

May 2, 2003

COURT DECLINES TO REHEAR CASE ON EXPERT ACCOUNTING TESTIMONY

(Rumsfeld v. United Technologies Corp.)

The U.S. Court of Appeals for the Federal Circuit announced on April 30, 2003 that it would not reconsider the January 5, 2003 ruling of a three-judge panel on the admissibility of expert accounting testimony. The Washington Legal Foundation (WLF) had urged the full court to rehear the case.

At issue in the case, *Rumsfeld v. United Technologies Corp.*, are technical accounting issues involving \$250 million in alleged liability. Defense contractor United Technologies had entered into complex “collaboration 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 program revenues it paid the suppliers were not “costs” includible in its material cost allocation base. Inclusion of the payments in the cost allocation base increased the overhead base and reduced the overhead allocated to government contracts. The Armed Services Board of Contract Appeals heard testimony from accounting experts on both sides, and ruled for United Technologies. On appeal, the Federal Circuit panel held that it was erroneous to allow the expert testimony because the interpretation of the Cost Accounting Standards (CAS) is a question of law to be decided by the Judge.

In its brief filed in the case, WLF argued that the Federal Rules of Evidence and precedents of the U.S. Supreme Court give the trier of fact broad discretion in choosing whether to admit or exclude expert testimony where that testimony is reliable and relevant. Testimony on technical accounting standards is precisely the type of testimony permitted under Federal Rule of Evidence 702: “specialized knowledge” that will “assist the trier of fact to understand the evidence or determine a fact in issue.” Supreme Court cases hold that the trial judge’s discretion to admit expert testimony may be set aside only upon finding an abuse of discretion. The full court gave no reasons for its decision not to rehear the case.

WLF’s brief was drafted and filed 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.