February 5, 2009

Arthur J. Pinkwater, Esq.

General Counsel

Buildit Construction Co., Inc.

432 Main Street, Ste. 900

Adamstown, PA 19503

**Re: Settlement offer/Carol Stoudt negligence claim**

Dear Mr. Pinkwater:

 This law firm represents Carol Stoudt in connection with the accident on November 10, 2007, when she was struck by Buildit Construction’s bulldozer on the Keystone State College campus. As you know, Ms. Stoudt was seriously injured that night, and she plans to file a lawsuit against Buildit unless Buildit is willing to settle. In this letter, I will outline Ms. Stoudt’s negligence claim against Buildit and detail the damages that she has suffered.

 \* \* \* \*

You should be familiar with the Supreme Court of Pennsylvania’s rulings on proximate cause, which hold a custodian of a vehicle liable for injuries resulting from actions of a third party if (1) it was foreseeable that the third party would attempt to operate the vehicle and (2) it was foreseeable that the third party would be an incompetent operator. *See Anderson v. Bushong Pontiac Co.*, 171 A.2d 771 (Pa. 1961); *Liney v. Chestnut Motors, Inc.*, 218 A.2d 336 (Pa. 1966); *Glass v. Freeman,* 240 A.2d 825 (Pa. 1968).

Ms. Stoudt can easily satisfy both elements of this proximate cause test. It was foreseeable that freshmen living in the dorm next to Buildit’s construction site would try to operate the construction equipment.  On two separate occasions freshmen tampered with the construction vehicles, where keys had been left in the ignition. One of these occasions was when Chris Funk actually stole one of the backhoes and drove it recklessly across the construction lot almost hitting several Buildit employees.

Giving further notice of Keystone State freshman tampering with construction equipment, Buildit employees had evidence of partying and drinking on the construction site, having found beer cans in and around the vehicles on numerous occasions.

Buildit should have foreseen that the freshmen would have operated the vehicles incompetently. They had evidence of such an instance when Chris Funk almost hit several Buildit employees while joy-riding in a stolen backhoe. The evidence of drinking in and around the vehicles should have further alerted Buildit that the freshmen who gathered around their vehicles had compromised decision-making and driving abilities. Just like in the precedential case of *Anderson* , the “facts clearly put the defendant…on notice, not only that the [vehicle] was likely to be stolen, but also that it was likely to be stolen and operated by an incompetent driver.” 171 A.2d 771.

Clearly, Buildit’s knowledge of the recreational use of their site, their previous experience with freshmen stealing and incompetently operating the vehicles, and their continual failure to secure their vehicles, satisfies the Supreme Court of Pennsylvania’s test for proximate cause and makes Buildit liable for Carol Stoudt’s injuries.

\* \* \* \*

As you can see, Ms. Stoudt continues to suffer immeasurably as a result of Buildit’s negligence, and she is confident that she will prevail in a lawsuit. However, in order to avoid the stress of litigation, she is willing to settle this matter for $2,280,000.00 prior to filing suit. Please consider this offer with your client and respond no later than 5:00 p.m. on March 1, 2009.

 Very truly yours,

 Partner

bcc: Associates #[341] & #[294]