March 7, 2022

***Sent Via Certified U.S. Mail – Return Receipt Requested***

***Sent Via U.S. Facsimile to: 877-219-0742***

***Sent Via Email to: Denise.Krewson@cmiw.com***

Walmart Claims Services, Inc.

Attn: Cristina Cruz

Case Manager I

P.O. Box 14731

Lexington, KY 40512

**Re: TIME SENSITIVE SETTLEMENT DEMAND OFFER;**

**EXPIRES AT 5:00 PM ON MARCH 14, 2022**

**CLAIMANT/OUR CLIENT :** **CARMEN ARMIENTA**

**YOUR INSURED/CLIENT : WAL-MART STORES, INC.**

**YOUR FILE NO. :** **9346537**

**DATE OF INCIDENT :** **SEPTEMBER 28, 2020**

**LOCATION :** **WAL-MART STORES, INC.**

**(FACILITY NO.: 3133)**

**1425 N. Hacienda Blvd.,**

**La Puente, CA 91744**

Dear Ms. Cruz,

This letter shall serve as representation of the damages sustained by our client, Ms. Carmen Armienta, and a demand for equitable settlement therefrom, in connection with, and arising from, the matter referenced above.

As such, this letter will convey our client’s present demand for settlement of her entire claims against your insured. Needless to say, this letter and its contents are made expressly subject to California *Evidence Code* § 1152 and do not constitute, nor should it be construed as, an admission of any fact or contention.

**I. INTRODUCTION**

As will be described in greater detail below, this action arises from serious injuries suffered by our client, Ms. Carmen Armienta (hereinafter “Ms. Armienta”) after she slipped and fell on a waterproof pouch phone case that was left on the floor located in and around the vitamin aisle and customer service area of your insured’s premises.

As a result of this fall our client sustained serious injuries to her body which required her to undergo significant medical treatments, as well as substantive pain and suffering as a result of the injuries she sustained from this incident, from the day of the fall to the present date, and most likely for well into the future.

**II. RELEVANT FACTS**

On or about September 28, 2020, our client was a patron of your insured’s Wal-Mart Stores, Inc. (Facility No.: 3133) business premises located at:1425 N. Hacienda Blvd**.,** La Puente, CA 91744(hereinafter referred to as “Business Premises” or “Premises”). On said date, at the subject premises, your insured negligently, carelessly, and recklessly owned, operated, maintained, supervised, cleaned, and managed said premises so as to cause our client substantial injuries.

More specifically, our client was a patron at your insured’s business premises establishment and was walking around the vitamin aisle and customer service area, when suddenly and without warning, slipped on a waterproof pouch phone case that was left on the floor. Ms. Armienta attempted to prevent her fall by grabbing onto another patron’s shopping cart with her right hand but could not hold and violently fell to the ground. Immediately after the fall Ms. Armienta felt severe pain in her left side of her body and her right knee. The patron, Ms. Lupe De la Mora, whose cart Ms. Armienta attempted to grab in order to prevent her fall, witnessed the events transpire and wrote a witness statement, (*a copy of the witness statement is attached herein and marked as* ***Exhibit “1”***).

Following her fall, Ms. Armienta did not request an ambulance, However, her injuries, pain and discomfort were so excruciating that she had to call her daughter to take her to the hospital emergency room. At the hospital emergency room Ms. Armienta was provided with x-rays of her right knee and lower back. She was also provided with medication and advised to return as needed.

On said date, at the subject Business Premises, your insured negligently, carelessly, and recklessly owned, operated, maintained, supervised, cleaned, and managed said premises so as to cause our client substantial injuries. Your insured failed to exercise ordinary care and safety for its customers such as. Ms. Armienta. Accordingly, your client’s failure and/or refusal to have warned or cautioned our client and/or to have corrected and/remedied such condition proximately caused those injuries and damages to our client hereinafter described.

Your insured could have foreseen that a hazardous condition such as a waterproof pouch phone case on the floor where there is significantly heavy foot traffic can cause a patron to slip and injured themselves. By making a reasonable investigation, taking thought, and exercising reasonable care to maintain the premises, your insured could have foreseen that waterproof pouch phone case on the floor created a hazardous condition on floor would cause an injury to patrons. Furthermore, your insured could have easily avoided injury to patron upon the business in several ways by at the very least maintaining the floor of the premises free of hazardous conditions that may cause injuries to patrons in or around the subject premises. As such, your insured’s liability in this matter is clear.

Your insured, by its careless conduct described above, is subjected to negligence and liability to Ms. Armienta for the injuries claimed in this matter. Your insured’s negligence in not maintaining its floor safe for customers caused Ms. Armienta to slip, fall on the hard floor, and is the direct and proximate cause of her injuries and damages hereinafter described.

Due to the severity of Ms. Armienta’s pain and injuries sustained as a result of her fall at the subject Wal-Mart business premises, Ms. Armienta has sought extensive medical treatments for her injuries immediately following the fall, and to date, has underwent extensive therapy and other medical treatments for the injuries sustained as a result of your insured’s negligence in causing this accident.

**III. LIABILITY**

Under *Civil Code*, section 1714(a), “Everyone is responsible not only for the result of his willful acts, but also for an injury occasioned to another by want of ordinary care of skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought injury upon himself.”

Furthermore, it is the rule in California that the keeper of a public place of business is bound to keep their premises and the passageways to and from it in a safe condition, and must use ordinary care to avoid accidents or injury to those properly entering upon his premises on business. (*Brown v. Holzwasser*, (1930) 108 Cal.App. 483, 487). This duty is not limited to conditions known to be dangerous but extends to those which might have been found dangerous by the exercise of reasonable care. (*Raber v. Tumin*, (1951) 36 Cal.2d 654, 658).

As set forth in great detail below, no issue as to liability surfaces here as your insured is clearly liable under a “premises liability” theory for its negligence in failing to maintain its Business Premises in a reasonably safe condition.

**A. YOUR INSURED HAD A DUTY TO MAINTAIN ITS BUSINESS PREMISES**

**IN A REASONABLY SAFE MANNER.**

In California, “[p]remises liability is a form of negligence...[where] [t]he owner of the premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm.” (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.) Further, “it is the duty of storekeepers to keep the floors of their premises safe for those who must pass over them...” (*Tuttle v. Crawford* (1936) 8 Cal.2d

126, 130.)

Further, the general rule of “premises liability” law, which was articulated by California’s Supreme Court 30-years ago, is that a landowner has a “duty to take affirmative action for the protection of individuals coming upon the land...” (*Sprecher v. Adamson Companies* (1981) 3 Cal.3d 358, 368.) More recently, the Supreme Court reaffirmed a landowner’s duty—“[t]his requires persons ‘to maintain land in their possession and control in a reasonably safe condition. [Citations.]” (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156; *CACI 1001 (Basic Duty of Care)*.) These basic principles are also codified in *Civil Code* section 1714.

Additionally, when it comes to proving notice of the type of dangerous condition that is at issue here, the knowledge of your insured’s employees, whom had a duty to perform general maintenance, is imputed to Defendant. *(CACI 1012 (Knowledge of Employee Imputed to Owner).)*

Here, your insured had an affirmative duty to take reasonable steps to ensure that its Business Premises (specifically the area in and around the vitamin aisle and customer service area of your insured’s premises) was maintained in a reasonably safe manner. As mentioned above, your insured’s employees, whom were responsible for the general maintenance of the premises, had knowledge or should have had knowledge of the hazardous condition where this incident occurred and our client was injured for a significant period of time, and perhaps much longer, before Ms. Armienta slipped and fell and was severely injured.

**B. YOUR INSURED IS 100% LIABLE FOR THE INCIDENT.**

No issue of liability surfaces here. On or about September 28, 2020, our client was a patron at your insured’s business premises establishment when our client was walking towards the pharmacy around the around the vitamin aisle and customer service area, when suddenly and without warning, slipped on a waterproof pouch phone case that was left on the floor. Ms. Armienta attempted to prevent her fall by grabbing onto another patron’s shopping cart with her right hand but could not hold and violently fell to the ground. Immediately after the fall Ms. Armienta felt severe pain in her left side of her body and her right knee. The patron, Ms. Lupe De la Mora, whose cart Ms. Armienta attempted to grab in order to prevent her fall, witnessed the events transpire and wrote a witness statement, (*a copy of the witness statement is attached herein and marked as* ***Exhibit “1”***).

On said date, at the subject Business Premises, your insured negligently, carelessly, and recklessly owned, operated, maintained, supervised, cleaned, and managed said premises so as to cause our client substantial injuries. Your insured had a duty to take reasonable steps to ensure that its Business Premises, specifically the area where this incident occurred and our client was injured, was maintained in a reasonably safe manner. More specifically, your insured failed to exercise ordinary care and safety for its customers. Accordingly, your client’s failure and/or refusal to have warned or cautioned our client and/or to have corrected and/remedied such condition proximately caused those injuries and damages to our client hereinafter described.

Your insured could have foreseen that a hazardous condition such as a waterproof pouch phone case on the floor where there is significantly heavy foot traffic can cause a patron to slip and injure themselves. By making a reasonable investigation, taking thought, and exercising reasonable care to maintain the premises, your insured could have foreseen that a hazardous condition on its floor would cause a hazard to patrons. Your insured could have easily avoided injury to patrons entering upon or exiting the subject business premises sections in several ways by making proper routine checks.

Your insured, by its careless conduct described above, is subjected to negligence and liability to Ms. Armienta for the injuries claimed in this matter. Your insured’s negligence in not maintaining its floor safe for customers caused Ms. Armienta to slip, fall on the hard floor, and is the direct and proximate cause of her injuries and damages hereinafter described.

Although our Ms. Armienta’s treatments are not quite finished, Ms. Armienta has asked our office to attempt a settlement with your insured at this point in time. In providing us with settlement authority, our client has considered her significant injuries, the disruption of her life, the reduction in her life’s quality since the incident and in the future, the future therapies and medical treatments necessary and required for her injuries, as well as the pain and discomfort our client has suffered to date, and that from which Ms. Armienta may very well suffer in the future from what might simply be a move in the wrong direction or a sudden move that causes Ms. Armienta further trauma.

Based on the foregoing, Ms. Armienta is entitled to be fully compensated for all economic and non-economic damages actually and proximately caused by your insured’s negligence including the reasonable value of medical case and expenses incurred, or is reasonably likely to incur in the future, for the treatment of injuries sustained as a result thereof as well as for physical pain and suffering, mental and emotional pain and suffering, and loss or diminution of the ability to enjoy life’s pleasures.

In light of your insured’s foregoing actions, omissions and negligent behavior, the set incident below is a detailed tabulation of our client’s damages and losses sustained as a result of this accident.

**IV. INJURIES, MEDICAL TREATMENT AND DAMAGES.**

Attached to this letter are Ms. Armienta’s complete medical records, reports and bills.

The months following the accident, Ms. Armienta received substantial medical care and treatments due to the injuries she sustained as a direct result of your insured’s negligence. Nevertheless, she has continued to experience pain, decreased range motion, and emotional distress. Her doctors say she may need future medical treatment over her lifetime and that she is at an increased risk of developing degenerative disc disease at an earlier age than general population.

In addition to his physical injuries, and perhaps as significant as the physical injuries are the corollaries of Ms. Armienta ’s emotional distress and trauma. Since the accident, Ms. Armienta has had significant psychological difficulties. She has had to learn how to adjust to life’s tasks, all of which have proved to be extremely arduous. The basic activities of daily living cause significant aggravation and exacerbation of his body, including the walking around his home. These basic activities of daily life are taken for granted by people with healthy bodies with no objective injuries.

The type of injuries Ms. Armienta sustained as a direct result of your insured’s negligence will forever plague Ms. Armienta with chronic pain from the damage to the surrounding soft tissues and nerves in Ms. Armienta ’s body. Although there are conservative treatment options available to Ms. Armienta, she will have to live with the effects of your insured’s negligent actions for the rest of her life.

As described in more detail below, Ms. Armienta has suffered significant pain, suffering, and emotional distress. Importantly, all of Ms. Armienta’s damages, both general and special, are very well documented.

**A. ECONOMIC DAMAGES.**

As you are aware, my client is entitled to economic damages incurred as a result of your insured’s negligence in causing this incident.

Immediately following the incident, Ms. Armienta developed significant pain and discomfort. After the impact and fall, Ms. Armienta was not rendered unconscious, though our client felt dazed, shocked, shaken, and nervous.

Ms. Armienta sat there a few minutes trying to regain her composure. When our client eventually was able to get up from the floor, she immediately felt the onset of pain throughout her body. Her violent fall caused Ms. Armienta to experience extreme pain throughout her body, specifically to her head, neck, lower back, and lower extremities, including her buttocks and her legs, right knee, and right hip and subsequent severe and frequent headaches. Our client felt swelling on the left and right side of her body and some numbness in her neck, arms, shoulders, chest, legs and feet. Ms. Armienta immediately had a headache as well.

Following her fall, Ms. Armienta did not request an ambulance, However, her injuries, pain and discomfort were so excruciating that she had to call her daughter to take her to the hospital emergency room. At the hospital emergency room Ms. Armienta was provided with x-rays of her right knee and lower back. She was also provided with medication and advised to return as needed.

Your insured’s negligent conduct in causing this incident irrevocably changed our client’s life that September 28th day forever. The fall and resulting injuries have had profound and devastating effects on Ms. Armienta and will continue to do so in perpetuity for the rest of her adult life.

Ms. Armienta has sought extensive medical treatments for her injuries immediately following this fall, and to date, has underwent extensive therapy and other medical treatments for the injuries sustained as a result of your insured’s negligence in causing this accident.

Ms. Armienta, medical providers recommended an MRI of her right knee due to the pain and discomfort she was experiencing. The MRI findings discovered Ms. Armienta had a **tear at the root of the posterior horn of the medial meniscus.** Also, findings discovered, medical providers recommended an MRI of his left shoulder. The MRI findings discovered she had **full thickness tear at the anterior edge** of her left shoulder.

The MRI findings of her cervical spine indicated she had a **2mm posterior disc bulge**. Also, Ms. Armienta medical providers recommended an MRI of his lumber spine. The MRI findings discovered Ms. Armientahas **2.5mm disc protrusion in her L4-L5 and 1.9mm disc protrusion in her L5-S1.**

Due to the pain and discomfort Ms. Armientawas experiencing as a result of the subject incident and along with his MRI findings, her medical providers recommended and administered epidural injections. This helped alleviate some of Ms. Armienta’spain and discomfort.

Ms. Armienta was also seen by a neurologist Dr. Benjamin Gross, who concluded Ms. Armienta had an **abnormal nerve conduction velocity study of the bilateral upper extremities characterized by focal right carpal tunnel syndrome**.

To date, Ms. Armientahas incurred approximately **$161,685.31** in medical bills and expenses. The money expenditures in our client's claims are itemized as follows[[1]](#footnote-1):

**EXHIBIT NO.: MEDICAL PROVIDER: AMOUNT:**

**Exhibit “2”: Advanced Pain Management $45,900.00**

**Exhibit “3”: Santa Clarita Surgery Center $85,250.00**

**Exhibit “4”: Eminence Medical Group $2,250.00**

**Exhibit “5”: Neurology Now, INC. $4,325.00**

**Exhibit “6”: Precise Imagining $6,600.00**

**Exhibit “7”: Prestige Medical Pharmacy $485.32**

**Exhibit “8”: Encino Orthopedics $2,890.00**

**Exhibit “9”: Healthpointe $13,984.99**

**Total Current Medical Specials** **$161,685.31 (*Approx*.)[[2]](#footnote-2)**

The attachments to this letter provide you with sufficient medical documentation and related medical bills to reasonably evaluate this claim.

It is well known that Ms. Armienta ’s injuries heal slowly, poorly, and many times incompletely, resulting in the formation of scar tissue and degenerative arthritis. In light of Ms. Armienta ’s clinical findings and the aforementioned factors that may well influence the degenerative process in his neck and back, it places his at a high level for exacerbation of symptoms.

With that said, the injury suffered by our client is not an injury which can heal itself. The best that Ms. Armienta can do is pain management, such as medication, combined with exercise therapy which he/she has done for many months in-clinic, and continues to do at home to keep the musculature mobile, strong, and supple, intended to keep the injury from getting worse, or with steroid and injections. Other than that, his injuries can only be addressed through surgery. It is inevitable at this point that she will have continued problems.

As Ms. Armienta ’s medical records indicate, our client was previously involved in a motor vehicle accident where her neck or back were injured.

Nevertheless, should this matter proceed to litigation and trial, the jury will be instructed with important jury instructions concerning the law governing the eggshell skull Plaintiff and your insured’s liability for all damages caused by the defendant, and the damages must be given according to a plaintiff ’s condition and susceptibility.

The jury will be instructed pursuant to *CACI* 3928, Unusually Susceptible Plaintiff, which addresses the fact that although an eggshell plaintiff may have suffered more damage than a healthy person, she/he must still receive damages that would reasonably and fairly compensate them for damages caused by the defendant:

*“You must decide the full amount of money that will reasonably and fairly compensate*, *Ms. Carmen Armienta for all damages caused by the wrongful conduct of WAL-MART STORES, INC, even if*, *Ms. Carmen Armienta was more susceptible to injury than a normal healthy person would have been, and even if a normally healthy person would not have suffered similar injury.”*

(*CACI* No. 3928, emphasis added.)

These aforementioned legal precedents and jury instruction are vital and will be given should this matter proceed to litigation and trial in order to compel the jury to consider the susceptibility of an eggshell plaintiff such as Ms. Armienta and will permit the jury to thus adequately award damages that will reasonably and fairly compensate Ms. Armienta for his physical condition that was made worse by this incident solely as a result of your insured’s negligence in causing this accident.

Since the accident, Ms. Armienta has had to go through a very long, very frustrating, and very painful course of treatment, including routine follow-ups and evasive examinations and care. During this time, she has been severely limited in the activities that she used to regularly do prior to the day she had the extreme misfortune of crossing paths with your insured, such as:

1. Exercising such as running and walking;
2. Spending recreational time with his friends and family;
3. Normal and healthy relations;
4. Picking up items over 5-10 pounds.

Moreover, there is no question that she has future medical expenses ahead of his, even if his injuries do not get worse. She will have to continue to manage the pain, perform home exercises, may have to undergo continued physical therapy to supplement at-home exercises, or undergo surgical intervention.

If Ms. Armienta should suffer further flare-ups of these residuals injuries with no new injury, Ms. Armienta will require to have the availability of further medical care immediately available to her. If Ms. Armienta ’s physicians are unable to control Ms. Armienta ’s elevated pain levels with chiropractic care, then more aggressive allopathic care should be afforded to her.

Ultimately, Ms. Armienta will most likely require an additional series of epidural steroid injections. These injections are usually performed at a surgical center facility in a series of three and can cost between $10,000.00 and $17,000.00 each per injection. This fee typically includes the surgeon, medication, anesthesiology, outpatient surgical center fees, fluoroscopic guidance etc.

Furthermore, in the instances that the injections are unresponsive, then surgical intervention needs to be considered in the form of lumbar discectomy surgery. Surgery is performed in a surgical facility, and the cost is approximately $95,000.00, which is inclusive of the surgical facility and the anesthesiologist fees. The surgery is usually followed by extensive rehabilitation services at additional cost. Surgery is occasionally successful, at times resulting in repeat procedures and long-term morbidity with associated costs.

Thereafter, Ms. Armienta will require future medical treatments in the form of, but not limited to, future medical evaluations, diagnostic testing, physical therapy, medication, pain management, and follow up care. The estimated cost of these future medical care services is approximately **$150,000.00.** As such, Ms. Armienta ’s future medical expenses will be significant.

Please see the discharge summaries and narratives of the above mentioned providers’ concurrence with regards to future medical expenses. The severity of these injuries will require future medical care.

**B. NON-ECONOMIC DAMAGES.**

Ms. Armienta is additionally entitled to non-economic damages (including, but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation) pursuant to California *Civil Code*, Section 1431.0 (b)(1) and 1431.2 (b)(2).

Furthermore, in *Hillard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 413, the court stated the rule in regards to the general damages a plaintiff is entitled to recover for personal injuries:

“Plaintiff is entitled to recover for physical pain and for mental suffering from his physical injury. These injuries constitute the principle elements of tort personal injury damages. An award failing to compensate an injured Plaintiff where pain and suffering was present is inadequate as a matter of law.”

While Ms. Armienta has incurred and will incur significant financial losses, pain is the worst harm in this case. Physical pain: Ms. Armienta will never be able to work like she used to again. She will never be able to take care of herself or his family the way she used to again. She is precluded from engaging in activities with his family and friends. Emotional pain: Knowing she/he can’t care and support for herself and her family or friends like she used to. Watching others participate in activities from which she is now excluded. Finding out that no matter how hard she tries, she’ll never be the same adult woman she was before the accident.

In view of the nature and extent of Ms. Armienta ’s injuries, pain, suffering, and emotional distress, and the fact that the foregoing took place solely as a result of your insured’s negligent acts and conduct in causing this accident, it is believed that Ms. Armienta shall be further entitled to substantial non-economic general damages against your insured’s for their significant and extensive pain, suffering, and emotional distress if this matter proceeds into adversary litigation.

Your insured is liable for negligence, and as a result, Ms. Armienta will be able to recover special and general damages. Moreover, we believe that if this case does go to trial, Ms. Armienta will undoubtedly recover a substantial amount for his/her pain and suffering alone.

Furthermore, physical and emotional trauma to Ms. Armienta continues to be substantially prevalent in her day-to-day activities. As a direct and proximate result of your insured’s conduct, Ms. Armienta has been forced to limit the type and scope of activities she used to enjoy prior to this incident.

Since this incident, my client has not only been precluded from participating in her day-to-day activities but has also been unable to do some of the social and familial activities that she enjoyed prior to this incident. Moreover, our client has expressed that his irritability, anxiety, sadness, frustration, anger and the well documented personal injuries caused by your insured’s negligence has and will continue to force his to undergo medical care, treatments, and therapies that took, and will take time away from his/her enjoyment of day-to-day activities with his family and friends.

I am sure that you are well aware that California law provides that Ms. Armienta has the right to recover for loss of enjoyment of his life. This covers all aspects of life from the mundane to the exiting. At this time, Ms. Armienta is unable to participate fully in many of the activities she enjoyed prior to sustaining these injuries. My client is constantly concerned about re-injuring herself and many times hesitant to fully participate in many everyday activities for fear of further injury which would cause her future injury and pain.

Nevertheless, should this matter proceed to litigation and trial, the jury will be instructed on the law governing general damages in accordance with *CACI* 3905A:

**Physical Pain, Mental Suffering, and Emotional Distress**

**(Noneconomic Damage)**

The following are the specific items of noneconomic damages claimed by Ms. Carmen Armienta:

Past and future physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress.

To recover for future physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress, Ms. Carmen Armienta must prove that she is reasonably certain to suffer that harm.

No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

For future physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate Ms. Carmen Armienta for future physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress. This amount should not be further reduced to present cash value.

Thus, the list of compensable noneconomic items is even more extensive than that for economic damages:

* Past loss of full use of his neck
* Future loss of full use of his neck
* Past loss of full use of his back
* Future loss of full use of his back
* Past physical pain
* Future physical pain
* Past emotional suffering
* Future emotional suffering
* Past loss of life’s pleasures
* Future loss of life’s pleasures
* Any other loss the jury finds

The value of each of these items of non-economic harm will be determined using the following three factors:

* How bad is the harm?
* How long does it last?
* How interfering is it?[[3]](#footnote-3)

Here, all of these factors militate in favor of a substantial general damages award. Ms. Armienta ’s physical injuries are demonstrable; she/he will never be the healthy adult she was before the accident. The psychological effects are equally devastating.

It is clear that many things have been radically altered in Ms. Armienta ’s life since this incident occurred. She has lost the full use and mobility of her back and has permanent impairments there. It is painfully apparent that Ms. Armienta ’s injuries have taken what was already an unfortunate and difficult situation and have made it dramatically worse.

Life has become a chore just to do normal things. Where she once enjoyed a normal, independent lifestyle, she now relies and depends on family and friends to provide assistance when needed. She has been prevented from going out with her family and friends, and in fact, spends a large part of her time now confined to her home with little to do. In essence, the injuries my client sustained in this incident severely restricted her daily routine for months following the incident. She continues to be plagued in that she is more cautious in his daily activities and guards for the conditions she sustained as a result of this incident.

We have enclosed herewith copies of all records and information we have to-date and provide you with sufficient documentation to reasonably evaluate this claim. We therefore believe that you are in a position to act promptly upon this demand.

However, please keep in mind that placing a dollar value on the physical pain, suffering and severe debility that our client has suffered, and that she continues to endure, is a very difficult task. Add to that the emotional turmoil she has endured in worrying about the long-term health effects that his injuries may cause his to continue and to experience for a very long time, possibly permanently, and assigning a dollar value becomes almost unrealistic.

Please be advised that the discussion of our client’s treatment to date and of his future prognosis herein above is not intended to be a comprehensive report of his claims, but merely a summary thereof. We request that you review the medical reports and bills closely and to your full satisfaction.

**Nevertheless, should this matter proceed to litigation and trial, based on the foregoing, including the testimony from expert witnesses, a reasonable estimate of** Ms. Carmen Armienta **provable economic and non-economic damages at trial is as follows:**

**Past Medical Expenses : $161,685.31(*Approx.*)[[4]](#footnote-4)**

**Future Loss of Earnings : $150,000.00**

**Future Medical Expenses : $150,000.00**

**Past Pain & Suffering/Emotional Distress : $250,000.00**

**Future Pain & Suffering/Emotional Distress : $750,000.00**

**TOTAL : $1,461,685.31**

**V. SETTLEMENT DEMAND OFFER FOR THE TENDER OF THE POLICY LIMITS**

**MAINTAINED BY YOUR INSURED FOR THIS ACCIDENT.**

The general and special damages suffered by Ms. Armienta, as detailed above, are substantially in excess of your insured’s policy limit amount, and we believe that if the case goes to trial she will undoubtedly recover far more than $1,000,000.00.

As you are well aware, insurers such as your company owe an ***affirmative duty* *to accept a settlement*** *demand* within policy limits when there is a substantial likelihood of a judgment in excess of those limits. *Crisci* v. *Security Insurance Company* (1967) 66 Cal.2d 425; *Garner* v. *American Mutual Liability Insurance Company* (1973) 31 Cal. App.3d 843,847-848 [as to the “crucial issue” of a liability insurer's duty to accept reasonable settlement offers within policy limits, the duty to consider and weigh all of the facts bearing upon the advisability of a settlement in the interest of the insured *is upon the insurance carrier* as well as the duty to “consider, *accept* or make a reasonable settlement offer” (emphasis added)].

Moreover, the implied covenant imposes upon the insurer the duty to communicate the results of any *investigation* indicating liability in excess of policy limits to the insured, *Davy* v. *Public National Insurance Company* (1960) 181 Cal. App.2d 387, 396, as well as the duty to inform its insured of ***all consequences, particularly* *financial consequences which could occur regarding a failure to settle within policy limits.*** *Transit* *Casualty Company* v. *Spink Corporation* (1979) 94 Cal.App.3d 124, 137, disapproved on other grounds in *Commercial Union Insurance Company* v. *Safeway Stores* (1980) 26 Cal.3d 912,921.

Where an insurer unreasonably fails to protect it’s insured from a compensatory judgment in excess of that insured's policy limits by failing to accept an offer of settlement within policy limits, the insurer is responsible for the ***entirety of the excess judgment****.* More than thirty years ago, the Supreme Court explained why an insurance carrier is responsible for the entirety of excess judgments:

“As we have seen, the duty of an insurer to consider the insured's interest in settlement offers within the policy limits arises from an implied covenant in the contract, and ordinarily contract duties are strictly enforced and not subject to a standard of reasonableness. Obviously, it will always be in the insured's interest to settle within the policy limits when there is any danger, however slight, of a judgment in excess of those limits. Accordingly the rejection of a settlement within the limits where there is any danger of a judgment in excess of the limits can be justified, if at all, only on the basis of the interests of the insurer, and, in light of the common knowledge that settlement is one of the usual methods by which an insured receives protection under a liability policy, it may not be unreasonable for an insured who purchases a policy with limits to believe that a sum of money equal to the limits is available and will be used so as to avoid liability on his part with regard to any covered accident. I view of such expectation an insurer should not be permitted to further its own interests by rejecting opportunities to settle within the policy limits unless it is also willing to absorb losses which may result from its failure to settle.

\* \* \* \*

Finally, and most importantly, there is more than a small amount of elementary justice in a rule that would require that, in this situation where the insurer's and insured's interests necessarily conflict, the insurer, which may reap the benefits of its determination not to settle, should also suffer the detriments of its decision.” *Crisci,* supra, 66 Ca1.2d at 430-431.

*Accord: Coe* v. *Farmers Insurance Exchange*(1977) 66 Ca1.3d 981 [**since the insurer reserves exclusive control over litigation and settlement,** it is liable for the entire amount of the judgment against the insured including any portion in excess of policy limits, if in the exercise of such control it has failed to protect its insured from a judgment in excess of policy limits by refusing an offer of settlement within policy limits.]

The previously referred to and enclosed attachments to this letter provide you with sufficient documentation to reasonably evaluate this claim. It is evident that your insured is civilly culpable for my client’s significant damages, of whatever nature, and your insured’s policy must be used to compensate my client’s losses.

A complete description of the effect which Ms. Armienta ’s injuries have had exceeds the scope of this letter. Suffice it to say that she would make an extremely sympathetic witness and his story can easily be expected to move a jury to return a significant award.

As stated at the outset, I am therefore taking this opportunity to present my client’s settlement demand herein in a good faith effort to settle these claims without having compounded more expenses. There is little doubt that a jury of our client’s peers would appreciate the consternation and frustration associated with the facts of this sudden and shocking incident and the difficulties Ms. Armienta experienced as a result of his injuries.

Our client’s damages have been sizable, rendering said amount palatable for all opinion that our client’s personal injury damages represent a conservative, fair, and equitable evaluation.

**AS SUCH, OUR CLIENT HEREIN OFFERS TO SETTLE HER CLAIM FOR THE TENDER OF THE BODILY INJURY POLICY LIMITS MAINTAINED BY YOUR INSURED REGARDING THE SUBJECT ACCIDENT. ADDITIONALLY, AS AN EXPRESS CONDITION OF ACCEPTANCE, A CERTIFIED DECLARATION PAGE AND A STATEMENT UNDER OATH THAT ALL POLICIES HAVE BEEN TENDERED MUST ACCOMPANY THE ACCEPTANCE. THIS OFFER SHALL EXPIRE AT 5:00 P.M. ON MARCH 14, 2022.**

**IN ORDER TO ACCEPT THIS OFFER, WALMART CLAIMS SERVICES, INC. MUST STRICTLY DO ALL OF THE FOLLOWING ON OR BEFORE 5:00 P.M. ON MARCH 14, 2022:**

1. **ACCEPTANCE MUST BE IN WRITING, AND EITHER FAXED TO (424) 429-2432 OR EMAILED TO LILLIAN@SEDLAWGROUP.COM, BY NO LATER THAN 5:00 P.M. ON MARCH 14, 2022;**
2. **SEND A COPY OF A STANDARD WALMART CLAIMS SERVICES, INC.RELEASE FOR MS. CARMEN ARMIENTA TO SIGN, ADDRESSED TO THE UNDERSIGNED’S ATTENTION BEFORE THE OFFER EXPIRES;**
3. **COUNSEL FOR MS. CARMEN ARMIENTA IS NOT A PARTY TO THIS ACTION. DO NOT INCLUDE ANY TERMS IN THE GENERAL RELEASE THAT PURPORTS TO IMPOSE A DUTY OR AN OBLIGATION ON COUNSEL TO DEFEND AND/OR INDEMNIFY YOUR INSURED, WALMART CLAIMS SERVICES, INC., OR ANYONE ELSE FOR THAT MATTER.  INCLUSION OF ANY SUCH TERM IN THE GENERAL RELEASE WILL CONSTITUTE A REJECTION OF THIS OFFER;**
4. **PROVIDE A CERTIFIED COPY OF YOUR INSURED’S DECLARATION PAGE SHOWING THE POLICY LIMITS;**
5. **ISSUE PAYMENT WITHIN ONE (1) WEEK OF YOUR RECEIPT OF THE SIGNED RELEASE; AND**
6. **THE SETTLEMENT DRAFT CHECK MUST BE MADE PAYABLE AS FOLLOWS, “SEDAGHAT LAW GROUP CLIENT TRUST ACCOUNT FBO CARMEN ARMIENTA”**

**AGAIN, TO BE CLEAR, YOUR ACCEPTANCE OF THE AFOREMENTIONED SETTLEMENT OFFER MUST BE IN WRITING, AND MUST BE COMMUNICATED TO OUR OFFICE VIA FACSIMILE TO: (424) 429-2432 OR EMAIL TO LILLIAN@SEDLAWGROUP.COM, ON OR BEFORE 5:00 P.M. ON MARCH 14, 2022**

**I have enclosed herewith copies of all known records, documentation and information that you will need for evaluating each of my clients claims herein. The damages sustained by each of our clients far exceed the full aggregate policy carried by your insured. We therefore believe that you are in a position to act promptly upon this demand and tender the full aggregate policy limits carried by your insured.**

For your reference and file, and to expedite the issuance of any and all drafts, a copy of our firm’s W-9 form is attached and enclosed with this correspondence herein and marked as **Exhibit “10”**.

**THE AFOREMENTIONED OFFER TO SETTLE OUR CLIENT’S BODILY INJURY CLAIM FOR THE POLICY LIMITS MAINTAINED BY YOUR INSURED REGARDING THE SUBJECT ACCIDENT IS A CLEAR AND UNEQUIVOCAL OPPORTUNITY TO GLOBALLY SETTLE THIS CASE AND PROTECT YOUR INSURED FROM THE CONSEQUENCES OF A VERDICT AND JUDGMENT IN EXCESS OF THE LIMITS OF THE INSURANCE POLICIES.**

**Please be advised that in the event you refuse to offer our client your insured’s full policy limit for consideration, and our client is forced to litigate, due to the increased fees associates with litigation, as well as the enormous costs involved, our client has instructed this office not to accept your insured’s policy limits at that time and will pursue your insured for a verdict in excess of their policy limits, therefore, our above offer to consider settlement is valid for the purpose of this settlement demand only.**

We are certain you are aware that if a judgment in excess of the policy limits is entered against your insured in a lawsuit, when you have had the opportunity to settle this matter within the policy limits, your company may be held responsible for the difference (*Silberg v. California Life Ins. Co.* (1974) 11 C3d 452, 113 CR 711).

Again, this offer to settle our client’s claims for the **POLICY LIMITS** maintained by your insured regarding the subject accident shall remain open for acceptance until **5:00 P.M. ON MARCH 14, 2022**

After that time, this offer will be withdrawn, and we will be forced to serve your insured with a lawsuit. Please review the enclosed information and contact our office promptly to discuss a mutually satisfactory resolution of this claim.

Taking into consideration the strong evidence of liability in this case, and the substantial injuries suffered by my client, we believe Ms. Armienta will recover at least the aforementioned amount if this case goes to trial. Juries are receptive to claims for general damages when a healthy woman loses her means of livelihood and the ability to enjoy recreational and familial activities because of physical injury.

Here, if settlement discussions prove unsuccessful, we anticipate that a reasonable jury, in our opinion, would have little difficulty in awarding Ms. Armienta general damages that are three to six times her special damages and possibly more. As you are well aware, personal injuries similar to my clients have been settled, and juries have awarded verdicts far in excess of our client’s settlement demand, especially in light of Ms. Armienta ’s injuries. We anticipate your evaluation of our client’s settlement demand in light of this factor.

Based on the foregoing facts, we respectfully request that Walmart Claims Services, Inc. consider its initial response so as to represent an offer that reasonably puts our client in the position she was in before this loss, which is nothing less than the tender of your insured’s policy limits. We trust that Walmart Claims Services, Inc. will honor its fiduciary duty to its insured and proffer the policy limits for the injuries your insured negligently caused our client.

**MOREOVER, OUT OF AN ABUNDANCE OF CAUTION, I REMIND YOU THAT YOU HAVE A DUTY TO FORWARD A COPY OF THIS LETTER TO YOUR INSURED.**

As I’m sure you’re well aware, an insurer has a duty to communicate this demand to your insured and keep your insured informed about the status of settlement negotiations. California case authority is clear that the failure of an insurer to communicate settlement offers to their insured is in and of itself actionable bad faith.

Where the insurer knows there is a risk that the injured party may obtain a verdict against its insured for more than policy limits, it must keep the insured informed of settlement demands from the third party:

“The company, having the right to select counsel to defend the insured, had the duty to communicate to [the insured] the results of any investigation indicating liability in excess of policy limits, and any offers of settlement which were made so that they might take proper steps to protect his own interest.”

*Martin v. Hartford Acc. & Indem. Co.* (1964 228 Cal. App. 2d 178, 184; *see also,* *Betts v. Allstate Ins. Co.* (1984) 154 Cal. App. 3d 688, 703.

This duty to communicate the offer has been deemed particularly important when it is a demand within the policy limits. *Anguiano v. Allstate Ins, Co*. 209 F. 3d at 1 169. Additionally, “The insured who is kept informed may have further information to give to the carrier; they may use powers of persuasion upon the carrier to increase its offer; they may engage counsel; they may have other courses of action open to them.” *Martin v. Hartford Acc. & Indem. Co.,* 228 Cal .App. 2d at 184. Moreover, insurers have a duty to communicate all demands in excess of policy limits. *Merritt v. Reserve Ins. Co,* (1913) 34 Cal. App. 3d 858, 875.

It is insufficient for you to merely inform your insureds of the sum of the demand. You must actually communicate the full content of this offer to ensure: (1) Your insureds are familiar with the nature of their exposure; (2) Your insureds can fairly evaluate whether or not they wish to offer personal assets, if necessary, to ensure that the fully policy limits are paid on the off-chance that Progressive fails to tender its policy limits; and (3) Your insureds can evaluate whether they wish to retain private counsel (as they should) to communicate to Walmart Claims Services, Inc. the importance of tendering its policy limits so that their personal assets are not exposed to an excess judgment.

**Therefore, request is separately hereby made to immediately direct and forward copies of this herein Time Sensitive Policy Limit Settlement Demand Offer, and all accompanying exhibits and documents, to the attention of: (1) Any and all Walmart Claims Services, Inc. decision makers; and (2) Your insured, WAL-MART STORES, INC.; and (3) Your insured’s private counsel and/or attorneys.**

**Additionally, a further separate request is hereby made that Walmart Claims Services, Inc. provide this office with the contact information for your insured’s private counsel or attorneys.**

As previously mentioned, we hope that this matter can resolve without the necessity of expensive and protracted litigation. If you consider this settlement offer carefully, you will realize that this offer is not only fair, but equitable for all parties involved.

Nevertheless, let us assure you that if your intention is to make paltry settlement offers in light of all the foregoing evidence, expecting that we will simply “go away,” this will not happen. The undersigned attorney has no problem with pursuing cases all the way through jury trial, for as long as it takes to achieve full, fair, and just recovery for his clients, and has had no problems doing so for many years now.

Plainly put, the undersigned has no intention of going away for an insulting settlement amount, and still believes the title of “attorney” means something: being willing to fight through the entire process to get the result to which his client is justly entitled. This firm does not do a “volume” practice; we do not amass hundreds of cases, and seek quick turnovers, dropping cases that seem like they will be “long” or “difficult.” Your offers should be made accordingly.

The liability damages are now known to you. I have enclosed herewith copies of all known records, documentation and information that you will need for evaluating this claim. The damages sustained by our client far exceed the policy carried by your insured. We therefore believe that you are in a position to act promptly upon this demand and tender the full policy limits carried by your insured.

While this correspondence is subject to *Evidence Code* Section 1152, nothing contained herein shall be deemed in any manner to be and admission by, or full explication of any facts or a waiver of our client(s)’ rights or remedies which may be or become available as a result of actions or omissions with respect to the subject matter stated herein or otherwise, all of which rights and remedies, at law, equity and/or otherwise, are specifically hereby reserved. Moreover, nothing in this letter shall be construed as any kind of threat by anyone as we are merely asserting what we believe to be our civil legal remedies.

Lastly, please be advised that this letter shall be deemed admissible as evidence of notice in the file of your insured of Walmart Claims Services, Inc.’s potential exposure from this loss in a prospective bad faith action against Walmart Claims Services, Inc., if necessary.

In the spirit of cooperation and in further attempts to resolve these issues informally and amicably, please feel free contact the undersigned upon receipt of this letter so that we may discuss the issues contained herein on or before the expiration of this settlement demand.

Nevertheless, please be advised that our demand to settle the above referenced claim will expire after **5:00 P.M. ON MARCH 14, 2022**

Thank you for your anticipated courtesy and cooperation in this regard.

I look forward to receiving your response without delay.

Very Truly Yours,

**SEDAGHAT LAW GROUP**

Managing Partner

LS./ls.

Enclosures

cc: Client (*Via Email Only*)

1. Accompanying medical reports and records for all of the aforementioned medical providers are enclosed herein for your reference and review. [↑](#footnote-ref-1)
2. Approximate, not final. Final amount of medical bills and expenses are to be determined and updated pending receipt of final medical billing statements from all referenced medical providers. [↑](#footnote-ref-2)
3. See *Duarte v. Zachariah* (1994) 22 Cal.App.4th 1652, 1664–1665, internal citations omitted [“For harm to body, feelings or reputation, compensatory damages reasonably proportioned to the intensity and duration of the harm can be awarded without proof of amount other than evidence of the nature of the harm”]. [↑](#footnote-ref-3)
4. Approximate, not final. Final amount of medical bills and expenses are to be determined and updated pending receipt of final medical billing statements from all referenced medical providers. [↑](#footnote-ref-4)