

Alert: Fourth Circuit Eviscerates False Claims Act's Statute of Limitations

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In a recent decision with extremely troubling implications for government contractors, the Fourth Circuit held that a little-used World War II-era law, the Wartime Suspension of Limitations Act (WSLA), suspends the statute of limitations for *all* fraud claims during a time of war, regardless of whether war is formally declared by the government, regardless of whether the claims are civil or criminal, and regardless of whether they are being brought by the government or a private relator.

The WSLA tolls any statute of limitations relating to an "offense" involving "fraud or attempted fraud" against the federal government "[w]hen the United States is at war." 18 U.S.C. § 3287. The suspension is effective until five years after hostilities have terminated. *Id.* In *United States ex rel Carter v. Halliburton Co.*, 710 F.3d 171 (4th Cir. Mar. 18, 2013), a divided panel of the Fourth Circuit concluded that the WSLA tolled the six-year False Claims Act (FCA) statute of limitations for false claims alleged under a 2005 war zone contract because the United States was "at war" with Iraq when the allegedly false claims were presented. Prior to this case, a district court in the Fifth Circuit had similarly held that the WSLA tolled the FCA's statute of limitations with respect to civil claims arising in 2005, when the United States was "at war" in both Iraq and Afghanistan. *U.S. v. BNP Paribas SA*, 884 F.Supp. 2d 589 (S.D. Tex. 2012). That decision has not yet been addressed on appeal by the Fifth Circuit.

Under this caselaw, contractors are potentially vulnerable to FCA claims that would otherwise be stale. For example, contractors may see qui tam relators arguing that the WSLA tolls FCA claims dating back to the beginning of the United States' invasion of Iraq – March 19, 2003 – or even that there has not yet been a formal "suspension of hostilities" in the war against terrorism, thereby creating an indefinite tolling of the FCA's statute of limitations. There may be some consolation in the FCA's statute of repose, which provides for an outside limit of ten years for FCA claims. Neither the *Halliburton* nor the *BNP Paribas* courts addressed whether it would be trumped by the WSLA's tolling provisions (although there is some disagreement among courts as to whether a statute of repose can be subject to tolling at all). At any rate, these decisions will likely have a significant effect on FCA cases, particularly if other courts follow their broad interpretation of the WSLA.

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