

**AMERICAN GROWERS INSURANCE
COMPANY (Ronald Boilini),**

Appellant

Representing the Appellant:

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Representing the Government:

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AGBCA No. 99-134-F

RULING ON GOVERNMENT’S MOTION TO DISMISS

July 18, 2001

Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

On January 27, 1999, the Board received this appeal from American Growers Insurance Company, the Appellant. The appeal arises out of a Standard Reinsurance Agreement (SRA) originally executed between City Insurance Company of New York, New York, and the Federal Crop Insurance Corporation (FCIC) on August 20, 1986, and October 24, 1986, respectively. (Appeal File (AF) 1- 45).¹ At the time Optional Amendment No. 10 to the SRA (July 1, 1987) was executed, the company is shown as Redland Insurance Company of Council Bluffs, Iowa (AF 10). This appeal arises under the 1991 SRA. In a letter dated July 14, 1995, American Growers Insurance Company

¹ Exhibit A to the SRA is a list of the names and addresses of six insurance companies including City Insurance Company and Redland Insurance Company. Exhibit X contains the name and address of American Agrisurance, N. 112 University, Suite 100, Spokane, Washington 99206, Steve Witthuhn, 509-926-2515. No explanation of the meaning of either exhibit has been provided.

agreed to assume all liability for the Multiple Peril Crop Insurance business written under past and present SRAs with Redland. The appeal has been made in the name of American Growers Insurance Company (American Growers or Appellant). The SRA contains no federal contract number.

The appeal raised the issue whether American Growers is liable to the FCIC for an alleged overpayment of \$57,446, excluding interest, for indemnity payment made pertaining to insured Ronald Boilini. The insured was the subject of an Inspector General investigation and a criminal proceeding wherein he pled guilty to one of six counts.

The Government moved to dismiss the appeal as untimely. Appellant filed a Resistance to the Motion to Dismiss. At issue was whether the Board lacked jurisdiction to hear the appeal because the Appellant failed to file an appeal within 90 days of a properly designated final agency decision. Treating the motion as one for summary judgment, a Board majority denied the motion. American Growers Insurance Co., AGBCA No. 99-134-F, 00-2 BCA ¶ 31,050. Respondent's motion for reconsideration was denied. American Growers Insurance Co., AGBCA No. 99-134-F, 00-2 BCA ¶ 30,967.

Thereafter, the parties agreed to submit the appeal for a decision on the record under Rule 11 of the Board's rules. Later, however, the Board was informed that the parties had settled the appeal. The Board has now received from Appellant's counsel a written dismissal of its appeal.

RULING

The Board dismisses the appeal as settled.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
July 18, 2001