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**October 31, 2003**

**COURT URGED TO REVIEW CASE  
ON CONTRACTORS' PENSION FUNDS  
(*General Motors Corp. v. United States*, No. 03-165)**

The Washington Legal Foundation filed a brief in the U.S. Supreme Court today urging the Court to review a lower court decision that would rewrite contracts between the U.S. government and defense suppliers and other contractors.

The case before the Court, *General Motors Corp. v. United States*, involves the regulations governing the allocation of costs for the pensions of federal contractors' employees. The lower court in the case, the U.S. Court of Appeals for the Federal Circuit, construed the federal Cost Accounting Standards (CAS) in a manner that saddles contractors with the cost of underfunded pensions attributable to fixed-price contracts when a division or plant is closed – contrary to principles that have long been incorporated into federal contracts through the CAS. Immediately at stake in the case is more than \$200 million in pension costs.

WLF's brief noted that under the CAS, the government is required to bear the cost of adjustments attributable to government contracts in the case of an underfunded pension plan, and is entitled to reap the benefit of such adjustments in the case of an overfunded plan. WLF argued that the Federal Circuit's holding, which would allow federal contractors to make a final adjustment only of those pension costs attributable to flexibly priced contracts, and not of those costs attributable to fixed-price contracts, is inconsistent with the text of the CAS. WLF's brief also argued that the lower court erred by disregarding the views of the staff of the Cost Accounting Standards Board, which promulgated the CAS, and the past practice of the Department of Defense.

Earlier this year, WLF filed a brief supporting the petition for certiorari in another government contracting case from the Federal Circuit, *United Technologies v. Rumsfeld*. That case involves the exclusion of expert testimony on the meaning of technical terms in the CAS.

WLF's brief in the *General Motors* case was drafted on a *pro bono* basis by the Hon. Kenneth W. Starr, a partner in the Washington, D.C. law firm of Kirkland & Ellis, and Kannon K. Shanmugam, an associate in that firm.

WLF is a public interest law and policy center with supporters in all 50 states.

For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).