

ENCLOSURES

EXPOSURES

Jurisdiction: Type (Contrib/Compar/ModComp): MODCOMP
 Percent of Fault: % Doubtful: Questionable: Probable: X
 Contribution: NO % Source:
 Subrogation: YBS Percent: 25 % Source: DLS, ET AL.

Comments: LIABILITY MAY FALL TO CLIENT DUE TO INSURANCE CONTRACT OBLIGATIONS.

REMARKS

SUMMARY: THE CONTRACT OPERATOR OF THE GAF LEASED VEHICLE REARENDED THE CLAIMANT, CAUSING CATASTROPHIC INJURY, AND TOTAL LOSS OF THE CLAIMANT VEHICLE.

THIS REPORT IS PRESENTED AS A REFLECTION OF CASE STATUS, AS WELL AS A REALITY CHECK FOR ALL PARTIES CONCERNED. AS YOU ARE AWARE, THIS MATTER HAS COME ALMOST FULL CIRCLE, WHERE GAF'S POLICY HAS BEEN CONTRACTUALLY OBLIGATED TO ACCEPT TENDER OF DEFENSE AND INDEMNITY OF DLS AND PENSKI. OF NOTE, WE NOTICE NOWHERE IS IT MENTIONED THAT IT APPEARS THAT DLS HAS NO, WE REPEAT, NO COVERAGE FOR THIS ACCIDENT DUE TO AN AGENCY ERROR. (THIS MAY BE ACTIONABLE BY THEM UNDER THE AGENT'S E&O COVERAGE, IF SUCH EXISTS) THIS INFORMATION COMES VIA PHONE CONVERSATION LAST DECEMBER BETWEEN TIM CORRIGAN AND DLS'S PERSONAL COUNSEL.

RESERVES: WE NOTE NOTHING HAS BEEN DONE REGARDING APPROPRIATE RESERVES ON THIS. IN THE CURRENT FINANCIAL CLIMATE WHERE REGULATORY AGENCIES ARE INVESTIGATING THE FINANCIALS OF FIDUCIARY ORGANIZATIONS, SUCH AS INSURANCE COMPANIES, THIS COULD PROVE PROBLEMATIC, AND COULD REFLECT ON BOTH INSURER'S CREDIT RATING. WE URGE THAT RESERVES BE INCREASED TO ZURICH POLICY LIMITS OF \$2 MIL AT ONCE TO KEEP ON THE CORRECT SIDE OF REGULATORS.

LIABILITY: 90% TO DLS/IMPUTED TO GAF, 10 % ARBORIST.

POSITIONING: ~~IT APPEARS UNPROBATIVE TO CONTINUE ANY INFIGHTING BETWEEN PARTIES WHEN ALL ATTENTION SHOULD BE FOCUSED ON GETTING TO A GOOD SETTLEMENT POSTURE.~~ SINCE THE DLS IS THE TARGET DEFENDANT, WITH PENSKI AND GAF CLOSE BEHIND, WE NEED TO DEAL WITH THIS NOW RATHER THAN LATER. BE AWARE THAT PLAINTIFFS COUNSEL IS A SUCCESSFUL BIG CASE LAWYER, AND HIS DEMAND IS NOT UNREASONABLE OR OUT OF HAND GIVEN THE SPECIALS OF JUST UNDER \$3MIL. HE IS ALSO ATTEMPTING TO SET UP DEFENDANTS FOR A 93A VIOLATION BY MAKING AN EARLY DEMAND, ASKING FOR A GOOD FAITH OFFER BEFORE SUBMITTING TO NON-BINDING ARBITRATION. WE STRONGLY SURRENDERING ZURICH'S FIRST LAYER OF COVERAGE, 2 MIL, AS A GOOD FAITH POSITION, PRIOR TO MEDIATION, WHICH WE ALSO ENDORSE.

ACTION PLANS

WE SEE FULL VALUE OF THIS CASE BETWEEN 5-7 MIL. IT WOULD BE BETTER IF ONLY ONE INSURER MANAGED A MEDIATION OF THIS ORDER. BY PUTTING UP THE UNDERLYING POLICY, THE SINGLE INSURER WILL FIND THIS MORE MANAGABLE.

DLS has no coverage
\$2mm reserve only ↑
O/c of regulations
had 93A in mind from the beginning
urge 3 limit 72M
Be Hand as good faith off mediation

REMARKS (Continued)

CC: AIG TECHNICAL SERVICES, INC., EXCESS CASUALTY CLAIMS, 175 WATER STREET,
22ND FLOOR, NEW YORK, NY 10038. POLICY NO BR 3574209, CLAIM 169-118180.

CC: DAVID MACINTOSH, ZURICH US, P.O. BOX 6288210, ORLANDO, FL 32862-8210.
PLEASE ADVISE OF RESERVE RECOMMENDATIONS.

JEFF SICKLES, NEASC

DEFENSR: PLEASE CC ZURICH ON ALL FURTHER REPORTS DIRECTLY

Adjuster: JOHN CHANBY

Date: 11/13/03

cc: NIXON PRABODY, GREG DESHENSE
101 FEDERAL ST
BOSTON, MA 02110

2 1/2 yrs

in 9/04 report
Alt has taken over



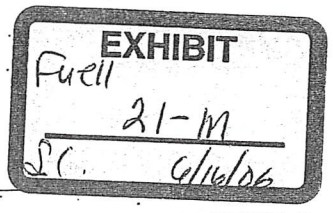
Risk Management
Services

STEPHEN C. PENICK
BRANCH MANAGER

Date: 06/04/04 Liability Transmittal Letter

To: GAF MATERIAL
1361 ALPS ROAD
WAYNE, NJ 07470

Attn: BOB MANNING



REFERENCE

Claim No.: Clmt/Owner: MARCIA RHODES (et al.)
Policy No.: WC2165693-03 Insd/Risk: Building Materials Corp of Ame
Effective Dates: 11/01/95 Client: BUILDING MATERIALS CORPORATION
Our File No.: 00082-000037641 Client Program No.: 011751

Date of Loss: 01/09/02 Time: Location: RT 109 EAST, MEDWAY
Accident Description: INSD REAR-ENDED CLT

This supplements our status report dated 11/13/03.

COVERAGE

Date received by branch: 01/09/02 Date received by Risk:
Coverage Type: BI Bodily Injury
Method of Coverage Confirmation: CSI
Coverage Issues: NONE

AUTO LIABILITY

Insd Driver: CARLO ZALEWSKI DOB: SSN:
VIN Year Make Plate St Unit Number
Vehicle:
Trailer:

RESERVES

Clmt Name/Owner Bus Clm Res Clm Pd Clm Net Exp Res Exp Pd Exp Net St
0001 RHODES MARCIA 211 2000000 0 2000000 500000 286215 213785 0
Comments:

Clmt Name/Owner Bus Clm Res Clm Pd Clm Net Exp Res Exp Pd Exp Net St
0002 RHODES HAROLD 212 0 0 0 0 0 0 0 0
Comments:

ENCLOSURES

EXPOSURES

Jurisdiction: Type (Contrib/Compar/ModComp): MODCOMP
Percent of Fault: % Doubtful: Questionable: Probable: X
Contribution: NO Percent: % Source:
Subrogation: YES Percent: 25 % Source: DLS, ET AL.

Comments:

not to the plaintiffs

REMARKS

DESCRIPTION: INSD REAR-ENDED CLT.

CURRENT STATUS: ZURICH HAS TENDERED ITS \$2M POLICY LIMIT TO AIG. IN ADDITION, DEFENSE COUNSEL HAS MADE A SETTLEMENT OFFER OF \$2M TO CLT ATTY IN AN EFFORT TO BRING THIS MATTER TO A PRE-TRIAL MEDIATION.

EXCESS CARRIER:

REDACTED

FURTHER HANDLING: WE ARE IN THE PROCESS OF SECURING UPDATED LEGAL BUDGETS FROM THE VARIOUS DEFENSE ATTYS. OUR ROLE IS LIMITED TO MANAGING THIS ASPECT OF THE CLAIM IN LIGHT OF ZURICH'S OFFER OF POLICY LIMITS.

ACTION PLANS

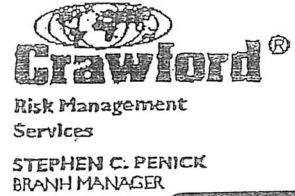
1- SECURE UPDATED LEGAL BUDGETS; 2- DIARY 45 DAYS

Adjuster: STKVE PENICK, ARM AIC

Date: 06/04/04

cc: NIXON PEABODY, GREG DESHENSE
101 FEDERAL ST
BOSTON, MA 02110

2 3/4 yrs



Date: 09/03/04 Liability Transmittal Letter

To: GAF MATERIAL
1361 ALPS ROAD
WAYNE, NJ 07470
Attn: BOB MANNING

EXHIBIT
Fuel
21-N
S.C. 6/16/06

REFERENCE

Claim No.: Clmt/Owner: MARCIA RHODES (et al.)
Policy No.: WC2165693-03 Insd/Risk: Building Materials Corp of Ame
Effective Dates: 11/01/95 Client: BUILDING MATERIALS CORPORATION
Our File No.: 00082-000037641 Client Program No.: 011751
Date of Loss: 01/09/02 Time: Location: RT 109 EAST, MEDWAY
Accident Description: INSD REAR-ENDED CLP

This supplements our status report dated 06/04/04.

COVERAGE

Date received by branch: 01/09/02 Date received by Risk:
Coverage Type: BI Bodily Injury
Method of Coverage Confirmation: CSI
Coverage Issues: NONE

AUTO LIABILITY

Insd Driver: CARLO ZALEWSKI DOB: SSN:
VIN Year Make Plate St Unit Number
Vehicle:
Trailer:

RESERVES

Clmt Name/Owner	Bus	Clm Res	Clm Pd	Clm Net	Exp Res	Exp Pd	Exp Net	St
0001 RHODES MARCIA Comments: .	211	2000000	2000	1998000	500000	436897	63103	0
Clmt Name/Owner	Bus	Clm Res	Clm Pd	Clm Net	Exp Res	Exp Pd	Exp Net	St
0002 RHODES HAROLD Comments: .	212	9100	9061	39	0	0	0	0

110 SECOND AVENUE • P.O. BOX 929128 • NEEDHAM, MA 02492 • Phone (781) 444-4071 • Fax (781) 444-4281
P.02 7814444281 CRAWFORD, CO SEP-03-2004 15:19

ENCLOSURES



EXPOSURES

Risk Management Services

Jurisdiction: Type (Contrib/Compar/ModComp): MOBILE
 Percent of Fault: % Doubtful: Questionable: PROBABLE
 Contribution: NO Percent: % Source:
 Subrogation: YES Percent: 25 % Source: DLS, ET AL.

Comments:

REMARKS

DESCRIPTION: INSD REAR-ENDED CLT.

SETTLEMENT STATUS: ZURICH HAS TENDERED ITS \$2M POLICY LIMIT TO AIG. IN ADDITION, DEFENSE COUNSEL HAS MADE A SETTLEMENT OFFER OF \$2M TO CLT ATTY IN AN EFFORT TO BRING THIS MATTER TO A PRE-TRIAL. CO-DEFENDANT, JERRY MCMILLAN'S PRO TREE SERVICE HAS SETTLED WITH THE CLT FOR \$550,000.

TRIAL: TRIAL IS EXPECTED TO LAST TWO WEEKS. IT IS SET TO BEGIN ON TUESDAY SEPTEMBER 7, 2004. WE EXPECT THE COST OF TRIAL TO BE APPROX \$5000 PER DAY. THAT FIGURE TAKES INTO ACCT THAT ZURICH IS FUNDING THE COSTS OF THREE SEPARATE DEFENSE ATTYs AND THERE ARE VARIOUS EXPERTS WHO WILL BE CALLED OVER THE COURSE OF THE TRIAL.

FURTHER HANDLING: AIG HAS TAKEN THE LEAD ROLE IN THIS MATER. WE ARE MAINLY FOCUSING ON EXPENSE RESERVING IN LIGHT OF THIS AND THE FACT THAT THE ZURICH \$2M POLICY HAS BEEN TENDERED. THE CURRENT EXP RESERVE IS \$500K. PAID TO DATE IS \$436,897.36. THEREFORE, THE EXPENSE RESERVE MAY WARRANTS AN INCREASE. WE ARE UP TO DATE ON LEGAL BILLINGS THROUGH AUGUST FOR NIXON PEABODY. THE TWO OTHER FIRMS ARE BILLING QUARTERLY AND WE HAVE YET TO REC'V INVOICES COVERING THE PAST TWO MONTHS. WE WOULD SUGGEST A RESERVE INCREASE OF \$250K TO COVER THESE EXPENSES YET TO BE BILLED AND THE COST OF TRIAL PREP AND TRIAL.

ACTION PLANS

1- MONITOR TRIAL; 2- DIARY 15 DAYS

Adjuster: STEVE PENICK, ARM AIC

Date: 09/03/04

cc: NIXON PEABODY, GREG DESHENSE
 101 FEDERAL ST
 BOSTON, MA 02110

*Zurich has tendered \$2M to AIG
 2/AIG has tendered \$2M to us
 we settled w/ Tree Svc for 550K*

*no where does it state
 why the is a trial*

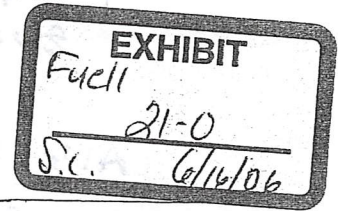


Risk Management Services

STEPHEN C. PENICK
BRANCH MANAGER

Date: 11/30/04 Liability Transmittal Letter

To: GAF MATERIAL
1361 ALPS ROAD
WAYNE, NJ 07470
Attn: BOB MANNING



REFERENCE

Claim No.: Clmt/Owner: MARCIA RHODES (et al.)
Policy No.: WC2165693-03 Insd/Risk: Building Materials Corp of Ame
Effective Dates: 11/01/95 Client: BUILDING MATERIALS CORPORATION
Our File No.: 00082-000037641 Client Program No.: 011751

Date of Loss: 01/09/02 Time: Location: RT 109 EAST, MEDWAY
Accident Description: INSD REAR-ENDED CLT

This supplements our status report dated 09/03/04.

COVERAGE

Date received by branch: 01/09/02 Date received by Risk:
Coverage Type: BI Bodily Injury
Method of Coverage Confirmation: CSI
Coverage Issues: NONE

AUTO LIABILITY

Insd Driver: CARLO ZALEWSKI DOB: SSN:
VIN Year Make Plate St Unit Number
Vehicle:
Trailer:

RESERVES

Clmt Name/Owner	Bus Clm Res	Clm Pd	Clm Net	Exp Res	Exp Pd	Exp Net	St
0001 RHODES MARCIA Comments:	211 2000000	2000	1998000	750000	493551	256449	0
Clmt Name/Owner	Bus Clm Res	Clm Pd	Clm Net	Exp Res	Exp Pd	Exp Net	St
0002 RHODES HAROLD Comments:	212 9100	9061	39	0	0	0	0

Z was ok etc to the judge they were
prompt as an ins. co. because
Zurich did not break the law

93 ~~93~~ - May have violated 93
AIG BIF Third -
said we would not accept a fair tender
even if they didn't tender - we didn't suffer any
Actual damage the AIG was okay

AIG - appellate jury verdict - was frivolous -
dragged out by a frivolous appeal

to access award - they say pay \$900,000 + legal fees

no idea where it came from
where do legal fees come from

AIG - just for 2nd trial win of third claim

legal fees are 1/3 of trial will award \$800,000

900,000 + 800,000 = 1.7M
BR 40% + one of pocket Co
60% → (negotiable)

we appeal all three issues | AIG appeal of 5/3 case
we appeal w/ any point win of double or triple on issues

And? are they using an consultant appellate 93/176 lawyers who have won BIF?

ENCLOSURES

EXPOSURES

Jurisdiction:		Type (Contrib/Compar/ModComp):	MODCOMP
Percent of Fault:	‡	Doubtful:	Questionable: Probable: X
Contribution:	NO	Percent:	‡ Source:
Subrogation:	YES	Percent:	25 ‡ Source: DLS, ET AL.

Comments: .

REMARKS

DESCRIPTION: INSD REAR-ENDED CLT.

DEFENSE APPEAL:

REDACTED

FURTHER HANDLING: AS YOU KNOW, THIS MATTER HAS BEEN TRANSFERRED TO GALLAGHER BASSETT IN MT. LAUREL, NJ FOR FURTHER HANDLING.

ACTION PLANS

1- CLOSE FILE

Adjuster: STEVE PENICK, ARM AIC Date: 11/30/04

cc: NIXON PEABODY , GREG DESHENSE
101 FEDERAL ST
BOSTON, MA 02110

Underlaying.

Defendants

GAF → Zurich takes over - are in charge (we get to defend it) + AIG

Driver Logistics → Zurich + AIG

← Penske → Zurich + AIG

Jerry's Tree Service → settled @ mediation 50k - separate settlement

Let off

Driver Behavior - GAF - DL.

Penske (Just 2 Brakes that failed)

NOT A CONTRIBUTING FACTOR 1/2 way thru the trial

Zurich tenders to AIG - AIG now actively involved

— why didn't we get this money

93A/176D plaintiffs (us)

Ins. Co. upon the receipt of a demand letter MUST

execute prompt, equitable & fair settlement ~~if not~~ ~~settling~~ WHICH SHOWS ACTUAL DAMAGE TO THE PLAINTIFF

WE CONTEND Z + AIG did NOT do above

Judge ^{parts} - ∴ actions of Z + AIG 1st trial

applied above to each

1 AFTER TRIAL