

Breach of Confidentiality Clause in Contract Outside Tucker Act Jurisdiction

The U.S. Court of Federal Claims recently dismissed *Higbie v. United States*, a case arising from the Government's alleged breach of a confidentiality clause in a mediation agreement. The CFC held that the CFC lacked jurisdiction over the case because the mediation agreement was not money-mandating.

In 2009, Higbie, a State Department employee, began proceedings in the Equal Employment Opportunity, alleging that the Government had discriminated against him by demoting him after he declined overseas assignments due to his daughter's serious illness. In those proceedings, Higbie and the Government entered into a mediation agreement, which included a confidentiality clause. Higbie later sued the Government had breached the mediation agreement's confidentiality clause. The Government moved to dismiss, arguing that the agreement was not money-mandating and was therefore outside the CFC's jurisdiction.

The CFC agreed, dismissing the lawsuit, explaining that "consent to suit under the Tucker Act does not extend to every contract." In Higbie's case the mediation agreement included no provision that was "remotely monetary":

Higbie is correct, of course, that there is a presumption that a damages remedy is available in the civil context. . . . [But t]he Mediation Agreement did not address anything remotely monetary; it is limited to the parties' conduct during and after the mediation process. The entire document is full of statements pertaining to the limitations upon mediation.

The full opinion can be read [here](#).