



Crop Insurance Arbitration:

What is Arbitration, When is it Required, and How Does it Work?

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The basic provisions of the common crop insurance policy provide that arbitration is often the required course of action for a producer who feels that his crop insurance claim has been improperly denied. While crop insurance is well known and widely used by agricultural producers in this country, many producers are not familiar with the arbitration requirement or the arbitration process. This article has been prepared in an effort to provide an overview of arbitration and the arbitration clause found within the common crop insurance policy. This article is not intended as legal advice, but it will hopefully bring some clarity to the arbitration requirement and foster a better understanding of arbitration as a dispute resolution method.

What is Arbitration?

Arbitration is a form of dispute resolution, where a dispute is submitted to an impartial decision-maker or a panel of decision-makers who make a binding decision on an insured's claim. Arbitration is commonly referred to as an alternative dispute resolution method because arbitration is an alternative to the use of the court system for the resolution of a dispute. The impartial decision-maker is called an arbitrator, and the arbitrator's decision is final and binding

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on the parties who submitted the dispute to arbitration. The binding nature of an arbitration decision, referred to as an arbitration award, distinguishes arbitration from mediation, another form of alternative dispute resolution that is offered in the basic provisions of the standard crop insurance policy. Mediation is a voluntary method of dispute resolution, wherein an impartial mediator does not issue a binding decision. Instead, mediation is an attempt to encourage a settlement or agreement between the parties of a dispute. Arbitration, on the other hand, results in a final decision as to the disagreement.

When is Arbitration Required in the Context of a Crop Insurance Dispute?

As earlier noted, Section 20 of the common crop insurance policy basic provisions requires the arbitration of disputes between an insured and the crop insurance provider as to “any determination” made by the insurance provider.² This policy provision also prevents insured producers, who feel that their crop insurance claims were improperly denied, from bringing suit against their crop insurance provider in a court of law. The arbitration requirement for crop insurance disputes has been challenged by insured producers across the country,³ who have sought to use the formal court system to force crop insurance providers to pay their crop insurance claims. So far, Courts have consistently found the arbitration requirement to be mandatory⁴ and have refused to hear crop insurance disputes that were not submitted to arbitration, as required in the common crop insurance policy.

The enforceability of arbitration clauses, such as the one found in the basic provisions is governed by the Federal Arbitration Act,⁵ and the aforementioned Court rulings stand for the

² Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (a) (2011).

³ See Nobles v. Rural Cmty Ins. Services, 122 F.Supp. 2d 1290, 1295 (M.D. Ala. 2000).

⁴ Nobles v. Rural Cmty Ins. Services, 122 F.Supp. 2d 1290 (M.D. Ala. 2000), IGF Ins. Co. v. Hat Creek Partnership, 76 S.W.3d 859 (2002).

⁵ 9 U.S.C. § 1 *et seq.* (2006).

proposition that arbitration is mandatory in all crop insurance disputes between an insured producer and the private insurance provider. Parties to a crop insurance contract are generally bound by the arbitration requirement.

Can you Appeal an Arbitration Award in a Crop Insurance Dispute?

The findings of an arbitrator may be subject to judicial review in certain circumstances.⁶ Court rulings also indicate that state law claims may survive an arbitration,⁷ and offer the insured an opportunity to litigate a crop insurance claim in state court. If missteps are made at arbitration, an insured producer has a right to judicial review of the arbitration award.⁸ The basic provisions make the availability of judicial review of arbitration awards clear.⁹ However, a Federal Court is not allowed to vacate an arbitration award merely because it disagrees with the findings of an arbitrator.¹⁰ A Federal Court review of an arbitrator's decision is limited by the Federal Arbitration Act.¹¹ This Act states the exclusive grounds upon which a court may vacate an arbitration award as follows:

- 1). Where the award was procured by corruption, fraud or undue means;
- 2). Where there was evident partiality or corruption in the arbitrators, or either of them;
- 3). Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing

⁶ See Federal Arbitration Act, 9 U.S.C. §§ 9-10 (2006); Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (c) (2011); 7 C.F.R. § 11.13 (2011).

⁷ See Nobles v. Rural Community Ins. Servs., 303 F.Supp. 2d 1292, 1299 (M.D. Ala 2004), IGF Insurance Co. v Hat Creek Partnership, 76 S.W.3d 859 (Ark. 2002).

⁸ Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20(c) (2011).

⁹ Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20(c) (2011).

¹⁰ Great American Ins. Co. v. Moye, 733 F.Supp.2d 1298, 1301 (M.D. Fla. 2010).

¹¹ Great American Ins. Co. v. Moye, 733 F.Supp.2d 1298, 1301 (M.D. Fla. 2010).

to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

4). Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.¹²

The above-referenced grounds upon which a court may vacate an arbitration award are applicable to crop insurance disputes. The fourth ground, allowing vacatur where arbitrators have “exceeded their powers” may be especially relevant in a crop insurance case, as an arbitrator’s power to resolve a crop insurance dispute is severely limited by the basic provisions of the common crop insurance policy.¹³

For example, when a dispute involves “a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure,”¹⁴ arbitration or mediation of a crop insurance dispute cannot proceed until the insured has obtained an FCIC interpretation of the disputed policy provision or procedure.¹⁵ This provision serves to stay the arbitration of a crop insurance dispute, until an FCIC interpretation has been obtained. The provision denies an arbitrator the power to interpret policy provisions and procedures. Moreover, the FCIC’s interpretation is binding on the arbitrator,¹⁶ effectively relieving an arbitrator of the power to render an independent decision as to the meaning of a policy provision or procedure. Such action by the arbitrator may very well supply grounds upon which a federal court could properly

¹² 9 U.S.C. § 10(a) (2006).

¹³ Scott Fancher, *Scope of the Federal Crop Insurance Arbitration Clause*, 2002, National AgLaw Center, http://www.nationalaglawcenter.org/assets/articles/fancher_arbitration.pdf; Common Crop Insurance Policy, 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (2011).

¹⁴ Common Crop Insurance Policy, 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (a)(1) (2011).

¹⁵ Common Crop Insurance Policy, 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (a)(1) (2011).

¹⁶ Common Crop Insurance Policy, 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (a)(1)(i) (2011).

vacate an arbitration award.¹⁷ The FCIC has added teeth to its limitations on the authority and power of an arbitrator or arbitration panel by including a clause in the basic provisions that states the “failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.”¹⁸ This provision appears to mandate judicial nullification of an award, where it was entered without a requisite FCIC interpretation.

Other instances where an arbitrator or arbitration panel does not have the authority to enter an award in a crop insurance dispute, include disagreements where the insured contests “determinations made by the FCIC,”¹⁹ claims where the “FCIC is directly involved in the claims process”,²⁰ and where the FCIC “directs” the insurance provider’s “resolution of the claim.”²¹ “Good farming practices” disputes are also not arbitrable disputes.²² The procedure for the resolution of these aforementioned disputes involve administrative proceedings, outside of arbitration, and pursuant to the common crop insurance policy basic provisions and federal regulations. A federal court may also modify or correct an arbitration award in the following situations:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.²³

¹⁷ See Garnett v. NAU Country Insurance Co., No. 5:09-CV-00144-R, 2009 WL 3644762 (W.D. Kentucky 2009).

¹⁸ Common Crop Insurance Policy. 7 CFR § 457.8, [For Reinsured Policies], Section 20 (a)(1) (2011).

¹⁹ Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (e) (2011).

²⁰ Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (e) (2011).

²¹ Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (e) (2011).

²² Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (d) (2011).

²³ 9 U.S.C. § 11 (2006).

Consequently the modification or correction of an arbitration award, as allowed by the Federal Arbitration Act, is limited to mistakes in the written award that do not relate to legal determinations or the merits of a claim submitted by the insured. Disagreement with the factual determinations made by an arbitrator should not generally allow a Federal court the authority to modify or correct an award.

State Law Actions Against an Insurance Provider

Further confusing the issue of crop insurance arbitration, a significant number of courts across the country have concluded that Federal Crop Insurance Act does not preempt actions against crop insurance providers that are based in traditional state law tort theories.²⁴ These rulings stand for the legal proposition that the Federal Crop Insurance Act and regulations promulgated pursuant to that Act do not extinguish state law claims arising from the tortious conduct of private insurance providers that sell and service federally reinsured crop insurance policies.²⁵ Remember, however, that the arbitration requirement of the common crop insurance policy mandates the arbitration of disputes between the insured and the insurer. As a result, the filing of a claim for benefits under a crop insurance policy will probably result in a court order compelling arbitration and staying the lawsuit in state court.²⁶

²⁴ See Williams Farms of Homestead, Inc. v. Rain & Hail Ins. Services, Inc., 121 F.3d 630, 635 (11th Cir. 1997), Meyer v. Conlon, 162 F.3d 1264, 1268-1269 (10th Cir. 1998), Agre v. Rain & Hail LLC, 169 F.Supp. 2d 906, 911-912 (D. Minn. 2002), Farmers Crop Ins. Alliance v. Laux, 442 F.Supp. 2d 488, 498-499 (S.D. Ohio 2006).

²⁵ Nobles v. Rural Community Ins. Servs., 122 F. Supp.2d 1290, 1294 (M.D. Ala. 2000); see also Williams Farms of Homestead, Inc. v. Rain & Hil Ins. Serv., Inc., 121 F.3d 630, 634 (11th Cir. 1997).

²⁶ Ledford Farms v. Fireman's Insurance Co., 184 F.Supp.2d 1242 (S.D. Fla. 2001), Wardlaw v. Rural Community Services, 2010 WL 4259792 (W.D. Ar. Sept 27, 2010), Hays v. Rural Comty. Ins. Services, 2010 WL 4269413 (W.D. Ar. Oct. 7, 2010).

Claims that may survive arbitration and find their way into state courts might include a situation where a company providing crop insurance has made misrepresentations to the insured.²⁷ At least one federal court opinion stated that the crop insurance policy arbitration clause was not a prohibition on a state-law suit but was instead a condition precedent.²⁸ What must be noted is that the direction provided by the Court on this point suggests that an insured cannot initiate a state law action, “unless it complies with all of the policy provisions,” including arbitration.²⁹

The cases cited herein pose an interesting dilemma for an insured who seeks to pursue a state law tort claim against the crop insurance provider. The legal principles of *Res Judicata* and *Collateral Estoppel* may effectively bar claims argued, after an arbitration proceeding has ended in state court, if arbitration is truly a “condition precedent” to the filing of a state law tort claim. For those unfamiliar with the terms, *Res Judicata* bars the re-litigation of claims that have been decided previously. *Collateral Estoppel*, bars the re-litigation of issues previously argued by the parties to a dispute.³⁰ In all actuality, *Res Judicata* and *Collateral Estoppel* may leave no claim or issue left for determination by a state court after an arbitration award has been rendered.

How Does Arbitration Work?

The Basic Provisions of the common crop insurance policy also dictate the manner in which an arbitration proceeding is conducted. Arbitration proceedings must be initiated by the insured within one year of either the date on which a disputed determination was issued or within

²⁷ See Farmers Crop Insurance Alliance v Laux, 442 F. Supp.2d 488, 503 (S.D. Ohio 2006), Nu-Air Mfg. Co. v. Frank B. Hall & Col. Of New York, 822 F.2d 987, 994-995 (11th Cir. 1987).

²⁸ Ledford Farms v. Fireman’s Insurance Co., 184 F.Supp.2d 1242, 1245 (S.D. Fla. 2001).

²⁹ Ledford Farms v. Fireman’s Insurance Co., 184 F.Supp.2d 1242, 1245 (S.D. Fla. 2001).

³⁰ Scott Fancher, *Scope of the Federal Crop Insurance Arbitration Clause*, 2002, National AgLaw Center, http://www.nationalaglawcenter.org/assets/articles/fancher_arbitration.pdf (2002).

one year of the denial of the insured's crop insurance claim.³¹ The policy states that arbitration must be conducted "in accordance with the rules of the American Arbitration Association."³²

The American Arbitration Association Rules can be found online at <http://www.adr.org>.

The timing for initiation of arbitration is key if an insured wishes to contest a determination by the insurance provider. The one year time limitation is not tolled by separate negotiations or legal proceedings involving the insurance provider.³³ Arbitration is "initiated" by filing a "Demand for Arbitration" with the insurance provider.³⁴ The common crop insurance policy's requirement that arbitration be conducted in accordance with the rules of the American Arbitration Association (AAA) has generated some confusion as to the proper initiation of a crop insurance arbitration, as the AAA rules require that an arbitration demand be filed with the AAA and AAA arbitrators be used to arbitrate the dispute. However, the USDA Risk Management Agency has made effort to clarify that crop insurance disputes, arbitrated pursuant to the common crop insurance policy, do not require a filing with the AAA³⁵ and do not mandate that a AAA Arbitrator conduct the arbitration.³⁶

While a crop insurance claimant may initiate a claim by filing with the AAA, the claimant may also elect not to have the AAA arbitrate the dispute. In the event that the claimant chooses not to engage the AAA, the guidelines provided in the recently issued RMA Bulletin No.:MGR-12-003.1 should be followed. Important points are that arbitration is initiated by filing a copy of a demand with the insurance provider and that demand

³¹ Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (b)(1) (2011).

³² Common Crop Insurance Policy. 7 CFR § 457.8 [For Reinsured Policies], Section 20 (a) (2011).

³³ Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (b)(1) (2011).

³⁴ Scott Fancher, *Scope of the Federal Crop Insurance Arbitration Clause*, 2002, National AgLaw Center, http://www.nationalaglawcenter.org/assets/articles/fancher_arbitration.pdf.

³⁵ United States Department of Agriculture, Risk Management Agency. Bulletin No.: MGR-12-003.1. Found at <http://www.rma.usda.gov/bulletins/managers/2012/mgr-12-003.1.pdf>. (October 4, 2012).

³⁶ Common Crop Insurance Policy. 7 C.F.R. § 457.8 [For Reinsured Policies], Section 20 (a) (2011).

shall clearly state a demand for arbitration and shall contain a statement of the nature of the dispute, including a short statement of facts, and identification of the policy provision upon which the policy holder relies, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested.³⁷

It may be interesting to some that, while the Bulletin states that “it was never the intent of FCIC to require the AAA to arbitrate all disputes,”³⁸ the Bulletin also provides that if the insured and the insurance provider cannot agree to an arbitrator or case management service, “then the policyholder must file a demand with the AAA.”³⁹ Again, the AAA arbitration rules will govern all arbitration proceedings, regardless of whether the arbitration is conducted through the arbitration services provided by the AAA.

Conclusion

As disputes are certain to occasionally arise between insured producers and their crop insurance providers, it is necessary for producers to be aware of the policy provisions that limit the available tools for the resolution of any such disagreement. An understanding of arbitration and the applicability of arbitration in the context of a crop insurance dispute is imperative if a producer who feels a crop insurance claim was improperly denied is to successfully argue against a decision made by the crop insurance company. Hopefully, this article has provided some insight into the arbitration requirement, found within the common crop insurance policy, and the arbitration process in general.

³⁷ United States Department of Agriculture, Risk Management Agency. Bulletin No.: MGR-12-003.1. Found at <http://www.rma.usda.gov/bulletins/managers/2012/mgr-12-003.1.pdf>. (October 4, 2012).

³⁸ United States Department of Agriculture, Risk Management Agency. Bulletin No.: MGR-12-003.1. Found at <http://www.rma.usda.gov/bulletins/managers/2012/mgr-12-003.1.pdf>. (October 4, 2012).

³⁹ United States Department of Agriculture, Risk Management Agency. Bulletin No.: MGR-12-003.1. Found at <http://www.rma.usda.gov/bulletins/managers/2012/mgr-12-003.1.pdf>. (October 4, 2012).