

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No. 05-1360-BLS2

MARICIA 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.)

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR
MOTION FOR SANCTIONS AGAINST AIGDC**

In its Opposition to Plaintiffs' Motion for Sanctions, AIG Domestic Claims, f/k/a AIG Technical Services, Inc. ("AIGDC") argues that it was entitled to instruct its employees to not appear for scheduled depositions because it served a non-emergency motion for a protective order under Superior Court Rule 9A, on the afternoon before the depositions were set to begin. AIGDC also claims that by serving a motion, it should be shielded from paying for the time and money expended by Plaintiffs in response to this tact. Accepting AIGDC's position would allow a party to obstruct the discovery process.

Mere service of a motion for a protective order does not automatically stay discovery and does not allow a witness to simply not appear for a properly noticed deposition. See Motion, pp. 3-4. In sharp contrast to AIGDC's gamesmanship, Zurich took the proper steps to seek resolution of a dispute on whether a deposition would go forward. On February 2, 2006, a full week before the next scheduled deposition of a Zurich witness, Zurich filed an Emergency Motion for Protective Order. Zurich's Motion then became the subject of a conference call with

this Court. By filing the motion on an emergency basis, Zurich allowed the parties and the Court to address the issues well in advance of the deposition. AIGDC's choice to serve its motion under Rule 9A the day before the deposition—and after Plaintiffs' counsel was already en route from Florida to New York—assured that the entire issue would be moot in less than 24 hours, while at the same time preventing Plaintiffs from conducting any discovery.¹

If AIGDC's position were correct, then a party could decide at the last minute that they did not want to appear for a deposition and simply serve a motion for protective order just hours before the deposition, thereby wasting the discovering party's time and expense of preparing for the deposition, making travel arrangements and scheduling a court reporter (all of which occurred here). This would also have the practical effect of shifting the burden of filing an emergency motion to the party seeking discovery, rather than on the party who seeks a continuance or protective order. By filing under Superior Court Rule 9A, the party seeking a delay can wait for an opposition to be served, and wait another 10 days before deciding whether to even file the motion because the entire issue would be moot since the scheduled deposition date will have been 3 weeks past. That result would allow a party to set frequent roadblocks and ultimately hijack their opponents' discovery schedule and their case.

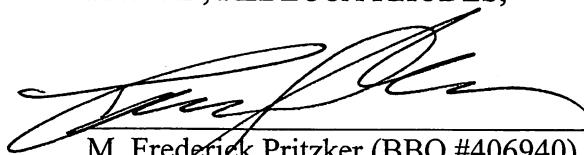
To prevent AIGDC from employing similar obstructionist tactics again, and to protect Plaintiffs' from additional costs and waste of time due to last minute cancellations and delays—Plaintiffs request that this Court require AIGDC, in addition to paying the costs described in the

¹ Defendants provided Plaintiffs with notice that they would not appear for the deposition, but as Plaintiffs told Defendants then, and stated in the Motion for Sanctions, Defendants could not unilaterally choose to not appear for properly noticed depositions. Additionally, Plaintiffs informed Defendants that they expected that the deposition of Mr. Nitti would likely go for more than one day, so the Plaintiffs could conduct the first day of the deposition without the disputed documents. Given Plaintiffs' position that they expected the witnesses to appear—especially since no motion for protective order had been filed with the Court—Plaintiffs' counsel had to travel to New York on the off-chance that Defendants changed their minds.

Motion, to produce its employee witnesses at the Boston offices of Brown Rudnick Berlack Israels, LLP.²

Respectfully submitted,

MARCIA RHODES, HAROLD RHODES INDIVIDUALLY, and HAROLD RHODES ON BEHALF OF HIS MINOR CHILD AND NEXT FRIEND, REBECCA RHODES,



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DATED: March 1, 2006

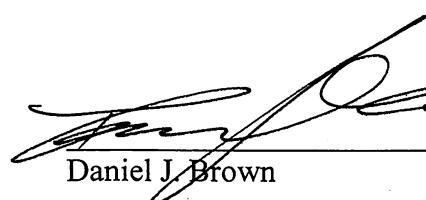
CERTIFICATE OF SERVICE

I, hereby certify that I have this day served the above document on the following counsel by hand:

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DATED: March 1, 2006

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² During the February 2, 2006 conference call, counsel for AIGDC indicated that the parties should be able to "work something out" with respect to conducting the depositions in Boston, but now refuses to do so because Plaintiffs filed a Motion for Sanctions.