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and Foster Poultry Farms*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**FOSTER FARMS, LLC AND FOSTER
POULTRY FARMS,**)

Plaintiffs,)

v.)

**EVEREST NATIONAL INSURANCE
COMPANY,**)

Defendant.)

CASE NO. 21-cv-4356

[Jury Demand Endorsed Hereon]

COMPLAINT AND JURY DEMAND

Plaintiffs Foster Farms, LLC (“Foster Farms”) and Foster Poultry Farms (“Foster Poultry”) (collectively “Foster”), by and through undersigned counsel, bring this action and allege as follows:

NATURE OF THE CASE

1. This is an action against Defendant Everest National Insurance Company (“Everest”) for breach of contract and declaratory judgment pursuant to 28 U.S.C § 2201.

1 Everest sold Foster a liability insurance policy with antitrust coverage but has denied any
2 coverage obligation for three purported class action lawsuits that allege antitrust claims. *See*
3 *Olean Wholesale Grocery Coop., et al. v. Agri Stats, et al.*, No. 1:19-cv-8318 (N.D. Ill. filed Dec.
4 19, 2019); *Sandee's Catering v. Agri Stats, et al.*, No. 1:20-cv-2295 (N.D. Ill. filed Apr. 13,
5 2020); *Gnemi, LLC v. Agri Stats, Inc.*, No. 1:20-cv-07371 (N.D. Ill. filed Dec. 11, 2020)
6 (collectively "Turkey-Market Lawsuits"). Copies of the operative complaints are attached as
7 Exhibits A, B and C.
8

9 2. Foster Farms and Foster Poultry are family-owned, family-managed companies
10 with their headquarters in Livingston, California. They employ thousands of individuals in
11 California and elsewhere in the United States.

12 3. Everest sold Private Company Liability Policy, Number PC8ML00004-191 (the
13 "Policy") to Foster for the policy period May 7, 2019 to May 7, 2020 (the "Policy Period"). A
14 true and correct copy of the Policy is attached as Exhibit D.
15

16 4. As part of the Antitrust Coverage Endorsement ("Antitrust Coverage") in the
17 Policy, Everest agreed to provide broad coverage for antitrust claims. The Antitrust Coverage
18 adds a \$5 million limit for antitrust claims and deletes an exclusion in the Policy for claims
19 "based upon, arising out of or attributable to an actual or alleged violation of" the antitrust laws.

20 5. The Turkey-Market Lawsuits allege, among other things, antitrust claims against
21 Foster and other suppliers of turkey in connection with the sale and production of turkey. The
22 claims in the Turkey-Market Lawsuits, therefore, fall within the Antitrust Coverage.
23

24 6. After receiving notice of the Turkey-Market Lawsuits, Everest denied coverage
25 for any portion of Foster's defense and thereby breached its obligations under the Policy.
26
27
28

PARTIES

1
2 7. Foster Poultry is a corporation organized under the laws of California with its
3 principal place of business in California. Foster Poultry engages in the production of
4 conventional, organic and antibiotic-free food products. Foster Poultry’s portfolio offers a full
5 variety of fresh, frozen and ready-to-eat products that meet clear consumer needs.

6 8. Foster Farms is a corporation organized under the laws of California with its
7 principal place of business in California. Foster Farms, among other things, operates farms
8 where it raises animals and sells livestock feed and feed ingredients to local dairies. None of
9 Foster Farms’ members are domiciled, have its principal place of business, or are incorporated in
10 Delaware or New Jersey.
11

12 9. Defendant Everest is an insurance company organized under the laws of the State
13 of Delaware with its principal place of business in New Jersey.
14

JURISDICTION AND VENUE

15
16 10. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
17 1332 because complete diversity of citizenship exists between Foster and Everest and the amount
18 in controversy exceeds \$75,000.

19 11. The Court has personal jurisdiction over Everest because the Policy covers
20 Foster’s business operations in California and was issued and/or delivered in California, and
21 Foster’s principal place of business and state of organization is California.
22

23 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because a
24 substantial part of the events giving rise to the claim, including Everest’s sale of the Policy,
25 occurred in this District.
26
27
28

FACTUAL ALLEGATIONS

A. The Policy Has Broad Antitrust Coverage

13. The Policy provides insurance coverage for the period May 7, 2019 to May 7, 2020. Foster has paid hundreds of thousands of dollars in premiums to Everest and otherwise complied with all terms and conditions of the Policy.

14. Everest drafted the Policy, including the Antitrust Coverage, using standard-form language that it filed with state insurance regulators and over which it claims a copyright.

15. Under the Policy, Everest agreed that it would insure “all Loss for which the Company becomes legally obligated to pay on account of a Claim first made against the Company during the Policy Period . . . for a Wrongful Act.” Ex. D at 57 of 75 (Endorsement 17.) Everest defined “Wrongful Act” to include “any actual or alleged error, misstatement, misleading statement, neglect, breach of duty, omission or act by the Company[.]” Ex. D at 60 of 75 (Endorsement 17.)

16. The term “Loss” is defined to include “Claim Expenses,” which in turn is defined as “that part of a Loss consisting of the reasonable fees (including attorneys’ fees and experts’ fees) and expenses incurred by the Insureds (except any salaries, wages, overhead, benefits or benefit expenses associated with any Insured) in the investigation, defense or appeal of a Claim, including the premium for appeal, attachment or similar bonds (without any obligation by the Insurer to apply for or furnish such bonds).” Ex. D at 51, 59 of 75 (Endorsement 16.) Everest agreed in the Policy to “advance covered Claim Expenses within ninety (90) days after the receipt by the Insurer of properly detailed Claim Expenses invoices.” Ex. D at 12 of 75.

17. In the body of the Policy, Everest drafted a comprehensive antitrust exclusion, which would have barred loss from Claims “based upon, arising out of or attributable to an actual or alleged violation of the Sherman Anti-Trust Act, the Clayton Act or the Federal Trade

1 Commission Act, as amended, or any other federal, state, local, common or foreign laws
2 involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing, restraint of
3 trade, unfair trade practices or tortious interference with another’s actual or prospective business
4 or contractual relationships or opportunities; provided this exclusion shall not apply to any Claim
5 by one or more shareholders of the Company in their capacity as such” (the “Antitrust
6 Exclusion”). Ex. D at 22 of 75.

7
8 18. For an additional premium, Everest added broad Antitrust Coverage through the
9 addition of an endorsement. Ex. D at 71 of 75 (Endorsement No. 21).

10 19. Specifically, Everest agreed to pay up to a \$5 million limit and to cover Foster for
11 “all Loss for which the Company becomes legally obligated to pay on account of any Anti-Trust
12 Claim first made against the Company during the Policy Period” Ex. D at 71 of 75
13 (Endorsement No. 21).

14 20. Everest defined “Anti-Trust Claim” as “a Claim for violation of the Sherman
15 Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any other similar
16 federal, state, local or foreign law involving anti-trust, monopoly, price fixing, price
17 discrimination, predatory pricing or a violation of the Federal Trade Commission Act or any
18 unfair or deceptive trade practices related to business competition, tortious interference in
19 another’s business or contractual relationships, anti-trust, monopoly, price fixing, price
20 discrimination, or predatory pricing.” *Id.*

21
22 21. As part of the Antitrust Coverage, Everest also agreed to delete the Antitrust
23 Exclusion from the Policy. Everest’s intent in doing so was to make clear that antitrust claims
24 were covered – not excluded – under the Policy.

25
26 22. Prior to selling the Policy, Everest completed a detailed review of Foster’s
27 operations and the potential risks in selling Foster liability insurance coverage. In view of the
28

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