

5/17/2005

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

**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.**

CIVIL ACTION No.

05-1360BLS

**ANSWER OF DEFENDANTS,
AIG DOMESTIC CLAIMS, INC.
(F/K/A AIG TECHNICAL SERVICES, INC.)
AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH**

COME NOW the Defendants, AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc. ("AIGDC") and National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), and file this Original Answer to Plaintiffs' Complaint as follows:

INTRODUCTION

The allegations of the introductory paragraph are a preamble to which no response is required. To the extent that a response is required, AIGDC and National Union deny the allegations in the introductory paragraph and demand strict proof thereof.

1. AIGDC and National Union admit the allegations of paragraph 1.
2. AIGDC and National Union admit the allegations of paragraph 2.
3. AIGDC and National Union admit only that: (a) National Union is a member company of AIG, Inc.; (b) National Union is a Pennsylvania corporation with its principal place of business at 70 Pine Street, New York, New York; and (c) National Union issued a policy of excess insurance to Building Materials Corporation of America and GAF Corporation, Policy No. BE 357 40 68. AIGDC and National Union deny the remaining allegations of paragraph 3, and demand strict proof thereof.
4. AIGDC and National Union admit only that: (a) National Union is licensed by the Massachusetts Division of Insurance as a property & casualty insurance company; and (b) National Union has an office located at 99 High Street, Boston, MA.
5. AIGDC and National Union deny the allegations of paragraph 5, and demand strict proof thereof.
6. AIGDC and National Union admit only that: (a) AIGDC is a member company of AIG, Inc.; (b) AIGDC is a Delaware corporation with a principal place of business at 400 Interpace Parkway, Parsippany, New Jersey; and (c) AIGDC is registered to conduct business in Massachusetts.
7. AIGDC and National Union admit only that: (a) AIGDC is a member company of AIG, Inc.; and (b) AIGDC provides claims and litigation management services to AIG, Inc's business customers. AIGDC and National Union deny the remaining allegations of paragraph 7, and demand strict proof thereof.

8. AIGDC and National Union admit the allegations of paragraph 8.
9. AIGDC and National Union admit the allegations of paragraph 9.
10. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and thus deny said allegations and demand strict proof thereof.
11. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and thus deny said allegations and demand strict proof thereof.
12. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and thus deny said allegations and demand strict proof thereof.
13. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and thus deny said allegations and demand strict proof thereof.
14. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and thus deny said allegations and demand strict proof thereof.
15. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, and thus deny said allegations and demand strict proof thereof.
16. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and thus deny said allegations and demand strict proof thereof.

17. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and thus deny said allegations and demand strict proof thereof.

18. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and thus deny said allegations and demand strict proof thereof.

19. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and thus deny said allegations and demand strict proof thereof.

20. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and thus deny said allegations and demand strict proof thereof.

21. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and thus deny said allegations and demand strict proof thereof.

22. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and thus deny said allegations and demand strict proof thereof.

23. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, and thus deny said allegations and demand strict proof thereof.

24. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24, and thus deny said allegations and demand strict proof thereof.

25. AIGDC and National Union admit the allegations of paragraph 25.

26. AIGDC and National Union deny the allegations of paragraph 26, and demand strict proof thereof.

27. AIGDC and National Union admit only that the underlying Complaint: (a) contained loss of consortium claims on behalf of Mr. Rhodes and his daughter, Rebecca Rhodes; and (b) purported to describe, inter alia, the Plaintiffs' allegations concerning the manner in which the accident occurred; the alleged severity of Marcia Rhodes' injuries; and the amount of time Marcia Rhodes spent in the hospital after the accident.

28. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, and thus deny said allegations and demand strict proof thereof.

29. AIGDC and National Union admit the allegations of paragraph 29.

30. AIGDC and National Union deny the allegations of paragraph 30, and demand strict proof thereof.

31. No response is required by National Union and AIGDC to paragraph 31 because the allegations contained in paragraph 31 set forth conclusions of law to which no response by AIGDC or National Union is required. To the extent that a response is required, AIGDC and National Union deny the allegations of paragraph 31, and demand strict proof thereof.

32. No response is required by National Union and AIGDC to paragraph 32 because the allegations contained in paragraph 32 set forth conclusions of law to which no response by

AIGDC or National Union is required. To the extent that a response is required, AIGDC and National Union deny the allegations of paragraph 32, and demand strict proof thereof.

33. AIGDC and National Union deny the allegations of paragraph 33, and demand strict proof thereof.

34. AIGDC and National Union admit only that upon information and belief Zurich American Insurance Company issued GAF a Massachusetts Commercial Auto policy, no. MA 2165692-05, covering the period November 1, 2001 to November 1, 2002, with policy limits of \$2 million per accident. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 34, and thus deny said allegations and demand strict proof thereof.

35. National Union and AIGDC admit only that National Union issued a policy of excess insurance to Building Materials Corporation of America and GAF Corporation, Policy No. BE 357 40 68. This excess policy was excess over Zurich's \$2 million primary policy. AIGDC and National Union deny the remaining allegations of paragraph 35, and demand strict proof thereof.

36. National Union and AIGDC admit only that National Union issued a policy of excess insurance to Building Materials Corporation of America and GAF Corporation, Policy No. BE 357 40 68 which has limits of liability of \$50 million. This excess policy was excess over Zurich's \$2 million primary policy. AIGDC and National Union deny the remaining allegations of paragraph 36, and demand strict proof thereof.

37. AIGDC and National Union admit only that: (1) AIGDC provides certain claims handling services to National Union; (2) an AIGDC representative attended the mediation of the underlying matter in August 2004 and the trial of the underlying matter in September 2004; and

(c) AIGDC discussed settlement of the underlying matter with Plaintiffs' counsel. AIGDC and National Union deny the remaining allegations of paragraph 37, and demand strict proof thereof.

38. AIGDC and National Union admit only that upon information and belief, DLS and Zalewski qualify as Additional Insureds under the National Union policy. AIGDC and National Union deny the remaining allegations of paragraph 38, and demand strict proof thereof.

39. AIGDC and National Union admit only that Zurich provided a defense to GAF, DLS, Zalewski, and Penske in the underlying action. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 39, and thus deny said allegations and demand strict proof thereof.

40. AIGDC and National Union admit only that: (a) Morrison, Mahoney & Miller represented DLS and Zalewski in the underlying action; and (b) Nixon Peabody represented GAF in the underlying action. AIGDC and National Union deny the remaining allegations of paragraph 40, and demand strict proof thereof.

41. AIGDC and National Union deny the allegations of paragraph 41, and demand strict proof thereof.

42. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42, and thus deny said allegations and demand strict proof thereof.

43. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, and thus deny said allegations and demand strict proof thereof.

44. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44, and thus deny said allegations and demand strict proof thereof.

45. AIGDC and National Union admit only that National Union did not make a settlement offer to the Plaintiffs during the Summer of 2003. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 45, and thus deny said allegations and demand strict proof thereof.

46. AIGDC and National Union admit only that the Plaintiffs forwarded a written settlement demand dated August 13, 2003, with exhibits attached thereto, to attorneys from Nixon Peabody, LLP; Morrison, Mahoney & Miller; and Corrigan, Johnson & Tutor. AIGDC and National Union deny the remaining allegations of paragraph 46, and demand strict proof thereof.

47. No response is required by AIGDC and National Union to paragraph 47 because the Plaintiffs' August 13, 2003, correspondence is a writing, the contents of which speak for itself. To the extent that a response is required, AIGDC and National Union deny the allegations of paragraph 47, and demand strict proof thereof.

48. No response is required by AIGDC and National Union to paragraph 48 because the Plaintiffs' August 13, 2003, correspondence is a writing, the contents of which speak for itself. To the extent that a response is required, AIGDC and National Union deny that the Plaintiffs actually sustained such damages.

49. AIGDC and National Union deny the allegations of paragraph 49, and demand strict proof thereof.

50. AIGDC and National Union deny the allegations of paragraph 50, and demand strict proof thereof.

51. AIGDC and National Union deny the allegations of paragraph 51, and demand strict proof thereof.

52. AIGDC and National Union admit only that Jane Mattson, Ph.D., met with Marcia Rhodes at her home in Milford, Massachusetts on September 24, 2003. AIGDC and National Union deny the remaining allegations of paragraph 52, and demand strict proof thereof.

53. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53, and thus deny said allegations and demand strict proof thereof.

54. AIGDC and National Union deny the allegations of paragraph 54, and demand strict proof thereof.

55. AIGDC and National Union admit only that the Plaintiffs forwarded a written settlement demand dated December 1, 2003, to attorneys from Nixon Peabody, LLP; Morrison, Mahoney & Miller; Lynch & Lynch; and Corrigan, Johnson & Tutor.

56. AIGDC and National Union deny the allegations of paragraph 56, and demand strict proof thereof.

57. AIGDC and National Union deny the allegations of paragraph 57, and demand strict proof thereof.

58. AIGDC and National Union deny the allegations of paragraph 58, and demand strict proof thereof.

59. AIGDC and National Union deny the allegations of paragraph 59, and demand strict proof thereof.

60. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60, and thus deny said allegations and demand strict proof thereof.

61. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61, and thus deny said allegations and demand strict proof thereof.

62. AIGDC and National Union deny the allegations of paragraph 62, and demand strict proof thereof.

63. AIGDC and National Union deny the allegations of paragraph 63, and demand strict proof thereof.

64. AIGDC and National Union admit only that at a pre-trial conference held on April 1, 2004, a trial date of September 7, 2004, was assigned to the underlying matter. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 64, and thus deny said allegations and demand strict proof thereof.

65. AIGDC and National Union admit only that: (a) Russell X. Pollock, Esq. of Campbell, Campbell, Edwards & Conroy, P.C. attended the April 1, 2004, pre-trial conference in the underlying matter; and (b) in April 2004, Campbell, Campbell, Edwards & Conroy, P.C. entered an appearance as co-counsel for GAF in the underlying matter. AIGDC and National Union deny the remaining allegations of paragraph 65, and demand strict proof thereof.

66. AIGDC and National Union admit the allegations of paragraph 66.

67. AIGDC and National Union deny the allegations of paragraph 67, and demand strict proof thereof.

68. AIGDC and National Union admit only that: (a) the Plaintiffs videotaped the deposition of Dr. Krauth on May 11, 2004; (b) the Plaintiffs videotaped the deposition of Dr. Beisaw on May 12, 2004; and (c) the Plaintiffs videotaped the deposition of Dr. Roaf on May 13, 2004. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 68, and thus deny said allegations and demand strict proof thereof.

69. AIGDC and National Union deny the allegations of paragraph 69, and demand strict proof thereof.

70. AIGDC and National Union admit only that: (a) in May 2004, Campbell, Campbell, Edwards & Conroy, P.C. served a motion to extend discovery and to postpone the trial of the underlying matter; and (b) this motion was subsequently withdrawn. AIGDC and National Union deny the remaining allegations of paragraph 70, and demand strict proof thereof.

71. AIGDC and National Union admit only that: (a) on June 16, 2004, Judge Chernoff denied GAF's Motion to Compel the production of Marcia Rhodes' mental health records, but allowed GAF to discover a post-accident summary of Marcia Rhodes' mental health condition prior to the incident to the extent such a summary existed. Judge Chernoff also stated that "[t]he Court may well require an in camera inspection of Plaintiff's medical records." AIGDC and National Union deny the remaining allegations of paragraph 71, and demand strict proof thereof.

72. AIGDC and National Union admit only that: (a) in June 2004, Campbell, Campbell, Edwards & Conroy, P.C. again served a motion to extend discovery and to postpone the trial of the underlying matter; and (b) on July 7, 2004, Judge Donovan denied the motion

(except that Judge Donovan indicated the Plaintiff's deposition could proceed). AIGDC and National Union deny the remaining allegations of paragraph 72, and demand strict proof thereof.

73. AIGDC and National Union admit only that Campbell, Campbell, Edwards & Conroy, P.C. arranged for Dr. Hanak to examine Marcia Rhodes. AIGDC and National Union deny the remaining allegations of paragraph 73, and demand strict proof thereof.

74. AIGDC and National Union deny the allegations of paragraph 74, and demand strict proof thereof.

75. AIGDC and National Union admit the allegations of paragraph 75.

76. AIGDC and National Union admit only that a mediation of the underlying matter was held on August 11, 2004. AIGDC and National Union deny the remaining allegations of paragraph 76, and demand strict proof thereof.

77. No response is required by AIGDC and National Union to the allegations of paragraph 77 because the Plaintiffs have inappropriately disclosed confidential communications occurring at a mediation in violation of Massachusetts Gen. L. c. 233, §23C and the confidentiality agreement that was executed by the parties at the August 11, 2004, mediation. To the extent a response is required, AIGDC and National Union deny the allegations of paragraph 77, and demand strict proof thereof.

78. No response is required by AIGDC and National Union to the allegations of paragraph 78 because the Plaintiffs have inappropriately disclosed confidential communications occurring at a mediation in violation of Massachusetts Gen. L. c. 233, §23C and the confidentiality agreement that was executed by the parties at the August 11, 2004, mediation. To the extent a response is required, AIGDC and National Union admit that National Union on behalf of Zalewski, DLS, Penske, and GAF made a settlement offer of \$3.5 million.

79. No response is required by AIGDC and National Union to the allegations of paragraph 79 because the Plaintiffs have inappropriately disclosed confidential communications occurring at a mediation in violation of Massachusetts Gen. L. c. 233, §23C and the confidentiality agreement that was executed by the parties at the August 11, 2004, mediation. To the extent a response is required, AIGDC and National Union deny the allegations of paragraph 79, and demand strict proof thereof.

80. AIGDC and National Union admit only that upon information and belief at the August 11, 2004 mediation, the Plaintiffs apparently reached a settlement with Jerry McMillian's Professional Tree Service in the amount of \$550,000. AIGDC and National Union deny the remaining allegations of paragraph 80, and demand strict proof thereof.

81. AIGDC and National Union deny the allegations of paragraph 81, and demand strict proof thereof.

82. AIGDC and National Union admit only that: (a) on August 23, 2004, Judge Donovan denied GAF's emergency motion for an in camera review of Marcia Rhodes' mental health records and to compel deposition testimony relating to Marcia Rhodes' mental health history; and (b) the Plaintiff's deposition concluded on or about August 25, 2004. AIGDC and National Union deny the remaining allegations of paragraph 82, and demand strict proof thereof.

83. AIGDC and National Union admit only that a stipulation of liability by DLS and Zalewski was filed on August 31, 2004. AIGDC and National Union deny the remaining allegations of paragraph 83, and demand strict proof thereof.

84. No response is required by AIGDC and National Union to the allegations of paragraph 84 because the Plaintiffs have inappropriately disclosed confidential communications in violation of Massachusetts Gen. L. c. 233, §23C. To the extent a response is required,

AIGDC and National Union admit only that prior to trial the parties met with Judge Murphy in order to discuss the settlement of the underlying case. AIGDC and National Union deny the remaining allegations of paragraph 84, and demand strict proof thereof.

85. AIGDC and National Union admit only that prior to trial GAF stipulated to liability in the underlying matter. AIGDC and National Union deny the remaining allegations of paragraph 85, and demand strict proof thereof.

86. AIGDC and National Union deny the allegations of paragraph 86, and demand strict proof thereof.

87. AIGDC and National Union admit only that damages was the only issue tried with respect to GAF, DLS and Zalewski. AIGDC and National Union deny the remaining allegations of paragraph 87, and demand strict proof thereof.

88. AIGDC and National Union admit only that at the commencement of the trial of the underlying matter the offer made by National Union on behalf of Zalewski, DLS, Penske, and GAF was \$3.5 million. AIGDC and National Union deny the remaining allegations of paragraph 88, and demand strict proof thereof.

89. AIGDC and National Union deny the allegations of paragraph 89, and demand strict proof thereof.

90. AIGDC and National Union admit only that near the conclusion of the evidentiary portion of the trial, National Union made a settlement offer on behalf of Zalewski, DLS, Penske, and GAF of approximately \$6 million. AIGDC and National Union deny the remaining allegations of paragraph 90, and demand strict proof thereof.

91. AIGDC and National Union admit only that the jury awarded Marcia Rhodes \$7.412 million; Harold Rhodes \$1.5 million; and Rebecca Rhodes \$500,000. AIGDC and National Union deny the remaining allegations of paragraph 91, and demand strict proof thereof.

92. AIGDC and National Union admit only that the underlying defendants have filed a Notice of Appeal and that one of the grounds of appeal is that the underlying verdicts were excessive. AIGDC and National Union deny the remaining allegations of paragraph 92, and demand strict proof thereof.

93. No response is required by AIGDC and National Union to paragraph 93 because the allegations contained in paragraph 93 set forth conclusions of law to which no response by National Union or AIGDC is required. To the extent that a response is required, National Union admits only that it received a letter dated November 19, 2004. AIGDC and National Union deny the remaining allegations of paragraph 93, and demand strict proof thereof.

94. AIGDC and National Union are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94, and thus deny said allegations and demand strict proof thereof.

95. AIGDC and National Union admit only that in correspondence dated December 17, 2004, from Walter Nitti to Plaintiffs' counsel, Mr. Nitti made an offer of settlement to the Plaintiffs of \$7 million (\$1.25 million of which would be used to purchase an annuity). AIGDC and National Union deny the remaining allegations of paragraph 95, and demand strict proof thereof.

96. AIGDC and National Union admit only that the offer of settlement made by Walter Nitti to Plaintiffs' counsel in correspondence dated December 17, 2004, was intended by Mr. Nitti to resolve all potential liability of the defendants in the underlying matter as well as the

putative bad faith claim mentioned by the Plaintiffs - which AIGDC and National Union expressly denied. AIGDC and National Union deny the remaining allegations of paragraph 96, and demand strict proof thereof.

97. AIGDC and National Union admit only that Walter Nitti, among others, attended a meeting with Plaintiffs' counsel in January 2005 to discuss settlement of the underlying matter. AIGDC and National Union deny the remaining allegations of paragraph 97, and demand strict proof thereof.

98. AIGDC and National Union admit only that the offers of settlement made by Walter Nitti to Plaintiffs' counsel in January 2005 included an expected contribution of \$2 million from Zurich. AIGDC and National Union deny the remaining allegations of paragraph 98, and demand strict proof thereof.

99. AIGDC and National Union admit only that the offers of settlement made by Walter Nitti to Plaintiffs' counsel in January 2005 were intended by Mr. Nitti to resolve all potential liability of the defendants in the underlying matter as well as the putative bad faith claim mentioned by the Plaintiffs - which AIGDC and National Union expressly denied. AIGDC and National Union deny the remaining allegations of paragraph 99, and demand strict proof thereof.

100. AIGDC and National Union admit only that the offers of settlement made by Walter Nitti to Plaintiffs' counsel in January 2005 were intended by Mr. Nitti to resolve all potential liability of the defendants in the underlying matter as well as the putative bad faith claim mentioned by the Plaintiffs - which AIGDC and National Union expressly denied. AIGDC and National Union deny the remaining allegations of paragraph 100, and demand strict proof thereof.

101. AIGDC and National Union admit only that the offers of settlement made by Walter Nitti to Plaintiffs' counsel were intended by Mr. Nitti to resolve all potential liability of the defendants in the underlying matter as well as the putative bad faith claim mentioned by the Plaintiffs - which AIGDC and National Union expressly denied. AIGDC and National Union deny the remaining allegations of paragraph 101, and demand strict proof thereof.

102. No response is required by AIGDC and National Union to paragraph 102 because the allegations contained in paragraph 102 set forth conclusions of law to which no response by National Union or AIGDC is required. To the extent that a response is required, AIGDC admits only that it received a letter dated February 18, 2004. AIGDC and National Union deny the remaining allegations of paragraph 102, and demand strict proof thereof.

103. AIGDC and National Union admit only that in correspondence dated March 18, 2005, from Walter Nitti to Plaintiffs' counsel, Mr. Nitti made an offer of settlement to the Plaintiffs of \$7 million (\$1.25 million of which would be used to purchase an annuity). AIGDC and National Union deny the remaining allegations of paragraph 103, and demand strict proof thereof.

104. AIGDC and National Union admit only that the offer of settlement made by Mr. Nitti in the correspondence dated March 18, 2005, to Plaintiffs' counsel, was intended by Mr. Nitti to resolve all potential liability of the defendants in the underlying matter as well as the putative bad faith claim mentioned by the Plaintiffs - which AIGDC and National Union expressly denied. AIGDC and National Union deny the remaining allegations of paragraph 104, and demand strict proof thereof.

COUNT I

**(G.L. c. 176D and G.L. c. 93A)
(National Union)**

105. No response is required by AIGDC to paragraph 105 because the allegations contained in paragraph 105 do not pertain to AIGDC. National Union repeats and re-avers its responses to paragraphs 1 through 104 of its Answer, as if fully set forth herein.

106. No response is required by AIGDC to paragraph 106 because the allegations contained in paragraph 106 do not pertain to AIGDC. The allegations of paragraph 106 set forth conclusions of law to which no response is required. To the extent that a response is required, National Union admits only that it is duly authorized to conduct the business of insurance in Massachusetts.

107. No response is required by AIGDC to paragraph 107 because the allegations contained in paragraph 107 do not pertain to AIGDC. The allegations of paragraph 107 set forth conclusions of law to which no response by National Union is required. To the extent that a response is required, National Union denies that it has violated Chapters 93A or 176D, and demands strict proof thereof.

108. No response is required by AIGDC to paragraph 108 because the allegations contained in paragraph 108 do not pertain to AIGDC. The allegations of paragraph 108 set forth conclusions of law to which no response by National Union is required. To the extent that a response is required, National Union denies the that it has violated Chapters 93A or 176D and demands strict proof thereof.

109. No response is required by AIGDC to paragraph 109 because the allegations contained in paragraph 109 do not pertain to AIGDC. National Union denies the allegations of paragraph 109, and demands strict proof thereof.

110. No response is required by AIGDC to paragraph 110 because the allegations contained in paragraph 110 do not pertain to AIGDC. National Union denies the allegations of paragraph 110, and demands strict proof thereof.

111. No response is required by AIGDC to paragraph 111 because the allegations contained in paragraph 111 do not pertain to AIGDC. National Union denies the allegations of paragraph 111, and demands strict proof thereof.

112. No response is required by AIGDC to paragraph 112 because the allegations contained in paragraph 112 do not pertain to AIGDC. National Union admits only that it received a letter on behalf of the Plaintiffs dated November 19, 2004. National Union denies the remaining allegations of paragraph 112, and demands strict proof thereof.

113. No response is required by AIGDC to paragraph 113 because the allegations contained in paragraph 113 do not pertain to AIGDC. National Union denies the allegations of paragraph 113, and demands strict proof thereof.

114. No response is required by AIGDC to paragraph 114 because the allegations contained in paragraph 114 do not pertain to AIGDC. National Union denies the allegations of paragraph 114, and demands strict proof thereof.

COUNT II

**(G.L. c. 176D and G.L. c. 93A)
(AIGDC)**

115. No response is required by National Union to paragraph 115 because the allegations contained in paragraph 115 do not pertain to National Union. AIGDC repeats and re-avers its responses to paragraphs 1 through 114 of its Answer, as if fully set forth herein.

116. No response is required by National Union to paragraph 116 because the allegations contained in paragraph 116 do not pertain to National Union. The allegations of paragraph 116 set forth conclusions of law to which no response by AIGDC is required.

117. No response is required by National Union to paragraph 117 because the allegations contained in paragraph 117 do not pertain to National Union. The allegations of paragraph 117 set forth conclusions of law to which no response by AIGDC is required. To the extent that a response is required, AIGDC denies that it has violated Chapters 93A or 176D and demands strict proof thereof.

118. No response is required by National Union to paragraph 118 because the allegations contained in paragraph 118 do not pertain to National Union. The allegations of paragraph 118 set forth conclusions of law to which no response by AIGDC is required. To the extent that a response is required, AIGDC denies that it has violated Chapters 93A or 176D and demands strict proof thereof.

119. No response is required by National Union to paragraph 119 because the allegations contained in paragraph 119 do not pertain to National Union. AIGDC admits only that: (1) AIGDC provides certain claims handling services to National Union; (2) an AIGDC representative attended mediation of this matter in August 2004 and trial of this matter in September 2004; and (c) AIGDC discussed settlement of the underlying matter with Plaintiffs' counsel. AIGDC denies the remaining allegations of paragraph 119, and demands strict proof thereof.

120. No response is required by National Union to paragraph 120 because the allegations contained in paragraph 120 do not pertain to National Union. AIGDC denies the allegations of paragraph 120, and demands strict proof thereof.

121. No response is required by National Union to paragraph 121 because the allegations contained in paragraph 121 do not pertain to National Union. AIGDC denies the allegations of paragraph 121, and demands strict proof thereof.

122. No response is required by National Union to paragraph 122 because the allegations contained in paragraph 122 do not pertain to National Union. AIGDC denies the allegations of paragraph 122, and demands strict proof thereof.

123. No response is required by National Union to paragraph 123 because the allegations contained in paragraph 123 do not pertain to National Union. AIGDC admits only that it received a letter on behalf of the Plaintiffs dated February 18, 2005. AIGDC denies the remaining allegations of paragraph 123, and demands strict proof thereof.

124. No response is required by National Union to paragraph 124 because the allegations contained in paragraph 124 do not pertain to National Union. AIGDC denies the allegations of paragraph 124, and demands strict proof thereof.

125. No response is required by National Union to paragraph 125 because the allegations contained in paragraph 125 do not pertain to National Union. AIGDC denies the allegations of paragraph 125, and demands strict proof thereof.

COUNT III

**(G.L. c. 176D and G.L. c. 93A)
(Zurich)**

126-135. No response is required by National Union or AIGDC to paragraphs 126-135 because the allegations contained in paragraphs 126-135 do not pertain to either National Union or AIGDC. To the extent a response is required, AIGDC and National Union deny the allegations of paragraphs 126-135.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against AIGDC and National Union upon which

relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs failed to send a legally adequate and legally sufficient Chapter 93A demand letter to AIGDC or National Union and otherwise failed to comply with the statutory pre-requisites for bringing a Mass. G. L. Chapter 93A claim against AIGDC and National Union.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs cannot recover on their claims against AIGDC and National Union because the Plaintiffs did not suffer an injury that was caused by any unfair or deceptive acts or practices or other acts in violation of Mass. G. L. Chapter 93A by AIGDC or National Union.

FOURTH AFFIRMATIVE DEFENSE

Any recovery against AIGDC or National Union must be reduced to the extent that the Plaintiffs failed to mitigate, minimize or avoid their damages.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs cannot recover on their claims against AIGDC for alleged violation of Mass. G. L. Chapter 176D because AIGDC is not an insurance company and it did not insure GAF, Penske, Zaleski, or DLS against the underlying lawsuit.

SIXTH AFFIRMATIVE DEFENSE

The claims against AIGDC and National Union are premature and should be stayed pending the conclusion of the appeal of the underlying case.

SEVENTH AFFIRMATIVE DEFENSE

The damages alleged by the Plaintiffs were caused, if at all, by the acts or omissions of third-parties for whose conduct neither AIGDC nor National Union are legally responsible.

EIGHTH AFFIRMATIVE DEFENSE

The 1989 amendment to Mass. G. L. c. 93A, sec. 9 is unconstitutional to the extent it imposes punitive damages in an amount prohibited by State Farm Mutual Automobile Ins. Co. v. Campbell, 123 S. Ct. 1513 (U.S. 2003).

JURY DEMAND

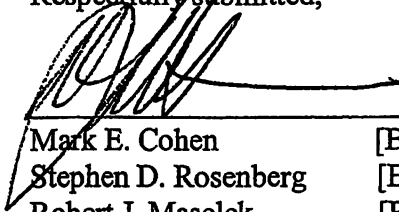
This defendant demands a trial by jury on all issues so triable.

WHEREFORE, National Union and AIGDC pray that judgment be entered in this action:

- A.** Dismissing Plaintiffs' Complaint against National Union and AIGDC; and
- B.** Awarding National Union and AIGDC their costs of suit, attorney's fees, and such other and further relief as the court may deem fair and proper.

Dated: May 17, 2005

Respectfully submitted,



Mark E. Cohen [BBO #089800]

Stephen D. Rosenberg [BBO #558415]

Robert J. Maselek [BBO #564690]

McCormack & Epstein

One International Place - 7th Floor

Boston, MA 02110

(617) 951-2929 Phone

(617) 951-2672 Fax

*Attorneys for Defendants AIG Domestic Claims, Inc.
(f/k/a AIG Technical Services, Inc.) and National
Union Fire Insurance Company of Pittsburgh, PA*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer has been served upon all counsel of record by depositing a copy hereof, postage prepaid, with the United States Postal Service, addressed to:

Margaret M. Pinkham, Esq.
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

DATED this 17th day of May, 2005.



Robert J. Maselek, Jr.

73604.1