180 F.Supp.2d 192 (2002)

UNITED STATES ex rel. Kenneth FISHER, Plaintiff/Relator,

v.

NETWORK SOFTWARE ASSOCIATES, INC., et al., Defendants.

Civil Action No. 99-3095(PLF).

United States District Court, District of Columbia.

January 14, 2002.

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A. Conspiracy Under 31 U.S.C. § 3729(a)(3)

With respect to Counts 1 and 2 of the amended complaint, the Court ruled at the conclusion of the motions hearing that the six-year limitations period of 31 U.S.C. § 3731(b)(1) is applicable. The Court agreed with Judge Flannery's analysis in *United States ex rel. El Amin v. George Washington University,* 26 F.Supp.2d 162, 170-73 (D.D.C.1998), that the six-year limitations period applies in *qui tam* actions when the United States decides not to intervene. The statutory language and legislative history support the conclusion that Section 3731(b)(2), with its three-year tolling provision and 10-year limitations period, applies only to the government and not to a *qui tam* relator. Accordingly, since the original complaint in this case was filed on November 22, 1999, the Court announced at the hearing that it will dismiss all purported violations of 31 U.S.C. § 3729(a)(1) (Count 1) and all purported violations of 31 U.S.C. § 3729(a)(2) (Count 2) that pre-date November 22, 1993.

With respect to Count 3, the Court held that the six-year limitations period was applicable but did not decide whether some, all or none of the allegations raised under this count should be dismissed. Defendants argue that the heart of the conspiracy claim is the Small Business Administration Section 8(a) certification which was applied for and obtained in 1987, well outside of the six-year limitations period. They maintain that the entire conspiracy claim therefore must be dismissed. Defendants rely on Judge Robertson's decision in *United States v. Vanoosterhout,* 898 F.Supp. 25 (D.D.C.1995), *aff'd,* 96 F.3d 1491 (D.C.Cir.1996), in which he dismissed a Section 3729(a)(3) False Claims Act conspiracy on the ground that the false claim giving rise to liability occurred more than six years prior to the filing of the complaint and therefore was time-barred. Defendants contend that Judge Robertson's opinion stands for the proposition that the entire conspiracy claim must be dismissed when the act central to the conspiracy occurs more than six years before the complaint was filed.

Defendants misread *Vanoosterhout.* In that case, Judge Robertson dismissed the action because the *only* purported violation of the False Claims Act ("FCA") was time-barred and not because the central act of the conspiracy fell outside of the limitations period. *See* United States v. Vanoosterhout, 898 F.Supp. at 28-29. Assuming that the application for the Section 8(a) certification is the central event in this case, relator has pointed to other acts allegedly constituting violations of the FCA in furtherance of the conspiracy that occurred within the six-year limitations period, some as recently as 1997 — such as contracts awarded to defendants and paperwork completed to maintain the defendants' Section 8(a) status. Because relator has alleged a conspiracy with overt acts in support of it that occurred within the six-year period, the conspiracy claim should not be dismissed just because the Section 8(a) certification itself occurred more than six years prior to the filing of the complaint.

The parties also disagree over when the statute of limitations begins to run for an FCA conspiracy claim. Defendants argue that in civil conspiracies, the statute of limitations begins to run when the first overt act in furtherance of the *195 conspiracy occurs — in this case the Section 8(a) certification in 1987; in their view, therefore, suit had to be filed by 1993. Relator argues that the limitations period should run from the date of the last overt act in furtherance of the conspiracy. In his view, if any one overt act occurred after November 23, 1993, the conspiracy claim lies and all overt acts, including those that occurred prior to that date, are relevant as part of the conspiracy on a continuing violation theory, a theory which relator attempts to import from employment discrimination case law. Both of these positions appear to conflict with the prevailing law in this circuit that "the statute of limitations in a civil damages action for conspiracy runs separately from each overt act that is alleged to cause damage. ..." *Lawrence v. Acree,* 665 F.2d 1319, 1324 & n. 7 (D.C.Cir.1981); *see* *Thomas v. News World Communications,* 681 F.Supp. 55, 73 (D.D.C.1988); *see also* *Scherer v. Balkema,* 840 F.2d 437, 439-40 (7th Cir.1988). Under this rule, relator may attempt to prove the underlying conspiratorial agreement through those overt acts that occurred after November 22, 1993, but not those that occurred before that date; if successful, he may recover damages for all violations committed as a part of the conspiracy from that date forward. Thus, the statute of limitations bars recovery for some but not all of the acts committed as a part of the conspiracy alleged in Count 3.