

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|--------------------------|---|--------------------------------------|
| ----- | X | |
| GREAT AMERICAN INSURANCE | : | |
| COMPANY, | : | |
| | : | Civil Action No.: 19-cv-1055 (KMK) |
| Plaintiff, | : | |
| | : | |
| -against- | : | |
| | : | <u>ANSWER TO COUNTERCLAIM</u> |
| HOULIHAN LAWRENCE INC., | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |

Plaintiff Great American Insurance Company (“GAIC”) by its attorneys, Ropers Majeski Kohn & Bentley, P.C., as and for its Answer to the Counterclaim by defendant Houlihan Lawrence Inc. (“Houlihan”) alleges as follows:

COUNTERCLAIM
(Breach of Contract)

68. Paragraph 68 does not contain any factual allegations to which a response is required. To the extent a response is required, GAIC denies the allegations of paragraph 68.

69. Admits the allegations contained in paragraph 69 of the Counterclaim and respectfully refers the Court to the Policy for the terms, conditions and limitations contained therein.

70. Denies the allegations in paragraph 70 of the Counterclaim.

71. Denies the allegations in paragraph 71 of the Counterclaim.

72. Denies the allegations in paragraph 72 of the Counterclaim.

73. Denies the allegations in paragraph 73 of the Counterclaim.

74. Denies the allegations in paragraph 74 of the Counterclaim.

75. Denies the allegations in paragraph 75 of the Counterclaim.

FIRST AFFIRMATIVE DEFENSE

76. The Counterclaim fails to state facts sufficient to state a claim against GAIC upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

77. Counterclaimant is barred, in whole or in part, from seeking any equitable relief by reason of Counterclaimant's own unclean hands.

THIRD AFFIRMATIVE DEFENSE

78. Counterclaimant's claims against GAIC are barred to the extent that, under the terms, conditions, and exclusions of the GAIC Policy, there is no obligation to defend and/or indemnify Counterclaimant, or to contribute towards payments made by Counterclaimant with respect to the incidents, claims or allegations in the underlying action pending against Counterclaimant.

FOURTH AFFIRMATIVE DEFENSE

79. To the extent that Counterclaimant has voluntarily paid, assumed an obligation to pay, or incurred an expense without notice and approval by GAIC, GAIC has no obligation to Counterclaimant for any such payment, obligation, or expense.

FIFTH AFFIRMATIVE DEFENSE

80. Counterclaimant's claims are barred, in whole or in part, to the extent that Counterclaimant has materially increased the risk to GAIC.

SIXTH AFFIRMATIVE DEFENSE

81. Counterclaimant's claims are barred, in whole or in part, by the terms, exclusions, conditions, definitions, declarations, endorsements and/or limitations contained in the GAIC Policy.

SEVENTH AFFIRMATIVE DEFENSE

82. The matters for which Counterclaimant seeks to recover are not within the Insuring Agreement of the GAIC Policy.

EIGHTH AFFIRMATIVE DEFENSE

83. The matters for which Counterclaimant seeks to recover are barred from coverage by one or more exclusions in the GAIC Policy.

NINTH AFFIRMATIVE DEFENSE

84. The amounts sought to be recovered by Counterclaimant are not within the definition of the term Loss as defined in the GAIC Policy.

TENTH AFFIRMATIVE DEFENSE

85. To the extent that coverage is proved to exist under the GAIC Policy, GAIC is not required to reimburse, indemnify or otherwise make payment for any unreasonable, excessive, improper, unnecessary, or unrelated costs or sums incurred by or on behalf of Counterclaimant.

ELEVENTH AFFIRMATIVE DEFENSE

86. GAIC alleges that it may have other separate and additional defenses of which it is not presently aware, and hereby reserves the right to assert them by amendment to this answer when discovery is complete.

WHEREFORE, GAIC demands judgment dismissing the Counterclaim in its entirety, and granting GAIC the relief sought in its Complaint in this action, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York.
March 25, 2019

ROPERS, MAJESKI, KOHN & BENTLEY



By: _____

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COMPANY

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