

FOR IMMEDIATE RELEASE

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

The Washington Legal Foundation urged the U.S. Supreme Court today to review a lower court decision that excluded expert testimony about the meaning of technical accounting terms. At issue in the case, *United Technologies Corp. v. Rumsfeld*, is a defense contract dispute involving \$250 million in alleged liability. WLF believes that the lower court's decision, if not reversed, will create disarray in government contract decisions by forbidding the use of expert testimony on accounting issues.

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 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." Prior 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.

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 – unlike most other areas of federal law, where the Supreme Court can watch and wait as an important issue is considered by multiple appeals courts.

WLF previously filed a brief in the Federal Circuit in the *United Technologies* 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, 2003.

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.