

PUBLICATION

Eleventh Circuit Clarifies FCA's Statute of Limitations and Deepens Circuit Split

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Addressing an issue of first impression in the Eleventh Circuit concerning interpretation of the False Claims Act's (FCA) statute of limitations for civil actions and deepening an existing Circuit split, the Eleventh Circuit recently reversed a district court's determination that a qui tam action was time-barred because the relator brought suit more than six years after the date of the alleged violation.

The FCA requires that a civil action be commenced within the later of two dates: "6 years after the date on which the violation . . . is committed," or "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."

In this case, the relator's complaint alleged that his employer and another entity violated the False Claims Act by submitting fraudulent claims for payment to the United States. The relator filed his suit more than six years after the alleged fraud occurred, but less than three years after disclosing the potential fraud to the government. The Defendants moved to dismiss the complaint, arguing that the relator's claims were time-barred because they were brought more than six years after the date of the alleged violations. The district court granted the motion, finding that the § 3731(b)(2)'s three-year statute of limitations did not apply to non-intervened suits, or, in the alternative, that it expired when the relator learned of the fraud.

The Eleventh Circuit reversed the district court's decision, holding that the plain language of the statute required that the § 3731(b)(2)'s three-year statute of limitations is applicable even in cases where the United States declines to intervene. The Fourth and Tenth Circuits have held the precise opposite, finding that such a reading requires something Congress clearly could not have intended: a statute of limitations contingent on a non-party's knowledge.

The Eleventh Circuit's opinion also diverges from the Ninth Circuit's reading of the statute, which has permitted application of the three-year statute of limitations in non-intervened suits, but held that because the relator sues on behalf of the government, the relator is a government official. Therefore, under the Ninth Circuit's approach, when the relator obtains (or should have reasonably obtained) knowledge of the alleged fraud's material facts, the claim accrues and § 3731(b)(2)'s clock commences.

Finding no textual support for the Ninth Circuit's approach, the Eleventh Circuit held that § 3731(b)(2)'s statute of limitations is triggered by the knowledge of a reasonable government official, not the relator. So while the relator might have known about the alleged fraud more than three years before suit was filed, the complaint's allegation that a reasonable government official would not have known about the fraud before the relator disclosed it was sufficient to survive a motion to dismiss the claims as time-barred.

The Eleventh Circuit's opinion is notable for two reasons. First, it creates yet another Circuit split on the relationship between the government and the relator under the FCA. Circuits are already divided on whether the government's consent is required to dismiss a qui tam complaint after the period for intervention has passed and the proper standard to evaluate a motion to dismiss filed by the government but opposed by the

relator. These splits suggest that, should the right petition present itself, the Supreme Court might be inclined to grant certiorari and resolve these disputes about the relator's role in the statutory scheme.

Second, the Eleventh Circuit's opinion shows the importance geography currently plays in FCA cases. While the differences between the Fourth and Tenth, Ninth, and Eleventh Circuit's interpretations may appear nuanced, they reflect different approaches to interpreting the FCA, with each Circuit emphasizing distinct facets of the statute's text, purpose, and legislative history. As a practical matter, FCA defendants in the Eleventh Circuit will likely now find it more difficult to prevail on a statute of limitations defense in cases where the United States declines to intervene than similarly situated defendants in sister Circuits.

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