

# U.S. Supreme Court May Overrule Indefinite Extension Of False Claims Act's Civil Statute Of Limitations

Today the U.S. Supreme Court heard oral argument in *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter* (Case No. 12-1497), which raises the issue of whether the Wartime Suspension of Limitations Act ("WSLA") tolls the statute of limitations in civil False Claims Act ("FCA") actions during times when the United States is at war. The WSLA provides that "[w]hen the United States is at war ... 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 ...." 18 U.S.C. § 3287. The issue in *Carter* largely turns on whether the word "offense" limits the WSLA's application to criminal cases.

The United States and *qui tam* relators (private parties who can pursue FCA suits on the government's behalf) have increasingly been relying on the WSLA to save civil FCA claims that would otherwise be barred under the FCA's 6-year statute of limitations. The FCA provides for the recovery of treble damages against any person who, among other things, knowingly presents a false or fraudulent claim to the United States government for payment or approval. 31 U.S.C. § 3729(a)(1)(A). The *Carter* case could have significant impact on civil FCA cases, reinstating a limitations period that the government has been arguing is tolled indefinitely as a result of the United States military actions in Afghanistan and Iraq.

## Case History

In *Carter*, Kellogg Brown & Root Services, Inc. and other entities (collectively "KBR") provided services to the United States military under a multi-year government contract. Relator Benjamin Carter worked for KBR on water-purification projects, and in 2006 filed an FCA *qui tam* complaint (amended in 2008), alleging that KBR instructed him to submit falsified time sheets so that KBR could overbill the United States on those projects. The government declined to intervene after reviewing Carter's complaint.

The district court granted KBR's motion to dismiss for two reasons. First, the court held that Carter's claims were time-barred because the statute of limitations for FCA civil claims had run, finding that the WSLA did not apply to a civil FCA case brought by a relator. *United States ex rel. Carter v. Halliburton Co.*, No. 1:11cv602, 2011 WL 6178878, at \*11-12 (E.D. Va. Dec. 12, 2011). Second, the court held that Carter's suit was barred under the FCA's "first-to-file" bar, which provides that "no other person other than the Government may intervene or bring a related action based on the facts underlying the pending action ...." *Id.* at \*6, 8 (quoting 31 U.S.C. § 3730(b)(5)).

On appeal, a divided panel of the Fourth Circuit reversed, holding that the WSLA suspended the statute of limitations for Carter's FCA civil claims because the United States was "at war" in Iraq since October 2002's Congressional authorization for the use of military force against Iraq. *United States ex rel. Carter v. Halliburton Co.*, 710 F.3d 171, 179 (4th Cir. 2013). In addition, the Fourth Circuit concluded that the FCA's first-to-file provision did not forever bar respondent's claims, because earlier cases based on the same facts were dismissed. *Id.* at 183.

KBR filed a petition for certiorari in June 2013. The Supreme Court granted certiorari in July 2014.

## WSLA's Application to FCA Civil Cases

In the Supreme Court, KBR argued that the Fourth Circuit mistakenly construed the WSLA to apply to civil fraud claims. Specifically, KBR explained that every use of the term “offense” in Title 18 of the U.S. Code means a crime. As a result, the use of that term in the WSLA limits wartime tolling to criminal matters. Moreover, KBR explained that the deletion of the modifier “now indictable” from a pre-cursor of the WSLA in 1944 was meant only to permit the statute to have prospective application to apply to offenses committed after the date of enactment, not to expand wartime tolling to civil cases.

In response, Carter and the United States as amicus curiae argued that the WSLA by its terms applies to “any offense,” expansive language that encompasses both criminal and civil cases. The United States explained that the Supreme Court itself held in *United States v. Hutto*, 256 U.S. 524 (1921), that the term “offense” included both criminal and civil violations of law. Carter noted that a slew of district court opinions in the wake of World War II held that the WSLA applied to civil cases, thereby confirming its ordinary meaning. Finally, Carter and the United States also explained that Congress deleted the modifier “now indictable” from the WSLA’s precursor in 1944 as part of the Contract Settlement Act, which was a statute with a predominantly civil focus.

## Implications Going Forward

If the Supreme Court limits the WSLA’s application to criminal cases, civil FCA claims would be subject only to the FCA’s 6-year limitations period and plus tolling applicable when the government should not have known of facts material to its cause of action. Such a ruling by the Supreme Court would mark an end to the efforts of the United States and FCA *qui tam* relators to expand indefinitely the FCA’s statute of limitations and to subject companies to liability on otherwise stale claims.<sup>1</sup>

A decision by the Supreme Court is expected by the end of the Term in June 2015.

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<sup>1</sup> Although unexpected, the Supreme Court could decide the case on the basis of the FCA’s “first-to-file” bar (if it were to agree with KBR) and not reach the WSLA issue.