

CLIENT ALERT

A-12 Litigation - After 20 Years a Draw - Or is it?

May.23.2011

Today, in *General Dynamics v. United States* (May 23, 2011), the Supreme Court, in yet another twist in this long-running litigation, reversed the Federal Circuit's 2009 decision upholding the Navy's January 1991 termination for default of the A-12 development contract. Applying its "common-law authority to fashion contractual remedies in Government-contracting disputes," the unanimous Court appeared to preclude adjudication of the government's termination claim, holding that the government's invocation of the "state secrets evidentiary privilege" to block adjudication of defendants' superior knowledge defense to the default termination (at least where defendants had made a *prima facie* showing using available evidence) required the parties be left where they were before the suit was filed, but the Court left open for remand the question of whether the government's duty to share its superior knowledge extends to "highly classified information."

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