



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 23, 2009

CBCA 970-FCIC

In the Matter of
ACE PROPERTY AND CASUALTY INSURANCE COMPANY
f/k/a CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY
and
RAIN AND HAIL, L.L.C.
(In re: WAYNE LEHMAN & GLENN GANIOUS)

Bradley A. Meyer of Rain and Hail, L.L.C., Johnston, IA, counsel for Appellant.

Mark R. Simpson, Office of the General Counsel, Department of Agriculture,
Atlanta, GA, counsel for Federal Crop Insurance Corporation.

Before Board Judges **GILMORE**, **POLLACK**, and **DRUMMOND**.

GILMORE, Board Judge.

Rain and Hail, L.L.C. (Rain and Hail) appeals a final determination by the Federal Crop Insurance Corporation (FCIC) that Rain and Hail owes FCIC \$45,549 for indemnity payments previously made to Rain and Hail in crop years 2001 and 2003 for tobacco destroyed by fire. Although FCIC initially paid the claims, FCIC, upon further review, determined that the fire losses were not covered under the terms of the Federal Crop Insurance Act (FCIA or Act) and the standard reinsurance agreement (SRA) and determined that a refund was required. This appeal was submitted on the written record.

Findings of Fact

1. Rain and Hail provides multi-peril crop insurance to farmers. The FCIC provides reinsurance to Rain and Hail under a SRA, issued in accordance with the FCIA, 7 U.S.C. §§ 1501-1524 (2000). The tobacco is insured under a common crop insurance policy and the FCIC Guaranteed Tobacco Crop Provisions. Appeal File, Exhibits 14, 17.¹

2. The FCIA provides that the FCIC “may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under 1 or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned. To qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other natural disaster (as determined by the Secretary [of Agriculture]).” 7 U.S.C. § 1508 (a)(1); Exhibit 12 at 11. The FCIA further provides that the insurance does not cover losses due to the neglect or malfeasance of the producer. 7 U.S.C. § 1508(a)(3)(A); Exhibit 12 at 11.

3. The common crop insurance policy provisions are published at 7 CFR 457.8 (2001 & 2003). They provide in the preamble as follows:

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act.

. . . .

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 a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

Exhibit 14 at 1.

¹ All exhibits are found in the appeal file, unless otherwise noted.

4. “Causes of Loss” are set forth in section 12 of the Common Crop Insurance Policy, which states, in part:

12. **Causes of Loss.**

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the [Guaranteed Tobacco] Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

- (a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees
.....

Exhibit 14 at 8.

5. Section 14(e) of the Common Crop Insurance Policy, entitled “**Duties in the Event of Damage or Loss**” provides that:

You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

Exhibit 14 at 9.

6. Section 10 (b) of the Guaranteed Tobacco Crop Provisions, at 7 CFR 457.136, states that insurance is provided only against the following causes of loss:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply, if caused by a peril specified in section 10(a) through (g) that occurs during the insurance period.

Exhibit 17 at 3.

7. The SRA between FCIC and Rain and Hail provides at section II.A as follows:
4. All eligible crop insurance contracts reinsured and subsidized under this Agreement must conform to the regulations published at 7 C.F.R., chapter IV or as approved in writing by FCIC.
5. FCIC will not provide reinsurance . . . for any eligible or ineligible crop insurance contract that is sold or serviced in violation of the terms of this Agreement, 7 C.F.R., chapter IV, FCIC approved procedures or any written instructions of FCIC.

Exhibit 11 at 7.

8. The SRA also provides at section V.I.1 that “[t]he Company must be in compliance with the provisions of this Agreement, the laws and regulations of the United States, the laws and regulations of the States and locales in which the Company is conducting business under this Agreement, and all bulletins, handbooks, instructions, and procedures of FCIC.” Exhibit 11 at 24.

9. The Loss Adjustment Manual (LAM) Standards Handbook is a publication of the FCIC. The Handbook for 2001 and succeeding crop years provides in section 114, FIRE LOSS, as follows:

A General Provisions

- (1) In all cases where fire, due to an act of nature, damages or destroys an insured crop WITHIN THE INSURANCE PERIOD, upon final inspection, establish whether or not the insured has other fire insurance ON THE CROP IN THE FIELD.

NOTE: Any damage resulting from fire caused by other than an act of nature is not insurable.

Exhibit 16 at 16.

10. The instructions in the LAM Handbook provide further that, if the insured has other fire insurance coverage, the insurance provider shall provide:

- (i) A statement of all known facts as to how the fire originated (including location of the field(s)), and if the fire resulted from the act of any person, the name and address of such person, and the name and address of person(s) having knowledge of the origin of the fire. **REMINDER:** Damage from fire is only covered if the fire is the result of an act of nature. If it is found that the fire was NOT caused by an act of nature, follow the instructions for uninsured causes of damage.

Exhibit 16 at 18.

The Fires

11. The tobacco involved in this appeal was destroyed by fire while the tobacco was in the barn and being cured using a fire-curing process. The fire curing of tobacco is a standard curing process in which the tobacco is brought to the barn after harvesting and is hung in the rafters on sticks. The strength of the sticks holding the tobacco is tested before hanging and does not normally present a problem in the curing process. Wood slabs are laid in the floor. The slabs are covered with sawdust and fires are then intentionally ignited. The fires burn the wood very slowly under the sawdust, producing smoke, which fills the barn and slowly dries the tobacco. It is customary to have someone on site, or if the fires are left unattended, to cover them with split barrels so sparks are trapped.

12. Tobacco is covered under the applicable insurance policies, after harvesting, while the tobacco is in the barn. Rain and Hail paid its farmer/insured, Wayne Lehman, \$27,370 for the loss sustained to his 2001 tobacco crop after a fire totally destroyed the crop and the barn while the crop was being fire-cured. The barn burned to the ground on September 11, 2001. The adjuster's report stated essentially that the barn was checked by a farm hand at 8:30 a.m. and all was well; that at approximately 10:30 a.m., the insured was called by cell phone and told that flames were shooting out of the eaves of the barn; and that by time the insured reached the barn shortly thereafter, the barn was on the ground. The adjuster's report, dated October 22, 2001, indicated that "wind was present on this day and is suspect." The Harvested Tobacco Worksheet prepared by the insured noted at the top that FIRE was the "NAMED PERIL." The worksheet noted simply that "fire" was the cause of the damage. It also noted that there was no arson investigation. The fire was reported to the fire department. There is, however, no fire department report in the record pertaining to this fire. Exhibit 9 at 10-11.

13. Rain and Hail paid its farmer/insured, Glenn Gainous, \$18,179 for the loss sustained to his 2003 tobacco crop after a fire totally destroyed the crop and the barn during

the fire-curing process. The fire occurred on September 23, 2003. Ironically, the adjuster on this policy was Wayne Lehman who was the insured under the similar tobacco fire-curing incident in 2001. The adjuster noted in his report, in pertinent part, as follows:

Barn fire occurred on 9/26/03 destroying all tobacco in tobacco barn. According to insured, there was no unusual weather such as high winds or lightning to cause the barn to burn. No known cause of loss was listed on the fire report from the fire department. The dimension of the barn was 60' X 32', 5 and 6 tiers deep, which would have been ample space to hold 4.5 acres of dark fired tobacco.

Exhibit 9 at 5. The fire department report noted that the type of fire was a “barn” fire but did not note the cause of the fire. Exhibit 9 at 6.

Review of Payments Made for Fire-Cured Tobacco Losses

14. After Rain and Hail paid the farmers, FCIC indemnified Rain and Hail under its reinsurance agreements. By letter dated December 11, 2003, the Southern Regional Compliance Office (SRCO) of the Department of Agriculture’s Risk Management Agency (RMA) advised Rain and Hail that it was reviewing whether Rain and Hail paid claims for loss of fire-cured tobacco in violation of the “Multiple Peril Crop Insurance (MPCI) Common Crop Policy Basic Provisions, Guaranteed Tobacco Crop Provisions and approved procedures in the Loss Adjustment Standards Handbook.” Exhibit 10 at 1. RMA stated in that letter that “only those claims for which the fire was caused by an act of nature (i.e. lightning [sic]) will be valid.” *Id.*

15. Rain and Hail responded to RMA by letter dated January 6, 2004, and advised that “fire” was designated in the policy as an insurable loss and that the agency should revise the language in the policy to include the language that RMA had cited from the LAM, and also should define what constitutes an “act of nature.” Exhibit 9 at 1. Rain and Hail also advised that, in crop year 2002, it denied any fire losses on fire cured tobacco where the policy holder could not prove that the fire was caused by an “act of nature,” but ultimately paid the losses out of accounts payable because (1) the fire department ruled out arson; (2) Rain and Hail could not prove that the fire was not due to an “act of nature”; (3) the policy stated that “fire” was an insurable cause of loss; and (4) other companies were paying for losses due on fire-cured tobacco as long as the fire was not due to arson. The letter also advised that Rail and Hail paid the 2001 crop year claim because the cause was documented as wind, and that it was paying 2003 crop year losses for fire-cured tobacco if the cause of the fire cannot be attributed to:

1. Arson
2. A third party.
3. Policyholder negligence.
4. A known cause of the fire which was definitely not an “act of nature.”

Exhibit 9 at 2.

16. On November 17, 2004, the SRCO of RMA issued its final finding, determining that Rain and Hail was indebted to the FCIC in the amount of \$45,549 for incorrect payments made on claims for losses to fire-cured tobacco. RMA’s position was that the sources of the fires were man-made and that Rain and Hail did not establish that the fires were due to a natural disaster or a natural cause. Exhibit 5.

17. On December 30, 2004, Rain and Hail appealed the final finding to RMA’s Deputy Administrator for Compliance. Exhibit 3. Rain and Hail, in that appeal letter, contended that once claims for indemnity were paid to Rain and Hail by FCIC, the burden was on FCIC to prove that an exclusion applied that would preclude coverage for the loss. Exhibit 3 at 3. Rain and Hail also stated that once it established that the source of the loss was “fire,” was unavoidable, and was not due to the negligence, mismanagement, or wrongdoing by the insured or the insured’s family or employees, then the losses were covered under the policies. *Id.*

18. By letter dated August 17, 2007, a final administrative determination was made by RMA’s Deputy Administrator for Compliance affirming the final finding of RMA’s SRCO which concluded that Rain and Hail did not show that the fires were caused by an act of God or nature and that Rain and Hail was indebted to FCIC in the amount of \$45,549. Exhibit 1. The present appeal followed.

19. In May of 2007, while this dispute was pending, FCIC proposed an amendment to the regulations to change the cause of loss in section 10(b) of the Guaranteed Tobacco Crop Provisions from “Fire” to “Fire, if caused by lightning.” The comments accompanying the proposed change stated that the change was being made to eliminate any ambiguity regarding what causes of the fire are covered. Exhibit 18 at 18, 21.

20. The insured farmers, Wayne Lehman and Glenn Gainous, each signed sworn statements in October of 2004. Both of the farmers submitted the following statements regarding the fires:

- a. All weeds and other forms of undergrowth in the vicinity of buildings on the property of Insured were controlled;
- b. The tobacco loss was an unavoidable loss of production directly caused by the fires;
- c. The fires were a fortuitous event and there was no negligence, mismanagement, or wrong-doing by me or any member of my family, household, tenants, or employees;
- d. There is no known human cause, through negligence or otherwise, of the fires; and
- e. While the cause and origin of the fires have not been determined to a certainty, the fires are believed to be an act of nature.

Exhibit 3 at 5-6. Both of the sworn statements were practically identical in wording. Glenn Ganious submitted his sworn statement one year after his fire occurred, and Wayne Lehman submitted his sworn statement three years after his fire. *Id.*

Parties' Positions

There is no dispute between the parties that the FCIA provides reinsurance only for crops damaged by flood, drought, or other natural disaster as designated by the Secretary of Agriculture. Although Rain and Hail's position has shifted somewhat at various times, Rain and Hail essentially argues that "fire" is specifically designated as an insurable cause of loss and that once it established a covered loss and established that the fire was unavoidable, and that no exclusions applied, i.e., that there was no malfeasance, mismanagement, or negligence on the part of the insured or its employees, this eliminated any man-made cause of the fire, and thus, the fire should be deemed to be caused by an act of nature. Rain and Hail also contends that once FCIC paid Rain and Hail's claim, the burden of proof shifted to FCIC to show that Rain and Hail did not sustain an insurable loss, i.e., that the loss was not caused by an act of nature, citing *Rain and Hail Insurance v. Federal Crop Insurance Corp.*, No. M-01-280 (S.D. Tex. Sept. 16, 2004). Rain and Hail also contends that the notation in the LAM provisions that "[a]ny damage resulting from fire caused by other than an act of nature is not insurable" contradicts the language in the policies and the FCIA and, therefore, is not binding on Rain and Hail.

Rain and Hail further argues that FCIC admitted in its comments to the 2007 proposed change to the Guaranteed Tobacco Crop Provisions that there was an ambiguity in the meaning of "fire" as a "cause of loss" and, thus, the provisions should be construed in favor of Rain and Hail's interpretation. Rain and Hail argues that it reasonably interpreted a loss by "fire" to mean a loss caused by a fire, and that once the exclusions were eliminated, which

discounted the cause of the fire as being man-made, then a determination must reasonably follow that the fire was the result of an “act of nature.”

Rain and Hail also contends that, in any event, the 2001 Wayne Lehman tobacco damage should be covered because the likely source of the fire that burned down the barn was documented as wind, and wind is an act of nature.

FCIC contends that the burden is on the insured to show that the insured sustained a covered loss, which means that the insured must show that the loss was attributable to a natural disaster. Thus, it contends, even though “fire” is listed as an insurable cause of loss, the fire must be attributable to an act of nature or an act of God. It also contends that the LAM clearly notes that any damage resulting from fire caused by other than an act of nature is not insurable and that the provisions and guidance set forth in the LAM are binding on Rain and Hail. FCIC further contends that the LAM provisions do not contradict, but are consistent with, the requirement in the FCIA that the losses must be due to drought, flood, or other natural disaster.

Discussion

Although the applicable crop insurance provisions and the SRA are not models of clarity as they pertain to coverage for tobacco destroyed by fire during a fire-curing process, the SRA and the crop insurance provisions are subject to the FCIA, which clearly provides that to qualify for reinsurance under the Act, the losses “must be due to drought, flood, or other natural disaster (as determined by the Secretary [of Agriculture].” Thus, even though “fire” was designated as one of the insurable causes of loss, the fire, to qualify for coverage under the Act, must be attributable to an act of nature or an act of God. The Act does not cover crop losses under any and all circumstances involving a fire, but applies only to crop losses caused by natural disasters. Any other conclusion would require us to ignore the clear language of the Act. In order for there to be coverage, we must be able to find that the fire was due to natural causes.

Toward that end, we turn to section 14 of the Common Crop Insurance Policy, which provides:

14. Duties in the Event of Damage or Loss.

....

- (e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

This clause clearly places the burden of establishing qualification or coverage on the insured. It clearly does not place that responsibility on FCIC. Significantly, the decisions in *Bartmess v. Federal Crop Insurance Corp.*, 845 F.2d 1258 (5th Cir. 1988), and *R & R Farm Enterprises v. Federal Crop Insurance Corp.*, 788 F.2d 1148 (5th Cir. 1986), which dealt with similar language, also concluded that the burden is on the insured to establish qualification under a category. In *Bartmess*, the Court of Appeals for the Fifth Circuit noted that under the authority granted to it by Congress, FCIC had issued regulations for the implementation of the FCIA. The court continued that the regulations set forth the terms and conditions of the rice crop insurance contract issued by FCIC and that the regulations placed on the claimants the burden of establishing that losses were directly caused by one or more of the perils insured against. *Bartmess*, 845 F.2d at 1260. The court then noted that the district court had concluded that Bartmess failed to prove by a preponderance of the evidence that the loss incurred was the result of an unavoidable insured peril, because that court had significant doubts that the flood waters first threatened and then inundated the property only after the rice planting had been completed. *Id.* With that as a backdrop, the appellate court addressed Bartmess's complaint that the district court disregarded general insurance law principles, placing on him an unreasonably heavy burden of proof by requiring him to show that he did not "plant into the flood." *Id.* The appellate court stated that once the insurer raised the defense that Bartmess had not shown that the loss was caused by a peril against which the insurance was provided, Bartmess had the burden of proving that he sustained a covered loss. It continued, stating:

Like the policy issued in *R & R Farm Enterprises . . .*, the policy issued to Bartmess states:

8. Claim for Indemnity. (a) It shall be a condition precedent to payment of any indemnity that the insured (1) establish the total production of rice on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed.

In *R & R Farm Enterprises*, the FCIC had denied a portion of plaintiffs' rice crop insurance claim, stating that much of its loss was due to poor farming

practices. The district court placed the burden of proving the poor farming practices on the insurer. The court reversed, holding that the policy clause contained in 7 C.F.R. § 424.7(d)(8)(a) placed this burden on the insured, requiring it to prove that the claimed loss was directly caused by one or more of the perils insured against.

Id. at 1260-61.

In finding against Bartmess, the court stated that Bartmess was seeking to create an issue where none existed by contending that the district court had not followed general insurance law principles and further pointed out that the court, contrary to Bartmess's assertions, had, in fact, applied general insurance principles. The court's next point is particularly significant to our case. The court went on to state, "Moreover, as the district court observed, to the extent such principles were inconsistent with Bartmess's contract, they were not applicable. This principle is incontrovertible because it is dictated by federal statute." *Bartmess*, 845 F.2d at 1261.

Given the cases cited above specifically addressing this issue, we hold that the burden is on the insured in the appeal before us to show not only that the fire occurred but that it resulted from a natural disaster.

To the extent that Rain and Hail argues that once FCIC indemnifies Rain and Hail, the burden somehow shifts to FCIC to prove that the loss was not directly caused by an insurable loss, we find that argument to be unpersuasive. Further, Rain and Hail's reliance upon *Rain and Hail* in support of its position is misplaced. This decision cannot reasonably be interpreted as overturning, or even modifying, the clear holding in *Bartmess* and *R & R Farm Enterprises*. The decision does not directly, or tangentially, address a policy clause similar to section 14, nor does it address the requirements of the FCIA as to coverage. Instead, the case simply addressed a situation where, once coverage had been established, the court believed that FCIC was in a better position than the insured to provide evidence of certain crucial facts. Under those circumstances, and with no contract language specifying the burden, the court placed the burden of going forward with certain evidentiary matters on FCIC. Merely because the case involved a claim by FCIC after it had indemnified Rain and Hail, as is the case here, does not mean that we can ignore the clear direction of section 14 and the cases addressing it, set out above, and use that case to shift the burden of establishing coverage under one of the stated perils to FCIC.

As to the applicability of the LAM provisions under Rain and Hail's policy, the SRA between FCIC and Rain and Hail provides at section V. I.1 that the insurance company must

be in compliance with the SRA, the laws and regulations of the United States, and all bulletins, handbooks, instructions, and procedures of FCIC. The LAM is an approved handbook of FCIC which provides procedures for handling adjustments for crop losses. Thus, Rain and Hail is required to comply with the procedures stated therein. The note in the LAM that provides that “[a]ny damage resulting from fire by other than an act of nature is not insurable” is consistent with the qualifications stated for insurance coverage under the FCIA and, thus, did not invoke a substantive rule change to the FCIA, as Rain and Hail contends, requiring notice and comment under the Administrative Procedure Act.

In light of the above, we will review the written record to determine whether the subject fires that occurred in 2001 and 2003 were fires that resulted from a natural disaster or act of nature as the FCIA requires.

2001 Wayne Lehman Fire

The 2001 fire was started by the insured, Wayne Lehman, to cure the tobacco using a fire-curing process. For this process, a fire is started on wood slabs covered in sawdust on the floor of the barn while tobacco is hanging from the rafters and the smoke produced from the fire slowly cures the tobacco. Customarily, someone is in attendance while the fire is burning; if left unattended, the fire is covered with split barrels so sparks are trapped. This method of curing tobacco is common in the industry. Since the fire was started by the insured, the insured must show some intervening natural event that caused the fire to spread out of control. It is not enough under the FCIA to simply show that there was a fire that destroyed the crop through some unknown cause.

The FCIA requires that losses be caused by a natural disaster and, thus, the burden is on the insured to show that the fire (which was started by the insured) was spread by an act of nature. The adjuster’s report noted that “wind was present on this day and is suspect.” This statement alone is not enough to show that the wind on that day was of a high enough level to be classified as an act of nature or an act of God which triggers liability. Rain and Hail did not offer any weather reports or other weather information establishing that there were high winds, or any windy conditions at all, on that specific day, which would have caused the fire to spread out of control.

Rain and Hail’s position is that if it establishes that the cause of the fire spreading was not the result of human activity, then the cause should be deemed to be an act of nature. Even if such a deductive analysis were applied as Rain and Hail asserts, there is nothing in the record to support Wayne Lehman’s self-serving statements that there was no negligence, mismanagement, or wrongdoing on the part of the insured or his employees. The

investigation at the time of the fire does not set forth facts associated with the fire that could be used to determine, by deductive analysis or otherwise, what caused the fire to spread out of control. The report merely indicated that a farm hand checked the fire at 8:30 a.m. and all was well, that at 10:30 a.m. the insured was called and told that flames were shooting out of the eaves of the barn, and that when the insured arrived, the barn was on the ground. There were no statements in the adjuster's record indicating that the fire was being monitored, or that, if left unattended, precautions had been taken to prevent sparks from flying. The report stated that the fire was reported to the fire department, but there is no fire department report in the record. Wayne Lehman submitted a sworn statement three years after the fire which set forth conclusions as to the cause of the fire and offered no facts which led him to reach those conclusions. The record is devoid of any evidence establishing that the fire, which was already burning for the fire-curing process, was subjected to an intervening act of nature or act of God which caused the fire to burn out of control.

The fact that FCIC in 2007 proposed that the cause of loss stated in the Guaranteed Tobacco Crop Provisions as "Fire" would be amended to designate "Fire, if caused by lightning," is irrelevant to the case here because in 2001 and 2003, when these fires occurred, any intervening act of nature, such as lightning, high winds, thunderstorms, drought, tornadoes, or a similar natural event, would have qualified. FCIC's 2007 amendment was proposed to clarify what acts of nature associated with a fire would be covered under the FCIA after the 2007 amendment. The proposed amendment did not in any way change the FCIA requirement that the loss had to be caused by a natural disaster. The FCIA requirement that the loss had to be caused by a natural disaster is not ambiguous.

Based on a preponderance of the evidence, we conclude that the 2001 Wayne Lehman tobacco losses were not caused by a natural disaster and, thus, were not insurable losses under the SRA. Thus, Rain and Hail is indebted to FCIC in the amount of \$27,370 for overpayments made on this claim.

2003 Glenn Gainous Fire

This fire was started by the insured, Glenn Gainous, who was using the fire-curing process to cure his tobacco. The barn burned to the ground and there was nothing at the site which provided any evidence of the cause of the fire. The adjuster on this policy was Wayne Lehman. His report noted in pertinent part that a barn fire occurred, destroying all tobacco in the barn; that, according to the insured, there was no unusual weather such as high winds or lightning to cause the barn to burn; and that no known cause of loss was listed on the fire department's report. The fire department's report noted only that the type of fire was a "barn" fire. The report did not note the cause of the fire. There is no evidence that the fire,

which was started by the insured for the fire-curing process, was subjected to an intervening act of nature which caused the fire to spread beyond the floor area of the barn. Glenn Gainous' sworn statement submitted one year after the fire is self-serving in nature and lacks any factual support for the conclusions he reached. He did not state any facts surrounding the fire-curing process, as to how the tobacco was set up, how the fire was started, who was watching the fire, whether precautions were taken if the fire was left unattended, and the like. He merely stated, in essence, that the fire was unavoidable; that there was no negligence or wrongdoing on the part of him, his family, or his employees; that there was no known human cause; and that the fire was believed to be an act of nature. Glenn Gainous' sworn statement set forth the same conclusions as Wayne Lehman provided in his sworn statement regarding his 2001 barn fire. Both Glenn Gainous and Wayne Lehman provided their sworn statements with essentially the same language, around the same time in October of 2004. There simply is no evidence in the record supporting Glenn Gainous' conclusions as to the likely cause of the fire.

To qualify for insurance under the FCIA, the fire must be attributable to a natural disaster. The record is devoid of any evidence that attributes the fire to an act of nature or an act of God. We, thus, conclude that the 2003 Glenn Gainous tobacco losses were not insurable losses under the SRA, and that Rain and Hail is indebted to the FCIC in the amount of \$18,179 for overpayments made on this claim.

Decision

Rain and Hail's claims are **DENIED**.

BERYL S. GILMORE
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

JEROME M. DRUMMOND
Board Judge