

M.K. STILES, LLC
1412 Mainline Boulevard
Charlotte NC, 28203

PERSONAL & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

March 6, 2016

Via Email

Ms. Sandra (Sandy) Johnson
P.O. Box 13
Charlotte NC

**Re: Potential claim for the recovery of damages suffered from a car accident in
Charlotte, on November 1, 2013.**

Dear Ms. Johnson:

I hope you have been well. At our meeting last week, you asked whether you can recover money damages, in the amount of your bills paid, reimbursement for lost pay, and possibly more to cover bills that are now late, due to you being out of work for six weeks, all as a consequence of an accident that you were involved in with Mr. Williams. You have stated that you would rather settle to get this over as soon as possible, but would be willing to go to trial if necessary.

After listening to your statement, and reviewing the records that you have submitted, we have identified a legal issue--specifically Mr. Williams' possible negligence--that could result in you recovering money because of the damages you have suffered. This letter will analyze the circumstances surrounding Mr. Williams conduct on the night of the accident. Based on the facts and analysis set out below, although we can make no guarantees as to any outcome at trial, we believe that a jury would likely conclude that Mr. Williams was negligent.

Before analyzing the legal considerations surrounding your potential claim, we would like to set out the terms and conditions of a potential contractual relationship between our firm and you. Section 1.0 through Section 8.0 describes the terms and conditions, and Section 9.0 and Section 10.0 provide some legal considerations with respect to a potential negligence claim against Mr. Williams.

1. M.K. STILES, LLC AND YOU

- 1.1 **Advice.** Any advice we give you will be provided solely to you as our client and solely for the purpose for which we were instructed. M.K. Stiles, LLC, shall exercise independent professional judgment and render candid advice. In rendering advice, we may refer not only to the law, but also to other considerations such as moral, economic, social and political factors, that may be relevant to your situation. Our advice may not be used or relied on for any other purpose or by any person other than you without our express prior written agreement.

2. **CONFIDENTIALITY**

- 2.1 **Duty of confidentiality.** The information that we receive from you will be kept confidential except to the extent you agree otherwise, or we are required to disclose it by law or our ethical and professional rules. We owe the same duty of confidentiality to all our clients.

3. **SCOPE OF REPRESENTATION**

- 3.1 **The scope of your request.** You have asked us whether you can recover money damages, in the amount of your bills paid, reimbursement for lost pay, and possibly more to cover bills that are now late, due to you being out of work for six weeks, all as a consequence of an accident that you were involved in with Mr. Williams. You have stated that you would rather settle to get this over as soon as possible, but would be willing to go to trial if necessary.

- 3.2 **Ordinary process.** Our normal process is to begin by “in-taking” all necessary information to ensure your instructions are clear and the task we are being asked to perform is properly understood. The intake process can be by way of initial meeting, telephone, email, regular mail, or a combination of these methods. You have already provided us with the information necessary to provide an initial legal analysis of your situation, and to prepare this attorney client letter. The purpose of the analysis provided in Section 9.0 and Section 10.0 of this letter is to help you decide on how you would like to proceed.

- 3.3 **The next step.** Once you have decided on how you would like to proceed, we will provide you with a detailed letter confirming your final instructions and explain the documentation we have prepared on your behalf. We will forward this documentation to you by whatever method you instruct, the normal choices being email, regular mail, courier, or client pick-up at our offices. After you have received and reviewed our detailed letter, we will endeavor to ensure that all questions, concerns or changes are attended to.

4. **TIMING AND EVENTS OF LITIGATION**

The following subsections describe the timing and events of a typical automobile tort claim, which would likely occur should you decide to engage M.K. Stiles, LLC, to take your claim to the next step.

- 4.1 **Case initiation.** The initial step is to conduct a final and complete client intake; perform initial fact investigations; perform further legal research; draft a complaint and an answer, as well as any cross-claims, counterclaims, or third-party claims if necessary; file a motion to dismiss on procedural grounds; provide defenses to procedural motions; as well as meet and confer regarding case scheduling and discovery.
- 4.2 **Discovery.** Following case initiation, we will conduct discovery. Discovery entails drafting and filing mandatory disclosures; drafting and answering interrogatories; responding to requests for production of documents; identifying and consulting with experts; reviewing expert reports; identifying and interviewing non-expert witnesses; deposing opponent's witnesses; preparing for and attending opponent's depositions; resolving electronically stored information issues; reviewing discovery and providing an overall case assessment; as well as resolving discovery disputes.
- 4.3 **Settlement.** Following discovery, we will attend settlement negotiations; and settlement conferences; and draft settlement agreements if necessary; as well as draft and file any motions to dismiss, if necessary.
- 4.4 **Pretrial Motions.** If a pre-trial settlement cannot be reached, we will begin to prepare for trial. This includes conducting any further legal research necessary; preparing draft motions *in limine*, to request that the judge exclude certain testimony, if necessary; preparing draft motions for summary judgment, if necessary; as well as answering any opponent's motions; preparing for motion hearings; and finally arguing motions.
- 4.5 **Trial.** In the event that your case reaches trial, we will conduct further legal research, if necessary; prepare witnesses and experts; meet with co-counsel (the trial team); prepare opening and closing statements; prepare for direct (and cross) examination; prepare jury instructions; propose findings of fact and conclusions of law; propose orders; and finally conduct the trial.
- 4.6 **Post-Disposition.** Following trial, we will conduct post-disposition settlement negotiations; draft motions for rehearing, in necessary, and help to enforce any judgment rendered.

5. THE TEAM

- 5.1 **Responsible Professional.** I will be the professional responsible for this matter. I will involve other professionals and staff as needed.

- 5.2 **Expert Witness.** In the event your matter proceeds to trial, it is likely that we will need to retain an expert witness. The expert witness would likely be required to prove causation (i.e. who is the responsible party for the accident), as well as the method of calculating and magnitude of damages claimed.

6. BILLABLE COSTS

- 6.1 **Projected cost.** M.K. Stiles, LLC, recognizes that many factors affect the amount of attorney time expended in the different litigation tasks set out in Section 5.0. Among the more obvious factors are case complexity, client expectations, and the working relationship with opposing counsel.

- 6.2 **Typical cost.** According to the National Center for State Courts, “Court Statistics Project,” the median attorney time and cost in automobile tort cases such as yours is as set out in the following table.

Typical Billable Costs for Automobile Tort Cases						
Stage		Sr. Attorney	Jr. Attorney	Paralegal	Expert Witnesses	Total
1	Case Initiation	4.5	5	3		12.5
2	Discovery	12	20	10		42
3	Settlement	8	5	2		15
4	Pre-trial	6	10	4		20
5	Trial	40	30	20	1	91
6	Post-disposition	5	8	3.5		16.5
	Total	75.5	78.0	42.5	1	
	Rate	\$275	\$175	\$90	\$5,000	
	Billable Costs	\$20,763	\$13,650	\$3,825	\$5,000	\$43,238

The typical cost for an automobile tort case such as yours is \$43,238. The purpose of providing you with a typical billable cost summary is to help you better understand M.K. Stiles, Inc’s proposed “contingency fee” arrangement, set out in Section 7.0, and to provide you with important information to help you decide the next step.

- 6.3 **Cost control.** Our initial quantification of damages, which you would be entitled to recover should we win a judgment at trial is \$17,250. Refer to Section 9.0 for a detailed breakdown of the damage calculations.

In order to provide you with cost control for the natural variation in case expenditures and billable hours, we propose to cover all costs associated with your claim, and charge you only a “contingency fee,” which is explained in detail in Section 7.0. Under a contingency fee arrangement, you would not be responsible for paying M.K. Stiles, LLC, any costs, including incidental costs, surrounding your claim, unless you recover money damages through either a pre-trial settlement or a judgment at trial.

- 6.4 **Tracking out-of-pocket costs.** Although we propose to cover all billable costs, and incidental costs, we will nevertheless track all costs based on the hourly rates set out in the table above, and based on any other incidental costs permitted by the rules that govern legal professionals.
- 6.5 **Basis for billable costs.** The billable costs that we track will be based on the time we actually spend in dealing with your file, which may include any of the following: (1) meetings with you and other parties you may request and any time spent preparing for such meetings or travelling to and from such meetings; (2) time spent considering, preparing and working on all required documentation; (3) corresponding with you, including telephone, email, or regular mail; and (4) generally acting on your behalf.
- 6.6 **Summary of costs.** Unless we agree otherwise, we will provide you with a monthly summary of the billable costs incurred. Again, although you are not responsible to pay M.K. Stiles, LLC, unless we achieve a pre-trial settlement, or win a judgment at trial, we believe it is important for us and for you to understand the costs our firm incurs while pursuing your case.

7. CONTINGENCY FEE AND BILLING ARRANGEMENT

- 7.1 **Contingency fee.** A contingency fee is a percent of the recovery you receive from a pre-trial settlement, or a judgment at trial. For clarity, you are responsible to pay M.K. Stiles, LLC, a 33% contingency fee if: (1) a settlement is reached before trial; or, (2) if we win at trial. This means that you will pay M.K. Stiles, LLC, 33% of the total amount of money awarded to you.
- 7.2 **Billing arrangement.** In contingency fee arrangements, we ordinarily bill following receipt of an award of damages. Payment of the contingency fee is due upon receipt of our invoice. Any billed amounts that remain unpaid after 30 days will bear interest at the rates set out in the relevant invoice. We will address and send our bills to you at the address indicated at the beginning of this letter unless you advise us otherwise.
- 7.3 **Method of payment.** All payments are to be made to us by check or wire drawn in the currency in which our bill is issued (or such other payment method or currency as we agree with you in writing). Applicable taxes will be added to our fees.
- 7.4 **Tax withholding.** Except as may be required by law, all fees we ask you to pay us will be paid free and clear of all deductions or withholdings whatsoever. If you are required by law to withhold any deductions or other amounts from any fee you must pay us the sum that will, after the deduction or withholding has been made, leave us with the same amount as we would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

- 7.5 **Advance Fees.** Any advance payments made will be paid into our trust account. While your money is in this trust account, it is yours and any interest it earns belongs to you. The amount paid in advance, plus any interest earned in accordance with our interest policy, may then be used to pay future bills when they are billed by transfer from this trust account.
- 7.6 **Late or Non-Payment.** We will charge you interest at the rate set out on the relevant bill on any amounts not paid within one month of the date on the bill issued to you. We are also entitled to keep deeds, documents and any other items we may hold for you until our fee is paid.
- 7.7 **Trust Money.** Any money we receive on your behalf is placed in our trust account. We will transmit cleared funds received on your behalf on receiving instructions to do so. We reserve the right to return any monies received to the account from which they came.

8. RIGHT TO TERMINATE THE RELATIONSHIP

- 8.1 **Your right to terminate.** You may terminate this relationship at any time. Despite any termination, you will remain responsible to pay for any fee that M.K. Stiles, LLC, has earned before that termination.
- 8.2 **Our right to terminate.** In our case, we will abide by the ethical and professional rules that apply to professionals when terminating an attorney-client relationship.

We may terminate our work if: (a) the job is finished; (b) any final bill remains unpaid for more than 30 days after the date it is issued to you (or such other period expressly agreed with you); (c) we consider that it is not in our mutual best interests for us to continue to act for you; (d) you decide not to instruct us any longer; (e) you become or we consider it likely that you will become insolvent or, in our reasonable opinion, you will have difficulty in paying us in accordance with our terms; or (f) we consider that we are unable to continue to act for professional reasons such as a conflict of interest arising, or your instructions are unlawful, unethical or impractical; (g) We will not cease to act for you without good reason and we will try to provide you with reasonable notice where appropriate.

9. LEGAL CONSIDERATIONS

- 9.1 **Introduction.** In our initial meeting, you explained that you were involved in a serious car accident. We confirmed the law regarding “negligence” and I have some news—we have a legitimate case. Although we can make no guarantees as to any outcome at trial, we believe that a jury will likely conclude that Mr. Williams violated the law by speeding through the residential neighborhood without his headlights on.

For your information, we also believe that we may have a legitimate case against the City of Charlotte, based on its failure to install adequate and properly working street signs. Further, we also believe that we may have a legitimate case against Toyota, based on its failure to successfully install a working airbag. The latter two theories of liability require further research, and are better suited for an in person discussion. Therefore, this discussion will only explain your case with respect to a negligence claim against Mr. Williams.

- 9.2 Summary.** Negligence is a term used to characterize conduct that creates an unreasonable risk of harm to others. If you are negligent, and your negligence causes another person to become injured, then you are legally responsible for paying damages. In order to prevail on a negligence claim, you will have to prove five elements. First, the defendant owed a duty toward the plaintiff (e.g. an automobile driver owes other drivers on the road the duty to drive with reasonable care for another's safety). Second, the defendant failed to act in a reasonable way, or breached his duty (e.g. a driver was intoxicated and did not drive with reasonable care). Third, the defendant's breach was the actual cause of the plaintiff's injuries (i.e. "but-for" the defendant's actions the injury would not have occurred). Fourth, the defendant's breach was the proximate cause of the plaintiff's injuries (i.e. the defendant "should have known" that his actions would cause injury). Finally, the plaintiff suffered actual injuries, for which a claim for damages is allowed.

In order to prove that the defendant was negligent and therefore liable for your injuries, you must prove all of five elements. For instance, one of the elements is "damages," meaning the plaintiff must have suffered damages (e.g. injuries, loss, etc.) in order for the defendant to be held liable. Even if you can prove that the defendant indeed acted negligently, you may not collect damages if you didn't suffer any injuries. Before applying the facts of your case to each element, we would like to recite the facts as we understand them.

- 9.3 Background.** As you described it, you were involved in a car accident at the intersection of Elm and Maple Streets in Charlotte, North Carolina, on November 1, 2013. You stated that you were alone in your car, a white Toyota Corolla, going north on Elm. At the intersection, you ran into defendant Chris Williams' truck, a gray Ford pickup, which was going west on Maple. Williams' truck had no lights on, although it was 6:00 p.m. and dark. The impact threw your head against the support column between the windshield and the driver side window, even though you still had your seat belt on. Doctor's reports, taken after the accident, indicate you suffered a concussion. You further state that you spent two days in the hospital, you missed six weeks of work, and that you still have periodic headaches, which interfere with both your work as an accountant and with your family life.

- 9.4 Mr. Williams Duty.** A negligence suit depends on whether the defendant owed a duty to the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and due to this relationship, the defendant is obligated to act in a certain manner toward the plaintiff. A judge establishes that a duty exists based on the law. According to North Carolina General Statute § 20-129 (1), Required Lighting Equipment of Vehicles, “. . . every vehicle . . . shall be equipped with lighted headlamps . . . during the period from sunset to sunrise . . . or, when there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead. Moreover, according to North Carolina General Statute § 20-141, Speed Restrictions, “No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.”

On the night in question, according the N.C.G.S. § 20-129, N.C.G.S § 20-141 (1), Mr. Williams had a duty to drive with his headlights on; and, (2) Mr. Williams had a duty to drive at a reasonable and prudent speed.

- 9.5 Your statement suggests Mr. Williams breached his duty.** A defendant breaches a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. The jury weighs evidence, and must determine by a preponderance of evidence (i.e. a fact is more likely true than not true) if a duty has been breached.

Your statement asserts that Mr. Williams breached two duties: (1) Mr. Williams did not have his headlights on while driving; and, (2) Mr. Williams was driving unreasonably fast. However, the only evidence presented to prove either of these assertions is your witness statement. Because the evidence in this regard is limited, there is a risk that if we take this case to litigation, Mr. Williams will simply deny these facts. This risk is heightened by your statement that you cannot recollect other specific facts surrounding the accident. Without having seen Mr. Williams defense, this element of your claim presents a risk should we take your claim to trial.

- 9.6 Mr. Williams was an actual cause of your damages.** Under the traditional rules in negligence cases, a plaintiff must prove that the defendant's actions actually caused the plaintiff's injury. This is often referred to as "but-for" causation. In other words, but for the defendant's actions, the plaintiff's injury would not have occurred. The jury will have to answer two questions: (1) if Mr. Williams had his lights on, would the accident have happened; and, (2) if Mr. Williams had been driving the speed limit would the accident have happened?

Based on your statements, it is reasonable to conclude that a jury would respond in the affirmative to both questions, however, it is prudent to remain cautiously optimistic. We will have the burden to prove that the accident would not have happened had Mr. Williams been driving with his headlights on and at a

responsible speed. If we can establish those facts, we can likely establish that Mr. Williams was a “but-for” cause of the car accident. However, in the absence of further evidence, there is a risk that a jury finds otherwise.

9.7 Mr. Williams’ breach of duty was the proximate cause of your damages.

Proximate cause relates to the scope of a defendant's responsibility in a negligence case. A defendant in a negligence case is only responsible for those harms that the defendant could have foreseen through his or her actions. If a defendant has caused damages that are outside of the scope of the risks that the defendant could have foreseen, then the plaintiff cannot prove that the defendant's actions were the proximate cause of the plaintiff's damages.

If we can prove that it was dark, Mr. Williams was speeding in a residential neighborhood, through an intersection, and that he did not have his headlights on, a jury will likely conclude that Mr. Williams’ actions were the proximate cause of the damages you have suffered. Again, here, the evidence is limited to your witness statement. That said, if your assertions of fact are proved, at the very least, Mr. Williams should have known that driving in that circumstance created a risk of harm to both pedestrians and other drivers. In other words, a jury would likely conclude that this accident was foreseeable. If a jury concludes that Mr. Williams could have foreseen the possibility of an accident through his actions, then Mr. Williams will be considered the proximate cause of the accident.

9.8 Your damages were a result of Mr. Williams’s breach of duty. Finally, a plaintiff in a negligence case must prove a legally recognized harm, usually in the form of physical injury to a person or to property. It is not enough that the defendant failed to exercise reasonable care; the failure to exercise reasonable care must result in actual damages to a person to whom the defendant owed a duty of care.

Here, you have good evidence. The following table summarizes the actual damages that you have suffered, which we must prove are the result of the breach of Mr. Williams’ duty of care. In most car accident claims, the negligent party will have to pay the other party monetary damages for their injuries and for their resulting economic losses. These usually cover such costs as hospital bills, mechanic repair fees, and lost wages.

Summary of Damages			
Item No.	Item Name	Total	Date of Occurrence
1	Towing Cost	\$150	11/01/13
2	Body Shop Repaid	\$3,015	11/01/13
3	Medication Rexall Pharmacy	\$94	12/31/13
4	Physicians Services Bills	\$1,660	11/01/13 to 11/28/13
5	County Memorial Hospital	\$3,750	11/01/13
6	Hertz Rental Car	\$1,658	11/04/13 to 11/17/13
7	Economic loss (Wages from job)	\$6,923	11/01/13 to 12/12/13

8	Economic loss (future earnings)	
9	Pain and Suffering	
	Total	\$17,250

According to North Carolina law, a driver has a duty to drive with his headlights on when it is dark outside, and a driver has a duty to drive within the speed limit. We plan to argue to the jury these duties are always important, but most acute, when driving through a residential neighborhood where there is a likelihood to encounter young children playing carelessly.

10. RISKS OF LITIGATION

- 10.1 It is prudent to consider possible counter-arguments. All drivers have a duty to be “vigilant” when behind the wheel. This means that drivers are required to maintain a good level of alertness while driving, in order to be prepared for unexpected occurrences on the road.

Mr. Williams could argue that you contributed to the accident because of your lack of awareness. In other words, had you proceeded through the intersection at a very slow speed, looking carefully both ways, the accident would not have happened—we should expect this line of argument. Since Mr. Williams was certainly in the intersection at the same time or before you were, Mr. Williams will undoubtedly claim the defense of contributory negligence. This counter-argument provides a high risk to success at trial, because if it is successful it completely blocks any recovery.

11. CONCLUSIONS AND RECOMMENDATIONS

In summary, we believe a jury would likely conclude that Mr. Williams was negligent, but we can make no guarantees as to any outcome of a trial. Based on the facts we have recited in this letter, we believe that a jury would likely conclude that Mr. Williams breached his duty to drive with reasonable care if we can prove your assertions that Mr. Williams sped through a residential neighborhood without his headlights on in the dark.

However, we must consider the fact that it has been several years since your accident, and there is limited evidence to prove certain essential elements of the claim. Additionally, we must consider Mr. Williams has a strong defense, which absolutely bars recovery.

Therefore, I would recommend that we contact Mr. Williams’ insurance company to discuss the matter and the possibility of a settlement. Frankly, I recommend that we settle for any amount between \$5,000 and your out-of-pocket total expenses of \$17,250, which is the amount listed as Items 1, 2, 3, 4, 5, 6, 7, set out in the table above. As discussed in Section 7.0, we will apply a 33% contingency fee to the recovery of any monies from Mr. Williams.

If Mr. Williams offers anything less than \$5,000, I recommend that we litigate the case, and let the jury decide in a court of law.

I hope this letter was helpful. I would be pleased to discuss this matter with you further. Feel free to call my office at 704-618-9426 if you have questions, or would like to set up a time to meet.

Very truly yours,

M.K. Stiles, LLC

Matthew Kenneth Stiles

MKS

I acknowledge receipt of the original of this letter, which I have read, and I agree to the terms set out in it.

Ms. Sandra (Sandy) Johnson