

Advisory

HEALTH CARE COMPLIANCE

AND INVESTIGATIONS | JULY 2008

WIGGIN AND DANA

Counsellors at Law

Allison Engine Co., Inc. v. United States ex rel Sanders

Contacts

Maureen Weaver

203-498-4384
mweaver@wiggin.com

James I. Glasser

203-498-4313
jglasser@wiggin.com

Joseph W. Martini

203-498-4310
jmartini@wiggin.com

On June 9, 2008, the United Supreme Court released a unanimous decision in *Allison Engine Co., Inc. v. United States ex rel Sanders*, 553 U.S. ___ (2008), limiting the scope of the False Claims Act.

The False Claims Act (FCA) was originally enacted in the Civil War era to facilitate prosecution of profiteers defrauding the Union army. The Act created civil liability for knowingly using a “false record or statement to get a false or fraudulent claim paid or approved by the government,” and for conspiring “to defraud the government by getting a false or fraudulent claim allowed or paid.” 31 USC §3729(a)(2) and 3729(a)(3). In the *Allison Engine*, case the Supreme Court granted certiorari to decide the required relationship between the party making the alleged false statement on the one hand and the Government on the other, in order to sustain a viable FCA claim.

The Facts

The United States Navy contracted with two shipyards to produce a new class of guided missile destroyers. The shipyards subcontracted Allison Engine, Co. to produce the generators for the ships. Allison Engine, in turn subcontracted General Tool Company, who further subcontracted Southern Ohio Fabricators, Inc. to manufacture essential components. Two whistleblowers from the General Tool Company filed a FCA suit against Allison Engine alleging that Allison Engine submitted Certifications of Compliance (COCs) to the shipyards representing that the generators were manufactured in accordance with the Navy’s specifications even though Allison Engine knew that the generator sets did not meet spec. The Government joined the case, as it is permitted to do under the FCA, and the case was tried to a jury.

After the close of the Government's case, Allison Engine moved for judgment as a matter of law, alleging that there can be no FCA liability where there was no evidence that the claims for payment were submitted to the United States Government. The defendant argued that the evidence introduced at trial showed only that Allison Engine submitted claims to the private, non-governmental entities with which they contracted. In response, the Government argued that submitting false claims to a private entity which are ultimately paid with government funds is sufficient to create False Claims Act liability. The District Court rejected the Government's argument and granted Allison Engine's motion to dismiss. The Government and the whistleblowers appealed to the Court of Appeals for the Sixth Circuit, which reversed the District Court and ruled that "proof of an intent to cause a false claim to be paid by a private entity using Government funds was sufficient" to create False Claims Act liability.

The Supreme Court

The United States Supreme Court unanimously ruled that FCA liability requires proof that the defendant intended that the Government pay the false claim. Vacating the Sixth Circuit decision, the Court found that merely being paid with funds that originated from the Government is not enough of a nexus to the Government to create FCA liability.

Importantly, the Court did not rule that FCA liability requires contractual privity with the Government or the presentation of a false claim directly to the Government. Rather, the Court held that for FCA liability to attach, evidence must show "that the defendant made a false record or statement for the purpose of getting a false or fraudulent claim paid or approved by the Government." *Id.* at *8. Therefore, although a subcontractor is not in contractual privity with the Government and is not presenting claims directly to the Government, the subcontractor, nevertheless, violates the FCA 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." *Id.* The Court focused on the defendant's intent instead of on its relationship to the Government.

This ruling applies to the FCA prohibition found at Title 31 U.S.C. §3729(a)(2) proscribing the use of a "false record or statement to get a false or fraudulent claim paid or approved by the government," and the proscription found at Title 31 U.S.C. §3729(a)(3) regulating an agreement "to defraud the government by getting a false or fraudulent claim allowed or paid." In both instances, the the defendant's intent is the critical inquiry to determine whether there was intent "to get" the Government to pay for the claims.

The Supreme Court explained that the FCA's text imposes liability when a person knowingly submits a false record or statement "to get a false or fraudulent claim paid or approved by the Government." The phrase, "[t]o get" denotes purpose, and thus a person must have the purpose of

ADVISORY

HEALTH CARE COMPLIANCE AND INVESTIGATIONS

Allison Engine Co., Inc. v. United States ex rel Sanders CONTINUED

WIGGIN AND DANA

Counsellors at Law

getting a false or fraudulent claim ‘paid or approved’ by the Government in order to be liable . . . getting a false or fraudulent claim ‘paid . . . by the Government’ is not the same as getting a false or fraudulent claim paid using ‘government funds.’” 553 U.S. *5.

The Court further explained that reading the Act more broadly to mean that any false claim paid for with Government funds falls under FCA jurisdiction would, “expand the FCA well beyond its intended role of combating ‘fraud against the *Government.*’” *Id.* For example, under that broader reading, “liability could attach for any false claim made to any college or university, so long as the institution received some federal grants – as most of them do.” *Id.* at *5-6. The Court concluded 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.

Although the Court focused on the intent of the defendant to get paid by the Government, it is instructive to observe that the FCA also imposes liability in instances where acts are committed in deliberate ignorance or reckless disregard for the truth or falsity of the information. The Court explained that the mens rea requirement pertains to the information in the submitted claim, while the intent requirement applies to the defendant’s intent to have the Government pay the claim. Therefore, while the defendant’s knowledge of the false claim can be proven by direct proof or proof of deliberate ignorance, the Supreme Court has held that the defendant must actually intend for a claim to be paid by the Government in order for the FCA to apply.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.