
Supreme Court's *Allison Engine* Decision Clarifies Intent Requirement Under False Records and Conspiracy Provisions of False Claims Act

2008-06-09

A unanimous US Supreme Court today handed down its decision in *Allison Engine Co. v. United States ex rel. Sanders and Thacker*, No. 07-214. Vacating a decision by the Sixth Circuit, the Court held that (i) a plaintiff asserting a claim that a defendant used "a false record or statement to get a false or fraudulent claim paid or approved by the Government," 31 U.S.C. § 3729(a)(2), "must 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," slip. op. at 2; and (ii) a plaintiff asserting a claim that a defendant "conspire[d] to defraud the Government by getting a false or fraudulent claim allowed or paid," 31 U.S.C. § 3729(a)(3), "must show that the conspirators agreed to make use of the false record or statement to achieve this end," Slip op. at 2.

Allison Engine involved contracts with the navy for the construction of destroyers. The relators claimed that several subcontractors had submitted invoices to the principal contractor that falsely certified that the components the subcontractors produced met the specifications required by the Navy under the governing contract. At trial, however, the relators failed to introduce invoices that were submitted by the principal contractors to the Government. The Supreme Court held that that omission was not fatal because a plaintiff asserting liability under § 3729(a)(2) need not show that a defendant's false record or statement was submitted to the Government; submission to a Government contractor or grantee may suffice. But, contrary to the Sixth Circuit, the Court held that a plaintiff must prove that the subcontractor submitted the false statement to the prime contractor "intending for the statement to be used to get the Government to pay its claim." Slip. op. at 8.

In a footnote that may prove to have significance in other contexts, the Court explained that its decision did not turn on the definition of "knowing" and "knowingly" in 31 U.S.C. § 3729(b), but on the phrase "to get" in § 3729(a)(2). The Court asserted that § 3729(b) "refers to specific intent with regard to the truth or falsity of the 'information,' while our holding refers to a defendant's purpose in making or using a false record or statement." Slip. op. at 8 n.2. The Court's suggestion that § 3729(b)'s knowledge requirement applies specifically to a defendant's knowledge about the information at issue may influence decisions under other provisions of the FCA.

In order to establish liability under the conspiracy provision of the False Claims Act, the Court held, "it is not enough for a plaintiff to show that the alleged conspirators agreed upon a fraud scheme that had the effect of causing a private entity to make payments using money obtained from the Government. Instead, it must be shown that the conspirators intended "to defraud the Government." Slip op. at 9.

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