

UNITED STATES of America, Plaintiff-Appellant/Cross-Appellee,
v.
UNITED TECHNOLOGIES CORPORATION, Defendant-
Appellee/Cross-Appellant.

[Nos. 08-4256, 08-4257.](#)

United States Court of Appeals, Sixth Circuit.

Argued: August 3, 2010.

Decided and Filed: November 18, 2010.

Under the Act, a "false or fraudulent claim" includes a false statement that is material to the government's decision to pay a claim. See [United States ex rel. A + Homecare, Inc. v. Medshares Mgmt. Grp. Inc.](#), 400 F.3d 428, 442-43 (6th Cir.2005). The parties do not dispute that Pratt's best and final offer may provide the basis for liability under the Act. They do not dispute that Pratt's final offer contained three false statements. They do not dispute that those false statements were material to the government's decision to enter into a contract with Pratt. And they do not dispute that, in the abstract, an invoice submitted in connection with a contract premised on a false statement amounts to a "claim" under the Act — a "request ... under a contract ... for money." 31 U.S.C. § 3729(c) (2006).

That leaves the possibility that liability does not exist when the relevant invoices are sent in connection with a multi-year contract like this one, as opposed to a single-year or one-time contract. That distinction, however, does not change things. See [United States ex rel. Marcus v. Hess](#), 317 U.S. 537, 542-44, 63 S.Ct. 379, 87 L.Ed. 443 (1943); [Harrison v. Westinghouse Savannah River Co.](#), 176 F.3d 776, 785-88 (4th Cir.1999). *Hess* establishes that an invoice, which itself does not contain a falsity, may supply the premise for a false claim if submitted in connection with a fraudulently obtained contract. 317 U.S. *320 at 542-44, 63 S.Ct. 379. Why? The invoices "caused the government to pay claims ... under contracts found to have been executed as the result of ... fraudulent bidding." *Id.* at 543, 63 S.Ct. 379. One variety of fraud is a knowingly false statement that has the "natural tendency to influence, or is capable of influencing" a government decision maker to pay the related invoice. A+ [Homecare](#), 400 F.3d at 445. False statements underlying multi-year contracts generate a stream of related invoices and cause the government to pay all of the invoices related to the contract.

*321 Also unavailing is Pratt's reliance on [*Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662, 128 S.Ct. 2123, 170 L.Ed.2d 1030 \(2008\)](#). Construing a prior version of § 3729(a)(2), [*Allison Engine*](#) held that a plaintiff must prove that a defendant intended to use a false record to get the government to pay a claim. [*Id.*](#) at 665, 128 S.Ct. 2123. In response, Congress amended the False Claims Act, [*retroactive to claims pending in June 2008, providing that a claimant no longer has to prove that a defendant intended to get a false claim paid.*](#) See [*Fraud and Enforcement Recovery Act of 2009*](#), Pub.L. No. 111-21, 123 Stat. 1617 (2009). Even if the *Allison Engine* standard for liability under § 3729(a)(2) applies to Pratt, a point we need not decide, the government satisfied it. Pratt intended the government to pay the fraudulent invoices that it submitted *directly* to the government, while *Allison Engine* had no such intent when it submitted invoices to a contractor, not the government. [*Allison Engine*, 553 U.S. at 666, 671-72, 128 S.Ct. 2123](#). Even if that were not the case, moreover, Pratt still violated § 3729(a)(1), a provision not at issue in *Allison Engine*, by submitting fraudulent invoices to the government.