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## **Drunk is Different Prosecuting the DWI Car Wreck**

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## **DRUNK IS DIFFERENT**

### **Prosecuting the DWI Car Wreck**

**by**

**Dan Christensen**

#### **I. SCOPE.**

It is my intent that this paper be a brief, very informal, discussion of some of the methods plaintiff's lawyers can use to increase the verdicts they receive on their cases that involve defendants who were intoxicated. It is not meant to be a comprehensive study of any one area of trial practice, but rather, a general overview of some strategies and techniques that have worked well in the past for this particular lawyer.

If you are in need of a thorough, heavily annotated, treatise on the subject, this is not your resource. On the other hand, if you are interested in a casual, practical and realistic discussion about how to maximize verdicts on smaller cases, it is my hope this paper will benefit you.

#### **II. NO-LEGALESE DISCLAIMER.**

I have stolen most, if not all, of my ideas and strategies from various authors, lawyers, friends and clients over several years. If I can recall who taught me a specific method or gave me an idea, I will credit them appropriately. If you are one of the people who gave me an idea and I fail to properly credit you, you have my word that I will share all the royalties I earn from this paper with you.

## **III. INTRODUCTION.**

This paper will focus on the question of how to best present the plaintiff's damages case in a DWI car wreck. As we all know, there is no one answer to this question. There is no single formula that, whenever employed, is universally successful in extracting substantial verdicts from all juries. Therefore, my goal in this paper is simply to present a number of ideas that have proven successful with some juries some of the time.

This paper will not devote much discussion to the nuts and bolts of drafting pleadings or discovery, arguing related legal issues, or collecting a judgment. Such practical pre- and post-trial matters are covered by numerous other sources written by authors far more qualified than I. I will provide a "DWI Car Wreck Tool Box" as a collection of appendices to the paper, however, the focus of this paper will be about how to best try the DWI car wreck to a jury.

Before we can discuss how to persuade the jurors to award damages in DWI cases, we first need to examine how jurors think. Once we know how jurors think and make decisions, we can evaluate the most common motivations jurors have for awarding or not awarding damages. Lastly, we will explore how we can use these juror motivations and beliefs to our advantage at trial in achieving higher damage awards.

#### IV. TYPES OF JUROR BIAS.

##### A. Fundamental attribution error and defensive attribution.

Personal injury trials often involve situations where someone's life has been significantly and irreversibly harmed in an instant due to no fault of the person. One moment, the plaintiff is enjoying life with a loving family, a successful career, and a future filled with hope and promise. One moment later, everything is lost and the only thing the plaintiff knows now is that he will have a future filled with excruciating pain every day.

When tragedy like this strikes, it can often seem very random and arbitrary. People do not like such uncertainty in their lives; it makes them uncomfortable. They want to believe that good things happen to good people and bad things only happen to those who deserve it. People want to believe that they have control over their lives. They want to know that if they go to work every day, be a good person, and take care of their family, everything will be fine.

Jurors in personal injury cases are forced to reconcile the plaintiff's story with their notion of a just world. The thought that this tragedy arbitrarily happened to the plaintiff makes jurors uncomfortable. If jurors accepted the notion that this terrible thing just randomly happened to the plaintiff, then they would have to make room for the idea that it could happen to them.

To avoid this anxious feeling, jurors look for a reason why it happened.

This tendency to assume that if a person has suffered an injury, there is someone to blame is referred to as "fundamental attribution bias." Psychologists and jury consultants used to believe that this bias would generally work in favor of plaintiffs by causing jurors to lean toward finding against the defendant. If they blamed the defendant for the plaintiff's harm, then they could reject the notion that awful things randomly befall innocent people for no reason at all.

More recent studies, however, seem to indicate that jurors will more often look to the plaintiff's conduct as a way to separate themselves from the plaintiff's plight and resolve their discomfort.<sup>1</sup> This phenomenon is termed "defensive attribution."<sup>2</sup> Jurors will compare the plaintiff's conduct with what jurors believe they would have done in the same position. When making the comparison, jurors seem not to ask whether they have ever acted the same as the plaintiff did, but rather, whether hypothetically they would have acted the same way under the same circumstances. For example, if the plaintiff was on his cellular telephone at the time of the collision, jurors are less likely to ask themselves whether they have ever driven while talking on the phone, but rather, whether hypothetically

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<sup>1</sup> N. Feigenson, et al., *Effects of Blameworthiness and Outcome Severity on Attributions of Responsibility and Damage Awards in Comparative Negligence Cases*, 1(6) LAW & HUM. BEHAV. 597 (Dec. 1997); V. Hans, *The Contested Role of the Civil Jury and Business Litigation*, 79(5) JUDICATURE 242-48 (Mar.-Apr. 1996).

<sup>2</sup> K. Shaver, *Defensive Attribution: Effects of Severity and Relevance on the Responsibility Assigned for an Accident*, 14 J. PERSONALITY & SOC. PSYCHOL. 101-13 (1970).

they would have been on the telephone in that situation. If the juror can conclude that the plaintiff was irresponsible in some way and brought the harm on himself, then the juror can maintain their belief that life is fair.

Studies have also shown that the strength of jurors' defensive attribution is correlated to the severity of the harm suffered by the plaintiff.<sup>3</sup> In other words, the more severely the plaintiff is injured, the more uncomfortable jurors feel, and hence, the stronger their urge to relieve their discomfort by finding a way the plaintiff brought this harm on himself.

## **B. Availability bias**

People have the tendency to make decisions in accordance with the availability of information. If one side of an issue or story is presented well, but the other side is presented poorly or not at all, people will have the tendency to focus on the side that has the most available information.<sup>4</sup> If a trial focuses on the plaintiff's opportunity to avoid the harm he suffered, the jury is likely to focus on the same thing.

"Tort reform" propaganda has been so successful, in part, due to this availability bias. A large majority of people believe that there are too many lawsuits today, when in fact there are fewer lawsuits per capita today than in decades past. People believe juries

award unreasonably high amounts of money to plaintiffs, when in fact the average jury verdict in a civil case today is smaller in inflation-indexed dollars than in years past. People believe these things because that is what the available information they have says.

## **C. Confirmation bias and belief perseverance bias**

The confirmation bias describes people's tendency to search and recall facts that confirm their beliefs and either criticize, reject, or forget facts that do not support their beliefs. This bias also causes people to interpret ambiguous or neutral facts in a manner that supports their beliefs.<sup>5</sup> The closely-related belief perseverance bias describes a person's tendency to refuse to abandon their theory of what happened, even in the face of conflicting evidence.<sup>6</sup>

Research has shown that jurors develop a theory of the case early in the trial. The theory chosen is determined, in part, on the value beliefs the juror possesses when they come to jury selection. For example, a juror who believes teenage drivers driving sports cars routinely speed and drive recklessly will quickly adopt a theory that is

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<sup>3</sup> M. Lerner & H. Goldbeg, *When Do Decent People Blame Victims?*, in DUAL-PROCESS THEORIES IN SOCIAL PSYCHOLOGY, ch. 31 (S. Chaiken & Y. Trope eds., Guilford Press 1999).

<sup>4</sup> Kahneman & Tversky, *The Simulation Heuristic*, in Daniel Kahneman & Amos Tversky, JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 201-08 (1982).

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<sup>5</sup> Ditto & Lopez, *Motivated Skepticism: Use of Differential Decision Criteria for Preferred and Nonpreferred Conclusions*, 63 J. PERSONALITY & SOC. PSYCHOL. 568 (1982); Lord, *Bias Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979); Ross, et al., *Perseverance and Self Perception and Social Perception; Bias Attribution Processes of the Debriefing Paradigm*, 32 J. PERSONALITY & SOC. PSYCHOL. 880-92 (1975).

<sup>6</sup> Nisbett & Ross, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT 167, ch. 8 (1980).

consistent with that belief. If a party's theory is inconsistent with that belief, it will likely not succeed with that juror, regardless of the facts. The juror will filter the evidence they hear, picking out those facts that support their theory and closely scrutinizing, rejecting, or forgetting those inconsistent facts.

## **V. HOW JURORS THINK ABOUT PERSONAL INJURY LAWSUITS.**

While every case and every venire is different, there are generally five attitude areas that people have pertaining to personal injury lawsuits.<sup>7</sup> They are the following:

### **A. The relative importance attributed to personal responsibility.**

Some people believe that a person should take responsibility for everything that occurs to them in their life. These people will be more inclined to hold a plaintiff responsible for taking care of themselves and overcoming any hardship that may have befallen plaintiff. At the other end of the spectrum, people believe that a person's life is affected by their environment and various social factors. These people will be more inclined to look to external forces and actions of others as an explanation for the plaintiff's plight. Most people will fit somewhere in between these two extremes.

### **B. Tolerance for ambiguity and ability to appreciate complexity.**

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<sup>7</sup> National Jury Project, *Jurywork: Systematic Techniques*, §19.01 (West 1999).

People have different amounts of patience and willingness to sift through voluminous facts and complex issues when determining liability in a case. While some folks are less detailed and have a desire to come to a quick conclusion, others are willing and able to meticulously pick through the facts presented and thoroughly evaluate all issues before reaching a conclusion. This attitude is very related to a person's attitude regarding personal responsibility mentioned above. Therefore, people "who seek simple answers to complex problems or who rush to closure find it difficult to hold named defendants liable when there is involvement by other unnamed defendants or even a tenuous basis to conclude that there was comparative negligence."<sup>8</sup> So, in the case of a low speed collision, if there will be extensive discussion about biomechanical, accident reconstruction, epidemiological, or injury causation issues, plaintiff's counsel will want to make sure the jurors have a high tolerance for ambiguity and ability to understand complex matters.

### **C. Respect for the law and the legal system.**

Attitudes about whether and how the legal system should be used to resolve disputes can also affect how a juror will decide a case. Some people believe that people should not bring lawsuits regardless of the reason. Others recognize that it is a tool that society has employed for years to resolve disputes. Similarly, while some people will follow

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<sup>8</sup> *Id.* at p. 19-10. See also, Vidmar, et. al., *Damage Awards and Jurors' Responsibility Ascriptions in Medical Versus Automobile Negligence Cases*, 12 BEHAVIORAL SCIENCES AND THE LAW 151 (1994).



the judge's instructions regardless of their personal beliefs, others will vote according to their value system, whether or not they are complying with the judge's instructions. Counsel will have to evaluate the facts and issues in their case to determine what type of attitude is unfavorable and then strike those jurors.

#### **D. Ability to empathize with one of the parties.**

Many attorneys and consultants used to advise that one method of defining the "juror profile" was to pick those characteristics that were common to the plaintiff. The thought was that if the jury was filled with people having similar demographic facts and experiences to the plaintiff, the more they would identify with the plaintiff and the better chance they would vote in his favor. The theory of defensive attribution, however, has shown that often times, jurors with similar experiences as the plaintiff will actually impose a higher standard of conduct on the plaintiff and eventually vote against him.

If a juror has similar experiences as the plaintiff, they may display very different reactions. Firstly, the juror may empathize with the plaintiff because the juror has lived through the same sort of ordeal. Secondly, the juror may impose a higher standard of conduct on the plaintiff because the juror has had the same experience and they either did not receive any compensation or are physically okay now. Lastly, the juror may, as a function of defensive attribution, distinguish their experience from the plaintiff's and focus on something that the plaintiff did or did not do that brought the tragedy on them.

#### **E. Views about financial compensation as a way of solving problems.**

Jurors are generally concerned with three things regarding damages when they deliberate: (1) how responsible was everyone, (2) the purpose of awarding damages, and (3) the effect awarding damages will have on the defendant, them, or the public in general.<sup>9</sup>

Regardless of whether comparative responsibility was an issue in the case, studies have shown that juries will examine plaintiff's conduct both while determining liability and damages.<sup>10</sup> Therefore, the weaker the liability case in a juror's mind, the lower the amount of damages they will support.<sup>11</sup>

Because jurors are concerned with the purpose of awarding damages, plaintiff's counsel needs to demonstrate during trial that the plaintiff and/or the plaintiff's family will benefit from a large damage award. If a juror believes that an award for pain and suffering or for someone's death will not improve the plaintiff or his family's situation, the juror will not be inclined to support a large damage award.

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<sup>9</sup> *Id.* at p. 19-17.

<sup>10</sup> Vidmar, et. al., *Damage Awards and Jurors' Responsibility Ascriptions in Medical Versus Automobile Negligence Cases*, 12 BEHAVIORAL SCIENCES AND THE LAW 151 (1994); Bovbjerg, et. al., *Valuing Life and Limb in Tort: Scheduling 'Pain and Suffering,'* 83 NORTHWESTERN U. L. REV. 963 (1989); Kalven, *The Jury, the Law, and the Personal Injury Damage Award*, 19 OHIO STATE L. J. 172 (1958).

<sup>11</sup> Broeder, *The University of Chicago Jury Project*, 38 NEB. L. REV. 754 (1959).

Jurors may also be concerned with the effect a large damage award will have on the defendant or others. Jurors may believe that if they award a large sum of money to this plaintiff, that it will affect the cost of goods and services in their community. Or, their concern may be more of a systematic concern that if they deliver a large verdict, that it will only exacerbate the existing problem of large verdicts and drive up prices of insurance across the country. At the other end of the spectrum, some jurors may assume that higher prices are inevitable anyway, and concentrate more on the extent of the defendant's conduct.

## VI. HOW JURORS DECIDE.<sup>12</sup>

Generally, jurors employ two different types of reasoning: inductive and deductive. Inductive reasoning is when a juror objectively weighs the facts on one side against the facts on the other side and comes to a conclusion. Deductive reasoning is when a juror forms opinions about the general issue presented and then looks to the specific facts to find support for the opinion.

Research has shown that many jurors reason deductively and the opinions they form are largely controlled by the values and beliefs they possess when they enter the courtroom.<sup>13</sup> In other words, jurors will typically apply

their understanding of the ways of the world to the facts of the case, accepting some facts and rejecting others, and will make a decision that comports with their values on the general subject at issue.

Which method of reasoning a juror employs is related, in part, to whether they are affective or cognitive thinkers. Affective jurors make decisions more quickly on an emotional basis (deductive reasoning) and cognitive jurors are more likely to carefully and methodically weigh the evidence before deciding (inductive reasoning). Affective jurors are more likely to be religious or philosophical people. They tend to be more creative and to conduct their lives based upon their feelings or beliefs. Cognitive jurors are often described as very structured, detailed, and organized.

Regardless of what type of reasoning a juror employs, however, studies have shown that (1) jurors think in pictures, not in words, and (2) jurors will reach a conclusion that they feel good about in the end. In other words, **regardless of whether they are affective or cognitive thinkers employing deductive or inductive reasoning, their decision is driven by their emotions and their emotions are created by the pictures in their mind. Therefore, the party who can create the most vivid mental pictures in the jurors' minds will win, as long as those pictures comport with the jurors' general understanding of the ways of the world and allow the jurors to feel good about their decision.**

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<sup>12</sup> For a more complete discussion of juror psychology and decision making, I suggest you read Richard Waites, *Courtroom Psychology and Trial Advocacy*, ALM Publishing, New York (2003) and Eric Oliver, *Facts Can't Speak for Themselves*, NITA (2005).

<sup>13</sup> Donald Vinson, *Jury Persuasion: Psychological Strategies & Trial Techniques*, 13 (1993).

### **Persuasion Formula**

- **Jurors make decisions using emotion**
- **Emotions are triggered by pictures**
- **Pictures are best created by stories**
- **Stories are better shown than spoken**

## **VII. JUROR MOTIVATIONS TO AWARD DAMAGES.**

Considering the above discussion about the ways jurors think and make decisions, we can make a list of the most common motivations for jurors to award damages in personal injury cases.

### **A. To punish the defendant.**

A jury that is angry at a defendant will be motivated to punish the defendant. This is true regardless of whether you plead gross negligence and seek exemplary damages or not. It seems juries will often award more damages out of anger toward a defendant than empathy toward an injured victim. This can be true even if the plaintiff is not especially likable. As long as the lawyer has successfully pinned the defendant into the role of the villain, the jury will often award large damages even on a small case. The case becomes less about how to compensate to plaintiff, and more about how to get revenge against the defendant.

### **B. To correct an injustice.**

The second major motivator for juries to award large damages is their

motivation to correct an injustice. Jurors, even if they often appear disinterested, generally have a desire to discharge their duty fairly and render justice. The trial lawyer will want to provide the jury with the opportunity to satisfy their desire to stop a wrongdoing, “even the score,” or enforce their personal belief that people should take responsibility for their wrongs.

Along this same line of logic, jurors will also sometimes have a desire to feel important or make a social statement with their verdict. This motivation goes beyond the case and parties at hand, but relates to jurors’ sense of social responsibility. The lawyer will want to align a large damage award with the “greater social good” so that the jury will be motivated to find in his favor in order to make the world a better place.

### **C. To help the plaintiff.**

Jurors are also motivated to award damages if they believe it will help a likeable plaintiff. Jurors will not typically give money for the sake of giving money, therefore, it is critical for the trial lawyer to explain how a large damage award would fix the plaintiff’s problems or help them deal with issues that can’t be fixed.

## **VIII. JUROR BELIEFS THAT CAUSE THEM TO NOT AWARD DAMAGES.**

As trial lawyers, we not only have to be mindful of what motivates jurors to award damages, but we also have to know what causes them to not award damages. Three common causes

of low or no damage awards are the following:

**A. It was just a simple mistake.**

If a juror believes that the defendant unintentionally made a simple mistake, they are less likely to support a large damage award. It is true that a simple mistake can constitute negligence, however, jurors do not typically see it that way. Jurors see it more on a sliding scale where the larger the mistake, the more the defendant should be held responsible and the more likely the plaintiff was severely damaged.

This makes perfect sense when one compares this to the above discussion of what motivates a juror to award damages. If the defendant made just a simple mistake, then there is less of a desire to punish him, less of a perceived need to right an injustice, and less probability that the plaintiff is in need of significant aid.

**B. Money will not help.**

If jurors believe that the money will do no good, they are less likely to award damages. In order to give large damage awards, jurors want to know that it will make a difference in the plaintiff's life. If they believe it will have no effect, they view it as a windfall and award less damages. Therefore, it is critical for the trial lawyer to supply the jurors with ample evidence of the positive effect a large damage award would have on the plaintiff's life and future.

**C. A large damage award will hurt everyone.**

Over the last two decades or more, jurors have been told that the cost of goods and services, as well as the availability of medical care, have all been negatively affected by the number of lawsuits and high damage awards. It is not surprising, therefore, that most jurors come to trial pre-loaded with that belief. Unless their motivation to punish the defendant, correct the injustice or help the plaintiff outweighs this belief, the juror's damage award will likely be very small.

**IX. USING JUROR BELIEFS TO OBTAIN A LARGE DAMAGE AWARD IN A DWI CAR WRECK.**

We have discussed how jurors think and make decisions, as well as what motivates them to give and not give damages. With those considerations in mind, now we must determine how to most effectively present the DWI car wreck.

I have noticed that when I have been fortunate enough to have received extraordinary results on these cases, I have employed certain techniques and followed certain processes. Set forth below is a collection of these techniques and processes. Use them, improve upon them, and hopefully, you will also receive truly extraordinary results on your next DWI car wreck.

**A. Create your mindset.**

Some would argue that lawyers who are great in the courtroom are just great actors. In large part, I agree. But,

one must recognize that true acting is not simply pretending. Great actors are those who mentally and emotionally take on the role of their character to the point they actually become that character. I suggest that, to be great, trial lawyers must do the same.

Part of this process is to create the correct mindset from the start. We must be passionate about the justness of our client's cause, committed to the importance of the case, and convinced that the case is deserving of a large damage verdict. If we believe this to our core, it will show and the result will likely follow.

If your DWI car wreck involves a dramatic collision with severe damage to the vehicles, horrific injuries or death, or other such remarkable circumstances, getting in the right mindset will likely not be difficult. It is when our case lacks those details that we are inclined to think of it as "a small car wreck." If we think if our client's case like this, however, the jury will almost certainly agree with a corresponding damage award.

When our case lacks sensational details, it is important to remember that the case is not just important to the client, it is also important you. You are not just trying this case, but you are essentially trying all the future cases you will have with this particular defense counsel, insurance adjuster, and judge. How well you do in this case will leave them all with an impression that will affect the value or respect you receive in future cases.

It is also important to remember that damage awards in DWI cases are just as much, if not more, about the

defendant than the plaintiff. Even if your client is not terribly injured or in need of extensive continuing care, a large damage verdict is still likely if the defendant's conduct was particularly egregious.

Your client's mindset is also very important. Some client's are very aware that the event upon which their case is based has had a significant impact on their lives. While no one likes a whiner, it is important that the client can feel and explain to the jury the injustice that exists in the case. If a client is viewing the case as just a "little car wreck", it will be treated as such by the jury. This is true even if the plaintiff's lawyer honestly believes the case warrants a substantial verdict.

## **B. Develop your theme.**

It is important to develop your theme early in the case. This will aid you in determining what discovery to conduct, what investigation to do, and what witnesses and documents to present.

A trial, like a good play or story, must have scenes, characters, to include a villain and a hero, a conflict, and a solution. It must also have a theme or morale that can be expressed very simply. **Try to identify the following things in each case and include them in your story:**

- **Villain**
- **Hero**
- **Injustice**
- **Struggle**
- **Hope**

To develop a theme that will resonate and be supported by the evidence, you first have to learn the case inside and out. This is not to say you need to evaluate it with your legal mind to identify all the potential evidentiary or procedural issues present. While that certainly must be done at some point, it is not necessary now while you are developing your theme. When you are learning the case to develop a theme, you must shelve your “legal” mind and stay in your “human” mind.

**Knowing the facts of the case is important, but jurors are less concerned with “what happened,” than with “why it happened.” That is why our story to the jury must not just be a collection of facts in a certain order, but rather, a seamless blend of characters, motives, feelings, facts and vivid scenes that create pictures and evoke emotions that are supportive of our case.**

To learn the “why” in the case, you must discover the characters involved. This will require you to figuratively, and sometimes literally, reverse roles with your client, the witnesses, the judge, the defendant, opposing counsel and the jurors.<sup>14</sup> If

you can climb into their skin and feel what they feel, you will discover why they did what they did or didn’t do what they didn’t do. You will be much better equipped to tell your client’s story and convince the jury that your case is true and worth everything you say its worth.

Once you have learned the facts and discovered the characters through role reversal, you are sufficiently equipped to develop your theme. A theme should be thought of like a movie poster in the window of a theater. This is the image, the feeling, the slogan you want the jury to keep with them at all times. It should be short and sweet. Examples might be, “It was the worst thing that could have happened” “It’s time to make it right” “Life can change in an instant” “If he would have just taken a second to look” or “Things will never be the same.”

There is no requirement that your case have only one theme. While you should avoid having too many messages jumbled in the same case or messages that are inconsistent, it might be helpful to have a couple of overarching themes depending on the case.

### **C. Investigation.**

Investigating the DWI car wreck is a little different than with a typical car wreck. The main difference is that there is a criminal investigation and prosecution proceeding concurrently with your civil case. This can complicate matters and sometimes frustrate your progress.

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<sup>14</sup> Role reversal is one of the most elementary forms of psychodrama and can be extremely effective at allowing a lawyer to mentally and emotionally discover his case, learn his characters and develop his theme. One cannot master role reversal and other forms of psychodrama solely by reading. However, to simply learn what psychodrama is and how it can be employed in a trial lawyer’s work, I would encourage you to read “The Psychodrama Papers” by John Nolte of the National Psychodrama Training Center. It can be ordered by going to [www.lulu.com/content/2138446](http://www.lulu.com/content/2138446). I would also strongly suggest that you attend a regional seminar put on by the staff of Gerry



Law enforcement will usually have video, pictures, documents and test results that can help your case. You want to request them as soon as you can. (See Appendices A, C, E, F & G). You also want to notify the prosecution of your representation and that you and your client want to be involved in the negotiation and disposition of the case. (See Appendix B). It is important that the defendant be forced to plead guilty, as opposed to no contest, if you want to use the plea to your advantage in the civil case. *L.G. McCormick v. Tex. Commerce Bank Nat'l Assoc.*, 751 S.W.2d 887 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1988).

Typically, law enforcement will not share their materials with you until their prosecution has concluded. Therefore it is important for you to take measures to preserve their evidence so you can use it later. (See Appendix B & D).

It is also important to thoroughly investigate the defendant's past driving and criminal history. (See Appendix H & I). If there is criminal history, be sure to obtain not only the certified criminal history, but the prosecutor's file, the detective's investigative file and any responding officer's report and notes.

Because the plaintiff will almost always be pleading gross negligence, the defendant's criminal history is usually admissible not only in the gross negligence case, but also in the exemplary damages phase (assuming the defense bifurcated). It is admissible on the issue of gross negligence because, if the defendant had been convicted of drunk driving before, then it is more probable that he would be subjectively

aware of the extreme degree of risk associated with such conduct. *Castro v. Sebasta*, 808 S.W.2d 189 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1991).

The defense will often attempt to stipulate to ordinary negligence in a DWI car wreck in an attempt to garner sympathy from the jury. A stipulation is an agreement, therefore, the plaintiff does not have to accept such stipulation. *U.S. v. Grassi*, 602 F.2d 1192 (5<sup>th</sup> Cir. 1979). From my experience, however, some judges will allow the stipulation over plaintiff's refusal.

Regardless of a defense stipulation, however, the facts of the incident are still admissible. In a DWI car wreck, the plaintiff has usually alleged gross negligence. Therefore, much, if not all, of the facts surrounding the incident are relevant to whether the defendant was grossly negligent.

Often, the defendant will admit negligence, but still assert that he was not grossly negligent. Even if he was convicted of DWI, he may argue that he did not have, at the time, a subjective awareness of the danger of his conduct. To overcome the defense's attempts to diminish the defendant's culpability, Plaintiff's counsel will want to speak to anyone who saw the defendant during the hours before and after the incident. If the defendant was at a public place or a special occasion, there may also be pictures or video. The defendant's conduct and words after the incident can offer valuable insight as to his consciousness of guilt and ability to subjectively appreciate the wrongfulness of his conduct.

After completing a thorough investigation, plaintiff's counsel should determine whether there are sufficient policy limits available to fully compensate the plaintiff. If the limits are insufficient, counsel should send a "Stowers" demand for the policy limits. (See Appendix J).

#### **D. Petition and Written Discovery.**

The petition and discovery in a DWI case are also different than in a typical car wreck. Plaintiff will often want to plead not only negligence *per se* and gross negligence, but also intoxication assault. (See Appendix K). By pleading intoxication assault, plaintiff can avoid the exemplary damages cap under the Texas Civil Practices and Remedies Code. CPRC §41.008(c)(14).

The differences in the petition, in turn, affect the scope of discovery. Therefore, plaintiff's discovery requests will target many areas that the typical car wreck would not. (See Appendices L-N). For example, if the defendant refused to submit a breath or blood sample, then his history or habit of drinking would be relevant to determine his tolerance. Any discovery aimed at the considerations for exemplary damages, such as net worth or prior misconduct, will also be relevant.

#### **E. Defendant's deposition.**

The above-described steps should be done before you depose the defendant so that you can ask the appropriate questions at the defendant's deposition to develop your theme. For example, in a car wreck case, your

theme may be that the defendant is refusing to accept responsibility for his actions, in spite of the wreck clearly being his fault. Keeping in mind what motivates jurors to award, and not award, damages, you might have the following objectives:

##### **1. Create the villain.**

In cases where the defendant has acted particularly egregiously, as in a drunk driver case, this may not be very difficult. Drunk driving has become recognized by the general public as one of the leading causes of injury and death on our highways. This almost universal hatred of drunk driving has caused the issue to become a popular political football as well. New legislation has surfaced every recent session addressing lowering the legal limit of breath alcohol constituting intoxication, establishing sobriety checkpoints, and increasing penalties for those caught of driving drunk with children or multiple offenders.

In order to cast the defendant as the villain, you will bring out the defendant's bad points such as his criminal history, driving record, and conduct before, during and after the incident in question. But, the inquiry is much broader and more subtle than just that. In general, it is important to contrast the defendant's actions with our jurors' accepted values in every area you can. For example, you may want to ask the defendant questions on the following issues:

- His belief about whether someone should accept responsibility if they did something wrong.



- Whether he thinks people nowadays are more or less likely to accept responsibility for their actions.
- Whether he would be willing to accept responsibility if the jury found that he was at fault.
- Whether he recognizes the difference between accepting responsibility and being accountable.
- Whether someone should have to be forced to pay for their own medical expenses if they are injured because someone else was negligent.
- Whether driving while intoxicated should be outlawed by society.
- Why does he think driving while intoxicated is outlawed by society.
- Whether driving under the influence involves an extreme degree of risk.
- Whether someone who drives while intoxicated should be punished.

In this first step, you are attempting to establish that the defendant believes in the same values we all do. If he denies these commonly held values, then he loses credibility with the jury. Typically, defendants will agree with the above-stated notions.

At this point, you can contrast his self-professed values with his actions, before, during and after the incident in question. You might consider asking questions about the following:

- What did he do at the scene? Did he get out and render aid? Who did he call first? Did he call 911 at all? Did he ask plaintiff not to call the police and why? Did he leave the scene?
- Did he cooperate with the police? Did he refuse to give a breath sample and why? Did he refuse to perform the field sobriety test and why?
- What did he do the next day? Did he ever call to find out if the plaintiff got her vehicle fixed? Did he ever call to make sure she was okay after seeing her injured at the scene?
- Did he ever know whether the plaintiff was incurring medical expenses? Did he ever know whether she was having difficulty getting medical care because he was denying fault?

Often, the defense stipulates to liability in an attempt to exclude facts like the above. Because plaintiff will usually have alleged gross negligence, however, such facts will likely still be admissible. Also, even if gross negligence was not alleged, you can argue that the defendant's actions after the collision have increased plaintiff's damages by preventing her from getting necessary medical care, increasing her pain and anxiety, increasing her impairment, etc.

Another way the defense sometimes attempts to reduce the negative image of their client is to highlight how the defendant has already been punished by the criminal justice system, has quit drinking and/or has changed his ways for the better. It is important for you to examine these

claims closely and then investigate whether they are true.

## **2. Expose the injustice.**

Again, in a case involving severe loss and/or egregious conduct by the defendant, it is much easier to expose the jury to the injustice that needs correcting. Even if your case is not extraordinary, however, you can still find ways to demonstrate the unfairness in the case. Often times, the injustice in the case is simply the unfair result that has befallen the plaintiff, and avoided by the defendant. To follow our example above, one could ask the defendant about the following:

- Did the defendant think about this collision at all after the day it happened until now?
- How has his life changed, if at all, as a result of the collision?
- Did he get his vehicle repaired immediately? Was he able to go and buy a new car? What did he get?
- How has his job gone since the collision? Has he been promoted or gotten raises?
- If he was hurt, did he get all the medical care he needed? Did he have to incur the expense? Did he fall behind on his bills?
- If he got a deferred adjudication or light sentence, were the effects, if any, from his criminal conviction over with before plaintiff was done treating? Is his life affected in the least today by the incident or his conviction? What good

did his conviction or light sentence do for the plaintiff?

When the trial lawyer reverses roles with the defendant, he clearly sees what choices the defendant made that were inconsistent with the jurors' values. Once he gets the defendant to profess that he believes in the same values as the jury, counsel can contrast that testimony with the defendant's actual actions.

## **3. Defang defensive issues.**

The defendant's deposition can also be a good time to take away some of the defense counsel's arguments for trial. These defensive issues go straight to those juror beliefs discussed above that limit their damage awards – simple mistake; money will do no good; and large award will hurt everyone.

In our example, some typical defensive issues might be the following:

- **Simple mistake.** If this is the defendant's first DWI, defense counsel will often argue this was a simple mistake and imply that many of us have driven after a drink or two. Plaintiff's counsel will want to illustrate the difference between accidentally taking your foot off the brake and consciously deciding to go drink without a plan as to how to get home safely. The defendant made the conscious decision to order each drink. All of these decisions were made at a time when the defendant was subjectively aware that drinking and driving involves an extreme degree of risk.
- **Subjective injury.** A defendant who has been injured or felt pain but

didn't have any objective signs of injury will be hard pressed to claim the plaintiff is not feeling pain simply because he can't see the injury.

- **Malingering or exaggerating.** If the defendant admits he has no reason to believe the plaintiff is lying, it makes it more difficult for the defense counsel to say otherwise. If the defendant attempts to claim that he thinks the plaintiff is lying, flush out the fact he has no basis for it and he will lose credibility with the jury.

- **Chiropractic treatment.** If the defendant has gone to chiropractors, then defense counsel will have a hard time saying such treatment is illegitimate.

- **Gap or delay in treatment.** If the defendant has waited to go to the doctor after being injured before, then it will be more difficult for defense counsel to blame the plaintiff for not going to the doctor immediately.

- **Pre-existing condition.** A defendant who has also suffered from a back injury knows such injury is easily exacerbated, potentially even in a low speed collision.

- **Already been punished.** If the defendant did suffer some adverse action from the criminal justice system as a result of being convicted, the defense is likely to argue that he has already been punished and should not be penalized again. Plaintiff's counsel will want to find out exactly what punishment he received, what the maximum punishment was and why he took a plea deal, if he did. Counsel can also contrast the minimal and short-lived affect of the defendant's sentence with the expensive,

painful and lingering "sentence" the plaintiff continues to serve.

These are just a few examples of how the defendant's own testimony can be used to limit the arguments available to defense counsel at trial. Always video your defendant's deposition and have the ability to present it at trial.

## **D. Plaintiff's deposition.**

### **1. It's all in the delivery.**

The plaintiff's testimony is one of the most important factors as to whether you obtain a large damage award or not. While you should work with your client numerous times during the case so that they fully understand what you are trying to accomplish, you do not want to overdo it to where their testimony comes off rehearsed.

Numerous jury studies have shown that what is said by a witness is of less importance than how it is said. Approximately 93% of communication is nonverbal. Of that, 58% is nonverbal actions, and 35% is the way we talk or the sound of the words. Therefore, only 7% of communication is composed of the actual words we say.<sup>15</sup>

In other words, the feelings or pictures the jury forms during the testimony is what they will recall later when evaluating a witness's credibility. Therefore, do not worry as much about what specific wording the client uses, as much as getting the client to be comfortable enough to testify with sincerity and feeling.

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<sup>15</sup> Presentation by Rex Parris, faculty, Trial Lawyer's College, 2006.

That being said, it is still critical that you spend sufficient time preparing your client for deposition and trial testimony. I find an outline helpful in preparing the client for their deposition. I suggest spending no less than three hours preparing a client for their deposition even in the simplest case. The more difficult the case or the less experienced or intelligent the client, the more time will be required.

## **2. Do no harm.**

Because the plaintiff's deposition is usually all cross-examination, it is very difficult for the plaintiff to paint elaborate pictures or evoke significant emotion. Instead, the goal at the plaintiff's deposition is usually to just get it done without the plaintiff hurting her case.

It is important that you prepare your client so that they are aware of all of the potential defensive issues that will likely be explored by defense counsel. For example, some of the more common issues are:

- plaintiff exercising faulty evasive action in an auto collision.
- unanticipated road condition creating an unavoidable accident.
- unanticipated event or responsible third party creating a sudden emergency.
- lack of prompt or consistent treatment being a failure to mitigate.

- pre-existing condition being the true cause of extended or future treatment.

- plaintiff went to lawyer before doctor.

- lawyer referred plaintiff to doctor.

- location and intensity of plaintiff's symptoms changing over time.

Educating the plaintiff about these defensive issues may prevent her from delivering damaging responses to defense counsel's questions. While we always have the ability to go back and modify our responses when we review the transcript, that is not the ideal situation as many judges will allow both the original and amended response to come in front of the jury.

Plaintiff's counsel should also prepare his client on the plaintiff's attitude about whether defendant needs to be punished over and above what the criminal system imposes and how much the plaintiff is asking from the jury.

Additionally, plaintiff may desire to gift some or all of any punitive damage award to a charity or Mother's Against Drunk Driving (MADD). This can have the affect of removing any belief by the jury that a large damage award would do no good.

## **3. Share some of the story.**

While our guidance to clients is typically to not volunteer anything

during the deposition, this may not be appropriate in response to questions about noneconomic damages. Because most cases settle, you might consider showing your hand a little and have the plaintiff elaborate when explaining how the incident in question has affected her life and her family's lives. This is best done in the form of stories. Work with your client so they can offer a couple of intimate, sincere examples of how the event has significantly changed their life.

## **E. Group Formation.<sup>16</sup>**

Group Formation is what most people refer to as jury selection or *voir dire*. Jury selection is a misleading term because, as the trial lawyer, we don't select anyone. Instead, we exclude those we do not want. Furthermore, I don't speak latin, so I don't know for sure what *voir dire* means. Judging from the number of definitions offered by various authors and speakers I've heard, I know that I am not alone in my ignorance. I prefer to call the process of jury de-selection "Group Formation."

### **1. Goals of Group Formation.**

Group Formation more accurately describes what we should be trying to accomplish when we are speaking to the venire. While certainly we want to identify and strike those jurors who have exposed themselves as adverse to our interests, that should not be our overriding mission or sole focus. Our primary objectives are to establish credibility with the venire and form a

group who will work together with us to find justice for our client.

Another major consideration specific to DWI car wreck cases is inoculation of the jury panel against a defense causal challenge. Drinking and driving can be a potentially explosive issue. Nowadays, it is very accepted, if not expected, for people to have strong opinions against drunk driving. If you are not careful, potential jurors who may be favorable to the plaintiff's case will set themselves up for a causal challenge from the defense by voicing their strong feelings against drunk driving. Additionally, because such opinion is currently so popular, one or two jurors voicing their opinions could quickly lead to you losing your entire panel. To prevent this, you must introduce the issue during your questioning and attempt to inoculate the panel from subsequent defense challenges.

### **2. Identifying the issues.**

There are few absolutes in this business, but in DWI car wreck cases, I believe you must address at least these three issues every time:

- Alcohol use
- Drinking and driving
- Punitive damages

Plaintiff's counsel who leaves any of these three issues out risks not identifying potentially bad jurors and leaves the door open for defense counsel to strike potentially favorable jurors who possess strong feelings against drinking and driving.

To identify what other issues you should address with the

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<sup>16</sup> This is a term I first heard used at Gerry Spence's Trial Lawyer College in 2006. This is the method taught at the College for selecting a jury.

venire in your case, simply ask yourself why you will lose the case, if you lose. “Losing” includes receiving a small or inadequate damage award. Pick the top three reasons a juror would have to either find for the defendant or award little or no damages. In addition to (1) alcohol use, (2) drinking and driving, and (3) punitive damages, some topics you might consider may include the following:

- Damage caps
- Runaway juries
- Frivolous lawsuits
- Insurance
- Cost of goods and services
- Non-economic damages
- Preponderance
- Subjective injuries
- Chiropractors
- Gap or delay in treatment
- Pre-existing condition

It can be a little frightening to spend your valuable time during group formation talking about all the worse parts of your case. The temptation is to persuade the panel and explain how you are going to overcome each of these issues. Doing so, however, will quash any chance you have of flushing out any unfavorable jurors.

Additionally, attempting to persuade the jurors is exactly what they expect you to do. Regardless of your amazing charisma and advocacy skills, you are not likely going to be able to cause a complete stranger to change the values they have possessed their entire life time. The better approach is to introduce the troubling issues in your case and watch how the jurors treat them. In essence, you can preview how

deliberations would go with those particular jurors.

For each issue present in your case, determine whether you want an affective thinker or cognitive thinker? Do you want someone more likely to employ deductive reasoning or inductive reasoning? What sort of responses do you think you will hear and what do they mean? It is important that you play out the questioning in your mind before you address the venire. You must know what you are looking for before you can know how to treat a certain response when it arises in trial.

### **3. Juror questionnaire.**

Because of the sensitivity of some of the issues in DWI car wrecks, it can sometimes be helpful to use a juror questionnaire. (See Appendix O). This prevents counsel from having to discuss, in front of the rest of the panel, things like a potential juror’s criminal history or experience with drinking and driving.

### **4. Questioning the panel.**

There are numerous ways to bring an issue up with the venire. One way is to simply describe the two sides of the issue and ask which side more closely describes the juror. For example,

Chiropractors. Some people swear by them. Some people swear at them. Some folks believe chiropractors are great and then other folks believe they are not real doctors and would



not go to them. Juror 7, which best describes you?<sup>17</sup>

Another good example of this is from David Ball in his book, *Ball on Damages*, where he suggests asking potential jurors the following question:

One of the questions on our verdict form will be how much money Sally should get. When figuring this out, some folks feel you should consider only the amount of harm. Other folks feel it's important to consider other things, such as how sorry they might feel for the plaintiff, or the fact that money cannot make the pain go away, or the fact that enough money to equal the harm might make prices go up for things or services we have to buy, or how much you like the plaintiff, or whether enough money to equal the harm would be too much money for one person, or seem like a windfall – or any other considerations other than the amount of harm. Mr. Juror, do you think you might be a little closer to folks who'd base their verdict amount only on the amount of harm? Or a little closer to folks who think it's important to take those other things into account at least a little?

When delivering the two alternatives, phrasing can be important. Make the alternative that is favorable to you more extreme than the alternative that is adverse to you. Remember, you

are trying to lower the resistance for an adverse juror to admit their bias. If you make the adverse alternative more radical, you will reduce your chance of getting an adverse juror to volunteer.

Additionally, make the adverse alternative the second of the two options given in the question. This is especially important for longer questions that could potentially lose jurors.

When we phrase the adverse option in a more accepting way or deliver it in an encouraging manner, this is not to trick jurors into admitting a bias they don't have. We are simply delivering the questions in a way that will make it most likely that someone with a genuine bias will respond.

Another way to present an issue to the venire is to first tell them why you are concerned with the issue. This is a method taught by Gerry Spence. He advises lawyers to “show them yours, and they will show you theirs.”<sup>18</sup> This method requires you to be very honest with yourself about your case. Why does this issue concern you? You might find that the issue concerns you because you are insecure about your ability to

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<sup>18</sup> Gerry Spence has broken the group formation process down into seven steps. They are:

- Identify those matters that trouble you the most about the case.
- Explore your personal feelings about the matters that trouble you.
- Determine why you are troubled.
- Share your feelings about the matters with the jury.
- Invite the jury to share their feelings about the matter with you.
- Accept and honor the gifts the jury gives you.
- Continue to share your feelings and invite the jury to share theirs.

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<sup>17</sup> This example is similar to one given to me by Robert Swafford, a jury consultant practicing in Austin, Texas.

educate the jury on the issue. An example of how you could introduce an issue using this method could be:

Sally has a condition called fibromyalgia. Now, when she first came to me, she didn't know what her injury was. I didn't either. Her doctors ran test after test and everything came back negative. And, I haven't told Sally this before today, but I really started to wonder if there was anything wrong. I mean, all the tests came back normal. She said she was in pain, but I had no proof. I felt like I wanted something, like a scan or film or test or something that showed what was wrong. Do any of you feel that same way?

This method can be very effective at lowering jurors' resistance to volunteer bias, however, it must be done in a very sincere manner. It should not be delivered as if it is just part of your routine. You should speak slower, make eye contact, and be sincere about your revelation to the jury.

Regardless of how you introduce the issue to the venire, once you get a positive response, flush it out with open-ended questions. "Tell me more." "Help me understand." "Why do you feel that way." Truly listen to their response and make sure you watch for any non-verbal cues from the responding juror or others listening to the discussion. Do not interrupt, nod quickly, or affirm the responses over and over with "yes" or "okay." These things can cause the juror's response to be incomplete.

If the open-ended questions reveal a genuine bias, then shift to closed-ended questions and see if you can establish the basis for a causal challenge. First, get the juror to agree that their feelings on the issue are firmly held. "It sounds like you feel pretty strongly that you could not award damages for something intangible like pain and suffering."

After the juror admits his feelings on the issue are firmly held, clarify that the juror had these strong feelings before they came to court today. "It is fair to say these feelings come largely from you having been a defendant in a lawsuit just last year. So, obviously, you felt this way before you came to court today."

You can lock them into a causal challenge by simply saying, "So, it is fair to say that, regardless of the facts, law or instructions (*said quickly*), you just could not consider giving money to someone for something intangible like pain and suffering."

If you want, you can also protect the juror from rehabilitation by the defense by saying, "I appreciate your candor. The answers you have just given me were, obviously, the truth, right. And if anyone else were to ask you the same questions, the judge, the defense counsel, your answers would be the same, right."

As mentioned above, it is usually also necessary in DWI car wrecks to inoculate or protect the panel against defense causal challenges. You can introduce the issue of drinking and driving with open-ended questions, however, you will want to shift to



closed-ended questions fairly quickly. It is important to maintain control over the discussion to prevent jurors from inadvertently setting themselves up for defense challenges.

Shortly after introducing the topic, it may be helpful to educate the panel briefly that it is permissible for them to have strong opinions about certain issues. That is human and makes us all different from one another. We are not required to forget everything we have ever learned or discard our personal values in order to be a juror. All we have to be able to do is be fair to both sides and be willing to consider the evidence presented.

Before leaving the issue, you will want to inoculate any jurors who exposed themselves as favorable plaintiff jurors. This could be done with leading questions such as “So, it sounds like you, like many of us, have strong feelings about those people who drink and drive, but you still believe you can be fair and impartial as a juror on this case.” “You can give Mr. Defendant a fair trial in this case and carefully consider any evidence he may present.” “What you have told us here, obviously, is true.” “So, it doesn’t matter if Mr. Defense Counsel or Judge Sleepy asks you these same questions, you will have the same answers.”

Some defense counsel like to object during group formation on the basis that your questions are not aimed at a disqualifying bias, therefore, they are improper. Remember that you are entitled to question jurors not only about issues which could form the basis for a causal challenge, but you are also entitled to inquire about issues which

would be useful in exercising your peremptory challenges. So, if a juror has an inflexible attitude about an issue in the case, you are entitled to discover that regardless of whether it would every rise to the level of a causal challenge.

## **F. Plaintiff’s case.**

### **1. Examinations.**

Your witness examinations serve as your opportunity to tell your story to the jury through others. Before trial, during your theme development, you should have picked a few scenes that best describe your story. Prior to trial, you should have worked with your client and the other witnesses and prepared them for telling their stories in present tense.

During your examinations, you will want to take the time to set those scenes with vivid detail. Take the witness there in present tense and have them describe the scene using all of their senses. For example, do not ask the witness, “what did you see?” Instead, ask the witness, “Take me there on that day. What do you see?”

Also, take the time to have the witness explain what they are thinking at the time. This provides the “why” that the jury is interested in. Recall from the discussion above, jurors are less concerned with what happened, and more interested in why it happened.

Having the witnesses, especially the plaintiff, describe what they are thinking as the scene is unfolding also provides a great opportunity for the jury to actually feel what the plaintiff felt at the time. Even if it was a mundane,

routine collision in your world, odds are it was not that way for the plaintiff. The plaintiff should describe what she was thinking at the moment of impact and shortly thereafter.

With the plaintiff, spend more time discussing what life was like before the collision than what she has been through since the collision. What were her and her families' plans for the future? What was she looking forward to in life? Studies have shown that jurors are more motivated to award damages for the loss of hope and a bright future (deprivation of a positive) than past pain (suffering of a negative).

Create the action in present tense as well. For example, do not ask, "What happened next?" or "What did the defendant do then?" Instead, ask "What is happening when...." You can speed up the examination to emphasize how quickly something occurred or slow it down to achieve the opposite.

In appropriate situations where it would be helpful, you can have the witness leave the stand and re-enact the scene in front of the jury. If done correctly, this can be a powerful way to place the image you want in the jurors' minds. And, as discussed above, **when a juror adopts a version of the facts that is consistent with his value beliefs and understanding of the ways of the world, he will filter the remaining evidence he hears. He will accept that evidence that is consistent with his theory of what happened and reject evidence that contradicts his theory. By being able to present our case first, the plaintiff has a tremendous advantage in this respect.**

## 2. Things to include.

There are some common characteristics of cases that result in extraordinary damage awards. Some of them are the following (in no particular order):

- **Likeable plaintiff.** As discussed above, one of the motivations for a jury to award large damages to a plaintiff is if they are inspired to want to help the plaintiff. For the jury to like the plaintiff, you have to first. If you are having difficulty finding a way to like your client, practice role reversing with the client until you can better understand who they are and empathize with where they have found themselves today. Unattractive personality traits often originate in a person's past. By investigating the client's history and upbringing, you may find a whole new theme or part of the story.

- **Defendant is an evil doer.** One of the, if not the, strongest motivators for a juror to award large damages is if the defendant is revealed as a bad person or bad actor. By proving this, you can also tap into jurors' desire to correct an injustice. This is not to say you should attack the defendant on the stand or during argument, but simply show the jury how his values and actions diverge from what we all find acceptable.

One of the best ways to cast the defendant in a poor light is to start your case by either calling him live to the witness stand or by playing excerpts from his videotaped deposition. This focuses the jury on the defendant's conduct immediately. Also, a well presented selection of video clips

showing defendant's most damning testimony can have a devastating affect on the defendant's case. By the time the defendant takes the stand during his case (if he does), his credibility has already been determined by the jury.

In DWI car wrecks, especially those against defendants who are repeat offenders, it can be very tempting to aggressively examine the defendant or adopt a very ridiculing tone toward the defense and their case. You should be careful, however, to get the jury's implicit permission before employing such tactics to avoid inadvertently garnering sympathy for the defendant or harming your credibility.

- **“Piss off” factor.** In a DWI car wreck, it is easier to paint the defendant as an evil doer and to find the “piss off” factors in the case. As discussed above, however, it is important to look beyond just the facts of the incident in question. Many times, “piss off” factors will lie in the defendant's acts or omissions either before or after the actual event. Facts about where he was going at the time of the collision, what he did immediately after, what efforts he made to avoid responsibility, or other such facts can mean a lot to the jury even though they may not go to any of the elements of the cause of action.

A relatively common strategy by defense counsel is to stipulate to liability shortly before, or on the day of, trial. This can provide an opportunity for you. Contrast for the jury the legal strategy by defense counsel to stipulate with the defendant's prior refusal to take responsibility. Explain to the jury how defendant's 11<sup>th</sup> hour stipulation just adds insult to injury. The defendant

denied responsibility all this time, preventing plaintiff from getting necessary medical care, etc. and then, as if the whole thing is just a game, comes in the day of trial and stipulates to liability.

An opportunity that exists in DWI car wrecks that may not be present in many other cases is to present evidence about how widespread and costly the problem of drunk driving is. Testimony from a police officer from the DWI task force or Mothers Against Drunk Driving about the number of DWI wrecks resulting injury might be effective. If the defendant is a multiple offender, you might consider offering testimony from one of his prior alcohol counselors about all the education the defendant received before getting drunk again and injuring the plaintiff.

This type of evidence is relevant to the issue of whether the defendant had a subjective and objective awareness of the extreme degree of risk associated with drunk driving – elements of gross negligence. CPRC §41.003. Moreover, such evidence would be relevant to some of the considerations for exemplary damages such as the character of the conduct or the extent to which such conduct offends a public sense of justice and propriety. CPRC §41.011(a).

- **Credible plaintiff's lawyer.** Earning credibility during group formation is one of your primary objectives. Once earned, it can determine the result of the trial. It can, however, be lost in an instant if the jury senses you are bolstering, not sincere, or overreaching. Many of the characteristics discussed in this section can be absent and a large damage award

still result. Such is not the case for this factor. If the trial lawyer loses credibility with the jury, he is almost certain to lose the case as well.

- **Evidence of insurance.** Introduction of evidence of defendant's liability insurance to prove he is negligent is prohibited. TRE 411. Introduction of evidence of defendant's liability insurance for any other reason is not prohibited. While I do not encourage affirmative use of evidence of insurance, you can usually count on overzealous (most) defense counsel opening the door at some point during trial.

You will typically move *in limine* to prevent questions to your client about why they went to a lawyer before a doctor, or why they filed suit, or other such irrelevant inquiries, but such rulings often have little effect. When defense counsel violates the motion *in limine*, don't object, but rather, allow your witness to answer. Defense counsel will have to live with the response.

- **Implication of settlement negotiations.** Similar to the above discussion about insurance, many defense counsel simply cannot help themselves when they are in trial. They will invariably ask the client questions like when they hired a lawyer or why they didn't go to the doctor sooner. While you typically will move *in limine* to prevent such irrelevant inquiries, often that serves as little deterrent. When defense counsel inquires, do not object, and again, they will have to live with the response.

- **Objective injury.** "Objective" can mean a lot of things. Higher damage awards are more probable when the plaintiff has fractures, scars, herniations, etc. But, even with simple "soft tissue" injuries, you can objectify those injuries through the well-prepared testimony of a treating doctor or therapist. X-ray films showing loss of lordotic curve, positive findings on orthopaedic tests, muscle spasms, etc. can serve as the basis for "objective" findings indicating injury.

- **Use of the money.** As discussed above, jurors are more likely to award large damages if they believe the money will do some good. You should make sure to present evidence illustrating a need for the money and explaining the difference it will make.

This can be especially important with regard to exemplary damages. Explain how a large damage award will deter the defendant and other like minded individuals from driving drunk again. It is important for the jury to send a message to everyone out there that this sort of conduct will not be permitted in this county.

It may also be helpful to have the plaintiff agree to donate some, or all, of the punitive damage award to a deserving charity or organization, such as Mothers Against Drunk Driving (MADD). Not only does this enhance the plaintiff's credibility, it gives the jury a purpose for the money.

- **Future damages.** Large damage awards are more likely if the plaintiff has the potential for future damages. While you never want to overreach, through testimony of the plaintiff and her doctors or therapists, you can

establish some future damages at a minimum. Remember the discussion above: jurors are more likely to award damages if they believe it will make a difference or help the plaintiff in the long run.

### **3. Things to avoid or explain.**

There are a number of issues common to car wreck cases that result in minimal damage awards. It is important to remove them from the case early on if at all possible. If the issues are present in your case, then you have to figure out a way to explain or address them with the jury. The following is a list of some of the common issues that drive damage awards down and some suggested ways to deal with them if you find them in your case.

- **No visible property damage.** This is a difficult issue that tends to place in invisible ceiling on your damage award. Ways to deal with this issue include having a mechanic testify about the damage to the interior of the vehicle such as the impact absorbers. Testimony from the vehicle owner about how the vehicle handled after the collision. Also, a discussion during group formation about jurors' experiences sometimes will defang the defense's argument that low impact equals no injury.

Finally, you can file a motion to exclude evidence of property damage or description of the impact unless the defense presents qualified expert testimony. These motions, unfortunately, are rarely successful.

- **Lawyer referral to doctor.** If this issue is present in your case, the best

way to deal with it is to start during group formation and talk about it. Explain your dilemma: a client, someone you care about, needs a doctor. Do you tell your client who they might try, knowing that a defense lawyer someday will try to make it look like some insidious relationship? Or, do you just let your client suffer or end up in the care of someone not knowledgeable? Does the jury think that you, as their lawyer, have a duty to help them?

You should also call the doctor live to have him testify that there is no improper relationship between you and him and to give him an opportunity to bolster his credentials and credibility with the jury.

- **Letter of protection.** The same danger exists with letters of protection where the doctor agrees to collect his bill once the case has resolved. The defense can sometimes make these look like improper relationships between lawyers and doctors. The defense can also imply the doctor's testimony is biased because he still needs to be paid. A proper direct and re-direct can take care of most of these issues, however, is still something to avoid if you can.

## **G. Argument.**

### **1. Opening statement.**

Similar to other areas of trial, there is no one formula for making an opening argument. One method is outlined below:<sup>19</sup>

- **Step 1: Intro and Story**

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<sup>19</sup> This example is taken, in large part, from a speech given by David Ball.

- > Part A: state a rule no one can disagree with.<sup>20</sup>
- > Part B: go to the story. Present tense. Don't mention Plaintiff until the end.
- Step 2: Right and Wrong
  - > Part A: why are you suing? Defendant did something
  - > Part B: what is wrong with what Defendant did
  - > Part C: How did what Def did cause harm and who will say it did?
  - > Part D: What should Defendant had done instead?
  - > Part E: How would it have helped?
- Step 3: Undermine the opposition. Before we came to trial, it had to be determined XYZ, so we talked to Persons 123 and they told us...
- Step 4: Damages. Should account for 1/3 of the time.
  - > Part A: mechanism of harm.
  - > Part B: step by step, tie mechanism to injury.
  - > Part C: what does something like that do to a "person"?
  - > Part D: what did it do to Plaintiff?
  - > Part E: treatment.
  - > Part F: who was the client before the injury?

This is just one way to organize your opening argument. Regardless of how you organize your argument, it is

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<sup>20</sup> Stating a "Rule" that everyone agrees with is a technique advocated by Rick Friedman and Partick Malone in their book *Rules of the Road*.

important that you tell a story that is compelling and continues the theme you revealed during your group formation.

In a compelling story, "good triumphs over evil, virtue is always rewarded, the lie cannot live forever, people who work hard and follow the rules will be rewarded."<sup>21</sup> Gerry Spence says, "A story needs to have a hero and a villain, right and wrong, pain and retribution, and a struggle for which the jury can grant the plaintiff the ability to overcome."

Tell your story in present tense whenever possible. It is much easier for the listener to create mental pictures from your story if it is told as though it is happening as you speak.

Also, focus on the defendant's acts and omissions, rather than telling the story from your client's vantage point. Jury studies have shown that juries are more likely to find fault with the defendant when the story is told from his vantage point and is focused on what he did or didn't do.

When you are telling the plaintiff's story in opening, keep your sentences factual, without descriptive language or words that embellish or characterize the actions you are describing. Remember, in opening, you are still earning credibility with the jury. They expect a lawyer to try to sell them something or trick them, so it is better to not raise their suspicion. Tell them what happened and let them come to the inescapable conclusion that the defendant was grossly negligent and must be held accountable. They will be

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<sup>21</sup> Jim Perdue, *Winning with Stories*, 6, State Bar of Texas, Austin, 2006.



much more likely to hold on to that position if it is something they came to on their own.

## **2. Closing Argument.**

Similar to opening statement, there is no one magic formula for closing argument. The general guidelines of staying in present tense and including the elements of a compelling story mentioned above remain the same. What you say and how you say it, however, largely depends on you, your client, and your case.

**Know that the jury just wants you to be honest. It is more important to be real than to be perfect, so memorizing someone else's tricks and phrases is not as effective as telling your client's story from the heart. If you do not reveal yourself to the jury, someone else will.**

Set forth below are just a handful of tips or arguments that have been well-received in the past. I would encourage you, however, not to adopt these arguments as your own, but rather, simply use them to spawn your own stories, ideas, and themes, personalized for your client.

I would also encourage you to deliver your story in your own way; a way that is true to yourself and your case. Many of us have made the mistake of trying to mimic someone else in trial.

## **3. It is not about who pays, it is about whether the plaintiff is the only one who pays.**

Normally, this argument starts out something like the following:

Ladies and Gentlemen, this case is not about who pays. We talked about that during voir dire, do you remember? Whether this verdict will be paid someday or whether this defendant will be the one who pays it is not your concern. The court and the parties will take care of that.

This case, rather, is about whether Sally will be the *only one* who pays. You see, up until now, Sally has been the only person who has paid anything in this case. She has paid in money, pain and emotional suffering. Let's look at what has transpired in this case since the collision and see who had paid the price thus far.

This argument is helpful in a few ways.<sup>22</sup> First, it allows you to reinforce the fact that whether a verdict is paid or who pays the verdict is not the jury's concern.

Secondly, this argument allows you to tap into one of the motivations that jurors have to award damages: to correct an injustice. Essentially, you want to create a timeline and paint two drastically different pictures; one of your

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<sup>22</sup> I first heard an argument like this during a lecture by Janice Kim.

client's life since the collision, and the other of the defendant's. I normally do this graphically on butcher paper or in a powerpoint slide.

While doing this, you can briefly mention the fact that the client had to go to the time and expense of hiring a lawyer and preparing for trial. It is not that you are asking the jury for attorney's fees or expenses, but simply discussing the effect these facts had on the plaintiff's mental anxiety.

Lastly, this argument characterizes the damage award in terms of reimbursement for costs already incurred. Jurors are more willing to award damages if they believe the plaintiff will not receive a windfall.

#### **4. It is about choices.**

Another method that can be helpful is to contrast the choices the defendant made with the choices the plaintiff had taken away from her.

For example, the following is an excerpt from a closing argument I recently gave in a case (have changed the names):

Ladies and Gentlemen, I'd like to talk to you briefly about what I think this case is about. It's about the choices that Charles Smith made and it's about the choices that Sam Bennett didn't have an opportunity to make. The choices that were taken from him.

Charles Smith on February 19, 2003, he's the one who chose to drink at the barbecue. He's the one who chose to drive all the way across town to try to – as he put it – “hang out” with a college co-ed living on the north side. He's the one who chose to do that. He's the one who chose to drive on the wrong side of the road into oncoming traffic in the middle of the night. That's a choice, that's not an “oops.” We talked about that in *voir dire*.

\* \* \* \*

But he didn't have to continue to make bad choices. I mean, he could of at that point maybe started to rectify things. But he continued to make choices, didn't he? We know what he did. He chose to leave the scene that night. That's his choice.

And, then he chose to go to Taco Cabana and run into somebody else. That was his choice. He chose to order a burrito instead of calling the authorities. That was a conscious decision.

\* \* \* \*

And then, the next day when – when maybe he might could have made it right. At the last second he made another choice, didn't he? And that choice was what? He called up his representatives. He talked to everybody he knew and made up this amazing story about how he,



actually, was the victim of a hit and run. And that's why his car was damaged and that's why he needed to get it fixed. Those are all choices that he made.

He also made a choice to add insult to injury. He continued to deny and avoid responsibility in this case for four years while Mr. Bennett struggled to put his life back together.

\* \* \* \*

What effect did those choices have on Mr. Bennett? Think about the choices that he didn't get to make. He didn't get to choose when he was going to lose his vehicle and have to go looking for another one. Right? That was dealt to him. He didn't choose to go to St. David's that evening and incur those bills and incur bills with the EMS truck. He didn't choose that. He didn't choose to be injured – his knee and back – he didn't choose to have that sort of thing. He didn't choose to spend the next two months going to the doctor. He didn't choose to lose his job. He didn't choose to get into complete financial dire straits because of this. That was all a choice that was dealt to him by Mr. Smith. And that's why I think this case is about choices.

And at the end of this case, y'all are going to have a choice aren't you? You're going to have to choose what to do with this case.

\* \* \* \*

Another way to argue this point is to graphically illustrate the choices the defendant made and contrast them with the choices that he should have made. Then, tell the jury their verdict represents the difference between what happened and what should have happened.

## **5. Method for calculating noneconomic damages.**

Many times during group formation, you will hear comments from jurors that they would have difficulty awarding noneconomic damages because they don't know how to put a dollar value on something as intangible as pain or suffering. To deal with that, David Ball suggests promising the jurors that you will show them how to do that by the time the case is done. Then, in closing argument, reveal to them the formula to use in computing noneconomic damages.

When I use this approach, I have used the demonstrative aid that gives the jury a graphical depiction of the method they should use in determining noneconomic damages. This method is helpful for those jurors who like a step-by-step process for reaching a conclusion.

When explaining the chart, you can say that cases in a certain category are worth \$X, and cases in another category would typically be worth \$Y. The purpose is to give the jury a frame of reference advantageous to your case.

It is important to note that when using charts and arguments like David Ball's example above, you do not lose the story. Remember that, ultimately, the jury must be emotionally invested in the case enough to cause them to support a large damage award. The best way to create that emotion is through stories.

## **6. Lemonade out of lemons.**

Rebuttal argument is a prime opportunity for you to take the defense's arguments and turn them around. For example, if the defense is implying that your client is exaggerating his symptoms or trying to use the incident as an opportunity to profit, you can respond with something like the following:

If Sally was trying to make something out of nothing, like the defense wants you to believe, then she really did a poor job at it. If Sally is faking and just trying to get rich, why didn't she grab her neck at the scene and demand that EMS be summoned? Why didn't she go to the ER and have numerous scans and diagnostic testing done to run up her medical expenses? Sally did the same thing the rest of us would have done; she tried to get along the best she could. She had to miss some of her appointments because that is the only way she could keep her job and support her family. I guess if she wanted to build her case, she would have just sat home and watched TV and claimed a bunch of lost wages. That's not who she is. She is a fighter, doing the

best she can in spite of what the defendant did to her.

In this example, you can take the defense's argument and (1) point out its absurdity, but also, (2) weave it into your theme that Sally is a fighter, the underdog, the victim struggling to survive. Jurors want good to triumph over evil, they want hardworking people who follow the rules to win in life, and they want to feel good about being able to help someone in need.

## **7. Call a spade a spade.**

Do not be afraid to characterize the defense's position accurately and frankly.<sup>23</sup> Often the defense's entire case is simply to come in and try to cast doubt on (1) the cause of the injury and (2) the extent or existence of the injury. They rarely have any expert testimony. Defense counsel simply stands up and offers expert medical and engineering conclusions for which he is not qualified. They point out completely extraneous facts such as when the plaintiff saw the doctor and when she saw the lawyer. Or, they bring up the fact that the treating therapist has a letter of protection with the lawyer and imply that the treatment is manufactured.

Their *modus operandi* is so predictable that you can give the jury some foreshadowing during your initial closing argument. For example:

Mr. Sneaky has done a fine job in this case, but the fact of the matter is, he has no case.

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<sup>23</sup> For a more thorough discussion of this method, see Rick Friedman's book entitled, *Polarizing the Case*, Trial Guides (2007).

I've been there in that chair before and I know what it is like. What can you do? You don't have a doctor who will say that the plaintiff is not injured, so all you can do is stand up and argue it yourself. Just take pot shots at the medical records and argue she's not injured. You don't have an engineer who will say that this collision could not have resulted in injury, so all you can do is stand up, point at the photographs and argue.

And that is what he will do. Throw it all up against the wall and hope something sticks.

At the beginning of this case, y'all took an oath to follow the judge's instructions, to follow the law. The judge has instructed you to base your decision in this case on the *evidence* and *only* on the evidence presented in this room. So, when Mr. Sneaky stands up and makes those arguments, ask him in your mind, where is the evidence? Demand from him that he shows you the evidence.

When the defense makes these sort of arguments, tell the jury truly what they are doing. Do not allow defense counsel to dress their argument up in politically correct terms to make it less offensive. When the defense argues that the wreck didn't cause the plaintiff's injuries, they are saying the plaintiff is lying. When the defense argues that the plaintiff didn't need the medical care she received, they are saying the plaintiff is lying. So, call it what it is. You might

consider trying something like the following:

The defense has added insult to injury in this case. It was not enough that the defendant wrecked Sally's car. It was not enough that he hurt her and caused her to go into debt with medical expenses. It was not enough that he didn't care even so much as to call and check on her once over the last three years. It was not enough that he caused her to lose two months of work. It was not enough that, in spite of being faulted by the responding officer, he refused to own up to his mistake.

No, none of that was enough. He had to also have his lawyer call her a liar in open court and take away Sally's good name. Now, he may not have used that word, but don't kid yourself. That is exactly what he means. On public record for everyone to see, they came in here and said she is not injured, she didn't need all that treatment. The one thing that they had not taken from Sally before today, now they have taken. And for someone proud like Sally, this hurts as much as all of the other harms combined.

Unlike Sally's back, you can fix this harm. Through your verdict, you can tell the defense, you can tell the community, that Sally is not a liar. With a full and fair verdict, you can give back Sally her good name.

Another argument is to focus on the efforts by the defendant to avoid responsibility for the incident. For example, “they devoted not one piece of paper toward training their drivers on safety, but look at all the paper (pointing at the defense counsel’s table) they have wasted coming up with excuses for running into Sally....” Another example might be the following:

She kisses Bill goodbye in the driveway that morning as he leaves for work. She turns and starts to walk inside. There is a letter on the step by the door. It is from Acme Company. She opens it.

Sally,

That is the last time you will see Bill pain free. I am going to get in my truck. I will be too tired to drive because I have been working double shifts for a week. I will not be paying attention and I will slam into the rear of Bill’s vehicle. You won’t ever really get to know what happened or why – not unless you go hire lawyers and sue me.

And even then I will try to avoid responsibility. I will make excuses, and my lawyers will try to blame the collision on Bill. I will never take full responsibility for my actions. My lawyers will take Bill’s life apart, and yours too. They will focus on the ugly and the bad. They will expose every part of Bill’s life that they can to make the jury think poorly of Bill. My lawyers will make you and Bill go to depositions, they will hire experts, and they

will spend whatever it takes to try to buy my way out of having to be accountable for what I did. They will subject you and your family to trial if they have to, and they will do everything in their power to convince a jury that Bill’s pain is worth nothing.

Sincerely,  
John Driver  
Acme Company

Now, we are in trial. We are still trying to make them admit that they are responsible and to be accountable for their actions. They don’t get to set the price they will pay. You do. What will justice look like?<sup>24</sup>

Be careful that when you attack defense counsel’s arguments, you do not also attack defense counsel. In spite of the potential ethical violations, personal attacks on the defense counsel or the defendant are usually not received well by the jury.

## **8. Valuing pain.**

As discussed above, juries award larger damages when they believe it will do some good. Many jurors believe that compensation for pain and suffering achieves nothing. The pain is still there whether the plaintiff has money or not. So, the best way to get a jury to award damages for pain is to (1) get them to truly understand the importance of valuing pain and (2) characterize the award as paying the plaintiff for a debt owed to her by the defendant, rather than just money for pain.

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<sup>24</sup> This example was taken from a lecture given by J. Jude Basile at the Trial Lawyer’s College.

To get jurors to recognize the importance of considering awarding damages for pain, you might try the following:

Placing a value on Sally's pain is a tough question. But, just because it is tough doesn't mean we don't do it. Regardless of our personal or political beliefs, we took an oath at the beginning of this case. An oath that we would follow the law in this case and the law requires us to award damages for each harm that you find Sally suffered as a result of the defendant's negligence. If you find Sally has suffered and continues to suffer pain, then your oath requires you to value that pain and award damages accordingly.

Or, you could try something like the following:

Some folks say, "Why award any money for pain, it's not gonna take the pain away." We talked about that during *voir dire*. The only question for you is, "what is the value of the harm?" That's it. Nothing else. It doesn't matter whether you like the plaintiff or like the defendant. It doesn't matter whether the verdict is paid or who pays it. It doesn't matter that money can't make the pain go away. So, if during deliberations someone brings up these things that we can't consider, be sure to remind them that the only question is, "what is the value of the harm?"

After emphasizing to the jury the importance of them following their oath and awarding damages for pain, try to get them to appreciate the significance of pain as part of your client's total damages. You might try one of the following examples:

Determining what pain is worth is a difficult task, but really, when you think about it, we place a value on pain all the time. As a society, we pay billions of dollars each year on over-the-counter pain medication to avoid pain. We will gladly spend \$100 or more for a shot of Novocain or thousands of dollars for anesthesia to avoid pain during surgery. If you read the Bible, you know that the Bible describes hell as unrelenting pain. When we punish our worst criminals, we put them to death. We don't subject them to pain. That would be cruel. So, for centuries, we have valued pain. And we know it is something we will do almost anything to avoid.<sup>25</sup>

Or, you might try this:

I'd like you to take a moment right now and think for me. Think of someone you love very dearly. You are scheduled to spend some time with them and you are at home waiting for them to come over. They are late. It is not a big deal as they have been late before, but yet, you are worried a little. Your phone

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<sup>25</sup> This example is based in large part from Jack McGehee's book, "The Plaintiff's Case," Texas Trial Lawyer's Association (1997).

rings and you suspect it is them telling you they are on their way. You answer the phone, but it is not them. It is a voice you don't recognize. It is a police officer and you have just gotten the call we all dread getting. The person you love so much has been involved in a wreck.

What is the first thing that goes through your mind when you get that call? "Oh my God, I hope they are okay. I hope they are not in pain." That is what you are worried about. That is what makes your heart race and your hands sweat. You aren't thinking, "Oh my God, I hope they don't have to miss work." Or, "I hope they aren't incurring medical expenses they can't afford." While those things are real, are not nearly as important as whether the person is in pain. So, you see, we can and do value pain and we know it is worth a lot more than simple medical expenses and lost wages. The same is true in Sally's case....

After you have established with the jury the importance and value of damages for pain, you can try to illustrate for the jury that these damages are a debt owed to the plaintiff by the defendant. For example:

Sally didn't ask for this in her life. She was doing just fine until the defendant injured her and now she feels pain every day. This was not her fault, but she has had to pay the price every day since, and will continue to pay every day from now on.

Well, now is your chance to reimburse her for that cost – the price she pays every day.

## **9. Empower the jury.**

At the conclusion of your rebuttal argument, you should empower the jury to deliver justice for your client. This can be done numerous ways, but the objective is to create within them a sense of responsibility for your client and your client's future. The following are some examples:

Sally needs your help. She does not need your sympathy. She has gotten plenty of that over these last three years. She needs justice and you are the only ones who can provide it.

Or,

This is Sally's one chance at justice. If your verdict does not provide for Sally's future, she cannot come back and ask the judge for more.

Or,

For the last three years, I have tried to take care of Sally. But, in just a couple of minutes, my job will be done and I will turn Sally and her future over to you.

Or,

You have the power to make things right for Sally. No one else does. Obviously, I was not able to force the defendant to

take responsibility. No one could before today. Today, you have all the power. Only you have the power to force this defendant to take responsibility and be accountable for his actions.

Or,

Picture yourself next week walking down the sidewalk and you run into someone you know really well. Y'all are talking and it comes up that you were on this jury. They ask you, "Well, what did y'all decide?" What will you say? Will you say that you made things right for Sally? Will you say that you forced the defendant to reimburse Sally for everything that she had been through so far? Will you say that you made sure that Sally was taken care of in the future? How you are able to answer that question is up to you.

Or,

Come with me for a moment. Come with me to the top of a large mountain. We are standing at the top looking out over everything. When we look over in this direction, we see Sally's future as it looks right now. It doesn't look so good. No money for the care she needs. Can't do the job she loves. Sitting at home because she can't do the things she used to do like waterskiing, tennis and golf. She's in pain. But, look the other way, over here. This is the future you can provide. We see Sally, healthy, happy and pain free, with her family out on the lake.

We see her back at the job she loves. We see her able to get the medical treatment she needs....<sup>26</sup>

Or,

A young boy was going to play a trick on the wise old man of the town. He would catch a bird, cup it in his hands and ask the old man, "Old man, what do I have in my hands?" When the old man answered, "A bird," the boy would then ask him, "Old man, is the bird alive or is it dead?" If the old man answered it was dead, the boy would open his hands and let the bird fly free. If the old man answered it was alive, he would crush it and open his hands to show the old man it was dead.

So, the boy caught the bird, found the old man and asked him, "Old man, what do I have in my hands?" The old man answered, "You have a bird, my son." The boy then asked, "Old man, is it alive or is it dead?" The old man paused and then answered, "The bird is in your hands."<sup>27</sup>

## **10. Send a message.**

A big part of your argument for exemplary damages will be about sending a message to the defendant and other like-minded people who drink and

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<sup>26</sup> This example is based on an example included by David Ball in his book *Ball on Damages* of an argument by Don Keenan.

<sup>27</sup> This example was taken from a lecture given by Gerry Spence at the Trial Lawyer's College.



drive. There are a lot of ways to argue this point as well. Here is an example:

This is such an important case. Obviously, it is very important to Sally because it is her case; the only case she has ever had. But this case is bigger than just Sally or this trial. This case will serve as an example for all future cases here in Travis County involving drunk driving. Your verdict will send a message out to everyone that will say this is how we here in Travis County treat drunk drivers who hurt other people.

How often do we as just regular people get the chance to really make a difference out there? You have such an amazing opportunity right now. You can send a loud message out there that we will not tolerate people driving drunk on our roads and hurting us. And if they do, they will pay dearly.

Look here at this list of victims left in Mr. Drunk's wake. Back in 1989 it was the citizens of Travis County. Again, in 1992 and 1995, it was the citizens of Travis County again. In 1999 it was the citizens of Bell County. In 2002 he got into another wreck and hurt Jane Esquivel. And then in 2007, he hurt Sally. See these blanks? Whether Mr. Drunk is going to continue to add to his list of victims is up to you. Whose name will be in those blanks?

Will it be a child? Will it be someone we know?<sup>28</sup>

You can stop Mr. Drunk if you want. Or, you can pass it on to the next jury to deal with in a year or two when he does it again. Remember the oath y'all took at the start of this case? Please do your duty and stop Mr. Drunk now. Don't make another group of our citizens come in and do what we need to do now.

The message you send, however, needs to be loud enough to be heard, not just by Mr. Defendant, but by other like-minded people who think it is okay to drink and drive. You may not be able to prevent all drunk drivers always, but you can make it so expensive that no one will risk it. This is your chance to make a real positive contribution to your community.

## **X. ARE PUNITIVE DAMAGES COVERED?**

There is still no definitive answer in Texas on the question of whether punitive damages are covered under the typical auto liability policy which does not specifically exclude it. In an attempt to answer the question for themselves, some carriers have begun to specifically exclude punitive or exemplary damages from its liability policy.<sup>29</sup>

---

<sup>28</sup> This part of the argument is loosely based out of an example from David Ball's book, *David Ball on Damages*.

<sup>29</sup> Safeco policy SA-1852/TXEP 2/07 reads as follows:

### **EXCLUSIONS**

A. We do not provide Liability Coverage for:

\*\*\*



In *Fairfield Ins. Co. v. Stephens Martin Paving*, 246 S.W.3d 653 (Tex 2008), the Texas Supreme Court stated, “Standard form personal automobile policies do not state specifically whether punitive damages are covered, and while two courts have concluded that punitive damages are damages for bodily injury covered by automobile policies, that position has been uniformly rejected in the context of uninsured and underinsured motorist coverage and is therefore dubious at best.” *Id.* At 683.

While certainly the issue of coverage is an important one, I submit it should not control our decision regarding whether to take or pursue DWI cases involving moderate compensatory damages. From my experience, even when the economic damages are low, the jury’s anger toward the defendant is often reflected in their compensatory damage award, as well as their exemplary damage award. In Appendix P, I have included three sample DWI verdicts. Each of these cases involved medical specials of less than \$9,000, yet the compensatory damage awards were as much as seven times the past medical expenses. This fact shows that we are still well advised to go forward on these cases regardless of the lingering question of coverage for punitive damages.

---

(11) Punitive or exemplary damages awarded against any Insured.

# APPENDIX

## A

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\* ‡  
STEVEN N. WALDEN +

JARED STENBERG  
EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
TABATHA BRANCH ±  
BRANDI E. BAYER-FRIBERG  
KATHRYN L. KNOTTS  
CASSANDRA F. CHARLES  
C. HEATHER DETRIXHE  
NICHOLAS A. PRITCHETT  
TOMEKIA LEE-CHANEY  
LEATRICE R. TAYLOR  
TERESA CHRISTIAN  
JULIE PURVES  
EMMA GUZMAN-RAMON  
JAMILAH O. DRIVER-KATELY  
CHRIS NORMAN  
SAVANNAH N. MEYER  
DREW GIBBS  
STEPHEN J. DEBYE  
DAN STOKES  
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KILLEEN  
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LAREDO  
107 CALLE DEL NORTE  
ROUND ROCK  
1111 N. IH-35  
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6100 BANDERA ROAD  
N. SAN ANTONIO  
13750 SAN PEDRO  
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3000 S. 31<sup>ST</sup> STREET  
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3410 FAR WEST BLVD. STE. 235  
AUSTIN, TEXAS 78731  
PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

\_\_\_\_\_ County Sheriff's Department  
ATTN: \_\_\_\_\_  
ADDRESS  
CITY, Texas ZIP

Re:	Client:	Injured Plaintiff
	DOA:	_____, 200__
	Defendant:	Negligent Tortfeasor
	Defendant's DL:	_____
	Defendant's DOB:	_____, _____

Dear \_\_\_\_\_:

I represent Injured Plaintiff for injuries she sustained in a collision with Negligent Tortfeasor on \_\_\_\_\_. I understand that Negligent Torfeasor has been arrested and charged with Driving While Intoxicated.

This is a request to obtain a probable cause affidavit and/or arresting report information regarding the above-referenced defendant and collision. Please forward this information as soon as possible.

If you have any questions, please to not hesitate to contact me. Should I be unavailable at the time of your call, you may speak with my assistant, \_\_\_\_\_. Thank you for your anticipated cooperation.

Sincerely,  
  
Daniel J. Christensen

# **APPENDIX**

## **B**

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\* ‡  
STEVEN N. WALDEN +

JARED STENBERG

EDNA G. ELIZONDO

VICKI L. CARLSON

MICHAEL G. ERSKINE

TABATHA BRANCH ±

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KATHRYN L. KNOTTS

CASSANDRA F. CHARLES

C. HEATHER DETRIXHE

ANDREW M. GUNN++

ANGELA K. SO

NICHOLAS A. PRITCHETT

TOMEKIA LEE-CHANNEY

LEATRICE R. TAYLOR

TERESA CHRISTIAN

JULIE PURVES

EMMA GUZMAN-RAMON

BRADLEY K. WILLIAMSON

JAMILAH DRIVER

CHRIS NORMAN

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KILLEEN  
400 W. JASPER ROAD  
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107 CALLE DEL NORTE  
ROUND ROCK  
1111 N. IH-35  
SAN ANTONIO  
9901 W. IH 10  
N. SAN ANTONIO  
13750 SAN PEDRO, SUITE 360  
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AUSTIN, TEXAS 78731  
PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

### VIA CMRRR #

Honorable [District Attorney]

\_\_\_\_\_, County District Attorney's Office

ADDRESS

CITY, TX ZIP

Re: State of Texas vs. \_\_\_\_\_

Crime Victim: \_\_\_\_\_

Cause Number: \_\_\_\_\_

In the \_\_\_\_\_ Judicial District Court of Travis County

Offense: \_\_\_\_\_

**NOTICE OF INVOCATION OF CRIME VICTIM RIGHTS**

**TCCP 56.02 TEXAS CRIME VICTIM'S ACT**

Dear Mr. \_\_\_\_\_:

Pursuant to the TCCP, Article 56.02, more commonly known as the Texas Crime Victims' Act, this letter is to advise you, the \_\_\_\_\_ County District Attorney, and the Court that I represent the above-referenced crime victim in this case. My client invokes all rights under the act, including but not limited to the following statutory rights:

**Art 56.02. Crime victims' rights**

**(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:**

\* \* \*

**(3) the right, if requested, to be informed:**

**(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and**

\* \* \*

**(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;**

**(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;**

**\* \* \***

**(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:**

**(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted;**

**\* \* \***

**(b) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.**

**(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Subsection (a) of this article and, on request, an explanation of those rights.**

Please direct all notices to me at my address and telephone number above. Obviously, my client and I wish to be consulted before any plea recommendations are made to the defendant in this case. I appreciate your consideration in this matter and look forward to hearing back from you. I remain,

Sincerely,

Daniel J. Christensen

---



# APPENDIX C

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\*‡  
STEVEN N. WALDEN +  
JARED STENBERG  
EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
TABATHA BRANCH ±  
BRANDI E. BAYER-FRIBERG  
KATHRYN L. KNOTTS  
CASSANDRA F. CHARLES  
C. HEATHER DETRIXHE  
NICHOLAS A. PRITCHETT  
TOMEKIA LEE-CHANEY  
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3410 FAR WEST BLVD. STE. 235  
AUSTIN, TEXAS 78731  
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FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

Crash Records  
Texas Department of Transportation  
P. O. Box 12879  
Austin, Texas 78711

TEXAS OPEN RECORDS ACT REQUEST

RE:      Client:      Injured Plaintiff  
         DOA:      \_\_\_\_\_  
         Defendant:      Negligent Tortfeasor  
         Report #:      \_\_\_\_\_

Dear Madams/Sirs:

Enclosed please find our firm check in the amount of \$8.00 for a certified copy of the Peace Officer's Crash Report for the \_\_\_\_\_, 200\_\_ collision involving Injured Plaintiff in \_\_\_\_\_ County, Texas. I am enclosing a self-addressed stamped envelope in order for you to return this requested document to our office. I am also enclosing your CR-91 form which has been completed.

Thank you in advance for your assistance in this matter. If you have any questions or need anything further from our office, please do not hesitate to give me a call. If I am not available at the time of your call, please feel free to speak to my assistant, \_\_\_\_\_.

Sincerely,

Daniel J. Christensen

\_\_\_\_\_

# APPENDIX D

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\* ‡  
STEVEN N. WALDEN †

**JARED STENBERG**

EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
TABATHA BRANCH ±  
BRANDI E. BAYER-FRIBERG  
KATHRYN L. KNOTTS  
CASSANDRA F. CHARLES  
C. HEATHER DETRIXHE  
NICHOLAS A. PRITCHETT  
TOMEKIA LEE-CHANEY  
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TERESA CHRISTIAN  
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PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

Honorable \_\_\_\_\_, Judge  
Court  
Address  
City, Texas ZIP

Re: Cause Number:  
Date of accident:  
Time of accident:  
Defendant:  
Incident No.:  
Offense & Citation #:

Dear Judge \_\_\_\_\_:

This letter is to inform you that I represent Injured Plaintiff, who was injured in the above referenced vehicle collision wherein Negligent Tortfeasor was charged with a DWI.

I am requesting that any evidence collected, stored or used in this case against Negligent Tortfeasor not be destroyed as part of any plea bargain or the like. As you know, the District Attorney and Police Department generally will not allow me to view the evidence until the criminal case is concluded. I would appreciate your assistance in ordering that any evidence or investigative material, including but not limited to, videotapes, statements, photographs, results of alcohol tests that were taken, or any other material that might be useful to our firm in our representation of Injured Plaintiff not be destroyed at the conclusion of the criminal matter until such time as we are able to obtain copies.

Thank you for your anticipated assistance in this matter.

Sincerely,

Daniel J. Christensen

cc: Prosecutor

---

# APPENDIX E

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\*‡  
STEVEN N. WALDEN +

JARED STENBERG

EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
TABATHA BRANCH ±  
BRANDI E. BAYER-FRIBERG  
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JULIE PURVES  
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STEPHEN J. DEBYE  
DAN STOKES  
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3000 S. 31<sup>ST</sup> STREET  
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3410 FAR WEST BLVD. STE. 235  
AUSTIN, TEXAS 78731  
PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

Accident Records Bureau  
TX DPS  
P.O. Box 15999  
Austin, Texas 78761

Re:	Cause Number:	_____
	Defendant:	Negligent Tortfeasor
	Client:	Injured Plaintiff
	DOA:	_____
	Time of collision:	_____
	Location:	_____

Dear Sir/Madam:

This firm has been retained to represent Injured Plaintiff in regard to injuries he sustained in the above-mentioned collision. I have attached a copy of the offense report for your convenience. At this time, I am requesting a copy of any video made of the scene of collision, in the officer's cruiser, or at the station, as well as any photographs, witness statements, and handwritten notes.

If there are any applicable fees, please advise in advance. Thank you for your help in this matter.

Sincerely,

Daniel J. Christensen

\_\_\_\_\_



# APPENDIX F

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\*‡  
STEVEN N. WALDEN +

**JARED STENBERG**

EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
TABATHA BRANCH ±  
BRANDI E. BAYER-FRIBERG  
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TOMEKIA LEE-CHANEY  
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TERESA CHRISTIAN  
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PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

Crime Records Dep't  
Law Enforcement Entity  
Address  
City, State ZIP

**TEXAS OPEN RECORDS ACT REQUEST**

RE: Defendant: Negligent Tortfeasor  
DOB: \_\_\_\_\_  
TX DL: \_\_\_\_\_  
DOA: \_\_\_\_\_  
Cause No: \_\_\_\_\_

To Whom It May Concern:

Please accept this Open Records Act Request for any and all criminal, investigative and criminal court records regarding the above-listed offense. This would include, but not be limited to, all documentation and other material regarding any arrests, charges, adjudications (deferred or otherwise), incarceration, probation, or sentence of Negligent Tortfeasor in the above-listed cause. Please include all documentation from the investigative file, the prosecutor's court file, as well as the probation department file.

I am happy to pay any costs associated with duplicating this material. Once you have identified the responsive material, please contact my office to arrange for payment and delivery. If you have any questions, please do not hesitate to contact me. Should I be unavailable at the time of your call, you may speak with my assistant, \_\_\_\_\_. I look forward to hearing from you soon.

Sincerely,

Daniel J. Christensen

# APPENDIX G

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\*‡  
STEVEN N. WALDEN +  
JARED STENBERG  
EDNA G. ELIZONDO  
VICKI L. CARLSON  
MICHAEL G. ERSKINE  
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AUSTIN, TEXAS 78731  
PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

\_\_\_\_\_ County Sheriff's Department

ATTN: \_\_\_\_\_

ADDRESS

CITY, Texas ZIP

Re:	Client:	Injured Plaintiff
	DOA:	_____, 200__
	Defendant:	Negligent Tortfeasor
	Defendant's DL:	_____
	Defendant's DOB:	_____, ____

Dear \_\_\_\_\_:

I represent Injured Plaintiff for injuries she sustained in a collision with Negligent Tortfeasor on \_\_\_\_\_. I understand that Negligent Torfeasor was arrested and charged with Driving While Intoxicated.

This is a request to obtain a certified copy of the disposition of the citation Negligent Tortfeasor received in the above-referenced collision. Please forward this information as soon as possible. If there is a fee for this, please let me know and I will be happy to send a check.

If you have any questions, please to not hesitate to contact me. Should I be unavailable at the time of your call, you may speak with my assistant, \_\_\_\_\_. Thank you for your anticipated cooperation.

Sincerely,

Daniel J. Christensen

\_\_\_\_\_

# APPENDIX H

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\*‡  
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\* BOARD CERTIFIED  
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LICENSED IN  
† TEXAS & NEBRASKA  
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ALL OTHER ATTORNEYS  
ARE LICENSED IN TEXAS

THE CARLSON LAW FIRM, P.C.

3410 FAR WEST BLVD. STE. 235  
AUSTIN, TEXAS 78731  
PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 200\_\_

Crime Records Dep't  
Law Enforcement Entity  
Address  
City, State ZIP

TEXAS OPEN RECORDS ACT REQUEST

RE: Defendant: Negligent Tortfeasor  
DOB: \_\_\_\_\_  
TX DL: \_\_\_\_\_

To Whom It May Concern:

Please accept this Open Records Act Request for any and all criminal, investigative and criminal court records regarding the above-listed individual. This would include, but not be limited to, all documentation and other material regarding any arrests, charges, adjudications (deferred or otherwise), incarceration, probation, or sentence on Negligent Tortfeasor. Please include all documentation from the investigative file, the prosecutor's court file, as well as the probation department file.

I am happy to pay any costs associated with duplicating this material. Once you have identified the responsive material, please contact my office to arrange for payment and delivery. If you have any questions, please do not hesitate to contact me. Should I be unavailable at the time of your call, you may speak with my assistant, \_\_\_\_\_. I look forward to hearing from you soon.

Sincerely,

Daniel J. Christensen



# APPENDIX

## I

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**REQUEST FOR A CERTIFIED ABSTRACT OF AN OPERATING RECORD  
AS PROVIDED IN SECTION 521.0475 OF THE TEXAS TRANSPORTATION CODE**

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Please complete the spaces provided below and return this form to the Texas Department of Public Safety. Be advised, the Department cannot be responsible for accuracy of certification when complete information is not furnished.

In addition, a fee of **\$20.00** is required for the furnishing of a certified abstract of the operating record and upon receipt of same, along with the other data, the record will be forwarded to you.

Mail to: Driver Records Bureau, Texas Department of Public Safety, Box 15999, Austin, Texas 78761-5999

**MAKE CHECK or MONEY ORDER PAYABLE TO: TEXAS DEPARTMENT OF PUBLIC SAFETY**

Any questions regarding the information on this form should be directed to Customer Service at 512/424-2600.

MAIL DRIVER RECORD TO: Requestor's Name \_\_\_\_\_ DL Number \_\_\_\_\_  
(PLEASE TYPE OR PRINT)  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_ Telephone # \_\_\_\_\_

If requesting on behalf of a business, organization, or other entity, please include the following:

Name of business, organization, entity, etc. \_\_\_\_\_

Your Title or Affiliation with above \_\_\_\_\_

Type of business, organization, etc. \_\_\_\_\_  
(i.e. insurance provider, towing company, private investigation firm, etc.)

**INFORMATION REQUESTED ON:**

Texas Driver License # \_\_\_\_\_ Date of Birth (Month/Day/Year) \_\_\_\_\_  
Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle/Maiden \_\_\_\_\_

**INDIVIDUAL'S WRITTEN CONSENT FOR ONE TIME RELEASE TO ABOVE REQUESTOR**

(Requestor, if you do not meet one of the exceptions listed on the back of this form, please be advised that without the written consent of the driver license/ID card holder, the record you receive will not include personal information.)

I, \_\_\_\_\_, hereby certify that I grant access on this one occasion to my Driver License/ID Card record, inclusive of the personal information (name, address, driver identification number, etc.), to \_\_\_\_\_

Signature of License/ID Card Holder or Parent/Legal Guardian \_\_\_\_\_

Date \_\_\_\_\_

**State and federal law requires requestors to agree to the following:**

In requesting and using this information, I acknowledge that this disclosure is subject to the federal Driver's Privacy Protection Act (18 U.S.C. Sect. 2721 et seq.) and Texas Transportation Code Chapter 730. False statements or representations to obtain personal information pertaining to any individual from the DPS could result in the denial to release any driver record information to myself and the entity for which I made the request. Further, I understand that if I receive personal information as a result of this request, it may only be used for the stated purpose and I may only resell or redisclose the information pursuant to Texas Transportation Code §730.013. Violations of that section may result in a criminal charge with the possibility of a \$25,000 fine.

I certify that I have read and agree with the above conditions and that the information provided by me in this request is true and correct. If I am requesting this driver record on behalf of an entity, I also certify that I am authorized by that entity to make this request on their behalf. I also acknowledge that failure to abide by the provisions of this agreement and any state and federal privacy law can subject me to both criminal and civil penalties.

Signature of Requestor \_\_\_\_\_

Date \_\_\_\_\_

**If you are not requesting a copy of your own record or do not have the written consent of  
DL/ID holder, you must provide the information requested on the reverse.**

The Texas Department of Public Safety may disclose personal information to a requestor without written consent of the DL/ID holder, on proof of their identity and a certification by the requestor that the use of the personal information is authorized under state and federal law and that the information will be used only for the purpose stated and in complete compliance with state and federal law.

**You must meet one or more of the following exceptions if you do not have written consent of the DL/ID holder to be entitled to receive personal information on the above named individual. Please initial each category that applies to the requested driver record.**

- \_\_\_\_\_ 1. For use in connection with any matter of (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle emissions; (d) motor vehicle product alterations, recalls, or advisories; (e) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer; or (f) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of the Automobile Information Disclosure Act, the Anti Car Theft Act of 1992, the Clean Air Act, and any other statute or regulation enacted or adopted under or in relation to a law included in the above.
- \_\_\_\_\_ 2. For use by a government agency in carrying out its functions or a private entity acting on behalf of a government agency in carrying out its functions.
- \_\_\_\_\_ 3. For use in connection with a matter of (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle product alterations, recalls, or advisories; (d) performance monitoring of motor vehicles, motor vehicle parts, or motor vehicle dealers; (e) motor vehicle market research activities, including survey research; or (f) removal of nonowner records from the original owner records of motor vehicle manufacturers.
- \_\_\_\_\_ 4. For use in the normal course of business by a legitimate business or an authorized agent of the business, but only to verify the accuracy of personal information submitted by the individual to the business or the authorized agent of the business and to obtain correct information if the submitted information is incorrect to prevent fraud by pursuing a legal remedy against, or recovering on a debt or security interest against the individual.
- \_\_\_\_\_ 5. For use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court.
- \_\_\_\_\_ 6. For use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual.
- \_\_\_\_\_ 7. For use by an insurer or insurance support organization, or by a self insured entity, or an authorized agent of the entity, in connection with claims investigation activities, antifraud activities, rating or underwriting.
- \_\_\_\_\_ 8. For use in providing notice to an owner of a towed or impounded vehicle.
- \_\_\_\_\_ 9. For use by a licensed private investigator agency or licensed security service for a purpose permitted as stated on this page.
- \_\_\_\_\_ 10. For use by an employer or an authorized agent or insurer of the employer to obtain or verify information relating to a holder of a commercial driver license that is required under 49 U.S.C. Chapter 313.
- \_\_\_\_\_ 11. For use in connection with the operation of a private toll transportation facility.
- \_\_\_\_\_ 12. For use by a consumer-reporting agency as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) for a purpose permitted under the Act.
- \_\_\_\_\_ 13. For any other purpose specifically authorized by law that relates to the operation of a motor vehicle or to public safety.

Please state specific statutory authority \_\_\_\_\_

- \_\_\_\_\_ 14. For use in the preventing, detecting, or protecting against identity theft or other acts of fraud. The Department prior to release of personal information may require additional information.

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# APPENDIX J

CRAIG W. CARLSON †  
DANIEL J. CHRISTENSEN\* ‡  
STEVEN N. WALDEN +

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PHONE (512) 346-5688  
FAX (512) 527-0398

\_\_\_\_\_, 2009

**VIA CMRRR:**

**FIRM**

Attn: ATTORNEY

**ADDRESS**

**CITY, Texas ZIP**

Re: Injured Plaintiff v. Negligent Tortfeasor

Dear Mr. ATTORNEY:

As you are aware, we represent Injured Plaintiff for the severe injuries he suffered as a result of the crash made the basis of this lawsuit. As you are equally aware, there is limited coverage to sufficiently compensate Injured Plaintiff for the damages he has incurred as a result of the incident in question. Therefore, in an effort to reach a timely and efficient resolution to this case, I have prepared this statement to help you better understand the tremendous loss Injured Plaintiff has suffered in this case

**Liability**  
[FACTS AND LIABILITY EXPLANATION]

**Damages**  
[DESCRIPTION]

**Stowers Demand**

I have reviewed all of the information presently available in the above-referenced matter in order to make a settlement proposal subject to Rule 408, Texas Rules of Evidence, and to invoke the Stowers Doctrine as to your insured.

My client understands that \_\_\_\_\_ are covered under a policy issued by State Farm Insurance Company, a solvent insurance carrier, in the amount of \$\_\_\_\_\_. Based upon our review of the liability and damages aspects of this case, and predicated upon what we understand to be the nature and extent of the insurance coverage that applies to the actions of \_\_\_\_\_, Injured Plaintiff offers to settle any and all claims against Negligent Tortfeasor for \$\_\_\_\_\_, in exchange for a full and

final release and satisfaction of all properly perfected liens and subrogation interests.

It is my client's intention is to make a settlement demand within the insurance policy limits of \_\_\_\_\_ in order to invoke the provisions of *Stowers v. American Indemnity Insurance*, 15 S.W. 2d 544 (Tex. 1929) and *American Physicians Insurance Exchange v. Garcia*, 876 SW. 2d 842 (Tex. 1994), in the event that \_\_\_\_\_ Insurance Company negligently fails to settle this action within \_\_\_\_\_'s policy limits. Our goal is to avoid any personal losses of \_\_\_\_\_ in excess of their available insurance coverage and to invoke excess liability responsibility upon his insurance carrier when Plaintiff receives a judgment against \_\_\_\_\_ in excess of his policy limits.

It is also our intention in this letter to invoke the excess liability provisions of *Stowers v. American Indemnity Insurance*, 15 S.W. 2d 544 (Tex. 1929) and *American Physicians Insurance Exchange v. Garcia*, 870 S.W. 2d 842 (Tex. 1994). Our intention is to predicate an excess liability recovery against all insurance carriers of \_\_\_\_\_. Such an excess liability claim will eventuate only if \_\_\_\_\_ chooses not to meet our demand to settle timely and fully with Injured Plaintiff, including release of all liens, in exchange for the available policy limits of his insurance coverage.

There has been sufficient time, opportunity and discovery to permit a complete evaluation of the comparative positions of the parties. Considering the grossly insufficient insurance coverage that we are advised is available to cover \_\_\_\_\_ for the extensive damages that he inflicted upon Injured Plaintiff, this policy limits demand is extremely reasonable. \_\_\_\_\_ and his insurance carrier certainly have sufficient information available to evaluate their own liability. Therefore, \_\_\_\_\_ days will be sufficient time to decide whether they will agree to this settlement demand.

As you know, the *Stowers* duty is activated by a settlement demand when three prerequisites are met:

- The claim against the insured is within the scope of coverage;
- The demand is within policy limits; and
- The terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment.

*A.P.I.E.*, 876 S.W.2d at 849.

Justice Cornyn additionally stated in the majority opinion of *A.P.I.E.* that to be a valid *Stowers* settlement demand, plaintiffs must propose to release the insured fully in exchange for a stated sum of money, but may substitute "the policy limits" for a sum certain. *Id.* at 848-49. Accordingly, Injured Plaintiff hereby offers to release \_\_\_\_\_ fully, including release of all liens, in exchange for the available "policy limits" of its insurance coverage.

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Clearly, all elements of *Stowers* and A.P.I.E. will be present, in the event of a negligent refusal by the \_\_\_\_\_ Insurance Company to settle this case timely and within the available policy limits. This demand for settlement of all claims, including release of all liens, within the available policy limits, affords the \_\_\_\_\_ Insurance Company for \_\_\_\_\_ the opportunity to prevent their excess liability exposure. The failure of \_\_\_\_\_ Insurance Company to pay this demand will result in the recovery of an excess judgment against \_\_\_\_\_ and may predicate the prosecution of a *Stowers* case against \_\_\_\_\_ Insurance Company for the amount of any recovery in excess of his policy limits.

Considering Injured Plaintiff's damages, the failure of \_\_\_\_\_ insurance Company to settle would leave Injured Plaintiff with no option but to fully prosecute this case to Judgment and to make every effort to recover from \_\_\_\_\_ for the full amount of the damages in excess of policy limits. This situation exposes \_\_\_\_\_ to a serious threat of personal liability if \_\_\_\_\_ Insurance Company fails to settle this claim within the available policy limits.

This offer will remain open until 5:00 p.m., \_\_\_\_\_, 200\_\_, at which time it will be automatically revoked if not accepted and will not be offered again. I look forward to hearing from you soon.

Sincerely

Daniel J. Christensen

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# APPENDIX K

	CAUSE NO. _____	
INJURED PLAINTIFF,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	_____ COUNTY, TEXAS
	§	
NEGLIGENT TORTFEASOR,	§	
Defendant.	§	____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**  
**AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, INJURED PLAINTIFF, hereafter referred to as Plaintiff, and files this, his Original Petition and Request for Disclosure against NEGLIGENT TORTFEASOR, hereafter referred to as Defendant, and for cause of action would show the following unto the Court:

**I.**

Plaintiff requests that this case be given a Level III Discovery Control Plan.

**II.**

Plaintiff is an individual who is a resident of Texas and who resided in \_\_\_\_\_ County, Texas at the time of the events which form the basis of this lawsuit.

Defendant is an individual whose last known address is \_\_\_\_\_, \_\_\_\_\_ Texas ZIP. Defendant may be served with process at that address via personal service.

**III.**

This suit is brought in accordance with the laws of the State of Texas, for the recovery of damages which are within the jurisdictional limits of the Court, to which Plaintiff is entitled to receive as compensation for the injuries described below. The subject matter of this suit is an automobile collision that occurred in \_\_\_\_\_ County, Texas. Both Plaintiff and Defendant

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were residents of \_\_\_\_\_ County, Texas at the time of the collision, and therefore the Court has jurisdiction over this matter and venue is proper in \_\_\_\_\_ County, Texas.

**IV.**

Plaintiff brings this suit to recover damages for personal injuries sustained by Plaintiff in a collision that occurred on \_\_\_\_\_, 200\_\_. Said collision was proximately caused by the negligence of Defendant.

At the time of the incident in question, [FACTS]

**V.**

**NEGLIGENCE**

Plaintiff alleges that upon the occasion in question, Defendant failed to use ordinary care by various acts and omissions in at least the following ways:

- a. Failing to keep a proper lookout;
- b. Failing to use due caution;
- c. Failing to yield the right of way;
- d. Failing to stop and render aid by fleeing the scene of the accident; and
- e. Operating a motor vehicle on the public roads while intoxicated.

Each and all of the above stated acts and/or omissions constitute negligence and the same are a direct and proximate cause of the injuries and damages sustained by Plaintiff.

---

## VI.

### **NEGLIGENCE PER SE**

Moreover, Plaintiff would show that, at the time of the incident in question, Defendants violated the Texas Transportation Code Annotated in at least one or more of the following ways:

- a. Failing to make a proper left hand turn in violation of Texas Transportation Code §§545.101, 545.103, 545.104, and 545.152;
- b. Failing to yield the right of way in obedience to an official traffic-control device in violation of Texas Transportation Code §545.151;
- c. Failing to yield the right of way to a vehicle already in control of the intersection in violation of Texas Transportation Code §545.153;
- d. Failing to drive on the right side of the roadway in violation of Texas Transportation Code §545.051;
- e. Failing to provide information or reasonable assistance at the scene of a collision in violation of Texas Transportation Code §550.021;
- f. Operating a motor vehicle while intoxicated in violation of Texas Penal Code §49.04; and/or
- g. Committing intoxication assault by causing serious bodily to Plaintiff by accident or mistake, while operating a motor vehicle in a public place while intoxicated, in violation of Texas Penal Code §49.07(a).

Each of the foregoing acts and/or omissions, taken together or individually, constitute negligence *per se* and each proximately caused the collision and the injuries and damages sustained by Plaintiff.

---

## **VII.**

### **GROSS NEGLIGENCE** **EXEMPLARY DAMAGES**

Plaintiff would further show that Defendant was grossly negligent in causing the incident in question which resulted in Plaintiff's injuries and damages. Defendant evidenced conscious indifference to the rights, safety and welfare of others in recklessly [FACTS]. Additionally, on the occasion in question, Defendant knowingly and voluntarily operated a motor vehicle on the public roads while intoxicated. Defendant's acts and omissions when viewed objectively from the standpoint of Defendant at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. At the time of the occurrence, Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such conscious indifference to the rights, safety and welfare of others, including Plaintiff's, was a direct and proximate cause of the collision in question, the injuries to Plaintiff's, and the damages resulting therefrom.

## **VIII.**

### **INTOXICATION ASSAULT**

Defendant's conduct amounts to the offense of "intoxication assault," because Defendant, by accident or mistake, while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication caused serious bodily injury to Plaintiff, in violation of Texas Penal Code §49.07(a). Each of the stated acts and/or omissions constitute intoxication assault, and the same are a direct and proximate cause of the injuries and damages sustained by Plaintiff.

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**IX.**

**DAMAGES**

As a result of the incident described above, Plaintiff has suffered severe personal injuries including physical pain, mental anguish, permanent bodily impairment, and physical disfigurement and will, with reasonable probability, continue to do so in the future by reason of the nature and severity of his injuries and disfigurement. Plaintiff has been caused to incur medical expenses, and lost wages in the past and will, with reasonable probability, continue to incur medical expenses and loss of earning capacity in the future.

**X.**

**REQUEST FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2.

**PRAYER**

WHEREFORE, Plaintiff respectfully requests that Defendant be duly cited to appear and answer herein and that, upon final trial of this cause, Plaintiff recover judgments against Defendant for Plaintiff's damages, for costs of court, for pre- and post-judgment interest as provided by law, exemplary damages and for such other further

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relief, both general and special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

THE CARLSON LAW FIRM, P.C.  
3410 Far West Blvd., Ste. 235  
Austin, Texas 78731  
(512) 346-5688 (phone)  
(512) 527-0398 (facsimile)

By: \_\_\_\_\_  
*Daniel J. Christensen*  
SBN: 24010695  
ATTORNEYS FOR PLAINTIFF

PLAINTIFF RESPECTFULLY REQUESTS A TRIAL BY JURY

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# APPENDIX L



CAUSE NO. \_\_\_\_\_

INJURED PLAINTIFF,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	OF _____ COUNTY
	§	
NEGLIGENT TORTFEASOR,	§	
Defendant.	§	____ JUDICIAL DISTRICT

**PLAINTIFF'S REQUESTS FOR PRODUCTION TO  
DEFENDANT NEGLIGENT TORTFEASOR**

TO: NEGLIGENT TORTFEASOR, by and through his attorney of record ATTORNEY, FIRM,  
ADDRESS.

NOW COMES INJURED PLAINTIFF, Plaintiff in the above styled and numbered cause,  
and serves this Requests for Production pursuant to Rule 196 of the Texas Rules of Civil  
Procedure, directed to Defendant, NEGLIGENT TORTFEASOR. These Requests are being  
served upon Defendant, NEGLIGENT TORTFEASOR, by and through his attorney of record  
ATTORNEY, FIRM, ADDRESS.

You are hereby given thirty (30) days from the date of service of these Requests for  
Production to produce the requested documents for inspection and copying at the office of The  
Carlson Law Firm, P.C., 3410 Far West Boulevard, #235, Austin, Texas 78731. Demand is  
made for supplementation of the Defendant's responses to these Requests for Production as may  
be required by Rule 193.5, Tex. R. Civ. P.

**DEFINITIONS AND INSTRUCTIONS**

For purposes of the following Requests, the following definitions and instructions apply:

"You", "Your" "Driver" and "Defendant" means and refers to NEGLIGENT  
TORTFEASOR as well as your attorneys, agents, employees, and all other natural persons or  
business or legal entities acting, or purporting to act, for or on your behalf whether authorized to  
do so or not.

---

“Plaintiff” means and refers to INJURED PLAINTIFF.

“Incident in Question” means and refers to the incident described in Plaintiff’s Original Petition.

“Vehicle” means and refers to the \_\_\_\_\_ involved in the Incident in Question.

"Document" means and includes writings of every type and from any source, including originals and non-identical copies thereof, that are in your possession, custody, or control or known by you to exist. This would include documents sent outside your organization to any source as well as documents intended for internal use.

The term also includes communications not only in words, but in symbols, pictures, sound recordings, film, tapes and information stored in, or accessible through, computer or other information storage or retrieval systems. If the information is kept in a computer or informational retrieval system, the term also includes codes and programming instructions and other materials necessary to understand such systems.

The term includes, but is not limited to: calendars, checkbooks, agenda, agreements, analyses, bills, invoices, records of obligations and expenditures, corporate bylaws and charters, correspondence, diaries, files, legal documents, financial documents including balance sheets and profit and loss statements, letters, memorandum recording telephone or in-person conferences, manuals, books, press releases, purchase orders, records, schedules, memos of interviews, evaluations, written reports of tests or experiments, public relations releases, telegrams, teletypes, work papers, drafts of documents, and all other writings whose contents relate to the subject matter of the discovery request.

"Custodian" means the person or entity with care, custody, control of the item or document that is subject of inquiry. A request to identify the custodian of any item or document is a request to provide the name, address and telephone number of said custodian.

"Photograph" means and includes any motion picture, still picture, transparency, videotape, drawing, sketch, electronic image, negatives or any other recording of any non-verbal communication in tangible form.

You are not asked to divulge or provide any information or documents which are privileged in nature. However, for each document or other requested information that you assert is privileged or is not discoverable, identify that document or other requested information. State the specific grounds for the claim or privilege or other ground for exclusion.

If a requested document once was but is no longer in the possession, custody or control of Defendant or any of its representatives, state what disposition was made of such document.

If any of these requests cannot be responded to in full, please respond to the extent possible, specifying the reason for Defendant’s inability to fully respond, and stating whatever information or knowledge Defendant has concerning the portion to which Defendant cannot fully respond.

*Overall v. Southwestern Bell Yellow Pages*, 869 S.W.2d 629 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1994), no writ, requires a party to send the documents to the requesting party along with a

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copy of the response. Unless there are thousands of documents, a party is not permitted to merely make documents available at a specific location.

Pursuant to Rule 193.7, Texas Rules of Civil Procedure, the Defendant is hereby notified that Plaintiff reserves the right to use at trial any and all documents Defendant produces in response to this and any other discovery request.

### **REQUESTS FOR PRODUCTION**

1. Any and all photographs or other electronic images that contain images of the underlying facts or that Defendant intends to offer into evidence at trial.
  2. Any and all photographs, movies, videotapes or other visual reproductions that Defendant has of the parties, persons with knowledge of relevant facts, the facilities, mechanisms or items involved, or scene of the Incident in Question.
  3. All documents or tangible things prepared by, prepared for, or relied upon, by any expert whom Defendant expects to call as a witness, including but not limited to, his/her report, curriculum vitae, factual observations, learned treatises, publications, studies, opinions, conclusions, photographs, field notes, calculations, models and exhibits. If any such expert has not prepared a report, request is hereby made that one be prepared and furnished to Plaintiffs' attorney.
  4. All documents or tangible things prepared by, prepared for, or relied upon, by any expert whose work product, opinions, or mental impressions have been, or will be, reviewed or relied upon, in whole or in part, by a testifying expert. This would include, but not be limited to, his/her report, curriculum vitae, factual observations, learned treatises, publications, studies, opinions, conclusions, photographs, field notes, calculations, models and exhibits.
  5. All documents or tangible things prepared by, prepared for, or relied upon, by any expert who has obtained knowledge about the case in some way other than consulting with Defendant's attorney. This would include, but not be limited to, his/her report, curriculum vitae, factual observations, learned treatises, publications, studies, opinions, conclusions, photographs, field notes, calculations, models and exhibits.
  6. All published documents, treatises, periodicals or pamphlets on the subject of medicine, accident reconstruction, any engineering field, and any other area of scientific study that you claim to be a reliable authority which may be used by you at trial.
  7. All published documents, treatises, periodicals or pamphlets on the subject of medicine, accident reconstruction, any engineering field, and any other area of scientific study that any testifying expert claims to be a reliable authority which may be used by you at trial.
  8. All published documents, treatises, periodicals or pamphlets on the subject of medicine, accident reconstruction, any engineering field, and any other area of scientific study that any testifying expert has relied, or will rely, upon to support their opinions and mental impressions.
  9. All documents, reports, publications, codes and regulations evidencing safety standards, laws, regulations, ordinances, or industry standards which you now contend or will contend at trial support any defensive theory.
  10. All documents, reports, publications, codes and regulations evidencing safety standards, laws, regulations, ordinances, or industry standards that any of your testifying experts have relied, or will rely, upon to support their opinions and mental impressions.
-

11. All documents, reports, publications, codes and regulations evidencing safety standards, laws, regulations, ordinances, or industry standards that any of your testifying experts claim to be reliable authority which may be used at the time of trial.
  12. A copy of any contract of employment that would govern Defendant's relationship with any other entity or bear on the issue of "course and scope of employment."
  13. Copies of any and all statements made by Plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by Plaintiff and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.
  14. Any written, taped or mechanically reproduced statement made of any Defendant or Plaintiff.
  15. Any and all statements made by the Defendant regarding the Incident in Question to his insurance company, its employees, agents, independent contractors, adjusters, or representatives, not including statements made to Defendant's attorney.
  16. Any and all drawings, surveys, plats, maps or sketches of the scene of the Incident in Question.
  17. Any document, photographs, or other physical evidence that will be used or offered at trial.
  18. All documents and tangible things (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations) that constitute or contain matters relevant to the subject matter of the action.
  19. The entire claim and investigation file, including but not limited to, statements, reports, videotapes, drawings, memoranda, photographs, and documents, regarding the Incident in Question generated or obtained by Defendant, Defendant's agents, or Defendant's insurers in the ordinary course of business.
  20. The entire claim and investigation file, including but not limited to, statements, reports, videotapes, drawings, memoranda, photographs, and documents, regarding the Incident in Question generated or obtained by Defendant, Defendant's agents, or Defendant's insurers before the Plaintiff, or Plaintiff's attorney, outwardly manifested an intent to pursue a claim against Defendant.
  21. The entire claim and investigation file, including but not limited to, statements, reports, videotapes, drawings, memoranda, photographs, and documents, regarding the Incident in Question generated or obtained by Defendant, Defendant's agents, or Defendant's insurers before the Plaintiff filed his/her Original Petition with the court.
  22. Please produce any and all correspondence, communications, letters, notes of oral conversations, and all other documents or writings sent to or received from or exchanged by and between you and your insurance carrier concerning the subject matter of this lawsuit, including, but not limited to, any damage to you, the vehicle in which you were riding, damage to any personal property, and any personal injuries.
  23. All documents, correspondence, memoranda, notes, or e-mails regarding communications between your insurance company and the Plaintiff's insurance company regarding the Incident in Question and/or Plaintiff.
  24. A copy of each primary, umbrella, and excess insurance policy or agreement, including the declarations page, which was in effect at the time of the Incident in Question including all non-waiver agreements, reservation of rights letters, or other documents or communications regarding any contractual obligations owed by you.
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25. A copy of each primary, umbrella, and excess insurance policy or agreement, including the declarations page, which may provide coverage to satisfy all or part of any judgment which may be rendered in this litigation including all non-waiver agreements, reservation of rights letters, or other documents or communications regarding any contractual obligations owed by you.
  26. Any documents, reports, photographs, or other written records pertaining to any investigation of the Incident in Question.
  27. All documents regarding all other claims being currently made against Defendant's insurance policies for the Incident in Question other than by this Plaintiff.
  28. Any and all settlement agreements, deals, contracts, understandings, "Mary Carter" agreements, or compromises between you or your representatives and any other party, potential party, or potential third party defendant to this suit or its representatives, agents, or insurers regarding any compromise, settlement, apportionment of liability or financial responsibility, contingent or otherwise, or alignment of the parties on any issue with respect to:
    - a. The Incident in Question;
    - b. Plaintiff's damages;
    - c. The presentation of any testimony;
    - d. Whether or how to conduct any cross-examination;
    - e. The performance of discovery; and/or
    - f. The presentation of any defense, excuse, or inferential rebuttal.
  29. Copies of any document or statement that any witness of Defendant will use or you anticipate may use to refresh his or her memory, either for deposition or trial.
  30. Any and all documents and tangible things whose production has not been requested pursuant to any other item of this request which you intend to offer into evidence at trial.
  31. Any and all documents and tangible things whose production has not been requested pursuant to any other item of this request which you do not intend to offer into evidence at the trial of this case, but which may be used as demonstrative evidence at trial.
  32. Any information relating to any arrest or conviction to be used for impeachment purposes against any party, witness, and/or person with knowledge of relevant facts named in discovery information provided by or to you before trial. Please include the name of the person convicted, the offense for which he or she was arrested or convicted, the year of such arrest or conviction, the court of such conviction, and the disposition of the case or allegation.
  33. Any and all calendars, journals, diaries, logs, or notes kept by Defendant covering the month of the Incident in Question.
  34. All documents regarding Plaintiff's employment history, status, performance, or compensation obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.
  35. All documents regarding Plaintiff's medical status, treatment or history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.
  36. All documents regarding Plaintiff's financial status, earnings history, and tax payment history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.
  37. All documents regarding Plaintiff's claims history obtained by Defendant via an authorization signed by Plaintiff, subpoena, deposition on written questions, or otherwise.
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38. All documents, records, reports, notations, or memoranda regarding the Plaintiff from persons or entities that compile claim information, to include but not limited to, insurance claims, unemployment claims, social security claims, and worker's compensation claims.
  39. All statements or documents that show the identity of any witness to the Incident in Question, or any person with knowledge of relevant facts concerning the Incident in Questions, the events leading up to it, or any damage sustained by Plaintiff.
  40. All documents and tangible things which support your contention that:
    - a. any act or omission on the part of Plaintiff caused or contributed to the Incident in Question;
    - b. any factor, other than a. above, contributed to or was the sole cause of the Incident in Question, including but not limited to, acts or omissions of negligence of any other party or parties, or potential third-party Defendants, sudden emergency, unavoidable accident, mechanical defect, or act of God;
    - c. any factor caused or contributed to the Plaintiff's damages, including but not limited to, pre-existing or subsequently existing physical or medical condition or conditions of the Plaintiff;
    - d. any or all of the medical expenses incurred by Plaintiff for treatment of injuries allegedly resulting from the Incident in Question were not reasonable and/or necessary;
    - e. Plaintiff's injuries, if any, were not the result of or caused by the Incident in Question.
  41. A copy of Driver's current and all past driver's licenses.
  42. Any and all documentation regarding any reprimand, citation, warning letter, license suspension, service limitation, license revocation, admission suspension, referral to the Attorney General, and any other administrative sanction or penalty issued by any public entity against you whether or not as a result of the Incident in Question.
  43. Copies of any and all traffic tickets, warnings issued, criminal charges, and/or regulatory violations charged or filed against you.
  44. All documents regarding any collision in which Driver was involved prior to the Incident in Question.
  45. All documents regarding police, military police, fire, and other related investigations related to the Incident in Question.
  46. All documents regarding any medication you were taking during the week before, and including the day of, the Incident in Question.
  47. All medical records for treatment received by you from a year before the Incident in Question for any medical condition whatsoever.
  48. All documents, invoices, receipts or records regarding all cellular or mobile telephones owned or used by you on the day of the Incident in Question.
  49. All documents regarding treatment or prescriptive records from any optometrist or ophthalmologist for treatment received by you from five years before the Incident in Question through present.
  50. Collossus dissection form or input data pertaining to Plaintiff's claim.
  51. Collossus consultation report pertaining to Plaintiff's claim.
  52. All documents, repair invoices, damage appraisals, or photographs regarding any property damage to Vehicle resulting from the Incident in Question.
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53. Any records or documentation (medical or non-medical) which would indicate that you had alcohol/drugs (including prescription or non-prescription, legal or illegal) in your bloodstream or urine at the time or immediately following the Incident in Question.
54. Any records or documentation (medical or non-medical) which would indicate that you were a regular user of marijuana within one (1) year preceding the Incident in Question.
55. Any records or documentation (medical or non-medical) which would indicate that you were a regular user of any illegal substance within one (1) year preceding the Incident in Question.
56. All documents, repair invoices, damage appraisals, or photographs regarding any property damage, mechanical defects, or malfunctions existing on Vehicle at the time of the Incident in Question.
57. All documents regarding the ownership or lease of the Vehicle in effect at the time of the Incident in Question.
58. All documents, repair invoices, account statements, or part orders regarding any maintenance, inspections, or repairs performed on the Vehicle from one year before the Incident in Question to present.
59. All documents regarding any criminal charges brought against You as a result of the Incident in Question.
60. All documents regarding any criminal arrests, charges, convictions or sentences imposed against You from 15 years before the Incident in Question to present.
61. All bank statements regarding any accounts owned (in whole or in part) from the date of the Incident in Question to present by You and/or any entity in which you had an ownership interest or in which You had a community property interest.
62. All ownership documents for any real estate owned (in whole or in part) from the date of the Incident in Question to present by You and/or any entity in which you had an ownership interest or in which You had a community property interest.
63. All ownership documents for any motor vehicles, boats, planes, fine artwork, collectibles, or life insurance policies insuring your life owned (in whole or in part) from the date of the Incident in Question to present by You and/or any entity in which you had an ownership interest or in which You had a community property interest.

Respectfully submitted,

THE CARLSON LAW FIRM, P.C.  
3410 Far West Blvd., Ste. 235  
Austin, Texas 78731  
(512) 346-5688 (phone)  
(512) 527-0398 (facsimile)

By: \_\_\_\_\_

*Daniel J. Christensen*  
SBN: 24010695  
ATTORNEYS FOR PLAINTIFF

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# APPENDIX

## M



CAUSE NO. \_\_\_\_\_

INJURED PLAINTIFF,  
Plaintiff,

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

v.

\_\_\_\_\_ COUNTY, TEXAS

NEGLIGENT TORTFEASOR,  
Defendant.

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S REQUESTS FOR ADMISSIONS TO**  
**DEFENDANT NEGLIGENT TORTFEASOR**

TO: Defendant \_\_\_\_\_, by and through his attorney of record,  
\_\_\_\_\_

NOW COMES INJURED PLAINTIFF, Plaintiff, in the above styled and numbered cause, and in order to simplify the issues for the trial of this cause, makes the following Requests for Admissions of Fact under the provisions of Rule 198, Tex.R.Civ.P. The Defendant is hereby advised that a failure to specifically answer any Request, or an evasive answer to any Request, will be taken as an admission of truth of such request. Demand is made for supplementation of the Defendant's responses to these Requests for Admissions as may be required by Rule 193.5, Tex.R.Civ.P. These Requests are being served upon Defendant who is given fifty (50) days from the date of service of these Requests for Admissions to admit or deny the following facts:

**DEFINITIONS**

For purposes of the following Requests, the following definitions apply:

"You," "Your," "Driver" and "Defendant" means and refers to NEGLIGENT TORTFEASOR.

"Incident in Question" means and refers to the collision referred to in Plaintiff's Original Petition.

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“Vehicle” refers to the vehicle driven by Defendant, Driver at the time of the Incident in Question.

### **REQUESTS**

1. Admit that NEGLIGENT TORTFEASOR is the correct name of Defendant.
  2. Admit that service of process on Defendant was properly achieved.
  3. Admit that on DATE, a collision occurred on DATE in \_\_\_\_\_, Texas.
  4. Admit that on DATE, there was a collision between the Plaintiff and Vehicle.
  5. Admit that you owned Vehicle at the time of the Incident in Question.
  6. Admit that you were leasing Vehicle at the time of the Incident in Question.
  7. Admit that you were driving Vehicle that collided into Plaintiff’s vehicle.
  8. Admit that INSURANCE CO provided an insurance policy covering Vehicle at the time of the Incident in Question.
  9. Admit that INSURANCE CO has a duty to defend you for Plaintiff’s claim as a result of the Incident in Question.
  10. Admit that INSURANCE CO has a duty to indemnify you for the Plaintiff’s claim as a result of the Incident in Question.
  11. Admit that you were an employed at the time of the Incident in Question.
  12. Admit that you were an independent contractor at the time of the Incident in Question.
  13. Admit that at the time of the Incident in Question you were acting in the course and scope of your employment and/or furtherance of your employment.
  14. Admit that at the time of the Incident in Question you were driving Vehicle with the owner’s permission.
  15. Admit that you were responsible for the proper maintenance of Vehicle in question at the time of the Incident in question.
  16. Admit that you had a moving violation before the Incident in Question.
  17. Admit that you had a previous motor vehicle accident before the Incident in Question.
  18. Admit that you failed to control your speed at the time of the Incident in Question.
  19. Admit that your failure to control your speed was a cause of the Incident in Question.
  20. Admit that Vehicle was in proper working condition the day of the Incident in Question.
  21. Admit that there was no mechanical condition/defect on Vehicle at the time of the incident that contributed to the cause of the collision.
  22. Admit that Plaintiff suffered personal injuries as a direct result of the Incident in Question.
  23. Admit that Plaintiff has incurred medical expenses as a result of the Incident in Question.
  24. Admit that Plaintiff will require future medical care for the personal injuries he sustained in the Incident in Question.
  25. Admit that Plaintiff has experienced pain and suffering as a result of the Incident in Question.
  26. Admit that Plaintiff will experience future pain and suffering as a result of the Incident in Question.
  27. Admit that Plaintiff has experienced physical disfigurement in the past as a result of the Incident in Question.
-

28. Admit that Plaintiff will experience physical disfigurement in the future as a result of the Incident in Question.
29. Admit that Plaintiff suffered physical impairment in the past as a result of the Incident in Question.
30. Admit that Plaintiff will suffer physical impairment in the future as a result of the Incident in Question.
31. Admit that Plaintiff has suffered lost wages as a result of the Incident in Question.
32. Admit that Plaintiff will suffer a loss of earning capacity in the future as a result of the Incident in Question.
33. Admit that Incident in Question was Driver's fault.
34. Admit that your negligence was a proximate cause of the Incident in Question.
35. Admit that your negligence resulted in Plaintiff's personal injuries, pain and suffering, lost wages, lost earning capacity and incurred medical expenses.
36. Admit that Plaintiff acted with ordinary care at the time of the Incident in Question.
37. Admit that the collision was not a result of a sudden emergency.
38. Admit that the collision was avoidable.
39. Admit that there was nothing obstructing your view of Vehicle the Plaintiff was driving at the time of the collision.
40. Admit that you were under the influence of medication, drugs or alcohol at the time of the collision.
41. Admit that you were talking on a cellular phone at the time of the collision.
42. Admit that weather conditions were not a factor contributing to the collision.
43. Admit that road conditions were not a factor contributing to the collision.
44. Admit that another person or entity other than Plaintiff or Driver did not contribute to the cause of the Incident in Question.
45. [CASE SPECIFIC QUESTIONS]

Respectfully submitted,

THE CARLSON LAW FIRM, P.C.  
3410 Far West Blvd., Ste. 235  
Austin, Texas 78731  
(512) 346-5688 (phone)  
(512) 527-0398 (facsimile)

By: \_\_\_\_\_

*Daniel J. Christensen*  
SBN: 24010695  
ATTORNEYS FOR PLAINTIFF

# APPENDIX

## N

	CAUSE NO. _____	
INJURED PLAINTIFF,	§	IN THE COUNTY COURT
Plaintiff,	§	
	§	
v.	§	AT LAW NO. _____
	§	
NEGLIGENT TORTFEASOR,	§	
Defendant.	§	_____ COUNTY, TEXAS

**PLAINTIFF'S FIRST SET OF INTERROGATORIES**  
**TO DEFENDANT**

TO: DEFENDANT NEGLIGENT TORTFEASOR, ADDRESS, CITY, Texas ZIP.

You are directed to answer the following written Interrogatories separately and fully, in writing and under oath, in accordance with Rule 197 of the Texas Rules of Civil Procedure, have the answers signed by the person making them, and serve a true copy of the answers on the undersigned attorney on the fiftieth (50) day after service hereof.

**DEFINITIONS**

1. "You", "Your", "Defendant" means NEGLIGENT TORTFEASOR, his principals, agents, employees, and anyone acting with authority on his behalf.
2. "Plaintiff" as used herein means INJURED PLAINTIFF, her principals, agents, employees, and anyone acting with authority on her behalf.
3. "Person" as used herein means any natural person, corporation, partnership or other legal entity.
4. "Incident" as used herein means the automobile collision alleged in Plaintiff's Original Petition.
5. "Accident" as used herein means the automobile collision alleged in Plaintiff's Original Petition.
6. "Wreck" as used herein means the automobile collision alleged in Plaintiffs' Original Petition.
7. "Collision" as used herein means the automobile collision alleged in Plaintiffs' Original Petition.
8. "Document" as used herein means any written or graphic matter or communication, however produced or reproduced, whether original or a copy, and is intended to be comprehensive and include, without limitation, any and all written correspondence, letters, telegrams, agreements, notes, contracts, instructions, financial statements, financial reports,

checks, reports, demands, memoranda, data, schedules, shop orders, studies, notices, work papers, recordings, photographs, charts, analyzes, indices, data sheets, intra-company or interoffice communications, notebooks, diaries, calendars, schedules, appointment calendars, diagrams, sketches, drawings, plans, lists, publications, drafts, minutes, job tickets, accounts, invoices, statements, vouchers, credit memos, bills of lading, due bills, journals, orders, confirmations, letters of credit, computer programs, computer tapes, computer printouts, and all other written or graphic material of any nature whatsoever, that are in your custody or control or to which you have access, or of which you have knowledge, and further means both the originals and all copies thereof, including those copies with additional marginal notes or other writing or marking thereon, or attachments or insertions thereto.

9. Whenever in these Interrogatories you are asked to "identify", you are requested:
    - (a) When identifying a person to give such person's full name, business address and residence address, telephone number, and present or last known position, affiliation at the time in question.
    - (b) When identifying a communication to identify the author thereof and the parties thereto or participants therein; give the date of communication; give the place of the communication; state verbatim the contents of the communication; specify whether such communication has been reduced to writing, and, if so, identify such document.
    - (c) When identifying a document to identify the author thereof and the parties thereto; state the title and other identifying matter; state the date of the document or if no date appears thereon state the approximate date; state verbatim the contents thereof and/or attach a copy of such document to your answers; and control of the original and any copies thereof; if such document was, but no longer is in your possession or subject to your control, describe in detail what disposition was made of it.
    - (d) When identifying a corporation or other entity: identify the name; state the principal place of business; identify the persons have knowledge of the matters with respect to which the corporation or other entity is named.
  10. "Evidence" or "evidencing" means having a tendency to show, prove or disprove.
-

11. "Communication" as used herein means a transfer of information, written or oral, by any means whatsoever.

Respectfully submitted,

THE CARLSON LAW FIRM, P.C.  
3410 Far West Blvd., Ste. 235  
Austin, Texas 78731  
(512) 346-5688 (phone)  
(512) 527-0398 (facsimile)

By: \_\_\_\_\_

*Daniel J. Christensen*

SBN: 24010695

ATTORNEYS FOR PLAINTIFF

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## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify each person either participating in the preparation of the answers to these interrogations or supplying information used in such preparation, and indicate the interrogatories with respect to which he or she was involved.

#### **ANSWER:**

### **INTERROGATORY NO. 2:**

For each request for production filed by Plaintiff in this action, identify each document that you withheld from production under any claim of privilege or other immunity, and for each such document or thing, state the nature of the privilege or immunity claimed.

#### **ANSWER:**

### **INTERROGATORY NO. 3:**

Identify the cause number, identities of all parties, court of jurisdiction, description of controversy, the amount in controversy, date of filing, date of resolution, prevailing party, and announcement of settlement or judgment of all lawsuits in which you have been a party since January 1, 1999.

#### **ANSWER:**

### **INTERROGATORY NO. 4:**

List all criminal arrests and/or charges levied against Defendant in the last fifteen years, by giving the cause number, identities of all accused, court of jurisdiction, description of criminal charges, date and place of arrest, plea made, date of trial and/or plea bargain, whether or not convicted and on what charges, time served, date of release from confinement, whether or not granted pardon or parole, and if so, date pardon granted or parole was or will be successfully completed.

#### **ANSWER:**

### **INTERROGATORY NO. 5:**

Do you intend to attempt to impeach Plaintiff, her employees, agents, representatives, attorneys or any other natural persons or business or legal entities associated with in any way, acting or purporting to act for or on behalf of Plaintiff, with evidence of a criminal conviction, if any? If so, please describe in detail such evidence, including but not limited to the name of the accused, nature of conviction and charges on



which convicted, year of conviction and whether or not parole has been successfully completed or pardon granted.

**ANSWER:**

**INTERROGATORY NO. 6:**

Has your driver's license ever been suspended or revoked during the last ten (10) years? If so, describe each such occurrence and include, but not by way of limitation, the date(s) on which your driver's license was revoked or suspended, the reason for such action, and the court which ordered such action.

**ANSWER:**

**INTERROGATORY NO. 7:**

Did you have anything to drink of an alcoholic nature within twenty-four (24) hours before the incident made the basis of this lawsuit? If so, for each such beverage, state: the type; the quantity; the time and place of consumption; and, the name, addresses and telephone numbers of all persons who witnessed you consume such beverages.

**ANSWER:**

**INTERROGATORY NO. 8:**

Did you take any sleeping pills, tranquilizers, prescription medication, pills, or injections within forty- eight (48) hours before the incident made the basis of this lawsuit? If so, for each, state: the type and quantity; the time and place when taken; and, the names, addresses and telephone numbers of all persons present when taken.

**ANSWER:**

**INTERROGATORY NO. 9:**

Did you take any illegal drug or substance within forty-eight (48) hours before the incident made the basis of this lawsuit? If so, for each, state: the type and quantity; the time and place when taken; and the names, address and telephone numbers of all persons present when taken.

**ANSWER:**

**INTERROGATORY NO. 10:**

Prior to the incident made the basis of this lawsuit, when had you last seen a physician and why?

**ANSWER:**

**INTERROGATORY NO. 11:**

Did you personally have any physical defects, illnesses, injuries or conditions at the time of the wreck? If so, describe each.

**ANSWER:**

**INTERROGATORY NO. 12:**

If, in making the incident trip, you were on any errand or mission for, or rendering any service or benefit to anyone other than yourself, describe the purpose of your trip and the name, address and telephone of such person, firm or organization.

**ANSWER:**

**INTERROGATORY NO. 13:**

With regard to the incident trip, state: its purpose; who directed that it be made; the time, date and place of departure; the number of miles traveled prior to the wreck location; and, the destination and estimated time of planned arrival.

**ANSWER:**

**INTERROGATORY NO. 14:**

If, at the time of the wreck you were acting as the agent, employee or servant of anyone, state that person's name, address and telephone number.

**ANSWER:**

**INTERROGATORY NO. 15:**

Describe in detail how the wreck occurred. Include, but not by way of limitation, the speed of the vehicles at impact, a description of the general weather conditions, and, a description of the vehicles involved to the extent that their condition caused or contributed to the wreck.

**ANSWER:**

**INTERROGATORY NO. 16:**

If you had any conversation(s) with the Plaintiff at the scene of the wreck or subsequent, describe in detail the substance of the conversation(s).

**ANSWER:**

**INTERROGATORY NO. 17:**

If you talked to anyone else at the scene of the wreck or subsequent to the wreck about the wreck, what was the substance of the conversation(s) and what was the name(s), telephone number(s) and address(es), of the person(s) with whom you talked. In answering this Interrogatory, please exclude conversations with your legal counsel, its agents and representatives.

**ANSWER:**

**INTERROGATORY NO. 18:**

If you have been involved in any wrecks, automobile or otherwise, before or after the incident made the basis of this suit, explain fully and in detail, giving the date, time, and place of such incident(s), and the names, addresses, and telephone numbers of the other party or parties involved in such wreck, if any.

**ANSWER:**

# APPENDIX O

**SUPPLEMENTAL JUROR QUESTIONNAIRE**  
**TRAVIS COUNTY COURT AT LAW**

The questions asked in this questionnaire could be asked in open court. You are under oath and required to answer these questions truthfully and completely. You must answer the questions yourself without discussing the question or your response with others, unless asked to do so by the Court. If you desire to more fully explain an answer or would like to discuss an answer in private, answer the question briefly and circle the question. **YOUR RESPONSES ARE COMPLETELY CONFIDENTIAL AND WILL NOT BE SHARED WITH ANYONE NOT INVOLVED IN THE CASE. PLEASE PRINT CLEARLY.**

**SUPPLEMENTAL PERSONAL DATA**

<b>Do you own or rent your residence?</b> (circle one)	<b>Own</b>	<b>Rent</b>
<b>Serve in the military?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, list dates, branch, MOS, highest rank and type of discharge.		

**FAMILY DATA**

<b>Mother's last occupation</b>	<b>Mother's most recent employer</b>
<b>Father's last occupation</b>	<b>Father's most recent employer</b>

**EXPERIENCE WITH JUDICIAL SYSTEM**

<b>What is your opinion about lawyers and whether they are trustworthy or not? Please explain why you feel the way you do.</b>
<b>Have you, a family member, or loved one ever had to file a claim?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If so, please explain.</b>
<b>Have you, a family member, or loved one ever worked in an insurance related business?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please explain.
<b>Have you, a family member, or loved one ever worked in a medical related business where the person treated or arranged for the medical treatment of others?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please explain.

<p><b>What is your opinion about whether there are too many lawsuits? Why do you feel that way?</b></p>
<p><b>Generally speaking, do you feel that jury verdicts or settlements in Austin are:</b>  <input type="checkbox"/> Too High   <input type="checkbox"/> About right   <input type="checkbox"/> Too Low   <input type="checkbox"/> No Opinion   <input type="checkbox"/> Don't Know   <b>Please explain.</b></p>
<p><b>If you, a family member, or loved one were injured because of someone else's negligence, would you bring a claim or file a lawsuit against that person? <input type="checkbox"/> Yes   <input type="checkbox"/> No   Please explain.</b></p>
<p><b>What is your opinion about whether the legislature should limit the ability of juries to award damages for pain and suffering and disfigurement? Why do you feel that way?</b></p>
<p><b>What is your opinion about punitive damages (extra damages to punish a person or entity who has committed gross negligence?) (circle one)   For   Against   They should be limited</b>  <b>Please explain.</b></p>

### **DRIVING EXPERIENCE**

<b>Texas Driver's License #</b>	<b>How many years licensed in any state?</b>
<p><b>Identify the Year, Make and Model of any vehicle currently owned by you or a family member living with you?</b></p>	
<p><b>Have you ever received a traffic ticket? <input type="checkbox"/> Yes   <input type="checkbox"/> No   If so, please list date, location, offense, and how disposed.</b></p>	
<p><b>Have you, a family member, or loved one ever been involved in a motor vehicle collision?</b>  <input type="checkbox"/> Yes   <input type="checkbox"/> No   <b>If so, please list date, location, whether the person was driving, whose fault it was, and whether anyone was injured.</b></p>	
<p><b>If a driver accidentally hits another car, do you think the driver should have to pay for any injuries he or she caused in the other car? Please explain why or why not.</b></p>	

## ALCOHOL QUESTIONS

<b>Do you consume alcoholic beverages?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>If so, how much and how often?</b>
<b>What do you think is the average alcohol consumption in the United States?</b>		
(chose how much)	1	2 3 4 5 6 7 8 9 10 or more
(chose how often)	Day	Week Month
<b>Have you ever attended an alcohol awareness class or a class on driving while intoxicated?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please list the date, location, class taken, and the reason for taking the class.		
<b>Have you ever driven after the consumption of an alcoholic beverage?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Have you ever ridden in a car with a driver who had consumed an alcoholic beverage?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>How familiar do you believe you are with the risks associated with drinking and driving?</b>		
Very Familiar	Somewhat Familiar	Familiar Not Really Familiar Totally Unfamiliar
<b>How familiar do you believe the average American is with the risks associated with drinking and driving?</b>		
Very Familiar	Somewhat Familiar	Familiar Not Really Familiar Totally Unfamiliar
<b>Have you, a family member, or loved one ever been arrested for DWI or DUI?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please list relationship to you, date, location, offense, and how disposed.		
<b>Have you, a family member, or loved one ever been involved in a motor vehicle collision with an intoxicated driver?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please list relationship to you, date, location, and whether anyone was injured.		

## SOCIAL BACKGROUND

<b>Please list all organizations, civic clubs, fraternal societies, and religious organizations to which you currently belong or support financially.</b>
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<b>Please list all magazines, periodicals, newsletters to which you currently subscribe or have subscribed to within the last three years.</b>
<b>Please list all television shows you watch regularly, including what your favorite show is and why.</b>
<b>Do you listen to any radio talk shows? If so, identify which ones and why you like them?</b>
<b>Do you currently have, or have you in the last three years had, any bumper stickers on any vehicle you owned or drove? If so, please state what it said and when you had it.</b>

### THIS CASE

<b>Please indicate whether and how you know any of the following individuals or entities:</b>			
<b>Name</b>	<b>Yes</b>	<b>No</b>	<b>How</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
<b>Is there anything occurring in your personal life or at work that might affect your ability to concentrate if you were selected as a juror on this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please explain.</b>			
<b>Is there anything else that you want the Court or counsel to know that you believe is important regarding whether you can serve as a fair and impartial juror in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please explain.</b>			



# APPENDIX P