



1 **A. Background**

2 **1. Plaintiff's Motion to Strike**

3 FMC asks the Court to strike portions of RCIS Operational Risk  
4 Manager Tonya Rowe's affidavit because the contested paragraphs and  
5 exhibits fail to present admissible evidence or facts as required by  
6 Federal Rule of Civil Procedure 56 and Local Rule 56.1(e). RCIS  
7 responds that the request to strike is largely moot because FMC  
8 conceded many of these facts in the parties' Joint Statement of  
9 Uncontroverted Facts, ECF No. 41; in addition, RCIS maintains that Ms.  
10 Rowe, as RCIS's operational risk manager, is competent to identify  
11 policies issued by RCIS.<sup>2</sup>

12 In her capacity as RCIS's operational risk manager, Ms. Rowe is  
13 competent to review RCIS's business records kept in the regular course  
14 of business and to testify as to the dates on which the underlying  
15 losses were reported and the causes of loss indicated by FMC in its  
16 notices of loss (paragraph 10) and the role of adjusters in working  
17 the underlying crop insurance claims (paragraph 12 and exhibit 8).  
18 Therefore, the Court denies FMC's motion to strike paragraphs 10 and  
19 12 and exhibit 8. In addition, the Court denies FMC's motion to  
20 strike paragraph 16 because Ms. Rowe's characterization of the  
21 February 21, 2013 arbitration hearing as "final" is not an improper  
22 legal conclusion but rather her description of this hearing as the

---

23  
24 <sup>2</sup> RCIS recognizes it provided an older version of the crop insurance policy  
25 and filed an errata, ECF No. 40-1, providing the applicable 2011  
26 version. In this regard, FMC's motion to strike is denied as moot.

1 last hearing held by the arbitrator. Because it is undisputed that  
2 the subject policies were issued by RCIS and that certain arbitration  
3 events occurred on specific dates, the Court denies as moot FMC's  
4 motion to strike paragraphs 3 and 14-18. Finally, because RCIS  
5 provided exhibit 7 as background for the underlying claim and not to  
6 prove the truth of the matters asserted, the Court denies FMC's motion  
7 to strike this exhibit and relating paragraph 11 in Ms. Rowe's  
8 affidavit.

9 In summary, the Court denies in part and denies as moot in part  
10 FMC's motion to strike.

## 11 **2. Factual Background<sup>3</sup>**

12 FMC leases farmland, which has been left fallow, and returns it  
13 to agricultural production. For the 2011 crop year, FMC leased a  
14 number of small farms in Walla Walla County, Washington and Umatilla  
15 County, Oregon, on which it planted and grew varieties of winter and  
16 spring wheat.

17 In 2011, FMC managed risk associated with its farming operation  
18 by purchasing Multiple Peril Crop Insurance (MPCI) from RCIS under  
19 policy numbers WA-951-824944 and OR-951-864865. MPCI policies are  
20 authorized and reinsured by the United States Department of  
21 Agriculture, Federal Crop Insurance Corporation (FCIC), and sold under

---

22 <sup>3</sup> In connection with their motions, the parties submitted a Joint  
23 Statements of Uncontroverted Facts. ECF No. 41. The Court treats these  
24 facts as established and sets them forth in this "Factual Background" section  
25 without citation to the record. See Fed. R. Civ. Proc. 56(d).  
26

1 a Standard Reinsurance Agreement, as authorized by the Federal Crop  
2 Insurance Act (FCIA), 7 U.S.C. § 1501 *et seq.*, and the regulations  
3 attendant thereto, 7 C.F.R Part 400.<sup>4</sup> MPCCI policies are issued on  
4 standardized forms that are written by the FCIC and utilized by all  
5 approved insurance providers participating in the federal crop  
6 insurance program. Crop insurance can be obtained through either the  
7 FCIA or private insurance companies, such as RCIS, which are reinsured  
8 by the FCIC if the insurance company abides by standard policy  
9 guidelines as to the policy.<sup>5</sup>

10 Each MPCCI policy issued to FMC for the 2011 crop year was  
11 comprised of three standardized forms: the Common Crop Insurance  
12 Policy (CCIP); the Small Grains Crop provisions; and the Special  
13 Provisions of Insurance. The CCIP, or Basic Provisions, prescribes  
14 general insuring terms and conditions common to all crops. 7 C.F.R.  
15 § 457.8. The Small Grains Crop Provisions set forth more detailed  
16 insuring terms specific to wheat and other small grains. *Id.*  
17 § 457.101.

18 FMC had twenty-eight farm units insured by RCIS in 2011. One  
19 unit was in Umatilla County, Oregon, under 2011: MPCCI policy number

---

21 <sup>4</sup> Congress enacted the FCIA to help promote economic stability in  
22 agriculture through a system of crop insurance and research. 7 U.S.C.  
23 § 1502.

24 <sup>5</sup> The Risk Management Agency (RMA) supervises the FCIC and has authority  
25 over the delivery of crop insurance programs. 7 U.S.C. § 6933(b).  
26

1 OR-951-864865. The other twenty-seven units were in Walla Walla  
2 County, Washington, under 2011 MPCI policy number WA-951-824944. FMC,  
3 through its manager, Ted Reid, undertook comprehensive seeding,  
4 fertilization, pesticide, and, where possible, irrigation programs  
5 that complied with industry standards and the needs of each individual  
6 farm unit. Despite FMC's best efforts, the production from most of  
7 the units did not meet the production guarantees established under the  
8 2011 policies; yet, none of the units suffered total destruction in  
9 2011. FMC determined the losses were attributable to rye infestation,  
10 ground squirrels, rust (a plant fungus), and wireworms, which Mr. Reid  
11 believes are insured causes of loss.

12 Due to the losses, FMC made a claim for indemnity for the Oregon  
13 Property. FMC also made twenty-two claims for indemnity under its  
14 policy for the Washington farm units: 0001-0003; 0001-0005; 0001-0034;  
15 0001-0039; 0001-0041; 0001-0044; 0001-0048; 0001-0052; 0001-0058;  
16 0001-0059; 0001-0060; 0001-0061; 0001-0064; 0001-0065; 0001-0066;  
17 0001-0067; 0001-0068; 0001-0069; 0001-0071; 0001-0072; 0001-0073; and  
18 0001-0074. FMC submitted to RCIS all of the documents and records it  
19 had relating to each of the farm units. Mr. Reid drove RCIS adjuster,  
20 Jack Wagner, past many of the farm units in 2011. Mr. Reid explained  
21 his conclusions regarding the various causes of loss that were  
22 impacting the production. RCIS Adjusters Patricia Petty and Jack

23 ///

24 ///

25 //

26 /

1 Wagner visited and inspected Units 0001-0039, 0001-0041, and 0001-  
2 0052.<sup>6</sup>

3 On September 8, 2011, RCIS adjuster Dylan Pettyjohn inspected  
4 the Oregon fields and noted heavy weeds and cheat grass still visible  
5 in the harvested fields. He further noticed that the stubble was thin  
6 and "stringy" in places. He concluded that the FMC fields were not  
7 similar to the fields in the area, which had healthy stubble stand  
8 with above average production.

9 Ultimately, RCIS denied all of FMC's claims on the Washington  
10 units and Oregon Property, determining the loss of production was  
11 caused by poor farming practices—an uninsured cause. FMC timely  
12 appealed RCIS's denial and the matter was submitted to an arbitrator.  
13 After taking testimony and considering the evidence submitted by FMC  
14 and RCIS, the arbitrator denied FMC's claims, albeit on grounds other  
15 than poor farming practices. The arbitrator divided the twenty-three  
16 claims of loss into three units: 1) the McAdams Units (in Washington),  
17 2) the other Washington Units ("Walla Walla Units"), and 3) the Oregon  
18 Property. As to the McAdams Units, the arbitrator determined that FMC  
19 failed to give timely notice of loss. As to the Walla Walla Units,  
20 the arbitrator determined that FMC failed to provide evidence to  
21 support its claim of rust damage or another insured cause of loss. As  
22 to the Oregon Property, the arbitrator determined that FMC's notice of

---

23  
24 <sup>6</sup> The narratives prepared by RCIS's agents set out its efforts taken  
25 with respect to FMC's claims for indemnity on its Washington units.  
26

1 rye damage was untimely and that FMC failed to establish rust damage  
2 or another insured cause of loss.

3       Thereafter, FMC filed this lawsuit, seeking to vacate the  
4 arbitrator's decision and asserting claims for negligence, bad faith,  
5 and violation of the Washington Consumer Protection Act. ECF No. 1.  
6 These cross motions for summary judgment were then filed, as well as  
7 the motion to strike by FMC.

8 **B. Standard**

9       Summary judgment is appropriate if the record establishes "no  
10 genuine dispute as to any material fact and the movant is entitled to  
11 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party  
12 opposing summary judgment must point to specific facts establishing a  
13 genuine dispute of material fact for trial. *Celotex Corp. v. Catrett*,  
14 477 U.S. 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*  
15 *Corp.*, 475 U.S. 574, 586-87 (1986). If the non-moving party fails to  
16 make such a showing for any of the elements essential to its case for  
17 which it bears the burden of proof, the trial court should grant the  
18 summary-judgment motion. *Celotex Corp.*, 477 U.S. at 322.

19 **C. Analysis**

20       FMC asks the Court to find that 1) the Court may conduct a *de*  
21 *novo* review of the indemnity claims because the arbitrator's decision  
22 is not binding, 2) the arbitrator's decision should be vacated because  
23 he exceeded his authority, and 3) FMC's state-law claims of bad faith,  
24 negligence, and violation of the Washington Consumer Protection Act  
25 are not preempted by the FCIA. RCIS asks the Court for largely the  
26 opposite relief, *i.e.*, asking the Court to decide that the Federal

1 Arbitration Act (FAA), 9 U.S.C. § 1 et seq., applies to the Court's  
2 review of the arbitrator's decision, affirm the arbitrator's decision,  
3 and conclude that the FMC's state-law claims are preempted by the FCIA  
4 and/or involve issues that were presented to the arbitrator and thus  
5 collateral estoppel applies.

6 1. Level of Review

7 The Ninth Circuit has not answered the question of whether a  
8 court's review of an arbitration decision concerning a CCIP is subject  
9 to the FAA; although a number of courts have concluded, albeit many  
10 with little analysis, that the FAA applies to CCIP arbitration. See,  
11 e.g., *Campbell's Foliage, Inc. v. Fed. Crop Ins. Corp.*, No. 13-11896,  
12 562 Fed. App'x 828, 831 (11th Cir. Apr. 3, 2014) (unpublished  
13 opinion); *Great Am. Ins. Co. v. Moye*, 733 F. Supp. 2d 1298, 1303 (M.D.  
14 Fla. 2010); *Bonnie Brae Fruit Farms, Inc. v. Rain & Hail, LLC*, No.  
15 1:13-cv-687, 2013 WL 1833633 (M.D. Pa. May 1, 2013) (unpublished  
16 opinion) (no analysis); *Cain Field Nursery v. Farmers Crop Ins.*  
17 *Alliance, Inc.*, No. 4:09-cv-78, 2012 WL 1286657 (E.D. Tenn. April 13,  
18 2012) (unpublished opinion) (no analysis). After reviewing the  
19 language of the CCIP, statutory and regulatory provisions, and  
20 legislative history, the Court concludes that review of CCIP  
21 arbitration is subject to the FAA.

22 The Court begins with the language of the CCIP. In pertinent  
23 part, CCIP section 20 states:

24 (b)(3) If arbitration has been initiated in accordance  
25 with section 20(b)(1) and completed, and judicial review is  
26 sought, suit must be filed no later than one year after the  
date the arbitration decision was rendered;

. . . .



1 (c) Any decision rendered in arbitration is binding on you  
2 and us unless judicial review is sought in accordance with  
3 section 20(b)(3). Notwithstanding any provision in the  
4 rules of the [American Arbitration Association], you and we  
5 have the right to judicial review of any decision rendered  
6 in arbitration.

7 ECF No. 40-1 § 20(b). FMC proposes that this language permits *de*  
8 *nov*o judicial review. The Court disagrees.

9 The "unless judicial review" language does not permit broader  
10 review of the arbitrator's decision than is permitted by the FAA.  
11 This policy language does not modify the statutory principle that  
12 review of an arbitration award concerning a matter of interstate  
13 commerce, such as crop insurance, is governed by the FAA. See  
14 9 U.S.C. § 2; *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th  
15 Cir. 2013). The FAA permits only limited review—not *de novo* review—of  
16 an arbitration decision. See *Campbell's Foliage, Inc.*, 562 Fed. App'x  
17 at 831 (determining that similar crop insurance policy language calls  
18 for FAA-limited judicial review of an arbitration decision); *Great Am.*  
19 *Ins. Co.*, 733 F. Supp. 2d at 1301 (same and listing other cases); see  
20 also *Cain Field Nursery*, No. 4:09-cv-78, 2012 WL 1286657 at \*5 (E.D.  
21 Tenn. Apr. 13, 2012) (same and listing other cases). Therefore, the  
22 purpose of the "unless judicial review" language is for the parties to  
23 understand that they are bound by the arbitrator's decision absent a  
24 party requesting judicial review of the arbitrator's decision, which  
25 will be pursuant to FAA standards.

26 FMC highlights a comment in CCIP's regulatory history which  
states, "arbitration is not binding." General Administrative  
Regulations, Catastrophic Risk Protection Endorsement; Group Risk Plan

1 of Insurance Regulations for the 2004 and Succeeding Crop Years; and  
2 the Common Crop Insurance Regulations, Basic Provision, 69 FR 48652-01  
3 (2004). At first glance, this language appears to support FMC's  
4 position that a court may conduct a *de novo* review of matters involved  
5 in the arbitration. However, on closer examination, the Court finds  
6 the regulation's intended purpose was otherwise. The CCIP continues  
7 to require the parties to arbitrate or mediate "[a]ll disputes[, with  
8 limited exceptions,] involving determinations made by us." CCIP  
9 § 20(a)(1). And section 20(c) still mandates that the arbitration  
10 decision is binding unless judicial review is sought.

11 The term "review" means to "view, look at, or look over again"  
12 or "to look back upon; view retrospectively." Dictionary.com (April  
13 8, 2015), <http://dictionary.reference.com/browse/review?s=t>.

14 Accordingly, the Court is to "review" the arbitrator's decision—not  
15 begin anew with the analysis of the issues presented to the  
16 arbitrator. Limited judicial review is consistent with the FAA's  
17 purpose, which is to "replace judicial indisposition to arbitration  
18 with a national policy favoring [it] and plac[ing] arbitration  
19 agreements on equal footing with all other contracts." *Hall St.*  
20 *Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008) (internal  
21 quotation omitted) (alterations in original).

22 Accordingly, based on the CCIP's language and history, the Court  
23 determines its review of the arbitrator's decision is limited to those  
24 grounds established by the FAA. In this regard, FMC's summary-  
25 judgment motion is denied, and RCIS's summary-judgment motion is  
26 granted.

1           2.     Grounds for Vacatur

2           FMC maintains that grounds for vacating the arbitrator's  
3 decision exist under the FAA. To vacate the arbitrator's decision,  
4 FMC must satisfy one of FAA § 10(a)'s subsections. See *U.S. Life Ins.*  
5 *Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010);  
6 *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 579 F.3d  
7 1268, 1276 (11th Cir. 2009) (describing judicial review of an  
8 arbitration award as "narrowly limited" under the FAA). Section 10(a)  
9 provides:

10           In any of the following cases the United States court in  
11 and for the district wherein the award was made may make an  
12 order vacating the award upon the application of any party  
13 to the arbitration—

- 14           (1) where the award was procured by corruption, fraud, or  
15 undue means;
- 16           (2) where there was evident partiality or corruption in  
17 the arbitrators, or either of them;
- 18           (3) where the arbitrators were guilty of misconduct in  
19 refusing to postpone the hearing, upon sufficient  
20 cause shown, or in refusing to hear evidence pertinent  
21 and material to the controversy; or of any other  
22 misbehavior by which the rights of any party have been  
23 prejudiced; or
- 24           (4) where the arbitrators exceeded their powers, or so  
25 imperfectly executed them that a mutual, final, and  
26 definite award upon the subject matter submitted was  
not made.

9 U.S.C. § 10(a).

22           The last subsection—subsection 4—is at issue here. See *Comedy*  
23 *Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009)  
24 (recognizing that section 10(a)(4)'s exceeding-of-powers standard is  
25 satisfied if the arbitrator's decision is "completely irrational, or  
26

1 exhibits a manifest disregard of law."). FMC contends vacatur is  
2 required under § 10(a)(4) because the arbitrator exceeded his power by  
3 1) manifestly disregarding RCIS's FCIA requirement to adjust all  
4 claims for losses; 2) failing to fully and individually analyze each  
5 of FMC's loss claims as required by CCIP section 20(a)(2); 3)  
6 erroneously interpreting policy provisions pertaining to notice and  
7 proof-of-loss requirements.

8 As to FMC's first argument, § 1508 of the FCIA specifies that  
9 the FCIC's rules "shall establish standards to ensure that all claims  
10 for losses are adjusted, to the extent practicable, in a uniform and  
11 timely manner." 7 U.S.C. § 1508(j)(1); see also 7 C.F.R. § 400.168(d)  
12 (The insurance company "shall utilize only loss adjustment procedures  
13 and methods that are approved by" the FCIC.); CCIP § 14(i) (RCIS  
14 "recognize[s] and appl[ies] the loss adjustment procedures established  
15 or approved by the [FCIC].").

16 Here, the arbitrator heard argument and received evidence.  
17 Although FMC had made claims for indemnity for twenty-three farming  
18 units, it is undisputed that RCIS did not view all of the units for  
19 which a claim of loss was made but only viewed the Oregon Property and  
20 three of the Washington units: Units 0001-0039, 0001-0041, and 0001-  
21 0052. FMC contends this was a clear violation of the FCIC's  
22 requirement that all claims be adjusted. Yet, the FCIA only requires  
23 claims be adjusted "to the extent practicable" in a uniform and timely  
24 manner. Therefore, even though RCIS reasonably should have inspected  
25 each of the units for which a claim of loss was made, the Court cannot  
26

1 find, under the FAA's limited standards for review, that the  
2 arbitrator exceeded his authority in this regard.

3       Second, the arbitrator rationally grouped the claims into three  
4 units to analyze the claims. The arbitrator's grouping of what he  
5 deemed to be similar units complied with CCIP section 20(a)(2), which  
6 states: "the arbitrator must provide to you and us a written statement  
7 describing the issues in dispute, the factual findings, the  
8 determinations and the amount and basis for any award and breakdown by  
9 claim for any award." This language does not prohibit the arbitrator  
10 from grouping like claims so long as the arbitrator identifies which  
11 claims are part of each group. Here, the arbitrator sufficiently  
12 identified what claims were part of each group. Accordingly, the  
13 Court does not find that the arbitrator exceeded his authority, and  
14 FMC's summary-judgment motion is denied in this regard.

15       FMC's final argument, *i.e.*, that the arbitrator exceeded his  
16 authority by interpreting the CCIP's notice and proof-of-loss  
17 provisions by requiring notice prior to harvest and placing the burden  
18 of proof of an insured loss on FMC, is also unpersuasive. First, as  
19 to notice, CCIP section 14 governs the insured's duties in the event  
20 of crop damage or loss: 1) a duty to continue to care for the crop,  
21 ECF No. 40-1 § 14(a) ("In case of damage or loss of production or  
22 revenue to any insured crop, [the insured] must protect the crop from  
23 further damage by providing sufficient care."); and 2) a duty to give  
24 timely notice, *id.* § 14(b)(1) ("For a planted crop, when there is  
25 damage or loss of production, you must give us notice, by unit, within  
26 72 hours of your initial discovery of damage or loss of production

1 (but not later than 15 days after the end of the insurance period,  
2 even if you have not harvested the crop."). A failure to comply with  
3 the notice requirement results in the loss being "considered solely  
4 due to an uninsured cause of loss for the acreage for which such  
5 failure occurred, unless we determine that we have the ability to  
6 accurately adjust the loss." *Id.* § 14(b)(5). If the insurer  
7 determines that it does not have the ability to accurately adjust the  
8 loss, the insurer need not pay the indemnity but the insured must pay  
9 all owed premiums. *Id.* § 14(a)(5)(ii).

10 The CCIP also specifies that if a crop-insurance dispute  
11 involves "in any way . . . a policy or procedure interpretation,  
12 regarding whether a specific policy provision or procedure is  
13 applicable, how it is applicable, or the meaning of any policy  
14 provision or procedure, either you or we must obtain an interpretation  
15 from the FCIC." ECF No. 40-1 § 20(a)(1). The FCIC's interpretation  
16 is binding in an arbitration, and a "[f]ailure to obtain any required  
17 interpretation from FCIC will result in the nullification of any  
18 agreement or award." *Id.* § 20(a)(1)(i) & (ii).

19 Here, the arbitrator acknowledged in his decision: "This  
20 coverage is governed by federal law with no 'wobble' room left open  
21 for interpretation of the policy, the coverages and its application.  
22 In fact, by its very language, such analysis on my part is strictly  
23 prohibited." ECF No. 26-4 at 2. With this recognition, the  
24 arbitrator then stated, "the burden of proof to establish a covered  
25 cause lies strictly with the insured, not RCIS. It is [FMC] who bears  
26 the burden of proving compliance with the policy claim requirements

1 and proving that a loss was caused by an insured cause as per the  
2 policy." *Id.* As to the "notice" policy provisions, the arbitrator  
3 relied on section 14(b)(1) and (b)(2) as requiring FMC to provide  
4 notice of crop damage to RCIS within "72 hours of the insured first  
5 observing 'damage' or loss of production," ECF No. 26-4 at 3 (emphasis  
6 in original), while RCIS had the duty to "verify" the insured cause of  
7 loss.

8         The arbitrator's determination that the CCIP required FMC to  
9 give notice within 72 hours of the earliest of either crop damage or  
10 loss of production concerns the Court. Section 14(b)(1) permits an  
11 insured to give notice within 72 hours of either "initial discovery of  
12 damage" or "loss of production." It does not require the insured to  
13 give notice at the earlier of these two occurrences. Where the CCIP  
14 intends to place a timing restriction on two occurrences it did so,  
15 e.g., "[t]he initiation of arbitration proceedings must occur within  
16 one year of the date we denied your claim or rendered the  
17 determination with which you disagree, whichever is later." ECF No.  
18 40-1 § 10(b)(1). No "first-in-sequence" language was used in CCIP  
19 section 14(b)(1). The arbitrator's interpretation of section 14(b)(1)  
20 may well be rational; however, CCIP section 20(a)(1) prohibits an  
21 arbitrator from interpreting the language of the CCIP. This  
22 responsibility is solely exercised by the FCIC, and any failure to  
23 obtain a "required interpretation from FCIC" results in nullification  
24 of the arbitration award." ECF No. 40-1 § 20(a)(1)(ii); *see also Fed.*  
25 *Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947).

26 ///

1           Yet, because the arbitrator determined that FMC failed to  
2 provide notice within either of these time frames—within 72 hours of  
3 the initial discovery of damage or loss of production—the Court  
4 determines the arbitrator did not erroneously exceed his authority.  
5 The arbitrator explained that FMC should have known that it  
6 experienced loss of production when it discovered the wireworm damage,  
7 which occurred more than 72 hours before FMC provided notice of loss  
8 to RCIS. ECF No. 26-4 at 3 (discussing that loss of revenue can be  
9 caused by a problem with production). Therefore, even though the  
10 arbitrator may have erroneously interpreted the CCIP language by  
11 inserting a “first-in-sequence” requirement, the Court cannot find the  
12 arbitrator’s decision that FMC failed to provide RCIS notice of damage  
13 or loss within 72 hours of discovery of either damage or loss of  
14 production was clearly irrational.

15           FMC’s final argument is that the arbitrator’s decision that FMC  
16 failed to satisfy its burden to establish that loss was caused by an  
17 insured loss for the Walla Walla Units and Oregon Property was  
18 irrational. FMC maintains that its responsibility was simply to  
19 provide notice of an insured cause of loss and the requested business  
20 records but that it was not required, as the arbitrator required, to  
21 provide photographs or other evidence to establish an insured cause of  
22 loss. Yet, in addition to requiring the insured to provide notice of  
23 damage or loss of production and any records required by CCIP section  
24 14(e)(4), the CCIP also requires the insured to “[e]stablish” “[t]hat  
25 the loss was caused by one or more of the insured causes specified in  
26 the Crop Provisions.” ECF No. 40-1 § 14(e)(4)(iii); see also U.S.



1 Dep't of Ag., Loss Adjustment Manual Standards Handbook ("LAM") (Feb.  
2 2011), ECF No. 26-4 (imposing same "establish" burden on insured),  
3 available at [http://www.rma.usda.gov/handbooks/25000/2011/11\\_](http://www.rma.usda.gov/handbooks/25000/2011/11_25010.pdf)  
4 [25010.pdf](http://www.rma.usda.gov/handbooks/25000/2011/11_25010.pdf); LAM, ECF § 121.I (same); LAM § 76(D) ("The insured must  
5 establish the cause of loss; the adjuster will: (1) [V]erify the cause  
6 of loss during the on-the-farm inspection. (2) . . . If the cause of  
7 loss appears to be different from what the insured has stated,  
8 document the facts on a Special Report.").

9       Neither party submitted to the FCIC the question of what  
10 "establish" an insured cause of loss means, *i.e.*, does it require the  
11 insured to simply identify the insured cause of loss he believes  
12 applies and then permit the insurer to verify this insured cause of  
13 loss by inspecting the crop and/or field and provided business  
14 records, or does it require the insured to provide evidence to support  
15 his identified insured cause(s) of loss. FMC may well be correct that  
16 the arbitrator placed too much responsibility on it in regard to proof  
17 of an insured loss. However, the Court cannot find that the  
18 arbitrator's determination of requiring FMC to provide more  
19 information to establish an insured cause of loss was irrational. And  
20 FMC's difficulty in establishing an insured cause of loss may well be  
21 due to its choice to delay providing notice of loss until months after  
22 initial observation of crop damage.

23       In summary, under the FAA's limited review, the Court concludes  
24 the FMC failed to establish a basis for vacating the arbitrator's  
25 denial of crop-insurance indemnity. FMC's summary-judgment motion is  
26

1 denied in this regard, and RCIS's summary-judgment motion is granted  
2 in this regard.

3       3.     Preemption

4       Both parties agree the FCIA does not preempt all state-law  
5 claims, but the parties disagree as to whether FMC's state-law claims  
6 for bad faith, negligence, and violation of WCPA conflict with federal  
7 law and are therefore preempted.

8       The U.S. Constitution's Article VI Supremacy Clause affords  
9 Congress the power to preempt state law. Therefore, courts may not  
10 "give effect to state laws that conflict with federal laws."  
11 *Armstrong v. Exceptional Child Ctr., Inc.*, No. 14-15, 575 U.S. \_\_\_,  
12 2015 WL 1419423 \*3 (March 31, 2015). Therefore, any state law, "which  
13 interferes with or is contrary to federal law, must yield." *Mutual*  
14 *Pharm. Co. v. Bartlett*, 133 S. Ct. 2466, 2473 (2013) (internal  
15 quotation marks omitted).

16       As recognized by the parties, the FCIA does not preempt *all*  
17 state law causes of action. See *Holman v. Lauilo-Rowe Agency*, 994 F.2d  
18 666, 669 (9th Cir. 1993) (mentioning, in the context of complete  
19 preemption and the well-pleaded complaint doctrine, that the FCIA does  
20 not preempt all state causes of action pertaining to FCIA-issued crop  
21 insurance); *Meyer v. Conlon*, 162 F.3d 1264, 1269 (10th Cir. 1998)  
22 ("Congress has not expressed a clear intent to preempt all state law  
23 causes of action against private reinsurers."); *Agre v. Rain & Hail*  
24 *LLC*, 196 F. Supp. 2d 905, 911 (D. Minn. 2002) ("The simple fact that  
25 Congress has established an ordered regulatory scheme is insufficient  
26 to preempt all contract claims involving crop insurance."). Instead

1 the Court must determine if FMC's asserted claims interfere with or  
2 are contrary to the FCIA, its regulations, or CCIP. The pertinent  
3 FCIA provision, § 1506(1), states:

4 The [FCIC] may enter into and carry out contracts or  
5 agreements, and issue regulations, necessary in the conduct  
6 of its business, as determined by the Board. State and  
7 local laws or rules shall not apply to contracts,  
8 agreements, or regulations of the [FCIC] or the parties  
9 thereto to the extent that such contracts, agreements, or  
10 regulations provide that such laws or rules shall not  
11 apply, or to the extent that such laws or rules are  
12 inconsistent with such contracts, agreements, or  
13 regulations.

14 7 U.S.C. § 1506(1) (emphasis added). Consistent with this statutory  
15 language, CCIP section 31 states, "If the provisions of this policy  
16 conflict with statutes of the State or locality in which this policy  
17 is issued the policy provision will prevail. State and local laws and  
18 regulations in conflict with federal statutes, this policy, and the  
19 applicable regulations do not apply to this policy." ECF No. 40-1  
20 § 31.

21 Accordingly, the Court focuses on the nature and relief  
22 requested by FMC through its state-law claims to determine if they  
23 interfere with or conflict with the FCIA, related regulations, or  
24 CCIP. In support of its state-law claims, FMC alleges RCIS "did not  
25 conduct an indemnity inspection of or make a farm visit to any of the  
26 other units in order to verify the causes of loss claimed by FMC," and  
"denied all of FMC's claims on the Washington Units and Oregon Unit  
without following the loss adjustment procedures established by the"  
FCIC. ECF No. 1 ¶¶ 2.7-2.9.

1           Assuming that RCIS committed such failures, the Court determines  
2 FMC's state-law claims based on such alleged failures are preempted by  
3 the FCIA, its related crop-insurance regulations, and the CCIP. The  
4 CCIP section requires "[a]ll disputes involving determinations made  
5 by" RCIS be "subject[ed] to mediation or arbitration." ECF No. 40-1  
6 § 20(a)(1). Any dispute that FMC had concerning RCIS's claims-  
7 handling and denial of insurance was to be brought before the  
8 arbitrator. The arbitrator did not identify insufficient claims-  
9 handling by RCIS because he concluded that FMC failed to provide  
10 sufficient notice and failed to establish an insured cause of loss.  
11 Notwithstanding the arbitrator's lack of analysis regarding RCIS's  
12 claims-handling, permitting FMC to pursue state-law bad faith,  
13 negligence, and WPCA claims pertaining to RCIS's claims-handling and  
14 denial of indemnity would interfere with the FCIA and its CCIP.

15           This may not be true for all state-law claims associated with a  
16 crop-insurance policy. *Cf. Meyer v. Conlon*, 162 F.3d 1264, 1269 (10th  
17 Cir. 1998) (permitting a state-law claim seeking to enforce an FCIC  
18 contract against a reinsurer). However, here the focus of FMC's  
19 state-law claims is the claims-handling process and denial of  
20 indemnity by RCIS. And FMC did not prevail during arbitration, nor in  
21 this Court's review under the FAA of the arbitrator's decision.  
22 Accordingly, FMC is not owed an indemnity payment. *Cf. 7 C.F.R.*  
23 *§ 400.176* (permitting a claim of punitive damages or compensatory  
24 damages against an insurance company *if the company's failure resulted*  
25 *in the insured receiving a payment in an amount that was less than the*  
26 *amount to which the insured was entitled*); CCIP, ECF No. 40-1 ¶ 20(i)

1 (same). Permitting FMC to recover punitive or compensatory damages  
2 pursuant to its state-law claims would conflict with the FCIA, its  
3 regulations, and the CCIP. FMC's state-law claims are preempted.<sup>7</sup>

4 **D. Conclusion**

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Defendant RCIS's Motion for Summary Judgment, **ECF No. 20**,  
7 is **GRANTED**.
- 8 2. Plaintiff FMC's Motion for Partial Summary Judgment, **ECF**  
9 **No. 23**, is **DENIED**.
- 10 3. Plaintiff FMC's Motion to Strike Portions of Affidavit of  
11 Tanya L. Rowe, **ECF No. 33**, is **DENIED IN PART AND DENIED AS**  
12 **MOOT IN PART**.
- 13 4. **Judgment** is to be entered in Defendant RCIS's favor.
- 14 5. All hearings and deadlines are **STRICKEN**.
- 15 6. This file shall be **CLOSED**.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
17 Order and provide copies to all counsel.

18 **DATED** this 21<sup>st</sup> day of April 2015.

19  
20 s/Edward F. Shea  
EDWARD F. SHEA  
21 Senior United States District Judge  
22  
23  
24

25 <sup>7</sup> Because the Court determined that FMC's state-law claims are preempted, the  
26 Court need not engage in a collateral-estoppel analysis.