

Section M

Settlement Demands: Getting What Your Clients Need and Deserve

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**STRUCTURED
SETTLEMENTS
SIMPLIFIED**

TR

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THE ART OF THE DEMAND

James Biscoglia
Andy Heiting-Doane
LAMARCA LAW GROUP

Timing

- Catastrophic damages cases (death, dismemberment, paralysis)
 - Timeline controlled by liability and damages proof
 - Eye towards bad faith
 - Fairly debatable standard: make sure there is no debate
- Other cases (back injuries, neck injuries)
 - Timeline controlled by MMI
 - Monthly calls
 - Does the client have any new medical treatment?
 - Will the client continue to treat in the future?
 - What are the financials of the case based on liability and accident issues?

Pre-Demand Workup

- Liability
 - Do I need an expert on liability?
 - Do I need a witness statement?

- Damages
 - Do I need an expert or report?
 - Surgery: Yes
 - Pre-existing conditions: Yes
 - Weird injuries: Yes
 - Loss of accumulation: Yes
 - Loss of support/services: Yes
 - Loss of earnings
 - Letter from employer
 - Canceled checks
 - If self-employed: business records
 - May need an expert
 - Letter or note from doctor—get a letter if no note in the file
 - Catastrophic injuries
 - Life care plan

Demand Considerations

- How much?
 - Type of injury
 - Goal of demand

- Cases where you are concerned that policy limits may be insufficient
 - Request policy limits information
 - Hold firm on the request—you get it in litigation anyway
 - REMEMBER—you need consent of UIM carrier to settle
- Cases valued within the policy limits
 - Generally I try to demand 2 to 3 times what I think it should settle for
 - Prepare your clients for the range of settlement

Content and Style of the Demand—Examples of our Demand Letters

- Estate of Alicia Alvarez
- Brendan Brown
- Cynthia Clark
- Dustin Dawson

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October 1, 2019

Tobi Duncan
Nationwide Insurance
1100 Locust St., Dept. 3011
Des Moines, IA 50391-3011

RE: Our Client: Alex Alvarez and the Estate of Alicia Alvarez
Date of Loss: April 5, 2019
Your Insured: Anderson Products Co.

CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO IOWA RULE OF EVIDENCE 5.408

Dear Tobi:

Please accept this letter and the enclosed materials as an attempt to initiate settlement discussions to resolve all claims arising out of the death of Alicia Alvarez as a result of the negligence of your insured without costly litigation expenses.

It is very likely the value of this claim exceeds the limits of all applicable insurance policies. Alex Alvarez, on behalf of the Estate of Alicia Alvarez, may be willing to settle at or within your insured's policy limits to avoid costly litigation. However, we need to know your insured's policy limits to enter into meaningful settlement negotiations. As you are aware, this information is necessary to evaluate the need for involving the underinsured carrier and for seeking lien reductions. As you also know, the Iowa Rules of Civil Procedure require you to disclose this information immediately if we file suit, through initial disclosures. The decision to file suit without vetting settlement possibilities would be costly for

Tobi Duncan, Nationwide

October 1, 2019

Page 2

both parties. We are seeking policy limits information as a courtesy to you and your insured, to determine whether settlement is possible.

Documents Enclosed

1. Photos of the scene of the collision (AA/SHERIFF PHOTOS 1-198)
2. Photos of Alicia Alvarez's Honda Civic (AA/PHOTOS HONDA 1-47)
3. Collision investigation report (AA/TI REPORT 1-93)
4. Freightliner black box data report (AA/BLACK BOX 1-43)
5. Honda black box data report (AA/HONDA 1-9)
6. Polk County Medical Examiner autopsy report (AA/AUTOPSY 1-12)
7. Report of expert economist (AA/BCC 1-23)
8. Photos of Alicia Alvarez (AA/PHOTOS ALICIA 1-137)

Negligence and Fault

Trucks, due to their size and mass, are extremely dangerous in the hands of inattentive drivers. Truck drivers, as professional drivers, are required to be far more vigilant due to the extremely dangerous nature of the vehicles they drive. Similarly, corporations are required to ensure that they employ safe drivers to protect the public from the inherent dangers of truck operations.

In this case, Anderson Products' driver, Alan Jonah, was clearly inattentive as he approached the intersection of Broadway Avenue and NE 46th Avenue. As a result he slammed into the rear of Alicia Alvarez's much smaller Honda Civic. The collision caused tremendous damage to Alicia's vehicle and resulted in her unfortunate and inexcusable death.

Tobi Duncan, Nationwide
October 1, 2019
Page 3



AA/PHOTOS HONDA 36

It would be giving Anderson Products' driver too much credit to say he was merely not paying attention. The "black box" data shows that the driver didn't hit the brakes until the moment of impact. Before that, he was accelerating. In other words, he was completely distracted at the time of the collision despite approaching an intersection at relatively high speeds in a very large vehicle.

Time	Vehicle Speed (mph)	Engine Speed (rpm)	Brake	Clutch	Engine Load (%)	Throttle (%)	Cruise	Diag. Code
-0:04	49.0	1253	No	No	82.50	95.60	No	No
-0:03	50.0	1284	No	No	100.00	100.00	No	No
-0:02	51.0	1309	No	No	100.00	100.00	No	No
-0:01	52.0	1337	No	No	99.50	98.80	No	No
0:00	53.0	1362	Yes	No	0.00	0.40	No	No
+0:01	42.0	933	Yes	No	27.50	0.00	No	No

AA/BLACK BOX 34 (composite image)

After the impact, Alicia's car was thrown forward, crashing into another car—the Toyota Highlander operated by Jane Smith—and continued into the intersection. Alicia's car careened into the median and crashed into a utility pole.

Tobi Duncan, Nationwide
October 1, 2019
Page 4

Alicia's Honda Civic weighed nearly 4,000 pounds, and yet this collision launched it into another car, through an intersection, into a grassy median, and into a utility pole, coming to a stop 884 feet from the point of impact. Mr. Jonah was grossly negligent in his reckless operation of this truck, and Anderson Products is responsible for his negligence.

Mr. Jonah admitted that he was not paying attention, and the law enforcement officials investigating the collision concluded that this was the cause of the crash.

The black box data from Alicia's vehicle highlight the fact that Alicia Alvarez did absolutely nothing to cause this collision. There was nothing she could do to avoid it. She approached a red light, slowed her car, and was simply waiting when the Anderson Products truck operated by Alan Jonah crashed into her.

Times (sec)	Speed vehicle indicated MPH [km/h]	Accelerator pedal, % full	Service brake, on/off	Engine RPM	ABS activity (engaged, non-engaged)	Stability control (engaged, non-engaged)	Traction Control via Brakes (engaged, non-engaged)	Traction Control via Engine (engaged, non-engaged)
- 5.0	6.2 [10.0]	17	Off	1,500	non-engaged	non-engaged	non-engaged	non-engaged
- 4.5	8.1 [13.0]	0	Off	1,700	non-engaged	non-engaged	non-engaged	non-engaged
- 4.0	8.1 [13.0]	0	On	1,300	non-engaged	non-engaged	non-engaged	non-engaged
- 3.5	7.5 [12.0]	0	On	1,000	non-engaged	non-engaged	non-engaged	non-engaged
- 3.0	6.8 [11.0]	0	On	1,000	non-engaged	non-engaged	non-engaged	non-engaged
- 2.5	6.2 [10.0]	0	On	900	non-engaged	non-engaged	non-engaged	non-engaged
- 2.0	5.0 [8.0]	0	On	900	non-engaged	non-engaged	non-engaged	non-engaged
- 1.5	3.7 [6.0]	0	On	800	non-engaged	non-engaged	non-engaged	non-engaged
- 1.0	3.1 [5.0]	0	On	800	non-engaged	non-engaged	non-engaged	non-engaged
- 0.5	3.1 [5.0]	0	Off	700	non-engaged	non-engaged	non-engaged	non-engaged
0.0	3.7 [6.0]	10	Off	900	non-engaged	non-engaged	non-engaged	non-engaged

AA/HONDA 7

Negligent Entrustment

In addition to vicarious liability, there are sufficient indications that an additional claim can be brought against Anderson Products for negligent entrustment. Since that may also be a gross negligence claim, evidence that otherwise would have been inadmissible can be admitted and emphasized through this negligent entrustment claim.



Tobi Duncan, Nationwide

October 1, 2019

Page 5

According to our research, Alan Jonah had dozens of violations on his record. His record shows hours of service violations, other motor carrier safety violations, and many speeding tickets. Three citations were for speeding 21 to 25 miles per hour over the speed limit, one was for 26 to 30 miles per hour over, and one was for more than 30 miles per hour over the speed limit.

Despite these serious violations, Anderson Products hired and then continued to entrust its truck to this driver. He continued this trend behind the wheel of Anderson Products trucks. In fact, through the black box data, we will be able to show that this habitual bad driving was the norm for this truck (and likely this driver). The black box shows that for the month of May 2017, the truck was driving at 66 miles per hour or more almost 50% of the time it was on the road.¹ The black box also shows that the truck hit a top speed of 78.5 miles per hour in May 2017. This is exactly the same as the top speed recorded in the truck's lifetime.

Highest Speed	78.5 mph
Occurred 05/16/17 12:00:18 (EST)	

AA/BLACK BOX 7

Peak Road Speed	78.5 mph
------------------------	-----------------

AA/BLACK BOX 10

We are confident that Iowa jurors will find that both Alan Jonah and Anderson Products were grossly negligent, resulting in the death of Alicia Alvarez.

¹ While it is also possible that other Anderson Products employees drove the truck and someone else is responsible for the various occasions on which the truck drove over 75 miles per hour, this would merely prove that this "habitual" conduct was culturally acceptable at Anderson Products.



Tobi Duncan, Nationwide

October 1, 2019

Page 6

DAMAGES

Pre-Death Pain And Suffering

Unfortunately, Alicia's death was not instantaneous. The report of Polk County Medical Examiner Gregory A. Schmunk lists the interval between her injury and her death as being "minutes," rather than "seconds" or being instantaneous.

Law enforcement collision investigators found that this conclusion was consistent with the mechanics of the crash; specifically, the force of the massive Freightliner truck crashing into the back of Alicia Alvarez's car was capable of causing death in this way. See document AA/TI REPORT 35.

Alicia Alvarez's head injury would likely not have been fatal. The bones in Alicia's face were unbroken. Her teeth were not knocked loose. Even the cartilage in Alicia's nose was intact. She was very likely awake and feeling the pain of multiple broken ribs and the internal bleeding from her lacerated aorta that killed her. Alicia's seat, steering wheel, and dashboard show no evidence of blood. Her airbag didn't even deploy.

Alicia would have first realized something was wrong either when she saw the truck barreling toward her in the rear-view mirrors, or at the moment of impact. After the impact, Alicia's car was thrown forward, colliding into another vehicle. The force of the impact was so great that her car continued into the intersection. Alicia must have felt helpless in these moments, totally unable to control her own car. Alicia's car careened into the median and crashed into a utility pole.

Whether she lived for one minute or five minutes, there is no question that she spent the final moments of her life in pain, terrified by what was happening to her, and dying from the injuries she suffered in the collision.



Tobi Duncan, Nationwide

October 1, 2019

Page 7

Accumulation Of The Estate and Loss of Support

Alicia was a hard worker. Her education and experience got her in the door at the Iowa Clinic, and they never let her go.² Her salary increased steadily as her experience grew. For 2019, her annual salary would have been \$52,056.00.

Pursuant to Iowa Civil Jury Instruction 200.15, Anderson Products must pay to the Estate of Alicia Alvarez **“The present value of the additional amounts [Alicia Alvarez] would reasonably be expected to have accumulated as a result of her own effort if she had lived out the term of her natural life.”** Pursuant to Iowa Civil Jury Instruction 200.17, Alex Alvarez is also entitled to **“The present value of the amount of financial support which [Alicia Alvarez] would have contributed to her spouse, but for her death.”**

Alicia also provided health insurance to herself and to Alex. Alex is left without any reasonably-priced health insurance option because it is not available to him through his employment. He is presently paying out of pocket to remain on Alicia’s health insurance through COBRA, but he will be removed from that plan at the end of 2018. He will be forced to find an individual health insurance plan at a time when there great uncertainty and volatility in the market for those plans.

Alicia Alvarez planned, like most members of society, to work at least until age 67. The report of Alan D. Ryerson, expert economist, is enclosed and projects the lost accumulation to the estate of Alicia Alvarez as a result of her untimely death. He calculates the economic damages for loss of accumulation and loss of support at \$391,945, as shown in this table and as detailed in his report. The report and the appendices show that each element of economic damages has already been reduced to present value and offset by personal consumption.

Mr. Ryerson’s report also includes the analysis of lost household services, which is the economic component of Iowa Civil Jury Instruction 200.19, “Services –

² More information about Alicia’s career can be found in the sections below.



Tobi Duncan, Nationwide

October 1, 2019

Page 8

Spousal Consortium.” The other parts of Alex Alvarez’s claim for loss of spousal consortium are not included in Mr. Ryerson’s report.³

Economic Damages Summary				
Type of Damage	To Age 64.84		To Age 67	
	<u>Past</u>	<u>Future</u>	<u>Past</u>	<u>Future</u>
Lost Income	\$25,991	\$107,320	\$25,991	\$146,580
Lost Health Insurance Benefits	\$4,365	\$14,898	\$4,365	\$20,565
Lost Household Services	\$10,245	\$161,669	\$10,245	\$184,199
	\$40,601	\$283,887	\$40,601	\$351,344
Total Lost Income, Benefits, and Services	\$324,488		\$391,945	

AA/BCC 6

Funeral Expenses

Mr. Ryerson and his firm, BCC Advisers, have calculated the lost interest on funeral and burial expenses to be \$14,164.00.

³ “Our analysis regarding Household Services is purely economic, and does not attempt to cover any losses relating to the benefit of company, cooperation, affection, attention, or any other non-economic damages.”

Loss Of Consortium: Who was Alicia Alvarez?



AA/PHOTOS ALICIA 1

Alicia Alvarez was the center of her family. Together, Alex and Alicia raised their family on the farm outside Oxford, and built a life together. This life should have continued for many years, but it was cut short by Anderson Products and Alan Jonah.

Alicia Alvarez was also a compassionate and attentive medical provider. She was a Registered Nurse, licensed by the State of Iowa Board of Nursing. She also earned specialty certifications. She was certified as an Adult Mental Health Nurse through the American Nurses Credentialing Center, and certified as a Physician Health Coach by Des Moines University.

In 2002, she began working at the Iowa Clinic. Alicia consistently demonstrated that she had the intelligence, the skills, and the personality necessary for the most advanced nursing positions. Several times over the next 15 years, Alicia was offered and accepted promotions to more prestigious, higher-paying positions at Iowa Clinic.



Tobi Duncan, Nationwide

October 1, 2019

Page 10

Alicia didn't leave her compassion or her medical skills at the door when she left the clinic each night. She took care of her disabled sister, who lives alone. She also took care of Alex's 89-year-old father, who lives in a nursing home.

The Iowa Civil Jury Instructions show how Alicia's character is directly relevant to the verdict. Iowa Civil Jury Instruction 200.21 tells the jury that when they are assessing the loss of Alicia's support, they may consider her **"health, strength, character, skills and training."** To determine the verdict for loss of her consortium, they may consider Alicia's **"capacities, abilities and efficiencies"** as a wife and as a parent, and her ability to provide **"instruction, guidance, advice and assistance"** to her husband, Alex, and to her children, Alvin and Amy. There are many more examples of Alicia demonstrating these attributes than we were able to fit into this letter.

Loss Of Consortium: Alex Alvarez Lost His Wife



AA/PHOTOS ALICIA 17

Alex lost so much more than Alicia's support. He lost his wife of 19 years and, ultimately, his partner in life.

Tobi Duncan, Nationwide

October 1, 2019

Page 11

Alicia and Alex spent as much time together as they possibly could. Alex bragged often about how he and Alicia would never tire of each other's company—*never*. Early in their marriage, they would always choose air travel over long drives. But after only a few years, they realized that they enjoyed the time they spent together on a long drive so much that it felt like adding another day to the start and end of each vacation. They chose road trips over air travel whenever possible for the last 15 years. They drove to Iowa Hawkeyes football and basketball games, concerts, weddings, and other events in Kansas, Minnesota, Colorado, West Virginia, Kentucky, and even South Carolina.

Alicia helped Alex turn every holiday into a tradition. Alicia was the one to plan birthdays, holidays, and all other family get-togethers. She insisted on everyone being there, and would change the date of the gathering several times if that was necessary to get everyone around the table. Alicia was an excellent cook and always made more delicious food than the assembled family members could eat. On birthdays, Alicia would cook the birthday boy or girl's favorite meal, and would cook a second meal for the picky eaters in the family. Every holiday and time of year had a different one of Alicia's creations connected to it by tradition—like meatloaf at Christmas and apple pie at Easter.

Alicia and Alex loved any sort of athletic competition. They would create competitions for each other and for the entire family on a regular basis. Over the course of the last few years, the Alvarez family held competitions in bowling, go kart racing, pickleball, miniature golf, "cornhole" (bean bag toss), pinball, and many other activities. They would compete at the midway games at Adventureland and the video games at every local arcade. They would challenge each other to see who could read more books in a single winter or who could spend more minutes on the elliptical machine in a single week. Their basement contains dozens of makeshift trophies commemorating these events.

Iowa Civil Jury Instruction 200.19 states that spousal consortium is:

The fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the



Tobi Duncan, Nationwide

October 1, 2019

Page 12

other in every marital relationship, general usefulness, industry and attention within the home and family.

We know that there are many family members, members of the church, friends, and others who will testify to the affection that Alex and Alicia Alvarez shared and how this loss has affected Alex.

As they approached middle age, Alicia and Alex began to plan to travel together more after retirement. These dreams will never come to fruition. With Alicia gone, Alex is now lonely in the evening. He misses the conversations he had with his wife every night and he misses the intimacy he shared with her. Most of all, Alex misses something that happened several times each day they were married—hearing Alicia say “I love you.”

Loss Of Consortium: Alvin Alvarez Lost His Mother



AA/PHOTOS ALICIA 137

Alicia has been a constant presence in her son's life since she welcomed him into this world. She was a dedicated “homeroom parent” in elementary and middle school, despite her full-time job. Alicia never missed one of Alvin's basketball games when he was in school, even though she was working full time in



Tobi Duncan, Nationwide

October 1, 2019

Page 13

a demanding career, and even though almost all of them were miles away from Oxford.

When Alvin left home for college, Alicia did everything in her power to stay close to her son. She would help Alvin with his laundry so that they could spend an afternoon together, talking through everything happening in his life. She would also visit him at his dorm and take him out to lunch.

Alvin was seriously injured in a work-related accident in 2008. He was hospitalized for almost two months. Predictably, Alicia was there day after day. She stayed with Alvin in the hospital room almost every night. Following his release from the hospital, Alvin was told that riding a bicycle could aid his recovery. Two days later, Alex got a phone call asking for help. Alicia had bought a brand new bicycle and needed help getting it into her trunk. She did in fact ride with Alvin on dozens of occasions that year, and helped him make a full recovery. The bicycle rides did not end with Alvin's return to health. Alvin estimates that he and his mother would ride 5–6 times every month in the spring, summer, and fall.

Alvin and his sister Amy Allen will each receive from the jury an award to compensate them for their loss of parental consortium, defined by Iowa Civil Jury Instruction 200.20 as:

The relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family.

The family has hundreds of examples of each of these elements. Alicia Alvarez made sure that no matter how old her children got, no matter how capable they were of tackling life on their own, they would always feel that companionship, comfort, guidance, affection, and aid. This was not just a fond memory from their childhood. Because of the person that Alicia was, the relationship with their mom kept providing them with guidance, affection, and aid

Tobi Duncan, Nationwide

October 1, 2019

Page 14

every week of their lives. Anderson Products Company took that away from Alvin and Amy.

Loss Of Consortium: Amy Allen Lost Her Mother



AA/PHOTOS ALICIA 62

Alicia and her daughter Amy remained very close until Alicia's death separated them. They talked on the phone several times every week, just to catch up on the big events and the little details in each other's lives. Alex often had to ask Alicia to go into the other room when she was talking to Amy, because she laughed so hard and so often during these calls that her laughter would drown out every other sound.

Alicia and Amy loved to play board games. They had a select group of games that were "the classics," which they would play frequently, but they also loved trying a new game. Alex tells of one occasion when Alicia was watching television when she gasped suddenly, reached for her phone and placed a call, and then breathlessly waited for an answer. Alex was afraid there had been some kind of emergency. There was no emergency—Alicia had just seen a commercial for a new board game, and literally could not wait a second longer to call Amy and tell her about it. The game was purchased and played by Alicia and Amy that weekend.



Tobi Duncan, Nationwide

October 1, 2019

Page 15

Amy and Alicia also often took walks together. When the weather cooperated, Amy would drive the short distance home to take a walk with Alicia at least once every week. Even when the weather was terrible, too cold or rainy to take the dog for a walk, Alicia and Amy would still venture out together. Sometimes, but not always, Alex was invited along. Amy says that these walks were "better than any therapy." Amy tearfully described to me that now she needs those walks more than she ever did before, but she will never walk with her mother again.

Summary of Damages

1. Loss of support & loss of accumulation of the estate	\$391,945.00
2. Lost interest on funeral expenses	\$14,164.00
3. Pre-death mental and physical pain and suffering	Open
4. Alex Alvarez's loss of spousal consortium	Open
5. Alvin Adams's loss of parental consortium	Open
6. Amy Allen's loss of parental consortium	Open

Conclusion

As you are aware, pre-suit negotiations are favored as a means of avoiding costly litigation, particularly where the damages meet or exceed the policy limits of the at-fault party. However, before meaningful negotiations can be had, it is imperative that the parties exchange information in a timely manner so both parties can fairly evaluate the case. By providing you the details of this case we are seeking information about your insureds' policy limits in an effort to ascertain whether this case can be settled for, or within, the policy limits. This is Nationwide's best opportunity to enter into settlement negotiations. It is quite possibly Nationwide's only opportunity to enter into settlement negotiations. If Alex Alvarez and the Estate of Alicia Alvarez are forced to proceed with costly litigation solely because you will not disclose the policy limits to us, the associated expenses of litigation may make settlement impossible.



Tobi Duncan, Nationwide
October 1, 2019
Page 16

If you need any other documents or information to evaluate this case, contact me right away. Otherwise, please provide me your policy limit information within 30 days of receipt of this letter.

Sincerely,

LAMARCA LAW GROUP, P.C.



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October 1, 2019

Samuel Clifford
Progressive Claims Branch
747 Alpha Drive
Highland Heights, OH 44143

Re: Our Client: Brendan Brown
Your Insured: Will Parry
Claim No.: 18-2007043
Date of Incident: May 5, 2019

CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO IOWA RULE OF EVIDENCE 5.408

Dear Sam:



BB/PHOTO 27

The collision caused by the negligence of your insured truck driver did this to Brendan Brown's truck. It had a similar effect on Brendan himself.

On May 5, 2019, our client, Brendan Brown, was traveling eastbound on Highway 71 approaching Xenia Avenue in Jordan County, Iowa. At the same time, your insured, Will Parry, was traveling Southbound on Xenia Avenue, approaching a stop sign at the corner of Xenia Avenue and Highway 71. Mr. Parry failed to stop at

Samuel Clifford, Progressive Insurance

October 1, 2019

Page 2

the stop sign. When he sped into the intersection, his tractor-trailer crashed into a fuel tanker carrying over 8,000 gallons of fuel driving Westbound on Highway 71. The force of the impact was so great that it caused the tanker trailer to detach from the tractor. The runaway tanker trailer caught fire.



BB/PHOTO 53

The flaming tanker trailer came barreling toward Brendan Brown's vehicle, crashing into his truck with brute force and launching his vehicle into the ditch on the south side of Highway 71.



BB/PHOTO 2

Samuel Clifford, Progressive Insurance
October 1, 2019
Page 3

His body was thrown to the left side of his vehicle, striking his head against the window and airbag of his vehicle.

Brendan's truck immediately caught fire while he was still inside it. He tried to open his door and he couldn't; it was impossible to open because of the force of the crash. Brendan was trapped in his burning vehicle. It was only a matter of time before he succumbed to either the flames or to the smoke that was filling his truck. Brendan gathered all his strength and dragged himself to the passenger side, forcing the door open, and allowing him to escape shortly before the vehicle became completely engulfed in flames.

Brendan collapsed on the ground in the ditch. A 911 caller described the scene:

It's a fuel truck. It's in the east bound ditch facing the wrong way, it's on fire, there's somebody laying in the ditch, there's a pickup and there's a cattle truck and I'm guessin' we got fatalities.

911 CALL #3

There is no doubt that your insured, Will Parry, was negligent in failing to stop at the stop sign and is 100% at fault for the injuries Mr. Brown sustained.

I have attached document BB/PARRY 1-2, which shows your insured driver's records of criminal, motor vehicle, and federal motor carrier violations. I count 46 charged violations in the state of Iowa alone.

DOCUMENTS

COLLISION REPORT / PHOTOS

1.	Police Report	BB/Police 1-5
2.	911 Calls - Jordan Co. Sheriff	BB/JCS Audio 1-5
3.	Police Photos	BB/PHOTO 1-40

Samuel Clifford, Progressive Insurance

October 1, 2019

Page 4

4.	Will Parry Criminal and Driving Record	BB/PARRY 1-2
5.	Vehicle Photos	BB/PHOTO 41-46
6.	Injury Photos	BB/PHOTO 47-52
7.	Pre-Collision Photos of Brown Truck	BB/PHOTO 54-55
8.	Photos of burnt road	BB/PHOTO 56-57

MEDICAL RECORDS

9.	Sedgwick File <i>One to One PT (mixed throughout)</i> <i>IA Ortho (48-51 & 78-80)</i> <i>Jordan Co. EMS (65-67)</i> <i>Medicap Pharmacy (68-69)</i> <i>Accident Report (70-75)</i> <i>Jordan Co. Hosp. (83-90)</i> <i>Sedgwick Payment itemization (91-94)</i>	BB/Sedgwick File 1-94
10.	Sedgwick File <i>IA Ortho (95-96, 99-103)</i> <i>One to One PT (mixed throughout)</i> <i>Zurich ltr to Dr. Adelman (106)</i> <i>Zurich ltr to Dr. Jacoby (127)</i>	BB/Sedgwick File 95-129
11.	Iowa Ortho Impairment Rating Letter to Sedgwick	BB/IA Ortho 1-2
12.	Coulter Family Chiropractic	BB/Coulter 1-41
13.	Gallivespian Clinics	BB/Gallivespian 1-45
14.	One to One Physical Therapy	BB/One to One 1-45
15.	Brown E-mails regarding Neurologist	BB/Neurologist 1-4

MEDICAL EXPENSES

16.	Medical Bills	BB/BILLS 1-4
17.	Sedgwick Subrogation Notice for WC Lien	BB/SUBRO Sedgwick 1-2
18.	Sedgwick Medical Ledger & Lien	BB/SUBRO Sedgwick 3-9



Samuel Clifford, Progressive Insurance

October 1, 2019

Page 5

MEDICAL TREATMENT

Immediately following the collision and the calls to 911, an ambulance was sent to the scene. Brendan stated that he had neck pain on his posterior side, sternum pain, and left shoulder pain. He was transported by ambulance to Jordan County Medical Center for treatment.

Brendan was taken into the care of Lyra D. Scoresby, MD at the Jordan County Medical Center Emergency Department. Brendan reported pain in his left shoulder and neck and Dr. Scoresby noted abrasions on the left side of Brendan's chest. Brendan rated his pain at 7/10. A CT of the cervical spine was taken which revealed moderate intervertebral disc height loss at the C5-6 and C6-7 with anterior and posterior marginal endplate spurs. Mild intervertebral disc loss at the C3-4 with small posterior endplate spurs was also noted. Dr. Scoresby diagnosed Brendan with a contusion of the left chest wall and a strain of the neck muscle. Brendan was prescribed a narcotic pain reliever.

On May 12, 2019, Brendan presented to Peter Quayle, MD at Iowa Ortho with complaints of neck pain, chest pain, and shoulder pain following the subject collision. Shortly after the collision, these symptoms were treated with hydrocodone, Aleve, and an injection. These treatment methods provided Brendan with moderate relief. His pain remained rated 6/10. Dr. Quayle examined Brendan, and ordered both an X-Ray and CT of the cervical spine. Dr. Quayle prescribed Brendan physical therapy 2-3 times per week for the next 8 weeks as well as Flexeril. Brendan was also given lifting and movement restrictions at work.

From May 19, 2019 through July 4, 2019, Brendan presented to One to One Physical therapy 12 times for treatment of his chest, shoulders and neck. On his initial visit, dated May 19, 2019, Brendan presented with complaints of pain in his right shoulder, chest, and front of his neck on the right side more than the left. Upon examination, the physical therapist noted a lot of tension and alignment issues. Brendan was treated with neuromuscular re-education and manual therapy.



Samuel Clifford, Progressive Insurance

October 1, 2019

Page 6

The therapist stated that Brendan should be able to recover with therapy. By his final visit, dated July 4, 2019, Brendan noted some improvement with numbness in his body. However, he still had pain, and he still had difficulty sleeping, carrying or lifting any weight, and moving his neck and shoulder. Brendan elected to seek further treatment of his injuries with a chiropractor.

From July 20, 2019 through August 30, 2019, Brendan presented to Amber Coulter, DC at Coulter Family Chiropractic a total of 9 times. On his initial visit, dated July 20, 2019, Brendan presented with complaints resulting from the collision, including neck pain, upper thoracic pain, left trapezius pain, right posterior trapezius pain, mild thoracic pain, loss of function in joints, joint pain and ringing in his ears. Dr. Coulter examined Brendan, noting spasm and tenderness, ultimately diagnosing him with the following:

- Cervicalgia (M54.2)
- Episodic Tension Headache (G44.219)
- Segmental and somatic dysfunction of cervical region (M99.01)
- Pain in thoracic spine (M54.6)
- Sprain of ribs (S23.41XA)
- Segmental and somatic dysfunction of thoracic region (M99.02)
- Low back pain (M54.5)
- Segmental and somatic dysfunction of lumbar region (M99.03)
- Segmental and somatic dysfunction of pelvic region (M99.05)

To treat these conditions, Dr. Coulter utilized chiropractic manipulative treatment to the C1, T1, T4, T5, T11, T12, L5 and left sacrum. Over the subsequent treatments, Brendan slowly showed improvements with chiropractic manipulation.

Brendan's final visit to Dr. Coulter at Coulter Family Chiropractic occurred on August 30, 2019. At that visit, Brendan presented overall pain of 2–4/10 depending on the day. He noted that he was able to do most of what he wants to do despite his aches and pains, due to his treatment, as well as his medications. Upon



Samuel Clifford, Progressive Insurance

October 1, 2019

Page 7

examination, Dr. Coulter found subluxations/restrictions at the right C1, left C2, left T1, T4, T5, T11, T12, left L5 and left sacrum. Pain and tenderness was noted at the upper to mid cervical, cervico-thoracic, and upper thoracic areas. Finally, spasm was noted in the right posterior trapezius. Dr. Coulter noted improvement and expectations being met in Brendan's treatment. On September 25, 2019, Brendan released himself from chiropractic care.

On August 4, 2019, Brendan presented to Dr. Byrnison at Gallivespian Clinic Family Medicine for a follow up on his tinnitus, joint swelling, and pain in his left wrist, pain in his right foot and leg, as well as fatigue. Brendan stated that he has battled fatigue and poor motivation since the subject collision. He often found himself putting off work, having anxiety, and overeating. There were times that Brendan felt as though he could be dead. Dr. Byrnison discussed these feelings with Brendan, stating that Brendan was experiencing symptoms of depression and PTSD due to the trauma of the subject collision. Brendan was prescribed Lexapro by Dr. Byrnison to treat these symptoms. Additionally he noted pain, swelling and stiffness in various joints around his body. Dr. Byrnison examined Brendan, including his ears and joints. He also completed a depression screening, which showed multiple signs of depression. Dr. Byrnison recommended an MRI to further address the tinnitus in both of Brendan's ears. He also spent time counseling and coordinating care with Brendan. He was instructed to follow up within a month.

On September 8, 2019, Brendan presented to Dr. Byrnison for a follow up on his moderate to severe joint pain. He was started on low dose Allopurinol as well as Colchicine for his joint pain, which showed improvement. Additionally, Brendan was prescribed Lexapro to help his symptoms of PTSD and depression stemming from the subject collision. He noted an increase in his motivation and less fatigue from the Lexapro.

As noted above, Brendan experienced both ringing in his ears and confusion following the collision, both of which are indicative of a closed head injury. Despite efforts to seek treatment through his workers' compensation case

Samuel Clifford, Progressive Insurance

October 1, 2019

Page 8

manager, he was unable to get treatment for this injury. Nevertheless, Brendan did suffer symptoms indicative of a closed head injury as a result of the collision.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Damages for negligent infliction of emotional distress are recoverable in Iowa. *Roling v. Daily*, 596 N.W.2d 72 (Iowa 1999). In order to be compensable, the mental distress should ordinarily be accompanied with physical manifestations of the distress. *Barnhill v. Parry*, 300 N.W.2d 104 (Iowa 1981). The plaintiff in *Roling* was a truck driver who was involved in a terrible accident. *Id.* at 73. The experience of the accident caused the plaintiff to suffer from depression, mood change, and flashbacks. *Id.* The court overruled the trial judge's entry of a judgment notwithstanding the verdict on the grounds that the plaintiff had carried his burden in regards to his claim of emotional distress. *Id.* at 76.

Brendan has been diagnosed with both depression and PTSD as a result of the collision by Dr. Byrnison, and treated with prescription medication. Brendan has suffered from flashbacks regarding the collision and feelings that he should be dead.

Every day, Brendan has to drive past the spot where this traumatic experience took place. He can see the scar on the road where the cement was burned. When he drives over it, his truck shakes because the roadway was chipped and cracked by the crash and the explosion. The damage to Brendan Brown was just as severe. If this case goes into litigation, we will present the jury with evidence supporting a significant award for negligent infliction of emotional distress.

IMPACT ON BRENDAN'S LIFE

The subject collision has been devastating for Brendan. Immediately following the collision, Brendan's soreness and pain were debilitating. He was forced to work with his manager to be able to work from home, where he would be



Samuel Clifford, Progressive Insurance

October 1, 2019

Page 9

able to lie down and rest when he could no longer keep working. When these symptoms had improved to the point that he could return to work, his back, neck and joints still bothered him regularly, causing him to seek treatment from a chiropractor.

In addition to Brendan's full-time job, he runs a family livestock farming operation at home. This farming operation requires a significant amount of work and lifting, including carrying 50+ pound bags of feed to feed the animals. Due to the subject collision, Brendan was forced to rely on his wife and children to do this livestock work that he was unable to do because of his soreness and pain.

Brendan is also a handyman who does all types of work around his home. He has done many large projects around his home including remodeling and pouring a new basement. One of the projects which he had planned to do prior to the subject collision was to build a new garage for his home. Due to the subject collision, Brendan was unable to build a garage for six months, while he underwent treatment.

Finally, Brendan had a significant struggle with his mental health following the collision. Brendan had not experienced mental health issues prior to the collision; after it, there were many days where Brendan would lack motivation, overeat, and have intrusive thoughts of death. While he was prescribed depression medication (Lexapro) for these symptoms, it took around 60 days to take effect and 120 days for the symptoms to resolve.

Brendan Brown is lucky to be alive, but he is permanently damaged. He still has intrusive thoughts of the collision and the horrific experience he went through. He still has ringing in his ears. No matter how much time passes, the trauma from this horrific collision will live with him forever.



Samuel Clifford, Progressive Insurance

October 1, 2019

Page 10

CONCLUSION

Brendan Brown will provide a complete release to Will Parry and Progressive in exchange for a settlement payment of \$150,000.00.

Let me know what additional information, if any, you will need in order to evaluate this claim.

Sincerely,

LAMARCA LAW GROUP, P.C.

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October 1, 2019

Benedict Barlow
Progressive Insurance Company
4280 Sergeant Road, Suite 260
Sioux City, Iowa 51106

Re: Our Client: Cynthia C. Clark
Your Insured: Cynthia C. Clark
Claim No.: 173068027
Date of Incident: May 12, 2019

CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO IOWA RULE OF EVIDENCE 5.408

Dear Ben:

Please accept this as our initial demand on behalf of our client Cynthia Clark, who is also your insured. This is an uninsured motorist claim resulting from a hit and run collision caused by a driver who was never identified. Cynthia suffered serious injuries as a result of this crash, including a closed head injury/mild traumatic brain injury.

THE COLLISION

On May 12, 2019, Cynthia Clark was driving southbound on Martin Luther King Jr. Parkway when a vehicle ran a stop sign and t-boned her vehicle. The impact was so strong that it sent her car spinning across two lanes. Cynthia hit her head on the side of the door, causing her to lose consciousness briefly. She was bleeding from the head and a bruise quickly raised on the spot where her head made contact with the car. Her head started hurting immediately. She also immediately felt pain in several other parts of her body. More information on her injuries is below.

Benedict Barlow, Progressive
October 1, 2019
Page 2

There is no question that Cynthia Clark is zero percent at fault for the collision that caused her injuries. Cynthia had the right of way in the intersection. The unidentified driver ran a stop sign.

The damage to Cynthia's car was considerable.



CC/PHOTO 2

Seeing what this collision did to an automobile highlights the amount of force that was imparted on Cynthia's body. Most problematically, this force caused her to hit her head on the car door.



Benedict Barlow, Progressive

October 1, 2019

Page 3

DOCUMENTS

COLLISION REPORT / PHOTOS

1.	Police Report	CC/Police 1-5
2.	Police Report—Nadia Baldwin vehicle theft	CC/Police 6-8
3.	Vehicle photographs	CC/PHOTO 1-4
4.	Injury photographs	CC/PHOTO 5-7

MEDICAL RECORDS

5.	Mercy Medical Center	CC/Mercy Med Ctr 1-48
6.	Des Moines Fire Department Ambulance	CC/DMFD 1-8
7.	Beck Chiropractic	CC/Beck 1-62
8.	Iowa Orthopaedic Center IA Ortho Radiology CD	CC/IA Ortho 1-39 CC/IA Ortho 40

MEDICAL EXPENSES

9.	Medical Expense Summary	CC/Med Exp Summ 1
10.	Medical Bills	CC/BILLS 1-55
11.	Progressive Exhaust Ltr & itemization	CC/SUBRO Progressive 1-2
12.	Beck Chiropractic Lien	CC/SUBRO Beck 1
13.	Rawlings-Wellmark Notice of Lien	CC/SUBRO Rawlings 1-175

LOST WAGES

14.	Timesheet	CC/Wage Loss 1
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CONCUSSION WITNESS STATEMENTS

15.	Statement of eyewitness Max Dillon	CC/Dillon 1
16.	Statement of supervising physician, Dr. Marko	CC/Marko 1



Benedict Barlow, Progressive

October 1, 2019

Page 4

MEDICAL TREATMENT

An ambulance arrived on the scene 5–10 minutes after the collision. Cynthia was conscious by the time the ambulance arrived, but she was completely dazed. The paramedics assessed Cynthia's injuries—her head, her legs, her neck, and her back. She rated the pain in her head at 7/10 and in her back at 5/10. She was also experiencing spasms around her spine. She was immobilized on a backboard and cervical collar and loaded into the ambulance. She was administered fentanyl via IV in the ambulance.

Cynthia then arrived at Mercy Medical Center in the Emergency Department. Doctors observed bruising on her head, abrasions on her knees, spasms in her left upper back, and recorded the pain in Cynthia's head, knee, thoracic spine, neck, and knees. She was given muscle relaxers.

Cynthia saw Dr. Beck at Beck Chiropractic on May 18, 2019. She reported pain in her neck ranging from 5-8/10 that would radiate to her left and right scapulae. Her teeth felt misaligned following the impact with her head. She also had severe spasms in her left trapezius. There was pain with movement. In addition, she had bilateral knee pain. She also had back pain and headaches. She was diagnosed with a sprain of ligaments in her cervical, thoracic, and lumbar spine. She was given chiropractic manipulative therapy and an extraspinal adjustment of her left shoulder. She continued to see Dr. Beck regularly thereafter.

On May 20, 2019, Cynthia presented to Josef Aldrich PA-C at Iowa Ortho with complaints of bilateral knee pain and numbness. Additionally, she stated that she struck her head during the collision and lost consciousness. She reported that her headache had been nearly nonstop since the collision. Mr. Aldrich examined Cynthia's knees. She was counseled by Mr. Aldrich on paying close attention to the severity of her headache, and to watch for other concussion symptoms appearing or worsening. She was prescribed meloxicam to address her knee symptoms.

Benedict Barlow, Progressive
October 1, 2019
Page 5

On August 9, 2019, Cynthia saw Dr. Nancy Wheeler, MD at Iowa Ortho about her left hip pain. Dr. Wheeler recorded the fact that the collision exacerbated her hip pain. It appears that Cynthia's hip condition was not caused by the collision, but it did worsen a problem that she was already experiencing.

From July 27, 2019 through November 16, 2019, Cynthia sought chiropractic treatment from Beck Chiropractic 10 additional times. On the July 27, 2019 visit, Cynthia presented with bilateral neck pain, mild thoracic pain, left hip pain, left knee numbness, headaches and right SI pain up into the iliac crest. This pain she rated at 5/10, and was noted as being achy, dull, and constant. Spasms were noted by Dr. Beck in the in the lumbar paraspinal. Movement caused pain in the cervical spine and SI. Following examination, Dr. Beck diagnosed Cynthia with the following conditions:

- Sprain of ligaments of cervical spine (S13.4XXA)
- Headache (R51)
- Sprain of ligaments of the thoracic spine (S23.3XXA)
- Muscle spasm of the back (M62.830)
- Sprain of ligaments of lumbar spine (S33.5XXA)
- Low back pain (M54.5)
- Pain in right knee (M25.561)
- Pain in left knee (M25.562)
- Stiffness of left shoulder (M25.612)
- Pain in left shoulder (M25.512)

Cynthia was treated with a course of active treatment consisting of spinal and extremity manipulation to reduce pain and inflammation, increase ROM and function and improve ADLs. Passive and active therapies were also used to assist in treating Cynthia's complaints.



Benedict Barlow, Progressive
October 1, 2019
Page 6

On her final visit, dated November 16, 2019, Cynthia presented to Dr. Beck at Beck Chiropractic with complaints of middle cervical pain, middle thoracic pain, left hip pain, left knee numbness, right SI pain and lumbosacral pain. Cynthia noted that these complaints were still bothering her and she had daily headaches and continued left knee numbness. Active treatment was used to treat her symptoms. Dr. Beck discharged Cynthia from care, as the therapeutic trial of care was complete.

To this day, well over a year after the collision, Cynthia still experiences the neck pain and back pain that resulted from the collision. Her back "goes out" on her regularly. This did not happen before the collision.

Cynthia's left knee is also still numb. Around the edges of the spot that is numb, she feels burning pain almost constantly. This pain is most severe when Cynthia tries to kneel and puts pressure on the kneecap—which she is basically unable to do.

CONCUSSION AND POST-CONCUSSION SYNDROME

The enclosed signed witness statements show that Cynthia suffered a concussion at the time of the collision and suffered from post-concussion syndrome for months afterward.

Eyewitness Max Dillon, also identified in the police report, describes how Cynthia was acting in his witness statement. Even after she regained consciousness, she had no idea what had happened to her. She asked, "**Where am I?**" and "**What happened?**" He says that he did his best to calm her down. Cynthia has no memory of these interactions, and in fact she believed that she was unconscious for several minutes after the collision because she has no memory of that time. She has a recollection of "waking up," which is very likely the moment that her brain regained the ability to record memories.

Benedict Barlow, Progressive
October 1, 2019
Page 7

I have also enclosed a statement by Dr. Marko, who is Cynthia Clark's supervising physician at the Toomes Clinic. Because of her medical training, Dr. Marko recognized the symptoms of post-concussion syndrome for what they were. She noticed Cynthia's limitations in conversations and in her work. Cynthia is fortunate that she had an understanding supervisor who was willing to be patient with her during this period of recovery. It is only because of Dr. Marko's understanding that Cynthia was able to limit her time away from work to just one day.

Cynthia has also suffered from serious headaches as a result of the crash. She still experiences painful headaches at least once every week. She did not have headaches this severe or this often before the crash.

LOST WAGES

Cynthia is a Registered Nurse. She works at the Toomes Clinic in Des Moines. She missed one day of work. The enclosed document (CC/Wage Loss 1) shows that one day was missed immediately following the collision. Cynthia's salary of \$62,688 equates to \$30.14 per hour. Multiplied by one 8-hour day, Cynthia Clark's claim for lost wages is \$241.12.

CONCLUSION

Cynthia Clark will provide a full release to Progressive in exchange for a settlement payment of \$65,000.00.



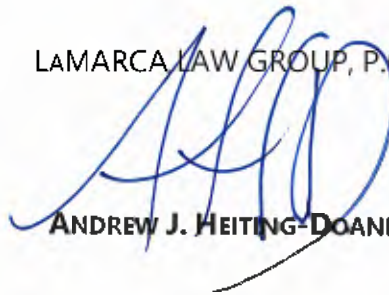
LAMARCA
LAW GROUP
Your Iowa Lawyers

Benedict Barlow, Progressive
October 1, 2019
Page 8

If you need any other documents or information to evaluate this case,
contact me right away.

Sincerely,

LAMARCA LAW GROUP, P.C.



ANDREW J. HEITING-DOANE

AHD/bcb
Enclosures



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October 1, 2019

Christopher Comstock
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kgummert@lwclawyers.com

Re: *Dustin Dawson v. Sasha Kaidonovsky*

CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO IOWA RULE OF EVIDENCE 5.408

Dear Chris:

This letter and the enclosed documents are a supplement to our demand letter sent August 30, 2019. I hope this supplement assists you and your carrier in evaluating this case and preparing for mediation. When you called me to tell me that our mediation in *Dawson v. Kaidonovsky et al.* would have to be rescheduled, you made a comment about the severity of Dustin Dawson's traumatic brain injury. Now that we have rescheduled the mediation for October 20, I need to address that comment.

Dustin Dawson suffered a serious concussion that led to mild and moderate post-concussion syndrome symptoms for months after the crash. I have enclosed documents showing the various doctors who diagnosed the mild traumatic brain injury and documented its symptoms.

- Dustin was knocked unconscious when he hit his head on the steering wheel. Deposition p. 78.
- Dustin's memory of the immediate aftermath has "blacked out." He doesn't know if he got out of the car himself or had help. His first memory is of standing in the middle of I-80, five feet away from his car. Deposition p. 79.
- Dustin was diagnosed with mild traumatic brain injury at the Iowa Methodist Medical Center emergency room by Dr. Newton Geiszler, MD. DN/IMMC 12.
- Chiropractor Dr. Raleigh Becket noted in a record dated August 11, 2016 that Dustin's photophobia was "significant" and that he was experiencing headaches every day. DN/Becket 6.



Christopher Comstock

October 1, 2019

Page 2

- Dr. Charles Hansen, DO at UnityPoint East Des Moines diagnosed Dustin with traumatic brain injury with loss of consciousness. DN/UP Fam Med E DM 10.
- Dustin reported post-concussion symptoms including photophobia, headaches, cognitive deficiency, inability to sustain conversations, and postural instability to Dr. Charles Hansen on August 10, 2016 (DN/UP Fam Med E DM 8) and to Dr. Hugh Campbell on December 30, 2016 (DN/UP Fam Med Urb 8) and February 6, 2017 (DN/UP Fam Med Urb 29).
- Dr. Hugh Campbell, MD classified Dustin's "decreased functioning ability" resulting from concussion symptoms as "mild to moderate" as of December 30, 2016. DN/UP Fam Med Urb 10.
- As of January 4, 2017, Dr. Becket was so concerned by Dustin's continuing MTBI symptoms that he referred Dustin to On With Life. DN/Becket 89. Dustin did not go to On With Life because he did not have health insurance, as you know.
- As of February 6, 2017, Dr. Campbell noted that although he was improving, Dustin was still experiencing multiple MTBI symptoms. DN/UP Fam Med Urb 29.

There is no contrary evidence. There will also be no expert testimony at trial on Dustin's TBI other than his own treating doctors—the ones who created the enclosed records referenced above. This diagnosis is not in dispute.

Sincerely,

LAMARCA LAW GROUP, P.C.


ANDREW J. HEITING-DOANE

AHD/bcb