***UIM Demand for Resident Relative Policy. For Simple UM/UM Claims the Resident Relative Language Can Be Discarded… Disclaimer: Just a guide and not intended to be used without specific demand language for that particular case and client. Names changed for confidentiality***

September 1, 2020

**VIA CERTIFIED MAIL**

**RETURN-RECEIPT REQUESTED**

Allgood Insurance

PO Box 660636

Dallas, TX 75266

Re: Claim No.: 05959595959 AAA

Our Client/Your Insured: SUSAN SMITH

At Fault Party: Karen Jones (Bristol West Ins)

Date of Loss: June 1, 2020

**UIM Resident Relative Demand for Settlement of Claim**

Dear Allgood Insurance:

**This letter is made for the purpose of attempting to compromise disputed claims. It is subject to the privileges attached to proposals to compromise, including but not limited to O.C.G.A. §§ 24-4-408, 51-12-14(d) and Federal Rules of Evidence 408.**

As you are aware, this law firm has been entrusted with the responsibility of assuring that our client and your insured has the financial resources to both medically treat her injuries and to be fairly compensated for the other damages flowing there from. Recognizing that Allstate Insurance as UIM carrier shares in this responsibility as the driver of the vehicle which caused this collision was woefully underinsured (she had only $25,000 per person/$50,000 per accident available in liability insurance), the enclosures are intended to document our client’s injuries and provide Allstate Insurance the opportunity to resolve all claims within our client’s policies of insurance and without need for further litigation and/or mediation. Now that the liability limits have been tendered, we are looking to Allstate Insurance as resident-relative UIM carrier to compensate our client for the remainder of her damages pursuant to O.C.G.A. § 33-7-11, *et. seq.*

**Ms. Bonnie Smith daughter and resident relative of Ms. Susan Smith**, has one (1) *reduced-by* liability bodily injury UIM policy with policy limits of $250,000 per person/500,000 per accident with Allstate Insurance.

**Our reasonable demand to settle this RESIDENT RELATIVE UIM claim against Allstate Insurance (based on the demand package submitted) is for FULL UIM POLICY LIMITS of $250,000.00. This demand is highly comprehensive and intended to help make this a simple decision to tender $250,000.00.**

Ms. Smith is a resident relative (mother) of Ms. Bonnie Smith and resides with her at 11 Timber Way, Big City, GA 30111. Ms. Smith has her own *reduced-by* liability bodily injury UIM policy with Hartford Insurance with limits of $250,000 per person/$500,000 per accident. A UIM demand was sent to Hartford today as well. Thus, based on the underinsured status of the at-fault party combined with the resident relative relationship between Ms. Smith and Ms. Bonnie Smith, **Allstate is obligated to provide additional coverage in this UIM claim** for a total a gross recovery of $500,000 from all insurance companies involved. (Bristol West for liability, Hartford and Allstate for UIM respectively)

Additionally, a demand for $25,000.00 maximum liability policy limits in exchange for Ms. Smith signing a LIMITED LIABILITY RELEASE was sent to Bristol West Insurance (aka Coast National Insurance) on August 1, 2020. Once the policy limits are tendered and the LIMITED LIABILITY RELEASE is executed, we will supplement accordingly.

Lastly, pursuant to the *Premium Test* outlined in Georgia Farm Bureau Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 255 Ga. 166 (1985), Hartford Insurance, the UM carrier that receives premium payments from Ms. Smith, would be entitled to a UM set off before Allstate. **Allstate is not entitled to an offset because Brandy’s UIM coverage is a “reduced by liability” policy.**

*Summary of Loss*

 On or about June 1, 2020 at approximately 3:20pm, Ms. Smith was driving 2019 Honda Accord at or near the intersection of Lilly Ln. and Rose Rd. in Big County, GA. As Ms. Smith was stopped for traffic ahead, Ms. Karen Jones followed too closely and struck Ms. Smith’s vehicle from behind. For a diagram of the accident, please refer to the images below and on the attached accident report:

**[INSERT ACCIDENT PHOTOS AND DIAGRAM HERE]**

Immediately following the crash, the police were called and Trooper J. Saul of the Georgia State Patrol responded to the scene. Upon investigating the scene and interviewing the drivers, **Trooper Saul issued Ms. Jones a citation for “following too closely” in violation of O.C.G.A. §40-6-49**. So, but for, Ms. Jones’s negligent actions as stated above, this collision would not have occurred. This sequence of events, with no intervening or superseding actions, indisputably led to the damages and injuries suffered by Ms. Smith outlined below. Ms. Jones’s negligence is therefore the proximate cause of the Ms. Smith’s losses.

Our client is entitled to fair compensation for her physical, emotional, mental, and financial injuries sustained as a result of this loss. We are prepared to file suit to obtain a proper recovery for Ms. Smith; however, in a good faith gesture of professional courtesy, my client and I are making a one-time pre-trial settlement demand to resolve this claim amicably and efficiently before litigation. I think it would be in your insured’s best interest if you considered our client’s generous offer of pre-trial settlement, and failure to tender your insured's policy limit may result in additional exposure for Allstate Insurance as an excess verdict is almost certain. This issue is further discussed below with the applicable statutes and case cites.

**Bodily Injuries and Pain and Suffering**

Ms. Smith was transported by EMS to Wellstar Hospital due to sustaining severe injuries at the scene of the crash.

*Wellstar Hospital*

At Wellstar Hospital, Ms. Smith underwent a comprehensive evaluation including a physical exam and multiple imaging exams (including CT scans and X-rays) and was diagnosed with the following (non-exhaustive list):

**S92.121B – Displaced fracture of body of right talus**

 **S25.00XA – Unspecified injury of thoracic aorta**

 **S22.080A – Wedge compression fracture of T11-T12 vertebra**

 **S80.12XA** – Contusion of left lower leg

 **S80.812A** - Abrasion, left lower leg

 **S92.131B – Displaced fracture of posterior process of right talus**

Ms. Smith was admitted to the hospital’s critical care department upon initial evaluation to undergo emergency surgery on her severely deformed right ankle. An external fixator was placed on her ankle and she also was evaluated by a neurosurgeon concerning her thoracic spine fractures. Ms. Smith remained under intensive care/supervision at Wellstar for a total of 7 days from June 1, 2020 to June 8, 2020.

 Additionally, Ms. Smith underwent a second right ankle surgery on July 1, 2020 to further stabilize her ankle. The records for this visit are still pending; however, the bill for this surgery is accounted for in Ms. Smith’s special damages below.

[INSERT INJURY/SURGICAL PHOTOS HERE]

*Treatment to date*

 Many of Ms. Smith’s bills/records are still forthcoming; however, they will be supplemented accordingly if necessary. The amount of her two ER bills alone surpass $160,000.00; thus, even without the subsequent numerous therapy, drug, doctor visit, and specialist bills, it is evident that Ms. Smith’s loss is substantial and warrants a full policy limit tenders from Allstate (UM), Hartford (UM), and Bristol West Insurance respectively. Ms. Smith’s special damages substantiated by bills received to date are as follow (again, this is only a very small portion and the beginning of a plethora of medical bills and lost wages/pain and suffering/future damages forthcoming):

**SPECIAL DAMAGES TO DATE**

 **Big County EMS $1,200.00**

**Wellstar Hospital $160,799.03**

 **ER Physician (6/1/20 only) $3,800.00**

 **ER Radiology $2,300.00**

 **Anesthesiology (7/1/20 only) $1,600.64**

 **Orthopedics (until 9/23/20) $18,300.01**

 **Physical Therapy $TBD**

 **Wellstar Medical Group $TBD**

 **Future Medical Expenses $TBD**

 **Future Lost Wages $TBD**

**MEDICAL EXPENSES: $193,000.68\***

 **LOST WAGES: $19,240.65**

 **TOTAL: $212,300.33**

\*this amount WILL increase as more records become available – including but not limited to medical mileage records, additional treatment records, future treatment, surgeries, therapy, prescription records, etc.

**Susan Smith’s Current Condition**

 In every gruesome and catastrophic injury case I have, it’s my hope that my client makes a full recovery with no lingering serious issues like deformity, loss of function, or worse - unrelenting pain that is unmanageable. Unfortunately for Susan, although her bones have healed up well post-surgery, she has hot shooting electrical pains hundreds of times per day into her ankle that doesn’t seem to be improving. The doctors have increased her Neurontin dosage but that has its own set of debilitating side effects. It is unknown at this point if this will improve with time or will require more surgical intervention, but what we do know now is that our client is living in hell with this pain every day. Susan was a full time nurse, and very active in the community as well as her young grand-children. Her daughter/caregiver Bonnie Smith has reiterated to me numerous times now that her mother is a different person and that she has “aged 20 years overnight.” This is a serious case with serious injuries and a jury would very likely return a 7-figure verdict if this case went to trial.

***[INSERT CURRENT CONDITION PHOTOS HERE]***

**Future Medical Specials**

After two surgeries, Ms. Smith’s ankle is currently held in place by metal hardware. It is not likely that she will be able to reach a level of flexibility and stability that she experienced prior to this crash. Additionally, it is unknown whether the surgery will be successful in the long run or if Ms. Smith will require future surgery to repair/replace the current hardware she has installed. Lastly, **Ms. Smith’s doctors still need to address/treat her FRACTURED VERTEBRE in her thoracic spine– which will also lead to more future damages and/or surgical procedures.** Thus, Ms. Smith has a very long road of recovery ahead and that she will inevitably incur the more medical expenses with time including, but not limited to some of the following treatment types:

* **FUTURE MRI’S AND CT SCANS**
* **CONTINUING MEDICAL TREATMENT**
* **OCCUPATIONAL THERAPY**
* **PHYSIAL THERAPY**
* **FUTURE LOST WAGES / INABILITY TO WORK**
* **COUNSELING**

**Elements of Damages**

* **Past Medical Bills**
* **Pain & Suffering (present, past and future)**
* **Permanent Injury**
* **Emotional Pain & Suffering (garden variety)**
* **Future Medicals**
* **Lost Earnings (present, past and future)**
* **Loss of Earning Capacity**
* **Disability**
* **Loss of Capacity to Enjoy Life**
* **Consequential Damages**

**Demand for Payment**

As we have set out in great detail, **Ms. Smith’s current special damages are $212,300.33 without accounting for a plethora of forthcoming bills, future medical expenses, or future lost wages.**

 Also, as you rightfully stated in your email from November 1, 2020, Allstate is entitled to a set off of the liability carrier’s policy limits of $25,000.00 because Allstate is the excess UM insurer in this case. Thus, considering that Ms. Smith’s damages are catastrophic and justifiably warrant a full policy limit tender on the part of all insurers, her global recovery should be as follows:

1. $25,000.00 from Coast National Insurance (tendered to date)
2. $250,000.00 from the Hartford (primary UM insurer)**;**
3. **$225,000.00 from Allstate (excess UM insurer – entitled to set off of liability carrier’s limits of $25,000.00)**

**TOTAL RECOVERY FOR MS. SMITH: $500,000.00**

Based upon the foregoing, **my client has authorized me to settle all claims against Allstate Insurance as UM carrier for $225,000.00 in exchange for my client signing a LIMITED LIABILITY RELEASE OF CLAIMS.** These claims include compensatory damages for pain and suffering, any special damages and medical expenses (past, present and future).

 Our records indicate that Allstate received (via return receipt) our initial UM demand dated September 25, 2020 on October 12, 2020. My client’s offer to settle for full policy limits (minus entitled set off to Allstate as excess insurer – i.e. $225,000.00 from Allstate) has not changed and thus, **Allstate has until the 60th day after October 9, 2020 (December 11, 2020) to tender $225,000.00 to avoid a bad faith UM action.**

 § O.C.G.A. 33-7-11(j) reads in part the following:

“If the insurer shall refuse to pay any insured any loss covered by this Code section within 60 days after a demand has been made by the insured and a finding has been made that such refusal was made in bad faith, the insurer shall be liable to the insured in addition to any recovery under this Code section for not more than **25 percent (“or $25,000… whichever is greater…” with the new GA UM law) of the recovery** **and all reasonable attorney's fees for the prosecution of the case under this Code section**. The question of bad faith, the amount of the penalty, if any, and the reasonable attorney's fees, if any, shall be determined in a separate action filed by the insured against the insurer after a judgment has been rendered against the uninsured motorist in the original tort action.”

 Furthermore, this demand to Allstate Insurance is made pursuant to Smoot v. State Farm Mutual Automobile Ins. Co., 299 F. 2d 525 (5th Cir. 1962) and 381 F. 2d 331 (5th Cir. 1967), and the Georgia Unliquidated Damages Act (O.C.G.A. § 51-21-14), which entitles our client to interest at the rate of 3% above prime as determined by the Federal Reserve on the amount of this demand if it is not paid within sixty (60) days.

**PLEASE MAKE YOUR TENDER PAYABLE AS FOLLOWS:**

**“Law Firm, LLC in trust for Susan Smith”.**

**PLEASE MAIL YOUR TENDER TO THE FOLLOWING ADDRESS:**

**Law Firm, LLC at 1010 Peachtree St. Suite 111 Atlanta, GA 30300**

If you have any questions regarding this matter, please do not hesitate to contact our firm at 404-618-0000. Thank you for your attention to this matter and I look forward to bringing this matter to resolution over the next 60 days.

Sincerely,

Attorney for Susan Smith

Cc: Susan Smith

Enclosed:

… All the Exhibits of bills, records, evidence, reports, photos, etc.