

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

FOUNDATION FOOD GROUP, INC.;
PRIME-PAK FOODS, INC.;

Plaintiffs,

v.

SELECTIVE WAY INSURANCE
COMPANY,

Defendant.

CASE NO.

2:21-CV-207-RWS

**COMPLAINT FOR DECLARATORY JUDGMENT
AND DEMAND FOR JURY TRIAL**

Pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, Plaintiffs Foundation Food Group, Inc. and Prime-Pak Foods, Inc. (collectively, “FFG”) file this Complaint for declaratory judgment, attorney’s fees, and demand for jury trial against Defendant Selective Way Insurance Company (“Selective”), and allege as follows:

SUMMARY

1. FFG owns and operates four poultry production plants in Gainesville, Georgia.

2. On and around January 28, 2021, a freezer in one of the poultry production plants, Plant 4, suffered physical damage and malfunctioned, causing a liquid nitrogen (LN2) overflow in the Plant 4 freezer room.

3. FFG employees were forced to evacuate Plant 4.

4. Six (6) FFG employees died as a result of the freezer incident (the “Incident”), and several others suffered physical injuries.

5. The Hall County Fire Department (“HCFD”) responded to the Incident and took control of Plant 4.

6. Federal government agencies launched investigations into the Incident and took control of Plant 4 from the HCFD.

7. Plant 4 was deemed an accident and crime scene; no one was allowed to enter for several days, and FFG was prevented from operating for several weeks.

8. As a result of the Incident, FFG suffered over \$2,000,000 in property loss, business income loss, and extra expense.

9. FFG maintains commercial general property insurance for Plant 4 with Selective.

10. FFG maintains the Selective Policy to cover risks like the January 28, 2021 Incident.

11. FFG promptly reported the Incident and its losses to Selective.

12. For the eight (8) months following the Incident, Selective has failed to pay any amount to cover FFG's losses.

13. Instead of paying covered losses, Selective has drowned FFG in requests for information and further explanations.

14. FFG has complied with all of Selective's requests and produced over 2400 pages of Bates-labeled documents to Selective.

15. FFG also submitted sworn Proofs of Loss for its claims, as well as follow-up narratives and further explanations requested by Selective.

16. Selective rejected FFG's Proofs of Loss in total and continues to request additional information from FFG.

17. By repeatedly failing to pay any amount towards FFG's over \$2,000,000 in losses, Selective has breached its duties to FFG under the Policy.

18. Selective's dilatory failure to pay FFG's covered losses has caused additional damage to FFG, including a forced sale of the company.

19. Without coverage from Selective, FFG continues and will continue to suffer additional damages.

PARTIES, JURISDICTION, AND VENUE

20. Plaintiff Foundation Food Group, Inc. is a Georgia corporation with its principal place of business in Gainesville, Hall County, Georgia. Foundation Food Group, Inc. is a citizen of Georgia.

21. Plaintiff Prime-Pak Foods, Inc. is a Georgia corporation with its principal place of business in Gainesville, Hall County, Georgia. Prime-Pak Foods, Inc. is a citizen of Georgia.

22. Defendant Selective is a New Jersey corporation with its principal place of business in New Jersey. Selective is a citizen of New Jersey.

23. Selective is registered with the Georgia Secretary of State to transact business in Georgia and does in fact transact business in Georgia. Selective may be served through its registered agent Corporation Service Company, 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

24. The amount in controversy exceeds \$75,000.

25. The Court has diversity jurisdiction of this case under 28 U.S.C. § 1332.

26. A substantial part of the events or omissions giving rise to the claims in this action occurred in this district and this division.

27. Defendants are subject to personal jurisdiction in this district and this division.

28. Venue is proper in this district and this division pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

I. THE UNDERLYING INCIDENT

A. FFG'S BUSINESS AND THE LN2 FREEZER INSTALLATION

29. FFG owns and operates four poultry processing plants in Gainesville, Hall County, Georgia.

30. One of FFG's processing plants, Plant 4, is located at 2076 Memorial Park Drive, Georgia.

31. Plant 4 houses five (5) production lines ("Lines 1-5").

32. Before 2020, FFG utilized an ammonia-based system in Plant 4 to freeze poultry products.

33. In 2020, FFG decided to switch from an ammonia-based freezer system to a liquid nitrogen ("LN2") freezer system.

34. FFG made this decision because LN2 freezer systems are more efficient than ammonia-based freezer systems.

35. FFG hired Messer, LLC ("Messer") to assist with its transition to an LN2 freezer system.

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