

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WAREHAM FREE LIBRARY, INC. and)
PRISCILLA PORTER, MARY NYMAN, HAZEL)
TABER, MICHELLE BAUM, SANDRA WHEELER,)
JOHN LANCI, MARTHA MAGUIRE, YELENA)
FARIOLI-BEAUPRE, and DIANE LAZARUS,)
Individually and as Trustees of the Wareham Free Public)
Library, Inc.,)
Plaintiffs/Defendants-in-Counterclaim/)
Plaintiffs in Counterclaim for Indemnification/)
Third-Party Plaintiffs,)

CIVIL ACTION NO.:
1:07-CV-11807-RGS

v.)

THE TOWN OF WAREHAM,)
Defendants/Plaintiffs-in-Counterclaim/)
Defendant in Counterclaim for Indemnification,)

and)

BRENDA ECKSTROM, BRUCE SAUVAGEAU, JOHN)
CRONAN, JAMES POTTER, and M. JANE DONAHUE,)
Individually and as Members of The Board of Selectmen)
of Wareham,)
Defendants,)

v.)

FRIENDS OF THE WAREHAM FREE LIBRARY, INC.)
and THE WAREHAM LIBRARY FOUNDATION, INC.,)
Defendants in Counterclaim,)

v.)

MIIA PROPERTY AND CASUALTY GROUP, INC.,)
Third-Party Defendant.)

ANSWER OF THE THIRD PARTY DEFENDANT,
MIIA PROPERTY AND CASUALTY GROUP, INC.
TO FIRST AMENDED THIRD PARTY COMPLAINT AND JURY CLAIM

FIRST DEFENSE

The First Amended Third Party Complaint fails to state a claim against the Third Part Defendant, MIIA Property and Casualty Group, Inc. (hereinafter “MIIA”) upon which relief can be granted.

SECOND DEFENSE

The Third-Party Defendant, MIIA, responds to the allegations contained in the First Amended Third Party Complaint, paragraph by paragraph, as follows:

1. The Third Party Defendant, MIIA, is without knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph of the First Amended Third Party Complaint, and therefore denies the same.
2. The Third Party Defendant, MIIA, denies the allegations set forth in this paragraph of the First Amended Third Party Complaint. The Third Party Defendant further provides that MIIA Property and Casualty Group, Inc. is a self insured governmental insurance group of which the Town of Wareham is a member. MIIA Property and Casualty Group, Inc. administers insurance on behalf of the Town of Wareham and has its principal place of business in Boston, Massachusetts.
3. The Third Party Defendant, MIIA, denies the allegations set forth in this paragraph of the First Amended Third Party Complaint. The Third Party Defendant further provides that MIIA Property and Casualty Group, Inc. is a self insured governmental insurance group of which the Town of Wareham is a member. MIIA Property and Casualty Group, Inc. administers insurance on behalf of its members, including the Town of Wareham and administers a general liability policy to the Town of Wareham.

4. The Third Party Defendant admits that the policy extends to elected, appointed or employed offices of the Town and/or appointed members of commissions, committees, agencies and/or boards in certain circumstances. The Third Party Defendant denies the remaining allegations as pled in this paragraph of the First Amended Third Party Complaint.

5. The Third Party Defendant admits that the Town of Wareham has brought a counterclaim in this action against the Third Party Plaintiffs and that they have alleged negligence by the Third Party Plaintiffs. The Counterclaim also includes allegations that the Third Party Plaintiffs are “de facto” trustees for the public library. The Third Party Defendant further states that the Counterclaim must be read as a whole and in its entirety.

6. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

7. The Third Party Defendant admits that a demand for coverage and a request for a defense and indemnification has been made upon MIIA.

8. The Third Party Defendant has denied the Third Party Plaintiffs request for coverage and/or to provide a defense or indemnification. The Third Party Defendant admits that one of the bases for the denial of coverage is that the Third Party Plaintiffs are private parties. The Third Party Defendant also relies on other policy provisions in support of its refusal to provide coverage to the Third Party Plaintiffs.

9. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

Count I – Breach of Contract

10. The Third Party Defendant repeats its responses to the allegations set forth in paragraphs 1 – 9 of the First Amended Third Party Complaint as if set forth in full herein.

11. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

12. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

Count II – Declaratory Judgment/Injunctive Relief

13. The Third Party Defendant repeats its responses to the allegations set forth in paragraphs 1 – 12 of the First Amended Third Party Complaint as if set forth in full herein.

14. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

15. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

16. The Third Party Defendant denies the allegations set forth in this paragraph of the First Amended Third Party Complaint.

WHEREFORE, the Third Party Defendant denies the Third Party Plaintiff is entitled to judgment in any amount or kind. The Third-Party Defendant also denies that the Third Party Plaintiff is entitled to a declaration that they are entitled to coverage under the liability policy or that it is entitled to an injunction.

THIRD DEFENSE

By way of affirmative defense, the Third Party Defendant state that the Third Party Plaintiffs is not entitled to recover based on terms and conditions of the insurance policy between MIIA Property and Casualty Group, Inc. and the Town of Wareham.

JURY DEMAND

The Third Party Defendant demands a trial by jury on all counts and causes of action so triable.

Dated: August 29, 2008

Respectfully submitted,
The Third Party Defendant,
By its attorneys,

TANG & MARAVELIS, P.C.

/s/ **Arthur E. Maravelis**

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Certificate of Service

In accordance with the Electronic Case Filing (“ECF”) Administrative Procedures of the United States District Court for the District of Massachusetts, I, Arthur E. Maravelis, hereby certify that a true copy of the above document was filed through the ECF system and will be sent electronically to registered participants as identified on the Notice of Electronics Filing (“NEF”) and that paper copies will be served upon those indicated as non-registered participants by first class mail on August 29, 2008.

/s/ **Arthur E. Maravelis**

Arthur E. Maravelis