Supreme Court Expands the Time for Private Suits Under the False Claims Act

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In *Cochise Consultancy Inc. v. United States, ex rel. Hunt*, the Supreme Court expanded the time in which False Claims Act ("FCA") lawsuits may be filed by *qui tam* relators in which the government does not intervene. The Court unanimously held that such suits must be brought within either six years of the FCA violation, under 31 U.S.C. § 3731(b)(1), or "three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances," but never "more than 10 years after" the violation, under § 3731(b)(2). This decision threatens to expose government contractors and health care providers to more FCA lawsuits.

The plaintiff-relator Billy Joe Hunt alleged that Cochise Consultancy and another defense contractor defrauded the federal government in a contract to clean up munitions left behind by Iraqi forces. The contract covered a period from before January 2006 until early 2007.

Hunt claimed that he revealed Cochise's alleged fraud in an interview with federal agents about an unrelated alleged fraud in November 2010. He conceded that his 2013 lawsuit fell outside the six-year limitations period of § 3731(b)(1) of the FCA.

But Hunt argued that his complaint was timely under § 3731(b)(2) of the statute because it was filed within three years of the interview in which he informed federal agents about the alleged fraud (and within 10 years after the violation occurred).

He claimed that both statutes of limitations apply to a "civil action under section 3730," and "whichever occurs last" controls the case. Hunt pointed out that, if the federal government had intervened in Hunt's suit, the alternative statute of limitations plainly would have applied. And the fact that the government failed to intervene should not deprive him and other relators of the longer statute of limitations.

The district court rejected Hunt's argument and dismissed the suit as untimely, but the U.S. Court of Appeals for the Eleventh Circuit reversed, taking a position different from two lines of reasoning adopted by several other circuits. Specifically, the Third and Ninth Circuits permitted a relator to use § 3731(b)(2), but they found that the limitations period begins to run when the relator, not the Government, knows or should know of the facts underlying the alleged fraud. Three other circuits—the Fourth, Fifth, and Tenth Circuits—had ruled that if the government does not intervene, the relator cannot use § 3731(b)(2).

Unlike its sister circuits, the Eleventh Circuit held that relators can invoke § 3731(b)(2) in suits in which the United States is not a party and that § 3731(b)(2)'s three-year limitations period does not begin until

the government learns of the alleged fraud, regardless of when the relator discovers it.

The Supreme Court concluded that the Eleventh Circuit's view was correct.

In a unanimous decision authored by Justice Thomas, the Court held that "the clear text" dictates that the discovery rule found in § 3731(b)(2) is always available because § 3731(b)(2) applies to "[a] civil action under section 3730," and there was "no textual basis to base the [provision's] meaning . . . on whether the Government has intervened."

Under Cochise's reading, Justice Thomas said, "a relator-initiated civil action would convert to '[a] civil action under section 3730' for purposes of subsection (b)(2) if and when the government intervenes. That reading cannot be correct."

Cochise had pinned many of its hopes for reversal on a 2005 decision, *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, in which the Supreme Court held that the six-year statute of limitations did not apply to actions brought under an FCA provision that governs retaliation.

Cochise argued that the court should adopt a similar construction of the phrase "civil action under section 3730" in § 3731(b).

"We disagree," Justice Thomas said. "Nothing in *Graham County* supports giving the same phrase in §3731(b) two different meanings depending on whether the government intervenes."

Thomas also rejected Cochise's fallback argument that the relator in a suit in which the government did not intervene should be considered "the official of the United States charged with responsibility to act in the circumstances."

"[T]he statute provides no support for reading "'the official of the United States' to encompass a private relator," Thomas wrote.

The FCA helps the federal government recover some $3 billion in fraudulent contracting expenses annually, with the government taking the lead in about one-quarter to one-third of cases, while private relators initiate the rest (with the possibility of the government's stepping in at any point).

This decision could have major negative effects on government contractors and health care providers who bill Medicare or Medicaid because it expands the universe of potential cases subject to the longer of the FCA statutes of limitations. A relator can now inform the appropriate U.S. official of material facts relating to an alleged FCA violation after its own six-year statute of limitations has already tolled, so long as the action is brought within 10 years, and take advantage of the longer limitations period. This decision may also spur additional, and earlier, requests by relators for information regarding the government's knowledge of the alleged conduct, because this knowledge is now dispositive both as to statute of limitations defenses as well as to materiality defenses following *Escobar*.

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