

NO. \_\_\_\_\_

**DENIS M. ARNOLD**

**Plaintiff,**

**V.**

**WEIFAN LIN**

**Defendant.**

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**IN THE DISTRICT COURT**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**COLLIN COUNTY, TEXAS**

**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Denis M. Arnold, Plaintiff, complains of Weifan Lin, Defendant, and for cause of action shows this Honorable Court the following:

**I. DISCOVERY CONTROL PLAN LEVEL**

Discovery is being conducted under Level 2, Rule 190.4, Texas Rules of Civil Procedure.

**II. REQUESTS FOR DISCOVERY**

Plaintiff requests that Defendant respond to the attached discovery requests:

- A. Requests for Disclosures;
- B. Written Interrogatories; and
- C. Requests for Production of Documents

**III. PARTIES**

- 1. Denis Arnold resides in Arlington, Texas.
- 2. Weifan Lin, a Texas resident, may be served at 133 Seabrook Drive, Plano, Collin County, Texas, or wherever he may be found.

**IV. FACTS**

- 3. On or about July 19, 2009 at approximately 6:00 p.m., Plaintiff was driving a 2006

Toyota Corolla eastbound in the 390 mile of US Highway-64/87, Union County, New Mexico. He was driving straight and driving in his lane. He was operating his vehicle in a lawful manner with due regard for other traffic around him.

4. Defendant was driving a 2005 Toyota pick-up truck. He was speeding westbound on US-64/87 towards Plaintiff.

5. Defendant lost control of his vehicle and crashed head on into Plaintiff's small car at a speed of at least 65 miles per hour.

6. The property damage to Plaintiff's vehicle was huge. It had to be towed from the scene and was totaled.

7. Officer D. J. Dissinger of the New Mexico Highway Patrol investigated the collision and concluded that Defendant's negligence was the sole proximate cause of the collision. Officer Dissinger issued Defendant Citation #5250193 due to his "careless driving - speed too fast for road conditions." A copy of the New Mexico State Police Uniform Crash Report will be used as evidence at time of trial.

### **V. NEGLIGENCE**

8. Defendant Lin had a duty to exercise the degree of care that a reasonably careful driver would use to avoid harm to others under circumstances similar to those described herein.

9. Plaintiff's injuries were proximately caused by Defendant's negligent, careless, and reckless disregard of said duty.

10. The negligent, careless, and reckless disregard of duty of Defendant consisted of, but is not limited to, the following acts and omissions:

A. Failing to drive in a single lane.

- B. Failing to keep a proper lookout for Plaintiff's safety that would have been maintained by a driver of ordinary prudence under the same or similar circumstances;
- C. Failing to apply his brakes in a timely and prudent manner;
- D. Failing to turn his vehicle to the right or left or take other such proper evasive action so as to avoid a collision with Plaintiff's vehicle;
- E. Failing to operate his vehicle at a rate of speed which a driver of ordinary prudence under the same or similar circumstances would have done;
- F. Failing to exercise that degree of care as would have been exercised by a driver of ordinary prudence under the same or similar circumstances;
- G. Failing to regard the safety and welfare of other drivers.

#### **VI. NEGLIGENCE PER SE**

11. Defendant's conduct described herein constitutes an unexcused breach of duty imposed by the traffic laws and regulations of the State of Texas and New Mexico, as codified in the *Texas Transportation Code* Sections 545.060, 545.351 and 545.401 and New Mexico Transportation Code Section 66-8-113A.

12. Plaintiff is a member of the class of drivers and passengers using the roads and highways of Texas and Tarrant County that these laws and regulations were designed to protect.

13. Defendant's unexcused breach of the duty imposed by these laws and regulations proximately caused the Plaintiff's injuries described herein.

#### **VII. DAMAGES**

14. As a direct and proximate result of the collision, Plaintiff was seriously injured. He lost consciousness. He was badly lacerated and bleeding from his trunk and shoulder, and his chest and arms were contused. Plaintiff was assigned the serious injury code of "B" by Officer Dissinger

and had to be rushed by ambulance to the Union County General Hospital in Clayton, New Mexico on a backboard. At the Emergency Room, Plaintiff's pain was so severe that the doctors had to give him a shot of Morphine. He was diagnosed with the following serious injuries:

1. Chipped front tooth;
2. Left shoulder lacerations and hematoma;
3. Severe contusions throughout the body; and
4. Right ankle sprain.

15. After he was released, Plaintiff had to walk on crutches for several weeks. He then had to be treated by various doctors. On July 26, 2009 Plaintiff's pain was so severe that he had to be rushed to the Emergency Room of the Medical Center of Arlington, where he was diagnosed with an edema in his left leg. Doctors bandaged his ankle, prescribed Lortab and Toradol, and recommended continue to seek medical care.

16. An Magnetic Resonance Image revealed that a large hematoma had formed on Plaintiff's left shoulder which had to be operated on on October 7, 2009.

17. Plaintiff has been treated by other physicians and health care providers since that time. Plaintiff had to undergo surgery due to the collision.

18. Plaintiff was caused to suffer and incur the following damages:

A. Medical care and expenses in the past for the necessary care and treatment of the injuries resulting from the collision in the sum of at least \$17, 527.43, such charges being reasonable and necessary and the usual and customary charges where provided;

B. Medical care and expenses which will in all reasonable probability be incurred in the future;

C. Physical pain and suffering in the past;

- D. Physical pain and suffering in the future;
- E. Disfigurement;
- F. Impairment;
- G. Loss of earnings in the past in the amount of at least \$1,023.30 in addition to Plaintiff being terminated from his job as a highly paid estimator with the Thornton Steel Company due to his injuries and losing a substantial sum of money sine September 30, 2009;
- H. Loss of wage earning capacity;
- I. Mental anguish in the past;
- J. Mental anguish in the future;
- K. Loss of property in the amount of at least \$1,524.00; and
- L. Travel expenses to New Mexico in the amount of at least \$263.00.

Plaintiff hereby requests a trial by jury.

### **VIII. EXEMPLARY DAMAGES**

15. Defendant's acts or omissions described above, when viewed from his standpoint at the time of the collisions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the Plaintiff and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others. Based on the facts stated herein, Plaintiff requests that exemplary damages be awarded to him from Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and that upon final trial, judgment be entered for Plaintiff against Defendant, for damages in an amount within the jurisdictional limits of the Court and not exceeding

\$100,000.00; exemplary damages; pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the maximum rate allowed by law; costs of court; and such other and further relief to which he may be entitled, at law or in equity.

Respectfully submitted,

**LAW OFFICES OF  
WILLIAM K. BERENSON, P.C.**

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By: \_\_\_\_\_

**WILLIAM K. BERENSON**

**ATTORNEY FOR PLAINTIFF**