

Accounting Firm Sues Fifth Circuit for Takings of Fees

On March 3, 2013, Marcum LLP, a professional services firm that specializes in forensic accounting and financial litigation support services, filed a Fifth Amendment takings claim in the U.S. Court of Federal Claims for the uncompensated taking of their business assets by the U.S. Court of Appeals for the Fifth Circuit.

In 2011, Marcum was retained by defense attorneys to provide forensic accounting, trial preparation assistance, and expert witness services to defend their client against fraud charges. Since the criminal defendant was deemed indigent, Marcum was retained under the Criminal Justice Act, which required judicial approval for its fees.

With the trial approaching, Marcum had not been paid for three months of work—totaling \$700,000. As a result, Marcum resigned. The Fifth Circuit, however, ordered Marcum to remain on as an advisor for the defense under threat of contempt sanctions:

It would be neither feasible nor economical to obtain a replacement to perform the services Marcum was expected by counsel to provide. Marcum LLP, and its partners, employees and agents are therefore ORDERED to continue working on the case as previously planned...

As Marcum argues in their complaint, they were left with “the Hobson’s choice of resigning and being held in contempt on one hand, and continuing to working and incurring devastating financial losses on the other.” Marcum thus continued working, predictably incurring additional unpaid fees ultimately totaling \$1.2 million.

Marcum claims that “[t]he direct, foreseeable and proximate result of the Chief Judge[’s order], together with the threat of sanctions, was to obliterate the contract between Marcum and defense counsel and force Marcum into involuntary servitude for public use.” Consequently, Marcum claims that it is due just compensation under the Fifth Amendment for the taking of its property interests, including contract rights, the exclusive use of its property, and the right to dispose of its property.

This case is docketed as *Marcum LLP v. United States*, Case No. 13-189C, and is currently pending before the U.S. Court of Federal Claims.

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