

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No.: 05-1360-BLS

Marcia Rhodes, Harold Rhodes, and)
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.)

**ZURICH AMERICAN INSURANCE COMPANY'S SUPPLEMENTAL ANSWERS
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO ZURICH
AMERICAN INSURANCE COMPANY**

Pursuant to Rule 33 of the Massachusetts Rules of Civil Procedure, defendant, Zurich American Insurance Company ("Zurich"), hereby supplements its answers Plaintiffs' First Set of Interrogatories Directed to Zurich American Insurance Company as follows:

GENERAL OBJECTIONS

1. Zurich objects to the instructions and definitions in Plaintiffs' First Set of Interrogatories to the extent that they are overly broad, unduly burdensome, vague and seek information beyond the scope of permissible discovery pursuant to M.R.C.P. 26.
2. Zurich objects to Plaintiffs' First Set of Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, work product doctrine and/or joint defense/common interest privilege.
3. Zurich objects to the definitions of all the entities identified in definition paragraphs C, I, K, M, O, and U, to the extent that they are overly broad, unduly burdensome and seek to include entities that are not relevant to this litigation.

INTERROGATORY NO. 4

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 INTERROGATORY NO. 4

Zurich objects to Interrogatory No. 4 to the extent that it seeks information beyond the scope of permissible discovery pursuant to M.R.C.P. 26 and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Without waiving these objections, Zurich has not yet decided what expert witnesses it may call at trial in this matter. Zurich reserves the right to supplement its answer to this interrogatory.

SUPPLEMENTAL ANSWER INTERROGATORY NO. 4

Zurich objects to Interrogatory No. 4 to the extent that it seeks information beyond the scope of permissible discovery pursuant to Mass. R. Civ. P. 26(b) and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Notwithstanding and without waiving these objections, Zurich responds as follows:

Zurich expects to call Karl A. Maser as an expert witness at trial. The subject matter of Mr. Maser's expected testimony is Zurich's handling of the tort claims that Marcia and Harold Rhodes (individually and on behalf of his minor daughter, Rebecca Rhodes) asserted against Building Materials Corporation of America d/b/a GAF Building Materials Corp. ("GAF"), Driver Logistics Service ("DLS"), Carlo Zalewski ("Zalewski") and Penske Truck Leasing Corp. ("Penske")¹ arising from Marcia Rhodes' motor vehicle accident on January 9, 2002.

Mr. Maser has over 43 years experience in the insurance industry. For the past decade, he has been self-employed providing consulting and expert witness services to policyholders and insurance carriers. He also serves as an arbitrator and mediator. Prior to becoming a consultant, Mr. Maser was a senior claim executive at two major insurance carriers, Fireman's Fund Insurance Company and The Hartford Insurance Group. His responsibilities at both companies encompassed all technical claim issues, including evaluation of good faith claim handling practices on a nationwide basis for all lines of insurance business. During his career, he has been involved in thousands of coverage determinations and has had the opportunity to evaluate the handling of hundreds of insurance claims in his capacity as a senior claim executive and, more

¹ Unless otherwise indicated, GAF, DLS, Zalewski and Penske are hereinafter referred to collectively as the "Personal Injury Defendants."

recently, as a consultant and expert witness. Mr. Maser's *curriculum vitae* is attached. His undergraduate degree from the University of Connecticut is in Insurance Administration. He holds a law degree from Western New England College in Springfield, MA, and is a member of the Connecticut bar.

Mr. Maser considered the following materials in connection with this assignment:

1. Documents produced in discovery in this matter.
2. Transcripts and exhibits from depositions taken in this matter.
3. The parties' answers to interrogatories.
4. A chronology of the Plaintiffs' underlying claims.
5. The Plaintiffs' demand letters to the insurers and the insurers' responses thereto.
6. The Complaint and Amended Complaint in this action.
7. The Complaint in the underlying tort action against the Personal Injury Defendants.

Pursuant to Mass. R. Civ. P. 26(b), the following is a statement of the substance of the facts and opinions to which Mr. Maser is expected to testify and a summary of the grounds for those opinions.

Factual Background

On January 9, 2002, Plaintiff Marcia Rhodes was injured when the vehicle she was driving was rear-ended by a truck while stopped at a worksite along Route 109 in Medway, Massachusetts. The truck that collided with Mrs. Rhodes' vehicle was owned by Penske and leased to GAF. The truck driver, Carlo Zalewski, was an employee of DLS, which provided drivers to GAF pursuant to a contract.

As of the time of the accident, Zurich provided Automobile Liability Coverage to GAF subject to a \$250,000 deductible. Zurich's policy limit was \$2 million. Excess coverage was provided by National Union Insurance Company of Pittsburgh, PA in the amount of \$50 million.

When it learned of the accident, GAF assigned Crawford and Company ("Crawford"), a third party administrator, to investigate and otherwise handle the claim on behalf of GAF. Crawford was also under contract with Zurich to administer business auto claims made against GAF. Given the \$250,000 deductible on the policy, Crawford initially reported to GAF's Risk Manager, Robert Manning.

Crawford's liability adjuster, John Chaney, commenced his investigation of the accident in January 2002. As part of his investigation, Mr. Chaney telephoned counsel for the Plaintiffs and discussed the accident and Mrs. Rhodes' condition generally. During that conversation, Mr. Chaney asked Plaintiffs' counsel to provide him with updates on Mrs. Rhodes' condition and

treatment as well as documentation of what Plaintiffs expected to prove in terms of damages. Mr. Chaney continued to investigate the accident for a number of months.

On January 30, 2002, Mr. Chaney sent his First Full Formal Report to Mr. Manning of GAF. Although the Report also lists Zurich as a recipient, it was never received by Zurich's Major Case Unit, Liability TPA Claims—the unit that would ultimately have oversight responsibility for the claim. Shortly after receipt of Mr. Chaney's initial report, GAF retained the law firm of Nixon Peabody to serve as GAF's counsel in the matter. Mr. Manning also authorized Mr. Chaney to retain an accident reconstruction expert to assist in the accident investigation.

Mr. Chaney sent his second report to Mr. Manning on April 8, 2002. In that report, Mr. Chaney noted that the bodily injury reserve, which Mr. Manning had approved at \$50,000, was too low and recommended raising it to \$2 million. At that time, however, Mr. Chaney had no documentation concerning Mrs. Rhodes' injuries, condition or treatment, or any other documentation regarding damages. The April 2002 report also explored possible theories of liability against Mr. Zalewski, DLS, GAF, Penske, the Town of Medway, and the arborist who was conducting work alongside Route 109 at the time of the accident. Like the January report, the April report was never received by Zurich's Major Case Unit, Liability TPA Claims.

Before filing suit, Plaintiffs and their counsel provided no medical records or other documentation to Crawford or Nixon Peabody, nor did they provide any update on Mrs. Rhodes' condition, medical treatment or claimed damages.

On July 12, 2002, Plaintiffs' counsel filed suit against Mr. Zalewski, DLS, Penske, and GAF. When it received the lawsuit, Penske tendered its defense to GAF, claiming additional insured status under GAF's policy with Zurich. GAF refused to provide a defense or to indemnify Penske. On or about August 7, 2002, Mr. Chaney telephoned David McIntosh of Zurich's Major Case Unit, Liability TPA Claims, about the claim. This was the first notice Zurich received of the accident. During that telephone conversation, Messrs. McIntosh and Chaney discussed several issues concerning the case, including Penske's request for insurance coverage and the bodily injury reserve. Mr. McIntosh authorized Mr. Chaney to retain coverage counsel to review and advise Zurich regarding the coverage issues. Mr. Chaney also explained that there was very little information upon which to value the case or a bodily injury reserve. Mr. McIntosh asked Mr. Chaney to provide reporting with facts and information regarding the possible exposure of the insured.

In August 2002, the law firm of Taylor, Duane, Barton & Gilman LLP was retained to advise Zurich regarding the insurance coverage issues associated with the Plaintiffs' claims. Zurich agreed to provide a defense to Penske, subject to a reservation of Zurich's rights under the policy, while the coverage issues were addressed. DLS and Zalewski subsequently tendered the defense of the lawsuit to Zurich, and coverage counsel was asked to analyze Zurich's coverage obligations, if any, to those entities. Coverage counsel completed an analysis of the coverage issues in December 2002, after receipt of necessary documentation from DLS and Penske. Zurich agreed to defend Penske, DLS and Zalewski, but continued to reserve its rights under the policy as to the duty to indemnify.

Between August and December 2002, Crawford issued two additional reports to GAF and Zurich. As of December 2002, however, Plaintiffs had not provided any medical records or damages-related documentation to Crawford or defense counsel. Information in the reports concerning damages was based solely on Mr. Chaney's discussion with Plaintiffs' counsel.

On a number of occasions between January and July 2003, Zurich asked Crawford for a full evaluation of the case and documentation of the claimed damages so that Zurich could assess liability and evaluate the damages. In its reports of May, June and July 2003, Crawford continued to suggest an increase of the bodily injury reserve and commented on the potential value of the case. Those comments and suggestions were not documented, however. In fact, as of July 2003, Crawford did not have medical records or other documentation from Plaintiffs' counsel regarding damages.

In September 2003, Kathleen Fuell of Zurich received a voluminous demand package prepared by Plaintiffs' counsel. The demand was apparently sent in response to a request by defense counsel in March 2003. In addition to medical records and bills, the demand package included reports from experts retained by Plaintiffs concerning Mrs. Rhodes' prognosis, future medical and rehabilitative care needs, and other future damages. This represented the first instance in which Plaintiffs produced documentation concerning Mrs. Rhodes' anticipated future damages. In order to evaluate Mrs. Rhodes' claim for future medical care, a life care expert was retained. The preliminary report of Jane Mattson was received in October 2003. In early October 2003, Kathleen Fuell asked for a report on the case from defense counsel, including jury verdict research. After receiving defense counsel's report and analyzing the demand package, Ms. Fuell completed a BI Claim Report in which she requested authority from her supervisors to tender Zurich's policy limits to excess insurer National Union and its claim administrator, AIG Domestic Claims, Inc. ("AIG").

On November 19, 2003, Ms. Fuell participated in a teleconference with defense counsel, representatives of AIG/National Union, Steven Penick of Crawford, and representatives of GAF. During that conference, Ms. Fuell learned, among other things, that Plaintiffs' counsel had announced that Plaintiffs would not engage in mediation unless an offer of at least \$5 million was made prior to the mediation. Ms. Fuell stated that she would recommend to her superiors that Zurich tender its policy limits to AIG/National Union and offer the limits in settlement to the Plaintiffs.

In January 2004, after receiving authority from her superiors, Ms. Fuell telephoned Nicholas Satriano of AIG and tendered Zurich's policy limits for use in a settlement with the Plaintiffs. Mr. Satriano informed Ms. Fuell that AIG would not accept a verbal tender of policy limits and asked her to put the tender in writing, which she agreed to do. In February 2004, Ms. Fuell confirmed the tender of Zurich's policy limits in an email exchange with Mr. Satriano. On March 29, 2004, Ms. Fuell sent AIG a letter confirming the tender once again. AIG rejected Zurich's tender and maintained that it had no obligation to pay for the defense of the lawsuit. Zurich then announced that it would continue to fund the defense.

On March 30, 2004, Zurich's \$2 million policy limits were offered to Plaintiffs. The offer was rejected immediately.

After Zurich tendered its limits to AIG/National Union, AIG retained new counsel for GAF, Campbell, Campbell, Edwards & Conroy. AIG also took control of the settlement negotiations with the Plaintiffs. During a mediation in August 2004 (of which Zurich was not aware), AIG offered Plaintiffs \$1.5 million on top of the \$2 million previously offered by Zurich. Plaintiffs refused that offer. Plaintiffs did settle their claims with Professional Tree Service for a payment of \$550,000.

The case went to trial in early September 2004. During the trial, AIG and the Plaintiffs engaged in additional settlement discussions, but were ultimately unable to agree on a settlement figure. The jury returned a verdict of \$11.8 million, including pre-judgment interest.

After the trial, counsel retained by AIG filed several post-trial motions and eventually appealed the case.

On November 19, 2004, Plaintiffs' counsel sent Zurich and National Union a letter alleging violations of Massachusetts General Laws chapter 93A. Zurich responded to the letter in December 2004 by denying that it committed any unfair practices in the handling of the Rhodes' claims.

On December 23, 2004, Zurich paid Plaintiffs \$2,322,995.75, which represented its policy limits plus accrued post-judgment interest on the policy limits.

Summary of Opinions

When presented with a personal injury claim against its policyholder, a liability insurer having the primary layer of coverage owes the policyholder a duty to fully investigate and evaluate all aspects of the claim. In reviewing a claim, the primary insurer must evaluate, (1) whether its insurance policy affords coverage for the incident giving rise to the claimant's injuries to any and all entities seeking such coverage; (2) the extent to which its insured bears legal liability for the injuries alleged; and (3) the nature and value of the damages sustained by the claimant as well as the future damages claimed. The evaluation of these factors must be based upon verifiable information and documentation, not second-hand information and speculation. The period of time required to complete the examination of a particular claim varies depending on the complexity of the coverage, liability and damages issues, the insurer's access to information, the level of cooperation of the insured and the claimant, and other factors. In general, an insurer should attempt to resolve a claim through settlement when coverage issues, if any, are resolved and both liability and damages are well documented and appear reasonably clear.

In this case, the mere fact that Mrs. Rhodes was involved in a rear-end collision and was reportedly rendered a paraplegic did not warrant the conclusion that the case had a value at or in excess of Zurich's primary layer of insurance. This was a complicated case that involved multiple potential defendants, numerous coverage and liability issues, and claimed damages that included past and future medical expenses, future life care needs, future economic losses, pain and suffering, loss of consortium and parental society, and other damages that are challenging to evaluate. Zurich resolved the coverage issues within a reasonable period of time, and simultaneously pursued documentation that would enable it to meaningfully assess the liability

of the various Personal Injury Defendants and the overall value of the claimed damages. The critical information that Zurich needed to fully assess the Plaintiffs' damages was received in September 2003 in the form of a demand package. Zurich evaluated the information and documents in the demand package appropriately and within a reasonable period of time, and then promptly attempted to bring about a settlement with the Plaintiffs by tendering its policy limits to AIG in January 2004. In a further effort to effectuate settlement, Zurich offered to pay Plaintiffs its policy limits in March 2004 in exchange for a release of all claims against the Personal Injury Defendants. By tendering the full limits of its policy to the excess insurer and offering its limits to the Plaintiffs on a timely basis, Zurich complied with good insurance claim handling practices.

Zurich addressed and resolved the insurance coverage issues presented by the Rhodes' claims in a timely and appropriate manner, consistent with industry standards.

As the primary insurer, Zurich was responsible for examining and resolving all coverage issues raised by claims presented under GAF's commercial auto policy. Zurich received first notice of the Rhodes' claims in early August 2002 when John Chaney of Crawford contacted David McIntosh of Zurich by telephone. During that conversation, Mr. McIntosh was informed that Penske had requested that GAF and/or its insurer defend Penske, and that GAF had rejected that request, prompting threatening letters from Penske. At that time (August 2002), Zurich did not quibble about coverage but instead agreed to provide a defense for Penske subject to a reservation of Zurich's rights under the policy and applicable law. Zurich took the same good faith approach when DLS and Zalewski tendered their defenses to Zurich. Zurich also retained competent Massachusetts coverage counsel to evaluate its obligations under its insurance policy.

The Rhodes case was complicated from a coverage standpoint given the number of entities involved and the nature of the business relationships among them. Specifically, the truck that collided with Mrs. Rhodes' vehicle was owned by Penske; was leased to GAF; was operated pursuant to a service contract between GAF and DLS; was operated by a driver who was said to have "contract driver" status; and was carrying materials owned by GAF. It was imperative, and consistent with good claim handling practices, that all relevant contracts and business relationships be examined carefully, in light of the policy language and applicable Massachusetts law, to determine whether Zurich owed a duty to defend Penske, DLS or Zalewski, and whether it might be required to indemnify any of them in the event of a settlement or adverse judgment. In addition, even assuming that DLS, Zalewski or Penske qualified for coverage under the Zurich policy, questions remained as to whether the policy would respond for any acts of independent negligence they may have committed. In light of the number, nature and complexity of the coverage issues presented and the contentious environment in which they arose, Zurich's retention of competent Massachusetts counsel to advise on the coverage issues was not only consistent with common industry practice but also demonstrative of Zurich's good faith approach to this claim.

In addition, Zurich owed its policyholder, GAF, a duty to determine whether DLS, Zalewski or Penske had other policies of insurance that might provide primary coverage. The resolution of the "other insurance" question was critical as it had the potential to dictate whether Zurich's policy would come into play at all, and if so, to what extent. In addition, if other policies of insurance were identified, the determination of which policy would provide primary

coverage in the circumstances of the claim would have required a careful review of Massachusetts law on the subject of competing "other insurance" clauses. Again, Zurich acted reasonably and in good faith by referring these issues to coverage counsel for review.

Zurich's coverage counsel pursued the documents and information he felt were necessary to properly examine the coverage issues presented. Despite those efforts, however, coverage counsel did not receive certain documentation from DLS and Penske until November and December 2002. Counsel delivered a timely analysis of Zurich's duty to defend in December 2002, whereupon Zurich authorized counsel to send letters to Penske and DLS formally agreeing to provide a defense, explaining Zurich's coverage position, and reserving the company's rights as to the duty to indemnify. Appropriately, Zurich accepted coverage and agreed to continue providing a defense despite that the "other insurance" question remained unresolved as of April 2003. Zurich continued to reserve its rights as to the duty to indemnify these entities throughout the pendency of the underlying litigation. Throughout 2003, and at Zurich's direction, coverage counsel continued to pursue information from DLS and Penske regarding the availability of other insurance.

In summary, Zurich's management of the insurance coverage issues presented by the Rhodes claim was appropriate and consistent with good claim handling practices. The four months it took Zurich to confirm that it had a duty to defend DLS and Penske was within industry standards given the complexity of the issues, the business relationships involved, and the circumstances in which the coverage issues arose. Importantly, the coverage analysis undertaken by Zurich did not hinder efforts to investigate and assess liability and damages. Nor did the continued efforts to identify other available liability insurance delay the timing of Zurich's tender or the ultimate resolution of the Plaintiffs' claims.

Zurich took a reasonable amount of time to evaluate and assess the Plaintiffs' claimed damages and the potential exposure of the Zurich policy.

In any personal injury case, and particularly one as complex as the Rhodes case, a primary insurer's assessment of damages and estimate of the value of the case must be based upon thorough documentation of the claimant's past medical expenses, anticipated future medical expenses and medical care needs, past and anticipated future out-of-pocket costs, lost wages (past and future), and other identifiable damages. Conversely, it is poor practice for an insurer to evaluate a claim based solely upon speculation, mere allegations in pleadings, or second-hand information that has not been properly and independently verified and documented.

In most cases where a claimant and its counsel are interested in attempting to resolve their claims with an insurer before resorting to litigation against its policyholder, the claimant will provide the insurer documentation of the claimant's incurred medical expenses, medical status, treatment plan and prognosis on an ongoing basis so that the insurer can evaluate the claim as it develops. That did not happen in this case. Within a few weeks of Mrs. Rhodes' accident, Crawford asked Plaintiffs' counsel to provide updates on Mrs. Rhodes' medical status and treatment, and to document Plaintiffs' claimed damages. Despite that request, the Rhodes and their counsel provided no such updates or documentation at any time in 2002. In fact, Plaintiffs provided no documentation regarding Mrs. Rhodes' injuries or their other claimed damages until April 2003 (approximately 15 months after the accident and 9 months after filing the lawsuit), when they produced medical bills and records to GAF's defense counsel. These

records were not furnished to Crawford or Zurich however, nor were Crawford or Zurich aware that GAF's defense counsel had them. In fact, Crawford's reports indicate that its adjusters understood as late as June 2003 that all medical records had not yet been produced in discovery. Also, the records that were produced in April 2003 related only to Mrs. Rhodes' past medical treatment, which was just one aspect of the injuries alleged by Plaintiffs.

Because Crawford lacked documentation of Mrs. Rhodes' injuries, medical status, projected future care needs and expenses and related damages, its adjusters' status reports to GAF and Zurich in 2002 and most of 2003 provided little useful information regarding the Plaintiffs' damages or the potential value of the case. In fact, the damages-related information in the majority of those reports was derived solely from second-hand accounts attributed primarily to Plaintiff's counsel. Some of that information, such as the representation by Plaintiffs' counsel that Mrs. Rhodes medical bills as of summer 2003 totaled approximately \$1.3 million, was later determined to be grossly inaccurate. Nevertheless, as of June 2002, Crawford began to suggest that the bodily injury reserve should be increased to Zurich's policy limit and, by September 2002, had commented that the claims had a "potential value," universally as to all defendants, in the range of \$5 million to \$10 million. It was readily apparent from the reports (and the Crawford adjusters later confirmed in their depositions) that their comments regarding reserves and potential case value were based on second-hand information. In fact, as late as June 2003, Crawford's adjuster indicated that Crawford lacked medical documentation and was not yet in a position to "fully evaluate" the damages.

Since Crawford did not have the documentation to support its reserve recommendations or its comments regarding "potential case value," it was essential for Zurich, in the exercise of good faith and consistent with its obligations to its policyholder, to insist that Crawford obtain such documentation so that Zurich could assess the full extent and potential value of the Plaintiffs' claimed damages. David McIntosh of Zurich attempted to pursue such documentation through Crawford, though none was provided to him before oversight of the Rhodes case was transitioned to Kathleen Fuell.

Zurich did not receive documentation of the nature and extent of the Plaintiffs' claimed damages until September 2003. That documentation came under cover of a demand letter dated August 19, 2003, and included a substantial volume of Mrs. Rhodes' medical records and bills, as well as reports from Plaintiffs' experts (including physicians, a life care planner and an economist) regarding Mrs. Rhodes' anticipated future care needs, future medical expenses, future economic losses and other claimed damages. It was the new information in this demand package—sent 13 months after the lawsuit was filed and 19 months after Mrs. Rhodes' accident—that enabled Zurich to conduct a reasoned analysis of the Plaintiffs' damages and to evaluate the extent to which its primary policy of insurance might be exposed. Zurich's analysis of the damage documentation was completed in November 2003, at which time Kathleen Fuell of Zurich concluded that the damages would likely exceed Zurich's \$2 million policy limits. Given the complexity of the claim, Zurich's obligation to fully investigate all aspects of the claim, and its prior lack of documentation regarding the Plaintiffs' claimed damages, Zurich's determination in November 2003 that its policy limits were exposed was timely and consistent with insurance industry standards.

The timing and nature of Zurich's efforts to settle Plaintiffs' claims were appropriate and consistent with insurance industry customs and practices.

After realizing in November 2003 that the Plaintiffs' damages were likely in excess of Zurich's policy limits, and in light of the Plaintiffs' demand and the representation by their counsel that Plaintiffs would not engage in mediation unless an offer of at least \$5 million was on the table, Ms. Fuell correctly concluded that the claims against the Personal Injury Defendants could not be settled without some contribution from National Union. During a conference call on November 19, 2003, Ms. Fuell informed AIG that Zurich would likely tender its policy limits to National Union for use in a settlement with the Plaintiffs. Ms. Fuell then promptly completed the internal reporting necessary to support a request to her superiors for settlement authority and authority to tender Zurich's policy limits to National Union. In January 2004, after receiving such authority, Ms. Fuell tendered Zurich's policy limits to National Union during a telephone conversation with Nicholas Satriano. While Mr. Satriano would not accept a verbal tender, that tender was sufficient to put AIG and National Union on notice that Zurich's policy limits were available for use in National Union's settlement negotiations with the Plaintiffs. Though Zurich complied with AIG's request for a formal letter tendering the policy limits, a formal written tender was not required, nor is it an insurance industry custom in this situation. In short, Zurich fulfilled its responsibilities to its policyholder, to the excess insurer and to the plaintiffs by tendering its policy limits verbally in January 2004, approximately nine months before the trial would commence.

Even after tendering its policy limits to National Union in January 2004, and despite the Plaintiffs' high settlement demand, Zurich attempted to keep the case on a settlement track. Specifically, in March 2004, Zurich made a settlement offer to Plaintiffs in the amount of its policy limits. In addition, rather than become embroiled in a dispute with National Union over which insurer had the obligation to pay for the defense of the Personal Injury Defendants after Zurich tendered its limits to National Union (a dispute which might have left the insureds without a defense), Zurich agreed to continue paying the defense costs so that the case could move toward resolution. Zurich did this despite that its policy arguably relieved it of the defense obligation after the tender. In summary, the nature and timing of Zurich's efforts to settle the Plaintiffs' underlying tort claims were consistent with insurance industry standards and good claim handling practices.

After it tendered its policy limits to National Union, it was appropriate and consistent with industry practice for Zurich to relinquish control of settlement negotiations to the excess insurer.

Once Zurich tendered its policy limits to National Union in January 2004, only National Union and the Plaintiffs could determine whether the case would ultimately settle or be resolved through a trial. Although Zurich continued to pay defense bills and sought to be consulted on litigation strategy after January 2004, Zurich played no part in the settlement process. No representative of Zurich attended the mediation in August 2004, nor was Zurich even aware that a mediation had been scheduled. Also, Zurich did not participate in and was never consulted about any of AIG's settlement negotiations with Plaintiffs' counsel at any point before or during the trial. Ultimately, the Rhodes case went to trial and ended in a jury verdict because the

Plaintiffs continued to demand more money to settle the case than National Union was willing to pay. Since Zurich had no obligation to pay more than its \$2 million policy limit and had no ability to influence settlement after it tendered its limits to National Union, it was reasonable and consistent with insurance industry practice for Zurich to step aside and allow AIG and National Union control all negotiations with the Plaintiffs.

DEFENDANT, ZURICH AMERICAN
INSURANCE COMPANY
By Its Counsel,

ROBINSON & COLE LLP



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Dated: September 22, 2006

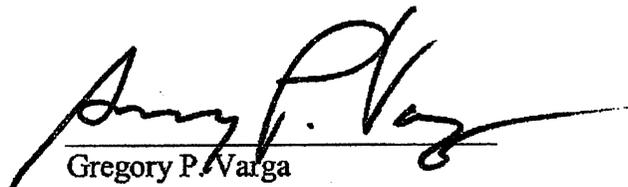
CERTIFICATE OF SERVICE

I, Gregory P. Varga, hereby certify that on this 22nd day of September, 2006, I caused a copy of the foregoing to be served by electronic mail and first class mail, postage prepaid upon:

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Boston, MA 02114



Gregory P. Varga

Curriculum Vitae KARL A. MASER

Professional Experience

1996 - Present Insurance Consultant
1994 - 1996 ITT Hartford - Vice President
Management Responsibilities for major litigation and extra-contractual claims.
1984 - 1994 ITT Hartford - Vice President
Management responsibilities for technical claims - all lines; property, casualty and group Life & Health.
1980 - 1984 Fireman's Fund Insurance Company - Vice President
Management responsibilities for technical claims all lines - property, casualty
1963 - 1984 Fireman's Fund Insurance Company
Various field and home office positions, including management of a large field office, administrative responsibility for 18 western field offices and working with outside consultants on productivity analyses and litigation management projects.

Industry Affiliations

Connecticut Bar	Admitted 1974
American Insurance Association	Claim Executive Committee, Liability Sub Committee
Center for Public Resources	Member Insurance Disputes Resolution Committee - Certified Mediator
American Bar Association	Vice Chair Economics of Law Committee; Tort and Insurance Practices Section; Litigation Section
Defense Research Institute	Member
Federation of Insurance and Corporate Counsel	Chairperson - ADR Committee
Industrial Risk Insurers	Dean - FICC Litigation Management College
American Nuclear Insurers	Member Loss Committee
Connecticut Fair Plan	Member Loss Committee
Mariners Club of Connecticut	Member and Chair - Loss Committee
California Fraud Bureau	Member and Chair
Insurance Information Institute	Member Insurance Advisory Committee
	Member Claims Advisory Committee

Insurance Consulting

Coverage & Complex Litigation - Insurance and Reinsurance
Mediator and/or Arbitrator

Education

1968 University of Connecticut - B.S. with Honors - Insurance Administration
1974 Western New England College - JD - Law
1964 - Present Numerous industry and company-sponsored technical, management and leadership courses.

Military Record

1955 - 1958 Honorable Discharge - U.S. Army