

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

COMPLAINT

CASE CLASS CODE 30703

CATHERINE CONRAD  
4230 East Towne Blvd., #183  
Madison, WI 53704

RODNEY RIGSBY  
4230 East Towne Blvd., #183  
Madison, WI 53704

Plaintiffs,

BELL, MOORE & RICHTER  
44 E. Mifflin St.  
10<sup>th</sup> Floor  
Po Box 1807  
Madison, WI 53701-1807

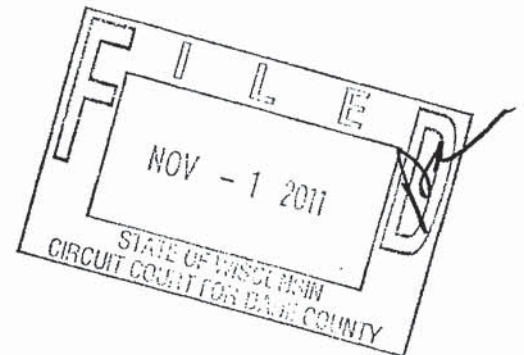
BILL ABBOTT  
44 E. Mifflin St  
10<sup>th</sup> Floor  
Po Box 1807  
Madison, WI 53701-1807

MARK FURHAMN  
740 Regent Street, Suite 400  
P.O. Box 1507  
Madison, WI 5701-1507

ABC INSURANCE COMPANY  
FOR BELL, MOORE & RICHTER

ABC INSURANCE COMPANY  
FOR MARK FURHMAN

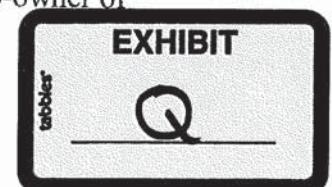
Defendants,



11CV4860

BACKGROUND

1. Plaintiff Catherine Conrad is located at 4230 East Towne Blvd., #183, Madison, WI 53704. Catherine Conrad is a client of Bill Abbott's at Bell, Moore & Richter and the co-owner of Banana Productions, LLC.



2. Plaintiff Rodney Rigsby is located at 4230 East Towne Blvd., #183, Madison, WI 53704. Rodney Rigsby is a client of Bill Abbott's at Bell, Moore & Richter and the co-owner of Banana Productions, LL C.
3. Bill Abbott is the defendant who is employed as an attorney at Bell, Moore & Richter at 44 E. Mifflin St., 10<sup>th</sup> Floor, P0 Box 1807, Madison, WI 53701-1807.
4. Bell, Moore & Richter is the defendant and law firm Plaintiff retained and is located at 44 E. Mifflin St., 10<sup>th</sup> Floor, P0 Box 1807, Madison, WI 53701-1807.
5. Mark Fuhrman is the defendant who previously was employed as an attorney at Bell, Moore & Richter during Plaintiff's retainment of the law firm however is now employed as an attorney at Lathrop & Clark at 740 Regent Street, Suite 400, P.O. Box 1507.
6. ABC Insurance Company ("ABC") is an insurance company whose principal place of business and actual name are unknown at this time. At all relevant times, ABC had in force and effect a policy of professional liability insurance with the law firm of Bell, Moore & Richter that obligates ABC to pay for the liability of the law firm and all defendants listed in this case.
7. ABC Insurance Company ("ABC") is an insurance company whose principal place of business and actual name are unknown at this time. ABC has in force and effect a policy of professional liability insurance with Defendant Mark Fuhrman and Lathrop & Clarke that obligates ABC to pay for the liability of Defendant Mark Fuhrman.

### **CAUSE OF ACTION**

1. June 2006 - Plaintiff Catherine Conrad hired Jessica Zerbst, an attorney with Bell, Gierhart & Moore to handle the \$114,000 closing of Plaintiff's condominium.
2. July 2007 - at a social gathering Plaintiff Conrad mentioned to Jessica Zerbst that she and her business partner Rodney Rigsby were growing as a business and was looking to have some more legal services done. Attorney Zerbst suggested Plaintiffs' take their business to her boss Attorney Bill Abbott at Bell, Gierhart & Moore because they were a bigger firm and a one stop shop for Plaintiffs' needs. Catherine Conrad is a children's entertainer who has performed across the country for 24 years as the "Banana Lady TM (c)". The business of both Plaintiff Conrad and Rigsby is to promote, entertain and produce products to sell globally for families.
2. August 2007 – Plaintiffs' retained Attorney Bill Abbott as their main counsel and his law firm Bell, Moore & Richter (previously Bell, Gierhart and Moore, S.C.) to perform various services

such as drafting agreements, setting up two securities (at \$999,999.00 each) so Plaintiffs could accept investors, help Plaintiffs' file their "Banana Lady TM ©" federal word mark application, copyrights and advise on other intellectual property protection, needs and goals. The law firm represented themselves to Plaintiffs' and the general public as legal experts and experts in the field of intellectual property. Bill Abbott is a partner in the law firm Bell, Moore & Richter and was Plaintiffs sole counsel for all their legal needs from August 2007 through May 2011. Attorney Abbott oversaw Mark Furhman and all attorneys and their related services performed for Plaintiffs from August 2007 through May 2011.

4. August 17, 2007 – Plaintiff Catherine Conrad emailed Bill Abbott stating that she *"enjoyed meeting him the*

*other day and would like to pursue working together. Right now my immediate needs are as follows: finish trademark application for actual use in two categories 041 and 09 and to get my LLC set up to accept investors. We want to get the "Banana Lady TM ©" protected as soon as possible since we're talking to national companies so this is obviously a priority. Please let me know how we would proceed, estimate of cost..."* Bill Abbott emailed Plaintiff back stating *"I'm happy to have a chance to work with you"*.

5. Fall of 2007 Bill Abbott directed Jessica Zerbst to draft the operating agreement for Banana Productions, LLC and set up three more LLC's for Plaintiffs'. Jessica Zerbst also drafted an agreement for new partner Lynne Westphal. Later Bill Abbott also directed Jessica Zerbst to draft Plaintiff Catherine Conrad's recording, author and performing agreements.

6. September 2007 - Bill Abbott directed Jessica Zerbst and Attorney Kelly Stohr who was another intellectual property expert at Bell, Moore & Richter, to do the applications for the "Banana Lady TM ©" federal word mark, the Banana Productions company logo and Banana Adventures the book series trademark. See Exhibit J.

7. September 10, 2007 – Jessica Zerbst emailed Plaintiff Catherine Conrad that Kelly Stohr

would be *"taking the lead on the trademarks and Jessica would be helping as needed"*.

8. October 7, 2007 – Plaintiffs' asked Kelly Stohr about the music copyrights and if she should file the songs personally or through Banana Productions, LLC who was the publisher. Bill Abbott wrote back that Plaintiffs *"should hold the copyrights on the songs personally"*.

9. October 19, 2007 – Attorney Bill Williams emailed Plaintiffs' introducing himself as *"one of Bill Abbott's partners"* and that he was going to be *"reviewing the draft of the offering circular and LLC operating agreement"*. These two investment securities were just under a \$1,000,000 million dollars each for Plaintiff's book series "Banana Adventures" and DVD series, "Adventures of Banana & Spike". Attorney Bill Williams was another intellectual property expert under Bill Abbott's direction at Bell, Moore & Richter. Specifically these investments included the use of Catherine Conrad's image as the author for book signings and appearances and the use of the costumed character image of the "Banana Lady TM©" and her monkey puppet Spike for performances, appearances and live action for the DVD series. These investments also included the licensing of all Plaintiffs' intellectual property.

10. March 2008 – Plaintiff Conrad finished her first children's book "The Lemonade Stand ©". Plaintiffs' gave Bill Abbott and Kelly Stohr copies. Kelly Stohr wrote to Plaintiff that *"she received a sample of your book and CD – they look terrific! I don't think we will need them for this round of trademark applications, but will I will keep them on file in case a need should arise"*.

11. April 28, 2008 – Catherine Conrad aka the "Banana Lady TM (c)" performed on a Betty Lou Cruise for the owner of Westport Marine, Inc. The cruise was a private party for independent restaurant owners. On this cruise a photo was taken of the "Banana Lady TM ©" posing with the Captain Peter Pol.

12. April 29, 2008 – Catherine Conrad met with Beverly Walsh and associates at Morgan Murphy Media/WISC-TV to discuss a potential live action family health and wellness campaign starring the "Banana Lady TM ©" character and her monkey puppet Spike.

13. May 29, 2008 – Plaintiffs' gave Kelly Stohr a copy of the "Banana Lady TM ©" Health and

Wellness TV proposal. Plaintiffs' wanted to "*start the process to trademark (word mark) "Banana Bites". We are already doing this on live radio on WIBA and will shortly be doing it on TV as a short PSA starring the "Banana and Spike".* Plaintiffs asked Kelly Stohr if she needed to "*trademark the characters in animated form as well?*"

14. May 29, 2008 – Plaintiff emailed Bill Abbott stating that the Morgan Murphy Media TV deal would be "*Plaintiff's ideas, content, talent (actors and writing. They're looking at pitching 4 or 5 sponsors for a year (i.e. St. Mary's, insurance companies...) airing 30 sec. Banana Bites with our characters and then have the sponsor tag at the end*". Memo from Bill Abbott to Mark Fuhman in regards to drafting the TV sponsorship contract. See Exhibit M and B.

15. June 1, 2008 – Kelly Stohr reviewed the Channel 3 "Banana Bites" and thought "*it would be good to seek the trademark registration of the word mark "Banana Bites* Kelly Stohr also stated that "*with regard to trade marking your literary characters Banana & Spike, we are not sure that this is the best option*" and that "*registering the characters for copyright protection as visual works of art might be more appropriate at the time*". Kelly Stohr offered Plaintiffs the US Copyright website and asked if Plaintiff wanted help with this.

16. June 9, 2008 – Mark Fuhman emailed Plaintiffs' stating that "*Bill asked me to work on a draft contract for Catherine's agreement with MMM/WISC-TV3*". Attorney Mark Fuhman was referring to Bill Abbott in the email. Attorney Mark Fuhman was another intellectual property expert at Bell, Moore & Richter under Bill Abbott's direction. The draft contract with Morgan Murphy Media for the Health and Wellness TV Campaign included using Plaintiff's intellectual property images and content ("*Banana Lady TM ©*" image, her monkey puppet Spike's image and Conrad's own image, music, merchandise...). Bill Abbott, Mark Fuhman and Chantelle Ringe were all included on all MMM/WISC-TV contract negotiation correspondence.

17. July 22, 2008 – Plaintiffs' emailed Bill Abbott agreement templates in regards to having



Bill Abbott draft an author and recording artist agreement for Plaintiff Conrad because he did not have these type agreements to work from. Plaintiffs' also asked Bill Abbott to set up a record label and publishing company for Plaintiffs'.

18. July 31, 2008 – Catherine Conrad signed the Morgan Murphy Media TV contract to do the family health and wellness campaign called “As Strong As I Can Be TM (c)”, a live action public service announcement starring the “Banana Lady TM” and her monkey puppet Spike. The exclusive TV contract also included using Plaintiffs' theme song “As Strong As I Can Be TM (c)”. The TV campaign was an ongoing 30 second spot for local surrounding counties in southern Wisconsin with a reach of over 375,000 subscribers with the option to expand to Morgan Murphy Media's two sister stations in La Crosse and in Spokane, Washington. Plaintiffs' contract also included extensive exposure of her images on Channel 3000 website, which 10,000,000 visitors per month and advertising the campaign in Madison Magazine. One corporate sponsorship alone was worth \$130,000 with four sponsorships being available per year in each market. Sponsorships were also renewable and ongoing. Plaintiff's percentage of each sponsorship was 25% or  $\$32,500 \times 4 = \$130,000$  per year plus the two other markets in La Crosse and Spokane equaling \$1,170,000 worth of sponsorship revenues nationwide. See Exhibits A, B and N. The TV campaign and Channel 3000 WISC/TV website were to have links to the Banana Productions website so Plaintiffs' could sell their merchandise, book more events locally, regionally and nationally. Just having 1 sponsorship on the air would have enabled Plaintiffs' to pitch the Banana Lady TM campaign to other TV stations across the country for other sponsorships.

19. August 8, 2008 – Bill Abbott emailed Plaintiffs' in regards to a new partner agreement for Lynne Westphal. Bill directed Jessica Zerbst to do the agreement.

20. September 9, 2008 – Plaintiff emailed Bill Abbott updating him on her progress for her first WISC-TV/Banana Lady TM sponsor, first investor and vendor certification to get Plaintiffs' “Banana Lady TM © merchandise into JC Penney retail stores. See Exhibit I. Plaintiffs' also told Bill

Abbott that the "*Banana Lady TM ©*" was featured in BRAVA magazine that month (September issue) and that she would bring him a copy". The BRAVA article was a three page spread about the "Banana Lady TM ©" with her photo. See Exhibit O.

21. September 24, 2008 - During a corporate pitch to Dane County Credit Union at Channel 3 Station, Plaintiffs' learned of a postcard mailer that Westport Marine, Inc. created to advertise for their Betty Lou Cruises using the photo taken on April 28, 2008 on the Betty Lou Cruise of the "Banana Lady TM" and of Catherine Conrad. After this meeting Bev Walsh, WISC-TV employee in charge of the Banana Lady TM campaign from the TV side said she'd seen the Betty Lou Cruise/Banana Lady TM postcard floating around the TV station for a few weeks and that she'd get a copy for Plaintiffs'. Two days later Bev Walsh emailed Plaintiffs' a copy of the postcard she received from the TV station's Madison Magazine sales rep Pamela A' Sant. Pamela A' Sant had been working on the Food & Wine show advertising and had Westport Marine, Inc. as a client so easily obtained a copy of the postcard mailer from Westport Marine, Inc.'s marketing rep, Lisa Lathrop. Plaintiffs' suspected a link between the TV station and the postcard mailer Westport Marine, Inc. using the Banana Lady TM image and informed Bill Abbott. Westport Marine, Inc. did not have permission to use the image so Plaintiffs' believed WISC-TV gave them permission to to use the Banana Lady TM image to help sell Madison Magazine for their own advertising dollars.

22. October 2, 2008 Bill Abbott wrote and sent a cease and desist letter as Plaintiffs' representation to the Betty Lou Cruises demanding them to "*stop using Plaintiff's image of the "Banana Lady" before damages increased*". Bill Abbott wrote that the Betty Lou Cruises had "*broken the law by using Plaintiff's image without her consent and without paying a royalty and that the postcard was a serious blow to her image for the TV health and wellness contract and may prevent sponsors from hiring her*". Bill Abbott urged Betty Lou Cruises to "*take the matter to their counsel quickly*". See Exhibit C. Bill Abbott received no response from Betty Lou Cruises.

23. October 15, 2008 emails between Plaintiffs' and Bill Abbott regarding the Betty Lou Cruise infringement on the "Banana Lady's TM © image. Plaintiff to Bill Abbott; *"any word from Westport Marine, Inc. about the trademark violation? How are assessing the damages coming? We can help with that. Our Channel 3 sponsorships (4) total \$520,000 alone and we just got back from a week in Pennsylvania doing a whole school district. "* October 16, 2008 – Bill Abbott emailed; *"no word yet. I probably will receive none.* Bill Abbott emailed Plaintiffs'; *"I doubt they will respond unless we sue them. That would be an expensive undertaking. However, if you'd like to make a licensing agreement, I'd be glad to forward it?"*

24. November 13, 2008 – Plaintiffs' emailed Bill Abbott regarding the progress on the author agreement.

25. November 17, 2008. Bill Abbott wrote and sent another letter to Betty Lou Cruises stating that *"there has been some backlash from the photo they circulated illegally of the "Banana Lady" image"* and offered \$7500.00 to settle. See Exhibit D.

26. November 2008 – Plaintiffs' filed a small claims suit against Westport Marine, Inc. in Dane County court.

27. Late January 2009 – Plaintiffs' small claims suit was dismissed with prejudice because it was the wrong jurisdiction. Federal court was the proper venue for trade dress infringement.

28. Mid January 2009 – Plaintiffs' asked Bill Abbott if he could represent her in litigation. Bill Abbott said he could not.

29. January 23, 2009 Plaintiffs' filed a federal lawsuit against Westport Marine, Inc. in the Western Federal District Court, Case No. 09-cv-49-bbc, pro se.

30. February 20, 2009 – Plaintiffs' received the opinion and order from Judge Crabb on leave to proceed on the claim of False Endorsement Trade Dress infringement against Westport Marine, Inc.

31. March 5, 2009 – Plaintiffs' emailed Bill Abbott; *"We wanted your feedback on the fed. case. We dropped off copies the other day to Rhonda for you. Also Kelly Stohr expressed interest in the*



*trademark case. Should we invite her to lunch as well. Your decision."*

32. March 30, 2009 – Plaintiffs' received the opinion and order from Judge Crabb on leave to proceed on the claim of The Right of Publicity against Westport Marine, Inc..

33. March 2009 - Plaintiffs came to Bill Abbott when her images were stolen again without her written consent. Madison Festivals and Purple Door Productions had used Plaintiff's image of the "Banana Lady TM" in their postcard mailer advertising their 2009 Kids Expo. The "Banana Lady TM ©" was not involved in any shape or form. Madison Festivals was using a photo they took of the "Banana Lady TM ©" performing during the 2008 Kids Expo. Plaintiff was not aware this photo was taken at the time. Rita Kelliher admitted willful intent in person to Plaintiff and in a voicemail left for Kelly Stohr at Bell, Moore & Richter.

34. April 16, 2009 – Plaintiffs' emailed Chantelle Ringe to see how the record label and songwriter agreement was coming. Chantelle Ringe emailed back that *"this is something that none of the attorneys here have ever drafted before, so have been trying to find a good template to use."* Chantelle Ringe said *she hoped to get the draft to Plaintiff in the very near future and was there a particular date or event Plaintiff needed it by?* Plaintiffs' requested this from Bill Abbott on July 22, 2008, 9 months prior. Plaintiffs' needed tasks done to help with their litigation damages and to pay out their team mates.

35. Mid April 2009 - Plaintiffs came to Bill Abbott when her images were stolen again without her written consent. Isthmus Publishing, Inc. had used a photo of the "Banana Lady TM ©", Rodney Rigsby and a Banana Productions volunteer for a commercial they aired on Channel 27 for their Green Day event at the Monona Terrace 2009. This commercial was aired for two weeks over 11 Wisconsin counties to over 275,000 viewers. Isthmus Publishing, Inc. had taken the photo in 2008 when Banana Productions had a vendor booth at Green Day. See Exhibit L. Banana Productions nor Catherine Conrad aka The "Banana Lady TM ©" were participating in the 2009 Green Day event. This case ended up in Wisconsin Western District Federal Court, case No 09-cv-566-bbc with Plaintiff filing pro

se on May 17, 2009. Plaintiff has an email letter from Rachael Tatge with Isthmus admitting willful intent.

36. April 27, 2009 - Plaintiff emailed Bill Abbott Rachael's letter and correspondence with Isthmus Publishing, Inc. regarding the Green Day aired commercial.

37. Mid June 2009 - Plaintiff asked Bill Abbott to review Westport Marine, Inc.'s insurance policy(Society Insurance) to check for trademark infringement coverage. Bill Abbott confirmed Defendants had a million dollar insurance policy with coverage for copyright and trademark infringements specifically stated in the policy: "*Personal and Advertising Injury: p. (13) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights*". See Exhibit E. Defendant admitted he did not have permission to use the Banana Lady TM image/photo taken on the Betty Lou Cruises TM in Plaintiffs' deposition. See Exhibit F.

38. August 24, 2009 – Plaintiffs' filed a federal suit against Madison Festivals and Purple door Productions in the Western District of Wisconsin Federal Court case No. 09-cv-0499-bbc pro se.

39. September 16, 2009 – Plaintiffs' emailed Bill Abbott a copy of the claims for Madison Festivals/Purple Door Productions case no. 09-cv-0499-bbc they received leave to proceed on: False endorsement Trade Dress, False Advertising and Right of Publicity.

40. October 12, 2009- Plaintiffs' emailed their expert witness damage report to Bill Abbott per his request. A colleague of Bill Abbott's, Greg Everts, requested a copy, Greg Everts is an intellectual property expert. See Exhibit E.

42. October 23, 2009 - After Plaintiffs' had incurred three federal infringements Plaintiffs' requested Bill Abbott to help tighten up their partnership agreements to include new percentages and the protection of Conrad's face and image for legal purposes with the Right of Publicity. Bill Abbott responded to Plaintiff in an email on October 23, 2008 - "*his partners instructed him to not take on any new projects from clients that still owe money*". October 23, 2009

Plaintiff emailed Bill Abbott back *"How about Kelly's help with the copyright on the existing book and CD? We can fill out the paperwork just wanted Kelly to double check it?"* Bill Abbott responded that *"Kelly can help with copyright"*.

43. February 11, 2010 – Plaintiffs' had defendant from Westport Marine, Inc. deposed. Defendant admitted they used the image/[photo of the "Banana Lady TM" for their own commercial purposes so Plaintiff has proof of willful intent. See Exhibit F.

**CLAIMS - (ALL DEFENDANTS)**

- 1. PROFESSIONAL NEGLIGENCE IN STANDARD OF CARE**
- 2. BREACH OF CONTRACT**
- 3. FAILURE TO PROPERLY ADVISE**
- 4. CONFLICT OF INTEREST**
- 5. BREACH OF DUTY**
- 6. FAILURE TO ACT PROMPTLY**
- 7. EMOTIONAL DISTRESS**

44. Plaintiffs' re-alleges by reference as if fully set forth herein the preceding paragraphs 1-43 of this Complaint.

45. Plaintiffs' retained Defendants to prepare, file and prosecute applications for Plaintiffs' copyright and trademarks and Defendants agreed to render and perform the services required to do so. Plaintiffs' also retained Defendants to perform services such as draft various agreements and contracts, set up two investment prospectuses advise on their intellectual property portfolio and the protection thereof and defend and perform the professional services required to do so. By reason of these agreements between Plaintiffs' and Defendants, at all material times, Plaintiffs' had an attorney-client relationship with Bill Abbott and Mark Fuhrman and the law firm Bell, Moore & Richter. All Defendant's failed to perform as promised therefore are negligent in breach of contract, negligent in providing the standard of care held to legal experts, negligent in their failure to properly advise, breach their duty and were negligent in conflict of interest, interested in their own dollars and billable hours vs. doing the right thing by taking care of their clients. All Defendant's chose not to help Plaintiffs' fully protect their intellectual property for their specific needs and goals, before, during and

after their Westport Marine, Inc. infringement. All Defendants' did not finish filing the necessary copyrights and trademarks of Plaintiffs' intellectual property that was included in the Morgan Murphy Media Contract.

46. Defendants listed herein missed the mark in protecting Plaintiffs' intellectual property assets, Conrad's personal assets, their business and their future. Because of their negligence in not advising Plaintiffs to protect Conrad's own image and her character images of the "Banana Lady TM ©" and puppet Spike with a copyright or trademark, and by failing to properly advise Plaintiffs' could not make copyright and trademark claims when their images were repeatedly infringed from April 2008 to April 2009, thereby missing the passing of a statute of limitations. But for the negligent acts and omissions alleged above to have been committed by all Defendants Plaintiffs' would have successfully been able to claim copyright and trademark infringements. There were plenty of opportunities to protect and or "cure" these issues with all defendants' from August 2007 through May 2011 specifically:

a. When Plaintiffs' retained Bill Abbott, Mark Furhman and Bell, Moore & Richter August 2007 they asked for help to protect their intellectual property as soon as possible since they were already pitching to national sponsors, specifically her costumed character the "Banana Lady TM. The Banana Lady TM and "Spike" TM image was never filed by copyright or trademark.

b. When Defendants were preparing their investor prospectuses. Bill Abbott and Bill Williams specifically wrote in both the book and DVD offering circulars under the Conflict of Interest section: *"All characters, trademarks, copyrights and intellectual property is owned by Banana Productions, LLC"*. Under the Licensing and Royalty section of both prospectuses it states on the first page that *"Banana Productions hereby licenses to DVD Adventures/Banana Adventures exclusive rights involved to disseminate the first four DVD's/four books in the Banana series, and it licenses non-exclusively, any songs, included therewith, as well as any images, characters, character names,*

*graphics, storyline, trademark, trade names and related intellectual property, as further described...".*

Both Bill Abbott and Bill Williams included the licensing of Conrad's images but did not actually do anything to protect Conrad's images with copyrights or trademarks so they could be licensed.

Defendants' left Plaintiffs' open to investors stealing their intellectual property.

c. When Plaintiffs' finished their book and CD,

d. When Plaintiffs' entered in a TV contract that involved their intellectual property images,

e. When Plaintiffs' were infringed on by Westport Marine, Inc. from the Betty Lou Cruise postcard mailer,

f. When Plaintiffs' were infringed on by Madison Festivals and Purple Door Productions from their 2009 Kids Expo postcard mailer,

g. When Plaintiffs' were infringed on from Isthmus Publishing, Inc. in their Channel 27 2009 Green Day commercial.

h. When Plaintiffs' shared their merchandise prototypes with Bill Abbott for JC Penneys such as the "Banana ankle peels" T-Shirts and hats that were ready for sale in conjunction to the WISC-TV launch.

47. Plaintiffs' had an attorney-client relationship with all the above Defendants from August 2007 to May 2011. Through their representation, Defendant's and the Law Firm failed to exercise the degree of skill and knowledge held by general practitioners in the area of intellectual property law and failed to meet the professional standard of care for general practitioners. All Defendants failed to meet the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise.

48. Defendant law firm Bell, Moore & Richter is also negligent in not providing the higher standard of care to client because they represent both sides in court from individuals and small business to large insurance companies and major health care organizations. They have a very experienced group of trial lawyers who handle a wide variety of civil litigation in virtually all of



Wisconsin's circuit courts, the Wisconsin Court of Appeals and Supreme Court, federal district courts, federal court of appeals and the U.S. Supreme Court. In particular, they are recognized as a leading firm for the defense of medical malpractice and general liability claims. They also have a strong history of service to businesses and individuals, in the areas of regulation, healthcare law, taxation, corporate law, business organization, finance, public utility, taxation, real estate, employment law, estate planning, intellectual property and family law. Bell, Moore & Richter had the legal expertise to advise and protect Plaintiffs' offensively and defensively with the end result in mind. Bell, Moore & Richter knew Plaintiff Catherine Conrad owned a condominium because they helped Conrad close on her home. Ironically they could have helped Plaintiff Conrad keep her home from foreclosure and car from a repossession scam had they done their job from the beginning to protect her images from infringements. These were basic services that should have been performed. Plaintiffs' were been emotionally devastated that their general counsel Bill Abbott. Mark Furham and their law firm Bell, Moore & Richter did not look out for them when they solely trusted and relied upon their advice to do so. How could the Defendants be Plaintiffs' attorneys and not tell them what they needed. Plaintiffs' kept Bill Abbott informed of all their goals, progress and litigation at all times from August 2007 through May 2011.

49. By reason of the attorney-client relationship as foresaid, Defendants as Plaintiffs' attorneys owed professional duties to Plaintiffs' to perform legal services in compliance with the standard of care and in so doing to possess and apply the knowledge and use the skill and care ordinarily used by reasonably well-qualified attorneys under the same or similar circumstances. Defendants' have breached their duty to Plaintiffs'.

50. As a result of Defendant's and the law firms negligence, Plaintiffs' suffered and incurred damages, including litigation fees and costs, loss of reputation, lost profits, lost opportunities, injury to capital and goodwill and emotional distress; and they will continue into the future to suffer and incur

litigation fees and costs, loss of reputation, lost profits, lost opportunities, injury to capital and goodwill and emotional distress and other damages as a result of Defendant's aforesaid negligence. Plaintiffs' cannot go back and claim copyright and trademark infringement along with the remedies available on the Westport Marine, Inc. case. Plaintiffs' have suffered irreparable damages from loss income, lost business opportunities and suffered enormous pain and suffering and emotional distress. See Exhibit G.

51. All Defendants and the law firm are liable for all the above-described damages. Defendant ABC Insurance Company for Bell, Moore & Richter is liable by virtue of it's policy of professional liability insurance with the law firm and/or all defendants that obligates ABC Insurance Company for Bell, Moore & Richter to pay for the liability of the law firm and all defendants in this case.

52. Defendant Mark Fuhrman and Lathrop & Clark law firm are liable for his described damages. Defendant ABC Insurance Company for Lathrop & Clark is liable by virtue of it's policy of professional liability insurance for Mark Fuhrman that obligates ABC Insurance Company for Lathrop & Clark to pay for the liability of Defendant Mark Furhman in this case.

In conclusion Plaintiffs' Catherine Conrad and Rodney Rigsby came to Attorney Abbott and Bell, Moore & Richter with the expectation they would advise us on the big picture from beginning to end with our business goals and needs in mind. From our first discussion and meeting with Bill Abbott it confirmed he and his law firm could meet our needs. Unfortunately we did not realize until after the Westport Marine, Inc. and subsequent infringements that the Defendants and Bell, Moore & Richter failed to properly advise, protect and represent us throughout the entire four years we retained them. At no time did Bill Abbott and all other defendants advise us to protect Catherine Conrad's own live image, her costumed character's live image of the Banana Lady TM or for the live image of the monkey puppet Spike for our business with a copyright or trademark. Our entire business is intellectual property. We could not claim or apply for copyrights and trademarks we were not aware

we needed, that's why we relied solely on Bill Abbott's advice since he was our main counsel. We would have thought that with over \$1,000,000's million's of dollars on the line that Attorney Bill Abbott, Mark Furhamn and Bell, Moore & Richter would have been obligated to give their clients the standard of care held to professional attorneys. It is evident now that there was a conflict of interest with Defendants watching out for themselves first instead of their clients. All Defendants breached their contract, failed to properly advise and failed in their duty to plaintiffs all the way around. All defendants failed in providing an adequate contract with the Banana Lady's TM TV campaign with Morgan Murphy Media. The contract did not provide any recourse for Plaintiffs' against Morgan Murphy Media's breaching their contract from turning down the two sponsorship offers that were on the table stealing Plaintiffs' leads for their own purposes and any compensation for Plaintiffs' hard work in bringing the leads to the TV station. If Plaintiff had at least one TV PSA featuring the Banana Lady TM then they could have shopped that piece to other TV stations around the country and have the opportunity to sell all their merchandise nationwide. The TV sponsorship and campaign was an opportunity for the Banana Lady TM to become an industry fairly quickly. There was nothing in the TV contract that discussed any royalties for the themed song and title of the campaign "As Strong As I Can Be" or for the use of Plaintiffs' intellectual property in a license agreement with the TV station. Plaintiff had the "As Strong As I Can Be merchandise ready to go for JC Penneys and for the TV campaign launch to take advantage of sales. There was also nothing in the TV contract that discussed a break up fee or from a breach in contract from the TV station's side. After Bev Walsh rejected two sponsorship offers and the Westport Marine, Inc. infringement in the fall of 2008, the TV station made little to no effort to push the Banana Lady TM TV campaign. The TV contract Bill Abbott and Mark Furhamn drafted for Plaintiffs' provided no protection or recourse for the TV station dropping the ball on the contract or operating in bad faith. Plaintiffs believed the TV station had a major hand in giving Westport Marine, Inc. permission to use the Banana Lady TM photo to use in their Betty Lou Cruises for profit cashing in on the notoriety and major on air presence from the TV campaign exposure.

Plaintiffs believe the TV station gave heads up on the TV Banana Lady TM campaign to Westport Marine, Inc. to gain their advertising dollars in their Madison Magazine account for the Food & Wine show. Plaintiffs' kept Bill Abbott informed of their discoveries regarding the links from the TV Station to Westport Marine, Inc. at all times. See Exhibit P. Bill Abbott started to represent us against Westport Marine, Inc. but never followed through with the lawsuit. Between the TV station not following through with their contract with the Banana Lady TM TV campaign, not accepting legitimate sponsors and the infringement from Westport Marine, Inc. Plaintiffs' lost the TV deal. All Defendants', especially Bill Abbott did not act promptly to finish author, songwriter and establishing a record label so cause Plaintiffs' to lose money there as well. Defendants' held Plaintiffs up from making money on licensing deals because they did not follow through and finish copyrighting and trademarking all necessary intellectual properties. As main counsel Bill Abbott was negligent at every turn the four years he represented Plaintiffs causing them irreparable damage personally due to emotional distress and loss of business income and lost opportunities.

#### **CLAIMS (BILL ABBOTT)**

- 1. PROFESSIONAL NEGLIGENCE IN STANDARD OF CARE**
- 2. BREACH OF CONTRACT**
- 3. FAILURE TO PROPERLY ADVISE**
- 4. CONFLICT OF INTEREST**
- 5. BREACH OF DUTY**
- 6. EMOTIONAL DISTRESS**
- 7. FAILURE TO ACT PROMPTLY**

53. Plaintiffs' re-allege by reference as if fully set forth herein the preceding paragraphs 1-53 of this Complaint.

58. Bill Abbott breached the standard of care and in so doing to possess and apply the knowledge and use the skill and care ordinarily used by a reasonably well-qualified attorney under the same or similar circumstances, in one or more of the following ways:

- a. Properly train and supervise its partners
- b. Review the work performed by other partners and Defendants on the Plaintiff's entire portfolio

- c. Ensure that its partners utilized a proper docket control system to monitor copyright and trademark applications
- d. Make reasonable efforts to ensure partners had in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

59. Bill Abbott had a chance to mitigate any further damages by advising Plaintiffs' to file copyright and trademarks on her image, image of the "Banana Lady TM ©" and Spike between September 28, 2008 and January 23, 2009 before Plaintiffs' filed her federal claim against Westport Marine, Inc. on January 23, 2009. If Bill Abbott had so advised Plaintiffs' to protect their intellectual property during these months Plaintiffs' would have had more recourse and remedies available to her in the Westport Marine, Inc. case. Plaintiffs' lost the chance again to claim damages from copyright and trademark infringement because Bill Abbott and Mark Furhman failed to protect their intellectual property assets.

60. As soon as Bill Abbott took on the responsibility of filing Plaintiffs' trademarks and drafting their prospectus's he was the sole intellectual property attorney responsible for their portfolio which included filing and litigation.

61. Bill Abbott's delay in getting Plaintiffs' the author, songwriter, performers and recording artists agreements for Conrad done in a timely manner for calculating royalties, calculating damages for litigation purposes further caused Plaintiffs' harm. Plaintiffs' also requested Bill Abbott's advice and assistance in setting up a record label. Bill Abbott accepted the task of drafting the recording contract but did not finish the record label set up therefore has breached his contract here as well.

62. When Plaintiffs' showed Bill Abbott in September 2008, pictures of their merchandise, T-shirts, ball caps and banana ankle peels ready for 1000 JC Penneys retail stores he failed to advise Plaintiffs' on how to protect their properties. JC Penneys does not accept unprotected properties so they wouldn't be sued. Plaintiffs' did have their vendor certification for JC Penneys but not all their intellectual property protected as listed in the TV contract. See Exhibit I and B.



63. Bill Abbott failed in his obligation and duty to defend Plaintiffs' when he or someone in his firm could have represented and litigated for Plaintiffs' in the Western District in Wisconsin Federal court for the Westport Marine Inc. case. This was an opportunity for Bill Abbott to mitigate his and his client's damages but chose not to. Plaintiffs' had to seek outside help for litigation from counsel that didn't know her or her history, was expensive and did a poor job. Did Bill Abbott ask Bill Williams to help Plaintiffs' litigate her federal cases? Did Bill Abbott tell any of his partners at Bell, Moore & Richter of Plaintiffs' federal infringement? Bill Abbott started the cease and desist letters to Westport Marine, Inc./Betty Lou Cruises as Plaintiffs' representation .

64. Bill Abbott reviewed the Society Insurance policy coverage for Westport Marine, Inc. in the federal case no. 09-cv-49-bbc and knew Westport Marine, Inc. had a \$1,000.000 million dollar policy with trademark and copyright infringement coverage. This was another opportunity for Bill Abbott to offer to litigate for Plaintiffs' and mitigate damages for future purposes by offering the advice to copyright and trademark Conrad's images. One of Bell, Moore & Richter's specialties is insurance defense. If Bill Abbott didn't think Plaintiffs' had a legitimate claim before, this should have triggered him to took action.

65. Bill Abbott also could have referred Plaintiffs' to one of his in-house partners at Bell, Moore & Richter to help Plaintiffs with their litigation but did not.

66. Conflict of interest. Bill Abbott refused to help Plaintiffs' tighten their agreements and their request to prevent further infringements because they had an outstanding bill with Bell, Moore & Richter. These tasks were not new projects but adjustments. Had Bill Abbott and his law firm done their job in preventing such infringements on Plaintiffs' then they would not have had trouble paying their balances due with the law firm. Bill Abbott and Bell, Moore & Richter were more interested in getting paid then helping their client. It would have only taken a few hundred dollars to file for copyrights and under a thousand dollars to trademark Conrad's images for protection. The remedy

monies available for copyright and trademark infringement would have paid for their attorney fees and then some. Bill Abbott, defendants and Bell, Moore & Richter could have made money from Plaintiffs' from protecting them with these simple tasks but chose not to do so.

67. Bill Abbott had a copy of Plaintiffs' damage report from their expert witness so knew the scope and magnitude of Plaintiffs' damages and still chose not to help them. See Exhibit G.

68. Bill Abbott, his firm and Jessica Zerbst combined had expertise in the real estate field and in bankruptcy. Both Bill Abbott breached his contract and obligation to Plaintiff Conrad by not helping her save her home.

69. Plaintiffs' kept Bill Abbott informed of their progress throughout their three federal cases including but not limited to copying Bill Abbott on all pleadings, opinions and orders, answers, exhibits, emails and the expert witness report on damages.

70. Had Bill Abbott protected Plaintiffs' properly for the Morgan Murphy Media TV deal then they would have been able to claim copyright and trademark infringement when Plaintiffs' were again infringed on by Isthmus Publishing, Inc. in April 2009 from a Green Day TV commercial using the image of the "Banana Lady TM ©". Bill Abbott and Mark Furhman both did not properly advise Plaintiffs' in drafting their Morgan Murphy Media TV contract, did not protect their interests from the TV station itself and take measures to protect the intellectual property involved and included in the TV deal. Defendants' did not draft a strong contract for Plaintiffs' with Morgan Murphy Media. Plaintiffs' spent one full year pitching to local, regional and national companies and had legitimate offers on the table for sponsorships, however there was nothing in the TV contract that protected Plaintiffs' against the TV station breaching their contract from not following through with legitimate sponsorship offers, stealing or infringing on Plaintiffs' property or following through with their end of the contract.

71. Plaintiffs' suffered unnecessary damages, injury and pain and suffering from Defendant not taking care of their legal needs that he contracted to do. Had Defendant provided the proper advice, prevention and care of their intellectual property in the first place, Plaintiff Conrad

would not have had to lose her home, her car, suffer bad credit and the ramifications that follow this or be in extensive debt. There was no excuse for Bill Abbott's sub-standard service and total lack of care for not protecting Plaintiff interests. Bill Abbott could have chose to step up at any time to mitigate his, his law firm's and Plaintiffs' damages but did not; before, during and after Plaintiffs' three federal infringements.

### **CLAIMS (MARK FUHRMAN)**

- 1. PROFESSIONAL NEGLIGENCE IN STANDARD OF CARE**
- 2. BREACH OF CONTRACT**
- 3. FAILURE TO PROPERLY ADVISE**
- 4. CONFLICT OF INTEREST**
- 5. BREACH OF DUTY**
- 6. EMOTIONAL DISTRESS**
- 7. FAILURE TO ACT PROMPTLY**

78. Mark Fuhrman was negligent in not providing the higher "standard of care" held to a legal expert in intellectual property law. Mark Fuhrman allowed Plaintiffs' to sign and enter into the Morgan Murphy Media TV contract without copyright protection of the Plaintiffs' image, the "Banana Lady M ©" and Spike and copyright theme song "As Strong As I Can Be TM (c)" that was the brand, slogan and TV campaign title for the Health and Wellness TV campaign. Mark Fuhrman should have been aware of the "Right of Publicity Laws" and copyright remedies and informed Plaintiffs'. Mark Fuhrman left Plaintiffs' intellectual property wide open to be stolen since Conrad's images were to be TV. Mark Fuhman and Bill Abbott should have made the WISC-TV contract tighter to hold Channel 3 accountable for when they breached the contract by turning down sponsorship client's who wanted to pay for the Banana Lady TM campaign.

79. Had Mark Fuhrman protected Plaintiffs' properly for the Morgan Murphy Media TV deal then they would have been able to claim copyright and trademark infringement when Plaintiffs' were again infringed on by Isthmus Publishing, Inc. in April 2009 from a Green Day TV commercial using the image of the "Banana Lady TM ©" and the image of Plaintiff Rodney Rigbsby.

80. Mark Fuhrman also drafted the Cross-Purchase agreement for Plaintiffs' but did not include any protection of their intellectual property.

### **REQUEST FOR RELIEF**

Wherefore, Plaintiffs' respectfully prays the following relief from this Honorable Court for Judgment in favor of Plaintiffs' and against all Defendants and for the recovery of the following:

- a. Compensatory (actual) damages for loss, injury and harm suffered as a result of defendant's breach of duty. Plaintiffs' prays that the court award the sum that would restore them to the economic position they expected from performance of the promises or expectation measure of damages.
- b. Special damages for the quantifiable monetary losses suffered by the Plaintiffs' lost earnings from the loss of WISC-TV Banana Lady campaign and economic losses resulting from lost profits in Plaintiffs' business Banana Productions, LLC in the amount of \$10,000,000. Plaintiffs has suffered extensive pain and suffering due to emotional distress and asks for \$10,000,000. Plaintiffs' will continue to suffer damages from lost opportunities, injury to capital and goodwill, and other damages as a result of Defendant's professional negligence. See Exhibit G , Expert report.
- c. Monetary damages from all remedies available for copyright and trademark infringements in case no. 09-cv-49-bbc, Conrad v. Westport Marine, Inc. that could have been recovered.
- d. Plaintiffs' are seeking the dollar amount they would have received from the insurance coverage for copyright and trademark infringement from Westport Marine, Inc.'s million dollar policy (Society Insurance) from case no. 09-cv-49-bbc, Conrad v. Westport Marine, Inc. See Exhibit E.
- e. Plaintiffs' are seeking the total attorney fees of \$7600.00 she already paid Bill Abbott,

Bell, Moore & Richter and all defendants from August 2007 through May 2011 plus the balance due of \$5249.15 and \$1813.35 waived. See Exhibit H.

f. Any monetary relief and or remedies available for breach of contract, breach of standard of care, conflict of interest, breach of duty and professional negligence from all Defendants.

h. Any such further relief as this Honorable court deems appropriate.

Respectfully submitted,

 11/1/11

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