

Advanced-Technology Car Companies Run Out of Gas

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XP Vehicles, an advanced technology vehicle company, and Limnia, Inc., an advanced technology energy system company (collectively “XP”), joined forces to produce state-of-the-art cars. Together, the companies applied for a \$40 million loan under a federal program administered by the U.S. Department of Energy for this purpose. However, DOE denied their loan applications, and both companies sued in the U.S. Court of Federal Claims, alleging that DOE denied their applications in breach of the agency’s regulations, policies, and an implied-in-fact contract, which included an implied duty of good faith and fair dealing. The United States moved to dismiss their lawsuit under Rules 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state claim on which relief can be granted).

The Court granted the Government’s motion to dismiss on both grounds. First, the Court held neither the statute nor the regulation that created the federal loan program was money-mandating. Therefore, without a substantive right to monetary compensation, the CFC could not assume jurisdiction over the claims. In addition, the Court held that the Tucker Act does not allow suits against the United States implied-in-law. Here, the Court concluded that XP’s promissory estoppel claim was essentially a claim for an implied-in-law contract, and the Court lacked jurisdiction to hear that claim.

Finally, the Court concluded that XP could not establish that the parties reached an agreement constituting an implied-in-fact contract. The Court explained that “there is nothing inherent in an agency’s invitation to the public to apply for a loan that constitutes an offer to contract.” Likewise, “a federal statute or regulation does not inherently create a contractual relationship between an individual and the government.” Finally, the Court noted that “[a]llegations of misconduct do not establish that a contract between the DOE and plaintiffs existed, nor breach thereof.”

Read full decision [here](#).