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2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

Ninth Circuit Partially Tackles Open Issues in Customs-Based False Claims Act Cases

by Douglas W. Baruch and Jennifer M. Wollenberg

Businesses importing goods into the United States often navigate a maze of laws and regulations when classifying the goods and designating the country of origin for customs purposes. The enforcement environment for these businesses is expected to become more robust under the current Administration due to changing tariff rates and a Justice Department emphasis on pursuing companies for allegedly evading customs duties. The Ninth Circuit's recent decision in *Island Industries, Inc. v. Sigma Corp.*, 142 F.4th 1153 (9th Cir. 2025), has important implications for enforcement under the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, as it removes two potential impediments to pursuing FCA claims based on alleged customs violations.

First Impediment Removed: The Jurisdictional Bar to Customs-Based FCA Claims Does Not Apply to *Qui Tam* Suits

Island Industries, acting as a *qui tam* relator, accused Sigma, a business competitor, of violating the FCA's reverse false claims provision (31 U.S.C. § 3729(a)(1)(G)) by knowingly avoiding an obligation to pay duties on certain pipe fittings Sigma imported into the United States. The United States declined to intervene in the action and the case proceeded to trial, where a jury found that the fittings in question were subject to an antidumping duty and Sigma knowingly misclassified the fittings.

On appeal, during oral argument before the Ninth Circuit, a judge *sua sponte* questioned whether the district court (and the Ninth Circuit) had jurisdiction over the case given the decision in *United States v. Universal Fruits and Vegetables Corp.*, 370 F.3d 829 (9th Cir. 2004). In *Universal Fruits*, the Ninth Circuit held that, under 28 U.S.C. § 1582, the Court of International Trade (CIT) had exclusive jurisdiction over any civil actions "commenced by the United States" to recover customs duties and ordered the district court to transfer the case to the CIT.[1]

As a result, based on the *Universal Fruits* decision, the law in the Ninth Circuit for the last 20 years has been that no district court within the circuit had jurisdiction over an affirmative FCA case (i.e., one brought by the United States) based on the avoidance of customs duties. The question raised by the *Island Industries* panel was whether that jurisdictional bar also applied to FCA *qui tam* cases (i.e., cases initiated by private parties on behalf of the United States).

[1] Interestingly, the CIT then dismissed the case, holding that it lacked jurisdiction over FCA claims because its jurisdiction is limited to the recovery of customs duties (not damages and penalties). *United States v. Universal Fruits and Vegetables Corp.*, 433 F. Supp. 2d 1351, 1356 (CIT 2006).

Douglas W. Baruch and **Jennifer M. Wollenberg** are partners in the Washington, D.C. office of Morgan, Lewis & Bockius LLP. *The authors of this article were counsel on an amicus curiae brief filed in the Ninth Circuit in the* Island Industries *case. The opinions expressed in this article are those of the authors and do not necessarily reflect the views of the organizations represented in that amicus brief.*

The Ninth Circuit ruled that the bar did not extend to *qui tam* actions. In particular, the panel found that relators and the United States are not synonymous for purposes of 28 U.S.C. § 1582. The panel cited as support *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928 (2009), which drew a distinction between the United States and relators for purposes of a Federal Rule of Appellate Procedure timing provision. The panel also relied on the Ninth Circuit's decision in *United States ex rel. Kelly v. Boeing*, 9 F.3d 743 (9th Cir. 1993)—namely that relators "effectively stand in the shoes of the United States" and have Article III standing under an assignment theory—to show that relators and the government are separate entities. *Island Industries*, 142 F.4th at 1163.

Second Impediment Removed: FCA Actions Based on Avoidance of Customs Duties Are Not Preempted by 19 U.S.C. § 1592

In its appeal, Sigma argued that 19 U.S.C. § 1592 provides the exclusive statutory remedy for violations of customs laws. Section 1592(d) states that "if the United States has been deprived of lawful duties, taxes, or fees . . ., the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed." The Ninth Circuit rejected that argument, finding "no irreconcilable conflict" between § 1592 and the FCA. *Island Industries,* 142 F.4th at 1164. The court held that the two statutory remedies can co-exist because § 1592 does not state that its remedies are exclusive and the FCA does not specifically exempt customs violations as it does tax violations. *Id.* In addition, the panel noted that the FCA's "alternate remedy" provision in § 3730(c)(5) indicates that an FCA action can be pursued "in parallel" with an action under § 1592. *Id.*

Current Status of the Law

The Ninth Circuit's *Island Industries* decision questioned, but did not overrule, the *Universal Fruits* holding. This means that the law in the Ninth Circuit is that district courts lack jurisdiction over customs-based FCA actions commenced by the United States but not relators (as the government acknowledged),[2] and Section 1592 does not preempt relator FCA actions. Outside of the Ninth Circuit, these issues remain largely undecided and likely will be ripe for resolution as the number of customs-based FCA cases continues to grow.

Possible Points for Future Court Review

In further briefing before the Ninth Circuit, Sigma indicated that it may ask the Supreme Court to resolve the two questions addressed above, namely whether FCA actions seeking to recover customs duties must be filed in the CIT and whether 19 U.S.C. § 1592 effectively preempts customs-based FCA actions.

Whether before the Supreme Court or a court outside of the Ninth Circuit, one might argue that the Ninth Circuit panel reasoning conflicts with the Supreme Court's decision in *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000), which made clear that relators have Article III standing in *qui tam* actions precisely because the FCA effects a partial assignment of the government's injury. The reality is that, in an FCA case, the relator is asserting a substantive right of recovery on behalf of the United States for damages sustained by the United States and, in the event of a recovery, damages and penalties are paid directly to the United States. Therefore, for purposes of jurisdiction under 28 U.S.C. § 1582, there should be no meaningful distinction between an FCA action for recovery of customs duties that is "commenced by the United States" versus one

[2] In an *amicus* brief, the government argued that *Universal Fruits* was wrongly decided but acknowledged nonetheless that "it is binding on the panel unless and until it is overruled by the en banc court." *See* Supplemental Brief for the United States, No. 22-55063 (9th Cir., Jan. 10, 2022). Logically, *qui tam* actions in which the government intervenes also should be barred, but that outcome remains unclear.

commenced by a relator.

With respect to the second issue, one might claim that the panel's citation to the FCA's alternate remedy provision is misguided, as that provision applies only to actions brought by a relator and therefore would not support finding that FCA actions brought by the United States can coexist with Section 1592 claims. Further, even in *qui tam* actions, when the alternate remedy provision applies, the statute contemplates that the relator's complaint cannot continue. 31 U.S.C. § 3730(c)(5) (affording the relator the same rights in the alternate remedy proceeding as it would have had if the *qui tam* "action had continued"). In practice, therefore, a relator action and a Section 1592 claim by the United States based on the same underlying avoidance of customs duties cannot "coexist."

