Press Release

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WLF Urges Appeals Court to Overturn Massive Judgment Under Federal False Claims Act

(U.S. ex rel. Harman v. Trinity Industries, Inc.)

"When senior Executive Branch officials express satisfaction with a contractor's performance, self-appointed private attorneys-general should not be permitted to second-guess that determination. The False Claims Act is intended to root out actual fraud against the federal government, not to police compliance with every regulatory requirement imposed on a government contractor."
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) late yesterday called on the U.S. Court of Appeals for the Fifth Circuit to overturn a $663 million False Claims Act (FCA) judgment imposed on a manufacturer for allegedly defrauding the federal government by selling highway guardrails that did not comply with federal regulations. In a brief filed in *U.S. ex rel. Harman v. Trinity Industries, Inc.,* WLF argued that plaintiffs' lawyers should not be permitted to pursue FCA claims when federal government officials declare themselves fully satisfied with a contractor's performance.

The FCA includes a unique *qui tam* provision that authorizes an individual (known as a "relator") to file suit in the name of the United States against contractors he believes have defrauded the government. If the relator prevails, he is entitled to share in up to 30% of any recovery, plus attorneys' fees. In this case, the relator owned his own guardrail firm that competed with the defendant.

The relator brought to the attention of federal highway administrators his allegations that the defendant had been selling non-compliant guardrails. They reviewed the allegations and ultimately determined that the defendant had properly been paid for its products. Dissatisfied with that conclusion, the relator brought his claims before a jury, which awarded him hundreds of millions of dollars.

WLF's brief noted that the FCA does not permit recovery against a contractor for making "false statements" unless the statements were "material" to the government's decision to pay the contractor's claims. WLF argued that even if, as the jury found, the guardrail manufacturer falsely stated that it had complied with all government regulations, those statements cannot be deemed "material" to the government's payment decision once senior officials determine that the statements were irrelevant to their decision.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: "When senior Executive Branch officials express satisfaction with a contractor's performance, self-appointed private attorneys-general should not be permitted to second-guess that determination. The False Claims Act is intended to root out actual fraud against the federal government, not to police compliance with every regulatory requirement imposed on a government contractor."

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive litigation.

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