COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No. 05-1360-BLS2
(Judge Gants)

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.

SECOND SUPPLEMENTAL ANSWER OF PLAINTIFFS TO EXPERT INTERROGATORIES OF AIG DOMESTIC CLAIMS, INC. f/k/a AIG TECHNICAL SERVICES AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S

Pursuant to Mass. R. Civ. P. 33, Plaintiffs hereby supplement the expert interrogatories of AIG Domestic Claims, Inc. f/k/a AIG Technical Services and National Union Fire Insurance Company of Pittsburgh, PA, submitted to each Plaintiff as the same numbered Interrogatory.

Plaintiffs reserve the right to further supplement this response.

GENERAL OBJECTIONS

Plaintiffs object to the disclosure of any information protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine.

Plaintiffs object to any interrogatory that purports to require anything beyond that which is required by Rule 33 of the Massachusetts Rules of Civil Procedure.

Plaintiffs object to any interrogatory that requires one or more conclusions of law.

Plaintiffs object to any interrogatory that calls for confidential information.

DEFINITIONS

A. As used herein, the term "the Accident" shall mean the crash that occurred on January 9, 2002 involving Marcia Rhodes and Carlo Zalewski.

B. As used herein, the term "AIGDC" shall mean and refer to AIG Domestic Claims, Inc. f/k/a AIG Technical Services, Inc., and any business entity owned, operated, or managed by, AIG Domestic Claims, Inc. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, predecessors, agents, counsel, attorneys, and other representatives of each such entity.

C. As used herein, the terms "Crawford" and "Crawford & Co." shall mean and refer to Crawford and Company and any business entity owned, operated, or managed by Crawford and Company, any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Crawford and Company and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

D. As used herein, the term "Driver Logistics" shall mean and refer to Driver Logistics Services, Inc. and any business entity owned, operated, or managed by Driver Logistics Services, Inc., any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Driver Logistics Services, Inc. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

E. As used herein, the term "GAF" or "GAF/Building Materials Corporation of America" shall mean and refer to Building Materials Corp. of America d/b/a GAF Materials Corp., and any business entity owned, operated, or managed by GAF Materials Corp., any parent, subsidiary, division, affiliate, or predecessor-in-interest of, GAF Materials Corp. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

F. As used herein, the term "National Union" shall mean and refer to National Union Fire Insurance Company of Pittsburgh, PA, and any business entity owned, operated, or managed by, National Union Fire Insurance Company of Pittsburgh, PA and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

G. As used herein, the term "Penske" shall mean and refer to Penske Truck Leasing Corp. and any business entity owned, operated, or managed by Penske Truck Leasing Corp., any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Penske Truck Leasing Corp. and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

H. As used herein, the term "Underlying Action" shall mean the personal injury action filed by Plaintiffs against GAF, Driver Logistics, Carlo Zalewski and Penske on or about July 12, 2002.

I. As used herein, the term "Zurich" shall mean, Zurich American Insurance Company and any business entity owned, operated, or managed by Zurich American Insurance Company, any parent, subsidiary, division, affiliate, or predecessor-in-interest of, Zurich

American Insurance Company and the officers, directors, employees, parents, subsidiaries, divisions, affiliates, agents, counsel, attorneys, and other representatives of each such entity.

ANSWER

INTERROGATORY NO. 20

Please identify by name, occupation, professional title and present address each person expected to be called as an expert witness at the trial of this matter and for each expert, state:

(a) the subject matter on which each expert is expected to testify;
(b) the substance of the facts to which each expert is expected to testify;
(c) the substance of the opinions to which each expert is expected to testify; and
(d) a summary of the grounds for each such opinion.

ANSWER

A. Arthur Kiriakos

Plaintiffs may call Arthur Kiriakos as an expert witness. Mr. Kiriakos' expertise in the field of insurance and insurance claims handling is derived from 26 years of experience in various technical claim handling and management positions in the property casualty insurance industry, including both personal and commercial lines of business at both the primary and excess layer. He holds a Masters in Business Administration (MBA) from Suffolk University, and has published on three occasions with the MCLE, and Massachusetts Bar Continuing Education. A copy of his Curriculum Vitae and testimony log are attached hereto.

Because there is still outstanding discovery, Mr. Kiriakos has reserved the right to alter or amend his opinion. If he does so, this response will be supplemented.

In forming his opinions, Mr. Kiriakos reviewed and relied upon the following materials:

1. Copy of Crawford & Co. claims file, as produced to Plaintiffs' counsel;
2. Copy of Zurich claims documents, as produced to Plaintiffs' counsel;
3. Copy of AIGDC, as an agent of National Union Fire Insurance Company, claims documents, as produced to Plaintiffs' counsel;
4. Plaintiff's medical documentation;
5. Plaintiffs' counsel's original demand letter;
6. Original Summons and Complaint;
7. Discovery documents from the Underlying Action;
8. All claims file notes and correspondence pre-verdict, as produced to Plaintiffs' counsel;
9. Correspondence between Plaintiffs' attorney and Crawford & Co., as an agent for Zurich;
10. Underlying verdict;
11. 93A/176D demand letter;
12. 93A/176D Summons and Complaint;

13. Zurich, and AIGDC's responses to Interrogatories;
14. 93A and 176D discovery materials, produced to Plaintiffs' counsel;
15. Various correspondence up to September 23, 2005, as produced to Plaintiffs' counsel;
16. Transcripts and Exhibits from depositions in this action; and
17. Chronology supplied by Plaintiffs' counsel.

If he does testify, Mr. Kiriakos is expected to provide the following opinions:

Factual Summary

On January 9, 2002, Ms. Marcia Rhodes was operating her motor vehicle on Route 109 in Medway. She was instructed by a police officer to stop her vehicle as she approached a site where tree stumps were being ground down on the side of the road. Behind her, Route 109 was straight for at least 750 feet with a slight decline toward Ms. Rhodes. While stopped, Ms. Rhodes' vehicle was struck in the rear by a tractor-tanker trailer, operated by Carlo Zalewski. There had been no vehicles between Ms. Rhodes' car and the tractor-tanker. Ms. Rhodes' vehicle was struck with enough force to result in the police officer at the site, a Sergeant Boultenhouse, of the Medway, Massachusetts Police Department, to have to jump out of the way of the vehicle. Ms. Rhodes' vehicle suffered total loss damage, and this resulted in the catastrophic injury, paraplegia.

The operator of the truck, by his own admission, had been distracted by an oncoming vehicle, and when he looked back in his direction of travel, it was too late to stop. The driver was cited for negligent operation/driving to endanger. The driver was an employee of Driver Logistics Services and was hired out to GAF/Building Materials Corporation of America to drive the tractor. The truck had been leased from Penske Corp.

Plaintiffs filed suit against Mr. Zalewski; GAF/Building Materials Corporation of America who had a $2 million commercial auto policy through Zurich and an excess policy of $50 Million per occurrence/$50 Million aggregate through National Union Fire Insurance Company (AIG); Driver Logistics Services; and Penske. The above mentioned policies, with endorsements, covered GAF, Driver Logistics Services, Penske, the tractor tanker and the driver. There were also third-party defendants to the Underlying Action, namely, the Town of Medway, who was subsequently released from the litigation as a result of a Motion for Summary Judgment, and the tree subcontractor, who the defendants claimed had a duty to set up warnings at the site. The tree subcontractor settled with Plaintiffs for $550,000 before trial.

To investigate this claim, Zurich, retained the services of Crawford & Co. ("Crawford") as a third-party administrator (TPA) to perform the initial and follow-up claims investigation, including liability and damages investigation, as well as to offer reserve and settlement recommendations. Zurich held the final decision on reserves and use of its policy limits for settlement.

On January 23, 2002, two weeks post-loss, Crawford was cognizant of the culpable conduct of the driver of the GAF vehicle and noted that GAF was contractually obligated to

provide coverage to the DLS driver. By January 25, 2002, Crawford knew that "liability favors the claimant no matter where it flows from" (Bates No. ZA00594).

On January 30, 2002, 21 days post-loss, Crawford issued its first full formal report in which it classified the claim as catastrophic. The report further documented the Plaintiff's injuries, informing GAF and Zurich that she is paralyzed, she suffers from pneumonia and pancreatic infection and that Crawford was "aware that the case carries a high value." (Bates Nos. ZA00421-00427, 02000-02008).

From as early on as 32 days post-accident, the excess carrier, National Union Fire Insurance Company, through its agent AIGTS, had notice of this loss, and within two months, they had confirmed such notice with the primary insurer. (Bates Nos. 1759, 1760, 1267-68).

It was clear that the plaintiff, a 48 year old married female, suffered life altering injuries which have affected her individually, as well as her relationship with her husband and daughter. Her injuries are well documented and do not need to be listed. Yet, it is important to note that at the time of the trial the medical costs to date, along with a projected life care plan, out-of-pocket expenses including modifications to the house, plus interest, totaled more than $3.5 Million.

At all times, liability was not only reasonably clear, it was absolute versus the driver, as the accident and subsequent damages suffered by Ms. Rhodes were caused by Mr. Zalewski's failure to stop. In fact, just before trial, Mr. Zalewski, Driver Logistics and GAF/Building Materials Corporation of America all stipulated to liability. Nonetheless, Plaintiffs were forced to go through a trial on damages.

From February 11, 2002, until the date of trial, from a factual stand point, nothing had changed. It was clear Ms. Rhodes suffered a catastrophic injury, the lion's share of culpability rested with the operator of the tractor trailer, and there existed a primary and excess layer of insurance for GAF/Building Materials Corporation of America, and all insurers had notice of this loss.

Even after the jury returned a verdict in excess of $9.4 million (almost $12 million including pre-trial interest) on September 15, 2004, the insurers still did not effectuate a prompt and fair settlement. In December 2004, Zurich finally paid its policy limits, plus post-judgment interest, in response to Plaintiffs' Chapter 93A Demand Letter. AIG, meanwhile, continued to make low settlement offers while pursuing an appeal. In June, 2005, AIG finally agreed to settle the underlying case for $8.965 million (in addition to the $2.32 million from Zurich and $550,000 from the tree subcontractor). That $11.835 million amount came nine months after the verdict, and almost 3 ½ years post-accident.

Opinions

I. Crawford acted reasonably in their investigation, evaluation, and in providing recommendations for disposition of this claim and properly reported to the insurers.

Crawford was retained by Zurich to act as the third-party administrator ("TPA") for this claim. The role of a TPA is an advisory one, and the specific difference between a third-party administrator and an insurer is that all financial control and disposition strategies are directed and controlled by the carrier, in this case Zurich. As the TPA, Crawford's duty was to complete the claims process and timely report on same. This process is a constantly evolving tripartite process of:

- Investigation;
- Evaluation; and
- Disposition.

In this case, Crawford promptly investigated both liability and damages and properly reported to and advised Zurich on this claim. Crawford determined the culpability of each tortfeasor and identified the extent of the plaintiff's injuries.

Beginning January 23, 2002, (Bates Stamp No. ZA00595), Crawford noted the contractual obligation to DLS and by January 25, 2002, that liability favored the plaintiff (Bates No. ZA00594). In its first full formal report dated January 30, 2002, Crawford stated:

> "to estimate the ultimate exposure is premature, but we are aware that this case will carry a high value. This claim is catastrophic." (Bates Nos. ZA00421-00427).

By March 6, 2002, Crawford had provided notice to the excess carrier and AIG acknowledged receipt of same. (Bates Nos. 1759-1760, 1267-1268). Furthermore, the reserve recommendation noted a policy limits exposure by as early as April 8, 2002, 90 days post-loss (Bates No. ZA00428), and repeated thereafter. Finally, as early as September 25, 2002, Crawford even communicated to the primary and excess insurers that the case had a potential value of at least $5 million, and repeated it over and over again. (Bates Nos. ZA 0434, ZA 0541, ZA 0547, ZA 0553, ZA 0555, ZA 0557).

Crawford's reporting of this claim was within industry standard for a third-party administrator as it promptly investigated and repeatedly advised Zurich as to liability, damages and exposure. Crawford's findings and recommendations for raising the reserve were repeated frequently in Liability Transmittal Letters and subsequent reports to Zurich and AIG, until they were finally followed almost two years post-loss. Crawford's conduct was within acceptable industry standards.

II. The insurers should have conducted an analysis of the coverage issues and determined that GAF, DLS, Zalewski and Penske were covered for this accident within 30 days of receiving notice of the claim. The one year that it took to make this determination is well beyond industry standard.

Based on the language of the primary and excess policies, and the endorsements, the identification of coverage affordability for the GAF/DLS driver and Penske should have unfolded in a very simple process. In January 2002, a copy of the policy for GAF should have been secured by the carrier. Analyzing coverage should not have taken more than 30 days given that within the first month, it was noted that the policy clearly endorsed motor vehicles used by the insured. The broker was involved and had supplied all requisite material, and could have been utilized to supply all policy documents, including all specific endorsements. The number of insureds and potential additional insureds were limited. Moreover, a risk manager was also involved and could have assisted in the review and analysis of coverage under the primary policy.

With ongoing delay, the carrier did not retain coverage counsel for eight months, and then waited another five months for a response, with no aggressive follow up, despite the fact that it is the insurance carrier's primary duty to confirm and identify all coverage afforded under the policy. This delay of over one year is well outside of acceptable industry practice, as it is the carrier's duty to direct the claims investigation, of which coverage is a part.

III. The possible existence of other primary policies, which may have covered defendants, would not have changed the primary duties of the insurer, Zurich, to GAF/Building Materials Corporation of America or the Plaintiffs.

The existence of additional policies only afford additional coverage, it does not remove the duty owed to the insured, or the claimant. The existence of possible additional policies for co-defendants would just lessen the potential financial impact, it does not change Zurich's duty to investigate, evaluate, and negotiate the disposition of a claim in a timely fashion once liability is reasonably clear. In this case, liability was noted to be adverse from the outset, and Crawford reported on the catastrophic damages. Zurich's attempts to determine if there was additional insurance did nothing but contribute to the extreme delay in this case.

IV. Within the insurance industry, the primary carrier has a duty to formally tender its policy limits to the excess carrier, in writing, when it is clear that potential exposure exceeds its policy limit. This formal tender is in addition to, and after, initial notice to the excess carrier.

In the Rhodes case, Crawford notified AIG of its potential excess exposure on February 11, 2002, 32 days post loss. A confirmation was entered by AIG regarding the possible excess exposure on March 5, 2002. It was clear that the primary policy limit was exposed as early on as April 8, 2002. At that time, Zurich had notice that their policy limit was exposed and the value of this case exceeded their policy limits. Zurich had a duty at that time to their insured, and to the excess carrier, to evaluate the loss and tender their policy so that the excess insurer could take over adjusting the entire loss and the resulting settlement discussions.

Furthermore, at least by September 25, 2002 (8 ½ months post-loss), Crawford noted that there is a universal case value of $5 Million to $10 million. (Bates No. ZA 0434). On May 16, 2003, Zurich acknowledged that the TPA was recommending the policy limit, yet Zurich held up the same, claiming that it needed more reporting. However, as noted on June 4, 2003, the action plan was clear, "secure authority and attempt to settle." (Bates No. ZA0544). This continued delay went on even after Plaintiffs made two settlement demands in the summer of 2003.

On September 11, 2003, the Crawford adjuster noted "we wish to increase the reserve," she forwarded another status report, and pointed out that the same authority had been requested since April 8, 2002. On September 24, 2003, Crawford communicated the case value of $5 Million to $7 Million. (Bates No. ZA00575-76).

Finally, on December 12, 2003, almost two years after the accident, Kathleen Fuell of Zurich finally stated that she would be recommending a tender of Zurich's policy limits to AIG, but the actual tender did not occur until March 29, 2004.

V. The dispute regarding who would pay defense costs continually stalled negotiation, and further delayed the disposition of this claim.

The paper trail indicates that both insurers had lost site of trying to effectuate settlement once liability became clear favoring instead the "bickering" back and forth of who was going to pay defense costs. This dispute should not have stopped, or stalled, settlement negotiations; the Insurers should have dealt with the issue separately and they should have done the right thing for both the Insured and the Claimant. This is an issue between insurers and it does not remove the insurer's duty of extending a reasonable offer when liability is reasonably clear as outlined by Anthony Bartell, Esq., GAF's counsel, on March 18, 2004. Regardless of the defense-cost issue, "[t]he excess carrier, AIG, runs afoul of Chapter 176D, by failing to respond substantively to the underlying plaintiff's excess demand." (Bates No. ZA418-20).

Coverage was to be "seamless", yet their actions made it clear that both Zurich and AIG ignored their promises to their Insured as the coverage had not changed, the facts of the loss were the same and the injury and damages had not changed. Nonetheless, the insurers continued to delay, which adversely exposed their insured, as well as the excess carrier, and greatly and negatively impacted the Plaintiff and her family. As a claims person, the duty owed is first to analyze coverage, and follow same to insure the protection of the policyholder.

VI. The excess carrier's duty or obligation as an excess insurer is the same as the primary insurer, once it is clear an exposure exists that will impact the excess layer of insurance and formal tender of the primary policy is received. AIG violated this duty.

From a claims function perspective, AIG has the right to investigate, evaluate, and dispose of the claim; it would have been advisable that they do so, especially since they were receiving reports from Crawford and were aware of the $18.5 million demand in July 2003 and the $16.5 million demand in August. AIG's "head in the sand" approach is outside of acceptable industry practice, and that approach unnecessarily exposed the insured and AIG shirked its fiduciary responsibilities to stockholders to make sure that reserves properly reflect the potential exposure.

The primary and excess carriers' obligations were heightened by the conference call of November 19, 2003, between Kathleen Fuell of Zurich, Nicholas Satriano from AIGTS, and the broker, Willis-Corroon, at which time Ms. Fuell committed to recommending a $2 Million tender of limits. This date can be used as notice, but also is another trigger point to evaluate and negotiate this claim by the excess carrier, wherein this is four months after the Plaintiffs' first settlement demand.

Finally, AIG agreed that settlement value of this case could be in excess of $6.6 Million and a verdict value in excess of $9.5 Million. Nicholas Satriano from AIG noted this during a March 5, 2004 meeting at GAF. This is significant for two distinctive reasons as it shows AIG was cognizant that this case's value was well in excess of the primary layer of insurance. More importantly, from a claim's perspective, AIG re-evaluated the claim at a full value downward to only $3.75 Million on July 29, 2004, (Bates No. 2059), and then their opening offer was only $750,000 over the primary limit—almost $3 Million less than AIG's previous valued exposure. This offer was not only unreasonable as the special damages both present and future were in excess of this figure, but was so low that the offer was outrageous. This "lowball" and delay tactic was not only adversarial but outside of industry practice for extending a reasonable offer in light of the noted settlement value of over $6 Million.

AIG and/or its adjusters continually moved toward adversarial posturing with the primary insurer and the Plaintiffs' attorney to the point where there was an unnecessary and undue delay which was not only outside of acceptable industry practice, but as outlined by Attorney Bartell, also violated AIG's statutory duty under M.G.L. c. 176D. (Bates No. ZA0418).

VII. AIGTS, as an agent for National Union Fire Insurance Company (collectively "AIG"), never extended a reasonable offer before or during trial. Based on the facts presented, AIG's conduct for case disposition was not only outside of acceptable industry practice, it was outrageous.

Based on all of the materials reviewed, there is no question that a settlement value of this case was somewhere between $6 Million to $8 Million. This is repeatedly documented by Crawford and later by Zurich. Further, on March 5, 2004, AIG's own representative noted a settlement value of $6.6 Million. Thus, the conduct exhibited by AIG, as an agent for National Union Fire Insurance Company, in its opening settlement offer of $2.75 Million (including Zurich's policy), was so unreasonable that it could only be considered to violate industry

standards. It is acceptable practice to extend an initial or opening offer which is lower than the target settlement value, but an offer that was significantly lower and only extended after so much delay did nothing but create adversarial posturing, resulting in further delay in the resolution of this matter, and unduly forced the Plaintiffs to go to trial.

Moreover, at mediation the mediator, a very seasoned, retired defense attorney, felt that the case had a settlement value of $8 Million and one week before trial, the parties met with Judge Ernest Murphy to discuss settlement, and Judge Murphy valued the case at $10-$12 million. Nonetheless, AIG's final offer before trial was $3.5 Million. Nonetheless, the $3.5 million offer was reiterated on the first day of trial, after the defendants stipulated to liability. AIG's outrageous conduct is further exemplified by their offer while awaiting the verdict on September 15, 2004 of $6 Million ($4 Million over the primary policy). This offer was made more than a year after Plaintiffs' settlement demand, after forcing Plaintiffs through protracted litigation and through an arduous trial, while also being aware that the interest that had accrued on the claim had reached 27% on top of the total award, and the defendants had conceded liability. Yet, on the last day of trial, AIG extended an offer $600,000 lower than it had evaluated the case in March of 2004; given the surrounding circumstances, that offer was outrageous. Further, by refusing to make a fair settlement offer, AIG exposed their policyholder to an adverse verdict.

AIG's outrageous conduct continued even after Plaintiffs received a jury verdict for $9,412,000 (totaling $11,844,000 with pre-judgment interest). In response to Plaintiffs' Chapter 93A Demand letter, AIG, offered $7 million, including Zurich's $2 million, to settle all claims. Given that this offer was almost $5 million less than the jury award and interest, that offer was outrageous. The unreasonable nature of the offer is further buttressed by the fact that AIG eventually agreed to settle the underlying case for $8.965 million, in addition to the $2.3 million from Zurich and $550,000 from the tree subcontractor.

B. Mary Anne Dufault

The plaintiffs may call Mary Anne Dufault, R.N., C.C.M., of Case Management Associates, Inc. as a witness. In addition to any factual testimony, Ms. Dufault may testify as to certain opinions regarding Mrs. Rhodes' recovery. Ms. Dufault is a registered nurse and certified case manager with more than twenty years of clinical experience. Ms. Dufault worked at a rehabilitation hospital for ten years and provided clinical care for patients with catastrophic injuries during that time period. She has provided case management services for more than ten years, most recently with Case Management Associates, Inc. Her CV is attached.

In giving factual testimony and in forming her opinions, Ms. Dufault relied on the following information: life care plan prepared for Mrs. Rhodes by Adele Pollard; medical records regarding Marcia Rhodes' treatment between December 2002 - October 2003 by Dr. Elizabeth Roaf; Dr. Donna Krauth; Greater Milford Visiting Nurse Association; Sturdy Memorial Hospital; Milford Whitinsville Regional Hospital; photographs of Mrs. Rhodes' pressure ulcers; and, her personal knowledge of Marcia Rhodes and experience in providing her with case management services since 2005.

In the event that Ms. Dufault testifies, she is expected to provide the following information and opinions:

Marcia Rhodes developed decubitis ulcers (pressure sores) in December 2002, with Stage II and III pressure sores located on her buttocks and toes. A stage II decubitis ulcer is partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater. A stage III pressure ulcer involves full thickness skin loss with damage to or necrosis of subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue. The wounds initially began to heal, but became worse in January 2003. It is Ms. Dufault's opinion that had Mrs. Rhodes retained the services of a case manager by that point in time, the standard of care in the industry would have resulted in the case manager monitoring the healing and treatment of the ulcers, and after a period of two - three weeks without progress in the healing, a case manager would have contacted Dr. Roaf to recommend that Mrs. Rhodes be referred to a wound care center for the ulcers to be assessed and for treatment by a health care professional who is a Certified Wound Care Specialist or certified through the Wound, Ostomy and Continence Nursing Certification Board. A case manager would not have waited months to seek assistance from the treating physician to get Mrs. Rhodes a referral into a wound care clinic. In Ms. Dufault's opinion and experience, Mrs. Rhodes' treating physician, Dr. Roaf, would have been receptive to a case manager's input, and it is more likely than not that Mrs. Rhodes would have been referred to a wound care clinic in January, 2003 if she had a case manager. Mrs. Rhodes began treatment with a wound care clinic in mid-May, 2003, at which time she still suffered from a number of Stage III pressure ulcers. One of the two most serious ulcers on Mrs. Rhodes' buttocks healed by mid-September, 2003, and the other had healed by early October, 2003. It is Ms. Dufault's opinion that if Mrs. Rhodes had a case manager in collaboration with the physician and the wound care center by late 2002 or early 2003, the pressure sores would have healed by late May or early June 2003.

In February, 2003, Mrs. Rhodes sought treatment for swelling and redness in one of her legs. She was first seen at an emergency room, and then was seen by her primary care physician, Dr. Krauth. The swelling and redness was initially diagnosed as cellulitis – a tissue infection that was treated with antibiotics. The condition did not respond to antibiotic treatment, and a number of different antibiotics were used, yet the swelling and redness still persisted. In early March, 2003, Mrs. Rhodes received another course of antibiotics intravenously in the emergency room over a three day period. The swelling persisted, which lead Dr. Krauth to suspect an infection in the bone, not tissue. At Dr. Krauth's request, Dr. Mastroianni saw Mrs. Rhodes. He ordered an x-ray in late March, 2003, which revealed leg fractures. Mrs. Rhodes had fallen during a transfer in the bathroom on February 10, 2003, which was identified as the likely cause of the fractures. If Mrs. Rhodes had a case manager in early 2003, the case manager would have provided education on the protocol to follow in the event of a fall. The standard training that Mrs. Rhodes would have received would have been to seek medical treatment after every fall to either rule out or confirm an injury resulting from a fall. Bone fractures are common injury among paraplegics, especially in women with osteoporosis, like Mrs. Rhodes. In Ms. Dufault's opinion, it is more likely than not that if Mrs. Rhodes had a case manager in February 2003, Mrs. Rhodes would have sought medical treatment immediately after her fall, and would have been

educated to identify the fall as a possible trauma, such that a treating physician or emergency room personnel would have ordered x-rays of her legs, and diagnosed the leg fractures within a day or two of the fall. Even in the event that Mrs. Rhodes herself did not recognize the fall as a possible trauma, a case manager would have, and the case manager would have called Mrs. Rhodes' physician to recommend that the doctor order x-rays, or would have encouraged Mrs. Rhodes to seek treatment at an emergency room and request x-rays in order to determine if the fall caused any injury.

Ms. Dufault will testify that the optimal treatment plan for patients with spinal cord injuries is to receive inpatient rehabilitation upon discharge from a trauma unit. The most advanced treatment and research are available at Model Systems facilities, including the Craig Institute, and Boston Medical Center. If Mrs. Rhodes had a case manager working with her at the time of her discharge from UMass Memorial, or at any time thereafter, the case manager would have strongly recommended rehab at a model systems program. Based on Ms. Dufault's experience as a case manager, it is her opinion that her patients who have participated in model systems programs receive a higher level of education and self-empowerment after discharge than clients who go through a regular rehab facility. In Ms. Dufault's opinion, Mrs. Rhodes would have benefited from such a program early in her recovery and that it is more likely than not that she would have been able to achieve a better functional outcome, even taking into consideration her depression and mental health issues, had she participated in such a program, including her ability and confidence to make transfers. Mrs. Rhodes would have received a particular benefit from community re-entry and peer support programs at a model systems center, as there are relatively few middle-aged female paraplegics to whom she can turn to for support and guidance. While it can't be quantified, it is Ms. Dufault's opinion that "something has been lost" because Mrs. Rhodes did not go to a model systems program early in her recovery from the accident that paralyzed her. Ms. Dufault is of the opinion that Mrs. Rhodes can still benefit from such a program, but she cannot form an opinion as to whether, at this stage of her recovery and given her current physical and medical condition, Mrs. Rhodes could "make up" the functional deficit that resulted from not attending a model systems program.

MARCIA RHODES, HAROLD RHODES,
and REBECCA RHODES,

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DATED: September 25, 2006

CERTIFICATE OF SERVICE

Counsel for plaintiffs hereby certifies that a copy of the foregoing document was served via first class mail upon the following counsel:

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Dated: September 25, 2006

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