

# Operative Facts

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In 2005, Kansas City Power & Light Co. contracted with the United States for the delivery of electrical utility services to the Hardesty Federal Complex in Kansas City, Missouri. The contract included an indemnity provision. In 2006, a GSA employee, David Eubank, died from fatal burns he received from a blast in the building. Eubank's widow, Kembra Eubank, successfully sued and recovered from Kansas City Power \$2.25 million.

In 2014, Kansas City Power filed a certified claim to the GSA's Contracting Officer seeking indemnification for the amount it paid Mrs. Eubank for also costs in defending the underlying case. On January 27, 2015, the contracting officer denied the claim, and on April 6, 2015, Kansas City Power filed a complaint in the U.S. Court of Federal Claims. The complaint contained two claims, the first was captioned "Contractual Indemnity" and the second was "Breach of Contract."

The Government moved to dismiss the complaint under Rule 12(b) (1), arguing that the Court lacked subject matter jurisdiction over the claims. Specifically, the Government argued that Kansas City Power's claims had never been certified and submitted to and decided by the contracting officer.

The Court, however, rejected the Government's contentions, quoting from a Federal Circuit decision holding that there is no requirement that a claim submitted under the Contract Disputes Act be "submitted in any particular form or use any particular wording." Here, the Court concluded that the two claims were based on the same operative facts as those in the claims submitted to the contracting officer, and therefore denied the Government's motion to dismiss:

*In this case, it is clear that irrespective of the way in which the counts are captioned . . . both plaintiff's certified claim and count two of the complaint are based on the same underlying theory—indemnification pursuant to Paragraph 4.12 of the Tariff. This case is further distinguishable from J. Cooper in that plaintiff sought the same relief in its certified claim as it does in count two—reimbursement for the amount paid Mrs. Eubank plus the cost of defending the suit brought by her. Thus, plaintiffs has arguable only asserted one legal theory in this case, that of contractual indemnity.*

Read J. Sweeney's full decision [here](#).