



March 28, 2007

SUPREME COURT CURBS ABUSIVE FALSE CLAIMS ACT LAWSUITS (*Rockwell Int'l Corp. v. United States ex rel. Stone*)

The Washington Legal Foundation (WLF) scored a victory yesterday when the Supreme Court ruled that a whistle-blower cannot receive as a bounty a portion of the fine recovered by the government in a False Claims Act (FCA) case unless that person is an "original source" of the fraud claims that the jury ultimately found against the company. This ruling will likely deter future filings by whistle-blowers hoping to force a settlement with government contractors when they do not have direct and independent knowledge or evidence of the alleged fraud, or hope to "piggy back" on the government's claims that ultimately prevail at trial.

The FCA forbids government contractors from submitting claims for payment to the federal government for goods or services where the work performed did not fully meet government requirements as specified in the contract. The FCA also has a very narrowly drafted "qui tam" provision that allows certain relators or whistle-blowers to file suit on behalf of the government if they are an original source of the information of the claims that were shown to be false. If they prevail at trial, the court may award them a bounty between 15 and 30 percent of the recovery from the contractor, and up to 25 percent if the government intervenes and successfully prosecutes the case.

In *Rockwell Int'l Corp v. U.S. ex rel. Stone*, the relator claimed that Rockwell disposed of certain waste materials in a manner that did not fully comport with the contract terms. After it became public that the government was investigating the company, Mr. Stone filed an FCA lawsuit claiming he was an "original source" of the claims. However, the Justice Department intervened and amended the complaint to allege different claims of fraud and prevailed only on those claims at trial. Nevertheless, the court of appeals ruled that the relator could be considered an "original source" and receive up to 25 percent of the \$4.2 million fine recovered. WLF argued in its brief, and the Supreme Court agreed, that since the relator never had direct and independent knowledge of the information that was proven at trial, he could not, by definition, be an "original source" of that information.

WLF's brief was filed with the *pro bono* assistance of Alan I. Horowitz, Robert K. Hoffman, Peter B. Hutt, II, and R. Weston Donehower of the Washington, D.C., law firm of Miller & Chevalier.

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