

CG Wins Appeal Before the U.S. Supreme Court; *Gabelli v. SEC* Rejects Application of the Discovery Rule in Civil Penalty Cases

On February 27, 2013, the U.S. Supreme Court unanimously held that the government cannot extend the five-year limitations period in 28 U.S.C. § 2462, the default statute of limitations for civil penalty actions, by application of the “discovery rule.” *Gabelli v. SEC*, 568 U.S. ____ (2013), No. 11–1274, was successfully argued for the petitioners by Lewis J. Liman of Cleary Gottlieb.¹

Section 2462 provides that actions for forfeitures, fines or penalties, monetary or otherwise, “shall not be entertained unless commenced within five years from the date when the claim first accrued.” Writing for a unanimous court, Chief Justice Roberts held that the statute of limitations begins to run when the violation giving rise to the penalty claim occurs and not when the violation is discovered, including when the underlying conduct sounds in fraud. The Court thus unanimously rejected the Second Circuit’s view that “for claims that sound in fraud a discovery rule is read into the relevant statute of limitation.” *Gabelli*, slip. op. at 4.

Section 2462 provides the statute of limitations for a broad range of substantive statutes, including the Investment Advisers Act of 1940; the Investment Company Act of 1940; the Securities Act of 1933; the Securities Exchange Act of 1934; the Commodity Exchange Act; the Federal Trade Commission Act; the Clean Air Act; the Clean Water Act; the Employee Retirement Income Security Act of 1974; the Patient Protection and Affordable Care Act; the National Recording Preservation Act of 2000; the Federal Election Campaign Act of 1971; the Lobbying Disclosure Act of 1995; the Immigration Act of 1990; the National Housing Act; the Energy Policy Act of 2005; the Consumer Product Safety Act; and the Toxic Substances Control Act. Thus, the opinion provides guidance with respect to the statute of limitations for a broad range of civil penalties affecting a wide range of businesses and a large number of people.

In addition, the opinion contains important language regarding the significance of statutes of limitations and the values of repose. Chief Justice Roberts stresses “the basic policies of all

¹ The slip opinion is available at http://www.supremecourt.gov/opinions/12pdf/11-1274_aplc.pdf.

limitations provisions,” which include “repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.” *Id.* at 5. At the conclusion of the Court’s opinion, Chief Justice Roberts emphasizes that “the cases in which a statute of limitation may be suspended by causes not mentioned in the statute itself . . . are very limited in character, and are to be admitted with great caution.” *Id.* at 11.

If you have questions about *Gabelli* and its implications for the statute of limitations for governmental actions, or questions about statutes of limitations generally, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed under “Litigation and Arbitration” in the “Practices” section of our website (<http://www.clearygottlieb.com>).

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