NORTH CENTRAL CROP INSURANCE, INC.,	)	**AGBCA Nos. 2001-154-F 2001-170-F**
and	)	
ALLIANCE 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:	)	
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RULING ON JURISDICTION

March 28, 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 The Alliance Companies of Eau Claire, Wisconsin (Athe Companies@), and the Federal Crop Insurance Corporation (FCIC), for the 2000 crop year. The Companies is the collective name for three insurance companies, The Farmers Alliance Mutual Insurance Company, Alliance Insurance Company, Inc., both of McPherson, Kansas, and Alliance Indemnity Company.

At issue here is the year 2000 policy pertaining to the Minnesota sugar beet crop. These are

companion appeals to AGBCA Nos. 2001-153-F and 2001-171-F on which the Board issued rulings March 20, 2002.

AGBCA No. 2001-154-F was received at the Board May 31, 2001. The appeal was made in the name of North Central Crop Insurance, Inc. (North Central) on behalf of itself and related entities, subsidiaries and parent companies including, but not limited to, Alliance Insurance Company (Alliance). Alliance, however, is only one of the three companies party to the SRA in their collective name. Appeal was taken from (1) the March 1, 2000 Managers 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-01-010.1 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. 2001-170-F.

The Board=s jurisdiction to consider the appeals is pursuant to regulation, 7 CFR '' 24.4(b) and 400.169(a).

The parties filed pleadings in both appeals. In its Answers, FCIC asserted as an affirmative defense, that the Board lacked jurisdiction because North Central 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 North Central on its own behalf or on the behalf of entities, subsidiaries or parents not a party to the SRA. The appeals may be prosecuted by the Companies, or any one of them, on behalf of the Companies.

FINDINGS OF FACT

1. These appeals involve Managers Bulletins MGR-01-010 and MGR-01-010.1 relating to the 2000 Minnesota sugar beet 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 North Central Crop Insurance, Inc., on behalf of itself, its related entities, subsidiaries, and parent companies, including but not limited to, Alliance. In the Notice of Appeal, Appellants were referred to collectively as ANorth Central.@ FCIC=s Answers in the two appeals asserted as an affirmative defense that the Board lacked jurisdiction because North Central is not a party to the SRA and therefore North Central=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 the Companies and FCIC. The SRA was originally for the 1998 crop year. E. Heyward Baker executed the SRA on behalf of FCIC and Greg Burger, President (Burger) executed it on behalf of AThe Company.@ The signature page does not further identify AThe Company,@ nor does it provide the name of the entity of which Burger is president. (Appeal File (AF) 456-93.) The Plan of Operation and Limited Power of Attorney (P/A) reveal that he is president of North Central (AF 500, 502).

5. The P/A recites that Farmers Alliance Mutual Insurance Company, Alliance Insurance Company, and Alliance Indemnity Company, collectively known as the Alliance Insurance Companies made, constituted and appointed Burger attorney-in-fact to negotiate, execute, bind, consummate, and terminate Multi-Peril Crop Insurance (MPCI) agreements and any other related documents with FCIC. The P/A further recites that it is understood and agreed that it is limited in fact to the MPCI produced to the Companies through North Central applicable to the 1998 crop year and continuing until canceled. The P/A was signed for each of the three named companies in the presence of a Notary Public by L. Keith Birkhead, Secretary-Treasurer. (AF 502.)

6. The Plan of Operation advised FCIC that North Central was a wholly-owned subsidiary of the Companies and, an agreement with North Central is considered an agreement with the Companies (AF 498). Further, FCIC was directed to remit all payments due on Monthly and Annual Summary reports to North Central (AF 497). North Central was not identified as a company which would issue eligible crop insurance contracts (AF 494).

7. The Preamble to FCIC=s Answers in both appeals describes the Complaints as having been filed by Athe Appellants, North Central Crop Insurance, Inc. (North Central) and Alliance Insurance Company (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 CFR ' 400.169(d). North Central was not a party to an SRA for the 2000 reinsurance year. Therefore, North Central=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 the Companies 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 MPCI insurance reinsured by FCIC under SRAs configure business relationships with their managing general agents. Unlike some others, Alliance did not, at least for the crop year 2000, name North Central as a party to the SRA. Also it did not provide written authorization to appeal solely in its own name. Further, in a previous appeal Alliance filed solely in its own name.[1]

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 North Central that would obligate it to make any payment or owe any money to North Central under the SRA; rather FCIC contends that North Central is simply a managing general agent for Alliance. Any funds that may be owed as a result of the appeal would only be owed to Alliance. Therefore, FCIC argues, North Central lacks standing to appeal under the SRA on its own behalf.

FCIC states that it does not contend that a statue or regulation prohibits North Central from acting on the behalf of 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 provider=s behalf when the managing general agent, like North Central in this case, is not a named party to the SRA. FCIC points out that in a prior appeal to the Board Alliance filed the appeal solely in its own name. FCIC also notes that Alliance has not alleged or proved that there is an agreement by which North Central is authorized to act on Alliance=s behalf in appeals before the Board. Thus, concludes

[1] FCIC=s contentions refer to Alliance as if it were the sole party to the SRA.

FCIC, North Central lacks standing to appeal to the Board on Alliance=s behalf or on its own behalf and, unless a delegation is provided by Alliance, North Central 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 SRAs between FCIC and approved insurance providers. FCIC, asserts Appellant, cannot in good faith dispute that Alliance is a party to an SRA with FCIC or party to this appeal. Thus, the Board has jurisdiction to hear Alliance=s appeal whether or not it has jurisdiction to hear an appeal by North Central. Appellants then argue that North Central is managing general agent for Alliance and has authority to bring this appeal in its or Alliance=s name, place and stead. Appellants point to the designation of North Central as managing general agent and the limited P/A authorizing North Central=s president to negotiate, execute, bind, consummate and terminate multiple-peril crop reinsurance agreements for Alliance in North Central=s [sic] name, place and stead. Appellants also emphasize that North Central=s president signed the SRA, amendments and Plan of Operation on behalf of Alliance; that Alliance identified the president and another official of North Central as its business managers and liaisons with FCIC and notified FCIC and others of North Central=s authority to produce, underwrite and manage its multiple-peril crop insurance business. Appellants argue that the authorizations and notifications make North Central an interested party authorized to prosecute the appeal in its and/or Alliance=s name(s).[2]

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., AGBCA No. 98-171-F, 00-2 BCA & 30,976.

The SRA for the crop year in question was between FCIC and the Alliance Insurance Companies (Finding of Fact (FF) 4). The Alliance Insurance Companies (the Companies) is the collective name of three separate entities, The Farmers Alliance Mutual Insurance Company, Alliance Insurance Company, Inc., and Alliance Indemnity Company (FF 5).

Appellants have shown that the Companies endowed their managing general agent, North Central, with broad powers, even to the extent that North Central=s president signed the SRA and that FCIC was instructed to remit monies due under the SRA to North Central (FF 6). The Companies, however, did not identify North Central as an entity which would issue eligible crop insurance contracts (FF 6). While North Central had far-reaching authorizations, it did not fully and completely stand in the shoes of the Companies. Moreover, North Central is a separate corporate entity from each of the three entities identified collectively as the Companies. Exploration of the absolute limits of North Central=s rights and obligations would require an inquiry into corporations

[2] Appellants also refer to Alliance as if it were the sole party, other than FCIC, to the SRA.

and agency law which the parties have not briefed and which is unnecessary for this ruling. Under the rule set down in Crop Growers, North Central is not entitled to pursue an appeal under the SRA in its own name.

That, however, does not defeat jurisdiction. Appellants brought this appeal on behalf of North Central and its related entities, subsidiaries and parent companies, including, but not limited to, Alliance, one of the three entities comprising the collective party to the SRA. 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, Alliance has standing. The managing general agent, North Central, may not pursue the appeals on behalf of itself or any other of the unnamed entities, subsidiaries and parents. Because the Companies is the collective name of the three parties to the SRA that are entitled to bring appeals to the Board subsequent to this ruling, the appeals will be styled only in the name of the Companies, 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:

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HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
March 28, 2002