

[Name]

[Address]

RE: Claimant:  
Date of injury:  
Your Insured:  
Claim Number:  
**Demand:**  
SSN:  
DOB:

Dear:

I represent , the above-named claimant. I am writing in reference to the proposed settlement of my client's injury claim against your insured, , for the policy limits. Enclosed with this **letter** you will find the following information in support of our **demand**:

1. Police **Accident** Report
2. Hospital Medical Records
3. Hospital Functional Capacity Examination Result
4. Unpaid Medical bill from Hospital
5. Medical Lien
6. Economist Report
7. Towing Bill

## I. LIABILITY

### **Background**

The Police **Accident** Report clearly cites [your insured] for turning left into [claimant] in violation of [statute].[Applicable case law] requires that a motorist who is turning left must exercise the standard of care of extreme caution prior to turning, while the approaching vehicle must exercise reasonable care not to hit the turning car, if such could be avoided. The police **accident** report indicates that [your insured] was the only contributing cause of the collision. The area of the collision was not controlled by a traffic signal; therefore [your insured] could not possibly claim a right of way. There was nothing in either the weather conditions or the roadway, which obstructed [your insured]'s view of an approaching vehicle when, she turned left in front of [claimant]. If this case does require litigation, I sincerely believe that I would be successful on a motion for summary judgment on liability.

## II. DAMAGES

### **A. Prior Medical/Physical Condition:**

Prior to the **accident** on [date], [claimant] had no limitations of use in her lower or upper extremities. In fact, [claimant] did not have a primary care physician due to lack of need, she believes her last visit with a primary care physician was [date]. [Claimant] is allergic to [list medications].

### **B. Past Pain and Suffering:**

As a direct result of the collision on [date], [claimant] has a significant claim for past pain and suffering. [Claimant]'s primary injuries involve the following:

#### **Left Knee:**

1. Fracture to her left lateral tibial plateau.
2. Slightly displaced fractured fibula.
3. Fracture of the medial femoral condyle chondral.
4. Synovitis throughout the patellofemoral, anteromedial, and anterolateral joints.

### **Tibial Plateau Fracture:**

A fracture to the tibial plateau alone can be a devastating injury. The tibial plateau is located at the very top of the tibia, which forms the surface of the joint, together with the condyles (knuckles) of the femur. The tibia plateau takes 80% of the weight of a body from the femur upward. To have a fracture in the area, as in this case, usually causes a crack through the cartilage at the top of the tibia. Without a smooth surface (cartilage) the area (synovial membrane) between the tibia plateau and the femur becomes irritated and inflamed. This process is not only painful; it greatly reduces the strength and mobility of the affected joint.

### **Displaced Fractured Fibula:**

*[Claimant]*'s slightly displaced fibula was set without internal fixation. With both the tibia and fibula sustaining fractures, it was impossible for *[claimant]* to bear any weight with her left leg from *[date of accident]* until *[date]*.

### **Medial Femoral Condyle Fracture:**

The medial femoral condyle is essentially the middle knuckle of the femur. This area bears the greatest share of the bodies weight as it impacts into the tibia and fibula. The medial femoral condyle is shaped to move smoothly against the tibia plateau and the fibula. Like the tibia plateau and the top of the fibula, the medial femoral is covered with cartilage for smooth motion. Once a fracture and inflammation of the chondyle occurs the cartilage will never rejoin to become a smooth area.

### **Synovitis:**

Synovitis is inflammation of the synovial membrane (the inner lining of the cavity within the capsule surrounding the joint). The inflammation affects the ability of the synovium to perform its protective and lubricating functions. While pain, joint effusions and restricted movement are the short-term concerns, chronic inflammation can be the first step to degenerative changes in the joint. *[Orthopedic surgeon]* found synovitis throughout the patellofemoral, anteromedial, and anterolateral joints. With the addition of all other injuries in the knee, the strength and range of motion in the knee amounts to a significant permanent disability. Additionally, *[claimant]* has a great likelihood of needing complete knee replacement. *[Orthopedic surgeon]* is prepared to testify concerning the above injuries, permanency, limitations, and necessity for further procedures. In considering that *[claimant]* has injuries to the knee joint of the femur, tibia, fibula, the likelihood of recurring synovitis is inevitable.

## **Strength and Range of Motion in Left Knee:**

A Functional Capacity Examination ("FCE") was conducted to determine the degree of [claimant]'s permanent loss of range of motion, strength, and capabilities as a result of the collision. An FCE test is extremely objective, as any deviation in effort is recorded throughout the testing process, so essentially if someone tries to "fake" or "exaggerate" an injury, it will show up. In [claimant]'s case, it is stated that she gave maximum effort and did not display a deviation.

## **Left Shoulder:**

[Claimant]'s entire left side struck the hood of [your insured]'s vehicle after the initial impact. Although the medical providers were mainly focusing on [claimant]'s left knee, she did sustain secondary injuries to her shoulder and neck. The extensive limitation of [claimant]'s left shoulder as indicated on the results of the FCE test, as been diagnosed as a form of traumatic induced bursitis (inflammation) that has lead to permanent limitations. Essentially the tendons and ligaments of the shoulder has stretched causing [claimant]'s shoulder joint to become loss, therein leading to inflammation, irritation, and weakness.

## **Neck:**

Like the shoulder, [claimant]'s neck problems were non-existent prior to the collision. [Claimant] displayed a deficit in cervical rotation bilateral (which is turning head toward shoulder); and cervical lateral flexion left (which is bending head down toward left shoulder). It appears that given the apparent limitations and complaints and level of disability as notes in the chart (moderate), [orthopedic surgeon] may order an upper MRI to rule out a herniation. Considering the policy limits and the above stated injuries for this case, I do not believe that a consideration of a neck injury is even necessary.

[Claimant] was asked to develop a time line of events after the collision. When considering pain, suffering, and loss of enjoyment of life a trier of fact will be considering many of these factors:

## ***Chronology of pain and suffering***

### **Date of accident to date of surgery**

- On the date of the collision, [claimant] was placed on leg brace until the surgery was performed on [date]. Since the main injuries were at the knee joint, casting was not an option. Every few weeks the brace was adjusted at a slightly different angle to avoid having the knee heal in a locking position therein greatly reducing range of motion. Adjusting a knee with fractures is an extremely painful experience.
- Since [claimant] is allergic to [particular medication], her pain medication was limited to [other medication], which in her words would only "take the edge off."

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- When *[claimant]* first returned to her home after her stay at the emergency department she was unable to climb up her stairs. She lives on the second story of her double home. Friends carried *[claimant]* up the stairs to her home. *[Claimant]* felt it only appropriate to ask her friends to come to her home and assist her only when absolutely necessary, which amounted to doctors appointments only. Her children assisted by going to stores to buy all necessities.
- No visiting nurse service at any time during recovery process.
- No weight bearing on the fractured leg, which limited all movement of left leg.
- Remained on couch almost exclusively from date of injury to surgery.
- Depressed due to her physical condition, constant crying.
- Never slept any period longer than 2 hours, due to pain, further affecting her mental state.
- Continuous nightmares limiting sleep.
- Constant pain at all times.
- Using crutch to assist in walking was extremely painful due to injury to left shoulder.
- Lying down almost exclusively.

## **Surgery and post-operative care**

- Surgery on *[date]* at Hospital.
- Pain from the operation frequently caused periods of crying.
- *[Claimant]* was placed back in leg brace and told no weight bearing on leg for over two months.
- Still lying down in upstairs apartment almost exclusively.
- Continued inability to climb stairs either assisted or unassisted.
- Pain from knee, shoulder, and neck majority of the waking hours.
- Sleep pattern has not improved; typically wakes several times a night due to pain and lack of physical activity.
- Began very lightweight bearing in physical therapy *[date]*.
- Limited ability to negotiate stairs with railing and assistance from others began in approximately *[date]*.
- Remained on couch almost exclusively.
- Depressed, difficulty coping with pain, loss of job, lack of mobility and freedom.

## **Post-operative recovery to present**

### ***Left Knee Permanent Limitations:***

- Permanent ankle and knee weakness and dysfunction.
- 41% loss in hamstring strength in left leg.
- 35% loss in quadriceps strength in left leg.
- Loss of approximately 22 degrees of range of motion in knee flexion.
- Loss of approximately 10 degrees of angle dorsiflexion. Although at first glance, one might think that 10 degrees is not significant, it is in fact extremely significant because without the

ability to have dorsiflexion of at least 15 degrees, a person's ability to walk with normal strides is greatly affected. When a person does not have proper dorsiflexion, their strides become shorter results in a flat-footed step, and end in a rotation of the foot and leg to the side to avoid dorsiflexion.

- Consistently shifting her body weight to right side when standing (note: a prolonged pattern of weight shifting will eventually result in a hip and back injuries). Under the heading "Gait" of the FCE report, it is stated that "client demonstrated left hip hike, decreased left heel strike and decreased left knee flexion during swing phase of gait."The above mentioned manner of walking (known as "hiphiking") results in the knee and foot pounding when a step is taken instead of defusing the weight in a step from heel to toe. This walking pattern will increase knee joint synovitis and chondritis.
- Unable to work at a job with continuous movement on feet (this would eliminate waitressing).
- Unable to climb stairs (or ramps, ladders, scaffold) without assistance oft-ailing (when no railing, *[claimant]* can not attempt to climb stairs.
- Knee and ankle swells when on feet for more than a 3-4 hours a day.
- Standing and walking limitation (less than 3 hours in an 8 hour day) due to injury to knee.
- Not recommended to engage in work involving squatting, kneeling, or crawling.
- Constant pain in knee affecting temperament and sleep.
- Early post-traumatic degenerative changes throughout knee.
- Early signs of post-traumatic arthritis due to trauma to left knee.
- Stiffness of left knee indicative of extensive damage to left knee.
- Extensive cartilage damage.
- Need to take *[pain medication]* (\$ per month) for rest of life.

### ***Left Shoulder Permanent Limitations:***

- Loss of 50 degrees in range of motion in left shoulder abduction (overhead reaching is greatly reduced).
  - A 37% total loss of use of complete functionality in her left shoulder.
  - A 58% loss of use in shoulder flexion.
  - Rarely lift over 11 pounds more than from the ground to her side.
  - Never lift over 21 pounds above her hips.
  - Never carry weight beyond 10 pounds.
- Note:* there is no question that the above limitations are indicative of a significant rotator cuff injury.
- Constant need for *[pain medication]*.

### ***Neck Permanent Limitations:***

- Loss of 45 degrees in range of motion in cervical rotation bilateral.
- Loss of 15 degrees in range of motion in cervical lateral flexion left.

## Loss of Enjoyment of Life (Past and Future):

If a trier of fact considers a value for past pain and suffering, part of the pain and suffering under the law includes compensation for loss of enjoyment. *[Claimant]* would both offer witnesses testimony and testify herself to the following restrictions in her daily life:

- Loss of employment, that *[claimant]* considered a once in a lifetime type job.
- Loss of ability to perform the type of job that *[claimant]* has always worked, in restaurants on her feet over 8 hours a day.
- *[Claimant]*'s father was a veterinarian, and since age 4, *[claimant]* rode horses, which were always a great enjoyment and part of life. *[Claimant]* used to train Arabian horses, rode them in shows, and give lessons, and now has great difficulty getting on a horse (still has not ridden since the **accident**).
- Danced professionally, in performances across the county; taught Latin and other forms of dance at various studios. *[Claimant]* can no longer dance.
- Sleep pattern has not improved. Typically wakes 4-5 times a night due to pain and lack of physical activity.
- Household duties: can no longer vacuum; cannot walk while pushing; cannot extend to do activities such as cleaning windows, cannot climb on ladder; cannot walk and carry anything.
- Cannot carry grocery bags with more than a few light items.
- Cannot carry any groceries up stairs, needs hands to hold rails.
- Cannot carry laundry either up stairs or on level ground.
- Getting items out of a bottom cupboard is very difficult.
- Getting out of bath is very difficult.
- Need to use hand for support to get out of a sitting position.
- Cannot jog, run, or walk an distance for cardio exercise.
- Weight gain varies from 17-25 pounds over pre-injury.
- Loss of job that she loved (restaurant manager).
- Constant depression.
- Inability to sleep a complete night without waking up in pain.
- Fallen behind on many mortgage payments, which has greatly hurt credit rating.
- Loss of saving in attempt to save car and home.
- Can no longer lie down or sit in a comfortable position.

## VALUATION OF PAST PAIN & SUFFERING

Upon reviewing state cases concerning traumatic knee injuries, the past pain and suffering has ranged from \$ to \$. Upon reviewing *[claimant]*'s history of past pain and suffering in comparison to other cases reported with similar injuries, clearly *[claimant]*'s history of recovery would justify a substantial recovery. I believe a conservative estimate of *[claimant]*'s past pain and suffering to be valued in excess of \$.

## C. Future Pain and Suffering:

The knee joint is the largest weight-bearing joint in the body. Over 80% of a person's body weight is supported at the knee joint. *[Claimant]* is currently  years old, at this time *[life expectancy tables]* would allow a trier of fact to consider  more years of future pain and suffering. Essentially, all of the limitations listed above as permanent injuries and loss of enjoyment of life should be and will be considered for a -year plus loss.

Since her injury, *[claimant]* has treated with *[orthopedic surgeon]*. In reviewing the medical records, it is apparent that *[orthopedic surgeon]* already foresees at least one more future knee surgery (knee replacement) and taking into consideration that she has an expected  years more of life expectancy, two knee replacement procedures are very likely (knee replacement typically does not last over 10-15 years). Clearly, we will ask the trier of fact to consider the heightened period of pain and suffering associated with additional surgery and recovery periods.

Past jury verdicts or settlements for future pain and suffering for individuals in their 50's range from a low of \$ to over \$. In *[claimant]*'s case, the proof clearly establishes a life of significant limitations, lifelong pain, and future medical procedures causing more pain and suffering. I truly believe that our trial of this matter on future pain and suffering alone could render a verdict over \$.

## D. Past Lost Wages:

Neither a judge nor a jury will waver on lost wages, as they are what they are. As of *[date]*, *[claimant]* has lost in excess of \$. *[Claimant]* is currently unemployed. By the time this matter were to get before a jury, *[claimant]*'s past lost wages will be well over \$.

## E. Future Lost Wages:

*[Claimant]* will likely never get a job that has the benefits to match what she lost at *[previous employer]*. The report of the economist retained by our office, , estimates *[claimant]*'s future lost wages at \$. Even assuming that a trier of fact would not completely agree with *[economist]*, they never veer far from an economist opinion. Even being conservative, *[claimant]* is likely to receive over \$ in future lost wages over the next  years (to age 65).

## F. Medical Bills Past and Future:

*[Claimant]* will ultimately be responsible for all her past and future medical bills past. *[Medical provider]* has already established a lien on this matter for \$. In addition, *[claimant]* owes the following bills: *[list]*

Total Medical Lien \$

*Future knee replacement surgery:*

The average cost of total knee replacement surgery is approximately \$, including hospital expenses, surgical material, surgical team costs, and recovery room expenses in hospital

(not including imaging expenses). The cost of each postoperative office visit with the treating orthopedic surgeon is approximately \$, with monthly visits anticipated for the first several months following surgery. Of course, physical therapy visits during the post operative period are anticipated to be more intense with an average of 3-4 times per week for approximately 2-3 months following surgery, adding up to \$ in postoperative physical therapy. In addition to the above, [claimant] will likely take [medication] for the rest of her life at a current cost of \$ per month, which, over [claimant]'s life expectancy, would amount to over \$. Establishing a case for past and future medical cost of over \$ is not unrealistic in this case. Presenting evidence related to medical expenses for past and future care and treatment for a severe injury such as [claimant] becomes simply a mathematical calculation by the fact finder, and the Appellate Court rarely disturbs the special damage portion of a verdict.

## G. Knee Injuries:

[Set forth relevant cases with settlement amounts]

### SUMMARY OF [CLAIMANT]'S CLAIM:

1. *Past Pain & Suffering (including loss of enjoyment of life)*, which by the time this matter is tried will be approximately years. The range of similar cases is \$ to \$. For purposes of this settlement, I am willing to assume a conservative jury would only give [claimant] \$ a year.

*Past Pain & Suffering* \$

2. *Future Pain and Suffering (including loss of enjoyment of life)*. Clearly [claimant] has permanency in her left knee, left ankle, left shoulder, and neck. With permanency established, a trier of fact will be offered the Life Expectancy Chart and consider -plus years. The range in similar cases has been established at between \$ and \$. For purposes of this settlement, I am willing to assume a conservative jury would only give [claimant] \$2,000 a year.

*Future Pain and Suffering* \$

3. *Past Lost Wages*. Already established lost wages are over \$. Estimating it will take years from the date of the collision to get to trial, the past lost wages will most likely be over \$. For purposes of this settlement, I am willing to assume that [claimant] gets a managerial position by [date] that pays \$ per year, and works its way up to \$ by the time of trial. Even considering this over-optimistic view, [claimant] would have past lost wages of well over \$ from years after the collision.

*Past Lost Wages* \$

4. *Future Lost Wages*. Taking my above-optimistic scenario of [claimant] getting a managerial job starting at \$, she will still never match her income from [previous employer], losing at least \$ a year. For our conservative viewing, I am willing to assume a trier of fact only considers an economic offset of \$10,000 a year over the next years.

*Future Lost Wages* \$

5. *Past Medical Bills*. Bills establish lien, no consideration of a discount.

*Past Medical Bills* \$



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6. *Future Medical Expenses*. Even though I believe my estimate of \$ was extremely realistic, for the purposes of this settlement, I would be willing to consider a trier of fact only giving *[claimant]* \$ toward a future knee replacement and *[pain medication]* at its current price.

<i>Future Medical Expenses</i>	\$
<i>Total</i>	\$

In conclusion, considering all categories and conservative figures, the total is \$. *[Claimant]* does not wish to personally attach the assets of your insured. She also does not believe it is fair that she suffer the rest of her life. If the policy is not offered within two weeks of receipt of this **letter**, we will begin an action in Court. After an action has begun, I have spoken with *[claimant]* at great length about not accepting the policy. We have no intention of litigating and then settling for policy. I believe any effort by *[insurer]* to save some of the policy with an offer of less than \$ is greatly outweighed by the exposure on an excess verdict. Thank you for your review of this matter I look forward to hearing from you in the near future.

Very truly yours,  
*[Attorney for Claimant]*