

JUDICIAL MALFEASANCE



1








Courts have great discretion in their decision making. Some decision making, however, is not subject to the discretion of judges, but instead is controlled by statute or U.S. Supreme Court precedent that defines the specific rulings courts are obligated to render when certain conditions exist. In all cases The Writing Company (TWC) sought to litigate against IRS and government employees, statutes dictated processes the courts were bound to abide by when adjudicating the cases. In all instances, the courts defied statutory mandates/U.S. Supreme Court precedent and rendered rulings designed to prevent TWC and Sanders from bringing actions that would have disclosed the wrongdoings of top government officials.








2








The following are among actions that evidence judicial malfeasance related to claims TWC filed before judicial bodies:




- *Judicial Corruption at General Services Board of Contract Appeals (GSBCA).* The Contract Disputes Act (CDA) was enacted by Congress to give every contractor the right to challenge an adverse contracting decision in dispute. The General Services Board of Contract Appeals (GSBCA), which adjudicated TWC’s claims, **ruled it did not have jurisdiction to adjudicate TWC’s wrongful termination claim** when, in fact, CDA clearly states GSBCA has the right to adjudicate disputes **“concerning termination of a contract.”**
- *Judicial Corruption at the U.S. Court of Federal Claims (COFC).* The *Election Doctrine* allows a contractor to re-litigate contract dispute claims anew if the contractor was not advised of its appeal rights by the contracting officer rendering a *final decision* on the contractor’s claims. Pursuant to the Election Doctrine, TWC sought to re-litigate claims TWC had brought before GSBCA years earlier. The question of whether TWC should be permitted to re-litigate claims at COFC hinged on one question: Did the IRS contracting officer advise TWC of its appeal rights years earlier *when negotiations reached an impasse*. Although GSBCA’s written ruling unequivocally confirmed IRS did not issue TWC a final decision that advised TWC of its appeal rights when TWC appeared before GSBCA, COFC Mary Ellen Coster-Williams proclaimed otherwise. She then used the proclamation to justify dismissing all TWC’s and Sanders’ claims to protect federal officials.
- *Judicial Corruption in the Federal District Court of Eastern Missouri.* Sanders and TWC filed suit in the Circuit Court of St. Louis County, Missouri. The lawsuit alleged that federal employees committed tort offenses that harmed TWC and harmed Sanders *personally and directly*. When a plaintiff files a tort claim action against federal employees, there are two possible paths the lawsuit can take: One path governs lawsuits that allege employees committed tort offenses while **acting within their scope of employment**. These lawsuits are adjudicated as prescribed by the Federal Tort Claims Act (FTCA), pursuant to laws within the state where the act(s) were alleged to have occurred. The other path governs lawsuits that allege employees committed torts while **acting outside their scope of employment**. These lawsuits are adjudicated pursuant to the state law where the offense(s) occurred; such claims are not subject to the Federal Torts Claims Act (FTCA). Judge Donald Stohr intentionally violated Supreme Court mandate to justify dismissing TWC’s claims. The Supreme Court made it clear there were no exceptions to the path the judge must take when adjudicating cases like TWC’s and Sanders’.





JUDICIAL MALFEASANCE Breach of Contract Claims—GSBCA & COFC		
	<p>The Contract Disputes Act (CDA) gives every contractor the right to adjudicate contract disputes:</p>	
3	<ul style="list-style-type: none"> ▪ <i>The Contract Disputes Act (CDA—41 U.S.C.)¹ was enacted by Congress to afford every federal contractor an unconditional right to appeal a final decision of a federal contracting officer to either the applicable board of contract appeals or to the U.S. Court of Federal Claims. Pursuant to CDA, all claims that relate to a contract and that are the subject of a final decision by the contracting officer are appealable to the Court of Federal Claims. <i>RCS Enterprises.</i>²</i> 	 Acrobat Document USC 28 1491 ¹ RCS ² ENTERP
4	<ul style="list-style-type: none"> ▪ The Contract Disputes Act (CDA) requires the contracting officer to issue the contractor a contracting officer’s final decision when a dispute reaches an <i>impasse</i>. The final decision MUST advise the contractor of its right of election, i.e., right to appeal the dispute to either the applicable board of contract appeals (General Services Board of Contract Appeals (GSBCA) in TWC’s case) or to the U.S. Court of Federal Claims (COFC). The final decision confers jurisdiction upon COFC/GSBCA to adjudicate the contract dispute. CDA specifies the exact language the contracting officer must include in the final decision: <p>33.211 Contracting officer’s decision.</p> <p>(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—</p> <ol style="list-style-type: none"> (1) Review the facts pertinent to the claim; (2) Secure assistance from legal and other advisors; (3) Coordinate with the contract administration office or contracting office, as appropriate; and (4) Prepare a written decision that shall include a— <ol style="list-style-type: none"> (i) Description of the claim or dispute; (ii) Reference to the pertinent contract terms; (iii) Statement of the factual areas of agreement and disagreement; (iv) Statement of the contracting officer’s decision, with supporting rationale; (v) Paragraph substantially as follows: <p>This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board’s small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision; and</p>	 Acrobat Document APPEALS RIGHTS




JUDICIAL MALFEASANCE AT GSBCA		
5	<ul style="list-style-type: none"> On January 28, 1999, TWC submitted a letter to the contracting officer, which it termed a contract dispute.¹ When IRS responded to TWC’s contract dispute letter following contract termination, it stated TWC’s concerns were “mute” (sic), given contract termination.² 	 Acrobat Document JAN 28 ¹ LETTER  Acrobat Document CLAIM ² MOOT
6	<ul style="list-style-type: none"> On August 9, 1999, TWC filed its first contract dispute¹ at the General Services Board of Contract Appeals (GSBCA). TWC’s claims included concerns expressed in TWC’s letter of January 28, 1999, and a wrongful contract termination claim. 	 Acrobat Document TWC’S ¹ FIRST CLAIMS
7	<ul style="list-style-type: none"> On March 13, 2000, GSBCA dismissed The Writing Company’s breach of contract/wrongful termination claim for lack of jurisdiction.¹ On March 21, 2000, TWC motioned for reconsideration;² GSBCA denied TWC’s motion,³ again refusing to adjudicate TWC’s wrongful termination claim. 	 Acrobat Document JAN. 28 ¹ DECISION  Acrobat Document MOTION ²  Acrobat Document CLAIM ³ DENIED
Contrary to General Services Board Of Contract Appeals’ (GSBCA’s) ruling, GSBCA did have authority to adjudicate TWC’s wrongful termination claim:		
8	<ul style="list-style-type: none"> 28 U.S.C. 1491 defines the U.S. Court of Federal Claims’ (COFC’s) jurisdiction as having the authority to: <p style="margin-left: 40px; color: red;">“[R]ender judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other non-monetary disputes on which a decision of the contracting officer has been issued under section 6 of the Act.”</p> 	 Acrobat Document 41 USC ³ § 607(d)
9	<ul style="list-style-type: none"> 41 U.S.C. § 607(d) defines the General Services Board of Contract Appeals’ (GSBCA’s) jurisdiction by stating, “The agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.” Consequently, GSBCA and COFC have the same powers to render judgment on a contract dispute, including: <p style="margin-left: 40px;">“upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract . . . (See 8—28 U.S.C. 1491.)</p> 	




<p>10</p>	<ul style="list-style-type: none"> GSBCA dismissed TWC’s wrongful termination claim,¹ stating GSBCA could not provide the relief TWC sought, which included a request for contract reinstatement. Even if GSBCA could not order IRS to reinstate TWC’s contract, GSBCA was obligated to resolve the <i>material facts in dispute</i>: TWC claimed the contract termination was a wrongful termination/breach of contract because it evidenced bad faith; IRS argued the termination did not evidence bad faith in its Motion To Dismiss. GSBCA was obligated to allow TWC to present evidence of bad faith in order to resolve the material facts in dispute: <ul style="list-style-type: none"> A contracting officer is not permitted to exercise rights under the Termination for Convenience clause if such exercise demonstrates bad faith. The contractor’s burden of proving Governmental bad faith, however, is quite heavy, <i>Kalvar Corp. v. United States</i>, 211 Ct. Cl. 192,543 F.2d 1298 (1976), cert. denied, 434 U.S. 830 (1977). There, the court indicated that “specific intent to injure” the contractor must be demonstrated. . . . Nevertheless, despite the difficulty of proof, the contractor is entitled to present evidence of bad faith as indicated in <i>Allied</i> and in <i>National Factors, Inc. v. United States</i>, 204 Ct. Cl. 98, 492 F.2d 1383 (1974). <p>As the Supreme Court determined in <i>Bell v. Hood</i>:</p> <p>Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction.</p>	 Acrobat Document TERM¹ CLAIM DISMISS			
JUDICIAL MALFEASANCE AT COFC					
<p>Contrary to U.S. Court of Federal Claims’ (COFC’s) ruling, IRS did not issue TWC a contracting officer’s final decision before TWC filed claims at GSBCA:</p>					
<p>11</p>	<ul style="list-style-type: none"> The contracting officer’s final decision confers jurisdiction upon COFC/GSBCA to adjudicate contract claims in dispute (See 3). 				
<p>12</p>	<ul style="list-style-type: none"> Soon after IRS terminated TWC’s contract, TWC began requesting a contracting officer’s final decision so it could file claims before GSBCA. IRS violated the Contract Disputes Act (CDA) when it repeatedly refused to provide TWC with the requested contracting officer’s final decision: “When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall . . . (4) Prepare a written decision that shall include” (See 4.) 				
<p>TWC’S MULTIPLE REQUESTS FOR A CONTRACTING OFFICER’S FINAL DECISION AND SEVERAL LETTERS FROM IRS REFUSING TO ISSUE A FINAL DECISION</p>					
 Acrobat Document 01/28/99 LETTER	 Acrobat Document TWC REQ 5/19/99	 Acrobat Document IRS REFUSES 5/20/99	 Acrobat Document IRS REFUSES 5/21/99	 Acrobat Document TWC REQ 7/28/99	 Acrobat Document REFUSES 8/31/99

13	<ul style="list-style-type: none"> TWC was forced to file all its claims before General Services Board of Contract Appeals (GSBCA) without a contracting officer’s final decision. When TWC filed its contract-related claims before GSBCA without the contracting officer’s final decision, IRS attorneys argued GSBCA did not have jurisdiction to adjudicate TWC’s claims, since the contracting officer had not issued TWC a final decision.¹ 	
14	<ul style="list-style-type: none"> On August 21, 2000, GSBCA issued a ruling denying IRS’s <i>Motion To Dismiss</i> TWC’s claims for unpaid overtime, invoice amounts, etc. GSBCA acknowledged IRS had not issued TWC a final decision advising TWC of appeal rights. GSBCA determined IRS knew TWC desired a final decision but repeatedly ignored TWC’s request. As a result, GSBCA ruled it would adjudicate TWC’s claims as <i>deemed denied</i>.¹ 	 Acrobat Document GSBCA ¹ CLAIMS DEEMED DENIED  Acrobat Document DEEMED ¹ DENIED
15	<ul style="list-style-type: none"> November 16, 2000: GSBCA ruled on a series of claims TWC filed before GSBCA on September 2, 1999. GSBCA ruled IRS must pay TWC \$6645.99 for material costs IRS <i>refused to pay</i> when TWC began contesting the wrongful contract termination.¹ 	 Acrobat Document GSBCA ¹ AWARDS 6445.99
16	<ul style="list-style-type: none"> May 8, 2001: IRS Contracting Officer Sharon Warren issued TWC a settlement by determination. The document outlined the final amounts IRS would pay TWC to close out the contract. The final amount was substantially less than the amount in TWC’s settlement proposal. Once again, Contracting Officer Sharon Warren violated CDA. In the <i>settlement by determination</i>, she failed to include CDA mandated information, including information advising TWC of its right to appeal to either GSBCA or COFC.¹ 	 Acrobat Document CNTCTNG ¹ OFFICER’S SETTLMT BY DETERM
17	<ul style="list-style-type: none"> Dec. 4, 2002: TWC appealed IRS’s settlement by determination to GSBCA, which adjudicated the matter as <i>deemed denied</i>. TWC challenged IRS’s decision not to pay TWC the full \$526,802 that TWC included in its settlement proposal. By the time TWC filed its settlement claim, it had lost all confidence in GSBCA.¹ TWC expected to receive nothing from GSBCA, since it was convinced GSBCA Judges were helping to perfect the cover-up. TWC ceased prosecuting its claims and instead turned to Senator Carnahan’s office for assistance. Sanders, president and CEO of TWC, told the GSBCA Judge she would prefer to have TWC’s case adjudicated in another judicial forum—meaning anywhere but GSBCA. The GSBCA judge issued a ruling denying all of TWC’s settlement claims for failure to prosecute.² 	 Acrobat Document LETTER TO ¹ GSBCA  Acrobat Document TWC’s ² CLAIMS DENIED
18	IRS <i>never</i> issued TWC a contracting officer’s final decision that advised TWC of its appeal rights on any claims TWC filed before GSBCA—not even on TWC’s settlement claims (<i>settlement by determination</i>). ¹	 Acrobat Document SETTLMT ¹
	TWC Discovers The Election Doctrine	
19	Years after GSBCA ruled on various claims filed by TWC, TWC discovered the <i>Election Doctrine</i> , which afforded TWC the right to re-litigate claims brought before GSBCA years earlier.	






	<p>II. Election Doctrine</p> <p>[O]nce a contractor makes a binding election to appeal the [contracting officer's] final decision to a board of contract appeals or to the Court of Federal Claims, the contractor can no longer pursue its claim in the other forum. <i>Bonneville Assocs. v. United States</i>, 43 F.3d 649, 653 (Fed. Cir. 1994) (citing <i>Nat'l Neighbors, Inc. v. United States</i>, 839 F.2d 1539, 1542 (Fed. Cir. 1988) (<i>National Neighbors</i>)). But this court may not apply the Election Doctrine to bar a suit until it is certain that a "binding election" before a board of contract appeals has occurred. See <i>National Neighbors</i>, 839 F.2d at 1543 (noting that "an untimely appeal to the board is not a binding election under the Election Doctrine").</p>	
<p>20</p>	<ul style="list-style-type: none"> ▪ Before re-litigating IRS Notice Redesign contract-related claims, Sanders read numerous books and cases. The law was undisputable and consistent, from case to case:¹ in every contract dispute action brought before either GSBCA or COFC, the contractor was allowed to re-litigate claims if the contracting officer had not advised the contractor of its right to appeal to either the applicable board of contract appeals or the U.S. Court of Federal Claims. 	<p> Acrobat Document</p> <p>CASE W/¹ ELECTION DOCTRINE</p>
<p>TWC Re-Filed Contract Dispute Claims Before The U.S. Court Of Federal Claims Pursuant To The Election Doctrine</p>		
<p>21</p>	<p><i>In 2004, TWC again petitioned the contracting officer for a final decision on ALL contract claims TWC brought before GSBCA years earlier. The final decision confers jurisdiction upon the applicable Board of Contract Appeals (GSBCA) and COFC to adjudicate a contract dispute. Finally, after six years, the contracting officer who managed TWC's Notice Redesign Contract issued TWC the requested final decision,¹ which finally met the conditions specified by CDA:²</i></p> <p>33.211—Contracting Officer's Final Decision</p> <p>(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—</p> <ol style="list-style-type: none"> (1) Review the facts pertinent to the claim; (2) Secure assistance from legal and other advisors; (3) Coordinate with the contract administration office or contracting office, as appropriate; and (4) Prepare a written decision that shall include a— <ol style="list-style-type: none"> (i) Description of the claim or dispute; (ii) Reference to the pertinent contract terms; (iii) Statement of the factual areas of agreement and disagreement; (iv) Statement of the contracting officer's decision, with supporting rationale; (v) Paragraph substantially as follows: <p>This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. . . .</p>	<p> Acrobat Document</p> <p>FINAL¹ DECISION YEAR 2003</p> <p> Acrobat Document</p> <p>APPEAL² RIGHTS</p>







<p>22</p>	<ul style="list-style-type: none"> ▪ The contracting officer’s final decision dated November 13, 2003, met most of CDA’s requirements for a contracting officer’s final decision. The contracting officer: <ul style="list-style-type: none"> · Provided the decision in writing. · Outlined <i>some</i> of the contract terms, factual areas of agreement and disagreement. · Advised TWC of its right of election, i.e., right to appeal to GSBCA or to U.S. Court of Federal Claims.¹ · Provided the decision within the specified timeframe. 	 Acrobat Document BONNVLE ¹
<p>U.S. Court of Federal Claims (COFC) Judge Mary Ellen Coster-Williams made a number of rulings that would cause a reasonable person to question her integrity:</p>		
<p>23</p>	<ul style="list-style-type: none"> ▪ Judge Coster-Williams never afforded TWC a trial or hearing. She dismissed ALL TWC’s claims carte blanche, even though she was legally obligated to accept as true all averments in TWC’s complaint and resolve the dispute¹ that existed between IRS and Plaintiffs TWC and Sanders: <p style="margin-left: 40px;">Through fair and impartial judgments, the federal courts interpret and apply the law to resolve disputes.</p> 	 Acrobat Document COURT ¹ OBLIGATED TO RESOLVE DISPUTE
<p>24</p>	<ul style="list-style-type: none"> ▪ Judge Coster-Williams dismissed TWC’s complaint and ruled as follows: <ul style="list-style-type: none"> · COFC did not have jurisdiction to adjudicate TWC’s claims pursuant to the Election Doctrine because the GSBCA judge advised TWC of its right of election on TWC’s final claim. (CDA requires the cognizant contracting officer, not the judge to advise a contractor of its final decision.) · Jerroll Sanders, a non-attorney, could not represent TWC, a corporation. · TWC’s tortious breach of contract claims and other breach of contract claims were not within COFC’s jurisdiction, since the claims “sounded in tort.” 	
<p>Judge Coster-Williams controverted CDA when she ruled COFC did not have jurisdiction to re-litigate TWC’s Notice Redesign Contract claims pursuant to the “Election Doctrine.”</p>		
<p>25</p>	<ul style="list-style-type: none"> ▪ Pursuant to the Election Doctrine, TWC re-filed all its claims before the United States Court of Federal Claims (COFC). In the detailed 30-page complaint TWC submitted to the Court of Federal Claims, along with 52 exhibits,¹ TWC alleged Treasury and IRS breached Jireh Consulting, Inc., dba The Writing Company’s contract and then retaliated against TWC and its sole shareholder, Jerroll M. Sanders, for attempting to make IRS’s illegal acts known. 	 Acrobat Document TWC FILES ¹ CLAIMS BEFORE COFC
<p>26</p>	<ul style="list-style-type: none"> ▪ The federal attorney responded to TWC’s filing before the U.S. Court of Federal Claims by motioning for the court to dismiss TWC’s claims,¹ arguing: <ol style="list-style-type: none"> 1. TWC had to establish COFC had jurisdiction over the case, since TWC had previously litigated claims before GSBCA. 2. TWC was a corporation and could not be represented by a non-attorney (Sanders), pursuant to COFC court rules. 3. Jerroll Sanders did not have standing to sue because she was not a party to 	 Acrobat Document MOTION ¹ TO DISMISS







	<p>the contract, and</p> <p>4. COFC did not have jurisdiction because Sanders' claims sounded in tort.</p>	
27	<ul style="list-style-type: none"> ▪ <i>TWC argued the following in response to IRS's Motion To Dismiss:</i>¹ <ul style="list-style-type: none"> · The Court of Federal Claims had jurisdiction to adjudicate TWC's claims pursuant to the Election Doctrine. TWC argued it could re-litigate claims <i>de novo</i> because IRS did not issue TWC a contracting officer's final decision advising TWC of its right of election, i.e., right to appeal to either GSBCA or COFC, on any claims TWC brought before GSBCA. · IRS conferred upon Sanders' <i>privity of contract</i> and <i>standing to sue</i> when IRS sought to and did injure Sanders <i>directly</i> and <i>personally</i>. · The Court of Federal Claims did have jurisdiction to adjudicate tortious breach of contract claims, which necessarily sound in tort. (TWC sought to prosecute a host of breach of contract claims. Some of TWC's breach of contract claims emanated from tortious acts committed by IRS employees during the course of administering and settling TWC's contract. Others originated when IRS violated contract provisions. COFC treated all TWC's breach of contract claims as if they were tort claims and then dismissed them for lack of subject matter jurisdiction to perfect the cover up.) 	 Acrobat Document TWC'S ¹ RESPONSE
28	<ul style="list-style-type: none"> ▪ <i>The federal attorney replied</i>¹ <i>to TWC's Response to Defendant's Motion To Dismiss.</i> The attorney essentially reiterated IRS's earlier argument on why the court should dismiss TWC's claims. He never contested TWC's averment that IRS never issued TWC a proper contracting officer's final decision on any claims TWC brought before GSBCA. 	 Acrobat Document DEFNDNT ¹ REPLY
	<p>Judge Mary Ellen Coster Williams intentionally misrepresented the facts when she ruled TWC had been advised of its right of election; therefore, the Election Doctrine did not apply:</p>	
29	<ul style="list-style-type: none"> ▪ By the time TWC filed its final claims before GSBCA (settlement claims), it had lost all faith in GSBCA's ability to adjudicate fairly.¹ <i>TWC ceased prosecuting its claim, convinced its efforts before GSBCA were acts of futility. TWC believed the GSBCA Judge was helping IRS conceal illegal acts.</i>¹ GSBCA's written opinion on TWC's final claims includes the following statement in reference to TWC's failure to prosecute: <p style="margin-left: 40px;">On June 18, it [TWC] made its very last filing in the case. It asked again that the Board reconsider its ruling denying an indefinite suspension of proceedings and concluded, "We prefer to have this case adjudicated in [another] judicial forum." In response, on June 20, the Board designated TWC's notice of appeal as its complaint, gave assurance that any schedule for further proceedings would permit the appellant to explain its position fully, and concluded, "If appellant 'prefer[s] to have this case adjudicated in [another] forum,' it may ask the Board to dismiss the case. We caution appellant, however, that if the case is dismissed and appellant files it in another forum, that other forum may not have jurisdiction to hear it - and even a refiling in this forum may be precluded for jurisdictional reasons (see <i>Bonneville Associates</i>,¹ <i>L.P. v. Barran</i>, 165 F.3d 1360 (Fed. Cor. 1999))."</p> 	 Acrobat Document GSBCA ¹ NOT ADJUD FAIRLY

<p>30</p>	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams characterized the GSBCA Judge’s foregoing statement (<i>See 29</i>) as constituting the contracting officer’s final decision.¹ When paraphrasing the GSBCA Judge’s warning to Sanders, COFC Judge Coster-Williams inserted the term Election Doctrine where it did not exist in the GSBCA opinion.² Coster-Williams’ ruling reads: <ul style="list-style-type: none"> On June 18, TWC requested the Board to reconsider its ruling denying stay and stating that it "prefer[red] to have this case adjudicated in [another] judicial forum." The Writing Company, 03-1 BCA (paragraph) 32,107, at 158, 759. On June 20, the Board designated TWC's notice of appeal as its complaint, advised TWC that it could ask the Board to dismiss the case if it wished to have its claims tried in another forum, but cautioned that another forum might not have jurisdiction pursuant to the "Election Doctrine" under the Contract Disputes Act, citing <i>Bonneville Assocs., L.P. v. Barran</i>, 165 F.3d 1360 (Fed. Cir. 1999). TWC did not request dismissal 	 Acrobat Document COFC ¹ MEMOR OPINION AND ORDER OF DISMISSAL  Acrobat Document GSBCA ² OPINION
<p>31</p>	<ul style="list-style-type: none"> ▪ The remark the GSBCA Judge made to Sanders (<i>See 29</i>) could not have constituted a final decision, since it failed to meet the conditions of a final decision as outlined by CDA, which requires the contracting officer to: <ul style="list-style-type: none"> · Provide the contracting officer’s final decision when the dispute reaches an <i>impasse</i>, not when the dispute is being adjudicated in court. · Issue the decision in writing, not verbally. · Outline the <i>contract terms, factual areas of agreement and disagreement, and the rationale for the contracting officer’s final decision, which the GSBCA Judge did not.</i> · Advise the contractor of its <i>right of election</i>, i.e., right to appeal to the applicable board of contract appeals or to the U.S. Court of Federal Claims when the dispute reaches an <i>impasse</i>, i.e., before the contractor commences legal action. 	
<p>32</p>	<ul style="list-style-type: none"> ▪ While Coster-Williams <i>falsely</i> claimed the GSBCA Judge who adjudicated TWC’s final (settlement) claim, advised TWC of its appeal rights, it would not have mattered if the Judge had. CDA is clear! The contracting officer, not the judge, must notify the contractor of its right of election before the contractor elects a forum, i.e., files an appeal at GSBCA or COFC. The decision to choose one tribunal over another has to be voluntary, informed, and knowing. “<i>See Bonneville Associates, L.P. v. Barran, McDonnell Douglas Corp., ASBCA:</i> <p>Once the fact of an election to appeal the contracting officer’s adverse decision to the Board has been established, our precedent mandates that the only remaining issue is whether that election was “informed, knowing and voluntary.” <i>Prime Construction Co., Inc.</i> 231 Ct. Cl. At 782; <i>Tuttle/White Constructors</i>, 656 F.2d at 644; <i>National Electric Coil v. The United States</i>, 227 Ct. Cl. 595 (1981). If so, then the election is binding and we are without jurisdiction. If not, we would naturally proceed to the merits de novo, and disregard any action taken by the Board. <i>Mark Smith Construction Company, Inc. v. The United States.</i></p> 	
	<p>Mary Ellen Coster-Williams incorrectly ruled that Jerroll M. Sanders, a non attorney, was precluded from litigating claims TWC could have litigated:</p>	
<p>33</p>	<ul style="list-style-type: none"> ▪ TWC’s President and CEO Jerroll M. Sanders sought to prosecute TWC’s claims based upon the concept of “privity of contract.” In Sanders’ and TWC’s joint complaint, Sanders argued that IRS sought to injure her <i>personally</i> and <i>directly</i> for attempting to make the agency’s illegal contracting activities 	 Acrobat Document TWC’S ¹ CLAIMS




	<p>known. Sanders listed the specific acts IRS committed against her personally and directly, including violating her privacy by peering into her bank account based upon contrived charges, disclosing Sanders’ private information to third parties, falsely stating to Senator Carnahan’s representative that Sanders had engaged in wrongdoing, and carrying out other acts of retaliation stemming from IRS’s, Treasury’s, and TIGTA’s efforts to conceal illegal contracting activities. Sanders argued the agencies’ actions conferred upon Sanders privity of contract and standing to sue. As a privity, Sanders stood in the shoes of a party to the Notice Redesign Contract. Sanders cited several cases in support of her argument, including <i>Von Brimer v. Whirlpool</i>, which discusses the concept of <i>privity of contract</i> and <i>special injury exceptions</i> that allow a shareholder to bring claims on behalf of the corporation:</p> <p>The Ninth Circuit also frames the test for a direct shareholder claim as one of standing: courts must consider “whether the person who brings the suit is a person harmed by the alleged wrong.” <i>Von Brimer v. Whirlpool Corp.</i>, 536 F.2d 838, 841 n.1 (9th Cir. 1976). Von Brimer also articulates the “settled principle” that mere “economic injury to a shareholder cannot support a personal cause of action.” <i>Id.</i> at 846 (acknowledging an exception to this principle “when the injury is to the plaintiff individually, as where the action is based on a contract to which [plaintiff] is a party, or on a right belonging severally to [plaintiff], or on a fraud affecting [plaintiff] directly” (internal quotation marks omitted)).</p>	
	<p>Judge Coster-Williams treated TWC’s tortious breach of contract claims and non-tort breach of contract claims as stand-alone tort claims:</p>	
<p>34</p>	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams did not allow TWC to exercise its right to present evidence in support of TWC’s and Sanders’ claims that IRS acted in <i>bad faith</i> and breached the Notice Redesign Contract on several fronts. TWC filed suit, claiming two types of breach of contract claims: <ul style="list-style-type: none"> · <i>Breach of contract claims</i> that arose from blatant violations of IRS Notice Redesign Contract provisions, including the Request for Information Services (RIS/inspection) and Systems Acceptance Testing (SAT). · <i>Tortious breach of contract claims</i>, i.e., breach of contract claims that arose from tortious acts committed by government employees during the course of administering and settling TWC’s Notice Redesign Contract, including slander, contract interference, etc. 	
<p>35</p>	<ul style="list-style-type: none"> ▪ TWC was well aware the U.S. Court of Federal Claims (COFC) did not have jurisdiction to adjudicate tort claims brought against federal employees. The Court did/does, however, have jurisdiction to adjudicate breach of contract claims and tortious breach of contract claims, i.e., breach of contract claims that arise from tortious acts committed by government employees during the administration and settlement of a government contract: <p>Plaintiffs maintain that this court has jurisdiction over their claims because defendant’s conduct, although tortious, specifically relates to defendant’s contractual obligation. Pls.’ Resp. at 15. Quoting <i>Pratt v. United States</i>, plaintiffs state, “[a] claim for tortious breach of contract . . . is not a tort independent of the contract so as to preclude Tucker Act jurisdiction. . . . For jurisdictional purposes, the tortious conduct must specifically relate to a contractual obligation.” <i>Id.</i> (quoting <i>Pratt v. United States</i>, 50 Fed. Cl. 469, 480-81 (2001)). Plaintiffs allege that “the obligation to search the vehicles in a reasonable fashion was an integral component of the contract for sale.” <i>Id.</i></p> <p style="text-align: right;">—<i>Francisco Javier Rivera Agredano And Alfonso Calderon Leon V. U.S.</i></p> 	






	<p>Most, if not all, of the underlying issues raised in claims 16 through 23 of the congressional reference were addressed and rejected in the 1996 Opinion. Plaintiff may use different words to describe claims 16 through 23, but essentially they are the same claims the court considered in the government contracts case. The court specifically discussed plaintiff's bad faith and spoliation claims. <i>Hardwick</i>, 36 Fed. Cl. at 415-18. This discussion adequately addresses the allegations in claims 17 and 19 in the congressional reference. Claim 18 for tortious breach is a contract claim. See <i>Travelers Indem. Co. v. United States</i>, 16 Cl. Ct. 142, 150-51 (1988); <i>H.H.O., Inc. v. United States</i>, 7 Cl. Ct. 703, 706-07 (1985). The court has already decided plaintiff's contract claims and that same analysis applies to claim 18. The court addressed issues raised in claims 16 and 20 through 23 in its 1996 Opinion. 36 Fed. Cl. at 380-96, 405-18 (discussing plaintiff's defective design claims, contour error claims, superior knowledge claims, differing site condition claims, defective specification claims, bad faith claims, and spoliation claims).</p> <p style="text-align: right;">—<i>Hardwick, Inc. v. U.S., Congressional reference to U.S. COURT OF FEDERAL CLAIMS</i> (Reference No. 93-646X)</p> <p>Although the court does not have jurisdiction to consider tort claims, it does have jurisdiction over claims based on tortious breach of contract if the tort claim is connected to a contract and there is a sufficient nexus between the alleged tort and the government's contractual obligations. . . . ¹</p> <p style="text-align: right;">—<i>Curry v. United States</i>, 221 Ct. Cl. 741, 609 F.2d 980 (1979).</p>	 Acrobat Document GOVT ¹ CONTRACTS
36	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams subsequently dismissed all TWC's and Sanders' claims. 	 Acrobat Document COFC OPINION
Prosecutorial Details on TWC's Case Before COFC		
37	<ul style="list-style-type: none"> ▪ U.S. Court of Federal Claims Judge Mary Ellen Coster-Williams and GSBCA Judge Alan Goodman, who adjudicated claims TWC brought before GSBCA, are closely linked.¹ 	 Acrobat Document GOODMAN & WILLIAMS
38	<ul style="list-style-type: none"> ▪ TWC filed a <i>Motion For Reconsideration And Recusal</i> in response to Judge Coster-Williams' ruling that dismissed TWC's claims. TWC sent the <i>Motion For Reconsideration And Recusal</i> to the U.S. Court of Federal Claims via FedEx. When TWC discovered FedEx would not deliver TWC's <i>motion</i> to COFC on time, TWC faxed the motion to Kinkos in Washington, D.C., and arranged for Kinkos to hand deliver it to COFC. TWC knew the motion would be defective, since it would not have an original signature. While a COFC judge can entertain a defective Motion For Reconsideration, a COFC judge cannot entertain a <i>Motion For Reconsideration</i> that is late. TWC asked the Kinkos courier to fax TWC a court-stamped copy of the motion to confirm COFC received the motion on November 5, 2004. 	 Acrobat Document MOTION FOR RECUSAL AND RECONSID
39	<ul style="list-style-type: none"> ▪ IRS responded to TWC's <i>Motion For Reconsideration and Recusal</i>. 	 Acrobat Document IRS RESPONDS







40	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams denied TWC’s <i>Motion For Recusal</i>. 	 Acrobat Document MOTION RECUSSAL DENIED
41	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams “accepted” TWC’s defectively filed <i>Motion For Reconsideration</i>, which was received on Nov. 5, 2004—within the timeframe required for filing a Motion For Reconsideration. She subsequently dismissed the Motion For Reconsideration, ruling it was late. 	 Acrobat Document MOTION RECONS DENIED
42	<ul style="list-style-type: none"> ▪ TWC motioned for Coster-Williams to correct the record and show November 5, 2004, as the date the motion was received. 	 Acrobat Document MOTION TO CORRECT THE RECORD
43	<ul style="list-style-type: none"> ▪ Judge Mary Ellen Coster-Williams refused¹ to correct the record. The head Clerk Of The Court stated Coster-Williams was obligated by court rules to show November 5, 2004, as the date TWC filed the <i>Motion For Reconsideration And Recusal</i>. 	 Acrobat Document REFUSED ¹ TO CORRECT RECORD
44	<ul style="list-style-type: none"> ▪ TWC and Sanders filed a complaint of judicial misconduct against Mary Ellen Coster-Williams. The Chief Judge of COFC dismissed TWC’s and Sanders’ complaint, stating Coster-Williams’ actions did not evidence judicial misconduct. 	 Acrobat Document COFC RESPONSE
	<p>Sanders and TWC appealed COFC’s rulings:</p>	
45	<ul style="list-style-type: none"> ▪ TWC appealed COFC’s rulings to the U.S. Court of Appeals for the Federal Circuit. 	 Acrobat Document TWC’S APPEAL BRIEF
46	<ul style="list-style-type: none"> ▪ IRS motioned to dismiss TWC on grounds a non-attorney CEO is not permitted to represent his/her corporation. TWC objected to the <i>Motion to Dismiss TWC</i>. The appeals court granted defendant’s <i>Motion to Dismiss</i>. 	
47	<ul style="list-style-type: none"> ▪ Sanders proceeded before the U.S. Court of Appeals (Case 05:5040) without TWC. Sanders argued: <ul style="list-style-type: none"> · She had standing to sue because IRS’s actions that harmed her <i>personally</i> and <i>directly</i> conferred upon her privity of contract. · Claim preclusion did not operate to bar her from litigating contract claims pursuant to the <i>Election Doctrine</i>. · Claims COFC stated sounded in tort were in fact <i>tortious breach of contract claims</i> that were within COFC’s jurisdiction to adjudicate. Sanders also argued that many of her breach of contract claims did not arise from tort offenses, but instead resulted when IRS breached clauses in the Notice Redesign Contract. She added that such claims did not sound in tort. 	









<p>48</p>	<ul style="list-style-type: none"> The panel at the appeals court rejected Sanders’ argument that IRS, Treasury, and TIGTA engaged in actions that injured her <i>personally</i> and <i>directly</i> and dismissed¹ Sanders’ complaint. The panel helped perfect the cover-up when it wrote: <p>“Sanders appears to argue that her case falls within an exception to the rule against shareholder standing that allows “a shareholder with a direct, personal interest in a cause of action to bring suit even if the corporation’s rights are also implicated.” Franchise Tax Bd., 493 U.S. at 331. Although Sanders claims to have suffered “directly and personally,” Pet. Br. At 2, she failed to allege any “ direct injuries [that are] independent of [her] status as [a] shareholder [],”as the exception requires.</p> 	 Acrobat Document APPEALS ¹ COURT DISMISSED SANDES COMPLINT
<p>49</p>	<ul style="list-style-type: none"> Contrary to the appeals court’s findings, Sanders did allege several direct injuries that were independent of her status as a shareholder: See Pages 18, 19, and 20 of the complaint TWC filed before U.S. Court of Federal Claims; the complaint was part of TWC’s appeals file.¹ See Page 2 and 3 of TWC’s appeals brief.² Sanders alleged defendants (IRS) assigned to her undeserved personal tax debts, disclosed her and her parents’ private bank account information to Senator Carnahan’s representative, slandered Sanders to her employees and throughout her community, contrived allegations Sanders engaged in wage fraud, and engaged in other acts intended to injure Sanders <i>personally</i> and <i>directly</i>. 	 Acrobat Document CLAIMS ¹ BEFORE COFC  Acrobat Document TWC’S ² APPEALS BRIEF
<p>50</p>	<ul style="list-style-type: none"> In 2006, Sanders and TWC filed a petition for writ of certiorari¹ before the U.S. Supreme Court. The Supreme Court dismissed TWC, stating court rules do not permit non-attorney CEO Jerroll M. Sanders to represent her corporation. On January 8, 2007, the U.S. Supreme Court denied Sanders’ petition for writ of certiorari:² Case 05-7432 	 Acrobat Document TWC’S ¹ PET FOR WRIT OF CERTIORI  Acrobat Document TWC’S ² PET FOR WRIT OF CERTIORI DENIED
<p>51</p>	<ul style="list-style-type: none"> Sanders wrote U.S. Supreme Court Justice John Roberts to complain about corruption in the Federal Judiciary. Roberts did not respond. 	 Acrobat Document SANDERS SEND LETTER TO ROBERTS; NO REPNSE.








JUDICIAL MALFEASANCE Tort Actions Filed in The Circuit Court of St. Louis County, Missouri, and Removed To Federal District Court	
52	<ul style="list-style-type: none"> ▪ Sanders and TWC filed suit in the Circuit Court of St. Louis County, Missouri. The lawsuit alleged federal employees committed tort offenses that harmed both TWC and Sanders <i>personally</i> and <i>directly</i>. When a plaintiff files tort claim actions against federal employees, there are two possible paths the lawsuit can take: <ul style="list-style-type: none"> · One path governs lawsuits that allege employees committed torts offenses while acting within their scope of employment. Such lawsuits are adjudicated pursuant to the Federal Tort Claims Act, which shields federal employees from personal lawsuits that arise while they are acting within the scope of their employment. The question of what constitutes an actionable offense is controlled by state law of <i>respondeat superior</i>. In some states, anything a government employee does during working hours is considered within the scope of the employee’s employment. In other states, such as Missouri, any illegal act the government employee commits during working hours is considered outside the employee’s scope of employment. · The other path governs lawsuits that allege employees committed torts while acting outside their scope of employment. These lawsuits are adjudicated pursuant to state law (<i>respondeat superior</i>) in which the offenses occurred; they are not controlled by the Federal Tort Claims Act (FTCA).
53	<ul style="list-style-type: none"> ▪ Federal District Court Judge Donald Stohr ignored a U.S. Supreme Court mandate and intentionally applied the wrong law when adjudicating TWC’s and Sanders’ tort actions against federal employees. Using the wrong law allowed Stohr to dismiss TWC’s and Sanders’ actions without affording them an evidentiary hearing that would have revealed the incriminating evidence they (Sanders and TWC) had impugning federal employees and officials.
Two Path for Adjudicating Tort Claim Actions	
Path for Adjudicating Claims Under The Federal Tort Claims Act (FTCA) When Plaintiff Alleges Employees Were Acting Within Their Scope of Employment	
54	<ul style="list-style-type: none"> ▪ The process for adjudicating claims brought under the Westfall Act/Federal Tort Claims Act (FTCA) is outlined below: <ol style="list-style-type: none"> a) Plaintiff files suit in federal district court or state court, alleging government employee committed a tort. b) If case was filed in state court, federal attorney certifies government employees were acting within the scope of their employment when they committed the act(s) alleged. The federal attorney removes the case to federal district court and notifies plaintiff of the government’s intent to substitute the United States as the sole defendant in the action. c) Federal attorney takes the appropriate action in response to the petition plaintiff filed in state court/federal district court:

	<ol style="list-style-type: none"> 1. <i>Files Motion To Dismiss for Lack of Jurisdiction</i> if the plaintiff did not file a claim with the federal agency at which the employee works before initiating the lawsuit (administrative notice): “[Employee] shall have first presented the claim to the appropriate federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. These exceptions include the discretionary function exception, which bars a claim 'based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.' 28 U.S.C. S 2680(a).” 2. <i>Files Motion To Dismiss For Lack of Subject Matter Jurisdiction</i> if the claims are among the exceptions enumerated by the Federal Tort Claims Act, which provides the government is not liable when any of its agents commits the torts of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights) while acting within the scope of their employment. 3. Litigates the claim(s). If the plaintiff filed a claim with the agency and the claim is one that is allowed by FTCA, the parties litigate the action pursuant to FTCA. The court must apply the law the state courts would apply in the analogous tort action, including federal law.” See <i>Caban v. U.S.</i>, 728 F.2d 68, 72 (2d Cir.'84); see also <i>Richards v. U.S.</i>, 369 U.S. 1, 11-13 ('62). <p style="text-align: center;">Keynote: Some litigants would prefer the government substitute itself for the employee, since the government’s financial resources far exceed those of individual employees.</p>	
	Path for Adjudicating Claims When Plaintiff Alleges Employees <i>Were Not Acting Within The Scope of Their Employment</i> When They Committed Acts Alleged	
55	<ol style="list-style-type: none"> a) Plaintiff files suit in federal district court or state court alleging government employee(s) committed a tort. b) If case was filed in state court, federal attorney certifies¹ government employees were acting within the scope of their employment when they committed acts alleged in the complaint, removes the case to federal district court, and notifies plaintiff of government’s intent to substitute the United States as the sole defendant in the action. c) If plaintiff files a timely challenge to the federal attorney’s certification that employees were acting within the scope of their employment when they committed acts alleged, a dispute arises that the court is bound to resolve (review).² Plaintiff then has the burden of proving the federal attorney’s certification is erroneous. The definition of what constitutes acting within the scope of employment is determined based upon state law. <p style="text-align: center;">Keynote: If plaintiff does not challenge the government’s certification, the government is substituted as the sole defendant in the action, which is then adjudicated pursuant to the Federal Tort Claims Act (FTCA), as outlined in the prior section.</p> d) When plaintiff challenges the certification and motions for remand, the <i>challenge gives rise to a material dispute</i>. The court has to adjudicate the action pursuant to state law of <i>respondeat superior</i>. (In Missouri, respondeat superior requires the court afford plaintiff a jury trial to answer the scope of employment 	<div style="text-align: right;">  Acrobat Document GUTIERRZ² DE MARTINEZ v. LAMAGNO </div> <hr/> <div style="text-align: right;">  Acrobat Document STOKES² </div> <hr/> <div style="text-align: right;">  Acrobat Document BORNEMN² </div>

	<p>e) question, i.e., were employees acting within the scope of their employment when they committed acts alleged in the complaint):³</p> <p>“[T]he scope of employment question is controlled by applicable state law Id at 1423.” <i>Stokes Billy v. Cross, Steven</i>. “In making this ultimate determination [whether or not employees acted within their scope of employment], the district court must apply the law of the state in which the alleged tort occurred to ascertain whether the federal employee was acting within the scope of his employment. See <i>Maron</i>, 126 F.3d at 323-24; <i>Jamison v. Wiley</i>, 14 F.3d 222, 237 (4th Cir. 1994). “A court’s de novo review of the scope of employment requires the application of the law of the state in which the employee’s alleged actions occurred. <i>Lawson</i>, 103 F.3d at 60.</p> <p>f) After allowing for discovery, the judge has to allow plaintiff to present evidence to the jury in support of plaintiff’s assertion that government employees were acting outside the scope of their employment when they committed acts alleged in the complaint.</p> <p>g) Judge provides jury with the applicable state’s jury instructions, which define scope of employment. In Missouri, the approved jury definition (standard) for evaluating whether or not an employee acted within the scope of his employment is:</p> <p>“[S]cope and course of employment to include requirement that acts “naturally” arise from performance of employer’s work implies that employee’s conduct must be usual, customary, and expected, and amounts to requirement of foreseeability. MAI 3d No. 13.02. <i>Maryland Cas. Co. v. Huger</i>, 728 S.W.2d 574. West’s Missouri Digest 2d (Mo. App. E.D. 1987).⁴</p> <p>h) Jury decides whether or not employees were acting within the scope of their employment, based upon standards outlined in Missouri Jury Instructions and evidence presented during the jury trial.</p> <p>i) Case remains in federal district court or is remanded, based upon the jury’s decision.</p>	 Acrobat Document MO LAW ³ RESPNDAT SUPERIOR  Acrobat Document MO. TRIAL ⁴ BY JURY
56	<ul style="list-style-type: none"> ▪ In Sanders’ case, the trial court judge skipped steps c through h by unilaterally deciding the scope of employment question. The judge ruled the case would be adjudicated under the Federal Tort Claims Act (FTCA) without affording TWC an evidentiary hearing, as mandated by the U.S. Supreme Court. 	
Judge Stohr Acts of Malfeasance Designed to Shield Federal Employees		
57	<ul style="list-style-type: none"> ▪ Sanders filed tort claim actions against government employees in the Circuit Court of St. Louis County, Missouri. Sanders’ and TWC’s complaint¹ included very specific acts IRS, Treasury, and TIGTA employees committed that harmed TWC and Sanders <i>personally</i> and <i>directly</i>. TWC and Sanders included evidence in support of their claims.² 	 Acrobat Document COMPLNT ¹  Acrobat Document ATTCHMT ²
58	<ul style="list-style-type: none"> ▪ The Federal Attorney “certified”¹ that employees named in the complaint TWC filed in the Circuit Court of St. Louis County, Missouri, were acting within the scope of their employment when they committed acts alleged in Sanders and TWC’s complaint. The federal attorney then removed the case to the Federal District Court of Eastern Missouri and notified TWC and Sanders of his intent to substitute¹ the United States as the sole defendant in the action, pursuant to 	 Acrobat Document CERTIF & ¹ NOTICE OF SUB

	the Federal Tort Claims Act (FTCA).	
59	<ul style="list-style-type: none"> ▪ Sanders and TWC filed a <i>timely</i> challenge to the federal attorney’s certifications and notice of substitution, giving rise to a material dispute the court was bound to resolve: The government claimed employees were acting within the scope of their employment when they committed acts alleged; TWC argued employees were acting outside the scope of their employment when they committed acts alleged. Sanders and TWC also motioned for remand, i.e., for the Federal District Court of Eastern Missouri to return the case to the Circuit Court of St. Louis County, Missouri, once it determined employees were acting outside the scope of their employment when they harmed TWC and Sanders. 	 Acrobat Document CHALLNG/ REMAND
60	<ul style="list-style-type: none"> ▪ The federal attorney filed a <i>Memorandum¹ Of Law In Support Of Their Partial Motion To Dismiss And In Opposition To Plaintiff’s Motion To Decertify, For Remand, To Name Defendants Jointly And Severably (Sic) Liable And To Add John Doe Defendants 1-10.</i> Government attorneys argued the government had a conclusive right to remove the case. 	 Acrobat Document MEMORAN ¹
61	<ul style="list-style-type: none"> ▪ TWC replied to the <i>Government’s Motion For Partial Dismissal, Motion For Remand, And Series Of Other Motions.</i> While TWC agreed the right to remove the case was conclusive, the right to retain the case was not. TWC argued the court must first resolve the scope of employment question in order to establish which court had jurisdiction: The Circuit Court of St. Louis County, Missouri, or the Federal District Court of Eastern Missouri. The Federal Attorney wanted Judge Stohr to retain the case so he could help perfect the conspiracy by inappropriately dismissing Sanders’ and TWC’s claims against federal employees. Until the scope of employment question was settled, neither the district court nor the state court had jurisdiction over the case: It is clear that a federal court's jurisdiction upon removal under 28 U.S.C., Section 1442(a)(1) is derivative of the state court jurisdiction, and where the state court lacks jurisdiction over the subject matter of the parties, the federal court acquires none upon removal, even though in a like suit originally brought in federal court, the court would have jurisdiction. <i>Boron</i>, 873 F.2d at 70. <i>Chada v. U.S.</i> 	 Acrobat Document TWC’S REPLY TO DEFNDNT’S MEMORND OF LAW
62	<ul style="list-style-type: none"> ▪ <i>The federal district court never resolved the question of jurisdiction. Conclusive jurisdiction (a determination of who has jurisdiction over the case) can only be established after the jurisdictional dispute is resolved by the federal court, since it is jurisdiction that determines which court adjudicates the dispute: If a jury had determined employees were acting within the scope of their employment when they committed acts alleged in TWC’s complaint, the federal district court would have been obligated to adjudicate the matter; if a the jury had determined employees were not acting within their scope of employment, the federal court would have been obligated to grant TWC’s Motion For Remand and return the case to the Circuit Court of St. Louis County, Missouri, for adjudication.</i> Judge Stohr was <i>obligated</i> to resolve the scope of employment question (<i>material dispute</i>) before adjudicating the case on its merits: "[R]egardless of the content of the certification . . . the federal district court must at least conduct an evidentiary hearing on the scope issue." 30F.3d at 1508. "If there is a material dispute as to the scope issue, the district court must resolve it at an evidentiary hearing." <i>Id.</i> at 1509. This procedure is in keeping with the statutory scheme that does not really treat the certification as having any particular evidentiary weight" <i>Kimbro</i>. 	 Acrobat Document BORNEMN ¹  Acrobat Document LAGMAN ²  Acrobat Document STOKES ³

63	<ul style="list-style-type: none"> The Federal Attorney filed a <i>Reply To Plaintiff's Objection To Defendant's Motion To Dismiss</i>. 	 Acrobat Document GOVRMNT REPLY
64	<ul style="list-style-type: none"> Sanders filed a <i>Response to Defendant's Reply to Plaintiff's Objection to Defendant's Motion To Dismiss</i>. 	 Acrobat Document DEF REPLY
65	<ul style="list-style-type: none"> Although the law¹ specifically states Sanders' challenge should have resulted in a discovery period and evidentiary hearing by jury,¹ Judge Donald J. Stohr arbitrarily issued a ruling (<i>Partial Judgment and Order of Substitution</i>) declaring that government employees named in TWC and Sanders' complaint were acting within the scope of their employment when they committed acts alleged.² He did so without affording Sanders and TWC an evidentiary trial by jury³ to settle the scope of employment question, as mandated by U.S. Supreme Court. The Court in <i>Kimbrow</i> held: "[R]egardless of the content of the certification . . . the federal district court must at least conduct an evidentiary hearing on the scope issue." 30F.3d at 1508. "If there is a material dispute as to the scope issue the district court must resolve it at an evidentiary hearing." Id. at 1509. This procedure is in keeping with the statutory scheme that does not really treat the certification as having any particular evidentiary weight" Id. 	 Acrobat Document BORNEMN ¹  Acrobat Document LAGMAN ¹  Acrobat Document STOKES ¹  Acrobat Document JUDGE ² STOHR'S ORDER  Acrobat Document MO LAW ³ OF RESPON. SUPERIOR
66	<ul style="list-style-type: none"> In his decision, Stohr granted the government's motion to substitute the United States as the sole defendant in the action. He also declared he would adjudicate Sanders' matter pursuant to the Federal Tort Claims Act (FTCA). Several attorneys and the solicitor general for the State of Missouri verbally confirmed Sanders' interpretation of the law is accurate: if a plaintiff challenges the federal attorney's certification in a tort claim action in the State of Missouri, the federal court is bound to conduct a trial by jury to resolve the scope of employment question. 	
67	<ul style="list-style-type: none"> <i>The court was required to apply Missouri law in order to resolve the question of whether government employees were acting within the scope of their employment.</i> The question of whether someone was operating in the scope of his/her employee is governed by state law (local law). In Missouri, if government employees commit illegal acts during the course of their employment, Missouri jury instructions¹ require a finding the employees <i>were not</i> acting within the scope of their employment when they committed act(s) alleged. Federal District Court Judge Donald Stohr knew Sanders and TWC could prove officials committed illegal acts and could successfully prosecute the case in the Circuit Court of St. Louis County, Missouri, since the law was favorable to plaintiffs. 	 Acrobat Document MO. JURY ³ INSTRUCT

<p>68</p>	<ul style="list-style-type: none"> Government filed a Motion To Dismiss,¹ arguing Sanders did not exhaust her administrative remedies before proceeding to court. (By then, the court had dismissed TWC from the action on the basis Sanders (a non-attorney) could not represent Jireh, a corporation.) If a prospective plaintiff intends to file suit against federal employees under the Federal Tort Claims Act, the prospective litigant must first file an administrative notice with the agency where the employee works, advising of intent to sue. Administrative notice is not required when a litigant alleges employees were acting outside their scope of their employment. 	 Acrobat Document MOTION ¹ TO DISMISS
<p>69</p>	<ul style="list-style-type: none"> Judge Stohr dismissed Sanders' claims,¹⁻² stating Sanders failed to file an administrative notice with applicable agencies before commencing suit on tort claim actions against federal employees. Stohr's dismissal ignored Sanders' challenge to the federal attorney's certification and her Motion For Remand. Stohr controverted U.S. Supreme Court mandate in order to help IRS and other top officials escape accountability for their actions. 	 Acrobat Document JUDGMNT ¹  Acrobat Document ORDER ²
<p>70</p>	<ul style="list-style-type: none"> TWC appealed¹ the District Court's decision to the United States Court of Appeals for the Eighth Circuit (Case No. 05-3007). The appeals court affirmed the lower court's ruling.² 	 Acrobat Document TWC'S ¹ APPEAL  Acrobat Document APPEAL ² DENIED
<p>71</p>	<ul style="list-style-type: none"> On November 1, 2005, Sanders and TWC filed a petition for writ of certiorari¹ before the U.S. Supreme Court to appeal the decision from the United States Court of Appeals for the Eighth Circuit. On January 9, 2006, the U.S. Supreme Court denied Sanders' petition for writ of certiorari.² 	 Acrobat Document PETITION ¹  Acrobat Document PETITION DENIED ²