

6/16/2003

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT OF THE
TRIAL DEPARTMENT
CIVIL ACTION NO. 02-01159A

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 ANSWERS TO
DEFENDANTS, CARLO ZALEWSKI AND DRIVER LOGISTICS, INC.'S
INTERROGATORIES TO PLAINTIFF, MARCIA RHODES**

Pursuant to Rule 33 of the Massachusetts Rules of Civil Procedure, Plaintiff, Marcia Rhodes, makes the following Answers to Carlo Zalewski and Driver Logistics, Inc.'s Interrogatories to Plaintiff Marcia Rhodes within forty-five (45) days after service.

Plaintiff reserves the right to seasonably supplement each Answer set forth below.

GENERAL OBJECTIONS

1. Marcia Rhodes objects to the disclosure of any information protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine.
2. Marcia Rhodes objects to any interrogatory that purports to require anything beyond that which is required by Rule 33 of the Massachusetts Rules of Civil Procedure.
3. Marcia Rhodes objects to any interrogatory that requires one or more conclusions of law.
4. Marcia Rhodes objects to any interrogatory that calls for confidential information.

DEFINITIONS

1. 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.
2. 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.
3. As used herein, the term “overly broad” means that a request is unreasonably general, vague and nonspecific.
4. As used herein, the term “compound” means that a request contains multiple, unrelated categories of documents that are improperly combined together.
5. 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.

6. 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.

ANSWERS

1. State your name, date of birth, home address, occupation, employer and business address.

ANSWER

Marcia Rhodes; 6/22/55; 11 Janock Road, Milford, MA 01757; self-employed antiques dealer; d/b/a Euneek Antiques, 11 Janock Road, Milford, MA 01757.

2. Please identify in complete detail how the alleged incident occurred, stating fully what you saw and what you did, and what happened to you in the order in which the events took place, including what you were doing immediately prior and up to the occurrences of the alleged incident.

ANSWER

On January 9, 2002, as I was traveling on Route 109 in Medway, I saw a police officer and truck on the side of the road. The officer indicated that I should stop, which I did, near Trotter Drive on Route 109. After I had been stopped, I glanced in the rearview mirror and saw the tractor trailer bearing down on me. I turned my wheels to the right, but the truck smashed into me before I could get out of the way. I was conscious at the time of impact and after, and remember giving the police or paramedics my husband's phone number and asking them to call him to come to the scene. I could not feel my legs, but I was in great pain. After my husband arrived, I asked the paramedics or EMTs to give me painkillers and told them that my husband was in charge if I lost consciousness.

3. Please state the date and time of the alleged incident and describe as accurately as you are able the location where the incident took place, giving distances in feet and inches to clearly identifiable objects.

ANSWER

January 9, 2002 at 1:12 p.m. The crash took place on Route 109 (Milford Street) in Medway, Massachusetts near Trotter Drive. See documents produced herein and documents produced by Medway Police and Massachusetts State Police for further answers.

4. State the name and present address of each person who witnessed, observed, or was present at, the incident alleged in your complaint.

ANSWER

Sergeant Boltenhouse of Medway Police witnessed, observed and was present when Defendant Zalewski crashed into my vehicle. Jerry McMillan of Jerry McMillan Professional Tree Service witnessed, observed and was present when Defendant Zalewski crashed into my vehicle. Santos Ramirez and Ramon DeBriae witnessed, observed and were present when Defendant Zalewski crashed into my vehicle.

5. If you are working at the present time, please state the wages, salary or profit you are receiving from such work, and the name and address of your employer.

ANSWER

I am unable to work at the present time due Defendant Zalewski crashing into my vehicle while driving the tractor trailer.

6. If you have suffered financial loss as a result of the alleged incident, state in what amount, itemizing as far as possible doctors' bills, hospital expenses, and loss in wage, salary or business profit.

ANSWER

Plaintiffs have not yet made a determination as to the itemization of such damages. Plaintiffs will seasonably supplement this Interrogatory.

7. If you anticipate future financial loss as a result of the alleged incident, state in what amount, itemizing as far as possible doctors' bills, hospital expenses, and loss of wage, salary or business profit.

ANSWER

Plaintiffs have not yet made a determination as to the itemization of such damages. Plaintiffs will seasonably supplement this Interrogatory.

8. State in full and complete detail all facts, and all acts or omissions to act of the defendant, upon which you base your allegations of negligence in your complaint.

ANSWER

Zalewski was negligent in that he failed to use reasonable care in operating the tractor-trailer on Route 109 on the afternoon of January 9, 2002. Specifically, Zalewski failed to stop as he approached my vehicle from behind, which was stopped on open road at the direction of a police officer. Zalewski's failure to stop caused him to crash into me and caused my car to careen into the woods, which caused me to become a paraplegic and to suffer myriad medical complications arising therefrom.

Driver Logistics was negligent as the employer of Zalewski as Zalewski's negligence was committed in the course of his employment with Driver Logistics.

9. If you claim any personal injuries as a result of the incident alleged in your complaint, state:
- (a) in full and complete detail, a description of each of the injuries you received, including all marks, bruises and what part or parts of your body were affected;
 - (b) in full and complete detail, a description of each of the injuries you believe or are informed are permanent;
 - (c) if you received any medical treatment as a result of the alleged incident, please describe all such treatment in full and complete detail, giving the date each treatment was received;
 - (d) if you received any treatment at a hospital or hospitals, please describe all such treatment in full and complete detail, giving places, dates and whether received as an in-patient or out-patient;
 - (e) the name and address of each physician who treated you as a result of the alleged incident, giving the date(s) each physician treated you;
 - (f) the dates between which you were confined to your home;
 - (g) the dates between which you were confined to your bed;
 - (h) the dates between which you were absent from your work;
 - (i) the wages, salary or profit you were receiving at the time of the alleged incident; and the name and address of your employer at that time;
 - (j) in full and complete detail a description of any physical impairments, accidents, illnesses or diseases which you have had during the period from six years prior to the accident to date;
 - (k) in full and complete detail, in what way and to what extent you are presently suffering from any of the injuries listed in your answer to interrogatory number 9.

ANSWER

Marcia Rhodes objects to Interrogatory Nos. 9(a)-(d) as they are unduly burdensome. Without waiving said objection, and expressly reserving the same, Marcia Rhodes states as follows:

My spinal cord was fractured at T-12, leaving me paralyzed from my waist down. I also suffered broken ribs, deep vein thrombosis (blood clot) in my left leg, a cerebral hematoma, pancreatitis, pneumonia, a pneumo-thorax, anemia, elevated blood function and endocrinology tests, as well as bruises and contusions to my body. I was hospitalized for approximately one month at UMASS Medical Center where I underwent spinal fusion surgery, had two 6 inch titanium rods inserted along my spine, and required the use of a ventilated breathing machine. Many times my body temperature was very high. Additionally, I had one blood clot removed and then I had a blood clot filter inserted into my body. I was released to Fairlawn Rehabilitation Hospital where I stayed for another two months. My recovery was impeded by the fact that I had contracted Methicillin Resistant Staphylococcus Aureus (MRSA) [a staph infection] and could not undergo any physical therapy while the staph infection was being treated. When I did do physical and occupational therapy, it was extremely painful and depressing. I developed a second blood clot in my leg, which is currently being treated with Coumadin, for which I require weekly or bi-weekly blood examinations – which are painful – to check my INR/PT levels. This blood clot caused my leg to swell extensively, which made physical therapy practically impossible.

By the time I was released from Fairlawn, I was still essentially entirely dependent on other people to accomplish any transfer from my wheel chair to my bed or from my wheel chair to the toilet, etc. Since I was paralyzed, I could not feel any pain or discomfort, and was unable to detect that fluid had begun to build up around my gall bladder. In May, 2002, my body temperature became quite high, I was nauseous, and I began to vomit. Therefore, in late May, 2002 I had to be hospitalized again at the Milford-Whitinsville Regional Hospital to undergo emergency surgery to remove a gangrenous gall bladder. After one week of recovery at Milford Hospital, I had to go for another two weeks of rehabilitation at Whittier Rehabilitation Hospital and came home again in June.

Shortly thereafter, because I was undergoing such intensive physical therapy and practicing in trying to maneuver my wheel chair, I developed tendonitis and bursitis and had to stop all physical therapy until my arms and shoulders could heal through a series of twelve ultrasound treatments. In the Fall of last year, I began to suffer stomach pain, which was ultimately attributed to the rods inserted in my spine and to other back areas (described as “Juncture Pain”), and I was advised that this would be pain that I would have to live with. I am currently taking Percocet each day to deal with this pain. At that point in time, I still required the assistance of one person to achieve any transfers. I continued physical therapy in October 2002, and by November 2002, I could maneuver my wheel chair around my house, but still had difficulty in making transfers.

In or around December, 2002, I developed Level 1, Level 2 and Level 3 pressure sores and had to remain in bed on my sides for almost three months to relieve pressure on the sores. Since I was unable to continue with physical and occupational therapy, once again I developed severe bursitis and tendonitis, which required another series of ultrasound treatments. Then, in February, 2003, I fell off the commode during a transfer back to my wheelchair and landed on the hard tile floor. Because I have no feeling in my legs, it was impossible to determine if I had broken or fractured any bones. Shortly thereafter, as I was continuing to recover from the pressure sores in early March, 2003, I developed an infection in my right leg and was treated

with antibiotics. The infection was very resistant to treatment and I had to go to Milford Hospital to be treated three times, on three separate occasions, with intravenous antibiotics every twenty-four hours for three days in a row. In the course of treatment for my leg infection, it was ultimately determined that I had two broken bones in my right leg -- the tibia and fibula -- and one fracture near my left knee. I have been fitted with a full leg cast on my right leg. The doctors believe that these bones were fractured during the fall in February. Again, because I have no feeling below my waist, I was unaware that these bones were broken. In addition to the broken bones, in March, 2003, I was diagnosed as suffering from osteoporosis. I recently learned that I will have this cast on my leg for approximately another two months which, in addition to the bursitis, tendonitis, and pressure sores, has caused my physical therapy to come to a halt. I currently require the assistance of two people to make any transfers and expect to begin suffering once again from bursitis and tendonitis in my shoulders and upper back once physical therapy commences once again. In addition, I perform a multiple-hour bowel program every morning (which lasts up to as long as four hours), as I have no control over elimination functions. I also have to do urine removal via a full-time Foley catheter, from which I have suffered several urinary tract, bladder, and fungus infections. Additionally, on several occasions, there has been blood, and other foreign material in my urine.

On April 5, 2003, I again fell from the toilet during transfer and had to be taken to the emergency room for x-rays. I did not suffer additional fractures, but additional pressure sores were discovered and I was told that I must resume bed rest (with my leg in a cast) to allow the sores to heal essentially all day, further aggravating the bursitis and tendonitis. I recently learned that I have another staph infection, this time in the pressure sores, for which I have been receiving treatment.

I now live with back spasms, general all-over body pain, general fatigue, very restricted living limitations, a great loss of personal independence, seemingly unrelenting stress, and daily personal embarrassment. I must see many doctors each week and worry about unplanned visits to the Emergency Room. Finally, since I suffer from ADHD and bi-polar disorder, my mental condition has significantly worsened as a cause of this crash; as a result, I have much difficulty sleeping. Last, I live with the deep depression of the knowledge of the limitations placed on me as a result of the crash which will continue throughout the course of my life. My answer is intended only to summarize the nature and extent of my injuries suffered as a result of the crash. See documents produced.

(e) Marcia Rhodes objects to this Interrogatory as it is overly broad and unduly burdensome in light of the fact that she was an in-patient at hospitals and rehabilitation facilities for months and is unable to identify each and every doctor or nurse who "treated" her after January 9, 2002. Notwithstanding this objection, and without waiving the same, Plaintiff states as follows.

Dr. Elizabeth Roaf - Physiatrist
Dr. Donna Krauth - Internist
Dr. James Bayley - Orthopedic Surgeon
Dr. Ben Blumenkopf - Neurosurgeon
Dr. Kelly Clark - Psychiatrist

Dr. Jill McNulty - LICSW
Dr. Eric Woodard - Medical Director of Spinal Cord Unit at the Brigham Hospital
Dr. Barry Arnet - Dental
Endontic Care (Milford) - Periodontist
Visiting Nurse Association of Milford including Nursing, Physical Therapy,
Occupational Therapy and Social Work
Dr. Lewis Kuchner - Dermatologist
Dr. David DeGrande - Internist (at Fairlawn Rehabilitation Hospital)
Dr. Leonard Digiovannido - OB/GYN
Dr. Marc Nierman - Urologist
Dr. Eileen Dvorkin – Nutritionist
Dr. Nicholas Mastroianni – Orthopedic surgeon
Dr. Ben Aspel - Psychiatrist
Dr. Keykre Mahesh – Wound Care Center; Sturdy Memorial Hospital
Dr. Carl Lieberman

In addition, please refer to documents produced herein.

(f) I have been confined to my home since my release from Fairlawn Rehabilitation Hospital in April 2002 with the exception of gallbladder surgery at Milford-Whitinsville and subsequent rehabilitation at Whitter in May and June 2002 and going to various medical appointments and outings with family and friends, which has occurred very infrequently.

(g) I have been confined to my bed numerous times since the crash. Most recently, I have been confined to my bed, with the exception of my daily bowel program and bathing, since approximately December 2002 after it was discovered that I developed pressure sores. Then, in March 2002, it was discovered that I broke bones in my right leg, fractured bones in my left knee and developed additional pressure sores. Because of these issues, I am still confined to my bed with the exception of my daily bowel program and bathing.

(h) I have not returned to work since January 9, 2002.

(i) I am not claiming lost wages.

(j) Plaintiff objects to Interrogatory 9(j) as it is irrelevant and calls for information not reasonably conducted to lead to the discovery of admissible evidence. Without waiving said objection, and expressly reserving the same, Plaintiff refers Defendants to documents produced herein and Answer No. 9(a)-(d) above.

(k) I suffer every day from permanent paraplegia and the numerous complications I have suffered from being a paraplegic as a result of the crash. See Answer 9(a)-(d).

10. With respect to each expert witness you or your attorney expect to call at trial:

(a) please give the name and present address of each person;

- (b) the subject matter on which each such expert is expected to testify;
- (c) the substance of the facts and opinions to which each such expert is expected to testify;
- (d) a summary of the grounds for each such opinion of each such witness.

ANSWER

Plaintiffs have not yet made the determination of which experts will testify at trial, and they reserve their right to seasonably supplement this response.

- 11. State the name and present address of each person having any knowledge regarding any of the facts, events, allegations and occurrences set forth in your complaint.

ANSWER

See Answer No. 12 below.

- 12. With respect to persons having knowledge of discoverable matters including witnesses to the alleged occurrence, please provide the following:
 - (a) their names and residential addresses;
 - (b) their occupation, employer and business address; and
 - (c) a complete description of the discoverable matter of which each person has knowledge.

ANSWER

Marcia Rhodes, 11 Janock Road, Milford, MA 01757-2123, is aware of the facts of the crash, her injuries and the effect on her and her family.

Harold Rhodes, 11 Janock Road, Milford, MA 01757-2123, is aware of the crash scene after he arrived, Marcia Rhodes' injuries, her medical treatment and the damages suffered by the entire Rhodes family.

Rebecca Rhodes, 11 Janock Road, Milford, MA 01757-2123, is aware of the extent of her mother's injuries, her medical treatment, and the effect that Marcia's injuries have had on her relationship with her mother and the entire family.

Sergeant Boltenhouse, Medway Police, 315 Village Street, Medway, 02053, has knowledge of the crash scene, police and emergency response at the scene and the path of the tractor trailer after it struck my car.

Carlo Zalewski, 50 Beacon Light Avenue, Keansburg, NJ 07734-1864, has knowledge of his conduct in causing the crash, of the crash scene and the response of both the police and medical personnel.

Massachusetts State Police representatives. See documents produced herein.

Medway Police Dept. representatives, 315 Village Street, Medway, 02053. See documents produced herein.

Various medical personnel. See documents produced herein.

Jerry McMillan, Jerry McMillan Professional Tree Service, 101 Thomas Road, Ashland, MA 01721, was grinding stumps at the scene and is aware of the crash scene. He heard the crash and saw the tractor trailer push my car into the woods.

Santos Ramirez, 20 Genoa Ave. #2, Milford, MA 01757, was a witness driving the car behind the tractor trailer and observed the truck and police officer in the road, and the crash scene.

Ramon DeBriac, 20 Genoa Ave., Milford, MA 01757, a passenger in the car driven by Ramirez, saw the officer directing traffic and the truck on the side of the road. He also saw the police officer running to get away from the tractor trailer as it pushed my automobile into the woods.

Plaintiff reserves the right to supplement this Interrogatory.

13. If you have ever been convicted of a felony within the past ten (10) years or a misdemeanor within the past five (5) years, please state the date of said conviction, the crime which you were convicted of, and the court in which the case was heard.

ANSWER

Marcia Rhodes objects to this Interrogatory as it calls for irrelevant information, is not likely to lead to the discovery of admissible evidence, and is intended solely to harass the plaintiff, Marcia Rhodes. Without waiving said objection, and expressly reserving the same, Marcia Rhodes states as follows.

I have not been convicted of a felony within the past ten (10) years or of a misdemeanor within the past five (5) years.

14. Please state the distance in feet from the point of the alleged accident when the plaintiff or the operator of the plaintiff's vehicle first applied the brakes.

ANSWER

Plaintiff, Marcia Rhodes, objects to this Interrogatory as it calls for irrelevant information and information not calculated to lead to the discovery of admissible evidence. Without waiving said objections, and expressly reserving the same, Marcia Rhodes states as follows.

As defendants are well aware, my vehicle was stopped when Defendant Zalewski crashed into my vehicle.

15. Please state in detail just what the plaintiff or the operator of the plaintiff's vehicle did in an attempt to avoid the alleged accident.

ANSWER

Plaintiff, Marcia Rhodes, objects to this Interrogatory as it calls for irrelevant information and is not likely to lead to the discovery of admissible evidence. Without waiving said objections, and expressly reserving the same, Marcia Rhodes states as follows.

As defendants are well aware, my vehicle was stopped when Defendant Zalewski crashed into my vehicle. While I was stopped, I glanced in the rearview mirror and saw the tractor trailer bearing down on me. I turned my wheels to the right, but the truck smashed into me before I could get out of the way. There was no way for me to avoid the tractor-trailer crashing into me.

16. Please state the speed of your vehicle and the defendant's vehicle:
- (a) at 100 feet from the point of impact;
 - (b) at 50 feet from the point of impact;
 - (c) at 25 feet from the point of impact;
 - (d) at the point of impact.

ANSWER

Plaintiff, Marcia Rhodes, objects to this Interrogatory as it calls for irrelevant information and is not likely to lead to the discovery of admissible evidence. Without waiving said objections, and expressly reserving the same, Marcia Rhodes states as follows.

As defendants are well aware, my vehicle was stopped at the point of impact when Defendant Zalewski crashed into my vehicle.

Marcia Rhodes further states that she is unaware of the speed of her vehicle at these various points of impact. Marcia Rhodes further refers Defendants to documents produced in response to Request No. 4.

17. Please state the time and location of the subject accident and describe the lighting and weather conditions.

ANSWER

See Answer Nos. 2 and 3 above and documents produced herein.

18. Please describe the course, direction and speed or varying speeds, if any, of the motor vehicle operated by you from the time you first saw the motor vehicle operated by the defendant.

ANSWER

I was stopped when Defendant Zalewski crashed into my vehicle. I was traveling East on Route 109 when I was directed to stop by a police officer.

19. If you applied the brakes at any time just prior to the occurrence, please state with respect to such time.
- (a) the speed in miles per hour which you were traveling;
 - (b) the distance in feet between you and the motor vehicle operated by the defendant;
 - (c) the distance in feet which you traveled from the moment your brakes were first applied, to the point of the occurrence;
 - (d) the distance in feet which you traveled from the moment the brakes were first applied to the point where you came to a full stop after the occurrence; and
 - (e) the distance in feet from the motor vehicle operated by you and the point of the occurrence.

ANSWER

Plaintiff, Marcia Rhodes, objects to this Interrogatory as it calls for irrelevant information and information not calculated to lead to the discovery of admissible evidence. Without waiving said objection, and expressly reserving the same, Marcia Rhodes states as follows.

As defendants are well aware, my vehicle was stopped when Defendant Zalewski crashed into my vehicle.

20. If there were any tire marks or any other marks in the road as a result of the occurrence, kindly describe the marks in detail, giving length and location on the road surface, and identify which motor vehicle caused each mark.

ANSWER

See documents produced herein and documents produced by Medway Police Department and the Massachusetts State Police.

21. Please describe the relative locations of both motor vehicles at the instant of first impact with each other, identifying distances in feet to nearby curbing or other fixed objects.

ANSWER

See documents produced herein and documents produced by Medway Police Department and the Massachusetts State Police.

22. Did any vehicle or person other than your vehicle or you and the defendant play any part in the happening of this occurrence?

ANSWER

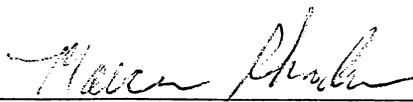
Yes.

23. If your answer to the preceding interrogatory is in the affirmative, please state in the fullest detail how any other vehicle or person contributed in any way to the happening of this occurrence.

ANSWER

Each of the four defendants contributed to Mr. Zalewski crashing his tractor-trailer into me. Zalewski was negligent in the scope of his employment with Driver Logistics when he failed to stop and crashed into my vehicle, causing it to careen into the woods. Driver Logistics is liable for my injuries as a result of the negligence of its employee, Zalewski. GAF and Penske were negligent in that they failed to exercise control over Driver Logistics and its employee Zalewski—to whom they entrusted the care of the tractor-trailer that crashed into me. Penske is also legally responsible as owner of the tractor trailer under Massachusetts law. Penske also was negligent by failing to maintain and repair the brakes of the tractor-trailer. See also Second Amended Complaint.

SIGNED under the pains and penalties of perjury this 16 day of June, 2003.



Marcia Rhodes

AS TO OBJECTIONS:



M. Frederick Pritzker, Esq. (BBO#406940)
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CERTIFICATE OF SERVICE

I, Carlotta M. Patten, counsel for plaintiffs, hereby certify that I have this day served a copy of the foregoing Plaintiff, Marcia Rhodes', Response To Defendants Carlo Zalewski and Driver Logistics, Inc.'s Request for Production of Documents To Plaintiff Marcia Rhodes in the manner indicated below:

By Hand Delivery

Michael Smith, Esq.
Morrison, Mahoney & Miller
250 Summer Street
Boston, MA 02210

By First Class Mail

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Corrigan Johnston & Tutor
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Carlotta M. Patten

DATED: June 16, 2003