

**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT, IN  
AND FOR BROWARD COUNTY,  
FLORIDA.**

TIMOTHY NEAL,

CASE NO.: CACE 13-010003

Plaintiff,

JUDGE: CARLOS A. RODRIGUEZ

vs.

DEAN ENTERPRISES, INC., a Missouri Corporation, d/b/a STANLEY STEEMER CARPET, CLEANER, CO., a Florida Registered Foreign Profit Corporation, and the WILLIAM J. MCFARLANE, III, P.A., a/k/a LAW OFFICES OF WILLIAM J. MCFARLANE, III., P.A., d/b/a MCFARLANE AND DOLAN LAW CENTER, a/ka/ MCFARLANE & DOLAN,

Defendants.

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**FIRST AMENDED COMPLAINT**

The Plaintiff, TIMOTHY NEAL, hereinafter referred to as “PLAINTIFF”, sues DEAN ENTERPRISES, INC., a Missouri Corporation, d/b/a STANLEY STEEMER CARPET CLEANER, CO., a Florida Registered Foreign Profit Corporation, and the WILLIAM J. MCFARLANE, III., P.A., a/k/a LAW OFFICES OF WILLIAM J. MCFARLANE, III., P.A., d/b/a MCFARLANE AND DOLAN LAW CENTER, a/ka/ MCFARLANE & DOLAN, hereinafter collectively referred to as “DEFENDANTS”, and as grounds states:

1. The Plaintiff, TIMOTHY NEAL, is an individual who at all times relative to this action, resided and worked in Monroe County, Florida.

2. The Defendant, DEAN ENTERPRISES, INC., is a Missouri Corporation, d/b/a STANLEY STEEMER CARPET, CLEANER, CO., a Florida registered foreign profit corporation, doing business in Monroe County, Florida, hereafter also referred to as “STANLEY STEEMER”.

3. The Defendant, the WILLIAM J. MCFARLANE, III., P.A., a/k/a LAW OFFICES OF WILLIAM J. MCFARLANE, III., P.A., d/b/a MCFARLANE AND DOLAN LAW CENTER, a/ka/ MCFARLANE & DOLAN is a Florida corporation doing business in Broward County, Florida, hereafter also referred to as “MCFARLANE AND DOLAN.”

4. STANLEY STEEMER operated and continues to operate a carpet cleaning business in Little Torch Key, Florida.

### **JURISDICTION AND VENUE**

5. This is an action for damages for a sum in excess of Fifteen Thousand (\$15,000.00) Dollars exclusive of interest and costs.

6. Defendant, MCFARLANE AND DOLAN, is a Florida corporation with its principal place of business in Broward County, Florida. At all time material, MCFARLANE AND DOLAN has conducted business in Broward County, Florida.

7. Defendant, DEAN ENTERPRISES, INC., is a Missouri Corporation, d/b/a STANLEY STEEMER CARPET, CLEANER, CO., a Florida registered foreign profit corporation, doing business in Monroe County, Florida.

8. All conditions precedent have occurred or have been waived and Plaintiff is entitled to initiate this litigation.

9. Based upon the foregoing, this Court has jurisdiction over the parties to this action and venue properly lies in Broward County, Florida.

### **BACKGROUND**

10. The Plaintiff was employed by STANLEY STEEMER and on or about DECEMBER 12, 2011, suffered a work related injury necessitating spinal surgery and giving rise to the provision of Florida Workers' Compensation benefits.

11. Ultimately, STANLEY STEEMER obtained the law firm, MCFARLANE AND DOLAN to represent themselves regarding MR. NEAL’S claims for Florida Workers’ Compensation benefits.

**Mcfarlane and Dolan’s Publications and Statements**

12. At all times material hereto MCFARLANE AND DOLAN maintained an internet website located at [www.mcfarlanedolan.com](http://www.mcfarlanedolan.com).

13. “[A]ll injured workers are frauds ... We litigate with baseball bats, ... the best defense is a good offense, ... a claimant is a fraud until proven injured, and ... a claim is fraud until proven otherwise.” These are the statements of MCFARLANE AND DOLAN’S senior partner, WILLIAM J. MCFARLANE, III., as stated and published on its website along with the following image of WILLIAM J. MCFARLANE, III., wielding a baseball bat:



14. MCFARLANE AND DOLAN states on its website that it “aggressively defends” claims, that they “litigate with a baseball bat” and supported their position by posting the following image:



### WHY CHOOSE MCFARLANE & DOLAN

*"At McFarlane & Dolan, we litigate claims with a baseball bat." —William J. McFarlane, III*

15. MCFARLANE AND DOLAN actively used their website to curry favor with the insurance industry and defense clients through a scheme and enterprise intended to convey a message of hostility, aggressiveness, coercion, and harassment, against “claimants,” including the plaintiff, TIMOTHY NEAL.

16. Copies of the website statements and publications are attached hereto as **Composite Exhibit “A.”**

### **COUNT I** **VIOLATION OF FLA. STAT. §440.205 AGAINST STANLEY STEEMER**

17. Plaintiff hereby re-alleges and incorporates paragraphs one (1) through sixteen (16) above herein.

18. Florida Statute, §440.205 states, that “No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee’s valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law.” That is, Fla. Stat., §440.205, Fla. Stat., creates a statutory cause of action for coercion and intimidation.

### **Stanley Steemer’s Violations of Fla. Stat., §440.205**

19. When the owner of STANLEY STEEMER, CHARLES PHILIP DEAN, a/k/a “PHIL” DEAN, learned that the plaintiff had hired the undersigned to represent Mr. Neal in his Florida Workers’ Compensation claims for benefits, Mr. Dean became verbally abusive to Mr. Neal and engaged in coercive and intimidating conduct including threatening verbal and written statements.

20. Mr. Dean then interfered with the Plaintiff’s medical treatment and wrote the following letter to the Plaintiff’s medical provider stating:

Dr - See attached 4 pages                      3/1/12  
Workers’ Comp laws were written for a purpose. Tim’s lawyer isn’t asking for anything that Tim wont get anyway - without a lawyer! But, he’s causing a paperwork headache that serves no purpose.  
The end result:  
We work harder.  
We pay out the same amount \$.  
Tim gets 1/3 less.  
His lawyer gets the third!  
What a crock.

Phil

A copy of the letter is attached hereto as **Exhibit “B.”**

21. On March 6, 2012, Defendant “Phil” Dean verbally notified the Plaintiff that he was going to do, “*anything and everything he could do to screw the Plaintiff over.*”

22. Mr. Dean told the Plaintiff that there were only two (2) reasons to hire a lawyer. One, “[because] the company is not helping [you],” and two, “you are trying to screw me over.”

23. Mr. Dean then levied the veiled threat that if the Plaintiff insisted on maintaining counsel, “[their] relationship will change forever.” and further:

a. Threatened the Plaintiff’s job;

- b. Notified the Plaintiff that he was “going to screw him” because he obtained counsel in his Florida Workers’ Compensation matters; and
- c. Demanded the Plaintiff lose weight in order to keep his job;

24. In addition to physical injuries, TIMOTHY NEAL suffered or continues to suffer from emotional distress arising from the threatening, coercive and intimidating treatment of the Defendants.

**Stanley Steemer Responsible for the Acts of Its Agent  
Principal/ Agent Theory of Liability**

25. STANLEY STEEMER’S agent, MCFARLANE AND DOLAN engaged in intimidating and coercive conduct directed at the Plaintiff.

26. MCFARLANE AND DOLAN’s express written accusations that “all claimants are frauds ...” that “all claims are fraudulent” read in conjunction with MCFARLANE AND DOLAN’S threats of litigation with a baseball bat are not only coercive and intimidating, but patently disgusting and outrageous.

27. MCFARLANE AND DOLAN’S bad acts should be imputed upon STANLEY STEEMER as arising from the principal/ agency relationship with MCFARLANE AND DOLAN.

28. Alternatively, the Plaintiff asserts that STANLEY STEEMER’S failure to instruct its agent to remove the offending statements are operate as an adoption and ratification of MCFARLANE AND DOLAN’S statements.

**WHEREFORE,** Plaintiff demands judgment for damages against Defendants, MCFARLANE AND DOLAN, and STANLEY STEEMER, jointly or severally, in excess of Fifteen Thousand (\$15,000.00) Dollars, exclusive of costs and interest, and further demands interest on any liquidated damages, attorney's fees pursuant to any applicable proposal for settlement, statute, and/or

rule, taxable costs, costs pursuant to §57.104, Fla. Stat. Plaintiff reserves the right to seek leave of Court to amend this Complaint to add a claim for punitive damages should same become appropriate. Additionally, Plaintiff demands any other relief this honorable court deems appropriate in law or equity.

**COUNT II**  
**VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**  
**(FDUPTA)**

29. Plaintiff hereby re-alleges and incorporates paragraphs one (1) through twenty-eight (28) above herein.

30. “The purpose of the FDUTPA is “[t]o protect the consuming public and legitimate business enterprises from those who engage in ... unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).” See Georgian v. Zodiac Group, Inc., 2011 U.S. Dist. LEXIS 85301 (S.D. Fla. Aug. 3, 2011).

31. Regarding the elements of a violation of FDUPTA, the District Court for the Southern District of Florida recognizes that the Florida Supreme Court “has not set forth the elements of a FDUTPA claim, the decisions of the Florida District Courts of Appeal guide this Court's analysis” Id.

32. The Southern District in Georgian provides additional guidance and directs our attention to Judge Padavano's opinion in Davis v. Powertel, 776 So. 2d 971, 974 (Fla. Dist. Ct. App. 2000), [as] instructive. Id.

33. Fla. Stat. § 501.204(2) states that it is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act,

15 U.S.C. s. 45(a)(1) as of July 1, 2006.

34. Read in pari materia with Georgian at 35-36, the Plaintiff must show that the defendant's engaged in a "deceptive practice ... that is 'likely to mislead' consumers." (citing In re Int'l Harvester Co., 104 F.T.C. 949 (1984); In re Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984); SW. Sunsites, Inc. v. FTC, 785 F.2d 1431 (9th Cir. 1986)). No showing of reliance on the statement is necessary. Id.

35. In the conduct of its trade/ commerce, including maintenance of its business website, MCFARLANE AND DOLAN, holds itself out as experts and specialists in insurance defense against claimant's claims. In doing so MCFARLANE AND DOLAN assert that "all claimants are frauds until proven injured." Claimants are not frauds until proven injured. This statement is likely to mislead consumers.

36. In the conduct of its trade/ commerce, including maintenance of its website, MCFARLANE AND DOLAN, holds itself out as experts and specialists in insurance defense against claimant's claims. In doing so MCFARLANE AND DOLAN assert that "all claims are fraud until shown otherwise." This statement is likely to mislead consumers. Claims are not presumed fraudulent until proven otherwise. This is statement is likely to mislead consumers.

37. In the conduct of its trade/ commerce, including maintenance of its business website, MCFARLANE AND DOLAN portray their senior counsel wielding a baseball bat with the caption and quote that "[MCFARLANE AND DOLAN] litigates with a baseball bat." This is unconscionable on multiple levels including in violation of Fla. Stat. §501.204(1).

38. Regarding defendant, STANLEY STEEMER, in the conduct of his trade/ commerce, Charles Phillip Dean contacted the Claimant's medical providers, and made misstatements such as

“Tim’s lawyer gets a third.” Other than being wholly inaccurate such visceral communication with the Claimant’s medical provider is not only unconscionable, but is likely to mislead the Plaintiff and the Plaintiff’s medical providers.

**WHEREFORE**, Plaintiff respectfully requests that this court enter judgment in favor of Plaintiff finding that the Defendants have violated Florida’s Deceptive and Unfair Trade Practices act and to award damages in excess of Fifteen Thousand (\$15,000.00) Dollars, exclusive of costs and interest, and further demands interest on any liquidated damages, attorney's fees pursuant to any applicable proposal for settlement, statute, and/or rule, taxable costs, and costs pursuant to Fla. Stat., §57.104. Plaintiff reserves the right to seek leave of Court to amend this Complaint to add a claim for punitive damages should same become appropriate. The Plaintiff further seeks that this court award Plaintiff all reasonable attorneys’ fees incurred in connection with this action pursuant to Fla. Stat., §501.2105, together with taxable costs as provided by law; and that this court enter such further legal and equitable relief as may be reasonable and appropriate under the circumstances.

**COUNT III**  
**DECLARATORY ACTION AND INJUNCTIVE RELIEF**

39. Plaintiff hereby re-alleges and incorporates paragraphs one (1) through thirty-eight (38) above herein.

40. This is a claim for declaratory judgment under FDUPTA and pursuant to Section 501.211 (1), Florida Statutes, providing the right to seek declaratory relief.

41. Defendant's actions, as more particularly described above, have created a present controversy and created the need a declaration of the rights and obligations of the parties.

42. The Plaintiff requires the resolution of its purported rights with respect to MCFARLANE AND DOLAN’S publication of statements that all claimants are frauds, that all

claims are fraudulent, and that they litigate with baseball bats such that Plaintiff is not prejudiced or hindered in obtaining his Florida Workers' Compensation benefits without being hindered by the acts of the Defendants, and without being hindered by the acts or practices, or conduct which create confusion and prejudice in the marketplace due to both Defendants actions.

43. The Plaintiff requires the resolution of its purported rights with respect to STANLEY STEEMER (Charles Phillip Deans) communications and statements to the Plaintiff's medical providers and to the Plaintiff such that Plaintiff is not prejudiced, hindered coerced, harassed, or intimidated in obtaining his Florida Workers' Compensation benefits without being hindered by the acts or practices, or conduct which create confusion and prejudice in the marketplace due to both Defendants actions.

44. The actions of the Defendants, and the refusal of Defendants to resolve the issues in dispute, have created a cloud of doubt as to just what the parties' rights, status and obligations are in connection with MCFARLANE AND DOLAN'S website publications and statements, and with STANLEY STEEMER (Charles Phillip Dean's) communications and statements to the Plaintiff's medical providers and to the Plaintiff.

45. Plaintiff has an actual, present, adverse and antagonistic interest in the subject matter, in fact and in law. The antagonistic interests are all before this court and capable of determination.

46. Plaintiff seeks this court's assistance in entering a declaratory judgment stating and declaring the rights and obligations of the parties

47. Plaintiff has been forced to retain counsel to represent its interests and pursue enforcement of FDUPTA through this litigation. Accordingly, Plaintiff is entitled to recover its reasonable attorneys' fees pursuant to Section 501.2105, Florida Statutes.

**WHEREFORE**, Plaintiff respectfully requests that this court enter judgment in favor of Plaintiff and against Defendants and provide the following relief: that this court determine and declare the respective rights and obligations of the parties concerning MCFARLANE AND DOLAN'S website publications, communications and statements and STANLEY STEEMER'S communications with the Plaintiff's medical providers and the Plaintiff; enjoin the defendant's from engaging in their unconscionable acts and practices including and declare that Defendants have violated FDUPTA via its publications, communications, statements, and utterances and that this court enter judgment for such other legal and or equitable relief as may be reasonably necessary to protect the interests of Plaintiff, including the Plaintiff's right to obtain Florida Workers' Compensation benefits free from coercion, intimidation, harassment, or suffering from the publications, communications, statements and utterances of the Defendants via its internet website, direct communication to the Plaintiff, and/ or written or direct communication with the Claimant's medical providers. The Plaintiff further seeks that this court award Plaintiff all reasonable attorneys' fees incurred in connection with this action pursuant to Fla. Stat., §501.2105, together with taxable costs as provided by law; and that this court enter such further legal and equitable relief as may be reasonable and appropriate under the circumstances.

48. Plaintiff requests trial by jury.

**/S./ ROBERT S. WINESS**

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