

Supreme Court to Decide Important False Claims Act Statute of Limitations and Jurisdictional Bar Issues

On July 1, 2014, the Supreme Court granted certiorari in *Kellogg Brown & Root Services, Inc., et al. v. United States ex rel. Carter* (No. 12-1497), a case involving two issues that have been central to recent False Claims Act (“FCA”) litigation. *Carter* arises out of allegedly fraudulent defense contractor billing practices in connection with United States military operations in Iraq. In 2013, the Fourth Circuit restricted two important FCA defenses—the six-year statute of limitations and the first-to-file bar—in holding that Relator’s suit was not barred by either. Although the Solicitor General recommended that review be denied, the Supreme Court granted certiorari and will hear the case in the fall of 2014.

The first issue for the Court in *Carter* is whether the Wartime Suspension of Limitations Act (“WSLA”) suspends the statute of limitations for civil claims, including FCA claims brought by a private relator. The WSLA was originally enacted during World War II, and provides that “[w]hen the United States is at war .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 or any agency thereof in any manner . . . shall be suspended until 5 years after the termination of hostilities.” Below, the Fourth Circuit held that that the WSLA suspended the FCA’s statute of limitations so that Relator’s claims were timely, even though they were brought outside the FCA’s six-year limitations period. In view of the evolving nature of U.S. involvement in international armed conflicts, including efforts to combat terrorism that have been on-going for years, the Court’s resolution of this issue will have enormous practical importance for the future of all FCA litigation.

The second issue in *Carter* involves the FCA’s first-to-file bar. The first-to-file requirement—designed to prevent repetitive lawsuits and incentivize relators to alert the government promptly of alleged fraudulent activity—serves as a jurisdictional bar to later-filed complaints alleging the same essential elements as another “pending action.” The Supreme Court will review whether the first-to-file bar precludes a later-filed action based on the same facts *only* if the earlier case is still pending, or if it also bars such a later-filed action after the prior case has been terminated. The Fourth Circuit held below that “an action that is no longer pending cannot have a preclusive effect for all future claims.” The Court’s decision on this question will likewise carry significant practical consequences, as it will either draw a hard line after which no FCA claims may be brought on a given set of facts or subject defendants to sequential, repetitive suits under certain circumstances.

If you have any questions or would like to discuss the foregoing or any related matter, please contact the Ropes & Gray attorney with whom you regularly work, or an attorney in our [false claims act](#) practice.

[Kirsten Mayer](#)
[Kathryn Wilhelm](#)
[Christopher J. Walsh](#)