

U.S. Supreme Court Extends Statute Of Limitations for Privately Initiated False Claims Act Lawsuits

Article By:

Thomas J. Kelly

Joseph A. Rillotta

Prior to today's ruling, there was a consensus among the courts and the parties that regardless of who initiates an FCA civil action—DOJ or a private relator—at a minimum, the six-year limitations period of 31 U.S.C. § 3731(b)(1) applies. Likewise, the parties agreed that if DOJ brings an FCA claim, then the limitations period may be extended to up to a total of ten years post-violation under 31 U.S.C. § 3731(b)(2), if late discovery of the violation does not enable compliance with the six-year rule. However, based on the drafting of the statute of limitations provisions, it was unclear whether the extension (or “equitable tolling”) provision of subpart (b)(2) was also available to a private relator who brings a claim without the involvement or intervention of DOJ. Last month, the Court heard oral argument in the matter of *Cochise Consultancy, Inc. et al. v. U.S. ex rel. Hunt* to address this issue that had been the subject of a circuit split.

The Court's decision, as expected, based on the Supreme Court justices' questions during the *Cochise Consultancy* oral argument, confirmed that the Court was sympathetic to the view previously adopted by the Eleventh Circuit, which is that there is no persuasive basis for distinguishing between DOJ-initiated and relator-initiated FCA cases with respect to the statute of limitations.

In explaining its rationale for holding that the limitations period in §3731(b)(2) is available in a relator-initiated suit in which the government has declined to intervene, the Court declared that the plain meaning of the text dictated this outcome. According to the Court, both government-initiated suits under §3730(a) and relator-initiated suits under §3730(b) are “civil action[s] under section 3730” and the “plain text of the statute makes the two limitations periods applicable in both types of suits.” The Court rejected *Cochise's* reliance on *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, emphasizing that interpretations that would “attribute different meanings to the same phrase” should be avoided. The Court also noted that the statute provides no support for the argument that a relator in a nonintervened suit is the official of the United States whose knowledge triggers § 3731(b)(2)'s 3-year limitations period.

In light of the Court's ruling, companies must be aware they are now vulnerable to belated relator FCA claims for an even longer period of time.

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