United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5348 **September Term, 2017**

FILED ON: JULY 13, 2018

ACE AMERICAN INSURANCE COMPANY, ET AL.,
APPELLEES

AMERICAN AGRI-BUSINESS INSURANCE COMPANY,
APPELLANT

v.

FEDERAL CROP INSURANCE CORPORATION, A CORPORATION WITHIN THE UNITED STATES DEPARTMENT OF AGRICULTURE AND RISK MANAGEMENT AGENCY, AN AGENCY WITHIN THE UNITED STATES DEPARTMENT OF AGRICULTURE,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-01992)

Before: GRIFFITH, KAVANAUGH, and WILKINS, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral arguments of counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is

ORDERED AND ADJUDGED that the judgment of the district court be **AFFIRMED**.

Appellant American Agri-Business Insurance Corporation ("Agri-Business") raised numerous claims in district court against the Federal Crop Insurance Corporation (FCIC). We agree with the district court that dismissal of those claims was proper.

The Federal Crop Insurance Act (the "Act"), codified as amended at 7 U.S.C. § 1501 *et seq.*, authorizes FCIC to "insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States." *Id.* § 1508(a)(1); *see id.* § 1507(c). Accordingly, FCIC enlists private crop insurers to sell "policies written on terms, including premium rates, approved

by [FCIC]." 7 C.F.R. § 400.166; *see* 7 U.S.C. § 1508(k)(1). The Department of Agriculture's Risk Management Agency supervises and administers the federal crop insurance program on behalf of FCIC, *see* 7 U.S.C. § 6933, and we refer to both collectively as FCIC throughout this judgment. *See Am. Growers Ins. Co. v. Fed. Crop Ins. Corp.*, 532 F.3d 797, 798 (8th Cir. 2008).

The private crop insurers obtain reinsurance from FCIC pursuant to a Standard Reinsurance Agreement (SRA) negotiated between FCIC and the private crop insurance industry. FCIC requires the private crop insurers to renew these reinsurance contracts annually, although the Act limits renegotiation of "the financial terms and conditions" of the SRA to once in every five-year period. *See* 7 U.S.C. § 1508(k)(8). As relevant here, FCIC and the private crop insurers, including Agri-Business, negotiated a new SRA to become effective in the 2011 crop year. The SRA detailed how FCIC would take a share of the premiums collected from insured farmers in exchange for reimbursing the private crop insurers for certain administrative expenses and providing them with reinsurance against the risk of loss. Importantly, however, nothing in the 2011 SRA dictated what premium rates the private crop insurers could charge insured farmers or the methodology by which FCIC would calculate those rates. The 2011 SRA simply incorporated the Act, which requires FCIC to set premium rates that are actuarially sound and provides that the ratemaking methodology is subject to change. *See, e.g.*, 7 U.S.C. §§ 1506(n), 1508(d), 1508(i); *cf.* 7 C.F.R. § 400.164. FCIC thus calculates approved premiums annually using its prevailing ratemaking methodology.

After negotiating the 2011 SRA, FCIC modified its ratemaking methodology, effective the following year. This resulted in lower premium rates than had been authorized in 2011 and allegedly cost the private crop insurers hundreds of millions of dollars in underwriting.

The private crop insurers sought relief from the Risk Management Agency's Deputy Administrator for Insurance Services. When that failed, they appealed to the Civilian Board of Contract Appeals (the "Board"), arguing that this modification to the ratemaking methodology violated both the duty of good faith and fair dealing implied in the 2011 SRA and the Act's limitation on renegotiating financial terms and conditions, codified at 7 U.S.C. § 1508(k)(8). In the alternative, the private crop insurers argued for reformation or rescission of the 2011 SRA on the ground that the parties had mistakenly assumed that the ratemaking methodology in place when they agreed to the 2011 SRA was actuarially sound. The private crop insurers further invoked promissory estoppel based on alleged representations by FCIC that the ratemaking methodology and subsequent premiums would remain unchanged for the five years the 2011 SRA would be in place. The Board determined it had no jurisdiction to decide the claim of promissory estoppel and granted summary relief to FCIC on all other claims. *ACE Am. Ins. Co.*, CBCA 2876-FCIC, et al., 14-1 BCA ¶ 35,791.

The private crop insurers brought this suit in November 2014, but significantly, they did not seek judicial review of the Board's decision. Instead, they raised anew the claims they had made to the Board. They also brought additional claims alleging that FCIC had unjustly enriched itself and had failed to "tak[e] into consideration the financial condition of the reinsured companies" when making SRA decisions as required by the Act, codified at 7 U.S.C. § 1508(k)(3). The district court dismissed all their claims, *ACE Am. Ins. Co. v. Fed. Crop Ins. Corp.*, 209

F. Supp. 3d 343 (D.D.C. 2016), and Agri-Business appealed. We affirm the judgment of the district court on each issue.

First, Agri-Business cannot pursue again in district court claims it had previously raised before and were already adjudicated by the Board. This is so because "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991) (quoting *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)); *see also B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1303 (2015) ("[W]here a single issue is before a court and an administrative agency . . . . 'courts may take it as given that Congress has legislated with the expectation that [preclusion] will apply except when a statutory purpose to the contrary is evident.'" (quoting *Astoria*, 501 U.S. at 108)). Agri-Business can only seek review under the Administrative Procedure Act (APA) of the Board's decision on these claims. *See* 5 U.S.C. § 704; *see also Am. Growers Ins. Co.*, 532 F.3d at 800 (reviewing a Board adjudication under the APA); *Old Republic Ins. Co. v. Fed. Crop Ins. Corp.*, 947 F.2d 269, 282 (7th Cir. 1991) (reviewing an FCIC adjudication under the APA).

Agri-Business responds that the Act overrides this default rule when it vests federal district courts with "exclusive original jurisdiction . . . of all suits brought by or against [FCIC]." 7 U.S.C. § 1506(d). Agri-Business thus reasons "the district court should disregard the decision of [the Board] in favor of a *de novo* trial" on all claims. Agri-Business Br. 20. We are unpersuaded. Nothing in "exclusive original jurisdiction" suggests Agri-Business can re-litigate in a de novo proceeding claims already raised before and adjudicated by the Board, especially in light of the neighboring statutory provision that requires exhaustion of administrative procedures, discussed below. *See* 7 U.S.C. § 6912(e); *see also Rain & Hail Ins. Serv. v. Fed. Crop Ins. Corp.*, 229 F. Supp. 2d 710, 715-17 (S.D. Tex. 2002); *Am. Growers Ins. Co. v. Fed. Crop Ins. Corp.*, 210 F. Supp. 2d 1088, 1091-93 (S.D. Iowa 2002). The word "exclusive" preempts jurisdiction in state courts and the Court of Federal Claims, *see Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1372-74 (Fed. Cir. 2005), and "original" designates federal district court as the initial Article III court to consider each case, *cf. United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715 (1963) ("[T]he function of reviewing an administrative decision can be and frequently is performed by a court of original jurisdiction as well as by an appellate tribunal."); *NO Gas Pipeline v. FERC*, 756 F.3d 764, 769 (D.C. Cir. 2014) (explaining the default rule that parties can obtain review of administrative decisions under the grant of original jurisdiction in 28 U.S.C. § 1331). *See generally* H.R. Rep. 96-1272, at 12-13 (1980) (Conf. Rep.), *reprinted in* 1980 U.S.C.C.A.N. 3082, 3082-83 (discussing suits by or against FCIC).

Agri-Business argues that it also sought APA review of the Board decision, but we can find no evidence of such pleading in its complaint. There is no reference to the APA, the proper standard of review, or even a request that the district court review the Board decision. And Agri-Business made no effort to amend its complaint to address such defects when FCIC moved to dismiss the case on those grounds. Although we do not require the invocation of "magic words," we will not manufacture a claim that is otherwise absent from the pleading. *Broderick v. Donaldson*, 437 F.3d 1226, 1232 (D.C. Cir. 2006).

Second, Agri-Business cannot pursue a claim in district court that FCIC violated § 1508(k)(3) by changing the ratemaking methodology without considering the financial condition of the reinsured companies unless Agri-Business first raised that issue in the administrative proceedings below. The Act requires plaintiffs to "exhaust all administrative appeal procedures established by the Secretary [of Agriculture] or required by law before the person may bring an action in a court of competent jurisdiction." 7 U.S.C. § 6912(e). Therefore, a private crop insurer who "believes [FCIC] has taken an action that is not in accordance with the provisions of the Standard Reinsurance Agreement" must file those claims with the Deputy Administrator and the Board. 7 C.F.R. § 400.169; *see ACE Prop. & Cas. Ins. Co. v. Fed. Crop Ins. Corp.*, 440 F.3d 992, 995-1002 (8th Cir. 2006). This requirement is mandatory but not jurisdictional. *Munsell v. Dep't of Agric.*, 509 F.3d 572, 580-81 (D.C. Cir. 2007).

Agri-Business counters that the Secretary did not establish administrative procedures for claims that FCIC violated the Act, arguing that the phrase "action that is not in accordance with the provisions of the Standard Reinsurance Agreement" limits the exhaustion requirement to express breach-of-SRA claims. According to Agri-Business, there were no prescribed procedures to exhaust. For the same reason, Agri-Business continues, the Board actually lacked jurisdiction to adjudicate whether FCIC changed the financial terms and conditions of the SRA in violation of § 1508(k)(8) as well. Agri-Business describes a "two-track" system whereby breach-of-SRA claims must be submitted to the Deputy Administrator and Board while claims that FCIC violated the Act can be filed directly in district court. Agri-Business Br. 12.

This argument overlooks that Agri-Business raised its statutory arguments in an effort to recover damages for breach of the 2011 SRA, which expressly incorporates the Act. Agri-Business cannot circumvent the administrative process by disguising its breach-of-SRA claims as statutory claims. *Cf. Westberg v. FDIC*, 741 F.3d 1301, 1306 (D.C. Cir. 2014) (determining administrative exhaustion requirements by the "functional" nature of a claim as opposed to the formal pleading); *Ingersoll-Rand Co. v. United States*, 780 F.2d 74, 77-79 (D.C. Cir. 1985) ("We begin with the well-accepted proposition that a plaintiff may not avoid the jurisdictional bar of the [Contract Disputes Act] merely by alleging violations of regulatory or statutory provisions rather than breach of contract."); *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 969 (D.C. Cir. 1982) (discussing "disguised" contract claims). And while Agri-Business insists the Board itself "concluded that it lacked jurisdiction over [Agri-Business]'s statutory claims," Agri-Business Br. 31, even the most cursory review of the Board's decision refutes that notion, *see ACE Am. Ins. Co.*, 14-1 BCA at 175,059-60.

Third, Agri-Business's promissory estoppel and unjust enrichment claims are foreclosed by the existence of the 2011 SRA. As we have previously explained, "Underscoring the nature of promissory estoppel and unjust enrichment as remedies for failed agreements, courts tend not to allow either action to proceed in the presence of an actual contract between the parties." *Vila v. Inter-Am. Inv. Corp.*, 570 F.3d 274, 280 (D.C. Cir. 2009). The ratemaking methodology and subsequent premiums "were repeatedly discussed during negotiations as they closely relate to the standard agreement," *ACE Am. Ins. Co.*, 209 F. Supp. 3d at 347-48, and cannot qualify as some

separate quasi-contract that could be the basis for additional equitable remedies. The district court was correct to dismiss these claims as well.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk