

4/7/2005

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
Civil Action No. \_\_\_\_\_

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. )

**COMPLAINT**

**INTRODUCTION**

This action arises out of the unfair settlement practices of AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc. ("AIGDC") and National Union Fire Insurance Co. of Pittsburgh, PA. ("National Union"), and Zurich American Insurance Company ("Zurich"), relating to a personal injury claim that resulted in a \$9,400,000 (plus \$2,500,000 prejudgment interest) jury verdict for Plaintiffs in Norfolk County, Massachusetts, Civil Action No. 02-01159A (the "Underlying Action"). The Underlying Action arose from the injuries suffered by Plaintiff, Marcia Rhodes when her car was struck from behind by a fully loaded tractor-tanker under the control of a motor carrier and driver insured by Defendants. Mrs. Rhodes suffered catastrophic injuries and is permanently paralyzed. Liability in the Underlying Action was reasonably clear almost immediately, yet AIGDC, National Union and Zurich engaged in unfair settlement practices by refusing to respond to either of the Plaintiffs' two settlement demands. Zurich eventually authorized the defendants in the Underlying Action to make a settlement offer, but not until more than two years after the accident and more than 6 months after the first

settlement demand was made. AIGDC and National Union did not authorize any settlement offer for another 5 months, which was more than two-and-a-half years after the accident, and even then the offer was unreasonably low. The actions of AIGDC, National Union and Zurich constitute unfair settlement practices in violation of G.L. c. 176D, § 3 and G.L. c. 93A, §§ 2, 9.

### **PARTIES**

1. The Plaintiffs, Marcia, Harold and Rebecca Rhodes are individuals who reside at 11 Janock Road, Milford, Massachusetts.

2. Rebecca Rhodes is the minor daughter of Marcia and Harold Rhodes.

3. National Union Fire Insurance Co. of Pittsburgh, PA (“National Union”), a member company of American International Group, Inc. (“AIG, Inc.”), is a Pennsylvania corporation with a principal place of business at 70 Pine Street, New York, NY 10270-0150. At all relevant times, National Union was the excess insurer for Building Materials Corp. of America d/b/a GAF Materials Corp. (“GAF”).

4. National Union is registered with the Massachusetts Division of Insurance to conduct business in Massachusetts and does so at 99 High Street, Floor 31, Boston, MA 02110.

5. All settlement discussions, settlement offers and injuries caused by National Union, which are more fully described below, occurred within the Commonwealth.

6. AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc. (“AIGDC”), a member company of AIG, Inc., is a Delaware corporation registered to do business in the Commonwealth, with a principal place of business at 400 Interpace Parkway, Parsippany, NJ 07054.

7. Upon information and belief, AIGDC is a wholly-owned subsidiary of AIG, Inc. AIGDC provides claims and litigation-management services to AIG, Inc.’s business customers.

8. AIGDC acted as the claims administrator for National Union in the Underlying Action. All settlement discussions, settlement offers and injuries caused by AIGDC, which are more fully described below, occurred within the Commonwealth. .

9. Zurich American Insurance Company ("Zurich") is a New York corporation with a principal place of business at 1400 American Lane, Schaumburg, IL 60196-1056. At all relevant times, Zurich was the primary insurer for GAF.

10. Zurich is registered with the Massachusetts Division of Insurance to conduct business in Massachusetts and does so at 60 State Street, Suite 600, Boston, MA 02109.

11. All settlement discussions, settlement offers and injuries caused by Zurich, which are more fully described below, occurred within the Commonwealth.

### **THE ACCIDENT**

12. At approximately 1:12 p.m., on January 9, 2002, Marcia Rhodes was driving a Toyota Corolla eastbound on Route 109 in Medway, Massachusetts.

13. Because of stump-grinding work beside the road, a Medway Police officer stopped traffic from the eastbound lane in order for traffic from the westbound lane to safely pass.

14. Mrs. Rhodes, at the direction of said officer, stopped her car in the eastbound lane of Route 109 at or near the intersection of Trotter Drive, and waited for further direction.

15. On or about the same time, Carlo Zalewski was also traveling eastbound on Route 109. He was driving an 18-wheel tractor-tanker that was fully loaded with liquid asphalt, weighing approximately 78,000 pounds.

16. Zalewski failed to stop behind Marcia Rhodes, and drove into the back of her car. The collision caused Mrs. Rhodes' car to careen into the woods and sustain substantial and total damage before coming to rest in the wooded area along the southern boundary of Route 109.

17. Mrs. Rhodes' car crumpled upon impact and she had to be removed from the vehicle with the "Jaws of Life" by the Medway Fire Department. Mrs. Rhodes was initially transported to Milford Hospital in Milford, Massachusetts and was subsequently transferred to the University of Massachusetts Medical Center because of the severity of her injuries.

18. Mrs. Rhodes sustained, among other injuries, seven broken ribs, a closed head injury, a punctured lung, and a burst fracture to vertebra T12 of her spinal cord.

19. Mrs. Rhodes remained hospitalized for three months and will be paralyzed from the waist down for the rest of her life. Since being released from the trauma and rehabilitation hospitals, she has suffered numerous conditions and complications which have impeded her recovery.

#### **LIABILITY FOR THE ACCIDENT WAS REASONABLY CLEAR**

20. Mrs. Rhodes was injured in a rear-end collision at a highly visible worksite, where the police officer who stopped Mrs. Rhodes was standing in the middle of the road wearing a fluorescent jacket. The driver of the tractor-tanker had a clear and unobstructed view from the top of an 800 foot slight decline -- there were no vehicles between the tractor-tanker and Mrs. Rhodes. Although he had twelve seconds to observe the scene and stop, Zalewski did not even slow down until after he crashed into Mrs. Rhodes' vehicle.

21. At the scene, Zalewski admitted that he had not been paying attention to the traffic in front of him.

22. Medway police charged Zalewski with negligent operation/driving to endanger on the date of the accident.

23. Driver Logistics, Zalewski's employer, conducted its own investigation and concluded that the accident was "preventable," and terminated Zalewski on January 28, 2002, less than one month after the accident.

24. Driver Logistics communicated the results of the investigation, and Zalewski's termination, to GAF, because Zalewski had been assigned to drive GAF routes up to the time of the accident.

25. On July 12, 2002, Plaintiffs filed suit in Norfolk Superior Court against Carlo Zalewski ("Zalewski") (the driver of the tractor-tanker), Penske Truck Leasing Corp. ("Penske") (the owner and lessor of the tractor-tanker), Building Materials Corp. of America d/b/a GAF Materials Corp. ("GAF") (the motor carrier for whom Zalewski was driving) and Driver Logistics (Zalewski's employer) (collectively, the "Personal Injury Defendants").

26. Liability of the Personal Injury Defendants was clear from the beginning.

27. The complaint in the Underlying Action described how the accident occurred, the severity of Mrs. Rhodes' injuries, the amount of time she was hospitalized and the fact that she was permanently paralyzed. The Underlying Action also included loss of consortium claims on behalf of Mr. Rhodes, and their daughter Rebecca, who was thirteen at the time of the accident.

28. The Medway police investigation was followed by an accident reconstruction performed by Trooper Edward O'Hara of the Massachusetts State Police. Trooper O'Hara's report, completed in late July 2002, indicated that the cause of the accident was the failure of the driver, Zalewski, to use care in operating the vehicle.

29. In November 2002, Zalewski admitted to sufficient facts to warrant a guilty finding of negligent operation of a motor vehicle in the criminal proceeding arising from the accident.

30. Given all of the facts surrounding the accident, the only possible conclusion was that Zalewski was negligent, thereby making his liability reasonably clear.

31. GAF's liability was based, among other things, on its control over Zalewski and its role as Zalewski's statutory employer under Federal Motor Carrier Safety Regulations because it was the motor carrier on whose behalf Zalewski was driving the tractor-tanker.

32. Driver Logistics' liability was based, among other things, upon its status as Zalewski's employer.

33. Despite liability being reasonably clear, National Union, AIGDC and Zurich failed to effectuate prompt, fair or equitable settlement of the Plaintiffs' claims.

#### **DEFENDANTS' UNFAIR SETTLEMENT PRACTICES**

34. On January 9, 2002, the date of the crash, GAF was insured by Zurich as the primary carrier (Zurich Policy Nos. GLO216569505 and MA216569205-MA), with a policy limit of \$2,000,000.

35. On January 9, 2002, the date of the crash, GAF was also insured by National Union (National Union Policy No. BE 357 40 698 (renewal of 9323693)) as the excess carrier.

36. The excess coverage was in the amount of \$50,000,000.00.

37. AIGDC acted as the claims administrator for National Union in connection with the Plaintiffs' claims. As claims administrator, AIGDC participated in settlement discussions as a claims negotiator and acted as a potential settler of claims by making settlement offers in the Underlying Action.

38. Through GAF, Zurich and National Union insured Carlo Zalewski, the driver, and his employer, Driver Logistics Services.

39. Zurich had a duty to defend the Plaintiffs' claims in the Underlying Action.

40. Zurich, upon information and belief, ultimately retained the law firm of Morrison, Mahoney & Miller to represent Zalewski and DLS. GAF, upon information and belief, and on its own accord, retained the law firm of Nixon Peabody.

41. If Zurich, National Union and AIGDC did not realize that the value of the claims in the Underlying Action far exceeded Zurich's \$2 million primary policy when the Complaint was filed in July 2002, they should have realized the value of the claim by April 2003, when the Plaintiffs responded to discovery requests.

42. On April 10, 2003, Mr. and Mrs. Rhodes responded to GAF's initial discovery requests.

43. In responding to discovery, Plaintiffs produced 750 pages of medical records, provided detailed information about Mrs. Rhodes' injuries, her condition, prognosis and her out-of-pocket expenses, and described plans for necessary renovations to their home so that Mrs. Rhodes could live in more than two rooms in the house and so the Rhodes family could eat meals together again. Mrs. Rhodes described the unrelenting complications from which she suffered after the accident, including: blood clots in her legs; swelling; urinary tract infections; emergency surgery to remove a gangrenous gallbladder, which resulted in three more weeks of in-patient treatment; tendonitis and bursitis in her elbows and shoulders; pressure sores on her buttocks that required several months of bedrest; a fall during a transfer that resulted in two fractures on her right leg; a multiple-hour bowel program every day to evacuate solid waste from her body; use of an in-dwelling catheter to drain urine; and additional sores resulting in more bedrest. Mrs. Rhodes also described how she could not transfer from her bed, wheelchair or toilet without the assistance of at least one person, and at times two people, to help her, as well as the depression and embarrassment caused by her loss of independence.

44. Plaintiffs further responded to discovery in June and July 2003, providing detailed information about Mr. Rhodes' and Rebecca Rhodes' claims.

45. Plaintiffs received no settlement offer in the summer of 2003.

46. On August 13, 2003, more than one year after filing suit, Plaintiffs served on the Personal Injury Defendants a detailed settlement demand, with documentary support, seeking \$16 million.

47. The settlement demand explained the various theories of liability and provided a detailed description of Mrs. Rhodes' injuries, her medical expenses, her out-of-pocket expenses,

the loss of her household services and anticipated future costs, as well as a description of the loss of consortium claims of Harold and Rebecca Rhodes.

48. The demand letter outlined the claimed damages as follows:

- a. Medical Bills—\$413,977.68
- b. Loss of Household Services—\$292,379
- c. Out-of-Pocket Expenses (not including the \$250,000 cost of necessary renovations to the home to accommodate Mrs. Rhodes and her wheelchair)—\$83,984.74
- d. Average Present Value of Combined Future Needs—\$2,027,078.00, consisting of the present value of:
  - i. Total Future Annual Costs (averaged based upon two separate life expectancy calculations)—\$1,953,565.50;
  - ii. Average Future Episodic Costs—\$486,196.15; and
  - iii. Average Complications/Risks Costs—\$34,572.50

49. Thus, as of August 2003, Zurich, National Union and AIGDC knew that Mrs. Rhodes' claimed special damages totaled \$2,817,419.42 – an amount well in excess of Zurich's primary policy.

50. National Union had a right and a duty to defend any claim or suit against GAF seeking damages covered by National Union's excess policy where damages were sought for bodily injury not covered by any underlying insurance providing coverage to GAF. Those damages in excess of \$2 million incurred by the Rhodes family were not covered by any underlying insurance policy providing coverage to GAF.

51. Zurich, National Union and AIGDC did not respond to Plaintiffs' August 2003 settlement demand, nor did any of the Personal Injury Defendants.

52. On September 24, 2003, the Personal Injury Defendants had their own life-care planning expert visit Mrs. Rhodes to evaluate her condition and her life-care needs.



53. When the life-care planner visited Mrs. Rhodes, she learned that Mrs. Rhodes was sleeping in the living room of her home, with no storage and no privacy, and that work had begun on an addition to the home to make it handicap-accessible and provide Mrs. Rhodes with adequate space for a bedroom, bathroom and storage for her supplies, wheelchairs and other handicap-related equipment, and a dining area for the Rhodes family. Additionally, the life care planner learned that Mrs. Rhodes was in the ninth month of a 10-month period of bed rest due to horrible pressure sores she developed on her buttocks.

54. Upon information and belief, Zurich, National Union and AIGDC has access to all documents and reports prepared by the Personal Injury Defendants' life care planning expert. Even after that life-care planner evaluated Marcia Rhodes' need for future medical care and assistance, Plaintiffs received no settlement offer.

55. Plaintiffs sent a second settlement demand on December 1, 2003, which included pre-judgment interest. The total demand was \$19 million.

56. Zurich, National Union and AIGDC did not respond to Plaintiffs' second settlement demand. Nor did the Personal Injury Defendants.

57. The Personal Injury Defendants' life care planner and economist opined that the present value cost of Mrs. Rhodes' future care would be approximately \$1.1 million and that the present value of her lost household services exceeded \$200,000. National Union, AIGDC and Zurich knew that Mrs. Rhodes' claims for future care and economic damages had a net present value exceeding \$1.3 million. Upon information and belief, National Union and AIGDC were even advised by their own experts that Mrs. Rhodes' future care costs would be at least \$1 million.

58. By early 2004, Zurich, National Union and AIGDC knew, based on Plaintiffs' discovery responses, that Mrs. Rhodes' medical bills were more than \$400,000, her personal care attendant costs were more than \$50,000, her out-of-pocket costs for bills, prescriptions, supplies

and equipment, including a handicap van, were more than \$100,000 and that the cost of renovating the Rhodes' home to accommodate Mrs. Rhodes' disability would exceed \$200,000.

59. Thus, by early 2004, National Union, AIGDC and Zurich knew that the value of Mrs. Rhodes' claim alone exceeded the primary policy. The loss of consortium claims asserted by Mr. Rhodes and his daughter had a high value on the date the Complaint was filed.

60. At a March 16, 2004 hearing, Judge Cratsley inquired about mediation or possible settlement efforts. Plaintiffs' counsel informed the Court that no settlement offers had been made. Judge Cratsley noted that the question of liability seemed clear, as this was a rear-end accident, and he encouraged the parties to attempt to settle the case.

61. In late March 2004—more than two years after the accident and seven months after Plaintiffs' first demand—Zurich finally authorized the Personal Injury Defendants' first settlement offer. That settlement offer was for the \$2,000,000 Zurich policy limit, in exchange for a release of all claims for all defendants.

62. The \$2,000,000 Zurich policy limit was \$800,000 less than Mrs. Rhodes' claimed special damages, as calculated more than 6 months before the offer was made. This offer left nothing to compensate Mrs. Rhodes for her past and future pain and suffering and left nothing for Mr. Rhodes' and Rebecca Rhodes' loss of consortium claims. That offer was unreasonably low, considering that the Personal Injury Defendants were requesting a full release.

63. National Union and AIGDC still authorized no offer of settlement.

64. On April 1, 2004, the parties attended a pre-trial conference and requested that a trial date be set for September. The case was given a trial date of September 7, 2004, and a first-case-out status.

65. In addition to the then-current counsel of record, Attorney Russell X. Pollock attended the pre-trial conference. Attorney Pollock officially noticed his appearance and that of

his law firm, Campbell Campbell Edwards & Conroy, P.C. ("CCE&C") on behalf of GAF on April 9, 2004.

66. Upon information and belief, National Union and AIGDC hired Attorney Pollock and CCE&C to represent GAF.

67. Upon information and belief, National Union waited until after Zurich offered its policy limits before taking over defense of the claims.

68. In continuing to prepare for trial, Plaintiffs took the audio-visual depositions of Mrs. Rhodes' treating physicians, Dr. Donna Krauth, Dr. Norman Beisaw and Dr. Elizabeth Roaf on May 11, May 12 and May 13, 2004, respectively, for possible use at trial.

69. National Union and AIGDC still made no settlement offer.

70. On May 17, 2004, GAF moved to extend discovery, which had closed on September 30, 2003, and to continue the trial date. That motion was subsequently withdrawn.

71. On June 11, 2004, Judge Chernoff denied GAF's motion to compel Mrs. Rhodes to produce her mental health records.

72. On June 18, 2004, GAF refiled its motion to extend discovery and continue the trial date. That motion was denied.

73. In July 2004, GAF requested that Mrs. Rhodes submit to an independent medical exam. Dr. Hanak performed the exam, which was arranged by CCE&C, on July 20, 2004.

74. Even after this evaluation, which confirmed the fact that Mrs. Rhodes remained permanently paralyzed from the waist down, National Union and AIGDC still made no settlement offer.

75. GAF deposed Mrs. Rhodes on August 4, 2004, and suspended the deposition.

76. The parties attended mediation on August 11, 2004, more than two-and-a-half years after the accident, one year after the Rhodes family's first demand, five months after Zurich made its offer, and one month before trial.

77. At the mediation, AIGDC finally authorized its first settlement offer of \$750,000 over the Zurich policy limit of \$2,000,000. At the same time, National Union and AIGDC blamed a third-party defendant, Jerry McMillan's Professional Tree Service, which had been performing the roadside work at the accident scene, for contributing to causing the accident because it did not put a "Men Working" sign on Route 109. National Union and AIGDC claimed that Professional Tree should pay for 50% of the damages.

78. During the course of the mediation, National Union's settlement offer, made by AIGDC, increased to \$1,500,000 over the Zurich policy, for a total of \$3,500,000.

79. The mediator valued the case at \$8,000,000.

80. AIGDC and National Union's final offer at mediation was barely enough to pay for Mrs. Rhodes' special damages, which totaled approximately \$3,200,000. The Plaintiffs, however, reached a settlement with the third-party defendant for \$550,000.

81. Additionally, AIGDC and National Union's settlement offer left virtually nothing for Mrs. Rhodes' past and future pain and suffering and ignored Mr. Rhodes' and Rebecca's loss of consortium claims.

82. On August 23, 2004, the trial judge, Judge Donovan, denied GAF's emergency motion for an in-camera review of Mrs. Rhodes' mental health records and to compel her to testify about her mental health in her deposition. Her deposition was concluded on August 25, 2004, but no additional settlement offers followed.

83. On August 27, 2004, Zalewski and his employer, Driver Logistics, stipulated to liability.

84. On August 30, 2004, at the request of Judge Donovan, the parties met with Judge Ernest Murphy. Judge Murphy valued the case to be between \$10,000,000 and \$12,000,000.

85. GAF stipulated to liability on September 2, 2004.

86. Although liability was not stipulated to until the week before trial, the facts giving rise to the admissions of liability were well known to National Union, AIGDC and Zurich for more than two years.

87. Trial commenced on September 7, 2004 on the issue of damages.

88. At the beginning of the trial, National Union, through AIGDC, again offered \$1,500,000 (plus Zurich's \$2,000,000 offer) to settle all claims.

89. As before, this offer was barely enough to cover Mrs. Rhodes' special damages (which had risen to \$3,201,670 by the time of trial), and left less than \$300,000 for her past and future pain and suffering, while completely ignoring Mr. Rhodes' and Rebecca's loss of consortium claims.

90. Hours before the jury returned a verdict on September 15, 2004, National Union, through AIGDC, offered approximately \$6 million, which included the \$2,000,000 Zurich policy, such that National Union's contribution to the settlement would have been \$4.0 million.

91. On September 15, 2004, Plaintiffs received a jury verdict for \$9,412,000 with \$7,412,000 awarded to Marcia Rhodes, \$1,500,000 awarded to Harold Rhodes, and \$500,000 awarded to Rebecca Rhodes. With pre-judgment interest, the award totaled \$11,844,000, almost twice the value of the Defendants' last settlement offer.

92. The Personal Injury Defendants, despite having stipulated to liability, have filed Notices of Appeal, and are challenging the jury verdict as "excessive."

93. On November 19, 2004, Plaintiffs served a Chapter 93A Demand Letter on National Union and Zurich. A true and accurate copy of the Demand Letter is attached hereto as Exhibit A.

94. After receiving Plaintiffs' Chapter 93A Demand Letter, Zurich offered and tendered \$2.3 million which represented the policy limits, plus post-judgment interest. True and accurate copies of Zurich's two responses are attached hereto as Exhibits B-C.

95. In response to the Chapter 93A Demand Letter, National Union, through AIGDC, offered to settle all claims for a total of \$7,000,000, part of which would be structured. This offer included the \$2,000,000 paid by Zurich. A true and accurate copy of National Union's Response is attached hereto as Exhibit D.

96. National Union's settlement offer was intended to settle the Underlying Action, which resulted in a verdict of \$11,844,000 (including pre-judgment interest) and has been accruing post-judgment interest since September 28, 2004, as well as the unfair settlement practices claim asserted in the Demand Letter.

97. On January 20, 2005, representatives of AIGDC attended a meeting at the offices of Plaintiffs' counsel to discuss settlement on behalf of National Union.

98. At that meeting, AIGDC confirmed that the \$7,000,000 settlement offer included the \$2,000,000 already paid by Zurich.

99. At that meeting, AIGDC also confirmed that the \$7,000,000 offer (\$5,000,000 from National Union) would be to settle the judgment for \$9,412,000, plus the 26 months worth of pre-judgment interest, the continually accruing post-judgment interest—then valued at approximately \$12,500,000—and the 93A claim presented by way of the November 19, 2004 Demand Letter.

100. AIGDC would only discuss a global settlement of all claims – it refused to discuss settlement of the Underlying Action and the 93A claims separately.

101. AIGDC further indicated that it would not consider settling all claims, including the Chapter 93A claim, for even the amount of the \$12,500,000 (including interest to date) awarded in the Underlying Action.

102. On February 18, 2005, Plaintiffs served a Chapter 93A Demand Letter on AIGDC. A true and accurate copy of the Demand Letter is attached hereto as Exhibit E.

103. In response to the 93A Demand Letter, AIGDC reiterated the same \$7 million offer that it made previously on behalf of National Union. A true and accurate copy of AIGDC's response is attached hereto as Exhibit F.

104. The AIGDC offer was intended to settle all Chapter 93A and Chapter 176D claims against all defendants, plus the underlying award of \$12,500,000 (including interest) and continually accruing post-judgment interest going forward.

**COUNT I**  
**(G.L. c. 176D and G.L. c. 93A)**  
**(National Union)**

105. Plaintiffs incorporate Paragraph 1 through 104 as if fully set forth herein.

106. National Union is engaged in trade or commerce within the meaning of General Laws Chapter 93A.

107. Under Massachusetts law, insurers are obligated under G.L. c. 176D, §3(9)(f) to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear," and failing to do so is a violation of Chapter 93A, §§ 2 and 9.

108. As an insurer, National Union and its representatives had a duty to effectuate prompt, fair and equitable settlement of all claims once liability became reasonably clear.

109. Although liability of the Personal Injury Defendants was reasonably clear, National Union knowingly and willfully did not effectuate prompt, fair and equitable settlement of all claims in violation of Chapter 176D and Chapter 93A.

110. National Union's continued refusal to make a settlement offer, even after receiving two settlement demands and later only making "lowball" offers, constitutes unfair and deceptive acts or practices within the meaning of General Laws Chapter 93A, §§2 and 9.

111. As a result of National Union's knowing and willful violation of Chapter 93A, §§ 2 and 9, Plaintiffs have sustained actual damages. National Union's actions forced Plaintiffs to

continue incurring medical and related costs, as well as the frustrations, costs and delays of litigation.

112. On November 19, 2004, Plaintiffs sent a Chapter 93A Demand Letter to National Union. See Ex. A.

113. Defendants did not respond to the Demand Letter with a reasonable offer of settlement. See Ex. D.

114. In light of National Union's willful conduct, Plaintiffs are entitled to additional punitive damages calculated as double or triple the amount of the underlying judgment, plus costs and attorneys' fees.

**COUNT II**  
**(G.L. c. 176D and G.L. c. 93A)**  
**(AIGDC)**

115. Plaintiffs incorporate Paragraph 1 through 114 as if fully set forth herein.

116. AIGDC is engaged in trade or commerce within the meaning of General Laws Chapter 93A.

117. Under Massachusetts law, insurers are obligated under G.L. c. 176D, §3(9)(f) to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear," and failing to do so is a violation of Chapter 93A, §§ 2 and 9.

118. As an insurer, National Union and its representatives had a duty to effectuate prompt, fair and equitable settlement of all claims once liability became reasonably clear.

119. AIGDC acted at all times as claims administrator for National Union. As part of its duties as claims administrator, AIGDC acted as claims negotiator and potential settler of Plaintiffs' claims. AIGDC's representative attended mediation of the Underlying Action, and attended the trial. AIGDC's representative was the only person who communicated settlement offers on behalf of National Union.



120. AIGDC is subject to the provisions of G.L. c. 176D, §3(9)(f). Although liability of the Personal Injury Defendants was reasonably clear, AIGDC knowingly and willfully did not effectuate prompt, fair and equitable settlement of all claims in violation of Chapter 93A.

121. AIGDC's continued refusal to make a settlement offer, even after receiving two settlement demands and later only making "lowball" offers, constitutes unfair and deceptive acts or practices within the meaning of General Laws Chapter 93A, §§2 and 9.

122. As a result of AIGDC's knowing and willful violation of Chapter 93A, §§ 2 and 9, Plaintiffs have sustained actual damages. AIGDC's actions forced Plaintiffs to continue incurring medical and related costs, as well as the frustrations, costs and delays of litigation.

123. On February 18, 2005 Plaintiffs sent a Chapter 93A Demand Letter to AIGDC.  
See Ex. E.

124. AIGDC did not respond to the Demand Letter with a reasonable offer of settlement. See Ex. F.

125. In light of AIGDC's willful conduct, Plaintiffs are entitled to additional punitive damages calculated as double or triple the amount of the underlying judgment, plus costs and attorneys' fees.

**COUNT III**  
**(G.L. c. 176D and G.L. c. 93A)**  
**(Zurich)**

126. Plaintiffs incorporate Paragraphs 1 through 125 as if fully set forth herein.

127. Zurich is engaged in trade or commerce within the meaning of General Laws Chapter 93A.

128. Under Massachusetts law, insurers are obligated under G.L. c. 176D, §3(9)(f) to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear," and failing to do so is a violation of Chapter 93A, §§ 2 and 9.

129. As an insurer, Zurich and its representatives had a duty to effectuate prompt, fair and equitable settlement of all claims once liability became reasonably clear.

130. Although liability of the Personal Injury Defendants was reasonably clear, Zurich knowingly and willfully did not effectuate prompt, fair and equitable settlement of all claims in violation of Chapter 176D and Chapter 93A.

131. Zurich's continued refusal to make any settlement offer until March 2004, thereby forcing Plaintiffs to continue to litigate a matter in which damages clearly exceeded the \$2,000,000 policy limit, is a violation of Chapter 93A and is the type of settlement behavior that warrants multiple damages.

132. As a result of Zurich's knowing and willful violation of General Laws Chapter 93A, §§ 2 and 9, Plaintiffs have sustained actual damages. Zurich's actions forced Plaintiffs to continue incurring medical and related costs, as well as the frustrations, costs and delays of litigation.

133. On November 19, 2004, Plaintiffs sent a Chapter 93A Demand Letter to Zurich. See Ex. A.

134. Defendants did not respond to the Demand Letter with a reasonable offer of settlement. See Exs. B – C.

135. In light of Zurich's willful conduct, Plaintiffs are entitled to additional punitive damages calculated as double or triple the amount of the underlying judgment, plus costs and attorneys' fees.

#### **DEMAND FOR RELIEF**

WHEREFORE, the Plaintiffs, Marcia, Harold and Rebecca Rhodes respectfully request that this Court:

1. Enter judgment in favor of Plaintiffs under Counts I, II and III for damages in an amount to be proven at trial;

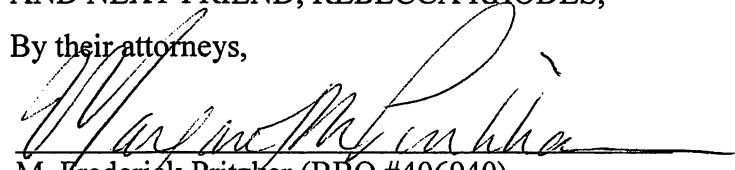
2. Treble the judgment in the Underlying Action as punitive damages for all willful conduct in violation of Chapter 93A;
3. Award attorneys' fees and costs; and
4. Enter such other and further relief as is just and reasonable.

**DEMAND FOR JURY TRIAL**

The plaintiffs hereby demand a jury trial on all such triable issues pursuant to Mass. R. Civ. P. 38(b).

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: April 7, 2005

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