

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

FILED BY WJ D.C.  
SEP 19 2019  
ANGELA E. NOBLE  
CLERK U.S. DIST. CT.  
S. D. OF FLA. - MIAMI

**DEL MONTE FRESH PRODUCE )  
N.A., INC., a Florida corporation )**

**Plaintiff, )**

**v. )**

**CASE NO.:**

**AMCO INSURANCE COMPANY )  
an Ohio corporation; and )  
THE MIDWEST'S BEST )  
PRODUCE COMPANY, )  
a Missouri corporation )**

**Defendants. )**

**COMPLAINT FOR DECLARATORY JUDGMENT**

**DEL MONTE FRESH PRODUCE N.A., INC. (“Del Monte”)** files this Complaint for Declaratory Judgment against defendants **AMCO INSURANCE COMPANY (“AMCO”)** and **THE MIDWEST’S BEST PRODUCE COMPANY D/B/A MIDWEST BEST PRODUCE, INC (“Midwest Best”)** pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 1332 and 2201 et seq., seeking a declaration that Del Monte is an additional insured under liability policies of insurance issued to Midwest Best by AMCO, and that AMCO has a direct and immediate obligation to defend and indemnify Del Monte under those policies for all claims against it.

## **PARTIES**

1. Plaintiff Del Monte is a domestic corporation organized and existing under the laws of the state of Florida with its principal place of business in Coral Gables, Florida, and is a corporate citizen of the State of Florida.

2. Defendant AMCO is a corporation organized and existing under the laws of the State of Iowa with its principal place of business in Des Moines, Iowa and is a corporate citizen of the State of Iowa.

3. Defendant Midwest Best is a corporation organized and existing under the laws of the State of Missouri with its principal place of business in St. Louis, Missouri, and is a corporate citizen of the State of Missouri.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction of this dispute based upon Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 et. seq. and 28 U.S.C. § 1332. An actual controversy exists as to whether AMCO has a direct and immediate duty to defend and indemnify Del Monte for claims asserted by various consumers against Del Monte for bodily injury allegedly occurring from contaminated vegetables provided by Midwest Best to Del Monte for distribution to those consumers, including claims asserted in two underlying lawsuits and in connection with non-lawsuit claims asserted by 174 claimants (“Underlying Suits

and Claims”). True and accurate copies of the complaints in the two underlying lawsuits are attached as Exhibits A and B.

5. The states of citizenship of Del Monte, AMCO and Midwest Best are completely different and diverse.

6. The amount in controversy exceeds the minimum jurisdiction amount of \$75,000. The policy limits at issue in this case, the claims for compensatory and punitive damages alleged against Del Monte in the Underlying Matters for which it seeks coverage, and the amount of attorney’s fees and expenses that will be incurred by Del Monte for the defense of the underlying lawsuits each exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1446; 28 U.S.C. § 1332 (a).

7. Venue is proper in this Court because defendants do business in this judicial district, are subject to the Court’s personal jurisdiction, and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. 28 U.S.C. § 1391.

### **FACTUAL ALLEGATIONS**

#### **A. Del Monte’s Relationship with Midwest Best**

8. Del Monte is one of North America’s leading vertically integrated producers, marketers and sellers of quality fresh and fresh-cut fruits and vegetables.

9. One of Del Monte's products is a prepackaged ready-to-eat vegetable tray sold in various venues, including Kwik Trip stores in Minnesota, Wisconsin and other states. The vegetable trays are typically comprised of broccoli, cauliflower, celery sticks, carrots and dill dip supplied by vendors including Midwest Best.

10. At all times relevant, Del Monte purchased from Midwest Best broccoli crowns, celery and cauliflower ("vegetables"). The vegetables were included within Del Monte vegetable trays it sold to various customers, including but not limited to Kwik Trip convenience stores in Minnesota, Wisconsin and other Midwestern states.

**B. Cyclospora Claims Asserted Against Del Monte**

11. In early June 2018, Del Monte was informed that state health departments were investigating an increase of Cyclospora infections from patients who had reported purchasing and eating Del Monte vegetable trays sold at Wisconsin or Minnesota Kwik Trip retail locations.

12. In an abundance of caution, Del Monte withdrew all vegetable trays from market retail locations on June 8, 2018, and issued a voluntary recall of all remaining vegetable trays with an expiration date of June 17, 2018.

13. Midwest Best was one of the providers of broccoli crowns, celery and cauliflower contained within the subject vegetable trays.

14. In connection with reports by consumers who alleged contracting *Cyclosporiasis* after eating Del Monte vegetable trays, Del Monte was presented with the claims for alleged damages asserted in the Underlying Matters.

15. The allegations contained in the filed and unfiled complaints are essentially identical: the complainants allege they suffered a food borne illness, specifically *Cyclosporiasis*, as a result of consuming produce within the vegetable tray.

**C. Midwest Best and AMCO's Agreement to Indemnify and Insure Del Monte**

16. Midwest Best entered into an agreement with Del Monte related to supplying food items entitled "Del Monte Fresh Produce, NA, Inc. Continuing Food Guaranty." A copy of this agreement is attached hereto as Exhibit C. In the Continuing Food Guarantee, Midwest Best agreed "to at all times defend, indemnify, and hold harmless Del Monte, its agents and employees against and from any and all actions, suits, liabilities, prosecutions, penalties, settlements, losses, damages, costs, charges, attorney's fees, and all other expenses relating to or arising from any and all claims (whether founded or unfounded) of every nature or character (including, without limitation, claims for personal injury, death or damage to property):

- (a) based upon or arising out of the condition of the merchandise, any defect or alleged defect in the merchandise, or based upon any allegation that the

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