

INDUSTRY LITIGATION OVER CATASTROPHIC RISK PROTECTION ISSUES

On Monday, June 14, 2004, twelve members of NCIS sued the Federal Crop Insurance Corporation (“FCIC”) to recover damages for reduced catastrophic risk protection insurance (“CAT”) payments resulting from program changes enacted in 1998 and 2000. The United States Supreme Court authorized suits such as this one when it established the “Winstar” doctrine in 1996. The lawsuit was filed in the United States District Court for the Southern District of Iowa, Western Division. The Western Division is headquartered in Council Bluffs, Iowa.

The June 14 suit merely refiled a suit initially filed February 26, 2003, in the United States Court of Federal Claims in Washington, D.C., raising identical issues and making identical damage claims. The suit was refiled in Council Bluffs because of a ruling made by the Court of Federal Claims on March 31, 2004. That ruling granted the federal government’s long pending motion to dismiss. The government’s motion raised two arguments with which the court agreed – that claims of the type asserted should be brought against the FCIC in a United States District Court instead of the Court of Federal Claims and that, prior to litigating in Federal District Court, administrative remedies needed to be exhausted. Although the twelve companies involved have appealed the March 31 decision by the Court of Federal Claims, they were compelled to file the new suit in the event that their appeal is unsuccessful. The timing of the new suit was necessitated by the potential running of the federal six-year statute of limitations on some of the companies’ claims. In other words, if the decision by the Court of Federal Claims is upheld by the Court of Appeals on its ruling that jurisdiction resides in Federal District Court, the twelve companies would have lost extremely valuable rights had they not sued in Federal District Court prior to June 23, 2004.

The statute of limitations issue arises because the first set of claims made in the litigation relates to enactment on June 23, 1998, of the Agricultural Research, Extension, and Education Reform Act of 1998. That legislation, contrary to the Standard Reinsurance Agreement then in effect, reduced CAT loss adjustment expenses payable by FCIC to the companies and eliminated their right to retain administrative fees paid by CAT policyholders. The Agricultural Risk Protection Act of 2000 reduced further the amount of CAT loss adjustment expenses payable to reinsured companies.

The Iowa litigation and the appeal have nothing whatsoever to do with current renegotiation of the SRA. The issues raised in the litigation are based on actions taken in 1998 and 2000 which have been detrimental to the crop insurance industry. Further, the litigation actually began well over a year ago when identical claims first were made in the United States Court of Federal Claims.