



County, Texas, and may be served with process at his last known residence, 3801 E. 199 Hwy, Springtown, Texas 76082, or wherever he may be found.

5. Defendant Mercury Insurance Services, LLC ("Mercury Insurance"), is an insurance company authorized to do business in the State of Texas that may be served with process through its registered agent, Cogency Global Inc., 1601 Elm St., Suite 4360 Dallas, Texas, 75201-0, or wherever they may be found. Suit is filed against this Defendant in all capacities and Plaintiff requests that the proper name of this party may be substituted as allowed and required by the Texas Rules of Civil Procedure, specifically including the proper name of this business entity.

### **III. JURISDICTION & VENUE**

6. The court has jurisdiction over this cause because the amount in controversy exceeds this court's minimum jurisdictional requirements.

7. Venue is proper in Tarrant County, Texas pursuant to §15.002(a)(1) and §15.002(a)(2), Texas Civil Practices and Remedies Code, because all or a substantial part of the events leading to this cause occurred in Tarrant County, Texas.

### **IV. FACTS**

8. On February 20, 2023, at approximately 3:38pm, Defendant Galan was the driver of a white 2018 Chevrolet Silverado C1500 Truck, owned by and registered to Defendant Galan, traveling west bound on Lakeworth Blvd at the intersection of Boat Club Road and Lakeworth Blvd, an intersection in Lake Worth, Tarrant County, Texas.

9. Plaintiff was traveling south-bound on Boat Club Road but had come to a stop at a red light as she waited for the light to turn green to make a left-hand turn onto Lake Worth Blvd.



10. After Plaintiff's light turned green, Plaintiff began to make a lawful left-hand turn to travel east bound on Lakeworth Blvd.

11. Defendant Galan ran the red light at the intersection of Boat Club Road and Lakeworth Blvd and struck Plaintiff. (video 1 – time stamp 03:38:01).



12. The impact sent Plaintiff's car flying across the intersection, spinning her vehicle until she finally comes to a stop. The force of the impact caused the airbags to deploy in Plaintiff's car.

13. Because of the severity of the wreck, Plaintiff sustained a serious head injury.

14. In the meantime, police arrived at the scene and approached Defendant to find out what happened. Defendant Galan lied to the police and denied running a red light. Instead, Defendant Galan placed all the blame on Plaintiff as she was pulled from her vehicle by a Good Samaritan. Not once did Defendant Galan attempt to help Plaintiff as she sat helpless, dazed, and confused. Plaintiff was unable to advocate for herself due to the injuries she sustained.

15. After the incident, Plaintiff's counsel obtained footage from the Quick Trip Gas Station which showed that Defendant Galan **clearly ran the red light** at an unsafe speed and caused the collision which resulted in significant injuries to Plaintiff.

16. Despite there being a clear video and evidence, Defendant Galan and his representatives continue to place blame on Plaintiff.

17. Defendant Galan was distracted, inattentive, and struck Plaintiff's vehicle which resulted in significant injuries and damages, which were proximately caused by Defendant Galan's negligence and/or negligence per se and gross negligence.

#### V. UNDERINSURED MOTORIST STATUS

18. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

19. Plaintiff would show that at the time of the collision, Defendant Galan maintained financial responsibility, but his liability limits in coverage were so low that he was effectively

underinsured for the damages caused to Plaintiff.

## **VI. UNDERINSURED/UNINSURED MOTORIST COVERAGE**

20. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

21. Plaintiff is an insured of insurance Policy CAPA-02069553 ("the Policy") sold and issued by Defendant Mercury Insurance. The Policy provides underinsured/uninsured motorist coverage.

22. Defendant Galan caused injuries and damages to Plaintiff and was underinsured as defined by the Policy.

23. Plaintiff's injuries and damages far exceed the policy limits of the tortfeasor's policies. Plaintiff carried uninsured/underinsured motorist coverage with Defendant Mercury Insurance. Plaintiff is entitled to the proceeds of the policy limits. All conditions precedent to this action have been satisfied.

24. Therefore, Plaintiff sues Defendant Mercury Insurance for all damages and policy benefits to which she is justly entitled as a result of the motor vehicle collision caused by the negligence of Defendant Galan.

## **VII. CAUSES OF ACTION**

### **A. CAUSES OF ACTION AGAINST DEFENDANT ROBERTO GALAN**

#### **Count one – Negligence**

25. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

26. At the time and on the occasion in question, Defendant Galan was operating a vehicle negligently. Defendant Galan had a duty to exercise ordinary care and operate the vehicle in a reasonable and prudent manner. Defendant Galan breached that duty in the following respects,

including but not limited to the following:

- a) Driving at a rate of speed greater than that at which an ordinary and prudent person would have driven under the same or similar circumstances, in violation of the laws of the State of Texas, including TEX. TRANS. CODE ANN. **§545.351**;
  - b) Operating his vehicle with willful or wanton disregard for the safety of other persons, which disregard was the result of conscious indifference to the rights, welfare and safety of those persons affected by it in violation of the laws of the State of Texas, including TEX. TRANS. CODE ANN. **§545.401**;
  - c) Running a red light, in violation of TEX. TRANS. CODE ANN. **§544.007**;
  - d) Failure to maintain proper control of his vehicle;
  - e) Failure to timely apply the brakes on his vehicle to avoid the collision;
  - f) Failure to keep such lookout as a person of ordinary prudence would have kept under the same or similar circumstances;
  - g) Failure to maintain proper attention while driving;
  - h) Choosing to drive distracted;
  - i) Failure to exercise that degree of ordinary care which a reasonable prudent person would have in the same or similar circumstances;
  - j) Failure to safely turn the vehicle he was operating to avoid the collision;
  - k) Failure to identify, predict, decide, and execute evasive maneuvers appropriately in order to avoid a collision; and
  - l) Failure to control the speed of the vehicle.
27. Each of the foregoing acts and omissions, singularly or in combination with others,

constituted negligence, negligence per se, and/or gross negligence by Defendant Galan and proximately caused the occurrence in question and the serious injuries to Plaintiff, for which Plaintiff is entitled to recover damages hereinafter set forth.

### **Count Two – Negligence Per Se**

28. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

29. Defendant Galan's conduct described herein constitutes an unexcused breach of duty imposed by the Texas Transportation Code. Plaintiff would show the Court that Defendant Galan was negligent per se in that Defendant's conduct violated Texas Transportation Code Section 545.351, Texas Transportation Code Section 544.007(d), and/or Texas Transportation Code Section 544.401.

30. Plaintiff is a member of the class of persons that the Texas Transportation Code was designed to protect.

### **Count Three – Gross Negligence**

31. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

32. Defendant Galan's conduct was more than a momentary thoughtlessness or inadvertence. Rather, the acts and/or omission by Defendant Galan in the preceding paragraphs constitute gross negligence as the term is defined in section 41.001(11) of the Texas Civil Practices and Remedies Code.

33. Defendant Galan's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff. Defendant Galan had actual, subjective awareness of the risk involved, but nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of Plaintiff or of others similarly situated.

34. The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and of Plaintiff's injuries and damages.

## **B. CAUSES OF ACTION AGAINST DEFENDANT MERCURY INSURANCE**

### **Count one – Breach of Contract**

35. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

36. The conduct of Defendant Mercury Insurance constitutes breach of contract. Plaintiff was an insured of an insurance policy sold and issued by Defendant Mercury Insurance. The Policy provided uninsured/underinsured motorist coverage to Plaintiff. The Policy was in full force and effect on the date of the collision.

37. Defendant Mercury Insurance has breached the contract by failing to and/or refusing to pay Plaintiff for injuries and damages suffered by Plaintiff promptly.

### **Count two – Violations of Texas Insurance Code**

38. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

39. Defendant Mercury Insurance's failure to effectuate a prompt, fair, and equitable settlement with respect to which its liability has become reasonably clear is a violation of Texas Insurance Code Section 541.060(a)(2)(A).

40. Defendant Mercury Insurance refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060(a)(7).

41. Defendant Mercury Insurance failed to acknowledge with reasonable promptness pertinent communications related to the claim in violation of Texas Insurance Code Section 542.003(b)(3).



42. Defendant Mercury Insurance failed to attempt in good faith to affect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear in violation of Texas Insurance Code Section 542.003(b)(4).

43. Defendant Mercury Insurance failed to timely commence investigation of the claim or to request from Plaintiff any additional statements or forms that Defendant Mercury Insurance reasonably believed to be required from Plaintiff in violation of Texas Insurance Code Section 542.055(a)(2-3).

44. Defendant Mercury Insurance delayed payment of Plaintiff's claim in violation of Texas Insurance Code Section 542.058(a).

#### **VIII. DAMAGES/RELIEF SOUGHT**

45. As a result of the above-described acts of Defendants, Plaintiff has been severely damaged. Accordingly, Plaintiff is entitled to recover against Defendants for all such applicable damages under Texas law.

46. Plaintiff is entitled to recover the following items of damages, which are in an amount in excess of the minimal jurisdictional limits of this Court.

- a. Physical pain and suffering in the past;
- b. Physical pain and suffering, in reasonable probability, sustained in the future;
- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Reasonable and necessary medical expenses in the past;
- f. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;

- g. Loss of wages in the past;
- h. Loss of wages, in reasonable probability, sustained in the future;
- i. Loss of wage-earning capacity in the past;
- j. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- k. Physical impairment in the past;
- l. Physical impairment, in reasonable probability, sustained in the future;
- m. Loss of the normal enjoyment of the pleasure of life in the past;
- n. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
- o. The value of Plaintiff's UIM policy limits;
- p. Attorney's fees under Tex. Ins. Code Section 541.152(a)(1);
- q. Costs of suit;
- r. Exemplary damages; and
- s. All other relief, in law and equity, to which Plaintiff may be entitled.

#### **IX. EXEMPLARY DAMAGES**

47. The acts and/or omissions of Defendants as set out above constitutes an entire want of care so as to indicate that the acts and/or omissions in question were the result of conscious indifference to the rights, welfare, and safety of Plaintiff, or that they constitute gross negligence, as that term is defined by law, so as to give rise to an award of exemplary damages. The acts/or omissions of Defendants, which when viewed objectively from the standpoint of the Defendants at the time of the occurrences, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; of which defendants had actual,

subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, welfare and safety of others. The acts and/or omissions of the Defendants, as set out above, constitute gross negligence, as that term is defined by law, so as to give rise to an award of exemplary damages against the Defendants. The Court should assess exemplary damages against Defendants in the amount that will punish Defendants and deter others from engaging in similar malicious and grossly negligent conduct.

**X. PRESERVING EVIDENCE**

48. Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting there from, including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, employee files, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic images or information related to the referenced incident or damages. Failure to maintain such items will constitute "spoliation" of the evidence.

**XI. JURY TRIAL**

49. Plaintiff respectfully requests that the trial of this cause is by jury and have paid the requisite fee with the filing of their Original Petition.

**XII. U.S. LIFE TABLES**

50. Notice is hereby given that Plaintiff intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

**XIII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and upon final hearing hereof, she take, have and recover, of and from said Defendants, the above damages, exemplary damages, costs of court, pre-judgment interest, post-judgment interest, and for such other and further relief to which she may be justly entitled.

Dated: February 18, 2025

Respectfully submitted,

THE BUTTON LAW FIRM

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Russell Button on behalf of Russell Button

Bar No. 24077428

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Filing Description: PLAINTIFFS FIRST AMENDED PETITION

Status as of 2/18/2025 12:46 PM CST

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