***[Slip and Fall Demand on a Commercial Big Box Defendant]***

August 1, 2018

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

First Insurance CorporationAddress…

RE: Claim Number: 0201802180218

 Date of Loss: January 1, 2018

 Your Insured: Holdings, Inc.

 Our Client: Alexander Alex

Dear First Insurance Corp.,

Please review the following settlement demand package for our client, Mr. Alexander Alex:

1. Barbour Orthopaedics bills and records

2. American Imaging bills and records;

3. Dr. Rich bills and records.

As you are aware, we represent the above-referenced client, Mr. Alexander Alex who sustained a slip and fall injury at Cinema 17 (123 Cinema Pkwy. Big City, GA 30315) on or about January 1, 2018. We have evaluated the above referenced matter and are prepared to enter into a good faith effort to resolve the above-referenced claim on Mr. Alex’s behalf with Holdings, Inc. and its insurer for the amount of **$50,000.00** in exchange for a general release.

This letter summarizes Cinema’s liability, the extensive damages our client has suffered and continues to suffer as a result, and the financial exposure your client will face should First Insurance Corp. fail to resolve this claim on Cinema’s behalf. Please be advised that this letter is sent for the purposes of negotiating settlement, and thus any statements contained herein or attached exhibits are inadmissible at any trial of this case per O.C.G.A. § 24-4-408.

**Facts and Liability**

On January 22, 2018, Mr. Alex was a customer lawfully on the premises of Cinema, owned by your insured, Holdings, Inc. At the time of the slip and fall incident at hand (approximately 9 or 10 pm that day), the move theater was open for business and Mr. Alex was there to watch a movie. Mr. Alex decided to go to the restroom during this time and as he approached the men’s restroom near theater 22, he slipped and fell on a slippery substance located on the tile floor immediately outside of the men’s restroom door. During the slip, Mr. Alex’s right ankle contorted and his lower back suffered the brunt of his impact with the hard floor. There were no signs in the area to indicate that the floor was wet prior to the incident at hand. Furthermore, a plumbing issue appeared to be happening at the time of Mr. Alex’s slip and fall. Shortly after the incident our client noticed that water was leaking from the inside of the bathroom to the outside section where he was located. It is unclear whether Cinema knew about the plumbing issue prior to the incident at hand; however, in any case, it still does not excuse Cinema from in its duty to exercise ordinary care in keeping the premises and approaches safe in accordance with O.C.G.A. § 51-3-1. If anything, proving that Cinema knew about the plumbing issue (and potential repercussions) and yet did nothing to keep their premises safe would aggravate the severity of the tort at hand as well.

Additionally, immediately following the slip and fall, an usher named “Ivan” rushed to help Mr. Alex back to his feet. It is unknown if camera footage recording the incident exists or if a report was filed on Cinema’s behalf; however, a letter demanding the preservation of evidence was sent to Cinema shortly after the incident on February 1, 2018.

With all this said, because there were no wet floor signs present at the time of Mr. Alex’s slip and fall, it is more likely than not that Cinema was in violation of O.C.G.A. §51-3-1. Georgia law requires that, "[w]here an owner or occupier, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary carein keeping the premises and approaches safe." O.C.G.A. § 51-3-1.

In addition to O.C.G.A. §51-3-1, the Georgia Supreme Court has also held that by encouraging others to enter the premises to further the owner/occupier's purpose, the owner/occupier makes an implied representation that reasonable care has been exercised to make the place safe for those who come for that purpose, and that representation is ·the basis of the liability of the owner/occupier for an invitee's injuries sustained in a "slip-and-fall." Prosser, Law of Torts (4th ed.), § 61, p. 422; Begin v. Ga. Championship Wrestling, supra, 172 Ga.App. at 294, 322 S.E.2d 737.

An invitee who responds to the owner/occupier's invitation and enters the premises does so pursuant to an implied representation or assurance that the premises have been made ready and safe for the invitee's reception, and the entering invitee is entitled to expect that the owner/occupier has exercised and will continue to exercise reasonable care to make the premises safe. Id. It is in this light that an invitee's exercise of ordinary care for personal safety must be examined.

The owner's duty includes inspecting the premises to discover possible dangerous conditions, and taking reasonable precautions to protect invitees from dangers foreseeable from the arrangement and use of the premises. *Robinson v. Kroge*r, 268 Ga. 735, 741 (1997).

All of the previously mentioned facts confirm that your insured (1) failed to inspect, (2) failed to discover, and (3) failed to warn of the dangerous hazard (i.e. wet floor). Additionally, your insured had employees that were on-duty at the premises that day and failed to notice or remove the water puddle from the entrance of the store as well.

**At no point does it appear that any employee inspected the area to attempt to discover or remedy the hazard.** This is significant because the plaintiff has met his burden of establishing actionable negligence on the part of the premises owner. See Mazur v. Food Giant, Inc., 183 Ha.App. 453, 454 (1987); see also Jones v. Krystal Co., 231 Ga.App. 102, 105 (1998). Moreover, an owner's constructive knowledge of a hazard may be inferred where there is evidence that an employee **was in the vicinity of the hazard and could have discovered and removed it by even a simple casual observation**. See Sharpton v. Great Atlantic & Pacific Tea Co., Inc., 112 Ga.App. 283 (1965). In this case, more than one employee was in the area that could have done something about the wet spot on the floor.

It is clear that your insured failed to exercise ordinary care in keeping its premises safe and allowed a dangerous hazard to exist on the floor for an extended period. Additionally, your insured apparently did nothing to discover hazards of this type either; therefore, it let its customers "enter at their own risk."

**Injuries and Loss-Related Medical Treatment**

 In the hours following the slip and fall incident, Mr. Alex began to develop severe swelling and pain in his right ankle and lower back. Mr. Alex attempted to ice the affected areas and take over the counter pain relief medication to see if his pain would subside; however, the pain worsened as time passed. Mr. Alex eventually decided to visit Urgent Care in order to further evaluate /treat his ongoing pain despite the medical expenses that he would incur. Records/bills for this provider are currently pending; however, we have been made aware that Mr. Alex received an bandage for his ankle here and was given pain medication as well for his injuries.

**Barbour Orthopaedics – January 20, 2018**

On January 20, 2018 (\_\_ days after the incident), Mr. Alex visited Dr. Sam Barbour in order to further evaluate his pain and to assess whether he would need more invasive treatment. At Barbour Orthopaedics, Dr. Barbour performed a physical exam and took x-rays to further assess Mr. Alex’s injuries. After performing said exams, Dr. Barbour ultimately diagnosed Mr. Alex with the following:

**M54.5** - Lumbago

**S93.491A** - Sprain of other ligament of right ankle, initial encounter

Dr. Barbour prescribed Mr. Alex pain relief medication in order to help manage his pain, ordered an MRI to be done for further evaluation of his injuries, and ordered a brace for Mr. Alex to wear on his right ankle to help support him in the interim.

**Health Imaging – February 1, 2018**

On February 1, 2018, Mr. Alex visited Health Imaging to undergo MRIs of his right ankle and lower back at the recommendation of Dr. Barbour.

The right ankle MRI revealed the following:

***[Cut and Paste images from Radiology MRI Readings that have Objective Findings]***

**Barbour Orthopaedics – February 11, 2018**

On February 11, 2018, Mr. Alex followed up with Dr. Barbour to review the MRI findings and further assess/treat his injuries. After reviewing the MRI findings and conducting a follow up physical exam, Dr. Barbour discussed various treatment options including but not limited to epidural injections in his lumbar spine and a cortisone injection in his right ankle to help him manage his pain. Additionally, physical therapy was recommended for the next four weeks as well.

**Dr. Rich – March 1, 2018**

In the weeks following the February 11, 2018 visit to Dr. Barbour, Mr. Alex went back to Tanzania and did as much home-care as he possibly could while he could find a doctor to begin conservative treatment with. Mr. Alex’s at home care at this time included rest, ice, stretching, and over the counter medication in order to manage his pain. On March 11, 2018, Mr. Alex was finally able to follow up for treatment with Dr. Rich regarding his injuries. At Dr. Rich’s office, Mr. Alex was given an initial evaluation and was diagnosed with the following:

**M51.26 – Other intervertebral disc displacement, lumbar region**

**S33.5XXA – Sprain of ligaments of lumbar spine, initial encounter**

**S93.401A – Sprain of unspecified ligament of right ankle, initial encounter**

Dr. Rich recommended that Mr. Alex undergo various treatments including hot/cold therapy, massage therapy, chiropractic adjustments and extremity adjustments in order to help alleviate his pain. Mr .Alex treated with Dr. Rich for 10 visits between the dates of March 1, 2018 to April 1, 2018.

**Present date treatment**

Since April 3, 2018, Mr. Alex has not been able to find a place to treat because he has relocated from Tanzania to Big City for work. He still complains of lower back and ankle pain; however, is willing to attempt to settle his case now in good faith before he continues to explore much costlier treatment options that are usually associated with a herniated disc (including but not limited to physical therapy, epidural injections, surgery, etc.). As you are probably aware, a herniated disc is not a soft tissue injury that heals over time in most cases and our client will most likely need more invasive procedures done in order to help him heal from his injuries.

**Damages**

 To date, Mr. Alex’s special damages include but are not limited to the following:

1. Urgent Care $222.00
2. Barbour Orthopaedics $2,642.82
3. Health Imaging $4,595.00
4. Dr. Rich (D.C.) $2,081.00

 **Total: $ 9,318.82\***

\*Please note that his amount is subject to increase as more records become available. This includes amounts from prescription records, medical mileage reimbursements, and additional doctor’s visits.

**Demand**

As we set out in great detail above, **our client’s current damages are $9,318.82.** In addition to medical expenses, our client is entitled to pain and suffering. Pain and suffering are general damages given to compensate an injured party for all non-pecuniary loss, inconvenience, hardship, pain, discomfort, anxiety, etc. whether mental, physical, or both, experienced as a consequence of a personal injury. The injury does not need to be permanent; temporary injury will permit recovery for physical pain and suffering.

Therefore, **we hereby demand you tender you tender $50,000.00 to settle our clients bodily injury claim in exchange for a general release.** This Demand is being sent pursuant to O.C.G.A. § 9-11-8. If we do not receive your acceptance in writing of your tender of policy limits within 32 days from your receipt of this letter, our offer to settle will automatically withdraw and we will proceed with filing suit.

**Terms**

Finally, experience has taught us that a successful settlement discussion can easily unravel unless we identify some general matters which must be included with the settlement of this claim. Therefore, please consider the offer to compromise this claim *subject to the following terms*:

* The settlement draft will be issued directly to this firm and only in the names of **“Alexander Alex”** and “**Law Firm LLC.**” You should deliver the check to 1776 Peachtree St., Suite 333, Atlanta, GA 30303. Our firm’s federal taxpayer ID is **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. Payment must be physically received by this office no later than 10 days after your acceptance, as contemplated by O.C.G.A. § 9-11-8.
* No reductions or withholdings from any settlement amount and no indemnities and hold harmless clauses shall be implied or made unless expressly communicated, in writing, prior to acceptance of a parole settlement offer. Any settlement document will be signed only by our client and shall contain no representations, warranties, seals, or sworn statements.
* We will agree to release Holdings Inc. in consideration of your full tender of the $50,000.00 demand. The release will be in the form a general release pursuant to O.C.G.A. § 33-24-41.1 for all personal injury claims arising out of the subject incident and will only be signed by Mr. Alex.
* Settlement is conditioned upon the agreement that it represents a compromised claim. Therefore, our client is not fully compensated by the very definition of “compromise” and thus will not have been made whole or received full and fair compensation under O.C.G.A. § 33-24-56.1. We will presume our client has not been made whole unless expressly stated in writing and in advance of any parole agreement subsequent to this writing.

We will assume these general terms are accepted and are included as part of any offer either of us may propose even though not expressly restated.

Best regards,

Attorney at Law

Enclosures: a, b, c, d…

cc: Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_