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U.S. Supreme Court Holds That False Claims Act Relators May Have up to 10 Years to File Suit, Regardless of Government Intervention

On May 13, 2019, the Supreme Court unanimously held in *Cochise Consultancy, Inc. v. United States ex rel. Hunt*¹ that the limitations period in Section 3731(b)(2) of the False Claims Act applies in all *qui tam* suits where the provision's requirements are met, regardless of whether the United States intervenes. Section 3731(b)(2), one of two alternative statutes of limitations available to relators, permits suits to be filed within three years of "the official of the United States charged with responsibility under the circumstances" gaining actual or constructive knowledge of the alleged fraud, but no later than 10 years after the fraud. The Court further held in *Cochise Consultancy* that the relator does not qualify as the relevant "official of the United States" under Section 3731(b)(2), meaning that the beginning of the limitations period does not turn on the relator's knowledge. As a result of this decision, private persons in some situations will have up to 10 years from the alleged fraud to file a *qui tam* action, regardless of whether the United States intervenes.

The Supreme Court's decision resolves a long-running split of authority among lower courts, and can be expected to increase the incentives and opportunities for filing *qui tam* suits. Below, we describe the statutory framework, the Court's decision, and its implications.

Statutory Framework

The False Claims Act imposes civil liability on any person who knowingly submits a false or fraudulent claim for payment to the federal government.² Section 3730 of the Act authorizes two types of civil actions: the Attorney General can file suit against the false claimant, or a private person can file what is known as a *qui tam* action against the false claimant.³ In a *qui tam* action, the private person, known as the relator, prosecutes the lawsuit in the name of the United States and receives a share of the proceeds if successful.⁴ After filing suit, the relator must notify the federal government, which then has the option to intervene.⁵ If the government intervenes, it assumes primary responsibility for the litigation;⁶ if it does not intervene, the relator can continue to prosecute the action.⁷

The False Claims Act provides two alternative statutes of limitations for "civil action[s] under section 3730," with the longer of the two governing in any particular case.⁸ The first provision—set forth at Section 3731(b)(1)—states that an action is time-barred if filed "more than six years after the date on which" the false claim is submitted.⁹ The second provision—set forth at Section 3731(b)(2)—provides that a relator may file suit up to "3 years after the date when facts material to the right of action are known or

reasonably should be known by the official of the United States charged with responsibility under the circumstances, but in no event more than 10 years” after submission of the false claim.¹⁰

Background and Procedural History

The relator in *Cochise Consultancy* alleged that the defendant defense contractors submitted false claims for payment under a government subcontract to provide security services in Iraq. The defendants had submitted the alleged false claims more than six years before the relator filed suit.

After the government declined to intervene, the contractors moved to dismiss the complaint as untimely. The relator opposed, arguing that the limitations period in Section 3731(b)(2) applied because the federal government first learned about the alleged fraud less than three years before he filed suit.

The U.S. District Court for the Northern District of Alabama granted the contractors’ motion to dismiss, concluding that the limitations period in Section 3731(b)(2) applies only in *qui tam* actions in which the federal government intervened.¹¹ The U.S. Court of Appeals for the Eleventh Circuit reversed.¹² It held that Section 3731(b)(2) applies in all *qui tam* cases, regardless of the government’s involvement, and that the limitations period in that provision begins to run when the relevant federal official, as opposed to the relator, knew or should have known about the fraud. The Supreme Court granted certiorari.¹³

The Supreme Court’s Decision

In a unanimous decision authored by Justice Thomas, the Supreme Court affirmed, holding that Section 3731(b)(2) applies in all *qui tam* actions, and that the limitations period in that provision begins to run when the relevant federal official, and not the relator, knew or should have known about the fraud. The United States, participating as *amicus curiae*, had asked the Court to adopt both of those positions.

The Supreme Court first addressed the question whether Section 3731(b)(2) applies only to cases in which the federal government intervenes. Looking to the relevant statutory text, the Court observed that the limitations periods in both subsections (b)(1) and (b)(2) apply to “civil action[s] under section 3730,” the statutory provision authorizing *qui tam* actions. “[T]he plain text of the statute,” the Court concluded, “makes the two limitations periods” applicable to all *qui tam* actions.¹⁴

Among other things, the contractors argued that it is normally the *plaintiff’s* knowledge that triggers the limitations period under a tolling provision. Under Section 3731(b)(2), however, it is the relevant *federal official’s* knowledge that triggers the limitations period. The contractors thus reasoned that the limitations period in Section 3731(b)(2) should apply only when the federal government intervenes in a *qui tam* action as a plaintiff. The Supreme Court disagreed. Under the contractors’ reading, the Court explained, the statutory phrase “civil action under section 3730” would have two different meanings. With respect to the six-year limitations period under subsection (b)(1), the phrase would cover all *qui tam*

actions, regardless of the federal government's involvement. But with respect to subsection (b)(2), the phrase would cover only *qui tam* actions in which the federal government intervened. That result, the Court reasoned, would be "at odds" with the "fundamental rule[] of statutory interpretation" that "a single use of a statutory phrase must have a fixed meaning" "[i]n all but the most unusual situations."¹⁵

The contractors also argued that the relator's reading of the statute would create a "counterintuitive result": "If the Government discovers fraud on the day it occurred, it would have 6 years to bring suit, but if a relator instead discovered 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."¹⁶ The Court saw "nothing unusual" about that result, however, and noted that even a result that "may seem odd . . . is not absurd."¹⁷

The Supreme Court then held that the limitations period in Section 3731(b)(2) begins to run when the relevant federal official, and not the relator, knew or should have known about the fraud. The Court reasoned that the relator could not be "the official of the United States charged with responsibility to act in the circumstances" under Section 3731(b)(2), because "a private relator is not an 'official of the United States' in any ordinary sense of that phrase."¹⁸ The relator is not an "official of the United States" for purposes of the U.S. Constitution's Appointments Clause, the Court explained; nor is the relator a federal employee.¹⁹ The Court also observed that Section 3731(b)(2) refers to "*the* officer," which generally means only one person and not all of the potential relators who could file suit.²⁰

Implications

As a result of the decision in *Cochise Consultancy*, relators could have up to 10 years to file a *qui tam* action under the False Claims Act, depending on when the relevant federal official knew or should have known about the underlying false claims. The longer limitations period could further incentivize relators to file suit, given that the potential damages increase as time elapses. While that dynamic could lead some relators to consider delaying the filing of a *qui tam* action, they would have to weigh the benefits of delay against the risk that another private party or the federal government could file suit first, precluding recovery.²¹

Because timeliness under Section 3731(b)(2) turns on the federal government's knowledge, the parties in *qui tam* cases in which the government declines to intervene will likely seek discovery from the government about what it knew about the alleged fraud, and when. The focus on government knowledge may also incentivize government contractors to disclose more quickly potential violations of the False Claims Act in an effort to limit future *qui tam* actions.

One key question that remains after *Cochise Consultancy* is who is "the official of the United States charged with responsibility under the circumstances" for purposes of Section 3731(b)(2). The federal government argued in *Cochise Consultancy* that the Attorney General or his delegate is the relevant "official of the United States," but the Court did not resolve the issue.²² The lower courts will need to

grapple with the issue, with defendants likely seeking to invoke the knowledge of a broader array of federal officials (such as Inspectors General) if doing so would shorten the limitations period. The courts that have addressed the issue so far have reached conflicting results.²³

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ No. 18-315 (U.S. May 13, 2019).
² *See* 31 U.S.C. § 3729(a).
³ *Id.* § 3730(a), (b).
⁴ *Id.* § 3730(b), (d).
⁵ *Id.* § 3730(b)(2), (4).
⁶ *Id.* § 3730(c)(1).
⁷ *Id.* § 3730 (b)(4)(B), (c)(3).
⁸ *Id.* § 3731(b).
⁹ *Id.* § 3731(b)(1).
¹⁰ *Id.* § 3731(b)(2).
¹¹ No. 13-cv-2168, 2016 WL 1698248, at *1-4 (N.D. Ala. Apr. 28, 2016).
¹² 887 F.3d 1081, 1083 (11th Cir. 2018).
¹³ 139 S. Ct. 566 (2018).
¹⁴ *Cochise Consultancy*, slip op. 5.
¹⁵ *Id.* at 5.
¹⁶ *Id.* at 7-8.
¹⁷ *Id.* at 8.

¹⁸ *Id.*

¹⁹ *Id.* at 8–9.

²⁰ *Id.* at 9 (emphasis added).

²¹ *See* 31 U.S.C. § 3730(b)(5), (e)(3).

²² *Cochise Consultancy*, slip op. 9.

²³ *See, e.g., United States ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 296 n.2 (4th Cir. 2008).