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CLIENT ALERT

For Whom the Statute Tolls: Ten Years Is Now the Default Statute of Limitations Period for All FCA Cases, High Court Holds

May.13.2019

In a unanimous decision issued on May 13, 2019, the Supreme Court held in *Cochise Consultancy Inc. et al. v. U.S. ex rel. Hunt*, that qui tam relators can invoke the three-year tolling provision at § 3731(b)(2) in False Claims Act (FCA) cases where the government declines intervention. By affirming the Eleventh Circuit's decision, the justices resolved a split among the circuits on the proper interpretation of § 3731(b), pursuant to which a FCA suit can only be brought within six years of the date of the violation or within three years of the date when facts material to the right of action are known by the official of the United States charged with responsibility to act, whichever is later. Interpreting the plain text of the statute, the Court found that the three-year limitations period is, in fact, applicable in cases in which the government elects not to intervene, thus allowing relators to take advantage of § 3731(b)(2) in declined cases so long as their action is brought within the statute's overall ten-year limitations period.

The Court also held that a relator is not the official of the United States whose knowledge triggers the three-year period in § 3731(b)(2), reasoning that a private whistleblower is neither appointed as an officer of the United States nor employed by the United States. The Court thereby effectively shut the door on the argument recently put forward in a separate petition for certiorari (and discussed here) that the qui tam provisions are unconstitutional because they violate the appointments clause. Even so, the Court declined to opine on whether the relevant "official of the United States" is limited to the Attorney General or his delegate, as was argued by the government, leaving open to dispute arguments as to the knowledge of other government officials in applying the tolling provision going forward.

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

Gail D. Zirkelbach
Partner – Los Angeles
Phone: +1 213.443.5549
Email: gzirkelbach@crowell.com

Mark R. Troy
Senior Counsel – Los Angeles
Phone: +1 213.443.5576
Email: mtroy@crowell.com