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United States: Self-Disclosure And The FCA Statute Of Limitations: Cochise Consultancy, Inc. v. United States v. Ex Rel. Billy Joe Hunt

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The U.S. Supreme Court heard oral arguments in the case mentioned in our [prior blog post](#), *Cochise Consultancy v. United States, ex rel. Hunt*, 887 F. 3d 1081 (11th Cir. 2018). The main question before the Supreme Court was "whether a relator in a False Claims Act (FCA) *qui tam* action may ultimately rely on the statute of limitations provision in 31 U.S.C. § 3731(b), when the United States has declined to intervene in the lawsuit and, if so, whether the relator constitutes an 'official of the United States' for purposes of section 3731(b)(2)."

Section 3731(b) requires an FCA case be filed within (1) six years after the date on which the violation is committed; or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by an 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, whichever occurs last. Relator Hunt filed his case within three years of informing the Federal Bureau of Investigation (FBI) of his allegations, but outside the standard six-year limitations period. The Supreme Court's ruling in *Cochise* will determine whether the discovery rule in the FCA statute of limitations should apply to *qui tam* suits where the government has not intervened.

Cochise's counsel argued that a statutory reading of § 3731(b)(2) implies that it only applies to the United States only, and the statute of limitations is triggered based on the knowledge of the "official of the United States charged with the responsibility to act under the circumstances." On the other hand, relator Hunt argued that § 3731(b)(2) statute of limitations applies both to the United States and to relators. In support of the relator's position, the United States argued that

relators and the United States have the same filing deadlines under both paragraphs (b)(1) and (b)(2) whether or not the government initiates or intervenes in the lawsuit.

During oral arguments, the questions by the Justices suggested that the Supreme Court may be taking a textual view of the FCA statutory provisions and favoring an interpretation that allows relators to take advantage of the additional limitation period in section 3731(b)(2).

Interestingly, the Justices also inquired into who is "an official of the United States charged with responsibility to act in the circumstances" for purposes of § 3731(b). In response, the government argued that "the official charged is cabined to the Department of Justice." The government explained that "[i]f it could be any government official, then that screening process that Congress designed would not [work]." The government emphasized that "[t]here isn't anyone in the FBI or the Office of Inspector General (OIG) or the contracting agency who's responsible for protecting the government's rights" under the statute.

The government's position in *Cochise* seems to be contrary to some case law allowing knowledge of officials other than those at the Department of Justice (DOJ) to trigger governmental knowledge for purposes of § 3731(b) under certain circumstances. See, e.g. *United States v. Intradocs/Int'l Mgmt. Group.*, 265 F. Supp. 2d 1, 12 (D.D.C. 2002) (finding that regardless of whether Section 3731(b) is interpreted so that DOJ is deemed to be the responsible party charged with uncovering fraud, DOJ should have known material facts giving rise to action when a DCAA audit was released); *United States v. Tech Refrigeration*, 143 F. Supp. 2d 1006, 1008-10 (N.D. Ill. 2001) (finding that the term "official of the United States charged with responsibility to act" . . . means pertinent DOJ officials, but under some circumstances the knowledge of other government agencies might trigger the FCA statute of limitations); *United States v. Kensington Hospital*, 1993 WL 21446 (E.D. Pa. 1993) (holding that the responsible government official whose requisite knowledge causes the statute to run was not limited to a representative of the DOJ, but also included special agents of the Internal Revenue (IRS) and FBI, as sufficient to cause the statute of limitations to run).

In addition to determining whether relators may take advantage of the additional limitations period, the Supreme Court's decision may also provide clarity as to which governmental agency is deemed "an official of the United States" to trigger the statute of limitations period under § 3731(b).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.