

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARYLAND CASUALTY COMPANY, a
Maryland Corporation,
1400 American Lane
Tower 1 - Floor 19
Schaumburg, IL 60196

Plaintiff,

vs.

FALLON TRADING COMPANY, INC., a
Pennsylvania corporation,
3897 Adler Place
Bethlehem, PA 18017

Defendant.

Civil Action No.:

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Maryland Casualty Company (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, hereby avers as follows:

PARTIES

1. Plaintiff Maryland Casualty Company ("Maryland Casualty") is a corporation incorporated in the State of Maryland, maintains its principal place of business in Schaumburg, Illinois, and is duly licensed to issue policies of insurance in the Commonwealth of Pennsylvania.

2. Defendant Fallon Trading Company, Inc. ("Fallon") is a corporation incorporated in the State of Pennsylvania and maintains its principal place of business in Bethlehem, Pennsylvania.

JURISDICTION AND VENUE

3. Jurisdiction is with this Honorable Court pursuant to 28 U.S.C. § 1332, by virtue of the citizenship of the parties and the amount in controversy exceeding \$75,000.

4. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1391, by virtue of the fact that a substantial part of the events giving rise to the claim occurred within this District and because Fallon's principal place of business is located in this judicial district.

GENERAL ALLEGATIONS

5. Maryland Casualty issued to Fallon policy no. PPS 01826181, for a series of two consecutive policy periods from July 25, 2012, to July 25, 2014 (the "Policy"). The Policy was delivered to Fallon at 3897 Adler Place, Ste. 150, Bethlehem, PA 18017.

6. The Policy's Each Occurrence Limit is \$2,000,000 and its Products-Completed Operations Aggregate Limit is \$4,000,000.

7. The Policy contains the "Amendment of Insuring Agreement – Known Injury or Damage" endorsement which states:

Paragraph 1. Insuring Agreement of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1)** The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
- (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

(2) The “bodily injury” or “property damage” occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.

d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

(1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or

(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

8. The Policy also includes an endorsement entitled “Two Or More Coverage Forms Or Policies Issued By Us,” which states in part:

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same “occurrence”, offense, claim or “suit”, the Limits of Insurance under all the Coverage Forms or policies applicable to such “occurrence”, offense, claim or “suit” shall not exceed the highest applicable Limits of Insurance under any one Coverage Form or policy.

9. Upon information and belief, Fallon brokered a sale of pomegranate arils from United Juice, a subsidiary of GoKnür, a Turkish fruit producer, to one or more purchasers in the United States.

10. Upon information and belief, one batch of pomegranate arils that GoKnür shipped to the United States was allegedly contaminated with the Hepatitis A virus (“HAV”). United Juice shipped the allegedly contaminated arils through one or more distributors to food manufacturers in the United States.

11. There have been over 3,000 claims made of illness caused by HAV contaminated pomegranate arils, and over 25 lawsuits filed in state and federal courts in multiple states including California, Idaho, Washington, Hawaii, Arizona, Colorado, Nevada, and New Mexico. Collectively, these claims and lawsuits will be referred to as the “Underlying HAV Claims.”

12. Pursuant to the Policy, Maryland Casualty agreed to defend Fallon in the Underlying HAV Claims, which Fallon tendered to Maryland Casualty.

COUNT I

13. Maryland Casualty hereby incorporates by reference paragraphs 1 through 12 of this Declaratory Judgment Complaint as though the same were set forth fully herein at length.

14. There presently exists a controversy within the meaning of 28 U.S.C. § 2201 between Maryland Casualty, on the one hand, and Fallon, on the other hand.

15. Maryland Casualty contends that its maximum indemnity obligation, subject to the Policy's terms, conditions, limitations and exclusions, for the Underlying HAV Claims all together is the \$2,000,000 Each Occurrence Limit. The Policy defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Fallon is alleged in the Underlying HAV Claims to have distributed pomegranate arils contaminated with HAV. All claimants purport to have suffered injuries from consuming juice containing, pomegranate arils allegedly distributed by Fallon. Fallon's role in the distribution of pomegranate arils allegedly contaminated with HAV constitutes one "occurrence." Accordingly, the applicable policy limit for the Underlying HAV Claims all together is the \$2,000,000 Each Occurrence Limit.

16. Upon information and belief, Fallon contends that the policy limit applicable to the Underlying HAV Claims in total is the \$4,000,000 Products-Completed Operations Aggregate Limit.

17. Maryland Casualty desires a judicial determination of its rights and duties, and in particular a declaration that the applicable policy limit for the Underlying HAV Claims all together is \$2,000,000 Each Occurrence Limit.

18. A judicial declaration is necessary and appropriate at this time so that Maryland Casualty may ascertain its rights and duties.

COUNT II

19. Maryland Casualty hereby incorporates by reference paragraphs 1 through 18 of this Declaratory Judgment Complaint as though the same were set forth fully herein at length.

20. There presently exists a controversy within the meaning of 28 U.S.C. § 2201 between Maryland Casualty, on the one hand, and Fallon, on the other hand.

21. Maryland Casualty contends that its indemnity obligation, subject to the Policy's terms, conditions, limitations and exclusions, is limited to the \$2,000,000 Each Occurrence Limit of one policy period because either (1) only one policy applies to the Underlying HAV Claims, or (2) because the anti-stacking "Two Or More Coverage Forms Or Policies Issued By Us" endorsement limits Maryland Casualty's indemnity obligation where there is one "occurrence" to "the highest applicable Limits of Insurance under any one Coverage Form or policy."

22. Upon information and belief, Fallon contends that it may "stack" the policy limits of each of the two policy periods of the Policy (*i.e.*, apply two \$2,000,000 Each Occurrence Limits, or two \$4,000,000 Products-Completed Operations Aggregate Limits, to the Underlying HAV Claims), effectively multiplying the maximum policy limits available to cover the Underlying HAV Claims.

23. A judicial declaration is necessary and appropriate at this time so that Maryland Casualty may ascertain its rights and duties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Maryland Casualty Company requests that this Honorable Court enter judgment in its favor and against Defendant Fallon Trading Company, Inc., as follows:

Count I:

For a judicial declaration that Fallon's alleged wrongdoing in the Underlying HAV Claims constitutes one "occurrence" so that the Policy's applicable limit is the \$2,000,000 Each Occurrence Limit.


Count II:

For a judicial declaration that, at most, only one \$2,000,000 Each Occurrence Limit applies to the Underlying HAV Claims in total.

Respectfully submitted,

KAUFMAN DOLOWICH & VOLUCK LLP

By: _____


Anne R. Myers, Esquire
Christopher J. Tellner, Esquire
Dean B. Herman, Esquire (*pro hac vice* pending)
Attorneys for Plaintiff,
Maryland Casualty Company

Dated: May 23, 2014