

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VAN CUREN,

Plaintiff,

v.

FEDERAL CROP INSURANCE  
CORPORATION ET AL.,

Defendants.

No. C 13-04601 CRB

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS OR IN THE  
ALTERNATIVE FOR SUMMARY  
JUDGMENT, AND DENYING  
PLAINTIFF’S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Chapter 11 Bankruptcy Trustee John Van Curen (“Trustee” or “Plaintiff”) brought suit against the Federal Crop Insurance Corporation and Risk Management Agency (collectively, “Defendants”) to compel payment of crop insurance proceeds for the benefit of Debtor Michael Hat, formerly doing business as Michael Hat Farming Company’s (“Debtor’s”) bankruptcy estate. See generally Compl. (dkt. 1). Trustee filed a Motion for Partial Summary Judgment (“P. MSJ”), (dkt. 28), asking the Court to order Defendants to implement the administrative decision of the U.S. Department of Agriculture’s National Appeals Division. Defendants, in turn, filed a Motion to Dismiss or in the Alternative for Summary Judgment (“Def. MSJ”), (dkt. 29), arguing that the National Appeals Division never had jurisdiction to decide the dispute because Trustee’s claims are time-barred under the Federal Crop Insurance Act, 7 U.S.C. § 1508(j), and the subject crop insurance policies.

1 Because Plaintiff Trustee’s claims are time-barred, the Court GRANTS Defendants’ Motion  
2 and DENIES Plaintiff’s Motion.

3 **I. BACKGROUND**

4 The facts in this case are virtually undisputed. Debtor grew grapes primarily in  
5 California’s Central Valley and sold them to wine and juice manufacturers. See Van Curen  
6 v. Great Am. Ins. Co. (In re Hat), 363 B.R. 123, 129 (Bankr. E.D. Cal. 2007). Debtor filed  
7 for Chapter 11 bankruptcy relief on July 20, 2001. Compl. ¶ 8; see In re Michael Hat, also  
8 known as Michael Hat Farming Company, No. 04-32497 (Bankr. E.D. Cal. filed July 20,  
9 2001). During the initial stages of Debtor’s bankruptcy, until April 2003, Debtor continued  
10 operating his farming business as “debtor-in-possession.” See In re Hat, 363 B.R. at 130.

11 Starting around 1999, Debtor purchased crop insurance for his grape crops when  
12 available. See id. at 131. While operating as debtor-in-possession, Debtor purchased  
13 substantial crop insurance coverage from American Growers Insurance Company (“AGIC”)  
14 for the 2002 crop year. Van Curen Decl. Exhibit A (dkt. 28-2) at 7. He increased existing  
15 coverage on some 33 grape units, and purchased new coverage on 11 additional units. Id.  
16 AGIC, a private insurer, issued the policies, and the Federal Crop Insurance Corporation  
17 (“FCIC”), a creation of the U.S. Department of Agriculture, acted as reinsurer pursuant to a  
18 Standard Reinsurance Agreement between AGIC and FCIC. See id. at 3-4; see also Van  
19 Curen Decl. Exhibit J (dkt. 28-14) (Common Crop Insurance Policy); Burnett Decl. Exhibit 1  
20 (dkt. 36-1) (Standard Reinsurance Agreement).

21 Most relevant to this action, the crop insurance policies contained the following  
22 provisions:

23 20. Arbitration.

24 (a) If you and [AGIC] fail to agree on any factual determination, the  
25 disagreement will be resolved in accordance with the rules of the  
26 American Arbitration Association. Failure to agree with any factual  
27 determination made by FCIC must be resolved through the FCIC appeal  
28 provisions published at 7 CFR part 11. . . .

25. Legal Action Against [AGIC]

(a) You may not bring legal action against [AGIC] unless you have  
complied with all of the policy provisions.

1 (b) If you do take legal action against [AGIC], you must do so within 12  
2 months of the date of denial of the claim. Suit must be brought in  
accordance with the provisions of 7 U.S.C. 1508(j). . . .

3 Van Curen Decl. Exhibit J at 12-13.

4 Many of Debtor’s insured crops suffered substantial damage during the 2002 crop  
5 year. Van Curen Decl. Exhibit A at 3-4. In late 2002, Debtor filed several insurance claims  
6 with AGIC under the various policies. Id. AGIC adjusters inspected Debtor’s vineyards,  
7 processed and approved the claims, and sent Debtor \$8,354,368 in indemnity payments. Id.  
8 at 4. Debtor cashed some of AGIC’s indemnity checks, in the amount of \$1,804,701, but  
9 never cashed the others. Id. After issuing checks to Debtor, in early 2003, AGIC began a  
10 “High Dollar Loss Review” of Debtor’s claims, as required by the Reinsurance Agreement  
11 for claims over \$100,000. Id.

12 As AGIC conducted its High Dollar Review, the insurer itself was experiencing  
13 severe financial difficulties. In November 2002, the Nebraska Department of Insurance  
14 issued an order of supervision over AGIC, and in December 2002, placed AGIC into  
15 rehabilitation. Burnett Decl. (dkt. 36) ¶ 8. The Nebraska Department of Insurance and the  
16 U.S. Department of Agriculture’s Risk Management Agency<sup>1</sup> (“RMA”) entered into a  
17 Memorandum of Understanding with regard to AGIC’s financial troubles. See Van Curen  
18 Decl. Exhibit F (dkt. 28-10). The Memorandum essentially promised that RMA, acting on  
19 behalf of the Federal Crop Insurance Corporation (“FCIC”), would guarantee AGIC’s  
20 insurance policies in the event of an AGIC liquidation. See id. (“RMA will ensure that all  
21 claims for [AGIC] policies that are reinsured by FCIC are paid in full.”). RMA began day-  
22 to-day oversight of AGIC in January 2003 to ensure orderly claims processing and to transfer  
23 existing policies to new private insurers in an apparent effort to wind down AGIC’s  
24 operations. Burnett Decl. ¶¶ 11-16.

25 Meanwhile, in April 2003, the bankruptcy court appointed Trustee to take over control  
26 and management of Debtor’s bankruptcy estate. Van Curen Decl. Exhibit A at 4. Debtor  
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28 <sup>1</sup> RMA, a defendant herein, is an administrative agency within the U.S. Department of  
Agriculture. RMA manages the affairs of the Federal Crop Insurance Corporation.

1 could no longer operate his business as debtor-in-possession, and Trustee began the process  
2 of liquidating Debtor's business and paying his creditors. Id. Trustee accordingly took over  
3 responsibility for Debtor's pending 2002 AGIC crop insurance claims. Id.

4 In July 2003, AGIC concluded its High Dollar Review of Debtor's insurance claims.  
5 By letter dated August 7, 2003, AGIC issued its final determination to Trustee. Van Curen  
6 Decl. Exhibit D (dkt. 28-8). AGIC found that Debtor had been substantially overpaid on his  
7 claims, and that Debtor's estate owed AGIC repayment of some \$1.2 million. Id. The letter  
8 ended with the following statement:

9 "This letter constitutes a final determination by [AGIC]. Your insurance policy  
10 with us contains a mandatory arbitration clause that any disagreements  
11 regarding factual determinations be resolved through binding arbitration. . . .  
12 Arbitration is considered legal action and must be commenced within 12  
13 months from the date of this letter notifying you of our final determination. . . .

14 Id. (emphasis added).

15 Trustee responded just under one year later, by letter dated July 29, 2004. Van Curen  
16 Decl. Exhibit E (dkt. 28-9). Trustee denied any obligation to commence arbitration regarding  
17 the insurance claims, claiming that the bankruptcy court had exclusive jurisdiction over such  
18 matters. Id. Trustee also informed AGIC that its August 2003 letter was a violation of the  
19 automatic stay of 11 U.S.C § 362, and that AGIC's claims for repayment were nevertheless  
20 barred pursuant to a May 28, 2004 bankruptcy claims bar date. Id. Trustee then "reserve[d]  
21 all rights with respect to the 2002 Crop Claims, including the right to challenge AGIC's final  
22 determination regarding the validity of such claims irrespective of the deadline and  
23 arbitration procedures described in [AGIC's August 2003] letter." Id. Trustee did not  
24 commence arbitration or take any legal action to contest AGIC's decision by the August 7,  
25 2004 deadline.

26 On February 28, 2005, a Nebraska state court entered an Order of Liquidation,  
27 Declaration of Insolvency, and Injunction (the "Liquidation Order") authorizing the  
28 Nebraska Department of Insurance to liquidate AGIC. Van Curen Decl. Exhibit G (dkt. 28-  
11). The Liquidation Order appointed Nebraska's Director of Insurance as Liquidator to  
administer AGIC's liquidation under court supervision. Id. The Liquidation Order stated

1 that “the rights and liabilities of AGIC and its insureds, creditors, shareholders and all other  
2 persons interested in its estate shall become fixed as of the date of entry of [the] Order. . . .”  
3 Id. The Liquidation Order further specified that “no actions at law or in equity or arbitration  
4 . . . may be brought against AGIC, or its Liquidator, nor shall any existing actions be  
5 maintained or further presented after issuance of” the Liquidation Order. Id. The  
6 Liquidation Order also required the appointed Liquidator to give notice of the liquidation to  
7 all potential AGIC claimants, and required all interested claimants to file claims with the  
8 Liquidator by August 28, 2005. Id.

9 The Liquidator immediately sent notice to claimants. See Van Curen Decl. Exhibit H  
10 (dkt. 28-12). The notice reiterated the key points from the Liquidation Order. Id. The notice  
11 stated that all actions against AGIC—those already pending and future actions not yet  
12 filed—were immediately enjoined, and informed potential claimants of the August 28, 2005  
13 liquidation claims deadline. See id. Finally, the notice informed recipients that holders of  
14 federally reinsured AGIC policies (like Trustee) should receive a separate notice from RMA  
15 because RMA/FCIC had taken over servicing all federally reinsured AGIC policies. Id.

16 As promised, RMA separately sent notice to federally reinsured AGIC policy holders,  
17 informing them of RMA’s role in taking over federally reinsured AGIC policies pursuant to  
18 the Memorandum of Understanding (between RMA and the Nebraska Liquidator) and the  
19 Standard Reinsurance Agreement (between RMA and AGIC). See Van Curen Decl. Exhibit  
20 I (dkt. 28-13). The RMA notice included a brief question and answer section addressing  
21 many policyholders’ general concerns, including instructions on how and when to submit  
22 claims to RMA. Id.

23 Trustee submitted claims under the AGIC policies to the Nebraska Liquidator in early  
24 July 2005. See Burnett Decl. Exhibit 8 (dkt. 36-2). Liquidator rejected Trustee’s claims on  
25 June 21, 2006, because “the obligation, if any, for any loss under [Trustee’s] polic[ies] was  
26 transferred to the FCIC,” “[a]s a result of the Order of Liquidation and pursuant to the terms  
27 of the Standard Reinsurance Agreement between [AGIC] and the [FCIC].” Burnett Decl.  
28 Exhibit 9 (dkt. 36-2). Trustee formally objected to Liquidator’s rejection. See Burnett Decl.

1 Exhibit 10 (dkt. 36-2). In August 2008, Trustee and Liquidator stipulated to a final denial of  
2 Trustee’s crop insurance claims with the understanding that Trustee would pursue those  
3 claims against RMA, as successor to AGIC. See Burnett Decl. Exhibit 14 (dkt. 36-3).

4 Commencing sometime around early 2006, Trustee simultaneously pursued RMA in  
5 an effort to obtain payment under the policies. See Burnett Decl. Exhibit 17 (dkt. 36-3).  
6 After approximately three years without a definitive response, in July 2009, Plaintiff filed  
7 suit in this district to compel an RMA decision as to Plaintiff’s outstanding claims for  
8 indemnity. Van Curen Decl. ¶¶ 11, 16; see Van Curen v. Federal Crop Ins. Corp., No. 09-  
9 3509 (N.D. Cal. filed July 30, 2009). RMA issued a determination on April 6, 2010, denying  
10 Trustee’s claims and requesting that Trustee return to Defendants a substantial sum of money  
11 previously issued to Debtor—plus interest and expenses—under the policies. Burnett Decl.  
12 Exhibit 18 (dkt. 36-3). RMA concluded that Debtor’s crops had suffered due to poor farming  
13 practices, late harvesting, and other uninsured causes of loss. See id. The decision did not  
14 mention that Debtor or Trustee had missed the one-year arbitration deadline triggered by  
15 AGIC’s final determination several years prior. See id. RMA’s decision rendered the  
16 pending district court lawsuit moot, and the court accordingly dismissed the action. See  
17 Dismissal Order, Van Curen v. Federal Crop Ins. Corp., No. 09-3509, dkt. 40 (N.D. Cal.  
18 entered June 26, 2010).

19 The parties entered mediation, and pursuant to the mediation agreement, RMA  
20 rescinded its April 2010 decision to allow Trustee to submit additional evidence. See Burnett  
21 Decl. Exhibit 19 (dkt. 36-3). After reviewing Trustee’s additional evidentiary submissions,  
22 RMA issued a second decision on May 25, 2011 (“Second RMA Decision”). Id. The 106-  
23 page Second RMA Decision reached the same conclusion as the first, denying Trustee’s  
24 claims for indemnity and requesting repayment of a substantial sum—over \$2.4 million. See  
25 id. The Second RMA Decision also did not mention the missed arbitration deadline. See id.

26 Trustee appealed the Second RMA Decision to the National Appeals Division  
27 (“NAD”) of the U.S. Department of Agriculture. Trustee and Defendants participated in  
28 multiple days of hearings, leading to a lengthy NAD decision on July 18, 2012. See Van

1 Curen Decl. Exhibit A. NAD ultimately determined that RMA had erred in its assessment of  
2 Trustee’s claims, and found that RMA owed Trustee approximately an additional \$2.3  
3 million. Burnett Decl. Exhibit 20 (dkt. 36-4). At this stage, RMA argued for the first time  
4 that Trustee’s claims were time-barred for failure to initiate arbitration against AGIC back in  
5 2004. See id. NAD dismissed RMA’s statute of limitations argument, stating that it did not  
6 have jurisdiction or authority to rule on disputes between insureds and private insurers, only  
7 to review agency actions. Id. at 33-34. NAD stressed that its duty was merely to review  
8 RMA’s factual determinations pursuant to crop insurance regulations. Id.

9 Both parties requested a Director Review of the NAD Decision. On December 31,  
10 2012, the NAD Director issued his review decision, upholding in part and reversing in part  
11 the NAD decision. Burnett Decl. Exhibit 21 (dkt. 36-4). At this stage, RMA again urged  
12 that Trustee’s claims were time-barred, but the NAD Director agreed that he did not have  
13 jurisdiction to decide the issue. Id. at 5 (“I dismiss RMA’s time-bar argument as the issue  
14 regarding failure of [Trustee] to properly pursue legal action in accordance with an  
15 agreement with a private insurance provider is not properly before me.”). The NAD Director  
16 ultimately determined that RMA owed substantial indemnity payments to Trustee under the  
17 2002 crop insurance policies. Id. The NAD Director Review marks the final administrative  
18 appeal.

19 On January 30, 2013, RMA sent Trustee a letter—what RMA calls an  
20 “implementation decision”—explaining how RMA planned to proceed based on the NAD  
21 determination and subsequent Director Review. See Burnett Decl. Exhibit 22 (dkt. 36-4).  
22 RMA advised Trustee that, based on NAD’s reversal, RMA would not expect repayment of  
23 funds specified in the Second RMA Decision. Id. RMA further advised Trustee, however,  
24 that RMA would not pay any additional amounts that NAD found it owed under the policies  
25 because those claims were barred under the policies’ mandatory arbitration clause and the  
26 relevant statute of limitations. Id. RMA assumed that because NAD declined to rule on the  
27 limitations issue, the argument remained valid, and thus the additional claims were time-  
28 barred. Id.

1 Trustee commenced this case on October 4, 2013, asking the Court to review and  
2 compel implementation of NAD’s decision. See Compl. ¶¶ 134-43. The parties now bring  
3 cross-Motions for Summary Judgment. Trustee moves for partial summary judgment as to  
4 his first claim, which asks the Court to order RMA to implement the NAD Director’s final  
5 determination and to pay additional amounts owed to Trustee. Defendants move to dismiss  
6 or, in the alternative, for summary judgment, arguing that the Court lacks jurisdiction and  
7 that Trustee’s claims are time-barred.

8 **II. LEGAL STANDARD**

9 Federal Rule of Civil Procedure 12(b)(1) authorizes a party to seek dismissal of an  
10 action for lack of subject matter jurisdiction. A party can raise the subject matter jurisdiction  
11 defense at any time, even for the first time on appeal. See Fed. R. Civ. P. 12(h)(3);  
12 Henderson ex rel. Henderson v. Shinseki, 131 S. Ct. 1197, 1202 (2011). Indeed, “federal  
13 courts have an independent obligation to ensure that they do not exceed the scope of their  
14 jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties  
15 either overlook or elect not to press.” Henderson, 131 S. Ct. at 1202 (citation omitted).

16 The Supreme Court has held that some statutes of limitation are “jurisdictional.” See,  
17 e.g., John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 133-34 (2008); Bowles v.  
18 Russell, 551 U.S. 205, 210 (2007); United States v. Dalm, 494 U.S. 596, 609-10 (1990).  
19 Most often, a statute of limitations is “jurisdictional” based on principles of sovereign  
20 immunity. See John R. Sand & Gravel, 552 U.S. at 133-34; Dalm, 494 U.S. at 609-10; see  
21 also Irwin v. Department of Veterans Affairs, 498 U.S. 89, 97-98 (1991) (White, J.,  
22 concurring in part and concurring in the judgment). Where Congress waives sovereign  
23 immunity and permits suits against the federal government, but places a conditional  
24 limitation on those suits—e.g., a statute of limitations—courts have treated the condition as  
25 an absolute limitation on subject matter jurisdiction. John R. Sand & Gravel, 552 U.S. at  
26 133-34; see also Aloe Vera of Am., Inc. v. United States, 580 F.3d 867, 871-72 (9th Cir.  
27 2009). “As the United States are not liable to be sued, except with their consent, it was  
28 competent for congress to limit their liability, in that respect, to specified causes of action,



1 brought within a prescribed period.” Finn v. United States, 123 U.S. 227, 232 (1887). In  
2 cases against the United States, if a “jurisdictional” statute of limitations has run, the suit  
3 must be barred, regardless of any potential forfeiture or waiver of the limitations defense.  
4 John R. Sand & Gravel, 552 U.S. at 133-34; see Finn, 123 U.S. at 232-33; Aloe Vera of Am.,  
5 580 F.3d at 871-72.

6 Courts routinely resolve Administrative Procedure Act (“APA”) challenges by  
7 summary judgment. Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric., 18 F.3d 1468, 1481 (9th  
8 Cir. 1994). The district court “is not required to resolve any facts in a review of an  
9 administrative proceeding.” Occidental Eng’g Co. v. I.N.S., 753 F.2d 766, 769 (9th Cir.  
10 1985). The purpose of the district court in deciding a motion for summary judgment, then,  
11 “is to determine whether or not as a matter of law the evidence in the administrative record  
12 permitted the agency to make the decision it did.” Id. “[Courts] review questions of law,  
13 including an agency’s determination of its own jurisdiction, de novo.” Reynoso-Cisneros v.  
14 Gonzalez, 491 F.3d 1001, 1002 (9th Cir. 2007) (citation omitted).

### 15 **III. DISCUSSION**

16 The Court finds that the one-year statute of limitations ran in 2004 with respect to  
17 AGIC’s final denial of Trustee’s claims. AGIC issued its final notice of denial on Debtor’s  
18 crop insurance claims in August 2003. Van Curen Decl. Exhibit D. AGIC’s notice of denial  
19 clearly referenced the mandatory one-year arbitration requirement. Id. Debtor’s insurance  
20 policies also clearly noted the one-year limitations period and the arbitration requirement.  
21 See Van Curen Decl. Exhibit J at 12-13. Trustee responded to the notice in July 2004, just  
22 within the limitations period. Van Curen Decl. Exhibit E. Trustee’s response acknowledged  
23 the limitations period, but claimed that the limitations provision did not apply. Id. Trustee’s  
24 response also unilaterally attempted to reserve the right to contest AGIC’s denial outside of  
25 the statutory limitations period. Id. Trustee did not commence legal action by the August  
26 2004 deadline.

27 Trustee, in his July 2004 letter to AGIC, claimed that the statute of limitations did not  
28 apply because of the automatic stay imposed under 11 U.S.C. § 362. Id. This argument

1 lacks merit. The automatic stay applies to actions against a debtor, but does not prevent a  
2 debtor from offensively asserting a claim. See White v. City of Santee (In re White), 186  
3 B.R. 700, 704 (B.A.P. 9th Cir. 1995) (“[T]he primary purpose of [11 U.S.C.] § 362 is not  
4 applicable to offensive actions by the debtor in possession or bankruptcy trustee.”). In fact,  
5 Debtor purchased the insurance and initially submitted his loss claims to AGIC as debtor-in-  
6 possession, well after filing for bankruptcy. Once AGIC issued its decision on those claims,  
7 Debtor (or Trustee in Debtor’s stead) was still required to contest the decision within the  
8 statutory period, notwithstanding the automatic stay. The one-year deadline to contest  
9 AGIC’s decision therefore applied to Trustee.

10 Trustee’s letter further argued that the arbitration provision in the insurance contract  
11 was inapplicable because the subject of the contract was a “core” bankruptcy matter and  
12 could only be addressed by the bankruptcy court. This argument does not impact the statute  
13 of limitations issue, however, because Trustee did not initiate any action in response to  
14 AGIC’s claim denial, whether inside or outside of bankruptcy. If Trustee had filed an  
15 adversary proceeding against AGIC within Debtor’s bankruptcy, then arguments about the  
16 applicability of the arbitration requirement might be relevant. But not so here.

17 Trustee also cites In re Gandy, 299 F.3d 489 (5th Cir. 2002), in support of his claim  
18 that the automatic stay permitted him to delay contesting AGIC’s claim denial because the  
19 arbitration provision was not enforceable. The Fifth Circuit in Gandy affirmed a bankruptcy  
20 court’s decision not to compel arbitration in an adversary proceeding concerning “core”  
21 bankruptcy matters. Id. at 494-96. Gandy did not involve a statute of limitations defense,  
22 only the enforceability of an arbitration agreement. Again, if Trustee had filed a timely  
23 adversary proceeding against AGIC, Gandy might have been relevant to the enforceability of  
24 the arbitration provision. But Gandy does not change the statute of limitations’ requirement  
25 that “legal action” be commenced within one year of a final denial.

26 Accordingly, the Court finds that the statute of limitations period ran in 2004.

27 Next, the Court considers whether the running of the limitations period ends its  
28 inquiry, or whether the limitations period is excused because it applied only to AGIC, or

1 because RMA otherwise waived the defense. Defendants advance two primary arguments as  
2 to why the statute of limitations should bar Trustee’s claims. First, Defendants argue that  
3 this Court lacks subject matter jurisdiction because Congress intended the Federal Crop  
4 Insurance Act’s one-year statute of limitations to be “jurisdictional” and thus definitive.  
5 Under this theory, a time bar would be absolute and not subject to waiver or excuse. See  
6 John R. Sand & Gravel, 552 U.S. at 133-34. Second, Defendants argue that even if the Court  
7 has jurisdiction over this dispute, Defendants are still entitled to summary judgment on their  
8 statute of limitations affirmative defense because Trustee’s missing of the limitations period  
9 should not be excused.

10 **A. Limitations Period as Challenge to Court’s Jurisdiction**

11 Defendants first argue that the one-year statute of limitations provided in the Federal  
12 Crop Insurance Act, 7 U.S.C. § 1508(j)(2)(B), and included in the subject crop insurance  
13 policies, is “jurisdictional.” Def. MSJ at 11-13. Defendants argue that this Court lacks  
14 jurisdiction because Trustee failed to comply with the one-year statute of limitations. Id.  
15 Trustee responds that he timely filed this action within one year of NAD’s final  
16 administrative decision in 2012. Plaintiff’s Opp’n to Def. MSJ (dkt. 37) at 8-9. Trustee  
17 admits that if this action were brought against AGIC, as opposed to Defendants, “the 12-  
18 month arbitration deadline relied upon by Defendants might have some impact.” Id. But  
19 Trustee argues that the 2003 AGIC denial is not at issue here, and that this Court should only  
20 be concerned with the Second RMA Decision, from 2011. Id. at 9; see also id. (“Whether or  
21 not August 2004 was the deadline for suing AGIC with regard to its August 2003 decision, it  
22 was not the deadline for suing Defendants for their 2012 decision.”). Trustee misses the  
23 point. The claims AGIC denied in 2003 are the same as the claims asserted against RMA.  
24 Upon AGIC’s liquidation, the Liquidation Order “fixed” claimants’ rights with respect to  
25 AGIC, and all claims under the subject policies passed to RMA. Van Curen Decl. Exhibit G;  
26 see Van Curen Decl. Exhibit F (Memorandum of Understanding). The Liquidation Order  
27 and its transfer of policies to RMA is the only reason Trustee had an opportunity to assert the  
28 claims against RMA, rather than continuing to pursue those claims against AGIC. If

1 Trustee’s claim was extinguished in 2004 for failing to timely initiate legal action against  
2 AGIC, and the limitations period is “jurisdictional,” then RMA’s subsequent review was  
3 meaningless.

4 Generally, statutes of limitations seek to prevent adjudication of stale claims, and are  
5 treated as ordinary affirmative defenses. See John R. Sand & Gravel, 552 U.S. at 133-34;  
6 Aloe Vera of Am., 580 F.3d at 871-72. That is, if a party fails to raise the defense, that  
7 defense may be waived. However, in cases involving the United States government, statutes  
8 of limitations are often treated differently. Where Congress, by statute, waives sovereign  
9 immunity to allow suits against the U.S. government, courts must strictly apply the  
10 limitations Congress imposed on the waiver of immunity.<sup>2</sup> See John R. Sand & Gravel, 552  
11 U.S. at 133-34. These statutes of limitations are, in essence, a limitation on courts’  
12 jurisdiction over certain types of disputes.

13 The limited authority available in this area supports the notion that the statute of  
14 limitations provision in the Federal Crop Insurance Act, 7 U.S.C. § 1508(j)(2)(B), is  
15 “jurisdictional.” See, e.g., Godbold v. Federal Crop Ins. Corp., 365 F. Supp. 836, 838 (N.D.  
16 Miss. 1973) (“The one-year limitation is unequivocal, and a dissatisfied claimant must adhere  
17 to it strictly.”); Edmonds v. Federal Crop Ins. Corp., 684 F. Supp. 656, 657-58 (N.D. Ala.  
18 1988) (“[T]he one year period is jurisdictional and may not be waived.”). These cases both  
19 involved disputes with the government, however, as opposed to claims against private  
20 insurers.<sup>3</sup>

21 If Trustee’s insurance claims in this case had been asserted against the government  
22 from the outset, the Court would almost certainly lack jurisdiction. Permitting the U.S.  
23 government to be sued under the Federal Crop Insurance Act is a waiver of sovereign  
24 immunity, and the one year limitations period, as applied to the government, is a condition of

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26 <sup>2</sup> The same principle applies to suits against governmental corporations, such as the Federal  
27 Crop Insurance Corporation. See Edmonds v. Federal Crop Ins. Corp., 684 F. Supp. 656, 658 (N.D. Ala.  
1988).

28 <sup>3</sup> The parties did not bring to the Court’s attention, nor did the Court discover, any cases  
analyzing whether the statute of limitations is absolute as applied to private insurers.

1 that waiver. Here, of course, Trustee’s claims were initially asserted against a private  
2 insurer. Claims against private insurers still impact the federal government because the  
3 privately issued policies are federally reinsured, meaning that the federal government has  
4 guaranteed to reimburse indemnity payments up to a certain percentage of claims. See 7  
5 U.S.C. § 1508(k). Because claims against private issuers of federally reinsured policies  
6 might still, at least in part, be paid out of the federal government’s coffers, the Court finds  
7 that the limitations provision in the Federal Crop Insurance Act retains its “jurisdictional”  
8 quality. Additionally, it is impractical to treat a statute’s single limitations period differently,  
9 depending on who the defendant is in a given case. Because of significant government  
10 involvement with the policies, and in the absence of contrary authority, the Court finds that it  
11 lacks jurisdiction based on the statute of limitations having run in 2004. Accordingly, the  
12 Court GRANTS Defendants’ Motion and DENIES Plaintiff’s Motion.

13 **B. Summary Judgment on Affirmative Defense**

14 Even if the statute of limitations is not jurisdictional, Defendants alternatively argue  
15 that they are entitled to summary judgment for the same reason that the Court lacks  
16 jurisdiction: the indemnity claims are time-barred. Def. MSJ at 13-19. Trustee, as discussed  
17 above, argues that the mandatory one-year arbitration deadline did not apply because that  
18 deadline violated the bankruptcy automatic stay of 11 U.S.C. § 362, and because a “core”  
19 bankruptcy proceeding such as AGIC’s claim denial could only be litigated in bankruptcy  
20 court. P. Opp’n to Def. MSJ at 15-17. As discussed above, Trustee’s arguments do not  
21 excuse Trustee’s lack of action within the limitations period.

22 Trustee also argues that the one-year arbitration deadline in AGIC’s denial applied  
23 only to AGIC, not to FCIC or RMA. See P. Opp’n to Def. MSJ at 9. Trustee presumably  
24 argues, then, that simply by virtue of AGIC’s liquidation, which passed Debtor’s AGIC  
25 policies to RMA, the limitations period started fresh as to RMA. However, if AGIC never  
26 liquidated, Trustee would not have been in a position to assert his claims against RMA. If  
27 AGIC never liquidated, Trustee’s claims against AGIC would have been barred for failure to  
28

1 initiate legal action—whether arbitration or otherwise—within one year of AGIC’s final  
2 notice of denial.

3 Of course, it might seem unfair that RMA could conduct a lengthy review of AGIC’s  
4 claim denial, issue a 100-plus-page decision affirming AGIC’s denial without mentioning the  
5 statute of limitations issue, and still preserve its limitations defense on appeal. This litigation  
6 has gone on for nearly ten years since the statute of limitations ran in 2004. Nevertheless,  
7 both parties were arguably careless on the limitations issue. Trustee knew of the 2004  
8 deadline, acknowledged it, and feebly attempted to preserve his claims by written letter only.  
9 See Van Curen Decl. Exhibit E. The arguments Trustee provided in his July 2004 letter do  
10 not excuse his failure to commence some sort of legal action against AGIC before the  
11 limitations period had run. See id. Trustee did indeed attempt a second “bite[] at the apple”  
12 by filing claims with the Liquidator and with RMA, well over one year after AGIC’s final  
13 denial. See Def. Reply in Support of MSJ (dkt. 38) at 8-9. Though RMA’s oversight has  
14 resulted in what appears to be a tremendous waste of time and resources, that alone is no  
15 justification for permitting this action to proceed.

16 Trustee finally argues that the doctrine of estoppel prevents enforcement of the statute  
17 of limitations. P. Opp’n to Def. MSJ at 17-19. Trustee asserts that Defendants’ initial failure  
18 to raise the statute of limitations defense acts as an estoppel and prevents Defendants from  
19 asserting the limitations defense here. Id. Trustee argues that the delay alone, resulting in  
20 significant expense on Trustee’s part, establishes an estoppel claim. Id.

21 Trustee has not established a claim of estoppel. As Trustee notes, equitable estoppel  
22 generally requires that “(1) [t]he party to be estopped must know the facts; (2) he must intend  
23 that his conduct shall be acted on or must so act that the party asserting the estoppel has a  
24 right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he  
25 must rely on the former’s conduct to his injury.” United States v. Georgia-Pacific Co., 421  
26 F.2d 92, 96-97 (9th Cir. 1970); Plaintiff’s Opp’n at 19. But see Wagner v. Director, Fed.  
27 Emergency Mgmt. Agency, 847 F.2d 515, 519-21 (9th. Cir. 1988) (noting that estoppel  
28 applies against the government only in severe cases, and holding that party claiming estoppel

1 against the government must show “affirmative misconduct going beyond mere negligence,”  
2 plus “serious injustice”). Trustee offers no evidence of Defendants’ knowledge or intent, or  
3 Trustee’s own ignorance, reliance, and injury. Accordingly, Trustee’s estoppel argument  
4 fails.


5 Because the statute of limitations ran in 2004 without excuse, the Court GRANTS  
6 Defendants’ Motion to Dismiss or in the Alternative for Summary Judgment and DENIES  
7 Plaintiff’s Motion for Partial Summary Judgment.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court finds that the statute of limitations ran with  
10 respect to Trustee’s crop insurance claims in 2004. Accordingly, the Court GRANTS  
11 Defendants’ Motion to Dismiss or in the Alternative for Summary Judgment and DENIES  
12 Plaintiff’s Motion for Partial Summary Judgment.

13 **IT IS SO ORDERED.**

14 Dated: April 21, 2014

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17 CHARLES R. BREYER  
18 UNITED STATES DISTRICT JUDGE  
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