

CAVEAT MANCEPTS REI PUBLICAE

Copyright 2026 Richard D. Lieberman, Consultant & Retired Attorney

“Caveat Mancepts rei publicae,” Latin for “let the contractor for the government beware,” is how Judge Ryan T. Holte of the Court of Federal Claims (“COFC”) began his opinion in *Margaret Abare v. United States*, No. 22-171 (Fed. Cl March 19, 2026). The plaintiff, Margaret Abare, was a former mail handler with the U.S. Postal Service (“USPS”) who filed a complaint alleging discrimination. During settlement discussions that were ordered by the Equal Employment Opportunity Commission (“EEOC”), Ms. Abare’s attorney alleged that she had accepted a \$180,000 settlement offer from a USPS representative—a USPS attorney. However, that representative did not have authority to bind USPS to the offer, and USPS later asserted there was no contract in existence. The plaintiff filed suit in the COFC, alleging the government had breached the settlement agreement.

During the course of settlement discussions, the USPS attorney stated that the USPS “was willing to settle ...for \$180,000” and the Plaintiff’s attorney stated that Ms. Abare accepted the offer. Both attorneys filed a joint report to the EEOC stating that the parties “have recently been able to enter an agreement in principle.” Three months later, USPS counsel advised the Plaintiff that its client “was unwilling to enter into the previously discussed settlement agreement,” having determined that there was no binding agreement. The plaintiff alleged breach of that agreement (contract).

The COFC explained that there were four elements in a breach case that the plaintiff must show to demonstrate that a binding contract existed:

- 1) Mutuality of intent
- 2) Consideration
- 3) Unambiguous offer and acceptance and
- 4) Actual authority on the part of the government's representative to bind the government in contract

Considering the fourth element first, the court noted that there is no “apparent authority” of the government’s representative, there must be *actual* authority or implied actual authority. Furthermore, the plaintiff has the duty to inquire about the USPS attorney’s actual or implied actual authority. Plaintiff never made such an inquiry. After discussing the various settlement authorities of the USPS attorney and high ranking USPS officials, the Court noted that “no genuine material fact exists as to whether [USPS attorney] had settlement authority of \$180,000.” The internal documents showed that the attorney had settlement authority for only \$5,000 and the USPS Law Department had settlement authority of up to \$50,000. But where an official exceeds his authority, the U.S. Government is not bound. For this reason, plaintiff could not show that there was a valid contract (settlement agreement).

The court also examined whether the offer and acceptance in the “Agreement-in-Principle” were unambiguous, and concluded that it was most likely insufficiently definite, because it was based on an email exchange that did not include all material terms. This was not really relevant here because the person who made the offer lacked authority to make it.

As a result, the COFC dismissed Ms. Abare's complaint and case.

Takeaway. Always ask for documentation of the actual authority of the person (usually a Contracting Officer, but it may be someone else who makes the offer) to determine if he/she truly possesses required authority. Federal Acquisition Regulation ("FAR") 1.602-1, Authority, states that "information on the limits of the contracting officer's authority shall be readily available to the public and agency personnel." Unfortunately, the USPS is not bound by the FAR, and apparently, its regulations contain no similar requirement. But the plaintiff could still demand it as part of any settlement agreement, and it is clear that the Judge believed that the plaintiff had the duty to demand it.

For other helpful suggestions on government contracting, visit:

Richard D. Lieberman's FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and Mistakes in Government Contracting
at <https://richarddlieberman.wixsite.com/mistakes>.