

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEL MONTE FRESH PRODUCE, N.A, INC.,
a Florida Corporation

Plaintiff,

v.

Case 4:20-cv-00500-DDN

AMCO INSURANCE CO., an Ohio
Corporation, and THE MIDWEST'S BEST
PRODUCE CO., a Missouri Corporation

Defendants.

AMCO'S ANSWER AND AFFIRMATIVE DEFENSES

AMCO Insurance Company answers the Complaint filed by Del Monte Fresh Produce, N.A., Inc. and states as follows.

PARTIES

1. Admitted.
2. Admitted.
3. Admitted.

JURISDICTION AND VENUE

4. AMCO admits that the Eastern District of Missouri has jurisdiction of this dispute. The Underlying Complaints speak for themselves. To the extent the allegations of this paragraph are inconsistent with Exhibits A or B, AMCO denies those allegations. AMCO denies the remaining allegations in Paragraph 4.

5. Admitted.
6. AMCO admits the amount in controversy exceeds the minimum jurisdiction

amount of \$75,000 for jurisdictional purposes only and without admitting that AMCO is responsible to pay for those fees and costs under its policy.

7. AMCO admits that venue is proper in the Eastern District of Missouri.

FACTUAL ALLEGATIONS

A. Del Monte's Relationship with Midwest Best

8. AMCO is without knowledge and therefore denies the allegations in Paragraph 8.

9. AMCO is without knowledge and therefore denies the allegations in Paragraph 9.

10. AMCO is without knowledge and therefore denies the allegations in Paragraph 10.

B. Cyclospora Claims Asserted Against Del Monte

11. AMCO is without knowledge and therefore denies the allegations in Paragraph 11.

12. AMCO is without knowledge and therefore denies the allegations in Paragraph 12.

13. AMCO is without knowledge and therefore denies the allegations in Paragraph 13.

14. Admitted that Del Monte was presented with claims and/or suits which speak for themselves; otherwise denied.

15. The filed and unfiled complaints speak for themselves. To the extent the allegations in Paragraph 15 are inconsistent with the filed and unfiled complaints, AMCO denies Paragraph 15.

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

16. The Del Monte Fresh Produce, NA, Inc. Continuing Food Guaranty speaks for itself. To the extent Exhibit C is inconsistent with the Del Monte Fresh Produce, NA, Inc. Continuing Food Guaranty, AMCO Denies the allegations in Exhibit 16. AMCO denies the remaining allegations of Paragraph 16.

17. The Del Monte Fresh Produce, NA, Inc. Continuing Food Guaranty speaks for itself. To the extent Exhibit C is inconsistent with the Del Monte Fresh Produce, NC, Inc.

Continuing Food Guaranty, AMCO Denies the allegations in Exhibit 17. AMCO denies the remaining allegations of Paragraph 17.

18. The Del Monte Fresh Produce, NA, Inc. Continuing Food Guaranty speaks for itself. To the extent Exhibit C is inconsistent with the Del Monte Fresh Produce, NC, Inc. Continuing Food Guaranty, AMCO Denies the allegations in Exhibit 18. AMCO denies the remaining allegations of Paragraph 18.

19. AMCO is without knowledge and therefore denies Paragraph 19's allegation about why Mid-West Best obtain liability policies from AMCO. AMCO's insurance policies issued to Midwest Best speak for themselves. To the extent the allegations in Paragraph 19 are inconsistent with policies, AMCO denies the remaining allegations in Paragraph 19. AMCO denies the remaining allegations of Paragraph 19.

20. The policies AMCO issued to MidWest Best speak for themselves. To the extent the allegations in Paragraph 20 are inconsistent with the policies, AMCO denies the allegations in Paragraph 20. AMCO denies the remaining allegations of Paragraph 20.

21. Admitted.

22. AMCO's Primary Policy speaks for itself. To the extent the allegations in Paragraph 22 are inconsistent with the Primary Policy, AMCO denies the allegations in Paragraph 22. AMCO denies the remaining allegations of Paragraph 22.

23. AMCO's Primary Policy speaks for itself. To the extent the allegations in Paragraph 23 are inconsistent with the Primary Policy, AMCO denies the allegations in Paragraph 23. AMCO denies the remaining allegations of Paragraph 23.

24. AMCO's Primary Policy speaks for itself. To the extent the allegations in Paragraph 24 are inconsistent with the Primary Policy, AMCO denies the allegations in Paragraph

24. AMCO denies the remaining allegations of Paragraph 24.

25. Denied as phrased. Further answering even if De Monte is an insured it is not entitled to a defense under the AMCO policy under the applicable law and facts.

26. AMCO's correspondence to Del Monte speaks for itself. To the extent the allegations in Paragraph 26 are inconsistent with those communications, AMCO denies the allegations in Paragraph 26. AMCO denies the remaining allegations of Paragraph 26.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

D. Nationwide Refuses to Provide Del Monte with a Complete Defense or Indemnification

31. Del Monte's correspondence to Midwest's Best speaks for itself. To the extent the allegations in Paragraph 31 are inconsistent with the correspondence, AMCO denies the allegations in Paragraph 31. AMCO denies the remaining allegations of Paragraph 31.

32. Midwest's Best's correspondence speaks for itself. To the extent the allegations in Paragraph 32 are inconsistent with the correspondence AMCO received from Midwest's Best, AMCO denies the allegations in Paragraph 32. AMCO denies the remaining allegations of Paragraph 32.

33. AMCO admits Del Monte tendered the lawsuit to AMCO on October 10, 2018. That correspondence speaks for itself. To the extent the allegations in Paragraph 33 are inconsistent with the correspondence, AMCO denies the allegations in Paragraph 33. AMCO denies the remaining allegations of Paragraph 33.

34. AMCO denies that either of its policies provides primary coverage. AMCO admits

issuing a reservation of rights on December 21 2018. That letter and the complaints' allegations speak for themselves. To the extent Paragraph 34 is inconsistent with AMCO's reservation of rights letter or the complaints' allegations, AMCO denies the remainder of Paragraph 34. AMCO denies the remaining allegations of Paragraph 34.

35. AMCO reservation of rights letter speak for itself. To the extent Paragraph 35 is inconsistent with AMCO's reservation of rights letter or the complaints' allegations, AMCO denies the allegations in Paragraph 35. AMCO denies the remaining allegations of Paragraph 35.

36. Denied.

37. AMCO admits that it has refused to reimburse Del Monte for costs incurred prior to Del Monte's tender to AMCO in October of 2018, since it has no obligation to do so. AMCO denies the remaining allegations of Paragraph 37.

38. AMCO admits that it has refused to unconditionally reimburse Del Monte for settlements reached by Del Monte, since it has no obligation to do so. AMCO denies the remaining allegations of Paragraph 38.

39. AMCO denies that it refused to attend and fully participated in the mediation. Further, the October 21, 2019, correspondence sent by AMCO's counsel to Del Monte's counsel speaks for itself. To the extent the allegations of Paragraph 39 are inconsistent with the October 21, 2019, AMCO denies those allegations. AMCO denies the remaining allegations of Paragraph 39.

40. Denied.

41. Denied.

COUNT I- DECLARATORY JUDGMENT

42. AMCO incorporates by reference its answers to Paragraphs 1 through 41 as its

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