Sum Certainty: The Federal Circuit Rules the CDA’s Requirement to Plead a “Sum Certain” Damages Amount Is Not Jurisdictional

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During oral argument in ECC International Constructors, LLC v. Secretary of the Army in May 2023, the U.S. Court of Appeals for the Federal Circuit questioned whether the long-standing requirement to plead a “sum certain” monetary claim against the U.S. government under the Contract Disputes Act (CDA) is jurisdictional. The court raised the issue sua sponte in the wake of the U.S. Supreme Court's recent decision in Wilkins v. United States, which outlined the test to determine when a pleading requirement is jurisdictional in nature and highlighted the significant expenditure of time and resources that are often wasted when such requirements are considered jurisdictional.

The Federal Circuit now has answered its own question, holding that the requirement that contractors state a sum certain in claims brought under the CDA is not a jurisdictional prerequisite to litigating that claim in federal court or before a board of contract appeals. The court acknowledged prior Supreme Court decisions holding that jurisdictional requirements must be “clearly state[d]” and, after analyzing the text of the CDA, concluded that it did not require a “sum certain” as a predicate to jurisdiction. The Federal Circuit further noted that “Supreme Court precedent, and in particular the principles articulated in recent Supreme Court decisions, reflects that rules outside the statutory text are not jurisdictional.” Accordingly, the Federal Circuit held that courts must “treat the requirement as nonjurisdictional under the [Supreme] Court's bright-line rule.” “Under that rubric,” the court ruled “the sum-certain requirement is an element of a claim for relief – in other words, it is an element of a CDA claim that a claimant must satisfy in order to recover – rather than a jurisdictional rule that a party could challenge after a trial on the merits. The requirement is no less mandatory under this framework; it does not, however, control the jurisdiction of the boards or courts.”

Although the Federal Circuit asserted its decision will not impact “the vast majority of cases,” its ECC International decision is significant because it helps level the playing field for contractors bringing CDA claims by allowing courts to consider a contractor’s claims, including whether the sum certain requirement has been met, on its merits. The court has thus deprived the government from using one of its favorite procedural tools to obtain dismissals before the merits of claims are ever considered by the courts. While the government still may seek to challenge the sum certain sufficiency of a claim before the U.S. Court of Federal Claims (COFC) or the Civilian or Armed Services Boards of Contract Appeal (Boards), such challenges would be made on motions to dismiss or at summary judgment.
As explained below, in opposing such motions, contractors should employ a number of procedural strategies to keep their CDA claims alive for consideration by the courts on their merits, instead of having them dismissed with prejudice on procedural grounds, after having spent many months or years litigating them.

Read the full article.

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