

**SETTLEMENT OFFER
ER 408**

April 6, 2021

Adjuster
Geico Insurance
P.O. Box 509119
San Diego, CA 92150

RE: Our Client: John Doe
 Your Insured: Jane Doe
 Date of Loss: November 1, 2014
 Claim Number:

Dear _____:

As you know, I represent John Doe with regard to injuries he sustained in the accident of November 1, 2014, caused by your insured, Jane Doe. Mr. Doe's condition has now stabilized to the point that I am now authorized to make a settlement demand to you with regard to this claim. Given the clear liability and intensity of his injuries, demand is hereby made for \$_____.

This letter and the enclosed documents are submitted for settlement purposes only. The Washington Rules of Evidence prohibit use of this letter and the enclosures as evidence in any legal proceeding without our express consent. If settlement fails for any reason, this letter and its enclosures are to be returned to me without retention of copies.

BACKGROUND

John Doe is a thirty-five-year-old married man who makes his home in Seattle, Washington, with his wife and one year old daughter, Sarah. Prior to this accident, he was asymptomatic and injury-free and enjoyed attending Crossfit 3-5 times a week and was an avid cyclist. He is college educated, is very personable, and would come across favorably if we are not able to resolve this claim through settlement negotiations and are forced to proceed into litigation.

ENCLOSURES

We have enclosed the following documents in support of this demand:

1. Police Report;
2. Medical Billing;
3. Medical Records from Harborview Medical Center;

4. Medical Records from Primary Care;
5. Medical Records from Physical Therapy;
6. Medical Records from Massage Clinic.

FACTS OF ACCIDENT

On the morning of November 1, 2014, John Doe was driving his work vehicle and traveling northbound on I-5 in lane 2 of 4 near the Michigan exit in Seattle, Washington, heading home from work to go to the gym with his wife. Your insured, Jane Doe, was traveling in lane 4, drifted into the HOV lane, overcorrected to the right, and lost control of her vehicle hitting a semi-truck in the lane next to her ultimately hitting Mr. Doe head on.

Washington State Patrol responded to the scene and spoke with all drivers involved and witnesses to the collision. Following investigation, Ms. Doe was found at fault for the accident and cited with *Negligent driving in the 2nd degree – Cit# 4Z1006498*. All three vehicles were left inoperable and towed from the scene. Mr. Doe was treated at the scene by paramedics and transported to the emergency room at Harborview Medical Center with injuries to his neck, back, and shoulder.

MEDICAL TREATMENT

Date of First Treatment: November 1, 2014

SUMMARY OF INJURIES

ICD-9 CODE

Post-Traumatic Stress Disorder	309.81
Cervical Strain	847.0
Thoracic Strain.....	847.1
Thoracic Dysfunction.....	722.92
Knee Pain	719.46
Low Back Strain	847.2
Hand Abrasions.....	914.0
Knee Abrasions	916.0

TREATMENT

Harborview Medical Center
Dates of Treatment: 11/01/14 – 04/28/15

Tab 3
No. of Visits: 8

Mr. Doe arrived at the emergency room on a backboard wearing a cervical collar. On intake with the ER physician, Dr. Dan Smith, he reported pain across his right hand and right knee, and neck pain. Dr. Smith examined Mr. Doe and noted multiple abrasions over his right hand and right knee. X-rays of his cervical spine and chest were obtained and he was diagnosed with hand

and knee abrasions and cervical strain. Mr. Doe's wounds were cleaned and dressed, and he was discharged with a prescription for Robaxin and Oxycodone and instructed to follow up with Occupational Medicine

As instructed by Dr. Smith, Mr. Doe presented to Dr. Kate Jones of Harborview Occupational Medicine on December 5, 2014. He described the accident and discussed being hit in the face by the airbag and sustaining multiple abrasions to his hands, knees, and head and bruising on his chest and face from the airbags. Mr. Doe reported being unable to sleep in the days following the collision due to disturbing thoughts, feeling severe anxiety while driving especially in heavy traffic, and having to literally pull off the road to let cars pass him until traffic became lighter. He noted neck pain worse when turning his head, weakness in his shoulders, numbness in his shoulders and upper back, wrist stiffness, soreness in his knees and right shin. Mr. Doe stated that he was now only working at his desk and not going on any sales calls though would need to return to driving as part of his position.

Dr. Jones' examination of Mr. Doe revealed pain with cervical flexion and extension, a decrease in range of motion with pain at side bending, tenderness from the base of his neck to the top of his shoulders, chest bruising from seatbelt impact, numbness in both upper arms, and tenderness to his paraspinal muscles around L5/S1. Dr. Jones diagnosed him with cervical strain, low back strain, and PTSD. She recommended physical therapy, massage therapy, psychiatric care, a prescription of Ambien to help him sleep, and employment restrictions. Mr. Doe was instructed to remain under the care of Occupational Medicine and return for follow-up in approximately four weeks.

John Doe sought psychiatry consultation with Dr. Linda Nelson of Harborview Medical Center on January 8, 2015. He discussed experiencing panic attacks when driving on the highway, avoidance of the freeway, checking his wife's safety while she was driving as she was eight months pregnant, being awoken from deep sleeping with anxiety, and recurring nightmares in which he was dead. Mr. Doe described increased irritability and loss of patience, which was unlike him, in shouting at his boss and feeling stress most of his waking hours. He remarked that he was not socializing and watching more TV due to anxiety, pain, and low energy. Following evaluation, Dr. Nelson noted "*his evaluation and history are most consistent with PTSD*". She instructed him to begin psychotherapy for treatment.

On January 13, 2015, Mr. Doe began psychotherapy with Lisa Johnson, MS, at Harborview Counseling Center. He reported vivid memories of his car flipping over, anxiety while driving, continued avoidance of the freeway during heavy traffic, nightly nightmares, feeling on edge much of the time, and worrying about his wife while driving. Ms. Johnson diagnosed Mr. Doe with PTSD and he was treated with four psychotherapy sessions provided by the therapists at Harborview Counseling Center.

John Doe remained under the care of Occupational Medicine for a period of five months for a total of three visits. On April 28, 2015, he presented to Dr. Kate Jones for his final visit. On this

visit, he reported feeling better, returning to the gym, and driving normally. Dr. Jones deemed Mr. Doe at maximum medical improvement and released him from medical care.

Primary Care

Dates of Treatment: 12/01/14 – 12/21/14

Tab 4

No. of Visits: 2

On December 1, 2014, Mr. Doe presented to his primary physician, Dr. Gary Nelson, of Primary Care with significant back pain and tightness, pain in both knees, numbness over both shoulders, and neck pain. Dr. Nelson noted Mr. Doe had a prior history of a left knee torn ACL and neck fusion and that he had completely recovered from those at the time of this accident. Examination by Dr. Nelson produced trapezius, rhomboid, and lower back tenderness on palpation and right knee pain. Mr. Doe was diagnosed with knee pain, thoracic strain, and cervical strain. He was given a prescription for Cyclobenzaprine and Meloxicam and instructed to begin physical therapy treatment. Mr. Doe returned once more on December 22, 2014, for follow-up care with Dr. Nelson with continued tightness and a decrease in motion in his neck. They discussed a possible physiatry consult and he was advised to return as needed.

Physical Therapy

Dates of Treatment: 12/11/14 – 02/26/15

Tab 5

No. of Visits: 11

As directed, Mr. Doe began physical therapy on December 11, 2014, with Jane Smith, PT, of Physical Therapy. On initial discussion with Ms. Smith, he discussed taking as little medication as possible, concern with the ability to soon take care of an infant due to his pain, and continued stress while driving. Mr. Doe reported neck pain and stiffness, knee pain, and pain in both arms made worse with prolonged sitting, computer work, and driving. He noted the inability to enjoy the activities he had prior to the collision such as working out in the gym 3-4 times per week and regular hiking and cycling.

Ms. Smith's assessment was that Mr. Doe's symptoms were consistent with acute to sub-acute cervical strain and thoracic dysfunction. She noted soft tissue pain with palpation, compression, and stretching, and limitation in cervical range of motion with pain lacking full motion on all planes. Ms. Smith recommended manual therapy, modalities, activity modification, and home exercise instruction at a rate of 1-2 times per week for 4 weeks.

John Doe continued his treatment with Ms. Smith and received a series of eleven visits over the next six weeks. On his final visit on February 26, 2015, he reported improvement though noted continued cervical weakness. Ms. Smith examined him and noted some pain on cervical palpation and remarked that he needed to continue to improve his core trunk muscle strength and endurance including his cervical spine and abdominals. She discharged him from care with instructions to continue the use of his home exercise program.

Massage Clinic

Dates of Treatment: 01/02/15 – 05/18/15

Tab 6

No. of Visits: 12

As recommended by Dr. Jones, John Doe began massage care to treatment with Jan Smith, LMP, of Massage Clinic on January 2, 2015. On intake, he discussed neck stiffness and associated numbness, upper back pain, lower back pain, arm pain, and pain in his wrists. He noted trouble with sleeping, recreational activities, and normal daily activities. Ms. Smith's examination revealed pain and restriction in movement in his neck and upper shoulders and tenderness to palpation to his neck and right shoulder. She treated him with a series of twelve deep tissue massages until May 18, 2015, when he concluded care.

SPECIAL DAMAGES

CURRENT MEDICAL EXPENSES

Ambulance	\$886.73
Harborview Medical Center	\$7,881.43
UW Physicians	\$1,791.44
Primary Care	\$332.00
Physical Therapy	\$2,233.50
Massage Clinic	\$1,440.00
TOTAL:	\$14,565.10

MILEAGE EXPENSES

John Doe has incurred mileage expenses for treatment of the injuries sustained in his motor vehicle collision with your insured. The total incurred Mileage Expense for medical treatment transportation is as follows:

Harborview Medical Center	8 visits x 13.8 RT = 110.4 miles x 56.5	\$62.37
Primary Care	2 visits x 34.2 RT = 68.4 miles x 56.5	\$38.64
Physical Therapy	11 visits x 5.8 RT = 63.8 miles x 56.5	\$36.04
Massage Clinic	12 visits x 9 RT = 108 miles x 56.5	\$61.02
TOTAL:		\$198.07

SPECIAL DAMAGES SUMMARY

Medical Specials	\$14,565.10
Mileage Expenses	\$198.07
TOTAL:	\$14,763.17

GENERAL DAMAGES

John Doe is entitled to recover damages for all personal injuries caused by this collision, including damages for emotional distress and economic damages. The guiding principle of tort law is to make the injured party as whole as possible through pecuniary compensation. Aker Verdal, A/S v. Lampson, 65 Wn. App. 177 (1992). He is entitled to recover the reasonable value of necessary medical care, treatment and service rendered before trial. Mr. Doe may also recover the reasonable value of time, earnings, or salaries lost and the present value of reasonable future losses. WPI 30.08.01 and 30.08.02. Loss of earning capacity is a permanent diminution of ability to earn a living owing to disability as opposed to the temporary inability to continue in a prior occupation. Kubista v. Romaine, 14 Wn. App. 58, 62, 63, 538 P.2d 812 (1975); affirmed, 87 Wn.2d 62, 549 P.2d 491 (1986). WPI 30.07. Travel expenses reasonably necessary to secure proper treatment are compensable. Shipman v. Foisy, 49 Wn.2d 406, 302 P.2d 480 (1956).

At his position in sales, John Doe's primary duty at work is to drive and see clients. Following the accident, he was unable to drive as needed due to pain and absolute panic when driving, especially on the freeway. Initially, Mr. Doe was forced to stop driving for a period of time and worked only from his desk. As he noted to Dr. Jones, he spent many hours on the side of the road waiting for traffic to clear in order to begin driving again due to the anxiety and would often take back roads extending his travel times significantly. This severely impacted his ability to earn a living which caused extra stress as the birth of his first child was fast approaching.

Besides specially proven damages, an injured person may also recover general damages for disability, disfigurement, pain and suffering, loss of the ability to enjoy life, loss of earnings capacity and loss of consortium. Disability is a very general term and means the inability to lead a normal life. Kirk v. WSU, 109 Wn.2d 448, 746 P.2d 285 (1987). The term does not just refer to impairment of working capacity but includes all aspects of life including sleeping or leisure activity. Parris v. Johnson, 3 Wn. App. 853, 479 P.2d 91 (1970). Disfigurement is a separate category of damage because of the long recognized mental suffering that goes with it. Gray v. Washington Water Power Co., 30 Wn. 665, 71 P. 206 (1903).

The accident occurred on the day before Thanksgiving. Mr. and Mrs. Doe had planned a full day visiting her family and his. Due to the pain he was experiencing, he was unable to go to visit his wife's family and they remained at his parent's house where he spent the day in a chair and on pain medication. Mr. Doe spent most of the Christmas holiday season in pain and extremely limited in his activities.

Recovery for pain and suffering compensates for the physical and mental discomfort caused by the injury. Kirk v. WSU. The amount is determined by the discretion of the jury. Collins v. Nelson, 112 Wn. 71, 191 P. 819 (1920). Lay witness testimony of purely subjective symptoms still existing at trial allows for a jury instruction and consideration of future damages for all categories of general damages. Bitzan v. Parisi, 88 Wn.2d 116, 558 P.2d 775 (1977). Negligently inflicted mental distress is compensable. Hunsley v. Giard, 87 Wn.2d 424, 553 P.2d

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1096 (1976). So is distress about the fear of the future consequences of an injury. Elliott v. Aerosmith, 149 Wn. 631, 272 P. 32 (1928). Loss of ability to enjoy life is a proper element of damages, and if there are special artistic or athletic skills, separate or added distress compensation is appropriate. Kirk v. WSU, at 460-461. The injured person's anxiety and worry are compensable. Freeman v. Intalco Aluminum Corp., 15 Wn. App. 677, 552 P.2d 214 (1976). Following the collision, Mr. Doe had trouble sleeping due to his post-traumatic stress disorder. He experienced nightmares of the crash Mr. Doe was unable to work in the same capacity as he had prior to the accident, avoided social activities, and became hyper-vigilant about driving for a significant period of time following the accident.

At the time of this collision, Mr. Doe lived a normal and active life. Following the accident, he suffered ongoing pain and limitations that substantially impacted the normal activity of his life for which he required medical care. Although Mr. Doe has made progress in getting his symptoms under control over the course of treatment, he continues to suffer a considerable amount of pain and suffering as a result of this accident.

SETTLEMENT PROPOSAL

In light of the clear liability in this case and the injuries clearly proximately caused, as well as the damages documented herein, we make a reasonable and fair demand in the total amount of \$_____ in full and final settlement of this claim. Hopefully, we can settle this claim quickly and in a cordial negotiation. We make this request pursuant to Washington Administrative Code, Section 284-30-360(3), which states in relevant part:

- (3) An appropriate reply shall be made within ten working days...on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

Thank you and I look forward to hearing from you.

Very truly yours,

Bob R. James
Attorney at Law

Enclosures

BRJ/tm

cc: client w/o encl.