

06/29/2004

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.)

-v-)

JERRY McMILLAN'S)
PROFESSIONAL TREE SERVICES, INC.)
AND TOWN OF MEDWAY)

**DEFENDANT BUILDING MATERIALS CORPORATION OF AMERICA D/B/A/ GAF
MATERIALS CORPORATION'S SECOND SUPPLEMENTAL ANSWERS TO
PLAINTIFF MARCIA RHODES' SECOND SET OF INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 26 and 33 of the Massachusetts Rules of Civil Procedure,
defendant Building Materials Corporation of America d/b/a GAF Materials Corporation
("BMCA") hereby supplements its response to the plaintiff Marcia Rhodes' Second Set of
Interrogatories as follows:

GENERAL OBJECTIONS

Each interrogatory is responded to subject to the General Objections set forth below.

These limitations and objections form a part of the response to each interrogatory. The failure to specifically incorporate a General Objection is not a waiver of the General Objection.

1. BMCA objects to the interrogatories to the extent that they call for the disclosure of information protected by the attorney-client privilege, or the work product doctrine, or information which is otherwise not discoverable under the Massachusetts Rules of Civil Procedure.
2. BMCA objects to the interrogatories to the extent that they call for the disclosure of materials or information prepared in anticipation of litigation and/or trial preparation materials.
3. BMCA objects to the interrogatories to the extent that they seek information or documents not relevant to the issues raised in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.
4. BMCA objects to the interrogatories to the extent that they are vague, ambiguous and overly broad, and to the extent that they require a search for information that is oppressive, unduly burdensome and prohibitively expensive.
5. BMCA objects to the interrogatories to the extent that they request disclosure of confidential and sensitive business information.
6. BMCA objects to the interrogatories to the extent that they seek to impose obligations different from or in addition to the requirements of the Massachusetts Rules of Civil Procedure.
7. BMCA objects to the interrogatories to the extent that they seek information or material from entities other than BMCA, and to the extent that they purport to encompass each of

BMCA's predecessors or affiliates, and all present and former officers, partners, directors, employees, agents, representatives, servants or attorneys, who are not parties to this litigation or have not had any dealings with Plaintiff that are the subject of this litigation.

8. These responses are based on BMCA's present knowledge. BMCA reserves the right to supplement, amend or otherwise change these responses in the event that discovery reveals facts that would justify such supplementation, amendment or change.

INDIVIDUAL OBJECTIONS AND RESPONSES

Subject to its objections, BMCA specifically responds to the individual interrogatories as follows:

Interrogatory No. 10

Identify by name, employer, address, and qualifications, each person you expect to call as an expert witness at the trial of this action and for each such person:

- a. State the subject matter on which such person is expected to testify;
- b. State the substance of the facts and opinions to which each such person is expected to testify; and
- c. Provide a summary of the grounds and the materials relied upon for each such opinion.

Answer No. 10

BMCA objects to this interrogatory to the extent that it seeks information beyond the scope permitted by M.R.C.P. 26(b)(4). Subject to and without waiving its objections, BMCA states that it has not yet determined which expert witnesses, if any, it will call at trial.

Supplemental Answer No. 10

BMCA may call one or more of the following experts to testify about Ms. Rhodes' future costs and regulations concerning highway safety. By calling these witnesses, BMCA does not admit liability in this matter.

- (1) Jane Mattson, Ph.D. – Jane Mattson Associates, Inc., 286 Richards Avenue, Norwalk, CT 06850. Dr. Jane Mattson ("Dr. Mattson") received a B.S. in Occupational Therapy from Columbia University, College of Physician and Surgeons in 1971 and received her Ph.D. from

Brandeis University in 1994. Her dissertation topic was “Examining Health Status, Quality of Life and Cost: A comparison of the Independent Living Model vs. the Medically Supervised Model of Caregiving for Persons with Spinal-Cord Injuries (SCI).”

From 1975 and 1977, Dr. Mattson was self-employed as a consultant in occupational therapy. From 1978 to 1979 she was the Chief of Occupation Therapy at the Suburban General Hospital in Norristown, Pennsylvania. In 1981 she was a rehabilitation specialist for Associated Rehabilitation Consultants. Between 1982 and 1984, she was a rehabilitation consultant for Rehaberco, Inc. From 1984 through the present, Dr. Mattson has been President of Jane Mattson Associates, Inc. and has managed over 250 cases involving spinal cord injuries.

Dr. Mattson is a certified Rehabilitation Counsel, Case Manager, and Life Care Planner. She also has a certification from the Disability Management Specialist Commission and is listed in the National Occupational Therapy Registry. Dr. Mattson is a member of the following organizations: American Spinal Injury Association, National Association of Rehabilitation Professions (in the private sector), Case Management Society of America, Brain Injury Association, American Congress of Rehabilitation Medicine, and International Academy of Life Care Planners.

She has presented on spinal cord injury at various conferences and has attended many courses sponsored by the American Congress of Rehabilitation Medicine regarding spinal cord injuries. She has also published articles and reviewed articles regarding spinal cord injuries.

Dr. Mattson will testify concerning the life care plan she prepared for Marcia Rhodes (“Ms. Rhodes”) and costs associated with that plan. In preparing Ms. Rhodes’ life care plan, she reviewed the following records:

- (1) Records from the University of Massachusetts Memorial Medical Center, 1/9/02 – 2/5/02;
- (2) Records from Fairlawn Rehabilitation Hospital, 2/5/02 – 4/16/02;
- (3) Records from Milford-Whitinsville Regional Hospital, 5/24/02;
- (4) Records from Whittier Rehabilitation Hospital, 5/31/02 – 6/14/02; and
- (5) Records from Milford Orthopedic Associates, Inc., 2/10/03.

Dr. Mattson also met with Ms. Rhodes at her home in Milford, Massachusetts on September 24, 2003. In addition, Dr. Mattson reviewed Plaintiffs’ Answer to Expert Interrogatories.

Dr. Mattson will testify about nine major categories of Ms. Rhodes’ care: one time costs, rehabilitation, medical, case manager, personal care, medications, medical supplies, medical equipment, and transportation.

Rehabilitation – Dr. Mattson will testify that Ms. Rhodes should receive spinal cord injury rehabilitation, education, and training at Craig Hospital in Englewood, Colorado. She also recommends that Ms. Rhodes should belong to a health club that has a pool where she can continue her aquatics program with the assistance of her attendant. See Exhibit A.

Medical – Dr. Mattson will testify that Ms. Rhodes will also need medical care throughout the course of her lifetime. See Exhibit B. Ms. Rhodes should also be evaluated for a Vocare Bladder System. See Exhibit C.

Case Manager – Dr. Mattson will testify that Ms. Rhodes should have a case management advisor who will assist her in hiring attendants and obtaining appropriate equipments and services. See Exhibit D.

Personal Care – Dr. Mattson will testify that Ms. Rhodes should have three hours of personal assistance per day and eight hours of homemaker services per week. Ms. Rhodes should be able to become more independent with proper training and should be able to reduce the number of attendant hours from the current eight hours per day. See Exhibit E.

Medication – Dr. Mattson will testify that Ms. Rhodes will need the medications detailed in Exhibit F.

Medical Supplies – Dr. Mattson will testify that Ms. Rhodes will need the supplies detailed in Exhibit G.

Medical Equipment – Dr. Mattson will testify that Ms. Rhodes will need the medical equipments detailed in Exhibit H.

Transportation – Dr. Mattson will testify that Ms. Rhodes needs a modified van for transportation. Allowance should be included for extra fuel, insurance and maintenance above what would be necessary for a sedan. See Exhibit I.

Dr. Mattson will also testify that the one-time costs includes case management, allowance for potential complications, psychological counseling, driver evaluation and training, and allowance for modification of the kitchen. See Exhibit J.

Dr. Mattson will testify that Ms. Rhodes' life care plan will cost \$1,191,215 without the Vocare System and will cost \$1,239,763 with the Vocare System. See Exhibit K. She will also testify on how she calculated the cost and that these costs are calculated in 2003 dollars and that growth trends need to be determined by an economist.

Dr. Mattson reserves the right to alter or refine her opinions should additional information become available.

(2) Richard Siegel, Ph.D. – Applied Economics Incorporated, 220 Boylston Street, Chestnut Hill, MA 02467, 617-928-0074. Dr. Siegel is an economist and the President of Applied Economics Incorporated. Dr. Siegel received an A.B. in 1953 and received a M.B.A in 1959. Dr. Siegel received his Ph.D. in business administration from the University of California at Los Angeles in 1961.

Dr. Siegel has been the President of Applied Economics Incorporated since 1983. Previously, from 1979 through 1983, Dr. Siegel was an economist at the Economics Research Associates. Between 1970 and 1979, Dr. Siegel was President of Richard Siegel Associates. Between 1968 and 1970, he was an economist at Arthur D. Little, Inc. and prior to that time, from 1966 through 1968, he was an economist for the state of California, and from 1964 through 1966, he was an economist at the Bank of America. Between 1962 and 1964, he was an assistant professor of economics at the State University of New York at Buffalo.

Dr. Siegel's prior work includes cost analysis of medical care programs, including life care plans, as well as the analysis of the value of lost earning capacity and lost household services. He has also reported on and testified to economic damages for lawsuits originating in personal injury and death from accidents.

He has also published articles in several fields of economic analysis. The articles have been published in the Massachusetts Lawyers' Weekly, the Western Economic Review and the Journal of The American Institute of Planners, to name a few. Dr. Siegel has also lectured at conferences on the topic of analysis of economic loss and cost of medical care. In addition, he is a member of the National Association of Forensic Economics and the American Academy of Economic and Financial Experts.

A. Future Medical and Personal Care Expenses

Dr. Siegel will testify concerning the real cost of Ms. Rhodes' life care plan. His calculations are based upon his review of Dr. Mattson's life care plan, which was divided into nine major categories of care, many of which contain several items of care. Dr. Siegel also reviewed Plaintiffs' Answer to Expert Interrogatories. He projected the cost of each care category and began with January 1, 2004, and extended the projections to the year 2028, when Ms. Rhodes would be 72 years old.

He based his projections on a review of the real price behavior of each item in Dr. Mattson's plan. By "real price behavior" he means changes in price due to factors other than changes caused by general price inflation, i.e. "real price" is measured by subtracting the change in general price inflation from the change in reported price of a good or service. Furthermore, general price inflation is measured by changes in the All Items category of the Consumer Price Index ("CPI"). Dr. Siegel calculated the real cost change of each item in Dr. Mattson's life care plan and made the calculations by setting most of them into appropriate category of the Medical Care area of the CPI, with a few exceptions.

He based his projections of Dr. Mattson's annual costs by applying the average, annual change in real cost for the period beginning 1993 through the end of September 2003. He measured real costs with information provided by the US department of Labor, Bureau of Labor Statistics. The following table details the categories of Dr. Mattson's plan and the real cost change factor he applied to form the basis of his projection:

	PLAN ELEMENT	CPI & BLS CATEGORY	REAL ANNUAL CHANGE, %
1	One-Time Costs	None	
2	Rehabilitation	Inpatient Hospital Services	3.4
3	Medical	Physician's Services	0.9
		Outpatient Hospital Services	3.4
		Prescription Drugs	1.4
4	Case Manager	Other Medical Professionals	0.3
5	Personal Care	National Hourly Wages	1.4
6	Medications	Prescription Drugs	1.4
7	Medical Supplies	Nonprescription drugs and medical supplies	-1.32
8	Medical Equipment	Nonprescription drugs and medical supplies	-1.32
		National Hourly Wages	1.4
9	Transportation	Vehicles	-1.9

Dr. Siegel used a 1.75 percent real rate of interest for his present value calculation, which is the average annual interest rate on one year US Treasury notes from 1991 though 2001. His testimony will discount future costs to the date the litigation commenced. See Griffin v. General Motors, 380 Mass. 362 (1980).

Dr. Siegel will testify about how he calculated the projections and that the total cost of Ms. Rhodes' care plan, if she lives to the age of 72, is \$1,391,321 and the present value is \$1,134,527. Dr. Mattson also recommended that Ms. Rhodes be evaluated for the placement of the Vocare Bladder System. If the system is utilized, Dr. Siegel will testify that the total cost of the life care plan is \$1,439,869 and the present value is \$1,183,075.

B. Lost Household Services

Dr. Siegel will also testify concerning the loss of Ms. Rhodes' household services. In his calculations, Dr. Siegel used information on hours of household work contained in a recent treatise entitled, *The Dollar Value of a Day: 1996 Dollar Valuation*, Shawnee Mission, Kansas,

1998, published by Expectancy Data. This study indicates that a female housekeeper with children under age 18 in the house, who works part time, performs 24.3 hours a week of household work. Hours of work reduce to 18.8 hours a week with no children under age 18. In accordance with Dr. Dana Hewins' ("Dr. Hewin") opinion contained in Plaintiffs' Answers to Expert Interrogatories, Dr. Siegel adopted the hourly wage rate of \$8.00 per hour, the growth and discount rates of 1.0 percent (inflation free) and 1.9 percent, respectively, and the termination age of 75 years old. In addition, Dr. Siegel used a 24.3 hour work week as the number of hours Ms. Rhodes performed household services. After Ms. Rhodes' daughter turns 18 years old on April 8, 2006, Dr. Siegel reduced the number of household services hours to 18.8.

Dr. Siegel will testify on how he calculated the projections and that the total cost of lost household services is \$276,364 and the present value is \$211,799.

Dr. Siegel reserves the right to alter or refine his opinions should additional information become available.

(3) Gerald Murphy – Accident Reconstruction, Inc., 45 Eastern Point Drive, Shrewsbury, MA 01545, 508-791-2870. Mr. Murphy graduated summa cum laude from Clark University in 1982. He majored in law enforcement while at college. He received a M.A. in Criminal Justice from Anna Maria College in 1983.

Since receiving a M.A., he received specialized training in accident investigation and reconstruction from the Institute of Police Technology & Management, Northwestern University Traffic Institute, Texas A&M University, and Colorado School of Mines.

Mr. Murphy was an officer with the Massachusetts State Police for 27 years. He enlisted as a Trooper in 1972. In 1982, he was a Senior Accident Reconstruction Specialist and was responsible for overseeing all the Department's field accident reconstruction officers and establishing investigation standards and policies and procedures. During his career, he conducted numerous accident training courses for the State Police Agencies throughout the Northeast and has taught classes at numerous locations throughout the United States.

In 1993, he became the Operations Officer for the Bureau of Traffic Operations and served in that capacity until July 1994. From July 1994 through August 1996, Mr. Murphy served as an Assistant Secretary of Public Safety for the Commonwealth. His responsibilities included overseeing the State Police, Registry of Motor Vehicles, and the Office of the Chief Medical Examiner.

After August 1996, he returned to the Department of State Police and served as an assistant to the Division Commander for Administrative Services and worked as the State Police's liaison with the Legislature. He retired from the police force in February 1999.

He received several distinctions throughout his career. In 1986, Mr. Murphy was one of eighteen individuals selected by the National Highway Traffic and Safety Administration to help develop training and certification standards for accident reconstructionists in the United States. In 1998, he was one of five professionals invited by the government of Taiwan to lecture at a Traffic

Accident Investigation Workshop. In 1990, he was one of twelve individuals selected to serve on a newly formed Commission on Accident Reconstruction Accreditation.

He is a member of the International Association of Accident Reconstruction Specialists, Society of Accident Reconstruction Specialists, Massachusetts Chiefs of Police Association and an affiliate member of the Society of Automotive Engineers. He is also a past member of the Police Executive Research Forum and the International Association of Chiefs of Police.

Mr. Murphy will testify that Jerry McMillan's Professional Tree Services, Corp. ("Professional Tree") did not comply with the regulations specified in the Manual on Uniform Traffic Control Devices ("MUTCD") and the Mass Highway Work Zone Safety Guidelines. In support of his opinion, Mr. Murphy primarily relied on his review of the following documents, among others:

- (1) The MUTCD and Mass Highway Work Zone Safety Guidelines;
- (2) Deposition testimonies and exhibits of Officer Boultenhouse, Trooper O'Hara, Jerry McMillian, and Carlo Zalewski; and
- (3) Police and accident reports from Officer Kingsbury, Trooper Jawarek, and Carlo Zalewski.

In addition, Mr. Murphy also visited the accident scene.

Mr. Murphy will testify that the MUTCD is a federal regulation, which Massachusetts has adopted (see M.G.L. c. 85, §2) and that the industry standard is to follow the MUTCD. He will testify that the purpose of the MUTCD is to protect the motoring public when entering the work zone as well as to provide protection to the workers in the work zone.

He will also testify that Professional Tree's operations on the day of the accident were moving/mobile from job site to job site. As such, their work zone conduct was governed by the MUTCD Section 6G, *Temporary Traffic Control Zone Activities*. For the work being conducted by Professional Tree on Milford Street (state highway Route 109), Professional Tree should have placed advance warning signs on the roadway or, at a minimum, Professional Tree should have placed traffic cones in the work zone on the day of the accident.

Mr. Murphy reserves the right to alter or refine his opinions should additional information become available.

(4) Joseph Hanak, M.D. – Psychiatrist, New England Medical Center, 750 Washington Street, Boston, MA 02111. In 1985, Dr. Hanak graduated from the University of Massachusetts, Amherst, Massachusetts, with a Bachelor of Science in Chemistry. Dr. Hanak graduated from the Medical University of Pecs, Pecs, Hungary, in 1991.

From September 1991 through March 1992, Dr. Hanak was a resident in Orthopedic Surgery at the I. University Clinic, POTE, Pecs, Hungary. Dr. Hanak had a transitional internship between June 1995 and June 1996 -- he was a resident at the Metro West Medical Center-Beth Israel Hospital/Harvard Medical School Program, and had electives at the Beth Israel Hospital and the New England Medical Center, both in Boston, Massachusetts. Between June 1996 and June 1997, Dr. Hanak was a resident at the New England Medical Center Hospitals. Between July

1997 and July 2000, Dr. Hanak did a physical medicine and rehabilitation residency at the New England Medical Center. He is currently a psychiatrist at the Department of Physical Medicine and Rehabilitation, New England Medical Center. He is also a researcher at Tufts University School of Medicine.

Dr. Hanak has co-authored articles in the American Journal of Physical Medicine and Rehabilitation and the Archives of Physical Medicine and Rehabilitation. Dr. Hanak also conducted research and presented on spinal cord injury and other related areas to the West Roxbury Veterans Administration Medical Center, Spinal Cord Injury Unit; Gillette Company; and the Medical University of Pecs, Hungary. In addition, Dr. Hanak is involved with the American Medical Association; Massachusetts Medical Society, American Academy of physical Medicine and Rehabilitation; Association of Academic Psychiatrists; and the Hungarian/American Medical Association.

In preparation, Dr. Hanak reviewed Marcia Rhodes' Medical Records; Harold Rhodes' Deposition Transcript; Dr. Elizabeth Roaf's Deposition Transcript; Plaintiffs' Expert Interrogatory Responses; Police Reports of the Accident; and Photographs of the Accident Site. Dr. Hanak also viewed the "Day in the Life" video tape.

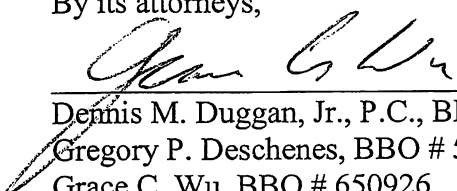
Dr. Hanak will testify to the results of his review of these documents and as to the results of his examination of Mrs. Rhodes, which has not yet occurred. He will further give an opinion on the areas addressed by Dr. Elizabeth Roaf.

This response will be supplemented if necessary after Dr. Hanak examines Mrs. Rhodes. Dr. Hanak also reserves the right to alter or refine his opinions should additional information become available.

As to objections,

BUILDING MATERIALS CORP. OF AMERICA,

By its attorneys,


Dennis M. Duggan, Jr., P.C., BBO #137460

Gregory P. Deschenes, BBO # 550830

Grace C. Wu, BBO # 650926

NIXON PEABODY LLP

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Dated: June 29, 2004

CERTIFICATE OF SERVICE

I, Grace C. Wu , hereby certify that on June 29, 2004, I served the foregoing Second Supplemental Responses to Plaintiff's Second Set of Interrogatories upon all interested parties by forwarding the same via First Class Mail Postage pre-paid to the following:

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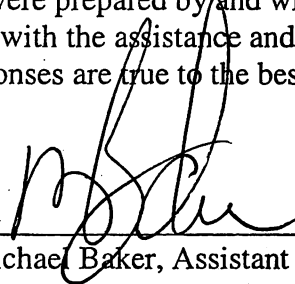
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Grace C. Wu

VERIFICATION

The undersigned does hereby, under the penalties of perjury of this 29 day of June 2004, state that he is an Assistant Secretary of Building Materials Corporation of America d/b/a GAF Materials Corporation ("BMCA"), authorized to sign the foregoing on behalf of BMCA, defendant in this matter, and that he has read the contents of the foregoing supplemental responses to interrogatories, and that said responses were prepared by and with the assistance of the corporation's employees and representatives, and with the assistance and advice of counsel, upon which he has relied, and that the foregoing responses are true to the best of his present knowledge, information and belief.



Michael Baker, Assistant Secretary of BMCA