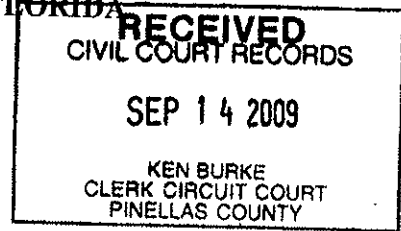


IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION



TERRY BOLLEA a/k/a  
HULK HOGAN,

Plaintiff,

v.

Case No.: 09-16115-C-20

ZUCKERMAN SPAEDER, LLP, a foreign  
partnership; MORRIS "SANDY"  
WEINBERG, JR., a Florida resident;  
and LEE FUGATE, a Florida resident,

Defendants.

VERIFIED COMPLAINT

COMES NOW, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN (hereinafter "Bollea"), by and through his undersigned counsel, and hereby sues the Defendants, ZUCKERMAN SPAEDER, LLP (hereinafter "Zuckerman"), a foreign partnership; MORRIS "SANDY" WEINBERG, JR. (hereinafter "Weinberg"), a Florida resident; and LEE FUGATE (hereinafter "Fugate"), a Florida resident, and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for damages exceeding \$15,000 (Fifteen Thousand Dollars), exclusive of fees and costs.
2. Venue lies within Pinellas County, Florida because Defendant, FUGATE, is a resident of Pinellas County, and material operative facts occurred in Pinellas County.

PARTIES

3. At all times material hereto, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN ("BOLLEA"), was a resident of Clearwater, Pinellas County, Florida.

4. At all times material hereto, Defendant, ZUCKERMAN SPAEDER, LLP (“ZUCKERMAN”), was and is a foreign partnership, licensed to conduct business in the State of Florida, and conducting business in Pinellas County, Florida, to wit, the practice of law.

5. At all times material hereto, Defendant, MORRIS “SANDY” WEINBERG (“WEINBERG”), was and is a resident of Hillsborough County.

6. At all times material hereto, Defendant, LEE FUGATE (“FUGATE”), was and is a resident of Pinellas County, Florida.

### **FACTUAL ALLEGATIONS**

7. Plaintiff, BOLLEA, is a professional athlete/entertainer known primarily as “Hulk Hogan.”

8. Defendant, ZUCKERMAN, is a law firm comprised of attorneys that offer legal services on behalf of the firm in various jurisdictions, and maintains an office in Tampa, Florida.

9. Defendant, WEINBERG, is an attorney at law, a partner in the Defendant law firm, and was one (1) of two (2) attorneys, along with Defendant, FUGATE, primarily responsible for Plaintiff, BOLLEA’s legal representation that made the basis of this lawsuit and the events complained of herein. The said legal representation is more fully described below. WEINBERG is not, nor has he ever been, Board Certified by The Florida Bar in any specialization, including Civil Trial Practice. In addition, WEINBERG has very little, if any, experience in the defense of civil negligence claims arising out of a motor vehicle accident.

10. Defendant, FUGATE, is an attorney at law, counsel for/an employee of the Defendant law firm, and is the second of two attorneys, along with Defendant, WEINBERG, primarily responsible for Plaintiff, BOLLEA’s legal representation that made the basis of this lawsuit and the events complained of herein. The said legal representation is described more

fully below. FUGATE is also not, nor has he ever been, Board Certified by The Florida Bar in any specialization, including Civil Trial Practice. In addition, FUGATE, like WEINBERG, also has very little, if any, experience in the defense of civil negligence claims arising out of a motor vehicle accident.

11. On August 26, 2007, one of Plaintiff, BOLLEA's, vehicles, a 1998 Toyota Supra, was being driven by his minor son, Nicholas Bollea, and was involved in an accident in Clearwater, Pinellas County, Florida.

12. The car being driven by Nicholas Bollea carried a passenger, John Graziano, who was severely injured in the accident.

13. At the time of the accident, the vehicle in question was insured through Progressive Select Insurance Company (hereinafter "Progressive"). Part and parcel to that insurance policy, Plaintiff, BOLLEA, was provided insurance coverage to the extent of the policy's bodily injury liability limits, which were \$250,000 (Two Hundred Fifty Thousand Dollars) per person, \$500,000 (Five Hundred Thousand Dollars) per occurrence.

14. In addition, Progressive owed Plaintiff, BOLLEA, a separate contractual duty under its policy. This separate contractual duty was a good faith defense, including payment of all necessary attorney fees and costs, against any and all civil actions brought, or that may be brought, as a result of the accident against him, and also to provide the same to any permissive user of the covered vehicles.

15. This aforementioned duty arose as a matter of contract in exchange for the insured, Plaintiff, BOLLEA, having previously paid insurance premiums for the same. At the time of the accident at issue, all premiums had been paid by Plaintiff, BOLLEA, and the policy was in full force and effect.

16. It is common knowledge throughout the legal profession experienced in such matters, especially in the area of insurance defense litigation and personal injury law, that automobile insurance policies include the aforementioned duty to defend the insured, as well as any permissive user, should a civil suit arise or the possibility of a civil claim exist.

17. It is equally well-known among attorneys experienced in this area of the law that, in discharging its contractual duties, the insurer is obligated to hire one or more attorney(s) on behalf of the insured and pay the insured's necessary attorneys' fees and costs, including reasonable fees and costs of investigation and experts.

18. Furthermore, pursuant to the terms of standard Florida automotive insurance policies, including the one at issue, the selection of the particular attorney(s) chosen to defend the insured(s) is the contractual right of the insurance company. The insurance carrier maintains a duty to act in good faith in obtaining competent and experienced counsel to defend potential action(s), and to do so promptly upon notice of an occurrence.

19. The foregoing accident at issue garnered extensive publicity, both locally and nationally, and became known to Progressive almost immediately following its occurrence.

20. On August 29, 2007, three (3) days following the accident at issue, Progressive, pursuant to the policy referenced above, sent a letter to Plaintiff, BOLLEA's, Clearwater, Florida Business/Financial Manager(s), Lewis, Birch & Ricardo, LLC (hereinafter "LBR"), advising of the appointment of attorney Bryan Reynolds (hereinafter "Reynolds"), who had been retained by Progressive to defend Plaintiff, BOLLEA in the investigation and impending prosecution of any civil matter arising out of the above-referenced accident. At all times material, Plaintiff, BOLLEA's, Business/Financial Manager(s) handled and received all of Plaintiff's mail/correspondence. Plaintiff, BOLLEA, was never informed by anyone, including Defendants,

of the existence of this letter or of the information contained therein. A copy of the letter from Progressive is attached hereto as Exhibit "A."

21. Reynolds is and was at the time an experienced insurance defense attorney in motor vehicle accident law and, additionally, unlike Defendants WEINBERG and FUGATE, is Board Certified by The Florida Bar in Civil Trial Law.

22. On that same day, August 29, 2007, attorney Reynolds sent a separate letter to Plaintiff, BOLLEA, received by Plaintiff, BOLLEA's, Business/Financial Manager(s), LBR, as well as to Kevin Hayslett (hereinafter "Hayslett"), Nicholas Bollea's recently retained criminal defense attorney, requesting an immediate meeting with Plaintiff, BOLLEA, to discuss an immediate investigation and to prepare a defense to any impending civil claim. Plaintiff, BOLLEA, was never informed by anyone, including Defendants, of the existence of this letter or of the information contained therein. A copy of the letter is attached hereto as Exhibit "B."

23. This letter (Exhibit "B"), together with the aforementioned letter from Progressive (Exhibit "A"), were forwarded by Plaintiff, BOLLEA's, Business/Financial Manager(s), LBR, in early September to the Tampa law firm Cohen, Jayson & Foster, who at the time, along with attorney Kevin Hayslett, were involved in the representation of Nicholas Bollea regarding potential criminal charges arising out of the accident.

24. Slightly more than two weeks after the accident, on or about September 14, 2007, Plaintiff, BOLLEA, consulted Defendants on behalf of his son regarding their possible representation of his son regarding potential criminal charges arising out of the accident and to replace the law firm of Cohen, Jayson & Foster in that regard.

25. Immediately after Plaintiff, BOLLEA, met with Defendant WEINBERG, in mid-September, 2007, Plaintiff, BOLLEA, agreed to retain Defendants not only for representation of

his son regarding potential criminal charges arising out of the subject accident, but, importantly here, also for himself and his son for any potential civil claims that may arise out of the subject accident. This was based upon Defendant, WEINBERG's, representation and insistence to Plaintiff, BOLLEA, that he was the most experienced attorney in the area to handle the civil matter. This representation agreement was reduced to writing on September 19, 2007. A copy of the same is attached hereto as Exhibit "C."

26. On September 20, 2007, another letter from Progressive was delivered to Plaintiff, BOLLEA's, Business/Financial Manager(s), LBR, urging the importance of making contact with Plaintiff, BOLLEA, regarding the accident, with a copy sent to attorney Reynolds. Upon receipt, LBR promptly scanned and emailed said letter to Defendants. Plaintiff, BOLLEA, was never informed, advised or consulted by Defendants of the existence or the legal ramifications of that letter, or of the information contained therein, nor were legal recommendations made in Plaintiff, BOLLEA's, best interests. A copy of the letter is attached hereto as Exhibit "D."

27. Progressive further advised that they had not heard from Plaintiff, BOLLEA, since the accident, and contact was extremely important to protect his financial interests. Defendants never informed, advised or consulted Plaintiff, BOLLEA, of this or any other correspondence from Progressive or attorney Reynolds or the legal ramifications of the same, nor were legal recommendations made in Plaintiff, BOLLEA's, best interests.

28. At the time of the above September 14, 2007 initial consultation regarding the criminal defense of Plaintiff, BOLLEA's son, Defendants knew or should have known that Plaintiff, BOLLEA, had automobile insurance coverage on the vehicle in question, and knew or should have known that the insurance policy contractually provided a paid defense, including costs and fees of investigation, to Plaintiff, BOLLEA, as well as to his son, Nicholas Bollea, for

all civil matters arising from a covered event, such as the motor vehicle accident at issue. Progressive would have allowed Plaintiff, BOLLEA, to interview and hire a civil defense attorney acceptable to him, and another civil defense attorney for his son. Defendants, however, made no effort to advise, inform or counsel Plaintiff, BOLLEA, of this materially important fact. Defendants were further aware, or should have been, that, like most laymen, Plaintiff, BOLLEA, had no experience in the area of insurance.

29. Despite the foregoing, in mid-September, 2007, Defendant, WEINBERG, proposed and insisted that he defend Plaintiff, BOLLEA, and his son, with regard to a potential civil suit, and made no mention to Plaintiff, BOLLEA that the option existed to utilize any - experienced civil automobile accident attorney acceptable to both Progressive and Plaintiff, BOLLEA, to be retained by Progressive pursuant to the contract of insurance to investigate and defend the potential civil claims arising out of the accident. In fact, Defendant, WEINBERG, insisted that he was the best attorney around to defend Plaintiff, BOLLEA, in the civil case. At the time, Plaintiff, BOLLEA's, understanding, which was known by Defendant, WEINBERG, was that he needed a civil defense attorney, and that he would need to pay for the representation himself. Despite this, Defendant, WEINBERG, insisted that Plaintiff, BOLLEA, not look elsewhere and never disclosed to Plaintiff, BOLLEA, that his insurance policy would provide a defense paid in full.

30. In addition, Defendants, WEINBERG and FUGATE, failed to, at any time, advise Plaintiff, BOLLEA, that they had very little, if any, experience in defending civil personal injury cases that arise out of a motor vehicle accident, and given the severity of the accident and injuries to the passenger in the vehicle, that experienced counsel in these matters was essential.

31. Plaintiff, BOLLEA, because of Defendants, WEINBERG and FUGATE's silence, was unaware of any other contractual agreements/arrangements/options he may have had regarding civil representation, and agreed to Defendants' terms in September, 2007, as stated above.

32. Plaintiff, BOLLEA, was not at that time, or in fact at any time during the next approximately seventeen (17) months of Defendants representation, made aware by Defendants, or any other source, of Progressive's prior appointment of an experienced Board Certified Civil Trial Attorney to defend him at their cost, Progressive's duty to appoint attorneys acceptable to Plaintiff, BOLLEA, upon his interview and selection of said attorneys, or the availability of the same contractual defense for both himself and his son, Nicholas Bollea.

33. Shortly after Plaintiff, BOLLEA, retained Defendants, and no later than late September 2007, Defendants received documents and files regarding the accident and applicable insurance policies from various sources including Plaintiff, BOLLEA's, Business/Financial Managers, LBR, as well as from attorneys Kevin Hayslett and Barry Cohen, including the above-referenced letters.

34. These files and documents contained confirmation, as noted above, that Progressive had in fact appointed an experienced local Board Certified Civil Trial Attorney, Reynolds, to investigate the circumstances and defend Plaintiff, BOLLEA and his son for any potential civil matter arising out of the subject accident. The files and documents further confirmed that that Reynolds was anxious to begin said investigation and mount a defense to the inevitable civil claim that would arise out the accident. The importance of this knowledge to Plaintiff, BOLLEA, was not that Reynolds would ultimately be the attorney retained to defend him and/or his son in the civil case, but that Progressive would provide the attorneys to defend

him and his son. However, nothing was mentioned to Plaintiff, BOLLEA, in this regard by Defendants.

35. As will be noted below, the lack of experienced civil defense counsel in this type of incident can result, and did result, in the failure to raise, investigate and preserve necessary legal defenses in order to protect Plaintiff, BOLLEA's, hard-earned assets from liability exposure or seizure, as well as result, and did result, in unnecessary billing of legal fees and costs for time spent in the education of such inexperienced attorneys.

36. Despite the knowledge of their lack of experience in matters of this type, as discussed above, and the existence of a contractual insurance defense, Defendants entered into a representation agreement with Plaintiff, BOLLEA, that required an initial \$250,000 (Two Hundred Fifty Thousand Dollar) retainer and an additional \$50,000 (Fifty Thousand Dollar) cost deposit, which Plaintiff, BOLLEA, paid on or about September 19, 2007.

37. Plaintiff, BOLLEA, further agreed to be billed by Defendants at \$550 (Five Hundred Fifty Dollars) per hour for work done by Defendant, WEINBERG, and \$475 (Four Hundred Seventy-five Dollars) per hour for work done by Defendant, FUGATE, as well as lesser amounts to other ZUCKERMAN attorneys, including as follows: \$300 (Three Hundred Dollars) per hour for work done by Marcos Hasbun, Esq., and \$265 (Two Hundred Sixty-five Dollars) per hour for work done by Simon Gaugush, Esq., neither of whom are Board Certified in Civil Trial Practice by the Florida Bar or experienced in the defense of civil litigation matters arising out of a motor vehicle accident. On one occasion, an attorney in Defendant, ZUCKERMAN's, Washington, D.C. office, pursuant to the agreement, billed Plaintiff, BOLLEA, \$725 (Seven Hundred Twenty Five Dollars) per hour for his consult with attorneys in the Tampa, Florida office. In addition, the agreement did not give Defendants authority to bill Plaintiff, BOLLEA,

for work performed by non-attorney paralegals, although, as discussed below in paragraph thirty-nine (39), the Defendants did in fact bill for such work, making it appear as though it was work actually performed by attorneys. A copy of said agreement is attached hereto, as discussed in paragraph twenty-five (25), as Exhibit "C."

38. Moreover, Defendants, during the course of the next seventeen (17) months, billed for work done by non-attorney paralegals at up to \$180 (One Hundred Eighty Dollars) per hour, and not only failed to disclose same to Plaintiff, BOLLEA, but also did not include this element of billing in the representation agreement signed by Plaintiff, BOLLEA, as referenced above. Additionally, during the course of the ensuing seventeen (17) months, the attorneys' billing rates increased.

39. In fact, to further conceal the practice of billing \$180 (One Hundred Eighty Dollars) per hour for work done by legal secretaries and avoid any billing scrutiny, Defendants led Plaintiff, BOLLEA, to believe that those bills, for work done by legal secretaries, were for work done by "attorneys" on the billing statements, as more fully discussed below in that those employees were not distinguished as non-attorneys on the billing statement.

40. Defendants' representation agreement contained a specific clause stating that they reserved the right to discontinue representation of Plaintiff, BOLLEA, and his son, if their invoices were not paid within a reasonable time, and on more than one occasion in the subsequent seventeen (17) months of representation, Defendant, WEINBERG, verbally threatened to do so.

41. Not only did Defendants fail to inform, advise, consult and recommend to Plaintiff, BOLLEA, of the fact that he had the ability to avail himself to contractually provided representation by a Board Certified Civil Trial Attorney and/or an attorney experienced in

defending motor vehicle accident cases, or that he could have another mutually acceptable experienced attorney in such matters be provided by Progressive to him, the Defendants actively concealed this information from Plaintiff, BOLLEA, and continued to bill Plaintiff, BOLLEA, for costs and fees that would have otherwise been covered and paid in full by Progressive pursuant to the above-referenced contract of insurance.

42. Because both the legal investigation and costs of experts required to defend the potential criminal and civil actions were not unique to each other, there was no need for Plaintiff, BOLLEA, to incur much if not the vast majority of the extensive costs and fees for investigation out of his pocket. Rather, these fees and costs could have and should have been contractually paid by Progressive.

43. However, despite the foregoing, Defendants repeatedly billed Plaintiff, BOLLEA, for attorney fees as well as costs of investigators, experts and consultants over the next seventeen (17) months, nearly all of which (fees and costs) were not unique to the criminal case, and nearly all of which were necessary to the investigation and defense of the impending civil case, and thus would have been immediately paid for by Progressive as part of its contractual duty to provide a defense in the civil matter, rather than being drawn from Plaintiff, BOLLEA's, retainer account and personal funds.

44. Progressive once again attempted to contact Plaintiff, BOLLEA, on September 24, 2007 through Plaintiff's Business/Financial Managers, LBR, who promptly scanned the correspondence and emailed it to Defendant, WEINBERG; Defendants again failed to inform, consult or advise Plaintiff, BOLLEA of Progressive's attempted contact or make legal recommendations in Plaintiff, BOLLEA's, best interest regarding the same. Plaintiff, BOLLEA,

was never informed by Defendants of the existence of this letter or of the information contained therein.

45. On or about September 28, 2007, Plaintiff, BOLLEA's, Business/Financial Managers, LBR, specifically asked Defendant, WEINBERG, to advise whether the letters being received by them from Progressive, and referred to above, needed to be forwarded to any other attorney. A copy of that correspondence from LBR is attached hereto as Exhibit "E."

46. On or about October 3, 2007, attorney Reynolds sent a letter to Nicholas Bollea's criminal attorney, Kevin Hayslett, underscoring the importance that he (Reynolds) make contact with Plaintiff regarding defense of Plaintiff, BOLLEA's, potential civil case, as discussed above, and requesting Hayslett's assistance in securing such contact. This correspondence from Reynolds was thereafter immediately forwarded by Hayslett to Defendants. Hayslett made Reynolds aware of the fact that he (Reynolds) needed to contact Defendant, WEINBERG, regarding any matters related to the defense of the civil matter. Plaintiff, BOLLEA, was never informed by Defendants of the existence of this letter or of the information contained therein. A copy of that correspondence is attached hereto as Exhibit "F."

47. Nearly six (6) weeks after the accident, Plaintiff, BOLLEA, had still not been informed that attorney Reynolds had been retained on behalf of himself and his son by Progressive, nor had Reynolds been allowed by Defendants to consult with Plaintiff, BOLLEA. Additionally, Plaintiff, BOLLEA, had not been informed that a contractual defense was available to him, whether by Reynolds or another attorney experienced in these matters.

48. Finally, on or about October 8, 2007, more than six (6) weeks after the accident and nearly four (4) weeks after retaining Defendants, attorney Reynolds had a phone conversation with Defendant, WEINBERG, during which Reynolds confirmed again, verbally

this time, that Progressive had hired him to defend Plaintiff, BOLLEA, and his son. Again, this information was never relayed to Plaintiff, BOLLEA, by Defendants, nor was Reynolds provided access to Plaintiff, BOLLEA.

49. Immediately following the aforementioned phone conversation, attorney Reynolds sent an email to Defendant, WEINBERG, asking him to confirm specific information regarding Plaintiff, BOLLEA, and his son, so that he could begin preparation of their defense.

50. During this conversation, Defendant, WEINBERG, represented to Reynolds that Defendants were “coordinating” the defense of both the criminal case against Plaintiff’s son and the civil case against Plaintiff, BOLLEA, and his son, yet did not disclose to Reynolds that Plaintiff, BOLLEA, had never been informed of Reynolds appointment. Again, neither this information nor the foregoing correspondence or conversations with Reynolds were ever relayed to Plaintiff, BOLLEA.

51. At this time, as evidenced by the correspondence discussed above, Reynolds was clearly under the impression that he (Reynolds) nevertheless represented Plaintiff, BOLLEA, and his son, in defense of the civil matter, despite his lack of access to his clients, and was told that Defendants were simply “coordinating” the civil and criminal defenses for Plaintiff and his son. However, importantly, Plaintiff, BOLLEA, was not in need of a criminal defense attorney as he was not in danger of criminal charges, although he was clearly in need of a civil defense attorney experienced in the defense of automobile accident cases.

52. At this time, October 2007, almost six (6) weeks after the accident, Reynolds, the attorney appointed by Progressive to defend Plaintiff, BOLLEA, pursuant to the aforementioned contract of insurance, was still being actively prevented by Defendant, WEINBERG, from speaking with Plaintiff, BOLLEA, and undertaking an investigation and defense to protect

Plaintiff, BOLLEA's, interests. At the same time, Defendants were billing large sums against Plaintiff, BOLLEA's, retainer account for fees and costs for investigation and research not unique to the criminal investigation that would have otherwise been provided and paid in full by Progressive, and by attorneys more experienced in the defense of auto accident cases than Defendants.

53. On or about October 17, 2007, Progressive sent yet another letter, this time to Defendant, WEINBERG, stating that, despite repeated attempts, it had not had any contact with their insured, Plaintiff, BOLLEA. Plaintiff, BOLLEA, was never informed by Defendants of the existence of this letter or of the information contained therein. A copy of this correspondence is attached hereto as Exhibit "G."

54. On or about October 19, 2007, attorney Reynolds sent another letter to Defendant, WEINBERG, in which he sought confirmation as to whether Defendants actually represented Plaintiff, BOLLEA, in the civil matter, rather than simply acting as "coordinator" of the defenses, and reiterated that, to date, he had not been permitted by them to contact Plaintiff despite his repeated attempts, and had not received the information from Defendants requested in his two (2) prior emails to Defendants. Plaintiff, BOLLEA, was never informed by Defendants of the existence of this letter or of the information contained therein. A copy of this correspondence is attached hereto as Exhibit "H."

55. On or about December 3, 2007, Reynolds, the attorney hired by Progressive to defend Plaintiff, BOLLEA, and his son under Plaintiff, BOLLEA's, contract of insurance against a potential civil claim at no cost to Bollea, sent a letter to Defendant, WEINBERG, stating that he had received the accident report and, in a "normal situation," he would be meeting with his clients and obtaining statements as part of his representation. However, because he had still not

been able to make contact with Plaintiff, he was forced to defer to Defendants, and again inquired of Defendants as to whether his employment as defense counsel for Plaintiff, BOLLEA, and his son, was acceptable to Plaintiff. Again, none of this information was relayed to Plaintiff, BOLLEA. A copy of this correspondence is attached hereto as Exhibit "I."

56. On or about December 7, 2007, Defendants sent a letter to Plaintiff, BOLLEA, in which they recognized that costs for "much of the work we [the Defendants herein] do in preparation for the criminal case will be critical for the civil case and will not need to be redone."

57. However, Defendants made no mention that the converse was actually much more advisable, where much, if not all, of the work (fees and costs) done in preparation for the *civil* defense, which would have been paid for by Progressive, would not have to be redone for the criminal defense. This course of action would greatly reduce Plaintiff BOLLEA's legal fees and costs, as well as be more likely to protect his assets. A copy of the aforementioned letter is attached hereto as Exhibit "J."

58. The aforementioned fees and costs that are "critical" to the civil case, and not unique to the criminal case, are fees and costs that would have been taxed against Plaintiff, BOLLEA's, automobile insurance policy, rather than Plaintiff's own pocket, had this fact not been concealed from Plaintiff.

59. In the same letter to Plaintiff, BOLLEA, Defendants estimated that the attorneys' fees for the civil and criminal cases combined would be approximately \$110,000 (One Hundred Ten Thousand Dollars) for the month of December, 2007, and approximately \$120,000 (One Hundred Twenty Thousand Dollars) for the month of January, 2008.

60. Defendants clarified that the aforementioned amounts were exclusive of costs, which included experts that needed to be paid immediately by Plaintiff, BOLLEA, in the aggregate of approximately \$44,000 (Forty-four Thousand Dollars).

61. This same December 7, 2007, letter from Defendants specifically noted that Defendants needed to be paid right away for the November, 2007 attorneys' fees, even though the November, 2007 invoice had not even been sent to Plaintiff, BOLLEA, as of the date of that letter.

62. Nearly four (4) months after the automobile accident, on or about December 14, 2007, Defendant, WEINBERG, contacted Progressive Vice President and in-house attorney Robert Flayman (hereinafter "Flayman") seeking to allow Progressive to permit Defendants to act as attorneys under Plaintiff, BOLLEA's, policy of insurance in replacement of Reynolds.

63. Defendant, WEINBERG, incorrectly advised Flayman that Plaintiff, BOLLEA, insisted that no one but Defendant, WEINBERG, and Defendant's firm was acceptable as defense counsel on any impending civil court matters arising out of the accident, including Reynolds. Flayman was further incorrectly advised by Defendant, WEINBERG, that Plaintiff, BOLLEA, had no interest in speaking with another attorney to handle defense of any civil cases arising out of the subject auto accident.

64. Thereafter, in December 2007, based on the foregoing representations to Flayman, Defendants negotiated on behalf of Plaintiff, BOLLEA, without Plaintiff, BOLLEA's knowledge, an agreement with Progressive, through Flayman, whereby Progressive agreed to approve Defendants involvement as counsel per the insurance contract to defend Plaintiff, BOLLEA, in regard to defense of the civil matter, and pay Defendants \$145 (One Hundred Forty-Five Dollars) per hour of Defendants' rate, on a "going-forward basis" in place of attorney

Reynolds. Based on Defendants representations that Plaintiff, BOLLEA, would not agree to any firm other than Defendants', Flayman agreed to Defendants' retention, but only because of Plaintiff, BOLLEA's, celebrity status and the high profile nature of his exposure.

65. On or about December 28, 2007, at Flayman's request that he be assured that Defendant, WEINBERG's, previous representations to Flayman were accurate, Defendants created a personal "letterhead" for Plaintiff, BOLLEA's signature, authorizing Progressive to involve Defendants in defense of the civil claim. Defendants provided this "letterhead" to Plaintiff, BOLLEA, without full disclosure, advice and consultation to Plaintiff, BOLLEA, of its ramifications or have any relevant discussions with Plaintiff, BOLLEA, or make recommendations in Plaintiff, BOLLEA's, best interests. "Terrence" is not, nor has it ever been, Plaintiff, Terry Bollea's name. A copy of said letterhead is attached hereto as Exhibit "K." The letter was drafted by Defendants but, significantly, did not accurately reflect the agreement they reached with Flayman as discussed in paragraph sixty-eight (68) and exhibit "M," *infra*.

66. Moreover, the specific written disclosure mandated by the Supreme Court of Florida and the Florida Bar was not provided by Defendants to Plaintiff, BOLLEA, this in order to keep Plaintiff, BOLLEA, without knowledge of his available rights in order to enrich Defendants at Plaintiff, BOLLEA's, expense. Rule 4-1.8 of the Rules Regulating The Florida Bar required specific disclosure by Defendants that "[u]sually the insurance company pays all of the fees and costs of defending the claim." A copy of said Rule and required disclosure is attached hereto as Exhibit "L."

67. This agreement between Progressive and Defendants was based almost entirely on Defendant, WEINBERG's, incorrect representation to Flayman, that Plaintiff, BOLLEA, had no interest in any other attorneys' representation for the civil matters. That representation by

Defendant, WEINBERG, was blatantly false and misleading, as Defendants had never once informed, advised or consulted with Plaintiff, BOLLEA, as to any fully insurance-paid alternative to Defendants' representation in the civil matters arising out of the subject accident, as required by the Supreme Court of Florida and The Florida Bar, and instead disclosed to Plaintiff, BOLLEA, only that Progressive would contribute to payment of his civil defense by Defendants at the hourly rate of \$145 (One Hundred Forty-Five Dollars). Moreover, this agreement required written disclosure in a manner specifically prescribed in Rule 4-1.8 of the Rules Regulating The Florida Bar, and is required without exception, even if a client is already aware of his insurance provisions.

68. The foregoing hourly rate of \$145 (One Hundred Forty-Five Dollars) to which Defendants agreed is the same hourly rate that Progressive had previously agreed to pay Reynolds. Importantly, the agreement at issue called for Progressive to pay for all fees and costs "not unique to the criminal case." Plaintiff, BOLLEA, was never informed by Defendants of the terms of the agreement. In fact, very little of Defendants' representation was the, or ultimately ever, unique to the criminal case, and the vast majority of Defendants' representation was related to the civil case. A copy of the agreement is attached hereto as Exhibit "M."

69. The agreement Progressive had initially made with Reynolds regarding his representation, \$145 (One Hundred Forty-Five Dollars) per hour, would have resulted in no cost to Plaintiff, BOLLEA. Interestingly, at this time, Defendants were already billing Plaintiff, BOLLEA, and Plaintiff, BOLLEA was paying, for the work of legal secretaries at higher hourly rates than that of attorney Reynolds. Moreover, all attorneys assigned to the Bollea case were billing well in excess of that amount, despite their lack of experience in civil defense of automobile liability claims as well.

70. Because Defendants' hourly rate being charged to Plaintiff, BOLLEA, was substantially higher than what Defendants and Progressive had agreed to, as discussed previously, the extensive remainder of the cost of representation was still borne by Plaintiff, BOLLEA. Defendants never provided Plaintiff, BOLLEA, with a full and knowledgeable disclosure of their retention by Progressive, and the related consequences of Defendants' retention compared to the retention of Reynolds. Progressive, who was ready and willing to pursue Plaintiff, BOLLEA's, defense at Progressive's full expense, rather than Bollea's expense, and provide an attorney(s) more experienced in auto negligence defense matters at no cost to Plaintiff, BOLLEA. Had Defendants made such disclosures and recommendations in Plaintiff, BOLLEA's, best interests, Plaintiff, BOLLEA, would have interviewed and availed himself to the more experienced attorney(s) retained by Progressive under his contract of insurance with Progressive.

71. Despite the previously mentioned Florida Supreme Court and Florida Bar mandate that attorneys representing insured clients disclose, in writing, the fact that "[u]sually the insurance company pays all of the fees and costs of defending the claim," Plaintiff, BOLLEA, was never advised that the customary arrangement is for the defense fees and costs to be paid in its entirety by the insurance carrier.

72. Despite their agreement with Progressive, Defendants did not then periodically bill Progressive for their hourly fees already incurred, but in fact did not bill Progressive for nearly a year after thereafter, but instead continued to bill Plaintiff, BOLLEA in full. This was further done in order to maximize Defendant's cash recovery from Plaintiff, BOLLEA. This was done so as to not subject their extensive billings to Progressive's scrutiny, as was later borne out. Defendants intended from the outset to bill Plaintiff, BOLLEA, and draw down Plaintiff,

BOLLEA's, personal account completely for all fees billed and only later seek recovery from Progressive if and when it was necessary to Defendants' financial interest to do so.

73. On or about March 30, 2008, Reynolds contacted Defendant, WEINBERG, via email and reiterated that although he had been hired by Progressive to defend Plaintiff and his son, the same was never accomplished as he had never spoken to or met with either of them. A copy of this correspondence is attached hereto as Exhibit "N."

74. On or about April 3, 2008, Defendants received a letter from Progressive informing them that Plaintiff, BOLLEA, and his son, had in fact been named as Defendants in a civil suit arising from the accident, and that in the event of a judgment in excess of the policy limits, which were \$250,000 (Two Hundred Fifty Thousand Dollars) per person and \$500,000 (Five Hundred Thousand Dollars) per occurrence, Plaintiff, BOLLEA, would be personally liable for the excess. A copy of the same is attached hereto as Exhibit "O."

75. In the almost eight (8) months since the accident, and at the time of the filing of the civil lawsuit in the Spring of 2008 naming Plaintiff, BOLLEA, and his son, among others, as defendants, Plaintiff, BOLLEA, had been billed and had paid Defendants hundreds-of-thousands of dollars out of his personal funds to investigate the accident in question, and virtually all such fees and costs were "not unique to the criminal case." Therefore, virtually all of Defendants' billings were related to the civil case at issue. The majority of work unique to the criminal case was performed by attorney Kevin Hayslett. To the extent that Hayslett performed work not unique to the criminal case, Defendants never submitted those bills to Progressive for repayment.

76. Throughout this time, Plaintiff, BOLLEA, remained unaware that Progressive stood ready and willing to contractually undertake his civil defense at no cost to him, other than the previously paid insurance premiums.

77. On or about June 4, 2008, Defendants opened an additional civil case file on behalf of Plaintiff, BOLLEA, and his son, this one involving the Pinellas County Sheriff's Office, in reference to alleged taped phone conversations between Plaintiff's son and family members, including Plaintiff, BOLLEA, which were later released to the media. Defendants billed Plaintiff, BOLLEA, at their foregoing regular hourly rates, as previously discussed, except that in January 2008 Defendants had increased those rates to Plaintiff, BOLLEA.

78. As of early May, 2008, the criminal proceedings against Plaintiff, BOLLEA's, son had concluded, he was incarcerated, and the criminal matter was no longer pending. Therefore, any further billings by Defendants were not only "not unique to the criminal case," but were entirely related to the two civil cases.

79. Because the opposing litigants in the civil matter at issue may take a position advocating the jail tape recordings' potential evidentiary relevance to the civil auto accident case now filed, Progressive would have additionally had a contractual duty to provide legal defense services in regard to the recently opened case against the Pinellas County Sheriff's Office as well, again without cost to Plaintiff, BOLLEA, and again would have appointed an attorney to defend that case. Defendants, at all times material hereto, failed to inform Plaintiff, BOLLEA, as to this material fact, or to advise, consult or make recommendations in Plaintiff, BOLLEA's, best interests.

80. The legal fees being billed to and paid by Plaintiff, BOLLEA, to Defendants became so excessive that on or about July 28, 2008, Plaintiff, BOLLEA's, divorce attorney, Ann L. Kerr, sent a letter to Defendant, WEINBERG, notifying him that an allegation had been made by Plaintiff's wife, Linda Bollea, in the pending divorce proceedings that the exorbitant fees paid

on their son, Nick's, behalf by Plaintiff, BOLLEA, in the opinion of her divorce attorney, constituted a wasting of marital assets. A copy of the same is attached hereto as Exhibit "P."

81. Still Defendants made no mention to Plaintiff, BOLLEA, or Bollea's divorce attorney, Ann L. Kerr, after having received the above letter from her that Plaintiff, BOLLEA could have representation in the two (2) civil cases now pending at no cost under the previously mentioned provisions of Progressive's insurance policy.

82. Shortly thereafter, on or about August 5, 2008, Plaintiff's divorce attorney, Ann L. Kerr, sent another letter to Defendant, FUGATE, notifying him of an upcoming hearing in the divorce proceeding that "involves allegations of massive attorney fees paid by Terry Bollea." Further, that, "You [FUGATE] may need to testify as to the necessity of those charges." Defendants, WEINBERG and FUGATE, did nothing to advise Plaintiff, BOLLEA, or attorney Kerr, of the availability of a defense to both pending matters to be paid by Progressive in its entirety. A copy of the same is attached hereto as Exhibit "Q."

83. By the fall of 2008, Defendants' legal fees and costs billed to Plaintiff, BOLLEA, had become so exorbitant that Plaintiff, BOLLEA, could no longer bear the financial strain of the billings and was unable to timely pay Defendants' bills that continued to be incurred on a daily basis regarding the multiple civil matters, and Plaintiff, BOLLEA, repeatedly verbally informed Defendants of this fact.

84. By the fall of 2008, and after being billed and/or paying well in excess of \$1,000,000 (One Million Dollars) in legal fees and costs to Defendants alone, Plaintiff, BOLLEA, was steadily accumulating an ever-increasing outstanding balance of legal fees to Defendants that he was unable to pay.

85. As a result of Plaintiff, BOLLEA's, inability to pay, Defendants thereafter, in the fall of 2008, finally submitted their outstanding billings to Progressive and Progressive staff attorney Flayman, asking for reimbursement of \$444,162.71 in fees and costs at the previously agreed hourly rate of \$145 (One Hundred Forty Five Dollars) per hour. Defendants, by virtue of the agreement, represented to Flayman that those bills submitted were the bills applicable to the defense of the civil cases, and were "not unique to the criminal case." The bills submitted were represented by Defendants as being those bills incurred from the inception of the representation through November, 2008. They did not include any billings by Hayslett, being paid separately by Plaintiff, BOLLEA, or Cohen, Jayson & Foster, presumably because those billings were thought by Defendants to be "unique to the criminal case." A copy of that correspondence is attached hereto as Exhibit "R."

86. However, as stated above, the total billings that had been submitted to Plaintiff, BOLLEA, totaled well in excess of \$1,000,000 (One Million Dollars).

87. Even though a year earlier, in December 2007, Defendants had entered into an agreement with Progressive under which Progressive agreed to pay \$145 (One Hundred Forty Five Dollars) per hour of Defendants' legal fees for all fees and costs "not unique to the criminal case," Defendants had continued to bill Plaintiff, BOLLEA, and Bollea had in large part paid, the full amount of all fees. It was not until Plaintiff, BOLLEA, informed Defendants that he had run out of money, that Defendants sought payment from Progressive in the fall of 2008 for reimbursement of fees pursuant to the aforementioned agreement.

88. Thereafter, on or about December 22, 2008, despite submissions by Defendants to Progressive for reimbursement of \$444,162.71 in legal fees that Defendants, pursuant to the December, 2007 agreement, now represented to Progressive were "not unique to the criminal

case,” Defendants negotiated a “settlement” with Progressive for the amount submitted. This settlement was negotiated by Defendants without Plaintiff, BOLLEA’s, knowledge or consent. Defendants agreed to accept \$350,000 (Three Hundred Fifty Thousand Dollars) “as a compromise sum for all unpaid costs and fees incurred by [Defendant] firm to date.” This settlement represented a reduction of nearly \$100,000 (One Hundred Thousand Dollars) in the fees and costs submitted by Defendants, which Defendants would hold Plaintiff, BOLLEA, responsible for. A copy of Flayman’s letter to Defendant, WEINBERG, confirming the compromise is attached hereto as Exhibit “S.”

89. The aforementioned compromise was as a result of Flayman informing Defendants that, based on Defendants’ submission of excessive and unnecessary billings (even at \$145 (One Hundred Forty Five Dollars) per hour), he would no longer approve payment for Defendants’ continued representation of Plaintiff, BOLLEA.

90. On December 22, 2008, Flayman sent a check to Defendants in the above compromised amount of \$350,000 Three Hundred Fifty Thousand Dollars. The money was applied to Plaintiff, BOLLEA’s then-outstanding balance and coincided calendar-wise with Defendants’ year-end accounting for partnership distribution purposes which, in large part, is presumed to be why Defendants readily agreed to the compromise without informing Plaintiff, BOLLEA.

91. As previously discussed, Flayman instructed Defendant, WEINBERG, that he would no longer approve payments to Defendants for defense of Plaintiff, BOLLEA. This action was taken due to Flayman’s review in December, 2008 of the \$444,162.71 in billings submitted to date by Defendants for reimbursement at the \$145 (One Hundred Forty-Five Dollar) per hour

agreed rate, and his professional opinion that, even at that rate, much of Defendants' billings were grossly unnecessary and grossly inflated.

92. Flayman instructed Defendants that Progressive intended to immediately appoint substitute counsel, free of cost to Plaintiff, BOLLEA, upon Defendants' immediate withdrawal, and instructed Defendants to refrain from undertaking any additional work on the Plaintiff's behalf to be submitted to Progressive. Nothing in this regard was ever relayed to Plaintiff, BOLLEA, by Defendants.

93. In response, on or about December 29, 2008, Defendant, WEINBERG, sent a return letter to Flayman advising him that, although the compromised amount settled any existing fees and costs, the fees and costs incurred in December were as of yet unbilled and thus remained unsettled. Defendant, WEINBERG, further advised that Defendants had not conclusively decided to withdraw from the representation of Plaintiff, BOLLEA, and would not agree to refrain from undertaking additional work on the Bollea file. A copy of this correspondence is attached hereto as Exhibit "T."

94. When Defendants later submitted the aforementioned "unbilled" fees and costs incurred in months of December, 2008 and January, 2009 in excess of \$20,000 (Twenty Thousand Dollars) at the rate of \$145 (One Hundred Forty-Five Dollars) per hour to Flayman, Progressive paid this amount to complete its business with Defendants.

95. On or about January 8, 2009, Defendants requested a meeting to be held with Plaintiff, BOLLEA, on January 12, 2009, to discuss, among other things, Plaintiff's stated inability to pay for Defendants' legal services, and the hiring of counsel by Progressive, for which Progressive would pay for defense of the civil auto accident case entirely, relieving Plaintiff, BOLLEA, of the obligation. However, Defendants continued to bill Plaintiff,

BOLLEA, despite Flayman's instructions that Progressive would no longer pay any sums for Defendants' continued representation and did not inform Plaintiff, BOLLEA, of that fact.

96. It was not until January 12, 2009 at the aforementioned meeting with Defendants, WEINBERG and FUGATE, and now approximately seventeen (17) months from the date of the accident, that Defendants, for the very first time, informed Plaintiff, BOLLEA, that they had spoken with Progressive and that Progressive is prepared to hire counsel to represent both Plaintiff, BOLLEA, and his son in the civil action.

97. However, Defendants failed to advise Plaintiff, BOLLEA, that Progressive had in fact terminated the relationship due to the exorbitant and unnecessary fee billings or that they had submitted billings well in excess of \$400,000 (Four Hundred Thousand Dollars) that they had compromised without Plaintiff, BOLLEA's, knowledge or consent.

98. Also in January, 2009, Defendants suggested to Plaintiff, BOLLEA, and offered to stay on at their prevailing hourly rates with regard to the action against the Pinellas County Sheriff's Department if he would pay their standard rates. In addition they demeaned the abilities of Progressive insurance defense counsel as being inferior to them with regard to the defense of the automobile accident, despite insurance defense attorneys being attorneys who generally have far more experience than any of the Defendants in the defense of automobile collision cases.

99. Defendants further discussed with Plaintiff, BOLLEA, in January, 2009, that Defendants had negotiated a settlement with Progressive in December, 2008, and how those funds positively impacted his balance. However, this "settlement" of billings submitted to Progressive for reimbursement had already occurred and was made prior to the end of calendar year 2008 without Plaintiff, BOLLEA's, knowledge or consent.

100. On or about January 18, 2009, and shortly after Plaintiff, BOLLEA, learned that he could have experienced legal counsel paid for in its entirety by Progressive, he immediately instructed his representative to contact Defendants, that he was no longer interested in discussing matters related to the civil cases with them, and instructed them to transfer representation to counsel hired by Progressive.

101. Plaintiff, BOLLEA, simultaneously advised Defendants that he was terminating them as his attorneys on the Pinellas County Sheriff's Department action as well. Thereafter, Plaintiff, BOLLEA, promptly sought to interview replacement attorneys for both civil cases.

102. In a confirmation letter, dated February 26, 2009, that echoed what had been said to Defendants earlier, Plaintiff, BOLLEA, stated that he could no longer financially bear Defendants' fees, again formally instructed Defendants to cease all billable work on all matters in which they had been retained, and to provide fully duplicated files to substitute counsel being provided by Progressive.

103. As of March 4, 2009, Defendants had continued to bill Plaintiff, BOLLEA, tens-of-thousands of dollars in calendar year 2009, but Defendants simultaneously refused to release files to Plaintiff, BOLLEA's, new counsel until all outstanding bills had been paid.

104. In late February, 2009, Progressive appointed separate experienced attorneys for Plaintiff, BOLLEA, and his son. Jeff Winkler, Esq. of Banker Lopez Gassler, P.A. was selected and appointed to represent Plaintiff, BOLLEA, and Scott Brasfield of Brasfield Fuller et. al., P.A. was selected and appointed to represent Nicholas Bollea. Plaintiff, BOLLEA, had been allowed to interview various attorneys in this regard and select the foregoing attorneys with Progressive's consent. Both attorneys and their law firms are being paid in full by Progressive,

and Plaintiff, BOLLEA, does not, nor will he be expected to, pay them anything. Future costs of the case will be borne by Progressive in full as well.

105. Despite Defendants' enormous fees, and despite Defendant, WEINBERG's, representation and insistence that Defendants were the best-suited and most competent firm to undertake Plaintiff, BOLLEA's, civil defense, not a single deposition was taken in the civil case, and significant legal defenses for Plaintiff, BOLLEA, were never raised by Defendants, requiring his subsequent defense attorneys to do so. In addition, enormous amounts of billings were incurred by Defendant, ZUCKERMAN, firm attorneys lacking in an understanding and experience in legal matters relevant to the law of casualty claims, resulting in Plaintiff, BOLLEA, being billed vast sums for Defendants to educate themselves on matters well-known to experienced counsel in this area of practice.

106. Despite the fact that in December, 2008, Flayman had unequivocally communicated to Defendants that Progressive would no longer pay bills submitted by Defendants, and despite the fact that Progressive even paid the "unbilled" fees and costs for the month of December, 2008, after terminating Defendants, as previously discussed, Defendants submitted billings to Progressive for fees and costs incurred into 2009, which Progressive refused to pay, citing their December, 2008 agreement with Defendants that payment had been made in full and no further work by Defendants would be authorized. A copy of a letter summarizing that denial is attached hereto as Exhibit "U."

107. All tolled, Defendants received approximately:

- a. \$300,000 – September, 2007;
- b. \$175,000 – January, 2008;
- c. \$112,800 – February, 2008;

- d. \$27,100 – March, 2008;
- e. \$39, 000 – April, 2008;
- f. \$60,100 – June, 2008;
- g. \$200,000 – August, 2008;
- h. \$23,000 – September, 2008;
- i. \$150,000 – October, 2008;
- j. \$50,000 – November, 2008;
- k. \$350,000 – December, 2008;
- l. \$20,000 – February, 2009;
- m. \$64,500 – March 2009.

The foregoing amounts total approximately \$1,571,500 (One Million Five Hundred Seventy-One Thousand Five Hundred Dollars) in fees and costs, virtually all of which were not unique to the criminal case and virtually all of which were related to the aforementioned civil matters, of which, Plaintiff, BOLLEA, ultimately and unnecessarily paid \$1,097,500 (One Million Ninety-Seven Thousand Five Hundred Dollars) because of Defendants' actions. The remaining \$474,000 (Four Hundred Seventy Four Thousand Dollars) reflects payments by Progressive totaling \$370,000 (Three Hundred Seventy Thousand Dollars), and Defendants' return of approximately \$104,000 (One Hundred Four Thousand Dollars) to Plaintiff, BOLLA, that had previously been held in trust by Defendants as a retainer against future fees and costs at the time of Defendants' termination. The billings collected by Defendants, based on the foregoing facts stated herein, qualify as clearly excessive fees per the Florida Supreme Court's definition found in Rule 4-1.5 of the Rules Regulating The Florida Bar. Defendants' accounting record summaries reflecting the same are attached hereto as Exhibit "V."

**COUNT I**  
**LEGAL MALPRACTICE**

**Defendant: Morris "Sandy" Weinberg**

108. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107) as though set forth fully herein.

109. Plaintiff, BOLLEA, retained Defendant, WEINBERG, as his civil defense attorney for civil claims arising out of the August 27, 2007 auto accident, and as his civil plaintiff attorney in the action against the Pinellas County Sheriff's Department.

110. As Plaintiff, BOLLEA's, attorney, Defendant, WEINBERG, was obligated to meet all professional standards of care in his representation of Plaintiff, BOLLEA, and to perform his duties carefully and properly and to exercise the skill, knowledge and diligence of an attorney retained in such circumstances.

111. Furthermore, Defendant, WEINBERG, had an obligation to be competent in the matters for which he undertook legal representation in order to provide Plaintiff, BOLLEA, the degree of care, skill and diligence to which he was entitled.

112. Particularly in light of Plaintiff, BOLLEA's, lack of insurance sophistication, and inexperience with auto negligence actions, Defendant, WEINBERG, had a duty to use reasonable care when dealing with Plaintiff, BOLLEA, and to ensure that actions taken were not prejudicial to his interests or assets.

113. Defendant, WEINBERG, failed to exercise due care, skill or diligence in representing and protecting the interests of his client, Plaintiff, BOLLEA, by *inter alia*:

- a. Failing to advise and recommend to Plaintiff, BOLLEA, of his right and need to retain experienced insurance defense legal counsel without cost to him;

- b. Failing to disclose to Plaintiff, BOLLEA, that Progressive had, in fact, retained an experienced attorney to provide his civil defense, and stood ready to select someone else should he desire;
- c. Preventing Plaintiff, BOLLEA, from knowing about or communicating with the experienced Board Certified Civil Trial Attorney retained by Progressive on Plaintiff's behalf or assisting in the selection of a qualified replacement;
- d. Needlessly and excessively billing and collecting from Plaintiff, BOLLEA, for work that would have been paid for by Progressive, as well as for work that was otherwise unnecessary to his defense and not authorized pursuant to the attorney/client agreement; and
- e. Compromising claims in December, 2008 of fees and costs submitted to Progressive without the authority of Plaintiff, BOLLEA, and despite representing that such fees and costs were "not unique to the criminal case."

114. The legal malpractice and failure to use reasonable care by Defendant, WEINBERG, was a direct and proximate cause of the damages sustained by Plaintiff, BOLLEA.

115. Indeed, with proper legal representation and attorneys exercising due care, skill and diligence, Plaintiff, BOLLEA, would have been advised, and recommendations made, of his right to legal representation provided and paid for by Progressive, would have exercised that right, would have avoided damage, and would have saved in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, MORRIS "SANDY" WEINBERG, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally,

Plaintiff reserves the right to amend this Complaint to add allegations of wantonness and/or reckless conduct, relying on the Exhibits attached hereto as the requisite record evidence, to support a claim for punitive damages pursuant to Fla. Stat. § 768.72.

**COUNT II**  
**VICARIOUS LIABILITY FOR THE**  
**LEGAL MALPRACTICE OF MORRIS "SANDY" WEINBERG**

**Defendant: Zuckerman Spaeder, LLP**

116. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107), and one hundred and eight (108) – one hundred and fifteen (115) as though set forth fully herein.

117. Defendant, ZUCKERMAN, is a law firm comprised of attorneys that offer legal services on behalf of the firm in various jurisdictions, and maintains an office in Tampa, Florida.

118. Defendant, WEINBERG, is an attorney at law, a partner in the Defendant law firm, and was one (1) of two (2) attorneys primarily responsible for Plaintiff, BOLLEA's legal representation.

119. Defendant, WEINBERG, is an agent of Defendant, ZUCKERMAN, by virtue of his partnership and business relationship with Defendant, ZUCKERMAN.

120. Defendant, WEINBERG, undertook the legal representation of Plaintiff, BOLLEA, on behalf of Defendant, ZUCKERMAN.

121. Defendant, WEINBERG, committed legal malpractice/failed to exercise reasonable care in the course and scope of his legal representation of Plaintiff, BOLLEA, and while acting in the furtherance of the business of the partnership, as described fully in paragraphs one hundred six (106) – one hundred thirteen (113).

122. As a result, Defendant, ZUCKERMAN, is vicariously liable for Defendant, WEINBERG's, legal malpractice/legal negligence under the principle of *respondeat superior*.

123. As a direct and proximate result of Defendant, WEINBERG's, conduct, for which Defendant, ZUCKERMAN, is vicariously liable, Plaintiff, BOLLEA, suffered, and continues to suffer, damage in amounts previously discussed in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, ZUCKERMAN SPAEDER, LLP, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add allegations of wantonness and/or reckless conduct, relying on the Exhibits attached hereto as the requisite record evidence, to support a claim for punitive damages pursuant to Fla. Stat. § 768.72.

**COUNT III**  
**INTENTIONAL BREACH OF FIDUCIARY DUTY**

**Defendant: Morris "Sandy" Weinberg**

124. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107) as though set forth fully herein.

125. Defendant, WEINBERG, owed Plaintiff, BOLLEA, a fiduciary duty by virtue of the trust and confidence inherent in the attorney-client relationship between Defendant, WEINBERG, and Plaintiff, BOLLEA.

126. Defendant, WEINBERG, breached his fiduciary duty by, *inter alia*:

- a. Failing to advise and recommend to Plaintiff, BOLLEA, of his right and need to retain experienced insurance defense legal counsel without cost to him;

- b. Failing to disclose to Plaintiff, BOLLEA, that Progressive had, in fact, retained an experienced attorney to provide his civil defense, and stood ready to select someone else should he desire;
- c. Preventing Plaintiff, BOLLEA, from knowing about or communicating with the experienced Board Certified Civil Trial Attorney retained by Progressive on Plaintiff's behalf or assisting in the selection of a qualified replacement;
- d. Needlessly and excessively billing and collecting from Plaintiff, BOLLEA, for work that would have been paid for by Progressive, as well as for work that was otherwise unnecessary to his defense and not authorized pursuant to the attorney/client agreement; and
- e. Compromising claims in December, 2008 of fees and costs submitted to Progressive without the authority of Plaintiff, BOLLEA, and despite representing that such fees and costs were "not unique to the criminal case."

127. Defendant, WEINBERG, did so intentionally, even though he knew or should have known that his acts and omissions were adverse to Plaintiff, BOLLEA's, interests, violated his trust and confidence, and were to his detriment.

128. Plaintiff, BOLLEA, who was dependent on Defendant, WEINBERG's, advice and counsel, reasonably relied on Defendant, WEINBERG's, acts and omissions, and agreed to and paid for Defendant, WEINBERG's, legal representation for nearly seventeen (17) months when he could have had cost-free legal representation provided by Progressive.

129. As a direct and proximate result of Defendant, WEINBERG's, breach of fiduciary duty, Plaintiff, BOLLEA, suffered, and continues to suffer, damage. Indeed, with proper legal representation and attorneys exercising due care, skill and diligence, Plaintiff, BOLLEA, would

have been advised, and recommendations made, of his right to legal representation provided and paid for by Progressive, would have exercised that right, would have avoided damage, and would have saved in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, MORRIS “SANDY” WEINBERG, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages pursuant to the requirements of Fla. Stat. § 768.72, and relying on the Exhibits attached hereto as the requisite record evidence.

**COUNT IV**  
**VICARIOUS LIABILITY FOR**  
**INTENTIONAL BREACH OF FIDUCIARY DUTY**  
**BY MORRIS “SANDY” WEINBERG**

**Defendant: Zuckerman Spaeder, LLP**

130. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107), and one hundred twenty-four (124) – one hundred twenty-nine (129) as though set forth fully herein.

131. Defendant, ZUCKERMAN, is a law firm comprised of attorneys that offer legal services on behalf of the firm in various jurisdictions, and maintains an office in Tampa, Florida.

132. Defendant, WEINBERG, is an attorney at law, a partner in the Defendant law firm, and was one (1) of two (2) attorneys primarily responsible for Plaintiff, BOLLEA’s legal representation.

133. Defendant, WEINBERG, is an agent of Defendant, ZUCKERMAN, by virtue of his partnership and business relationship with Defendant, ZUCKERMAN.

134. Defendant, WEINBERG, undertook the legal representation of Plaintiff, BOLLEA, on behalf of Defendant, ZUCKERMAN.

135. Defendant, WEINBERG, owed Plaintiff, BOLLEA, a fiduciary duty by virtue of the trust and confidence inherent in the attorney-client relationship between Defendant, WEINBERG, and Plaintiff, BOLLEA.

136. Defendant, WEINBERG, breached his fiduciary duty in the course and scope of his legal representation of Plaintiff, BOLLEA, and while acting in the furtherance of the business of the partnership, as described fully in paragraphs one hundred twenty-two (122) -- one hundred twenty-seven (127).

137. As a result, Defendant, ZUCKERMAN, is vicariously liable for Defendant, WEINBERG's, breach of fiduciary duty under the principle of *respondeat superior*.

138. As a direct and proximate result of Defendant, WEINBERG's, conduct, for which Defendant, ZUCKERMAN, is vicariously liable, Plaintiff, BOLLEA, suffered, and continues to suffer, damage in amounts previously discussed in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, ZUCKERMAN SPAEDER, LLP, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages pursuant to the requirements of Fla. Stat. § 768.72, and relying on the Exhibits attached hereto as the requisite record evidence.

**COUNT V**  
**LEGAL MALPRACTICE**

**Defendant: Lee Fugate**

139. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107) as though set forth fully herein.

140. Plaintiff, BOLLEA, retained Defendant, FUGATE, as his civil defense attorney for civil claims arising out of the August 27, 2007 auto accident, and as his civil plaintiff attorney in the action against the Pinellas County Sheriff's Department.

141. As Plaintiff, BOLLEA's, attorney, Defendant, FUGATE, was obligated to meet all professional standards of care in his representation of Plaintiff, BOLLEA, and to perform his duties carefully and properly and to exercise the skill, knowledge and diligence of an attorney retained in such circumstances.

142. Furthermore, Defendant, FUGATE, had an obligation to be competent in the matters for which he undertook legal representation in order to provide Plaintiff, BOLLEA, the degree of care, skill and diligence to which he was entitled.

143. Particularly in light of Plaintiff, BOLLEA's, lack of insurance sophistication, and inexperience with auto negligence actions, Defendant, FUGATE, had a duty to use reasonable care when dealing with Plaintiff, BOLLEA, and to ensure that actions taken were not prejudicial to his interests or assets.

144. Defendant, FUGATE, failed to exercise due care, skill or diligence in representing and protecting the interests of his client, Plaintiff, BOLLEA, by *inter alia*:

- a. Failing to advise and recommend to Plaintiff, BOLLEA, of his right and need to retain experienced insurance defense legal counsel without cost to him;

- b. Failing to disclose to Plaintiff, BOLLEA, that Progressive had, in fact, retained an experienced attorney to provide his civil defense, and stood ready to select someone else should he desire;
- c. Preventing Plaintiff, BOLLEA, from knowing about or communicating with the experienced Board Certified Civil Trial Attorney retained by Progressive on Plaintiff's behalf or assisting in the selection of a qualified replacement;
- d. Needlessly and excessively billing and collecting from Plaintiff, BOLLEA, for work that would have been paid for by Progressive, as well as for work that was otherwise unnecessary to his defense and not authorized pursuant to the attorney/client agreement; and
- e. Compromising claims in December, 2008 of fees and costs submitted to Progressive without the authority of Plaintiff, BOLLEA, and despite representing that such fees and costs were "not unique to the criminal case."

145. The legal malpractice and failure to use reasonable care by Defendant, FUGATE, was a direct and proximate cause of the damages sustained by Plaintiff, BOLLEA.

146. Indeed, with proper legal representation and attorneys exercising due care, skill and diligence, Plaintiff, BOLLEA, would have been advised, and recommendations made, of his right to legal representation provided and paid for by Progressive, would have exercised that right, would have avoided damage, and would have saved in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, LEE FUGATE, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the

right to amend this Complaint to add allegations of wantonness and/or reckless conduct, relying on the Exhibits attached hereto as the requisite record evidence, to support a claim for punitive damages pursuant to Fla. Stat. § 768.72.

**COUNT VI**  
**VICARIOUS LIABILITY FOR THE**  
**LEGAL MALPRACTICE OF LEE FUGATE**

**Defendant: Zuckerman Spaeder, LLP**

147. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107), and one hundred thirty-nine (139) – one hundred forty-six (146) as though set forth fully herein.

148. Defendant, ZUCKERMAN, is a law firm comprised of attorneys that offer legal services on behalf of the firm in various jurisdictions, and maintains an office in Tampa, Florida.

149. Defendant, FUGATE, is an attorney at law, counsel in the Defendant law firm, and was one (1) of two (2) attorneys primarily responsible for Plaintiff, BOLLEA's legal representation.

150. Defendant, FUGATE, is an agent of Defendant, ZUCKERMAN, by virtue of his employment and business relationship with Defendant, ZUCKERMAN.

151. Defendant, FUGATE, undertook the legal representation of Plaintiff, BOLLEA, on behalf of Defendant, ZUCKERMAN.

152. Defendant, FUGATE, committed legal malpractice in the course and scope of his legal representation of Plaintiff, BOLLEA, and while acting in the furtherance of the business of the partnership, as described fully in paragraphs one hundred fifty-five (155) – one hundred sixty-two (162).

153. As a result, Defendant, ZUCKERMAN, is vicariously liable for Defendant, FUGATE's, legal malpractice under the principle of *respondeat superior*.

154. As a direct and proximate result of Defendant, FUGATE's, conduct, for which Defendant, ZUCKERMAN, is vicariously liable, Plaintiff, BOLLEA, suffered, and continues to suffer, damage in amounts previously discussed in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, ZUCKERMAN SPAEDER, LLP, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add allegations of wantonness and/or reckless conduct, relying on the Exhibits attached hereto as the requisite record evidence, to support a claim for punitive damages pursuant to Fla. Stat. § 768.72.

**COUNT VII**  
**INTENTIONAL BREACH OF FIDUCIARY DUTY**

**Defendant: Lee Fugate**

155. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107) as though set forth fully herein.

156. Defendant, FUGATE, owed Plaintiff, BOLLEA, a fiduciary duty by virtue of the trust and confidence inherent in the attorney-client relationship between Defendant, FUGATE, and Plaintiff, BOLLEA.

157. Defendant, FUGATE, breached his fiduciary duty by, *inter alia*:

- a. Failing to advise and recommend to Plaintiff, BOLLEA, of his right and need to retain experienced insurance defense legal counsel without cost to him;

- b. Failing to disclose to Plaintiff, BOLLEA, that Progressive had, in fact, retained an experienced attorney to provide his civil defense, and stood ready to select someone else should he desire;
- c. Preventing Plaintiff, BOLLEA, from knowing about or communicating with the experienced Board Certified Civil Trial Attorney retained by Progressive on Plaintiff's behalf or assisting in the selection of a qualified replacement;
- d. Needlessly and excessively billing and collecting from Plaintiff, BOLLEA, for work that would have been paid for by Progressive, as well as for work that was otherwise unnecessary to his defense and not authorized pursuant to the attorney/client agreement; and
- e. Compromising claims in December, 2008 of fees and costs submitted to Progressive without the authority of Plaintiff, BOLLEA, and despite representing that such fees and costs were "not unique to the criminal case."

158. Defendant, FUGATE, did so intentionally, even though he knew or should have known that his acts and omissions were adverse to Plaintiff, BOLLEA's, interests, violated his trust and confidence, and were to his detriment.

159. Plaintiff, BOLLEA, who was dependent on Defendant, FUGATE's, advise and counsel, reasonably relied on Defendant, FUGATE's, acts and omissions, and agreed to and paid for Defendant, WEINBERG's, legal representation for nearly seventeen (17) months when he could have had cost-free legal representation provided by Progressive.

160. As a direct and proximate result of Defendant, FUGATE's, breach of fiduciary duty, Plaintiff, BOLLEA, suffered, and continues to suffer, damage. Indeed, with proper legal representation and attorneys exercising due care, skill and diligence, Plaintiff, BOLLEA, would

have been advised, and recommendations made, of his right to legal representation provided and paid for by Progressive, would have exercised that right, would have avoided damage, and would have saved in excess of one million dollars.

**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, LEE FUGATE, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages pursuant to the requirements of Fla. Stat. § 768.72, and relying on the Exhibits attached hereto as the requisite record evidence.

**COUNT VIII**  
**VICARIOUS LIABILITY FOR**  
**INTENTIONAL BREACH OF FIDUCIARY DUTY**  
**BY LEE FUGATE**

**Defendant: Zuckerman Spaeder, LLP**

161. Plaintiff, BOLLEA, realleges and incorporates paragraphs one (1) – one hundred and seven (107), and one hundred fifty-five (155) – one hundred sixty (160) as though set forth fully herein.

162. Defendant, ZUCKERMAN, is a law firm comprised of attorneys that offer legal services on behalf of the firm in various jurisdictions, and maintains an office in Tampa, Florida.

163. Defendant, FUGATE, is an attorney at law, counsel in the Defendant law firm, and was one (1) of two (2) attorneys primarily responsible for Plaintiff, BOLLEA's legal representation.

164. Defendant, FUGATE, is an agent of Defendant, ZUCKERMAN, by virtue of his employment and business relationship with Defendant, ZUCKERMAN.

165. Defendant, FUGATE, undertook the legal representation of Plaintiff, BOLLEA, on behalf of Defendant, ZUCKERMAN.

166. Defendant, FUGATE, owed Plaintiff, BOLLEA, a fiduciary duty by virtue of the trust and confidence inherent in the attorney-client relationship between Defendant, FUGATE, and Plaintiff, BOLLEA.

167. Defendant, FUGATE, breached his fiduciary duty in the course and scope of his legal representation of Plaintiff, BOLLEA, and while acting in the furtherance of the business of the partnership, as described fully in paragraphs one hundred seventy-one (171) – one hundred-six (176).

168. As a result, Defendant, ZUCKERMAN, is vicariously liable for Defendant, FUGATE's, breach of fiduciary duty under the principle of *respondeat superior*.

169. As a direct and proximate result of Defendant, FUGATE's, conduct, for which Defendant, ZUCKERMAN, is vicariously liable, Plaintiff, BOLLEA, suffered, and continues to suffer, damage in amounts previously discussed in excess of one million dollars.

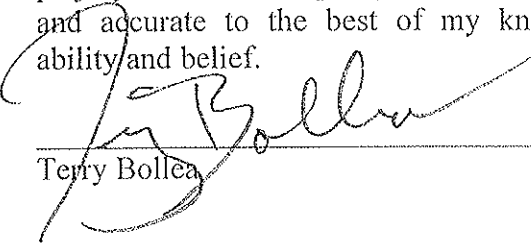
**WHEREFORE**, Plaintiff, TERRY BOLLEA a/k/a HULK HOGAN, respectfully prays for judgment against Defendant, ZUCKERMAN SPAEDER, LLP, and for compensatory damages in excess of \$15,000 (Fifteen Thousand Dollars), prejudgment interest, reasonable costs of this action and such other and further relief as this Court deems just and proper. Finally, Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages pursuant to the requirements of Fla. Stat. § 768.72, and relying on the Exhibits attached hereto as the requisite record evidence.

**DEMAND FOR JURY TRIAL**

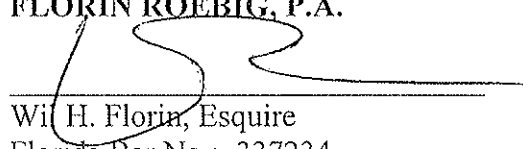
Plaintiff, BOLLEA, requests a jury trial on all issues so triable.

**DATED** this 11<sup>th</sup> day of September, 2009.

I do hereby affirm, under the penalties of perjury, that the foregoing statements are true and accurate to the best of my knowledge, ability and belief.

  
\_\_\_\_\_  
Terry Bollea

**FLORIN ROEBIG, P.A.**

  
\_\_\_\_\_  
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