
Supreme Court Strengthens False Claims Act's Statute of Limitations, Narrows First-to-File Bar

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The U.S. Supreme Court today resolved two important questions under the False Claims Act (FCA), holding that (1) the Wartime Suspension of Limitations Act (WSLA), 18 U.S.C. § 3287, applies only to criminal cases, and (2) the FCA's first-to-file bar, 31 U.S.C. § 3730(b)(5), ceases to apply once the earlier-filed action that might have created the bar has been dismissed.¹

Background

In *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, a relator filed a *qui tam* action alleging that Kellogg Brown & Root Services (KBR) fraudulently billed the government for water purification services performed in Iraq in 2005. The relator filed his original *qui tam* complaint in 2006, and the government declined to intervene. In 2010, the government informed the parties about an earlier filed *qui tam* complaint asserting similar claims, leading the district court to dismiss Carter's suit. After a series of dismissals and filings, Carter refiled his complaint in 2011. Two other relators had filed related cases by this time, however, and the district court dismissed Carter's suit with prejudice on first-to-file grounds.² The district court also ruled that the WSLA applied only to criminal cases and therefore did not suspend the running of the limitations period for civil FCA claims, rendering all but one of Carter's claims time-barred.³

The Fourth Circuit reversed, holding that the FCA's first-to-file bar does not block *qui tam* suits filed after the first-filed action is no longer pending and that the WSLA tolls the FCA's statute of limitations for civil as well as criminal claims. The Fourth Circuit found that the suit should not have been dismissed with prejudice and Carter should have been permitted to refile because the previously pending actions that supported dismissal had been dismissed.

The Supreme Court's Decision

The Supreme Court reversed the Fourth Circuit's WSLA holding. "The text, structure, and history of the WSLA," the Court concluded, "show that the Act applies only to criminal offenses."⁴ The Court held that the term "offense" as used in Title 18 refers to criminal violations, and that any ambiguity

must be resolved in favor of a narrower definition.⁵ Accordingly, the Court found all but one of Carter's claims to be time-barred. The Court's reasoning and holding drew no distinction between *qui tam* suits and civil FCA claims instituted by the government.

As to the first-to-file bar, the Court held that a *qui tam* suit ceases to be "pending" once it has been dismissed.⁶ The Court rejected KBR's interpretation of the bar "as short-hand for the first filed action,"⁷ concluding that under that interpretation, a first-filed suit, even if it was not dismissed on the merits, would bar all subsequent suits based on the same underlying facts, a result that Congress likely did not intend.⁸ The Supreme Court also suggested that KBR's interpretation would create practical difficulties for defendants attempting to settle first-filed actions due to the prospect of future claims.⁹ The Court held that Carter's remaining live claim was not barred by the first-to-file bar as the related suits had been dismissed.¹⁰

Implications for Future FCA Cases

By limiting the application of the WSLA to criminal cases, the Supreme Court's decision protects defendants from potentially indefinite tolling of the Act's limitations period. The Court's holding should provide defenses for FCA defendants on time-barred civil claims in a host of areas, from defense contracting to health care to financial services cases.

The Supreme Court's first-to-file decision, however, means that defendants could be subjected to follow-on suits based on the same underlying facts as earlier filed actions once those actions have been dismissed. While defendants may raise other defenses to follow-on suits—such as claim preclusion, depending on the ground for dismissal, and the public-disclosure bar—the potential for follow-on suits may increase uncertainty regarding whether to settle first-filed *qui tam* suits, and if so, for what amount.

¹*Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, Slip Op., No. 12-1497 (U.S. May 26, 2015).

²See 31 U.S.C. § 3730(b)(5) ("When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.").

³See 18 U.S.C. § 3287 ("When the United States is at war or Congress has enacted a specific authorization for the use of the Armed Forces..., the running of any statute of limitations applicable to any offense ... involving fraud or attempted fraud against the United States ... shall be suspended until 5 years after the termination of hostilities[.]").

⁴*Kellogg Brown & Root Services, Inc.*, Slip Op. at 5.

⁵*Id.* at 10.

⁶*Id.* at 13.

⁷*Id.* at 11.

⁸*Id.* at 12.

⁹*Id.* at 12.

¹⁰*Id.* at 13.

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