

[CAPTION]

**COUNTERCLAIM**

The defendant for his counterclaim against plaintiff, states and alleges as follows:

1. The automobile accident described in the petition was caused by the plaintiff's failure to operate her motor vehicle at a safe speed under existing conditions;

2. Due to plaintiff's negligence, defendant has suffered injury, has incurred expenses for necessary medical treatment and will incur additional expenses for future treatment, has lost wages and will continue to lose wages in the future, and has suffered and will continue to suffer pain.

WHEREFORE, defendant prays that he be awarded judgment against plaintiff for damages in excess of \$75,000, for costs and other relief as the Court deems just and proper.

\_\_\_\_\_  
*(Signature of attorney)*  
**(Name), Attorney for (party)**  
**Bar Registration Number**  
**Address**  
**Telephone**  
**[Facsimile number]**  
**[Email address]**

Authority

K.S.A. 60-213.

Notes on Use

This form is intended to illustrate the requirements of a compulsory counterclaim under K.S.A. 60-213. In answering a petition, a party must state as a counterclaim any claim the party has against the opposing party

except as otherwise excused by K.S.A. 60-213(a), and may join additional parties to the counterclaim under K.S.A. 60-213(i) in accordance with K.S.A. 60-219 and K.S.A. 60-220 and amendments thereto. The counterclaim must contain a short and plain statement of the claim showing the pleader is entitled to relief and a demand for relief. K.S.A. 60-208(a). The counterclaim should be included as part of the answer, K.S.A. 60-207(a). The assertion of compulsory counterclaims in an answer is mandatory if the counterclaim arose out of the subject of the opposing party's claim. K.S.A. 60-213(a). The answer and counterclaim must be served within the time prescribed by K.S.A. 60-212(a), signed as required by K.S.A. 60-211, and served upon the parties and filed with the court as required by K.S.A. 60-205(b) and (d)(3). If an additional party is joined, process must be served in accordance with Article 3 of the code of civil procedure.

### **Comment**

Failure to assert a compulsory counterclaim results in an estoppel or bar that will prevent bringing the claim in another action. *Mohr v State Bank of Stanley*, 241 Kan. 42, 51, 734 P.2d 1071 (1982).