

CLIENT ALERT

Supreme Court Addresses The Statute of Limitations For Retaliation Claims Under The False Claims Act

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The Supreme Court has clarified the statute of limitations applicable to retaliation actions brought under the False Claims Act (FCA). *See Graham County Soil & Water Conservation District v. United States ex rel. Karen Wilson*, No. 04-169, June 20, 2005. The FCA prohibits a person from making false or fraudulent claims for payment to the United States. 31 U.S.C. § 3729(a). The 1986 amendments to the FCA included a new provision prohibiting retaliation against individuals for assisting in an FCA investigation or proceeding. 31 U.S.C. § 3720(h).

The 7-2 majority opinion in *Graham County* holds that FCA retaliation actions are not covered by the general 6 year statute of limitations applicable to substantive FCA false claims actions, enacted in 1986 and set forth in 31 U.S.C. § 3730(b)(1). Such claims are now subject to the most analogous state law limitations period applicable to employment retaliation claims.

Justice Thomas' majority opinion concluded that, as a textual matter, the 6 year limitation period is ambiguous as to its applicability to retaliation claims. In support of its textual analysis, the majority noted that a plaintiff alleging retaliation in violation of the FCA need not allege that the defendant actually submitted a false claim. Instead, the provision requires only a showing that the plaintiff was retaliated against for engaging in "lawful acts done . . . in furtherance of" an FCA "action filed or to be filed." 31 U.S.C. § 3730(h). Justice Thomas' opinion was careful to avoid endorsing any of the various formulations expressed by the lower courts as to the burden of proof applicable to plaintiffs making a retaliation claim, leaving that important issue unresolved.

The majority also concluded that the contrary view of the limitations period, expressed by a majority of the Fourth Circuit and adopted by the dissenting opinion, was at odds with the "default rule" that a statute of limitations generally begins to run when the cause of action accrues. Under that reading, the statute of limitations on a retaliation claim could begin to run well before any act of retaliatory action. Justice Breyer's dissenting opinion concluded that it was "reasonably clear," as a textual matter, that Congress intended a uniform 6 year statute of limitations to apply to all types of civil actions brought under the FCA, including retaliation claims.

The Court remanded the case for determination of which state law statute of limitations would be appropriate. The district court originally determined that the plaintiff's retaliation claim was time-barred because it was filed after expiration of North Carolina's 3 year statute of limitations for retaliatory discharge actions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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