

## Federal Circuit Affirms Court of Federal Claims Has Jurisdiction Over “Contract-Based” Misappropriation of Trade Secrets

In *United States Marine, Inc. v. United States*, the Federal Circuit recently affirmed a decision by the Fifth Circuit that a federal district court lacked jurisdiction to hear a claim against the federal government for misappropriating trade secrets—even where the claim was first pled in a district court as a tort claim under the Federal Tort Claims Act—because the trade secret protection was grounded in contract.

Beginning in 1993, the U.S. Navy awarded VT Halter Marine, Inc., a series of government contracts to build ships using a new design co-owned by United States Marine, Inc. . The contracts contained provisions placing limits on the government’s ability to disclose the design, but years later the Navy disclosed the design to a competitor of U.S. Marine. VT Halter and USM filed tort claims for misappropriation of trade secrets against the government in Louisiana federal district court under the Federal Tort Claims Act, which gives district courts “exclusive” jurisdiction over tort claims against the federal government. The district court awarded \$1.45 million in damages, but on appeal the Fifth Circuit vacated the award for lack of jurisdiction and ordered the district court to transfer the case to the Court of Federal Claims (CFC). The Fifth Circuit reasoned that the tort claim was “so rooted” in a breach of contract claim that “its adjudication . . . would be an unjustified incursion” on the Tucker Act’s “presumptive commitment” of government contract matters to the CFC.

Because U.S. Marine is not a party to the VT Halter contract, the transfer to the CFC could result in USM being unable to recover damages in the CFC. Nevertheless, the Federal Circuit held that the Fifth Circuit’s transfer of the case to the CFC was not “clearly erroneous” because it is not clear whether a meaningful opportunity for recovery in the CFC is required before ordering such a transfer and, at any rate, USM may have a breach of contract claim as a third-party beneficiary to the VT Halter contracts or a takings claim against the government for taking its trade secrets. The Federal Circuit, however, suggested that if it had reviewed the Fifth Circuit’s decision under a less-deferential standard of review, it would have disagreed with the transfer of the case.

The opinion can be found [here](#).

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