

July 12, 2002

**VIA HAND DELIVERY**

Civil Clerk's Office  
Norfolk Superior Court  
650 High Street  
Dedham, MA 02026

RE: Marcia Rhodes, Harold Rhodes, et al. v. Carlo Zalewski, et al.  
Norfolk Superior Court; Civil Action No.

Dear Sir/Madam:

Enclosed for filing with regard to the above-captioned case, please find the following:

1. Complaint;
2. Civil Action Cover Sheet; and
3. Filing Fee for \$535.00.

Kindly acknowledge receipt of said documents by time-stamping the enclosed copy of this letter with the appropriate docket number and returning it to the messenger who is waiting.

Very truly yours,

**BROWN RUDNICK BERLACK ISRAELS LLP**

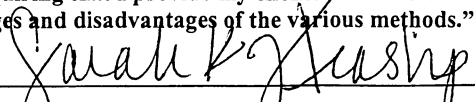
By:   
Sarah K. Heaslip

SKH/smh  
Enclosures  
cc: Harold Rhodes ✓  
M. Frederick Pritzker, Esq.

#1122854 v\1 - 5/202

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<b>CIVIL ACTION COVER SHEET</b>	DOCKET NO.(S)	<b>Trial Court of Massachusetts Superior Court Department County: NORFOLK</b>						
<b>PLAINTIFF(S)</b> <b>Marcia Rhodes, Harold Rhodes, Harold Rhodes, On Behalf Of His Minor Child and Next Friend, Rebecca Rhodes</b>		<b>DEFENDANT(S)</b> <b>Carlo Zalewski, Driver Logistics, Penske Truck Leasing Corp., and GAF Building Materials Corp.</b>						
<small>ATTORNEY NAME, FIRM NAME, ADDRESS AND TELEPHONE</small> <b>Margaret M. Pinkham (BBO#561920) Sarah K. Heaslip (BBO#647687) Brown Rudnick Berlack Israels LLP One Financial Center Boston, MA 02111</b>		<small>ATTORNEY (if known)</small>						
<b>Origin code and track designation</b>								
Place an X in one box only: <table style="width:100%; border:none;"> <tr> <td style="width:50%;"><input checked="" type="checkbox"/> 1. F01 Original Complaint</td> <td style="width:50%;"><input type="checkbox"/> 4. F04 District Court Appeal c. 231, s.97 &amp; 104 (After trial) (X)</td> </tr> <tr> <td><input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)</td> <td><input type="checkbox"/> 5. F05 Reactivated after prescript relief from judgement/Order (Mass.R.Civ.P.60) (X)</td> </tr> <tr> <td><input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)</td> <td><input type="checkbox"/> 6. E10 Summary Process Appeal (X)</td> </tr> </table>			<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Court Appeal c. 231, s.97 & 104 (After trial) (X)	<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after prescript relief from judgement/Order (Mass.R.Civ.P.60) (X)	<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)
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<b>CODE NO.</b>	<b>TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)</b>							
<b>303</b>	<b>TYPE OF ACTION (Specify)</b> <u>Motor Vehicle/Personal Injury</u>	<b>TRACK</b> (F)						
		<b>IS THIS A JURY CASE?</b> ( X )YES ( )NO						
<b>The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.</b>								
<b>TORT CLAIMS</b>								
<small>(Attach additional sheets as necessary)</small>								
A.	Documented medical expenses to date:							
	1. Total hospital expenses.....	\$ aprox. 820,000						
	2. Total Doctor expenses .....	\$ aprox. 93,000						
	3. Total chiropractic expenses .....	\$.....						
	4. Total physical therapy.....	\$.....						
	5. Total other expenses (describe) .....	\$ aprox. 92,000						
	<b>Various medical tests and equipment</b>							
	<b>Subtotal</b>	<b>\$.....</b>						
B.	Documented lost wages and compensation to date: .....	\$.....						
C.	Documented property damages to date: .....	\$ aprox. 8,000						
D.	Reasonably anticipated future medical and hospital expenses: .....	\$.....						
E.	Reasonably anticipated lost wages: .....	\$.....						
F.	Other documented items of damages (describe): <b>Handicap accessible van and home repairs</b>	\$ aprox. 73,000						
G.	Brief description of Plaintiff's injury, including nature and extent of injury (describe):  <b>Plaintiff suffered among other injuries, 7 broken ribs, edema and fracture of spinal cord, and will be permanently paralyzed.</b>							
	\$ .....							
	<b>TOTAL</b>	<b>\$ aprox. 1,000,000</b>						
<b>CONTRACT CLAIMS</b>								
<small>(Attach additional sheets as necessary)</small>								
Provide a detailed description of claim(s):								
	<b>TOTAL</b>	<b>\$.....</b>						
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTRY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT								
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."								
Signature of Attorney of Record		DATE: <u>7/12/02</u>						

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
Civil Action No.

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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 )  
GAF BUILDING MATERIALS CORP. )  
Defendants. )

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**COMPLAINT and DEMAND FOR  
JURY TRIAL**

**INTRODUCTION**

This action arises out of a motor vehicle accident on January 9, 2002. Plaintiff, Marcia Rhodes was stopped on Route 109 in Medway, Massachusetts when she was struck from behind by a truck driven by, and under the control of, the Defendants. As a result, Ms. Rhodes has suffered great damages for personal injury and property damages, as she was hospitalized for three months and remains permanently paralyzed. In addition, Harold Rhodes and Rebecca Rhodes have lost the consortium of their wife and mother, respectively.

## PARTIES

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

2. The plaintiff, Harold Rhodes, has been married to Marcia Rhodes since April 16, 1983.

3. The plaintiff, Rebecca Rhodes, is the 14-year old daughter of Marcia Rhodes.

4. The defendant, Carlo Zalewski is an individual residing at 50 Beacon Light Avenue, Keansburg, New Jersey. On January 9, 2002, Carlo Zalewski was employed by Defendant Driver Logistics.

5. The defendant, Driver Logistics, upon information and belief, is incorporated in Kentucky with a usual place of business at 134 Main Street, West Springfield, Massachusetts. Driver Logistics is a professional driver leasing and transportation management company. Upon information and belief, Driver Logistics leased Defendant Zalewski's services to GAF Building Materials Corp.

6. The defendant, GAF Building Materials Corp. ("GAF"), is a company incorporated in Delaware, with its world headquarters in Wayne, New Jersey, and a usual place of business at 60 Curve Street, Millis, Massachusetts.

7. Defendant GAF, upon information and belief, directed Defendant Zalewski's daily driving activities.

8. Defendant GAF leased the tractor-trailer that Defendant Zalewski was driving on January 9, 2002 from Penske Truck Leasing Corp.

9. The defendant, Penske Truck Leasing Corp. (“Penske”), is incorporated in Delaware, with a usual place of business at 1800 Hylton Road, Pennsauken, New Jersey.

10. Defendant Penske is the registered owner of the tractor-trailer that Carlo Zalewski was driving on January 9, 2002. Upon information and belief, Defendant Penske leased the tractor-trailer to Defendant GAF.

### **THE ACCIDENT**

11. On or about January 9, 2002 at approximately 1:12 p.m., Marcia Rhodes was driving a Toyota Corolla Eastbound on Route 109 in Medway, Massachusetts.

12. On or about the same time, because of tree removal work on or beside the road, a Medway Police officer stopped traffic from the Eastbound lane in order for traffic from the Westbound lane to safely pass.

13. Ms. 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.

14. On or about the same time, Defendant Zalewski was also travelling Eastbound on Route 109. He was driving an 18-wheel tractor-trailer.

15. Defendant Zalewski failed to stop behind Marcia Rhodes, and drove into Marcia Rhodes’ car, causing it to be violently pushed across the lane and into the wooded area on the side of Route 109.

16. The collision caused the car to careen into the woods and sustain substantial and total damage prior to coming to rest in the wooded area lining the southern boundary of Route 109.

17. Ms. Rhodes’ car crumpled upon impact and she had to be removed from the vehicle with the “Jaws of Life” by the Medway Fire Department.

18. Ms. 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.

19. Ms. Rhodes sustained, among other injuries, 7 broken ribs, injuries to her lungs and a burst fracture to section T12 of her spinal cord.

20. Ms. Rhodes remained hospitalized for three months and will be paralyzed for the rest of her life.

**COUNT I**  
**(G.L. c. 228, § 1 – Negligence)**  
**(Carlo Zalewski)**

21. Plaintiff Marcia Rhodes repeats and realleges the allegations in paragraphs 1 through 20 above.

22. Defendant Zalewski owed Marcia Rhodes a duty to use reasonable care in operating the tractor-trailer on Route 109 on the afternoon of January 9, 2002.

23. Zalewski's failure to observe the road or otherwise stop as he approached Ms. Rhodes' car represent breaches of his duty of care.

24. Defendant Zalewski caused and is directly liable for the injuries to Marcia Rhodes as a direct and proximate result his negligence.

25. Plaintiff Marcia Rhodes has suffered and will continue to suffer damages as the result of Defendant Zalewski's negligence.

**COUNT II**  
**(G.L. c. 228, § 1 – Negligence)**  
**(Driver Logistics )**

26. Plaintiff Marcia Rhodes repeats and realleges the allegations in paragraphs 1 through 25 above.

27. Defendant Zalewski was acting within the scope of his employment at the time of the accident.

28. Defendant Driver Logistics is liable for the injuries to Marcia Rhodes as a direct and proximate result of the negligence of its employee, Defendant Zalewski.

**COUNT III**

**(Negligence in Exercising Control of Independent Contractor)  
(GAF Building Materials Corp./Penske Truck Leasing Corp.)**

29. The plaintiffs repeat and reallege the allegations in paragraphs 1 through 28 above.

30. The defendants' conduct in exercising control over the contractors with whom they entrusted operation of an 18-wheel tractor trailer was negligent.

31. The defendants, GAF Building Materials Corp. and Penske Truck Leasing Corp. caused and are liable for the injuries to Marcia Rhodes as a direct and proximate result of their failure to use reasonable care in exercise of control over the manner in which the tractor-trailer was operated.

32. The plaintiffs have suffered and will continue to suffer damages as the result of the defendants' negligence.

**COUNT IV**

**(G.L. c. 231 § 85A – Owner's Responsibility for Operation of Motor Vehicle)  
(Penske Truck Leasing Corp.)**

33. The plaintiffs repeat and reallege the allegations in paragraphs 1 through 32 above.

34. Defendant Penske is the registered owner of the tractor-trailer that smashed into Ms. Rhodes' car.

35. Defendant Penske is legally responsible for the conduct of the driver of the tractor trailer, Defendant Zalewski, and liable for the injuries to Marcia Rhodes as a direct and proximate result of the manner in which it allowed the tractor-trailer to be operated.

36. Plaintiffs have suffered and will continue to suffer damages as the result of Defendant Penske's conduct.

**COUNT V**  
**(Harold Rhodes - all defendants)**  
**(Loss of Consortium)**

37. Plaintiff Harold Rhodes repeats and realleges the allegations in paragraphs 1 through 36 above.

38. The defendants' conduct was negligent and caused the life-altering injuries suffered by Marcia Rhodes.

39. Harold Rhodes is entitled to recover damages from each of the defendants because he has suffered the loss of the services, protection, care, assistance, society, companionship, comfort, guidance, and advice of Marcia Rhodes as a result of her injuries.

**COUNT VI**  
**(Rebecca Rhodes - all defendants)**  
**(Loss of Consortium)**

40. Plaintiff Rebecca Rhodes, through her father, Harold Rhodes, repeats and realleges the allegations in paragraphs 1 through 39 above.

41. The conduct of the defendants was negligent and caused life-altering injuries suffered by Marcia Rhodes.

42. Rebecca Rhodes, through her father Harold Rhodes, is entitled to recover damages from each of the defendants because she has suffered the loss of parental society, services,



protection, care, assistance, psychological and economic dependence, comfort, guidance, and advice of her mother, Marcia Rhodes, as a result of her injuries.

**DEMAND FOR RELIEF**

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

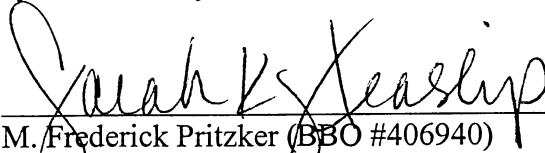
1. Enter judgment in favor of plaintiff Marcia Rhodes under Counts I - IV for damages suffered by her, including but not limited to pain and suffering, medical costs, lost earning capacity and damage to her vehicle, in an amount to be proven at trial;
2. Enter judgment in favor of plaintiffs Harold Rhodes and Rebecca Rhodes under Counts V - VI for damages suffered by them, in an amount to be proven at trial; and
3. 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,



M. Frederick Pritzker (BBO #406940)

Margaret M. Pinkham (BBO#561920)

Sarah K. Heaslip (BBO#647687)

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DATED: July 12, 2002