

## Supreme Court Reverses 4th Circuit: Statute of Limitations *Not* Tolled During Wartime for Civil Fraud Claims

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Government Contracts and White Collar

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On May 26, in *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, Docket No. 12-1497, the U.S. Supreme Court ruled that the statute of limitations for actions brought under the civil False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, is **not** suspended during times of war by the Wartime Suspension of Limitations Act (“WSLA”), 18 U.S.C. § 3287. This reverses the contrary ruling of the Fourth Circuit and brings much-needed clarity to this critical issue for government contractors and other potential FCA defendants in a wide range of industries.

Under the civil FCA’s statute of limitations, either the Government or a *qui tam* relator can bring an action within six (6) years of the alleged violation. An action brought by the Government also will be timely if it is brought within three (3) years of when the Government knew or should have known of the violation, up to ten (10) years after the violation. In a 2013 decision in the *Carter* case, however, the Fourth Circuit held that the WSLA, which suspends statutes of limitations for certain “offenses” during times of war, had suspended the civil FCA’s statute of limitations during the conflict in Iraq. In so doing, the Fourth Circuit rejected the argument of Kellogg Brown & Root Services, Inc. (“KBR”) that the WSLA applied only to criminal offenses. The Fourth Circuit’s holding was consistent with decisions interpreting the WSLA in a number of district courts in other circuits, and would have resulted in government contractors and other FCA defendants facing years of uncertainty due to the indefinite tolling of the statute of limitations, even with respect to conduct unrelated to wartime efforts. Following the Fourth Circuit’s ruling, KBR sought, and was granted, certiorari to the U.S. Supreme Court.

In a unanimous decision authored by Justice Alito, the Court reversed the Fourth Circuit on the statute of limitations issue. The Court found that the text, structure, and history of the WSLA demonstrated that the WSLA applies only to criminal offenses -- not to civil claims like those at issue in a civil FCA case. In the Court’s words, it is “clear that the term ‘offense’ in the WSLA applies solely to crimes.” While this holding leaves open the possibility that the WSLA suspends the statute of limitations for *criminal* fraud violations during the pendency of the conflict in Iraq and other armed conflicts, it ensures that contractors and other potential civil FCA defendants will not be on the hook for stale claims stemming from alleged behavior that occurred more than a decade ago.

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