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| RAIN AND HAIL INSURANCE SERVICE, INC. |) | AGBCA No. 99-123-F |
| (B. C. O’Neal), |) | |
| |) | |
| Appellant |) | |
| |) | |
| Representing the Appellant: |) | |
| |) | |
| Bruce B. Green |) | |
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| |) | |
| Representing the Government: |) | |
| |) | |
| Mark R. Simpson |) | |
| Office of the General Counsel |) | |
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DECISION OF THE BOARD OF CONTRACT APPEALS

 April 18, 2000

Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge HOURY.

This appeal arose under a 1992 Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government corporation within the U. S. Department of Agriculture, and Rain and Hail Insurance Service, Inc., of West Des Moines, Iowa (Appellant).¹ Under the SRA, Appellant sells and administers Multi-Peril Crop Insurance (MPCI) policies in furtherance of the Government’s crop insurance program. The appeal also relates to FCIC

¹ Appellant asserts that pursuant to a plan of reorganization adopted by the Rain and Hail Insurance Service (RHIS) shareholders, Rain and Hail Limited Liability Corporation (RHLLC) replaced RHIS as the operational entity under the SRA, and that the rights and obligations under the SRA belong to RHLLC. The Government concurs that RHLLC is the proper party (Government counsel letter of Jan. 18, 2000). However, since the original appeal was filed in the name of RHIS, the Board retains RHIS in the appeal caption.

Manager's Bulletin, MGR 93-020, which allows reinsurers such as Appellant to recoup certain litigation expenses incurred administering crop insurance policies, if conditions in the MGR 93-020 are met.

The undisputed facts indicate that Appellant insured a producer (B. C. O'Neal) who failed to pay Appellant the insurance premiums for the 1992 crop year. Appellant began collection efforts against the producer, who filed suit against Appellant in the Common Pleas Court of South Carolina. The producer alleged that Appellant failed to timely or correctly disclose the amount of premiums, the terms of coverage, and that Appellant failed to timely process the producer's claim for losses to tobacco and cotton crops. The producer further alleged that Appellant acted in bad faith, and was guilty of unfair trade practices. The producer sought punitive damages, incidental and consequential damages, treble damages, attorney fees and costs. The litigation was settled.

MGR 93-020 provided for reimbursement of litigation expenses and reasonable attorney fees if the litigation involved an attack on FCIC-approved program procedures, regulations, and/or crop policies, and the probability of a court ruling which may set a legal precedent detrimental to the crop insurance program.

Pursuant to MGR 93-020, Appellant filed a claim with FCIC for the litigation expenses and attorney fees. FCIC denied Appellant's claim, concluding that the litigation involved whether Appellant's agent (1) provided premium coverage at the time of purchase, (2) properly denied indemnity, and (3) attempted to collect an undisclosed and exorbitant premium. Moreover, FCIC noted that the litigation was settled and could not have established a detrimental precedent, as required by MGR 93-020, as a condition of recoupment. Appellant filed a timely appeal. The Board has jurisdiction pursuant to 7 C.F.R. § 24.4(b) and 7 C.F.R. § 400.169(a).

The pleadings and Rule 4 file were submitted and supplemented. After a telephone conference call, the parties agreed to have the Board decide the appeal pursuant to Rule 11, Submission Without a Hearing. The parties filed briefs. Subsequently, the parties reached a settlement agreement and requested that the Board dismiss the appeal with prejudice.

DECISION

The appeal is dismissed as settled.

EDWARD HOURY
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
April 18, 2000