IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CLIFFORD A. BUCHHOLZ and
AUDREY PASSE,

OPINION AND ORDER

Plaintiffs,

05-C-0115-C

v.

RURAL COMMUNITY INSURANCE COMPANY,
FEDERAL CROP INSURANCE CORPORATION, and
MIKE JOHANNS (solely in his capacity as
Secretary of Agriculture),

Defendants.

- -

In this action for monetary relief, plaintiffs Clifford A. Buchholz and Audrey Passe contend that defendant Rural Community Insurance Company acted in bad faith and breached its insurance contract with plaintiff Passe when it denied plaintiffs' claim for indemnification after they sold a 2003 crop at a loss. Plaintiffs have also sued the Federal Crop Insurance Corporation and Mike Johanns in his capacity as Secretary of Agriculture; these parties will be collectively referred to as the "federal defendants." Jurisdiction is present under 28 U.S.C. § 1331. The case is before the court on the federal defendants' motion to dismiss.

Even drawing all possible inferences in favor of plaintiffs, I cannot find that they have standing to sue the federal defendants. They fail to explain how they have been injured by the federal defendants, although a showing of injury is critical to standing. Moreover, they have not shown that their claim against the federal defendants is "ripe," that is, that there is a live controversy between plaintiffs and the federal defendants requiring adjudication. Finally, they have not shown that they have exhausted the administrative remedies they must pursue in order to sue a federal governmental agency. Therefore, I must grant the federal defendants' motion to dismiss the complaint as it pertains to federal defendants.

For the sole purpose of deciding this motion, I accept as true the allegations in the complaint.

FACTUAL ALLEGATIONS

Plaintiffs run a joint farming operation. On the advice of defendant Rural's agent, plaintiffs purchased the crop insurance for their 2003 crop year from defendant Rural in plaintiff Passe's name only. In the fall of 2003, plaintiff Buchholz sold the crop at a loss and in his name only. Plaintiffs made a claim on the policy before March 1, 2004. Defendant Rural denied the claim because the policy was in plaintiff Passe's name and the sale was in plaintiff Buchholz's name. Plaintiffs filed this suit in tort and contract, alleging bad faith and breach of contract by defendant Rural. Defendant Rural is reinsured by the Federal

Crop Insurance Corporation.

OPINION

The requirements for standing under Article III of the Constitution are well established. First, the plaintiff must have suffered an "injury in fact," that is, an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Plaintiffs fail to meet either the first or second prongs of the Lujan test with respect to any claims they have against the federal defendants. Plaintiffs allege an injury by defendant Rural, but do not allege any improper conduct by the federal defendants or any injury caused by them. Plaintiffs argue that the second prong of Lujan requires only that the injury not be caused by "some third party not before the court" and that by naming both the third party that caused their injury and the Federal Crop Insurance Corporation as

defendants, they have met the first and second prongs of Lujan. However, plaintiffs are misreading Lujan. It is not enough simply to name another party whom they do have standing to sue. Lujan requires a plaintiff to establish standing as to *each defendant* sued.

Although plaintiffs' inability to show standing justifies dismissal of their case against the federal defendants, two other defects in the pleadings would require dismissal in their own right. The first is the lack of ripeness of plaintiffs' claims against the federal defendants. "Ripeness is a justiciability doctrine. . . [designed] to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." National Park Hospitality Ass'n v. DOI, 538 U.S. 803, 807-808 (2003) (internal citations and quotations omitted).

As a general rule a claim for indemnification of a tortfeasor is not ripe until the tortfeasor has been held liable. Grinnell Mutual Reinsurance Co. v. Reinke, 43 F.3d 1152, 1154 (7th Cir. 1995) (Illinois law); General Casualty Co. of Wisconsin v. Hills, 209 Wis. 2d 167, 176, 501 N.W.2d 718, 722 (1997) (determination of insurer's duty to indemnify must await resolution of claim brought against insured) (Wisconsin law). Until and unless plaintiffs' claim against defendant Rural has been determined in plaintiffs' favor and plaintiffs can show an imminent danger that defendant Rural will be unable to pay the claim

so that the federal defendants will be called upon to indemnify defendant Rural and the federal defendants have refused the indemnification request, the controversy between the federal defendants and plaintiffs is not ripe.

If it should be determined that defendant Rural is both liable and unable to pay and that the federal defendants refuse to indemnify the company, plaintiffs will be able to show that they have a ripe claim against the federal defendants and that they have standing to bring it. Plaintiffs argue that suing federal defendants now promotes judicial efficiency because it will avoid a second suit later if plaintiffs succeed and defendant Rural should be found to be insolvent. Maybe so, but the Constitution does not permit such a suit; it requires an actual controversy, not a hypothetical one.

Even if plaintiffs did have a ripe controversy and met all three prongs of the Lujan test, they would still have to exhaust their administrative remedies before suing the Federal Crop Insurance Corporation. "[N]o one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). Some of the factors in favor of requiring exhaustion of administrative remedies include (1) avoiding premature interruption of the administrative process; (2) allowing the agency to compile an accurate factual record, exercise its discretion or apply its expertise; (3) improving the efficiency of

the administrative agency; (4) conserving scarce judicial resources (because the complaining party may be successful in vindicating rights in the administrative process and the courts may never have to intervene); (5) giving the agency a chance to discover and correct its own errors; and (6) avoiding the possibility that frequent and deliberate flouting of administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures. McKart v. United States, 395 U.S. 185, 194 (1969). In an unusual argument, plaintiffs say that they had no administrative remedies to exhaust because the Federal Crop Insurance Corporation did not actually do anything about which plaintiffs could complain. As a general rule, if one has nothing to complain about, one does not have a case.

Plaintiffs lack standing to sue federal defendants; their claims against the federal defendants are unripe; and even if they had valid claims against the federal defendants, they have not exhausted their administrative remedies. Thus, their claims against these defendants must be dismissed.

ORDER

IT IS ORDERED that the motion of defendants Federal Crop Insurance Corporation and Mike Johanns to dismiss plaintiffs' claims against them is GRANTED.

Entered this 20th day of July, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge