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FAMILY LAW • PERSONAL INJURY • CRIMINAL DEFENSE • BANKRUPTCY



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September 29, 2010

Via Certified Mail Return Receipt

No.: 7009 2250 0001 1079 4995

John A. Bosanko
USAA Insurance
P.O. Box 26001
Daphne, Alabama 36526

Re:	Our Client	:	Jane Smith (Estate of Mary Doe)
	Date of Injury	:	August 3, 2010
	Your Insured	:	Dalton Rosenberger
	Claim Number	:	4249837-7106-9-7257

Dear Mr. Bosanko:

In an attempt to resolve the above-referenced claim amicably, our firm hereby submits the following demand on behalf of our client:

FACTS

On August 3, 2010, very shortly after 9:00 p.m. on a Tuesday evening, Ms. Mary Doe was a pedestrian walking to her home (401 West 2nd Street, Georgetown, Texas 78626), from an apartment complex where she had just finished a shift as a residential healthcare aide / caregiver. Her walking path would be approximately 45 minutes, and would take her from south to north, across State Highway 29 (also known as West University Avenue), then eastbound along 29 / University for approximately 1.5 miles, then turning left on Scenic Drive, to go north into the vicinity of her neighborhood. Ms. Doe had taken this path before, and was quite used to walking long distances, according to her daughter (our client, Ms. Jane Smith).

Tragically, Ms. Doe was never able to complete her walk. While crossing 29 / University from south to north, she was struck and killed immediately by your insured, Mr. Dalton A. Rosenberger, who was driving westbound in the right-hand lane of 29 / University, in a Nissan Sentra four-door sedan.

LIABILITY

Our investigation has revealed that your insured's negligence was, either in whole or for the most part, the proximate cause of Ms. Mary Doe's death.

Sergeant Cory Tchida (Badge #4550), of the Georgetown Police Department, who was the investigating officer at the scene, determined the following things:

- (a) Your insured was in the far right-hand lane of westbound University Avenue / Highway 29; and,
- (b) There was no evidence of pre-impact braking (e.g., skid marks, etc.).

Based on these factors, it is easy to conclude, by a preponderance of the evidence, that your insured was not paying careful enough attention to the road ahead of him prior to this impact.

The speed limit on this roadway is 55 miles per hour. Assuming that he was going at this full speed, this calculates to approximately 81 feet per second (calculation / conversion table is enclosed with this correspondence). Ms. Mary Doe was at no age or in no shape to sprint across this four (4) lane roadway. Therefore, while crossing at a normal (or perhaps even a brisk) pace, she can be traveling at no more than 8-10 feet per second. It would take her quite a few seconds to cross from the south shoulder of the roadway, to the furthest north lane (right-hand westbound lane) of the roadway (where the impact occurred). This means, based on simple mathematics, that your insured had several hundred feet of advanced notice before reaching this spot, to look ahead and notice with his headlights that a pedestrian was on the roadway.

Therefore, even if she bears some responsibility for not crossing at a pedestrian crosswalk, your insured bears greater responsibility for the enormous distance from the impact point that he could have seen her (had he been paying careful attention), and taken appropriate measures (i.e., slowed down, moved to the right, etc.).

For that matter, even if the parties are each held to bear 50% responsibility, based on the enormous pain, suffering, and mental anguish caused to our client from the death of her mother, an adjusted jury award will likely cover more than any policy limits applicable to your insured.

For your review, enclosed are aerial satellite photographs of the following:

- (a) The intersection that this impact occurred closest to (D.B. Wood Drive and West University, from which Sergeant Tchida determined that the crash occurred less than 0.1 miles east of);
- (b) The area of West University in which the crash occurred (based on Sergeant Tchida's drawings of the telephone poles); and,
- (c) A Google walking map demonstrating the foot path from the intersection area to the deceased's home at 401 West 2nd Street, Georgetown, Texas.

DAMAGES

As a proximate result of your insured's negligence, our client has incurred the following

economic damages:

Medical / Funeral Expenses:

1. The Gabriels Funeral Chapel \$ 6,867.00

As the enclosed death certificate shows, Ms. Doe was pronounced dead on-scene, from having suffered multiple blunt force injuries. As such, there are no ambulance or hospital expenses. However, the enclosed itemized invoice from The Gabriels Funeral Chapel evidences the funeral expenses incurred.

Lost Income:

2. Angelic Home Care Services / FHCN, L.L.P. \$ 58,500.00

As you can see from the enclosed tax records (available only for the most recent tax year, 2009), as well as the discussion in the newspaper clippings about Ms. Doe, she worked in the healthcare and residential care field almost all her life. In the time period of her death, she had been working for Angelic Home Care Services, and for FHCN, L.L.P. (d/b/a Visiting Angels). Her 2009 I.R.S. tax return, as well as her 2009 W-2's, demonstrate gross annual earnings of \$19,500.00.

As you can see from the enclosed death certificate, she was 62 years old at the time of death. Calculating three (3) years until the standard retirement age (65), times \$19,500.00 per year, this is \$58,500.00 of income that is lost and will no longer be contributed to our client's household as a result of Ms. Doe's death. Bear in mind that this is being very reasonable and conservative; in light of Ms. Doe's lifelong work history, there is little reason to believe she would have stopped working in this profession at age 65.

Of course, far above and beyond the quantifiable economic damages, there is the intangible and unquantifiable human aspect to Ms. Doe's death. She had only recently begun living with her only daughter (our client, Ms. Jane Smith) at the time of her death. As Ms. Smith states in one of the newspaper articles, enclosed with this correspondence, "She had spent a long time taking care of me and it was my turn to take care of her" by having her live at Ms. Smith's home, 401 West 2nd Street, in Georgetown.

Consistent with her character and professional calling, she had deeply helped Ms. Smith through a very low point in her life, battling through drug addiction, which Ms. Smith was finally able to overcome and conquer in the very early part of this year.

As a final note, we would point out that Ms. Doe's 2009 tax return lists two dependents; however, neither one of them is an heir-at-law. She had been taking care of her sister and her niece in that tax year (noted on the tax return). They ceased being her dependents when she went to live with Ms. Smith earlier this year.

Also, the Gabriels Funeral Home obituary states that aside from Ms. Smith, she was also survived by a son, Bill Doe. However, Mr. Doe was a boy that Ms. Doe took care of from a young age (again, consistent with her character and care giving nature) and raised in her household, who grew accustomed to calling her “mom.” They had not been in regular contact for some time after he grew to adulthood and went on his own, and there was also never a formal adoption of any sort. Ms. Smith is perfectly happy to attest to this under oath, as could any of Ms. Doe’s other surviving relatives (e.g., sister), in an affidavit of heirship or other formal document of this nature.

The grief over the loss of Ms. Doe, her absence from the home, and her absence as a strong, guiding, and giving personality in Ms. Smith’ life, continues to haunt Ms. Smith and will do so for the reasonably foreseeable future.

DEMAND

In reimbursement of the past medical / funeral expenses, past and future loss of income, and compensation for the pain, suffering, and mental anguish of Ms. Jane Smith, demand is hereby made for **\$500,000.00 or the policy limits**, whichever is less, in exchange for a full and final release of all claims.

As authorized by *Allstate Ins. Co. v. Kelly*, 680 S.W. 2d 595 (Tex. Civ. App.–Tyler 1984, writ ref’d n.r.e.), this offer of settlement will remain open for fifteen (15) days after your receipt of this letter. If, after the expiration of fifteen (15) days, the terms of this letter have not been accepted by tender of funds, the offer will be considered rejected and automatically withdrawn. Because of the substantial probability a verdict would exceed \$500,000.00 or the policy limits, whichever is less, based upon material furnished to you in support of this demand, should we subsequently proceed to trial and obtain a judgment in excess of the policy limits, your insured will be expected either to pay the excess or promptly take action against your company for the full amount of the judgment, including pre-judgment interest, as authorized by *G.A. Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W. 2d 544 (Tex. Comm’n App. 1929, opinion adopted) and *Cavnar vs. Quality Control Parking*, 696 S.W.2d 549 (Tex. 1985).

It would appear that your insured’s interests and USAA’s interests are in conflict, in view of this offer of settlement. Therefore, pursuant to applicable insurance law, a copy of this letter **must be forwarded directly to your insured** so that he may review it and consult with counsel of his own choice, regarding the extent of his personal exposure.

Finally, USAA’s duty under these circumstances is detailed in *Ranger County Mut. Ins. Co. v. Guin*, 723 S.W.2d 656 (Tex. 1987). We hope that you will give this matter serious attention, so that it may be resolved within the time limits set forth in this letter.

Again, as discussed above, even if Ms. Mary Doe is found to be as much as 50% liable for this incident (which we do not believe is likely, given the evidence discussed), the

compensation awarded by a jury for her tragic death and loss will likely be such that, even adjusted by 50%, it would outstrip your insured's liability policy limits.

ENCLOSURES

In order to assist you in evaluating this demand, we have enclosed all of the following items on CD-ROM:

- (a) The police report;
- (b) Aerial satellite photographs, walking maps, and speed-distance conversions;
- (c) The official death certificate;
- (d) The Gabriels Funeral Chapel itemized funeral services invoice;
- (e) Ms. Mary Doe's 2009 tax return and W-2 forms; and,
- (f) All available obituaries, newspaper clippings, and Internet news reports.

We look forward to your cooperation in resolving this matter promptly.

Sincerely yours,

Ali A. Akhtar
Attorney at Law

Austin Office
AAA/ns
Enclosure