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U.S. SUPREME COURT ADOPTS STRICTER STANDARDS FOR WHISTLE-BLOWER SUITS UNDER THE FALSE CLAIMS ACT

On March 27, 2007, the United States Supreme Court issued an opinion of significance to any business that conducts operations subject to regulation by the federal government, participates in government programs, or has government contracts. At issue in Rockwell Int'l Corp. v. United States, No. 05-1272, was the liability of Rockwell International for a jury award in the amount of \$4,000,000 pursuant to the False Claims Act, 31 U.S.C. § 3729, et seq., which provides for civil liability and treble damages for false or fraudulent claims made to the United States, and authorizes litigation either by the Attorney General or by a private party who may bring a "*qui tam*" action on behalf of the United States.

The plaintiff in the case was a former employer of Rockwell International who brought a whistleblower suit in the name of the United States, asserting that the company committed fraud by making false statements to the federal government for improper gain. The former employee, James Stone, alleged Rockwell violated numerous state and federal environmental regulations and then falsely represented to the government that it complied with these regulations when submitting for reimbursements under its contract.

Pursuant to the False Claims Act, a *qui tam* relator who bases his suit on publicly disclosed information must be an "original source" with "direct and independent knowledge of the information" on which the allegations of fraud against the United States are based. 31 U.S.C. § 3730(e)(4)(A) & (B). The FCA's *qui tam* provisions are designed to encourage private citizens to expose fraud but to avoid actions by opportunists seeking to capitalize on public information. The Supreme Court granted certiorari in the Rockwell International case to decide whether the relator must have knowledge of the false statements made to the government or whether knowledge underlying or supporting the fraud allegations is sufficient.

Stone had filed the *qui tam* action alleging his former employer violated numerous state and federal environmental regulations while processing waste at the Rocky Flats nuclear weapons plant in Colorado and that Rockwell falsely represented to the Department of Energy that it complied with these regulations when submitting reimbursements under its contract. The most significant portion of Rockwell's compensation came in the form of a semiannual "award fee," the amount of which depended on DOE's evaluation of Rockwell's performance in a number of areas, including environmental, safety, and health concerns. Newspapers had already published detailed reports concerning environmental compliance problems at Rocky Flats before Stone had filed suit. Stone, thus, argued that despite the news coverage, he was an "original source" with "direct and independent" knowledge who could maintain the suit under Section 3730(e)(4)(A) & (B). The district court denied Rockwell's motion to dismiss even though Stone could neither specify who



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made misrepresentations to the government nor identify the specific documents in which those misrepresentations were made. The United States intervened to support the *qui tam* suit, and a jury ultimately returned a verdict in favor of the United States and Stone for over \$4,000,000. The Tenth Circuit affirmed, holding that a Stone was an "original source" because he had direct and independent knowledge of information "underlying or supporting" the fraud allegations rather than actual alleged fraudulent submissions to the Government.

The Supreme Court reversed, holding that the "original source" requirement is jurisdictional, and that False Claims Act does not permit jurisdiction over a relator's entire suit just because the relator may be an original source with respect to some specific allegations. Thus, that Stone may allege to have had some direct and independent knowledge of his former employer's operations at Rocky Flats was not enough to make him an original source with respect to the alleged fraudulent submission, i.e., the alleged false statements to the government, for improper gain. The Court gave the jurisdictional provisions of the False Claims Act a strict interpretation, where lower courts had been split on the issue.

The Supreme Court's decision in Rockwell International will make it much more difficult to file and maintain a suit under the False Claims Act based on publicly disclosed transactions, and represents a clear victory for government contractors and companies involved in other types of government programs, which are often faced with broad discovery and wide-ranging investigations as a result of such cases. The False Claims Act provides for substantial rewards to would be *qui tam* plaintiffs, but by the same token also allows for cost-shifting awards of attorney's fees and costs in the event they cannot prevail. This firm's attorneys have successfully defended against False Claims Act allegations brought by opportunist whistleblowers seeking to capitalize on matters of public record and disgruntled former employees claiming to have direct and independent knowledge of their employers' operations.¹

- Luis A. Leitzelar

¹ See, e.g., U.S. ex rel Bain v. Georgia Gulf Corp., 2006 WL 3093637 (5th Cir. 2006) (affirming award of \$65,000,000 in attorney's fees and costs in favor of the employer and against the *qui tam* plaintiff who failed to comply with the "original source" requirement); United States ex rel. Bain v. Georgia Gulf Corp., 386 F.3d 648 (5th Cir. 2004) (dismissing reverse False Claims Act allegations and finding that potential regulatory fines and penalties for alleged failure to properly report emissions to the LDEQ and EPA cannot form basis for liability); United States of America, ex rel. John Doe v. Dow Chem. Co., 343 F.3d 325, 328 (5th Cir. 2003) (dismissing suit for failure to plead with particularity False Claims Act allegations related to alleged failure to comply with LDEQ and EPA requirements).