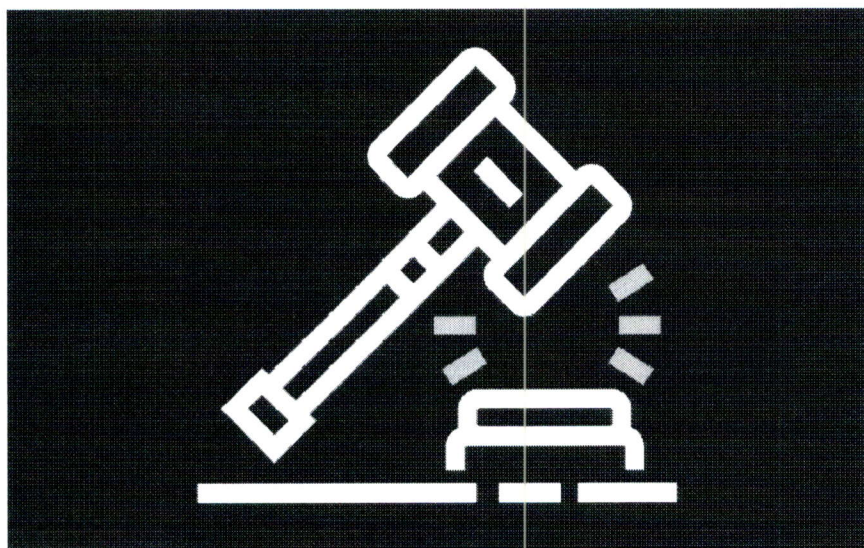


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Cochise Consultancy v. U.S. ex rel. Hunt

MARCH 15, 2019 · WILLIAM L. HURLOCK



Argument: March 18, 2019

Petitioner Brief:
Cochise Consultancy, Inc. and The Parsons Corporation

Respondent Brief: United States of

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Whistleblower asks the Court to consider his claim timely

Billy Joe Hunt worked in Iraq for a government contractor. He learned of an alleged kickback scheme in which Cochise Consultancy paid bribes to get awarded a U.S. contract to clean up excess munitions left by enemy troops. Awarding Cochise the contract, he argues, ended up costing the U.S. government more money because another company was better equipped to perform the work.

The False Claims Act

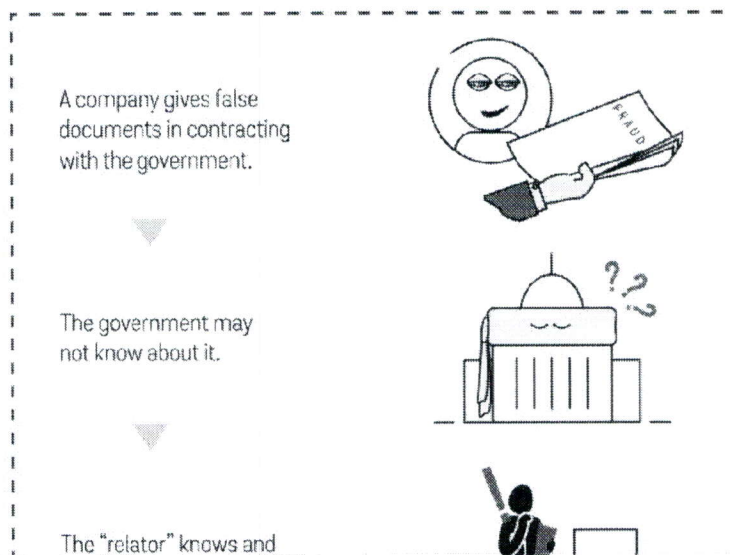
The federal False Claims Act exists to combat fraud on the public. Congress first passed the False Claims Act in 1863 at the height of the Civil War in an attempt to address the massive fraud occurring in the

Did Hunt file his case on behalf of the U.S. government on time?

Cochise Consultancy versus United States ex rel. Hunt

BACKGROUND: THE FALSE CLAIMS ACT

The False Claims Act allows a private party to represent U.S. Government interests in claims for fraudulent contracting.



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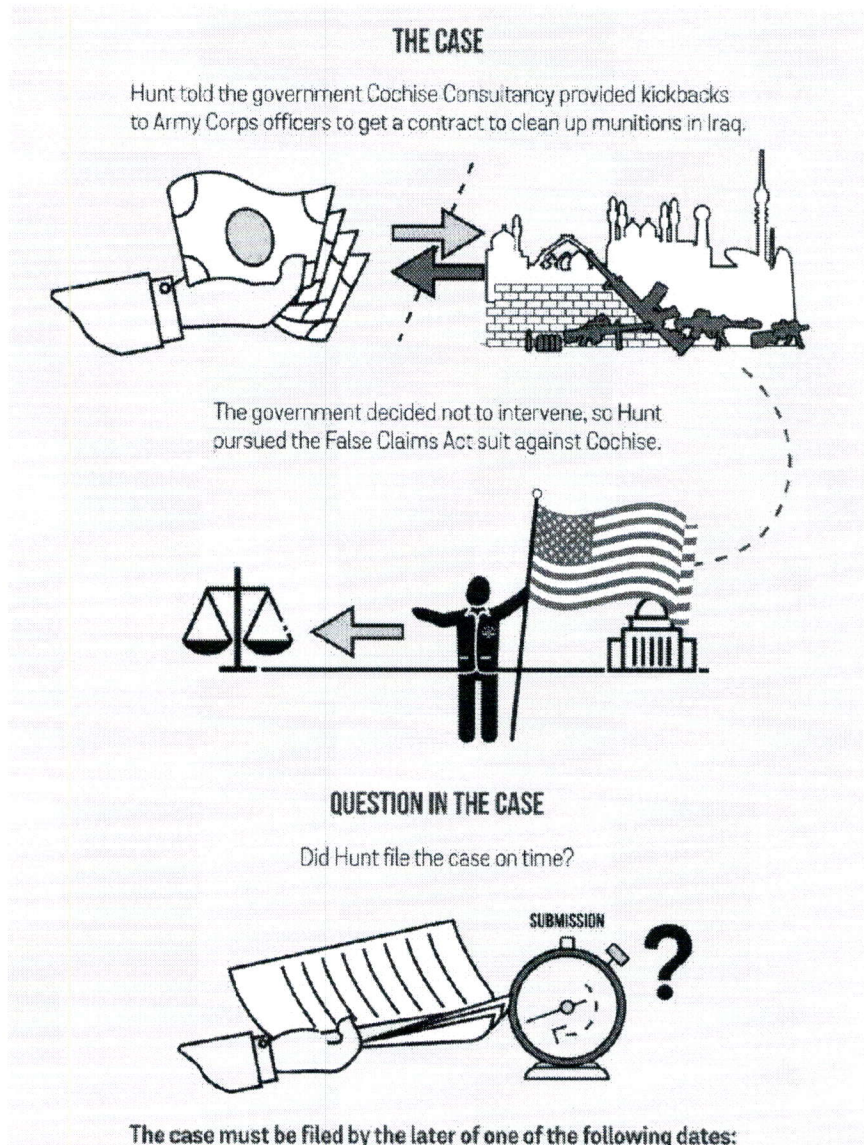
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The person files a suit on behalf of the government.

Congress amended the Act in 1943 during the Second World War. Once again, the government attempted to combat war profiteers selling inferior products to the United States military. In 1986, at the height of the Defense Department build-up during the Reagan Administration, Congress again amended the Act to further combat procurement fraud and encourage the filing of cases. Congress recently amended the Act as part of the Fraud Enforcement and

Litigant's Motive	Government's Motive
Pursuing justice and potentially recovering money.	Defense against fraud without the litigation expense and potentially recovering losses.



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The “relator”

stand in
Hunt's way:

Does Hunt count as “the official of the U.S. charged with responsibility to act in the circumstances”?

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The statute contains a *qui tam* provision that allows an individual citizen or entity, referred to as a “relator,” to sue on behalf of the government. If successful, the relator receives a percentage of the recovery. *Qui tam* is an abbreviation of the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur* which translates into “he who brings a case on behalf of our lord the King, as well as for himself.” The relator may also assert personal employment claims for wrongful termination for engaging in whistleblowing activities under of the Act.

Many legislators recognize the importance of financial incentives to promote fraud detection and prosecution. Indeed, it is believed that the *qui tam* model provides the greatest incentive for the whistleblower while exposing information that the government cannot detect on its own. These incentives may encourage individuals to report fraud, the occurrence of which law enforcement is unaware.

How the Act works

A party who presents fraudulent information to the U.S. government to get payment on a contract violates the False Claims Act. The relator, who learns of the fraud, may take action.

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This case is about whether the relator filed the case on time.

The timing provision

The relevant section of the Act at issue here says a civil action may not be brought—

- (1) more than 6 years after the date on which [the violation] is committed, or
- (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

31 U.S.C. § 3731(b).

This case

Billy Joe Hunt, the relator in this case, filed a complaint in 2013 alleging fraud on the part of Cochise Consultancy during 2006 and 2007. The government declined to intervene in the case, and Hunt decided to go forward with it on his own. The Defendants filed a motion to dismiss the case, claiming the case was barred because it was brought too late under the Act.

Specifically, the Defendants argued that Hunt's complaint was untimely

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declined to intervene; or because the time period expired three years after Hunt discovered the fraud in 2006.

Hunt then appealed his case to the United States Court of Appeals for the Eleventh Circuit. The Appeals Court essentially agreed with Hunt and reinstated the case. In so ruling, the Eleventh Circuit took a unique position among other circuits. It held relators (like Hunt) can invoke the longer time period to bring in suits in which the United States itself is not a party. In addition, the three-year limitations period does not begin until the United States government learns of the alleged fraud, regardless of when the relator discovers it.

The defendants appealed this decision to the United States Supreme Court.

Applying the Act to Hunt's case

In *Hunt*, the Court will resolve the issue of whether relators may avail themselves of the benefit of a longer time period to bring the case - essentially the same amount of time that the government is afforded under the Act. The Supreme Court agreed to hear the case, in part, to resolve a split that developed among the Circuits. The Fourth, Fifth and Tenth Circuits believe that relators are not the government and, as such, do not get the benefit of the longer time to file the case. The Third and Ninth Circuits believe that relators do get the benefit of a longer time to file. Most interestingly, the Eleventh Circuit takes yet another view and believes that a relator has a ten-year period

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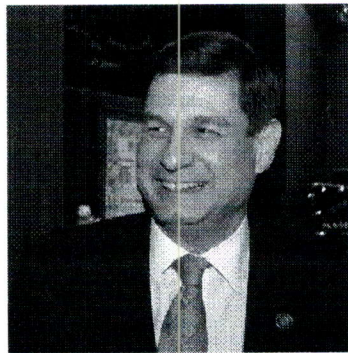
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The federal government's view

The United States, through the Solicitor General's office, sided with Hunt. It filed a "friend of the court" brief asserting that relators should have the benefit of the longer period with which to file an action, even where the government declines to intervene, in the interest of protecting the public fisc. The government also argues that the time period does not begin to run until the government learns of the fraud.

The Justices will hear arguments on March 19, 2019.



CONTRIBUTOR

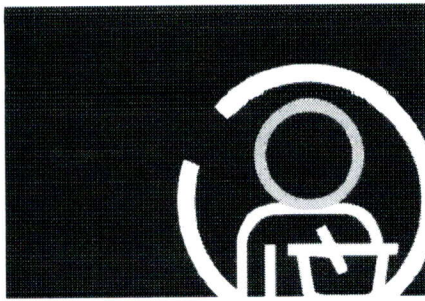
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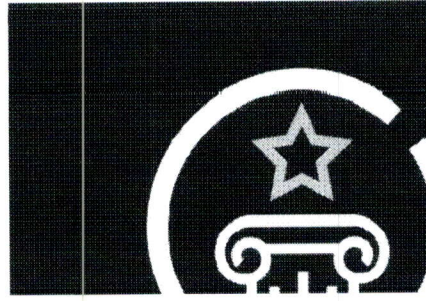
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