

Supreme Court Settles Circuit Split and Reads the False Claims Act Statute of Limitations Provision Broadly in Boon to Relators

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On May 13, 2019, the U.S. Supreme Court decided *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, No. 18–325, and resolved a circuit split regarding the statute of limitations for an FCA claim brought by a relator between six and ten years after a violation, but less than three years after the government knew or should have known the relevant facts. The Court held that relators can invoke a statute that tolls the usual six-year FCA statute of limitations to permit suit until up to three years “after the date when facts material to the right of action are known or reasonably known to the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed.” 31 U.S.C. § 3731(b). In doing so, the Court settled the debate about whether a relator can claim the benefit of this tolling provision even when the government declines to intervene and the relator knew of the alleged violation before the usual six-year statute of limitations expires. The Court held a relator can.

Relator Billy Joe Hunt worked for a defense contractor in Iraq tasked with cleaning up excess munitions left behind by enemy forces. Hunt alleged that the contractor and others defrauded the United States through a scheme designed to award a security subcontract to a higher priced contractor than the lowest qualified bidder. As a result of the alleged scheme, Hunt claimed that the United States paid for the higher priced services through September 2006. On November 30, 2010, Hunt reported the alleged fraud to FBI agents investigating a separate kickback scheme.

On November 27, 2013, Hunt filed a sealed complaint alleging FCA claims against the contractors in federal court in Alabama. The government declined to intervene, and the contractors moved to dismiss the claims as time-barred under the six-year statute of limitations period in 31 U.S.C. § 3731(b)(1). The district court dismissed the claims, but the U.S. Court of Appeals for the Eleventh Circuit reversed, finding that Section 3731(b) (2) tolled the statute of limitations until three years after the United States became aware of the alleged scheme. The Supreme Court agreed to review the decision to resolve a split among the circuit courts about how to apply the tolling provision.

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The Court agreed that Hunt was entitled to invoke the three-year tolling provision under Section 3137(b)(2), even though the government declined to intervene and Hunt knew of the alleged fraud well before disclosing the scheme to the FBI in 2010. The Court reasoned the text of the statute does not support the contractors' theories that the United States should have to intervene before the tolling provision applied or that a private relator could himself be "the official" whose knowledge begins the three-year tolling period. Although the Court was not enamored with the text of Section 3731(b)(2)—Justice Alito called the FCA "a terribly drafted statute" at oral argument—the justices unanimously agreed it could only be read one way.

This decision creates an anomaly in the world of tolling provisions—typically, plaintiffs can claim the benefit of a tolling provision only when they personally did not know they had a potential claim. Not so in FCA cases. Rather, *Cochise* makes clear that an FCA relator can bring an otherwise time-barred claim that the relator has long known about if a third party ("the official of the United States") did not know the claim existed until a later date. This is what the Court decided Congress envisioned when it wrote the statute. After all, in an FCA suit, the United States is always the beneficiary of more than half of any settlement or judgment proceeds. The United States has the authority to move to dismiss an FCA suit, even when it did not intervene, and its consent is always required to settle an FCA suit. Given this unique role, the Court decided it was not illogical to follow the plain meaning of the statutory text and extend to relators tolling rights that depend on the knowledge of the United States.

The implications for government contractors and others subject to the FCA are clear: **First**, relators now have more time—as many as four more years—to bring FCA claims. **Second**, because claims brought by private relators are initially sealed while the government decides whether to intervene—a process that can itself take years—a government contractor may not learn of a timely-filed complaint until more than ten years after the alleged violation. **Third**, government recoveries in declined qui tam actions may trend upward, given that there is now a broader universe of conduct that could be encompassed by a relator's complaint. **Fourth**, government contractors may want to evaluate their document-retention policies to retain documentation related to government claims until ten years—or more—have elapsed. Burdensome though this may be, it might assist contractors defend themselves against the aged FCA claims made possible by the Court's interpretation of the statute.