cc: MMF

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M. FREDERICK PRITZKER, Esq.
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May 12, 2005

Warren C. Nitti, Complex Director
Excess Specialty Claims Dept.
AIG Technical Services, Inc.
175 Water Street, 22nd Flr.
New York, NY 10038

RE: Insured: Building Materials Corp. of America d/b/a GAF Corporation
Claimant: Marcia Rhodes, et al
Date of Loss: January 9, 2002
AIG File #: 169-151612

Dear Mr. Nitti:

Thank you for your May 2, 2005 letter in which you increased AIG's settlement offer to $5.75 million. It is not clear from your letter whether this settlement offer is for the personal injury claim that resulted in a $9.4 million verdict in September, 2004, or whether this offer is made to settle both the underlying personal injury action and the chapter 93A/176D action that was filed against AIGDC, Inc. last month, *Marcia Rhodes et. al. v. AIG Domestic Claims, Inc. et al*, Suffolk Superior Court, No. 05-1360 BLS2. In either event, the offer is rejected.

As you are aware, the $9.4 million judgment has been accruing interest at the rate of 12% since July, 2002, such that the total value of that judgment was almost $12 million when the jury returned its verdict on September 15, 2004. Another $600,000 in interest has accrued since then. To date, the primary policy for your insured, Building Materials Corp. of America d/b/a GAF Materials Corp. ("GAF"), and the insurer for Professional Tree Services, the third party defendant, have paid $2.8 million, leaving a deficiency of more than $9.5 million on the judgment. The Rhodes family, which is obligated to pay attorney's fees and costs, will not settle for an amount that does not even satisfy the jury award, with interest, in a case in which your insureds admitted liability and Judge Donovan denied the defense motions to set aside the verdict and order a new trial. Moreover, we see little risk that the verdict will be overturned on appeal on the basis of Judge Chernoff's and Judge Donovan's decisions denying GAF the opportunity to conduct a fishing expedition through Mrs. Rhodes' therapy records. As for Judge Donovan's decision denying your insured's request to remove a juror, such decisions are well within the Court's discretion, and it is "relatively rare for evidentiary errors to result in a reversal in a civil action." *Bowlen v. O'Connor Café of Worcester, Inc.*, 50 Mass. App. Ct. 56, 67 (2000).

As your insureds admitted liability, we are confident that even if we have to retry the case, the end result will be the same, or better, for the Rhodes family since interest will continue to accrue at 12% until the new judgment is entered. You should know that Mrs. Rhodes has continued to suffer setbacks in her recovery. After a period of bedrest for pressure ulcers on her

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buttocks, which developed during the week of the trial in September, 2004, Mrs. Rhodes again tried to vacation in Florida this winter. Unfortunately, she fell out of the rental wheelchair she used, fracturing her knee in January. She has been on strict bedrest for the past 14 weeks, which caused her to cancel the driving test for her license and miss a trip with her husband and daughter to visit colleges in April over school vacation. Because the Rhodes family is very concerned with meeting Marcia's needs over the coming years and for the rest of her life, they have not expended funds on items that are part of her life care plan, including foregoing an intensive in-patient rehabilitation program and a life care planner, and initially reducing the hours of their home health aide. As you can see, the Rhodes family continues to suffer numerous emotional and financial challenges as the result of AIGDC's failure to settle this claim, and indeed, its decision to appeal the underlying judgment.

Furthermore, the structured settlement included in your latest offer is not only insufficient, it is misleading. You claim that Mrs. Rhodes' projected benefits would total $4,562,535 over 20 years, yet the Benefit Schedule identifies the Accumulative Income in Year 20 (assuming year 1 is 2005) as $2,335,059. Accordingly, when Mrs. Rhodes turns 75, the payments under the offered annuity would total $2,835,059. In order for Mrs. Rhodes to accumulate $4,562,535 in income, she would have to wait until Year 32, at which point she would be at least 81 years old. The fact that the Benefit Schedule runs for 80 years is also highly misleading as there is no likelihood that Mrs. Rhodes will ever accumulate more than $27 million in income under this proposal by living until age 129. In any event, given Mrs. Rhodes' immediate need for medical and personal care, there are no circumstances in which a structured settlement will be acceptable.

As your insureds admitted liability and the jury awarded a verdict of $9.412 million, and as the Rhodes family is entitled to interest, they will not settle the underlying action for any amount less than the verdict, with interest, having been forced to go through a trial in a case in which liability was clear on the date in which your insured drove a 78,000-lb tractor-trailer into Mrs. Rhodes' stopped car. Mrs. Rhodes is entitled to collect the award now, not over the next twenty or thirty years. In addition, we would be happy to receive an offer to settle the ongoing 93A/176D claim, keeping in mind the belated and meager offers to settle the underlying action before the trial, and the weak grounds for appeal in a case in which liability was admitted, and the insufficient post-judgment settlement offers.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: _____
M. Frederick Pritzker

MFP/rsg

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cc: MMP

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May 12, 2005

Stephen J. Arbanel, Esq.
Robinson & Cole LLP
One Boston Place
Boston, Massachusetts 01208-4404

RE: Marcia Rhodes, et al v. Zurich American Insurance Co., et al

Dear Steve:

I am writing this letter at your request to explore the possibility of my clients settling the 93A claim against Zurich American Insurance Co., as set out in the demand letter sent on November 19, 2004 and the complaint filed in Suffolk Superior Court, Civil Action No. 05-1360-BLS2. This letter is being written in reliance on our verbal agreement that its sole purpose is to explore settlement possibilities and consequently it will be kept strictly confidential and will be used for no evidentiary or other legal purpose.

I will not attempt in this letter to rehash the healthy and cordial dialogue which has occurred between us since this claim was articulated. If I can try to summarize (at the risk of oversimplifying) it seems to boil down to the following. We can agree that the accident happened on January 9, 2002 when Carlo Zalewski crashed into the back of Marcia Rhodes' stopped car, paralyzing her from the waist down. Liability should have been clear very soon after the date of the accident. The defendants ultimately conceded liability prior to the commencement of trial. The civil action cover sheet in the lawsuit which was filed in July 2002 identified already incurred expenses of $1,000,000 (not including any future expenses, pain and suffering or loss of consortium amounts). The first communication to the plaintiffs on behalf of Zurich, tendering the policy, occurred in March 2003. There will be conflicting evidence whether or not that tender included conditions of a full release of the defendants. I suggest to you, however, that it makes no sense that the plaintiffs would reject an unconditional tender of $2 million given the desperate need for funds which the plaintiffs had, which gives significant credibility to the evidence that a condition was attached.

The jury verdict of $9.4 million which with interest totaled over $11.8 million and now is approximately $12.5 million was awarded in September, 2004. The risk to the plaintiffs of pursuing the 93A claim against Zurich is that the timing and unconditional tender was such that the violation of 93A (if at all) is not willful, knowing or in bad faith, and consequently is limited to the loss of use of the funds. The risk to Zurich is that the tender was woefully late, that the first communication in March 2003 was conditional, that the first unconditional tender was after jury verdict. Further, Zurich will be wrapped up with the additional and blatant willful, knowing

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and bad faith behavior of AIG. Under those circumstances, the statutory doubling or tripling of the judgment creates a range between $18 million and $36 million.

The Rhodes family is grateful that Zurich ultimately tendered (albeit belatedly) $2.3 million to them. Based upon that, I believe that they will accept an additional amount of $3.65 million in full settlement for all claims against Zurich. As we previously discussed, a further condition of settlement will be full disclosure and cooperation from Zurich as if they were still a party to the litigation and subject to discovery in that status. This demand will remain open for forty-five (45) days.

Please call if you wish to discuss.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By:_____
M. Frederick Pritzker

MFP/jlw

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