RAIN AND HAIL INSURANCE SERVICES, INC.,) **AGBCA No. 96-170-F**

Appellant

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DECISION OF THE BOARD OF CONTRACT APPEALS

July 10, 1998

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This appeal arises from a 1993 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 Rain and Hail Insurance Services, Inc. (RHIS or Appellant). In addition to the above-named parties, evidence also addressed the role of the Agricultural Stabilization and Conservation Service (ASCS), another agency of USDA. ASCS is now the Farm Service Agency (FSA) as a result of a USDA reorganization.

Under an SRA, Appellant sells crop insurance to insureds under Multi Peril Crop Insurance (MPCI) policies in furtherance of the Government crop insurance program and 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 RHIS and insureds such as CR Partners (CR), the insured in this appeal.

Appellant issued an MPCI policy to CR for a wheat crop on 4,247 acres in Blaine County, Montana. The policy was based on the covered acreage being classified summerfallow (as contrasted with continuous cropping) for the prior growing season. If the insured crop were grown on land that had been summerfallow, the production of wheat would be expected to exceed the production on land that was classified as continuous cropping. Therefore, in the event of a crop loss due to an insured peril, the indemnity payments by Appellant (and the recovery by the insured) would exceed the indemnity payments for land classified as continuous cropping. The premiums received from the insured for summerfallow land would also be greater than the premiums paid for continuous cropping.
CR Partners suffered a crop loss because of drought and Appellant paid CR $87,113 for the loss, basing the payment on a summerfallow prior practice. Thereafter, FCIC notified Appellant that it had received an anonymous complaint that CR had incorrectly represented the land as summerfallow. FCIC conducted an investigation, and concluded that there had been insufficient mechanical and/or chemical weed control for the land to have been classified as summerfallow. FCIC concluded that CR was entitled only to $20,588 rather than the $87,113 paid it by RHIS and disallowed reinsurance of the balance of $66,525 as well as the amount by which Appellant had overstated the premium, $2,629.

Appellant disputed the reduction, contending that conversations held with FCIC at the time of CR's application for insurance, as well as Appellant's view of the practices, procedures and customs that supported its actions, made any recoupment of reinsurance paid improper.

Appellant appealed a March 20, 1996, final decision of the Director, Risk Compliance Division, Farm Service Agency, USDA, in which the Director asserted that Appellant owed the $66,525 in indemnity overpayment and $2,629 in premium overstatement. The Board has jurisdiction over such appeals pursuant to 7 CFR § 400.169(a) - (d) and 7 CFR § 24.4 (b). A hearing was held in Great Falls, Montana, on June 18, 1997.[1]

FINDINGS OF FACT

CONTRACTUAL AGREEMENTS AND PROVISIONS

1. The SRA provides at Section II, Reinsurance, A.1., that "Only eligible crop insurance contracts written under the authority of the Act)[2], will be reinsured under this agreement." At Section I, I., the SRA defines an eligible crop insurance contract as, "a crop insurance contract which

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[1] The hearing was held before Judge Sean Doherty, who retired from the Board on April 3, 1998.

[2] Act refers to the Federal Crop Insurance Act (FCIA), 7 U.S.C. § 1501 et seq.

is sold and serviced: in a manner consistent with the Act, 7 C.F.R., Chapter IV, FCIC policy and procedure and applicable rates." (Exhibit (Ex.) 1, page (p.) 2 (all exhibits were joint exhibits)). It further provides, under Section V, General Provisions, Paragraph H, Self Audit and Compliance:

> H1. 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 United States, the laws and regulations of the state in which the Company is conducting business under this agreement unless such state law and regulations are preempted by this Agreement, and all instructions of FCIC. (Ex. 1.)

2. The SRA continues at subparagraph H.3 that if FCIC finds that the Company has not complied with the provisions of Section V.H.1 and 2, FCIC, at its option may:

> H3b. 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. (Ex. 1.)

3. The preamble to the SRA between FCIC and RHIS incorporates by reference into the reinsurance agreement, the regulations codified in Title 7, Chapter 4 of the CFR (Ex. 1). The regulations provide at 7 CFR § 401.8 that the terms of the SRA cannot be changed by an agent or employee of FCIC (Ex. 2). The regulations further provide at 7 CFR § 400.168 that the participating insurance company "shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured" (Ex. 8).

4. The crop practice of summerfallow is defined in two FCIC (industry assisted) published documents, the National Crop Insurance Service (NCIS) 760 and the Loss Adjustment Manual (LAM) (Ex. 6, 7). NCIS 760 is used to assist reinsurance companies in making policy determinations, while the LAM assists reinsurance companies in properly adjusting losses (Ex. 6, 7; Transcript (Tr.) 28-29). Neither are included in or published in the CFR. Appellant acknowledges that the NCIS and LAM set forth policies and procedures of FCIC as to issuance of insurance and handling of crop insurance claims, and that such policies and procedures are to be followed. (Ex. 7; Tr. 129-130, 135, 171-172, 185, 240-241, 310.)

5. The NCIS 760 (at I-2 paragraph 5) and the LAM (at I.8, 9) specify for summerfallow that the acreage has to have remained unplanted during the prior crop year, that the land had been fallow for a full crop year, that plant growth must have terminated by June 1 (for Montana) and that thereafter, the property had to be subject to a continuous mechanical or chemical weed control program. In addition, the publications provided that "Summerfallow practices carried out must be consistent with

Soil Conservation Service (SCS)[3] for soil erosion control measures and good summerfallow practice for the area with regards to method(s), frequency, and adequacy of tillage and/or chemical control." (Ex. 6, 7.)

6. According to Appellant, summerfallow (for purposes of the SRA) did not necessarily mean that there had to be an absolute absence of weeds on the farm after June 1 (Tr. 175-176). Ronald Swanson, Appellant's expert in insurance practices, noted that FCIC would often issue bulletins extending the termination date, and at times FCIC disregarded the termination date. He noted that business had the view that very little was etched in stone at FCIC. (Tr. 175-176.) In his view, the existence of some weeds and a classification of summerfallow "created somewhat of a gray area" (Tr. 125, 192). The record shows that there were some instances where weeds existed on farmland which was treated by some agencies of USDA as summerfallow for non-FCIC purposes. Additionally in some instances, FCIC would deviate from the June 1 deadline. However, in each example provided by Appellant relating to crop practices, and particularly, where FCIC extended the date, there was a writing from FCIC specifically setting out the change. Furthermore, FCIC crop practice changes were done on a general or regional basis and not on a single farm basis. (Exs. 47, 48, 49, 50; Tr. 262-264.)

7. According to RHIS witnesses, insurers such as Appellant do not normally check or investigate the truthfulness of representations and information given by insureds at the time of issuance of a policy. MPCI policies are sold on the basis of what the insurer is told by the insured as to yield, crop practice, etc. (Tr. 299.) Further, according to Appellant, other than going to the insured for information, Appellant and FCIC obtain information from ASCS (Tr. 100-101). Appellant asserts that in theory, private insurers can rely upon ASCS information since farmers certify information to ASCS in order to obtain other government programs and benefits (Tr. 170).

8. While the MPCI policy is between RHIS and CR, the MPCI is relevant to this dispute in that it defines summerfallow and provides that RHIS can recover payments made due to misreported information by the insured. The MPCI provides at General Provision, Section 3(g) (Crop, Acreage and Share Report) that, "If you misreport any information, we may revise the premium and/or liability for the farm unit to the amount we determine to be correct or to conform to the information reported." (Appeal File (AF) 192.) The parties agree that the FCIC program is a program where the farmer self certifies (reports) the validity of information provided (Tr. 189). Similarly, filings with ASCS (described in more detail below) and its programs are also self certified (Tr. 100-101).

9. The MPCI defines summerfallow as, "The practice of allowing the insured acreage to lie idle throughout the previous crop year, while maintaining a continuous chemical and/or mechanical weed control program" (AF 187).

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[3] SCS has been reorganized and is now the Natural Resources Conservation Service.

EVENTS RELATING TO ISSUING THE MPCI POLICY TO CR

10. In the fall of 1993, CR contacted Donald Richman (Richman), a local insurance agent (who sold RHIS policies), for purposes of securing crop insurance on land that CR had not previously farmed but that it planned to lease. That initial contact raised a number of questions for Richman as to the status of the land and how it was to be treated under FCIC procedures. Among the questions were whether the land could be classified summerfallow. (Ex. 9, 13; Stipulation (Stip.) 14; Tr. 203-205.) Whether the land was classified continuous cropping or summerfallow was significant to the insured, for according to Richman, the principal of CR might not have leased the farm if it had been classified as continuous cropping rather than summerfallow (Tr. 248).

11. During the period of October 1993 and continuing until some time prior to RHIS entering into the MPCI with CR, Mr. Richman and FCIC exchanged correspondence. Nothing in the correspondence related to whether the land met the summerfallow criteria, although Richman did request FCIC to deviate from its standard policy on the handling of crop units. FCIC approved that deviation and presented a written agreement on the subject to RHIS. (Exs. 9, 14, 22, 27; Tr. 154-155, 206.)

12. On or about November 11, 1993, Richman submitted CR's application for insurance to RHIS (Ex. 13; Stip. 14).

13. In describing what he did in selling the policy, Richman said that before he telephoned RHIS about how to treat the property, he called the Blaine County ASCS office. He explained that since he did not know how well the predecessor farmer, Stuart, had kept records as to the previous crop year, he inquired in the telephone call as to "what ASCS was calling the land"and was told ASCS "had it as summerfallow." (Tr. 210-211.) Appellant produced no evidence as to whom Richman spoke with at ASCS or further details of that conversation.

14. In his capacity as an agent, Richman was familiar with various ASCS documents and in particular ASCS Form 578, which, among other information, contained the farmer's certification for the prior-year's practice for the land. He knew that the information on Form 578 had been provided and certified by Stuart to ASCS. Prior to issuing the policy, he looked at Stuart's 1993 Form 578 and verified that Stuart had designated the property as summerfallow. Richman admitted that he never contacted Stuart for verification, explaining that they had a falling out and they were not talking. He confirmed that he knew the information on ASCS forms depended on the veracity of the farmer, as it was not created or verified by ASCS. (Tr. 225-226, 233, 252.)

15. Richman, along with a principal of CR, visited the property on Easter weekend (April 3, 1994). They observed weeds and Richman described the weeds as being a couple of feet high. Although weeds did not cover all acres, they observed weeds all over the farm. (Tr. 207-208, 224.) It was Richman's opinion that "there was no problem whatsoever as to summerfallow," for while there were weeds, he knew that CR had contracted with a neighbor to go on the property with

tractors and in his view the property was going to be in better shape than it had been in a long time (Tr. 213-214).

16. As of April 7, 1994, Richman still was not sure as to how to classify the prior practice, so on that date he telephoned Ms. Vicki Fasbender of RHIS regarding how to classify the property. She then related her conversation with Richman to her supervisor, Mr. Jay Conlon, who then called the head of the FCIC Regional Service Office in Billings, Montana (RSO), Mr. Robert Prchal.

17. Mr. Conlon did not have personal knowledge of conditions at the site and was relying on the conditions described by Richman. At the time he spoke to Mr. Prchal, Mr. Conlon did not know if or when plant growth had been terminated nor whether there had been continuous weed control in the 1993 crop year. He said he told Mr. Prchal that this was a new farm that had not been farmed the previous year and noted that Mr. Prchal did not ask any questions. The conversation did not take very long. Further, he said, "And I was not told there was a severe weed problem. I was told that there were some weeds on this farm." Mr. Conlon acknowledged that he knew what constituted summerfallow and what constituted continuous cropping. (Tr. 112-113.) Mr. Conlon had often dealt with Mr. Prchal over the years. (Tr. 209-210, 265.) He related to Mr. Prchal, that "the agent had told us that there were some weeds on this farm, yet ASCS had determined that it was going to be summerfallow. . . ." He then asked Mr. Prchal what to do and said he was relying on Mr. Prchal to tell him how to handle the matter. (Tr. 113, 148.) He said that Mr. Prchal told him that whatever ASCS called it, he could call it (Tr. 211). Mr. Conlon then related the substance of the above conversation to Mr. Richman (Tr. 236).

18. In describing the situation at the time of the conversation, Mr. Conlon noted, "we were in the middle between what strict FCIC procedure may say and what . . . ASCS was doing. Two different agencies going separate directions." (Tr. 114.) He further stated that what he had before him were two divisions within USDA, one with a definition of summerfallow and the other without a written definition. He continued, that "As it came to us, the definition of the determination of whether or not a farm would be, or land would be considered summerfallow is at the discretion of the county committee, which means -- in this state I don't know how many county committees there are, but there are 56 counties. There are only 40 county committees. You could have 40 separate definitions." He described that as being a very uncomfortable position for a farmer, an agent or a company to be in, having to deal with two agencies which are on two different levels. (Tr. 128-129.)

19. While Mr. Conlon represented to Mr. Prchal that there were some weeds on the property, observations of others establish a very different picture. Ms. Tracy Harshman, County Director of the Blaine County ASCS and other Blaine County ASCS committee officials conducted spot checks in December 1993, in conjunction with an investigation involving compliance by Stuart with the acreage crop reduction program (that was a separate program involving a contract between Stuart and another USDA agency, with FCIC having no involvement). Ms. Harshman described the property as having 100 percent weed cover that was 2 to 3 feet high with some volunteer grain mixed in. She called the weeds severe. (Tr. 338-341, 366-367.) Other committee members also reported

extensive weeds (AF 264, 266-267). It was further determined that while Stuart did apply a single aerial spray to control the weeds on August 24-25, 1993, that was not adequate to control the weeds and Stuart performed no further treatment or mechanical tilling from September 1993 through January 1994 (AF 122; Stip. 3-5; Tr. 335-342, 344).

20. Mr. Prchal had no specific recollection of the conversation reported by Mr. Conlon nor was he able to find any records of the telephone call (Tr. 32, 36). He did testify as to how he would normally handle a call of this type, noting that he would first request additional background materials, look at policies and procedures, and, if there was a difference, would see how it could be resolved (Tr. 48). For summerfallow, he would need to know conditions in the field, the state of land, and first and foremost, when the tillage operation occurred (Tr. 48-51).

21. Based on what it characterizes as FCIC's direction, RHIS issued CR a policy, based on summerfallow. On or about June 13, 1994, CR executed and filed a report of acreage on Form ASCS 578 with the Blaine County FSA office where he certified that the acreage on the farm in issue qualified as summerfallow practice. (Stip. 16-17.)

22. The parties stipulated that no crop was planted on the property in crop year 1993, that weeds existed on the farm, that Stuart did not use any physical tillage or chemical application to any land within the farm to remove plant growth from January 1993 through August 23, 1993. The parties also stipulated that Stuart applied aerial chemical weed control from August 24-25, 1993, on most of the acreage with the remainder physically tilled in August. Stuart applied no further tillage or chemical to any land from September through the end of the year. (Stip. 2-5.) Also, Blaine County determined that Stuart was in maintenance default for the same acreage; albeit that default involved an acreage reduction program for 1993, administered from that office. That decision was appealed by Stuart and was affirmed. (AF 5-9.)

THE LOSS ADJUSTMENT

23. During crop year 1994, CR planted on the property. On or about August 7, 1994, it filed a claim with RHIS. RHIS adjusted the claim in September 1994 and made an indemnity payment to CR of $87,113 (Stip. 21, 22). Prior to paying CR, RHIS verified that summerfallow was the prior practice certified by CR on its June 1994 insurance application (Ex. 16; Tr. 151). Mr. Richman took no part in the loss adjustment procedure, which was handled by an RHIS adjuster. That adjuster viewed the farm in the fall of 1994, well after the time during which the summerfallow practice would have been in place and after crops were planted in 1994. Since the summerfallow issue involves the status of the land in 1993, it follows that the adjuster could not visually verify 1993 practices in September 1994. (Tr. 197.) RHIS verified by looking at information on the ASCS documents. RHIS reported that the adjuster saw no discrepancies between the practice indicated on the claim and that set out in the ASCS document entries. (Tr. 88-89, 221, 269-270.) Finally, there was no evidence presented that indicated that the adjuster contacted the prior farmer, Stuart, at any time during the adjustment process.

24. On October 28, 1994, FCIC notified RHIS that it had received an anonymous complaint concerning the classification of the CR property (AF 60). FCIC conducted an investigation and in March 1995, determined that during 1993 there was insufficient tillage and weed control to meet the definition of summerfallow (AF 61-63). FCIC recalculated CR's claim, determining that CR only qualified for an indemnity payment of $20,588 and further that the premium was overstated by $2,629 (AF 63). RHIS took exception to that finding, with FCIC upholding it on May 5, 1995 (AF 92).

AUTHORITY OF RSO AND ITS DIRECTOR IN ALLOWING VARIANCE FROM CROP PRACTICES

25. A significant issue in this appeal was the scope of Mr. Prchal's and the RSO office's authority as to changing the criteria for summerfallow. It was a regular practice for insurers to go to the RSO for clarification on policy matters, interpretation and procedures. It was the practice in the industry to rely on RSO guidance. The RSO was the front line interactive office for FCIC in dealing with the crop insurance program and the RSO regularly provided technical assistance, guidance and counsel to both insureds and insurance companies. FCIC also participated in policy and procedural interpretation (Tr. 15, 23-24, 33-35, 172, 216) and industry officials regularly went to and received guidance and interpretation from the RSO (Tr. 162-163). As FCIC acknowledged, it was and is the custom and practice for reinsured companies to contact the RSO when there are problems with policy or procedure interpretation (Tr. 33).

26. A March 2, 1993, letter from Mr. Prchal to RHIS, which advised insurers of a recent reorganization of the FCIC field office structure, noted that each year there are numerous changes to the crop insurance program, policies and guidelines, and that communicating those changes and providing training was a critical success factor. It continued, "The Billings RSO personnel are available to provide field level support to companies in resolving problems, explaining procedures, and participating in training and providing technical assistance and guidance on underwriting and claims issues. Please feel free to contact us when the need arises." (Ex. 46.)

27. RSO's mission statement provided, "facilitate the implementation of a sound, equitable system of crop insurance, by assuming impartial risk management evaluations, program oversight, and uniformly providing consistent explanations of insurance policy provisions to all farmers, crop insurance deliverers and the general public at the regional level" (Tr. 21).

28. Appellant also presented other evidence which indicated that the RSO had authority to make changes, or deviate from normal underwriting criteria (Tr. 24, 26, 27, 30). In particular, a letter of June 4, 1996, out of the Billings Office (then Risk Management Division), signed by Mr. Prchal as Director, advised RHIS of a date extension for summerfallow practice for the 1996 crop year (Ex. 45). Despite this document, Mr. Prchal testified that he could not change plant growth dates and that such action could only be done by the Manager under a Manager Bulletin (Tr. 62-67).

29. The SRA did not define the authority of the Director of RSO. From a Departmental standpoint, FCIC is run by a Board of Directors that delegates management authority to the Manager of FCIC. That delegation further allows the Manager to redelegate authority to appropriate officers and employees of the Corporation. Among the delegated authorities was the authority to contract with private insurance companies for various services, to prescribe rules for adjusting and paying claims and to reinsure private insurance providers and to pay operating and administrative costs of such insurers. (Ex. 5.) Mr. Prchal testified that for some matters such as dividing insurable units, RSO had the authority to act. However, as to classifying summerfallow, he asserted that he did not have such authority (Tr. 29, 62-67). However, clearly, the RSO provided interpretations and changes to the norm from time to time and did so during this contract. For example, during this contract, the RSO assigned seven insurable units to the farm, thereby permitting CR to farm across sectional boundaries and deviate from standard underwriting criteria. (Tr. 206.) Further, (although not in regard to the SRA in issue) there was a June 4, 1996, letter from Mr. Prchal to Mr. Conlon (at that time, FCIC was still part of FSA), where under Mr. Prchal's signature as Director of the Risk Management Division of the RSO office, he extended the summerfallow cut-off date on a general basis to a number of counties due to the presence of dry conditions (Ex. 45). While there is nothing in that letter which says that the decision on the summerfallow extension was not first made by the Manager (as FCIC contends), the letter conversely has no indication that the Manager had a role. What is indisputable on the face of the letter, is that it was signed by Mr. Prchal and initiated from the RSO office. (Ex. 45; Tr. 288.)

30. When asked if RSO can authorize a change and deviate from what would be the more normal type circumstances and units, Mr. Prchal confirmed the RSO office is authorized to make those type changes or deviations, limiting it however, as, "That is true, according to policy and procedure" (Tr. 30).

31. In its brief at pages 33-34, FCIC makes the assertions that the RSO is not assigned any function overseeing the essentials of contract performance with respect to the SRA policy or procedure. FCIC continues that FCIC's Reinsurance Division and Risk Compliance Division are assigned the function of overseeing essentials of performance of the reinsured company under the SRA. No citation to the record is provided on the assertions relating to the non-RSO entities.

RELATION OF FCIC AND ASCS

32. FCIC is a wholly-owned corporation within USDA. Congress charged FCIC, under the Federal Crop Insurance Act, with implementing the federal crop insurance program. In 1993 and 1994, ASCS was an agency of USDA and worked with various farm programs such as the Conservation Reserve Program, Wheat and Feed Grain Programs, and Grain Loan Program. ASCS was somewhat unique, as compared to other federal entities, in that ASCS was under the direction of a locally elected county committee. (Tr. 339, 363.) The ASCS entity that existed in 1993/1994 is now part of the Farm Service Agency (FSA) in USDA. (Tr. 11). Some time after the events leading up to this dispute arose; and, as a result of the Reorganization Act of 1994, there was a short

time period during which both ASCS and FCIC were absorbed into FSA (Tr. 11, 12, 340). However, in 1996, legislation removed FCIC from FSA (Tr. 12).

33. At the time of the events material to this dispute, FCIC and ASCS were separate entities, had separate offices, dealt with separate programs, had separate and distinct authorities and operated under different legislation (Tr. 11, 357).

34. The ASCS office involved in this dispute was in Blaine County, Montana. It was staffed by a local county committee. The FCIC was in Billings, Montana, and ultimately reported to Washington, DC. (Tr. 10-14.)

35. During the time at issue, FCIC and ASCS did not share policies or procedures or regularly consult on program matters (Tr. 55-58, 353-357). There is no dispute that among its roles, ASCS was a repository for information filed by farmers as to yields, practices and other matters. In that regard, FCIC and others consulted ASCS forms and data from time to time as third-party verification for crop and other information. Moreover, portions of the NCIS 760 and the LAM identified and referred to ASCS for a number of purposes, including as a source for information and verification. (Ex. 6, 7; Tr. 20.) There was, however, no specific provision in either NCIS 760 or LAM that directed an insurer to use ASCS documents to verify a crop practice such as summerfallow. Additionally, neither manual contained language which stated that a party could rely on what the ASCS documents showed, where later it was established that the information on the ASCS forms was inconsistent with actual conditions. (Ex. 6, 7.) In this regard, Appellant's expert, Mr. Swanson acknowledged that FCIC policy and procedure did not support these practices (Tr. 197). He testified there was no FCIC policy instructing companies to call ASCS to determine summerfallow. This was supported by Ms. Fasbender, who described such an action as an exception and not the rule. (Tr. 197, 297-298.)

36. Further, at least during 1993 and 1994, FCIC and ASCS did not define summerfallow in the same manner. None of the FCIC or ASCS officials involved in this dispute were aware of the other's definition and policy as to what constituted summerfallow. ASCS classified land as summerfallow if the producer did not plant a crop on the land during the previous crop year. (Tr. 142, 345-346; n (Stip. 18.) FCIC, in defining summerfallow, followed the definitions set forth in the NCIS 760 and in the LAM. Those definitions included considerably more criteria, including requirements for weed control and cut off dates for tilling. (Ex. 6, 7.) Also of importance, the evidence showed that Mr. Conlon of RHIS was aware of the limited scope of the ASCS definition. He said, "the best definition that he'd been given regarding procedures of ASCS was that if there was not crop on the land the previous year, it would be classified as summerfallow." He confirmed that it was only what he was told orally and he was unaware of any written definition. (Tr. 142.)

37. Finally, in addition to ASCS having a different definition of summerfallow than FCIC, ASCS had no uniform definition among its various offices and no written ASCS definition for the practice. (Tr. 363.)

CUSTOM AND TRADE USAGE

38. Appellant testified that the CR situation was not a normal situation for RHIS, since CR did not operate the farm during the 1993 crop year and CR was allegedly not familiar with Stuart's operation. According to Ms. Fasbender, of RHIS, this was the first time she had worked with a farmer that had not had control of the ground the prior year. (Tr. 266, 322-323.) Appellant also testified that it is not the agent's responsibility to verify the information provided by the farmer, that the MPCI policy provides that it is the insured's responsibility to report the acreage, the share of the crop and the type of farming practice; and that the agent is not required to call ASCS to verify information. Nevertheless, RHIS and Richman thought it necessary here. (Tr. 299.)

39. Mr. Swanson, RHIS's expert, testified that if an insurance agent called him and said ASCS "has this as summerfallow," but that there are some weeds, he would not have felt comfortable. He said he probably would have checked, and stated that he personally has made such calls in the past to the RSO. (Tr. 166.)

40. Mr. Richman said that out of 160 policies he sold, this was first time he called ASCS to determine planting practice (Tr. 212). Ms. Harshman of ASCS said she has never had an agent examine ASCS documents to determine whether acreage qualifies as summerfallow. (Tr. 353.)

41. Mr. Swanson contended that an agent ascertains information about the June 1 deadline and continuous weed control from ASCS. However, he admitted he did not know whether ASCS possessed the information. (Tr. 182-183.) He testified that there was no way that RHIS could know first hand what had been done on this acreage the previous June 1. He acknowledged the producer from the previous year would know when plant growth was terminated and what weed control measures were used. (Tr. 181, 193.) According to Appellant, the practice for a new MPCI policy, such as the one in issue, was to rely on what the farmer told the insurer, and that an agent could not be expected to go out and inspect each farm that he/she insures (Tr. 168). Mr. Conlon, however, testified that agents are supposed to work with the producer to determine information such as coverages, price elections, and production records, and it is the responsibility of the agent to explain policy provisions to insured. Agents are required to ask insureds whether their acreage qualified for summerfallow. (Tr. 135-136.) According to RHIS, it never makes the determination of planting practice but relies on the insured knowing the difference between summerfallow and continuous cropping (Tr. 137, 174-175, 232-234, 298-299). In that regard, Mr. Swanson noted that Montana always had the highest participation in this federal program and that the farmers in Montana are very sophisticated as to practices (Tr. 175).

42. FCIC does not dispute that the NCIS 760 and the LAM use and reference specified ASCS records as a means of verification for certain crop information (Exs. 7, I-2, I-4, II-1, II-9, III-1, III 9-10). For example, the LAM contains a section entitled ASCS Visit, which lists a number of ASCS documents, and identifies information that RHIS was to obtain and verify with ASCS during adjustment of a claim (Tr. 130). Among the forms cited for information was Form 578, which included the farmer's certification of its prior year practice (Tr. 131). The LAM, however, also specifically identifies when ASCS reported information was to be used (Exs. 7, I-2, paragraph C.1 (dealing with share), III-14 (dealing with acreage)).

43. RHIS acknowledged that it will not and does not use ASCS reported information when it knows that the information is incorrect (Tr. 191-192, 311-312).

ALLEGATIONS OF SUPERIOR KNOWLEDGE

44. Appellant asserts that FCIC had superior knowledge as to condition of the property at the time Mr. Prchal is alleged to have directed it to proceed with the summerfallow classification. RHIS attributes direct knowledge of conditions to ASCS. There is no indication that Mr. Prchal had personal knowledge as to the CR property and he so testified. (Tr. 36, 37.) Further, he knew of no instance where he had told someone to override an FCIC classification with one from ASCS (Tr. 51).

45. In March 1993, Stuart contracted to participate in the acreage reduction program, which was then administered by ASCS, and under which the producer agrees not to plant a specific number of acres in return for the right to obtain deficiency payments, price support loans and other program benefits. To remain eligible for payment, the producer is required to use needed measures in a timely manner to control erosion, insects, weeds and rodents. (AF 119-124.)

46. The parties stipulated that on or about December 9, 1993, the County Office Committee for Blaine County determined that the Stuart Farm was in “maintenance default” for 2,463 acres which Stuart had enrolled in the above program for 1993 crop year. It determined that Stuart had failed to perform the necessary measures to control the weeds in a timely manner. Stuart appealed to both the County Office Committee for Blaine County and to the State FSA Committee. Both rejected its appeal and upheld the maintenance default. At some point thereafter, Stuart appealed to a higher level at the USDA and on April 6, 1995, that appeal was denied. (Stip. 6-9.)

DISCUSSION

THE POSITIONS OF THE PARTIES

According to FCIC the property in issue did not qualify as summerfallow under the NCIS and LAM definitions and therefore, payment of a claim on the basis of that status was a violation of the FCIC

policies and procedure and was not in compliance with provisions of the SRA. More specifically, FCIC contended that there was no mechanical tillage or chemical treatment to remove all weeds and grasses for a period of 1 year, the initial tillage operation had not been conducted by June 1 and that CR failed to meet the continuous weed control requirement. FCIC asserts that the SRA provides that only eligible crop insurance contracts will be reinsured and that eligible crop insurance contracts under the SRA exist only when the insurance is sold and serviced in accordance with the SRA, laws, regulations, rules and procedures and policies. FCIC also points out that the Appellant can possibly recoup from CR because the MPCI policy provides a basis for indemnity and premium adjustment where the insured misreports information.

Appellant defends on the basis of several theories. First, it asserts that FCIC is estopped because Appellant reasonably relied upon the April 8, 1994 representation of Mr. Prchal that if ASCS had classified the insured acreage as summerfallow, it was acceptable for Appellant to do the same. Second, Appellant asserts that it complied with custom and trade practice in relying on ASCS documents, and in the farmer's self certification that the acreage was summerfallow. Third, Appellant asserts that FCIC possessed superior knowledge regarding classification of the acreage.

VIOLATION OF THE CONTRACT

The SRA requires RHIS to comply with policies and procedures of FCIC. RHIS has agreed that among policies and procedures to be followed in issuance of crop insurance and adjustment of claims, are the policies set out in NCIS 760 and LAM. Each of those documents define summerfallow and require as elements that the property be fallow for a full crop year, be subject to continuous chemical or mechanical weed control and that there be no plant growth beyond June 1. (Findings of Fact (FF) 1 and 5.) The summerfallow criteria was not complied with by the prior farmer, Stuart (FF 15, 19).

The record is quite clear that there were extensive weeds throughout the property during the relevant period (FF 15, 19). Since the ASCS officials viewed the property in December 1993 and saw extensive weeds, and since the parties have stipulated that no weed control was used after September 1993 (FF 15, 19, 22), we find that the property had a severe weed condition and as such did not qualify for summerfallow. Richman's description of the property as "some weeds" was both inaccurate and misleading. (FF 23.)

The SRA provides that a company such as Appellant can be required to refund or forfeit a share of reinsurance with respect to a crop insurance contract violation (FF 2). Implicit in that would be where the classification used in the contract does not meet the summerfallow criteria, a company (RHIS) fails to follow the agreement or fails to comply with policies and procedures. We find here that the violation of summerfallow classification triggers that provision.

AUTHORITY OF RSO/ESTOPPEL

Before addressing the April 8 conversation, we must first address FCIC's contention that Mr. Prchal lacked legal authority to waive or change the criteria for summerfallow. In considering this, we also look at the effect of 7 CFR § 401.8, which prohibits employees or agents of FCIC from changing provisions of the policy. (FF 3.)

The matters of estoppel and authority raise questions relating to Federal Crop Insurance v. Merrill, 322 U.S. 380, 68 S. Ct. 1, 92 L. Ed. 10 (1947). FCIC asserts that Federal Crop Insurance is directly on point, and characterizes the policies on summerfallow as akin to regulations.

There is considerable evidence to establish that Mr. Prchal had authority to provide guidance and interpretations regarding the summerfallow classification. In this instance, Appellant asserts that such interpretations and guidance was needed here because CR, as a new producer was not aware of the prior producer's practice, but only had available to it the prior producer's ASCS Form 578, on which that producer (Stuart) specified summerfallow. Mr. Prchal testified as to regularly providing interpretations and guidance on policy issues and matters. Appellant's witnesses confirmed that practice. (FF 25.) In addition, Mr. Prchal's letter of March 2, 1993, to Mr. Conlon and the Mission Statement of RSO further laid out the role and assistance provided by the RSO to insurers and farmers, including providing advice and interpretation (FF 26, 27). Finally, the evidence showed that from time to time, the RSO issued letters revising dates for various activities, including summerfallow, which again indicates the authority of the RSO to act (FF 28). Consequently, we conclude that on the evidence presented in this case, the RSO's advice and guidance could be relied upon.

We are of course mindful that the authority of a Government official is subject to prescribed limits. We have therefore considered FCIC arguments relying on Federal Crop Insurance v. Merrill, supra, and find those arguments do not control in this instance. That case involved a local official accepting property as insurable even though the practice was not allowed under regulations published by FCIC in the Federal Register. Here we have an official being asked to interpret and provide guidance on matters set out in a handbook. This is not comparable to evidence of a statute or regulation.

Further, a finding that the RSO was acting within the limits of his authority is supported by the decision in LDG Timber Enterprises, Inc. v. Secretary of Agriculture, 114 F.3d 1140 (Fed. Cir. 1997). There, in a matter involving a contracting officer, the court noted that when actions of the contracting officer are within the authority that pertains to the subject matter of the contract, and no statute or regulation limits that authority, as in Federal Crop Insurance, the agency bears the burden of coming forward with evidence of lack of authority for the actions of the contracting officer. The court went on to note that no statute, regulation or rule was cited as violated by the contract extensions and representations in issue and "nothing in these routine arrangements reasonably suggested lack of authority."

As noted above, Mr. Prchal, in testimony and by letter, made it clear that one of his roles was to provide interpretation and guidance on policies and procedures and contract matters (FF 25-28). As was the case in LDG, supra, we see nothing in what appears to be routine arrangements and normal contract management, that suggest a lack of authority as to providing guidance and interpretations for the summerfallow criteria. To find as FCIC urges would render useless any interpretation or guidance given by the RSO office, particularly where Appellant might have had concerns about the proper classification.

Finally, the record has an express delegation of contract authority to the Manager of FCIC by the Board of Directors of the Corporation (FCIC). It specifically authorized redelegation of various authorities, including those dealing with contract management. (FF 29.) While the record before us has no specific document indicating that the Manager redelegated that authority to the RSO nor does the record amplify the scope of the delegated contract management, the actions of RSO indicate that the RSO was providing contract administration services. This is further confirmed in the March 1993 letter and the RSO mission statement. (FF 26-27.) Evidence provided by FCIC in this case, simply does not support the assertion that clarifications and directions on contract interpretation by Mr. Prchal were outside the scope of his authority.

As to FCIC's argument that Mr. Prchal was bound under 7 CFR § 401.8, which prohibits an agent or employee of FCIC from changing the agreement set out in the CFR, we point out that the NCIS 760 and LAM are not set out in the CFR (FF 3). Rather, the definitions are incorporated into the SRA through clauses addressing policy and procedure. The prohibition relied on by FCIC to buttress its position on lack of authority, is a preamble to and refers strictly to the SRA language, which appears in that volume. While we fully agree that Mr. Prchal cannot change those regulatory prescribed terms, we will not stretch the above-cited prohibition to also cover changing policies and practices set out in documents such as NCIS 760 or LAM. Those are clearly not the same as regulatory requirements.

Having found that Mr. Prchal is not lacking in authority, the case now turns on whether his actions in the telephone conversation with Mr. Conlon, bind FCIC or are a basis for estoppel or waiver.

It is well settled that where the above criteria are met, the Government may be estopped . However, the private party cannot prevail without at least demonstrating that the traditional elements of estoppel are present. Heckler v. Community Health Service of Crawford, 104 S. Ct. 2218, 467 U.S. 51, 81 L.Ed. 2d 42 (1984). The traditional elements of estoppel are: the party to be estopped must know the facts; (2) the party must intend that his conduct be acted upon; (3) the party seeking estoppel must be ignorant of the facts; and, (4) the party must have detrimentally relied on such conduct. NLRB v. Dominicks Finer Foods, Inc., 28 F.3d 678 (7th Cir. 1994); Granite State Insurance Co. v. Smart Modular Technologies, 76 F.3d 1023 (9th Cir. 1996); Lincoln Logs, Ltd. v. Lincoln Pre-Cut Log Homes, Inc., 971 F.2d 732 (Fed. Cir. 1992). Appellant in this case clearly fails to meet at least two of these elements.

The evidence is uncontroverted that Mr. Prchal had no independent knowledge of the condition of the property when he was contacted by Mr. Conlon of RHIS (FF 45). The evidence also shows that Mr. Conlon inaccurately described the conditions of the property to Mr. Prchal. The weed situation was considerable and severe and that was not the picture "of some weeds" provided to the RSO (FF 17-19). At best Mr. Conlon put before Mr. Prchal a picture shaded in gray, when in fact conditions were black and white. A party cannot hold another to an agreement, where in providing information essential to the agreement, the reporting party misreports material information, which if known by the other party, would have negated the agreement or direction.

As to the element of estoppel dealing with intent to be bound, the evidence shows that FCIC had no intent to waive or change the FCIC requirement for summerfallow. Mr. Prchal testified that he did not even remember the conversation. He unequivocally stated that if given the full picture there was no way he would have made the statements alleged. (FF 20.) Here Richman sent no letter, as he did in seeking information on units and other matters (FF 11), and we find that RHIS simply did not make clear to Mr. Prchal how and to what extent it intended to use information he provided as to summerfallow. Nothing informed FCIC that RHIS would be taking Mr. Prchal's comments or statements on summerfallow as a waiver or modification of the criteria for summerfallow. Further, as Mr. Conlon acknowledged, he had no information on other criteria such as tilling. (FF 17.)

While we believe that RHIS had the right to seek information and clarification and if properly given, to rely on it, we require as a predicate that RHIS had to provide full and accurate information and had to make it clear to FCIC how it intended to use and rely upon that information. The fact is that Appellant did not give an accurate description of the property. Further, it never indicated that it would use information from Mr. Prchal as the original source, and not exercise its own obligation to insure that the practice it designated in the policy was consistent with conditions on the ground. Given those facts, Mr. Prchal's comments cannot serve as a basis for estoppel.

APPELLANT'S CONTRACTUAL OBLIGATIONS

RHIS alleges that it complied with the express terms of contract and with industry custom and trade usage as to the criteria for summerfallow. RHIS states it met those requirements because of the practice of farmer self certifications and because it reviewed ASCS Form 578. According to RHIS, once it conducted the proper contractual verification, which it says consists of simply reviewing the ASCS forms, it was relieved of any further obligation, regardless of whether the ASCS form was accurate or not. RHIS says it was the custom and trade usage between it and FCIC that policies and payments were based solely on reviews of ASCS documents. RHIS asserts that FCIC wrote the rules and since FCIC did not choose to define the scope of verification in the LAM, RHIS's actions were adequate to conform to FCIC policies and procedures.

We do not doubt that ASCS forms and self certified application are a convenient means for carrying out verification. We also do not doubt that insurers often choose to rely on such forms, rather than making an independent check. (FF 35.) That, however, does not relieve an insurer of risks associated

with availing itself of such conveniences (FF 42-43). It is well known in the industry and was known by RHIS that the ASCS forms in issue were filled out by CR's predecessor on the land in issue (FF 14). There is no evidence that ASCS, FCIC or any other Government body insured or checked whether the ASCS Form 578 accurately reflected the certified conditions nor has it been shown that either FCIC or ASCS had such a duty. There is no question that the reliance solely on farmer certification left open the door for consequences such as that present here (FF 41). Given that obvious possibility, given that the SRA specifically allowed FCIC to recoup money paid when a contract term was violated, and given that the MPCI protects an insurer by allowing it to recoup from the insured (FF 2, 8, 9), we find the risk to fall on the insurer (RHIS) and find no basis to conclude that FCIC intended to accept the risk of improper reporting.

Finally, two other points need to be made. Typically, the insured farmer is the same party that certified the ASCS Form 578. Both RHIS and FCIC witnesses described the situation of relying on a prior producer's certification, as being an exception to standard practice. Accordingly, since this was an exception, there is no custom and usage which is applicable. (FF 35, 38-40.) There also was considerable evidence from Mr. Swanson as well as Mr. Richman that Appellant considered the situation here to create a "gray area" as to qualification for summerfallow. (FF 6, 10, 23.)

Second, the evidence is clear that CR and RHIS (through Richman) had information that conflicted with the practice identified on ASCS Form 578 and on the insurance application. Richman and a CR principal (Becker) had been to the property prior to the telephone call to the RSO and well prior to the decision to classify the land as summerfallow. (FF 14-16.) These facts are critical, because as Appellant's own expert, Mr. Swanson said, given the situation, he would not have relied on ASCS documents. (FF 39.) Further, RHIS's own uncertainty as to the classification (even after talking to Richman) and its telephone call to Mr. Prchal for direction are inconsistent with the argument that the custom and usage in the trade was to rely solely on the ASCS forms, regardless of other surrounding circumstances and knowledge. (FF 13-18.) We therefore find no custom or usage for this situation.

SUPERIOR KNOWLEDGE

Appellant has made several other arguments, none of which we believe negates FCIC's right to secure the reimbursement. Appellant alleges that FCIC had superior knowledge in knowing through the ASCS that the Stuart farm was under investigation for improper classification and had a duty to disclose that information when Mr. Prchal spoke to Mr. Conlon. The evidence does not support Appellant's position. It is clear that Mr. Prchal had no knowledge of an investigation as to the Stuart farm nor has Appellant identified anyone else with FCIC who had that knowledge. (FF 44.)

Appellant's argument, however, does not stop with Mr. Prchal. Rather Appellant's argument rests on the proposition that FCIC and ASCS are so linked that what is known to one must be properly attributed to the other, or that if not, wrongful withholding by ASCS is to be attributed to FCIC regardless. The record is clear that while at the time of this contract, both FCIC and ASCS were

entities of USDA, the two entities were separate. They had separate offices and performed different functions. As Mr. Prchal testified, he does not know what ASCS did on a daily basis. Appellant has not shown otherwise. (FF 16-21.)

In J.A. Jones Construction Co. v. United States, 390 F.2d 886 (Ct. Cl. 1968), the court addressed a situation where the Corps of Engineers (COE) was managing a number of construction projects for the Air Force. One of the contracts was with J.A. Jones. The record showed that the Air Force had information as to future projects that was important to the contractor, but neither the Air Force nor the COE revealed the information. In defending the claim, the COE contended that in order for the Government to be held liable, Appellant had to show that the information was known by local Corps officials and that a showing of knowledge by the Air Force or Chief of Engineers was not sufficient to create liability.

In deciding the matter, the court first noted that if the Air Force had been the contracting party, there would be clear liability. The court then pointed out that the Government was composed of multitudinous departments and independent agencies and cited Bateson-Stolte, Inc. v. United States, 305 F.2d 386, 158 Ct. Cl. 455 (1962), which held that a truly independent federal agency should not be charged with knowledge of what another is doing simply because both are components of the same Federal government. In Bateson, the court found for the Government noting that the Corps in that case was not the construction or service agent for the AEC, which was building the plant in issue.

Turning to Jones, the court concluded that as to the Air Force contracts in issue, the Corps was acting as construction agent for the Air Force and was not engaged in an independent enterprise. As such, the court found the Government liable.

The situation here is completely different. But for the use of ASCS forms as a third party verification, FCIC and ASCS operated totally independently and neither was involved in running or managing the others programs (FF 10-15). Sharing or making available information to another agency in no way is similar to the relationship found in Jones. Here, ASCS was not working for or with FCIC on the insurance contract and to the extent it was involved, it was peripheral at best.

DECISION

The appeal is denied.

____
HOWARD A. POLLACK
Administrative Judge

Concurring :

____
ROBERT M.M. SETO
Administrative Judge

Concurring with separate opinion:

____
EDWARD HOURY
Administrative Judge

Issued at Washington, DC
July 10, 1998

CONCURRING OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

I concur that the appeal should be denied. However, I have a somewhat different view of the facts and issues necessary to reach this result. Finding of Fact citations are to the findings in the majority opinion, and knowledge of that opinion is presumed.

Appellant issued a Multi Peril Crop Insurance (MPCI) contract to insure a 1994 wheat crop on the basis that the acreage had been classified as "summerfallow" in 1993, i.e., planted growth must have terminated by June 1, and the acreage must have had a continuous mechanical or chemical program for weed control. The insured reported a wheat crop loss in 1994 due to drought and was paid $87,113 by Appellant for the loss.

The Federal Crop Insurance Corporation (FCIC) investigated an anonymous complaint, concluding that the acreage in fact should not have been classified as summerfallow, and that therefore, the estimated wheat crop yield had been overstated. FCIC determined that the insured was entitled to $20,588 and disallowed $66,525 of Appellant's reinsurance and $2,629 in overstated premium, under the Standard Reinsurance Agreement (SRA). Appellant appealed the disallowance to the Board.

The SRA provides that "only eligible crop insurance contracts" will be reinsured under the SRA, and defines an eligible crop insurance contract as one that was sold and serviced in a manner consistent with the Federal Crop Insurance Act, 7 U.S.C. 1501-1521, and FCIC policy and procedure and applicable rates (Finding of Fact (FF) 1). For the reasons stated below, the MPCI contract in issue was not an eligible contract because it was not sold in a manner consistent with the Act and because it was not consistent with FCIC policy and procedure and applicable rates.

The purpose of the Act is to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance. 7 U.S.C. 1502(a). There is a specific requirement in the Act that insurance be based upon actuarial soundness, 7 U.S.C. 1506(o), and that the insurance coverage be limited to crop losses due to natural disasters. 7 U.S.C. 1508(a).

An MPCI contract requiring indemnity payments for wheat yields that would not have materialized, even without the insured peril, is not consistent with the purposes of the Act. Moreover, the premium charged the insured was in excess of the premium that should have been charged. This is also inconsistent with the Act, one purpose of which is to assure that insurance is based on actuarial soundness. Based upon these facts, the MPCI contract between Appellant and the insured was not an eligible contract. It follows that FCIC need not reinsure the excess indemnity payment made under the contract and that Appellant must also return the excess premium collected.

Further, the National Crop Insurance Service 760 Manual (NCIS) and the Loss Adjustment Manual

(LAM) establish FCIC policy and procedure that include the definition of summerfallow (FF 4, 5). The preponderance of the evidence establishes that the acreage in issue did not qualify as summerfallow (FF 15, 19, 22). Consequently, the MPCI contract was not sold in a manner consistent with FCIC policy and procedure and applicable rates, and is therefore, not an eligible contract within the meaning of the SRA.

Appellant presented evidence that insurers such as Appellant can properly accept the insured's representation regarding acreage classification and that there was no obligation on Appellant's part to conduct an investigation or verify the information received (FF 7). In this instance, at the time of the insurance application, the insured was only considering leasing the acreage and was apparently unaware of the owner-lessor's farming practices, if any, during 1993. For reasons not entirely clear, classifying the property as summerfallow was important to the insured and might have affected his decision to lease the acreage (FF 10). Moreover, Appellant's agent was not on speaking terms with the owner-lessor and did not attempt to determine whether the acreage was in fact summerfallow for 1993 (FF 14).

Even if Appellant is correct regarding the practice of relying on the insured's representations, the facts of the present case are distinguishable. Here we have a new insured, not an insured who had farmed the acreage the prior season and was aware of the prior practices. Further, even if Appellant could properly rely on the insured's representations, the MPCI contract is nevertheless not an eligible contract. No improper conduct, nonfeasance or malfeasance on Appellant's part is necessary for this conclusion. The MPCI contract is simply not an eligible contract as that term is defined by the SRA, which constitutes the parties' agreement. Appellant's remedy, if any, under the MPCI contract is to seek recoupment from the insured (FF 8). Any other conclusion would require the FCIC to pay indemnity on nonexistent risks, a conclusion that is contrary to the SRA and the Act.

Appellant also presented evidence that it relied on the advice of the FCIC Regional Servicing Officer (RSO), that if the Agricultural Stabilization and Conservation Service (ASCS) had the acreage classified as summerfallow for 1993, it was proper for Appellant to issue the MPCI policy on this basis. In this regard, I concur with the majority's conclusion that Appellant has failed to prove all the necessary elements of estoppel. Further, there is no evidence that the RSO in this instance had authority to render advice which resulted in the payout of an insurance indemnity for a nonexistent risk, a payout not authorized by the Act. Moreover, the fact that the owner-lessor may have incorrectly completed ASCS Form 578 to indicate the acreage had been summerfallow in 1993 confers no legal rights on Appellant, and does not render an otherwise ineligible MPCI contract as eligible.

On pages 11 and 12 of Appellant's Post Hearing Brief, Appellant attempts to shed doubt on the definition of summerfallow by referring to paragraph c of clause 5, Summerfallow (SF) Practice, in the NCIS manual (Exhibit 6, page 1-2). Paragraph c simply provides that summerfallow practices

must be consistent with the Soil Conservation Service's (SCS's)[4] erosion control measures and good practices regarding the methods, frequency and adequacy of tillage and/or chemical weed control. Appellant has not shown how compliance or noncompliance with good SCS practices affected the determination that the acreage was not summerfallow in 1993. Appellant notes on page 19 of its brief that the SCS on occasion, because of drought or excessive moisture, prohibited farmers from removing all plant growth. Again, Appellant fails to show the relevance to the acreage in issue.

In conclusion, under the SRA, FCIC has no obligation to reinsure an MPCI contract that was sold or serviced contrary to the Act or FCIC policy or procedure.

[4] SCS was an agency within the Department of Agriculture. SCS has been reorganized and is now known as the Natural Resources Conservation Service.