



Government Investigations ADVISORY ■

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U.S. District Judge Rejects Argument that Wartime Suspension of Limitations Act Tolls Statute of Limitations in False Claims Act Lawsuit Against Lance Armstrong

On June 19, in a widely-publicized False Claims Act (FCA) case known for its high-profile defendant, Lance Armstrong, a federal judge in the District of Columbia issued a significant procedural ruling barring the plaintiff's ability to toll the statute of limitations on the basis of the Wartime Suspension of Limitations Act (WSLA). U.S. District Judge Robert Wilkins rejected the argument raised by the relator, Floyd Landis, that the WSLA tolled the FCA's applicable statute of limitations period beginning September 18, 2001, when Congress authorized the use of military force in Afghanistan. Judge Wilkins held that the WSLA tolls only those offenses involving a specific intent to defraud the government, which the FCA does not require. This is the first time that a federal court has reached this conclusion. Although the decision may be later appealed, it is for now a significant victory for FCA defendants seeking to time-bar stale claims alleged by relators to have been fraudulent.

Background

In *United States ex rel. Landis v. Tailwind Sports Corp.*, 10-CV-00976, 2014 WL 2772907 (D.D.C. June 19, 2014), the relator brought suit against Lance Armstrong and other individuals and companies associated with the United States Postal Service (USPS) cycling team alleging that the defendants breached their sponsorship agreements and submitted false claims for payment. Two sponsorship agreements between the USPS and the defendants—one in 1995 and one in 2000—included provisions that mandated compliance with the rules of the Union Cycliste International (UCI) and the International Olympic Committee (IOC). The UCI and IOC both prohibited the use of certain performance enhancing drugs. The relator and the government (which intervened in the case) alleged that the defendants had used banned performance enhancing techniques or encouraged such use, leading to the submission of false claims to USPS for sponsorship funds.

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The District Court's Decision on the WSLA

The defendants moved to dismiss all claims on a variety of grounds, including the statute of limitations. The district judge found that the six-year limitations period for FCA allegations applied to the relator and thus claims based on conduct prior to June 10, 2004—six years prior to the relator's filing of the complaint on June 10, 2010—were dismissed. The relator attempted to argue that the statute was tolled under the WSLA, which would allow him to bring claims based on allegedly fraudulent payments prior to the 2004 date. Judge Wilkins disagreed. Citing a 1953 Supreme Court decision, *United States v. Grainger*, 346 U.S. 235 (1953), which held that the WSLA applied only to offenses that “include fraud as an essential ingredient,” Judge Wilkins interpreted that phrase as requiring specific intent to defraud the government as an essential element of the cause of action.

The district court noted that the FCA was amended in 1986 to specify that “no proof of specific intent to defraud is required” to establish FCA liability. Because FCA liability may lie without proof of specific intent to defraud, the court concluded that an FCA claim is not an offense that includes the necessary “fraud as an essential ingredient” to trigger tolling under the WSLA. Judge Wilkins therefore rejected the plaintiff's argument that the WSLA tolled the FCA allegations.

Takeaways

Whether the district court's decision will be appealed and/or followed by other federal courts outside of the District of Columbia remains to be seen. What is clear, however, is that Judge Wilkins' ruling is at odds with a decision issued last year by U.S. District Judge Jesse Furman of the Southern District of New York, in *United States v. Wells Fargo Bank, N.A.*, 972 F. Supp. 2d 593 (S.D.N.Y. 2013).

Judge Furman also analyzed the *Grainger* decision in considering the plaintiff's argument that the WSLA tolled the statute of limitations for the FCA claims, but did not interpret the Supreme Court's phrase “fraud as an essential ingredient” as requiring proof of specific intent to defraud. Rather, Judge Furman noted that the FCA, at the time *Grainger* was decided, only required proof that the claims be submitted “knowing such claim to be false, fictitious, or fraudulent.” Judge Furman then cited to numerous cases that define the knowledge component of fraud as including both actual knowledge as well as reckless disregard for the truth. Therefore, Judge Furman concluded, the FCA as amended in 1986—which includes liability for actual knowledge, deliberate ignorance of the truth, and reckless disregard of the truth—could be an offense that has “fraud as an essential ingredient” to trigger tolling under the WSLA.

Landis' conflict with *Wells Fargo*, and the absence of any appellate decision on point, suggests that there may be further developing case law on this issue. Alston & Bird will continue to monitor and report on these developments as they occur. However, unless and until such time that other courts rule on this issue, the *Landis* decision is a significant development and provides defendants with another tool to counter attempts by plaintiffs to shoehorn otherwise stale claims into their complaints alleging violations of the False Claims Act.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Craig Carpenito
Co-Chair
212.210.9582
craig.carpenito@alston.com

Michael L. Brown
Co-Chair
404.881.7589
mike.brown@alston.com

George Abney
404-881-7980
george.abney@alston.com

Christina Hull Eikhoff
404-881-4496
christy.eikhoff@alston.com

Edward T. Kang
202-239-3728
edward.kang@alston.com

Theodore J. Sawicki
404-881-7639
tod.sawicki@alston.com

Randall L. Allen
404-881-7196
randall.allen@alston.com

Rodney J. Ganske
404-881-4996
rod.ganske@alston.com

Louis A. Karasik
213-576-1148
lou.karasik@alston.com

Brian Stimson
404-881-4972
brian.stimson@alston.com

Jeffrey A. Belkin
404-881-7388
jeff.belkin@alston.com

Mary C. Gill
404-881-7276
mary.gill@alston.com

John L. Latham
404-881-7915
john.latham@alston.com

Jason M. Waite
202.239.3455
jason.waite@alston.com

Donna P. Bergeson
404-881-7278
donna.bergeson@alston.com

James A. Harvey
404-881-7328
jim.harvey@alston.com

Dawnmarie R. Matlock
404-881-4253
dawnmarie.matlock@alston.com

Kyle G.A. Wallace
404-881-7808
kyle.wallace@alston.com

Cathy L. Burgess
202-239-3648
cathy.burgess@alston.com

Katherine E. Hertel
213.576.2600
kate.hertel@alston.com

Wade Pearson Miller
404-881-4971
wade.miller@alston.com

Kenneth G. Weigel
202-239-3431
ken.weigel@alston.com

Mark T. Calloway
704-444-1089
mark.calloway@alston.com

H. Douglas Hinson
404-881-7590
doug.hinson@alston.com

William R. Mitchelson
404.881.7661
mitch.mitchelson@alston.com

R. Neal Batson
404-881-7267
neal.batson@alston.com

Marianne Roach Casserly
202-239-3379
marianne.casserly@alston.com

J. Andrew Howard
213-576-1057
andy.howard@alston.com

Bruce Pasfield
202-239-3585
bruce.pasfield@alston.com

Angela T. Burnette
404-881-7665
angie.burnette@alston.com

Steven M. Collins
404-881-7149
steve.collins@alston.com

Brett D. Jaffe
212-210-9547
brett.jaffe@alston.com

Kimberly K. Peretti
202.239.3720
kimberly.peretti@alston.com

Brian J. Fields
212-210-9585
brian.fields@alston.com

Thomas E. Crocker
202.239.3318
thomas.crocker@alston.com

William H. Jordan
404-881-7850
bill.jordan@alston.com

T.C. Spencer Pryor
404.881.7978
spence.pryor@alston.com

Eileen M.G. Scofield
404-881-7375
eileen.scofield@alston.com

ALSTON & BIRD LLP

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, CA 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333