

ERROR BY COURT IN ANALYSIS OF BREACH OF CONTRACT

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The Federal Circuit recently sent an appeal back to the Court of Federal Claims (“COFC”) because the lower court had dismissed the claim, concluding that there was no contractually explicit basis for it (i.e. there was no relevant obligation under the contract). The Federal Circuit disagreed, noting that the COFC failed to show a causation between the breach and non-breach). *Keyes Helium Co, LLC et al v. United States*, Fed. Circ. No. 2024-1132, June 23, 2025.

The government (Bureau of Land Management (“BLM”) administers the federal helium program. Keyes, a private helium refiner, operates the first refinery of BLM’s helium pipeline system. Keyes received a contract for storage and delivery of helium. The contract stated the “helium will be delivered to Keyes at [location] and in a helium gas-mixture containing not less than 50 percent helium by volume...” After several “off-spec” deliveries of helium to Keyes, the company filed a breach of contract claim asserting that BLM failed to deliver the helium in accordance with the terms and conditions of the contract. Keyes also asserted tort liability (in a US District court, also making a takings claim, and breach of the implied duty of good faith and fair dealing). The COFC dismissed all of Keyes’ under its rules that the protester failed to state a claim upon which relief can be granted” (Rule 12(b)(6).

The Federal Circuit reversed the dismissal of Keyes’ breach of contract claim, and remanded for further proceedings. It found that taken together, Keyes’ allegation had plausibly established BLM’s breach of its delivery obligation.

The Federal circuit noted the following:

To recover for breach of contract, a party must allege and establish: (1) a valid contract between the parties, (2) an obligation or duty arising out of the contract, (3) a breach of that duty, and (4) damages caused by the breach.

But the COFC reversed the breach of contract analysis. Instead of identifying BLM’s obligations under the contract and considering whether any had been breached, it started with the alleged harm and then tried to find a contractually explicit basis. The COFC concluded there was no obligation that corresponded to the harm and there was no breach. But the Federal Circuit found that the starting point should have been whether Keyes had plausibly shown that the contract had been breached and then proceeded with damages.

Takeaway. Any breach analysis must show an obligation or duty, then a breach of that duty and then damages. Always start with the approach of the Federal Circuit.

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