policy that was produced in response to Request No. 13 and want to confirm whether there are any other policies, umbrella or excess, naming GAF or BMCA as an insured to provide coverage for personal injury and property damage arising out of tractor-trailer or other vehicular accidents.

With regard to Request No. 16, I do not believe the objection raised relieves BMCA/GAF of its obligation to produce the requested documents, and would appreciate an understanding of the factual basis for this objection.

Finally, regarding Request No. 20, BMCA has produced a handful of violations issued to Carlo Zalewski, yet none for any other driver leased from Driver Logistics. I do not believe that asking for five years of traffic, operational or speeding violations is vague, ambiguous or overbroad. It is certainly calculated to lead to the discovery of admissible evidence as this issue goes directly to the claims alleged in Count III of the Amended Complaint, *i.e.*, BMCA/GAF’s negligence in exercising control over Driver Logistics and the drivers.



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I contacted you because you are the attorney who signed BMCA's responses, although I understand that you need to confer with both your client and other attorneys at Nixon Peabody. I would appreciate learning of BMCA's response to Mrs. Rhodes' position that she is entitled to the requested documents in the near future so that I can determine whether it will be necessary to file a motion to compel.

With regard to Mrs. Rhodes' request for driving logs for Carlo Zalewski, I understand that you have another group of documents predating the six months' worth of logs that have already been produced. I appreciate BMCA's responsiveness on this issue, but ask that you hold those documents since it may be more efficient to confirm our understanding that Carlo Zalewski drove on GAF routes exclusively for the past three or four years via an interrogatory, or deposition testimony. On a related note, I would like some understanding of what Carlo Melia's role is with regard to GAF's relationship with Driver Logistics and/or the individuals who drive GAF's fleet vehicles. If I have some understanding of his role before issuing either a 30(b)(6) notice of deposition or a notice of deposition naming Mr. Melia, it is my hope that Mrs. Rhodes' discovery efforts will be more efficient for all of the parties.

I look forward to hearing from you on these issues.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: 

Margaret M. Pinkham

MMP/ac

cc: M. Frederick Pritzker, Esq.



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bcc: Mr. Harold Rhodes

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