



FOR IMMEDIATE RELEASE

September 29, 2017

Media Contact: Grace Galvin | ggalvin@wlf.org | 202-588-0302

Appeals Court Overturns Massive Judgment Under Federal False Claims Act

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

“The Fifth Circuit correctly held that a claim for reimbursement from the federal government, even if arguably false, is not ‘material,’ and thus not actionable under the False Claims Act, if government officials pay the claim despite full knowledge of the alleged falsity.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—In a victory for Washington Legal Foundation, the U.S. Court of Appeals for the Fifth Circuit today overturned a \$663 million False Claims Act (FCA) judgment imposed on a manufacturer for allegedly selling highway guardrails to the government that did not comply with federal regulations. The court agreed with arguments WLF made in its *amicus* brief that Trinity’s alleged false statements were not material to the government’s decision to pay the contractor’s claims, and thus did not give rise to an FCA violation.

Joshua Harman, who ran a company that competed with the defendant in the guardrail market, reported his belief to federal highway officials that Trinity had been selling non-compliant guardrails. The officials reviewed the allegations and ultimately determined that the defendant had properly been paid.

Dissatisfied with that conclusion, Harman filed suit as a “relator” under the FCA’s *qui tam* provisions. *Qui tam* relators stand in the government’s shoes in court, and are entitled to share in up to 30% of any recovery, plus attorneys’ fees. Even though the government provided a formal statement on the eve of trial affirming its continued purchase of Trinity’s product, a jury awarded Harman millions of dollars.

The Fifth Circuit reversed the jury award, agreeing with WLF that Trinity’s false certification of compliance with all government regulations did not run afoul of the FCA because the alleged non-compliance was not material to the federal purchaser’s payment decision. The government’s continued payment, the court explained, “substantially increases the burden on the relator” to prove materiality, and Harman could not meet that burden.

Federal highway officials repeatedly rejected Harman’s opinion that Trinity’s guardrails were flawed and the court determined that a verdict in Harman’s favor would allow a jury to usurp the government’s decision-making role in making public purchases.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###