

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GREAT AMERICAN LIFE INSURANCE COMPANY,)	
)	
)	
Plaintiff,)	No. 1:16-cv-00699-MRB
)	
v.)	
)	Judge Michael R. Barrett
SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR,)	
)	
)	
Defendant.)	
)	

DEFENDANT’S ANSWER

Defendant, Secretary of the United States Department of the Interior (“DOI” or the “Agency”) (the “Secretary”), hereby answers Plaintiff Great American Life Insurance Company’s (“GALIC”) Complaint, Dkt. 1, as follows¹:

INTRODUCTION

The allegations contained in the Introduction are Plaintiff’s characterization of its case to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

PARTIES

1. Admits that GALIC is a party. Otherwise denies the allegations contained in paragraph 1 for lack of knowledge or information sufficient to form a belief as to their truth.

¹ Except as otherwise defined in this Answer, capitalized terms have the meanings assigned to them in the Complaint. The Secretary answers only those portions of the Complaint that remain in contention after the Court’s June 3, 2019 Order (Dkt. 13) (“Order”) granting, in part, the United States’ motion to dismiss the Complaint. For portions or paragraphs of the Complaint that were resolved by the Order, the Secretary responds here as “N/A.”

2. Admits that 25 U.S.C. § 1451 states, “[i]t is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.” Admits that the Indian Loan Guaranty, Insurance, and Interest Subsidy Program was established under the Indian Financing Act of 1974 (IFA), Pub. L. No. 93-262, as amended, 25 U.S.C. § 1451 *et seq.*, and regulations at 25 C.F.R. Part 103. Loan guaranties are governed by Title II of the IFA (codified at §§ 1481-1499), which authorizes the Secretary to guarantee up to 90% of the unpaid principal and interest due on loans to Indian entities or individuals “[i]n order to provide access to private money sources which otherwise would not be available.” 25 U.S.C. § 1481. Otherwise denies the allegations contained in paragraph 2.

3. Admits that Plaintiff brings its Complaint against the Secretary in his official capacity. Otherwise denies the allegations contained in paragraph 3.

4. N/A

5. N/A

JURISDICTION AND VENUE

6. The allegations contained in paragraph 6 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

7. The allegations contained in paragraph 7 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

**DESCRIPTION OF THE TRANSACTIONS AND
RELATIONSHIPS AMONG THE PARTIES**

A. The Loan Guaranty Program.

8. Paragraph 8 contains conclusions of law about the Indian Financing Act of 1974 (IFA), Pub. L. No. 93-262, as amended, 25 U.S.C. § 1451 *et seq.*, and regulations at 25 C.F.R. Part 103, to which an answer is not required. To the extent that paragraph 8 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document (or documents) for a full and accurate statement of its contents. Otherwise, denies the allegations contained in paragraph 8.

9. Admits that former President Richard Nixon made the statement excerpted in paragraph 9 at the time of his “signing into law S. 1341, the Indian Financing Act.” <https://www.presidency.ucsb.edu/documents/statement-about-signing-the-indian-financing-act-1974>.

10. Admits that 25 C.F.R. § 103.2 [not § 103.02] states: “The purpose of the Program is to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The direct function of the Program is to help lenders reduce excessive risks on loans they make. That function in turn helps borrowers secure conventional financing that might otherwise be unavailable.” Admits that the then-chief of DCI, Philip Viles, approved Lower Brule Community Development Enterprise, LLC’s (“LBCDE”) final application for a 90% guaranty on the loan from LBC Western Holding, LLC (“LBCWH”). To the extent that paragraph 10 summarizes or characterizes any other document (or documents), a response is not

required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document (or documents) for a full and accurate statement of its contents. Otherwise, denies the allegations contained in paragraph 10.

B. Prior to GALIC's purchase of the Loan in the secondary market there was an original Loan and Guaranty under the Agency's Loan Guaranty Program.

11. Denies the allegations contained in paragraph 11 for lack of knowledge or information sufficient to form a belief as to their truth.

12. Admits that the Division of Capital Investment, Office of Indian Energy and Economic Development, issued a guaranty certificate for 90% of the unpaid principal and interest due on a \$22,519,638 loan from LBCDE to LBCWH, but denies that LBCDE loaned LBCWH \$22,519,638. Admits that the Lower Brule Sioux Tribe of South Dakota is a federally-recognized Indian tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. §476, *et seq.* To the extent that paragraph 12 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document (or documents) for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 12 for lack of knowledge or information sufficient to form a belief as to their truth.

THE AGENCY GUARANTEES THE ORIGINAL LOAN
FROM LBCDE TO LBCWH

13. Admits that on December 16, 2009, LBCDE submitted an incomplete request to DCI for a loan guaranty. To the extent that paragraph 13 summarizes or characterizes another document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document (or documents) for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 13.

14. Admits that on or about June 24, 2010, DCI approved LBCDE's final application for a 90% guaranty on the loan from LBCWH. Otherwise denies the allegations contained in paragraph 14 for lack of knowledge or information sufficient to form a belief as to their truth.

15. Denies the allegations contained in paragraph 15 for lack of knowledge or information sufficient to form a belief as to their truth.

16. Denied.

17. Denied.

18. Admits that on or about June 24, 2010, DCI approved LBCDE's final application for a 90% guaranty on the loan from LBCWH. Denies the guaranty was no. G103D141501. Otherwise denies the allegations contained in paragraph 18 for lack of knowledge or information sufficient to form a belief as to their truth.

19. Admits that LBCDE sought to sell the guaranty. Otherwise denies the allegations contained in paragraph 19 for lack of knowledge or information sufficient to form a belief as to their truth.

LBCDE SELLS ITS GUARANTEED LOAN IN THE SECONDARY MARKET

20. Denies the allegations contained in paragraph 20 for lack of knowledge or information sufficient to form a belief as to their truth.

21. Denies the allegations contained in paragraph 21 for lack of knowledge or information sufficient to form a belief as to their truth.

22. Denies the allegations contained in paragraph 22 for lack of knowledge or information sufficient to form a belief as to their truth.

23. Admits that, on March 21, 2012, Plaintiff, through its counsel, began inquiring with DCI, by e-mail to Viles, regarding a possible transfer of the loan. Otherwise denies the allegations contained in paragraph 23 for lack of knowledge or information sufficient to form a belief as to their truth.

24. Denies the allegations contained in paragraph 24 for lack of knowledge or information sufficient to form a belief as to their truth.

25. Admits that on or about June 24, 2010, DCI approved LBCDE's final application for a 90% guaranty on the loan from LBCWH. To the extent that paragraph 25 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 25 for lack of knowledge or information sufficient to form a belief as to their truth.

26. Denies the allegations contained in paragraph 26 for lack of knowledge or information sufficient to form a belief as to their truth.

27. Admits that, on April 5, 2012, Plaintiff provided notice to DCI, by letter to Viles, that it had purchased the loan on April 2, 2012. To the extent that paragraph 27 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 27 for lack of knowledge or information sufficient to form a belief as to their truth.

28. Denies the allegations contained in paragraph 28 for lack of knowledge or information sufficient to form a belief as to their truth.

29. Denies the allegations contained in paragraph 29 for lack of knowledge or information sufficient to form a belief as to their truth.

30. Admits that, on April 23, 2013, Plaintiff sent a letter to DCI asserting that, on April 1, 2013, the event of default on which Plaintiff bases its claim for loss occurred when LBCWH allegedly failed to timely pay the March 2013 installment of principal and interest due on the loan. To the extent that paragraph 30 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 30 for lack of knowledge or information sufficient to form a belief as to their truth.

31. Denies the allegations contained in paragraph 31 for lack of knowledge or information sufficient to form a belief as to their truth.

GALIC'S CLAIM FOR LOSS UNDER THE CERTIFIED LOAN GUARANTY

32. Admits that, on June 19, 2013, Plaintiff submitted a claim for loss under the guaranty for \$20,043,618.67. To the extent that paragraph 32 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 32 for lack of knowledge or information sufficient to form a belief as to their truth.

33. Admits that, by a July 11, 2013 letter, DCI determined that additional information and documentation from Plaintiff was required "to properly evaluate" the claim. Admits that, by a September 6, 2013 letter from its attorneys, Plaintiff responded with a compact disc (CD) containing more than 3,000 pages of unindexed documents. Admits that, on October 1, 2013, DCI notified Appellant that indexing Appellant's documents was taking an inordinate amount of DCI staff time. Admits that, on October 31, 2013, Plaintiff's attorneys sent DCI another CD indicating which documents were responsive to each specific DCI request. Admits that, on November 14, 2013, DCI acknowledged its receipt of the second CD and advised Plaintiff that many of the documents it requested had not been provided and attached another lengthy list of outstanding documents. Admits that Plaintiff responded to DCI's November 14, 2013, letter with written responses to each of DCI's document requests and provided two additional documents. Admits that, on December 23, 2013, the acting chief of DCI issued her decision denying Plaintiff's claim for loss "in its entirety because [Plaintiff] has not complied with the requirements of [Part 103]." Denies the guaranty was no. G103D141501. To the extent that paragraph 33 summarizes or characterizes any other document (or documents), a response is not

required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 33 for lack of knowledge or information sufficient to form a belief as to their truth.

**PROCEEDINGS BEFORE THE AGENCY'S
INTERIOR BOARD OF INDIAN APPEALS**

34. The allegations contained in paragraph 34 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact they are denied.

35. Admits that Plaintiff Appellant timely appealed the decision of BIA's acting chief to the Interior Board of Indian Appeals ("Board" or "IBIA"). Admits that the Board ordered the parties to address a question of the Board's jurisdiction. To the extent that paragraph 35 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 35 for lack of knowledge or information sufficient to form a belief as to their truth.

36. Admits that the Board granted a request by the director of IEED to remand the acting chief's decision and dismiss the appeal, without vacating the acting chief's decision. Admits that, on June 17, 2014, the Principal Deputy Assistant Secretary - Indian Affairs summarily affirmed the acting chief's decision. To the extent that paragraph 36 summarizes or characterizes any other document (or documents), a response is not required because the

document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 36 for lack of knowledge or information sufficient to form a belief as to their truth.

37. Admits that Plaintiff appealed the Principal Deputy Assistant Secretary's decision to the Board on June 27, 2014. To the extent that paragraph 37 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations contained in paragraph 37 for lack of knowledge or information sufficient to form a belief as to their truth.

38. Admits that, on August 1, 2014, GALIC filed a Motion for Status, Scheduling and Case Management Conference with the Board and that the Board denied the motion on August 4, 2014. To the extent that paragraph 38 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations in paragraph 38.

39. Admits that on November 26, 2014, the Agency filed a Certification of the Administrative Record. To the extent that paragraph 39 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed

required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations in paragraph 39.

40. Admits that, on December 23, 2014, Plaintiff objected to the administrative record as certified by the Agency. To the extent that paragraph 40 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 40.

41. Admits that, on December 23, 2014, Plaintiff objected to the administrative record as certified by the Agency. To the extent that paragraph 41 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 41.

42. Admits that on March 18, 2015, the Agency filed a Response to Appellant's Objections to the Administrative Record. To the extent that paragraph 42 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 42.

43. Admits that, on April 6, 2015, Plaintiff again challenged the record, and requested that the Board remand the matter to the Principal Deputy for the production of additional documents and supplementation of the privilege log. Otherwise, to the extent that paragraph 43

summarizes or characterizes a document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 43.

44. Denies there was a “patently incomplete and misleading record.” Admits that on April 6, 2015, Plaintiff requested the Board’s permission to depose several current or former Agency employees. Otherwise, to the extent that paragraph 44 summarizes or characterizes a document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 44.

45. Admits that, by order of July 2, 2015, the Board concluded that Plaintiff had failed to demonstrate that the record was incomplete pursuant to 43 C.F.R. § 4.335(a). Denies the remaining allegations contained in paragraph 45.

46. Admits that, before the Board, Plaintiff filed an opening brief, the Principal Deputy filed an answer brief, and Plaintiff filed a reply brief. Admits that, on May 27, 2016, the Board affirmed the Principal Deputy’s decision.

47. Admits that the Board affirmed the Principal Deputy’s decision denying GALIC’s claim in a May 27, 2016 decision. Otherwise, to the extent that paragraph 47 summarizes or characterizes a document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations in paragraph 47.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. The first two sentences of paragraph 25 are conclusions of law to which an answer is not required; to the extent they may be deemed allegations of fact they are denied. Admits that DCI received payment for the loan premium on November 30, 2010. To the extent that paragraph 52 summarizes or characterizes any other document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Denies the remaining allegations in paragraph 52.

53. Denied.

54. Denied.

55. Denied.

**GALIC IS A HOLDER IN DUE COURSE OF THE
LOAN GUARANTY CERTIFICATE**

56. The allegations contained in paragraph 56 are conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact they are denied.

57. The allegations contained in paragraph 57 are conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact they are denied.

58. The first two sentences and the fourth sentence contained in paragraph 58 are conclusions of law to which no answer is required; to the extent they may be deemed allegations

of fact they are denied. Denies the remaining allegations in paragraph 58 for lack of knowledge or information sufficient to form a belief as to their truth.

59. To the extent that paragraph 59 summarizes or characterizes a document (or documents), a response is not required because the document (or documents) speaks for itself and is the best evidence of its contents. To the extent a response is deemed required, Defendant respectfully refers the Court to the document for a full and accurate statement of its contents. Otherwise denies the allegations in paragraph 59.

60. Denies allegations in paragraph 60 for lack of knowledge or information sufficient to form a belief as to their truth.

CAUSES OF ACTION

Count One **(Breach of Contract)**

61. The Secretary incorporates by reference the responses in the preceding paragraphs of this Answer as though fully set forth herein.

62. Admits that on or about June 24, 2010, DCI approved LBCDE's final application for a 90% guaranty on the loan from LBCWH. Denies the remaining allegations contained in paragraph 62 for lack of knowledge or information sufficient to form a belief as to their truth.

63. Denies the allegations contained in paragraph 63 for lack of knowledge or information sufficient to form a belief as to their truth.

64. Admits that, on June 19, 2013, Plaintiff submitted a claim for loss under the guaranty for \$20,043,618.67. Otherwise denies the allegations contained in paragraph 64.

65. Denied.

66. Denies the allegations contained in paragraph 66 for lack of knowledge or information sufficient to form a belief as to their truth.

Count Two – Count Seven

67-88. N/A

Count Eight
(Declaratory Judgment)

89. The Secretary incorporates by reference the responses in the preceding paragraphs of this Answer as though fully set forth herein.

90. The allegations in paragraph 90 are Plaintiff's characterization of the relief it seeks under Count Eight of the Complaint to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

Count Nine

91-93. N/A

The remainder of Plaintiff's Complaint consists of a prayer for relief, to which no response is required. To the extent a response is deemed required, Defendant denies Plaintiff is entitled to the requested relief or to any relief whatsoever.

Defendant denies all and all other allegations set forth in the Complaint not otherwise admitted or qualified above.

Dated: June 27, 2019

JOSEPH H. HUNT
Assistant Attorney General

BENJAMIN C. GLASSMAN
United States Attorney

RUTH A. HARVEY
Director
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/s/Marc S. Sacks

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and served by ECF to all parties on record.

/s/ Marc S. Sacks
MARC S. SACKS