

4/10/2003

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT OF THE
TRIAL DEPARTMENT
CIVIL ACTION NO. 0201159A

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 BUILDING MATERIALS)
CORP. OF AMERICA, D/B/A GAF)
MATERIALS CORP.)
))
Defendants.)

**PLAINTIFF MARCIA RHODES' RESPONSE TO BUILDING
MATERIALS CORPORATION OF AMERICA'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Massachusetts Rules of Civil Procedure, the Plaintiff, Marcia Rhodes ("Marcia Rhodes"), hereby responds to Defendant Building Materials Corporation of America's First Request for Production of Documents. The statements below which indicate that Marcia Rhodes "will produce" documents do not constitute any representation that such documents exist but only that Marcia Rhodes will produce those documents that are in her possession, custody or control, that are not privileged, that are not confidential business information and that are not otherwise immune from disclosure by any reason of the objections set forth therein.

DEFINITIONS

As used herein, the term “irrelevant” means that a request calls for documents which are not relevant to the subject matter of this action and which are not reasonably calculated to lead to the discovery of admissible evidence.

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 “overly broad” means that a request is unreasonably general, vague and nonspecific.

As used herein, the term “compound” means that a request contains multiple, unrelated categories of documents 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 “privileged” means that the documents requested are subject to either the attorney-client privilege, the attorney work product doctrine or any other recognized privilege against disclosure.

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 Marcia Rhodes has such documents in her possession or subject to her control, but only that she does not object in principle 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 Marcia Rhodes to decline to produce a like document on grounds of confidentiality or privilege.

GENERAL OBJECTIONS

The following objections are incorporated by reference into each Response to the individual Requests below.

1. Marcia Rhodes objects 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.
2. Marcia Rhodes objects 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 her to any regulatory liability.
3. Marcia Rhodes objects to any request or instruction for documents or information that is not discoverable under the Massachusetts Rules of Civil Procedure or otherwise.
4. Marcia Rhodes objects to any request for documents that are confidential.
5. Marcia Rhodes objects to any request for documents that are not in her possession or not subject to her custody or control.
6. Marcia Rhodes objects to producing any documents that were not specifically requested by Defendant Building Materials Corporation of America (“BMCA”) and that do not fall within the scope of the Definitions and Instructions set forth by BMCA.

RESPONSES

REQUEST NO. 1

Each and every document concerning communications between or among Marcia Rhodes, BMCA or any other person concerning the matters which are the subject of this action, including but not limited to correspondence, e-mail, memoranda, notes, agendas, telephone records, calendars, and diaries.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it is overbroad, unduly burdensome, does not seek production of relevant information nor information that will lead to discovery of relevant information, and that it seeks production of documents that are protected by attorney-client privilege and the attorney work product doctrine. Without waiving said objection, and expressly reserving the same, Marcia Rhodes will produce documents in her possession, custody or control responsive to Request No. 1.

REQUEST NO. 2

All documents referring or relating to the maintenance of the vehicle Marcia Rhodes was driving at the time of the accident, including but not limited to, the entities responsible for any maintenance performed on the vehicle.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it does not seek the production of relevant evidence nor will it lead to the discovery of relevant evidence. Without waiving said objection, and expressly reserving the same, Marcia Rhodes will produce documents in her possession, custody or control responsive to Request No. 2.

REQUEST NO. 3

All documents referring or relating to Marcia Rhodes' driving records from 1997 to the present.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it does not seek the production of relevant evidence nor will it lead to the discovery of relevant evidence. Without waiving said objection, and expressly reserving the same, Marcia Rhodes states that she will produce documents in her possession, custody or control responsive to Request No. 3.

REQUEST NO. 4

Each and every document concerning the damages you claim in this action.

RESPONSE

Documents responsive to this Request will be produced.

REQUEST NO. 5

All documents referring to or relating to any investigation of the January 9, 2002 accident that is the subject of this suit, including but not limited to witness statements, and/or reports, including expert reports.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it seeks the production of documents that are protected from disclosure as attorney work product. Without waiving said objection, and expressly reserving the same, documents obtained from third parties will be produced.

REQUEST NO. 6

All documents referring or relating to traffic violations Marcia Rhodes received since 1997.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it does not seek the production of relevant evidence nor will it lead to the discovery of relevant evidence. Without waiving said objection, and expressly reserving the same, Marcia Rhodes states that she will produce documents in her possession, custody or control responsive to Request No. 6.

REQUEST NO. 7

All documents referring or relating to Marcia Rhodes' car insurance policy for the vehicle that was involved in the accident.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it does not seek the production of relevant evidence nor will it lead to the discovery of relevant evidence. Without waiving said objection, and expressly reserving the same, Marcia Rhodes will produce documents in her possession, custody or control responsive to Request No. 7.

REQUEST NO. 8

All documents referring or relating to Marcia Rhodes' medical history, included but not limited to any mental or psychiatric history.

RESPONSE

The plaintiff, Marcia Rhodes, objects to this Request as it is overbroad and unduly burdensome as it seeks medical records for five years preceding the accident. Without waiving said

objection, and expressly reserving the same, Marcia Rhodes will produce documents in her possession, custody or control responsive to Request No. 8.

REQUEST NO. 9

All documents referring or relating to any medications Marcia Rhodes was taking on or prior to the date of the accident on January 9, 2002.

RESPONSE

See EMS report produced in response to Request No. 8.

REQUEST NO. 10

All documents referring or relating to any medications Marcia Rhodes was taking after the date of the accident on January 9, 2002.

RESPONSE

Documents responsive to this Request will be produced.

REQUEST NO. 11

Each and every document reviewed by, referred to or relied upon by any expert witness retained by any person in this matter.

RESPONSE

Plaintiff, Marcia Rhodes, objects to this Request as it seeks production of documents protected as attorney work product. Plaintiff has not yet determined the identity of testifying experts and reserves her right to supplement this response.

REQUEST NO. 12

Each and every document identified or referred to in your responses to Building Materials Corporation of America's First Set of Interrogatories to Plaintiff Marcia Rhodes, served contemporaneously herewith.

RESPONSE

Documents responsive to this Request will be produced.

REQUEST NO. 13

Each and every document you intend to introduce as an exhibit at the trial of this matter.

RESPONSE

Plaintiff, Marcia Rhodes, has not yet made the determination referred to above and reserves her right to supplement this response.

REQUEST NO. 14

All documents concerning your medical insurance/health care provider regarding its coverage of the accident on January 9, 2002.

RESPONSE

Plaintiff, Marcia Rhodes, possesses no responsive documents as plaintiff's health care provider does not provide coverage for auto accidents.

Respectfully submitted,

MARCIA RHODES,

By her attorney,



M. Frederick Pritzker, Esq. (BBO#406940)

Margaret M. Pinkham, Esq. (BBO#561920)

Carlotta M. Patten, Esq. (BBO#641035)

Brown Rudnick Berlack Israels LLP

One Financial Center

Boston, Massachusetts 02111

(617) 856-8200

DATED: April 10, 2003

CERTIFICATE OF SERVICE

I, Carlotta M. Patten, counsel for plaintiffs, hereby certify that I have this day served a copy of the foregoing Response To Building Materials Corporation Of America's First Request for Production of Documents To Plaintiff Marcia Rhodes in the manner indicated below:

By First Class Mail

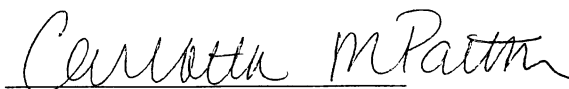
Michael Smith, Esquire
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250 Summer Street
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By First Class Mail

Timothy F. Corrigan, Esq.
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141 Tremont Street
Boston, MA 02111

By Hand

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



Carlotta M. Patten

DATED: April 10, 2003

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