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Too little, too late: Statute of limitations and public disclosure bar warrant dismissal of FCA claim

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Courts rarely dismiss FCA claims under the FCA's statute of limitations, particularly since the Supreme Court's decision[1] in *Cochise Consultancy, Inc. v. United States ex rel. Hunt*,[2] which held that relators in declined *qui tam* actions have more than six years to bring suit as long as the government "official ... charged with responsibility to act" did not know (and should not reasonably have known) of the alleged fraud.

But in a recent decision, *United States ex rel. La Frontera Ctr., Inc. v. United Behavioral Health Inc. et al.*,[3] the district court dismissed a *qui tam* claim as untimely under the FCA's statute of limitations because the government indeed had knowledge of the alleged fraud.

The court held that the claim was also foreclosed by the FCA's public disclosure bar even though specific allegations of fraud had not been previously disclosed. The decision shows that courts will continue to dismiss FCA claims that run afoul of important statutory thresholds like the FCA's statute of limitations and public disclosure bar.

In January 2009, United Behavioral Health (United) entered into a contract with New Mexico to provide behavioral health and substance abuse services to Medicaid patients. United represented that it had substantial experience in running Medicaid programs nationwide and had a functional claim adjudication system that would prevent fraud and abuse.

These representations were apparently untrue because later that same year New Mexico held public hearings and fined United for failure to process Medicaid claims. In December 2015 — more than six years after United entered into its contract with New Mexico — relator La Frontera Center filed its FCA suit against United and related defendants.

At the threshold, United argued that the case should be dismissed under FRCP 41(b) for failure to prosecute, because the *qui tam* complaint had lingered under seal for almost seven years while the government engaged in what it called "one sided discovery." The United States submitted a statement of interest in opposition, arguing that the court had found good cause to extend the seal throughout the period.

Although the court expressed "concern[] about the Government's habitual requested extensions," it concluded that the extensions were nonetheless made in good faith and complied with the FCA and denied United's motion for failure to prosecute.

But the court did hold that the relator's fraudulent inducement claim was untimely. The FCA contains two statutes of limitations for *qui tam* suits: *first*, an action must be brought within six years after the statutory violation occurred; and *second*, an action must be brought within three years after DOJ knew or should have known about the alleged FCA violation.

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The court found relator's fraudulent inducement claim untimely under both because (1) it was filed more than six years after United had entered into the contract and (2) DOJ should have known about the underlying facts by October 2009, given the public investigation, sanctions, and news releases.

The court concluded that the public disclosure bar similarly foreclosed the same fraudulent inducement claim. Relator argued that the specific fraud allegations had never been publicly disclosed and that the public disclosures focused solely on United's failure to meet contractual obligations. The court disagreed.

"Material elements of the alleged fraudulent transaction," the court explained, "were disclosed sufficiently to put the government on the trail of the alleged fraud." And based on "the failure of the contract, the government could have followed the trail to determine if fraud had caused the contract violations."

Notwithstanding the dismissal of relator's fraudulent inducement claim under the statute of limitations and public disclosure bar, the court denied United's motion to dismiss with respect to relator's remaining reverse fraud and state FCA claims.

Unlike the fraudulent inducement claim, the reverse false claim did not occur when the contract was executed but rather when "[d]efendants had an obligation to pay the government and knowingly did not." The court concluded that the facts relating to the overpayments "remain[] unresolved" and, as a result, neither the statute of limitations nor the public disclosure bar warranted dismissal.

La Frontera is yet another decision highlighting the importance of the statute of limitations and public disclosure bar as critical threshold issues in *qui tam* cases. The decision shows that any alleged fraudulent inducement claim filed more than six years after a contract is entered is vulnerable under the statute of limitations depending on when the government had notice of the facts constituting the alleged fraud.

And, as we have recently blogged[4] in the context of the public disclosure bar, even where the public disclosures did not contain specific allegations of fraud, litigants should assess whether the publicly available information reflects the "material elements" of the alleged fraudulent transaction sufficient to warrant dismissal.

Notes

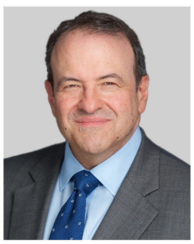
[1] http://bit.ly/3YEwhxQ

[2] 139 S. Ct. 1507 (2019).

[3] Case No. 1:15-cv-01164 (D.N.M. Feb. 8, 2023).

[4] http://bit.ly/3mHk2Dk

About the authors



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