

ROUND ROCK OFFICE:
595 Round Rock West, Suite 201
Round Rock, Texas 78681
(512) 246-1149 – Telephone
(512) 255-3657 – Facsimile

AUSTIN OFFICE:
819½ West 11th Street
Austin, Texas 78701
Telephone – (512) 853-9068
Facsimile – (512) 853-9064

September 14, 2010

Via Certified Mail Return Receipt
No.: 7009 2250 0001 1079 4926

Lindi L. Gray
Farmers Insurance
P.O. Box 268994
Oklahoma City, Oklahoma 73126-8994

Re: Our Client : Jane Doe
Date of Injury : March 6, 2010
Your Insured : Gerry F. Lin
Claim Number : 1015623876-1-2

Dear Ms. Gray:

In an attempt to resolve the above-referenced claim amicably, our firm hereby submits the following demand on behalf of our client:

FACTS

On March 6, 2010, at approximately 1:00 a.m. on the very beginning of a Saturday morning, our client, Ms. Jane Doe, was the properly restrained driver of a 2000 Nissan Altima sedan, traveling in downtown Austin (Travis County), Texas. Ms. Doe was heading to a club downtown to meet a friend, and had just exited southbound Interstate Highway 35, turning west onto 11th Street. As she was headed westbound on 11th Street, in the right-hand lane of traffic, approaching the intersection with San Jacinto Boulevard, her light was green. She continued straight through the intersection, with full right-of-way.

As she did so, your insured, Mr. Gerry F. Lin, was driving some type of 2-door sport coupe southbound on San Jacinto Boulevard, approaching the same intersection. He completely disregarded his red light, drove full speed straight into the intersection, and suddenly and violently collided with the passenger side of our client's car. The force of impact knocked our client's car all the way from the right-hand lane of westbound traffic, through the left-hand lane, and into the left-hand eastbound lane of 11th Street, into potentially oncoming traffic. When Ms. Doe overcame her initial shock, she turned to her right and locked eyes with Mr. Lin. After meeting her gaze for a moment, he immediately gunned his engine and fled the scene.

Ms. Doe immediately grabbed her cell phone and dialed 911, but even while she was on the telephone, a police officer came up to her car, apparently already in the vicinity and having

seen or heard the crash. She got off the phone and got out of the car to discuss with the officer what had just happened. It was after several minutes that, eventually, two bicycle police officers rode up to where Ms. Doe and the first officer were talking, and reported that they had just caught a driver who was speeding away, was clearly intoxicated, and who had almost hit pedestrians while trying to get away, eventually colliding with and driving right through a street barricade. The officers all escorted Ms. Doe to that area where Mr. Lin's car had come to rest after going through the barricade, to see if she could identify him. When Ms. Doe got there, she was positively able to identify him as the man and the car who hit her.

Ms. Doe' car was disabled and had to be towed from the scene. It was subsequently declared to be a total loss. There was substantial structural right-side damage, the front passenger side window had been shattered, the right front bumper and right side of the hood were misaligned, and the impact was also serious enough that the passenger side glove compartment had popped open and could not even be closed. Ms. Doe had to call the friend that had been waiting to meet her downtown and told her what happened. Her friend came to pick her up and drive her to Ms. Doe' sister's house.

LIABILITY

Our investigation has revealed that your insured's negligence and recklessness was the proximate cause of our client's injuries and damages, for all of the following reasons:

- (1) He failed to be attentive and keep a proper lookout for traffic conditions ahead;
- (2) He disregarded a red traffic light controlling his lane at an intersection;
- (3) He failed to yield right-of-way to our client, who was well into the intersection;
- (4) He failed to control his speed;
- (5) He failed to timely apply his brakes or take evasive actions to avoid a collision;
- (6) He generally failed to operate a motor vehicle as a reasonable driver of ordinary prudence would have done in the same or similar circumstances; and,
- (7) Worst of all, he operated a motor vehicle while intoxicated. The investigating officer at the scene, Officer Jason Mistic (Badge #4856) of the Austin Police Department, took a specimen from Mr. Lin and confirmed that his blood alcohol level was 0.19 (more than twice the legal limit of 0.08).

The latter conduct constituted negligence *per se*, as well as gross negligence, in that it was a violation of clear traffic statutes in the State of Texas, and caused Mr. Lin to be arrested at the scene for DWI (driving while intoxicated). This is criminally irresponsible behavior that rises to the level of gross negligence, so as to entitle our client to an award of exemplary damages, pursuant to Texas Civil Practice & Remedies Code § 41.003, should this matter have to proceed to trial. Any reasonable Travis County jury would unanimously find, by clear and

convincing evidence, that Mr. Lin's conduct, in operating a motor vehicle in such an intoxicated state, was gross negligence under the standards set forth in the Texas Civil Practice & Remedies Code. He would therefore be subject to punitive damages for such behavior.

Even worse, Mr. Lin's outrageous conduct did not stop there. He fled the scene, failing to stop and render aid to an individual he had just injured, attempting to escape responsibility for his actions. In his attempts to flee the area, he put even more individuals at risk, as the bicycle officers relayed to our client that he nearly hit pedestrians and ended up driving through a barricade before coming to a stop. His arrest, according to Officer Mistic's report, also included a charge for leaving the scene of a collision, in addition to the charge of DWI. This would only inflame the anger of a reasonable jury even further.

Interestingly, according to the police department's detailed CAD (dispatch) report, it was documented by the officer that drove Mr. Lin away in the squad car that the "prisoner" was continually "banging head on partition," which can only be assumed to mean the partition between the back seat and front seat of the squad car. This would be further priceless testimony to elicit from the officer regarding Mr. Lin's behavior and level of intoxication.

INJURIES

As Ms. Doe was getting into her friend's car in order to be driven to her sister's home, she noted the onset of pain and stiffness in the neck, lower back, right hip, and right shoulder. Upon reaching the house, Ms. Doe was exhausted due to the late hour and the entire ordeal, and tried to get some rest for a while. However, she could not get into much of a comfortable position to sleep, and as the hours passed, her symptoms worsened. Later that same Saturday morning, she was driven to the emergency room of Seton Medical Center – Williamson.

At the Seton emergency room, she was attended by Aarti Leyva, M.D., presenting with chief complaints of severe neck and back pain (according to the E.R. chart). After hearing the mechanism of injury and the patient's pain complaints since then, Dr. Leyva ordered X-ray views of the chest, lumbar spine, and pelvis, along with a CT-scan of the cervical spine. Thankfully, all testing was negative for any fractures, dislocations, or other such damage. Dr. Leyva administered Norco for potent pain relief, and Valium as a muscle relaxant. After some time for the treatment to take effect, Ms. Doe stated that she felt more relaxed in not as acute distress. Dr. Leyva diagnosed her to have suffered acute cervical and lumbo-sacral strain, secondary to the motor vehicle accident, and prescribed more Norco and Valium for Ms. Doe to take at home. She also provided her discharge instructions in using alternating ice and heat to combat the strain/sprain symptoms, and recommended her to follow up with her primary care doctor within 1-2 weeks.

As the next day and a half passed, Ms. Doe's symptoms persisted and worsened. She was developing stiffness, soreness, and pain in the shoulders along with the neck and back. Her only relief was to take the Norco and Valium medication, which was all she had from the E.R. doctor. However, she noted that the medication made her feel drowsy and would most definitely interfere with her work. On Monday morning, after waking up to more pain and stiffness and flare-up of symptoms, she knew that if she took the medications again, she would not be able to

perform up to expectations that day at work. She therefore called in sick to work, and made an immediate appointment for her primary care clinic, the Lone Star Circle of Care Family Practice.

On that Monday, March 8, she saw Maria Duarte, a nurse practitioner, at the Lone Star clinic. Ms. Duarte took note of the patient history of motor vehicle accident, emergency room treatment, and prescription medications. It was noted that “pain remains,” but “too drowsy with current meds.” Upon review of musculoskeletal symptoms, there was noted to be “much soreness” in the neck, shoulders, and back. Upon physical exam of the neck, there was “ttp” (i.e., tenderness to palpation) over the posterior neck and base of skull, “ttp” on bilateral shoulders (right greater than left), and also on the back. The nurse added a prescription for Mobic (Meloxicam), a non-steroidal anti-inflammatory medication to control pain and inflammation, and advised that the Norco and Valium should only be taken in the evenings after work. She also wrote a work release note for Ms. Doe for the remainder of that day, and advised Ms. Doe to follow up as needed for persistent symptoms.

Ms. Doe spent the next two weeks taking the medication, and nursing herself at home with ice, heat, and massages. However, after this time, it was clear that medications alone still were not providing her relief of the strain/sprain symptoms. She therefore obtained a referral to see Joseph T. Powell, M.D., a physical medicine and rehabilitation specialist. On March 23, Dr. Powell reviewed her history and took note of complaints of burning sensations down both shoulders, as well as neck and back pain and soreness. He examined and assessed her to have pain in the cervical spine upon extension and lateral bending, tenderness to palpation on the back and sides of the neck musculature, pain upon flexion of the lumbar spine, and tenderness to palpation in the lumbar region as well. Dr. Powell referred her to begin a course of physical therapy, instructed her in some home exercises to help relieve her neck and back flare-ups, continued her on her medications, and also dispensed some Salonpas analgesic patches that she could directly apply to affected areas as needed for muscle pain flare-ups.

On March 31, Ms. Doe went as instructed to the Eagle Ward Rehabilitation clinic, for first physical therapy evaluation and plan of care. Under the care and supervision of Kevin Andrew, P.T., a licensed physical therapist, Ms. Doe was assessed and examined to be suffering neck and shoulder pain that at best was a dull and persistent 5/10, but at worst (with computer activity and other duties involving head turning, e.g., driving) a 10/10. Her lower back pain was at rest a 5/10, but flared up to 10/10 with prolonged periods of sitting in her computer chair, as well as doing any bending forward or lifting motions. Mr. Andrew set her up on a very reasonable and conservative regimen of clinical therapy three (3) times per week, for four (4) weeks, with a view to correcting her guarded posture, regaining full mobility in her cervical and lumbar spine range of motion, and regaining strength in the affected areas.

Between March 31 and April 30, Ms. Doe diligently attended her scheduled clinical therapy appointments, and supplemented that by performing her home exercise plan as instructed by the therapist. She was always documented to be tolerating the exercises, exerting full efforts, and making progress toward therapeutic goals. Her recovery was by no means pain-free or easy, however. It was documented that she would suffer flare-ups of increased pain and symptoms from exerting herself in the exercises, as well as doing her basic activities of daily living, including and especially at work:

April 1: Documented in the therapy notes that while treatment the day before had made her neck feel “ok,” she awoke with the neck being “very painful this morning.” There was point tenderness to palpation noted on the cervical and lumbar paraspinal musculature.

April 30: As of the last date of clinical therapy, it was still noted that she was experiencing continued tenderness and soreness in the cervical and lumbar spine, although her overall progress toward goals was good, and she had no increased complaints of pain.

Ms. Doe also returned to Dr. Powell for follow-up and progress evaluations in April and May. On the May 13 visit, he noted that she had completed her four (4) week regimen of therapy and had improved nicely. However, upon the advice of her therapist, she was also starting an aggressive weight loss regimen to reduce strain and symptoms in her lower back. With increased walking and elliptical machine exercise, her lower back strain was aggravated and she used a TENS unit that a friend had in order get some relief. Dr. Powell cleared her to continue that exercise regimen and return for follow-up in about a month.

On June 16 follow-up visit, it was noted that she was still suffering some focal lumbar pains since the accident, though her exercise regimen had helped her shed 20 lbs., and her range of motion was essentially good in all areas. She needed a refill of the pain and muscle relaxant medications, and was still applying the Salonpas patches as needed directly to the lower back areas, especially at night / bedtime. Dr. Powell refilled the prescriptions and scheduled her to come back in about a month for further progress check.

On the July 7 follow-up visit, she was testing well in range of motion and pain levels in the cervical and lumbar areas, but was still controlling her symptoms with medication as needed. Dr. Powell felt that she could be released from further formal treatment at that time, but to continue with her home exercise plan.

However, by mid to late July, Ms. Doe was suffering recurrence of significant lower back pain, again, of a type not experienced at any time before this accident. She controlled her symptoms as best as possible with medications and her at-home exercises, but called back in to Dr. Powell’s office to report that the lumbar pain was simply not resolved. In light of the persistent nature of her lower back symptoms, Dr. Powell called in a referral to have her undergo a lumbar spine MRI.

On August 2, she underwent the lumbar MRI at River Ranch Radiology, which demonstrated some clear objective findings that were perfectly consistent with her reported pain complaints ever since the accident: midline disc protrusions at both L4-5 and L5-S1. At L4-5 it was even more serious, with objective signs of tearing in the annulus. In light of these findings, Ms. Doe had no choice but to scale back on her exercise regimen, and continue pain medication and therapeutic exercises at home to manage these symptoms. Dr. Powell advised her that the most important thing was not to aggravate the injury.

She has not returned for any formal in-office treatment since that time.

DAMAGES

As a direct result of your insured's gross negligence, our client has incurred the following economic damages:

Medical Expenses

1.	Seton Medical Center – Williamson	\$ 10,878.25
2.	Emergency Physicians of Central Texas	\$ 754.00
3.	Austin Radiological Association	\$ 268.50
4.	Lone Star Circle of Care Family Practice	\$ 103.00
5.	Joseph T. Powell, M.D.	\$ 642.00
6.	Eagle Ward Rehabilitation	\$ 1,924.00
7.	River Ranch Radiology	\$ 1,922.50
8.	Prescription Rx	\$ 25.10

	Total Medical Expenses:	\$ 16,517.35

Lost Wages

1.	URS Corporation	\$ 277.59

	Total Lost Wages:	\$ 277.59

As you can see from the enclosed documentation completed by her employer, Ms. Doe has been employed since November of 2008 with URS Corporation, an engineering firm engaged in a long-term contract with the Texas Department of Transportation. Her position is that of a data imaging specialist, a job that entails constant desk work, repetitive keyboarding and computer work, and other duties made extremely difficult by her various neck and back injuries sustained in this collision.

As you can see from the enclosed documentation, her hourly rate of pay is \$11.33 (Ms. Doe receives no "paid time off" or other such benefits in this job), and she had always worked a regular 40-hour week leading up to this incident. Subsequent to the incident, because of her

injuries and because of the time off needed for her therapy and other appointments, she missed 24.5 hours of work, yielding total lost wages of \$277.59, as stated above.

Summary

Ms. Doe has suffered quite a miserable six (6) months since your insured decided to get drunk and speed his car through a red light, causing a collision that totaled our client's vehicle. She has had to undergo a costly and painful regimen of emergency room treatment, radiology, follow-up doctors' visits, pain medication, and physical therapy, none of which would have been necessary but for the gross negligence and outrageous behavior of your insured.

In addition, Ms. Doe's ordeal is not over. She still continues, to this day, to have to manage her symptoms which began with this accident using a combination of at-home therapy, pain medication, and analgesic patches, none of which she had to do before this collision.

She also has an MRI which demonstrates objective findings of permanent injury that has fundamentally changed the way she must deal with and protect her lumbar spine / lower back. Although the nucleus pulposus at L4-5 has not escaped through the annular fissure, the fact that the annulus is torn at all is an irreversible injury that can, at best, stay the same, but more likely, will get worse with time. This is not a case of mere "soft tissue" injury (e.g., strain / sprain), and we will refuse to negotiate it as such.

Once the annulus is torn, there is no longer a physical barrier to keep the highly pressurized nucleus pulposus from herniating, i.e., breaking out of the disc space. As such, this is not an injury which can heal itself, unlike a strain or sprain, which generally resolves within a couple of months' time. The best that Ms. Doe can do is pain management combined with exercise therapy to keep the musculature mobile, strong, and supple, intended to keep the injury from getting worse. It is inevitable at this point that she will have continued problems, as it has been documented that basic activity and exercising has caused aggravation of her lower back. These basic activities of daily life are taken for granted by people with healthy spines with no objective disc injury. However, it would take very little to cause a serious worsening of her injury, whereby the disc could herniate even further from protrusion, to becoming a full extrusion, causing nerve root impingement, and more serious neurological pain complaints than the ones she has already dealt with the past half-year.

As such, there is no question she has future medical expenses ahead of her, even if her injury does not get worse. She will have to continue to take medications to manage the pain and inflammation, and may have to return for more physical therapy to supplement her at-home exercises.

We are experienced with these types of injury cases and take into account all of these factors when negotiating them. Just to give you a sample of the type of presentation we can make to a jury regarding these injuries, we have included a sample of some very helpful, detailed medical literature on annular tears and disc protrusions.

In any case, our client is prepared at this time to submit the following demand:

DEMAND

Demand is hereby made for reimbursement of Ms. Doe' medical expenses and lost wages, compensation for her physical impairment, physical pain and suffering, and mental anguish, and appropriate factoring in of exemplary damages, in the amount of **\$100,000.00 or the policy limits, whichever is less**, in exchange for a full and final release of all claims against your insured.

As authorized by *Allstate Ins. Co. v. Kelly*, 680 S.W. 2d 595 (Tex. Civ. App.—Tyler 1984, writ ref'd n.r.e.), this offer of settlement will remain open for fourteen (14) days after your receipt of this letter. If, after the expiration of fourteen (14) days, the terms of this letter have not been accepted by tender of funds, the offer will be considered rejected and automatically withdrawn. Because of the substantial probability a verdict would exceed \$100,000.00 or the policy limits, whichever is less, based upon material furnished to you in support of this demand, should we subsequently proceed to trial and obtain a judgment in excess of the policy limits, your insured will be expected either to pay the excess or promptly take action against your company for the full amount of the judgment, including pre-judgment interest, as authorized by *G.A. Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W. 2d 544 (Tex. Comm'n App. 1929, opinion adopted) and *Cavnar vs. Quality Control Parking*, 696 S.W.2d 549 (Tex. 1985).

Many insurers are under the mistaken impression that exemplary damages in these cases are capped by the provisions of Texas Civil Practice & Remedies Code § 41.008(b). However, please see Texas Civil Practice & Remedies Code § 41.008(c)(14) as confirmation that **exemplary damages will not be subject to any cap** in this case, should this matter proceed to trial. This particular subsection states that "intoxication assault" is one of the exceptions to the limitation on exemplary damages set forth in the preceding subsection. As that term has been defined by Texas law, striking another individual with one's vehicle while intoxicated, so as to cause injury, qualifies as intoxication assault.

It would therefore appear that your insured's interests and Farmers' interests are in conflict, in view of this offer of settlement. Therefore, an additional copy of this letter is enclosed **which must be forwarded directly to your insured** so that he may review it and/or consult with counsel of his own choosing, regarding the extent of his personal exposure

Finally, Farmers' duty under these circumstances is detailed in *Ranger County Mut. Ins. Co. v. Guin*, 723 S.W.2d 656 (Tex. 1987). We hope that you will give this matter serious and immediate attention, so that it may be resolved within the time limits set forth in this letter.

ENCLOSURES

In order to assist you in evaluation of this claim, we have enclosed the following items:

- (1) An additional copy of this demand letter to forward to your insured;

- (2) A CD-ROM containing all of the following:
- (a) The police accident report;
 - (b) The police dispatch and arrest report, Austin city incident / offense report, and “mug shot” photographs of your insured;
 - (c) Photographs of the satellite view of the accident scene, and of the damage to our client’s vehicle;
 - (d) Medical records and itemized bills for our client’s injury treatment, including detailed Internet medical literature regarding annular tears and disc protrusions;
 - (e) Lost wages documentation from our client’s employer; and,
 - (f) The completed Medicare reporting form which you previously forwarded.

Thank you in advance for your cooperation in promptly resolving this claim.

Sincerely yours,

Ali A. Akhtar
Attorney at Law

Austin Office
AAA/ns
Enclosures