



Client Alert

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UNANIMOUS SUPREME COURT REJECTS EXPANSION OF FALSE CLAIMS ACT LIABILITY

A unanimous U.S. Supreme Court, in an opinion written by Justice Samuel Alito, rejected the Sixth Circuit's recent expansion of False Claims Act ("FCA") liability into the private sector. See *Allison Engine Co. v. United States ex rel. Sanders*, No. 07-214 (June 9, 2008). (<http://www.supremecourtus.gov/opinions/07pdf/07-214.pdf>) Instead of transforming the FCA into an "all purpose fraud statute," that impacts any transaction involving government money to pay a subcontractor's false claim, the Court determined that the FCA applies only to fraud on the government, as opposed to fraud on private entities. The Court determined that the Act requires the government, and any private individuals suing on its behalf, to prove that the defendant intended that the false record or statement be material to the government's decision to pay or approve the false claim. As opposed to the Sixth Circuit decision, the Supreme Court held it is not enough to merely prove that a false claim was paid with government money. The Supreme Court's decision should have generally positive ramifications for companies that work as subcontractors on government projects or indirectly receive government funds, including Medicare and Medicaid reimbursement.

By way of background, the FCA permits private citizens to sue Government contractors in the name of the United States and to collect a percentage of any judgment awarded. To that end, the FCA imposes civil liability upon anyone who knowingly makes or uses a false statement to get a false or fraudulent claim paid or approved by the Government or who conspires to defraud the Government by getting a false or fraudulent claim allowed or paid. 31 U.S.C. §§ 3729(a)(2), (a)(3). Until the Supreme Court's recent decision in *Allison Engine*, the federal circuit courts were divided on the correct interpretation of these provisions, in particular on what a plaintiff must show regarding the relationship between the making of a "false statement" and the payment of "a false or fraudulent claim by the Government."

The defendants in *Allison Engine* were three subcontractors who manufactured generators to be used in 50 United States Navy *Arleigh Burke* class-guided missile destroyers. Two former employees of the subcontractors (the "relators") alleged that the subcontractors falsely certified that the generators they delivered to the prime contractors had been manufactured in conformance with government specifications. At trial, the relators failed to introduce evidence that the defendants or the prime contractors ever submitted a claim for payment to the federal government. Consequently,

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the district court granted the defendants' motion for judgment as a matter of law for lack of any evidence that defendants submitted (presented) the alleged false claims to the government. A divided panel of the Sixth Circuit reversed the district court's decision, concluding that the Act does not require proof of presentment to the government. The Sixth Circuit confirmed the relators' theory that the FCA was satisfied by evidence that the defendants intended to cause a false claim to be paid by a private entity using government financial resources. The Sixth Circuit's ruling conflicted with the District of Columbia Circuit decision in *U.S. ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004), authored by Chief Justice John G. Roberts, Jr., when he was a judge on the circuit court. The Supreme Court granted certiorari to resolve the conflict.

Disagreeing with the Sixth Circuit decision, the Supreme Court held that under subsection (a)(2), the phrase "to get" denotes "purpose" and therefore a person must have the purpose of getting a false or fraudulent claim paid or approved by the Government. Importantly, the Court explained, "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.'" A different result, the Court explained, would make the reach of §3729(a)(2) "almost boundless" because of the expansive reach of federal funds.

Therefore, the Court determined that a subcontractor or vendor may be liable if it makes a fraudulent statement to a prime contractor with the purpose of getting the government to pay a false claim. However, liability would not attach to the subcontractor or vendor under the FCA if it merely seeks to defraud the prime contractor.

With respect to the FCA's conspiracy provision, the Court held that in order for there to be liability, the plaintiff must prove that the conspirators intended to defraud the Government. The Court determined that there is no presentment requirement for conspiracy liability relating to the submission of a false claim. The Court explained that while it is not necessary to show that the conspirators intended the false records or statement to be presented directly to the Government, it must be "established that they agreed that the false record or statement would have a material effect on the Government's decision to pay the false or fraudulent claim."

While the Supreme Court's decision in *Allison Engine* limits the FCA to cases that involve actual fraud on the government, in contrast to disputes between private entities, the future scope of the FCA is unclear. There is pending legislation, referred to as the "False Claims Act Correction Act," that seeks to expand the scope of the FCA by eliminating the requirement that a defendant seek payment "by the Government."

In the healthcare context, the Court's ruling may provide opportunities for defendants to argue that Medicare and Medicaid claims have not been submitted "with the purpose of inducing payment" by the federal government, particularly when funds are provided to states in block grants or when claims are presented to fiscal intermediaries or carriers for processing. Because Medicare and Medicaid programs utilize contractors or states to administer claims processing, providers may argue that the federal government does not "rely on" the statements in a claim, therefore precluding FCA liability.