

CLIENT ALERT

Court Applies *Totten* Reasoning To Subcontractor Liability Under FCA

March 23, 2005

Applying the reasoning of the D.C. Circuit in *U.S. ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004), regarding lack of False Claims Act (FCA) liability for claims made by contractors of federal grantees when those claims are not presented to the Government for payment [see Crowell & Moring Bullet Points 9/16/2004 and 12/16/04], the Southern District of Ohio in *U.S. ex rel. Sanders v. Allison Engine Co.* (Mar. 11, 2005) dismissed a *qui tam* case for failure to present evidence that the defendant subcontractor's claims had been presented to the government for payment. In so doing, the court distinguished longstanding Supreme Court precedent imposing subcontractor liability when the prime passes the sub's false claim up to the government.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.