CFC Rules That Money-Mandating Statute Does Not Give Rise to Claim for Consequential Damages

The Tucker Act grants jurisdiction to the U.S. Court of Federal Claims for damages not sounding in tort arising out of various federal statutes. But in order for jurisdiction to be proper, there must be a money-mandating statute under which the claim arises.

Identifying the source and nature of a money-mandating statute can be an issue of contention between the parties, and was recently addressed in the case of *Clean Fuels v. United States*. *Clean Fuels* involved a green energy company, a developer of biodiesel platforms, that sought a grant from the federal government under a provision of the American Recovery and Reinvestment Tax Act of 2009 (AARTA) that provides grants to reimburse part of the cost of certain "energy property" when used to produce clean energy.

After the Government determined it was not required to provide the grant, the plaintiff sued. The rub in the case was that, in addition to the amount of the grant, Clean Fuels also sought consequential damages.

The trial court noted that the CFC had previously ruled that the grant provision of AARTA at issue qualified as a money-mandating statute for purposes of Tucker Act jurisdiction. The primary reason was because "the statute required the payment of grants subject only to the ministerial discretion involved in determining whether the statutory scheme's other requirements were met."

But the issue in the current case was whether the CFC had Tucker Act jurisdiction to award consequential damages, not the grant amount. The CFC agreed with the Government, finding that jurisdiction did not exist:

> *The obligation to identify a money-mandating statute is an obligation to identify a statute that mandates the form of monetary compensation a plaintiff requests. When a plaintiff requests more than one form of damages, the court has jurisdiction with respect only to those claims for damages covered by the money-mandating statute. Because § 1603 cannot "fairly be interpreted" to mandate lost profits or other consequential damages, the court must grant defendant's motion.*

The CFC also held that plaintiff's argument that proving consequential damages goes to the merits and is not a jurisdictional issue "misses the point" because "the money-mandating source of law plaintiff invokes does not authorize *any* consequential damages."

As a result, the Government's motion for partial dismissal was granted.