



## Does the Wartime Suspension of Limitations Act Spell the Doom of the Statute of Limitations Defense?

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In *United States v. Wells Fargo Bank, N.A.*, a federal district court has determined that the Wartime Suspension of Limitations Act (WSLA) applies to claims brought under the False Claims Act to toll the statute of limitations. No. 12 Civ. 7527 (JMF), 2013 U.S. Dist. LEXIS 136539 at 33 (S.D.N.Y. Sept. 24, 2013). The WSLA suspends statutes of limitation for offenses involving fraud against the United States when the country is at war or when Congress has enacted a specific authorization for the use of the Armed Forces. See 18 USC 3287. The language allowing for a suspension of limitations when Congress has enacted an authorization for use of military force was added to the WSLA on October 14, 2008, when the WSLA was amended. *Wells Fargo*, 2013 U.S. Dist. LEXIS 136539 at 34. The WSLA suspends relevant statutes of limitation until five years after the terminations of hostilities as proclaimed by a presidential proclamation, with notice to Congress, or by a concurrent resolution of Congress. *Id.* at 35.

The court noted that there was no dispute that the WSLA is currently in effect, in light of the 2008 amendment. *Id.* at 35. On September 18, 2001, Congress authorized the use of military force against those responsible for the September 11, 2001, terrorist attacks. see *Authorization for Use of Military Force*, Pub. L. No. 107-40, 115 Stat. 224 (2001). Congress also authorized the use of military force in Iraq on October 16, 2002. see *Authorization for Use of Military Force Against Iraq Resolution of 2002*, Pub. L. No. 107-243, 116 Stat. 1498. There has been neither a presidential proclamation of termination of hostilities nor a congressional resolution. *Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 136539 at 36. Thus, the terms of the WSLA have been satisfied.

The court also considered whether the WSLA 2008 amendments would retroactively apply to toll the False Claims Act (FCA) statute of limitations and whether the WSLA would apply at all to FCA claims that are unrelated to wartime contracting. *Wells Fargo* at 36. The court answered yes on both accounts.

As to the question of whether applying the WSLA as amended in 2008 would be retroactive, the court explained that there was in fact no retroactivity. The earliest fraudulent conduct alleged by the U.S. was in 2001. *Id.* at 37. Under Section 3731(b) (2) of the FCA, the earliest claim was still live until 2011. *Id.* at 38. Therefore, because all of the FCA claims would have been live on October 14, 2008, when the WSLA was amended, application of the WSLA was not retroactive. *Id.* As such, the court reasoned that the claims all fell within the ambit of the WSLA, the statute of limitations was therefore suspended, and the claims were timely. *Id.*

The court also determined that the WSLA applied to all frauds against the U.S., including those unrelated to war. *Id.* at 46. Finding the statutory language plain on its face, the court was unwilling to read Wells Fargo's interpretation into the statute. *Id.*

Wells Fargo's argument that the FCA complaint against it should be dismissed on the basis of expiry of the FCA statute of limitations was thus unavailing. This decision accords with a recent decision from the Fourth Circuit Court of Appeals on the application of the WSLA to FCA claims — *U.S. ex rel. Carter v. Halliburton*, 710 F.3d 171 (4th Cir. 2013).

These decisions indicate that a statute of limitations defense is likely to carry little to no heft in the current political landscape.