

<b>FARMERS ALLIANCE MUTUAL</b>	)	<b>AGBCA No. 2000-163-F</b>
<b>INSURANCE COMPANY,</b>	)	
	)	
<b>COUNTRY MUTUAL INSURANCE CO.</b>	)	<b>AGBCA No. 2000-164-F</b>
	)	
<b>FIREMAN'S FUND INSURANCE CO.,</b>	)	<b>AGBCA No. 2000-165-F</b>
	)	
<b>GREAT AMERICAN INSURANCE CO.,</b>	)	<b>AGBCA No. 2000-166-F</b>
	)	
<b>HARTFORD FIRE INSURANCE CO.,</b>	)	<b>AGBCA No. 2000-167-F</b>
	)	
<b>IGF INSURANCE CO.,</b>	)	<b>AGBCA No. 2000-168-F</b>
	)	
<b>THE ALLIANCE INSURANCE COMPANY,</b>	)	<b>AGBCA No. 2000-169-F</b>
	)	
Appellants	)	
	)	
<b>Representing the Appellants:</b>	)	
	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**November 25, 2003**

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.  
Opinion for the Board by Administrative Judge POLLACK.**

These appeals arise out of a Standard Reinsurance Agreement (SRA) between the above-captioned Appellants and the U. S. Department of Agriculture, Federal Crop Insurance Corporation (FCIC). The appeals concern a dispute involving prevented planting for the 1996 reinsurance year (July 1, 1995, through June 30, 1996.) The SRA represents a cooperative financial assistance agreement between the parties to deliver multiple-peril crop insurance policies (MPCI's) to various farmers/producers. The appeals involve claimed reimbursements from the various Appellants (all companies reinsured by FCIC) in excess of 50 million dollars for excess indemnities paid and in excess of 2.4 million dollars in excess loss adjustment expenses.

In addition to these appeals involving reimbursement due to the affect of the prevented planting changes on Appellants' obligations under their SRA's, the Board, at the time of Appellants' filing of these appeals, had several similar appeals from other insurance companies regarding the same 1996 prevented planting rules.

On June 8, 2000, FCIC issued a final determination denying these Appellants reimbursement for costs and indemnification associated with the 1996 prevented planting rule changes. The final determination set out the Appellants' appeal rights. At the time FCIC issued its final determination, FCIC made no charge that Appellants' request for that determination had not been timely filed. On July 31, 2000, Appellants filed their complaint with the Board.

On September 11, 2000, FCIC filed a Motion to Dismiss and Answer to the appeals. The motion was in two parts. The first contended that the appeals should be dismissed due to lack of jurisdiction because the reinsured companies in these appeals failed to object to the prevented planting rule on December 7, 1995, or 45 days after the reimbursement of FCIC of premium subsidy loss or other FCIC actions on the individual policies with the prevented planting coverage. The second portion of FCIC's Motion to Dismiss was based on the doctrine of *stare decisis*. According to FCIC, at the time it filed the motion, the Board through its earlier decision in American Growers Insurance, AGBCA No. 98-200-F, 00-2 BCA ¶ 30,980, had already examined FCIC's conduct with respect to the implementation of the 1996 prevented planting provisions and the Board had held that none of the claimed theories behind that claim for breach of the SRA were sustainable under the facts or the law. In American Growers, a decision with three separate opinions, two of the judges (each using a different basis) granted an FCIC motion for summary judgment. Subsequent to the American Growers decision, but after the filing of FCIC's motion in these appeals, the Board issued two other decisions on summary judgment motions filed by FCIC dealing with the same matters decided in American Growers. In each of those decisions, Rain & Hail Insurance Services, Inc., AGBCA No. 97-182-F, 02-1 BCA ¶ 31,790, and in Rural Community Insurance Co., AGBCA No. 2000-154-F, 02-1 BCA ¶ 31,761, the majority denied FCIC's motion, thereby coming to a different result than had the Board in American Growers.

On February 28, 2002, the Board denied FCIC's motion in these appeals. Farmers Alliance Mutual Insurance, AGBCA Nos. 2000-163-F, et al., 02-1 BCA ¶ 31,786. In denying the motion, the majority stated that these appeals presented virtually the same factual and legal issues that were

before the Board in Rain & Hail and Rural Community (appeals where, as noted above, the Board declined to sustain a summary judgment motion).

Thereafter, in April 2002, Board held a telephone conference with the parties as to scheduling. The parties then proceeded with discovery. On November 6, 2002, the Board again held a telephone conference, at which time the Board and parties discussed the status of the appeals and the fact that other similar appeals (those in Rain & Hail and in Rural Community) were scheduled for a December 2002 and January 2003 hearing, respectively. At that time, counsel for Appellants requested that the parties wait for disposition of one or both of those appeals before proceeding with a hearing. Counsel for FCIC was in agreement. Accordingly, the Board held the matter in a suspense status, however, the Board did set a closing date for completion of discovery.

Neither of the two scheduled hearings proceeded as planned, as each was postponed. Thereafter, the parties in each of those scheduled appeals engaged in settlement discussions. On May 30, 2003, the Board received a letter from counsel for Appellants in these appeals, advising the Board of a compromise settlement. Counsel advised that the agreement was being circulated and that following its execution, counsel would be filing a request for a dismissal with prejudice. Thereafter, the Board made several inquires, as to the status of the settlement. On October 21, 2003, Appellants submitted to the Board a Notice of Dismissal. Appellants asked that the appeals be dismissed with prejudice.

**DECISION**

The appeals in these matters are dismissed with prejudice.

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**HOWARD A. POLLACK**

Administrative Judge

**Concurring:**

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**JOSEPH A. VERGILIO**

Administrative Judge

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**ANNE W. WESTBROOK**

Administrative Judge

**Issued at Washington, D.C.**

**November 25, 2003**