



Supreme Court Extends False Claims Act's Statute of Limitations for Non-Intervened Suits

A case must be filed within either six years of the FCA violation or three years from when the government knew or should have known of the violation.

In *Cochise Consultancy, Inc. v. U.S. ex rel. Hunt*, the Supreme Court yesterday clarified the statute of limitations for most False Claims Act ("FCA") lawsuits—those filed by *qui tam* relators in which the government does not intervene. The Court 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).

Because § 3731(b)(2) mentions the government's knowledge, circuit courts had long disagreed over its application when the government declines to intervene—not only on *whether* relators could use the discovery rule, but also on *whose* knowledge matters (just the government's, or the relator's also?). In a unanimous opinion by Justice Thomas, the Court found both issues straightforward.

First, the Court held that "the clear text" dictates that the discovery rule is always available, thus rejecting what had been the majority view. Section 3731(b)(2) applies to "[a] civil action under section 3730," and the Court found "no textual basis to base the [provision's] meaning ... on whether the Government has intervened." Second, the Court found "no support for reading 'the official of the United States' [in § 3731(b)(2)] to encompass a private relator," thus rejecting the more defendant-friendly view.

As the Court summarized the result, "if the Government discovers [a] fraud on the day it occurred, it would have six years to bring suit, but if a relator instead discovers 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." Even if this seems anomalous, the Court found the statutory text to compel it. As a result, FCA timeliness arguments are increasingly likely to focus on when "material" facts "reasonably should have been known" to the government and who is the relevant government "official."



C. Kevin Marshall
Washington



Rajeev Muttreja
New York

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