

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO.: 06-CV-688 (DMC)

|                                    |   |                          |
|------------------------------------|---|--------------------------|
|                                    |   |                          |
| <b>DEBORAH FELLNER,</b>            | ) |                          |
|                                    | ) |                          |
|                                    | ) |                          |
| <b>Plaintiffs,</b>                 | ) | <b>ANSWER TO AMENDED</b> |
|                                    | ) | <b>COMPLAINT</b>         |
| v.                                 | ) |                          |
|                                    | ) |                          |
| <b>TRI-UNION SEAFOODS, L.L.C.,</b> | ) |                          |
| <b>d/b/a CHICKEN OF THE SEA,</b>   | ) |                          |
|                                    | ) |                          |
| <b>Defendant.</b>                  | ) |                          |
|                                    | ) |                          |

Defendant Tri-Union Seafoods, LLC d/b/a Chicken of the Sea (“Tri-Union”) by way of Answer to the Amended Complaint of Plaintiff Deborah Fellner says:

**RESPONSE TO PARTIES**

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of plaintiff’s Amended Complaint.
2. Defendant admits the allegations set forth in paragraph 2 of plaintiff’s Amended Complaint.

**RESPONSE TO COUNT I**

3. Defendants repeat and reallege their responses to the allegations to **PARTIES** as though set forth fully and of length herein.
4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of Count I of plaintiff’s Amended Complaint.

5. Defendants deny the allegations set forth in paragraphs 4-8 of Count I of plaintiff's Amended Complaint.

**RESPONSE TO COUNT II and III**

6. Counts II and III have been dismissed.

**SEPARATE DEFENSES**

**FIRST SEPARATE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND SEPARATE DEFENSE**

The plaintiff's cause of action is pre-empted by federal law.

**THIRD SEPARATE DEFENSE**

Plaintiff knew, or should have known, of the alleged propensities or dangers of the subject product and was a sophisticated user thereof, thereby obviating this Defendant's need or duty to warn of alleged dangers or propensities of same, if any. The defendant has no duty to warn plaintiff against the existence of commonly known dangers.

**FOURTH SEPARATE DEFENSE**

The defendant has no duty to warn of the dangers of excessive consumption of a food product.

**FIFTH SEPARATE DEFENSE**

Plaintiff fails to state a cause of action for breach of warranty and strict liability because the alleged "harmful compounds" occurred naturally.

**SIXTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred in whole or in part because this Defendant's actions did not proximately cause the damages allegedly sustained by Plaintiff.

**SEVENTH SEPARATE DEFENSE**

The occurrence complained of was neither foreseeable nor preventable by the exercise of reasonable care.

**EIGHTH SEPARATE DEFENSE**

Recovery is barred in this action by reason of the applicable Statute of Limitations.

**NINTH SEPARATE DEFENSE**

Any and all damages alleged to have been suffered by Plaintiff were not causally related to any act or omission alleged to be chargeable to this Defendant.

**TENTH SEPARATE DEFENSE**

This Defendant demands credit for any and all payment by way of insurance, other medical benefits or collateral sources received by Plaintiff as against any award that may be made to Plaintiff as a result of this action.

**ELEVENTH SEPARATE DEFENSE**

At all times and places mentioned in the Complaint herein, this Defendant violated no legal duty owed to Plaintiff.

**TWELFTH SEPARATE DEFENSE**

Any conditions of which Plaintiff complained of or from which Plaintiff presently suffers are unrelated to any actions or treatments that were performed or ordered by this Defendant, either by causation, exacerbation or both.

**THIRTEENTH SEPARATE DEFENSE**

This Defendant avers that whatever duties were required of it by and for Plaintiff, were performed properly, and that it employed and demonstrated in performing such duties the requisite skill, discretion and judgment in accordance with the accepted standards and practices recognized and followed by others in the same profession and specialty.

**FOURTEENTH SEPARATE DEFENSE**

The damages alleged by Plaintiff were caused by the negligence or other culpable conduct of persons or entities over whom this Defendant had neither control nor right of control.

**FIFTEENTH SEPARATE DEFENSE**

The FDA does not require defendant to place warnings on its tuna product's labels about the existence of methylmercury in tuna fish.

**SIXTEENTH SEPARATE DEFENSE**

Plaintiff will not be able to establish that warnings about the existence of methylmercury in tuna are required on the labels of its tuna fish products.

**SEVENTEENTH SEPARATE DEFENSE**

The Summons and Complaint are defective because of insufficiency of process.

**EIGHTEENTH SEPARATE DEFENSE**

This defendant's liability, if any, is limited to the terms set forth in the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, *et seq.*

**NINETEENTH SEPARATE DEFENSE**

Plaintiff failed to mitigate damages reasonably as a matter of law.

**TWENTIETH SEPARATE DEFENSE**

The product distributed by this defendant was reasonably fit, suitable or safe for its intended purpose.

**TWENTY-FIRST SEPARATE DEFENSE**

The doctrine of strict liability does not apply to this cause of action.

**TWENTY-SECOND SEPARATE DEFENSE**

Defendant did not violate any provision of the Food and Drug Act.

**TWENTY-THIRD SEPARATE DEFENSE**

If there were any defects in the subject product, which this Defendant specifically denies, such defects were not the substantial factor which contributed to the circumstances and damages alleged in the Complaint.

**TWENTY-FOURTH SEPARATE DEFENSE**

If Plaintiff incurred any injuries as alleged in the Complaint, such injuries and/or damages were incurred entirely as a result of misuse of the subject product without any negligence, strict product liability or breach of warranty on behalf of this Defendant.

**TWENTY-FIFTH SEPARATE DEFENSE**

Upon information and belief, that the product which forms the subject of this suit was misused, mishandled, abused or otherwise improperly operated, used and contained by the Plaintiff and/or by others over whom this Defendant had no control.

**TWENTY-SIXTH SEPARATE DEFENSE**

Recovery is barred by the doctrine of unclean hands.

**RESERVATION OF RIGHTS**

Defendant Tri-Union reserves the right, at or before trial, to bring additional defenses pending discovery and investigation of Plaintiff's claims in this action, and further to move to dismiss the Complaint and/or for summary judgment on the grounds the Complaint fails to state a claim upon which relief can be granted and/or the Defendant is entitled to judgment as a matter of law, based on any or all of the above defenses.

WHEREFORE, Defendant Tri-Union demands judgment dismissing Plaintiff's Complaint herein and further demands judgment over and against Plaintiff for the amount of any judgment obtained against this Defendant by Plaintiff, or on the basis of apportionment of responsibility, in such amounts as a jury or the Court may direct, together with the costs and disbursements of this action.

Dated: August 26, 2010

BONNER KIERNAN TREBACH  
& CROCIATA, LLP

By:



Kenneth A. Schoen, Esq. (KS7180)  
Attorneys for Defendant  
Tri-Union Seafoods, LLC d/b/a  
Chicken of the Sea