

CLIENT ALERT

SOL for Whom? Supreme Court Agrees To Review Deepening Disagreement on FCA's Statute of Limitations Tolling Provision

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On Friday, November 16, 2018, the Supreme Court granted a petition for a writ of certiorari to address a widening circuit split over the applicability of the FCA's tolling provision. The FCA's statute of limitations provides that actions may not be brought more than six years after the violation occurred or "more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the 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." 31 U.S.C. § 3731(b)(2). This second prong of the statute is sometimes referred to as the FCA's tolling provision. Earlier this year, in *United States ex rel. Hunt v. Cochise Consultancy Inc.*, (discussed by C&M attorneys here) the Eleventh Circuit joined the Ninth Circuit in holding that the FCA's tolling provision is applicable to qui tam actions even when the government declines to intervene, deepening a split with the Fourth and Tenth Circuits, which have interpreted that provision to apply only to actions brought by the government. The widening circuit split encourages forum-shopping by relators seeking to bring claims reaching years back in time and, in turn, creates significant uncertainty for defendants. Notably, the Eleventh Circuit in *Hunt* also broke with the Ninth Circuit to hold that the tolling period in non-intervened qui tam actions triggered by a government official's knowledge of the fraud, not the relator's. As a result of these conflicting if not confusing interpretations of the FCA's statute of limitations, whether a qui tam suit is time-barred has depended on where, and not just when, it was brought. The Supreme Court's review of the Eleventh Circuit's ruling will hopefully put an end to the uncertainties and confusion surrounding these conflicting applications of the FCA's statute of limitations across all jurisdictions.

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