



# Standard Demand Package Sample for Attorneys

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### Demand Package

#### Facts and Liability

\_\_\_\_\_  
\_\_\_\_\_

#### Damages

Elements of Damages	Amount
_____	_____
_____	_____
_____	_____

#### Injuries

Diagnosis	ICD Code
_____	_____
_____	_____
_____	_____

Contact Us

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“Knowing that it’s being reviewed not just by a person, but by someone who might be a former lawyer or a former adjuster gives us that satisfaction that **quality people are reviewing** this and making sure that the draft we get back is pretty much ready to go.”

**Anthony Golden**

Managing Partner

Anthem Injury Lawyers

## Standard vs. Basic+ vs. Simple Demands

Sections & Features	Standard	Basic+	Simple (From \$100)
Objective Tests with Positive Findings	X	X	✓
Interventional Treatments	X	X	✓
Medical Summary	✓	X	X
Loss of Household Services	✓	X	X
Lost Wages (if applicable)	✓	X	X
Verdict Analysis	✓	X	X
Punitive Damages (if applicable)	✓	X	X
Future Medical Bills	✓	✓	X
Per Diem Analysis	✓	✓	X
Areas of Opportunity	✓	✓	X
Red Flags, Problems and Priors	✓	✓	X
Facts & Liability	✓	✓	X
Missing Documents	✓	✓	X
Exhibit Management	✓	✓	✓
Past Medical Bills	✓	✓	✓
Diagnosis/ICD-10 Codes	✓	✓	✓

# Table of Contents

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<b>Sample Demand</b>	<b>5-23</b>
Facts & Liability	5
Injuries & Treatments	8
Damages	14
Demand to Settle	22

November 15, 2024

**VIA EMAIL:** [REDACTED]

[REDACTED] Insurance Company

[REDACTED], Claims Adjuster

[REDACTED]

[REDACTED]

**RE: BODILY INJURY DEMAND FOR POLICY LIMITS**

**Our Client:** [REDACTED]

**Your Insured:** [REDACTED]

**Date of Incident:** February 26, 2023

**Claim No.:** [REDACTED]

Dear Mr. [REDACTED] and All Insurance Company Decision-Makers,

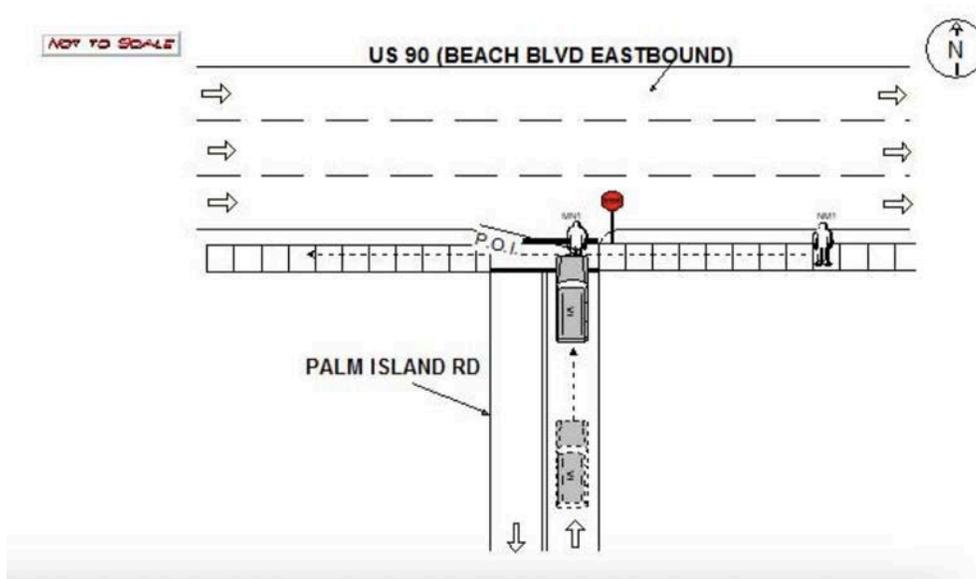
Our firm represents [REDACTED] (“**Mr. [REDACTED]**” or “**our client**”) in connection with a motor vehicle collision that occurred on February 26, 2024, involving [REDACTED] (“**Ms. [REDACTED]**” or “**your insured**”).

This settlement demand and supporting documentation are provided solely for settlement purposes pursuant to Fla. Stat. § 90.408, and may not be used for purposes inconsistent with that authority. Nothing herein limits or impairs our client’s claims, rights, or defenses, which are fully reserved.

**Please inform us of any additional items needed to evaluate this demand within 10 days. Kindly forward this demand to all insurance company decision-makers and Ms. [REDACTED].**

## 1. FACTS & LIABILITY

On February 26, 2023, Mr. [REDACTED] was a pedestrian traveling westbound on the sidewalk alongside U.S. 90 (Beach Boulevard) near its intersection with Palm Island Road in Jacksonville, Duval County, Florida. As Mr. [REDACTED] lawfully traversed through the pedestrian crosswalk, suddenly and without warning, he was struck by a vehicle operated by Ms. [REDACTED], who was traveling northbound on Palm Island Road. Ms. [REDACTED]'s vehicle struck the right side of Mr. [REDACTED]'s body, causing him to spin around before falling onto the ground. The collision resulted in Mr. [REDACTED] sustaining significant personal injuries and other damages.



As exposed in the Florida Traffic Crash Report,<sup>1</sup> Deputy [REDACTED] of the Jacksonville Sheriff's Office investigated the collision and determined that Ms. [REDACTED] was the sole party responsible for the collision due to driving while intoxicated and her failure to yield the right-of-way.

**The conditions for establishing liability are clear.** Ms. [REDACTED] was at all times relevant to this matter subject to the duty of care placed upon the operator of a motor vehicle by Florida law, including the duty to exercise reasonable care for the health and safety of lawful pedestrians upon Florida's roadways, Mr. [REDACTED] in particular. In breaching her affirmative duty on February 26, 2023, Ms. [REDACTED] caused a collision with Mr. [REDACTED], which proximately resulted in Mr. [REDACTED] sustaining severe personal injuries and other damages, including punitive damages, for which Ms. [REDACTED] is liable.

<sup>1</sup> Exhibit 1 - Florida Traffic Crash Report.

Pursuant to **Fla. Stat. § 316.193**, all drivers are expressly prohibited from operating or otherwise being in physical control of a motor vehicle while under the influence of alcohol or drugs that impairs his or her ability to safely operate a motor vehicle. Likewise, all drivers must exercise due care to avoid colliding with any pedestrian, and must yield the right-of-way to pedestrians crossing the roadway within a crosswalk, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. **Fla. Stat. § 316.125**. In addition, pursuant to **Fla. Stat. § 316.192**, a driver who operates his or her motor vehicle in willful or wanton disregard for the safety of others commits the act of, and is liable for, reckless driving.

**Here, it is clear that 100% liability rests with Ms. [REDACTED]**, who operated her vehicle with complete and utter disregard for health and safety of Mr. [REDACTED] on February 26, 2023, by driving while under the influence of alcohol and failing to yield the right-of-way to Mr. [REDACTED] who was lawfully crossing in a clearly marked pedestrian crosswalk. In doing so, Ms. [REDACTED] was reckless, willful, and wanton, and her conduct demonstrated an entire want of care or concern for Mr. [REDACTED].

Certainly, a jury will easily glean from the facts and circumstances leading to Mr. [REDACTED]'s injuries that Ms. [REDACTED] breached her duty of care and could have prevented Mr. [REDACTED] from suffering harm on February 26, 2023, had she simply adhered to Florida's rules of the road.

Ms. [REDACTED]'s failures created an unsafe and unreasonably dangerous roadway environment that placed the safety and well-being of Mr. [REDACTED] foreseeable and serious risk. As a direct and proximate result of Ms. [REDACTED]'s reckless and willful failures, Mr. [REDACTED] sustained significant severe personal injuries and other damages for which Ms. [REDACTED] is undoubtedly liable.

**As evidenced by the photographs below, the February 26, 2023, collision occurred within an unobscured pedestrian crosswalk that resulted in severe personal injuries and other damages.<sup>2</sup>**

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<sup>2</sup> Exhibit 2 - Incident Scene Photographs.

Insurance Company

November 15, 2024

Page 4 of 24



[NTD: The provided request indicates that [REDACTED] was the owner and operator of the vehicle that struck [REDACTED], however, the police report names [REDACTED] as the owner and operator. We have utilized the information provided in the report, though you may wish to confirm with the agency on its accuracy or modify the above facts and liability statements.]

## 2. INJURIES & TREATMENTS

### 2.1. Summary of Injuries

The below tables are non-exhaustive lists/summaries of the injuries and treatments Mr. [REDACTED] sustained as a direct and proximate result of the February 26, 2023, collision.

ICD Code	Description
M25.511	Pain in Right Shoulder
M25.512	Pain in Left Shoulder
M43.8X2	Other Specified Deforming Dorsopathies, Cervical Region
M46.94	Unspecified Inflammatory Spondylopathy, Thoracic Region
M46.96	Unspecified Inflammatory Spondylopathy, Lumbar Region
M54.12	Radiculopathy, Cervical Region
M54.16	Radiculopathy, Lumbar Region
M62.830	Muscle Spasm of Back
M99.01	Segmental and Somatic Dysfunction of Cervical Region
M99.02	Segmental and Somatic Dysfunction of Thoracic Region
M99.03	Segmental and Somatic Dysfunction of Lumbar Region
M99.04	Segmental and Somatic Dysfunction of Sacral Region
S13.4XXA	Sprain of Ligaments of Cervical Spine
S16.1XXA	Strain of Muscle, Fascia and Tendon at Neck Level
S23.3XXA	Sprain of Ligaments of Thoracic Spine
S29.012A	Strain of Muscle and Tendon of Back Wall of Thorax
S33.5XXA	Sprain of Ligaments of Lumbar Spine
S33.6XXA	Sprain of Sacroiliac Joint
S39.012A	Strain of Muscle, Fascia and Tendon of Lower Back

## 2.2. Treatment

Medical Center	
Timeline	February 26, 2023
No. Visits	1
Summary	<ul style="list-style-type: none"> <li>On February 26, 2023, Mr. [REDACTED] presented to the emergency room for emergent treatment and care. Upon arrival, Mr. [REDACTED] complained of lower back pain, right arm and right leg pain, and posterior head pain. The attending emergency physician ordered X-rays of Mr. [REDACTED]'s bilateral legs and right arm and a brain MRI, which revealed no acute abnormalities. After a physical examination and reviewing the results of Mr. [REDACTED]'s diagnostic imaging, the attending emergency physician diagnosed Mr. [REDACTED] with a back strain/sprain and a head injury. The attending emergency physician discharged Mr. [REDACTED] with prescriptions for Flexeril and Ibuprofen and instructions to consult with his primary care physician if his symptoms persisted or worsened.</li> </ul>
Documents	<ul style="list-style-type: none"> <li>Exhibit 3 - [REDACTED] Medical Center - Records</li> <li>Exhibit 8 - [REDACTED] Medical Center - Bills</li> <li>Exhibit 9 - [REDACTED] Emergency Physicians - Bills</li> <li>Exhibit 10 - [REDACTED] Radiology Specialists - Bills</li> </ul>

Chiropractic	
Timeline	February 27, 2023 - May 26, 2024
No. Visits	68
Summary	<ul style="list-style-type: none"> <li>On February 27, 2023, Mr. [REDACTED] presented to [REDACTED], D.C., for a chiropractic evaluation and treatment. During the initial consultation, Mr. [REDACTED] complained of radicular cervical and lumbar spine pain, right hip, knee, and foot/ankle pain, pain throughout his sternum, and frequent headaches that inhibited his ability to sleep and prevented him from participating in his normal activities of daily living. After a complete and thorough physical examination, Dr. [REDACTED] recommended a treatment plan that consisted of but was not limited to, the following: chiropractic manipulation, soft tissue therapy, and</li> </ul>

manual therapy. The goals of Mr. [REDACTED]'s treatment plan were to decrease his pain and associated limitations throughout all affected areas and increase his functionality in the performance of his normal activities of daily living. **Dr. [REDACTED] opined that Mr. [REDACTED]'s injuries, to a reasonable degree of medical certainty, were directly related to his February 26, 2023, motor vehicle collision.**

- On June 12, 2023, Mr. [REDACTED] returned to Dr. [REDACTED] for a chiropractic progress examination. Upon arrival, Mr. [REDACTED] stated that he remained symptomatic for cervical and lumbar spine pain that radiated into his upper extremities and left lower extremities and that he required the use of a cane for ambulation. After a clinical examination and review of Mr. [REDACTED]'s diagnostic imaging, Dr. [REDACTED] recommended that he continue treatment with his pain management specialist for **consideration of interventional or surgical measures** to resolve his cervical complaints.
- On May 26, 2024, Mr. [REDACTED] returned to Dr. [REDACTED] for a chiropractic progress examination. Mr. [REDACTED] received chiropractic manipulation, soft tissue therapy, and manual therapy. After completing an examination, Dr. [REDACTED] discharged Mr. [REDACTED] from active weekly care, with a recommendation to follow up for monthly maintenance care to sustain his present injury status and continue to follow up with his pain management specialists.

[NTD: Individual date of service records were not present for visits on March 8, April 17, June 3, or June 27th. Based upon the provided billing, it appears that these were routine service visits which likely did not yield additional diagnoses, though you may wish to confirm with the provider.]

Documents

- Exhibit 4 - [REDACTED] Chiropractic - Records
- Exhibit 11 - [REDACTED] Chiropractic - Bills

Imaging Center

Timeline March 12, 2023

No. Visits 1

Summary

- On March 12, 2023, Mr. [REDACTED] underwent diagnostic imaging which revealed, in relevant part, the following:
  - **MRI of the Cervical Spine:**
    - **C4-C5: Broad-based posterior annular bulge, annular fissure**, and approximately 6.3 mm central disc extrusion impinging on the cervical spinal cord. A portion of the disc is displaced to the cranial aspect.
    - **C5-C6: Broad-based posterior annular bulge, annular fissure, and approximately 3.5 mm central disc protrusion** abutting the cervical cord.
    - **C6-C7: Broad-based posterior annular bulge** and approximately 5 mm central disc extrusion with posterior osteophytes impinging on the cervical spinal cord. A portion of the disc is displaced to the caudal aspect. Uncovertebral and facet joint hypertrophic changes.
  - **MRI of the Lumbar Spine:**
    - **L4-L5: Broad-based posterior annular bulge** and approximately 5 mm central disc extrusion abutting the L5 nerve roots. A portion of the disc is displaced to the caudal aspect. Facet joint hypertrophic changes. Neural foraminal narrowing.
    - **L5-S1: Broad-based posterior annular bulge and central/left central annular fissure.** Right central to foraminal annular fissure and approximately 5 mm disc extrusion abutting the exiting nerve roots. A portion of the disc is displaced to the cranial aspect. Narrowing of the neural foramina. Bilateral pars interarticularis defects causing approximately 2 mm anterior subluxation of the posterior margin of the L5 on S1.

[NTD: The referring provider listed on the imaging study for this provider is [REDACTED], who appears to be a primary care physician, however, no documentation matching a physician of this name was provided in your request or uploads. You may wish to contact your plaintiff to determine where and when he was treated by [REDACTED] to obtain their records.]

Documents

- Exhibit 5 - [REDACTED] Imaging Center - Records
- Exhibit 12 - [REDACTED] Imaging Center - Bills

### Spine and Pain Center

Timeline March 14, 2023 - December 7, 2023

No. Visits 4

Summary

- On March 14, 2023, Mr. [REDACTED] presented to [REDACTED], M.D., for a pain management consultation and treatment. During the initial consultation, Mr. [REDACTED] complained of ongoing cervical and lumbar pain and instability, numbness that radiated to his bilateral extremities, frequent headaches, and dizziness. After a clinical examination, Dr. [REDACTED] diagnosed him with cervical and lumbar disc displacement and cervical radiculopathy and recommended that Mr. [REDACTED] continue his conservative treatment and undergo **Cervical Interlaminar Epidural Steroid Injections at C5-T1**. Dr. [REDACTED] advised that if Mr. [REDACTED] received no relief, bilateral Medial Branch Blocks or surgical intervention would be considered.
- On August 19, 2023, Mr. [REDACTED] returned to Dr. [REDACTED], at which time he underwent **C5-T1 Cervical Interlaminar Epidural Steroid Injections**. Mr. [REDACTED] tolerated the procedure well and was discharged with post-injection care instructions. He was advised to follow up two to three weeks later in the clinic to assess the effectiveness of the injections before determining if further interventional or surgical methods were necessary.
- On September 6, 2023, Mr. [REDACTED] returned for re-examination. He continued to experience significant cervical pain which was not alleviated by the previously provided injections. After examining and discussing the available treatment options, Dr. [REDACTED] recommended that Mr. [REDACTED] undergo a **C5-C6 Anterior Cervical Discectomy and Fusion** at [REDACTED] Surgery Center. Mr. [REDACTED] was provided with instructions about this operation and advised to weigh this option alongside continued non-operative care before making a final decision and was instructed to continue with his chiropractic care.
- On December 7, 2023, following his surgical procedure at [REDACTED] Surgery Center, Mr. [REDACTED] returned to Dr. [REDACTED] for a re-examination. He continued to experience pain in his cervical and

lumbar spine, though mildly reduced following the procedure, and noted slight improvements to his overall swelling and headache symptoms. Dr. [REDACTED] performed a physical examination and recommended continued maintenance care with his chiropractor to preserve his current injury status, as well as follow-up pain management visits to continue monitoring his lumbar injuries with a probable need for **Bilateral Lumbar Transforaminal Epidural Steroid Injection at L4-S1**. Dr. [REDACTED] opined that Mr. [REDACTED]'s injuries, to a reasonable degree of medical certainty, were directly related to his February 26, 2023, motor vehicle collision.

[NTD: At his March 14, 2023 visit, Mr. [REDACTED] stated that he had been in a collision three years prior, after which he suffered significant neck and back pain. You may wish to obtain prior records to assess the similarity of his injuries and gain additional context on this prior incident.]

Documents

- Exhibit 5 - [REDACTED] Spine and Pain Center - Records
- Exhibit 13 - [REDACTED] Spine and Pain Center - Bills

### Surgery Center

Timeline November 9, 2023

No. Visits 1

Summary

- On November 9, 2023, Mr. [REDACTED] presented to Dr. [REDACTED], at which time he underwent a **C5-C6 Anterior Cervical Discectomy and Fusion**. Mr. [REDACTED] tolerated the procedure well and was discharged with prescriptions for Oxycontin and Gabapentin and instructions to return for a post-operative examination at [REDACTED] Spine and Pain Center.

Documents

- Exhibit 7 - [REDACTED] Surgery Center - Records
- Exhibit 14 - [REDACTED] Surgery Center - Bills
- Exhibit 15 - [REDACTED] Anesthesia Consultants - Bills

### 3. DAMAGES

#### 3.1. Total Projected Claim Value

<b>Elements of Damages</b>	
<b>Economic Damages</b>	
Past Medical Expenses	\$117,892.42
Future Medical Expenses	\$64,290.64
Loss of Income	\$26,230.30
Loss of Household Services	\$11,248.23
<b>Non-Economic Damages</b>	
Past and Future Pain and Suffering	\$429,120.00
Punitive Damages	\$150,000.00
<b>Total Damages</b>	<b>\$798,781.59</b>

### 3.2. Past Medical Expenses

To date, Mr. [REDACTED] has incurred medical expenses as itemized below.

Provider	Date of Service	Amount Charged	Supporting Document(s)
[REDACTED] Medical Center	2/26/2023	\$18,951.22	Exhibit 8
[REDACTED] Emergency Physicians	2/26/2023	\$2,600.50	Exhibit 9
[REDACTED] Radiology Specialists	2/26/2023	\$1,410.00	Exhibit 10
[REDACTED] Chiropractic	2/27/2023 to 5/26/2024	\$22,200.75	Exhibit 11
[REDACTED] Imaging Center	3/12/2023	\$2,915.00	Exhibit 12
[REDACTED] Spine and Pain Center	3/14/2023 to 12/7/2023	\$1,649.05	Exhibit 13
[REDACTED] Surgery Center	11/9/2023	\$66,335.00	Exhibit 14
[REDACTED] Anesthesia Consultants	11/9/2023	\$1,830.90	Exhibit 15
<b>Total</b>		<b>\$117,892.42</b>	

[NTD: As noted in the medical summary for [REDACTED] Imaging Center, we believe there is missing documentation for physician [REDACTED], which may include additional medical billing.]

If you dispute any of Mr. [REDACTED]'s medical treatment or bills as unnecessary or unreasonable, please specify the disputed items in writing. Otherwise, we will assume you agree with the necessity and reasonableness of Mr. [REDACTED]'s medical treatments and bills.

### 3.3. Future Medical Expenses

Mr. [REDACTED] will require additional future treatment as identified below.

Procedure	Years	Per Year	Cost	Total
Pain Management Follow-Up Appointments <sup>3</sup>	3	8	\$549.68	\$13,192.32
Bilateral Lumbar Transforaminal Epidural Steroid Injection at L4-S1 <sup>4</sup>	1	3	\$16,650.00	\$49,950.00
Continued Chiropractic Care <sup>5</sup>	1	4	\$287.08	\$1,148.32
<b>Total</b>				<b>\$64,290.64</b>

*Healthcare and medication costs are expected to rise, and we reserve the right to update or extend our estimate to account for further care needs.*

<sup>3</sup> Exhibit 13 - [REDACTED] Spine and Pain Center - Bills.

<sup>4</sup> Exhibit 13 - [REDACTED] Spine and Pain Center - Bills.

<sup>5</sup> Exhibit 11 - [REDACTED] Chiropractic - Bills.

### 3.4. Loss of Income

Based on the enclosed Economic Loss Report estimating that Mr. █████ will be unable to return to work until at least August 2024.<sup>6</sup> Mr. █████ suffered a loss of income totaling **\$26,230.30** when he was rendered unable to work due to the injuries he sustained in the February 26, 2023, collision.

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<sup>6</sup> Exhibit 16 - Loss of Income Documentation and Economic Loss Report.

### 3.5. Loss of Household Services

Mr. [REDACTED] has been unable to contribute valuable household services for which he is entitled to the below compensation:

1. Prior to February 26, 2023, Mr. [REDACTED] contributed an estimated average of 1.17 hours of household services per day to his household, in line with the average contribution of similarly aged persons in Florida.
2. The monetary value of Mr. [REDACTED]'s labor is consistent with the average housekeeping salary of \$15.50 an hour in Florida, as estimated from the May 2024 Report on Occupational Employment and Wages by the U.S. Bureau of Labor Statistics.<sup>7</sup>
3. Mr. [REDACTED] suffered a 100% impairment from contributing to household services from February 26, 2023, to May 26, 2024, and a conservative 15% impairment for three years thereafter.

Assuming no further impairment of household services after May 26, 2027, we calculate the value of Mr. [REDACTED]'s loss of household services between February 26, 2023, and May 26, 2027, at **\$11,248.23**.

Loss of Household Services Schedule					
Start of Loss Date	End of Loss Date	Hourly Rate	Hours Per Day	% Impaired	Net Loss
2/26/2023	5/26/2024	\$15.50	1.17	100%	\$8,269.56
5/27/2024	5/26/2027	\$15.50	1.17	15%	\$2,978.67
<b>Total Loss of Household Services</b>					<b>\$11,248.23</b>

Injured plaintiffs can recover damages for loss of household services in Florida, which encompass tasks such as ironing, washing dishes, and general cleaning. *See Colbert v. United States*, 2014 WL 11353232 (M.D. Fla. 2014); *Terry v. United States*, 2008 WL 619317 (M.D. Fla. 2008); *Burch v. United States*, 2006 WL 4876954 (M.D. Fla. 2006); *Miami Transit Co. v. Scott*, 58 So. 2d 542 (Fla. 1952); *see also, Estrada v. Mercy Hosp., Inc.*, 121 So. 3d 51 (Fla. Dist. Ct. App. 2013) (an award of economic damages in a medical malpractice claim included the

<sup>7</sup> U.S. DEPT. OF LABOR., Div. of Occupational Emp't & Wage Statistics, Rep. on Occupational Emp't & Wages (May 2024) (accessed May 2024). BLS.gov cannot vouch for the data or analyses derived from these data after the data have been retrieved from BLS.gov.

present value of the patient's loss of household services); *Hassan v. U.S. Postal Serv.*, 842 F.2d 260 (11th Cir. 1988) (under the Federal Tort Claims Act injured plaintiffs can recover for household services even if such services are provided gratuitously); *White Construction Co., Inc. v. Dupont*, 430 So. 2d 915 (Fla. 1st DCA 1983) (recognizing the value of loss of household services; where there is no risk of double recovery, loss of services damages are recoverable).

### 3.6. Past and Future Pain and Suffering

The February 26, 2023, collision resulted in Mr. [REDACTED] sustaining significant noneconomic damages, including considerable physical and emotional pain and suffering, for which he is entitled to compensation.

Florida law allows for an injured plaintiff to recover noneconomic damages, which includes physical pain and suffering, as a result personal injuries tortiously and proximately caused by the wrongful acts/omissions of a defendant. *Loftin v. Wilson*, 67 So. 2d 185 (Fla. 1953). In addition to considering pain and suffering that has already been endured by the plaintiff in a personal injury action, future pain and suffering resulting from the injury is a proper element of damages to be considered by the trier of fact. *Sears, Roebuck & Co. v. Genovese*, 568 So. 2d 466 (Fla. Dist. Ct. App. 1990). The term “noneconomic damages” means and includes, for example, “nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.” Fla. Stat. Ann. § 766.202(8).

The determination of an injured plaintiff’s noneconomic damages, including past and future pain and suffering, is decidedly left to the sound discretion of the trier of fact. *Le Juene Rd. Hosp., Inc. v. Watson*, 171 So. 2d 202, 204 (Fla. Dist. Ct. App. 1965); *Kraus v. Osteen*, 135 So. 2d 885, 888 (Fla. Dist. Ct. App. 1961). As to the method of calculating damages, including past and future pain and suffering noneconomic damages, *per diem* arguments (i.e., a certain monetary amount for each day an injured plaintiff suffered from the pain and suffering as a result of the injuries proximately caused by a negligent tortfeasor) are not prohibited, and the jury enjoys wide latitude in determining the amount of noneconomic damages to award an injured plaintiff. *See, e.g. McDaniel v. Prysi*, 432 So. 2d 174, 175 (Fla. Dist. Ct. App. 1983) (“In Florida, the propriety of making *per diem* arguments such as this rests within the sound discretion of the trial court.”); *Ratner v. Arrington*, 111 So. 2d 82, 89 (Fla. Dist. Ct. App. 1959) (in a personal injury action, the plaintiff’s suggestion of a *per diem* amount approach in computing damages for pain and suffering was not an error). Florida courts may instruct a jury as follows:

Any bodily injury sustained by [Plaintiff] and any resulting pain and suffering [disability, physical impairment, disfigurement, mental anguish, inconvenience, or loss of capacity for the enjoyment of life] experienced in the past or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just in the light of the evidence.

Florida Standard Jury Instructions (Civil) 501.2.

There is no question that the February 26, 2023, collision caused Mr. █████ a great deal of physical and emotional pain and suffering. Since the collision, Mr. █████'s priorities have shifted from parenting and providing for his family to pain management. Mr. █████ is prescribed Oxycodone up to three times daily for severe neck and back pain. He tries not to take it as often as prescribed; however, sometimes, it is simply, and unfortunately, a necessity. Pain, along with the use of narcotics, causes Mr. █████ to tire easily, which makes it difficult to keep up with his former lifestyle and activities. Pain also negatively impacts Mr. █████'s quality of life, reduces his independence, and hinders his ability to engage in activities he once enjoyed.

Despite his pre-collision neck and back injuries, Mr. █████ enjoyed a physically active lifestyle, which included regular cardio exercise, running, and competing throughout Florida. To be clear, Mr. █████'s prior neck and back injuries never hindered or otherwise impeded his ability to run or participate in competitive races. The cumulative effect of these limitations has been devastating for Mr. █████. His ability to work, engage in social activities, and maintain his independence has been severely compromised. The constant pain and the need for ongoing medical treatment have not only affected his physical well-being but have also taken a toll on his emotional and mental health. Mr. █████'s quality of life has been significantly diminished, and he faces an uncertain future as he continues to navigate the challenges posed by his injuries.



Mr. █████'s pain and suffering are key factors in assessing his damages in this case.

Verdict Analysis

Mr. [REDACTED] is entitled to pain and suffering damages, as supported by the following verdict rendered under similar circumstances:

Verdict	
Citation	[REDACTED], 2019 Jury Verdicts LEXIS [REDACTED].
Jurisdiction	Broward County, Florida
Award	\$538,600.00 ( <i>entire award apportioned to Pain and Suffering damages</i> )
Case Facts	<p>On February 23, 2013, [REDACTED] was struck by a vehicle operated by defendant [REDACTED] while crossing the street in a crosswalk on Magnolia Terrace in the City of Hollywood.</p> <p>[REDACTED] filed a lawsuit against [REDACTED], alleging negligence for failing to yield the right-of-way to a pedestrian in a crosswalk. He claimed that he had a green walk signal and was behind two other pedestrians who were also crossing legally. After jury deliberation, [REDACTED] was awarded \$538,600.00 for his past and future pain and suffering.</p>
Injuries	<p>[REDACTED] was taken to [REDACTED] Hospital and Medical Center, where he had radiological studies and was diagnosed with a fracture of the lateral tibial plateau at his left knee, multi-level cervical herniations, and a head injury. [REDACTED] underwent a course of chiropractic care, consulted his primary care physician and an orthopedic specialist, and received a series of injections to his cervical spine. When these injections failed to improve his symptoms, he underwent a cervical fusion procedure, on April 16, 2012, followed by six months of physical therapy.</p> <p>At trial, [REDACTED] claimed that his injuries hindered his mobility, which was supported by testimony from his treating orthopedic surgeon that a future knee replacement and/or conservative injections could be necessary.</p>

The plaintiff above and Mr. [REDACTED] suffered personal injuries and other damages as a result of a reckless, careless, or otherwise negligent tortfeasor. This verdict represents a strong benchmark for estimating the *minimum amount* a similarly situated jury would award Mr. [REDACTED] today.

Noneconomic Damages - Pain and Suffering

As illustrated in the below per diem analysis, Mr. [REDACTED]'s claim for pain and suffering is conservatively valued at **\$429,120.00**.

- \$30.00/hr. for initial pain and suffering from February 26, 2023, to May 26, 2024; and
- \$12.00/hr. for subsequent pain and suffering from May 27, 2024, to May 26, 2027.

<b>Pain &amp; Suffering</b>	
<b>Initial Pain &amp; Suffering</b>	
Initial Period (in Days)	456
Waking Hours/Day	16.0
Reasonable Compensation/Hour	\$30.00
<b>Total Initial Pain &amp; Suffering</b>	<b>\$218,880.00</b>
<b>Subsequent Pain &amp; Suffering</b>	
Subsequent Years with Pain	3
Days/Year	365
Waking Hours/Day	16.0
Reasonable Compensation/Hour	\$12.00
<b>Total Subsequent Pain &amp; Suffering</b>	<b>\$210,240.00</b>
<b>Total Pain &amp; Suffering</b>	<b>\$429,120.00</b>

In light of the per diem and representative verdict analysis above, Mr. [REDACTED] is entitled to **\$429,120.00** as compensation for his pain and suffering.

### 3.7. Punitive Damages

“A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence.” Fla. Stat. Ann. § 768.72(2). For example, “juries may award punitive damages where voluntary intoxication is involved in an automotive accident in Florida without regard to external proof of carelessness or abnormal driving, provided always the traditional elements for punitive liability are proved, including proximate causation and an underlying award of compensatory damages.” *Ingram v. Pettit*, 340 So. 2d 922, 924 (Fla. 1976) (noting that intentional conduct and recklessness constitute culpable negligence warranting the imposition of punitive damages). The term “culpable negligence” has been defined as a basis for punitive damages by the Florida Supreme Court: “[t]he character of negligence necessary to sustain an award of punitive damages must be of ‘a gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them.’” *Carraway v. Revell*, 116 So. 2d 16, 20 n.12 (Fla. 1959) (quoting *Cannon v. State*, 91 Fla. 214, 221, 107 So. 360, 363 (1926)). Florida courts may instruct a jury, in pertinent part, as follows:

[Plaintiff] claims that punitive damages should be awarded against [Defendant] for [Defendant’s] conduct in [operating a motor vehicle while intoxicated]. Punitive damages are warranted against [Defendant] if you find by clear and convincing evidence that [Defendant] was guilty of [intentional misconduct or gross negligence], which was a substantial cause of [Plaintiff’s injury]. Under those circumstances you may, in your discretion, award punitive damages against [Defendant]. ... “Intentional misconduct” means that [Defendant] had actual knowledge of the wrongfulness of the conduct and there was a high probability of injury or damage to [Plaintiff] and, despite that knowledge, [Defendant] intentionally pursued that course of conduct, resulting in injury or damage. “Gross negligence” means that [Defendant] had actual knowledge of the wrongfulness of the conduct and there was a high probability of injury or damage to [Plaintiff] and, despite that knowledge, [Defendant] intentionally pursued that course of conduct, resulting in injury or damage.

████ Insurance Company

November 15, 2024

Page 22 of 24

Fla. Std. Jury Instr. (Civ.) 503.1(b)(1).

On February 26, 2023, Ms. █████ knowingly operated her motor vehicle while under the influence of alcohol, which was reckless, willful, wanton, and committed with utter disregard for the safety and well-being of Mr. █████. Therefore, punitive damages in the amount of **\$150,000.00** represent what we believe to be a reasonable minimum threshold for what a similarly situated jury would award Mr. █████ today on the issue of punitive damages alone.

Insurance Company

November 15, 2024

Page 23 of 24

#### 4. DEMAND TO SETTLE

Mr. [REDACTED] offers to settle his claims against your insured for **\$750,000.00**, which represents the applicable policy limits providing coverage for the February 26, 2023, collision. This settlement demand will remain open until **5:00 P.M. EST on the 30th day after receipt**, after which it will be automatically withdrawn if not accepted.

Your company has a legal duty to act in good faith to resolve this matter. Under Florida law, an insurer's statutory obligation to settle claims in good faith requires the insurer to timely evaluate and pay benefits owed on the insurance policy. *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1275 (Fla. 2000). As a consequence of an insurer's failure to act in good faith, and in the third-party context, Fla. Stat. Ann. § 624.155 "authorizes a third party to file a bad-faith claim directly against the liability insurer without an assignment by the insured upon obtaining a judgment in excess of the policy limits. In addition, this section also authorizes the successful plaintiff to recover attorney's fees in section 624.155(3), a remedy not otherwise clearly available prior to the enactment of the statute." *State Farm Fire & Cas. Co. v. Zebrowski*, 706 So. 2d 275, 277 (Fla. 1997) (internal citations omitted).

While this correspondence is subject to Fla. Stat. § 627.4137, nothing contained herein shall be construed to limit or impair, in any way, any of our client's claims, rights, remedies, or defenses in this matter, all of which are hereby expressly reserved.

Please do not hesitate to contact me if you have any additional questions or concerns. Thank you for your anticipated cooperation.

Sincerely,

[REDACTED], Esq.

**Exhibit List**

<b>Exhibit No.</b>	<b>Description</b>
1	Florida Traffic Crash Report
2	Incident Scene Photographs
3	Medical Center - Records
4	Chiropractic - Records
5	Imaging Center - Records
6	Spine and Pain Center - Records
7	Surgery Center - Records
8	Medical Center - Bills
9	Emergency Physicians - Bills
10	Radiology Specialists - Bills
11	Chiropractic - Bills
12	Imaging Center - Bills
13	Spine and Pain Center - Bills
14	Surgery Center - Bills
15	Anesthesia Consultants - Bills
16	Loss of Income Documentation and Economic Loss Report



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**FACTS & LIABILITY**

**DAMAGES**

Elements of Damages	Amount
Past Medical Expenses	\$45,700.34
Future Medical Expenses	\$173,655.02
Loss of Income	\$16,350.47
Loss of Household Services	\$8,450.51
Past and Future Pain and Suffering	\$730,505.88
<b>Total Damages</b>	<b>\$974,662.22</b>

**INJURIES**

Diagnosis	ICD Code
Cervicalgia	M54.2
Sprain of joints and ligaments of unspecified parts of neck	S1.90XA
Radiculopathy of thoracic region	M54.14
Lumbar radiculopathy	M54.16

**TREATMENT**

Provider	Chiropractic & Wellness
Dates of Treatment	6/22/2022 - 11/13/2022

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