February 19, 2014

***VIA FEDERAL EXPRESS & ELECTRONIC MAIL (ADJUSTER@INSURANCECOMPANY.COM)***

**OFFER OF SETTLEMENT**

Ms. Jane Adjuster
Insurance Company
1234 Any Street
Atlanta, GA

Re:

***My Clients* – Sherry Battle and her two minor sons, Adam Hill and Ben Hill**
***Date of Accident*: August 16, 2009**
***Your Insured*: Susan Q. Baddriver**
***Your Claim No*: 1234566**

Dear Ms. Adjuster:

As you know, my law firm has been retained to represent Ms. Sherry Battle and her two sons Adam (age 2) and Ben (age 9 months). This letter shall serve as my clients' offer to resolve this matter prior to litigation.[1]

**LIABILITY**

Liability in this case is clear. On a rainy, wet day Ms. Baddriver pulled her vehicle directly out in front of the car operated by John Hill. I have been to, and investigated, the accident scene. This is a very busy, major road and a speed limit of 45 miles per hour. Ms. Baddriver's decision to run a stop sign and pull out in front of oncoming traffic was negligent at best, reckless at worst.

[The accident report and all other documents cited herein are provided on the enclosed disc].

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1" Accordingly, nothing herein is admissible in any forthcoming trial.

During our initial telephone calls, you mentioned that Insurance Company will accept only 75 percent of the responsibility for this accident. Insurance Company apparently places 25 percent of the blame for the collision on Mr. Hill.

First, Ms. Baddriver did not contest the traffic citation and paid the fine levied for "failing to stop at a stop sign." This is, in effect, a guilty plea and will be treated as such at trial. If Ms. Baddriver attempts to shift some of the blame for the accident, it will ring hollow with jurors against the backdrop of her prior admission of guilt. [Traffic citation and entry of fine provided herewith].

Next, let me address the allegations about improper restraint of the two children, Adam and Ben. The accident report and medical records are conflicting regarding how the children were restrained. What seems clear is that they were in child seats. Whether such child seats were used in total compliance with the manufacturer's directions is another question—and, it is a question that we will not be able to resolve this far removed from the accident.[2] However, as you know, restraint issues are inadmissible under Georgia law in a case like this. Therefore, the jury will not learn how the children were belted.

Moreover, while I respect you, your experience adjusting claims, and your company, I reject the notion that Mr. Hill bears some significant level of responsibility for this collision. I understand why Insurance Company wants to take that position, given the number of claimants and given the applicable policy limits; however, there is simply no credible evidence to support significant wrongdoing by Mr. Hill, particularly in light of Ms. Baddriver's judicial admission that she ran the stop sign.

I acknowledge, and the jury will see, the significant damage to the vehicles. The speed limit on this major thoroughfare is high and one would expect extensive damage from a collision of this sort. If you are aware of any scientific evidence of negligent driving by Mr. Hill that would survive a *motion in limine*, Daubert motion (if an expert were identified by the defense), and directed verdict, please let me know and I will advise my client accordingly. At present, I am only aware of an *allegation* of negligence by Mr. Hill (perhaps supported only by Ms. Baddriver's friend and passenger—who is seeking, or has received, monetary payment from Insurance Company). Quite simply, the fact that the vehicles suffered major damage helps Plaintiffs' case and is not indicia of malfeasance by Mr. Hill. Notably, jurors will be familiar with the 'rule of the road' that you do not pull your car out into a driving lane until it is safe and clear to do so. Therefore, *even if*, Mr. Hill was driving too fast, it was incumbent upon Ms. Baddriver to refrain from pulling out until it was safe to do so. Moreover, it was certainly inappropriate to run a stop sign.

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2 Some of the medical records note that the children were "restrained," while other give varying accounts of how the kids were belted.

Of course, even if there were some facts tending to support Insurance Company's theory that Mr. Hill shares some minor degree in the fault for this accident, that cannot legally be held against Ms. Battle or her two minor children, who were passengers.

We believe the jury will see the case as we do and as the responding officer did—one of clear liability on behalf of Ms. Baddriver. Any attempt to shift blame away from Ms. Baddriver is likely to anger the jury and drive up the damage award.

## DAMAGES

Ms. Battle was seen in the emergency room at Oconee Regional immediately after the accident at issue. There, she was diagnosed with a comminuted fracture of her left wrist and endured immobilization of, and therapy to, her arm for an extended period of time.[3] Her sons, Adam and Ben, were very severely injured in this crash and nearly lost their lives. I will not belabor discussion about the sympathy infants and toddlers enjoy with juries, particularly in the face of evidence of "traumatic brain injuries," as noted in the enclosed medical records. Juries understand hematoma and seizure activity as they relate to brain injury.

The damages suffered by the children in this collision were horrendous.

The value of each child's claim *far* exceeds the $100,000 per person policy limit you have represented is applicable in this action. In fact, even using Insurance Company "75 percent responsibility theory," the value of Adam and Ben's claims each still exceed the $100,000 per person limit. If there were higher per person limits, we would be seeking those without question.

## DRELYN

Adam was emergently transported to Oconee Regional after the accident. While there, he had "prolonged seizure activity" as a result of head trauma suffered during the collision.[4] Unfortunately, Adam required intubation. Due to the severity of his condition, Adam was then emergently transferred to Children's Healthcare in Atlanta and admitted to the Pediatric Intensive Care Unit. Upon admission, Adam was subject to multiple tests and studies. His condition was listed as "critical." He was noted to have respiratory failure and "seizure secondary to trauma and eye hematoma." Adam remained hospitalized until August 19, 2009.

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3 As you know, the designation "comminuted" means that Ms. Battle's bones was crushed and/or splintered into multiple pieces—obviously a significant fracture

4 Children who suffer traumatic head injuries are at continued risk for seizure and, according to the medical literature, are not "out of the woods" until years after the event. See, for example, http://www.braininjury.com/seizuresandheadinjury.html.

He appears on the road to recovery; however, as you know, when children as young as Adam suffer head injuries and seizure activity, the total scope of the injuries may not manifest for quite some time. Adam's medical bills, which will be presented to the jury, are $30,000. [Medical records and bills of Adam Hill provided herewith].[5]

We are quite confident that a jury will be able to understand what Adam endured as a result of this accident and we believe their verdict will be in excess of the policy limits available to your insured. Jury verdict research reveals that jurors take head trauma to children quite seriously.

I am authorized to accept the $100,000 policy limit available to Adam. In exchange for this policy limit, we will sign a limited release, not file suit, and not pursue your insured's personal assets.

**BEN**

Ben was emergently transported to Oconee Regional after the accident. He was then in respiratory failure and, like his brother, emergently transported to Children's Healthcare in Atlanta. Ben had a diagnosis of "head injury." He was intubated, listed as "unresponsive," and his condition was classified as "severe." He was admitted to the Pediatric Intensive Care Unit and required neurology and neurosurgery consults. Ben's medical records reveal that he was in "constant pain" and that he had a "traumatic subarachnoid hemorrhage" and brain injury. Ben underwent numerous tests and studies and he was ultimately discharged on August 22, 2010.

As with his brother Adam, it is likely that the total scope of Ben's injuries may not manifest for quite some time. Nolan's medical bills exceed $45,000. [Medical records and bills of Ben Hill provided herewith].

I am authorized to accept the $100,000 policy limit available to Ben. In exchange for this policy limit, we will sign a limited release, not file suit, and not pursue your insured's personal assets.

**MS. BATTLE**

As noted above, Ms. Battle was seen in the emergency room at Oconee Regional immediately after the accident. She suffered a comminuted fracture of her left wrist and endured immobilization of, and therapy to, her arm for an extended period of time. [Ms. Battle's Medical records and bills are provided herewith]. Ms. Battle underwent at least seven occupational

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5" As you know, Wellcare (Georgia Medicaid) paid the medical bills. While this information is not admissible at trial, and the jury will simply be presented with total charged medical bill figure, it is worth noting that Wellcare must be reimbursed. Therefore, the medical bill figure is not a windfall for these Plaintiffs.

therapy sessions to rehabilitate her fractured wrist and the records reveal her "excellent" efforts to regain her prior range of motion.

Ms. Battle will accept $45,000 in full and final settlement of her claims. In exchange for this figure, we will sign a limited release, not file suit, and not pursue your insured's personal assets.

Of course, should this matter proceed into litigation, we will investigate this matter thoroughly, to include: Ms. Baddriver's use of a cell phone or other digital device at the time of the collision and any other theory which might give rise to punitive damages.

Next, **this demand is being made pursuant to the Georgia Unliquidated Damages Interest Act, O.C.G.A. § 51-12-14, which provides for the recovery of interest if the demand is rejected. Please note that as required by Georgia law, I have sent a copy of this demand to your insured directly.**

Further, I recognize that there are a number of claimants which Insurance Company must pay; however, my clients are totally without fault in this incident and, particularly with respect to Adam and Ben, they suffered extremely serious injuries. I suggest you notify your insured (who is copied on this letter) that she clearly has personal exposure in an amount in excess of the policy limits and should seek independent representation and legal counsel due to excess liability. I have discussed this matter thoroughly with Ms. Battle and have advised her of the consequences of the insurance company's failure to exercise good faith in this matter.

Please note, these offers to settle are also 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 punitive damages awarded against the insured individually. **This is your opportunity to protect your insured from the very likely possibility of personal liability for my clients' damages, above and beyond the coverage Insurance Company provides.**

If you contend that you cannot pay the per-person limits demanded for Adam and Ben because of payments to other claimants, my client may[6] be willing to compromise such claims if it is shown that other claims submitted prior to this demand were, in fact, paid. This would

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6* At present, the undersigned is unaware of the extent of any injury to the two individuals not represented by this firm. As such persons are represented no communication has been had with them.

further allow you to protect your insured from the near-certainty of an excess judgment. If this is the case, please let me know before the time for this demand expires

Finally, these offers are conditioned upon the disclosure of the $100,000 per person limits being truthful and accurate. If there is additional insurance coverage over and above the $100,000 per person you have disclosed to me, these offers are null and void.[7]

Because the Unliquidated Damages Interest Act mandates a thirty day time-window for Defendant to respond, these offers will remain open until March 15, 2010 at 5:00 p.m. EST. After that date and time, they will be withdrawn and we will file suit.

Sincerely,

Andrew E. Goldner

Enclosure

Cc: Ms. Battle (*w/o encl.; via U.S. Mail*)
Ms. Baddriver (*w/o encl.; Via Certified Mail, Return Receipt Requested*)

**Disclaimer to Lauren Baddriver**

**As indicated, this letter is being sent to you pursuant to the Georgia Unliquidated Damages Interest Act. As I represent parties adverse to you, this letter is not intended to be, and should not be interpreted as, legal advice. You have the right to contact your own attorney to discuss this matter. It is my understanding at this time that you are unrepresented. If that is incorrect, please forward this letter to your attorney so that I can communicate with him or her directly. The demand is being sent solely to establish a claim to interest following a verdict.**

7 The Claimants reserve any and all claims against any other persons or companies, including insurers, pursuant to O.C.G.A. § 32-24-41.1.