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Supreme Court Resolves 'Presentment' Issue; Limits Scope of False Claims Act Liability

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The U.S. Supreme Court unanimously overturned the Sixth Circuit's recent expansion of False Claims Act (FCA) liability. Allison Engine Co. v. United States ex rel. Sanders*, No. 07-214, 553 U.S. ___, slip op. (June 9, 2008). The Court held that 31 U.S.C. §§ 3729(a)(2) and (a)(3) do not premise the FCA's treble damages liability on the "presentment" of a false record or statement to the government; rather, those FCA sections require proof that the defendant intended the false record or statement to be material to the government's decision to pay or approve a false claim. This decision should limit liability for companies that work as subcontractors on government projects or otherwise indirectly receive government funds.*

As noted in our November 2, 2007 client alert,[1] the *Allison Engine* case involves claims that three subcontractors sought to defraud the United States under contracts for the construction of engines for 50 United States Navy warships. The *qui tam* relators—former employees of the defendants—allege that the subcontractors falsely certified that their work complied with the Navy's requirements and submitted invoices for payment.

At the close of relators' case at trial, the district court granted defendants' motion for judgment as a matter of law for lack of any evidence that defendants submitted the purported false claims—invoices for payment—to the Navy. The Sixth Circuit reversed the district court's ruling as to 31 U.S.C. §§ 3729(a)(2) and (a)(3),[2] holding that liability may be imposed for a false claim that is not presented to the government so long as government money is used to pay the claim. The Sixth Circuit's ruling conflicted with the D.C. Circuit's ruling in *United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004).

[1] "Supreme Court to Address 'Presentment' Requirement Under False Claims Act" (Nov. 2, 2007).

[2] § 3729(a)(2) imposes civil liability on any person who makes a false statement "to get" a false or fraudulent claim paid by the government, and § 3729(a)(3) imposes liability on any person who conspires to defraud the government by obtaining payment for a false claim.

Addressing § 3729(a)(2), the Supreme Court held that "a person must have the purpose of getting a false or fraudulent claim 'paid or approved by the Government' in order to be liable under § 3729(a)(2)." *Allison Engine Co*., slip op. at 5. This holding limits the scope of § 3729(a)(2) in three important ways. First, plaintiffs must now prove that a defendant acted with specific intent or purpose to defraud the government. Second, the defendant is only liable if it seeks payment, or seeks to cause payment, by the government itself (as opposed to merely seeking payment of government funds). Third, the false statement itself must be a "condition of payment"—in effect imposing a requirement of proof of materiality. At the same time, the Court ruled that § 3729(a)(2) does not require that false claims be "presented" to the government by the defendant. *Id*. at 7.

Accordingly, a subcontractor may be liable under § 3729(a)(2) if it submits a false statement to a prime contractor with the intention of getting the government to pay a false claim, but not if it only seeks to defraud the prime contractor. *Id*. at 8. The Court reasoned that "[r]ecognizing a cause of action under the FCA for fraud directed at private parties would threaten to transform the FCA into an all-purpose antifraud statute." *Id*. at 8-9. Further, "[e]liminating this element of intent [that the Government itself pay the claim] … would expand the FCA well beyond its intended role of combating 'fraud against the *Government*.'" *Allison Engine Co*., slip op. at 5 (*quoting Rainwater v. United States*, 356 U.S. 590, 592 (1958) (emphasis added by Supreme Court). Without this requirement, "the reach of § 3729(a)(2) would [] be 'almost boundless.'" *Id*. at 5 (*quoting Totten*, 380 F.3d at 496).

The Court applied the same "intent" requirement to FCA conspiracy liability, holding that § 3729(a)(3) requires proof "that the conspirators intended 'to defraud the Government.'" *Id*. at 9. The Court also held that there is no "presentment" requirement for conspiracy liability relating to submission of false records or statements. *Id*. Rather, liability for such conduct requires proof "that [the conspirators] agreed that the false record or statement would have a material effect on the Government's decision to pay the false or fraudulent claim." *Id*. In other words, conspirators must intend to seek payment by the government—not just payment of government funds.

The *Allison Engine* ruling effectively limits the False Claims Act to cases that involve actual fraud on the government, as opposed to the wide variety of disputes between private parties in which funds can ultimately be traced back to the government. The decision is an important victory for companies that do business with the government, directly or indirectly. This victory could, however, be short-lived if Congress passes proposed legislation dubbed the "False Claims Act Corrections Act." In the words of its sponsor, Senator Chuck Grassley of Iowa, the bill seeks to tie "liability directly to government money and property." *Statements on Introduced Bills and Joint Resolutions*, 153 Cong. Rec. S. 11506 (2007) (statement of Sen. Grassley, Member, S. Judiciary Comm.). Among other changes, this bill seeks to revise the language of § 3729(a)(2) to eliminate the requirement that a defendant seek payment "by the Government"—leading to the possibility of greatly expanded FCA liability. In response to the *Allison Engine* decision, we may well see a resurgence of legislative activity.

Live Link

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