

CAUSE NO. 08-06-05805-CV

RODRIGUEZ	§	IN THE COUNTY COURT OF
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	
YATES, TAYLOR and	§	MONTGOMERY COUNTY, TEXAS
ALLSTATE FIRE AND CASUALTY	§	
INSURANCE COMPANY	§	
Serve at: CT Corporation	§	
350 North St. Paul Street	§	
Dallas, TX 75201	§	
	§	
DEFENDANTS.	§	COURT AT LAW # 2

PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION

ALLEGATIONS APPLICABLE TO ALL COUNTS

Plaintiff Gloria Rodriguez, by and through her attorneys of record, Law Offices of Gary Green, Inc., for her cause of action against the Defendants Marilyn Yates, Diane Taylor, and Allstate Fire and Casualty Insurance Company (hereinafter called “Allstate”), alleges and states as follows:

I. DISCOVERY CONTROL PLAN

1. Plaintiff Gloria Rodriguez intends to conduct discovery under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

II. STATEMENT OF JURISDICTION

2. This claim is brought pursuant to this Court's original jurisdiction of all actions proceedings and remedies, such jurisdiction granted by Texas Government Code § 24.007.

3. The amount of damages sought are within the jurisdictional limits of the court.

4. Venue is proper under Civil Practice and Remedies Code § 15.002 in that all or a substantial part of the events or omissions giving rise to Plaintiff Gloria Rodriguez's cause of action occurred in Montgomery County, Texas.

III. DEMAND FOR JURY TRIAL

5. Plaintiff Gloria Rodriguez makes a written request for a jury pursuant to Texas Rules of Civil Procedure 216 and tender herewith the required jury fee.

IV. PARTIES TO THE CLAIM

6. Plaintiff Gloria Rodriguez, is an individual and at all times material hereto, is and has been a resident of Montgomery, Montgomery County, Texas.

7. Upon information and belief, at all the times material hereto, Defendant Marilyn Yates is, or has been, a resident of Willis, Montgomery County, Texas.

8. Upon information and belief, at all the times material hereto, Defendant Diane Taylor has been, a resident of Willis, Montgomery County, Texas.

9. Defendant, Allstate, a domestic insurance carrier that moved its principal office outside Texas, may be served with process by serving its designated agent for service of process, CT Corporation, at 350 North St. Paul Street, Dallas, 75201, Dallas County, Texas, because Defendant Allstate is required by the Texas Insurance Code § 804.102 to appoint and maintain an agent for service of process.

V. STATEMENT OF THE CASE

10. Approximately on 11/17/2007, Defendant Marilyn Yates was given permission by Defendant Diane Taylor to operate Defendant Diane Taylor's vehicle, a Hyundai Santa Fe

GLS/LX.

11. On or about 11/17/2007, at approximately 11:30 p.m. in Willis, Montgomery County, Texas, Plaintiff Gloria Rodriguez was operating a Dodge Ram on Highway 75 on a one-lane highway near where Meador Road intersects.

12. At said time and place, Defendant Marilyn Yates was operating Hyundai Santa Fe GLS/LX vehicle, on Highway 75 on a one-lane highway, near where Meador Road intersects.

13. At said time and place, Defendant Marilyn Yates was driving under the influence.

14. At said time and place, Defendant Marilyn Yates failed to keep a look out for other drivers.

15. At said time and place, Defendant Marilyn Yates failed to control her speed.

16. At said time and place, Defendant Marilyn Yates followed Plaintiff Gloria Rodriguez too closely.

17. At said time and place, Defendant Marilyn Yates collided with Plaintiff Gloria Rodriguez.

18. At said time and place, Defendant Marilyn Yates collided with Plaintiff Gloria Rodriguez a second time.

19. At said time and place, Defendant Marilyn Yates collided with Plaintiff Gloria Rodriguez a third time.

20. At said time and place, Plaintiff Gloria Rodriguez suffered injuries to her person and property.

21. At the time of the accident described above, Plaintiff Gloria Rodriguez was a

covered person under the underinsured motorist coverage of Policy No. 98611430910, issued by Allstate to Plaintiff Gloria Rodriguez. Such policy protected Plaintiff Gloria Rodriguez against loss caused by bodily injury resulting from the use of an underinsured motor vehicle. The vehicle owned by Defendant Diane Taylor, and operated by Defendant Marilyn Yates was an underinsured motor vehicle, within the meaning of the Allstate policy. At said time and place, Defendant Marilyn Yates collided with Plaintiff Gloria Rodriguez.

VI. COUNT 1- NEGLIGENCE

22. Plaintiff Gloria Rodriguez re-alleges and adopts by reference paragraphs 1-21.

23. At the time of the collision, Defendant Marilyn Yates was negligently operating the vehicle she was driving. Defendant Marilyn Yates had a duty to exercise ordinary care and operate the vehicle reasonably and prudently. Defendant Marilyn Yates' negligence was a proximate cause of Plaintiff Gloria Rodriguez's injuries. Defendant Marilyn Yates breached that duty in one or more of the following ways:

- (a) in failing to keep a proper lookout;
- (b) in failing to maintain a reasonable speed under the circumstances;
- (c) in failing to apply her brakes to her motor vehicle in a timely and prudent manner;
- (d) in failing to maintain proper control of the vehicle;
- (e) in failing to take proper evasive action to avoid a collision;
- (f) in failing to operate her motor vehicle at a speed that an ordinary, reasonable person would when a special hazard exists;
- (g) in failing to keep such distance away from Plaintiff Gloria Rodriguez's

motor vehicle as an ordinary, reasonable person would;

- (h) in failing to turn the vehicle to avoid the collision;
- (i) in driving a motor vehicle while intoxicated, and;
- (j) in driving recklessly with a willful and wanton disregard for the safety of others.

VII. COUNT 2- NEGLIGENCE PER SE

24. Plaintiff Gloria Rodriguez re-alleges and adopts by reference paragraphs 1-21.

25. That on or about 11/17/2007, the State of Texas had in full force and effect various traffic statutes, that Defendant Marilyn Yates, breached said traffic statutes that constitute actionable negligence per se, and that the specific statutes which were breached are set forth in pertinent part as follows:

- (a) in operating a vehicle at a greater speed than is reasonable and prudent under the conditions in violation of Texas Transportation Code § 545.351 (b);
- (b) in failing to reduce the speed of her vehicle for special hazards in violation of Texas Transportation Code § 545.351;
- (c) in wilful and wanton disregard for the safety of persons and property in violation of Texas Transportation Code § 545.401 (a);
- (d) in failing to pass slower moving vehicles on the left in violation of Texas Transportation Code § 545.051 (a)(1);
- (e) in recklessly engaging in conduct that placed another in imminent danger of serious bodily injury in violation of Texas Transportation Code

§ 545.421 (d);

- (f) in failing to maintain an assured, clear stopping distance between the two vehicles in violation of the Texas Transportation Code § 545.062 (a);
- (g) in failing to obey the posted maximum speed limit in violation of Texas Transportation Code § 545.352;
- (h) in failing to provide identity and insurance information at the scene of the collision in violation of Texas Transportation Code § 550.023;
- (i) in driving with an open container of alcohol in the motor vehicle in violation of Texas Penal Code § 49.031;
- (j) in driving while intoxicated in violation of Texas Penal Code § 49.04;
- (k) in causing injury to another while intoxicated in violation of Texas Penal Code § 49.07;
- (l) in being at a public place while visually intoxicated in violation of Texas Penal Code § 49.02;
- (m) in recklessly damaging or destroying the property of another in violation of Texas Penal Code § 28.04;
- (n) in failing to give a specimen for drug and alcohol testing in violation of Texas Transportation Code § 724.011;
- (o) in intentionally or knowingly using abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace in violation of Texas Penal Code § 42.01 (a)(1);

- (p) in intentionally or knowingly abusing or threatening a person, in a public place, in an obviously offensive manner in violation of Texas Penal Code § 42.01 (a)(4);
- (q) in interfering with a peace officer, while the peace officer is performing a duty, or exercising authority, imposed or granted by law in violation of Texas Penal Code § 38.15 (a)(1);
- (r) in intentionally preventing or obstructing people, when Defendant Marilyn Yates knew the people were police officers, from effecting an arrest, search, or transportation in violation of Texas Penal Code § 38.03 (a), and;
- (t) in recklessly destroying or damages the property of another in violation of Texas Penal Code § 28.04.

VIII. COUNT 3- ASSAULT

26. Plaintiff Gloria Rodriguez re-alleges and adopts by reference paragraphs 1-21.

27. At the time of the collision, Defendant Marilyn Yates was operating the vehicle intentionally, knowingly, or recklessly to threaten bodily injury. Defendant Marilyn Yates made physical contact with Plaintiff Gloria Rodriguez's person, or in the alternative, threatened Plaintiff Gloria Rodriguez with immediate bodily injury. Defendant Marilyn Yates' threat proximately caused injury to the Plaintiff Gloria Rodriguez in the following ways:

- (a) in threatening Plaintiff Gloria Rodriguez at the scene of the collision;
- (b) in causing serious bodily injury while intoxicated;
- (c) in colliding numerous times with the Plaintiff Gloria Rodriguez's motor vehicle;

- (d) in attempting to climb through the window of Plaintiff Gloria Rodriguez's motor vehicle;
- (e) in attempting to grab the cellular telephone out of Plaintiff Gloria Rodriguez's hand;
- (f) in appearing at a public place while intoxicated to the degree that the Defendant Marilyn Yates did endanger Plaintiff Gloria Rodriguez, and;
- (g) in intentionally preventing a person Defendant Marilyn Yates knew was a peace officer from effecting arrest, search, and transportation of the defendant.

IX. COUNT 4- NEGLIGENT ENTRUSTMENT

28. Plaintiff Gloria Rodriguez re-alleges and adopts by reference paragraphs 1-21.

29. At said date described above, Defendant Diane Taylor was the owner of the vehicle operated by Defendant Marilyn Yates.

30. Defendant Diane Taylor entrusted the vehicle to Defendant Marilyn Yates, a reckless and/or incompetent driver. Defendant Marilyn Yates has at least one previous charge of driving while intoxicated. Defendant Marilyn Yates was intoxicated at the time of the collision.

31. Defendant Diane Taylor knew, or through the exercise of reasonable care should have known, of Defendant Marilyn Yates' incompetence at the time of entrustment.

32. At said time and place described above, Defendant Marilyn Yates was negligent.

33. Defendant Marilyn Yates's negligence was the proximate cause of Plaintiff Gloria Rodriguez's damages.

X. COUNT 5- PER SE NEGLIGENT ENTRUSTMENT

34. Plaintiff Gloria Rodriguez re-alleges and adopts by reference paragraphs 1-21.

35. That on or about 11/17/2007, the State of Texas had in full force and effect a traffic statutes, that Defendant Diane Taylor, breached said traffic statute that constitute actionable negligence per se.

36. That the specific statute which was breached is set forth in pertinent part; in knowingly permitting Defendant Marilyn Yates to operate a motor vehicle owned by Defendant Diane Taylor while knowing that Defendant Marilyn Yates was convicted on driving under the influence in violation of Texas Transportation Code § 705.001.

XI. COUNT 6- UNDERINSURED MOTORIST CLAIM

37. Plaintiff Gloria Rodriguez re-alleges and adopt by reference paragraphs 1-21.

38. Plaintiff Gloria Rodriguez will show that she is a beneficiary of, and is entitled to receive underinsured motorist insurance benefits under, the Allstate policy described above, and she hereby sues for the recovery of said benefits, due to the bodily injuries sustained by Defendants Diane Taylor and Marilyn Yates, and the resulting damages to Plaintiff Gloria Rodriguez.

XII. COMPENSATORY DAMAGES

39. As a direct and proximate result of Defendants, Diane Taylor's and Marilyn Yates' negligence, Plaintiff Gloria Rodriguez sustained sprains of neck, thoracic region, and lumbar region. She has been rendered nervous by the wreck, has suffered pain and anxiety of body and mind, and has experienced emotional upset. She has suffered all of the above

injuries, pain and damages since the date of the incident, suffers them at the present time, and will suffer them in the future, said injuries, pain, and damages being permanent, disabling and progressive.

40. By reason of Plaintiff Gloria Rodriguez's injuries, she experienced and continues to experience pain and suffering in the past and in the future.

41. By reason of Plaintiff Gloria Rodriguez's injuries, she experienced and continues to experience mental anguish in the past and in the future.

42. By reason of Plaintiff Gloria Rodriguez's injuries, she paid or became obligated for, and in the future will pay or become obligated for, items of expense in obtaining and receiving medical care and treatment.

43. By reason of Plaintiff Gloria Rodriguez's injuries, she has suffered, and in the future will suffer fear of future condition.

44. By reason of Plaintiff Gloria Rodriguez's injuries, she will suffer, loss of earning capacity.

45. By reason of Plaintiff Gloria Rodriguez's injuries, she has suffered, and in the future will suffer, loss of consortium, including damages to the family relationship, loss of care, comfort, solace, companionship, protection and services.

46. By reason of Plaintiff Gloria Rodriguez's injuries, she has suffered, and in the future will suffer, physical impairment.

47. By reason of Plaintiff Gloria Rodriguez's injuries, she has suffered lost wages.

48. By reason of the Defendants, Diane Taylor's and Marilyn Yates' negligence Plaintiff Gloria Rodriguez has suffered property damage.

XIII. EXEMPLARY DAMAGES

49. Defendant Marilyn Yates, had specific intent to cause substantial injury or harm to others.

50. Defendant Marilyn Yates' acts and omissions, as described above, when viewed from the standpoint of Defendant Marilyn Yates at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of harm to Plaintiff Gloria Rodriguez and others.

51. Defendant, Marilyn Yates had actual and subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff Gloria Rodriguez and others.

52. In addition to compensatory damages set forth above, and as a result of Defendant Marilyn Yates' willful and wanton conduct in disregard of the rights and safety of others, exemplary damages should be imposed to punish Defendant Marilyn Yates and to deter similar willful and wanton conduct in others.

XIV. PRAYER

53. **WHEREFORE**, Plaintiff Gloria Rodriguez asks that Defendants Diane Taylor, Marilyn Yates, and Allstate be cited to appear and answer, and that Plaintiff have judgment against Defendants for the following damages:

- (a) Physical pain in the past and future;
- (b) Mental anguish in the past and future;
- (c) Medical expenses in the past and future;
- (d) Fear of future condition in the past and future;

- (e) Loss of earning capacity in the future;
- (f) Consortium in the past and future;
- (g) Physical impairment in the past and future;
- (h) Lost wages;
- (i) Property damage;
- (i) Exemplary damages;
- (j) Costs of suit;
- (k) Prejudgment and postjudgment interest, and;
- (l) All other relief, in law and in equity, to which Plaintiff may be entitled.

XV. REQUEST FOR DISCLOSURE

54. Under Texas Rule of Civil Procedure 194, Plaintiff Gloria Rodriguez requests that Defendants Diane Taylor, Marilyn Yates, and Allstate disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

By: _____

Kimberly A. Gruber
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