

November 10, 2003

HIGH COURT DECLINES CASE ON EXPERT ACCOUNTING TESTIMONY *(United Technologies Corp. v. Rumsfeld, No. 03-128)*

The U.S. Supreme Court today refused to hear a case involving the exclusion of expert testimony about the meaning of technical accounting terms. The Washington Legal Foundation (WLF) had filed a brief in the case, *United Technologies Corp. v. Rumsfeld*, urging the Court to grant review.

The case involves the interpretation of the Cost Accounting Standards (CAS), the accounting rules that govern federal contracts. Defense contractor United Technologies had entered into complex agreements with foreign parts suppliers for aircraft engine parts under which the suppliers shared in the program costs and program revenues. United Technologies argued that the revenues it paid the suppliers were not “costs” that could be reflected in its base for allocation of overhead under the CAS. The Armed Services Board of Contract Appeals heard testimony from accounting experts on both sides, and ruled for United Technologies. On appeal, the U.S. Court of Appeals for the Federal Circuit held that it was improper to admit any expert testimony on the interpretation of the CAS.

In its brief filed in the Supreme Court, WLF argued that the Federal Circuit’s decision was inconsistent with the Federal Rules of Evidence and precedents of the Supreme Court, which give the trier of fact broad discretion in choosing whether to admit expert testimony where that testimony is reliable and relevant. WLF’s brief also noted that erroneous rulings of the Federal Circuit in government contract matters have a nationwide impact because no other appeals courts have jurisdiction over such disputes.

In accord with its usual practice, the Supreme Court did not give an explanation of its decision not to hear the case. Justice Stephen Breyer recused himself from consideration of the case, also without explanation.

WLF previously filed a brief in the Federal Circuit in the case urging the full appeals court to review the January 5, 2003, decision of the three-judge panel. The court denied the request for *en banc* review on April 30.

WLF's briefs in the U.S. Supreme Court and the Federal Circuit were drafted on a *pro bono* basis by Clarence T. Kipps, Jr., a partner in the Washington, D.C. law firm of Miller & Chevalier.

WLF is a public interest law and policy center with supporters in all 50 states. It has filed briefs in numerous cases regarding the admission of expert testimony, including *Kumho Tire Co., Ltd. v. Carmichael*, 526 U. S. 137 (1999), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

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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.