IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

AMERICAN GROWERS INSURANCE COMPANY, Plaintiff, v. FEDERAL CROP INSURANCE CORPORATION, a corporation within the United States Department of Agriculture, RISK MANAGEMENT AGENCY, an agency of and within the United States Department of Agriculture. Defendants.	*	Civil No. 1:01-CV-10059 RULING AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff American Growers Insurance Company ("American Growers") brings this action against defendants Federal Crop Insurance Corporation ("FCIC") and Risk Management Agency ("RMA") seeking indemnification pursuant to 7 U.S.C. §§ 1506(d) and 1508(j)(2) for alleged errors and omissions committed by defendants. In the alternative, American Growers seeks administrative review of the June 15, 2000, decision of the Agriculture Board of Contract Appeals ("AGBCA"). Before the court are defendants' motion to dismiss and motion for partial summary judgment. For the reasons articulated herein, defendants' motion to dismiss will be granted and their motion for partial summary judgment will be denied.

I. BACKGROUND

This contract dispute arises out of a Standard Reinsurance Agreement ("SRA") between American Growers and the FCIC relating to the 1996 crop year. The core facts of this case have been reported in an earlier opinion; only a summary of the procedural history is warranted here. See Am. Growers Ins. Co. v. Fed. Crop. Ins. Corp., 210 F. Supp.2d 1088 (S.D. Iowa 2002). On September 15, 1998, American Growers filed an appeal to the AGBCA after the FCIC denied its claims for indemnification. On June 15, 2000, a three member panel of the AGBCA granted defendants' motion for summary judgment. Thereafter, on November 27, 2001, American Growers filed a complaint with this court seeking damages rather than asking for a review of the decision of the AGBCA.

On June 26, 2002, this court dismissed Counts I and III of American Growers' complaint for failure to state a claim upon which relief can be granted. Id. at 1095-96. The court granted American Growers leave to amend its complaint to seek judicial review of the AGBCA. Id. at 1095. On July 26, 2002, American Growers amended its original complaint to add a fourth count seeking administrative review of the AGBCA ruling if it is not entitled to bring an original action under Counts I, II, or III. Defendants move to dismiss Counts I and III of the amended complaint pursuant to this court's earlier ruling and order. Defendants further move for summary judgment on Count II in which American Growers seeks indemnification pursuant 7 U.S.C. § 1508(j)(3). American Growers filed a resistance to both motions and the matter is fully submitted.

II. APPLICABLE LAW & DISCUSSION

A. Defendants' Motion to Dismiss

When considering a motion to dismiss, a court will accept as true all factual allegations in the complaint. McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 740 (8th Cir. 1996). A motion to dismiss will be granted "only if no set of facts would entitle the plaintiff to relief." Id.

In Counts I and III of its amended complaint, American Growers asserts the same breach of contract and constitutional takings claims that were dismissed in this court's June 26, 2001, order. Defendants move to dismiss these claims pursuant to the court's earlier order and Rule 12(b)(6) of the Federal Rules of Evidence. American Growers resists the motion for the purposes of the record. For the reasons set forth in this court's previous order, Counts I and III of plaintiff's amended complaint will be dismissed. See Am. Growers, 210 F. Supp.2d at 1088-96.

B. Defendants' Summary Judgment: Standard of Review

Summary judgment is appropriate only when the record, viewed in the light most favorable to the nonmoving party, presents no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Procedurally, the "party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S.

317, 323 (1986). If the moving party carries its burden under Rule 56(c), then the party resisting the motion must "go beyond the pleadings, and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Id. at 324. If either party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." Id. at 322.

In considering a motion for summary judgment, a court must determine whether a reasonable jury could return a verdict for the nonmoving party based on the evidence presented and all reasonable inferences which may be drawn from that evidence. Quick v. Donaldson Co., 90 F.3d 1372, 1377 (8th Cir. 1996). The substantive law determines which facts are material, and factual disputes which are irrelevant will not affect the summary judgment determination. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

C. Whether 7 U.S.C. § 1508(j)(3) Applies to Plaintiff's Claim in Count II

In Count II of its amended complaint, American Growers seeks indemnification from defendants' under 7 U.S.C. § 1508(j)(3) for alleged errors and omissions. Defendants contend that when read in the context of the entire section, this provision does not apply to American Growers' claim. As with all questions of statutory construction, the starting point is the language of the statute. Duncan v. Walker, 533 U.S. 167, 172 (2001). Section 1508(j)(3) requires the FCIC to "provide approved insurance providers with indemnification, including costs and reasonable attorney fees incurred by the approved insurance provider, due to errors or omissions on the part of the [FCIC]." 7 U.S.C. § 1508(j)(3).

Defendants argue that the indemnification requirement only applies to situations in which an insured successfully sues American Growers due to the FCIC's errors of omissions. They point to the first two subsections of § 1508(j) as evidence that the statute only applies to indemnification for actions brought against American Growers by its insureds. Section 1508(j)(1) authorizes the FCIC to "provide for adjustment and payment of claims for losses . . . to the extent practicable, in a uniform and timely manner." Id. Section 1508(j)(2)(A) allows a party to challenge the FCIC's denial of a claim for indemnity "in the United States district court for the district in which the insured farm is located." Id. Section 1508(j)(2)(B) requires that an action on the claim for indemnity be "brought no later than 1 year after the date on which final notice of denial of the claim is provided to the claimant." Id. Defendants reason that because the first two subsections refer to insureds' claims for losses under crop insurance policies, subsection 3 must be similarly limited. I disagree.

The plain language of the § 1508(j)(3) requires that the FCIC "shall provide approved insurance providers with indemnification . . . due to errors or omissions on the part of the [FCIC]." The statute does, as the defendants suggest, contemplate indemnification for private actions brought by insureds against approved insurance providers. See Williams Farms of Homestead, Inc. v. Rain and Hail Ins. Servs., Inc., 121 F.3d 630, 635 (11th Cir. 1997); Bullard v. Southwest Crop Ins. Agency, Inc., 984 F. Supp. 531, 536 n.3 (E.D. Tex 1997) (observing that § 1508(j)(3) presumes the existence of state law claims against approved insurance providers by requiring the FCIC to provide indemnification). The text of § 1508(j)(3), however, contains no language limiting its application only to indemnification for claims brought by insureds. Had

Congress intended for the statute take on the meaning suggested by defendants, it would have written the statute to require the FCIC to "provide approved insurance providers with indemnification . . . due to errors or omissions on the part of the [FCIC] *in the adjustment and payment of claims for losses*." Congress, however, chose not to do so and I decline defendants' invitation to imply such language.

D. Whether the Statute of Limitations in § 1508(j)(2)(B) Applies to Count II

Defendants next claim that Count II is barred because American Growers failed to filed its complaint within the one-year limitations period found in 7 U.S.C. § 1508(j)(2)(B). That section provides that "[a] suit on the claim may be brought not later than 1 year after the date on which final notice of denial of the claim is provided to the claimant." § 1508(j)(2)(B). American Growers argues that § 1508(j)(2)(B) does not apply to the type of indemnification it seeks under § 1508(j)(3). I agree.

As articulated above, claims under § 1508(j)(2) are different from those under § 1508(j)(3). Section 1508(j)(2) applies to a "claim for indemnity." 7 U.S.C. § 1508(j)(2)(A). Under FCIC regulations, "claim for indemnity" is a term of art used in crop insurance policies that refers to claims made "for damage or loss to an insured crop." See 7 C.F.R. § 457.8 (2002). American Growers is not making a claim for indemnity pursuant to any crop insurance policy. Rather, it is seeking indemnification pursuant to § 1508(j)(3) for the FCIC's alleged errors and omissions. Accordingly, the one year statute of limitations found in § 1508(j)(2)(B) does not apply to its claim under Count II.

E. Whether Res Judicata Bars Count II

Defendants contend that res judicata bars Count II of American Growers' amended complaint because the allegations contained therein were presented to the AGBCA and addressed in the board's decision. The principles of the res judicata, or claim preclusion, are founded upon the idea that "one who has a choice of more than one remedy for a given wrong may not assert them serially, in successive actions, but must advance all at once on pain of bar." Mills v. Des Arc Convalescent Home, 872 F.2d 823, 826 (8th Cir. 1989). Accordingly, the Eighth Circuit Court of Appeals has observed that res judicata will bar any subsequent suit if: "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of actions." Black Clawson Co., Inc. v. Kroenert Corp., 245 F.3d 759, 763 (8th Cir. 2001).

The court need not go any further than to determine whether the suits are based upon the same causes of action. I conclude that they are not. American Growers' cause of action in Count II arises from 7 U.S.C. 1508(j)(3). In contrast, its appeal to the AGBCA stemmed from the alleged breach of the 1996 SRA of the parties. In re Am. Growers Ins. Co., AGCBA No. 98-200-F at 7-8 (June 15, 2000). Indeed, it is doubtful whether the AGBCA even has jurisdiction to entertain a claim brought under § 1508(j)(3).[1] Summary judgment on res

[1] The jurisdiction of the AGBCA appears is limited to appeals of final administrative determinations of the FCIC pertaining to standard reinsurance agreements. See 7 C.F.R. §§ 24.4(b) and 400.169(d). The regulations granting the AGBCA appellate jurisdiction do not address the board's supplemental jurisdiction over federal statutory claims.

judicata grounds will therefore be denied.

F. Whether Collateral Estoppel Bars Count II

In their final grounds for summary judgment, defendants argue that the doctrine of collateral estoppel precludes consideration of Count II. Specifically, defendants claim that every allegation in Count II was part of the breach of contract claim brought before the AGBCA. Even assuming this contention is true, it does not necessarily follow that American Growers is precluded from raising these issues in its suit on Count II.

Like res judicata, the collateral estoppel doctrine rests on the premise that a "question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies." Montana v. United States, 440 U.S. 147, 153 (1979). Courts have long favored the application of collateral estoppel to final administrative determinations. Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 107 (1991). Nevertheless, collateral estoppel applies to administrative proceedings only if:

> (1) there is identity of the parties or their privies; (2) there is identity of issues; (3) the parties had an adequate opportunity to litigate the issues in the administrative procedure; (4) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (5) the findings on the issues to be estopped were necessary to the administrative decision.

Pantex Towing Corp. v. Glidewell, 763 F.2d 1241, 1245 (5th Cir. 1985); see also, United States v. Utah Constr. and Mining Co., 384 U.S. 394, 421-22 (1966).

There is no question that the first three elements of the collateral estoppel requirements are satisfied in this case. A careful examination of the AGBCA's decision,

however, reveals that the issues defendants seek to preclude were never "actually determined" by the AGBCA for the purposes of collateral estoppel. This conclusion warrants a comparison of the allegations of Count II with the issues addressed in the AGBCA's decision.

In Count II of its amended complaint, American Growers seeks indemnification pursuant to 7 U.S.C. 1508(j)(3), specifically alleging the defendants committed errors and omissions in the following ways:

1. In failing to provide American Growers reinsurance consistent with sound reinsurance principles in violation of 7 U.S.C. § 1508(k)(2);

2. By offering expanded Prevented Planting Coverage when the FCIC lacked sufficient actuarial data to offer the same, in violation of 7 U.S.C. § 1508(a);

3. In failing to set, or adequately adjust, premium rates to reflect the Prevented Planting Insurance Changes, in violation of §§ 1506(o), 1508(d)(1) and (2), and 1508(i);

4. By instituting the Prevented Planting Insurance Changes without providing American Growers with adequate compensation for assuming the increased risks associated with said changes;

5. In acting outside its legal authority, thereby causing damage to American Growers; and

6. In failing to indemnify American Growers for the FCIC's errors and omissions in violation of 7 U.S.C. § 1508(j)(3).

Of the six errors and omissions alleged in Count II, only allegations 3, 4, and 5 were actually raised in American Growers' complaint before the AGBCA. Cf. In re Am. Growers, AGCBA No. 98-200-F at 7-8. Of the three allegations actually raised before the AGBCA, none were actually determined by a majority of the court. This is due to the fact that the decision of the

AGBCA resulted in a plurality opinion. Both Administrative Judges Vergilio and Hourly agreed summary judgment was appropriate, but they reached that result on different grounds.

Regarding allegation 3, Judge Vergilio concluded that "[the] allegation fails because a basis of the allegation is that [the] statute requires actuarially sound premium rates. The statute does not so require." Id. at 11. In contrast, Judge Hourly concluded that the SRA does not even address the rights and obligations of the FCIC under 7 U.S.C. §§ 1508(a)(1) and 1506(o)(1). Id. at 24. Judge Hourly further held:

> Appellant has not shown that FCIC failed to achieve [a loss ratio less than 1.1] for 1996. Even if FCIC had failed to achieve [a loss ratio less than 1.1], as stated above, Appellant has not shown that the loss ratio requirement was anything other than a Congressional budgetary consideration, rather than a provision intended to confer rights on insurers through the SRA.

Id. at 25. Additionally, although Judge Vergilio addressed allegations 3 and 4 of Count II in his opinion, Judge Hourly did not. Thus, of the allegations in Count II that were actually raised before the AGBCA, none were similarly determined by a majority of the board. Consequently there has not been an "actual determination" of the issues for the purposes of the doctrine of collateral estoppel. Summary judgment on the grounds of collateral estoppel will therefore be denied.

III. CONCLUSION

Pursuant to this court's earlier order in Am. Growers Ins. Co. v. Fed. Crop Ins. Corp., 210 F. Supp.2d 1088, defendants' motion to dismiss is **GRANTED**. Counts I and III of plaintiff's amended complaint are **DISMISSED**.

I find and conclude that the plain language of 7 U.S.C. § 1508(j)(3) does not limit

its application to indemnification for actions brought by insured. Likewise, the plain language of statute of limitations provision of § 1508(j)(2)(B) does not apply to plaintiff's claim for indemnification. I further find and conclude that doctrines of res judicata and collateral estoppel do not apply plaintiff's claims under Count II. Defendants' motion for partial summary judgment is **DENIED**.

IT IS SO ORDERED.

DATED this 3rd day of March, 2003.

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Ronald E. Longstaff, Chief Judge
United States District Court