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U.S. Supreme Court Clarifies Scope of False Claims Act Statutes of Limitations

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In a unanimous [decision](#) issued on May 13, 2019, the U.S. Supreme Court sought to resolve lingering confusion over the statute of limitations under the False Claims Act (FCA) for *qui tam* suits in which the federal government declines to intervene. In *Cochise Consultancy, Inc. v. United States Ex Rel. Hunt*, the Court held that a relator's claim may be brought within 3 years after the government was made aware of underlying material claims, even where the government did not intervene in the case, because 10 years had not passed since the actions giving rise to such claims occurred, applying the periods in 31 U.S.C. § 3731(b)(2) to the case. *Cochise* addresses confusion over applicability of 31 U.S.C. § 3731(b), which contains two separate limitations periods (along with a repose period) that can apply to an FCA suit. Under that law, an FCA action may be brought (1) 6 years from the date of the violation, or (2) 3 years from the date the U.S. official responsible for acting knew or should have known of the violation, but no later than 10 years from the date the violation occurred.

The FCA makes it unlawful for individuals or entities to knowingly submit or cause to be submitted false claims for government payment. FCA suits may be brought by the government, or by private citizens in *qui tam* actions in the name of the United States. In *qui tam* actions the relator must serve the complaint on the government, and the government then has an opportunity to intervene in the suit.

In *Cochise*, a relator filed a *qui tam* action on November 27, 2013 for allegedly false claims submitted by the defendants related to security services provided in 2006 and 2007. Importantly for purposes of this suit, the relator had allegedly notified government officials of the allegations on November 30, 2010. The defendants sought to dismiss the suit on the basis that more than 6 years had passed since the violations allegedly occurred when the relator filed suit, and the second statute of limitations provision under the FCA did not apply because the government declined to intervene. After a District Court dismissed the complaint, the U.S. Court of Appeals for the Eleventh Circuit reversed, holding that regardless of whether the government intervenes, the 3 year post-notice limitation applies to FCA *qui tam* actions, and therefore the suit was timely. The Supreme Court has now affirmed the appellate ruling, and in doing so affirms the dual statute of limitation structure under the FCA, even where the government does not intervene in a *qui tam* suit.

The Court rejected the defendants' argument that applying the 10-year period in this context would lead to counterintuitive results, such that "if the Government discovers the fraud on the day it occurred, it would have 6 years to bring suit, but if a relator instead discovers the fraud on the day it occurred and the Government does not discover it, the relator could have as many as 10 years to bring suit." The Court noted that there was no other plausible interpretation of the text.

The [Cochise](#) decision clarifies that the statute of limitations for FCA *qui tam* actions may be up to 10 years, depending upon when the government is notified of alleged violations. As a result, government contractors and other participants in federal programs would be well-advised to maintain compliance records for not less than that period.

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