GRAHAM LAW
Shining a Light on Safety, Guiding the Way to Justice.

Edward L. Graham, Esq.

October 1, 2018

VIA Electronic Mail
Ashby Davis
Davis, Snyder, Williford & Lehn, P.A.
5 Hawthorne Park Court
Greenville, South Carolina 29615

RE: Angela Patton v. Dr. Gregory Miller, et al.
C/A No. 2009-CP-46-5195

Ashby:

As we discussed recently, this case involves severe and permanent injuries to the entire brachial plexus. Discovery in the case has proven how devastating Alexia's injuries and damages are. A verdict could and should exceed your clients' combined policy limits by a significant amount. See below for some recent verdict amounts.

My reading of the policies applicable to this case is that Dr. Miller has $ 1 million in coverage, and the P.A. has a separate and additional $1 million.

We are willing to settle within policy limits of $2 million in exchange for a general release of all parties. That is a reasonable settlement amount. Reasonable consideration of Alexia's horrific lifelong damages and other issues in the case requires that your insurance carrier pay it, unless settlement under one or both of these policies requires consent of one or both of the insureds, and one or both withhold consent.

Alternatively, we are willing to settle within policy limits for either party … $1 million from either party in exchange for a covenant which allows us to proceed to trial against the non-settling defendant. That is also a reasonable settlement, and reason requires payment of that amount, again unless consent is required and is withheld by one or both insureds.

If you have a different interpretation of the coverage amounts, please let me know as soon as possible. It is my intent to make a settlement demand for the policy limits of each policy or both policies combined. Thus, if the limits are in fact different from my interpretation as set forth in this demand letter, my demand should be construed as being modified to that extent.

Obviously, a favorable verdict for the plaintiff in an amount commensurate with Alexia's injuries would be in excess of policy limits and would put your clients' personal assets at risk. That should be especially concerning for any defendant who has a "consent required" policy and chooses to withhold consent to a settlement within policy limits. A defendant who withholds consent under

those circumstances is of course subject to personal responsibility for the portion of the verdict above policy limits, including the forced sale of any personal assets which are not exempt.

As you well know, under the S.C. Tyger River doctrine, an insurer who refuses settlement within policy limits can be liable for the entire verdict, including that portion above policy limits, plus costs and any applicable interest, if the insurer acts unreasonably in declining to accept the policy limits demand(s). If the defendant(s) consent(s) to settlement within policy limits, and the insurer fails to pay a reasonable demand, assets of consenting defendant(s) can be protected from exposure to loss from any verdict above policy limits by assigning their bad faith claim to the plaintiff. To the contrary, any non-consenting defendant would be putting their own assets at risk, and not those of the insurer, if there is a verdict above policy limits.

As noted above, I said I would provide you with information concerning some recent verdicts. Chuck Zauzig recently obtained a verdict of $2.3 million in Virginia. In the past few months Ken Levine got a verdict of $1.8 million in Dupage County, Illinois; and an arbitration recovery of $2.4 million in Massachusetts. Most recently, near the end of September, Chris Kuhlman and Joe Crosby obtained a verdict of $8.9 million in Minnesota. The latter involved an injury to only C-5 and C-6. These were nerve root avulsions, so the injuries were serious, but nowhere near as serious as the pan plexus injuries in this case. There is an emerging trend of more favorable verdicts for plaintiffs in brachial plexus birth injury cases. Although some defense lawyers and some insurers have been taking solace in the OB emergency statute, that will end when we get authoritative appellate law on these issues.

In this case a verdict of $1 million or more would trigger significant pre-judgment interest based on our offer of judgment and your decision to decline it. Many years have passed since then, so any pre-judgment interest earned in this case would represent a very significant percentage of the verdict. This is yet another reason why your clients should consent to a policy limits settlement, and why your insurer should pay it.

Please discuss these considerations with your clients and inform them (or more likely, remind them) that they have the right to retain personal counsel to advise them on these issues. If they, or either one of them, decide to retain personal counsel, please let me know who the attorney(s) is (are).

Sincerely,

GRAHAM LAW FIRM, P.A.

BY: _____
Edward L. Graham

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