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# Nixing Gov't Immunity Too Giant A Leap In Moon Dust Fight



By [Daniel Wilson](#)

*Law360* (April 18, 2019, 9:07 PM EDT) -- NASA escaped a suit seeking a ruling that a woman owns moon dust gifted to her by prominent astronaut Neil Armstrong despite NASA's claims to ownership over all lunar material, after a Kansas federal judge ruled there was no action by the agency to form the basis of a lawsuit.

There is no specific action by NASA or a NASA employee underlying Laura Murray Cicco's suit to support a waiver of the agency's sovereign immunity, U.S. District Judge Eric F. Melgren said Wednesday, dismissing Cicco's bid for a declaratory judgment that she legally owns the vial of moon dust.

"Plaintiff does not allege any unlawful action, or inaction, by an agency or employee," the judge said. "There are no allegations that defendant, or any of its employees or officers, have performed any actions or failures to act in this case. Instead, she simply seeks a declaration that she is the rightful owner of a vial containing dust from the moon."

According to the June 2018 complaint, Cicco owns a vial of grey moon dust given to her as a child by her mother.

The vial was accompanied by a business card with a message addressed to Cicco under her maiden name, Laura Ann Murray, wishing her luck, signed by Neil Armstrong — the commander of the landmark Apollo 11 mission and first man to walk on the moon — she claimed.

Armstrong, a former naval aviator before joining the space program, was friendly with Cicco's father Tom Murray, another former military pilot, and had taught at the University of Cincinnati at the same time as the Murray family lived in the city, Cicco said.

The signature has been authenticated by an expert, and testing has confirmed that the dust in the vial contains material from both the moon and from Earth — possibly vacuumed from the space suit of an astronaut who touched down on the moon — according to the complaint.

Cicco claimed that despite there being no law against private persons owning or possessing any material from the moon, NASA has taken the position — in a separate lawsuit not involving her — that all "lunalogic" material on Earth belongs to the agency, and sought a ruling that she is the legal owner of the moon dust in the vial.

But to establish the court's jurisdiction to make such a ruling, her suit would have to get past NASA's usual sovereign immunity, and there is no basis to waive that immunity, Judge Melgren ruled.

Neither the Declaratory Judgment Act nor federal lien enforcement law offers any waiver of sovereign immunity, the judge said.

And although Cicco has argued that she can pursue her suit under a "right of review" clause in the Administrative Procedure Act covering "agency actions" that have an adverse effect and a non-monetary solution, that was also inapplicable in her case, given there was no relevant agency action at all, Judge Melgren claimed.

Even if there were a basis to waive sovereign immunity, there was no other statutory basis that could establish subject matter jurisdiction, Judge Melgren ruled.

Christopher M. McHugh of [Seigfreid Bingham PC](#), counsel for Cicco, said in a statement Friday that they were "disappointed" in the decision.

Bob Jacobs, a spokesman for NASA, said that although Armstrong's signature on the card owned by Cicco "appears to be authentic," NASA is less convinced of the authenticity of the moon dust in her vial and instead "suspect it was a father trying to do something nice for his young daughter."

"NASA has always questioned whether or not Neil would have been able to collect vials of lunar dust to publicly hand out, something that would have been very difficult, highly unlikely, and ultimately illegal," Jacobs said. He noted the space agency will keep an eye on any further related legal developments.

The underlying lawsuit mentioned by Cicco in which NASA has sought to establish its ownership of lunar materials was filed in 2013 by Joann Davis, the widow of a NASA engineer who worked on the Apollo 11 mission and had paperweights containing lunar rock and part of the Apollo 11 heat shield.

Davis had the lunar rock paperweight seized as part of a sting operation after contacting NASA about her intention to sell it to help pay her son's medical costs, and sued over her allegedly wrongful arrest and seizure, arguing she had not broken the law.

Davis claims the seized lunar rock had been valued at around \$1.7 million before being seized; an Apollo 11 lunar sample bag containing moon dust later sold for \$1.8 million at auction in 2017 after NASA lost another legal fight to keep the bag, which it had earlier mistaken for a similar bag and sold at auction.

Cicco is represented by Christopher M. McHugh and Christopher C. Tillery of [Seigfreid Bingham PC](#).

NASA is represented by Stephen R. McAllister and Brian D. Sheern of the [U.S. Attorney's Office for the District of Kansas](#).

The case is [Cicco v. National Aeronautics and Space Administration](#), case number [6:18-cv-01164](#), in the U.S. District Court for the District of Kansas.

--Editing by Connor Relyea.

*Update: This story has been updated to include comment from NASA and counsel for Cicco.*

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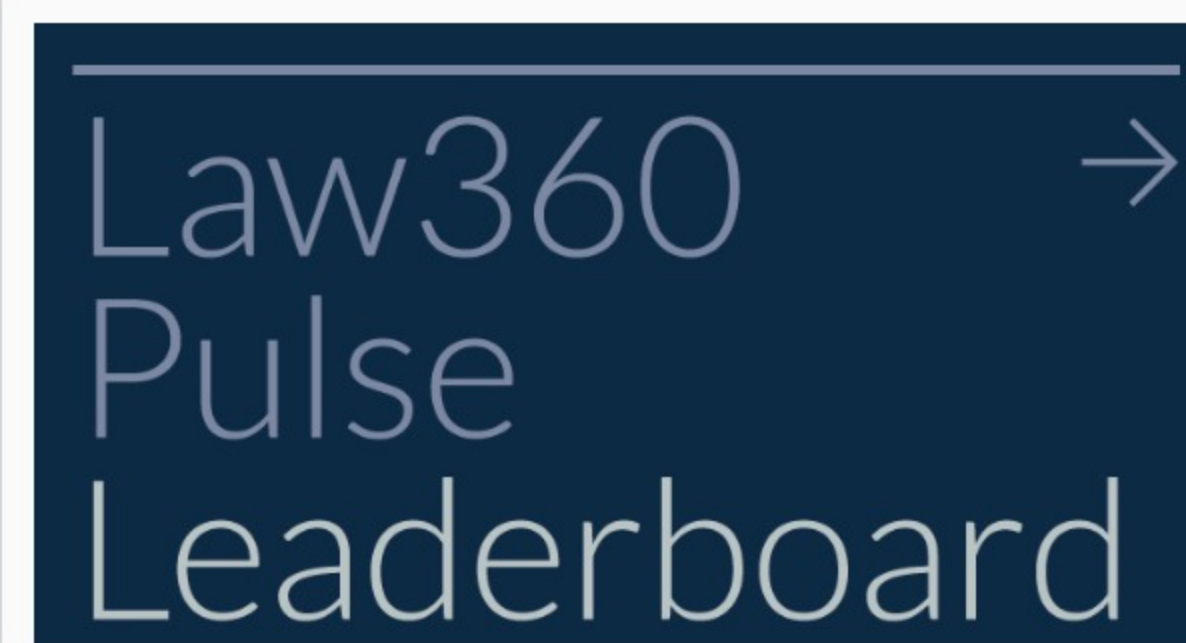
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