



Supreme Court Settles Debate Over Limitations Period for FCA Relators

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On May 13, 2019, the Supreme Court handed down its decision in *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, wherein it recognized a prolonged statute of limitations for a *qui tam* relator bringing an action under the False Claims Act (FCA)¹.

The FCA allows an individual, known as a *qui tam* relator, to bring a civil whistleblower action on behalf of the federal government.² The FCA statute of limitations requires that a relator file his or her lawsuit within the later of six years from when the violation occurred or three years after the government knew, or should have known, about the material facts, but not more than 10 years after the violation.³ In *Cochise*, the Supreme Court reviewed whether a relator can bring an action more than six years after the alleged violation, but still within three years after the government learned of the violation, regardless of whether the government intervenes in the case.

In the underlying action, Relator Billy Joe Hunt brought suit against two defense contractors, The Parsons Corporation (“Parsons,” Hunt’s former employer) and Cochise Security (“Cochise”), alleging that the contractors submitted false or fraudulent claims for payment to the U.S. Department of Defense (DOD) in violation of the FCA.⁴ According to his complaint, Hunt served as a manager for Parsons in 2006 when the company won a \$60 million DOD contract to clean up excess munitions left behind by enemy forces in Iraq.⁵ As part of that contract, Parsons was required to provide security for the cleanup crew. Parsons hired a subcontractor to provide the security services, initially awarding a subcontract to ArmorGroup.⁶ However, Hunt alleged, after accepting a bribe from Cochise, an Army Corps of Engineers contracting officer forged a document rescinding the subcontract award to ArmorGroup and awarding it to Cochise instead.⁷ Hunt claimed that this fraudulent scheme took place from February through September 2006, the time period during which Cochise provided security services on Parsons’ behalf under the terms of the subcontract.⁸ Hunt did not report the alleged fraud to the government until November 30, 2010, when he was interviewed by the FBI regarding his role in a separate kickback scheme.⁹ Hunt did not file his FCA suit against Parsons and Cochise until November 27, 2013¹⁰.

Cochise moved to dismiss Hunt’s complaint for failing to file within the six-year limitations period under 31 U.S.C. § 3731(b)(1).¹¹ The parties agreed that, because Hunt filed his complaint seven years after the alleged scheme to defraud DOD, his suit would be barred under a 6-year limitations period.¹² Hunt argued, however, that his action was timely because it fell within the three-year limitations period under 31 U.S.C. § 3731(b)(2) that begins to run when the government knew, or should have known, of the material facts underlying the alleged FCA violation (and within 10 years

1 *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, Case No. 18-351, 587 U.S. ____ (May 13, 2019).

2 31 U.S.C. § 3730.

3 31 U.S.C. § 3731(b).

4 *Cochise Consultancy, Inc.*, 587 U.S. ____, at *3.

5 *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1083 (11th Cir. 2018).

6 *Id.*

7 *Id.*

8 *Cochise Consultancy, Inc.*, 587 U.S. ____, at *3.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

of the violation) and should not be barred.¹³ Specifically, Hunt claimed that he informed the government of Cochise's allegedly fraudulent scheme during a November 30, 2010 interview with federal agents regarding an unrelated contracting fraud, and brought his FCA case against Cochise and Parsons within three years of that date¹⁴.

The district court granted Cochise's motion to dismiss, but the Eleventh Circuit reversed, resolving the statute of limitations issue in favor of Hunt.¹⁵ Cochise petitioned for certiorari to the Supreme Court as a circuit split had developed over which statute of limitations provision applied to cases brought by relators where the government declined to intervene. The Supreme Court granted certiorari, and heard oral argument on March 19, 2019.¹⁶ In reviewing the case, the Supreme Court unanimously found that, even in cases where the government declines to intervene, the three-year limitations period beginning when the government learns of alleged can apply, and thus affirmed the Eleventh Circuit's decision.

In adopting this interpretation, the Court took a strict textualism approach and found that the plain language of the statute did not limit the application of § 3731(b)(2) to government-intervened cases only. The Court held that an FCA case is a "civil action under Section 3730(b)," regardless of whether the government intervenes in the relator's case.¹⁷ Thus, the three-year limitations period remains available. The Court found that there is "nothing unusual about extending the limitations period when the Government official did not know and should not reasonably have known the relevant facts, given that the Government is the party harmed by the false claims and will receive the bulk of any recovery."¹⁸

With a potentially prolonged limitations period in *qui tam* actions, FCA defendants may face expanded liability for years of claims that had previously been time-barred. In addition, FCA defendants may be forced to investigate and defend decade-old claims using stale evidence and may face difficulty locating witnesses, who in turn may no longer recall the circumstances giving rise to the relator's allegations.

With the expanded limitations period, *qui tam* relators may delay informing the government of the alleged fraud to inflate their potential earnings in the event that their case is successful. However, the FCA's first-to-file and public disclosure bars may temper any incentives *qui tam* relators may have to defer filing a complaint.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 8.

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