

Supreme Court Decision in FCA Case Both a Win, Setback for Health Care Providers

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On May 26, 2015, the U.S. Supreme Court issued a rare unanimous decision in a False Claims Act (FCA) case that cuts both ways for the health care industry. In an opinion authored by Justice Samuel Alito, the Court held in *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter (KBR)* that (i) the Wartime Suspension of Limitations Act (WSLA) does not apply to civil cases filed under the FCA, and (ii) the FCA's "first-to-file" bar keeps claims out of court only while related claims are awaiting resolution, not in perpetuity. In a concise 13-page opinion, the Court reversed in part and affirmed in part the U.S. Court of Appeals for the Fourth Circuit. The Court remanded the case to federal district court for additional proceedings.

Top Line Summary

- The Supreme Court found that the WSLA, which suspends the operation of the statute of limitations based on authorizations for the use of Armed Forces by Congress, applies only to criminal "offenses" and does not apply to civil FCA cases.
- The Court also found that the FCA's "first-to-file" rule does not apply in perpetuity. Without reaching the question of claim preclusion following dismissal of a case, the Court simply concluded that cases that are dismissed are no longer "pending" and do not bar future cases based on similar facts.
- The Court's holdings rejected government and relator arguments that would have effectively tolled the FCA statute of limitations during armed conflicts but also extended the potential for "follow-on" FCA *qui tam* cases after earlier dismissals.

Factual and Procedural Background

KBR was an FCA case brought by the relator against defense contractors and related entities providing logistical services to the United States military during the armed conflict in Iraq. Although the federal government did not intervene in the trial court, the U.S. solicitor general filed an amicus brief in the Supreme Court. The case was brought by a former employee of one of the defendants, who claimed the defendants had fraudulently billed the government for water purification services that were not performed or were performed improperly.

The case proceeded through a series of dismissals and refilings, which eventually resulted in the appeal before the Fourth Circuit Court of Appeals. In reversing the district court, the Court of Appeals held that the WSLA applied to the plaintiff's civil claims and, thus, those claims were timely. The majority of the relator's claims were filed more than six years after the alleged conduct. The Court of Appeals also held that the relator's single claim filed less than six years after the alleged wrongdoing could proceed, noting that the first-to-file bar ceases to apply once any similar or related action is dismissed.

The Supreme Court reversed the Fourth Circuit's WSLA holding but affirmed its first-to-file holding.

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Wartime Suspension of Limitations Act Does Not Apply to Civil Suits

The WSLA tolls the normal statute of limitations for cases when the United States is at war or Congress has enacted a specific authorization for the use of military force. The Court held that “[t]he text, structure and history of the WSLA show that the Act applies only to criminal offenses.” The Court provided a history of the WSLA to demonstrate that Congress always intended the statute to apply to criminal cases, not civil suits. Congress passed prior versions of the WSLA in 1921 and 1942 in response to World War I and World War II, respectively, to extend the statute of limitations for fraud offenses “now indictable under any existing statutes.” As the 1942 version of the statute was set to expire by its own terms, Congress changed the words “now indictable under any existing statute” to “any offense against the laws of the United States.”

Both the relator and the United States argued this change illustrated Congress’ intent to make the WSLA applicable to civil as well as criminal offenses. The Court disagreed for three reasons. First, it found this language to indicate Congress making the WSLA prospective in nature and applicable to future claims of criminal fraud, rather than only affecting past claims. Second, the Court stated that this reading of the WSLA was consistent with the common use of the word “offense” as defined in both Black’s Law Dictionary and Webster’s New International Dictionary at the time of the change in the WSLA’s language. Third, the Court gave weight to Congress’ placement of the WSLA in Title 18 of the U.S. Code (Crimes and Criminal Procedure).

First-to-File Rule Does Not Bar Cases Indefinitely

The Court separately found that the first-to-file rule, which bars later-filed actions based on the same facts in a “pending” suit, does not apply indefinitely. In *KBR*, the district court dismissed the relator’s claims with prejudice because of other cases filed in Maryland and Texas. The district court’s dismissal of the relator’s case came despite the earlier dismissal of these prior cases.

Applying a plain meaning analysis of the word “pending,” the Court found that “a *qui tam* suit under the FCA ceases to be ‘pending’ once it is dismissed.” Accordingly, the Court agreed with the Fourth Circuit that there were no “pending” cases that would bar the relator’s remaining “one live claim,” filed within the statute of limitations period.

The Court acknowledged that its finding created “practical problems” and recognized the petitioner’s argument that, if the first-to-file bar is lifted once prior actions end, defendants may be reluctant to settle those prior actions without reserving some amounts for the prospect of similar future cases. However, the Court noted that the FCA’s *qui tam* provisions present “many interpretive challenges” and it was “beyond [the Court’s] ability in this case to make them operate together smoothly like a finely tuned machine.”

Considerations for Health Care Entities Facing FCA Claims

KBR provides both a win and a setback for health care providers and others facing FCA claims. The Court rejected a vigorous attempt by the relator and the government to extend virtually indefinitely the tolling of the civil FCA statute of limitations while Congress has authorized military actions. On the other hand, the Court has lengthened the shelf life of FCA claims by permitting later-filed *qui tams* to proceed after the same claims have previously been filed and dismissed.

Defendants will find securing dismissal of later-filed *qui tam* actions more complicated by this ruling. While the limitations period may have expired and would independently limit such later claims, or claims preclusion principles may lead a court to reject later-filed complaints, defendants may not have access to the complete filing history where a case has remained under seal for many years to support a motion. Still, the public disclosure bar, even as relaxed in recent amendments to the FCA, will remain an important defense to such copycat *qui tams*.

In sum, the Court expressly recognized but declined to sort out some of the practical consequences of its ruling or resolve the many “interpretive challenges” posed by the FCA. Yet, there may be advantages flowing from the opinion and Court’s insistence on “ordinary meaning” interpretations of FCA terms in defending cases asserting strained reasoning or applications of the statute.

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