

GREAT AMERICAN INSURANCE)	AGBCA No. 97-176-F
COMPANIES)	
(JOHN W. LYERLY, INSURED),)	
)	
Appellant)	
)	
Representing the Appellant:)	
)	
W. Kurt Henke)	
Attorney At Law)	
Henke, Heaton & Bufkin)	
P.O. Box 39)	
Clarksdale, Mississippi 38614)	
)	
Representing for the Government:)	
)	
Kimberley E. Arrigo)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
Room 2449 South Building)	
1400 Independence Avenue, S.W.)	
Washington, DC 20250)	

DECISION OF THE BOARD OF CONTRACT APPEALS

November 18, 1998

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This appeal relates to a 1993 crop year Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government corporation within the U.S. Department of Agriculture, and Great American Insurance Companies (John W. Lyerly, Insured) of Cincinnati, Ohio (Great American or Appellant). Under the SRA, Appellant sells and administers crop insurance policies in furtherance of the Government's crop insurance program. The Board has jurisdiction over appeals relating to SRAs pursuant to 7 CFR § 400.169(a)-(d) and 7 CFR § 24.4(b).

The dispute involved allegations that Appellant's loss adjuster failed to follow approved procedures (1) dealing with misrepresentation by the insured, and (2) involving shifting and commingling of production units. According to FCIC there was evidence that the insured provided misleading information through which it secured indemnity payments. FCIC sought the reimbursement of the

reinsurance from Appellant on the basis that Appellant's loss adjuster did not follow FCIC-approved policies and procedures, among which were verification failures as to the timeliness of the filing of the loss, and failures in verifying and investigating transfers by the insured of production from loss to non-loss units.

FCIC through its Raleigh, North Carolina Field Office issued initial findings on the matter on February 28, 1995. In its initial findings, FCIC determined that Appellant must forfeit the reinsurance paid to the insured. The initial findings were then affirmed in a final determination which Appellant then appealed to the Director of Risk Compliance Division, FCIC.

By letter of April 18, 1997, FCIC issued the Determination of the Acting Deputy Administrator, Risk Compliance Division, in which FCIC denied Appellant's appeal of FCIC's claim for recoupment of the \$41,437 in reinsurance. Appellant timely appealed that determination by letter of June 16, 1997, and the matter was thereupon docketed at the Board.

After the filing of pleadings and supplementation to the Rule 4 file, 7 CFR § 24.21, Rule 4, the parties advised the Board in a telephone conference of March 6, 1998, that they were engaging in settlement efforts, including the possibility of utilizing an alternate dispute resolution procedure. The parties then proceeded to engage in mediation.

By transmittal of June 30, 1998, the Board received a Stipulation of Dismissal with Prejudice executed by counsel and a Full and Final Release executed by officials of the respective parties which set out the parameters of the settlement. The documents called for dismissal of the appeal with prejudice.

DECISION

The appeal is dismissed with prejudice pursuant to the settlement.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, DC
November 18, 1998