

[www.andrewgoldner.com](http://www.andrewgoldner.com)

February 19, 2014

VIA FEDERAL EXPRESS

## **OFFER OF SETTLEMENT**

Mr. David Lucas  
Lake Mountain Insurance Co.  
625 Beta Drive  
Highland Heights, OH 44143

Re:

*My Client* – Richard A. Floyd  
*Date of Collision*: March 21, 2011  
*Your Insureds*: Inner Disaster Management &  
Mr. Shannon Dank  
*Your Claim No*: 11-2812252  
*Lake Mountain Policy No*: 07888600-0

Dear Dave:

As you know, my law firm has been retained to represent Richard Floyd in connection with catastrophic injuries, including a traumatic brain injury, multiple fractured ribs, and a total splenectomy, which he suffered on March 21, 2011. These injuries, and others, were the result of an automobile wreck caused by your insureds, Mr. Shannon Dank and Inner Disaster Management, Inc.

This demand package is provided at this time in order to afford Mr. Dank and Inner Disaster the opportunity to avoid personal/corporate asset exposure in connection with this matter.

Mr. David Lucas  
Lake Mountain Insurance Co.  
2

**RICK FLOYD**

Prior to the March 21, 2011 wreck, Rick Floyd was an independent, active father and grandfather. Rick, his three children, and four grandchildren all live in the Cherokee County/north Georgia area and are well-established within that community. Prior to the wreck, Rick lived alone in his own apartment, lived without assistance<sup>1</sup>, drove his own car, cared for two dogs, and was enjoying his retirement years. I have provided you with some pre-wreck photos of Rick at family gatherings. These pictures demonstrate the kind of life Rick lead before the wreck at issue.

Rick was married once, to Patricia Floyd, in 1965. She passed away in the late 1990's. Rick served honorably in the United States Navy for more than ten years, serving both domestically and abroad. He worked for the same company for thirty-eight years (Kimberly-Clark, employed as a credit analyst).

Before the wreck at issue, Rick loved spending time with his grandchildren, traveling to watch his granddaughters' softball games, and walking his dogs multiple times each day. The injuries associated with this wreck have caused Rick tremendous pain, caused him to lose mental capacity (as more fully described below) and generally resulted in a more sedentary lifestyle for him. Rick is now (understandably) nervous about venturing outside his home and onto the roads and highways with which he had become accustomed. While the brain injury has moved past the traumatic bleed, Rick's family notices lingering personality and memory issues. Mr. Floyd's altered mental status is evident throughout his medical records and while some of these issues have resolved, many linger.

**THE MARCH 21, 2011 WRECK AND**  
**THE LIABILITY OF MR. DANK / INNER DISASTER**

At around 10-00 a.m. on March 21, 2011, Rick was driving his Dodge Caliber northbound on Interstate 575 in Cherokee County, located approximately thirty minutes north of Atlanta. Not surprisingly, as happens so frequently in the Atlanta area, traffic began to cause congestion on the highway.<sup>2</sup> A number of cars in front of Rick slowed without problem, as did Rick and most of the cars behind him. Shannon Dank, driving a Toyota Sequoia SUV was either distracted<sup>3</sup> or inattentive and caused his truck to rear-end Mr. Floyd's vehicle (then, Mr. Dougherty's SUV struck two other vehicles). The pictures from this wreck, provided herewith<sup>4</sup>, speak to the force of this collision.

---

<sup>1</sup> I would urge you to review the "Initial Assessment" worksheet from Golden Living, the facility where Rick was admitted to rehabilitate his brain injury. The "prior" vs. "current" levels of functioning are striking.

<sup>2</sup> In this case, traffic apparently slowed for a passing funeral procession.

<sup>3</sup> Should this matter proceed into litigation, we will subpoena Mr. Dougherty's cell phone records in order to investigate telephone calls and text messages.

<sup>4</sup> All pertinent documents, including but not limited to: photos, the wreck report, medical bills, and medical records are produced herewith on the enclosed disc.

Mr. David Lucas  
Lake Mountain Insurance Co.  
3

Mr. Rodney Baker, the only impartial witness identified in the wreck report, signed a statement (provided herewith) evidencing his belief that Mr. Dank was traveling at least 55 – 60 miles per hour when he rear-ended Rick’s car. Mr. Baker also stated that the wreck was “totally” Mr. Dank’s fault. I am cautiously optimistic that Lake Mountain Insurance does not believe that there is a viable liability defense in this matter. I think most would agree that any attempt to deny liability<sup>5</sup> would do little more than anger the jury and thus drive up the verdict.

#### RICK FLOYD’S INJURIES

Rick was transported via ambulance from the collision scene to Northside Hospital Cherokee. While there he was noted to have, among other injuries: a pneumothorax, pneumomediastinum, pulmonary contusion, cardiac contusion, multiple left-side rib fractures, right first rib fracture, and a lacerated spleen<sup>6</sup>. Treatment for these injuries exceeded the capability of Northside Hospital Cherokee. Accordingly, Rick was life-flighted (via air ambulance) to Atlanta Medical Center, a trauma center in downtown Atlanta.

At Atlanta Medical Center, the physicians confirmed the injuries diagnosed at Northside and also found that: Rick had free fluid into the abdomen (noted as a “massive hemoperitoneum”); he was hemodynamically unstable and in hemorrhagic shock; Rick had a brain laceration; he was essentially comatose; and, he was diagnosed via CT scan with a traumatic subarachnoid hemorrhage (note also that the CT scan ruled *out* chronic subdural hematoma).

Rick underwent an emergent splenectomy and was then transferred to the Intensive Care Unit. He remained in ICU for four days.<sup>7</sup> As you know, the spleen is the organ in the body which fights infections.<sup>8</sup> Rick no longer has his spleen and, particularly given his age, he will forever be at greatly increased risk for serious infections. After his stay in the ICU, Rick was transferred to the hospital floor, where he stayed for an additional five days. The nursing notes detail Rick’s hospital course, which included the use of bilateral wrist restraints, due to his altered mental status, and the use of a Foley catheter as a result of urinary retention.

---

<sup>5</sup> O.C.G.A. 40-6-49 (a) – “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

<sup>6</sup> Dr. Vernon Henderson, the surgeon who performed the splenectomy at Atlanta Medical Center, noted in his operative report that the laceration “literally divided the spleen in half.”

<sup>7</sup> You have all of the medical records. Therefore, in the interest of brevity, I am not going to list herein each and every pertinent nurses’ and physicians’ note. Suffice it to say, the records reflect the gravity of Rick’s injuries and the pain associated therewith (particularly with respect to the head trauma and multiple fractured ribs).

<sup>8</sup> See, e.g., <http://uvahealth.com/services/cancer-center/conditions-treatments/14866> and <http://www.mayoclinic.com/health/splenectomy/MY01271>.

Mr. David Lucas  
Lake Mountain Insurance Co.

4

After remaining in the hospital for nine days, Rick was transported via ambulance to Golden Living Center – Kennestone for rehabilitation of his brain injury. Notably, many people suffer brain bleeds and brain injuries as a result of motor vehicle wrecks; however, few require *in-patient* admission at an acute care facility to rehabilitate the brain injury. We believe that Rick's month-long admission to Golden Living speaks to the gravity of this wreck and the nature of his brain injury. While at Golden Living, Rick underwent physical, occupational, and speech therapy for approximately a month. Note that the reason for the referral was:

*"(Cognitive Linguistics) Patient is a 77 year old male who presents with a decline in safety due to subarachnoid hemorrhage suffered from MVA. The patient used to be able to complete all executive cognitive tasks independently but now requires maximum cognitive assistance to complete these tasks."*

The records detail Rick's altered mental status and his tremendous efforts to rehabilitate himself. Rick's children were frequently at his bedside and we believe that his family will make an outstanding impression upon the jury. Mr. Floyd was finally discharged home, with daily home health visits, well over a month after the collision at issue.

As mentioned above, Rick's children have noticed cognitive changes in their father since the wreck. His speech is slower, he seems to "process" more slowly, he is more forgetful, and is more sullen. The acute aspect of Mr. Floyd's brain injury has seemingly resolved; that is to say, the bleeding has stopped. However, he remains at increased risk for further brain bleeds as a result of the trauma to his brain caused during this wreck. Perhaps most importantly, we believe Rick's family will tell a compelling story about pre-wreck father/grandfather and post-wreck father/grandfather.

### **OFFER TO SETTLE**

This is not a matter which permits of some simple multiplier of medical bills or the like. Georgia juries understand catastrophic damages such as a traumatic brain injury, a total splenectomy, massive scarring, and multiple rib fractures. These are not the types of injuries which are difficult to explain at trial.

As noted above, the pictures of this wreck and of Mr. Floyd after the collision say much more about what he has been through than I ever could. Rick's surgery, his stay in the Intensive Care Unit, month-long admission to a rehabilitation center for his brain injury, and subsequent in-home health care speak to the gravity of the injuries he suffered. Obviously, individuals in their seventies do not recover from such injuries like those who are younger and in better health. Rick's ultimate long-term prognosis remains an open question.<sup>9</sup>

---

<sup>9</sup> There does not seem to be an issue with continued bleeding into Rick's brain; that has apparently subsided. The long-term effects of the initial brain injury are likely to continue to manifest over time. In addition, it is beyond dispute that older individuals, who are naturally more immunocompromised, are at far greater risk for serious infections after a total splenectomy.

Mr. David Lucas  
Lake Mountain Insurance Co.

5

I have settled a case previously with Fred and also know him by reputation to be a very good and reasonable attorney. Likewise, Dave, I have spoken with some of my colleagues who have dealt with you and I understand you to be a reasonable adjuster and a straight-shooter. Accordingly, rather than send the usual and expected policy limits demand in connection with a brain injury/catastrophic damages case, I have asked my client to provide a number which signals to Lake Mountain Insurance a good faith effort to resolve this matter pre-suit and which we believe to be fair to all involved. Therefore, Rick Floyd will accept \$899,000.00 in order to resolve this matter now. This number contemplates Lake Mountain's good faith in allowing my client to avoid the time and expense of litigation. Obviously, should the deadline stated below elapse without settlement, we will file suit and ask the jury for an amount well in excess of the policy limits.

My client's offer to settle this matter within Inner Disaster/Shannon Dank's policy limits will remain open until July 29, 2011 at 5:00 p.m. EST. After that date and time, we will file suit. This is Lake Mountain's chance to resolve this claim within its insureds' policy limits.

For us to have productive conversations, I believe it is vital for Lake Mountain to understand that we are submitting a number that we believe is quite fair, given the facts of this matter. If we were interested in playing the usual negotiation game, my client would have simply demanded the policy limit—we are trying to cut to the chase with you in order to determine whether this claim will need to be placed into suit soon. Therefore, it would be a mistake for Lake Mountain to assume that the amount now demanded is a usual "starting point"—it is not.

Please note, this offer to settle is made pursuant to the holdings of Cotton States Mutual Insurance Company v. Brightman, 256 Ga. App. 451 (2002) and Southern General Insurance Co. v. Holt, 262 Ga. 267 (1992). As you are undoubtedly aware, Georgia law allows an injured party to make a time-limited demand to the insurer of a party causing an injury, and failure of the insurer to make a timely tender of the amount demanded will render it potentially liable to its insured for the full amount of any excess judgment rendered against that insured, plus potential punitive damages above and beyond any damages awarded against the insured individually. This is your opportunity to protect your insureds from an excess verdict. Inner Disaster is a company with assets sufficient to satisfy an excess verdict. Therefore, in the event that my client secures a verdict above Lake Mountain's policy limits, we will keep all avenues of collection open, including pursuing corporate and personal assets.

Finally, this offer is conditioned upon the disclosure of the \$1,000,000.00 policy limits being truthful and accurate. If there is additional insurance coverage over and above the \$1,000,000.00 limits which you have disclosed, this offer to settle is null and void.<sup>10</sup>

We look forward to hearing from you.

---

<sup>10</sup> Mr. Floyd also reserves any and all claims pursuant to O.C.G.A. § 32-24-41.1.

Mr. David Lucas  
Lake Mountain Insurance Co.  
6

Sincerely,

**ANDREW E. GOLDNER**

:aeg

Enclosure of DVD

Cc: Fred Smith, Esq. (*w/ encl of DVD*)  
Jeff Ruffalo, Esq. (personal counsel for Inner Disaster) (*w/o encl.*)