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6th Circ. Nixes UTC's $664M Judgment In Jet FCA Suit

By **Jacob Fischler**

Law360, Washington (April 06, 2015, 5:36 PM ET) -- The Sixth Circuit rejected on Monday a $664 million judgment against United Technologies Corp.-owned Pratt & Whitney over allegations it deceived the U.S. Air Force in violation of the False Claims Act, remanding the case back to an Ohio federal court for the second time.

The decision of the three-judge appellate panel will send the case back to the courtroom of U.S. District Judge Thomas M. Rose, who will decide if the government will have another chance to show whether Pratt's competition with General Electric Co. affected the damages that resulted from Pratt's deception of the Air Force over the price of jet engines 32 years ago.

Judge Rose initially awarded no damages in the case when he decided it in 2008, but the government won on its first appeal to the Sixth Circuit, which sent the case back to Judge Rose, who eventually awarded $664 million in 2013.

But the Sixth Circuit panel said Monday that Judge Rose should have not awarded those damages because the government failed to provide an accurate estimate of damages that took into account how competition affected the damage.

The panel said it was tempted to allow the case to end with only a $7 million False Claims Act penalty after the government passed on its chance to present an accurate estimate of damages.

"We are tempted to say that, after 17 years of litigation about a fraud that occurred 32 years ago, the

time has come to end this dispute," the panel said Monday. "... After we remanded the case, the government had every opportunity to put on an expert to show whether competition affected its damages. It not only refused to do so, but it also successfully objected to Pratt's own efforts to put on a pricing expert. On this record, there is something to be said for leaving it at that."

But the panel decided not to leave it at that, instead allowing Judge Rose to decide if he would hear testimony that took into account the effect of competition on the actual damages suffered by the Air Force.

The litigation goes back to 1999, when the U.S. sued Pratt's parent company UTC, accusing it of lowballing the government in cost estimates for F-15 and F-16 fighter engine contracts that eventually cost the government about $3.18 billion. The government initially purchased the jet engines only from Pratt & Whitney, but in 1983 it sought to bring down costs by allowing General Electric to compete for the procurements.

In an effort to keep GE from cutting into its fighter jet engine contracts, Pratt "prepared an offer that made it difficult for the Air Force to enter into dual-source engine contracts with Pratt and GE," according to a Sixth Circuit opinion in 2013. In its 1983 contract offer, Pratt made three false statements, "all designed to drive up the prices for split-award contracts and to discourage the Air Force from splitting up the work," the Sixth Circuit said in 2013.

The government is represented by Benjamin M. Shultz, Alan S. Gale and Michael S. Raab of the U.S. Department of Justice.

UTC was represented by Gregory G. Garre of Latham & Watkins LLP, Jeffrey A. Hall of Bartlit Beck Herman Palenchar & Scott LLP, David Z. Bodenheimer of Crowell & Morning LLP, and Lori Alvino McGill of Quinn Emanuel Urquhart & Sullivan LLP.

Circuit Judges Eugene E. Siler Jr. and Jeffrey S. Sutton and U.S. District Judge Robert H. Cleland sat on the panel.

The case is USA v. United Technologies Corp., case number 13-4057, in the U.S. Court of Appeals for the Sixth Circuit.

--Additional reporting by Lance Duroni. Editing by Chris Yates.
