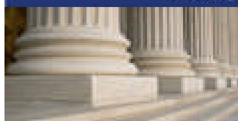

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MLA Unanimous Qui Tam Victory at Supreme Court: False Statement Must Be "Intended to Get" The Government to Pay the False Claim

On June 9, 2008, the Supreme Court significantly narrowed the reach of the civil False Claims Act in cases premised upon "false statements." In a unanimous decision, the Court held that a subcontractor's false statement to a prime contractor does not give rise to liability unless the plaintiff proves that the subcontractor intended both that its statement be used by the prime contractor, and be materially relied upon by the Government, in paying the claim. *Allison Engine Co. Inc., et al. v. United States ex rel. Sanders et al.,* 553 U.S. ___, No. 07-214, Slip Op. at 2 (June 9, 2008).

Courts had been split as to whether a plaintiff alleging a false statement (subsection 3729(a)(2)) or a conspiracy (subsection 3729(a)(3)) is required to prove that a false statement was "presented" to the Government, or whether it is sufficient simply to prove that the claim ultimately was paid with federal funds. While the parties framed the issue in terms of the "presentment" requirement, the Supreme Court formulated a different rule based upon its reading of the statute – a rule that imposes a difficult hurdle for plaintiffs to overcome, particularly if there is no evidence that the alleged false statement actually found its way to the Government.

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The *qui tam* relators alleged that first-tier subcontractor Allison and two of its lower-tier subcontractors knowingly had submitted false claims for payment that ultimately were paid with Government funds. At trial, however, relators offered no evidence that any of the alleged false claims or false statements had been presented to the Government by defendants or by the prime contractor. Following the close of relators' case to the jury, the district court granted defendants' motion for judgment as a matter of law because relators did not offer evidence that the alleged false statement actually had been presented to the Government, nor evidence that any false claims had been submitted to the Government. The Sixth Circuit reversed, reasoning that subsections(a)(2) and (a)(3) do not contain the word "presented," which is found in subsection (a)(1); and to establish FCA liability, it is sufficient to prove that a claim has been paid with federal funds.

In proceedings before the Supreme Court, relators and the Government adopted the Sixth Circuit's position. Defendants argued that a "federal funds" standard would result in boundless liability under the FCA and that there must be a factual nexus between the false statement and the Government's payment decision.

The Supreme Court agreed with defendants that the Sixth Circuit's holding that the FCA applied to any claim paid with federal funds "impermissibly deviates from the statute's language" and would "expand the FCA well beyond its intended role." While the Court clarified that it is not necessary to prove that the

false statement actually was submitted to the Government, the Court held that the false statement must be made "for the purpose of getting a false or fraudulent claim paid or approved by the Government." Thus, a subcontractor violates § 3729(a)(2) "if the subcontractor submits a false statement to the prime contractor intending for the statement to be used by the prime contractor to get the Government to pay its claim." In that regard, there must be a "direct link between the false statement and the Government's decision to pay or approve the false claim," and proof that the contractor "intended" the Government to rely on that false statement as a condition of payment." This standard echoes the traditional test for proximate cause.

The Supreme Court's decision in *Allison Engine* significantly alters the landscape of FCA liability. In the context of subcontractor liability, it may be difficult for a plaintiff to prove the necessary intent in the absence of evidence that the underlying false statement actually made its way to the Government. In addition, the Court's focus on "materiality," as an element of a false statement by a subcontractor, likely would apply as well in cases brought against prime contractors. Thus, the decision serves to confirm that materiality is a required element of a false claim, notwithstanding the absence of that requirement from the statute itself.

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