

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PHILADELPHIA INDEMNITY INSURANCE,)		
COMPANY,)		
)	Case No. 1:21-CV-04037
Plaintiff,)		
)	
v.)		
)	
LEWIS PRODUCE MARKET NO.2 INC.,)		
LEWIS PRODUCE MARKET, INC., and)		
OSCAR ABUNDES.)		
)	
DefendantS.)		

**DEFENDANTS LEWIS PRODUCE MARKET NO. 2 INC. & LEWIS PRODUCE
MARKET, INC.
ANSWER TO PLAINTIFF’S COMPLAINT**

Defendants, LEWIS PRODUCE MARKET NO. 2 INC. & LEWIS PRODUCE MARKET, INC., doing business as “Lewis Produce Market” (hereinafter collectively referred to as “Defendants” and individually as “Market No. 2” and “Lewis Inc.”; respectively) answer Plaintiff’s complaint as follows:

1. Insofar as an answer to allegation 1 is required, Market No. 2 and Lewis Inc. admit PHIALDELPHIA INSURANCE COMPANY’s (“Plaintiff”) filed the instant declaratory judgment action and seeks the stated relief. but deny the requested relief has merit.
2. Admit
3. Admit
4. Admit
5. Defendants admits Oscar Abundes has alleged in the underlying action that he is an Illinois citizen. Defendants deny the remaining allegations of paragraph 5.

6. Defendants admit to jurisdiction.

7. Defendants admit to venue.

BACKGROUND STATEMENTS OF FACTS

8. Admit.

9. Admit.

10. Admit.

The Abundes Lawsuit

11. Admit.

12. The Complaint attached as Exhibit D to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 12.

13. The Complaint attached as Exhibit D to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 13.

14. The Complaint attached as Exhibit D to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 14.

15. The Complaint attached as Exhibit D to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 15.

16. The Complaint attached as Exhibit D to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 16.

17. Admit.

18. The First Amended Complaint attached as Exhibit E to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 18.

19. The First Amended Complaint attached as Exhibit E to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 19.

20. The First Amended Complaint attached as Exhibit E to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 20.

21. The First Amended Complaint attached as Exhibit E to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 21.

22. The First Amended Complaint attached as Exhibit E to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 22.

23. Admit.

24. The Second Amended Complaint attached as Exhibit F to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 24.

25. The Second Amended Complaint attached as Exhibit F to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 25.

26. The Second Amended Complaint attached as Exhibit F to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 26.

27. The Second Amended Complaint attached as Exhibit F to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 27.

28. The Second Amended Complaint attached as Exhibit F to Plaintiff's Complaint speaks for itself to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 28.

The Policies

29. Admit.

30. Admit.

31. Admit.

32. Admit.

33. Admit.

34. Admit.

COUNT I – DECLARATORY JUDGMENT UNDER 28 USC § 1331

35. Defendants repeat their answers to Paragraphs 1 to 34 as paragraph 35 as though fully set forth herein.

36. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 36.

37. The Policies attached as Exhibits A & B speak for themselves to which no answer is

required. To the extent an answer is required Defendants admit the allegations of paragraph 37.

38. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 38.

39. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 39.

40. Admit.

41. Admit.

42. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 42.

43. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 43.

44. Defendants deny the allegations of paragraph 44.

45. Admit.

46. Defendants deny the allegations of paragraph 46.

47. The Policies attached as Exhibits A & B speak for themselves to which no answer is required. To the extent an answer is required Defendants admit the allegations of paragraph 47.

48. Defendants deny the allegations of paragraph 48.

49. The allegations of paragraph 49 state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations.

50. The allegations of paragraph 50 state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations.

51. Defendants admit that Philadelphia has a duty to defend, to advance defense costs and to indemnify Market No. 2 in connection with the Complaint and First Amended Complaint filed in the *Abundes* Lawsuit.

52. Paragraph 52 states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 52.

COUNT II – DECLARATORY JUDGMENT UNDER 28 USC § 1331

53. Defendants repeat their answers to Paragraphs 1 to 52 as paragraph 53 as though fully set forth herein.

54. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit coverage under the Policies is offered on a “claims made” rather than an “occurrence basis”. Defendants deny the remaining allegations.

55. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 55.

56. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 56.

57. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 57.

58. The Policies speak for themselves to which no answer is required. To the extent an

answer is required, Defendants admit the allegations of paragraph 58.

59. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 59.

60. Admit.

61. Defendants admit on February 23, 2021 email correspondence was exchanged between counsel for Market No. 2 and Philadelphia. Defendants admit counsel advised the February 8, 2021 email from Vedder Price was the “first notice of the claim or potential claim” to Market No. 2. However, defendants deny that the February 8, 2021 email from Vedder Price was Market No. 2’s first notice of the claim pursuant to the terms of the Policies.

62. Defendants deny the allegations of paragraph 62. Further answering, first notice of the claim to Market No. 2 pursuant to the terms of the Policies is February 1, 2021; the filing date of the *Abundes* lawsuit.

63. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 63.

64. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 55.

65. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 55.

66. Defendants deny the allegations of paragraph 66.

67. Defendants admit Philadelphia has a duty to defend, to advance defense costs and to indemnify Defendants in conjunction with the *Abundes* lawsuit.

68. Paragraph 68 states a legal conclusion to which no answer is required. To the extent

an answer is required, Defendants admit the allegations of paragraph 68.

COUNT III – DECLARATORY JUDGMENT UNDER 28 USC § 1331

69. Defendants repeat their answers to Paragraphs 1 to 68 as paragraph 69 as though fully set forth herein.

70. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 70.

71. The Policies speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 71.

72. The complaints in *Abundes* speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 72.

73. The complaints in *Abundes* speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 73.

74. The complaints in *Abundes* speak for themselves to which no answer is required. To the extent an answer is required, Defendants admit the allegations of paragraph 74.

75. Admit.

76. Deny.

77. Paragraph 77 states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations of paragraph 77.

COUNT IV – DECLARATORY JUDGMENT UNDER 28 USC § 1331

78. Defendants repeat their answers to Paragraphs 1 to 77 as paragraph 78 as though fully set forth herein.

79. Admit.

80. The Policies speak for themselves to which no answer is required. To the extent

paragraph 80 states a factual allegation, those allegations are denied.

81. Admit.

82. Paragraph 82 states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations of paragraph 82.

Dated: October 1, 2021

Respectfully submitted,

MAG MILE LAW LLC,

By: /s/ Steven P. Mikuzis
Attorney for Plaintiff

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