

33 North Dearborn Street  
Suite 1930  
Chicago, IL 60602

Via Certified Mail

Paul Pearson  
Pacesetter Adjustment Company  
3045 Westfork Drive  
Baton Rouge, LA 70816

RE: Caridad Patarawan v. Yellow Cab Affiliation, et al  
Claim: YCNM-X-12-03412  
D/A: March 26, 2013

Dear Mr. Pearson:

I wanted to take this opportunity, prior to filing a lawsuit in the Circuit Court of Cook County on behalf of our client, Caridad Patawaran, to make our formal demand for settlement. Pacesetter has indicated that Yellow Cab Affiliation policy limits of insurance coverage on the vehicle involved in this incident of \$350,000.00 without any excess or umbrella coverage. The Plaintiff's demand is for the \$350,000.00 policy. We will not accept anything less than \$350,000.00 and believe we have a good faith basis to do so.

The following is our analysis of the facts and damages in this case and our support for a bad faith claim in the case Pacesetter Adjustment Company / New York Marine and General Insurance Company (hereinafter "Pacesetter Adjustment Company") refuses to tender the applicable limits.

Liability:

On March 26, 2013, Caridad Patawaran was a pedestrian who was in the process of crossing Division Street on Chicago's Northside. She was crossing in a marked crosswalk and had a walk signal. The collision occurred when Yellow Cab driver, Firasathuddin Khan made a left turn from westbound Division to northbound Western. The collision occurred while Ms. Patawaran had a signal and was within the marked crosswalk.

Ms. Patawaran did not hear or see the turning Yellow Cab before impact. There is no indication that Mr. Khan slowed or used his horn prior to impact. The incident was witnessed by Michael Lopez who attributes fault for this incident to the turning Yellow Cab driver exclusively. Mr. Lopez's transcribed statement is included with these materials.

Past Medical History:

There is nothing relevant in Ms. Patatarawan's medical history other than the fact she was a healthy and active 64-year-old woman. She was not under the care of any physician other than a general practitioner prior to March 26, 2013.

### Injuries:

The impact between the Yellow Cab and Ms. Patawaran resulted in the fracture of the fibula and tibia in the left leg. The fractures required open reduction, internal fixation that was performed by Joseph Sheehan at St. Mary of Nazareth Hospital. Ms. Patawaran was hospitalized for her injuries and short-term rehabilitation at St. Mary's

Upon discharge from St. Mary's, Ms. Patawaran went to live with her daughter and her family because she was unable to access her apartment due to a series of stairs. She lived with her daughter for several months following this incident and rented a hospital bed so she could minimize getting up-and-down stairs.

Ms. Patawaran underwent a course of physical therapy and was taken off work by Dr. Sheehan.

## Future

### Loss of Normal Life

This injury caused a substantial loss of a normal life for Caridad Patawaran, a previously active and healthy woman with no restrictions or limitations. Prior to this incident, Caridad, enjoyed brisk walking for exercise, spending time with family and grandchildren along with her full-time work as phlebotomist at St. Mary of Nazareth Hospital where she was employed at the time of this incident.

Ms. Patawaran was a single woman and lived independently in Chicago, IL at the time of this incident. Due to her injuries and the fact that her apartment was only accessible by stairs, she moved in with her daughter, Bernadette Paras, and her family so the family could care for her and because the families apartment did not require use of stairs. Ms. Patawaran lived with her family—and out of her-- apartment

While Ms. Patawaran had returned to her own apartment, she remains hindered by her injuries and requires assistance with household chores that she was able to otherwise do independently. Ms. Patawararn is unable to walk or stand for any extended period of time due to pain in her leg.

### Policy Limits Demand and Bad Faith

Ms. Patawaran's cases exceeds the applicable \$350,000.00 policy. Should you refuse to tender the policy and this case proceeds to a jury trial in the Circuit Court of Cook County, we will a judgment well in excess of your insured's policy limits.

We will therefore allow 30 days for Pacesetter Adjustment Company to notify us of the tender of the policy. **We will withdraw this demand for the policy limit within 30 days, by November 14, 2013.** After that date, we will file a lawsuit and do everything in our power to make sure an excess verdict is entered and every last penny in excess of that verdict is collected.

As you are aware, an insurer's duty to settle is satisfied when there is a "reasonable probability of recovery in excess of policy limits." *Chandler, supra*. It would not be right for an insurance company to gamble with Defendants' money given the likelihood (more than just a "reasonable probability") of a recovery in excess of the policy limits. Such a situation presents itself here.

## Rosenfeld Injury Lawyers

Further, an insurer's duty to settle is that "the third party demands settlement within policy limits." *Chandler, supra*. As outlined above, this demand is for the policy limits. The breach of that duty will be in bad faith and will subject Pacesetter et al to further liability. Assuming the trial court will enter judgment on an excess verdict, we will seek an assignment of Caridad Patawaran's claim against Pacesetter Adjustment Company for negotiating in bad faith and for vexatious delay as permitted under the Insurance Code and the Illinois Supreme Court and Appellate Court decisions of *Haddick v. Valor Insurance*, 198 Ill.2d 409 (2002) and *Marcheschi v. Illinois Farmers Insurance Company*, 299 Ill.App3d 306 (1<sup>st</sup> Dist., 1998), respectively. In that suit we will seek Caridad Parawaran's full damages, attorney's fees, litigation expenses and punitive damages.

Therefore, please be aware that in the event Pacesetter Adjustment does not tender the fully policy limits to settle the case and avoid trial and judgment is entered in excess of \$350,000.00, we will pursue all avenues under the law to recover the full amount of the judgment from Pacesetter Adjustment, New York Marine and General Insurance Company, including all Section 155 fees and penalties and possible punitive damages. Any refusal to assign bad faith claims will be dealt with appropriately consistent with 735 ILCS 5/2-1402(c)(5) and *O'Neill v. Gallant Ins. Co*, 329 Ill.App.3d 1166, 1185 (5<sup>th</sup> Dist. 2002).

As you are aware, under Illinois law, Pacesetter Adjustment Company is obligated to advise its insured that he or she may require independent counsel to defend this action in case a jury renders an excess verdict which exposes their corporate / personal assets. Given the summary outlined above, I presume Firashathuddin Khan will be made aware of this correspondence.

I look forward to hearing from you by **November 14, 2013**.

Very Truly Yours,

Jonathan Rosenfeld

Encl: Specials, Disc w/ full records (pdf)