**RURAL COMMUNITY INSURANCE SERVICES, (J. BOGESTAD & SON FARM, INC.)** ) **AGBCA No. 98-173-F**

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**RULING ON GOVERNMENT'S MOTION TO DISMISS**

November 24, 1998

**OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY**

This appeal relates to a Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC) a wholly-owned Government corporation within the U.S. Department of Agriculture (USDA), and Rural Community Insurance Services of Anoka, Minnesota (Appellant). Under the SRA, Appellant was authorized to sell and administer Multi-Peril Crop Insurance (MPCI) policies in furtherance of the Government's crop insurance program.

Appellant paid an indemnity under an MPCI policy to an insured[1] for a 1993 wheat crop loss, and sought reinsurance for the indemnity from FCIC under the terms of the SRA. The St. Paul Compliance Field Office (Field Office) of the USDA Risk Management Agency concluded, on behalf of FCIC, that the insured did not have an insurable interest in the crop. The insured apparently did not acquire an interest in the crop until the middle of the growing season when the owner concluded it was not worthwhile to produce the crop and gave it to the insured as payment

[1] J. Bogestad & Son Farm, Inc., was the insured.

for his services. Consequently, on April 8, 1998, the Director of the Field Office denied Appellant's claim for reinsurance. The Field Office advised that Appellant could appeal the determination within 45 days in accordance with 7 CFR § 400.169(d) to the Risk Compliance Division of the Risk Management Agency in Washington, D.C. Appellant then filed this appeal with the Board.

The Appellant has brought this case under regulations. The Board has jurisdiction of appeals of final administrative determinations of the FCIC pertaining to SRAs under 7 CFR § 400.169(d). See 7 CFR § 24.4(b). The Government has filed a Motion to Dismiss on the basis that the Field Office's denial of Appellant's claim for reinsurance was not a final administrative determination within the meaning of 7 CFR § 24.4(b). Appellant asserts that the Director of the Risk Compliance Division in Washington D.C., had already determined that the case would not be reopened and that it would be futile to resubmit the case to the Director as a condition precedent to an appeal to the Board. Appellant also asserts that the appeal to the Board is required to exhaust its administrative remedies but that a return to the Director is not.

## FINDINGS OF FACT

1. On September 29, 1995, the Field Office denied Appellant's request for reinsurance for an indemnity paid an insured for a 1993 wheat crop loss, on the basis that the insured did not have an insurable interest in 474 acres and that 70 acres had been improperly insured. Consequently, the Field Office concluded that Appellant overpaid the indemnity and overstated the premium.

2. Based upon what Appellant characterized as new information, Appellant requested the Director of the Risk Compliance Division of the Risk Management Agency in Washington, D.C., to review the Field Office's determination. The "new" information was referred by the Director back to the Field Office for further evaluation. However, the Field Office had already been aware of and considered the "new" information in their prior determination. The Director reviewed the Field Office's analysis and agreed with it. On this basis, in an August 22, 1996 letter to Appellant, the Director stated: "I have determined that the case will not be re-opened and the findings will not be re-evaluated. If you have further questions please contact . . . of my staff."

3. On July 24, 1997, the Field Office was informed that in an arbitration proceeding between Appellant and the insured concerning the indemnity, the arbitrator ruled that the insured was entitled to an indemnity. Also, the Risk Management Agency filed an action with the USDA Office of Administrative Law Judges[2] (OALJ) seeking to have the reinsured suspended or debarred from purchasing insurance for 2 years, on the bases of the insured's alleged willfully providing false and inaccurate information. Although the OALJ dismissed the action against the insured, the OALJ concluded that the Risk Management Agency was not bound by the arbitrator's decision because the Risk Management Agency was not a party to that proceeding. Appellant paid the insured the indemnity found due by the arbitrator and again sought reinsurance from the FCIC.

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[2]Appellant incorrectly refers to this action as before the Board of Contract Appeals in paragraph 17 of its Complaint.

4. On April 8, 1998, the Field Office, relying in part on the OALJ decision, concluded that Appellant had overpaid $55,001 in indemnity and had overstated the insurance premium in the amount of $3,867. The Field Office demanded that Appellant make these adjustments in its 1994 Reinsurance Year Annual Accounting Report. The Field Office also advised that the Appellant could appeal its determination in accordance with 7 CFR § 400.169 to the Risk Compliance Division of the Risk Management Agency in Washington, D.C., within 45 days.

5. On May 19, 1998, in lieu of appealing the Field Office's determination to the Risk Compliance Division in Washington, D.C., Appellant filed this appeal with the Board. The Government moved to dismiss and Appellant opposes for the reasons set forth in the introductory portion of this Ruling.

## DISCUSSION

In ruling on the Government's Motion to Dismiss, the Board is obligated to assume all factual allegations as true and to draw all reasonable inferences in Appellant's favor. Henke v. United States, 60 F.3d 795 (Fed. Cir. 1995). The facts set forth above are not disputed. In ruling on the Motion, the Board is not confined to an examination of the Complaint. Indium Corp. of America v. Semi Alloys Inc., 781 F.2d 879, 884 (Fed. Cir. 1985), cert. denied, 479 U.S. 820 (1986). Here we have considered the Complaint, the Motions of the parties with attachments, as well as the April 8, 1998 decision of the Field Office.

The Appellant brings this action pursuant to 7 CFR § 24.4(b). Regarding the FCIC, these regulations provide that the Board shall have jurisdiction of appeals of final administrative determinations of the Corporation pertaining to the SRAs under 7 CFR § 400.169(d). Title 7 CFR § 400.169(d) provides for appeals of final administrative determinations from § 400.169(a) or (b). Title 7 CFR § 400.169(b) provides that the company may within 45 days of receiving an adverse determination request the Director of Compliance to make a final administrative determination regarding the disputed issues and that the Director of Compliance will render the final administrative determination of the Corporation.

It is clear from the facts that Appellant has appealed the decision of the Field Office and that this decision is not the final administrative determination within the meaning of 7 CFR § 24.4(b) or 7 CFR § 400.169(a), (b) or (d). The Board simply has no authority to expand its jurisdiction without the necessary rule making to revise its regulations. Such an effort would also require coordination with the FCIC at a minimum. Absent expansion of the Board's jurisdiction, the Board has no jurisdiction to consider Appellant's appeal. If Appellant's assertion is taken to its logical conclusion, Appellant could file its initial complaint with the Board in lieu of the Field Office.

Moreover, contrary to Appellant's assertion, there is no indication that a request by Appellant for a final administrative determination by the Director of Compliance would have been futile. First, the Director invited further questions. Second, the circumstances and the Director's language that the case would not be reopened or reevaluated referred to the case then before the Director. His

language clearly did not refer to the new circumstances that might arise some 20 months later. (Finding of Fact 2.) In any event, a request for a review by the Director would not have taken inordinate effort or time. Failure of the Director to have rendered a decision within 60 days would have been a basis to appeal to the Board. Rain and Hail Insurance Service, Inc., AGBCA Nos. 97-173-F, 97-174-F, 97-175-F, 98-1 BCA ¶ 29,450**.**

The Board is not in a position to disregard its jurisdictional limitations. The fact that such limitations are regulatory rather than statutory does not allow Appellant to by-pass the requirement to have the Director of Compliance render a final administrative determination as a condition precedent to Board jurisdiction.

## RULING

The appeal is dismissed without prejudice for lack of jurisdiction.

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**EDWARD HOURY**
Administrative Judge

**Concurring:**

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**HOWARD A. POLLACK** **JOSEPH A. VERGILIO**
Administrative Judge Administrative Judge

**Issued at Washington, D.C.**
**November 24, 1998**