

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BROWN

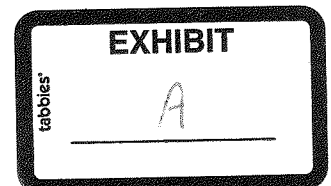
FIFTH JUDICIAL DISTRICT
Case Type: Contract and Other Civil

<p>Associated Milk Producers Inc.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>Ace European Group Limited; Certain Underwriters at Lloyd's of London Subscribing to Policy No. B0509FINSR1600036, believed to be Syndicate 2003 XLC and Syndicate 2007 NVA; XL Insurance America, Inc.,</p> <p style="text-align: center;">Defendants.</p>	<p>Court File No. _____</p> <p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">(Jury Trial Demanded)</p>
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Plaintiff Associated Milk Producers Inc. ("AMPI"), for its Complaint against Defendants, states and alleges as follows:

INTRODUCTION AND OVERVIEW

1. This is an insurance coverage dispute of vital importance to AMPI. AMPI is a farmer-owned dairy cooperative based in New Ulm, Minnesota. The milk supplied by AMPI farmers is used to produce quality dairy products at plants owned and operated by AMPI. AMPI's cheese products, as relevant here, are large (nearly 700-pound) blocks of cheddar cheese commonly referred to as "640s." AMPI sells the 640s that it produces primarily to its customers who, at "conversion plants," convert the 640s into various other



products which are then sold directly to consumers, or to other third parties who convert these products into food items to be sold to consumers.

2. During the period between October 27 and November 17, 2016, 640s produced at AMPI's manufacturing plant in Blair, Wisconsin ("Blair Cheese Plant") became damaged when equipment at the City of Blair, Wisconsin's (the "City" or "Blair") water treatment plant failed, causing Blair's water filtration system to send large amounts of black foreign material (believed to be filter media consisting of anthracite charcoal, green treated sand and other foreign materials) into Blair's water distribution system and the potable water supply servicing AMPI's Blair Cheese Plant.

3. The black foreign material distributed in Blair's water supply breached and ruptured AMPI's water intake pressure filter that was part of AMPI's point of entry water filtering equipment ("Filter Equipment"). The black foreign material entered the Blair Cheese Plant and caused physical damage to AMPI's equipment, the 640s that AMPI manufactured and sold to customers for conversion into food products, and products of third parties who converted cheese from the 640s into their products.

4. The 640s produced at the Blair Cheese Plant consisted of premium cheese that was to be aged and then converted by AMPI's customers, typically three to four weeks or more after the original date of manufacture. Thus, AMPI customers did not begin processing any of the 640s produced by AMPI between October 27 through October 30, 2016 until the week of November 14-18, 2016.

5. On November 17, 2016, AMPI was informed by a customer that the customer had discovered black foreign material in packaged cheese products it made from 640s

manufactured at AMPI's Blair Cheese Plant, and that the black foreign material came from the 640s. AMPI thereafter notified its various customers who had purchased 640s made between October 27 and November 17, 2016 (the "Impacted Period"), that they should hold and not process, convert or sell cheese products made from the 640s produced during this period. Approximately six million pounds of cheese was placed on hold; the cheese is valued at about \$12 million dollars.

6. AMPI's customers refused to accept the 640s that were put on hold for conversion into their food products due to the presence of black foreign material in the 640s manufactured during the Impacted Period. AMPI's customers also refused to pay for those 640s, and AMPI has had to withdraw the impacted cheese from the market and reimburse or credit customers for the amounts they had paid for the 640s. AMPI has been unable to sell the 640s manufactured during the Impacted Period for processing into food products for human consumption.

7. AMPI is protected against these losses by first-party insurance. AMPI purchased the following insurance policies from the various Defendants in this case: (1) a Product Contamination Policy and (2) an Equipment Breakdown Policy (collectively, the "Insurance Policies").¹

¹ AMPI also purchased and made claims under its all-risk Commercial Property policies issued by Lexington Insurance Company; Allied World Assurance Company (U.S.) Inc.; First Specialty Insurance Corporation; Hallmark Specialty Insurance Company; and Certain Underwriters at Lloyd's London Subscribing to Policy No. B0621P33093015, believed to be Novae 2007 Syndicate (the "Property Insurers"). In accordance with the forbearance provisions of a tolling agreement between AMPI and the Property Insurers, AMPI has notified the Property Insurers of its intent to initiate proceedings. AMPI intends to amend its Complaint and join the Property Insurers when the 10-day forbearance period concludes.

8. AMPI made claims under its Insurance Policies and sought reimbursement for its losses. Rather than fulfill their obligations under the insurance protection AMPI had purchased, the insurers who issued the Insurance Policies (as well as the Property Insurers) have either denied coverage outright or otherwise refused to reimburse AMPI for the full extent of its losses.

9. AMPI's insurers' refusal to live up to their contractual obligations and timely pay AMPI's claims in full has caused and continues to cause AMPI and its dairy farmer members significant financial loss and harm. AMPI brings this action against these insurers for, *inter alia*, breach of contract and declaratory judgment.

THE PARTIES

10. Plaintiff AMPI is a corporation with its principal place of business in New Ulm, Brown County, Minnesota. AMPI is a dairy cooperative owned by over 3,000 dairy farmer families who operate farms in Minnesota, Wisconsin, Iowa, Nebraska, South Dakota, and North Dakota. AMPI owns several cheese manufacturing facilities throughout the Midwest, one of which is the Blair Cheese Plant.

11. Upon information and belief, Defendant ACE European Group Limited ("ACE") is an insurance company domiciled in the United Kingdom. ACE has transacted business in Minnesota, and has contractually consented to jurisdiction before any court of competent jurisdiction in the United States.

12. Upon information and belief, Defendants Syndicate 2003 XLC ("Lloyd's 2003 XLC") and Syndicate 2007 NVA ("Lloyd's 2007 NVA") are domiciled in the United Kingdom. Both Lloyd's 2003 XLC and Lloyd's 2007 NVA have transacted business in

Minnesota, and have contractually consented to jurisdiction before any court of competent jurisdiction in the United States.

13. Upon information and belief, Defendant XL Insurance America, Inc. (“XL America”) is an insurance company incorporated under the law of Delaware with its principal place of business in Connecticut. XL America is authorized to sell insurance in Minnesota, and has transacted business in Minnesota.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over the Defendants pursuant to Minn. Stat. § 543.19 because each of the Defendants transacts business in Minnesota, including by issuing policies to Plaintiff AMPI in Minnesota, and because each of the Defendants’ actions have caused injury to AMPI in Minnesota. In addition Defendants ACE, Lloyd’s 2003 XLC, and Lloyd’s 2007 NVA have contractually consented to jurisdiction before this Court.

15. Venue in this Court is proper pursuant to Minn. Stat. § 542.09 because a significant part of the claim arose in Brown County, Minnesota. Among other things, each of the Defendants issued the relevant policies to Plaintiff AMPI in Brown County, and Plaintiff AMPI accepted those policies in Brown County and paid the premiums for those policies from its headquarters in Brown County.

THE INSURANCE POLICIES

The Product Contamination Policy

16. Defendants ACE, Lloyd’s 2003 XLC and Lloyd’s 2007 NVA (“the Product Contamination Insurers”) jointly issued to AMPI a Product Contamination Policy, bearing

policy number No. B0509FINSR1600036 (the “Product Contamination Policy”), covering the period from February 4, 2016, through February 4, 2017. The Product Contamination Policy contains annual limits of \$10,000,000.

17. AMPI is the named insured under the Product Contamination Policy. AMPI timely paid all premiums due and owing for this policy and fulfilled all other obligations under the Product Contamination Policy.

18. Under the Product Contamination Policy, the Product Contamination Insurers agreed “to reimburse the Insured for all or any Loss arising out of Insured Events.”

19. An “Insured Event” includes “Accidental Contamination.”

20. The Product Contamination Policy defines “Accidental Contamination” as:

“Error in the manufacture, production, processing, preparation, assembly, blending, mixing, compounding, packaging or labelling (including instructions for use) of any Insured Products, or

the introduction into an Insured Product of an ingredient or component that is, unknown to the Insured, contaminated or unfit for its intended purpose, or

error by the Insured in the storage or distribution of any Insured Products whilst in the care or custody of the Insured provided that the use or consumption of such Insured Products has led to or would lead to:

i) bodily injury, sickness, disease or death of any person(s) or animal(s) physically manifesting itself within 365 days of use or consumption, or

ii) physical damage to or destruction of tangible property (other than the Insured Products themselves).”

The Equipment Breakdown Policy

21. Defendant XL America issued to AMPI an “Up + Running Equipment Breakdown Insurance” Policy, bearing policy number US00076751PR16A (the “Equipment

Breakdown Policy”), covering the period from October 1, 2016, through October 1, 2017. The Equipment Breakdown Policy has annual limits of \$150,000,000.

22. AMPI is the named insured under the Equipment Breakdown Policy. AMPI timely paid all premiums due and owing for this policy and fulfilled all other obligations under the policy.

23. The Equipment Breakdown Policy “covers direct damage to ‘Covered Property’ resulting from a ‘Breakdown’ to ‘Covered Equipment.’”

24. The Equipment Breakdown Policy defines “Covered Property” as “property that you own or that is in your care, custody or control and for which you are legally liable.”

25. The Equipment Breakdown Policy’s “Breakdown” definition includes:

“The following direct physical loss that causes damage to ‘Covered Equipment’ and necessitate its repair or replacement:

1. Failure of pressure or vacuum equipment;
2. Mechanical failure including rupture or bursting caused by centrifugal force; or
3. Electrical failure including arcing”

26. The Equipment Breakdown Policy defines “Covered Equipment” to include equipment, which “during normal usage, operates under . . . pressure other than the weight of its contents.”

THE BLAIR CHEESE PLANT

27. AMPI makes 640s at its Blair Cheese Plant and sells the 640s to customers, who in turn convert the 640s into various retail and food service cheese products at “conversion plants.” These third party customers sell certain of their cheese products directly to

consumers for human consumption, and other products to other third parties who convert those products into food items to be sold to consumers. AMPI also converts some of the 640s into cheese products at its own conversion plant in Portage, Wisconsin, to be sold to food service companies or other customers. These cheese products are also often used by third parties who convert the products into other food products to be sold to consumers.

28. The 640s produced at the Blair Cheese Plant are stored in the Blair Cheese Plant for several days and then shipped to conversion plants.

29. AMPI's customers begin converting the 640s by aging the cheese for a certain number of days or weeks, depending on the type of cheese product that is being made. The aging process creates a distinct cheese product; as the cheese is aged longer, it acquires a sharper flavor. Conversion plants then take additional conversion steps, depending on the ultimate product to be produced. For example, the cheese may be cubed, shredded, mixed with other cheeses, or converted into processed cheese. Often, these converted products are then combined with other foods to make still other products, such as incorporating shredded cheese into pizza.

30. AMPI's Blair Cheese Plant uses Blair's municipal water supply for its cheese manufacturing operations. AMPI is the first customer on the water distribution line from Blair's water treatment facility. AMPI accounts for approximately 80% of Blair's potable water usage.

31. AMPI's Blair Cheese Plant uses Blair's potable water for various purposes, including clean-in-place operations, rinsing of the pasteurizer equipment, and providing moisture to the 640s during the cheese-making process.

32. During the relevant time period, AMPI's Blair Cheese Plant filtered the water it received from Blair's municipal water system through two parallel filters (the "Primary Pressure Filters"), comprising the Filter Equipment, at the point where the main water line entered the facility. This precaution meets or exceeds industry standards; many similar plants have no such filter system and are reliant on the potable nature of municipal water. The cheese-making equipment at AMPI's Blair Cheese Plant is further protected in certain areas by secondary filtering equipment.

33. During the relevant time period, AMPI's Filter Equipment operated under pressure from the municipal water supply, including municipal water pumps. This pressure exceeded the weight of the Filter Equipment's contents.

34. During the relevant time period, AMPI's operating procedures provided for inspection and replacement of the Primary Pressure Filters on a weekly basis.

THE BLAIR INCIDENT

35. On October 26, 2016, during a planned plant shutdown at the Blair Cheese Plant, AMPI inspected and replaced its Primary Pressure Filters. AMPI found nothing unusual during this inspection. AMPI resumed cheese-making on October 27, 2017.

36. On November 3, 2016, AMPI experienced a significant reduction in water pressure at the Blair Cheese Plant. AMPI commenced inspecting its water system, including the input from Blair's main water line into the plant. Upon inspecting the water intake and Primary Pressure Filters, AMPI discovered that a voluminous amount of black material had clogged the water line. AMPI also discovered that the black material had ruptured one

of the Primary Pressure Filters. The rupture occurred sometime between the October 26 inspection of the Primary Pressure Filters and November 3.

37. AMPI removed the black material from the water line and filter area, flushed the line, replaced the Primary Pressure Filters, and thereafter increased the frequency in which it inspected and replaced the Primary Pressure Filters (inspecting and replacing the filters multiple times each day).

38. AMPI contacted Blair to inquire about the black foreign material found at the water intake. AMPI was informed that Blair's water supply was functioning properly. AMPI observed additional black material on its Primary Pressure Filters following November 3, 2016, but believed the black material had not affected, and was not affecting the 640s destined for conversion due to the filter systems and other precautions being taken by AMPI at the Blair Cheese Plant.

39. AMPI subsequently learned that at some time prior to November 3, 2016, there was a failure of equipment at Blair's water treatment plant, causing Blair's water filtration system to send large amounts of black foreign material (believed to be filter media) into Blair's water distribution system and into the potable water supply servicing AMPI's Blair Cheese Plant.

40. On November 17, 2016, AMPI received notification from a customer that 640s the customer had purchased from AMPI's Blair Cheese Plant contained black material. AMPI had manufactured the particular 640s subject to this customer complaint on October 30, 2016.

41. Following the November 17, 2016 customer complaint, AMPI conducted an extensive clean-out of its Blair Cheese Plant. At this time, AMPI unexpectedly observed black foreign material in its clean-in-place tanks and water lines. AMPI drained and cleaned the clean-in-place systems, flushed water lines, and re-inspected and changed filters prior to resuming cheese production on November 18, 2016.

42. AMPI immediately notified its customers who had purchased 640s made between October 27 and November 17, 2016, and advised them that they should hold and not convert or sell cheese using the 640s produced during this period.

43. Since that time, AMPI's customers refused to use the 640s for conversion into their food products due to the presence of black material from Blair's water filtration plant in 640s manufactured during the Impacted Period. AMPI's customers refused to pay for the 640s, and AMPI has had to withdraw the impacted cheese from the market and reimburse or credit its customers' accounts. AMPI has been unable to sell 640s manufactured during the Impacted Period for processing into food products for human consumption.

44. Subsequent sampling and testing of 640s made during the Impacted Period has confirmed the existence of black foreign material from Blair's water treatment facility in 640s manufactured on every day of the Impacted Period.

45. AMPI's customers will not use for human consumption cheese made, in whole or part, from 640s manufactured during the Impacted Period. AMPI has incurred and will incur losses related to the cheese and its withdrawal from the market, and losses relating to storage and disposal of these products.

46. The 640s manufactured during the period October 27-November 17, 2016, and the various cheese products using or incorporating those 640s, were directly and physically damaged as a result of the incident described above.

47. The 640s manufactured during the period October 27-November 17, 2016, and the various cheese products using or incorporating those 640s, are un-merchantable and unable to be sold for human consumption.

48. Use or consumption of the 640s manufactured during the period October 27-November 17 has or would lead to physical damage to other tangible property, including but not limited to AMPI's customers' converted products.

49. There are approximately six million pounds of cheese manufactured and sold by AMPI during the period October 27-November 17, 2016. AMPI has suffered approximately \$13.5 million in losses related to the damaged 640s, replacement or credit for the impacted 640s, storage costs, and other related costs and expenses. AMPI must dispose of the 640s it is unable to sell for non-human consumption and will incur costs relating to that disposal.

**DEFENDANTS' REFUSALS TO ACCEPT THEIR COVERAGE OBLIGATIONS
UNDER THE INSURANCE POLICIES**

Product Contamination Policy

50. AMPI notified the Product Contamination Insurers of the claim arising out of the Blair Cheese Plant in November 2016 and submitted an Interim and Partial Proof of Loss to the Contamination Insurers on or about February 24, 2017.

51. The Product Contamination Policy provides that “[f]ollowing any Insured Event, and subject to the Underwriters’ agreement of coverage applying to the Insured’s claim, the Underwriters agree, if requested from time to time by the Insured, to make interim payments of a Loss duly proved as soon as practicable after receipt of an acceptable signed and sworn partial or final proof of Loss in respect of such Insured Event.”

52. The Product Contamination Insurers refused to adjust and pay AMPI’s full loss as claimed; indeed, they have failed to pay any portion of AMPI’s loss.

53. AMPI reasonably cooperated and responded to the Product Contamination Insurers’ numerous information requests.

54. On March 30, 2017, XL Catlin, in representation of the Product Contamination Insurers, sent correspondence to AMPI which “reserved the right to deny coverage.”

55. The Product Contamination Insurers have not acknowledged coverage for all of AMPI’s claim, have refused to pay the limits of the Product Contamination Policy, and have not paid any portion of AMPI’s claim.

Equipment Breakdown Policy

56. AMPI notified XL America of the claim relating to the Blair Cheese Plant in November 2016 and submitted an Interim and Partial Proof of Loss to XL America on or about February 24, 2017. XL Catlin, on behalf of XL America, denied coverage on March 7, 2017, claiming AMPI’s claimed loss was “not within the scope of coverage” provided by the insurer.

57. XL America's coverage defenses are not well-founded, which AMPI has demonstrated to XL America. Yet, XL America continues to deny coverage for AMPI's claim, and has refused to pay anything to AMPI for its losses.

COUNT I
(Breach of Contract Against Product Contamination Insurers)

58. AMPI incorporates and reasserts herein all of the foregoing paragraphs 1-57 of this Complaint.

59. The Product Contamination Policy is a valid contract between the Product Contamination Insurers and AMPI.

60. AMPI has performed all of its obligations and duties under the Product Contamination Policy, including the payment of all premiums owed and satisfaction of all policy conditions.

61. By failing to pay for AMPI's loss arising out of the Blair Incident, the Product Contamination Insurers materially breached the Product Contamination Policy and breached the duty of good faith and fair dealing.

62. As a direct result of the Product Contamination Insurers' breach of contract, AMPI has suffered, and is entitled to recover, all damages arising from the Product Contamination Insurers' breach in an amount to be determined at trial.

COUNT II
(Breach of Contract Against XL America)

63. AMPI incorporates and reasserts herein all of the foregoing paragraphs 1-57 of this Complaint.

64. The Equipment Breakdown Policy is a valid contract between XL America and AMPI.

65. AMPI has performed all of its obligations and duties under the Equipment Breakdown Policy, including the payment of all premiums owed and satisfaction of all policy conditions.

66. By denying coverage and refusing to pay for damage to covered property arising out of the Blair Incident, XL America materially breached the Equipment Breakdown Policy and breached the duty of good faith and fair dealing.

67. As a direct result of XL's breach of contract, AMPI has suffered, and is entitled to recover, all damages arising from XL's breach in an amount to be determined at trial.

COUNT III
(Declaratory Judgment Against All Defendants)

68. AMPI incorporates and reasserts herein all of the foregoing paragraphs 1-57 of this Complaint.

69. By issuing the Product Contamination Policy and the Equipment Breakdown Policy, the Product Contamination Insurers and XL America have all agreed to indemnify AMPI against certain losses arising out of various risks covered under the terms of the respective policies.

70. AMPI's various types of losses described in this Complaint are covered by the Product Contamination Policy and/or the Equipment Breakdown Policy. Yet all Defendants have completely failed and refused to indemnify AMPI for its losses covered by the respective policies. As such, pursuant to Minn. Stat. ch. 555 and Minn. R. Civ. P.

57, an actual and justiciable controversy exists between and among AMPI, the Product Contamination Insurers, and XL America with respect to their respective duties to AMPI under the various insurance policies. AMPI is entitled to a declaration as to the obligations of the Product Contamination Insurers and XL America, under the Product Contamination Policy and the Equipment Breakdown Policy, respectively, to indemnify AMPI for all losses arising out of the incident at the Blair Cheese Plant described herein, and for such other relief as the Court deems just and appropriate under the circumstances.

* * *

WHEREFORE, Plaintiff AMPI respectfully requests that this Court grant the following relief:

- a. All damages allowed by law, including consequential damages, flowing from the breaches of contract by the Product Contamination Insurers and XL America, respectively;
- b. Adjudge and declare that the obligations of the Defendants, under the Product Contamination Policy and the Equipment Breakdown Policy, respectively, to indemnify AMPI for all losses arising out of the incident at the Blair Cheese Plant described herein;
- c. Award damages to AMPI in the amount to be determined at trial, plus interest, costs, expenses, attorneys' fees, and all other damages, costs, and expenses allowed by law, including 10% interest under Minn. Stat. § 60A.0811 and/or Minn. Stat. § 549.09; and

d. Issue such other and further relief, which this Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Plaintiff AMPI demands a trial by jury on all claims so triable.

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: December 21, 2017

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