

CAUSE NO. _____

Jane Doe,

§

IN THE COUNTY COURT

Plaintiff,

§

§

§

V.

AT LAW NUMBER _____

§

§

JEFFREY DARLING,

§

§

Defendant.

§

WILLIAMSON COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Jane Doe, Plaintiff in the above-styled cause, hereby complaining of JEFFREY DARLING, Defendant, and for this cause of action would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

Plaintiff intends to conduct discovery under a Level Two (2) Discovery Control Plan, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PARTIES AND SERVICE**

Plaintiff Jane Doe (hereinafter, “Plaintiff”) is an individual residing at 1101 Jordan Lane, Round Rock, Texas 78665 (Williamson County).

Upon information and belief, Defendant JEFFREY DARLING (hereinafter, “Defendant”) is an individual residing at 2118 Jester Farms Road, Round Rock, Texas 78664 (Williamson County).

Plaintiff is requesting citation only, and will arrange for private process service.

**III.
JURISDICTION AND VENUE**

The subject matter and amount in controversy are within the jurisdictional limits of this Court, and this Court has personal jurisdiction herein because Defendant is a Texas resident.

Venue in this Court is proper because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Williamson County, pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(1).

**IV.
FACTS**

On or about April 7, 2010, shortly after 2:00 p.m. on a Wednesday afternoon, Plaintiff was the properly restrained driver of a 2001 Chevrolet Silverado C1500 pickup truck, in Round Rock (Williamson County), Texas. Plaintiff was traveling on Gattis School Road, approaching the intersection with Meister Lane. She slowed to a full stop for the red light at the intersection, waiting for the light to turn green and proceed on Gattis School Road. Another vehicle was also at a full stop behind Plaintiff, to the best of her recollection a red Toyota Corolla sedan.

After Plaintiff and the other car had been at a full stop for some time, the light finally turned green. Just as Plaintiff took her foot off the brake and prepared to press the accelerator, Defendant, driving a green Toyota Avalon full-size sedan, came up at high speed directly behind Plaintiff and the red Toyota Corolla, and violently slammed into the rear of the Toyota Corolla, which in turn was forcefully propelled into Plaintiff's vehicle. Upon information and belief, Defendant was driving while intoxicated (under the influence of an overdose of prescription drugs) at the time of this collision.

**V.
NEGLIGENCE**

Defendant's conduct was negligent, in one or more of the following ways:

- (a) He failed to control his speed;
- (b) He failed to maintain assured clear stopping distance;
- (c) He failed to timely apply his brakes to avoid a collision;
- (d) He was grossly negligent and/or reckless, in that he was operating a motor vehicle while intoxicated or otherwise under the influence of drugs; and,
- (e) He otherwise failed to operate his motor vehicle as a reasonable driver of ordinary prudence would have done in the same or similar circumstances.

The negligence of Defendant proximately caused the occurrence made the basis of this lawsuit, and Plaintiff's injuries and damages alleged herein.

In addition, the above-mentioned actions and/or omissions constituted negligence *per se*, in that they violated one or more traffic laws of the State of Texas, including and especially laws against driving while under the influence of drugs, and caused Defendant to be arrested for driving while intoxicated. In this regard, Plaintiff would show as follows:

- (a) Defendant, without excuse, violated said statutes;
- (b) Said violations were the proximate cause of the occurrence; and,
- (c) Plaintiff was among the class of persons for whose benefit and protection said statutes were enacted.

VI. DAMAGES

The above-referenced actions and/or omissions were the proximate cause of injuries and damages to Plaintiff, in particular:

- (a) Property damage to Plaintiff's vehicle;
- (b) Past reasonable and necessary medical expenses;
- (c) Past physical pain and suffering;

- (d) Past physical impairment;
- (e) Past mental anguish; and,
- (f) Past loss of wages.

**VII.
EXEMPLARY DAMAGES**

Defendant's above-referenced actions and/or omissions, when viewed objectively from the standpoint of a reasonable driver in Defendant's position, involved an extreme degree of risk, considering the probability and magnitude of harm to others, and Defendant had actual, subjective awareness of the risk involved, but proceeded with conscious indifference to the safety and welfare of others. Specifically, he became intoxicated (under the influence of drugs), and then proceeded to operate a motor vehicle in this state.

Therefore, pursuant to Texas Civil Practice & Remedies Code § 41.001(11) and 41.003, Defendant has, by clear and convincing evidence, committed gross negligence and recklessness so as to entitle Plaintiff to an award of exemplary damages, designed to punish Defendant and deter the same or similar conduct by similarly situated parties in the future.

Furthermore, pursuant to Texas Civil Practice & Remedies Code § 41.008(c)(14), Plaintiff pleads that Defendant has engaged in "intoxication assault" (as that term is defined under Texas law) with a motor vehicle, and therefore the exemplary damages that may be awarded against Defendant are not subject to the limitations set forth by Texas Civil Practice & Remedies Code § 41.008(b).

**VIII.
JURY DEMAND**

Plaintiff respectfully demands her right to have a trial by jury, and hereby tenders the appropriate jury fee to the County Clerk of Williamson County, Texas.

**IX.
DISCOVERY REQUESTS**

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)-(l) of the Texas Rules of Civil Procedure, to the undersigned counsel of record for Plaintiff.

B. INTERROGATORIES

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

C. REQUEST FOR ADMISSIONS

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

D. REQUEST FOR PRODUCTION

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

**X.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be

cited to appear and answer herein, and that upon final trial, Plaintiff have and recover:

- (a) Actual damages in excess of the minimum jurisdictional limits of this Court;
- (b) Pre-judgment interest at the maximum rate allowed by law;
- (c) Taxable costs of Court;
- (d) Exemplary damages as set forth above;
- (e) Post-judgment interest at the maximum rate allowed by law; and,
- (f) Such other and further relief to which Plaintiff may be justly entitled, at law or in equity.

Respectfully submitted,

BROWN, MCHAM & ASSOCIATES
819½ West 11th Street
Austin, Texas 78701
(512) 853-9068 – Telephone
(512) 853-9064 – Facsimile

ALI A. AKHTAR
State Bar No. 24027271

ATTORNEY FOR PLAINTIFF

“EXHIBIT A”

PLAINTIFF’S FIRST SET OF INTERROGATORIES

1. Please identify yourself, to include all of the following identification information: (a) Full legal name and any other names you have used; (b) Current driver’s license number, including type, state of issuance, and restrictions, if any; (c) Address(es) for the past five (5) years, giving the street, street number, city, state, zip code, and foreign country, if applicable; (d) Date and place of birth; and, (e) Social Security Number (necessary due to the medical authorization being requested in Plaintiff’s First Request for Production).
2. Identify each person answering these Interrogatories, supplying information, or assisting in any way with the preparation of the answers to these Interrogatories.
3. State the name and address of the owner and all occupants of the vehicle which you were operating at the time of the collision. If the owner is not yourself, please state how the vehicle came to be in your possession in the occurrence made the basis of this lawsuit.
4. Please state completely and fully how the occurrence made the basis of this lawsuit occurred, to include a description of the area in which the accident occurred, the weather conditions, visibility level, any obstructions or similar factors, the speed of your vehicle immediately prior to and at the time of the accident, the estimated speed of any other vehicle involved in the collision, where you were coming from and where you were traveling to at the time of the incident, and everything you did to avoid the incident.
5. If you are claiming that Plaintiff was in any way contributorily or comparatively negligent with regard to the incident made the basis of this lawsuit, please state in what way(s) the Plaintiff was negligent.
6. If you consumed any alcoholic beverage or any type of drug (whether prescription, non-prescription, over the counter, recreational, or illegal) in the twelve (12) hour period immediately preceding the accident, please state what was consumed, the time it was consumed, the quantity you consumed, the place where you consumed it, and identify by name, address, and telephone number any other person(s) present when you consumed it.
7. Describe in detail any conversations you have had with the Plaintiff or Plaintiff’s representative following the collision, including but not limited to any statements made by Plaintiff that you believe constitute an admission or declaration against interest.
8. State whether you have entered into any type of indemnity agreement, settlement, or

- understanding with any person or entity relevant to Plaintiff's claims and/or injuries made the basis of this suit.
9. If you have been involved in any way in any other automobile accidents, either prior to or subsequent to the one made the basis of this suit, please state when and where such accident took place, the general nature of such accident, and, if any claim or lawsuit arose from such accident, the identifying information for such claim or lawsuit, and the disposition of such claim or lawsuit.
 10. If you have ever been arrested, charged with, or convicted of any crime (including as a result of the occurrence made the basis of this lawsuit), please state what you have been arrested for, charged with, or convicted of, and state the date, place, and ultimate disposition of the offenses.
 11. For the last five years, list your traffic violation record, including but not limited to any citation, ticket, or warning received in connection with the accident made the basis of this lawsuit. With respect to any such citation or ticket received in connection with the accident made the basis of this lawsuit, please state the disposition, your exact plea, any amount(s) you paid in fees or fines, and any other penalties assessed against you or corrective actions undertaken by you (i.e., jail time, community service, restitution, defensive driving course, etc.).
 12. Please identify all prescription medications you were taking as of the date of the incident made the basis of this lawsuit, to include the dosage, the health care provider that prescribed the medication, the condition for which the medication was prescribed, and the side effects (if any) you experienced while taking it.
 13. If the medications you were taking on the date of this incident were not prescription medications (i.e., illegal, recreational, or prescription pharmaceutical received from some other source than a licensed doctor or pharmacy), then please identify the type of medication or drug taken, the person or entity from whom you received or obtained it, and the contact information (address and telephone) of such person or entity.
 14. Please state whether your driver's license has ever been suspended or revoked; if the answer is "yes," please state from what date it was suspended or revoked, upon what date it became reinstated (if applicable), under what circumstances it became suspended or revoked, and the entity or agency which declared it to be suspended or revoked.
 15. Please identify by name, address, and telephone, all medical providers (to include primary care doctors, specialty clinics, pain management, chiropractors, acupuncturists, hospitals, and all pharmacies from which you received medications) with whom you have treated in the past five (5) year period preceding this incident, up to the present, and briefly state the health conditions or symptoms for which you have seen each.

“EXHIBIT B”

PLAINTIFF’S FIRST REQUEST FOR ADMISSIONS

1. You were driving a vehicle on Gattis School Road, approaching the intersection with Meister Lane, on April 7, 2010.
2. You collided with the rear of a red sedan in front of you at the intersection.
3. The red sedan was at a stop before you collided with it.
4. The red sedan was not reversing before you collided with it.
5. You were traveling too fast for the traffic conditions ahead.
6. You were exceeding the speed limit prior to this collision.
7. You failed to maintain appropriate stopping distance between yourself and the red sedan.
8. You did not operate your motor vehicle as a reasonable driver of ordinary prudence would have done in the same or similar circumstances.
9. You are not claiming any negligence or responsibility on the part of the red sedan with regards to the collision.
10. You are not claiming any negligence or responsibility on the part of the Plaintiff with regards to the collision.
11. You were at fault in the collision.
12. Your negligence proximately caused the collision.
13. You were under the influence of some type of drug at the time of this collision.
14. You attempted to dispose of some bottles of pills at the scene of this accident.
15. You were arrested for driving while intoxicated as a result of this accident.
16. You have pled guilty to charges stemming from this accident.
17. You have been convicted of charges stemming from this accident.
18. Your driver’s license has been suspended on at least one occasion prior to this accident.

19. Your driver's license was suspended in 1999 for failure to maintain financial responsibility.
20. You have been convicted of more than one traffic violations prior to this accident.
21. You were convicted in 2010 on the offense of speeding equal to or greater than 10% above the posted speed limit in 2008.
22. You were convicted in 2008 on the offense of failure to maintain financial responsibility in 2007.
23. You were convicted in 2008 on the offense of speeding 15 or more miles over the speed limit in 2006.
24. You were convicted in 2006 on the offense of running a red light in 2006.
25. You were involved in a previous motor vehicle collision in September of 2007.
26. You have been arrested at least once prior to this accident for driving while intoxicated.
27. You were arrested on January 5, 2010 for driving while intoxicated.

“EXHIBIT C”

PLAINTIFF’S FIRST REQUEST FOR PRODUCTION

1. Produce color copies of all photographs, slides, videotapes, audiotapes, charts or drawings that relate in any way to the subject matter of this lawsuit, including but not limited to photographs of the scene of the collision, vehicles involved in the collision, or persons involved in the collision. (Note: for any items requested to be produced in color, digital files may be sent to the e-mail address of counsel for Plaintiff, which is aakhtar@pbrownlaw.com, in order to save color copy costs)
2. Produce a copy of your driver’s license, front and back.
3. Produce any and all expert reports that have been prepared in connection with this lawsuit or the incident giving rise to this lawsuit, if the expert is expected to or may testify in this cause as an expert. If any such expert has not prepared a report, request is hereby made that one be prepared and furnished to Plaintiff’s attorney.
4. Produce any and all insurance agreements or policies pertaining to the vehicle involved in the collision made the basis of this lawsuit that were in place at the time of the collision.
5. Produce copies of any witness statements, written or electronically transcribed, that are relevant to the collision in question that are not privileged by law.
6. Produce any and all books, documents, photographs, learned treatises, or other tangible things which may be used at the trial of this matter.
7. Produce any and all public documents relating to this incident in your possession, including but not limited to: police reports, witness reports, weather reports, criminal inquiries, and vehicle titles.
8. Produce any and all documents reflecting repairs or appraisals of any of the vehicles involved in the incident made the basis of this lawsuit.
9. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 5 of Plaintiff’s First Set of Interrogatories (e.g., including but not limited to, accident reconstruction reports, diagrams, witness statements, etc.).
10. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 6 of Plaintiff’s First Set of Interrogatories (e.g., including but not limited to, store / bar receipts, medication prescriptions, etc.).

11. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 7 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, handwritten or typed notes, journals, recorded telephone calls, etc.).
12. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 8 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, settlement agreements, releases, "Mary Carter" agreements, etc.).
13. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 9 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, insurance carrier correspondence, vehicle damage documents, citation / moving violation documents or records, etc.).
14. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 10 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, arrest records, "mug shots," Court summons records, disposition documents, etc.).
15. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 11 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, citation / moving violation documents or records, municipal court summons, subpoenas, indictments, and any other documents related to disposition, etc.).
16. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 12 of Plaintiff's First Set of Interrogatories (e.g., including but not limited to, prescription medication logs, prescription medication cards, receipts, etc.).
17. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 13 of Plaintiff's First Set of Interrogatories (e.g., purchase receipts, Internet invoices, or other transactional documents, etc.).
18. Produce any and all documents reflecting or relating to your answer to Interrogatory No. 14 of Plaintiff's First Set of Interrogatories (e.g., governmental agency notices or letters received, citations / summons received, official proceedings and final disposition letters, etc.).
19. Produce any and all forms, reports, or other documents you filled out in connection with this accident, whether such form or report was prepared by you or provided to you by, or for the benefit of, the investigating officer, any insurance company, your employer, the owner of the vehicle, any investigative agency or company, or any other third party, excluding privileged documents prepared specifically by or for your attorney for purposes of this lawsuit.
20. Produce copies of any depositions you intend to use in order to impeach any of Plaintiff's experts.

21. If your answer to Plaintiff's Request for Admission No. 9 is anything other than an unqualified "Admit," then produce all documents or tangible items in support of contributory negligence on the part of the red sedan in this collision.
22. If your answer to Plaintiff's Request for Admission No. 10 is anything other than an unqualified "Admit," then produce all documents or tangible items in support of contributory negligence on the part of Plaintiff in this collision.
23. If your answer to Plaintiff's Request for Admission No. 16 is anything other than an unqualified "Admit," then produce all documents or tangible items relating to your plea.
24. If your answer to Plaintiff's Request for Admission No. 17 is anything other than an unqualified "Admit," then produce all documents or tangible items in support of the disposition.
25. Produce any and all other documents or tangible items, not already produced above, which you plan to submit to the jury or other trier of fact in this case, and/or which you contend to be relevant to any issues of liability, causation, or damages in this case.
26. Sign and produce the attached Authorization for Release of Medical Information covering the date range of five (5) years preceding this incident, to the present.

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

This form is compliant with the Health Insurance Portability & Accountability Act (HIPAA)

I hereby authorize _____ to disclose my individually identifiable health information as described below, which may include information concerning communicable diseases such as H.I.V. and A.I.D.S., mental illness, chemical or alcohol dependency, laboratory test results, medical history, treatment, or any related information. I understand that this authorization is voluntary and I may refuse to sign this authorization. I further understand that my health care and the payment of my health care will not be affected if I do not sign this form.

I understand that if the recipient authorized to receive the information is not a covered entity, e.g., an insurance company or health care provider, the released information may no longer be protected by federal and state privacy regulations.

Patient Name: JEFFREY DARLING

Date of Birth: JANUARY 2, 1974

Soc. Sec. No.: _____

Service Date(s): APRIL 7, 2005 – PRESENT

Description of information to be released (check all that apply):

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Face Sheet | <input checked="" type="checkbox"/> Radiology Reports | <input checked="" type="checkbox"/> Radiology Films (imaging department) |
| <input checked="" type="checkbox"/> Discharge Summary | <input checked="" type="checkbox"/> Laboratory Reports | <input checked="" type="checkbox"/> History & Physical |
| <input checked="" type="checkbox"/> Pathology Reports | <input checked="" type="checkbox"/> Emergency Room Records | <input checked="" type="checkbox"/> Other: <u>any doctors' handwritten notes,</u> |
| <input checked="" type="checkbox"/> Consultation Reports | <input checked="" type="checkbox"/> Diagnostic Reports | <u>charts, nurses' notes, reports,</u> |
| <input checked="" type="checkbox"/> Operative Reports | (e.g., EKG, EEG, Sleep Study, etc.) | <u>and medication logs.</u> |

The purpose of the disclosure is:

For use in the lawsuit styled as Cause No. _____; *Jane Doe v. Jeff Darling*; In the County Court at Law No. __, Williamson County, Texas

The information described herein will be sent to the following address:

**Brown, McHam & Associates
819½ West 11th Street
Austin, Texas 78701**

I understand that this authorization will expire 180 days from the date of this authorization unless I otherwise specify. I desire this authorization to be in effect until **the conclusion of the above-styled lawsuit.**

I further understand that I may revoke this authorization at any time by notifying the above-referenced health care provider in writing. I also understand that the written revocation must be signed with a date that is later than the date on this authorization. The revocation will not affect any actions taken before the receipt of the written revocation. Any facsimile or photocopy of this document shall have the same force and effect as the original.

Signature of Patient (or Patient's Representative)

Date

Printed Name of Patient's Representative (if applicable)

Relationship to Patient (if applicable)