

Unanimous Supreme Court Ruling Expands Statute of Limitations for Filing Qui Tam Cases

Tuesday, June 18, 2019

On May 13, the US Supreme Court (the Court) unanimously ruled in *Cochise Consultancy, Inc., v. U.S. ex rel. Hunt* that the “government knowledge” statute of limitations under the federal False Claims Act (FCA), §31 U.S.C. 3729, *et seq.*, applies regardless of whether the government intervenes in a case. As a result, in some circumstances, relators will have up to four years longer to file *qui tam* claims.

Background

The FCA permits a relator bring a *qui tam* civil action on behalf of the federal government against “any person” who “knowingly presents . . . a false or fraudulent claim for payment” to the government or to certain third parties acting on the government’s behalf. 31 U. S. C. §3730(b). The relator must deliver a copy of the complaint and supporting evidence to the government, which then has 60 days to decide whether to intervene in the action. During this time, the complaint remains under seal. If the government intervenes, it assumes primary responsibility for prosecuting the case, although the relator may continue to participate. If the government does not intervene, the relator has the right to pursue the case alone. The relator receives a share of any proceeds from the action, generally 15-25 percent if the government intervenes and 25-30 percent if it does not intervene.

The general statute of limitations for all civil actions under Section 3730 of the FCA requires that cases be filed within six years of the alleged violation or three years after relevant material facts are known or should have been known by the “official of the United States charged with responsibility to act in the circumstances,” whichever is later, but not more than 10 years after the violation. 42 U.S.C. §3731.

The Case

In November 2013, Billy Joe Hunt filed a complaint alleging that two defense contractors (collectively, Cochise) defrauded the federal government by submitting false claims for payment related to security services provided in Iraq up until approximately early 2007. Hunt claimed that he revealed Cochise’s allegedly fraudulent scheme during a November 30, 2010, interview with federal officials about his role in an unrelated contracting fraud in Iraq.

The government declined to intervene in the action and Cochise moved to dismiss the complaint as barred by the statute of limitations. Hunt countered that his complaint was timely under §3731(b)(2). Siding with Cochise, the US District Court for the Northern District of Alabama considered various interpretations of §3731(b)(2) and ultimately found that Hunt’s claim would have been untimely under two of the three. On appeal, however, the 11th Circuit reversed and remanded, finding that the correct interpretation of §3731(b)(2) is that it also applies in non-intervened actions, and the limitations period begins when the government official responsible for acting knew or should have known the relevant facts.

The Court later granted certiorari due to a split among the Circuit Courts: while the 4th, 5th, and 10th circuits had previously held that Section 3731(b)(2) only applies in cases filed by the government or in which the government intervenes, the 3rd and 9th circuits had held that relators can rely on Section 3731(b)(2) to toll the six-year limitations period, which is triggered by the relator’s knowledge of the alleged fraud.

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In the opinion, written by Justice Clarence Thomas, the Court considered whether the limitations period in §3731(b)(2) is available in a relator-initiated suit in which the government has declined to intervene and if so, whether the relator in such a case should be considered “the official of the United States” whose knowledge triggers §3731(b)(2)’s three-year limitations period.

The Court reasoned that under *Cochise’s* reading of the FCA, a relator-initiated, non-intervened suit is a “civil action under section 3730” for purposes of subsection (b)(1) of §3731, but not subsection (b)(2) and stated that such a reading “is at odds with fundamental rules of statutory interpretation”. Instead, the Court held both government-initiated suits under §3730(a) and relator-initiated suits under §3730(b) are “civil action[s] under section 3730,” concluding that the plain text of the statute makes the two limitations periods applicable in both types of suits.

The Court also considered *Cochise’s* second argument that the relator in a non-intervened suit should be considered “the official of the United States charged with responsibility to act in the circumstances,” meaning that §3731(b)(2)’s three-year limitations period would start when the relator knew or should have known about the fraud. The Court rejected this argument, stating that the FCA provides no support for reading “the official of the United States” to encompass a private relator.

Analysis

The expansive view of the time that relators have to file a case under the FCA taken by the Court in *Cochise* may ultimately increase the number of complaints filed by relators and the amount of money that they (and the government) recover. Specifically, by delaying when an FCA action is filed, a relator can potentially increase the number of claims at issue, thereby increasing the amount of the government’s losses in the case. Under the FCA, a defendant can be held liable for treble damages (*i.e.*, three times the amount of the government’s losses) plus a per claim penalty—currently ranging \$10,957 up to \$21,916 *per claim*.

Also of note, the longer period of time that a relator has to file a claim under *Cochise* may make an FCA case more difficult to litigate for all parties involved. For the relator, the passage of more time may make it more difficult to prove his/her allegations. For example, critical records and other documentation may be destroyed in the normal course pursuant to document retention/destruction policies within the intervening period between the alleged conduct and the filing of the suit. For the same reasons, it may be more difficult—and costly—for the defendant to defend against allegations relating to conduct that happened up to 10 years in the past. In addition, the government may face increased discovery demands regarding the materiality of the alleged conduct to the government’s payment decision, particularly with regard to the government’s knowledge of the illegal conduct alleged by the relator (*i.e.*, if the government continued to pay a particular type of claim over time despite its knowledge that certain related requirement(s) were violated, this may be used by the defense as evidence that such requirement(s) were not material to payment as required under [*Universal Health Services v. United States ex rel. Escobar*](#), 136 S. Ct. 1989 (2016)).

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