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Corner Post Claim Accrual And Lessons From Government Contracts Statutes Of Limitations

*By Jennifer Bentley, Bob Huffman, and Nooree Lee**

Just days after ruling on *Loper Bright Enterprises v. Raimondo*,[1] the U.S. Supreme Court issued a critical decision that received less attention but drastically changed the landscape for litigation under the Administrative Procedure Act (APA)[2]—at least as it relates to how long a plaintiff has to challenge a regulation or other agency action under the statute of limitations. In *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*,[3] the Supreme Court determined that for facial challenges to a final agency action (i.e., allegations that a regulation or other agency action is unlawful as written), a plaintiff has a much longer time span to bring her challenge than had previously been interpreted by certain circuit courts. The Court redefined when a claim "accrues" for statute of limitations purposes, finding that a plaintiff can bring a facial challenge within six years of the date that she has a "complete and present cause of action" and the right to "file suit and obtain relief," which includes being injured by a final agency action.[4]

Much has been written already by the dissenting Justices and others about the practical import of this change, including the fact that decades-old regulations are now fair game for new challenges by the right plaintiff, creating a new opportunity for this decision to be weaponized by activist litigants.[5] However, it is not clear at this time how the Supreme Court's new approach to the APA statute of limitations will be interpreted and analyzed in the lower courts on a practical level. In other words, how will courts understand when an injury occurs? Is there any daylight between the "complete and present cause of action," and the time that the injury occurs? How will ongoing injuries be addressed? Much like statutes of limitations in any context, the factual circumstances of cases in the future will determine the contours of the doctrine.

This BRIEFING PAPER identifies a parallel between the new standard for

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IN THIS ISSUE:

APA claim accrual under *Corner Post* and the statute of limitations scheme under two foundational federal procurement statutes: the Tucker Act, 28 U.S.C.A. § 1491, and the Contract Disputes Act (CDA), 41 U.S.C.A. Chapter 71. The Tucker Act and the CDA include the term "accrue" or "accrual" in their statutes of limitations[6] and have long used a similar test for determining when a claim "accrues," therefore creating a useful analog for working with the Supreme Court's new test.

This PAPER suggests that APA litigants should consider looking to and drawing on case law interpreting the Tucker Act and CDA when forming arguments about how the new APA statute of limitations should be interpreted—not only because they involve suits against the government, but because they appear to, at least on their face, apply a similar standard to the one articulated by the *Corner Post* court. Similarly, as lower court decisions interpreting the *Corner Post* standard are issued, they may be useful persuasive authority for statute of limitations issues in the federal procurement context.

This BRIEFING PAPER first discusses statutes of limitations in APA litigation prior to *Corner Post* and then turns to the general statute of limitations under the Tucker Act and CDA. Following that overview, it walks through nuances in how the statute of limitations has been applied under the Tucker Act and CDA. Those nuances include: (1) the requirement for damages, (2) the plaintiff's awareness, (3) suspension of accrual, (4) the availability of equitable tolling, and (5) the continuing claims doctrine. Following that discussion, the PAPER analyzes those five principles from government contracts law in the context of APA litigation under *Corner Post* and ends with suggested practical considerations for litigators in the regulatory space facing statute of limitations issues.

APA Statutes Of Limitations Pre-*Corner Post*

28 U.S.C.A. § 2401(a) applies to APA actions and sets out the default statute of limitations that applies unless a more specific limitation has been legislated. It reads, "Except as provided by chapter 71 of title 41 [the CDA], every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." Prior to *Corner Post*, at least nine federal courts of appeals had found that for facial challenges, the statute of limitations runs from the time that agency action is final.[7]

Under this long-standing and widely accepted interpretation of APA claim accrual, if an agency published a final rule on January 1, 2024, any facial challenge to that rule was time-barred on January 1, 2030. This scheme provided finality where, six years following a rulemaking, a regulatory regime was no longer vulnerable to facial challenge. As-applied challenges could still be timely, running from the time of application, but this PAPER is not focused on the statute of limitations for as-applied challenges, which were not changed under *Corner Post*.

The impact of the change in the definition of "accrual" is perhaps best illustrated by the facts of *Corner Post*. Corner Post is a truck stop and convenience store in North Dakota that challenged Federal Reserve Board regulations setting maximum interchange transaction

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fees that payment networks (e.g., Visa, Mastercard) can charge for the use of debit cards. The Federal Reserve Board's rule setting the maximum interchange fee was published in July 2011. Corner Post did not exist until 2018, and therefore was not able to bring a facial challenge to the rule by July 2017. The federal district court and appeals court both dismissed Corner Post's 2021 challenge as time barred because the statute of limitations began to run when the rule was promulgated.[8] The Supreme Court reversed, finding instead that Corner Post's claim accrued at the time it had a "complete and present cause of action," which was when it was injured by the rule, even though "that injury did not occur until many years after the action became final."[9] Connecting accrual to the plaintiff's injury was a sea change in the avenues to challenge the lawfulness of a given regulation on its face.

However, what the Supreme Court did not explain is how to determine exactly when an injury occurs, if damages are required for injury, whether the plaintiff's awareness of the injury is relevant, and if accrual can be suspended after injury. The Tucker Act and CDA may be able to offer lessons as APA litigants navigate these new waters, and APA interpretations may inform future Tucker Act and CDA litigation.

Statutes Of Limitations Under The Tucker Act And Contract Disputes Act

The Tucker Act, 28 U.S.C.A. § 1491, and the Contract Disputes Act, 41 U.S.C.A. Chapter 71, are foundational federal procurement statutes that provide avenues for government contractors and other parties who seek to bring an action against the United States. While these statutes may be unfamiliar to practitioners outside of the government contracts space, the Tucker Act and CDA are central to government procurement law and have driven the shape of the practice over time.

These statutes are relevant here because they, like the APA statute, include statutes of limitations for bringing an action against the government and calculate that limitation from the time the action "accrues." Under the Tucker Act and CDA, courts and other ruling bodies have determined that an action accrues at the time that "all events" have occurred. We posit that "all events" occurring is a similar enough standard to the "complete and present cause of action" set out by the Supreme Court in *Corner Post* such that these statutes might be instructive for APA litigation and offer new potential arguments around the relevant statute of limitations timing.

To illustrate this point, we will next discuss the general statute of limitations under the Tucker Act and CDA and then turn to specific aspects of how that limitation has been interpreted, including: (1) the requirement for damages, (2) the plaintiff's awareness, (3) suspension of accrual, (4) the availability of equitable tolling, and (5) the continuing claims doctrine. This Paper discusses the application of the two statutes together because of their similarities, but also highlights their differences, in particular the requirement for damages, the jurisdictional nature of the statute, and the availability of equitable tolling.

Tucker Act And Contract Disputes Act General Statutes Of Limitations

The Tucker Act allows certain lawsuits to be filed against the U.S. government by granting the U.S. Court of Federal Claims jurisdiction over contract disputes, bid protests, takings claims, and more.[10] The Tucker Act's statute of limitations is set out at 28 U.S.C.A. § 2501: "Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." It shares the six-year time period and the language "first accrues" with the APA statute of limitations.[11] The Supreme Court's opinion in *Corner Post* even draws the connection that the APA statute of limitations was originally based on the language of the "Little Tucker Act."[12] (The Little Tucker Act covers claims against the government for $10,000 or less,[13] but it uses the same statute of limitations as the Tucker Act.) Courts have interpreted the Tucker Act statute of limitations to make up a test quite similar to the standard set out by the court in *Corner Post*. The general rule is that a claim first accrues "when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action."[14]

The CDA establishes a comprehensive system for

resolving disputes between a contractor and a procuring agency.[15] The CDA's statute of limitations is set out at 41 U.S.C.A. § 7103(a)(4)(A): "Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim." The CDA does not define "accrual," but the Federal Acquisition Regulation (FAR) does. FAR 33.201 defines "accrual of a claim" as: "[T]he date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred."[16] Accordingly, the statute of limitations under the CDA operates very similarly to the Tucker Act, with the key difference being no requirement for damages to be incurred under the CDA under the FAR definition.

These are longstanding rules, with the Tucker Act's interpretation dating back to at least the 1950s.[17] The question then becomes, how do you determine when all events have occurred? This is a fact-dependent question, as evidenced by the cases discussed below that walk through: (1) the requirement for damages, (2) the plaintiff's awareness, (3) suspension of accrual, (4) the availability of equitable tolling, and (5) the continuing claims doctrine.

Requirement For Damages

Under the Tucker Act, a claim has not accrued until the plaintiff has suffered damages. While breach of contract cases are often the easiest scenario under this rule—damages often occur at the time of breach—sometimes determining the time that damages occur is more difficult. For example, in *Terteling v. United States*, the government contracted for Terteling to extract gravel from certain lands, only for Terteling to be sued by the owners of the land for the extraction.[18] When Terteling later sued the government for the costs incurred in defending against the landowners' lawsuits, the government moved to dismiss on the basis that Terteling's suit was time-barred, claiming that six years accrued from the date of final acceptance and payment.[19] The Court of Claims disagreed, finding that the claim did not accrue until the termination of litigation with the landowners, because that was the time that Terteling could total up its litigation expenses and set up a claim.[20] In other words, all the events had not occurred until the litigation expense damages were incurred.

Another example is *Gilead Sciences, Inc. v. United States*, involving a breach of contract claim by a life sciences company for violations of a Material Transfer Agreement and resulting government patents using plaintiff's proprietary drugs. The Court of Federal Claims found that the company's claim was not time-barred because accrual did not occur until the date that the government's allegedly improper patent was issued—not the date that the provisional patent application was filed—because it was not until the patent was issued that the government had enforceable patent rights and the plaintiff suffered damages.[21] Notably, while the Tucker Act requires damages in order for all events to be fixed, there is not a requirement for a precise, final quantum of damages to be calculated.[22]

In contrast, under the CDA, damages are not required in order for all events to be fixed, by definition in the interpreting FAR provision.[23] When a contractor does have monetary damages, case law indicates that accrual "is not be suspended until [the contracting party] performs an audit or other financial analysis to determine the amount of its damages."[24] In *Raytheon Missile Systems*, the fact that the government did not complete an audit report calculating the amount of the noncompliance at issue until 2006 did not move the accrual date to 2006.[25] Accrual remained in 1999, when Raytheon disclosed the relevant underlying facts to the government.[26] Therefore, similar to the Tucker Act, damages do not need to be precisely calculated in order for all events to be fixed and accrual to occur.

"All The Events" Requires The Plaintiff's Awareness

Determining when "all events" have occurred also requires looking at the plaintiff's awareness of the facts. The Federal Circuit has previously held that a claim does not accrue under the Tucker Act until all the

events which fix the government's liability have occurred *and* the plaintiff was or should have been aware of their existence.[27] In other words, a claim does not accrue unless the claimant knew or should have known that the claim existed.[28] This is an objective standard—the plaintiff does not have to have actual knowledge of all of the facts in order for the claim to accrue.[29]

For the CDA, FAR 33.201 says that accrual occurs, in part, when the party knows or should have known the events occurred. This means that accrual is not suspended under the CDA where it takes the injured party some time to recognize the import of information communicating the injury.

In *Fallini v. United States*, a Tucker Act takings case about a private ranch being required to provide water to wild horses, the Federal Circuit found that the objective knowledge standard was "clearly met" where the ranchers "have been cognizant of the facts underlying the alleged taking since long before they filed their complaint in the Court of Federal Claims."[30] In that case, their complaint, filed in 1992, alleged that the taking began in 1971, two decades before the suit was filed, at the time Congress enacted the Wild Free-Roaming Horses and Burros Act, which mandated the provision of water.[31] The plaintiffs alleged that the taking had continued since that time.[32] The Federal Circuit seemed especially persuaded by the fact that the ranchers sent a water bill to the Bureau of Land Management in 1983 (nine years before the suit was filed), at which point the court found that they were surely aware of the facts necessary to establish the government's liability.[33]

San Carlos Apache Tribe v. United States is another Tucker Act case illustrating the way in which the objective standard for plaintiff's awareness can counsel in favor of accrual occurring earlier in time than might have been expected.[34] In that case, the Tribe brought suit against the government in 2009 for monetary damages stemming from a failure to protect the Tribe's water rights under a 1935 decree, based on the government's representation of the Tribe in the negotiations leading to that decree.[35] The Tribe argued that the suit was timely because the effect of the decree was not clear until a 2006 decision by the Arizona Supreme Court concerning the water rights.[36] The Federal Circuit disagreed, finding the claim time-barred because the Tribe's claim was based on the terms of the 1935 decree and the Tribe "knew or should have known" what the terms meant.[37] Therefore all of the events that fixed the government's liability occurred upon the entry of the decree in 1935.[38]

Raytheon Missile Systems is a CDA case about alleged violations of Cost Accounting Standards that illustrates that a CDA claim can accrue even when it takes the injured party some time to recognize the import of information communicating the injury. The government brought a costs claim against Raytheon that was ultimately time-barred, and the government tried to extend the time available by asserting that although Raytheon disclosed the information relevant to the government's claim in 1999, the government price analyst's 1999 report showed that the analyst failed to recognize the relevance of the information that early in time.[39] The Armed Services Board of Contract Appeals rejected this argument because "claim accrual does not turn upon what a party subjectively understood; it objectively turns upon what facts are reasonably knowable," and the alleged noncompliance was reasonably knowable in 1999.[40] While this case is distinct from the others we have discussed in that it is a government claim against a contractor, the same principles would apply in a suit against the government.

Suspension Of Accrual

In a helpful doctrine for plaintiffs seeking to extend the available time period to bring a claim, the accrual of a claim against the United States is suspended under the Tucker Act if the plaintiff can show either that "the defendant has concealed its acts with the result that plaintiff was unaware of their existence or . . . that its injury was inherently unknowable at the accrual date."[41] In *Japanese War Notes Claimants Ass'n of Philippines, Inc. v. United States*, the Court of Claims provided an example of an injury that would be inherently unknowable: "when defendant delivers the wrong type of fruit tree to plaintiff and the wrong cannot be determined until the tree bears fruit. In this situation the statute will not begin to run until the plaintiff learns or reasonably should have learned of his cause of action."[42] The accrual suspension rule is applied very

narrowly, and "absent active concealment by defendant, accrual suspension requires what is tantamount to sheer impossibility of notice."[43]

Availability Of Equitable Tolling Differs Under The Statutes

Equitable tolling is not available under the Tucker Act.[44] Courts often refer to this as a "jurisdictional" statute of limitations, which cannot be waived by the courts, including for equitable purposes.[45] In practice, this creates a harsher time cutoff for claims under the Tucker Act than those under the CDA.

In contrast, there is case law holding that equitable tolling can be available under the CDA. In *Arctic Slope Native Association, Ltd. v. Sebelius*, the Federal Circuit determined that unlike lawsuits under the Tucker Act, equitable tolling is available under the CDA because it does not fall into the class of statutes to which Congress did not intend equitable tolling to apply.[46] The Armed Services Board of Contract Appeals has stated that "the CDA's six-year limitation upon the submittal of claims may be equitably tolled when a litigant has (1) been pursuing his rights diligently, and (2) some extraordinary external circumstance stood in his way and prevented timely filing."[47] While difficult to prove, the availability of equitable tolling is a welcome option for potential litigants under the CDA who may be pushing up against the six-year limit.

Continuing Claims Doctrine

While equitable tolling is not available under the Tucker Act, certain types of claims may be available for an extended time because of the continuing claims doctrine. This doctrine only applies where the plaintiff's claim is "inherently susceptible to being broken down into a series of independent and distinct events or wrongs, each having its own associated damages."[48] The doctrine says that each wrong is an alleged violation of a statute or regulation that accrued when the particular wrong occurred, independent of the accrual of other wrongs.[49] This doctrine is frequently applied in cases about pay, which generally can easily be broken down into distinct units.[50]

Applying Lessons From The Tucker Act And Contract Disputes Act To APA Statute Of Limitations And Accrual Under *Corner Post*

As illustrated above, there are decades of history and authority for determining the nuances of when a claim accrues under the Tucker Act and the CDA. The Tucker Act and CDA's test for "all the events" occurring to fix liability is at least on its face similar to the standard under *Corner Post* for a "complete and present cause of action," including an injury. Because of this parallel, APA litigants should consider drawing on Tucker Act and CDA decisions as persuasive authority and lessons as they move forward in a new era of APA litigation, and suits proceeding under the Tucker Act or the CDA may newly be able to rely on cases interpreting the standard in *Corner Post*. The following sections set out concepts that may be most helpful to draw parallels.

All Events Are Fixed

First, one area that APA litigants might draw on as helpful is the Tucker Act and CDA's interpretations of "all events" being fixed as equivalent to *Corner Post*'s "complete and present cause of action," including an injury. For litigants hoping to extend the available time frame for bringing a suit that is potentially bumping up against the statute of limitations, asserting that the events were not fixed at an earlier time of alleged accrual may expand the possible window.

Requirement For Damages

In particular, the Tucker Act's requirement for the claimant to have suffered damages may be helpful persuasive authority. As described above, the Tucker Act has been interpreted to require a claimant to have suffered damages before all the events have occurred to fix liability.[51] This requirement for damages provides a close parallel to *Corner Post*'s holding that a claim does not accrue under the APA until the plaintiff suffers an injury. While an "injury" is broader than "damages," the concepts from the Tucker Act's cases about damages could provide analogous propositions.

Because the CDA does not have a requirement for

damages in order for all events to be fixed, this is one area where litigants would likely only want to draw on the Tucker Act, and not the CDA. However, this is easily distinguished for purposes of fighting any argument that the CDA rule should apply in understanding the meaning of the all events test: the FAR expressly states that damages are not required for a CDA claim.[52] The FAR generally will not be controlling for APA claims, and the Tucker Act cases to draw on are judge-made law rather than regulation or statute.

Awareness Of Events

The requirement for the plaintiff to be aware of the events fixing the government's liability is another area that may be of interest to APA litigants. In the right factual circumstances, an APA plaintiff could seek to delay the time at which their claim accrued by asserting that they were not aware of all the events fixing the government's liability. However, any argument to this effect would likely see a government response that the plaintiff had an objective awareness of the facts attributing to the government's liability, particularly when there is a significant delay between the beginning of the relevant conduct and the lawsuit.

Litigants should also take heed from the lessons in CDA cases about damages assessments. While the CDA does not have an express requirement for damages to have occurred in order for all events to be fixed, it is instructive that there are cases rejecting arguments that the claim did not accrue until there was a formal, established measurement of damages. Plaintiffs should not calculate the date of accrual from when they can precisely pinpoint the magnitude of their injury, but instead from when the plaintiff has an awareness of the injury occurring.

Suspension Of Accrual

Like under the Tucker Act, plaintiffs could seek to take advantage of the suspension of accrual cases. It is clear that this will only apply in a very narrow set of circumstances—where the Government concealed its acts such that the plaintiff was unaware of their existence or that the plaintiff's injury was inherently unknowable at the accrual date.[53] However, for the right APA plaintiff, this could be critical persuasive authority.

Possibility Of Tolling

APA litigants may want to take advantage of the equitable tolling rules that are available under the CDA (but not the Tucker Act). This would first require a finding that the APA statute of limitations for facial challenges is not a jurisdictional requirement, and thus can be waived by a court. Because the language of 28 U.S.C.A. § 2401(a) (the APA statute of limitations) is very similar to 28 U.S.C.A. § 2501 (the Tucker Act statute of limitations) there is likely a strong argument that the APA statute of limitations is also jurisdictional, especially considering that they share the strong language that the civil action "shall be barred" unless filed within six years. However, given the drastic change on the calculation of the statute of limitations set out in *Corner Post*, there may be an opportunity for a persuasive argument that this should be treated more like the CDA and allow for equitable tolling, especially given that the availability of equitable tolling is a rebuttable presumption.[54]

APA litigants should also certainly take advantage of the continuing claims doctrine when available, as long as the claim at issue can be broken down into a series of independent wrongs.

Practical Guidelines For Litigators In The Regulatory Space Facing Statute Of Limitations Issues

These practical *Guidelines* offer tips to litigants in APA, Tucker Act, and CDA cases who are facing statute of limitations challenges and want to form the most persuasive possible arguments around the time of accrual. The new standard set out in *Corner Post* has presented an opportunity for persuasive advocacy by looking beyond the particular statute at hand. The *Guidelines* are not, however, a substitute for professional representation in any specific situation.

1. Understand that these questions are inherently fact-intensive, and therefore the available authorities are fact-dependent as well. While this Briefing Paper sets out certain cases as illustrations for important points, there is a large volume of case law in this area and it will be most persuasive to identify the most

factually analogous decision under the Tucker Act or the CDA to prove the point.

2. Be mindful of clearly establishing the analytical parallel between the accrual standard in *Corner Post* and the accrual standards under the Tucker Act and CDA in any papers making such a comparison. While the Court's opinion in *Corner Post* notes that the text of the APA statute of limitations is drawn from the text of the "Little Tucker Act," it does not instruct litigants to look to the Tucker Act or the CDA in applying the new standard. It will be important for any argument to draw a clear comparison to most effectively take advantage of the plethora of cases under the Tucker Act and CDA.

3. An issue to monitor is whether the lower courts interpreting *Corner Post* adopt or analogize to the Tucker Act and CDA cases and draw on the standard that a claim accrues when all events are fixed.

4. Another issue that remains to be resolved is any ability to toll the statute of limitations under the APA. Consider whether arguments about tolling can analogize to the CDA, rather than the Tucker Act, given the difference in the law.

5. Litigants should consider the plaintiff's first awareness of the injury or events fixing liability. Awareness is an objective standard and if a party is not diligent in understanding the relevant facts, it may lose available time that it "should have been aware."

6. Consider whether an ongoing injury can be broken down into distinct events such that the continuing claims doctrine could delay the date of accrual. This could counsel for additional time for claims that continue on and bump up against the six-year limitation.

ENDNOTES:

[1] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

[2]5 U.S.C.A. §§ 701–706.

[3]Corner Post, Inc. v. Bd. of Govs. of the Fed. Res. Sys., 144 S. Ct. 2440 (2024).

[4]144 S. Ct. at 2452–53.

[5]See 144 S. Ct. at 2470–83 (Jackson, J., dissenting); see, e.g., Loper Bright and Corner Post: Scope and Consequences, Public Citizen (July 18, 2024), available at https://www.citizen.org/article/loper-bright-and-corner-post-scope-and-consequences/.

[6]28 U.S.C.A. § 2501; 41 U.S.C.A. § 7103(a)(4)(A).

[7]Cong. Rsch. Serv. Legal Sidebar LSB11197, Corner Post and the Statute of Limitations for Administrative Procedure Act Claims 2 (July 12, 2024), available at https://crsreports.congress.gov/product/pdf/LSB/LSB11197.

[8]See Corner Post, 144 S. Ct. at 2448.

[9]144 S. Ct. at 2449.

[10]See 28 U.S.C.A. § 1491.

[11]Compare 28 U.S.C.A. § 2401(a) with 28 U.S.C.A. § 2501.

[12]See Corner Post, 144 S. Ct. at 2450.

[13]28 U.S.C.A. § 1346(a)(2).

[14]Alder Terrace, Inc. v. United States, 161 F.3d 1372, 1377 (Fed. Cir. 1998).

[15]See 41 U.S.C.A. ch. 71.

[16]The six-year statute of limitations was added to the CDA under the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, § 2351(a), 108 Stat. 3243, 3322. See Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378. The definition of accrual was added to the FAR later. See FAR 33.201.

[17]See, e.g., Levine v. United States, 137 F. Supp. 955, 959 (Ct. Cl. 1956).

[18]See Terteling v. United States, 334 F.2d 250, 254 (Ct. Cl. 1964).

[19]334 F.2d at 253–54.

[20]334 F.2d at 254–55.

[21]Gilead Scis., Inc. v. United States, 163 Fed. Cl. 104, 119-20 (2022).

[22]Alder Terrace, 161 F.3d at 1377.

[23]FAR 33.201.

[24]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, 55 GC ¶ 73.

[25]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, 55 GC ¶ 73.

[26]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, 55 GC ¶ 73.

[27]Hopland Band of Pomo Indians v. United States, 855 F.2d 1573, 1577 (Fed. Cir. 1988).

[28]Kinsey v. United States, 852 F.2d 556, 557 n.* (Fed. Cir. 1988).

[29]See Fallini v. United States, 56 F.3d 1378, 1380

(Fed. Cir. 1995).

[30]56 F.3d at 1380.

[31]See 56 F.3d at 1380.

[32]See 56 F.3d at 1380.

[33]See 56 F.3d at 1381.

[34]San Carlos Apache Tribe v. United States, 639 F.3d 1346, 1350–51 (Fed. Cir. 2011).

[35]639 F.3d at 1350–51.

[36]639 F.3d at 1350–51.

[37]639 F.3d at 1350–51.

[38]639 F.3d at 1350–51.

[39]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, 55 GC ¶ 73.

[40]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, 55 GC ¶ 73.

[41]Young v. United States, 529 F.3d 1380, 1384 (Fed. Cir. 2008) (internal quotations omitted).

[42]Japanese War Notes Claimants Ass'n of Philippines, Inc. v. United States, 373 F.2d 356, 359 (Ct. Cl. 1967) (citation omitted).

[43]Rosales v. United States, 89 Fed. Cl. 565, 578 (2009).

[44]See John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 134 (2008), 50 GC ¶ 18.

[45]552 U.S. at 134; Artic Slope Native Ass'n, Ltd. v. Sebelius, 583 F.3d 785, 790 (Fed. Cir. 2009), 51 GC ¶ 404.

[46]Arctic Slope, 583 F.3d at 798-99.

[47]Khenj Logistics Grp., ASBCA No. 61178, 18-1 BCA ¶ 36,982 (internal quotation omitted) (denying the application of equitable tolling where contractor did not identify actions taken to pursue claim in eight-year window and did not identify circumstances impairing its ability to submit a claim).

[48]Brown Park Estates-Fairfield Dev. Co. v. United States, 127 F.3d 1449, 1456 (Fed. Cir. 1997).

[49]127 F.3d at 1456.

[50]127 F.3d at 1456; Batten v. United States, 220 Ct. Cl. 327, 330 n.10 (1979).

[51]See, e.g., Gilead Scis., Inc. v. United States, 163 Fed. Cl. 104, 119-20 (2022); Terteling v. United States, 334 F.2d 250, 254 (Ct. Cl. 1964).

[52]FAR 33.201.

[53]See Young v. United States, 529 F.3d 1380, 1384 (Fed. Cir. 2008).

[54]See Arctic Slope, 583 F.3d at 798.

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