STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

The Old Firm P.C.,

Plaintiff, Case No

v

GAL's Law Firm, a Michigan Professional Service Limited Liability Company, and

GAL

Defendants.

/

Counsel for plaintiff

Danesville, MI 48819

counsel for plaintiff

Traverse City, MI 49685-0735

Counsel for defendants

Traverse City, MI 49686

/

VERIFIED RESPONSE TO VERIFIED COMPLAINT

Defendants, GAL's Law Firm and GAL, correctly spelled GAL, through their counsel, P.C. respond to Plaintiff the Old Firm's Verified Complaint as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. If Plaintiffs are referring to the conversion that Mr had with initially had no intention of filing suit. d general questions concerning first-party benefits for her daughter in connection with an automobile accident that occurred on July 20, 2002, near Dayton, Ohio. Mr. answered Ms. questions and offered to come to the home to review information and help the understand their first-party no-fault rights.

5. The retainer agreement signed by dated September 12, 2002, speaks for itself. The ained after continued problems with their first-party carrier. With regard to her third-party no-fault rights, etained the firm to communicate with and potentially negotiate with the third-party insurance carrier. Both nd did not initially authorize the firm to file a third-party lawsuit on her behalf. Both and were wary of litigation.

6. It is denied that shortly after September 12, 2002, Plaintiff retained the services of Ohio counsel, o assist Plaintiff in the handling of this matter. In fact, did not agree to bring any third-party litigation at any time during 2002, 2003 or the first part of 2004. Much of the activity during the first 1 1/2 years involved helping the with first-party issues, and preparing a settlement brochure to attempt pre-suit settlement in the third-party matter. Unfortunately, the firm's settlement brochure failed to yield any response from the insurance carrier.

7. The retainer agreement signed by speaks for itself. It was not until approximately June 2004 that decided she was willing to file a complaint in this matter. It was not until June 30, 2004, after pre-suit settlement efforts literally went nowhere, when the Mikowskis authorized the retention of Mr. to provide local representation for third-party auto no-fault litigation. (See Verified Complaint Exhibit G, Billing Records).

8. The July 15, 2004 Ohio complaint speaks for itself.

9. It is admitted that Mr. GAL was the primary attorney handling the case until his departure from the Plaintiffs on February 3, 2005. It should be noted Mr. GAL was a full equity partner at The Old Firm Mr. GAL developed a personal relationship with and her mother GAL

10. It is denied that "Plaintiff and Defendant, sent a joint letter to and GAL on February 23, 2005." The signature on Exhibit D is not signature, nor was authorization ever requested by The Old Firm to sign Mr. GAL name on this particular letter. The material facts concerning GAL departure from The Old Firm and specifically concerning the and matter, are detailed in the Affidavit of GAL attached as **EXHIBIT 1** and the Affidavits of and attached as **EXHIBITS 2 & 3.** The February 23 letter was sent by The Old Firm only after: (a) The Old Firm initial proposal to GAL precluding him from representing GAL was rejected by Mr. (b) the initial letter signed by Mr. GAL January, 2005 advising the client of their choice of counsel had been destroyed by The Old Firm c) had called the client(s) advising

them that they would be reassigned to an new attorney; (d) efforts to retain the client despite their desire to change counsel failed; and (e) had effectively been terminated.

11. It is admitted that both and never once spoke with anyone from again after the events described in the attached Affidavits. It is specifically denied that Exhibit E was the first notice to that they had been fired. It is unclear why sent out their February 23, 2005 letter, except in an attempt to restore their position on the quantum meruit claim they now assert in court.

12. It is admitted that the file was delivered to as indicated on Plaintiff's Exhibit F. It is unknown whether or not the entire file was transmitted. The January 2005 letter drafted by to and nd signed by is not located in the file materials provided by lending further support that those letters were destroyed by . Evidence of that letter should exist on the computer system, even if deleted or overwritten.

13. It is believed tha and after having learned of Mr. deception concerning their right to choose counsel, chose not to speak to from that point forward, including through today's date. The had informed Mr hat they were terminating the services of as noted in the Affidavit of attached as **EXHIBIT 1**.

14. It is admitted that at the time the ile was transferred, the Defendants were aware of Plaintiff's claim to a common law charging lien. Further,

had already been informed in a conversation between Mr. and that they had, in fact, been terminated; that they had violated their ethical obligations to advise the client of my departure in a timely fashion, and had violated their affirmative duty to advise the client of their right to select counsel. Mr had also indicated that a law firm who violates their ethical duties to the client potentially waives their right to quantum meruit. Defendants specifically deny Plaintiffs have a "common law charging lien," given the breach of their ethical duties to the client.

15. It is admitted that on February 9, 2006, for the Plaintiff wrote Defendants a letter attaching an attorney lien to the file of $47,713.51; $2,539.76 for costs; and $45,173.75 for attorneys' fees. At least $9,000.00 of those fees related to first-party issues for which no lawsuit or recovery was ever made. Further, no discount has been applied as a result of the partnership formula to which is entitled which potentially 'zeroed-out' his time as a result of the 2005 partnership distribution or minimally discounted his time for yet-unrealized profit sharing under the firm formula.

16. On February 22, 2006, Defendants admit writing an acknowledgement of receipt of the letter. However, at no time did Defendants accept the quantum meruit fee claim as correct, accurate or enforceable under Michigan law. In fact, in his letter dated February 9, 2006, notes he is aware that claim for quantum meruit fee will be contested.

17. It is admitted that in early May 2006, the Ohio case for was settled. Plaintiffs never requested any further information after Mr. sent the May 24, 2006 letter enclosing checks for full reimbursement of costs and

noting that the claimed quantum meruit fee had been retained in the client trust account pending resolution.

18. The May 24, 2006 letter advising The Old Firm of settlement speaks for itself. Defendants provided full reimbursement for costs to The Old Firm and indicated: "As you know, there is an issue as to whether or not The Old Firm is entitled to any quantum meruit attorney's fees in this matter. Since I only know a portion of what happened here, I wanted to give you an opportunity to respond." The letter further noted The Old Firm quantum meruit claim had been retained in the client trust account pending resolution of the matter. It is interesting that The Old Firm has never -- in correspondence or the pleadings in this case -- addressed the issues surrounding Mr. GAL departure and the lack of notice to and of their right to select counsel.

19. Defendants' letter dated May 24, 2006, speaks for itself. Plaintiffs failed to respond to the letter or ask for any further documentation, and filed this lawsuit instead.

20. It is denied that Defendants improperly determined the amount, which Plaintiff might be entitled without permission or agreement by Plaintiff. Plaintiff specifically put in its lien with attorneys' fees and costs attached. Defendant has reserved that claimed quantum meruit attorney fee in the client trust account pending resolution, despite the fact that it would inevitably be reduced for a variety of reasons even if The Old Firm can show that it is entitled to all or part of the fee after litigation on the merits. Defendants further paid Plaintiff their full costs in this matter. Regardless, Defendants have retained sufficient amounts in the trust retainer to address the claimed lien of The Old Firm awaiting resolution by this Court.

21. Defendant is without knowledge concerning Plaintiff's dispute of the fee disbursement calculation.

22. It is denied that Defendants have a "fiduciary duty" to Plaintiff to withhold legitimate and uncontested settlement distributions to the clients, local counsel, or even GAL's Law Firm By setting aside the total amount claimed by The Old Firm on their lien pending resolution through the Court, Defendants acted both ethically and reasonably to protect any interest Plaintiff may have in a quantum meruit award.

23. It is unclear what Plaintiffs mean by "a segregated trust account." Defendants held Plaintiff's claimed lien in the client trust account pending further contact from Plaintiff after Mr. GAL's May 24, 2006, letter. However, instead of responding to the letter, requesting further information or further separation of their claimed lien, they proceeded directly to Court.

24. Denied. Plaintiff's claimed quantum meruit lien is held in a client trust account pending further direction from this Court.

25. MRPC 1.15(b) speaks for itself.

26. MRPC 1.15(c) speaks for itself.

27. MRPC 1.15(d) speaks for itself.

28. Paragraph 28 states a legal conclusion to which no answer is required. To the extent an answer is required; Defendant notified The Old Firm of the fees and requested further directions. The only message Mr. Grow received from the Old Firm was a phone message from indicating he would hold the May 24, 2006, letter until our schedules would permit us to discuss the matter.

29. Defendant specifically denies Plaintiff is entitled to a quantum meruit fee for work performed on the , matter as a result of the ethical violation. Plaintiff's conduct discouraged rom pursuing the litigation to the full extent and thereby affected the ability of her counsel to maximize the recovery in this matter. Michigan law makes it clear that quantum meruit is an equitable claim and that "unclean hands" preclude recovery. Michigan law further states that if Defendants breach their obligations to the Plaintiffs who thereafter change counsel, no quantum meruit fee is to be awarded by the court. Plaintiff has, quite literally, offered no evidence to explain its conduct in this matter.

30. Defendants deny that the matter was 75% complete at the time Mr. GAL departed. Plaintiffs have no basis to know what occurred during the 15 months after the changed counsel. Billing records establish that 60% of the activity on this matter occurred after Mr. GAL departure from the Old Firm Regardless, Plaintiff can't even establish a high probability of 'success on the merits' that it is entitled to the $45,173.75 set forth in 's lien letter dated February 9, 2006 currently held in the GAL's Law Firm client trust account, let alone any number higher than that.

Defendants respond to Plaintiff's request for relief as follows:

A. Plaintiffs knew, and have known for over 16 months, that they breached an ethical duty to the client. Plaintiff's claimed lien, as set forth in the February 9, 2006 letter from is already preserved in Defendants' client trust account. Plaintiff's attempt to require others who did nothing wrong to return their money to the trust

account pending resolution of Plaintiff's claimed quantum meruit fee is unreasonable and unnecessary under these circumstances.

B. Defendants have no problem making available the distribution papers signed by local counsel and the clients as well as GAL's Law Firm's billing records, subject to a confidentiality order. Defendants would also request this Court put the billing records, attached as **Exhibit 4** under seal, as they contain attorney-client privilege information, which The Old Firm had no authority to disclose.

C. This Court, or potentially a jury, will determine whether or not The Old Firm is entitled to any amount of money under the equitable theory of quantum meruit subject to all defenses and arguments of Defendants in the underlying matter.

D. Defendants deny that Plaintiff should be awarded attorneys' fees and costs and, in fact, request the same be awarded in Defendants' favor. Plaintiff's argument that $108,333.33 should be returned to the trust account is without support or legal merit. Defendants have stood ready to move the claimed lien pursuant to February 9, 2006 letter into an escrow account if that is what Plaintiff wants to do during the pendency of this action.

E. Defendants deny that any further relief should be granted to Plaintiff. This matter should be moved to a trial based on the limited and narrow facts presented.

AFFIRMATIVE DEFENSES

At all times material to this matter, Defendants will show the following:

1. Plaintiff's Complaint has failed to state a cause of action upon which relief can be granted, entitling Defendant to judgment as a matter of law.

2. There is no essential issue of material fact, Defendants being entitled to judgment as a matter of law.

3. Plaintiff lacks standing for bringing the present lawsuit.

4. Plaintiff has failed to state a cause of action for negligence, failing to provide on the face of its Complaint an alleged duty owed by Defendants to Plaintiff.

5. The sole proximate cause of injuries or damages suffered by Plaintiff was the active or intervening negligence of other parties or persons.

6. Any evidence concerning an oral contract or supplemental oral terms to a written contract between Plaintiff and Defendants is barred by the application of the parol evidence rule.

7. Any damage sustained or suffered by Plaintiff as stated in its Complaint was caused, in whole or in part, by the negligence, fault and want of care of the Plaintiff.

8. Plaintiff's allegations concerning a contract between Defendants and Plaintiff are barred by the application of the statute of frauds.

9. Plaintiff has failed to mitigate its damages.

10. Plaintiff's allegations of vicarious liability and *respondeat superior* must fail for the reason that Defendants lacked the requisite control over the actions of other parties or Defendants.

11. Plaintiff, by conduct, is estopped from and has waived its right to seek the relief sought in its Complaint against Defendants.

12. The venue as stated in Plaintiff's Complaint is improperly laid.

13. This Court lacks jurisdiction over the Plaintiff's Complaint for the reason that Plaintiff has failed to exhaust administrative remedies.

14. The Plaintiff's claims fail due to the defense of laches.

15. The Plaintiff's claims for equitable relief are barred by the doctrine of "unclean hands."

16. Defendants respectfully request and reserve the right to amend and supplement these Affirmative Defenses at such times as further facts upon which the Plaintiff's cause of action are based are brought out through discovery proceedings or otherwise become known to Defendants.

The above is true to the best of my knowledge, information and belief.

Date: 6-30-06

GAL

Date: June 30, 2006

By:_

STATE OF MICHIGAN
COUNTY OF GRAND TRAVERSE

GAL

Acknowledged before me on June 30, 2006 b,

Grand Traverse County, Michigan
My Commission Expires: J
Acting in Grand Traverse County, Michigan