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Atlanta, GA 30326

October 4, 2013

Via Federal Express

Settlement Demand

Mr. Shawn Johnson, AIC, FCLA
Elite Group Insurance
572 Hawk Avenue
Auburn, ME 04211-1350

Re: ***My Clients: Nathan Darcy, a minor, Kevin Darcy &
Sharon Darcy - Parents
Date of Attack: July 26, 2013
Your Insured: Ms. Carol Lynn Smith
Concord Claim Number: 1111916***

Dear Shawn:

As you know, my law firm has been retained to represent Nathan Darcy, a five year old, and his parents in connection with very serious injuries he sustained from a dog attack on Peaks Island, Maine on July 26, 2013. The dog at issue was owned by Ms. Carol Lynn Smith, Concord's insured.

This letter and the associated exhibits shall serve as my clients' demand for settlement of their claims.¹

THE DARCY FAMILY

Any jury seated in this case is going to immensely like the Darcy family. I have had the pleasure of getting to know this family over the last several months. I can state, without

¹ We will soon be sending Ms. Smith the Notice of Claim, pursuant to 14 M.R.S.A. § 1602-B and will provide you with a copy of the same.

hesitation, that they are some of the nicest, most sincere clients I have represented in over a decade of law practice.

Kevin is a self-employed internet consultant. His wife, Sharon, is an ultrasound technician at a well-regarded Atlanta hospital. Tina, Nathan's sister, is three and a half years old. She witnessed the entire attack upon her brother. I have enclosed pictures of the Darcy family as Exhibit G, so that you can put faces with the names.

Of course, this case is and forever will be about Nathan (he is usually called "Nate."). Nate is a boy who enjoys: soccer, swimming, going to the beach, hiking, and, until this attack, dogs and other animals. Prior to his visit to Peaks Island and the attack by Ms. Smith's dog, Nate loved dogs, enjoyed their company, and had no reason to behave otherwise. The attack at issue has changed not only Nate's physical appearance but also his ability to be around dogs. I will return to that topic below.

LIABILITY

Liability in this case is clear and the facts are likely to outrage a jury.² I am well aware of Maine's strict liability laws for off-premises dog attacks; however, many of the below issues are will be discussed at trial, if only to provide the context of the attack.

The Darcy family has a number of friends on Peaks Island. In July of this year, they traveled from Atlanta to vacation and visit with those friends. I will not belabor herein the details surrounding the attack, as the same are well known to all involved and well documented within the police report [Exhibit B], EMS, and medical records. Notably, these documents were created contemporaneous with the event, in contrast to Ms. Smith's multi-page, fantastical rendition about the attack (which she submitted to the local prosecutor).

Suffice it to say, the evidence is clear that the Darcys sought Ms. Smith's permission before approaching her large Bullmastiff. Ms. Smith misrepresented her dog to be "friendly" and, therefore, Nate began petting the dog. Soon thereafter, the dog attacked Nate, slicing his teeth into the child's face and attempting to bite into his throat. Fortunately, Kevin was nearby and was able to pry the dog's jaws and teeth off of his son's face.

You can imagine the effect that this attack had upon Kevin, Sharon, and three year old Tina, let alone Nate.

The pictures of Nate's face, provided herewith, are nothing short of disturbing and will be so perceived by a jury. [See Exhibit A]. These pictures present a before and after contrast which we believe is quite striking.

² We can reserve a discussion about the propriety of a punitive damage claim and award under the facts of this case. Suffice it to say, we will investigate the same in conjunction with an assessment of whether Elite's policy provides coverage for such damages.

THE DOG & THE AFTERMATH OF THE ATTACK ON NATE

Prior to July 26, 2013, Ms. Smith had *specific knowledge* that her dog was very dangerous. This fact cannot be disputed. First, the dog attacked Ms. Smith herself. [See Exhibit D]. Next, approximately one year prior to the attack on Nate, the dog attacked another young boy, Gibson Jackson. [See Exhibit C]. I have spoken to Gibson's father, John Jackson. He confirmed the unprovoked attack on his son and discussed, at length, Ms. Smith's behavior toward he and his son after the attack. Both the attack and Ms. Smith's post-attack conduct toward his family are not favorable for your insured.

Ms. Smith has engaged in what can fairly be described as a smear campaign against both of these young boys and their families. Her lengthy submission to the Portland Police Department seeks to place blame upon Gibson and his family, as well as upon Nate and his family. You can read Exhibit E and discover more about Ms. Smith's viewpoints on her dog and on the victims of the attacks. Some of her more interesting opinions about the attacks are as follows:

p. 1 of the Smith Statement: *"This is not a dangerous dog! This dog was provoked. The child grabbed the dog's head and neck pulling it towards him. When the dog reacted the boy stumbled and fell and then the father and mother got on top of the dog, trapping the dog on top of the child!"*

p. 6 of the Smith Statement: *"From this moment forward, I have learned that it is not safe for me or my dog to have any children anywhere near Phineas. Not because he is a "dangerous dog", but because I now learned that children, especially young children are fearless, think they are invincible and impulsive and are not to be trusted around an animal."*

p. 6 of the Smith Statement: *"I've now learned that parents/adults cannot be trusted either. I can't imagine what the parents were thinking to set their child free to do whatever he wanted to with the dog. It was irresponsible and unthinkable action on their part."*

Respectfully, I cannot imagine that Ms. Smith is the sort of Defendant that a jury will relate to or sympathize with. These excuses, offered in an attempt to avoid responsibility, do not merit further discussion. This is the type of commentary that enrages juries and drives up verdicts—whether in Maine or in Georgia.

DAMAGES

After the attack, Nate was taken by fireboat to Maine Medical Center. There, doctors operated on his facial injuries. [See Exhibit F, medical records and bills]. He followed up with a plastic surgeon in Portland and has done the same in Atlanta.

Nate has been left with permanent facial scars and indentations on both sides of his face. These are injuries that will likely require future surgeries. You can review Dr. Asaf Young's note, which details this board-certified plastic surgeon's opinions about the permanency of the scarring and likelihood of future surgical intervention. Dr. Young has an excellent vantage point with respect to evaluating the injuries since it has been more than two months since the attack.

Nate's scars will never go away and will be an ever-present reminder of this attack. I have provided you with photos of the injuries to both sides of his face. I understand that you are a seasoned claims adjuster who is accustomed to seeing terrible injuries. However, on Nate's behalf, I ask that you take a few minutes to contemplate the life-changing effect that these scars will have on Nate for decades to come.

- They are *facial* scars, not wounds to the legs, arms, or back which can be covered up. No matter the time of year, no matter the circumstance, no matter his age, these facial scars will be noticed by everyone who ever sees, talks with, or interacts with Nate.
- Nate's facial scars will be present in family photos, in school photos, and in his wedding photos.
- For the next seventy-five years, Nate will answer questions from classmates, teachers, friends, girlfriends, co-workers, and strangers about how his face was injured, where his scars came from, and countless other similar inquiries.

Next, this attack has multiple psychological components as well. First, Nate is unfortunately old enough to remember the attack. Unlike a two year old who will grow up absent a memory of the event that led to his scars, Nate will forever associate his injuries with the attack at issue. In fact, the EMS records document that Nate knew that the dog was trying to bite into his throat. That memory, and countless others related to this incident, will endure.

Moreover, almost every house that Nate visits, whether family or friend, has a dog. Therefore, Nate is constantly placed in the position of having to confront his newfound fear of dogs. It is very difficult to travel outside of one's home without routinely encountering dogs. In fact, one recent example of the lingering emotional effects of this attack occurred a few weeks ago at Nate's school bus stop. A parent brought her golden retriever to the bus stop. Upon seeing Nate's reaction to the dog, some of the children began making fun of him and pointing out that he was scared of dogs. This is one of what will likely be countless similar stories. Every juror seated in this case will be asking himself or herself—what if Nate was my child?

Further, as I am sure you are aware, the medical literature is replete with studies about the psychological harm that scarring (particularly on the face) does to a child. Some, among many, examples are as follows:

The Psychological Impact of Scars in Children, Part III³

*“It’s very common to have scarring on the face from very simple injuries, and then deeper and/or more significant scarring that can happen from more significant trauma such as car accidents, serious bike injuries and dog bites. **Dog bites are a very common cause,**” explains Lawrence Eichenfeld, MD, chief of pediatric and adolescent dermatology at the University of California, San Diego (UCSD) School of Medicine and Rady Children’s Hospital, San Diego. “Scars can be functionally significant and deforming, and may have tremendous psychological effects beyond their physical injuries. For instance, there can be great emotional trauma from the events of traumatic abuse injuries, or dog attacks, and the scars represent much more than the physical changes.”... Dr. Eichenfeld considers dog bites to be a very common cause of scarring in children that can be both functionally significant and deforming and also have psychological impact beyond their physical state. In addition, he explains, the scars have much more significance tied to them than the physical aspect of the scars. One study that took place over 5 years at the Children’s Hospital of Philadelphia in Pennsylvania, described both physical and psychological scars from dog bites as “long-term reminders of these events.”*

The Psychological Impact of Scars on Children, Part II⁴

*“In childhood, especially in adolescence, that’s certainly a time when they don’t want to stand out,” Ms. Ruiz explains. “**If the injury has resulted in visible scars,** that sort of puts them in the limelight, puts the focus on them, and that creates problems.”*

Psychological Consequences of Facial Scarring⁵

*“The individual will go through periods when the scar is tight, tender and itchy, and periods of limitations on function due to the contractions that can occur. **From a psychological perspective the location of scarring can be of particular importance, especially in visible locations such as the face and neck, back of the hands and lower arms.**”*

The Hidden Cost of Skin Scars: Quality of Life after Skin Scarring⁶

*“**Facial scars have been shown to cause high levels of anxiety and self-consciousness....**Thirty-four scar patients, the majority of respondents were unhappy with their scar’s appearance due to their perceived stigma and psychological associations, and thus adopted different coping behaviors to hide or compensate for them. Often this made them unsociable and interfered with their communication skills,*

³ <http://www.the-dermatologist.com/content/psychological-impact-scars-children-part-iii>

⁴ <http://www.miamidermlaser.com/wp-content/uploads/2012/08/The-Psychological-Impact-of-Scars-in-Children.pdf>

⁵ http://link.springer.com/chapter/10.1007%2F978-3-642-59307-9_53

⁶ <http://www.jprasurg.com/article/S1748-6815%2808%2900395-1/abstract>

personal relationships, work life and leisure activities. Concerns about the diagnosis and persistent nature of scars were common....”.

Anxiety and Self-Consciousness in Patients with Minor Facial Lacerations⁷

“For physiologically major injuries (such as facial cancers, burns and fractures), the face has been suggested to be a psychologically significant area of the body and disfigurement has been found to have numerous potential social consequences for patients.”

Because of the behavior that Nate has already exhibited, his parents are likely to have him seen by a child psychologist in the near future. The Darcys are doing what they can to minimize the emotional trauma that this attack has had on their son.

We are confident that a jury will understand the severity of the injuries, both mental and physical, that Nate has sustained as a result of the dog attack. You can imagine, as the jury will be asked to do, what is like for a young child to go through such a terrifying event and then be left with scars on his face and the associated emotional trauma.

Our sincere belief is that if Elite rejects the opportunity to protect its insured by resolving this case now, we will secure a verdict in excess of Ms. Smith’s policy limits. As you can probably surmise, we have been in touch with a few very well regarded trial lawyers in the Portland area who are eager to file suit and try this case to verdict with us.

DEMAND

I am authorized to accept Elite’s full policy limits, represented to be xxx hundred thousand dollars (\$xxx,000.00), in order to resolve all claims related to this attack and Nathan’s injuries, scarring, past and future surgeries, and medical bills. If Elite does not accept this offer to settle by the deadline stated below, we will place this matter into suit and secure an excess verdict. Moreover, if the representation that the applicable and available policy limits of \$xxx,000.00 is not accurate, this offer to settle is null and void.⁸

This is your opportunity to protect your insured from the likelihood of personal liability for my clients’ substantial, ongoing damages.

Next, this offer to resolve my clients’ claims within your insured’s policy limits will expire on November 1, 2013 at 5:00 p.m. (EST). After that date and time, we will file suit.

I would respectfully suggest that given the totality of the circumstances, as described above, this is a case that Elite should resolve as offered by my clients and not gamble with Ms. Smith’s assets. I do not believe that this story will end well for Ms. Smith or Elite after the jury meets the Darcy family, sees the enclosed pictures, hears about the attack, and renders a verdict.

⁷ <http://www.ncbi.nlm.nih.gov/pubmed/15271161>

⁸ We would appreciate a full disclosure of all known insurance policies, pursuant to 24-A M.R.S.A. §2164-E.

We look forward to hearing from you.

Sincerely,

ANDREW E. GOLDNER

Enclosures: medical records, bills, photographs, police report,
and other referenced documents

Cc: Kevin and Sharon Darcy