

RURAL COMMUNITY INSURANCE)	AGBCA No. 99-130-F
COMPANY)	
(Prieto and Hansen),)	
)	
Appellant)	
)	
Representing the Appellant:)	
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Larry M. Rosenstein)	
Levin & Rosenstein, P.C.)	
1130 17 th Street, N.W.)	
Suite 314)	
Washington, D.C. 20036)	
)	
Representing the Government:)	
)	
Robert J. Crockett)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
33 New Montgomery, 17 th Floor)	
San Francisco, California 94105-4511)	

RULING ON GOVERNMENT’S MOTION FOR PARTIAL DISMISSAL

September 2, 1999

OPINION BY ADMINISTRATIVE JUDGE ANNE W. WESTBROOK

On January 11, 1999, the Board received this appeal from Rural Community Insurance Services (RCIS). On March 2, 1999, the Board received an Amended Notice of Appeal and Complaint. The amended Notice of Appeal added Rural Community Insurance Company (RCIC) as an appellant.¹ The appeal arises under a Standard Reinsurance Agreement (SRA) between RCIC of Minneapolis, Minnesota (Appellant), and the Federal Crop Insurance Corporation (FCIC or Government), and involves Compliance Case No. SA-EF00-236 relating to 32 RCIC 1994 crop year raisin

¹ In a May 4, 1999 letter to the Board, Appellant’s counsel confirmed that the SRA is between RCIC and the FCIC and RCIC is the only necessary party to this appeal other than FCIC. Hence, the Board has styled the case in the name of RCIC only. However, where documents in the record refer to RCIS, this ruling will also refer to RCIS.

policyholders. Under the SRA, Appellant sells and administers Multi-Peril Crop Insurance (MPCI) contracts in furtherance of the Government's crop insurance program. The Risk Management Agency (RMA), an agency of the U. S. Department of Agriculture, has jurisdiction over the supervision of the FCIC and administration and oversight of the programs authorized by the Federal Crop Insurance Act.

At issue are 32 separate final determinations by the Sacramento Compliance Field Office (SCFO). RMA did not issue final administrative determinations in any of the cases. Thereafter, Appellant appealed to the Board of Contract Appeals. The Government has moved to dismiss the appeal as it pertains to two of the insureds, Eric Prieto (Prieto) and Hansen/Hansen/McInt/Smith (Hansen, et al.). The Government argues that the complaint makes no factual allegations specific to the facts surrounding the claims of these two insureds and that the portions of the appeal pertaining to those two policies should be dismissed.

The Board has jurisdiction to hear this appeal pursuant to 7 C.F.R. §§ 24.4(b) and 400.169(b).

FINDINGS OF FACT

1. This appeal arises under an SRA between Appellant and FCIC. The SCFO determinations recite that they are relevant to the 1994 crop year. In a telephonic conference with the Board, the parties agreed the SRA to be construed is the 1995 SRA.
2. On January 16, 1998, the Director, Risk Operations Division of RMA transmitted to Appellant the initial findings of the SCFO in 32 separate cases in which SCFO concluded that errors by Appellant resulted in a total indemnity overpayment of \$1,414,480 and a premium overpayment of \$6,597. (Appeal File (AF) 94-1033.) By letter dated August 12, 1998, Appellant's counsel forwarded Appellant's "response to and appeal from" the initial determinations to the Director, Reinsurance Services Division. The letter stated that RCIS "waives its rights to an initial appeal to the Field Office" (AF 1034). The SCFO issued "final determinations" dated July 31, 1998. (AF 1076-1261.) Except for one reduction of \$4,132 in indemnity overpayment and one reduction of \$1,205 in premium overstatement, the final determinations were the same as the initial determinations.
3. By letter of August 12, 1998, Appellant's counsel wrote the Director, Reinsurance Services Division, stating "this is an appeal" from the final determinations and asking that he "reconsider each determination" (AF 1262). The Director replied the same date stating that the "request for reconsideration" was being forwarded to the Director of the Risk Compliance Division. He quoted from the final determinations which stated that if RCIS did not agree with the determinations, "you may request reconsideration in accordance with Title 7, Code of Federal Regulations, Part 400.169." Any further correspondence regarding "reconsideration," he stated, should be sent to the Risk Compliance Division. (AF 1263.) By letter dated August 20, 1998, the Director of the Insurance Services Branch, Office of Risk Compliance acknowledged receipt of the "request for an appeal under "& [sic] 7 C.F.R. 400.169 of Compliance case No. SA-EFOO-236." He stated that his

decision would be made as expeditiously as possible and that should Appellant wish to appeal the decision, 7 C.F.R. § 400.169 provides for an appeal to the Department of Agriculture Board of Contract Appeals. (AF 1265-6.) The Director of the Risk Compliance Division failed to issue a decision within the next 4½ months. Appellant's appeal dated January 4, 1999, was received at the Board of Contract Appeals January 11, 1999.²

4. Appellant's Notice of Appeal was accompanied by a Complaint. By letter dated February 26, 1999, Appellant filed an amended Notice of Appeal and Complaint. The Complaint alleged that it involved the 32 RCIS policyholders whose names and policy numbers were set forth in an appendix to the Notice of Appeal and Complaint. It also alleged that it involved \$1,410,348 of alleged indemnity overpayments and \$4,392 of alleged premium overstatements. Count I of the Complaint contained allegations concerning the M8-Raisin Handbook; an October 13, 1994 Sacramento Regional Field Office Informational Memorandum pertinent to raisin reconditioning; and the Raisin Endorsement (90-17). Count II contains additional allegations concerning the Informational Memorandum. The Complaint did not make individual allegations about the circumstances of the claims of any of the 32 individual policyholders.

5. The Government filed an Answer which was received at the Board March 12, 1999. The Answer included Motions to Dismiss the claims concerning the policies of Prieto and Hansen, et al., on the grounds that the only factual dispute raised in the action involves loss adjusting and reconditioning of rain damaged raisins under FCIC Handbook M8-Raisins and the Sacramento informational memorandum of October 13, 1994.

6. The Government is correct that the Complaint does not allege facts specific to the claims for overpayment regarding Prieto and Hansen, et al. In moving to dismiss, the Government relies on facts as set out in the initial and final determinations to show that the Prieto and Hansen, et al., claims concern factual issues unlike those of the other 30 claims. The Government provides no authority to support the contention that the omission to describe the facts of these two claims requires dismissal for failure to state a claim upon which relief may be granted.

7. Appellant responded arguing that its Complaint satisfied the requirements for notice pleading in that the Complaint had generally alleged that no factual bases supported the initial and final determinations of the SCFO as to each and every one of the 32 policyholders. The Government filed a response to Appellant's Opposition to the Motion to Dismiss relying on the paragraphs in the Complaint which, the Government contends, erroneously alleged that the Government had applied the Raisin Handbook and other documents pertaining to raisin crop to each and every one of the claims for overpayment of indemnity. Again, the Government supplied no authority suggesting that this error required dismissal of the two claims.

² Despite the fact that both parties have used the terms, "appeal", "initial appeal" and "reconsideration" in different ways than the terms are used in the current regulation, 7 C.F.R. § 400.169, counsel for both parties have expressed agreement that there has been no final agency determination; that Appellant has filed a "deemed denial" appeal; and that the Board has jurisdiction under 7 C.F.R. § 400.169(b).

8. On the record before the Board, it appears that the dispute concerning the insured, Prieto, involves an alleged overpayment because the insured received an indemnity based upon a 100 percent share of the crop although allegedly he had less of a share. Regarding Hansen, et al., the dispute is whether the claim was for an uninsured risk rather than loss due to rain. Because no facts concerning those questions were pled in the Complaint, the Government contends that no claim has been stated upon which relief can be granted.

DISCUSSION

In general, a case should be dismissed for failure to state a claim upon which relief may be granted only when that conclusion may be reached by looking solely to the pleadings. Federal Rules of Civil Procedure 12(b) provides that when a motion to dismiss is based on a failure to state a claim upon which relief can be granted, and matters outside the pleadings are considered, the motion should be treated as one for summary judgment pursuant to Federal Rules of Civil Procedure 56. Automated Power Systems, Inc., DOTBCA Nos. 2925, et al., 98-1 BCA ¶29,568; RBW & Associates, AGBCA No. 95-208-1, 96-2 BCA ¶ 28,416; Walker Equipment v. International Boundary & Water Commission, GSBCA No. 11527-IBWC, 93-3 BCA ¶ 25,954. While the Government submits no documents outside the pleadings with its motion, the Government relies on facts recited in the agency determinations and not alleged in the pleadings, to form the basis of its motion. Thus, the Board here treats the motion as one for summary judgment under Federal Rules of Civil Procedure 56. In so doing, we base our ruling on matters outside the pleadings, i.e., the documents in the Appeal File.

Granting a Motion for Summary Judgment is appropriate only where there are no material facts in dispute, so the moving party is entitled to judgment as a matter of law. John R. Wood Trucking, Inc., AGBCA No. 97-158-1, 98-1 BCA ¶ 29,644, citing Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). All inferences are to be made in favor of the non-moving party. John R. Wood Trucking, Inc. citing Hughes Aircraft Co., ASBCA No. 30144, 90-2 BCA ¶ 22,847. The Government has not shown an absence of disputed material facts. The record before the Board indicates that the matters were raised before FCIC and that disputed issues exist, requiring the Board to deny the motion. The record shows that the Government contends that the insured Prieto was overpaid because he did not have a 100 percent interest in the crop and Appellant paid based on his having a 100 percent interest. Appellant contends that there were contrary indications as to the amount of ownership and proof is needed to show the amount of insured's share. In the case of Hansen, et al., the Government asserts that the record indicates that Appellant paid the insureds based on their having suffered a loss due to rain, an insurable risk, alleging that the loss resulted from a lack of workers to harvest the crop, an uninsured risk. Appellant asserts, with support, that it will present proof to contradict the factual conclusions reached by the Government. In both cases, material facts are at issue. Thus, the appeals are not appropriate for disposition on a motion for summary judgment.

RULING

The Government's motion is denied.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
September 2, 1999