

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

C.A. NO. 1:16-CV-00327-TCB

FASTCASE, INC.,)
)
 PLAINTIFF,)
)
 vs.)
)
LAWRITER, LLC d/b/a Casemaker,)
)
 DEFENDANT.)
_____)

**AFFIDAVIT OF
DAVID HARRIMAN**

PERSONALLY APPEARED BEFORE ME, David Harriman, who being duly sworn deposes and states as follows:

1. I am over the age of eighteen, am fully competent to give this affidavit, and have personal knowledge of the following statements.
2. I am the CEO of Lawriter, LLC d/b/a Casemaker (“Lawriter”) and have served in this position since Lawriter was founded in 2012.
3. Lawriter is a for-profit subscription legal research service that offers searchable access to cases, statutes, and other primary law materials operating under the name “Casemaker.”
4. Lawriter is the designated publisher of the Georgia Rules and Regulations pursuant to a contract with the State of Georgia, attached hereto as Exhibit A.
5. The digital publication process is very involved and complicated. The Initial Data Conversion was built using a relational database to hold the rule hierarchy

and Portable Data Format (PDF) files (converted from Microsoft Word files) at the rule detail level. Lawriter worked with the technical and editorial staff to obtain and convert all forms of data into Lawriter's Extensible Markup Language ("XML") format. Given the data was in multiple formats, there were inconsistencies to be worked out which in many cases meant getting revised information at the Georgia State Agency level. In addition, on Lawriter's suggestion, a decision was made to enhance the hierarchy of the rules to match that directed by statute. While the previous hierarchy labeled all levels as a "Chapter" the new hierarchy is Department\Chapter\Subject\Rule. This entire conversion process took approximately four (4) calendar months and involved hundreds of programmer and senior editorial hours.

6. In parallel, the Georgia Rules & Regulations website architecture was developed and enhanced. Many remote focus groups were conducted as the prototype was refined to meet Georgia's specific requirements. The simple search mechanism and citation "Go To" features were complimented by the introduction of the "friendly URL" linking so that agencies and external entities could cite to any level in the hierarchy by adding the chapter\department\subject or rule number to the end of the base URL. There is a similar friendly URL for presenting search results. This process also consumed over a hundred hours of programmer and senior technical staff time.

7. Lawriter typically receives three (3) to seven (7) agency updates on monthly basis from the State of Georgia. Once the updates are received in Microsoft Word format they have to be converted in Hypertext Markup Language ("HTML") by Lawriter's proprietary software, which is monitored by a programmer for any errors. The

data is then converted to Extensible Markup Language (“XML”) using another proprietary program. The process is again monitored by a programmer to assure accuracy. The converted XML files are then manually checked and “tagged” by three (3) to four (4) trained editors, which takes about four (4) to six (6) hours each depending on the data. A “tag” is a non-hierarchical keyword, term, or symbol placed in a document to identify it or assign placement to a piece of information, such as titles, chapters, section, sub-section, or footnote. This kind of metadata tagging helps describe an item and allows it to be found again by browsing or searching. A senior editor then checks the XML data for accuracy. Data is then published by another specially-written program, which is monitored by a senior programmer to assure accuracy. After all these processes the data is ready for publishing and sent to senior editors in Charlottesville, Virginia, who review the changes in the data from previous versions including verification of effective dates and accuracy of all affected sections due to change. After the review, the data is ready to be published on the website. Data on the Georgia website is uploaded by a senior programmer before proprietary software is run to assure all the hyperlinks are proper and accuracy is maintained after publication. Thus, every time revised data is received from Georgia, it takes total of approximately twelve (12) hours of senior programmer, up to twenty-four (24) hours of editor time, approximately four (4) hours of senior editor time and approximately three (3) to four (4) hours of editor time in Charlottesville, Virginia and approximately two (2) hours of programmer time for publishing the Georgia data on the website. This process repeats three (3) to seven (7) hours each month.

8. The Georgia Bulletin, the companion publication to the Georgia Rules and Regulations, is published once a month to show what data is newly effective in the Rules and Regulations each month. Preparation of the Georgia Bulletin includes coordination between the Georgia Secretary of State's office and Lawriter personnel to assure all of the effective changes are in our published version and that no conflict exists between the Georgia Bulletin and the Rules and Regulations. This process takes another approximately thirty-six (36) to thirty-eight (38) hours of specially trained editors and programmers time each month.

9. Beginning April 7, 2016, Lawriter updated its Terms of Use to reflect the existence of an express contract between Lawriter and any user of its services, attached hereto as Exhibit B.

10. Due to the express contract as reflected by its updated Terms of Use, Lawriter withdrew its counterclaims against Plaintiff regarding the copying of any material from the version of the website in existence prior to April 7, 2016, which focuses on the rules and regulations of the State of Georgia.

11. Lawriter has agreed to provide Plaintiff a covenant not to sue as to these abandoned counterclaims, a copy of which is attached hereto as Exhibit C.



David Harriman, CEO, Lawriter, LLC

SWORN TO BEFORE ME this 9th
day of June, 2016.

Margaret S. Gilbert
Notary Public for Commonwealth of Virginia

My Commission Expires: 01-31-2019

MARGARET IVY GILBERT
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JAN. 31, 2019
COMMISSION # 7624574

Quo S. Hauman

EXHIBIT A

Contract for Services

This contract is entered into the 16th day of March, 2015, by and between:

The Office of the Georgia Secretary of State, hereinafter referenced as "GASOS," located at 2 MLK, Jr. Dr., Suite 313, Floyd West Tower, Atlanta, GA 30334-1530

and

Lawriter LLC, hereinafter referenced as "Lawriter," located at 1467 Greenbrier Place, Charlottesville, Virginia 22901.

A. GENERALLY. In order to satisfy the duties of GASOS in the Official Code of Georgia Annotated Section 50-13-7, Lawriter agrees to publish a compilation of the Georgia Administrative Rules and Regulation hosted on a World Wide Web Site ("Site") as specified in this Contract.

B. REQUIRED CONTENT. The Site will include the following content:

1. The Georgia Administrative Rules and Regulations (collectively, "the Rules"), complete with title, chapter and section headings, and tables of contents;
2. Visible hypertext links linking the Rules' internal references to the Georgia Code to the referenced Georgia statutes;
3. A link to the Web Site of the Georgia Secretary of State;
4. Capability for a Site user to print the text of rules and regulations
5. Links on each page that can be used to proceed to the next section, previous section, table of contents, and main screen;
6. Textual descriptions with each icon on the Site;
7. Full-text search software sufficient to readily permit hypertext, form, or other normal methods of generating complex search. Additionally, a quick search feature will enable the user to go directly to a rule or regulation. The search function will feature:
 - a. The capability to initiate a search from the first screen displayed when the Site is accessed;
 - b. The capability to initiate a new search from any screen;
 - c. The capability to initiate a search using the Enter key (that is, users are not required to mouse click on a Search icon to execute a search);
 - d. No limits on the number of hits retrieved in a search;

- e. Display of the number of items retrieved from a search;
- f. Highlighting, or similar identification, of matched search terms in retrieved documents;
- g. The capability to perform Boolean searches using: AND operator; OR operator; NOT operator;
- h. The capability for phrase (adjacency) searching (e.g., retrieve the phrase "highway contractors" and not "highway travel by contractors");
- i. Support of truncation ("wild cards") (e.g., retrieve "house," "houses," "housing," "household" when searching for "hous*")

C. UPDATES AND CHANGES. Lawriter shall update the Rules with all changes within five (5) business days of the new or amended rules or regulations being made available by GASOS. In addition, the Site shall indicate the currency of the Rules each time an update is made.

Lawriter will publish on the site a quarterly bulletin setting forth the text of all rules filed in the preceding quarter

D. SITE SPECIFICATIONS. Lawriter shall ensure the following Site specifications are met:

1. Lawriter shall make the Rules continuously and freely available twenty-four (24) hours a day, seven (7) days a week for viewing and searching by the general public via Internet connection; this shall be done at no charge and without the requirement of any passwords, codes, or registration requirements of any kind.
2. The Site shall be accessible using any computer hardware and software, Internet browsers, and mobile devices. The Site shall not require the use of any plug-in technology except a PDF reader, if needed for the display of images and appendices.
3. Lawriter shall maintain the servers and associated hardware and software in good operating condition and to promptly resolve any operational problems with the Site in a timely manner.
4. Lawriter shall maintain sufficient resources, including hardware, communications lines, and equipment, to reasonably respond to the bandwidth and computing resources demanded by traffic to the Site, including during normal peak usage times.

E. SALES BY LAWWRITER. Lawriter shall have the right to sell complete copies of the entire set of rules and regulations or individual chapters of the rules and regulations at such reasonable prices and terms that Lawriter may determine in its sole discretion. Lawriter shall provide information regarding such sales to GASOS, including customer and price, upon request.

F. PROVISION OF CHAPTERS TO STATE ENTITIES. Lawriter will make electronic

pdf files of Rules and Regulations of the State of Georgia, and bulletins available upon request free of charge to the heads of all departments, bureaus, agencies, commissions, and boards of this state; members of the General Assembly; Justices of the Supreme Court, Judges of the Court of Appeals; judges, clerks, and district attorneys of the superior courts.

G. TERM OF AGREEMENT

The effective date of this Contract is March 16, 2015 and the Contract is renewable annually. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of the State for payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

The Agency shall have the option, in its sole discretion, to renew the Contract for additional renewals or terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Upon the Agency's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed in writing by the Agency and the Contractor.

In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified Software, Licenses and Services, the Agency may, with the written consent of Contractor (such consent shall not be unreasonably withheld), extend this Contract for such period as may be necessary to afford the Agency a continuous supply of the identified Software, Products, Licenses and Services.

- H. COMPENSATION.** GASOS shall pay Lawriter \$20,000 per year for the term of the contract, payable in quarterly installments of \$5,000 to be invoiced at the beginning of each quarter.

For each complete set of the updated rules and regulations the Lawriter may sell, as described in section E of this Contract, in any year of the term of the contract, GASOS shall be relieved of the payment to Lawriter of one quarterly installment of \$5,000.

I. LIMITATIONS OF LIABILITY

NEITHER PARTY IS LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND ATTORNEY FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE SITE, CONTENTS, FEATURES, OR MAINTENANCE THEREOF, WHETHER THE CLAIM ARISES IN TORT, CONTRACT, STRICT LIABILITY, BREACH OF WARRANTY, INDEMNITY OR OTHERWISE. IN THE EVENT ANY WARRANTY OR REMEDY LIMITATION IS FOUND BY A COURT OF COMPETENT JURISDICTION TO FAIL OF ITS ESSENTIAL PURPOSE OR TO BE

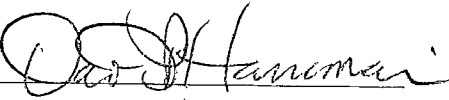
UNENFORCEABLE, THE ALTERNATIVE SOLE AND EXCLUSIVE REMEDY OF GASOS AGAINST LAWWRITER AND OF LAWWRITER AGAINST GASOS IS A REFUND OF A DOLLAR AMOUNT THAT DOES NOT EXCEED THE TOTAL FEES PAID UNDER THIS CONTRACT.

- J. EXCLUSIONS FROM LIMITATIONS OF LIABILITY.** The limitations on liability in this Contract do not apply to third-party claims of damage to tangible property or bodily injury caused by the fault of either party.
- K. SEVERABILITY.** If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect.
- L. CHOICE OF LAW AND FORUM.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
- M. NOTICE.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in Section 5 of the Agency Standard Contract Form. Each such notice shall be deemed to have been provided at the time of actual receipt.

From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed the Contract as of the last date below.

By: 

David P. Harriman, CEO

Lawriter, LLC

By: _____

Merritt Beaver, CIO

Office of the Georgia Secretary of State

EXHIBIT B

http://rules.sos.ga.gov/ GAR&R-Home x

View Favorites Tools Help

net Start RealPlayer Smith Moore Leatherwoo... Elite WebView Web Slice Gallery Suggested Sites



Rules and Regulations of the State of Georgia

Terms and Conditions of Agreement for Access to Rules and Regulations of the State of Georgia Website

(Note: certain features of this site have been disabled for the general public to prevent digital piracy. If you are an entitled government entity pursuant the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-7(d) contact the State of Georgia's Administrative Procedures Division at 678-364-3785 to enable these features for your location.)

To access this website, you must agree to the following:

These terms of use are a contract between you and/or your employer (if any), and Lawriter, LLC.

You agree that you will not copy, print, or download anything from this website other than for your personal use.

You agree not to use any web crawler, scraper, or other robot or automated program or device to obtain data from the website.

You agree that you will not sell, will not license, and will not otherwise make available in exchange for anything of value, anything that you download, print, or copy from this site.

Full Name:

Human verification: 3 + 1 =

Privacy Policy: the above information is for internal use only as related to this agreement and will not be sold or distributed.

EXHIBIT C

UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF GEORGIA

COVENANT NOT TO SUE

Atlanta Division

This COVENANT NOT TO SUE (this "Covenant") is made and given this 9th day of June, 2016, by Lawriter, LLC d/b/a Casemaker ("Lawriter"), an Ohio limited liability company with its principal place of business in Virginia, to and for the benefit of Fastcase, Inc. ("Fastcase"), a Delaware corporation with its principal place of business in Washington, District of Columbia.

RECITALS:

WHEREAS, Lawriter and Fastcase are presently parties to a civil action captioned as "Fastcase, Inc. v. Lawriter, LLC d/b/a Casemaker," and venued in the United States District Court for the Northern District of Georgia, Atlanta Division under Docket No. 1:16-cv-00327-TCB (the "Action"), a case in which Fastcase seeks a declaratory judgment regarding its copying of materials that Lawriter made available through the website found at <http://rules.sos.ga.gov/> (the "Website").

WHEREAS, on April 7, 2016 the Website was changed to require a user to agree to Terms of Use as stated on the Website in order to obtain access to the Website; and whereas for any copying, downloading, distribution, or use of materials obtained from the Website after the Website was so modified, Lawriter will rely on its contractual rights under the Terms of Use and on its rights as author or copyright owner of materials other than the text and numbering of the regulations of the State of Georgia.

WHEREAS, Lawriter does not claim and has never claimed to be the owner of the copyright in the text or numbering of regulations issued by the State of Georgia.

WHEREAS, Lawriter has voluntarily abandoned any claims or counterclaims it asserted or may have the authority to assert against Fastcase, any of its related business entities, or its customers, with respect to any copying, distribution, or use of materials obtained through the Website prior to April 7, 2016, or with respect to any copying, distribution, or use at any time of the text or numbering of the regulations of the State of Georgia (the "Released Claims").

WHEREAS, in the Action, Lawriter and Fastcase are engaged in litigation of the Released Claims.

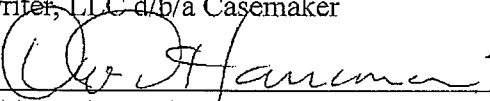
WHEREAS, Lawriter wishes to simplify the remaining issues and controversies between the parties.

WHEREAS, Upon due consideration, the Lawriter has determined to bind itself not to assert the Released Claims.

NOW, THEREFORE, in consideration of the foregoing Recitals, Lawriter, individually and jointly, for itself, its members, heirs, executors, administrators and assigns, does hereby release, acquit, and discharge Fastcase, its related business entities, its customers, and the heirs, executors, successors, agents and assign of Fastcase, its related business entities, and its customers (collectively, the "Released Parties") from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, and damages of any sort on account of, or in any way growing out of, the Released Claims. Further, under no circumstances will Lawriter in the future make any demand, sue, or otherwise prosecute any claim or cause of action under any state or federal law against any of the Released Parties on account of, or in any way growing out of, the Released Claims. It is understood that this Covenant shall not be construed as an admission of liability by any party.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals this 9th day of June, 2016.

Lawriter, LLC d/b/a Casemaker



David Harriman, CEO