



Kellogg Brown & Root v. United States ex rel. Carter, 135 S.Ct. 1970 (2015)

Topics Covered: False Claims Act

Outcome: Neutral

Issue

The issues on appeal in this case under the False Claims Act (FCA) are (a) whether the Wartime Suspension of Limitations Act (WSLA), 18 U.S.C. § 3287, applies to claims of civil fraud brought by private relators and (b) whether the FCA “first-to-file” bar, 31 U.S.C. § 3730(b)(5), requires dismissal of a subsequent lawsuit if no prior related suit is pending (or has been resolved on the merits) at the time the qui tam defendant asks the court to impose the bar and dismiss the case.

AMA Interest

The AMA is to seek modification or repeal of the Federal False Claims Act, as well as restrictions on its use.

Case Summary

Kellogg, Brown & Root (KBR) provided logistical services to the United States military in Iraq under a government contract. Benjamin Carter worked for KBR as a reverse osmosis water purification unit operator at two camps in Iraq in early 2005. Carter contended that during part of this period KBR was not purifying water but was repeatedly misrepresenting to the United States that it was. He also maintained that he and other KBR employees were instructed to submit false time sheets, so that KBR could overbill the government. As a result, according to Carter, the United States paid KBR for work not actually performed.

Carter brought a qui tam action on June 2, 2011. He alleged that KBR systematically submitted false claims to the United States, pursuant to the scheme above, and thereby violated the FCA. At that time, other qui tam cases were pending, which alleged similar misrepresentations by KBR. Those other qui tam suits were dismissed, without prejudice, after Carter filed his suit.

On a motion of KBR, the trial court found that Carter’s suit was barred under the first-to-file rule. The court further found that the FCA has a six-year Statute of Limitations, and the allegedly fraudulent claims had been filed after that period had lapsed. Consequently, the suit was also barred under the Statute of Limitations. Accordingly, the court dismissed Carter’s suit on both of these grounds, with prejudice.

Carter appealed to the United States Court of Appeals for the Fourth Circuit. As to the first to file bar, the court held that Carter’s suit would have been barred if the prior pending cases had been maintained or resolved on the merits before resolution of Carter’s suit. However, because the

prior pending suits were dismissed without prejudice while Carter's suit was still alive, Carter could still pursue his action.

As to the Statute of Limitations issue, the court noted that the WSLA suspends the running of the period of limitations "[w]hen ... Congress has enacted a specific authorization for the use of the Armed Forces ... until 5 years after the termination of hostilities." The WSLA applies to "any offense ... involving fraud or attempted fraud against the United States." The narrow question was whether the word "offense" in the WLSA referred only to crimes, which is what Carter advocated, or whether "offense" also encompassed civil wrongdoings, such as civil violations of the FCA. Based on its analysis of the legislative history, the court held that the WLSA should also apply to civil actions, as in this case.

The case was then appealed to the United States Supreme Court. On May 26, 2015, the Supreme Court, by unanimous decision, reversed the Fourth Circuit in part and affirmed it in part. It agreed with Carter that WSLA applies only to criminal FCA lawsuits and not to civil suits, such as the present case. Thus, Carter's suit was timely.

The Supreme Court also agreed with Carter that the trial court had erred by dismissing the case with prejudice. The case was remanded for further determination as to whether, in light of these rulings, Carter had a viable claim.

Litigation Center Involvement

The AMA joined in an *amicus* brief organized by the United States Chamber of Commerce.

United States Supreme Court brief