Federal Court Jurisdiction Over USDA/ASCS Cases: How and In What Courts Farmers Can Seek Review of USDA Denials of Their Farm Subsidy Payments

ALEXANDER J. PIRES, JR.*
SHELLEY L. BAGOLY**

I. BACKGROUND OF USDA/ASCS PROGRAMS PROVIDING SUBSIDIES TO FARMERS

For decades, Congress has passed acts promulgating differing types of farm programs that entitle farmers to subsidy payments. The United States Department of Agriculture (USDA) is the executive agency charged with implementing these federal farm subsidies. Within USDA, the Commodity Credit Corporation (CCC), through its Charter Act, technically administers the programs.[1] However, the day-to-day operations of programs are performed by employees of USDA's Agricultural Stabilization and Conservation Service (ASCS).[2] In essence, farmers throughout the country sign up for programs with and receive their checks from their local ASCS office, of which there are some 3,000 nationwide.

The Secretary of Agriculture uses local ASCS committees to carry out and enforce the farm programs.[3] The local committees, known as "County Committees," are composed of farmers from the county elected by other farm producers in that county.[4] The County Committees review and vote to approve or to disapprove each farmer's application for participation in the farm programs. If a farmer is unhappy with the determination, he can ask for a reconsideration hearing. If the farmer is again denied payments, he can appeal to the State Committee, which consists of farmers from the state selected by the Secretary of Agriculture (Secretary). Farmers can appeal state ASCS determinations to the national ASCS office in Washington, D.C., headed by the Deputy Administrator, State and County Operations (DASCO). DASCO oversees the programs,[5] renders final determinations in administrative appeals,[6] and supervises the county and state ASCS committees and their staffs.

As part of the regulatory scheme to control farm subsidies, farmers are subject to a $50,000 limitation per "person" in the amount of

---

1. 15 U.S.C. § 714c(g) (1988).
2. 7 C.F.R. §§ 2.21, 2.65 (1990).
3. 16 U.S.C. § 590(h), (b) (1988); 7 C.F.R. § 7.21 (1988).
4. *Id.*
5. 7 C.F.R. § 1421.2 (1990).
6. Administrative appeals are conducted in accordance with 7 C.F.R. § 780 (1990).

payments they may receive. In part, the "payment limitations" provision states:

> Notwithstanding any other provision of law:
>
> (1) For each of the 1986 through 1990 crops, the total amount of payments (excluding disaster payments) that a *person* shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. § 1421 *et seq.*) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.[7]

Although Congress has never defined the term "person," Congress has directed the Secretary to issue regulations defining the term "person."[8] These regulations are set forth in the Code of Federal Regulations.[9]

Every spring, each farmer (whether as an individual, a partnership, or a corporation) includes, in his application to the County Committee, a request to be determined as one or more "persons" for payment limitation purposes. If the farmer disagrees with the number of "persons" he is awarded, an appeal by right through the three-prong administrative hearing system mentioned above may follow.

These so-called hearings are not "adjudications" as defined by the Administrative Procedures Act.[10] Instead, they are informal hearings — more in the form of question and answer sessions — in which the farmer has both the obligation and burden of proving and establishing his right to a specific number of "persons." The Government is not required to present its case; likewise, the right to discovery and the rules of evidence do not apply.[11]

County committee hearings result in a brief (two to three page) written determination written by the county committee members. State committee determinations are seldom much longer, and DASCO final determinations, in only rare cases, contain findings of fact or conclusions of law. Therefore, it is common for a farmer who receives an unfavorable DASCO decision to want to seek review in a federal court. The controlling

---

7. Food Security Act of 1985, Pub. L. No. 99-198, § 1001, 99 Stat. 1354 (current version at 7 U.S.C. § 1308 (1988)) (emphasis added). This provision represented the legislative authority to conduct a payment limitation program for the 1986 crop year. The provision covers the 1987 through 1990 crop years. *Id.*

8. *See* 7 U.S.C. § 1307(4) (1988).

9. 7 C.F.R. § 1497.3(b) (1990). These new regulations were authorized by the Agricultural Reconciliation Act of 1987, Pub. L. No. 100-203, § 1303, 101 Stat. 1330. For contract years prior to 1989, see 7 C.F.R. § 795.

10. 5 U.S.C. § 551 (1988). *See* Hilburn v. Butz, 463 F.2d 1207 (5th Cir.), *cert. denied*, 410 U.S. 942 (1972). *But see* Prosser v. Butz, 389 F. Supp. 1002 (N.D. Iowa 1974).

11. *See* 7 C.F.R. § 780.8 (1990) for the nature of these informal hearings.

statutes and the case law, however, are confusing. This Article analyzes the two federal courts to which ASCS appeals can be taken, the history and limits of their jurisdiction, the arguments that the Government frequently makes to dismiss certain cases brought in each court, and the recent developments within these courts.

II. Judicial Review of ASCS Cases in Federal Courts

A. United States Claims Court Jurisdiction

Congress has enacted two distinct, but in practice almost identical, statutes that provide jurisdiction in the United States Claims Court for claims against the United States.[12] These statutes together are commonly referred to as the Tucker Act. The main difference between the two is that under section 1346(a)(2), district courts and the Claims Court are vested with concurrent jurisdiction if the claim is less than $10,000, while section 1491 deals only with the Claims Court's jurisdiction.[13] In sum, the Claims Court has jurisdiction over all claims against the Government involving a breach of contract, whereas the district courts' jurisdiction ceases whenever a monetary claim exceeds $10,000.[14]

---

12. 28 U.S.C. § 1346(a)(2) (1988); *id.* § 1491(a)(1). Section 1346(a)(2) states as follows:

> Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

Section 1491(a)(1) states:

> The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

13. 28 U.S.C. § 1491(a)(1) (1988).

14. *Id.* § 1346(a)(2).

With respect to jurisdiction in the Claims Court, whether a dispute over subsidy payments between a farmer and USDA is a breach of contract or a dispute involving administrative procedure, such as arbitrary or capricious action, can be critical. This is because the Claims Court's scope of review and its jurisdiction are limited.

The Government generally argues that disputes over farm subsidies are breach of contract suits and not suits for administrative review, and thus should be heard in the Claims Court. This is because contract disputes fit clearly under the Tucker Act while administrative review cases are more within the province of district courts where jurisdiction and relief are more liberal. This insistence by the Government began in the mid-1980s when subsidy payments became a substantial and critical part of most farmers' incomes, and thus became increasingly the subject of litigation:

> [A]fter the shift in the 1983 Payment-In-Kind (PIK) program to the use of binding contracts to guarantee producer compliance with farm program commitments, the USDA and the Justice Department began relying on the Tucker Act, which provides that actions rooted in breach of contract which ask for money damages of more than $10,000 must be brought in the U.S. Court of Claims.[15]

Both USDA and the United States Department of Justice prefer to defend ASCS cases in the Claims Court rather than in federal district courts. Essentially, the preference is because the Claims Court views its scope of review as a limited one — that is, determining whether the agency's ruling had a "rational basis" — a narrow avenue of relief that is usually decided on joint motions for summary judgment rather than in trials.[16] In contrast, federal district courts are more likely to open the record for new evidence, to examine the evidence and the policy behind the program under a broader scope of review, to allow testimony, to consider granting injunctive and/or declaratory relief, and to more closely examine issues of due process.[17] Therefore, the Government has repeatedly relied on the Tucker Act's $10,000 cap to keep ASCS cases in the Claims Court, or to force a transfer of federal district cases to the Claims Court.[18]

---

15. Hamilton, *Legal Issues Arising in Federal Court Appeals of ASCS Decisions Administering Federal Farm Programs*, 12 HAMLINE L. REV. 633, 635 (1989) (citations omitted).

16. *See, e.g.*, Carruth v. United States, 627 F.2d 1068, 1076 (1980); Raines v. United States, 12 Cl. Ct. 530, 537 (1987).

17. *See, e.g.*, Esch v. Yeutter, 876 F.2d 967 (D.C. Cir. 1989), *modifying* Esch v. Lyng, 665 F. Supp. 6 (D.D.C. 1987).

18. Divine Farms, Inc. v. Block, 679 F. Supp. 867, 869 (S.D. Ind. 1988); Gibson v. Block, 619 F. Supp. 1572, 1577 (N.D. Ind. 1985).

Many ASCS cases involve allegations of error in USDA administrative procedure. Although these administrative mistakes or omissions can severely prejudice farmers, they are often found inappropriate for Claims Court review.[19] On the other hand, district courts are more willing to review farm subsidy cases that contain issues of due process or arbitrary or capricious action, stressing the limited scope of the Claims Court's jurisdiction and review.[20]

In addition, certain causes of action, by their nature, preclude Claims Court jurisdiction, despite the Government's preference for that court. It is well settled that the Claims Court does not have jurisdiction to hear claims that are essentially equitable in nature.[21] For example, the Tucker Act[22] does not apply to regulations that are not "money mandating" or to claims that are discretionary.[23]

The Claims Court may not review claims for denial of due process, declaratory judgments, and injunctive relief.[24] This is important because the right to seek injunctive relief or to obtain a quick declaratory judgment can be critical to farmers who need immediate review by federal courts to avoid the impending disaster of bankruptcy or foreclosure. Further, many complaints seeking injunctive relief also seek declaratory judgments. For farmers, a declaratory judgment concerning their rights to payment can be dispositive when determining whether they will receive payments and how many "person" payments they are entitled to.

Bringing suit in Claims Court also may create costly delays. Farmers prefer not to be in the Claims Court because they must wait for USDA's payment deadline to pass before they can actually file suit — prompt receipt of payments is critical to most farmers' existence.[25]

Finally, because there is a strong preference in Claims Court to rule by summary judgment, Claims Court judges often deny plaintiffs the right to discovery. In the last four cases prosecuted by the authors, the

---

19. Raines v. Block, 599 F. Supp. 196, 198 (D. Colo. 1984), *appeal dismissed*, 798 F.2d 377 (10th Cir. 1986).

20. *See infra* notes 65-68 and accompanying text.

21. *See, e.g.*, Esch v. Yeutter, 876 F.2d 976, 982 (D.C. Cir. 1989), *modifying* Esch v. Lyng, 665 F. Supp. 6 (D.D.C. 1987); Pope v. United States, 9 Cl. Ct. 479 (1986).

22. 28 U.S.C. § 1491(a) (1988).

23. Kelly, *In Depth - ASCS Appeals: The equitable authority of DASCO*, AGRIC. L. UPDATE, June 1990, at 6 (citing United States v. Mitchell, 463 U.S. 206, 218-24 (1983)).

24. C. KELLEY & J. HARBISON, A LAWYER'S GUIDE TO ASCS ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW OF ASCS DECISIONS 83 (1990) (citing Morgan v. United States, 12 Cl. Ct. 247, 253 (1987) and Carruth v. United States, 627 F.2d 1068, 1081 (Ct. Cl. 1980).

25. *See generally* Pires & Knishkowy, *Jurisdictional Issues in Payment Limitation Cases*, 2 FARMERS' LEGAL ACTION REPORT (Nov.-Dec. 1987).

judge allowed discovery in only one case. It has been the authors' experience, as plaintiff farmers' lawyers, that these limitations on jurisdiction and review make the Claims Court, at times, a poor choice for the farmer needing relief and review of a case involving administrative error by ASCS or in a case requiring quick injunctive or declaratory relief. Thus, lawyers representing farmers are advised to look to federal district courts for relief.

B. United States District Court Jurisdiction

District courts have concurrent jurisdiction with the Claims Court if the action against the Government does not exceed $10,000.[26] District court jurisdiction is vested under 28 U.S.C. § 1331 for civil actions arising "under the Constitution, laws, or treaties of the United States."[27] As stated earlier, although section 1331 provides jurisdiction over claims for injunctive relief, it has no application when money damages exceed $10,000.[28] However, in some cases, even though the monetary benefit at issue exceeded $10,000, the plaintiff was entitled to seek relief in United States District Court.

In the most famous case, *Bowen v. Massachusetts,*[29] the United States Supreme Court held that a claim may be maintained in a district court even though the ultimate effect of the court's order may result in the payment by the United States in excess of $10,000.[30] In *Bowen*, the Court repudiated the idea that suits seeking monetary relief from the Federal Government are by definition suits seeking "money damages" cognizable only in the Claims Court.[31] The Court relied on an analysis of two provisions of the Administrative Procedures Act (APA).[32]

First, the Court examined section 702, which involves the APA's waiver of federal sovereign immunity. Section 702 states in part:

> The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States. . . . Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss

---

26. 28 U.S.C. § 1346(a)(1) (1988).

27. *Id.* § 1331.

28. *Id.* § 1346. This statute is commonly known as the federal question statute. Declaratory judgments are authorized under 28 U.S.C. § 2201 (1988). *See* Linden, *An Overview of the Commodity Credit Corporation and the Procedures and Risks of Litigating Against It*, 11 J. AGRIC. TAX'N L. 305, 326 (1990).

29. 487 U.S. 879 (1988).

30. *Id.* at 910-12.

31. *Id.* at 893.

32. 5 U.S.C. §§ 702, 704 (1988).

> any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.[33]

Second, the Court analyzed section 704's limitation on reviewability of "final agency action," which states that review is allowed only if there is no other adequate remedy in a court:

> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.[34]

The *Bowen* Court concluded that federal district courts may review agency actions (1) when monetary relief might ensue from a so-called breach of a federal contract if the claim can be construed as more than a monetary claim[35] and (2) when the alternate court (Claims Court) is untenable for purposes of providing adequate relief.[36]

In 1989, the District of Columbia Circuit Court in *Esch v. Yeutter*[37] applied *Bowen* to a farm subsidy case. However, to best understand *Esch*, it is instructive to review the district court's decision in *Esch* and a companion case brought about the same time in another district court.

In *Esch v. Lyng*,[38] which was decided one year prior to *Bowen*, the government determined that nine brothers and sisters were only one "person" for payment limitation purposes.[39] Although the plaintiffs could have brought claims for monies past due, they relinquished those claims in district court to avoid a Tucker Act transfer.[40] Instead, the plaintiffs

---

33. *Id.* § 702.
34. *Id.* § 704.
35. *Bowen*, 879 U.S. at 900-01.
36. *Id.* at 905.
37. 876 F.2d 976 (D.C. Cir. 1989), *modifying* Esch v. Lyng, 665 F. Supp. 6 (D.D.C. 1987).
38. 665 F. Supp. 6 (D.D.C. 1987).
39. *Id.* at 10.
40. *Id.* at 11.

sought (1) injunctive relief, prohibiting the Secretary from suspending their participation in the farm program as nine persons; (2) a declaration that they were eligible to participate as nine "persons"; and (3) an order (pursuant to the APA) setting aside ASCS's "person" determination as arbitrary and capricious, in violation of due process, and unwarranted by the facts.[41]

The district court recognized that the Claims Court would have exclusive jurisdiction *if* "the primary object of a suit is to recover money damages from the United States in excess of $10,000."[42] However, the court noted that if a plaintiff seeks equitable relief that would have "significant prospective effect or considerable value" other than monetary liability, the district court could assume jurisdiction over the nonmonetary claims.[43]

The Esches not only disavowed all claims for monies past due, but also produced evidence that a preliminary injunction would "immediately inure to their benefit by placating creditors who at the moment were threatening to shut down plaintiffs' farm."[44] Thus, the district court granted plaintiffs' injunction and found, *inter alia*, that the defendants had denied the plaintiffs a fair and impartial administrative hearing and that the Government's decision was reached in violation of due process.[45] The district court's holding was remarkably close to the soon-to-be rationale in *Bowen*.[46]

The Government appealed to the District of Columbia Circuit — essentially because the district court's decision represented a challenge to their long-standing policy that farmer-plaintiffs, disgruntled with the administrative process of determining their subsidy payments, could seek relief only in Claims Court.[47]

Shortly thereafter, a second federal district court reached a jurisdictional conclusion similar to *Esch*. In *Justice v. Lyng*,[48] the plaintiffs brought an action for a declaratory judgment regarding their eligibility to participate in an Agricultural Stabilization and Conservation Service (ASCS) program. The Government again argued that such a judgment would result in the plaintiffs' receiving money damages in excess of $10,000, and thus should trigger the Tucker Act.[49] The court ruled,

---

41. *Id.* at 15.
42. *Id.* at 11.
43. *Id.* (citation omitted).
44. *Id.* at 12.
45. *Id.* at 23.
46. *See supra* notes 29-36 and accompanying text.
47. *See Esch*, 876 F.2d at 977-78.
48. 716 F. Supp. 1567 (D. Ariz. 1988).
49. *Id.* at 1568.

however, that plaintiff's action was not an action for "actual, presently due money damages from the United States," but rather an action seeking a determination that plaintiffs were eligible to participate in a program from which benefits could be earned.[50]

In sum, *Esch* and *Justice* introduce the premise that district court jurisdiction over farm subsidy cases is necessary and rational.[51] Together, these two cases held that the Tucker Act does not preclude a district court from reviewing an agency action when the relief sought is something other than money damages, even when the relief may form the basis for a money judgment.[52]

In 1989, the District of Columbia Circuit Court of Appeals affirmed the district court's decision in *Esch v. Lyng* (and, by association, *Justice v. Lyng*).[53] The decision included language directly negating Judge Oberdorfer's "contract" holding in *Baker v. United States*[54] that farm subsidy disputes are contract claims.

> If appellees' suit is not based on a contract with the Federal Government, it cannot lie within the Claims Court's contractual jurisdiction. See 28 U.S.C. § 1491(a). Although appellees signed "contracts" with the Federal Government, and although the Department's regulations denominated the documents executed by the Federal Government and program participants as "contracts," see 7 C.F.R. § 704.1 (1988) (conservation reserve program); *id* §§ 713.490, 713.50 (1988) (price support program), we see no reason to assume that what is involved here is a contract within the meaning of the Tucker Act. As the Supreme Court recently noted "[u]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning de-

---

50. *Id.* (quoting King v. United States, 395 U.S. 1, 3 (1969)).

51. At the same time, a case somewhat similar to Esch v. Lyng, Baker v. Lyng, No. 87-1643-LFO (D. D.C. Aug. 4, 1987) was brought in the United States District Court for the District of Columbia. The plaintiffs disavowed any claim for monetary damages, sought APA review of USDA's "person" determination, and just as the Esch plaintiffs, sought declaratory and injunctive relief. Judge Oberdorfer ignored *Esch v. Lyng* and dismissed the *Baker* action, ruling that the district court lacked subject matter jurisdiction. *Id.* He found the case to be "a suit on a government contract" to be brought in the Claims Court. *Id.* Judge Oberdorfer relied on the CCC anti-injunction statute (discussed *infra* note 77 and accompanying text) as authority for dismissal. *Id.*

52. Tennessee Leech v. Dole, 749 F.2d 331, 336 (6th Cir. 1984), *cert. denied*, 472 U.S. 1018 (1985); 716 F. Supp. at 1568 (citing Laguna Hermosa Corp. v. Martin, 643 F.2d 1376, 1379 (9th Cir. 1981)).

53. Esch v. Yeutter, 876 F.2d 976 (D.C. Cir. 1989).

54. No. 87-1643-LFO (D.D.C. Aug. 4, 1987).

> sirable public policy." [Appellees'] claims arise under a federal grant program and turn on the interpretation of statutes and regulations rather than on the interpretation of an agreement negotiated by the parties. It seems to us, then, that [appellees'] claims are not contract claims for Tucker Act purposes.[55]

In *Esch v. Yeutter*, the court went to great lengths to align itself with the Supreme Court's recent decision in *Bowen v. Massachusetts* which held that the Claims Court has inadequate procedures to review what are essentially administrative procedure (APA) cases:

> [I]t is doubtful that the jurisdictional power of the Claims Court extends to the suit in question. Appellees, we repeat, assert no claim for a sum immediately due and owing by the Federal Government. The statute undergirding their suit does not mandate compensation. Similarly to the one involved in *Bowen*, it "directs the Secretary to pay money[,] . . . not as compensation for a past wrong, but to subsidize future . . . expenditures." Nor do appellees predicate their bid for relief upon the provisions of the contract they have negotiated with the Department of Agriculture. And, like the *Bowen* Court, we believe that district courts are better equipped to understand and evaluate the various factual circumstance of these cases than in the Claims Court, headquartered in Washington, far removed from the controversy, and inconvenient to most of those likely to become litigants. Accordingly, we conclude that the Claims Court does not possess the kind of review procedures which would displace the District Court's APA jurisdiction over appellees' suit.[56]

The Court of Appeals for the District of Columbia Circuit addressed the issue of jurisdiction before reviewing the merits of the case. The Government argued that subject matter jurisdiction is in the United States Claims Court.[57] The Government attempted to portray the Esches' claim as one of money damages in excess of $10,000, cognizable only in the Claims Court. However, because the complaint sought both monetary and equitable relief, the court was faced the identical multiple-claims dilemma addressed in *Bowen*.[58] In *Bowen*, the Supreme Court rejected the premise that actions involving money damages must be brought in the Claims Court.[59] The *Esch* court reviewed and parroted

---

55. *Esch*, 876 F.2d at 978 n.13 (quoting Maryland Dep't of Human Resources v. HHS, 763 F.2d 1441, 1449 (D.C. Cir. 1985)).

56. *Id.* at 985 (citations omitted).

57. *Id.* at 978.

58. *Id.* at 984.

59. *Bowen*, 487 U.S. at 904-05.

the Supreme Court's analysis in *Bowen*, which invoked a two-part test to determine whether a suit was cognizable under the APA.[60] The circuit court traced the analytical line traveled by the Supreme Court in *Bowen* with regard to sections 702 and 704 of the APA, and concluded that the district court possessed jurisdiction over the action.[61]

Addressing the section 702 inquiry, the *Esch* court noted that the appellees sought an injunction against an arbitrary or capricious administrative denial of subsidy payments due to them. The court found that the suit for relief was "certainly not an action for money damages."[62] The court held that the Esches' contention that the Government procedures were flawed and required a redetermination through a fair and impartial hearing was a plea for more than money damages and compensation for legal injury.[63] In a footnote, the court sagely pointed out that "[o]f course, appellees hope that upon a redetermination conducted properly, the evidence will lead to a finding that they are entitled to receive money from the Federal Government, but this result is by no means assured or compelled by the injunction they presently request."[64] The court also noted the speculative nature of appellees' claim because the Government, on redetermination, could again determine that appellees were not entitled to benefits.[65]

Finally, and most importantly for farmers seeking the right to have their day in district court, in conducting its section 704 analysis, the court questioned whether the Claims Court could provide the Esches with the sort of "'special and adequate review procedure' that will oust the district court of its normal jurisdiction under the APA."[66] The court opined that the Claims Court could *not* provide such review and that the Claims Court review was not an acceptable alternative to APA review in district court.[67]

The court's reasoning included the following: The Claims Court lacked equitable jurisdiction to award injunctive relief; the Esches asserted

---

60. *Esch*, 876 F.2d at 979 (citations omitted).

61. *Id.* at 983.

62. *Id.* at 984 (citing *Bowen*, 487 U.S. at 893).

63. *Id.* The *Esch* court went a step further and stated, "Indeed, the monetary aspect of any relief appellees might be entitled to, is much more a matter of guess work than either *Bowen* or *National Association of Counties* involved." *Id.* In *Bowen*, reversal of the administrative decision on the merits resulted in payment of money from the Federal Treasury. *Id.* (citations omitted). In National Ass'n of Counties v. Baker, 842 F.2d 369, 371 (1988), the injunction issued against the Secretary forced the release of specific funds withheld.

64. *Esch*, 876 F.2d at 984 n.68.

65. *Id.* at 984.

66. *Id.* (quoting *Bowen*, 487 U.S. 904) (citations omitted).

67. *Id.*

no claim for a sum immediately due and owing; the underlying statute did not mandate compensation; the Esches did not predicate their claim for relief upon the contract with defendant; and the court's adoption of the *Bowen* conclusion that "district courts are better equipped to understand and evaluate the various factual circumstances of these cases than is the [United States] Claims Court . . . [which is] far removed from the controversy and inconvenient to most of those likely to become litigants."[68]

In sum, with the help of *Bowen*, *Esch* has made the United States district courts an alternative for farmers seeking review of their farm subsidy payment cases.

C. Government's Continuing Opposition to Judicial Review in United States District Courts

Despite *Esch v. Yeutter*, the government continues to challenge farmers who bring suit in district courts. Their four remaining defenses are briefly summarized below.

1. The Tucker Act Defense.—The Government's first line of defense in most cases is that the Tucker Act mandates that all claims for breach of contract exceeding $10,000 be adjudicated in Claims Court. Generally, ninety-nine percent of all ASCS cases involve farmers who are denied participation and monies well in excess of $10,000 (typical cases are in the $50,000 to $250,000 range).[69] It has been the authors' experience that during the past four years the government has filed a motion to dismiss alleging lack of subject matter jurisdiction by reason of the Tucker Act in all suits brought in United States district courts.

2. The CCC Charter Act Defense.—The Commodity Credit Corporation ("CCC"), a federal corporation,[70] is technically vested with congressional authority to implement farm subsidy programs. Whether CCC is named as a party or not, the Government contends that any lawsuit involving farm subsidy monies (CCC funds) must have a basis for jurisdiction in federal district court separate from the CCC's Charter Act.[71] The Government often prevails on its contention that the Charter Act itself does not vest jurisdiction in the federal district courts to hear ASCS cases. Although the jurisdictional hurdle was overcome in cases

---

68. *Id.* at 985.

69. A massive reorganization of American farms took place during 1986-1989, at which time hundreds of thousands of "persons" were created through the formation of new partnerships and corporations. This made the one-"person," mom and pop farm receiving one $50,000 person payment much less prevalent, even in the most rural of areas.

70. 15 U.S.C. §§ 714-714(b) (1988).

71. *Id.* § 714(c).

such as *Robinson v. Block*,[72] *Esch v. Lyng*,[73] *Justice v. Lyng*[74] and *Esch v. Yeutter*,[75] other courts have held that actions involving CCC-funded ASCS programs must be brought in the Claims Court if the amount of relief sought exceeds $10,000.[76]

In addition, the Government often cites a separate part of the CCC Charter Act to keep farmers out of federal district court if the suit involves a plea for injunctive relief. This provision, the Charter Act's "Anti-Injunction" provision, states that CCC "[m]ay sue and be sued, but no attachment, injunction, garnishment or other similar process . . . shall be issued against the Corporation or its property."[77] This argument was successfully used by the government in *Baker v. Lyng* and in other cases.[78] In contrast, other federal district courts have moved away from the "anti-injunction" preclusion of farmer-plaintiffs seeking injunctive relief in federal district courts.[79] However, until further clarification by the circuit courts, the anti-injunction defense will continue to be actively and successfully used by the Government.

3. The Divine Farms Defense.—In *Divine Farms, Inc. v. Block*,[80] the Government succeeded in forcing a farmer plaintiff from federal district court (and into the Claims Court) by persuading the court that plaintiff's claim for monetary damages predominated the claim for equitable relief.[81] The plaintiff sought a program determination or, in the alternative, $90,000 in damages, and also sought injunctive relief. The court concluded that plaintiff's request for monetary damages predominated his claim for equitable relief because plaintiff's claimed injury could be redressed by an award of damages, and this would preclude

---

72. 608 F. Supp 817, 819 (W.D. Mich. 1985).

73. 665 F. Supp. 6 (D.D.C. 1987).

74. 716 F. Supp. 1567 (D. Ariz. 1988).

75. 876 F.2d 976 (D.C. Cir. 1989).

76. *See* United States v. O'Neil, 767 F.2d 1111, 1113 (5th Cir. 1985); Amalgamated Sugar v. Bergland, 664 F.2d 818, 823 (10th Cir. 1981); Raines v. United States, 12 Cl. Ct. 530, 534 (1987); Gibson v. United States, 11 Cl. Ct. 6, 11 (1986); Pettersen v. United States, 10 Cl. Ct. 194, 197, *aff'd*, 807 F.2d 993 (Fed. Cir. 1986); Gibson v. Block, 619 F. Supp. 1572, 1575 (N.D. Ind. 1985); Raines v. Block, 599 F. Supp. 196, 198 (D. Colo. 1984).

77. 15 U.S.C. § 714b(c) (1988).

78. Baker v. Lyng, No. 87-1643-LFO (D.D.C. Aug. 4, 1987). *See also* Stroud v. Benson, 254 F.2d 448, 450 (4th Cir. 1958); Moon v. Freeman, 245 F. Supp. 837, 839 n.3 (E.D. Wash. 1965); Lazer v. Benson, 156 F. Supp. 259, 268 (E.D.S.C. 1957).

79. *See* Iowa Miller v. Block, 771 F.2d 347, 348 n.1 (8th Cir. 1985), *cert. denied*, 478 U.S. 1012 (1986); Justice v. Lyng, 716 F. Supp. 1567, 1569 (D. Ariz. 1988); Mitchell v. Block, 551 F. Supp. 1011, 1015-16 (W.D. Va. 1982).

80. Divine Farms, Inc. v. Block, 679 F. Supp. 867 (S.D. Ind. 1988).

81. *Id.* at 871.

any need for equitable relief.[82] The court found equitable relief "incidental" to the remedy requested — money.[83] The *Divine Farms*' defense is in direct conflict with *Esch v. Yeutter*, thus requiring farmers' lawyers to carefully draft their complaints.[84]

4. The Finality Defense.—When all else fails, the Government always cites the finality rule. Pursuant to 7 U.S.C. §§ 1385 and 1429, decisions of CCC (ASCS determinations) are final and are not reviewable by district courts.[85] This defense was crippled in *Esch v. Yeutter*,[86] and appears to be losing favor in the USDA's Office of General Counsel.[87]

D. Recent U.S. Claims Court Decisions Limit Relief Available To Farmers

Since 1985, the United States Claims Court has heard approximately nineteen farm subsidy ASCS cases. A brief review of these cases reveals that farmers obtained meaningful relief in very few cases. The nineteen cases are listed below in chronological order.

1985

In *Amalgamated Sugar Co. v. United States*,[88] the court found that sugar beet processors who participated in the 1977 price support loan program were entitled to recover costs of storing sugar beyond the original maturity date of the loan. The regulations, prohibiting the accounting method used by the processors, only applied to the payment program, not to the loan program in which the processors participated.[89]

1986

In *Pettersen v. United States*,[90] the Government's determination that farmers were ineligible for the 1984 Feed Grain program was upheld.

In *Gibson v. United States*,[91] the court found that the Government's determination of a farmer's ineligibility for 1983 PIK program was not arbitrary or capricious.

---

82. *Id.*

83. *Id.*

84. For an excellent, in-depth analysis of *Divine Farms* and its conflict with *Esch v. Yeutter*, see C. KELLEY & J. HARBISON, *supra* note 24 at 71-78.

85. 7 U.S.C. §§ 1385, 1429 (1988).

86. 876 F.2d 976 (D.C. Cir. 1989).

87. Interestingly, the government has never explained why the finality defense does not preclude review by the United States Claims Court.

88. 770 F.2d 1042, 1043 (Fed. Cir. 1985).

89. *Id.* at 1044.

90. 10 Cl. Ct. 194, 199, *aff'd*, 807 F.2d 993 (Fed. Cir. 1986).

91. 11 Cl. Ct. 6, 16 (1986).

In *Haupricht Brothers, Inc. v. United States*,[92] the Claims Court affirmed that farmers were found ineligible for 1983 PIK program.

1987

In *Hilo Coast Processing v. United States*,[93] the court held against the plaintiffs, but the Federal Circuit reversed, and found that the plaintiffs were eligible under the 1977 sugar crop price support payment program, and that the plaintiffs had been singled out for seemingly unfair treatment.

The plaintiff's case in *Morgan v. United States*[94] was dismissed for lack of jurisdiction.

In a case reviewing of a 1983 PIK program, *Raines v. United States*,[95] the plaintiffs sought relief in the form of wheat, diversion payments, treatment costs, and storage costs. The plaintiffs' claim for wheat due under the original contract term fell outside the Claims Court's "incidental equitable powers" under 28 U.S.C. § 1491(a)(1), and was dismissed because it could not be construed as a claim for money damages.[96]

Hanson v. United States[97] involved a 1977 FMHA regulation violation and breach of implied-in-fact contract. The court found that no cause of action for money damages existed under regulations and statutes implementing emergency agriculture loans.[98] The court held that it had no jurisdiction over due process claims.[99]

1988

Willson v. United States[100] involved the 1985 Price Support and Production Adjustment program. The court found that the ASCS decision in which plaintiffs were found to be one "person" was "rationally based."[101]

A 1984-85 Milk Diversion Program case, *O'Connell v. United States*,[102] was remanded to permit the farmer to present evidence.

---

92. 11 Cl. Ct. 369, 374 (1986).
93. 816 F.2d 629, 634 (Fed. Cir. 1987).
94. 12 Cl. Ct. 247, 254 (1987).
95. 12 Cl. Ct. 530 (1987).
96. *Id.* at 535.
97. 13 Cl. Ct. 519 (1987).
98. *Id.* at 534.
99. *Id.* at 532.
100. 14 Cl. Ct. 300 (1988).
101. *Id.* at 309.
102. 14 Cl. Ct. 309, 317 (1988).

In another Milk Diversion Program case, *Grav v. United States*,[103] farmers on appeal alleged that the Secretary promulgated regulations inconsistent with the statutory scheme, and they prevailed.

In *Swartz v. United States*[104] the farmers, in this 1982-83 Commodity Price Support Program case, lost on the merits.

A civil penalty was assessed against the producers in *Parks v. United States*[105] for knowingly violating provisions of the 1984-85 Milk Diversion Program. On appeal to the Claims Court, the producers lost.[106]

Durant v. United States[107] involved farmers alleging breach of contract against ASCS for failure to make feed grain payments under the 1985 price support and production adjustment programs. The plaintiffs lost on the merits.[108]

1989

In *Frank's Livestock & Poultry v. United States*,[109] the farmers alleged, among other things, constitutional violations against the United States, which did not state claims for monetary relief. The Claims Court contended it had no jurisdiction over the claims.[110]

Grav v. United States[111] was a rare 1989 victory. Cow sellers were granted relief, and the Secretary of Agriculture's decision previously denying sellers' participation in 1984-84 Milk Diversion Program was reversed.[112]

1990

In one of five 1990 cases, *Stegall v. United States*,[113] two partnerships sought review of a "one-person" determination regarding the 1986 farm subsidy program. The court denied both parties' motions for summary judgment, and stated that it could not resolve the issues of the case without complete factual findings. The case was remanded to the USDA.[114]

Abound Corp. v. United States[115] involved the 1986 and 1987 Price Support and Production Adjustment programs for wheat and feed grains.

---

103. 14 Cl. Ct. 390, 394-96 (1988).
104. 14 Cl. Ct. 570, 579 (1988).
105. 15 Cl. Ct. 183 (1988).
106. *Id.* at 192.
107. 16 Cl. Ct. 447 (1988).
108. *Id.* at 453.
109. 17 Cl. Ct. 601 (1989).
110. *Id.* at 607.
111. 886 F.2d 1305 (Fed. Cir. 1989).
112. *Id.* at 1309.
113. 19 Cl. Ct. 765 (1990).
114. *Id.* at 765.
115. No. 739-88C (Cl. Ct. June 22, 1990).

The Government's ruling that plaintiffs adopted a "scheme and device to evade payment limitation regulations" was upheld by the Claims Court.[116]

In *Martin v. United States*,[117] another Dairy Termination Program case, the court upheld the Government's finding of a penalty, declaration of ineligibility to receive compensation, and the requirement that the farmer still adhere to the five-year nonproduction agreement.

Stevens v. United States[118] was a Price Support and Production Adjustment Program case. Plaintiffs lost despite various inconsistencies within the administrative record. The Claims Court held that these inconsistencies were allowed by regulation, because DASCO's final decision had a proper basis in the record.[119]

In *Rieschick v. United States*,[120] a Dairy Termination Program case, the Claims Court granted defendant's motion for summary judgment, finding the Government's determination against the farmer to have a rational basis.

It is obvious from this review that few farmers have obtained relief in the Claims Court. The reasons are fourfold: (1) The Claims Court's preference for resolution by summary judgment often vastly reduces the merits of the case to restricted issues of law, to which the court usually gives great deference to the agency's determination of the underlying statute; (2) the Claims Court's view of its limited scope of review — if there is a rational basis, the case stands affirmed — encourages the agency to write final determinations that appear rational even if they result from a denial of due process, an area where the Claims Court has been reluctant to venture; (3) the Claims Court refuses to review due process claims that are not blatantly offensive; and (4) the judges often lack experience in making an APA-type review. Consequently, for the farmer, there are obvious shortcomings to filing suit in the Claims Court. Although it is often quicker (by reason of summary judgment) and cheaper (no disputes over jurisdiction mean less legal fees) than suit in federal court, the results of recent years are not encouraging. In contrast, district court judges appear to be, of late, more pro-farmer and more innovative in their interpretation of ways to fairly adjudicate farmers' claims of denial of due process or other administrative abuses.

III. Conclusion

Obtaining relief in United States Claims Court can be difficult. The authors have represented plaintiffs in numerous cases in United States

---

116. *Id.*
117. 20 Cl. Ct. 738 (1990).
118. 21 Cl. Ct. 195 (1990).
119. *Id.* at 202.
120. 21 Cl. Ct. 621 (1990).

Claims Court and district courts throughout the country, and find the latter a preferable venue, even though it may be more costly to the client because of the Government's continuing insistence on litigating jurisdiction.