BLAKELY CROP HAIL, INC.	)	**AGBCA Nos. 2001-153-F**
	)	**2001-171-F**
and	)	
	)	
FARMERS ALLIANCE MUTUAL INSURANCE COMPANY,	)	
	)	
Appellants	)	
	)	
Representing the Appellants:	)	
	)	
Bruce B. Green, Esquire	)	
Willson & Pechacek, P.L.C.	)	
P. O. Box 2029	)	
Council Bluffs, Iowa 51502	)	
	)	
Representing the Government:	)	
	)	
Kimberley E. Arrigo, Esquire	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
Room 4344, South Building	)	
1400 Independence Avenue, S.W.	)	
Washington, D.C. 20250	)	

RULING ON JURISDICTION

March 20, 2002

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

These appeals arise out of a Standard Reinsurance Agreement (SRA) between Farmers Alliance Mutual Insurance Company (Farmers Alliance) of McPherson, Kansas, and the Federal Crop Insurance Corporation (FCIC) for the 2000 crop year. AGBCA No. 2001-153-F was received at the Board May 31, 2001. The appeal was made in the name of Blakely Crop Hail, Inc. (Blakely) of Topeka, Kansas, on behalf of itself and related entities, subsidiaries and parent companies including, but not limited to, Farmers Alliance Mutual Insurance Company (Appellants). Appeal was taken from (1) the March 2, 2001 Manager=s Bulletin, MGR-01-010; (2) the denial of its request for a final agency determination; and (3) the denial of its request to amend its 2000 Plan of

Operation. Subsequent to the appeal, MGR-01-010.01 was issued. Thereafter on September 4, 2001, an additional appeal was received stating that MGR-01-010.1 had been issued and as Appellants were unsure whether it was intended as a final agency determination, they were filing a new appeal. The new appeal was docketed as AGBCA No. 2001-171-F.

The parties filed pleadings in both appeals. In each Answer, FCIC asserted as an affirmative defense that the Board lacked jurisdiction because Blakely was not a party to the SRA. The Board which consolidated the two appeals notified the parties that it would address the jurisdictional issue raised by FCIC=s affirmative defense before setting further proceedings. The parties were directed to submit briefs in support of their positions on that issue.

The briefs have been received and considered. The Board concludes that the appeal may not be prosecuted in the name of Blakely on its own behalf or on the behalf of other unnamed entities, subsidiaries or parents not a party to the SRA. The appeals may be prosecuted by either Blakely or Farmers Alliance on behalf of Farmers Alliance.

FINDINGS OF FACT

1. These appeals involve Manager=s Bulletins MGR-01-010 and MGR-01-010.1 relating to the 2000 Minnesota sugar beets crop. The issues presently before the Board do not require an analysis of the substance of the bulletins.

2. Under 7 CFR ' 400.169(a) and (b), the Acompany@ is entitled to appeal final administrative determinations of FCIC regarding an SRA, or any reinsurance agreement with FCIC. Company is defined in 7 CFR ' 400.161(b) (1997) as Athe company reinsured by FCIC or apply [sic] to FCIC [for an SRA].@

3. Both appeals were filed by Blakely on behalf of itself, its related entities, subsidiaries, and parent companies, including but not limited to, Farmers Alliance. In the Notice of Appeal, they were referred to collectively as ABlakely.@ FCIC=s Answers in the two appeals asserted as an affirmative defense that the Board lacked jurisdiction because Blakely was not a party to the SRA and therefore Blakely=s claims did not arise under the SRA. The Board elected to decide the jurisdictional challenge before continuing with further proceedings.

4. The SRA at issue is between FCIC and Farmers Alliance. Signatories to the SRA were E. Heyward Baker, Director, for FCIC and Michael A. Miller, President for AThe Company.@ (Appeal File (AF) 480-512.) AThe Company@ is not further identified on the signature page. Michael A. Miller was then the President of Blakely (AF 529, 532, 536-38). Blakely was identified as Managing General Agent (MGA) to act on Farmers Alliance=s behalf (AF 532). Amendments to the SRA and the Plan of Operation were also signed by Mr. Miller (AF 529, 531, 536). Farmers Alliance directed that monies due it under the SRA be remitted to Blakely (AF 525, 535 (answer to question 18)).

5. Blakely is not listed in the Plan of Operations as a company which will issue eligible crop insurance contracts reinsured or insured by Farmers Alliance (AF 523, 532 (answer to question 2)).

6. In correspondence on the subject of the 2000 Minnesota sugar beets crop, both parties identify the party other than FCIC as ABlakely Crop Hail, Inc., on behalf of itself, its related entities, subsidiaries, and parent companies, including but not limited to, Farmers Alliance Mutual Insurance Company (hereinafter collectively referred to as ›Blakely=).@ (AF 216, 224, 237, 238.)

7. The Preamble to FCIC=s Answers in both appeals describe the Complaints as having been filed by Athe Appellants, Blakely Crop Hail, Inc. (Blakely) and Farmers Alliance Mutual Insurance Company (Farmers Alliance).@

8. FCIC=s Answers assert as an affirmative defense:

> The Board does not have jurisdiction of the claims for relief sought in this case. The Board only has jurisdiction over claims pertaining to SRAs that arise under 7 C.F.R. ' 400.169(d). Blakely was not a party to an SRA for the 2000 reinsurance year. Therefore, Blakely=s claims do not arise under the SRA and the Board does not have jurisdiction to grant the relief sought.

The affirmative defense does not address the SRA between FCIC and Farmers Alliance and the previous conduct of business between the parties pursuant to that SRA.

DISCUSSION

Contentions of the Parties

In its Brief, FCIC explains that there are variations in the ways companies selling Multi-Peril Crop Insurance (MPCI) reinsured by FCIC under SRAs, configure business relationships with their managing general agents. Unlike some others, Farmers Alliance did not, at least for the crop year 2000, name Blakely as a party to the SRA. Also, it did not provide written authorization for Blakely to appeal solely in its own name. Further, in a previous appeal, Farmers Alliance filed solely in its own name.

FCIC relies on the Board=s decision in Crop Growers Insurance, Inc., AGBCA No. 98-171-F, 00-2 BCA & 30,976. In Crop Growers the Board held:

> At best, Crop Growers has demonstrated that it wrote policies as an MGA for Continental (a party to an SRA), which would be liable to the insureds. The record does not demonstrate that the FCIC and Crop Growers agreed that FCIC would reinsure Crop Growers for any action or insurance policy it simply administered. The reinsurance agreement was between FCIC and Continental, not FCIC and Crop Growers. The interpretation proffered by Crop Growers permits any company

> identified in a plan of operation of an SRA to establish a reinsurance agreement with the FCIC, thereby subjecting the FCIC to suit and liability. The SRA envisions direct liabilities and obligations between the signatories to the agreement, which here does not include Crop Growers. Thus Crop Growers lacks standing to pursue this appeal.

FCIC argues that the Board=s description of the Crop Growers situation is Aprecisely the situation in the present case.@ FCIC asserts that it has not entered into any agreement with Blakely that would obligate it to make any payment or owe any money to Blakely under the SRA; rather FCIC contends that Blakely is simply an MGA for Farmers Alliance. Any funds that may be owed as a result of the appeal would only be owed to Farmers Alliance. Therefore, FCIC argues, Blakely lacks standing to appeal under the SRA on its own behalf.

FCIC states that it does not contend that a statue or regulation prohibits Blakely from acting on the behalf of Farmers Alliance. Rather, FCIC contends that it has not been the practice for approved insurance providers to allow managing general agents to sue on the approved insurance providers= behalf when the managing general agent, like Blakely in this case, is not a named party to the SRA. FCIC points out that in a prior appeal to the Board, Farmers Alliance filed the appeal solely in its own name. FCIC also notes that Farmers Alliance has not alleged or proved that there is an agreement by which Blakely is authorized to act on Farmers Alliance=s behalf in appeals before the Board. Thus, concludes FCIC, Blakely lacks standing to appeal to the Board on Farmers Alliance=s behalf or on its own behalf and, unless a delegation is provided by Farmers Alliance, Blakely should be dismissed from the appeal.

Appellants cite to 7 CFR ' 24.2(b) granting jurisdiction to the Board to hear appeals of final administrative determinations of FCIC pertaining to SRA between FCIC and approved insurance providers. Appellant asserts that FCIC cannot in good faith dispute that Farmers Alliance is a party to an SRA with FCIC or party to this appeal. Thus, the Board has jurisdiction to hear Farmers Alliance=s appeal whether or not it has jurisdiction to hear an appeal by Blakely. Appellants then argue that Blakely is managing general agent for Farmers Mutual and has authority to bring this appeal in its or Farmers Alliance=s name, place and stead. Appellants point to the designation of Blakely as managing general agent and the limited power of attorney authorizing Blakely=s president to negotiate, execute, bind, consummate and terminate multiple peril crop reinsurance agreements for Farmers Alliance in Blakely=s name, place and stead. Appellants also emphasize that Blakely=s president signed the SRA, amendments and plan of operation on behalf of Farmers Alliance; that Farmers Alliance identified Blakely as its managers and liaisons with FCIC and notified FCIC and others of Blakely=s authority to produce, underwrite and manage its multiple peril crop insurance business. Appellants point out that Farmers Alliance even instructed FCIC to remit all payments due it under the SRA to Blakely. Appellants argue that the authorizations and notifications make Blakely an interested party authorized to prosecute the appeal in its and/or Farmers Alliance=s name(s).

Analysis

The factual situations in Crop Growers and the instant case are not identical. Nonetheless, the central holding in that case is precedent for our ruling here. Appellants have the burden of establishing authority of the named Appellants to pursue the appeal. A proper party must establish for the crop year in question that it had an SRA with FCIC or that it was reinsured by FCIC. Crop Growers Insurance, Inc.

Appellants have shown that Farmers Alliance endowed its managing general agent, Blakely, with broad powers, even to the extent that Blakely=s president signed the SRA and that FCIC was instructed to remit monies due under the SRA to Blakely (Finding of Fact (FF) 4). It is clear also that FCIC has dealt with Blakely as though it were the holder of the SRA (FF 1). Farmers Alliance, however, did not identify Blakely as an entity which would issue eligible crop insurance contracts. While Blakely had far-reaching authorizations, it did not fully and completely stand in the shoes of Farmers Alliance (FF 5). Moreover, Farmers Alliance and Blakely are separate corporate entities. Exploration of the absolute limits of Blakely=s rights and obligations would require an inquiry into corporations and agency law which the parties have not briefed and which is unnecessary for this ruling. Under regulation, 7 CFR ' 400.169, the entity or insurance company that is the party to the SRA is the proper party to bring a case to the Board. Given the regulation and the analysis in Crop Growers, Blakely is not entitled to pursue an appeal under the SRA in its own name.

That however does not defeat jurisdiction. Blakely brought this appeal on behalf of Blakely and its related entities, subsidiaries and parent companies, including, but not limited to, Farmers Alliance. It is enough to give jurisdiction over a case, if one plaintiff has standing. Secretary of the Interior v. California, 464 U.S. 312, 319 n.3, 104 S. Ct. 656, 660 n. 3, 78 L. Ed. 496 (1984). Clearly, Farmers Alliance has standing and may pursue the appeals on its own behalf. Further, given the broad authorizations Farmers Alliance has bestowed on Blakely (FF 4), we find no impediment to Blakely pursuing the appeals on behalf of Farmers Alliance. We do not find the fact that in a single other case, the holder of an SRA opted to appeal in its own name compels us to decide that it may not have its managing general agent conduct its appeal in these if that is its choice here. The managing general agent, Blakely, may not, however, pursue the appeals on behalf of itself or any other of the unnamed entities, subsidiaries and parents. For that reason, subsequent to this ruling, the appeals will be styled only in the name of Farmers Alliance, the party to the SRA authorized by regulation to bring an appeal to the Board.

RULING

The Board has jurisdiction to decide the appeals.

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ANNE W. WESTBROOK
Administrative Judge

Concurring:

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

Issued at Washington, D.C.
March 20, 2002