

Blowing in the Wind

- inShare0

Terra-Gen developed and built the Alta Wind facilities, and then sold these facilities to the Alta Wind plaintiffs. Alta Wind then filed grant applications from the Treasury Department to recover 30% of the purchase price under a federal statute (the American Recovery and Reinvestment Act of 2009) authorizing the grant payments. Each application submitted to Treasury contained an analysis certified by an accounting firm, allocating the purchase prices of the Alta Wind facilities between eligible and ineligible property. However, Treasury granted only a portion of the 30% purchase price Alta Wind companies had requested. Instead of basing the cash grant awards on the purchase price of eligible property, Treasury based the awards on 30% of how much it had cost Terra-Gen to construct the eligible property.

Alta Wind sued in the U.S. Court of Federal Claims, seeking to recover the full grant payments they alleged they were owed under the Recovery Act. At the close of discovery, the Government sought to amend its answer to assert counterclaims. The Government based its new counterclaims on its expert report concluding that the eligible cost bases for the Alta Wind facilities are lower than what the Treasury used in making its grant awards. Under the Government's new counterclaims, Alta Wind could be required to pay some of its grant money back to Treasury.

The Court granted the Government's motion to amend its answer, explaining that Alta Wind had the opportunity to depose the Government's expert witness and thus had notice of its intent to file counterclaims. The Court stated that although the Court should deny a motion for leave to amend a pleading where there has been undue delay, here the Government was reasonable in waiting "to assert counterclaims until its expert had completed his analysis." The Court explained that it would "not impose upon Defendant an obligation to file protective counterclaims as a placeholder early in the case before it had formulated its overall position." And to eliminate any prejudice to Alta Wind based on this ruling, the Court stated that it would not "permit Defendant to offer any document or related evidence into evidence to prove its counterclaims unless the document previously has been furnished to Plaintiffs."

Read Judge Wheeler's full decision [here](#).