
Supreme Court Finds No Fraud Exception to Five-Year Statute of Limitations for Government Lawsuits Seeking Civil Penalties

By David M. Furbush, Sarah Good and Bruce A. Ericson

The U.S. Supreme Court's recent decision in [Gabelli v. Securities Exchange Commission](#) (Feb. 27, 2013) rejects an attempt by the Securities and Exchange Commission to extend a statute of limitations by invoking a "discovery rule." The SEC had proposed that, in an action by the SEC to impose a civil penalty for securities fraud, the time to bring an action should not begin running until the fraud was discovered, or reasonably could be discovered by the SEC. The Supreme Court rejected the SEC's view.

The relevant statute, 28 U.S.C. Section 2462, limits the time within which an "action, suit or proceeding for the enforcement of any civil fine, penalty or forfeiture" may be brought to "five years from the date when the claim first accrued." The statute governs many federal civil penalty provisions, not just those pertaining to securities laws.

In suits for compensatory damages for alleged fraud, other statutes of limitations have been held not to begin running until the plaintiff learns, or in the exercise of reasonable diligence could have learned, that it has a claim. The SEC argued that this "discovery rule" should apply to lawsuits or administrative actions brought by the SEC to recover civil penalties for fraudulent conduct. The Supreme Court rejected this argument, holding that the claim accrues, and the five-year period begins to run, when the allegedly fraudulent conduct occurs. In so doing, the court distinguished between "the private party who has no reason to suspect fraud" and the SEC, whose "very purpose is to root it out," cataloguing "the many legal tools" available to the SEC in pursuing its mission, such as the ability to subpoena documents and witnesses even before bringing suit and the ability to reward whistleblowers and violators who cooperate.

The ruling reduces the uncertainty and the potentially unfair burden on defendants that would have resulted from application of a discovery rule to such proceedings. However, the court left open the possibility that the fraudulent concealment doctrine could extend the statute of limitations where a defendant takes steps beyond the challenged conduct itself to conceal the conduct from the plaintiff. And

the Supreme Court did not address the lower court's holding that the statute of limitations is inapplicable to claims for injunctive relief and disgorgement, thus leaving defendants potentially exposed to such claims indefinitely.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

David M. Furbush [\(bio\)](#)
Silicon Valley
+1.650.233.4623
david.furbush@pillsburylaw.com

Sarah A. Good [\(bio\)](#)
San Francisco
+1.415.983.1314
sarah.good@pillsburylaw.com

Bruce A. Ericson [\(bio\)](#)
San Francisco
+1.415.983.1560
bruce.ericson@pillsburylaw.com

Charles J. Landy [\(bio\)](#)
Washington, DC
+1.202.663.8358
charles.landy@pillsburylaw.com

Richard M. Segal [\(bio\)](#)
San Diego
+1.619.544.3203
richard.segal@pillsburylaw.com

Ranah L. Esmaili [\(bio\)](#)
New York
+1.212.858.1526
ranah.esmaili@pillsburylaw.com

Christine A. Scheuneman [\(bio\)](#)
Los Angeles
+1.213.488.7487
christine.scheuneman@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2013 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.