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Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 PENDLETON DIVISION**

FROERER FARMS, Inc., an Oregon corporation,)

Plaintiff,)

v.)

UNITED STATES DEPARTMENT OF)
 AGRICULTURE, and FEDERAL CROP)
 INSURANCE CORPORATION,)

Defendants.)

CASE NO. 2:22-cv-01035

COMPLAINT

Jury Trial Demanded

I. INTRODUCTION

1. After faithfully paying federal crop insurance policy premiums and complying with all other relevant policy terms and conditions, Plaintiff, Froerer Farms, Inc. (“Froerer Farms”), was denied claim benefits due to arbitrary and capricious agency interpretations which purported to let the carrier retroactively void the policy because Froerer Farms’ authorized representative was supposedly incompetent to sign. Froerer Farms comes to this Court for a declaration of its rights.

II. PARTIES, JURISDICTION, VENUE, DEMAND FOR JURY TRIAL

1 2. Plaintiff Froerer Farms, Inc. is an Oregon corporation doing business within the District of
2 Oregon, with its principal place of business in Malheur County.

3 3. The Federal Crop Insurance Corporation (“FCIC”) is a wholly owned government
4 corporation managed by the Risk Management Agency (“RMA”) of the United States Department
5 of Agriculture (“USDA”).

6 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

7 5. Venue lies properly in this Court under 28 U.S.C. § 1391(e)(1).

8 6. Trial by jury is hereby demanded.

9
10 **III. FACTS**

11 7. Congress passed the Federal Crop Insurance Act (“FCIA”) in 1938, and enacted significant
12 updates in 1980 and 1994.

13 8. The purpose of the FCIA was and is to protect farmers from vagaries of the market and
14 nature and to encourage innovation.

15 9. It was not Congress’s intent for hyper-technical agency regulations and carrier-friendly
16 interpretations to provide windfalls to insurance companies.

17 10. Under the FCIA, crop insurance programs are administered by the FCIC and RMA,
18 which have authorized several approved insurance providers (“AIPs”) to issue policies under terms
19 and conditions approved by the FCIC, subject to FCIC regulations and guidance.

20 11. In 2016, by corporate resolution, Froerer Farms authorized Chase Froerer to pursue
21 crop insurance on its behalf.

22 12. Froerer Farms also executed a Power of Attorney form to confirm Chase Froerer’s
23 authority. Anticipating that it would purchase insurance from Rain and Hail L.L.C., Froerer Farms
24 specified that the power of attorney was “in connection with crop insurance polic(ies) issued or to
25

1 be issued through Rain and Hail, L.L.C.,” but also specified that he was empowered to, among
2 other things, “make application(s) for insurance” on Froerer Farms’ behalf.

3 13. Froerer Farms’ broker ultimately directed Mr. Froerer in submitting an application on
4 behalf of Froerer Farms to Hudson Insurance Company (“Hudson”) instead.

5 14. Hudson accepted the application and issued a Whole Farm Revenue Protection crop
6 insurance policy (the “Policy”) to Froerer Farms.

7 15. In 2019, after two years of faithfully paying premiums, submitting reports as required,
8 and substantially performing all other obligations under the Policy, Froerer Farms submitted a
9 claim for loss of revenue to Hudson under the Policy.

10 16. On or about June 17, 2019, Hudson rejected the claim, alleging that the Power of
11 Attorney had not authorized Chase Froerer to execute the crop insurance application and that it
12 was retroactively void.

13 17. Froerer Farms initiated arbitration against Hudson.

14 18. Pursuant to Policy terms, the parties to that arbitration jointly sought determinations from
15 FCIC as to the interpretation of the Policy and related regulatory guidance, particularly the FCIC’s
16 General Standards Handbook (the “Handbook”), which provides standards for AIPs’
17 administration of crop insurance policies.

18 19. The most relevant provisions interpreted by USDA were WFRP Policy Section 4(h) and
19 Handbook §§ 854 and 855, reproduced below in most relevant part:
20

21 **WFRP Policy Section 4(h) states:**

22 4. Life of Policy, Termination, and Cancellation

23 ***

24 (h) Any person may sign any document relative to crop insurance coverage on
25 behalf of any other person covered by such a policy, provided that the person

has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 15(j), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

General Standards Handbook

854 Signatures

A. Requirement

Any crop insurance document requiring a signature must be signed by the person whose signature is required (e.g., the applicant must sign the Application). A POA or other legally sufficient document is required for any person who is authorized to sign on behalf of the required person. If the applicant is a minor, the parent or court-appointed guardian must sign all documents that require a signature unless the minor has been legally emancipated.

B. Acceptable Signature Types

Acceptable signatures for crop insurance include the:

- (1) signature of the required person (e.g., applicant, insured, or grantor);
- (2) signature of the authorized representative (or attorney-in-fact) granted by a POA; and
- (3) signature of the authorized representative granted by a legally sufficient document.

855. Power of Attorney

Insureds may grant a third-party the authority to sign crop insurance documents on their behalf if a legally executed POA is provided to the AIP.

A. POA Types

- (1) A POA that is executed in accordance with the laws of the state of execution is acceptable for crop insurance purposes. Such POA must be in writing and specify the powers granted to the authorized representative by the grantor. A POA is executed when it is signed.

....

B. POA Requirements

(1) Authority

POAs which grant authority to sign contracts and legally bind the grantor(s) are sufficient for crop insurance purposes. The POA must specify the person authorized, the period of authorization, and powers granted.

Exception: Oral or open powers of attorney are not acceptable. An oral or open POA is a POA that does not specify who the authorized

representative receiving the power is at the time of execution.

20. The term “legally sufficient document” is not defined in the Policy or Handbook.

21. After receiving the initial claim denial, Froerer Farms executed an additional Power of Attorney to Chase Froerer, which expressly authorized him retroactively to “negotiate, acquire, and manage all matters involving insurance policies” for Froerer Farms.

22. Despite Froerer Farms’ express written corporate resolution and the two executed Powers of Attorney, FCIC interpreted its Policy and Handbook adversely to Froerer Farms and in favor of Hudson in every particular.

23. Under the FCIC’s interpretations, Hudson was not obliged to honor Froerer Farms’ claim and the Policy was void ab initio.

24. Copies of the FCIC’s interpretations, from which review is sought herein, are attached hereto as Exhibits A–F.

25. The FCIC’s interpretations were plainly erroneous, arbitrary, and capricious in at least the following points:

- a. The FCIC reads ¶ 4(h) of the Policy, which on its face plainly applies only to submissions by already-covered insured persons, to apply to applications for policies by uncovered persons. Based on this interpretation, the FCIC wrongly concluded that an applicant cannot ratify the actions of an intended agent with a subsequently executed Power of Attorney.
- b. The FCIC reads “other legally sufficient document” to mean, as to a corporate applicant, only its Articles of Incorporation, even though

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