IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RJMC Farms, LLC, Michelle Farms, LLC, Renee Farms, LLC, and Jennifer Farms, LLC, Plaintiffs, v. Thomas James Vilsack, Secretary, United States Department of Agriculture, and Frank M. Wood, Director, National Appeals Division, Defendants.	)	Case No. 1:21-CV-2702

COMPLAINT FOR JUDICIAL REVIEW AND DECLARATORY RELIEF

Plaintiffs, RJMC Farms, LLC ("RJMC"), Michelle Farms, LLC ("Michelle Farms"), Rene Farms, LLC ("Renee Farms"), Jennifer Farms, LLC ("Jennifer Farms"), state as follows for their Complaint for Judicial Review against Thomas James Vilsack, Secretary, the United States Department of Agriculture (the "Secretary") and Frank M. Wood, Director, National Appeals Division ("Director").

PARTIES

1. RJMC is an Indiana limited liability company with its principal place of business in Davies and Knox Counties, Indiana.

2. Michelle Farms is an Indiana limited liability company with its principal place of business in Davies and Knox Counties, Indiana.

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3. Renee Farms is an Indiana limited liability company with its principal place of business in Davies and Knox Counties, Indiana.

4. Jennifer Farms is an Indiana limited liability company with its principal place of business in Davies and Knox Counties, Indiana.

5. The Secretary is the Secretary of the United States Department of Agriculture ("USDA") and is charged with the duty of administering the USDA.

6. The Director is the director of the National Appeals Division ("NAD"), a division of the USDA, and is charged with the duty of administering all proceedings within the NAD.

NATURE OF CLAIM

7. Plaintiffs seek review of the final determination of the NAD issued by the Director, dated August 20, 2021, erroneously determining that the Risk Management Agency ("RMA") did not err in placing Plaintiffs on the Ineligibility Tracking System list (the "ITS List").

JURISDICTION AND VENUE

8. Review of a final determination of the NAD is properly before this Court pursuant to 28 U.S.C. § 1331, 7 U.S.C. § 6999, 7 C.F.R. § 11.13, and 5 U.S.C. §§ 701-706.

9. This case is properly before the United States District Court for the Southern District of Indiana pursuant to 28 U.S.C. § 1391(e).

REQUEST FOR JUDICIAL REVIEW

10. **Plaintiffs' Farming Operations and Insurance Coverage**. Plaintiffs are a collection of family farming entities that farmed soybeans and corn in Indiana during the 2009-2014 crop years, each of which insured crops under the Federal Crop Insurance Act ("FCIA"). This Judicial Review Action relates specifically to the 2011 crop year, for which Plaintiffs insured

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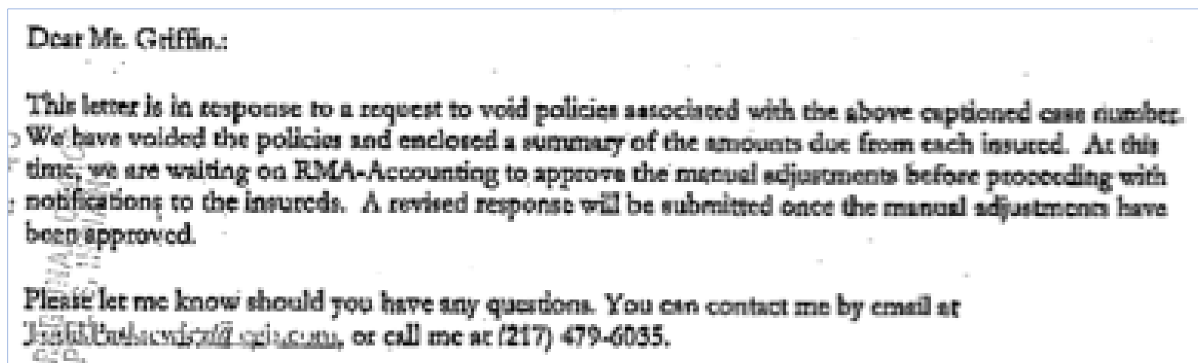
their crops with a Multiple Peril Crop Insurance Policy (the "MPCI Policy") purchased from Diversified Crop Insurance Services ("Diversified").

11. **The Now-Withdrawn Report of Initial Findings.** The dispute in this case began in 2015, when the USDA Office of Inspector General investigated Appellants' farming operations. Finding nothing actionable, the US Attorney refused to prosecute and **in 2015** turned the matter over to RMA, which ostensibly investigated the matter for another three years. Ultimately, RMA issued an August 30, 2018 Report of Initial Findings (the "2018 Initial Findings") to Diversified relating to the 2011 MPCI Policy.[1] The 2018 Initial Findings determined that Appellants lacked an insurable interest in the 2011 crop year and misrepresented eligibility as an insurable entity. As a result, RMA voided Appellants' 2011 policies and determined overpaid indemnity totaling $372,194. (App. Ex. A, p. 2.) **RMA also specifically directed Diversified to void the policies**. (*Id.*) The 2018 Initial Report (as with the majority of RMA's actions in this case) was substantively flawed for numerous reasons not at issue in this case or the underlying NAD Appeal.

12. **Diversified's Compliance with RMA's Voidance Directive**. Diversified, without conducting any independent inquiry to confirm the 2018 Initial Findings, complied with RMA's directive. In its October 12, 2018 letter to RMA, Diversified stated that "in response to a request to void policies... we have voided the policies."


Dear Mr. Griffin.:

This letter is in response to a request to void policies associated with the above captioned case number. We have voided the policies and enclosed a summary of the amounts due from each insured. At this time, we are waiting on RMA-Accounting to approve the manual adjustments before proceeding with notifications to the insureds. A revised response will be submitted once the manual adjustments have been approved.

Please let me know should you have any questions. You can contact me by email at [illegible], or call me at (217) 479-6035.

[1] A similar report was sent to Rural Crop Insurance Services ("RCIS"), the approved insurance provider for Appellants during crop years 2009-2010 and 2012-2014.

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Diversified enclosed a summary of amounts due and asked for RMA's approval of the numbers.

13. **Diversified's Determination to Appellants**. On January 4, 2019, Diversified notified Appellants of RMA's voidance and determination of debt. This letter again illustrated that Diversified conducted **no independent investigation** of the matters contained in the 2018 Initial Finding, simply stating "[a]s a result of the MRCO's finding, we have determined that you misrepresented the LLCs eligibility." (*Id.*). Essentially, Diversified was acting merely as the conduit for RMA's 2018 Initial Determination, which was the operative document voiding Appellants' policies. At this time, Diversified notified Appellants of the overpaid indemnity (which were the same figures determined by RMA minus the premiums), and gave the requisite ITS disclosures.

14. **Entry into Payment Agreements**. The unexpected (and facially defective) demand for such a high payment (in addition to a similar demand from RCIS) relating to a crop year nine years in the past obviously put Appellants in a bind. They wished to contest the debt; however, the only way they could do so while ensuring their continued eligibility was to enter into Payment Agreements to allow for the amounts to be paid under protest. Ultimately, Appellants entered into Payment Agreements with Diversified.

15. **Appellants' Initial Round of NAD Appeals**. With the Payment Agreements in place, Appellants began the process of contesting the baseless underlying determination: the 2018 Initial Determination. Appellants began NAD Appeals relating to both the 2018 Initial Determination directed to Diversified as well as the analogous document directed to RCIS. During the NAD Appeals, RMA issued a successor document to the 2018 Initial Determination in the form of an MRCO Final Finding (the "2019 Final Finding"). This became the focus of the appeals, but as with the 2018 Initial Findings, the 2019 Final Findings:

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- Voided Appellants' policies;
- Directed Diversified to void Appellants' policies and recover the overpayment; and
- Confirmed that Diversified had complied with RMA's October 2018 directive, noting "you have voided the subject policies"

Again, Diversified took no independent action, neither conducting a separate investigation nor reaching an independent conclusion regarding the matters addressed in the 2019 Final Finding. At this point, the **only** basis for the debt claimed in the Payment Agreements was the now-superseded 2018 Initial Findings.

16. **RMA's Withdrawal of the 2019 Final Findings**. Appellants spent significant time and effort within their NAD appeals, and ultimately, RMA withdrew the 2019 Final Findings, admitting that it had overstepped its authority in voiding (and ordering the voidance) of Appellants' policies. It seems also likely that RMA did not like the prospect of defending its determination, which would require litigation of facts over a span of ten years, multiple entities, and would have required voluminous documentation to support. Unquestionably, however, RMA admittedly recognized the legal error it had made:

> The original findings also, however, stated that RMA was "voiding" Appellants' policies, *see* RMA 204 – ***an action that RMA has no legal authority to take*** and that is inconsistent with current Agency policy to limit role in making and issuing reinsurance compliance findings solely to that of a reinsurer. Upon recognizing its error during the ensuing NAD proceedings, the Agency rescinded its original set of findings and determined to review and issue a new set of findings consistent with the scope of its legal authority...

On April 26, 2019, RMA transmitted a letter **to Appellants' counsel** that formally withdrew the 2018 Initial Finding and 2019 Final Findings to Diversified and RCIS. The letter included the following statement pertinent to this case:

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