Stowers Demand letter

Month DD, YYYY

Via Reg. Mail
Attn: XXXX
Address

Re:	Our Client	:	XXXX
	Your Insured	:	XXXX
	Claim #	:	
	Policy #	:	
	Date of Loss	:	

CONFIDENTAL STOWERS SETTLEMENT DEMAND – CASE NAME

Dear Mr. XXXX:

As you are aware, your insured driver, XXXX, caused a collision on Month DD, YYYY, when he decided to **Drive While Intoxicated**. This is our formal settlement demand. All exhibits mentioned attached to this demand.

I.
Cause of Collision

On or about Month DD, 2019 at approximately 11:49 pm in Austin, XXXX County, Texas, our client, XXXX, was traveling northbound in the 13700 block of North U.S. Highway 183 service road. Mr. XXXX was stationary at a red light at the intersection of U.S Highway 183 and Lakecreek Blvd, Austin, XXXX County, Texas. Mr. XXXX, was traveling directly behind our client and had four (4) minor children in his vehicle. Mr. XXXX was headed in the same direction as XXXX when he failed to keep a clear distance and suddenly and without warning, violently struck and rear-ended our client's vehicle.

The impact caused Mr. XXXX' vehicle to be pushed forward and caused his bodily to be harshly jolted within the vehicle.

As Austin Police Department arrived at the scene, Mr. XXXX was questioned and ***arrested for driving while intoxicated*** and removed from the premises. He was then booked for DWI with children under 15 years of age, by Austin Police Department.

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Negligence

Liability is not an issue in this matter, as our client was injured as a direct result of Mr. XXXX's negligence.

As you may know, the elements of a negligence cause of action are 1) Defendant owed a legal duty to the Plaintiff; 2) Defendant breached the duty; 3) the breach proximately caused the Plaintiff's injuries. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex.2009). In this case, Mr. XXXX owed XXXX the duty to use ordinary care to avoid the foreseeable risk of injury to them resulting from an impending collision. He breached his duty, and as a result, Mr. XXXX suffered severe injuries.

Further, Mr. XXXX violated the Texas Transportation Code as follows:

a) **Texas Transportation Code §545.062 (a**), which states, **"an operator shall, if following another vehicle, maintain an assured clear distance between two vehicles so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway."**

Negligence *Per Se*

Mr. XXXX purposely drove with four (4) minor children in the vehicle while intoxicated. This offense is now a felony charge. **See attached prior criminal history.**

Mr. XXXX was in direct violation of Texas Penal Code as follows:

a) Texas Penal Code §49.04(a), which states, **"a person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."; and**

b) Texas Penal Code §49.045, (a)(2)(b) which states, **"a person commits an offense if the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age. An offense under this section is a state jail felony.**

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For violating said law, your driver would be considered negligent *per se* if this matter is litigated.

Officer, XXXXXXXXX, Austin Police Department, noted Mr. XXXX's driving while intoxicated as the contributing factor to the collision. ***See attached TX DOT Crash Report.***

You are probably familiar with Williamson and Travis County civil jury verdicts in cases involving drunk drivers. County juries frown upon this type of careless conduct, and always choose to send a message that it is not okay. Even when the case involves low medical expenses or when it involved a "repetitive" drunk driver. I am, however, attaching a recent verdict with very similar facts for your reference where the jury awarded $1,062,261. ***See attached Verdict.*** Furthermore, see ***General Offense Hardcopies for XXXX***

and his history of DWI Mug Shots from Austin Police Department and Williamson County Sheriff's Department.

II.
Severity of Impact

The impact was harsh enough to cause your insured's red Dodge Challenger sedan to come to a complete stop after slamming against the rear of Mr. XXXX' vehicle. Mr. XXXX' vehicle came to a stop after he had to slam on his brakes. Mr. XXXX' rear bumper, tire cover, and lift gate were severely pushed inward. As you know, Mr. XXXX' vehicle was declared a total loss in the amount **of $10,430.07.**

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The following photograph depicts your insured and his red Dodge Challenger damage's. Mr. XXXX front end bumper, front grill and hood were demolished.

At the scene, Mr. XXXX was arrested and vehicle was towed away by Lakeside Towing.

III.
Medical Treatments and Injuries

Immediately after the impact, Mr. XXXX pain to his head and neck. He reported that his head struck the interior of the vehicle. He decided it was best to get medical attention and visited the ER at ABC Medical Center in Austin, Travis County, Texas. He was given a series of x-rays to his cervical region to rule out any head and any cervical fractures. He was then diagnosed to having a neck sprain/strain and instructed to follow up with his family physician and prescribed methocarbamol (robaxin 500 mg) and naproxen 500 mg to help with the inflammation and pain. As the days proceeded, Mr. XXXX continued with persistent pain and it was then that he realized that medication was not helping in relieving his symptoms.

On Month DD, 2019, Mr. XXXX sought medical treatment with his family physician at ABC Radiological Center. ABC Radiological Center's notes confirm the DWI rear end collision. He was treated by Dr. YYYY. His chief complaints were of pain to his body and worse pain to his mid low back. He was also experiencing dizziness when he worked with two computer screens. He was prescribed methylprednisolone 4mg and cyclobenzaprine 10 mg to help with pain. He was instructed to apply heat to the lower region of his back and work with gentle stretching to assist in seeking relief. He then was given an order for physical therapy and referred to ABC Physical Therapy Specialists.

Diagnosis: ***847.2 (ICD-9-CM) – S39.012A: Strain of lumbar region, initial encounter***
E929.0 (ICD-9-CM) – V89.2XXS: Motor vehicle accident sequela

As time went by Mr. XXXX realized he was not improving and, as instructed, followed up with treatment at ABC Physical Therapy Specialists. He was seen from MM DD, 2020 through MM DD, 2020, whereas he was diagnosed with the following initial encounter:

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Diagnosis*:* ***ICD10: S39.012A: Strain of muscle, fascia and tendon of lower back***

Treatment diagnosis was as follows:

ICD10: S39.012A; Strain of muscle, fascia and tendon of lower back
M54.5: Low back pain

Dr. XXXX, PT, DPT, and Dr. XXXX, PTA noted that Mr. XXXX was not able to sit for longer than 1 hour without exacerbating the back pain. Some aggravating factors are sitting, bending and lying down. He continues to have tightness/ hypomobility at lower lumbar and left SI area with aching. In addition, he was experiencing tremors with exercising such as hip 3 way and hip MET due to weakness. These exercises caused his to report aching and fatigue by the end of sessions. He also was unable to complete normal runs of approximately 3 miles without pain to lower back, along with difficulty and pain by the end of his work days. Pain was located mostly to the left side, as he initially had tingling down lower hip and trunk regions with increased muscle tone and muscle tightness. Notes indicate limited range of motion that correlated with his complaints. As the weeks went by, he complained of primary impairment / general soreness. Routine low impact exercising has helped his get some relief, but low back pain continues to have tenderness and to be bothersome. XXXX continued with his serious of physical therapy and was then released from their care. He was encouraged by his doctors to return if he experiences any flare ups in his symptoms, which is not unusual in this type of situation.

All medical records and bills are attached to this demand letter.

IV.
Patient Name
Past Medical Expenses

MEDICAL PROVIDER	BILL
ABC Medical Ctr at Austin	$3,174.75
Travis County Emerg. Physicians PA	$914.74
ABC Pharmacy	$82.32
ABC Regional Clinic	$192.00
Texas Physical Therapy Specialists	$2,275.00
TOTAL	**$6,638.81**

V.
Physical Impairment, Pain and Suffering

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Mr. XXXX' experience of being hit by a drunk driver greatly impacted his day-to-day life. He was unable to move around without pain, and thus, has experienced greater limits tending to his day-to-day affairs. Mr. XXXX already tenuous economic situation was exacerbated by having severe pain, which has in turn resulted in discomfort with daily activities at work.

Mr. XXXX works as a Client Access Associate at ABC Learning. His daily interactions with clients were affected by his re-living this traumatic experience and having to show up for work in pain.

VI.
Future Medical

Based on our experience in cases with similar impact and injury, we anticipate Mr. XXXX could need the following treatment**:**

MEDICAL TREATMENT	**ESTIMATE**
Future Chiropractic Treatment 3 years (palliative care, $200 per visit, once per mo.)	$7,200.00
TOTAL	**$7,200.00**

VII
Itemized Damages

Below is Mr. XXXX' total damage model:

DAMAGE ELEMENT	**AMOUNT**
Past Medical Expenses	$6,638.81
Future Medical Expenses	$7,200.00
Past Physical Pain	$5,000.00
Future Physical Pain	$2,500.00
Past Mental Anguish	$5,000.00
Future Mental Anguish	$5,000.00
Past Physical Impairment	$10,000.00
Future Physical Impairment	$2,500.00
TOTAL	**$43,838.81**

VIII.
Settlement Demand- *Stowers*

Although our client's damages known to date exceeds **$43,000.00**, in the interest of a fair and speedy resolution short of litigation, this is a demand and offer of settlement in this amount to

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settle all of Mr. XXXX' claims for bodily injury in exchange for the sum of **$30,000.00 or the policy limits** as full and final payment of **Mr. XXXX'** bodily injury claim.

In exchange, Mr. XXXX is prepared to fully release any and all claims against your insured, including release of all liens, for his individual claim. On acceptance of this offer, we will expect production of a certified copy of the applicable policy.

This offer will remain open until **May 15, 2020** at 5:00 p.m. CST and will be automatically withdrawn if not accepted before that time. I look forward to hearing from you by close of business on **May 15, 2020**.

Please NOTE that my client, Mr. XXXX, is not Medicare eligible nor a recipient. We will provide the appropriate safe harbor form upon request.

Sincerely,

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