Northrop Grumman Computing Systems, a subsidiary of aerospace/defense giant Northrop Grumman, brought suit in the U.S. Court of Federal Claims, arguing that the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) breached its contract when it failed to exercise priced options under an ID/IQ contract's Delivery Order.

According to Judge Allegra's decision , the Delivery Order required Northrop to "lease the Oakley software to ICE and perform specific support services for a one-year base period in return for payment of $900,000, with three one-year options at $800,186 per option year—for a total contract price of $3,597,558." Northrop delivered the software to ICE in October, 2004, and received payment of $900,000. A year later, on September 30, 2005, ICE told Northrop that it would not be exercising the first option year because it lacked sufficient funds.

Northrop filed suit under the Contract Disputes Act, alleging various actions or inactions on behalf of the Government, including failure to use its best efforts to obtain funding, failure to reserve appropriate funding, and replacing the software with another piece of software performing the same function—all of which (Northrop alleged) violated its contract with ICE.

What makes this case a bit more interesting than your run-of-the-mill contract dispute is that Northrop assigned its receivable to a third party—ESCgov. ESCgov paid Northrop $3,296,093 in return for "any payments [Northrop Grumman] received under the Delivery Order." And then ESCgov turned around and assigned its receivable to "Citizens Leasing Corporation, n/k/a RBS Citizens, N.A. (Citizens), in exchange for $3,325,252.16." As Judge Allegra noted, "neither plaintiff, ESCgov, nor Citizens ever notified ICE of these assignments."

The Government had a problem with this.

The Government moved "to dismiss for lack of jurisdiction pursuant to RCFC 12(b)(1), asserting that Northrop had submitted a claim to the contracting officer that failed to provide adequate notice of the nature of the claim and to reveal that the claim was for the losses of a third party."

As Judge Allegra stated—

[The Government] argues that this claim was deficient because it failed to reveal that Northrop had assigned its rights under the contract to ESCgov, which, in turn, had assigned those rights to Citizens. Defendant asseverates that Northrop should have revealed that it was seeking damages on behalf of a second-level assignee. Indeed, defendant questions whether, after the assignments, Northrop remained the proper party to file such a claim under the contract.

(Before we go on, how cool is that word "asseverate"? We had to look it up to understand it mean "earnestly assert".)

The Judge determined that Northrop was, indeed, the proper party to file the claim. However, he was less kind to Northrop with regards to its assignment. He wrote—

There is little doubt that, as in Beaconwear, Northrop's assignment here ran afoul of 31 U.S.C. § 3727. While that section allows for assignments to a 'financing institution of money due or to become due under a contract,' 31 U.S.C. § 3727(c), and ESCgov arguably qualifies as such an institution, Northrop admits that it did not notify defendant [the Government] of its assignment, as is required by the statute. See 31 U.S.C. § 3727(c)(3); Uniroyal, Inc. v. United States, 454 F.2d 1394, 1396 (Ct. Cl. 1972). Accordingly, the assignment of Northrop's claims under the ICE contract was null and void, as against the United States.

[Emphasis added.] So because Northrop never notified ICE that it was assigning its contract interests to ESCgov, that assignment was voided—as was ESCgov's subsequent assignment to Citizens. But that outcome did not necessarily invalidate Northrop's claim against ICE under the CDA. But then the Judge asked whether Northrop's concealment of the information violated the claim requirements of the CDA. He concluded that Northrop's failure to notify the Contracting Officer of the assignment(s) did violate a required claim element and thus Northrop's claim failed. He wrote, "allowing Northrop – or any other contractor, for that matter – to withhold the fact that it has assigned its claim against defendant not only prevents the contracting officer from analyzing whether the claimant has truly suffered damages, but might prejudice defendant's ability to mount a defense to the claim."

Judge Allegra dismissed Northrop's claim, and concluded by writing—

In sum, the court finds that Northrop's putative claim did not 'contain 'a clear and unequivocal statement that [gave] the contracting officer adequate notice of the basis'' of its claim. … At the least, Northrop needed to reveal that it had assigned its claim to a third party and was pursuing this matter as a sponsor. Revealing these facts was important, not only to alert the contracting officer to the potential application of the Anti-Assignment Act and Severin doctrine, but also to put him on notice as to the possible relevancy of a host of other issues that have been associated with sponsored or 'pass-through' claims. Northrop did not have the right to keep these facts in pectore. For the court to rule otherwise risks converting the CDA claims process into a high-stakes game of cat and mouse, in which some contractors might hope to catch the contracting officer unawares. Those inclined to forgive such gamesmanship in conferring more latitude upon CDA claimants would be well advised to remember that the filing of a claim is not merely a

prerequisite to suit – a way-station along the path to the courthouse – but, rather, a current demand 'for the payment of money in a sum certain.' 48 C.F.R. § 2.101. In fact, Congress created the CDA claims process with the expectation that the wide majority of claims would be resolved by the contracting officer and go no further. Consistent with that intent, a CDA claim ought to put the contracting officer on notice of all critical operative facts, lest a claim that should be denied be granted (or vice-versa). And that means that such a claim ought to reveal that it is only being sponsored by the original contractor.

Before we leave this topic, we wanted to direct interested readers to a discussion of the Anti-Assignments Act over in this Court of Appeals (Federal Circuit) decision. In the matter of Fireman's Fund Insurance Company v. England
, the Court wrote in 2002—

What is commonly called the Anti-Assignment Act consists of two statutory provisions. Title 41 of the United States Code, Section 15(a) (2000) (which deals with 'Public Contracts') provides that '[n]o contract or any interest therein, shall be transferred by the party to whom such contract is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned.' Subsection (b) of that provision states that '[t]he provisions of subsection (a)

shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof

are assigned to a bank, trust company, or other financing institution, including any Federal lending agency.'

Title 31 of the United States Code, Section 3727(a)(1), (b) (2000) (which deals with 'Money and Finance') provides that an 'assignment of any part of a claim against the United States Government or of an interest in the claim may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued.' Subsection (c) makes subsection (b) inapplicable 'to an assignment to a financing institution of money due or to become due under a contract' provided certain conditions (not here involved) are met.

These two provisions together broadly prohibit (with narrow exceptions discussed below) transfers of contracts involving the United States or interests therein, and assignment of claims against the United States. Such contracts (or interest therein) may not be transferred and

such claims may be assigned ‘only after’ they have been allowed in a specific amount and provisions made for their payment.

Northrop Grumman got schooled in the foregoing statutory requirements. And we hope you learned a lesson as well.