

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GREAT AMERICAN INSURANCE
COMPANY,

Plaintiff,

-against-

HOULIHAN LAWRENCE INC.,

Defendant.
-----X

**ANSWER AND
COUNTERCLAIM**

JURY DEMANDED

Civil Action No. 19-cv-1055 (KMK)

Defendant Houlihan Lawrence Inc. ("Houlihan"), by its attorneys Collier Halpern & Newberg, LLP, as and for its Answer and Counterclaim in response to Plaintiff Great American Insurance Company's ("GAIC") Complaint dated February 4, 2019 (the "Complaint"), alleges as follows:

1. Denies the allegations set forth in paragraph 1 of the Complaint that GAIC is entitled to the declaratory judgment or any other relief it seeks in this lawsuit.
2. Denies that the allegations set forth in paragraph 2 of the Complaint are an accurate or complete description of the allegations in the action entitled Goldstein, et al. v. Houlihan/Lawrence, Inc., Index No. 60767/2018 (N.Y. Sup. Ct., Westchester Co.) (the "Underlying Action"), and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.
3. Denies the allegations set forth in paragraph 3 of the Complaint that GAIC is entitled to the declaratory judgment or any other relief it seeks in this lawsuit.
4. Denies the allegations set forth in paragraph 4 of the Complaint that GAIC is entitled to the declaratory judgment or any other relief it seeks in this lawsuit.

5. Lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint.

6. Admits the allegations set forth in paragraph 6 of the Complaint.

7. Admits the allegations set forth in paragraph 7 of the Complaint.

8. Admits the allegations set forth in paragraph 8 of the Complaint.

9. Admits the allegations set forth in paragraph 9 of the Complaint.

10. Admits the allegations set forth in paragraph 10 of the Complaint.

11. Denies that the allegations set forth in paragraph 11 of the Complaint are a full and complete description of the claims and allegations of the plaintiffs in the Underlying Action, except admits that the plaintiffs in the Underlying Action have asserted claims and made allegations based on so-called “dual agency” transactions, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

12. Denies that the allegations set forth in paragraph 12 of the Complaint are an accurate or complete description of the allegations made by the plaintiffs in the Underlying Action, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

13. Denies that the allegations set forth in paragraph 13 of the Complaint are an accurate or complete description of the allegations made by the plaintiffs in the Underlying Action, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

14. Denies that the allegations set forth in paragraph 14 of the Complaint are an accurate or complete description of the allegations made by the plaintiffs in the Underlying Action, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

15. Denies that the allegations set forth in paragraph 15 of the Complaint are an accurate or complete description of the allegations made by the plaintiffs in the Underlying Action, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

16. Denies that the allegations set forth in paragraph 16 of the Complaint are a full and complete recitation of the allegations made by the plaintiffs in the Underlying Action, except admits that paragraph 16 accurately quotes from paragraph 330 thereof, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

17. Denies that the allegations set forth in paragraph 17 of the Complaint are an accurate or complete summary of the relief sought by the plaintiffs in the Underlying Action, except admits that the plaintiffs in the Underlying Action seek the return of certain sales commissions, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein.

18. Admits the allegations set forth in paragraph 18 that the document attached to the Complaint as Exhibit "B" appears to be a copy of the insurance policy issued by GAIC to

Houlihan Lawrence as Policy No. RAB3084795-16 for the July 26, 2016 to July 26, 2017 policy period (the “Policy”).

19. Denies that the allegations set forth in paragraph 19 of the Complaint are an accurate or complete description of the limit of liability set forth in the Policy, except admits that the Policy states that it has a limit of liability of \$5 million per claim subject to a deductible of \$50,000 per claim, which is applicable to “**Damages** only”, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

20. Admits the allegations set forth in paragraph 20 of the Complaint.

21. Denies that the allegations set forth in paragraph 21 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

22. Denies that the allegations set forth in paragraph 22 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

23. Denies that the allegations set forth in paragraph 23 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

24. Denies the allegations set forth in paragraph 24 of the Complaint, except admits that counsel retained by Houlihan sent the notice letter attached to the Complaint as Exhibit C to

GAIC on July 27, 2018, and respectfully refers the Court to the July 27, 2018 letter for the terms thereof.

25. Admits the allegations set forth in paragraph 25 of the Complaint.

26. Denies the allegations set forth in paragraph 26 of the Complaint, except admits that GAIC sent a letter dated July 31, 2018 to counsel for Houlihan, a copy of which is attached to the Complaint as Exhibit D, and respectfully refers the Court to the July 31, 2018 letter for the terms thereof.

27. Denies the allegations set forth in paragraph 27 of the Complaint, except admits that counsel for GAIC sent a letter dated December 5, 2018 to counsel for Houlihan, a copy of which is attached to the Complaint as Exhibit E, and respectfully refers the Court to the December 5, 2018 letter for the terms thereof.

28. Denies that the allegations set forth in paragraph 28 of the Complaint are an accurate or complete description of the contents of the February 4, 2019 letter, except admits that counsel for GAIC sent a letter dated February 4, 2019 to Houlihan, a copy of which is attached to the Complaint as Exhibit F, and respectfully refers the Court to the February 4, 2019 letter for the terms thereof.

29. Denies that the allegations set forth in paragraph 29 of the Complaint are an accurate or complete description of the contents of the February 4, 2019 letter, and respectfully refers the Court to the February 4, 2019 letter (attached as Exhibit F to the Complaint) for the terms thereof.

30. Denies that the allegations set forth in paragraph 30 of the Complaint are an accurate or complete description of the contents of the February 4, 2019 letter, and respectfully

refers the Court to the February 4, 2019 letter (attached as Exhibit F to the Complaint) for the terms thereof.

31. Denies that the allegations set forth in paragraph 31 of the Complaint are an accurate or complete description of the contents of the February 4, 2019 letter, and respectfully refers the Court to the February 4, 2019 letter (attached as Exhibit F to the Complaint) for the terms thereof.

32. Denies that the allegations set forth in paragraph 32 of the Complaint are an accurate or complete description of the contents of the February 4, 2019 letter, and respectfully refers the Court to the February 4, 2019 letter (attached as Exhibit F to the Complaint) for the terms thereof. Denies the allegation that at no time has GAIC consented to or approved the retention of either firm.

33. Denies the allegations set forth in paragraph 33 of the Complaint.

34. Admits the allegations set forth in paragraph 34 of the Complaint.

35. Houlihan repeats and realleges the responses to paragraphs 1 through 34 of the Complaint as if the same were more fully set forth at length herein.

36. Denies that the allegations set forth in paragraph 36 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

37. Denies the allegations set forth in paragraph 37 of the Complaint.

38. Denies the allegations set forth in paragraph 38 of the Complaint.

39. Denies the allegations set forth in paragraph 39 of the Complaint.

40. Houlihan repeats and realleges the responses to paragraphs 1 through 39 of the Complaint as if the same were more fully set forth at length herein.

41. Denies that the allegations set forth in paragraph 41 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

42. Denies that the allegations set forth in paragraph 42 of the Complaint are a complete and accurate description of the allegations made by the plaintiffs in the Underlying Action, except admits that the plaintiffs in the Underlying Action seek the return of certain sales commissions, and respectfully refers the Court to the First Amended Complaint filed October 1, 2018 (attached as Exhibit A to the Complaint) in the Underlying Action for the allegations set forth therein and the February 4, 2019 letter (attached as Exhibit F to the Complaint) for the terms thereof.

43. Denies the allegations set forth in paragraph 43 of the Complaint.

44. Denies the allegations set forth in paragraph 44 of the Complaint.

45. Houlihan repeats and realleges the responses to paragraphs 1 through 44 of the Complaint as if the same were more fully set forth at length herein.

46. Denies that the allegations set forth in paragraph 46 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

47. Denies the allegations set forth in paragraph 47 of the Complaint.

48. Denies the allegations set forth in paragraph 48 of the Complaint.

49. Denies the allegations set forth in paragraph 49 of the Complaint.

50. Denies the allegations set forth in paragraph 50 of the Complaint.

51. Houlihan repeats and realleges the responses to paragraphs 1 through 50 of the Complaint as if the same were more fully set forth at length herein.

52. Denies that the allegations set forth in paragraph 52 of the Complaint accurately describe GAIC's duties owed under the Policy and applicable law, except admits that GAIC has an obligation to pay "Claim Expenses" as that term is defined in the Policy in connection with a Claim that is subject to coverage under the Policy, including the Underlying Action, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

53. Denies the allegations set forth in paragraph 53 of the Complaint.

54. Denies the allegations set forth in paragraph 54 of the Complaint.

55. Denies the allegations set forth in paragraph 55 of the Complaint.

56. Houlihan repeats and realleges the responses to paragraphs 1 through 55 of the Complaint as if the same were more fully set forth at length herein.

57. Denies that the allegations set forth in paragraph 57 of the Complaint are a full and complete recitation of the language and provisions of the Policy, except admits that the quoted language appears in the Policy, and respectfully refers the Court to the Policy (attached as Exhibit B to the Complaint) for the terms thereof.

58. Denies the allegations set forth in paragraph 58 of the Complaint.

59. Denies the allegations set forth in paragraph 59 of the Complaint.

60. Denies the allegations set forth in paragraph 60 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

61. GAIC fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

62. To the extent GAIC's Complaint relates to its duty to indemnify Houlihan, GAIC's Complaint is premature and should be dismissed or, in the alternative, stayed until the Underlying Action is resolved.

THIRD AFFIRMATIVE DEFENSE

63. GAIC's claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

64. GAIC's claims are barred, in whole or in part, by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

65. GAIC's claims are barred, in whole or in part, because GAIC has failed to substantially perform, and is in material breach of, its obligations, terms, conditions, and duties to Houlihan under the Policy and applicable law, thereby precluding the requested relief.

SIXTH AFFIRMATIVE DEFENSE

66. GAIC's claims are barred, in whole or in part, because of GAIC's bad faith, the doctrine of unclean hands, and/or related equitable principles.

SEVENTH AFFIRMATIVE DEFENSE

67. GAIC'S claims are barred, in whole or in part, by the doctrine of laches.

COUNTERCLAIM
(Breach of Contract)

68. Houlihan repeats and realleges the allegations set forth in paragraphs 1 through 67 above as if the same were more fully set forth at length herein.

69. A contract exists between Houlihan and GAIC, namely the Policy (attached as Exhibit B to the Complaint).

70. Houlihan has performed its duties and obligations under the Policy.

71. Despite Houlihan's performance, GAIC has breached the Policy by failing to pay Houlihan's "Claim Expenses" in the Underlying Action as required under the terms of the Policy, and by disclaiming coverage for the Underlying Action.

72. GAIC has breached its duty of good faith and fair dealing in connection with its refusal to honor the terms and conditions of the Policy.

73. GAIC's breach of the Policy terms and conditions has caused Houlihan substantial damages in an amount to be determined by the trier of fact.

74. All conditions precedent to GAIC's performance have been satisfied or waived.

75. Houlihan is entitled to "Claim Expenses" in an amount to be determined by the trier of fact, plus costs and interest.

WHEREFORE, Houlihan Lawrence respectfully requests that this Court enter judgment on behalf of Houlihan Lawrence providing the following relief:

1. Awarding Houlihan Lawrence its "Claim Expenses" incurred to date in the Underlying Action, plus interest;
2. Declaring that GAIC is obligated to pay Houlihan Lawrence's ongoing "Claim Expenses" in the Underlying Action, in full and on a monthly basis as they are incurred;
3. Declaring that GAIC has no right to control the defense of Houlihan Lawrence in the Underlying Action and that Houlihan Lawrence may

continue to be defended by the counsel retained by it in the Underlying Action;

4. Declaring that GAIC's claims related to its indemnity obligations to Houlihan Lawrence are premature and dismissing or staying those claims pending the outcome of the Underlying Action;
5. Awarding Houlihan Lawrence its attorneys' fees and costs in this lawsuit; and
6. Awarding Houlihan Lawrence all other just and proper relief.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant demands trial by jury in this action of all issues so triable.

Dated: White Plains, New York
March 4, 2019

COLLIER HALPERN & NEWBERG, LLP
Attorneys for Defendant

By: _____


Philip M. Halpern
A Member of the Firm
One North Lexington Avenue, 15th Fl.
White Plains, New York 10601
Telephone: (914) 684-6800
Facsimile: (914) 684-6986
Email: phalpern@chnnb.com