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Supreme Court delivers important victory for qui tam whistleblowers

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On May 13, 2019, the Supreme Court of the United States, in a unanimous decision, delivered an important victory for qui tam whistleblowers in *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, (Hunt).^[1] The decision, authored by Justice Clarence Thomas, held that private qui tam whistleblowers are entitled to the extended statute of limitations period in the federal False Claims Act (FCA) that many federal courts had previously reserved only for FCA lawsuits filed by the government. This decision is important because: (1) it affords whistleblowers the same amount of time as the government to file a claim against those who defraud taxpayer-funded programs; and (2) it resolves a split in the lower federal courts as to how to interpret the statute of limitations provisions in the FCA.

The Supreme Court's decision resolves the application of the FCA's statute of limitations provisions, which provide:

(b) A civil action under section 3730 may not be brought — (1) more than 6 years after the date on which the violation of section 3729 is committed, or (2) 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.^[2]

Although federal courts have unanimously applied the six-year statute of limitations to qui tam lawsuits, there was a split between lower federal courts as to whether Section 3731(b)(2)'s three-year limitations period also applied to qui tam lawsuits. In particular, the Circuit Courts of Appeal were split along the following lines:

- The Fourth and Tenth Circuit Courts of Appeal had ruled that Section 3731(b)(2) did not apply to a relator-initiated action in which the government elects not to intervene.^[3] ^[4]
- The Ninth Circuit Court of Appeals had ruled that Section 3731(b)(2) applied in non-intervened whistleblower actions, and that the limitations period begins when the relator knew or should have known the relevant facts.^[5]
- The Eleventh Circuit Court of Appeals had ruled that Section 3731(b)(2) applied in non-intervened whistleblower actions, and that the limitations period begins when “the official of the United States charged with responsibility to act in the circumstances” knew or should have known the relevant facts.^[6]

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