

Re: [REDACTED]
Demand Letter to
January 23, 2022
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[REDACTED]

[REDACTED]

March 13, 2023

XXX Insurance Company

RE: FOR SETTLEMENT PURPOSES ONLY

Our Client:	[REDACTED]
Your Insured:	N/A
Date of Loss:	January 23, 2022
Claim Number:	5230D631R

Dear _____:

As you are aware, [REDACTED] represents our client [REDACTED] [REDACTED] arising out of the accident on January 23, 2022, motor vehicle collision involving (...) or your insured (...). We are currently in a position to resolve the personal injury claims of [REDACTED] and in connection therewith, submit the attached documentation.

It is expressly understood that any and all representations made herein are for the limited purpose of settlement discussions and in no way may be used in any legal proceeding regarding this matter. This correspondence is direct to all insurance company decision-makers and the insured policyholder.

We ask that this demand be immediately forwarded to all insurance company decision-makers and, most importantly, the insured policyholder.

1. FACTS & LIABILITY

On January 23, 2022, [REDACTED] states she was the unbelted front seat passenger of a vehicle that was parked and struck by another vehicle on the [REDACTED] side. [REDACTED] reports she hit her head. She reports right arm parenthesis. She states she has midline and left lumbar region pain.

The conditions for establishing liability, in this case, are clear. Your insured driver owed a duty of care to the other drivers on the road. Per NY Vehicle & Traffic Law §1211a, “the driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.”

On the date of loss, your insured driver lacked all due care by failing to ensure that they were able to reverse safely without causing a collision.

The facts of this collision establish a prima facie case of negligence against your insured in accordance with *McNamara v. Fishkowitz*, 18 A.D. 3d 721, 795 N.Y.S. 2d 714 (4th Dept. 2005). As a direct and proximate cause of your insured driver’s negligence, [REDACTED] suffered personal injuries.

2. INJURIES & TREATMENTS

2.1. Summary of Injuries

We have enclosed all pertinent medical information regarding [REDACTED] injuries. These injuries were suffered as a direct and proximate result of this incident. The chart below represents a non-exhaustive summary of the injuries sustained by our client:

Diagnosis	ICD Code
Cervicalgia, Neck pain	M54.2
Low back pain, unspecified	M54.50
Upper back pain	M54.9
Lumbar disc disease	M51.9
Cervical disc disease	M50.90
Radiculopathy, lumbosacral	M54.17
Other intervertebral disc displacement, lumbosacral region	M54.27

Disc degeneration, lumbar	M51.36
Lumbar herniated disc	M51.26
Lumbar radiculopathy	M54.16
Lumbosacral stenosis with neurogenic claudication	M48.07,G92.19

2.2. TREATMENT

Crouse Hospital	
Treatment Timeline	January 23, 2022 to March 16, 2022
Number of Visits	5
Summary	<ul style="list-style-type: none"> • On January 23, 2022, [REDACTED] presented to Justin White, NP for ED provider. She complained of headache, neck and lower back pain after MVA. She also reported right arm parenthesis. Also, she stated midline and left lumbar region pain. She rated her pain level as 10/10. On examination, she reported midline tenderness in cervical and lumbar region. After a complete examination, Justin White, NP recommended follow-up with Neurosurgery and advised to use over the counter topical patches or creams to help with discomfort if needed. • On the day, [REDACTED] underwent the following diagnostic imaging to determine the severity of her injuries further. The images revealed, in relevant part, the following: <ul style="list-style-type: none"> • <u>CT of the Cervical Spine</u> <ul style="list-style-type: none"> ▪ No evidence of acute cervical spine fracture or subluxation. • <u>CT of the Head</u> <ul style="list-style-type: none"> ▪ There is moderate left maxillary sinus mucosal thickening. Otherwise, no evidence of acute intracranial disease. • <u>Lumbar of the Spine</u> <ul style="list-style-type: none"> ▪ No evidence of acute lumbar spine fracture or subluxation. • On February 28, 2022, [REDACTED] presented to Rachel Macri, PT for physical therapy initial evaluation. She complained of neck, low back

	<p>pain and right bicep tightness. Pain at low back worse with bending over, sitting too long, stair climbing. She reported that she feels a lot of pulling in the muscles in the t-spine with neck AROM. She rated her pain level as 5/10 and 09/10. She has sign/symptoms c/w whiplash and concussion at the cervical spine and lumbar strain. She has advised for follow-up 1-2 times per week for 6-8 weeks.</p> <ul style="list-style-type: none"> • On March 09, 2022, [REDACTED] presented to Rachel Macri, PT for daily physical therapy and observed to have full AROM of neck and back throughout this treatment. She has needs to progress training in anticipation of return to work on 26th March. • On March 14, 2022, [REDACTED] presented to Rachel Macri, PT for daily physical therapy. She reported left knee pain on leg. • On March 16, 2022, [REDACTED] presented to Rachel Macri, PT for daily physical therapy. She did well new therapy today and no deficits noted in AROM.
Supporting Documents	<ul style="list-style-type: none"> • Exhibit 1 - Crouse Hospital (Medical Records)

St. Joseph's Hospital Health Center	
Treatment Timeline	February 15, 2022
Number of Visits	1
Summary	<ul style="list-style-type: none"> • On February 15, 2022, [REDACTED] presented to Helen Oneill, NP for a progress examination, she presented for follow-up MVA and complained of HA, back, neck and right arm pain. She needs a referral to the concussion clinic and PT. On examination, she had back pain, myalgias, neck pain, dizziness and headaches. Helen Oneill, NP advised to [REDACTED] for follow-up in 1 month.
Supporting Documents	<ul style="list-style-type: none"> • Exhibit 2 - St. Joseph's Hospital Health Center (Medical Records)

Upstate Orthopedics, LLP	
Treatment Timeline	April 05, 2022 to May 20, 2022
Number of Visits	3

<p>Summary</p>	<ul style="list-style-type: none"> • On April 5, 2022, [REDACTED] presented to Jaclyn Ireland, PA for a follow-up. She complained of low back pain. She has difficulty and walking up stairs. Her major complaint was pain in her lower lumbar spine. She has a cervicgia, cervical disc disease with radiculopathy, symptoms of cervical myelopathy, Ibp, lumbar disc disease with radiculopathy. Jaclyn Ireland, PA opined that return for follow-up after MRI and next visit for MRI cervical and lumbar. • On May 11, 2022, [REDACTED] underwent the following diagnostic imaging to determine the severity of her injuries further. The images revealed, in relevant part, the following: <ul style="list-style-type: none"> • <u>MRI of the Lumbar Spine:</u> <ul style="list-style-type: none"> ▪ Moderate acquired spinal stenosis L4-5 with mild inferior bilateral neural foraminal narrowing. Neural foraminal narrowing at L5-S1 with mild bilateral facet osteoarthritis, left greater than right. • <u>MRI of the Cervical Spine:</u> <ul style="list-style-type: none"> ▪ Minimal-mild broad based disc bulges as C3-4 with near cord contact, C4-5 with anterior cord contact and C6-7 with anterior cord without distortion of cord contour or myelomalacia. • On May 20, 2022, [REDACTED] presented to Jaclyn Ireland, PA for progress examination. She presented with results of MRI lumbar. She complained of Ibp with pain radiating down the back of her legs to ankles bilaterally. Also, she reported that her symptoms worse with prolonged standing. She has advised return for follow-up.
<p>Supporting Documents</p>	<ul style="list-style-type: none"> • Exhibit 3 - Upstate Orthopedics LLC (Medical Records)

<p>New York Spine & Wellness Center</p>	
<p>Treatment Timeline</p>	<p>July 14, 2022 to December 05, 2022</p>
<p>Number of Visits</p>	<p>4</p>

<p>Summary</p>	<ul style="list-style-type: none"> On July 14, 2022, [REDACTED] presented to Brendan McGinn, MD for office visit. She complained of neck pain radiating to both shoulders. On examination, she had tenderness on palpation on the left and right: paraspinal and trapezius muscle. On assessment, she has a lumbar disc degeneration, neck pain, lumbosacral stenosis with neurogenic claudication. She has advised for follow-up of treatment plan FMD. On September 26, 2022, [REDACTED] presented to Eric Tallarico, MD for follow-up visit. She complained of lower back and neck pain. She rated her pain level as 9/10. Her associated symptom has difficulty sleeping, walking and radiating. Dr. Eric Tallarico advised [REDACTED] to follow-up 4 weeks. On November 29, 2022, [REDACTED] presented to Raymond Alcuri, MD for follow-up visit. She complained of low back pain. She rated her pain level as 10/10. She has scheduled for cervical trigger point injections next week. On December 05, 2022, [REDACTED] presented to Raymond Alcuri, MD for EMG and NCV test. Her reason for testing was low back pain, lower extremity pain, numbness/tingling, cramping. She reported significant cramping in legs and feet as well. On impression, she has found abnormal study. Studies of the bilateral lower extremities revealed evidence suggestive of chronic bilateral L5 radiculopathies.
<p>Supporting Documents</p>	<ul style="list-style-type: none"> Exhibit 4 - New York Spine & Wellness Center (Medical Records)

<p>Heritage One Day Surgery</p>	
<p>Treatment Timeline</p>	<p>October 10, 2022 and December 8, 2022</p>
<p>Number of Visits</p>	<p>2</p>
<p>Summary</p>	<ul style="list-style-type: none"> On October 10, 2022, [REDACTED] presented to Dr. Mary Trusilo, MD for procedure. She complained of positive low back pain. On December 08, 2022, [REDACTED] presented to Dr. Mark Profetto, MD for procedure. She complained of neck pain and procedure performed bilateral cervical TPI.
<p>Supporting Documents</p>	<ul style="list-style-type: none"> Exhibit 5 - Heritage One Day Surgery (MedicalRecords)

3. DAMAGES

3.1. Total Projected Claim Value

Element of Damages	Amount
Economic Damages	
Future Medical Expenses	\$4,968.00
Loss of Income	To be perfected
Loss of Household Services	\$43,552.52
Non-Economic Losses	
Past and Future Pain and Suffering	\$188,346.24
Total Damages	\$236,866.76

3.2. Future Medical Expenses

[REDACTED] continues to experience pain and symptomatology as a result of the injuries sustained in the incident at issue and will require additional treatment moving forward, including, but not limited to, continued physical therapy. If conservative treatment fails to resolve her symptoms, then [REDACTED] may seek surgical opinions as a last resort.

Procedure	Years	#Year	Cost	Total
Physical Therapy	1	12	\$162.00	\$1,944.00
Chiropractic Therapy	1	12	\$252.00	\$3,024.00
Total				\$4,968.00

3.3. Loss of Income

At this time, for settlement purposes only, we are not submitting loss of earnings documentation or making a loss of earnings claim. We reserve the right to supplement any demand to reflect any loss of earnings claim that we may subsequently uncover.

3.4. Loss of Household Services

As a result of the incident, we estimate that [REDACTED] has been unable to contribute \$43,552.52 in labor in the form of past household services as a result of the impact of the injuries she sustained. Our calculation is as below.

Prior to her accident, we assume that [REDACTED] contributed an average of two hours of household chores per day to the household, in line with the average contribution of similarly aged women in America¹. To determine the value of household services labor, we assume that the monetary value of [REDACTED] work is consistent with the average housekeeping salary of \$31.93 an hour in 2022 and 2023 in the State of New York². In our estimation, [REDACTED] suffered a 100% impairment rate of her contribution to household chores.

Loss of Household Services					
Start of loss date	End of loss date	Hours per day	Hourly rate	%impairment	Net Loss
01/23/2022	12/08/2022	2 hours	\$31.93	100%	\$20,371.34
12/09/2022	12/31/2022	2 hours	\$31.93	100%	\$1,404.92
01/01/2023	12/08/2023	2 hours	\$31.93	100%	\$21,776.26
Total Loss of Household Services					\$43,552.52

3.5 Past and Future Pain and Suffering – Impact on Life

The injuries that [REDACTED] sustained on January 23, 2022, caused her a great deal of physical and emotional pain and suffering. As a result of your insured’s negligence, [REDACTED] suffered serious injuries that affected her entire life. [REDACTED] experienced difficulty and pain when trying to complete simple daily activities that she used to be able to complete with ease prior to this incident. [REDACTED] found sleep difficult to come by following the collision. When she did manage to fall asleep, she would often be awoken by her pain and would struggle to fall asleep again. This cycle resulted in her being fatigued throughout the day, which lowered the quality of her life.

Not only did [REDACTED] suffer physically, but she was also forced to endure hardships in her social and personal life due to the physical limitations imposed on her from the injuries sustained in this collision. [REDACTED] found it very difficult to work without pain

¹U.S. Bureau of Labor Statistics, 2015 “Charts by Topic: Household activities” (20 December 2016), online: <www.bls.gov/tus/charts/household.htm>.

²Source: <https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

Physical Therapy Visit, Estimated National Average Cost” (14 December 2022), online: <<https://www.mdsave.com/procedures/physical-therapy-visit/d787f9ce>>.

and could only last approximately one hour at work before experiencing excruciating pain.

To this day, [REDACTED] continues to experience residual symptoms from her injuries. As her injuries interfered with her physical abilities, she was unjustly imposed with a direct impediment that significantly impacted her ability to go about life as she once lived and adversely affected her physically, emotionally, and mentally. Everything that [REDACTED] has gone through, and continues to go through, is the result of your insured's clear negligence. In short, [REDACTED] has been forced to endure significant pain and suffering because of this senseless incident, and there is no question that a jury would be very sympathetic to her situation.

Per New York Consolidated Laws, Insurance Law - ISC § 5102 (d), "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus. Permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment. As [REDACTED] was unable to carry out all of her usual daily activities for at least Sixty two of the one hundred eighty days immediately following the injury and suffered from a significant cervical spine injury, neural foraminal narrowing at L5-S1. Demonstrates mild disc disease with disc bulging C3-C4, C4-C5 and C6-C7 disc bulge with mild central canal stenosis.

Below are some conservative figures we would present to a jury to consider our client's non-economic damages:

Pain and Suffering	
Initial Pain and Suffering	
Days since the crash	319
Waking hours/Day	16
Reasonable Compensation/Hour	\$17.21
Total Past Pain & Suffering	\$87,839.84
Subsequent Pain and Suffering	
Days since the crash	365
Waking hours/Day	16
Reasonable Compensation/Hour	\$17.21
Total Subsequent Pain & Suffering	\$100,506.40

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Total Pain and Suffering **\$188,346.24**

Nothing prohibits the attorney from telling the jury how many minutes, hours, etc.; a plaintiff will suffer, as long as they do not state a “specific monetary value for each unit” of time. In light of the analysis above, we assert that **\$188,346.24** is fair and equitable compensation for [REDACTED] past and future pain and suffering.

4. DEMAND TO SETTLE

Pursuant to the Medicare Section 111 Query process, please obtain then provide our firm with information regarding potential Medicare Part C (Medicare Advantage) and/or Medicare Part D (Prescription Drug) claims involving our client. This information may allow your company to avoid liability for failing to provide for reimbursement of certain claims.

In view of the above, our client offers a full, final, and complete release of their claims against your insured in exchange for a payment of the lesser of \$ _____ or the remaining policy limits of the applicable insurance policy. If we do not receive a timely response to this demand, we will be left with no choice but to commence suit in New York State Supreme Court.

In addition to the material terms above, we request that XXX Insurance Company provide a statement, under oath, regarding whether all liability and casualty insurance issued by XYZ Insurance Company provides coverage or that may provide coverage for the claim at issue has been disclosed to the offer or.

Further, all offers must be presented and accepted by our client.

As part of our firm’s green initiative to save trees, our client’s medical records are saved on the enclosed disc included with this letter. We look forward to your response at your earliest convenience. Thank you.

Very truly yours,

[REDACTED]

Enclosures

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Exhibit List

Sl. No:	Exhibit No.	Description	PDF Ref:
1	Exhibit 1	Crouse Hospital (MedicalRecords)	[REDACTED] 1 - Page No. 1 to 13, 2 - Page No. 1 to 24
2	Exhibit 2	St. Joseph's Hospital Health Center (MedicalRecords)	[REDACTED] 4 - Page No. 1 to 9
3	Exhibit 3	Upstate Orthopaedics LLC (Medical Records)	[REDACTED] 3 - Page No. 2 to 17
4	Exhibit 4	New York Spine & Wellness Center (MedicalRecords)	[REDACTED] 5 - Page No. 1 to 28
5	Exhibit 5	Heritage One Day Surgery (Medical Records)	[REDACTED] 5 - Page No. 29 to 30
6	Exhibit 6	Upstate Orthopaedics LLC (Bill)	[REDACTED] 3 - Page No. 1