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The Court of Federal Claims' *Railway Logistics International* Decision Limits Seventh Amendment Right of Government Contractors to Jury Trial to Contest Fraud-Based Counterclaims

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On January 17, 2012, the Court of Federal Claims (COFC) issued a decision clarifying that, if a contractor invokes the jurisdiction of the COFC (an Article I court) to pursue its claims, the contractor has no right to a jury trial on any fraud-based counterclaims, including False Claims Act (FCA) counterclaims, but must defend such counterclaims in the proceeding before a trial judge. Ry. Logistics Int'l v. United States, __ Fed.Cl. __, 2012 WL 171895 (Jan. 17, 2012). This case illustrates one way in which forum selection can adversely affect a contractor litigating claims against the Government. Below is a summary of the *Railway Logistics* decision along with some additional observations about the benefits and drawbacks of forum selection in proceedings against the United States.

Summary of the Decision

Railway Logistics International (RLI) brought suit in the COFC on claims arising from the termination of its contract to provide goods necessary to rehabilitate the Iraqi Republic Railway. The Government filed counterclaims alleging that RLI had not only failed to perform adequately under the contract, but had also grossly inflated its claim for an equitable

adjustment upon termination of the contract. The Government sought damages under both the Contract Disputes Act (CDA), 41 U.S.C. §§7101 *et seq.*, and the FCA, 31 U.S.C. §§3729 *et seq.*, as well as forfeiture of RLI's breach claim under the Forfeiture of Fraudulent Claims Act, 28 U.S.C. §2514.

RLI argued that the COFC lacked jurisdiction to hear the Government's counterclaims. RLI contended that, because the counterclaims were based on allegations of fraud, the Seventh Amendment guaranteed RLI the right to try them before a jury (an option that is not available in the COFC). The COFC ruled for the Government, holding that the Seventh Amendment does not protect plaintiffs who exercise their right to sue the Government in an Article I court from countersuits by the Government in the same court. The COFC relied in large part on a 1990 Federal Circuit decision, *Seaboard Lumber Co. v. United States*, 903 F.2d 1560 (Fed Cir. 1990), which in turn relied on a nineteenth-century Supreme Court decision, *McElrath v. United States*, 102 U.S. 426 (1880).

Implications

Under the CDA, government contractors have the right to a *de novo* trial on claims denied by a contracting officer. The CDA permits the contractor to appeal the denial of its claim to either the COFC or a Board of Contract Appeals (BCA or Boards). As the *Railway Logistics* decision demonstrates, this choice may have unintended or unforeseen consequences for contractors.

While the holding in *Railway Logistics* relates specifically to whether there is a right to a jury trial on fraud counterclaims brought by the Government in proceedings before an Article I court, the decision demonstrates the potential prejudice to contractors if the Government can bring a

counterclaim alleging fraud within the confines of CDA litigation. The *Railway Logistics* decision makes it clear that, once contractors have elected to litigate their claims at the COFC, they have effectively waived the right to a jury trial for counterclaims under the FCA.

If a contractor elects to pursue its appeal at a BCA, the Government cannot assert an FCA-based counterclaim, as the Boards have no jurisdiction over claims or counterclaims based on allegations of fraud. Instead, the Government would have to bring the FCA case in another forum where the contractor could demand a jury trial, a right guaranteed by the Seventh Amendment. Since Boards lack jurisdiction over counterclaims based on allegations of fraud, they generally stay proceedings on the contractor's affirmative claims pending resolution of fraud issues in another forum.

In practice, it appears that appeals brought in the COFC are very closely scrutinized for potential fraud-based counterclaims, since it is relatively simple for the Government to bring such counterclaims in the pending litigation, whereas appeals brought in a BCA require the Government to file an FCA lawsuit in a separate action and in a different forum.

In either case, counsel contemplating the appeal of an adverse contracting officer's decision on a claim should ascertain whether any part of the claim may be tainted by fraud. The Government can—and likely will—assert that a claim is tainted by fraud whenever evidence is not produced to support some aspect of the claim, such as inflated estimates of equitable adjustment damages. If there is any concern that the original claim was arguably tainted by fraud, the claim should be revised and recertified to eliminate any such taint. While removing the taint of fraud from an existing claim reduces the likelihood of the Government filing a complaint or counterclaim under the FCA, there is still a chance that it could allege that the claim as originally filed

was fraudulent. Therefore, counsel should ensure that evidence exists to support every aspect of a claim before presenting it to the contracting officer.

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