Roughriders Baseball Partners, LP, dba Frisco Roughriders et al v. Great American Assurance Company Doc. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROUGHRIDERS BASEBALL PARTNERS, LP, dba FRISCO ROUGH RIDERS, and ROUGHRIDERS BASEBALL, LLC	§	
	§	**No.**
v.	§	
	§	
GREAT AMERICAN ASSURANCE COMPANY	§	

PLAINTIFFS' ORIGINAL COMPLAINT

A. Parties

1. Plaintiff Roughriders Baseball Partners, LP, dba Frisco Rough Riders ("Roughriders LP") is a partnership organized under the laws of Delaware and registered as a foreign limited partnership in Texas.

2. Plaintiff Roughriders Baseball, LLC ("Roughriders LLC"), is a company organized under the laws of Delaware and registered as a foreign limited liability company in Texas. Roughriders LLC is the general partner of Roughriders LP.

3. Defendant Great American Assurance Company ("GAAC") is a corporation that is incorporated under the laws of Ohio, and authorized to do business in Texas by the Texas Department of Insurance. Defendant has its principal place of business in the State of Ohio. Defendant may be served with process by serving its registered agent, CT Corporation, at 350 N. St. Paul St., Dallas, Texas, 75201.

B. Jurisdiction

4. This court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1) because the plaintiffs and the defendants are citizens of different states and the amount in controversy exceeds $75,000, excluding interest and costs.

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C. Venue

5. Venue is proper in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events of omissions giving rise to this claim occurred in this district. This lawsuit concerns whether an insurance policy insuring, in part, Plaintiffs' business operations and the Roughriders' facility in Frisco, Collin County, Texas, covers damages arising from an accident that occurred at the Collin County facility. In addition, the lawsuit for which Plaintiffs seek insurance coverage was venued in the 380th District Court, Collin County, Texas.

D. Conditions Precedent

6. All conditions precedent have been performed or have occurred.

E. Facts

7. Plaintiffs operate a minor league baseball team and ballpark facility in Frisco, Texas. Defendant GAAC is their insurer for a general liability policy. The parties entered a contract of insurance, Policy No. PAC 558242002, providing coverage from February 2006 to February 2007 ("the Policy"). Both plaintiffs are named insured under the Policy. The Policy provides that GAAC will have a duty to defend suits seeking damages because of bodily injury.

8. In May 2006, Discount Tire Company held an employee picnic at the Roughriders' ballpark. During this event a large metal pole fell and struck an eight-year old boy, seriously injuring him and leaving him permanently disabled. The child and his family sued Roughriders LP and Roughriders LLC in *June L. Moore-Propes, individually and as parent and next friend of Kerry Hall, IV, a minor child v. Roughriders Baseball Partners, LP, Roughriders Baseball, LLC, and Rebound Unlimited, Inc.*, No. 380-4084-07, 380th Dist. Ct., Collin County, Texas, alleging claims for negligence and premises liability/attractive nuisance (the "Moore-Propes Lawsuit"). *See* Third Amended Petition, *Moore Propes v. Roughriders Baseball Partners, LP, et al.*, No. 380-4084-07. (Attached as Ex. A.)

9. The Third Amended Petition included claims based on the failure to control crowds including small children and the failure to adequately staff the picnic in order to control the crowds that included small children, resulting in the injuries to Kerry Hall when he and other children were standing in a dangerous area. The Petition also alleged that Roughriders was negligent in failing to vet and hire a competent contractor that would provide sufficient staff to control the crowds of children and in failing to adequately supervise the activities of the contractor.

10. The Plaintiffs timely provided notice of the Moore-Propes Lawsuit to GAAC in accordance with the terms of the Policy. Plaintiffs have fulfilled all conditions precedent to coverage under the Policy.

11. GAAC responded to the Plaintiffs' tender of the Moore-Propes Lawsuit by denying any obligation to defend. The last denial of coverage — after tender of the Third Amended Petition — occurred on June 8, 2010.

12. Accordingly, Plaintiffs had to retain the services of various counsel to provide a defense against the Lawsuit. In defending against the Lawsuit, Plaintiffs incurred significant defense costs and ultimately a settlement amount, both of which are payable by GAAC under the terms of the Policy.

13. By refusing to fulfill its defense obligations, GAAC has caused significant damage to the Plaintiffs.

F. Count 1 – Breach of Contract

14. Paragraphs 1-13 are incorporated by reference.

15. The Plaintiffs entered a valid contract with GAAC in their purchase of the Policy.

16. The Plaintiffs have fully performed all conditions precedent to coverage under the Policy.

17. The Policy requires GAAC to defend the Plaintiffs in the Moore-Propes Lawsuit. Alternatively, the Policy is ambiguous and must be interpreted in favor of coverage. Therefore, GAAC was required to defend the Plaintiffs the Moore-Propes Lawsuit under the Policy.

18. GAAC breached its contract with the Plaintiffs by refusing to defend them in the Moore-Propes Lawsuit and by failing to pay claims made under the Policy.

19. Because GAAC refused to participate in the payment of defense fees and expenses, Plaintiffs have paid and are continuing to pay those fees and expenses. Moreover, because GAAC has refused to participate in settlements, Plaintiffs have been required to fund settlements.

20. GAAC's refusal to defend, indemnify, or participate in the defense and settlement of claims constitutes a material breach of contract causing Plaintiffs to suffer financial losses and other harm.

21. GAAC's breach of contract has proximately caused damages to the Plaintiffs in an amount that greatly exceeds the sum of $75,000.

G. Count 2 – Prompt Payment of Claims

22. Paragraphs 1-21 are incorporated by reference.

23. GAAC has failed to make timely payment of claims, pursuant to Texas Insurance Code Section 542.051, et seq.

24. Texas Insurance Code Section 542.060 provides that, in addition to the amount of the claim, an insurer who fails to comply with the deadlines for payment is liable for interest on the amount of the claim at the rate of 18% a year as damages, together with reasonable attorneys' fees.

H. Count 3 – Declaratory Judgment

25. Paragraphs 1-24 are incorporated by reference.

26. An actual, justiciable controversy exists between the Plaintiffs and GAAC regarding GAAC's coverage obligations with respect to the Moore-Propes Lawsuit.

27. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57 that GAAC has a duty to defend Plaintiffs in the Moore-Propes Lawsuit under the Policy and owes Plaintiffs indemnification for the damages alleged and now paid per the Moore-Propes Lawsuit.

I. Damages

28. Paragraphs 1-27 are incorporated by reference.

29. As a direct and proximate cause of GAAC's breach, Plaintiffs suffered damages, namely the amount that remains due to the Plaintiffs under the terms of the Policy.

30. Plaintiffs also claim damages in the form of the 18% interest allowed by Chapter 542, Texas Insurance Code.

J. Attorneys' Fees

31. Paragraphs 1-30 are incorporated by reference.

32. Due to GAAC's actions, the Plaintiffs have been required to retain the services of various attorneys. Plaintiffs have agreed to pay those attorneys a reasonable fee for services necessarily rendered and to be rendered in this action. Pursuant to Section 542.060, Texas Insurance Code, and Sections 37.001 and 38.001, Texas Civil Practice & Remedies Code, Plaintiffs are entitled to an award of reasonable attorneys' fees against including the trial of this lawsuit, any additional actions before this Court, any appeal of the judgment of this Court, and for all efforts made by Plaintiffs to enforce the judgment or any orders of this Court.

K. Prayer

For these reasons, Plaintiffs ask for judgment against GAAC for the following:

a. Actual damages in an amount to exceed $75,000, including the amount that remains due to the Plaintiffs under the Policy;

b. Prejudgment and post-judgment interest;

c. 18% interest on the claim amount;

d. Reasonable attorneys' fees;

e. Costs of suit; and

f. All other relief the Court deems appropriate.

Dated: July 14, 2010

Respectfully submitted,

_/s/ Susan Hays___

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT “A”

COPY

CAUSE NO. 380-4084-07

JUNE L. MOORE-PROPES, Individually and as PARENT and NEXT FRIEND of KERRY HALL, IV, a minor child, Plaintiff,	§ § § § § §	IN THE DISTRICT COURT OF
v.	§ § §	COLLIN COUNTY, TEXAS
ROUGHRIDERS BASEBALL PARTNERS, L.P., ROUGHRIDERS BASEBALL, LLC, AND REBOUND UNLIMITED, INC., Defendants.	§ § § §	380TH JUDICIAL DISTRICT

PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

Plaintiff June L. Moore-Propes, Individually, and as Parent and Next Friend of Kerry Hall, IV, a minor child, complain of Defendants Roughriders Baseball Partners, L.P. and Roughriders Baseball, LLC (hereinafter collectively "Roughriders") and Defendant Rebound Unlimited, Inc. (hereinafter "Rebound"), and would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under a Level 3 Discovery Control Plan.

PARTIES

2. Plaintiff is a resident of Plano, Texas.

3. Defendant Roughriders Baseball Partners, L.P. is a foreign limited partnership which has already been served with process and has answered and previously entered an appearance herein.

4. Defendant Roughriders Baseball, LLC, is a foreign company which has already been served with process and has answered and previously entered an appearance herein.

5. Defendant Rebound Unlimited, Inc. is a foreign corporation organized and existing under the laws of the State of Utah and has a home office address of 150 W. 700 S, Cache County, Smithfield, Utah 84335. Rebound Unlimited, Inc. engages in business in Texas but does not maintain a regular place of business in this state or a designated agent for service of process, and this suit arose from this Defendant's business in Texas. Accordingly, Rebound Unlimited, Inc. has already been served with process and has answered and previously entered an appearance herein.

JURISDICTION AND VENUE

6. This Court has jurisdiction in this case because the events giving rise to this suit occurred in the State of Texas, and Plaintiff's damages exceed the minimum jurisdictional limits of the Court.

7. Venue is proper in Dallas County, Texas, pursuant to TEX. CIV. PRAC. & REM CODE §15.001, et. seq., because one or more of the Defendants have their principal office in Dallas County, Texas.

BACKGROUND FACTS

8. Kerry Hall, IV, is the eight-year old son of LaShawn Moore and Kerry William Hall III. On May 21, 2006, Kerry went to a Discount Tire Company employee picnic held at the Roughrider's ballpark.

9. There were numerous carnival-type rides and games at the event. One of those rides was called the Trampoline Thing ("Tramp Thing.") The Tramp Thing is a trampoline-like device that is adjoined with two large metal poles extending 21 feet high. Bungee-like cords connected to the metal poles attach to a harness that holds the rider. On this ride, the rider can

bounce, twirl, flip and "almost touch the sky." Upon information and belief, the Tramp Thing was designed, manufactured, and marketed by Defendant Rebound.

10. Defendant Roughriders contracted directly with All-4-Fun Party Services, Inc. ("All-4-Fun") to provide the rides, including the Tramp Thing, at the outing. Defendant Roughriders encouraged Discount Tire to use All-4-Fun for such services. Ms. Kerri Cooper, a representative of Roughriders, stated that All-4-Fun is Roughriders "preferred vendor." Ms. Cooper stated that Roughriders would provide a discount to Discount Tire for using All-4-Fun. Ms. Cooper further signed the actual contract that governed All-4-Fun's services on the day of the event.

11. Ms. Cooper, acting on behalf of Roughriders, worked on the planning and organizing of the event. Roughriders ordered the activities and coordinated all setup, layout, and operation of the amusement activities.

12. The written contract between Roughriders and All-4-Fun made it clear that the Roughriders released and held All-4-Fun harmless for any personal injuries that resulted from participation in any of the activities available that day at the Roughriders' Ballpark. Further, on the day of the event, the Roughriders apparently chose the location and placement of the activities provided by All-4-Fun, including the Tramp Thing. The Roughriders also closed off the street and controlled the location where they arranged for some of the activities to take place, including the Tramp Thing.

13. It appears that the Roughriders never performed a safety background investigation of All-4-Fun before they contracted to hire it to provide the activities for the Discount Tire event. Also, apparently Roughriders failed to inspect the Tramp Thing, which was in an unreasonably dangerous condition and posed an unreasonably dangerous risk in the condition it was in.

14. Once the outing began, young children and others began riding the Tramp Thing. Soon, however, the ride malfunctioned. One of the large metal poles that extends 21 feet into the air became dislodged from the ride. Obviously, this created a serious danger as it is the metal poles that ultimately support the young children riding the Tramp Thing as they fly 21 feet into the air. In addition, due to the length and size of the metal poles, a person could be injured within a large radius of the ride if the metal poles were to fall.

15. Once the ride malfunctioned, it was removed from service. Inexplicably, rather than leaving the ride out of service and sending it off for proper repair, the ride was placed back in service. In this state of disrepair, and despite the fact that one of the large metal poles had malfunctioned, young children were nevertheless invited to attach themselves to these metal poles and begin bouncing, twirling, and flipping up to 21 feet in the air.

16. Further compounding the Roughriders other failures, Roughriders did not control the crowds or the lines of children, which allowed children to stand in dangerous areas and get into very dangerous situations, including within the radius of the 21 foot metal pole that struck Kerry in the head. Neither the Roughriders nor its incompetent contractor, All-4-Fun, provided enough staff assigned to monitor and control the crowds, including small children. This situation in and of itself was a dangerous condition, which could have easily been noticed and/or prevented. However, even after contractually absolving its contractor, All-4-Fun from an liability for personal injuries they caused, the Roughriders failed to monitor the number of staff provided by All-4-fun to watch the lines of children, control the crowds and to take any steps to prevent the children form getting into imminently apparent and obviously dangerous situations. Moreover, the Roughriders themselves did not take any steps to control the crowds of children to

prevent them from standing in dangerous areas or to warn against or correct the dangerous condition of hundreds of children running around unchecked.

17. Kerry was one of the eight-year old boys at the picnic that was enticed by the Tramp Thing and wanted to go for a ride. After the Tramp Thing was put back in service, Kerry stood in line with other young children to go for a ride. As noted above, the Roughriders had not placed safety ropes, or used its personnel, to prevent the children standing in the line leading to the Tramp Thing from standing under the 21 foot pole. In fact, an employee of All-4-Fun has testified that they were short staffed that day and that they did not have enough staff to adequately control the crowds of children. Moreover, the Roughriders, did not take any steps to control the crowds of children or to warn them or their parents of the dangers awaiting them from the unchecked swells of excited kids. As Kerry stood waiting, once again, one of the large 21 foot metal poles malfunctioned. This time the pole fell toward the ground and struck Kerry in the head. Kerry was injured because the Roughriders and their incompetent contractor failed to take proper and appropriate reasonable steps to control the crowds of children invited to the stadium that day. Kerry wasn't inured while using or riding one of the amusement rides, but rather was struck down because neither the Roughrider Defendants nor All-4-Fun bothered to take any reasonable steps to control where children were allowed to roam freely.

18. Kerry immediately fell to the ground after being struck in the head by the pole. His skull was cracked by the blow, and internal bleeding began almost immediately. Emergency medical personnel were called to the scene, and Kerry was taken by ambulance to the emergency room. He was later transferred to Children's Hospital where he remained for several days receiving treatment. Kerry has developed severe and debilitating brain injuries as a result of the blow. Kerry was a normal, active and athletic 8 year old boy before the accident. His injuries

have been life changing. Kerry's frontal lobe suffered injury and permanent damage that has caused cognitive and severe behavioral problems. Kerry's organic brain injuries led the Social Security Administration to determine that he is permanently disabled.

19. All conditions precedent to Plaintiff's right to recovery have been performed or have occurred.

CAUSE OF ACTION – NEGLIGENCE (ROUGHRIDERS)

20. Plaintiff incorporates by reference herein all preceding paragraphs.

21. Plaintiff would show that on the occasion in question, Defendant was negligent in that they failed to use ordinary care in the supervision, assembly, operation and/or maintenance of the Tramp Thing and All-4-Fun. Defendant also failed to use ordinary care in (1) hiring All-4-Fun as the operator of the Tramp Thing ride, which were unreasonably dangerous to the general public; and/or when it knew or should have known All-4-Fun was not competent and would act negligently (including the failure to vet and hire a competent contractor that would provide sufficient trained staff to adequately control large crowds of excited children); (2) failing to maintain the premises in a safe condition, (3) by failing to warn Plaintiffs of a dangerous condition on the premises of which it knew or should have known, (4) supervising the activities of All-4-Fun, by not using reasonable care to exercise control over All-4-Fun's activities, (5) supervising the activities of All-4-Fun after contractually maintaining responsibility for All-4-Fun's negligent acts.

22. Roughriders was also negligent in the following respects:

a. Failing to perform a safety background investigation of All-4-Fun before contracting to hire All-4-Fun, which was an unreasonably dangerous and negligent company;

b. Failing to control the crowds and the lines for the activities in a manner that allowed children to get into dangerous situations, including coming within the arc

of the 21 foot metal poles (within the range of an unreasonably dangerous condition and defect on the premises within the Roughriders area of control);

c. Failing to install line control ropes, warnings, or physical barriers that could have easily prevented Kerry Hall from being in an uncontrolled crowd of children within the sphere of injury in relation to the dangerous conditions and defects of the uncontrolled crowds of children and within the arc of the 21 foot pole that was not properly secured;

d. Failing to take charge of the safety of the guests and invitees after contractually releasing All-4-Fun from any liability;

e. Failing to investigate and monitor the closed off portion of the street and premises where dangerous conditions and defects were located;

f. Failing to warn the guests and invitees of the dangerous conditions and defects; and

g. Failing to prevent the dangerous condition of not taking any steps to control excited children attracted to be or stand to within an area presenting an unreasonable risk of injury.

23. Defendants' negligence proximately caused Plaintiff's injuries and damages, such damages being in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues.

24. Further, the injuries caused resulted from gross negligence which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code §41.003(a), for which Plaintiffs now sue the Roughriders Defendants. Accordingly, Plaintiffs seek a judgment against each of the Roughrider Defendants for exemplary damages.

CAUSE OF ACTION – PREMISES LIABILITY-ATTRACTIVE NUISANCE (ROUGHRIDERS)

25. Plaintiff incorporates by reference herein all preceding paragraphs.

26. Since the Roughriders have alleged that Kerry Hall was in a prohibited area when he was injured, in the alternative, Kerry Hall was on the premises and standing in line waiting for the Tramp Thing.

27. The Roughriders were in possession of the premises where the Tramp Thing was located, since they had directed its placement and closed off and controlled access to the street, where it was placed.

28. The Roughriders knew or should have known of the artificial condition located on the premises.

29. The Roughriders knew or should have known that children were likely to trespass into the area around said artificial condition.

30. The Roughriders knew or should have known that the artificial condition posed an unreasonable risk of death or serious bodily harm to children.

31. Kerry Hall, because of his youth, did not realize the risk involved in coming within the area made dangerous by the condition.

32. The utility to the Roughriders of maintaining the artificial condition and the burden of eliminating the danger were slight as compared to the risk to children.

33. The Roughriders did not exercise reasonable care to eliminate the danger or otherwise protect Kerry Hall.

34. The Roughriders' breach proximately caused Kerry Hall's injuries and damages in an amount within the jurisdictional limits of this Court, for which Plaintiff now sues.

35. Further, the injuries caused resulted from gross negligence which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code §41.003(a), for which Plaintiffs now sue the Roughriders Defendants. Accordingly, Plaintiffs seek a judgment against each of the Roughrider Defendants for exemplary damages.

CAUSE OF ACTION – STRICT LIABILITY (REBOUND)

36. Plaintiff incorporates by reference herein all preceding paragraphs.

37. There was a design defect in the Tramp Thing that rendered the product unreasonably dangerous at the time it left the control of Rebound. The defective ride reached All-4-Fun without substantial change in its condition from the time of its original sale. There was a feasible and safer alternative design for the defective ride at the time the product was designed. The design defect in the product was a proximate and/or a producing cause and/or the sole proximate and/or the sole producing cause of the failure of the product and the injuries and damages to Plaintiff.

38. The Tramp Thing was defective in its marketing for its intended use. Rebound owed a duty to inform consumers and users of the ride that the product was defectively designed and was not safe for use. Rebound further failed to provide proper instructions regarding limitations, restrictions, or proper procedures regarding the installation, maintenance and use of the product. Rebound failed to provide guidelines, checklists, warnings and instructions to end users how the ride must be maintained for safety and that the ride must be inspected for safety guidelines prior to each and every use. This failure was a proximate and/or a producing cause and/or the sole proximate and/or the sole producing cause of the failure of the product and the injuries and damages to Plaintiff.

39. Each of above-referenced acts and omissions, singularly or in combination with others, constitute a breach of Rebound's duties to design, distribute and market a product that is reasonably safe for its intended uses and proximately caused the damages suffered by Plaintiff, which are in excess of the minimum jurisdictional limits of this Court.

CAUSE OF ACTION – NEGLIGENCE (REBOUND)

40. Plaintiff incorporates by reference herein all preceding paragraphs.

41. There was a design defect in the Tramp Thing that rendered the product unreasonably dangerous at the time it left the control of Rebound. Rebound owed Plaintiff a duty of care to act as an ordinary, reasonably prudent manufacturer, which Rebound breached. There was a feasible and safe alternative design for the product at the time the product was designed. The design defect in the product was a proximate and/or a producing cause and/or the sole proximate and/or the sole producing cause of the failure of the product and the injuries and damages to Plaintiff.

42. The Tramp Thing was defective in its marketing for its intended use. Rebound owed Plaintiff a duty to inform Plaintiff that the product was defectively designed and was not safe for use. Rebound failed to provide any instructions regarding limitations, restrictions, or proper procedures regarding the installation, maintenance and use of the defective product. Rebound failed to provide guidelines, checklists, warnings and instructions to end users how the ride must be maintained for safety and that the ride must be inspected for safety guidelines prior to each and every use. Rebound thereby breached its duty to Plaintiff. This failure was a proximate and/or a producing cause and/or the sole proximate and/or the sole producing cause of the failure of the product and the injuries and damages to Plaintiff.

43. Each of the above-referenced acts and omissions, singularly or in combination with others, constituted negligence, which proximately caused the damages suffered by Plaintiff, which are in excess of the minimum jurisdictional limits of this Court.

CAUSE OF ACTION – BREACH OF EXPRESS & IMPLIED WARRANTIES (REBOUND)

44. Plaintiff incorporates by reference herein all preceding paragraphs.

45. At all times material herein, Defendant Rebound expressly and/or impliedly warranted that the Tramp Thing was merchantable and fit for ordinary use. However, the defective products did not comply with these warranties.

46. Rebound breached these express and/or implied warranties in one or more of the following respects: 1) failing to design the Tramp Thing in a safe manner; 2) selling and/or distributing a defective project that subjected consumers and users to an unreasonable risk of harm; 3) failing to act as a reasonably prudent person would have under the same or similar circumstances; and 4) otherwise failing to use due care under the circumstances.

47. Each of the above-referenced acts an omissions, singularly or in combination with others, constitute a breach of express warranty, and/or breach of warranty of merchantability, and/or breach of the implied warranty of fitness for a particular by Rebound.

48. As a direct and proximate result, Plaintiff suffered damages, which are in excess of the minimum jurisdictional limits of this Court.

DAMAGES

49. Plaintiff incorporates by reference herein all preceding paragraphs.

50. Plaintiff, for herself and as next friend of Kerry Hall, IV, will seek the following measures of damages:

a. Physical pain in the past and continuing into the future;

b. Mental anguish in the past and continuing into the future;

c. Disfigurement;

d. Physical and mental impairment in the past and continuing into the future;

e. Medical expenses in the past and continuing into the future;

f. Loss of future earning capacity;

g. Loss of services;

h. Loss of consortium;

i. Exemplary damages;

j. Pre-judgment and Post-Judgment interest;

k. Costs of Court; and

l. All other and further relief, whether general or special, at law or in equity to which Plaintiff and Kerry Hall, IV may prove themselves justly entitled to receive.

JURY DEMAND

51. Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests Defendants Roughriders and Rebound be cited to appear and answer herein and on final trial, Plaintiff have and recover judgment against Defendants, jointly and severally, as follows:

1. Actual damages as set forth above;
2. Exemplary damages;
3. Prejudgment and postjudgment interest as allowed by law;
4. All costs of court; and
5. Such other and further relief , whether general or special, at law or in equity, to which Plaintiff and Kerry Hall, IV are justly entitled.

Respectfully submitted,

DAVID, GOODMAN & MADOLE,
A Professional Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of February, 2009, a true and correct copy of the foregoing was forwarded via certified mail to the following counsel of record:

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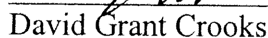
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