

<b>AMERICAN GROWERS INSURANCE COMPANY,</b>	)	<b>AGBCA No. 99-133-F</b>
<b>(David Alderman)</b>	)	
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**November 13, 2001**

**Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

This appeal arises out of a 1994 Standard Reinsurance Agreement (SRA) between American Growers Insurance Company (Appellant) and the Federal Crop Insurance Corporation (FCIC or Respondent). Under the SRA, American Growers sells and administers multi-peril crop insurance (MPCI) policies, which insurance is reinsured by the FCIC. The Risk Management Agency (RMA), an agency of the U. S. Department of Agriculture (USDA), administers and oversees the federal crop insurance program on behalf of FCIC. Initially, FCIC had entered into an SRA with Redland Insurance. Beginning in June 1995, American Growers agreed to assume all liability for the MPCI business written under all past and present SRA's between Redland and FCIC. The Board has jurisdiction over appeals from FCIC final determinations pursuant to 7 CFR 24.4 (b) and 400.169(d).

In this appeal FCIC issued a final determination in April 1997, denying reinsurance on Appellant's 1994 multi-peril crop insurance policy issued to David Alderman, American Growers' insured and denying financial protection to Appellant under Managers Bulletin (MGR-001). On January 25, 1999, Appellant filed an appeal which on its face was not timely. However, Appellant asserted that FCIC had failed and refused to disclose to Appellant the basis of FCIC's decision and had concealed from Appellant, during the applicable appeal period, the Government's agreements to reduce the amounts collectible from the Appellant's insured, Alderman.

The dispute initially appeared to center on a determination by FCIC that Appellant was required to reimburse FCIC the sum of \$24,094, due to payments made to the insured which were determined to be based on fraudulent misrepresentations by the insured, which FCIC calculated at \$92,337. In a criminal proceeding, Appellant's insured, Alderman, pled guilty and agreed to pay the Government \$68,243 in restitution. FCIC then appeared to look to American Growers for the balance in the sum of \$24,094. American Growers defended on the basis that under MGR-001, it was entitled to relief from having to make additional restitution because it had substantially complied with FCIC rules, regulations and policies regarding adjusting claims of loss and its actions did not proximately contribute to the overpayment to Alderman. FCIC had contended that Appellant did not follow practices and procedures approved by FCIC in adjustment of Alderman's claim.

On March 25, 1999, FCIC filed a motion to dismiss, claiming a lack of jurisdiction on the basis that Appellant failed to perfect a timely appeal of FCIC's determination letter regarding the \$24,094. Appellant replied asserting that the final determination only addressed Appellant's claim for relief under MGR-001, but did not address whether FCIC or American Growers had the legal authority to collect, or whether FCIC could force American Growers to collect from Alderman and return to FCIC the amounts in excess of those ordered by the court pursuant to the plea agreement. The briefs and supporting documentation by the parties, served to raise more questions as to fact and law than they answered. It also became questionable as to whether the \$68,243 agreed to by Alderman was also at issue in this appeal.

As a result of the questions raised in the various filings, the Board engaged in conferences with the parties, in an attempt to discern the operative facts. At that point it was not clear on what the parties agreed and on what they disagreed. Further, both parties had gaps in their respective factual explanations. By letter of February 24, 2000, the Board stated to the parties that it was clear to the Board that the position of the parties needed to be clarified before any decision could be written. The Board then gave the parties 30 days to confer and attempt to sort out the various disputed matters. The parties were told by letter that if they could not settle the appeal, then they were to file a joint letter setting forth the issues on which they were not in agreement. The parties responded on April 5, 2000. At that time they advised the Board that they were trying to work out an agreement and requested additional time.

Thereafter, the parties engaged in negotiation and the exchange of information. The Board granted various extensions. On February 26, 2001, the Board again held a conference with the parties, at which time it learned that a settlement of several matters involving American Growers and FCIC had been reached and this matter was to be included in that apparent overall settlement. Counsel for

FCIC could not confirm the agreement at that time. Thereafter, the Board received notification that a settlement would be entered into. On May 14, 2001, the Board received a letter from Appellant advising the Board that Appellant would voluntarily dismiss the appeal as soon as the accounting records were adjusted. On May 25, 2001, the Appellant moved for dismissal.

**DECISION**

Based on the motion of the Appellant, the appeal is dismissed with prejudice.

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**HOWARD A. POLLACK**

Administrative Judge

**Concurring:**

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**EDWARD HOURY**

Administrative Judge

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**ANNE W. WESTBROOK**

Administrative Judge

**Issued at Washington, D. C.**

**November 13, 2001**