



**June 16, 2008**

## **SUPREME COURT REDUCES CONTRACTOR EXPOSURE TO LIABILITY UNDER THE FALSE CLAIMS ACT**

*(Allison Engine Co. v. U.S. ex rel. Sanders)*

The Supreme Court unanimously ruled last week that a government subcontractor cannot be held liable under the False Claims Act (FCA) for submitting a false claim to a prime contractor for payment if there was no evidence showing that the subcontractor intended the claim to be material to the government's decision to pay or approve the prime contractor's claim. The decision reversed a lower court decision that, if left intact, would have expanded liability under the FCA beyond that intended by Congress. However, Senator Charles Grassley has indicated that he will amend his pending bill in Congress to reform the FCA to overturn the Supreme Court decision.

The decision in *Allison Engine Co. v. U.S. ex rel. Sanders* was a victory for the Washington Legal Foundation (WLF), which filed a brief urging the Court to reverse a lower court ruling finding the subcontractor liable where there was no evidence the subcontractor presented a claim to the government or that the U.S. Treasury suffered any financial loss due to the alleged false claim. WLF's brief was drafted with the *pro bono* assistance of John T. Boese, Michael J. Anstett, Kerry Hotopp, and Karen S. Bloom, of Fried, Frank, Harris, Shriver & Jacobson, LLP in Washington, D.C.

WLF's brief presented an exhaustive historical analysis of the FCA demonstrating that Congress intended a showing of financial loss to the Treasury and a causal link between the alleged fraud and the loss. Otherwise, any company doing business with a government contractor runs the risk of being sued under the FCA for seeking payment for work from that contractor, even though no claim was ever presented to the government for payment and there was no intent by the subcontractor for the government to rely on the claim as a condition for payment.

Under the False Claims Act, a suit may be brought by the United States or a private relator or whistleblower on behalf of the government against a company for submitting a false claim for payment for goods or services that were, in fact, not delivered or not provided according to the specifications under the government contract. A private relator bringing such a suit under the *qui tam* provisions of the law can recoup up to 25 percent of the overpayments made to the contractor as a bounty.

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For further information, contact WLF's Senior Executive Counsel, Paul Kamenar, at 202-588-0302. A copy of WLF's brief is posted on its website at [www.wlf.org](http://www.wlf.org).