6/16/2003

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.

PLAINTIFF, HAROLD RHODES', RESPONSE TO DEFENDANTS, CARLO ZALEWSKI AND DRIVER LOGISTICS, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF, HAROLD RHODES

Pursuant to Rule 34 of the Massachusetts Rules of Civil Procedure, the Plaintiff, Harold Rhodes ("Harold Rhodes"), hereby responds to Defendants Carlo Zalewski and Driver Logistics, Inc.'s Request for Production of Documents. The statements below which indicate that Harold Rhodes "will produce" documents do not constitute any representation that such documents exist but only that Harold Rhodes will produce those documents that are in his possession, custody or control, that are not privileged, that are not confidential business information and that are not otherwise immune from disclosure by any reason of the objections set forth therein.

DEFINITIONS

1. As used herein, the term "irrelevant" means that a request calls for documents which are not relevant to the subject matter of this action and which are not reasonably calculated to lead to the discovery of admissible evidence.

2. 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.

3. As used herein, the term "overly broad" means that a request is unreasonably general, vague and nonspecific.

4. As used herein, the term "compound" means that a request contains multiple, unrelated categories of documents that are improperly combined together.

5. As used herein, the term "confidential" means the documents requested are retained in confidence at the express or implied request of a third party or that it is the custom of the trade to retain such records in confidence.

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

REQUESTS TO WHICH NO OBJECTION IS MADE

Where it is indicated that no objection is made to producing the documents requested, no inference should be drawn that Harold Rhodes has such documents in his possession or subject to his control, but only that he does not object in principle to endeavoring to locate and produce such documents. In addition, if any confidential or privileged document is produced, whether intentionally or inadvertently, such production shall not waive the right of Harold Rhodes to

decline to produce a like document on grounds of confidentiality or privilege. Plaintiff reserves the right to seasonably supplement each response set forth below and her production.

GENERAL OBJECTIONS

The following objections are incorporated by reference into each Response to the individual Requests below.

1. Harold Rhodes objects to any request for documents that are protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege or the attorney work-product doctrine.

2. Harold Rhodes objects to any request for documents that are restricted in their disclosure under any state or federal law, rule or regulation or which would otherwise potentially subject him to any regulatory liability.

3. Harold Rhodes objects to any request or instruction for documents or information that is not discoverable under the Massachusetts Rules of Civil Procedure or otherwise.

4. Harold Rhodes objects to any request for documents that are confidential.

5. Harold Rhodes objects to any request for documents that are not in his possession or not subject to his custody or control.

6. Harold Rhodes objects to producing any documents that were not specifically requested by Defendants Carlo Zalewski and Driver Logistics, Inc. ("Zalewski" and "DL") and that do not fall within the scope of the Definitions and Instructions set forth by Zalewski and DL.

RESPONSES

1. All documents, reports, notices, or other correspondence related to any of the allegations in your complaint between you and:

a. The defendant, their agents or employees;

b. Any police department or other government agency;

c. Any insurance company possibly providing insurance to you or any portion of the loss sustained by you as a result of the incident alleged in the complaint;

d. Your employer.

RESPONSE

Documents responsive to Request No. 1 will be produced.

2. All documents relating to any of the events, occurrences and allegations contained in your complaint, other than those privileged or prepared in anticipation for litigation or for trial.

RESPONSE

The plaintiff, Harold Rhodes, objects to this Request as it does not seek the production of relevant evidence nor will it lead to the discovery of relevant evidence. Without waiving said objection, and expressly reserving the same, Harold Rhodes will produce documents in his possession, custody or control responsive to Request No. 2.

3. All bills, estimates, statements and other such documents concerning the damages and expenses sustained and incurred by the plaintiff as a result of the events and occurrences alleged in the complaint.

RESPONSE

Documents responsive to Request No. 3 will be produced. Plaintiff reserves the right to seasonably supplement this response.

4. The plaintiff's Federal Income Tax Returns for the period two years prior to the year of the alleged incident to the present.

RESPONSE

Documents responsive to Request No. 4 will be produced.

5. All documents relating, to, commenting on, or constituting any statement or witnesses to the events and occurrences alleged in the complaint.

RESPONSE

Plaintiff Harold Rhodes objects to Request No. 5 as it calls for documents protected by attorney work product.

6. All documents relating to, commenting on, or constituting any statement of the defendant or any agent or employee of the defendant.

RESPONSE

Documents responsive to Request No. 6 will be produced.

7. All reports from each expert plaintiff intends to call as a trial witness.

RESPONSE

Plaintiff Harold Rhodes will seasonably supplement this response.

8. All written or other documentary evidence which relates to the issue of the defendant's liability.

RESPONSE

Documents responsive to Request No. 8 are already in the possession of Defendants. To the extent other documents responsive to Request No. 8 exist, they will be produced.

9. All written or other documentary evidence which tends to exonerate or exculpate the defendant.

RESPONSE

None.

10. All written or other documentary evidence which tends to show that the conduct, by act or omission, of some third person or persons, caused or contributed to the happening of the event or injuries which form the subject matter of this complaint.

RESPONSE

Plaintiff objects to Request No. 10 as it is unclear and confusing. To the extent that "some third person or persons" refers to someone other than one of the four named defendants, none.

11. All photographs of the scene of the accident or place of occurrence which is the subject matter of the complaint.

RESPONSE

Documents responsive to Request No. 11 will be produced.

12. All diagrams, plans or drawings of any subject on which the plaintiff's complaint is based.

RESPONSE

None.

13. All photographs which the plaintiff intends to offer into evidence at trial.

RESPONSE

Plaintiffs have not yet determined what photographs will be offered at trial. Plaintiffs will seasonably supplement this response.

14. All statements of the plaintiff other than those privileged or prepared in anticipation of litigation.

RESPONSE

Plaintiff Harold Rhodes objects to Request No. 14 as it is unclear what the term "statements" refers to.

15. All documents of any kind which the plaintiff intends to offer as evidence at trial.

RESPONSE

Plaintiffs have not yet determined what documents will be offered at trial. Plaintiffs will seasonably supplement this Response.

Respectfully submitted,

HAROLD RHODES,

By his attorney,

Carlotta M Patten

M. Frederick Pritzker, Esq. (BBO#406940)
Margaret M. Pinkham, Esq. (BBO#561920)
Carlotta M. Patten, Esq. (BBO#641035)
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, Massachusetts 02111
(617) 856-8200

DATED: June 16, 2003

CERTIFICATE OF SERVICE

I, Carlotta M. Patten, counsel for plaintiffs, hereby certify that I have this day served a copy of the foregoing Plaintiff, Harold Rhodes' Response To Defendants Carlo Zalewski and Driver Logistics, Inc.'s Request for Production of Documents To Plaintiff Harold Rhodes in the manner indicated below:

By Hand Delivery
Michael Smith, Esq.
Morrison, Mahoney & Miller
250 Summer Street
Boston, MA 02210

By First Class Mail
Grace C. Wu, Esq.
Nixon Peabody LLP
101 Federal Street
Boston, MA 02110-1832

By First Class Mail
John Johnston, Esq.
Corrigan Johnston & Tutor
141 Tremont Street
Boston, MA 02111

Carlotta M. Patten

DATED: June 16, 2003

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