

ELEVENTH CIRCUIT AFFIRMS APPLICATION OF GOVERNMENT CONTRACTOR DEFENSE TO MAINTENANCE PROVIDERS

By
Edward J. McMurrer
Alexis M. Dougherty

The Government Contractor Defense is an affirmative defense that vests an independent contractor performing procurement work for the government with complete immunity from state-based tort claims in situations where the government itself is immune. If, for example, an aircraft manufacturer supplies the military with an aircraft according to specifications approved by the military, and the manufacturer performs in accordance with those specifications, the law has evolved so that the manufacturer cannot be held liable for claims arising out of a failure of the aircraft. When the manufacturer follows the criteria sanctioned by the military, the manufacturer essentially stands in the shoes of the military, and is immune from suit.

Background of the Government Contractor Defense

The United States Supreme Court decision delineating the test which a manufacturer must satisfy to enjoy this immunity is found in *Boyle v. United Technologies Corp.*¹. In short, the *Boyle* Court held that it makes little sense to subject a contractor to state tort suits for building aircraft that conform to designs fashioned or approved by a federal official when the federal official would be entitled to immunity from suits arising out of defects in those designs. The Court formed a three pronged test, holding that government contractors supplying equipment would be immune from state law claims when: “(1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about dangers in the use of the equipment that were known to the supplier but not to the United States.”² The decision of the *Boyle* Court is predicated on the concern that state law, in certain circumstances, can frustrate an identifiable federal interest or policy requiring that state law be preempted.

Recent Victories for the Provider of Maintenance Services to the Government

Two opinions from the United States District Court for the Northern District of Alabama which extended the Government Contractor Defense to apply to DynCorp, a military maintenance service provider, have now been affirmed by the Eleventh Circuit Court of Appeals. These two cases, *Hudgens v. DynCorp* (hereinafter “*Hudgens*”) and *Crawford v. DynCorp*. (hereinafter “*Crawford*”) arose out of a crash, in Alabama, of a United States Army UH-1H helicopter that was on a Medivac mission. The vertical tail fin separated from the helicopter, resulting in the crash, and seriously injuring both the

¹ 487 U.S. 500 (1988).

² *Id.* at 512.

pilot and co-pilot. The subsequent investigation revealed that the separation of the vertical tail fin was caused by the failure of the forward vertical tail fin spar.

DynCorp had a contract with the Army to inspect and maintain the helicopter fleet pursuant to the standards promulgated by the Army. Pursuant to this contract, DynCorp was not permitted to deviate or perform any inspection or maintenance on any Army aircraft that was not set forth in the Army technical manuals. The argument went that should not DynCorp, who had a service contract with the military, be afforded the same immunity protections as a manufacturer who contracts with the military for the procurement of a product?

Plaintiffs in both *Hudgens* and *Crawford* asserted that DynCorp was responsible for the inspection, maintenance, and repair of the subject helicopter. Plaintiffs further contended that DynCorp was aware of an Airworthiness Directive (“AD”) issued by the Federal Aviation Administration (“FAA”) in September 1997 and of a Military Alert Bulletin (“MAB”) issued by Bell in April 1998, both of which advised of potential cracking problems with the vertical tail spar of UH-1 aircraft. The AD and MAB recommended changing the criteria the Army had established for inspection of the vertical tail spar. Plaintiffs asserted that DynCorp failed to implement the AD and MAB, and failed to detect and correct cracks, which resulted in the subject crash.

Based on these allegations, Plaintiffs alleged, in part, that: DynCorp was negligent in failing to properly maintain or repair the aircraft; DynCorp was guilty of wantonness in willfully and purposely failing to correct a dangerous condition on the aircraft; DynCorp knew of the dangers associated with the aircraft and was negligent in its failure to warn Plaintiffs of the dangers associated with the operation of the helicopter.

DynCorp subsequently moved for summary judgment based on the Government Contractor Defense. Plaintiffs argued that DynCorp was not entitled to summary judgment because the Government Contractor Defense did not apply to performance or service contracts, and even if it did, DynCorp did not meet the three-pronged *Boyle* requirements necessary to qualify for immunity under the defense. Both lower courts rejected the plaintiffs’ arguments that the government contractor defense only applies to design defects, holding instead that the defense extends to contracts of the kind entered into by the Army and DynCorp. Furthermore, both opinions held that the evidentiary material submitted by the parties, striking certain expert opinion evidence, showed no genuine issue of material fact as to DynCorp’s satisfaction of the three elements detailed in *Boyle*.

Eleventh Circuit Court of Appeals Decision & Current Status

The plaintiffs appealed to the Eleventh Circuit Court of Appeals, which affirmed the lower Court holding that the government contractor defense applies to the Army-DynCorp maintenance contract, and that DynCorp demonstrated the absence of any genuine issue of material fact as to its satisfaction of the three *Boyle*’s elements. To date, the plaintiffs have not filed an appeal.