



June 13, 2019

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Clerk of the Court
Tenth Circuit Court of Appeals
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257-1823

Re: USA ex rel Tracy v. EID et al., No. 18-4109
USA ex rel Tracy v. EID et al., No. 19-4021
USA ex rel Tracy v. EID et al., No. 19-4022

Letter Memorandum Per Order Dated May 30, 2019

Dear Clerk of Court:

The undersigned counsel submits this letter on behalf of Appellant Mark Christopher Tracy in response to this Court’s order issued on May 30, 2019. This Order requested the parties address (1) whether supplemental briefing is necessary in Appeal No. 18-4109; and (2) whether Appeal No. 18-4109 should proceed separately from Appeal Nos. 19-4021 and 19-4022. Mr. Tracy’s position is as follows.

First, supplemental briefing is not necessary in this case because the disputed issues remaining before the Court have already been briefed. Mr. Tracy’s opening brief (Case No. 18-4109) argued that the district court erred when it held that the ten year statute of limitations set forth in the False Claims Act (“FCA”), 31 U.S.C. § 3731(b)(2), did not apply to a relator’s claims in which the government does not intervene. On May 13, 2019, the United States Supreme Court addressed this exact issue and held that the ten-year statute of limitations applies to a relator’s claims. *Cochise Consultancy v. United States ex rel. Hunt*, 139 S. Ct. 1507 (2019). Shortly thereafter, the Appellee filed a notice of supplemental authority acknowledging the Supreme Court’s decision in *Cochise* and that the ten year statute of limitations applies. (*See* Supp. Letter filed 5/20/2019.) The letter also acknowledged that the only issue now remaining before the Court is Appellees’ alternative ground for affirmance, which is whether Mr. Tracy’s claims are allegedly time barred under the ten year statute of limitations. This issue has already been briefed. (*See* Aplee Br., pp. 21-29; Reply Br., pp. 8-17). None of the

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CHRISTENSEN & JENSEN

June 13, 2019

Page 2

parties have suggested that the narrow question decided in *Cochise*—whether the ten year statute applies—affected this alternative argument. Supplemental briefing is therefore unnecessary.

To the extent this Court finds that supplemental briefing would be helpful on any issue, Mr. Tracy will provide any such briefing. Mr. Tracy respectfully requests that any such briefing be minimal, at most 14 pages for principal briefs and 10 pages for a response brief. Mr. Tracy also requests 30 days to prepare any such briefing.

As relates to the second issue, Mr. Tracy’s position is that the appeals referenced in the Court’s Order should be consolidated. Appeal No. 18-4109 “the merit appeal” addresses the merits of Mr. Tracy’s FCA claims. Whereas, Appeal Nos. 19-4021 and 19-4022 (“fee appeals”) address whether attorney’s fees should be awarded to Appellee Emigration Improvement District because Mr. Tracy’s FCA claims are allegedly frivolous. Because this Court’s decision on the “merits” of Mr. Tracy’s FCA claims is relevant to the determination of whether such claims are frivolous for purposes of determining attorney’s fees, it seems appropriate that the “merit” and “fee” appeals should be decided at the same time.

Please let us know if you have any additional questions or concerns regarding the matters.

Very truly yours,

CHRISTENSEN & JENSEN, P.C.



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