

6/2/2006

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

Civil Action No.: 05-1360-BLS

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.

**ANSWER TO DEFENDANT ZURICH AMERICAN INSURANCE COMPANY'S
FIRST SET OF INTERROGATORIES TO PLAINTIFF HAROLD RHODES**

Pursuant to Mass. R. Civ. P. 33, Plaintiff, Harold Rhodes, makes the following Answers to Zurich American Insurance Company's ("Zurich") Interrogatories and reserves the right to seasonably supplement each Answer set forth below.

GENERAL OBJECTIONS

Harold 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.

Harold 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.

Harold Rhodes objects to any interrogatory that requires one or more conclusions of law.

Harold Rhodes objects to any interrogatory that calls for confidential information.

DEFINITIONS

A. As used herein, the term “the Accident” shall mean the crash that occurred on January 9, 2002 involving Marcia Rhodes and Carlo Zalewski.

B. As used herein, the term “AIGDC” shall mean and refer to AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc., and any business entity owned, operated, or managed by, AIG Domestic Claims, Inc. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, predecessors, agents, counsel, attorneys, and other representatives of each such entity.

C. 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.

D. As used herein, the term “compound” means that a request contains multiple, unrelated requests that are improperly combined together.

E. As used herein, the term “Crawford” shall mean and refer to Crawford & Co. and any business entity owned, operated, or managed by, Crawford & Co. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

F. As used herein, the term “National Union” shall mean and refer to National Union Fire Insurance Company of Pittsburgh, PA, and any business entity owned, operated, or managed by, National Union Fire Insurance Company of Pittsburgh, PA and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

G. As used herein, the term “overly broad” means that a request is unreasonably general, vague and nonspecific.

H. As used herein, the term “Personal Injury Defendants” shall mean and refer collectively to Carlo Zalewski, GAF, Driver Logistics and Penske.

I. As used herein, the term “privileged” means that the documents requested are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege against disclosure.

J. As used herein, the term “Underlying Action” shall mean the personal injury action filed by Plaintiffs against GAF, Driver Logistics, Carlo Zalewski and Penske on or about July 12, 2002.

K. As used herein, the term “Zurich” shall mean, Zurich American Insurance Company and any business entity owned, operated, or managed by Zurich American Insurance Company, any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Zurich American Insurance Company and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

INTERROGATORIES AND ANSWERS

Interrogatory No. 1

Identify (in accordance with the Instructions set forth above) all oral and written communications you personally had with any of the Personal Injury Defendants, Crawford, Zurich, or any of their respective employees, agents or legal counsel, at any time during the period January 9, 2002 through September 16, 2004, regarding the Accident, your claims against any of the Personal Injury Defendants, Plaintiffs’ alleged damages resulting from the Accident, or the potential settlement of Plaintiffs’ claims against the Personal Injury Defendants.

ANSWER

I communicated with defense counsel during my deposition, and when I testified at trial. On the day he admitted to sufficient facts to warrant a guilty finding in Wrentham District Court

in November, 2002, Carlo Zalewski approached me and my wife and said he was sorry. On the day the jury was selected for the trial in September, 2004, Carlo Zalewski asked how Marcia was doing. I don't recall if I responded.

Interrogatory No. 2

Identify (in accordance with the Instructions) all communications you had with persons other than attorneys affiliated with Brown Rudnick Berlack & Israels during, during the period January 9, 2002 to September 16, 2004, in which you discussed: (i) any offer of settlement made to Plaintiffs during the course of the Underlying Action, or (ii) the amount of any settlement demand Plaintiffs contemplated making or actually made to any of the Personal Injury Defendants or any of their respective insurers prior to or during the course of the Underlying Action.

ANSWER

I told Marcia that a demand letter had been sent in August, 2003, and I also told her and my brother that the December 2003 demand letter had been sent.

Interrogatory No. 3

Describe the nature of, itemize and state the amount of all "actual damages" (as alleged in paragraph 132 of the Complaint) you claim to have sustained as the result of the conduct of Zurich alleged in the Complaint and describe the method by which you calculated the alleged damages.

ANSWER

Zurich's failure to make a settlement offer until the end of March, 2004 delayed the final resolution of the Underlying Action and caused me to be a party to litigation through September, 2005, when a Satisfaction of Judgment was filed in that action. I paid in excess of \$150,000 in litigation costs during the Underlying Action. Because no advance payments were ever offered or made to me or my wife, I had to liquidate more than \$460,000 from my brokerage account between February, 2002 and September, 2004. In addition, my checking account balance went from \$131,777 to \$23,912 during the same time period. These funds were used for: the support of my family; renovations to our home to make it handicap-accessible and provide sufficient

space for Marcia; and the myriad of equipment and supplies she needed as the result of the Accident. I also took out a \$125,000 home-equity line from Fleet in 2003 to pay for renovations and an addition to our home. Interest charges on the home equity line totaled \$6674.

Before the Underlying Action was resolved, I was “on duty” as Marcia’s personal care attendant from 4:00 pm to 8:00 am during the week, and from 4:00 pm on Fridays until 8:00 am on Mondays. I was the member of our family who dealt with our health care provider, tracked all of our claims, and pursued coverage for Marcia’s numerous expenses. I was also the day-to-day contact with Brown Rudnick, and this role required a significant part of my time and focus given its paramount importance in our lives. Filling all of these roles while the Underlying Action was pending left me with relatively little time or energy to devote to my work. I was not able to work on a full-time basis, but did discrete consulting engagements, especially in 2002 during the several months in which Marcia was an in-patient. In fact, I turned down offers of full-time employment or extended consulting assignments with Northrop Corporation in May 2002 and with Gomez, Inc. in October 2002. As a result, my earned income dropped precipitously. In 2001, my income was \$392,275. In 2002, it dropped to \$168,059. In 2003, my income was \$90,108. In 2004, it was \$60,835.

Because of the rate at which we were expending funds, and the uncertainty as to the amount or timing of any recovery, I was very concerned about paying for Marcia’s personal care and treatment, so much so that we even cut down on the hours of her personal care attendant from 8 hours/day to 4 hours/day when we learned that the Personal Injury Defendants were going to appeal the judgment. Doing so increased the burden and stress imposed on me, as I needed to care for both Marcia and Rebecca; since Marcia was unable to drive Rebecca to her friends’ homes, or to school or appointments, I was mainly responsible for that role as well.

The financial strain on me and my family was enormous while the Underlying Action was pending. The financial burden was always a weight on my shoulders – as was “The Trial.” The Underlying Action was a black cloud that loomed over me and my family for more than two years – it was as though we could not really start living our “post-accident” lives as a family until The Trial was over and we had achieved some finality and certainty. My ability to act as a parent to Rebecca, and to compensate for Marcia’s inability to fill the role that she had prior to the Accident, was greatly compromised by my stress over the lawsuit and uncertainty of our financial future.

I had to become a party to litigation in order to be compensated for the way my relationship with my wife changed after the Accident, and I had to remain a party to litigation because the insurance companies refused to do the right thing and compensate me, my wife and my daughter for our losses. In fact, the insurance companies did not even show my family the common courtesy of acknowledging, much less responding to, our initial settlement offer. I had to fill the role of litigation decision-maker because it was not a burden that either my wife or daughter could bear – so I bore it alone. I had to spend hours and hours of my life with lawyers, preparing for testimony, testifying in a deposition, participating in mediation and even testifying in court, despite the fact that the Personal Injury Defendants had stipulated to liability, because the insurance companies did not make a reasonable settlement offer. I will never get those hours back, and they took a toll on me.

Words cannot explain my fury at having to watch my poor wife sit in her wheelchair beside the witness stand, visibly uncomfortable being the center of attention – something she has always hated. I tried my best to control my emotions during the trial and to remain clinical when I testified about the personal care I provide to my wife, but I could not help but cry, and

what husband can help but be embarrassed when talking about his wife's bowel movements or menstruation? I have never been so angry, or so powerless, as when my daughter broke down in tears on the witness stand and Judge Donovan called a recess. Marcia and I were on the other side of the courtroom, and there was nothing we could do to protect our only child. Then to add insult to injury, AIGDC appealed the verdict, creating additional financial insecurity and anxiety.

Interrogatory No. 4

Identify all sources of income of the Plaintiffs during the years 2001 through 2005 and state the amount of income derived from each source.

ANSWER

Harold Rhodes objects to this request as the breakdown of his earnings from various sources as it is not relevant and will not lead to the discovery of relevant evidence. Without waiving such objection, Harold Rhodes designates this Response as Confidential under the Confidentiality Agreement:

2001 – total income of \$392,275 from consulting work for Visibility, Inc.

2002 – total income of \$168,059 from consulting work for Visibility Inc.; Northrup; Gomez, Inc.; KeyCommerce.

2003 – total income \$90,108 from consulting work for Gomez, Inc.; Xformx; Xcipro; mValent; Workspace.

2004 – total income \$60,835 from consulting work for mValent , and as employee of Xformx.

2005 – total income \$61,614 as employee of XFormx.

Interrogatory No. 5

Identify all bank accounts, investment accounts, trust accounts, 401(k), 403(b) and other retirement accounts, pensions and other financial assets of any kind held by the Plaintiffs, or any of them, during the years 2001 through 2005 (inclusive), and identify all documents reflecting such assets. For each account and other asset identified, include in your answer the name and

address of the financial institution that had custody of the account, the account number(s), and the account balance or account value as of December 31st of each year noted in the immediately preceding sentence.

ANSWER

Harold Rhodes objects to this request as overly broad and unduly burdensome as it seeks the production of private financial documents that are unrelated to Plaintiffs' allegations that Defendants failed to effectuate a fair and reasonable settlement once liability became reasonably clear.

Interrogatory No. 6

If you claim that Zurich's alleged failure to effectuate a prompt, fair and equitable settlement of Plaintiffs' claims against the Personal Injury Defendants caused Plaintiffs or any of them to incur debts or other financial liabilities, identify and describe each debt and liability, including in your answer the name of the person or organization to whom any Plaintiff became indebted, the inclusive dates of the indebtedness or liability, and the amount of the debt or liability.

ANSWER

See Response No. 3. The Fleet equity line was paid off with the proceeds of the Professional Tree settlement in December 2003.

Interrogatory No. 7

Identify each person Plaintiffs intend to call as a fact witness at the trial of this action and, for each such person, state the subject matter about which the person is expected to testify.

ANSWER

Harold Rhodes objects to this request as it seeks the production of attorney work product. Without waiving said objection, Plaintiffs have not yet determined who they will call as witnesses, and reserve the right to supplement this Answer.

Interrogatory No. 8

Identify each person Plaintiffs intend to call as an expert witness at the trial of this matter and, for each expert, state:

- (a) the subject matter on which the expert is expected to testify;
- (b) the qualifications of the expert that enables him to testify as to the subject matter;
- (c) the substance of the facts and opinions to which the expert is expected to testify;
and
- (d) a summary of the grounds for the expert's opinion.

ANSWER

The Plaintiffs intend to call Arthur Kiriakos as a testifying expert, and his CV is attached hereto as Exhibit A. As discovery is still ongoing, and the Plaintiffs are seeking another Court Order requiring the production of additional documents from the Defendants, Mr. Kiriakos is still formulating his opinion, and the Plaintiffs reserve their right to supplement this response.

Interrogatory No. 9

Identify each date on which Plaintiffs provided the Personal Injury Defendants with documents relating to their alleged damages, and identify the documents produced on said dates.

ANSWER

January 25, 2002 – M. Frederick Pritzker letter to John Chaney attaching a copy of the police report. July 18, 2002 – M. Frederick Pritzker letter to John Chaney attaching a copy of the Complaint in the Underlying Action. April 10, 2003 – Plaintiffs produced in excess of 2000 pages of medical bills and records, Underlying Action Bates Stream 1-89; 91; 93-746; 802-1000; 1238-1857; 2532A-3069; 3074-3167. On June 16, 2003, the Plaintiffs supplemented their production: 3168-3679; 3728-3748; 3826-3911; 3913-4050. August 13, 2003 – Demand Letter with Exhibits and Marcia Rhodes Day in the Life Video (AIG/Nat'l Union Bates 0949 -1560, Satriano Exhibit 9). On September 8, 2003, the Plaintiffs supplemented their production: 4052-4053; 4066-4384. On September 9, 2003, the Plaintiffs produced document 4385. The Bates-stamped documents were provided to defense counsel for GAF, Zalewski and DLS. The same documents were made available for review to counsel for Penske.

Interrogatory No. 10

Identify all persons (other than lawyers affiliated with Brown Rudnick Berlack & Israels) who assisted you in any way in responding to these interrogatories, and for each such person, identify by number the specific interrogatories with which that person assisted you.


ANSWER

Not Applicable.

SIGNED under the pains and penalties of perjury this 2 day of June, 2006.


Harold Rhodes

AS TO OBJECTIONS:


M. Frederick Pritzker, Esq. (BBO#406940)
Margaret M. Pinkham (BBO#561920)
Daniel J. Brown (BBO#654459)
BROWN RUDNICK BERLACK ISRAELS LLP
One Financial Center
Boston, Massachusetts 02111
(617) 856-8200

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Answer of Plaintiff, Harold Rhodes, to Defendant, Zurich American Insurance Company's First Set of Interrogatories upon all counsel of record via ~~hand delivery~~ *2-mail and first class mail* to:


Robert J. Maselek, Jr., Esq.
The McCormack Firm, LLC
One International Place, 7th Flr.
Boston, Massachusetts 02110

Danielle Andrews Long, Esq.
Robinson & Cole LLP
One Boston Place
Boston, Massachusetts 01208-4404

Anthony R. Zelle, Esq.
Brian P. McDonough, Esq.
Zelle McDonough LLP
Four Longfellow Place, 35th Flr.
Boston, MA 02114

Gregory Varga, Esq.
Robinson & Cole LLP
280 Trumbull St.
Hartford, CT 06103-3597

DATED: *6/5/06*


Daniel J. Brown

EXHIBIT

A

Arthur A. Kiriakos
3 Ethel Street
Blackstone, Ma 01504
781-859-9260

April, 2005 to Present:

ADR-Equimar, Inc; Boston, Ma
Director of Marketing, and Business Operations

Equity Partner of an Alternative Dispute Resolution firm. Primary responsibilities include all aspects of day to day business operation. Additional responsibilities include, staff selection, training and development, sales, marketing, all accounting functions.

December, 2003 to
April, 2005

Hartford Insurance, Syracuse, NY
High Exposure Claims Consultant

Responsibilities include the handling of the Complex Commercial General Liability, Employers Liability, and Workers Compensation Losses. Jurisdictions include New York, and New Jersey on Workers Compensation losses, and National Exposure on General and Employers Liability losses. Reserves Supervision in excess of \$50,000,000.

October, 1992 to
December, 2003

Adjusters Out-Standing, Inc., Fall River, Ma
Treasurer and Managing Partner

Manage and Administrate an independent claims adjusting company. Responsibilities include staff selection, development, and training of all staff, sales, marketing, and overall business operation of a Property & Casualty claims company. This includes providing multi-line claims adjusting services to Insurers, and Self-Insureds throughout the all of New England. Additional services include, Claims training Workshops, Operational Assessment Consulting, as wells as expert review, and testimony on Claims Handling procedures involving Chapter 93A/176D cases, where there has been an allegation of statutory violations by an Insurer.

September 1991 to
December, 1992

Equimar, Inc.; Boston, Ma
Co-Founder, and Business Development Executive

Assisted in the initial business development, planning, staffing and management phase of an Alternative Dispute Resolution firm. This includes the authoring of a claims training program to assist in educating the claims industry how to better understand and utilize "ADR" as an alternative means of claims disposition.

April, 1990 to
June, 1991

AIG/AIAC; Boston, Ma
Litigation Claims Manager

Management of a Complex Commercial Litigation Claims Department, to include management and supervision of all technical and support. Policy limit settlement authority.

June, 1986 to
April, 1990

Commercial Union Insurance Company; Boston, Ma
Corporate Claims Consultant

Technical supervision, and support to 13 field claims offices, encompassing 22 jurisdictions. Lines of business include Commercial Auto, General Liability, and Employers Liability. Settlement authority \$500,000. Developed and authored various claims policies and procedures.

January, 1984 to
June, 1986

Hanover Insurance Company, Boston, Ma
Casualty Claims Supervisor

Administrate and supervise 6 casualty claims adjusters, handling 1200 auto, general liability, and workers compensation claims, Also functioned as the Office Claims Training Coordinator. Approximately 90% volume involved Massachusetts Auto Claims.

June, 1980 to
January, 1984

Kemper Insurance Group, Arlington, Ma
Claims Adjuster

Handling automobile, general liability, and workers compensation claims.

EDUCATION:

Suffolk University, Boston, Ma
Degree; M.B.A. concentration in Finance, 1990.

Boston State College, Boston, Ma
B.S. in Business Administration, 1980

Arlington High School, Arlington, Ma, 1976

REFERENCES:

References will be furnished upon request

Arthur A. Kiriakos
3 Ethel Street
Blackstone, Ma 01504
781-859-9260

PROFESSIONAL MEMBERSHIPS

- Boston Area Claims Executives
- New England Claims Executives
- NH Adjusters Association
- New England Small Business Association
- V.P. American Business Task Force
- Boston Claims Manager Counsel
- Casualty Adjusters of America
- Who's Who of Professionals in America
- International Who's Who of Professionals
- Suffolk University Alumni Ambassador
- Board of Directors Landmark School

PROFESSIONAL CREDENTIALS

- Investigate hundreds of 93A demands
- Drafted numerous 93A responses
- Expert retention and trial testimony in 93A/176D cases
- Claims Management training
- Licensed Claims Adjuster
- Multi-Jurisdictional Claims Experience
- Multi-line Claims knowledge; auto, G/L, W/C, Property, Facultative and Treaty Reinsurance
- Developed claims policy and procedure manuals
- Co-Founder Equimar, Inc.
- Founder Adjusters Out-Standing, Inc.
- Designed, developed and presented claims training to better understand and utilize ADR
- Attended various DRI seminars on Claims handling, and litigation management.
- Attended various Supervisory and Management training programs-

Arthur A. Kiriakos
3 Ethel Street
Blackstone, Ma 01504
781-859-9260

LECTURES, SEMINARS and PUBLICATIONS

- “Business Pursuits Exclusions” Section II, Homeowners Liability,
Commercial Union Co., Boston, Ma 1987, 88, 89, 90
- “Litigation Management” Claims Adjuster Role, Commercial Union Insurance Co.,
Boston, Ma 1988, 89
- “Litigation Management” Cost Containment, AIG/AIAC, Rocky Hill, CT, 1990
- “Litigation Management” Good Faith vs. Bad Faith, proactive claims handling,
AIG/AIAC, Boston, Ma and Commercial Union Insurance Co.,
1988, 89, 90.
- “Contractors Liability” Commercial Union Insurance Co., Boston, Ma 1987, 88, 89.
- “Alternative Dispute Resolution” Equimar, Inc., Boston, Ma, 1991, 92. Focusing on ADR
as an alternative means of claims disposition.
- “Claims Investigation” Adjusters Out-Standing, Inc., Fall River, Ma 1993, 94, 95, 96, 97.
- “Understanding Industry
Standards Regarding Claims
Handling” Massachusetts Bar Continuing Education Legal Seminars, Boston, Ma
How to try a Chapter 93A/176D case, 1998, 2002, 2006

PUBLICATIONS

- “Understanding Industry
Standards Regarding Claims
Handling” Massachusetts Bar Continuing Legal Education, October, 1998, 2002, April, 2006.