

6/9/2003

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

SUPERIOR COURT  
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 )

**DEFENDANT, DRIVER LOGISTICS SERVICES INC., ANSWERS TO PLAINTIFF,  
MARCIA RHODES' FIRST SET OF INTERROGATORIES**

The defendant objects to the plaintiff's pages of instructions and definitions to the extent that they attempt to place a burden on the defendant beyond that required by the Rules of Civil Procedure. Notwithstanding nor waiving this objection, the defendant responds to these interrogatories as required by the Rules of Civil Procedure, giving words their ordinary meaning in the context of this action.

**INTERROGATORY NO. 1**

Identify all facts upon which you rely for your affirmative defenses claiming:

- a. Plaintiffs injuries were caused by persons over whom Driver Logistics had no control;
- b. Plaintiffs injuries were caused by an intervening or superseding cause;
- c. The plaintiff's recovery is either barred or reduced by contributory negligence.

**ANSWER**

Objection. The defendant objects to this interrogatory to the extent that it seeks information beyond the scope of Rule 26 and asks the defendant to make legal conclusions. Notwithstanding said objection and without waiving it, the defendant responds as follows:

- a. Building Materials Corp. of America d/b/a GAF Materials Corp. (hereinafter "GAF") was responsible for Mr. Zalewski's daily activities, including assignment of vehicles, routes and the like.

- b. The defendant is informed that a brake on the subject tractor trailer was inoperable at the time of the accident which may have been a intervening or superceding cause of the accident. In addition, the defendant is informed that at the time of the accident, roadwork was being performed which was both illegal and dangerous and not in compliance with various state and federal regulations. As discovery is ongoing, the defendant reserves the right to supplement this response.

**INTERROGATORY NO. 2**

Identify all facts upon which you rely in admitting the allegations contained in paragraph 7 of the Complaint, i.e., that the defendant, GAF, directed Carlo Zalewski's daily driving activities.

**ANSWER**

Objection. The defendant objects to this interrogatory in that when same was propounded, the plaintiff had filed her original complaint. Since the propounding of said interrogatories, the plaintiff has filed an amended complaint and a second amended complaint. As such, the defendant does not know what paragraph 7 the plaintiffs are referring to. Notwithstanding said objection, and without waiving it and to the extent the defendant understands this interrogatory, the defendant responds that pursuant to the contract between Driver Logistics and GAF, it was responsible for all of Carlo Zalewski's daily driving activities, including assigning him to the tractor-trailer, assigning routes that he worked, assigning the cargo that he hauled, and all other aspects of Mr. Zalewski's driving for GAF.

**INTERROGATORY NO. 3**

Identify the person who instructed, dispatched or otherwise assigned Zalewski to drive on GAF routes or deliver GAF loads. Your response should encompass all time frames, including January 9, 2002, in which Carlo Zalewski drove a GAP route or otherwise delivered GAF loads.

**ANSWER**

Objection. The defendant objects to this interrogatory to the extent that it is vague and not properly limited in scope of time. Specifically, the defendant is unable to determine whether the plaintiff means at the time Mr. Zalewski first was assigned to drive for GAF or throughout his entire tenure as a driver for GAF. Notwithstanding said objection, without waiving it, and to the extent the defendant understands plaintiff's interrogatory, the defendant responds that Mr. Zalewski was assigned to work for GAF shortly after being hired by Driver Logistics. Once he began driving for GAF, all of his daily activities, routes, assignments were dictated and controlled by GAF.

**INTERROGATORY NO. 4**

Identify all facts relied upon by DLS in making the determination that the accident in which Zalewski was involved on January 9, 2002 was "preventable.

**ANSWER**

Objection. The defendant objects to this request to the extent that it asks a legal conclusion that the defendant is not capable of making. Notwithstanding said objection and without waiving it, the defendant responds: in making the determination that the accident was preventable, Driver Logistics relied on the accident reports, photographs and various Department of Transportation and National Safety Counsel Standards.

**INTERROGATORY NO. 5**

Identify all DL employees/agents/representatives who investigated the January 9, 2002 accident or were otherwise involved in the determination of preventability, including name, title, responsibility or function in investigation/determination.

**ANSWER**

It is believed that Mike Kelley, Mark McLeash, Tom Schaefer and Greg McDaniel were involved. At the time, it was believed that Mike Kelley was a Driver Logistics employee who also drove for GAF. Tom Schaefer and Mark McLeash were both in management at the Driver Logistics facility in Springfield, Massachusetts.

**INTERROGATORY NO. 6**

Identify Carlo Melia and describe his relationship or course of dealings with DL. Your response should identify any appropriate time frames and DL's understanding of Mr. Melia's job responsibilities.

**ANSWER**

It is Driver Logistics' understanding that Mr. Melia is an employee of GAF and is in charge of GAF's national transportation fleet. He has been involved with Driver Logistics for several years in that capacity. It is Driver Logistics' understanding that Mr. Melia's course of dealing with Driver Logistics' includes contact with employees concerning issues that may arise concerning Driver Logistics' drivers assigned to GAF.

The undersigned deposes and says that he is an agent of the Driver Logistics, named defendant in the above-captioned action, and that he signs the answers to the interrogatories for and on behalf of the Driver Logistics and is authorized to do so; that the matters stated in the foregoing answers are not all within his personal knowledge and that he is informed that there is no officer or employee of said Driver Logistics who has personal knowledge of all such matters; that such facts as are stated in said answers which are not within the personal knowledge of the deponent have been assembled by authorized agents, employees and counsel of said defendant and the deponent is informed and believes that the facts stated in said answers are true and so states under the pains and penalties of perjury.



Driver Logistics  
By its designee Gregory McDaniel

As to objections,



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