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With Cochise Decision, Supreme Court Expands Limitations Period in Declined Qui Tam Cases

The Supreme Court handed down its decision today in *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, a closely-watched case about the False Claims Act's (FCA) statute of limitations. In short, the Court held that a relator can file a qui tam up to 10 years after a violation of the FCA occurs as long as the relator files suit within three years of a responsible government official learning of the alleged fraud.

In a unanimous opinion by Justice Thomas, the Court held that the FCA's 10-year statute of limitations can apply in cases where a relator pursues FCA claims after the United States has declined to intervene. The FCA contains two possible statutes of limitations. An FCA action may not be brought (1) more than six years after the date on which the FCA violation is committed, 31 U.S.C. § 3731(b)(1), or (2) "more than 3 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 in no event more than 10 years after the date on which the violation is committed," *id.* § 3731(b)(2), whichever occurs last. By holding that relators in declined cases can take advantage of the 10-year limit in § 3731(b)(2), the Court rejected the view held by the three other courts of appeals to have addressed this question (the Fourth, Ninth, and Tenth Circuits), which had all held that relators in declined cases were confined to the 6-year statute of limitations in § 3731(b)(1).

The Court based its decision on the text of the FCA. Section 3731(b) states the limitations periods for "civil action[s] under section 3730," and according to Justice Thomas, this "plain text" makes the two limitations periods applicable in both government-initiated and relator-initiated suits. Slip. op. 5. The Court dismissed Cochise's arguments that § 3731(b)(2) should only apply when the government is a party as "at odds with fundamental rules of statutory interpretation." Slip. op. 5.

The Court also rejected Cochise's argument that the relator in a declined case should be considered "the official of the United States charged with responsibility to act in the circumstance" for purposes of triggering the three-year period within which the complaint must be filed to get § 3731(b)(2)'s 10-year limitations period. A private relator is not ordinarily an "official of the United States," nor does the FCA's text contemplate such a result.

This decision has significant implications for defendants. First, although the case before the Court was a suit involving alleged misconduct during a limited one-year period seven years before the suit was filed, the consequences of the decision are potentially far greater for entities that submit claims on a recurring basis (for example, those in the health care field and government contractors with long-term contracts), because for them, the decision means that relators will be able to seek treble damages plus per-claim penalties for 10 years' worth of false claims.

Second, defendants now have a greater incentive to seek discovery of what the government knew and when because a relator seeking to use § 3731(b)(2)'s 10-year limitations period must file the complaint within three years of when "facts material to the right of action are known or reasonably should have been known" by "the official of the United States charge with responsibility to act in the circumstances." The Court's holding suggests that defendants may want to expand their efforts to develop defenses showing the relator failed to meet this requirement.

And like Justice Thomas' unanimous decision in *Universal Health v. United States ex rel. Escobar*, this decision may inspire more questions than it answers. The Court declined to decide who constitutes "the official of the United States" under § 3731(b)(2) or whether that must be the Attorney General (or his delegate), as the United States argued. And as defendants seek to develop factual records showing the appropriate government official knew (or should have known) material facts, courts will likely need to provide further guidance about what constitutes "material facts" in this context and when government officials reasonably should have known them.

While the Court's decision has the potential to expand liability, Justice Thomas's opinion leaves open several avenues for defendants to try to limit the impact of Court's holding.

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