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WLF Seeks Supreme Court Review of Erroneous False Claims Act Ruling

(Purdue Pharma L.P. v. United States ex rel. May)

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—Rich Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that undermines the ability of defendants to contest *qui tam* lawsuits filed against them under the federal False Claims Act. In a brief filed in support of a petition for review filed by a pharmaceutical company alleged to have promoted one of its drugs based on false claims, WLF argued that private individuals should not be permitted to file suit in the name of the federal government against a company doing business with the government, if they have no personal knowledge of wrongdoing and are simply basing their claims on publicly available reports.

The False Claims Act (FCA) allows the federal government to sue for reimbursement of funds it paid out in response to false claims. The act includes a unique “*qui tam*” provision, which allows individuals to appoint themselves as private attorneys general and file suit in the name of the federal government for the recovery of funds that were improperly paid. The *qui tam* provision allows genuine whistleblowers to assist the government in uncovering fraud and recovering taxpayer dollars. But it also gives rise to parasitic lawsuits by individuals who have no unique knowledge of fraudulent activity but are attracted by the generous bounties available under the FCA—up to 30% of all amounts recovered, plus attorney fees.

In order to cut back on parasitic *qui tam* lawsuits, Congress adopted a statute (known as the “public-disclosure bar”) that bars *qui tam* lawsuits by those who lack personal knowledge of wrongdoing, if the suit is filed after there has been a public disclosure of the allegations asserted in the complaint. WLF’s brief argues that a decision by the U.S. Court of Appeals for the Fourth Circuit has interpreted the public-disclosure bar far more narrowly than Congress intended, with the result that the law now lacks an effective deterrent against litigants who seek to recover bounties despite failing to provide the government with any meaningful information.

After filing the brief, WLF issued the following statement by Chief Counsel Richard Samp: “Ersatz whistleblowers should not be permitted to collect bounties by filing lawsuits based on alleged wrongdoing that has already been widely reported. Genuine whistleblowers have a legitimate role to play in uncovering fraud by government contractors, but taxpayer dollars should not be used to pay bounties to professional litigants who provide no useful information to the government. Congress adopted statutes designed to prevent parasitic lawsuit, and it is now up to the courts to make sure they are enforced.”

WLF is a public interest law firm and policy center that regularly litigates in support of tort reform, to ensure that the costs of unwarranted lawsuits do not drive up costs for all consumers.