RURAL COMMUNITY INSURANCE SERVICES (J. Bogestad & Son Farm, Inc.),	)	**AGBCA No. 99-141-F**
Appellant	)	
Representing the Appellant:	)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

May 16, 2000

Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

This appeal arises from a 1993 crop year 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 NAU Insurance Company (NAU) of Anoka, Minnesota. Rural Community Insurance Services (RCIS or Appellant) also of Anoka, Minnesota, is the successor-in-interest to NAU, also referred to as National Ag Underwriter's, Inc. The Risk Management Agency (RMA), an agency of USDA acts for FCIC, supervising and administering programs authorized by the Federal Crop Insurance Act, as amended , 7 U.S.C. § 1501 *et seq.* ("the Act").

Under the SRA, Appellant sells crop insurance to insureds under Multi Peril Crop Insurance (MPCI) policies in furtherance of the Government's crop insurance program. FCIC pays Appellant a percentage of the insurance premiums as compensation for Appellant's administrative expenses. FCIC also agrees to reinsure Appellant for a percentage of the MPCI indemnity payment properly made by Appellant to an insured. FCIC is not a party to MPCI agreements between sellers such as RCIS and insureds, such as J. Bogestad & Son Farm, Inc. (Bogestad), the insured in this appeal.

This appeal involves payment by Appellant of an indemnity to Bogestad as the result of a wheat crop loss during the 1993 crop year. Subsequently, FCIC undertook Compliance Review No. SP-EF00-306 and, as a result, determined that a portion of the indemnity payment to Bogestad was improper because RCIS did not follow approved loss adjustment procedures when it accepted a late filed acreage report and because at the time of planting Bogestad had no interest in the crop. The FCIC St. Paul Compliance Field Office (SPCFO) in a revised final determination concluded that Appellant had made indemnity overpayments of $55,001 and premium overstatements of $3,867. Thereafter, Appellant filed an appeal at the Board which was dismissed for lack of jurisdiction as FCIC had not issued a final determination nor had RCIS requested one. Rural Community Insurance Services, AGBCA No. 98-173-F, 99-1 BCA ¶ 30,144. Thereafter, RCIS requested a final determination. FCIC failed to issue a determination within 60 days and RCIS filed the current appeal with the Board.

The Board has jurisdiction under 7 C.F.R., part 24 and 7 C.F.R. § 400.169(d). The parties agreed to submit the appeal for decision on the record without a hearing under Board Rule 11.

FINDINGS OF FACT

Contractual Agreements and Provisions

1. NAU, now RCIS, and FCIC entered into an SRA for the 1993 crop year commencing July 1, 1992, and ending June 30, 1993. FCIC would reinsure MPCI policies sold by Appellant. Section II, Reinsurance, A 1, provides that only crop insurance contracts written under the authority of the Act are eligible for reinsurance (Page (p.) 4 of the SRA submitted an attachment to the Agency Initial Brief (AIB)).[1] At Section I, H, the SRA defines an eligible crop insurance contract as one written at rates and for terms consistent with Title 7 C.F.R. Part 400 and on forms of FCIC's standard policy or other forms that have been approved by FCIC in advance (SRA, p. 2).

2. The preamble to the SRA between FCIC and Appellant incorporates by reference into the reinsurance agreement the regulations codified in Title 7, Chapter 4 of the C.F.R. The regulations provide at 7 C.F.R. § 401.8, "The application and policy," that application for insurance is to cover a person's share in the insured crop as "landlord, owner-operator, or tenant."

[1] The Appeal File erroneously included the SRA for the 1994 crop year.

3. At Section V, General Provisions, paragraph E, "Policy and Form Approval," subparagraph 4., the SRA requires the company to utilize loss adjustment procedures, forms, methods, and instructions approved by FCIC. For the 1993 crop year, NAU used the FCIC Loss Adjustment Manual (M8-LAM) with an effective date of March 1992. Thus, no additional FCIC approval was required.

4. Paragraph 213, "CROP INSPECTION TO DETERMINE ACCEPTANCE OF ACREAGE FOR INSURANCE," of M8-LAM indicates that such an inspection can be initiated by either of two occurrences. The first is an insured's filing of a late-filed application and/or acreage report or an insured's wish to add acreage that was initially not reported on the timely filed acreage report for the crop(s). Such a crop inspection will consists of an on-the-farm visit to determine the number of acres and to perform crop appraisals and make observations of the current general crop, soil, and weather conditions to determine if the crop will produce at least 90 percent of a normal "crop." A "normal crop" is defined as the yield upon which the guarantee is based. (M8-LAM, pages (pp.) 239-40, substituted by Appellant's counsel's letter for Appeal File (AF) 47.)[2]

5. Paragraph 18 of M8-LAM provides that only producers who receive all or part of a crop, by reason of their ownership or tenancy, can be insured. A landlord is the owner of land upon which the crop is grown and who receives a share of the crop. An owner-operator or tenant is a person who produces the crop; exercises managerial control relating to producing and marketing the crop (controls when to till, cultivate, irrigate, fertilize, spray, harvest and market); makes credit arrangements; and owns farming equipment, makes arrangements to obtain equipment, or hire custom work. (M8-LAM, p. 16, substituted for AF 61, 62.)

6. Section V, paragraph H, "Self Audit and Compliance," of the SRA provides:

> 1. The Company must be in compliance with the provisions of this Agreement, Standards for Approval as published by FCIC, the laws and regulations of the state in which the Company is conducting business under this Agreement, and all instructions of FCIC.
>
> 2. The Company must cooperate with the FCIC in the review of Company operations which are designed to assure policyholders are properly serviced and that monies are distributed in accordance with the Act, and that FCIC policies and procedures are being followed.
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> 3. If FCIC finds the Company has not complied with the provisions of paragraph V.H.1. and 2. above, the FCIC, at its option may:

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[2] The Appeal File contains pages from the NAU Loss Adjustment Manual, effective date November 1993, which postdated the events relevant to this appeal. For this reason, Appellant's counsel, with agreement of Government counsel, provided the corresponding pages from M8-LAM.

> a. Require that the Company take corrective action to address reported violations, and
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> b. Require that the Company refund or forfeit a share of or all of the expense reimbursement, premium subsidy or reinsurance with respect to the crop insurance contract violation identified.

7. The General Crop Insurance Policy (Rev. 3-91), ("the policy") Terms and Conditions, Paragraph (para.) 2, Crop, Acreage and Share Insured, provides:

> c. The insured share is your share as landlord, owner-operator, or tenant in the insured crop at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of:
> (1) the time of loss; or
> (2) the beginning of harvest.
> d. Unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making the application for insurance.

(AF 130.)

8. The policy provides in paragraph 3 that the acreage report[3] must be submitted each year on or before the reporting date for the crop in the county and may be used as the basis to determine premium and indemnity. Revisions to the report may only be made with the company's approval. (AF 131.) Paragraph 21.t. defines "reporting date" as the acreage reporting date (contained in the Actuarial Table) by which the insured is required to report all its insurable and uninsurable acreage in a county in which it has a share and its share at the time the insurance attaches (AF 135). The record does not contain the Actuarial Table indicating the reporting date for wheat in Marshall County, Minnesota. The record indicates that date was June 30, 1993 (AF 30).

9. The policy also provides:

> 7. Insurance attaches on each unit or part of a unit when the insured crop is planted or when the application is properly signed, completed, and

[3] The policy defines acreage report as follows: "A report required by Section 3 of the contract. This report contains, in addition to other information, the report of the insured's share of all acreage of an insured crop in the county whether insurable or uninsurable and must be filed prior to the final acreage reporting date contained in the actuarial table for the county of the crop insured."

> delivered to your service office, whichever is later, or on the calendar date for the beginning of the insurance period if specified in the crop endorsement, and ends at the earliest of:
> a. total destruction of the insured crop in the unit;
> b. harvest of the unit;
> c. final adjustment of a loss on a unit; or
> d. the calendar date of the end of the insurance period contained in the crop endorsement.

(AF 132.)

10. Paragraph 9. j. of the policy between Appellant and the insured provides that any dispute between the insured and the company will be settled through binding arbitration (AF 133). Paragraph 9.j. is the only portion of the policy at issue here which differs from the policy published at 7 C.F.R. § 401.8 by FCIC. The reason for the difference is that the published language was applicable only to policies sold directly by FCIC and not to reinsured policies. The terms of the policy were approved by FCIC.

Events Relating to Issuance of the MPCI Policy to Bogestad

11. On April 15, 1992, Bogestad submitted an application to Nelson Insurance Agency (Nelson) for crop insurance on an unspecified wheat crop in Marshall County, Minnesota (AF 129). Subsequently, NAU, a company represented by Nelson, issued Bogestad an MPCI policy, No. 22-942-111644. The policy continues from year to year. (AF 29.)

12. A large portion of the wheat crop at issue here (474 of 544 acres) was custom planted by Bogestad on land in Marshall County, Minnesota, then owned by Tri-Campbell Farms Partnership (Tri-Campbell) of Walsh County, North Dakota.[4] Tri-Campbell's Marshall County property consisted of the southeast quarter of section 8 and the west half of section 16 in township 158, north of range 47 west, of the 5th principal meridian. (Exhibit 9 to Deposition of Thomas Scott Campbell (Campbell deposition).) The planting resulted from a verbal agreement between Roger Jon Bogestad of Bogestad and Thomas Campbell of Tri-Campbell (Campbell deposition). Bogestad performed tilling, preparation, planting, application of fertilizer and spraying from April through June 1993. He provided the seed. Bogestad's undated bill to Tri-Campbell was in the amount of $22,181.25. (AF 54.)

13. Bogestad submitted an Acreage Reporting Form to Nelson specifying the wheat crops in Marshall County, Minnesota, to be insured as 155 acres in section 9 and 155 acres in section 21.

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[4] Except for one side, the Tri-Campbell land was adjacent to land which Bogestad owned. Tri-Campbell had purchased the land in 1990 and had discussed selling it to Bogestad but they had not been able to agree on a price. In June 1994, they agreed on a price and the land was sold to two of Roger Bogestad's children on a Contract for Deed under which actual title would not transfer until 1996. In the intervening 2 years, the land was leased to Bogestad. The land was owned by Tri-Campbell during the period in which the events which are the subject of this appeal transpired.

These units were identified as Nos. 0101 and 0102 and both were indicated as having been planted on April 20, 1993. The first page was signed by Michael Douglas of Nelson as Agency Representative. His signature was dated June 10, 1993. A computer generated date of June 11, 1993, appears on the print out and an NAU receipt stamp shows a date of July 12, 1993. The second page is signed by Roger Bogestad and is undated. (AF 91, 92.) The record also contains an Acreage Reporting Form showing wheat crops insured in sections 9 (155 acres); 21 (225 acres); 16 (316 acres) and 8 (158 acres). The first page of this form is also signed by Michael Douglas with the date June 10, 1993. It shows a computer print date of August 11, 1993, and a NAU stamp receipt date of September 10, 1993. The Remarks section contains this unsigned handwritten notation: "See attached worksheets - page 2 was missed in error." The second page is signed by Roger Bogestad and is undated. This form specifies the wheat crop in Marshall County to be insured as 155 acres in section 9; 225 acres in section 21; 316 acres in section 16 and 158 acres in section 8. (AF 92, 93.) The additional 70 acres in section 21 (on Bogestad land); the 316 acres in section 16; and the 158 acres in section 8 (both on Tri-Campbell land) make up the land on which the wheat crop here at issue was produced.

14. Appellant has presented no evidence that it conducted an inspection to determine whether to accept the acres in sections 21, 16 and 8 before doing so after receipt on September 10, 1993. The record contains the deposition of the Nelson agent who signed the late acreage report. He testified that he made no inspection and had no knowledge of an inspection being performed at the time the additional acres were reported and submitted to Appellant for a determination of acceptability of coverage. (Deposition of Michael Paul Douglas (Douglas deposition.)

15. Tri-Campbell did not insure the wheat crop because Tri-Campbell never insures its wheat crops in any location. Tri-Campbell did, however, enroll the wheat crop in the USDA price support program. Tri-Campbell considered the wheat crop to belong to it as of the time of its planting. (Campbell deposition.) The wheat crop was enrolled with the USDA, Agricultural Stabilization and Conservation Service (ASCS) Committee in Walsh County, North Dakota, where Tri-Campbell's main farm is located. (Deposition of Bonita Hayes (Hayes deposition) and Campbell deposition.) According to a statement given by Roger Bogestad to an investigator, he did not enroll the wheat crop custom farmed for Tri-Campbell with ASCS because he was not the operator (AF 177).

16. Wheat crops in Marshall County were damaged by rain in the middle of the summer of 1993. In July or August 1993, Tri-Campbell gave the wheat crop to Bogestad for the amount due under Bogestad's custom farming bill because the wheat crop was damaged by a hard rain. The kernels were shriveled and the wheat had scab. Roger Bogestad told Tom Campbell the yield would probably be 10 to 15 bushels per acre rather than the normal yield of 35 to 50 bushels per acre. Harvesting would be too expensive in view of the probable low yield. However, Bogestad owned equipment which would facilitate harvesting under these conditions. Tri-Campbell did not own such equipment and expected it to be difficult to rent because of a high demand due to the wet weather. (AF 66, 67; Campbell deposition.)

Claim for Indemnity

17. In August, Bogestad informed Nelson that he expected a wheat loss claim (AF 50). NAU did not receive the acreage report adding 70 acres in section 21; 316 acres in section 16; and 158 acres in section 8 until September 10 (AF 92, 93) after the June 30 late reporting date and after commencement of harvest (AF 191). Harvest was completed during the September-October time frame (AF 12).

18. NAU paid Bogestad $79,103 in indemnity loss on its 1993 wheat crop (AF 12). The total related to payments for wheat on four tracts: unit 0101 (154.4 acres), $14,919; unit 0102 (220 acres), $21,229; unit 0103 (316 acres), $28,577; and unit 0104 (158 acres), $14,378 (AF 35-42).

19. Later, as the result of a compliance review, the SPCFO of the RMA, made initial findings dated June 26, 1995, that Appellant had made an indemnity overpayment of $49,723 and a premium overstatement of $3,867 on Bogestad's Marshall County wheat crop for the crop year 1993. The determination stated that NAU had increased liability on wheat acreage that was already damaged and paid indemnities on acreage for which the insured had no insurable interest. The determination referenced the acreage report worksheet faxed by Nelson to NAU on September 14, 1993, increasing the total wheat acreage in Marshall County from 310 acres to 884 acres after Bogestad had reported that it expected a wheat loss claim. Also noted was page 124 of the NAU Loss Adjustment Module requiring a crop inspection to determine if acreage meets insurability requirements in cases where the acreage report is filed after the final acreage reporting date.[5] SPCFO considered the fact that the acreage in two sections was owned by Tri-Campbell. It also considered the fact that Bogestad had custom farmed the land and that Tri-Campbell had entered the land in the ASCS price support program and had received payment therefor. Based on those facts, RMA deleted the 70 acres in section 21 (unit 0102) and all wheat acreage in sections 8 and 16 (units 0103 and 0104). NAU was asked to provide a response if it disagreed with the initial findings in the report. (AF 28-33.) New calculations showing an indemnity overpayment of $49,723 were attached (AF 63). In a response dated July 10, 1995, NAU stated its agreement with the determinations. NAU also stated its intent to make the relevant corrections on the August 1995 accounting report (AF 10). RMA followed up with a final determination dated September 29, 1995, verifying that NAU had made the accounting corrections on its September 13, 1995 financial accounting report and stating that it was closing its case on these policies.

20. Thereafter, NAU informed Bogestad of the RMA final determination. Bogestad disagreed and a series of correspondence ensued among NAU, Bogestad and Nelson. Despite its earlier agreement with the findings, NAU also wrote RMA which declined to reopen the case. NAU informed Bogestad that the case would not be reopened on October 25, 1996. (AF 13, 14.)

[5] The corresponding pages of the M8-LAM used by NAU in the relevant time period are pages 239-240.

Other Proceedings

21. On March 27, 1997, Bogestad requested arbitration. He was granted an arbitration hearing. The only parties to the hearing were Bogestad and NAU. Before the arbitrator, NAU filed a brief with the following closing language: "It is RCIS's belief that it was Mr. Bogestad's contention [sic] to report units 0101, 0102, 0103, and 0104 of wheat when the original report was submitted. Mr. Bogestad believe [sic] that his farming interest on unit 0103 and 0104 was substantiated by his operating expenses and time invested and the verbal agreement with Tri Campbell for the 1993 crop year. RCIS hereby request [sic] that the claimant's appeal be accepted." (AF 12-15.) In an award dated May 22, 1997, the arbitrator determined that Bogestad had an insurable interest in sections 8 and 12. He also stated that the parties had stipulated that if there were an insurable interest, that [Bogestad] was entitled to indemnification for crop loss under the terms of the insurance agreements totaling $47,009. Bogestad was also awarded interest and was to reimburse Bogestad $150 in previously paid administrative fees and expenses (AF 17). FCIC learned of the arbitration sometime shortly before July 22, 1997 (AF 101).

22. On June 26, 1997, the FCIC filed a disqualifiation complaint with the USDA Office of Administrative Law Judges, alleging that Roger Jon Bogestad, d/b/a/ John Bogestad and Sons, willfully and intentionally provided false and inaccurate information to the FCIC or to the insurer with respect to an insurance plan or policy under the Act in violation of 7 U.S.C. § 1506(a). Both parties filed motions for summary judgment. Bogestad's motion argued that the doctrines of res judicata and collateral estoppel precluded FCIC from asserting that Bogestad did not have an insurable interest in the crop on the Tri-Campbell land because the arbitrator had decided otherwise. Bogestad also argued that he had an insurable interest and that the FCIC had failed to prove that Bogestad willfully or intentionally provided false information to the FCIC or the insurer. The FCIC disputed the applicability of the doctrines of collateral estoppel and res judicata and maintained that there was sufficient evidence to show that Bogestad did not have an insurable interest in the crop and that he intentionally reported the interest falsely. Finding that the FCIC had failed to show that Bogestad willfully and intentionally reported the crop falsely and also finding that the nature of his interest was unclear, the Chief Administrative Law Judge (CALJ) granted Bogestad's motion and denied the motion of the FCIC. The complaint against Bogestad was therefore dismissed March 17, 1998. (AF 18-27.)

23. On April 8, 1998, the SPCFO issued an RMA Revised Final Determination increasing the claimed amount of the Marshall County indemnity overpayment to $55,001. The premium overstatement of $3,867 remained unchanged. The determination recited the events relating to the earlier initial determinations and the corrections as reflected on the September 13, 1995 financial accounting report. The determination then briefly set out the facts relating to the arbitration including the fact that the arbitration had not dealt with the late filed 70 acres in section 21. Also, it contained a discussion of the proceeding before the CALJ on the Government's complaint under

the 7 U.S.C. § 1506(a).[6] The revised final determination then affirmed the initial determination, explaining the SPCFO's reasons. The first enumerated reason was a failure to follow approved loss adjustment procedures. Two failures were included: (1) the lack of an on-site inspection to determine if the crop was damaged prior to accepting the additional wheat acreage and increasing liability and (2) failure of the adjuster to obtain the required ASCS document to verify crop share at the time of loss. The second reason was that Tri-Campbell had given the wheat to Bogestad in payment for custom farming expenses and that Tri-Campbell had reported a 100 per cent interest in the crop with the ASCS and received deficiency payment on the wheat acreage in 1993. Finally, the determination relied on the crop insurance policy provision that insurance attaches at the time of planting. At the time of planting, Bogestad had no interest in the crop, only a verbal agreement to custom farm the land. The revised final determination then set out its revised calculations indicating an indemnity overpayment of $55,001.[7] Appellant was advised that if it did not agree with the determination, it could file an appeal in writing with RMA, Risk Compliance Division, Stop 0806, 1400 Independence Avenue, SW, Washington D.C. 20250-0806 within 45 days of receipt of the letter. (AF 4-7.)

24. On May 19, 1998, Appellant appealed the SPCFO's revised April 18, 1998 final determination to the Board. Thereafter, the FCIC moved to dismiss. The Board dismissed the appeal for lack of jurisdiction on the ground that a final administrative determination within the meaning of 7 C.F.R. § 24.4(b) and 7 C.F.R. § 400.169(a), (b) or (d) had not been issued. Rural Community Insurance Services, AGBCA No 98-173-F, 99-1 BCA ¶ 30,144.

25. By letter dated November 30, 1998, Appellant requested from the Deputy Administrator, Risk Compliance Division, RMA, a finding that it has no liability for overpaid indemnity and overstated premium, and, if RMA disagreed with that conclusion, requested a final administrative determination under 7 C.F.R. § 400.169(b) (AF 3). No final administrative determination was issued and Appellant filed this appeal with the Board February 11, 1999.

DISCUSSION

Contentions of the Parties

Appellant frames the issue before the Board as whether RMA may sanction Appellant for complying with an arbitrator's determination and abiding by it. Appellant contends that it properly paid an indemnity on the 1993 wheat crop because Bogestad had an insurable interest in the crop. While Appellant concedes that an arbitrator's award in favor of an insured and against a company does not

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[6] The determination misidentifies this proceeding as having been before the Board of Contract Appeals. The determination refers to the complaint as having been made by RMA. The CALJ's dismissal refers to the complainant as FCIC. In their briefs here, the parties have agreed that the terms RMA and FCIC are sometimes used interchangeably and that RMA acts to fulfill the responsibilities and obligations of FCIC.

[7] The record does not explain what the $5,278 difference between the $55,001 and the earlier claimed indemnity overpayment of $49,723 represents, but presumably it is the interest and costs awarded by the arbitrator.

in and of itself entitle the company to benefits under an SRA, Appellant argues that absent a showing that the company did not arbitrate in good faith or did not defend the crop insurance program, the FCIC "may not shirk its obligations under the SRA." Additionally, in support of its argument that Bogestad had an insurable interest, Appellant compares and contrasts the definitions of several terms contained in the MPCI policy and the Act.

FCIC contends that Appellant failed to follow approved loss adjustment procedures as required by the SRA. FCIC also argues that Bogestad did not have an insurable interest as that term is defined in the SRA. Further, FCIC contends that neither the disqualification proceeding before the CALJ nor the arbitrator's award are binding on the parties to this appeal.

The Issue

The issue before the Board is whether the FCIC correctly determined that Appellant overpaid the indemnity to Bogestad when Appellant included indemnity for a total of 544 late filed acres, 474 acres of which were custom planted by Bogestad and later, after the time of loss, given to it in payment for the custom planting bill.

Analysis

Appellant has limited its argument to the 474 acres custom planted by Bogestad on Tri-Campbell land, and its contentions as to those acres, to the outcome of the arbitration conducted under the relevant provision of the MPCI policy. Appellant has not addressed the wheat crop grown on 70 acres of Bogestad's own land which were reported after the acreage reporting date, nor the fact that the 474 acres on Tri-Campbell land were also reported late. The FCIC was not a party to the arbitration and the outcome of that proceeding was not binding on the FCIC (or on this Board) for reasons to be addressed infra. This appeal necessitates a broader examination.

The SRA requires Appellant to comply with policies and procedures of FCIC, both in the issuance of crop insurance policies and in the adjustment of claims of loss. (Findings of Fact (FF) 1-3). The FCIC is obligated to indemnify and reinsure only under the Act and SRA. Appellant failed to comply with FCIC policies and procedures in both instances.

Late Reported Acreage

The policy requires an insured to submit an acreage report each year on or before the reporting date for the crop in the county. That report may be used to determine premium and indemnity. The 544 acres in question here were not listed on the first acreage report submitted by Appellant. While Bogestad's signature was not dated on either report, the agent's signature is dated June 11, 1993, on both. They were, however, date-stamped as received at Appellant's office on different dates, the first on July 12, 1993, and the second on September 11, 1993. The report received September 11, 1993, adds the 544 acres in question. The printout received at Appellant's office on September 11 shows a computer printout date of August 11, 1993. The weight of the evidence is that the second report

reciting the additional acres was received after the acreage reporting date for the county, in this case June 30, 1993. (FF 13.) FCIC rules and regulations do not prohibit a reinsurance company from accepting the additional liability after the reporting date. They do, however, require a crop inspection to determine whether the acreage should be accepted for insurance. (FF 4.) In this case, there is no evidence that such an inspection occurred. The agent testified at deposition that he did not make an inspection and had no knowledge of one having been made. (FF 14.) In fact, the crops were already damaged by heavy rain which occurred in Marshall County in the middle of the summer of 1993. Its condition and the fact that harvesting it would cost Tri-Campbell more than the crop was worth was the reason Tri-Campbell gave Bogestad the wheat crop on its land in satisfaction of the custom farming bill. (FF 16.) Appellant accepted liability on a wheat crop which was already damaged without performing the required inspection. Appellant's assumption of liability for the late reported units without conducting the required inspection which would have revealed the condition of the wheat crops constitutes a failure of compliance as described in section V, paragraph H of the SRA, allowing FCIC to require a refund of the expense reimbursement in question.

Our conclusion on this issue alone is dispositive of the appeal. Appellant, however, has largely based its case on the outcome of the arbitration. We shall address that contention briefly.

Effect of Arbitrator's Decision

Appellant has raised the argument that because the policy required disputes between the company and the insured to be resolved by arbitration and because the arbitrator decided that Bogestad had an insurable interest in the wheat crop, FCIC may not undertake an action contrary to that finding, absent a showing of bad faith on the part of the company associated with the arbitration. Appellant essentially attempts to set up a fairness argument. Appellant provides no legal authority for its position. Given the facts in this case, even were we to conclude that FCIC, in some instances, might have an obligation to act in a manner not contrary to the result in a contested arbitration, that would not reasonably apply to the situation presented in this case. The matter of Bogestad's insurable interest was not seriously, if at all, contested by Appellant in the arbitration, with Appellant requesting in its brief that the Appellant's request be accepted. Further, FCIC was neither a party, nor even notified as to the arbitration. Appellant knew that FCIC had taken a position contrary to the request for relief asked for by the producer and which Appellant supported at arbitration. To conclude under these circumstances that FCIC is somehow acting improperly by not following the arbitration decision, is an untenable position. Accordingly, we reject this argument.

DECISION

The appeal is denied.

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ANNE W. WESTBROOK
Administrative Judge

Concurring:

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EDWARD HOURY
Administrative Judge

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HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
May 16, 2000