

## Blog Post

# US Supreme Court to Hear FCA Statute of Limitations Case

March 12, 2019

The Eleventh Circuit Court of Appeals, in its ruling in *Cochise Consultancy Inc. v. U.S. ex rel. Hunt*, created a 3-way circuit split regarding the determination of the applicable statute of limitations period in a False Claims Act (FCA) case. On March 19, the United States Supreme Court will hear oral argument on the matter, hopefully ending the division among the circuit courts of appeal.

Pursuant to 31 U.S.C. § 3731(b)(1)-(2), two potential statutes of limitations apply to FCA cases. A *qui tam* plaintiff can bring an FCA case on behalf of the Government either (1) six years after the date of the alleged FCA violation or (2) three years after the date when the responsible Government official learned or should have known of the relevant facts supporting the claim, but not more than ten years after the alleged FCA violation.

The Fourth, Fifth, and Tenth Circuit Courts have held that a whistleblower plaintiff can only use the three-year, knowledge-based statute of limitations if the Government intervenes in the FCA case, reasoning that Congress intended this limitations period to apply only to the Government because the statute's language specifically identified the knowledge of a responsible Government official as determinative of when the statute runs.

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The Courts of the Third and Ninth Circuits have held that the three-year statute of limitations is available in declined cases and begins to run when the relator knows or should know of the facts underlying the alleged fraud, reasoning that relators in FCA cases are agents of the Government who sue on its behalf.

In *Cochise Consultancy*, the whistleblower plaintiff claimed that a military contractor submitted false claims to the Department of Defense subsequent to a contract to clear excess munitions from Iraq. The relator argued that the three-year statute of limitations should apply, as he had filed the lawsuit more than six (but less than ten) years after the alleged FCA violation but within three years of when he informed the Government of the violation. The Eleventh Circuit Court of Appeals ruled that the three-year limitations period applies even when the Government has declined to intervene, thus permitting a relator to file a claim within three years of when the Government learns of the alleged fraud—independent of whether the qui tam plaintiff knew of the alleged fraud much longer—as long as the complaint is filed within ten years of the FCA violation.

Because the FCA's broad venue provision allows relators to file cases in various jurisdictions, the three-way circuit split has created a situation ripe for forum-shopping. Stakeholders are anticipating that SCOTUS' decision will provide a uniform statute of limitations standard that will provide greater certainty for business who contract with the government as part of their daily operations—such as healthcare providers.

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