

CLIENT ALERT

First Means First: Dismissal of Prior Related Actions No Cure For Relator's First-to-File Defect

August 15, 2017

The Fourth Circuit held in *United States ex rel. Carter v. Halliburton* – its third decision in this protracted litigation – that the False Claims Act's first-to-file rule required dismissal of the relator's action, because relator brought his case while related cases were pending even though those related cases had since been dismissed and the relator's complaint subsequently amended. The court explained that the statutory text of the first-to-file rule is "unambiguous" and "affords courts no flexibility to accommodate an improperly-filed action when its earlier-filed counterpart ceases to be pending." The court acknowledged that its holding "may raise statute of limitations problems" for some FCA relators, but noted that (1) the FCA's objective of putting the government on notice of fraud was already met by the first-filed actions, and (2) FCA defendants also have an interest "in repose and avoiding stale claims outside the limitations period." For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Brian Tully McLaughlin

Partner – Washington, D.C.

Phone: +1.202.624.2628

Email: bmclaughlin@crowell.com

Charlotte Gillingham

Counsel – Washington, D.C.

Phone: +1.202.624.2948

Email: cgillingham@crowell.com