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Supreme Court Clarifies Statute of Limitations in Qui Tam Suits Under the False Claims Act

Whistleblowers bringing *qui tam* suits under the False Claims Act have up to ten years to file suit against defendants in cases in which the government declines to intervene, the U.S. Supreme Court has held, rejecting a government contractor's argument in favor of a shorter limitations period. The case resolves a circuit split over the applicable statute of limitations in such cases.

False Claims Act Statute of Limitations Overview

Under the False Claims Act (FCA), private persons known as "relators" may bring a *qui tam* action in the name of the government against any person who knowingly presents false or fraudulent claims for payment to the government. The government may choose to intervene in the action.

The FCA has two separate statutes of limitations periods. An action must be brought within either six years after the violation occurred, or three years after "the official of the United States charged with responsibility to act in the circumstances" knew or should have known of the relevant facts, but not more than ten years after the violation. Circuit courts of appeals were split between the two potential time limits in *qui tam* cases in which the government declines to intervene.

The Supreme Court's *Cochise* Decision

In [*Cochise Consultancy, Inc., et al. v. United States ex rel. Hunt*](#), the Supreme Court resolved the circuit split. The Court considered a relator's *qui tam* complaint against two defense contractors who allegedly defrauded the government by submitting false claims for payment for security services in Iraq. The district court dismissed the relator's complaint as time-barred because it was not filed until more than six years after the alleged violations occurred. The U.S. Court of Appeals for the Eleventh Circuit reversed, holding that the ten-year limitations period set forth in the statute applied, rendering the case timely.

On May 13, the Supreme Court affirmed, rejecting the defense contractor's argument that the ten-year statute of limitations only applies when the government is a party to the case, finding that it was "at odds with fundamental rules of statutory interpretation" whereby a single phrase in a statute generally should be given a fixed meaning. The Court reasoned that both the six-year and ten-year limitations periods apply to "civil action[s] under section 3730" and that this phrase includes an action initiated by a relator in which the government does not intervene. The Court reasoned that "[i]f the Government intervenes, the civil action remains the same—it simply has one additional party."

The Court distinguished one of its past False Claims Act cases involving the statute of limitations in retaliation claims under the statute. The Court also rejected the contractor's fallback argument that the "official of the United States" in the statute encompasses a private relator, but the Court did not address whether the "official of the United States" is limited to the attorney general or his delegate in the U.S. Department of Justice.

Takeaways

Cochise has important implications for companies doing business with the government and other industries that may be subject to liability under the False Claims Act. As Chief Justice John Roberts recognized during oral

argument, *qui tam* relators are incentivized to file suit promptly or risk having their complaint dismissed under the first-to-file bar and other restrictions.

Under the Court's decision, however, relators in cases in which the government does not intervene will be able to file a *qui tam* complaint as many as ten years after an alleged violation, provided that the suit is filed within three years of the government knowing, or having reason to know, of the relevant facts. It will thus be critical in future cases whether and when the "official of the United States charged with responsibility to act in the circumstances" learns of the factual allegations.

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