

CAUSE NO. _____

MARY DOE and
JOHN DOE,

Plaintiffs,

V.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

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IN THE DISTRICT COURT

WILLIAMSON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, MARY DOE and JOHN DOE, Plaintiffs in the above-styled cause, hereby complaining of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant, and for this cause of action would show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

Plaintiffs intend to conduct this cause under a Level Two (2) discovery control plan, pursuant to Rule 190 of the Texas Rules of Civil Procedure.

**II.
PARTIES AND SERVICE**

Plaintiffs MARY DOE (hereinafter, "Mrs. Doe") and JOHN DOE (hereinafter, "Mr. Doe") are individuals, married (collectively referred to as, "Plaintiffs"), residing at 8369 Liberty Walk Drive, Round Rock, Texas 78681, in Williamson County.

Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (hereinafter, "Defendant" or "State Farm"), is an insurance carrier duly licensed and lawfully

doing business in the State of Texas. State Farm may be served with process by and through its registered agent, Ms. Shyama Terry, V.P.O., at 8900 Amberglen Boulevard, Austin, Texas 78729. **Plaintiffs are requesting citation only, and will arrange for private process service.**

III. JURISDICTION AND VENUE

This Court has personal jurisdiction over Defendant because it avails itself of the privilege of doing business in the State of Texas, and the subject matter of this action arises under the common law and statutes of the State of Texas. Furthermore, the amount in controversy is within the jurisdictional limits of this Court.

Venue is proper in this Court because suit on a policy against an insurance carrier may be brought in the county in which the policyholder or beneficiary instituting the suit resided at the time the cause of action accrued, pursuant to Texas Civil Practice & Remedies Code § 15.032.

IV. FACTS

On or about October 18, 2008, Mrs. Doe was the rear passenger of a motorcycle being driven by her friend, in Ruidoso, New Mexico. The motorcycle was traveling westbound on Sudderth Drive, at the appropriate speed for the posted speed limits and traffic conditions. During this time, Mr. Jeremiah Beasley was driving a 2001 Chevrolet Blazer eastbound on Sudderth Drive, intending to turn left into the parking lot of the Movie Gallery, located at 628 Sudderth Drive.

Mr. Beasley proceeded to turn left towards the entrance of the parking lot, without ascertaining that both westbound lanes were clear or stopped, and without yielding right of way to traffic in the westbound lanes. As a result of his sudden and careless maneuver, he turned directly into the path of travel of the motorcycle, giving the motorcycle no opportunity

whatsoever to stop or take evasive maneuvers to avoid a collision. There was a serious collision between the front end of the motorcycle and the rear passenger side of Mr. Beasley's vehicle, as a result of which the motorcycle was completely totaled, and both the motorcycle driver and Mr. Beasley were violently thrown. Mrs. Doe in particular was thrown into the oncoming eastbound lane of traffic, where she lay on the roadway in extreme pain until help arrived.

V. NEGLIGENCE

Mr. Beasley's aforementioned conduct constituted negligence, for one or more of the following reasons:

- (a) He failed to yield right of way to oncoming westbound traffic;
- (b) He failed to ascertain that both westbound lanes were either clear or stopped; and,
- (c) He otherwise failed to operate his motor vehicle as a reasonable driver of ordinary prudence would do in the same or similar circumstances.

In addition, Plaintiffs would show that the aforementioned conduct constituted negligence *per se*, in that it violated one or more traffic laws, and caused Mr. Beasley to receive a citation for failure to yield right of way while turning left, from the investigating officer at the scene. In this regard, Plaintiffs would show:

- (a) Mr. Beasley, without excuse, violated the aforementioned statute(s);
- (b) Said violation was the proximate cause of this occurrence; and,
- (c) Mrs. Doe was among the class of persons for whose benefit and protection such statute(s) were enacted.

The aforementioned actions and/or omissions were the proximate cause of the damages suffered by Plaintiffs, as set forth herein.

**VI.
DAMAGES**

As a proximate result of the aforementioned actions and/or omissions of Mr. Beasley, Mrs. Doe has sustained the following damages:

(a) Past reasonable and necessary medical expenses, in the following amounts:

(i)	Lincoln County EMS	\$ 433.39
(ii)	Lincoln County Medical Center	\$ 9,205.49
(iii)	Lincoln County Radiology	\$ 1,673.00
(iv)	Orthopedic Associates of Central Texas	\$ 3,135.00
(v)	The Urology Team	\$ 485.00
(vi)	Central Texas Spine Institute	\$ 755.00
(vii)	Associated Neurological Specialties	\$ 390.00
(viii)	Capitol Pain Institute	\$ 19,679.00
(ix)	Northwest Hills Surgical Center	\$ 5,904.31
(x)	Austin Radiological Association	\$ 4,360.00
(xi)	Austin Health Imaging	\$ 2,388.00
(xii)	Prescription medications	\$ 171.39

Total Past Medical Expenses: \$ 48,579.58

- (b) Future reasonable and necessary medical expenses of **\$17,033.08**, in all reasonable medical probability, in the opinion of Mrs. Doe's treating physician;
- (c) Past lost wages in the amount of **\$549.79**;
- (d) Past other out-of-pocket expenses / losses in the amount of **\$2,364.49**;
- (e) Past and, in all reasonable probability, future physical pain and suffering;

- (f) Past and, in all reasonable probability, future physical impairment;
- (g) Past and, in all reasonable probability, future physical disfigurement; and,
- (h) Past and, in all reasonable probability, future mental anguish.

Also as a proximate result of the aforementioned actions and/or omissions of Mr. Beasley, Mr. Doe has sustained the following damages:

- (a) Past and, in all reasonable probability, future loss of marital consortium; and,
- (b) Past and, in all reasonable probability, future mental anguish.

VII. UNDERINSURED MOTORIST CLAIM

Plaintiffs would show that at the time of the occurrence, Mr. Beasley maintained financial responsibility by way of an automobile insurance policy, but his limits of bodily injury liability coverage were so low that he was underinsured for the damages caused to Plaintiffs. Preceding the filing of the present cause of action, Mr. Beasley tendered the limit of his bodily injury liability insurance coverage of \$25,000.00 to Plaintiffs, and was accordingly released from any further financial liability arising out of this occurrence.

Plaintiffs would also show that at the time of the occurrence, they were named insureds on a Texas personal automobile insurance policy underwritten by Defendant State Farm, under Policy No. 0231-198-53P, which provided, among other things, underinsured motorist bodily injury coverage of up to \$25,000.00.

Because Mr. Beasley's negligence was the proximate cause of the aforementioned occurrence and because he failed to maintain financial responsibility in a sufficient amount to pay all damages proximately caused by his negligence, Plaintiffs subsequently made a claim with Defendant State Farm for the \$25,000.00 policy limits of their underinsured motorist coverage, to which State Farm assigned Claim No. 53-G279-283.

Plaintiffs submitted detailed proof of loss, by way of a demand letter and documentation of all of the aforementioned damages, including medical records, itemized bills, lost wages documentation, doctor's narrative opinion on future medical costs, photographs of property damage and disfiguring injuries, documentation of other out-of-pocket losses, and proof of Mr. Beasley's liability coverage limits. This detailed proof of loss was sent via certified mail, on December 15, 2009, and set forth a very reasonable fourteen (14) day timeframe within which State Farm should tender its \$25,000.00 policy limits.

State Farm made no response at all within this reasonable timeframe. The first response of any kind was a letter from State Farm, dated January 8, 2010, requesting additional documentation. On January 19, 2010, Plaintiffs submitted the only additional documentation that was necessary and relevant to the underinsured motorist claim (the other request for additional information was a direct statutory violation of the Texas Insurance Code, as discussed in further detail below), via facsimile, and extended a further reasonable seven (7) day timeframe within which State Farm should tender its \$25,000.00 policy limits.

State Farm failed to respond within this very reasonable timeframe, and continues to fail and refuse to tender the underinsured motorist limits. By reason of this failure, Plaintiffs hereby sue for payment of the \$25,000.00 underinsured motorist coverage to which they are entitled by the terms of their State Farm policy, as well as for all other monetary damages and remedies to which they are entitled by law by reason of State Farm's failure and refusal.

VIII. NOTICE AND CONDITIONS PRECEDENT

Plaintiffs have served Defendant State Farm with notice of this claim, including documentation and detailed proof of loss, via the aforementioned certified letter on December 15, 2009. All other conditions precedent to maintaining this cause of action have been

performed or have otherwise occurred.

IX. DECLARATORY JUDGMENT

Based on the foregoing facts and circumstances, Plaintiffs seek a declaratory judgment, pursuant to Texas Civil Practice & Remedies Code § 37.001 *et seq.*, to have their rights, status, and other legal relationships vis-à-vis Defendant, established by a Court of competent jurisdiction. In particular, Plaintiffs seek a declaration from the Court that:

- (a) Mr. Beasley was negligent and liable for the occurrence described above;
- (b) The amount of compensable damages suffered by Plaintiffs as a result of said negligence exceeded the \$25,000.00 already received from Mr. Beasley's automobile insurance policy;
- (c) The damages suffered by Plaintiffs fall within the terms of coverage afforded them under Policy No. 0231-198-53P with Defendant State Farm;
- (d) The amount for all categories of economic and non-economic damages (as set forth in Section VI of this petition) that Plaintiffs are entitled to recover from Defendant State Farm for their underinsured motorist Claim No. 53-G279-283, allowing for all applicable credits and offsets;
- (e) Defendant State Farm has engaged in *per se* statutory violations of the Texas Insurance Code, as set forth in more detail below, and is liable for all remedies set forth in the pertinent subchapters;
- (f) Defendant State Farm has breached its contract with Plaintiffs, and is liable for all remedies set forth at common law for said breach; and,
- (g) Finally, specifying the amount of damages owed to Plaintiffs under the insurance contract with Defendant State Farm, including interest, reasonable and necessary

attorneys' fees, Court costs, and other expenses.

**X.
CAUSES OF ACTION**

A. Breach of Duty of Good Faith and Fair Dealing

Under the established common law and judicial precedent in the State of Texas, Defendant State Farm owes its insured a duty of good faith and fair dealing, due to the special relationship that exists between and insurance carrier and its insured.

An insurance carrier is liable for breaching its duty of good faith and fair dealing owed to its insured when it fails to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim, as Defendant State Farm has done in this case.

As a result, Plaintiffs have suffered damages, including but not limited to: medical expenses; damage to their credit history due to unpaid medical expenses; loss of income; and, additional interest due to delay in payment of this claim.

B. Violations of Texas Insurance Code

State Farm's failure to attempt to effectuate a prompt, fair, and equitable settlement of Plaintiffs' claim, with respect to which State Farm's obligation has become reasonably clear, and its failure to promptly pay the full policy limits of Plaintiffs' coverage, constitute violations of Texas Insurance Code §§ 541 & 542, *et seq.* Specifically:

- (a) It is a violation of Chapter 541 for an insurer to engage in the following:
 - (i) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;
 - (ii) Refusing, failing, or unreasonably delaying an offer of settlement under applicable first-party coverage on the basis that other coverage may be

available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy; and/or,

(iii) With respect to a Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy all or part of the loss forming the basis of that claim.

(b) It is an “unfair claim settlement practice” and violation of Chapter 542 for an insurer to engage in the following:

(i) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear; and/or,

(ii) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

(c) Defendant State Farm has violated the aforementioned statutory provisions and engaged in unfair claim settlement practices, by:

(i) Unreasonably delaying in response to Plaintiffs’ initial detailed proof of loss and demand for underinsured motorist benefits;

(ii) Further unreasonably delaying and altogether failing to respond to Plaintiffs’ subsequent extended deadline after providing additional documentation;

(iii) Soliciting detailed documentation from Plaintiffs about health insurance coverage payments (i.e., explanation of benefits forms) made toward

Plaintiffs' voluminous medical expenses, and using such request for documentation as a basis for unreasonably delaying and/or denying Plaintiffs' underinsured motorist claim, in direct violation of the aforementioned provisions of Chapter 541 of the Texas Insurance Code; and,

- (iv) Forcing Plaintiffs to institute the present cause of action to recover not only the \$25,000.00 policy limits, but all additional actual damages beyond the policy limits, all interest, all attorneys' fees, all Court costs, and other such expenses, in an amount that would be substantially more than simply paying the policy limits due under the State Farm policy, in direct violation of the aforementioned provisions of Chapter 542 of the Texas Insurance Code.
- (d) In a lawsuit filed under the aforementioned subchapters of the Texas Insurance Code, Plaintiffs may obtain:
- (i) The amount of actual damages, plus interest thereon at the rate of eighteen percent (18%) per annum;
 - (ii) On a finding by the trier of fact that Defendant knowingly committed the act(s) complained of, an amount not to exceed three (3) times the actual damages;
 - (iii) Reasonable and necessary attorneys' fees, which are to be taxed as Court costs, along with all other taxable Court costs; and,
 - (iv) Any other relief which the Court deems proper.

- (e) Furthermore, pursuant to Texas Insurance Code § 542.061, the remedies provided under this subchapter are not exclusive and are in addition to any other remedy provided by statute or at common law.

C. Breach of Contract

Plaintiffs would show that they entered into a binding agreement with Defendant State Farm for automobile insurance under Policy No. 0231-198-53P, and that there existed a meeting of the minds as to the premiums to be paid by Plaintiffs, and all actions to be taken by Plaintiffs upon suffering a covered loss, and the duties and obligations of State Farm toward Plaintiffs.

Defendant breached the contract by failing to pay on a covered claim.¹

Defendant's breach has proximately caused Plaintiffs' damages, to include the policy amount, interest on the policy amount at eighteen percent (18%) per annum, reasonable and necessary attorneys' fees in prosecuting this claim to seek the policy amount, and Court costs.

XI. JURY DEMAND

Plaintiffs respectfully demand their right to have a trial by jury and hereby tender the appropriate jury fee to the District Clerk of Williamson County, Texas.

XII. DISCOVERY REQUESTS

Plaintiffs hereby incorporate the following requests for discovery into this petition:

¹ Specifically, Defendant State Farm's contract of insurance provides:

We will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by a covered person, or property damage, caused by an accident.

...

An uninsured motor vehicle means a land motor vehicle or trailer of any type ... which is an underinsured motor vehicle. An underinsured motor vehicle is one to which a liability bond or policy applies at the time of the accident but its limit of liability either:

- a. is not enough to pay the full amount the covered person is legally entitled to recover as damages; or
- b. has been reduced by payment of claims to an amount which is not enough to pay the full amount the covered person is legally entitled to recover as damages.

A. Request for Disclosure

Defendant is hereby requested to disclose, within fifty (50) days of service of this petition and incorporated request, the information or material described in Rule 194.2 (a) through (l) of the Texas Rules of Civil Procedure, to the undersigned counsel for Plaintiffs.

B. Interrogatories

Defendant is hereby requested to answer separately, fully, in writing, and under oath, the interrogatories attached hereto as “Exhibit A,” to the undersigned counsel for Plaintiffs, pursuant to Rule 197 of the Texas Rules of Civil Procedure, within fifty (50) days of service of this petition and incorporated request.

C. Request for Admissions

Defendant is hereby requested to admit or deny, in writing, the propositions attached hereto as “Exhibit B,” to the undersigned counsel for Plaintiffs, pursuant to Rule 198 of the Texas Rules of Civil Procedure, within fifty (50) days of service of this petition and incorporated request.

D. Request for Production

Defendant is hereby requested to produce the documents or tangible items attached hereto as “Exhibit C,” to the undersigned counsel for Plaintiffs, pursuant to Rule 196 of the Texas Rules of Civil Procedure, within fifty (50) days of service of this petition and incorporated request.

**XIII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendant be cited to appear and answer, and that on final trial on the merits, Plaintiffs have and recover from Defendant the following:

- (a) Actual damages in an amount in excess of the minimum jurisdictional limits of

this Court;

- (b) Pre-judgment at the highest legal rate of eighteen percent (18%) per annum;
- (c) Reasonable and necessary attorneys' fees;
- (d) Taxable Court costs;
- (e) Statutory damages in the amount of three (3) times the actual damages;
- (f) Post-judgment interest on the above amounts, compounded annually; and,
- (g) Such other and further relief, general or special, at law or in equity, to which the Court finds Plaintiffs justly entitled.

Respectfully submitted,

PATRICIA L. BROWN & ASSOCIATES, P.C.
819 ½ West 11th Street
Austin, Texas 78701
(512) 853-9068 – Telephone
(512) 853-9064 – Facsimile

ALI A. AKHTAR
State Bar No. 24027271

ATTORNEY FOR PLAINTIFFS

“EXHIBIT A”

PLAINTIFFS’ FIRST SET OF INTERROGATORIES

1. Please identify by name, title, and insurance adjuster’s license (if applicable) with the Texas Department of Insurance, the following individuals:
 - (a) All persons answering, assisting with, or providing information to be used for answering, these Interrogatories (including the person whose name is subscribed to the oath / verification to the answers).
 - (b) All claims adjusters, claims handlers, supervisors, or any other such individuals involved with Defendant’s handling of Plaintiffs’ underinsured motorist bodily injury Claim No. 53-G279-283.

ANSWER:

2. Please state with particularity all reasons, bases, and justifications for Defendant’s failure to pay the policy limits of Plaintiffs’ underinsured motorist bodily injury Claim No. 53-G279-283. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

3. Please identify with particularity all credits, off-sets, or discounts (if applicable) that Defendant is claiming with regards to Plaintiffs’ personal injury protection (PIP) benefits, health insurance benefits, or any other such source of recovery or insurance for Plaintiffs’ damages in this matter. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

4. If Defendant is contending that either (or both) Plaintiff was/were contributorily or comparatively negligent with respect to the accident made the basis of this claim, please describe in full the factual bases (including identification of documents and witnesses, if any) for the contention that Plaintiff(s) was/were negligent. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

5. If Defendant is contending that the accident made the basis of this claim was an unavoidable accident, or the result of a sudden emergency, please describe in full the factual bases (including identification of documents and witnesses, if any) for such contention. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

6. If Defendant is contending that any of the medical treatment submitted in support of Plaintiffs' underinsured motorist bodily injury Claim No. 53-G279-283 was not necessary, please describe in full the factual bases (including identification of documents and witnesses, if any) for such contention. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

7. If Defendant is contending that any of the charges for medical treatment submitted in support of Plaintiffs' underinsured motorist bodily injury Claim No. 53-G279-283 were not reasonable, please describe in full the factual bases (including identification of documents and witnesses, if any) for such contention. *See* Tex. R. Civ. P. 192.3(j).

ANSWER:

8. If Defendant is claiming that any part of the entire file pertaining to Plaintiffs' underinsured motorist bodily injury claim is subject to attorney-client or work-product privilege, then please identify the name of the attorney(s) that participated in, provided advice or counsel, or otherwise assisted in the process of evaluating Plaintiffs' claim.

ANSWER:

9. For each attorney listed in the answer to Interrogatory No. 8, please provide the date upon which that attorney first became involved in providing advice, counsel, or assistance in the evaluation of Plaintiffs' claim, as well as the general type of advice, counsel, or assistance that the attorney provided. This Interrogatory, of course, does not call for the disclosure of any communications between that attorney and any other employee of Defendant involved in the evaluation of Plaintiffs' claim.

ANSWER:

10. For each attorney listed in the answer to Interrogatory No. 8, please state whether that attorney is serving as defense counsel, or serving on the team of defense counsel, for the defense of this lawsuit.

ANSWER:

11. Please state the date upon which Defendant is claiming it anticipated lawsuit in this matter.

ANSWER:

“EXHIBIT B”

PLAINTIFFS’ FIRST REQUEST FOR ADMISSIONS

1. Plaintiffs had a policy of automobile insurance coverage with Defendant as of the date of the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

2. Plaintiffs’ automobile insurance coverage with Defendant included underinsured motorist bodily injury coverage.

ADMIT: _____ **DENY:** _____

3. Plaintiffs’ underinsured motorist bodily injury coverage was in the amount of \$25,000.00 per person as of the date of the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

4. Plaintiffs’ automobile insurance coverage with Defendant was in full force and effect as of the date of the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

5. Plaintiffs were current in paying their premiums for automobile insurance coverage with Defendant as of the date of the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

6. Plaintiffs’ counsel sent written demand for underinsured motorist benefits (Claim No. 53-G279-283) dated December 15, 2009.

ADMIT: _____ **DENY:** _____

7. Plaintiffs’ counsel’s written demand for underinsured motorist benefits (Claim No. 53-G279-283) contained medical records, itemized bills, wage loss documentation, and other written documentation for all economic damages asserted in Section VI of Plaintiffs’ Original Petition.

ADMIT: _____ **DENY:** _____

8. Plaintiffs' counsel's written demand for underinsured motorist benefits (Claim No. 53-G279-283) contained written proof of Jeremiah Beasley's limits of automobile liability coverage.

ADMIT: _____ **DENY:** _____

9. Plaintiffs' counsel's written demand for underinsured motorist benefits (Claim No. 53-G279-283) contained a request for Defendant's consent for Plaintiffs to settle their third party claim with Jeremiah Beasley's automobile liability insurance carrier.

ADMIT: _____ **DENY:** _____

10. Plaintiffs' counsel's written demand for underinsured motorist benefits (Claim No. 53-G279-283) contained a demand for tender of Plaintiffs' underinsured motorist bodily injury limits within fourteen (14) days of Defendant's receipt of the written demand.

ADMIT: _____ **DENY:** _____

11. Defendant granted its consent for Plaintiffs to settle the third party claim with Jeremiah Beasley's automobile insurance liability carrier.

ADMIT: _____ **DENY:** _____

12. Defendant did not grant its consent for Plaintiffs to settle the third party claim with Jeremiah Beasley's automobile insurance liability carrier.

ADMIT: _____ **DENY:** _____

13. Defendant conducted a background check into the financial solvency of Jeremiah Beasley.

ADMIT: _____ **DENY:** _____

14. Defendant did not conduct a background check into the financial solvency of Jeremiah Beasley.

ADMIT: _____ **DENY:** _____

15. Defendant did not tender the limits of Plaintiffs' underinsured motorist bodily injury coverage within fourteen (14) days of receipt of the December 15, 2009 written demand.

ADMIT: _____ **DENY:** _____

16. Defendant's first written response to the December 15, 2009 written demand was a letter dated January 8, 2010.

ADMIT: _____ **DENY:** _____

17. Defendant received the December 15, 2009 written demand prior to December 24, 2009.

ADMIT: _____ **DENY:** _____

18. Defendant's January 8, 2010 letter was more than fourteen (14) days after its receipt of Plaintiffs' December 15, 2009 written demand.

ADMIT: _____ **DENY:** _____

19. Defendant's January 8, 2010 letter requested proof of any underinsured motorist coverage on the motorcycle involved in the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

20. Plaintiffs' counsel provided the certificate of coverage for the motorcycle involved in the accident made the basis of this lawsuit.

ADMIT: _____ **DENY:** _____

21. Plaintiffs' counsel faxed the certificate of coverage for the motorcycle on January 19, 2010.

ADMIT: _____ **DENY:** _____

22. The certificate of coverage for the motorcycle indicated that there was no underinsured motorist coverage on the motorcycle.

ADMIT: _____ **DENY:** _____

23. Defendant's January 8, 2010 letter requested copies of all explanation of benefits (EOB) forms sent to Plaintiff by her health insurance carrier.

ADMIT: _____ **DENY:** _____

24. Defendant is governed by the statutory provisions of the Texas Insurance Code.

ADMIT: _____ **DENY:** _____

25. Defendant has violated Texas Insurance Code § 541.060(a)(8) by delaying payment of Plaintiffs' claim due to request for Plaintiff's explanation of benefits (EOB) forms.

ADMIT: _____ **DENY:** _____

26. At this time, Defendant's only pending or outstanding request for more information from Plaintiffs is the Plaintiff's health insurance explanation of benefits (EOB) forms.

ADMIT: _____ **DENY:** _____

27. Plaintiffs' counsel's January 19, 2010 letter offered an additional one-week deadline for Defendant to tender the underinsured motorist policy limits.

ADMIT: _____ **DENY:** _____

28. Defendant did not tender the underinsured motorist policy limits within the additional one-week deadline.

ADMIT: _____ **DENY:** _____

“EXHIBIT C”

PLAINTIFFS’ FIRST REQUEST FOR PRODUCTION

1. A true and correct copy of the full and complete policy / contract of insurance that existed between Plaintiffs and Defendant as of the date of the accident made the basis of this lawsuit.

RESPONSE:

2. A true and correct copy of the full and complete claims handling files (including files of all claims adjusters, managers, or supervisors) maintained by Defendant with regard to Plaintiffs’ underinsured motorist bodily injury claim that is the subject of this lawsuit, including memos, notes, meeting minutes, e-mail communications, or recorded telephone conversations between claims handlers, adjusters, supervisors, etc., with regard to Plaintiffs’ claim (excluding any documents prepared in anticipation of lawsuit).

RESPONSE:

3. Any and all documents evidencing the existence and amount of any credits or off-sets being claimed by Defendant (whether for personal injury protection (PIP), health insurance benefits, or any other source of insurance or recovery for Plaintiffs).

RESPONSE:

4. Any and all claims handling handbooks, manuals, or training materials generated or provided by Defendant to any of the claims adjusters, supervisors, etc. involved in the evaluation of Plaintiffs’ underinsured motorist bodily injury claim.

RESPONSE:

5. Any and all documents in support of the contention (if applicable) that Plaintiffs failed to comply with any provisions of their policy of insurance with Defendant.

RESPONSE:

6. Any and all documents in support of the contention (if applicable) that Plaintiffs were contributorily or comparatively negligent with regard to the accident made the basis of this lawsuit.

RESPONSE:

7. Any and all documents in support of the contention (if applicable) that the accident made the basis of this lawsuit was unavoidable, a sudden emergency, or the like.

RESPONSE:

8. Any and all documents in support of the contention (if applicable) that Plaintiffs were contributorily or comparatively negligent with regard to the accident made the basis of this lawsuit.

RESPONSE:

9. Any and all documents in support of the contention (if applicable) that any of Plaintiff's medical treatment submitted in support of the underinsured motorist bodily injury claim was not necessary.

RESPONSE:

10. Any and all documents in support of the contention (if applicable) that any charges or itemized bills for Plaintiff's medical treatment submitted in support of the underinsured motorist bodily injury claim were not reasonable.

RESPONSE:

11. Any and all documents in support of the contention (if applicable) that Plaintiffs were contributorily or comparatively negligent with regard to the accident made the basis of this lawsuit.

RESPONSE:

12. If the response to Plaintiffs' Request for Admission No. 4 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's notification to Plaintiffs that the policy was not in full force and effect as of the date of the accident.

RESPONSE:

13. If the response to Plaintiffs' Request for Admission No. 5 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's notification to

Plaintiffs that their premiums were delinquent, unpaid, etc. as of the date of the accident.

RESPONSE:

14. If the response to Plaintiffs' Request for Admission No. 8 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's belief that Jeremiah Beasley's liability insurance limits were more than \$25,000.00.

RESPONSE:

15. If the response to Plaintiffs' Request for Admission No. 14 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's background check into the financial solvency of Jeremiah Beasley.

RESPONSE:

16. If the response to Plaintiffs' Request for Admission No. 15 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's tender, or agreement to tender, Plaintiffs' underinsured motorist bodily injury limits.

RESPONSE:

17. If the response to Plaintiffs' Request for Admission No. 16 is anything other than an unqualified "Admit," any and all documents evidencing that Defendant made some written response or correspondence to Plaintiffs (or their counsel) prior to January 8, 2010.

RESPONSE:

18. If the response to Plaintiffs' Request for Admission No. 22 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's belief that there existed underinsured motorist coverage on the motorcycle policy.

RESPONSE:

19. If the response to Plaintiffs' Request for Admission No. 26 is anything other than an unqualified "Admit," any and all documents evidencing correspondence from Defendant requesting any other information or documents, other than the explanation of benefits (EOB) forms, which Plaintiffs have not yet provided.

RESPONSE:

20. If the response to Plaintiffs' Request for Admission No. 28 is anything other than an unqualified "Admit," any and all documents evidencing Defendant's tender, or agreement to tender, Plaintiffs' underinsured motorist bodily injury limits.

RESPONSE: