



August 30, 2007

**COURT UPHOLDS EPA'S ORDER  
TO CLEAN UP GOVERNMENT'S POLLUTION**  
*(Raytheon Aircraft Co. v. United States)*

The U.S. District Court in Kansas City, Kansas rejected a constitutional challenge by Raytheon Aircraft Company to the Environmental Protection Agency's (EPA) unilateral administration order (UAO) issued to Raytheon. The UAO required Raytheon to clean up the government's own pollution or face severe penalties of \$32,500 per day plus treble damages, while insulating the United States from liability for its own actions. The ruling was a loss for WLF, which had filed a brief in support of Raytheon.

In *Raytheon Aircraft Company v. United States*, the EPA issued a UAO to Raytheon directing it to clean up the environmental contamination at Herington Army Airfield, which had been designated as a Superfund site due to disposal of solvents by the Department of Defense (DOD) while processing heavy bombers used during World War II. However, DOD concealed its activities and suppressed evidence of its own liability. Raytheon was forced to incur cleanup costs of \$2.5 million. Raytheon argued in its lawsuit that the imposition of liability without any meaningful hearing, while opposing the company's right to have the United States contribute to the cleanup costs, violates both Due Process and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

In its brief, WLF argued on behalf of itself and its client, the Kansas Feed and Grain Association, whose members may also be subject to UAOs, that it was fundamentally unfair for the United States to exploit its unique governmental powers to saddle a private company with cleanup costs for the government's own pollution, and then deny the company any procedurally adequate forum to raise its claims. WLF further relied on a recent Supreme Court decision, *Atlantic Research Corp. v. United States*, to support its argument. The Supreme Court held that it was unconscionable and inequitable to preclude companies from recovering cleanup costs from responsible parties. The district court ruled that Raytheon has the option to seek contribution from the government for contribution for the pollution caused by the government.

WLF's brief was drafted by Harvard Law Professor Laurence H. Tribe, and Jonathan S. Massey, both noted constitutional law experts. M. Courtney Koger of Kutak Rock LLP of Kansas City, Missouri, served as local counsel.

\* \* \*

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief is posted on its website at [www.wlf.org](http://www.wlf.org).