

"Crop Insurance 101"

**Litigation Basics & Suggestions
for a New Practitioner**

HARRISON PITTMAN
National Ag Law Center

GRANT BALLARD
Banks Law Firm, PLLC

AMANDA URBANEK
USDA-NAD

DAVID BURT
Hawkins, Hawkins & Burt, LLP

**Crop
Insurance 101**

- **History and Legislation**
- Major Participants
- Important Basic Documents
- Evaluating a claim
- Important policy provisions
 - Common crop insurance policy

Presentation Available:

<http://nationalaglawcenter.org/wp-content/uploads/assets/linkstorage/Crop-Insurance-101.pdf>

History

- 1938**
 - Federal Crop Insurance Act is passed, establishing first federal crop insurance program.
 - The Federal Crop Insurance Corporation (FCIC) was created to carry out the program.
- 1980**
 - Passage of the Federal Crop Insurance Act of 1980
 - Expanded crop insurance to many more crops and regions of the country.
 - Built subsidies into the program
 - Authorized sale of policies by private industry (AIPs)
- 1996**
 - USDA created the Risk Management Agency (RMA) to operate and manage the FCIC.
- 2014**
 - Direct and countercyclical payment programs and ACRE are eliminated
 - Farm "safety net" is focused on crop insurance.

Major Statutes

- **Federal Crop Insurance Act (7 USC §1501, et seq.)**
 - Authorized the crop insurance program
 - Provided for the creation of a Federal Crop Insurance Corporation (FCIC)
- **Federal Arbitration Act (9 USC §1, et seq.)**
 - Provides for judicial facilitation of private dispute resolution through arbitration, applicable to contracts involving interstate commerce
 - Requires that where the parties have agreed to arbitrate, they must do so in lieu of going to court

Major Regulations

- **Regulations (7 C.F.R. §400, et seq.)**
 - Administrative provisions and policy terms for crop insurance program
- **National Appeals Division (7 C.F.R. Part 11)**
 - Outlines NAD procedural format and organization

Major Types of Crop Insurance Protection

- **Yield Protection:**
 - Provides protection for production losses
 - Based on actual production history ("APH")
 - APH = Average yield obtained on the insured unit for four to ten consecutive crop years.
 - Guarantee is determined by multiplying the production guarantee by the projected price
- **Revenue Protection**
 - Provides protection against loss of revenue caused by price changes, low yields or both
 - A projected price and a harvest price is determined in accordance with the Commodity Exchange Price Provisions (CEPP).
 - Guarantee is determined by multiplying the production guarantee by the greater of the projected price or the harvest price
- **Other types of crop insurance are available as well, but not as frequently used.**
 - For more information, see <http://www.rma.usda.gov/policies>

Crop Insurance 101

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Major Participants

- **Insured**
 - Primary Duties:
 - Report acreage, and any required protection, accurately,
 - Keep adequate records,
 - Meet policy deadlines,
 - Pay premiums when due, and
 - Report losses immediately.
- **Insurance Agent**
 - Salesmen for the program
 - Duties:
 - Interact with producers,
 - Calculate the producer's APH
 - Provide premium quotes for the policy
 - Notify company in an event of loss.

Major Participants

- **Approved Insurance Provider (AIP)**
 - Delivers the program
 - Duties:
 - ✦ Hiring/training agents and loss adjusters
 - ✦ Billing and collecting premiums
 - ✦ Processing and verifying applications, APH, and acreage reports
 - ✦ Paying claims, auditing and verifying claims data
 - ✦ Communicating data with USDA as necessary

Major Participants

- **Federal Crop Insurance Corporation (FCIC)**
 - Authorized to “insure or provide reinsurance” to approved, private insurance providers
 - Wholly owned corporation of the U.S. Department of Agriculture (USDA)
 - Managed by a board of directors
 - ✦ Mix of USDA officials, insurance agents, and producers
 - Duties:
 - ✦ Proposes/finalizes regulations for crop insurance program
 - ✦ Establishes price, terms and conditions for federal crop insurance contracts
 - ✦ Oversees delivery of crop insurance policies to farmers.

Major Participants

- **Risk Management Agency (RMA)**
 - Carries out administrative responsibilities of the FCIC
 - ✦ Develops crop insurance policies, approving products, reinsuring private companies that sell and service crop insurance policies
 - ✦ Publishes handbooks outlining procedures relating to administration of the programs
 - ✦ Supervises and audits the activities of the AIPs
 - ✦ Participates in large claims

Major Participants

- **National Appeals Division (NAD)**
 - One of the administrative appeal arms of the U.S. Department of Agriculture
 - Jurisdiction to hear certain appeals from determinations made by the Federal Crop Insurance Corporation (FCIC) and the Risk Management Agency (RMA)

Why is NAD Important/Suggestions for Practice

- What is NAD (#1)
- What is NAD's jurisdiction (#2)
- What's appealable and what's not (#3, #8)
- The NAD appeal (#5, #7)
- What now (#6)
- Five little but **IMPORTANT** things about NAD (#4)
 - Burden, rules, getting paid (maybe), other relief (or not), and basis for determinations

*For more information on these topics, please refer to the reading materials at the listed numbers

Crop Insurance 101

- History and Legislation
- Major Participants
- **Important Basic Documents**
- Evaluating a claim
- Important policy provisions
 - Common crop insurance policy

Important Basic Documents: Policy

- **Basic Provisions (BP), or Common Crop Insurance Policy**
 - Applies to all crops in all locations
 - ✦ 7 C.F.R. §457.8
- **Crop Provisions (CP)**
 - Applies to particular crop in all locations
- **Special Provisions (SP)**
 - Applies to particular crop in particular location
- **Which of these documents is MOST important?**
 - Order of control

Important Basic Documents: Agency Guidance

- **Risk Management Agency promulgates the following documents which may have substantial impact:**
 - Manager's Bulletins
 - Final Agency Determinations
 - ✦ "FAD"
 - 7 C.F.R. §400.765 *et seq.*
 - ✦ Can be appealed to federal court (and sometimes to NAD)
 - Agency Interpretations of Policy Procedures
 - ✦ MGR-05-018
 - ✦ Can be appealed to NAD
 - Crop Insurance Handbooks (General and Crop Specific)
 - Loss Adjustment Handbooks (General and Crop Specific)

Important Basic Documents: SRA

- **Standard Reinsurance Agreement (SRA)**
 - Agreement between AIP and FCIC – sets out duties and obligations of AIP
 - ✦ AIP Duties
 - Training of Agents
 - Training of Adjusters
 - Reporting Requirements
 - Internal Audits – Compliance

Other Sources of General Information

- See materials
 - *Preparing a Crop Insurance Case: Research Resources*

- Primarily:
 - RMA website
 - www.rma.usda.gov
 - NAD website
 - www.nad.usda.gov
 - Decisions are searchable

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Bottom Line Questions to Ask a Client

- Who denied the claim?
 - RMA or AIP

- When was the claim denied?
 - Be mindful of the limitations period

- Who can substantiate the producer's position?
 - Do you need an expert?

Additional Questions to Ask a Client

- When did the loss occur?
- What is cause of loss?
- When was the loss reported, and to whom?
- How big is the claim? (is RMA involved?)
- Was the claim denied, and by whom?
- When was the claim denied?
- Do you have pictures?
- Do you have correspondence from/to agent or AIP?
 - What were you told about the claim, and by whom?
- What records do you have? (purchases, sales, storage, etc.)

For more questions to ask/consider, see materials

Obtaining Additional Documents

- Remember, insured producers are first-party insureds and are entitled to their claim files
 - AIP Underwriting File
 - Applications, Underwriting Inspections, Summary of Coverage
 - AIP Loss Adjustment File
 - Notice of Loss, Loss Adjustment Inspections and documents, Correspondence, Special Reports
- Historical weather information
- Correspondence

Obtaining Additional Information

- Crop insurance sales agents are a wealth of information
- County FSA & Extension offices are also often in tune with local issues

Considerations/Issues/Decisions

- **Carefully analyze the reason for the dispute, as that will govern how the dispute will be resolved.**
 - Is the AIP or RMA relying on the Policy, a Manager's Bulletin, a FAD, a LAM or other document?
- **Limitations period to bring arbitration**
 - One year from denial of claim or other unfavorable determination with which the producer disagrees.

Resolving the Dispute: Avenues

- **Mediation or Arbitration or NAD or Judicial Review?**
- **Considerations.**
 - Does mediation work?
 - Does an AIP have an incentive to settle?
 - Previous directives from RMA indicate that mediation is not an effective way to resolve a crop insurance dispute
 - AAA or private mediator?
 - Was there an Agency Determination appealable to NAD?

Overview of the Dispute Resolution Process

- **The crop insurance policy provides a unique dispute resolution process which includes an arbitration clause along with USDA administrative review requirements**
 - **Mandatory Arbitration**
 - Disputes Between the AIP and Producer
 - **USDA Administrative Appeal**
 - Where RMA is involved
 - National Appeals Division (NAD)
 - **RMA Administrative Review**
 - Good Farming Practices and Large Claim Review

Crop Insurance Dispute Resolution

- How do you challenge a decision by an Approved Insurance Provider (AIP) or RMA?
 - The answer depends on whose decision you are challenging
 - Most disagreements with an AIP must go through the arbitration process
 - Disagreements with RMA must go through an Administrative Review Process

Arbitration

- Mandatory Arbitration
 - Required if you dispute any determination by the insurer
 - A Final Agency Determination may be required
 - Exceptions include "good farming practices" determinations and determinations by FCIC
 - Administrative Review is Required
 - AIP must provide Notice
 - MGR-05-010

Resolving the Dispute: Selecting the Arbitrator

- AAA or Agreement as to the Arbitrator?
 - The Policy incorporates the American Arbitration Association (AAA) Rules
 - The AAA arbitration system is not mandatory
 - It's expensive but gets the case moving
 - No AAA adds time to the process
- **NOTE:** Remember, the CCIP limits the power of Arbitrators regarding the meaning of a policy provision or procedure
 - This is reserved for RMA
 - Unique and interesting contractual provision

Selection of the Arbitrator

- RMA Bulletin NO.: MGR-12-003.1 Provides an Outline of the Process for Selecting an Arbitrator “outside” of AAA

- Considerations?
 - Can you agree on Arbitrator?
 - What qualifications do you look for?

 - Expense

Selecting an Arbitrator

- Guidance is conflicting as to whether AAA must be used if the parties cannot agree to an arbitrator or arbitration panel
 - Bulletin No.: MGR-12-003.1 indicates that “the policy holder must file a demand with the AAA” if the parties fail to agree on an arbitrator
 - Yet, the Federal Arbitration Act provides that a party to an arbitration provision may request a Federal Court Appoint an Arbitrator should “there be a lapse in the naming of an arbitrator”
 - 9 U.S.C. § 5

 - There exist unpublished interpretations by RMA of MGR-12-003.1. This guidance states “the AIP cannot force the use of AAA by simple disagreement with the insured’s election to seek arbitration.”

Pre-Hearing Discovery

- Discovery is generally limited in arbitration.

- However,
 - AAA Commercial Arbitration Rules allow the arbitrator broad authority
 - to “**manage any necessary exchange of information**” and to “**require the parties, in response to reasonable document requests, to make available to the other party documents** . . . not otherwise readily available to the party.” (R.22)

Pre-Hearing Discovery

- ¶ 21 of the Crop Insurance Basic Provisions provides:
 - The AIP has the right to examine "all records related to the insured crop"
 - Subparagraph (d) goes so far as to require insured's to "assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties"
 - Failure to authorize access to third party records may result in a determination that no indemnity is due –Subparagraph (e)

Depositions?

- Depositions are customary
- ¶ 14(e)(4)(iv) of the Basic Provisions requires insured's to submit to an examination under oath, upon the AIP's Request
- RMA Final Agency Determination -019 (2003)
 - FCIC agreed that the initiation of arbitration proceedings does not stay this requirement and that "the insurance company has the right to question the insured under oath in conjunction with the proceeding."

Discovery Pointers

- Take depositions
- Conduct written discovery
- Consider FOIA requests

Discovery in Arbitration

- Never underestimate the power of a FOIA request
- RMA keeps records of claims per county, claimed acreage, and stated causes of loss, some of which is available on their website
- If an AIP states that a certain cause of loss was not present in your county, RMA records may contradict the AIP position

Arbitration and the FAD

- Exactly when must you obtain a FAD and what happens if you don't?
- Vacatur or Nullification?
 - Not so Fast . . .
 - ✦ *Curtis Davis v. Pro Ag* No. 13-10648 (11th Cir. Court of Appeals, August 6, 2014)

Failure to Obtain a FAD- *Davis v. Pro Ag*

- The Eleventh Circuit reversed District Court's Vacatur of an Arbitration Award where a FAD was not obtained.
 - "Arbitrator was entitled to make his findings without first seeking a formal opinion of the Federal Crop Insurance Corporation."
 - The USDA submitted an amicus curiae brief wherein USDA stated that "FCIC had already resolved that particular policy issue, and the arbitrator was not required to seek another FCIC Interpretation."

Eleventh Circuit Findings in Davis

- Is a FAD Required?
 - “FCIC agrees with Mr. Davis” that *whether an insurer can impose a “deadline not explicitly found in the policy. . . is an interpretive issue”*
- But,
 - “The agency already has exercised its prerogative and provided the interpretation”
 - “Further Submission of the Issue to FCIC was not required”

Take-Away from Davis

- The failure to obtain a FAD may still provide a basis for vacating an arbitration award.
 - Interpreting the policy can be argued to be in excess of arbitrator’s power and authority
- But, FADs are not always required when there is an issue of policy or procedure interpretation
 - So long as FCIC/RMA have already spoken to the issue

RMA Disputes

- If you disagree with RMA?
 - Final Agency Determinations
 - Interpretation by FCIC of a policy provision is a matter of general applicability
 - ¶ 20(a)(1)(iii)
 - ¶ 20(k) provides that determinations of general applicability are not subject to administrative review or appeal
 - Federal Court Review?
 - Interpretations of Procedure
 - National Appeals Division Review
 - ¶ 20(a)(1)(iv)

Administrative Review

- **Three Primary Forms:**
 - 1) **National Appeals Division**
 - Review of USDA Agency Decisions such as RMA
 - 2) **Good Farming Practices**
 - Review by RMA/ Suit against FCIC
 - 3) **RMA Claim Review – Section 20 (j)**
 - May obtain Review by RMA, then appeal to NAD

Resolving the Dispute: State Law

- **State law tort claims may survive arbitration**
 - “Bad Faith”
- **State law claims against sales agents have been pursued successfully in state courts, on theories of negligence, misrepresentation, etc.**
 - Where the Agent fills out the forms incorrectly

Tort Claims

- **Extra-contractual tort claims against the AIP may survive arbitration**
 - The “current form of the federal regulations reveal no conflict with state law claims for negligence, misrepresentation or fraud”
 - *Plants, Inc. v. Fireman's Fund Ins. Co.* 2012 WL 3291805 (Tenn Ct. App. 2012).

Tort Claims

- While various Courts have indicated that the Federal Crop Insurance Act does not preempt state law tort actions against private crop insurance providers, the arbitration clause has been interpreted to mandate arbitration as a **“condition precedent”** to the prosecution of a case in State Court.

- *Ledford Farms v. Fireman's Ins.*, 184 F.Supp. 1242, 1245 (S.D. Fla. 2001).

- You may name an adjuster to defeat diversity jurisdiction but a State Court Claim against an AIP will likely be stayed pending arbitration.

Fees and Costs

- **Payment of Fees and Costs**

- Fee and Cost structure
 - Hourly
 - Contingent
 - Blended
 - Costs
 - Retainer
- Cannot recover fees or costs (even in arbitration) except in judicial review if FCIC determines AIP or adjuster failed to comply with policy provisions
- Bankruptcy of Client
- Equal Access to Justice Act

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COMMON CROP INSURANCE POLICY
(This is a continuous policy. Refer to section 2.)

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 et seq.). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's Web site at <http://www.rma.usda.gov/> or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we," "us," and "our" refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), etc.

<http://www.rma.usda.gov/policies/2011/11-br.pdf> Pg. 1/40

Paragraph 31

31. Applicability of State and Local Statutes.

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this policy, and the applicable regulations do not apply to this policy.

<http://www.rma.usda.gov/policies/2011/11-br.pdf> Pg. 36/40

Paragraph 20

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d) or (e), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

<http://www.rma.usda.gov/policies/2011/11-br.pdf> Pg. 31-32/40

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(1) All disputes involving determinations made by us, except those specified in section 20(d) or (e), are subject to mediation or arbitration. However, if the dispute in any way 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, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

- (i) Any interpretation by FCIC will be binding in any mediation or arbitration.
- (ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.
- (iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability.
- (iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

- (b) Regardless of whether mediation is elected:
- (1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;
 - (2) If you fail to initiate arbitration in accordance with section 20(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;
 - (3) If arbitration has been initiated in accordance with section 20(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and
 - (4) In any suit, if the dispute in any way 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, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 20(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(e) Except as provided in sections 18(n) or (o), or 20(d) or (k), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

- (1) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal.
- (2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.
- (3) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

- (g) To resolve any dispute through mediation, you and we must both:
 - (1) Agree to mediate the dispute;
 - (2) Agree on a mediator; and
 - (3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(h) Except as provided in section 20(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 26.

<http://www.rma.usda.gov/policies/2011/11-br.pdf>

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Paragraph 20 (Continued)

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review....

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following:
USDA/RMA/Deputy Administrator of Compliance/ Stop 0806, 1400 Independence Avenue, SW., Washington, D.C. 20250-0806.

<http://www.rma.usda.gov/policies/2011/11-br.pdf>

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Take-Away from *Campbell's Foliage v. FCIC*

- **CAMPBELL'S FOLIAGE, INC. v. FCIC., et al.**
 - 562 Fed.Appx. 828 (11th Cir. 2014), *cert. denied* (Oct. 6, 2014).
- **Specific Holding:** Section 20(c) of the MPC I Policy providing for "judicial review" does not allow a party to vacate an arbitration award on any ground other than those enumerated in Section 10(a) of the Federal Arbitration Act:
 - (1) where award was procured by corruptions, fraud or undue means;
 - (2) where there is evident partiality or corruption in the arbitrators;
 - (3) where the arbitrator is guilty of misconduct in failing to postpone hearing upon sufficient cause being shown, failing to hear evidence, or any other misbehavior prejudicing the rights of the parties; or
 - (4) where arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Contact Information:

Grant Ballard
Banks Law Firm, PLLC
Phone: (501) 280-0100
Email: gballard@bankslawfirm.us

David A. Burt
Hawkins, Hawkins & Burt, LLP
Phone: (386) 252-4499
Email: davidburt@hawkinsandburt.com

Harrison M. Pittman
National Agricultural Law Center
Phone: (479) 575-7640
Email: hmpittm@uark.edu

Amanda Urbaneck
USDA-National Appeals Division
Phone: (901) 544-0370
Email: Amanda.Urbaneck@nad.usda.gov
