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Supreme Court Asks for Just the Facts When Determining Claims  
Court Jurisdiction

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**MAY 3, 2011***United States—Accounts and Claims***Supreme Court Asks for Just the Facts  
When Determining Claims Court Jurisdiction**

**A**lthough worded in such a way that it appears quite complex, 28 U.S.C. § 1500 acts as a straightforward bar to the jurisdiction of the U.S. Court of Federal Claims in cases where suit has already been filed in another court, and the claims are “based on substantially the same operative facts,” the U.S. Supreme Court held April 26 (*United States v. Tohono O’odham Nation*, U.S., No. 09-846, 4/26/11).

Relying on both the syntax and objectives of the statute, as well as the nature of the claims court itself, Justice Anthony M. Kennedy wrote for five justices that the reach of the jurisdictional provision is best viewed without regard to the remedies sought in the competing actions—specifically, whether they overlap.

In coming to its conclusion the majority downplayed concerns over the burden such an interpretation would inflict on plaintiffs, who, due to the federal statutory scheme, must rely on multiple suits in order to be made whole.

It was that statutory scheme that led Professor Gregory C. Sisk, University of St. Thomas School of Law, Minneapolis, Minn., to file an amicus brief in the case, in favor of neither party, he told BNA April 26.

“It’s my continual belief that lawsuits of this nature belong solely and exclusively in the Court of Federal Claims,” Sisk said. “In my view . . . when there is a claim that is a monetary claim or when monetary relief would be adequate it should be in the Court of Federal Claims.”

Sisk is the author of a casebook and treatise both of which are titled, “Litigation with the Federal Government.”

And while the court did not directly address his concerns, Sisk took comfort in the fact that the majority did suggest that the Nation could have received all necessary relief in the claims court, without resorting to a district court action.

Justice Sonia Sotomayor, joined by Justice Stephen G. Breyer, concurred in the judgment only.

Justice Ruth Bader Ginsburg dissented, and Justice Elena Kagan did not participate in the case.

**Xeroxed Complaint Would Have Worked.** The case revolved around a claims court action against the United States by the Tohono O’odham Nation—a Native American tribe located primarily in southern Arizona—

seeking money damages for what it perceived as a breach of the government’s fiduciary duty regarding land and other assets held in trust for the benefit of the Nation.

However, prior to initiating that suit, the Nation also filed suit in federal district court against the federal officials in charge of managing the assets seeking equitable relief, including an accounting, for what amounted to the same fiduciary violations.

As the Supreme Court ultimately concluded, the facts underlying the two suits were so similar, “the Nation could have filed two identical complaints, save the caption and prayer for relief, without changing either suit in any significant respect.”

After the claims court dismissed the case, citing Section 1500, the U.S. Court of Appeals for the Federal Circuit reinstated the claims, concluding that because the two suits were not seeking the same relief, Section 1500 had no bearing on the Nation’s claims court action.

**Keene Supplies Partial Answer.** The text of Section 1500 reads:

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

Boiling the statute’s language down, the court said, “The [claims court] has no jurisdiction over a claim if the plaintiff has another suit for or in respect to that claim pending against the United States or its agents.”

The court also noted that it had previously provided a partial answer to “what it means for two suits to be ‘for or in respect to’ the same claim” in *Keene Corp. v. United States*, 508 U.S. 200 (1993).

In *Keene*, the court held that two suits trip Section 1500’s jurisdictional bar if they are “based on substantially the same operative facts . . . , at least if there [is] some overlap in the relief requested.”

The language in *Keene* allows for only two possible interpretations of Section 1500, the court said. “Either it requires substantial factual and some remedial overlap, or it requires substantial factual overlap without more.”

**Aimed at Stopping ‘Redundant Litigation.’** Settling on the latter course, the court began by looking at the text of the statute.

Section 1500 speaks of a person—presumably a government official—acting under color of federal law “in respect to” a cause of action at the time it arose, the court pointed out.

“But at that time, the person could not act in respect to the relief requested, for no complaint was yet filed,” the court said. Thus, the statute’s use of the phrase “in respect,” signals a reliance on facts “without regard to judicial remedies,” whether it is talking about a “cause of action” or a “claim” as referenced in the beginning of the statute, the court said.

Additionally, referencing the statute’s history as a way to prevent “redundant litigation” by southern farmers seeking recompense for cotton taken by the federal government during the civil war, the court said that relying on factual similarities prevents plaintiffs from simply pleading around the rule and forcing the government to litigate in multiple forums by tweaking their requests for relief in each court.

Finally, the court explained that because the claims court has no general power to provide equitable relief against the government, but is “the only judicial forum for most non-tort requests for significant monetary relief against the United States,” overlapping relief is by definition a rare occurrence.

“For that reason, a statute aimed at precluding suits in the [claims court] that duplicate suits elsewhere would be unlikely to require remedial overlap,” the court held.

**Court Divided Over Hardship Concerns.** The court also rejected the Nation’s argument that relying on factual similarities alone would force it “to choose between partial remedies available in different courts.”

“The hardship in this case is far from clear,” the court said. Specifically, the Nation could have filed in the claims court alone and obtained sufficient monetary relief, it said.

Further, the Nation could have proceeded with its district court suit and then filed an action in the claims court following the resolution of those claims, the court noted.

However, the concerns regarding partial remedies resurfaced in the court’s two additional opinions. First, in her concurrence, Sotomayor concluded that remedies do play a role in assessing claims court jurisdiction under Section 1500, but that the plaintiff in this case was impermissibly requesting overlapping relief.

Second, Ginsburg in her dissent criticized the majority’s “immoderate reading” of the statute. “It matters not, the Court holds, that to gain complete relief, the Nation had to launch two suits, for neither of the two

courts whose jurisdiction the Tribe invoked could alone provide full redress,” Ginsburg said.

**Takings Claimants Beware.** Professor Sisk acknowledged that, given the origins of Section 1500, the majority’s opinion was a plausible reading of the statute.

“I’ve referred to section 1500 in the past as a traffic cop statute,” he said, and “not a good one.”

It was enacted to manage traffic between the district courts and the claims court, with the peculiar problem of “cotton claimants” in mind, as the court said in its opinion. However, little of what we now understand regarding the federal government’s amenability to suit was relevant at that time, Sisk pointed out.

“At the time . . . the Tucker Act had not been enacted,” and the district courts “had essentially no jurisdictional authority to hear suits against the federal government,” he said. “Issues of overlapping waivers of sovereign immunity” were nonexistent.

While the Federal Circuit’s decision was steeped in common sense, it did not match up with the problem Congress was trying to address with Section 1500, which involved cotton claimants who were both seeking to have their commodities returned and also monetary damages in separate courts, Sisk explained—two different remedies.

Essentially, the majority did the best it could with what it had in the form of Section 1500, he added.

However, one area where Sisk predicted that this decision may have some lasting and significant effect is in the realm of federal takings law.

Where the government has regulated the use of your property, he said, you basically have two choices. You either pursue relief in district court under the Administrative Procedure Act and try to have the action set aside, or you file in the claims court—basically conceding that the taking was valid—and seek just compensation.

While the statute of limitations under the Tucker Act is fairly lengthy at six years, Sisk pointed out, it can not be equitably tolled, and district court litigation—and subsequent appellate review—could conceivably eat away at a large chunk of that time, Sisk pointed out.

There may come a time when a claimant is faced with the choice of surrendering his APA action to pursue a Tucker Act claim in the claims court, he explained.

Assistant to the Solicitor General Anthony A. Yang argued for the United States. Danielle Spinelli, Wilmer Cutler Pickering Hale and Dorr, Washington, D.C., argued for the Nation.

BY TOM P. TAYLOR

Full text at <http://pub.bna.com/lw/09846.pdf>.