



**ANSWER**

**Parties**

1. Plaintiffs admit the allegations in Paragraph 1 of the Counterclaim.
2. Plaintiffs admit the allegations in Paragraph 2 of the Counterclaim.

**Jurisdiction and Venue**

3. The allegations in Paragraph 3 of the Counterclaim are legal conclusions to which no response is required.
4. The allegations in Paragraph 4 of the Counterclaim are legal conclusions to which no response is required.
5. The allegations in Paragraph 5 of the Counterclaim are legal conclusions to which no response is required.

**Factual Background**

**THE POLICIES AT ISSUE**

6. A it relates to the first sentence of Paragraph 6 of the Counterclaim, Plaintiffs admit that Discover issued commercial general liability policies to the Blue Bell Entities<sup>1</sup> from January 1, 2009 to January 1, 2011 and that Travelers issued commercial general liability policies to Blue Bell Creameries, L.P. and to some or all of the other Blue Bell Entities from January 1, 2011 through January 1, 2012 and January 1, 2013 through January 1, 2016, but otherwise lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations. Plaintiffs deny the allegations in the second sentence of Paragraph 6 of the Counterclaim. Plaintiffs are without knowledge or information sufficient to form a belief about the truth of the allegations in the third sentence of Paragraph 6 of the Counterclaim.

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<sup>1</sup> Capitalized terms not defined herein have the meaning assigned to them in Plaintiffs' Original Complaint, as it may be amended.

7. The terms of the Policies speak for themselves, and Plaintiffs respectfully refer to the Policies for the complete contents thereof. To the extent the allegations in Paragraph 7 of the Counterclaim are inconsistent with the Policies, such allegations are denied.

8. The terms of the Policies speak for themselves, and Plaintiffs respectfully refer to the Policies for the complete contents thereof. To the extent the allegations in Paragraph 8 of the Counterclaim are inconsistent with the Policies, such allegations are denied.

9. The terms of the Policies speak for themselves, and Plaintiffs respectfully refer to the Policies for the complete contents thereof. To the extent the allegations in Paragraph 9 of the Counterclaim are inconsistent with the Policies, such allegations are denied.

10. Plaintiffs admit that premiums were paid to purchase the Policies, but otherwise lack knowledge or information sufficient to form a belief about the truth of remaining allegations in Paragraph 10 of the Counterclaim.

11. Plaintiffs deny the allegations in Paragraph 11 of the Counterclaim. Plaintiffs specifically deny that Defendants satisfied all relevant conditions and requirements imposed on them by the Policies, including, but not limited to, the notice and cooperation clauses.

#### **THE UNDERLYING CASE**

12. Plaintiffs admit the allegations in Paragraph 12 of the Counterclaim.

13. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in Paragraph 13 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

14. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in

Paragraph 14 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

15. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in Paragraph 15 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

16. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in Paragraph 16 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

17. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in Paragraph 17 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

18. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent the allegations in Paragraph 18 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

19. The underlying Complaint speaks for itself, and Plaintiffs respectfully refer to the underlying Complaint for the complete contents thereof. To the extent Defendants' characterization of the underlying Complaint in Paragraph 19 of the Counterclaim are inconsistent with the underlying Complaint, such allegations are denied.

20. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of the Counterclaim.

21. Plaintiffs admit that the underlying Complaint seeks compensatory and other damages, but denies the remaining allegations in Paragraph 21 of the Counterclaim.

22. Plaintiffs deny the allegations in Paragraph 22 of the Counterclaim.

23. The underlying Complaint and Policies speak for themselves, and Plaintiffs respectfully refer to the underlying Complaint and Policies for the complete contents thereof. To the extent the allegations in Paragraph 23 of the Counterclaim are inconsistent with the underlying Complaint and/or Policies, such allegations are denied.

24. Plaintiffs deny the allegations in Paragraph 24 of the Counterclaim.

25. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25 of the Counterclaim.

26. Plaintiffs admit that the Policies do not cover the Shareholder Suit and that Plaintiffs owe no duty to defend Defendants in connection with the Shareholder Suit, and otherwise deny the allegations in Paragraph 26 of the Counterclaim.

**FIRST CAUSE OF ACTION**  
**Breach of Contract**

27. Plaintiffs incorporate their responses to Paragraphs 1-26 as if fully set forth herein.

28. Plaintiffs deny the allegations in Paragraph 28 of the Counterclaim.

29. Plaintiffs deny the allegations in Paragraph 29 of the Counterclaim.

30. Plaintiffs deny the allegations in Paragraph 30 of the Counterclaim.

31. Plaintiffs deny the allegations in Paragraph 31 of the Counterclaim.

**PRAYER FOR RELIEF**

32. The “Prayer for Relief” section of the Counterclaim, including subparagraphs (a) through (c), contains statements regarding damages to which no response is required. Should a response be deemed necessary, Plaintiffs deny that Defendants are entitled to any of the relief they request.

33. Pursuant to Federal Rule of Civil Procedure 8(b)(3), Plaintiffs generally deny all allegations in the Counterclaim except to the extent such allegations are specifically admitted in Paragraphs 1 – 32 above.

**JURY DEMAND**

34. Plaintiffs admit that Defendants have demanded a trial by jury on all issues so triable raised in the Counterclaim.

**DEFENSES**

1. The allegations in the Counterclaim fail to state a claim against Plaintiffs upon which relief may be granted.

2. The claims asserted in the Counterclaim are barred, either in whole or in part, because the Shareholder Suit is not a suit for damages because of “bodily injury.”

3. The claims asserted in the Counterclaim are barred, either in whole or in part, because the Shareholder Suit does not seek to hold any insured under the Policies legally liable for damages.

4. The claims asserted in the Counterclaim are barred, either in whole or in part, because any alleged bodily injury was not caused by an “occurrence” as that term is defined in the Policies.

5. The claims asserted in the Counterclaim are barred, either in whole or in part, by the Policies' "expected or intended injury" exclusion.

6. The claims asserted in the Counterclaim are barred, either in whole or in part, by the Policies' "contractual liability" exclusion.

7. The claims asserted in the Counterclaim are barred, either in whole or in part, by the Policies' "recall of products, work or impaired property" exclusion.

8. The claims asserted in the Counterclaim are barred, either in whole or in part, by the Policies' "personal and advertising injury" exclusion.

9. The claims asserted in the Counterclaim are barred, either in whole or in part, by the Policies' "knowing violation of rights of another" exclusion.

10. The claims asserted in the Counterclaim are barred, either in whole or in part, because Defendants failed to perform all of their obligations and/or comply with all of the conditions under the Policies, including without limitation, the notice and cooperation clauses.

11. The claims asserted in the Counterclaim are barred, either in whole or in part, because of Defendants' failure to mitigate their damages.

12. The Policies do not provide insurance coverage for the Shareholder Suit for claims asserted against individuals or entities that do not qualify as an insured under one or more of the Policies.

13. The Policies do not provide insurance coverage for any defense costs incurred or obligations undertaken prior to tender of those costs to Plaintiffs for payment.

14. The claims asserted in the Counterclaim are barred, either in whole or in part, by the terms, exclusions, conditions, and/or limitations contained in the Policies.

15. The claims asserted in the Counterclaim are barred, either in whole or in part, to the extent that Defendants have other insurance applicable to the claims asserted in the Shareholder Suit.

16. There is no coverage for the Shareholder Suit to the extent that punitive or exemplary damages are being sought.

17. There is no coverage for the Shareholder Suit to the extent that it seeks to hold Defendants liable for injunctive, declaratory, restitutionary or other equitable relief.

18. The claims asserted in the Counterclaim are barred, in whole or in part, based on the doctrines of waiver, estoppel, and/or laches.

19. Plaintiffs reserve their right to assert additional defenses as discovery or investigation in this matter may reveal.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Discover Property & Casualty Insurance Company and the Travelers Indemnity Company of Connecticut pray that upon final judgment, all relief requested by Defendants be denied, all costs be taxed against Defendants, and for such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

By: /s/Courtney Ervin

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**CERTIFICATE OF SERVICE**

I certify that on August 27, 2021 a copy of this instrument was served on counsel of record as listed below either via the court's ECF noticing system or via US First Class Mail, postage prepaid.

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