

AMERICAN GROWERS INSURANCE COMPANY,)
(1996 Prevented Planting))

AGBCA No. 2000-160-R

Appellant)

Representing the Appellant:)

Frank W. Pechacek, Jr.)
Bruce B. Green)
Willson & Pechacek)
P.O. Box 2029)
Council Bluffs, Iowa 51502)

Representing the Government:)

Kimberley E. Arrigo)
Office of the General Counsel)
U. S. Department of Agriculture)
Room 4344, South Building)
1400 Independence Avenue, S.W.)
Washington, D.C. 20250-1400)

RULING ON APPELLANT'S MOTION FOR RECONSIDERATION

September 7, 2000

Before HOURY, POLLACK, and VERGILIO, Administrative Judges.

Opinion by Administrative Judge VERGILIO; separate dissenting opinion by Administrative Judge POLLACK.

Opinion by Administrative Judge VERGILIO.

On July 13, 2000, the Board received from American Growers Insurance Company, of Council Bluffs, Iowa, a motion for reconsideration of the decision issued on June 15, 2000, involving the U. S. Department of Agriculture, Federal Crop Insurance Corporation. In that decision, the Board

granted a motion for summary judgment filed by the Government, and denied the appeal of the insurance company. American Growers Insurance Co., AGBCA No. 98-200-F, 00-2 BCA ¶ 30,980. On August 30, 2000, the Government filed a reply, opposing the requested reconsideration.

In its motion for reconsideration, the insurance company provides no basis meriting reconsideration. The reargument of alleged facts and the law do not constitute a valid basis for reconsideration. As already expressed in the three separate opinions resolving the underlying matter, the Board considered the various arguments presented in the latest motions. The insurance company's disagreement with the conclusions of the judges in the majority may be understandable, but does not provide a basis to revisit the Board's determinations. We each have reviewed the motion and the Government's response and conclude that no basis for reconsideration has been presented to revisit our own opinion.

RULING

The Board denies the insurance company's motion for reconsideration.

JOSEPH A. VERGILIO

Administrative Judge

I concur:

EDWARD HOURY

Administrative Judge

POLLACK, Administrative Judge, dissenting.

I reaffirm here my dissent to the decision of my colleagues to grant summary judgment in this proceeding. I will not here restate the basis or my reasoning, as that has already been set forth in my initial dissent. From my perspective, we need a hearing or further proceedings to sort out what the parties intended, how they understood the contract, and whether Federal Crop Insurance Corporation (FCIC) met its essential obligations or not.

That said, I am compelled to address one particular aspect regarding the status of this appeal, which was brought home through the FCIC brief opposing the reconsideration. While the Board by a majority of two judges determined that summary judgment was warranted, the reasoning and bases for those decisions were not the same. I will not here go into the various differences, other than to point out that certain matters and legal conclusions were solely that of the individual deciding judge

and not that of both majority judges. In assessing the Board's position, as to this appeal and as to its effect on any future litigation that must be recognized.

HOWARD A. POLLACK

Administrative Judge

Issued at Washington, D.C.

September 7, 2000