JONES DAY

DECEMBER 2006

SUPREME COURT'S DECISION IN *ROCKWELL* MAY RESOLVE FALSE CLAIMS ACT CIRCUIT SPLIT ON MEANING OF "ORIGINAL SOURCE" FOR PURPOSES OF PUBLIC DISCLOSURE BAR

On December 5, 2006, the Supreme Court heard argument in *Rockwell International Corp. v. United States ex rel. Stone* (05-1272), regarding the circumstances under which a *qui tam* relator may bring a False Claims Act ("FCA") lawsuit that is based upon publicly disclosed allegations.

The FCA bars courts from exercising jurisdiction over any *qui tam* action that is based upon publicly disclosed information, unless the relator is an "original source" of that information. 31 U.S.C. § 3730(e)(4)(A). To qualify as an original source, an individual must have "direct and independent knowledge of the information on which the allegations are based" and have "voluntarily provided the information to the Government before filing an action." *Id.* § 3730(e)(4)(B).

In *Rockwell*, the Supreme Court may resolve a circuit split regarding what type of knowledge a relator must possess to qualify as an "original source." The Tenth Circuit in *Rockwell* ruled that a relator need not know of the actual submission of false claims to the Government; rather, it is enough if the individual knows of facts "underlying or supporting" the complaint's allegations of fraud. The Third Circuit, by contrast, requires a relator to have knowledge of the alleged false representation itself. *See United States ex rel. Mistick PBT v. Housing Auth.*, 186 F.3d 376, 388-89 (3d Cir. 1999) (Alito, J.). Some other circuits require relators to have knowledge of essential elements of the fraud. *See, e.g.*, *United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 657 (D.C. Cir. 1994). The Ninth Circuit additionally requires that an original source

© 2006 Jones Day. All rights reserved. Printed in the USA.

have "had a hand in the public disclosure of allegations that are a part of . . . [the] suit." *United States ex rel. Zaretsky v. Johnson Controls, Inc.*, 457 F.3d 1009, 1013 (9th Cir. 2006).

The Court's decision will be important to all businesses and local governmental entities that have financial dealings with the federal government. Relators suing under the FCA often piece together their claims from information that has been publicly disclosed in the news media, in litigation, or in some form but assert "original source" status based on general knowledge of wrongdoing. Clarification of the definition of "original source" may help FCA defendants dispose of "parasitic" FCA suits designed to extract settlements.

Jones Day filed an amicus brief on behalf of BP America Production Company, Chevron Corporation, and Shell Oil Company in support of the defendant in *Rockwell*, and we have extensive experience in representing public and private defendants in FCA actions. Recently, for example, Jones Day won summary judgment for Los Angeles County in a multi-billion dollar FCA case brought by a former California official who claimed that the County had conspired with the state to defraud the federal government by using intergovernmental transfers to finance the costs of providing Medicaid services to the poor. A significant issue in the case was the role of federal knowledge about the allegedly fraudulent practice. A list of other recent Jones Day FCA representations may be found on the Jones Day web site at www.jonesday.com/pubs/pubs_detail.aspx?pubID=S3875.

LAWYER CONTACTS

The information contained herein is only a summary of a case pending before the U.S. Supreme Court. For further information on the substantive issues, please contact your principal Firm representative or the lawyer listed below. General e-mail messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Donald B. Ayer
1.202.879.4689
dbayer@jonesday.com

Martha Boersch
1.415.875.5811
mboersch@jonesday.com

R. Christopher Cook
1.202.879.3734
christophercook@jonesday.com

Peter F. Garvin III
1.202.879.5436
pgarvin@jonesday.com

Gregory M. Luce
1.202.879.4278
gmluce@jonesday.com

Daniel D. McMillan
1.213.243.2582
ddmcmillan@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our web site at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.