In the Matter of the Arbitration Between

FARADAY, Claimant/Counter-Respondent,

and

WILEY, KEENE, DOOLITTLE & BRANDON, PLLC, et al.

Respondents/Counter-Claimants.

Case No.: __________

RESPONSE TO CLAIMS IN ARBITRATION
And
COUNTERCLAIM

ANSWER AND COUNTERCLAIM OF WILEY, KEENE, DOOLITTLE & BRANDON, PLLC

Wiley, Keene, Doolittle & Brandon, PLLC, formerly known as Wiley, Keene, Faraday & Brandon (“Wiley Keene” or the “Firm”) is a corporate consulting firm having its principal place of business in Denver, Colorado. The Firm, James Wiley, Gerald Keene and Dante Brandon, through counsel, answer the claim in arbitration filed July 1, 2008 by Christina M. Faraday (“Faraday”). Wiley Keene also asserts a counterclaim.

GENERAL DENIALS AND AFFIRMATIVE DEFENSES

1. Wiley Keene generally denies the allegations and claims. All allegations not specifically admitted herein are denied.

2. Wiley Keene asserts all applicable legal and equitable defenses, including but not limited to defenses under the clean-hands doctrine.

3. Any dispute between Faraday and the individual respondents (James Wiley, Gerald Keene, and Dante Brandon) is not subject to arbitration.

4. Without waiving their objection to these proceedings, Wiley, Keene, and Brandon, PLLC generally deny all allegations and claims asserted by Faraday and assert all applicable legal and equitable defenses, including but not limited to defenses under the clean-hands doctrine.
FACTS

A. Faraday’s tenure and compensation at Wiley Keene


6. The terms governing Faraday’s relationship with Wiley Keene are set forth in the Wiley Keene Operating Agreement (as amended January 1, 2005), the fully integrated Separation Agreement, and the Separation Agreement, as amended.

7. During the period of time in which Faraday was a part of Wiley Keene, all members of the Firm received their share of the profits in accordance with the percentages set forth in the Operating Agreement. These distributions were made without regard to whether, at any given time, one member brought in more fees than another.

8. Faraday held a 25% equity interest in Wiley Keene from January, 2005 until her termination in August 2006. Over the life of the Operating Agreement, Faraday received more than $5.5 million in fees from the Firm. Following termination, Faraday was compensated as set forth in the Separation Agreement. Faraday was fully compensated for all services that she rendered on behalf of Wiley Keene while she was employed there.

B. The New Energy Contingent Fee

9. James Wiley performed consulting services for New Energy, Inc. on various matters during the 1990s. He continued to do so following the formation of Wiley Keene in 2001.

10. From 2001 to 2008, the Firm represented New Energy in what was to become known as the New Energy/World Fuel Merger Negotiations. Faraday worked on the merger negotiations as a member of the Firm as did other members of the Firm as well as support staff at Wiley Keene.

11. The time that Faraday spent on the New Energy negotiations amounted to 3500 hours of the total 10,000 hours billed to the matter. The value of Faraday’s time on the New Energy matter amounted to 25% of the total amount of the fee received by Wiley Keene.

12. In 2004, Wiley Keene and New Energy entered into a contingency fee agreement. All parties agree that the New Energy Contingent Fee was an asset of the Firm.

13. In January 2008, New Energy successfully concluded its negotiations resulting in a contingency fee for the Firm in the amount of $10,450,000.
14. While Faraday was a member of the Firm, including the period after the Firm entered into the contingent fee agreement, Wiley Keene paid Faraday the full amount of her share of the Firm’s profits, which was 25% as provided in the Operating Agreement as amended.

15. Faraday never offered or agreed to any decrease or deferral of her ordinary equity or compensation in exchange for some special interest in the New Energy Contingent Fee.

16. In the Separation Agreement, Wiley Keene agreed to pay Faraday her 25% share of the New Energy Contingent Fee.

17. On March 3, 2008, Wiley Keene tendered the following to Faraday:

   a. 25% of the New Energy Contingent Fee of $10,450,000 $2,612,500
   b. Less Deduction of Expenses Incurred to Collect the Fee $ (53,460)

   Total tender to Faraday $2,559,040

On March 5, 2008, Faraday accepted the tender.

18. Faraday is entitled to nothing more.

**COUNTERCLAIM: BREACH OF FIDUCIARY DUTIES AND BREACH OF CONTRACT IN THE PETRO-TRAN MATTER**

19. Prior to 2002, Wiley Keene regularly represented PetroTran-American. After the merger of PetroTran and American Oils, Wiley Keene was selected as one of the top-tier consulting firms for PetroTran-American (“Petro-Tran”).

20. During the course of representing Petro-Tran, Faraday caused the Firm to incur substantial damages in fees and costs of legal counsel, the value of the lost time of the managing partner, James Wiley, and the disgorgement of a part of the consulting fees paid by Petro-Tran to Wiley Keene.

21. Faraday’s conduct includes but is not limited to:

   a. Concealing from Wiley Keene and others that Faraday had represented a client who was adverse to Petro-Tran in matters where Wiley Keene represented Petro-Tran, and failing to obtain a waiver for that conflict.

   b. Misrepresenting to the other members of the Firm that she had cleared the conflict which she had not.
22. Faraday’s conduct constituted a breach of fiduciary obligations to Wiley Keene and her duties to Wiley Keene under the Operating Agreement.

23. As a result of Faraday’s conduct, Wiley Keene incurred damages in an amount to be proven.

RESPONDENT-COUNTERCLAIMANT’S PRAYER FOR RELIEF

24. Based on all of the foregoing, Wiley Keene prays that the arbitrator grant the following relief:

A. Enter an award in favor of Wiley Keene on all claims asserted in Faraday’s Claim in Arbitration;

B. Award Wiley Keene damages on Wiley Keene’s counterclaim against Faraday in an amount to be determined;

C. Award Wiley Keene pre and post-award interest, costs and fees, including attorneys’ fees, associated with this arbitration, and any other relief to which it may be entitled.

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Dated: July 25, 2008