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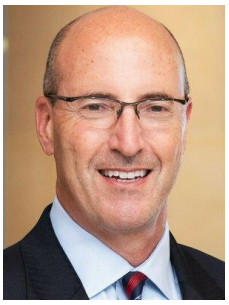
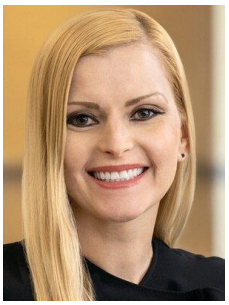
9th Circ. Customs Ruling A Limited Win For FCA Plaintiffs

By **Douglas Baruch and Jennifer Wollenberg** (July 15, 2025, 5:09 PM EDT)


Douglas Baruch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In an era of increased enforcement of customs violations under the False Claims Act, qui tam relators pursuing such claims were handed a reprieve via the U.S. Court of Appeals for the Ninth Circuit's June 23 decision in Island Industries Inc. v. Sigma Corp.

In this nonintervened qui tam action brought in the U.S. District Court for the Central District of California by Island Industries against its business competitor, Sigma, a 2021 jury verdict found Sigma liable for knowingly failing to pay antidumping duties on certain pipe fittings.

On appeal, the Ninth Circuit, of its own accord, questioned whether it had jurisdiction over the action, given the Ninth Circuit's 2004 decision in U.S. v. Universal Fruits and Vegetables Corp., holding that the U.S. Court of International Trade has exclusive jurisdiction over actions by the U.S. to recover customs duties.[1]

Having posed the question, the Ninth Circuit panel — employing debatable reasoning — held that the Universal Fruits decision does not apply to relator actions because relators are distinct from the U.S.

The panel also held that customs violations can be pursued via the FCA, rejecting the argument that a customs statute, Title 19 of the U.S. Code, Section 1592, provides the exclusive remedy for customs violations.

While the Ninth Circuit's decision may be welcome news for relators, the fact remains that — under the binding Universal Fruits decision — courts within the Ninth Circuit do not have jurisdiction to adjudicate customs-based FCA claims pursued by the U.S. rather than a qui tam relator.

Case Overview

The underlying qui tam action in this case involved Sigma's import of certain pipe fittings from China. Island Industries alleged that the pipe fittings fell within the scope of an antidumping duty, and that Sigma knowingly avoided an obligation to pay the duty — giving rise to reverse false claims liability under FCA Section 3279(a)(1)(G) — and falsely described the fittings as steel couplings rather than welded outlets.

At trial, Sigma argued that (1) its product did not fall within the scope of the antidumping duty order, (2)

it lacked scienter given ambiguity over the order's scope, and (3) the government sustained no damages because it later determined that duties were only owed on product that was liquidated after the imports in question.

After the district court instructed the jury that the falsity had been established, the jury returned a verdict for Island Industries, finding $8 million in single damages, which are subject to trebling under the FCA.

On appeal, after oral argument, the Ninth Circuit sua sponte ordered supplemental briefing on whether it had jurisdiction over the action following the decision in Universal Fruits that held, pursuant to Title 28 of the U.S. Code, Section 1582, the Court of International Trade has exclusive jurisdiction over any action "commenced by the United States" to recover customs duties arising out of an import transaction.[2]

In June, two years later, the remaining two members of the panel — one had retired — issued the Island Industries opinion holding that relator actions are not subject to the Universal Fruits decision, and otherwise affirming the district court's judgment for relator.

Ninth Circuit Decision

Ban on Affirmative FCA Actions Intact but Does Not Apply to Relator Actions

In Universal Fruits, the Ninth Circuit held that FCA actions brought by the U.S. are within the exclusive jurisdiction of the Court of International Trade pursuant to Section 1582. Because the district court and the Ninth Circuit lacked jurisdiction, the court ordered that the Universal Fruits case be transferred to the Court of International Trade.

Notably, the Court of International Trade, following the transfer, determined that it lacked jurisdiction over FCA claims, finding that its jurisdiction was limited to the recovery of customs duties and did not extend to the recovery of damages and penalties.[3] The Universal Fruits case ended without any resolution of this jurisdictional conflict.

However, the Ninth Circuit's Universal Fruits holding remains in effect. Thus, the threshold jurisdictional question before the Ninth Circuit in Island Industries was whether the lack of jurisdiction over customs-related FCA actions commenced by the U.S. extended to actions commenced by relators.

The Ninth Circuit panel held that relators are exempt from the ban. The panel rationalized its decision by finding that relators and the U.S. are not synonymous for purposes of Section 1582.

The panel held that relators also are distinct from the U.S. for purposes of Section 1582,[4] pointing to the U.S. Supreme Court's 2009 decision in U.S. ex rel. Eisenstein v. City of New York, — wherein the court held that, for purposes of a timing provision in the Federal Rules of Appellate Procedure, a relator does not get the benefit of the extended appeal period available to the government.[5]

The panel further relied on language in the Ninth Circuit's 1993 decision in U.S. ex rel. Kelly v. Boeing — which found that relators "effectively stand in the shoes of the United States" and have Article III standing under an assignment theory — as evidence that the two must be distinct entities, i.e., an assignor and an assignee, and not the same.[6]

Oddly, for this proposition, the panel did not cite to the Supreme Court's subsequent 2000 decision in

Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, 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.[7]

The panel's reasoning is shaky. The fact that a relator stands in the shoes of the government and is pursuing the government's claim for injury should be paramount, as these facts show an identity of interests between the relator and the government. This is not a question of appeals timing, as in Eisenstein, nor is it a question of standing, as in Kelly.

To the contrary, in an FCA case, the relator is asserting a substantive right of recovery on behalf of the U.S. for damages sustained solely by the U.S. While a relator may be entitled to a share of the government's recovery, the judgment in a qui tam case is entered for the U.S., and all damages and penalties are paid directly to the U.S.

In these circumstances, for purposes of jurisdiction under Section 1582, there should be no meaningful distinction between an FCA action for recovery of customs duties that is commenced by the U.S. versus one that is commenced by a relator. Indeed, the scenario created by the Ninth Circuit's dichotomy can lead to gamesmanship.

The jurisdictional bar preventing the U.S. from filing affirmative FCA actions for violations of import duties in district courts within the Ninth Circuit may lead the U.S. Department of Justice to outsource such cases to relators who have no such jurisdictional bar.

And it is unclear whether the bar would apply if the U.S. sought to intervene in a qui tam action or sought to amend a relator complaint to add such violations.

As it stands following the Ninth Circuit's decision, however, the U.S. cannot commence a customs-based FCA action in a district court within the Ninth Circuit due to the Universal Fruits precedent, while relators face no such jurisdictional impediment.

Customs Law Does Not Displace Customs-Based FCA Claims

After determining that it had jurisdiction, the Ninth Circuit panel addressed Sigma's contention that Section 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 court rejected this argument, finding that in the absence of express statutory language exempting customs laws violations from the FCA — such as the tax-claims exemption under FCA Section 3729(d) — the two statutory remedies can coexist.

In arriving at this result, the panel noted that Section 1592's plain language does not state that it provides the exclusive remedy for customs violations.

The panel further noted that the FCA's alternate remedy provision in Section 3730(c)(5) demonstrates that an FCA action can be pursued in tandem with an action under Section 1592.[8]

The court did not directly address Sigma's argument that because FCA damages would be measured, at least in part, on the avoided customs duties, allowing an FCA remedy to acquire those damages would also conflict with the Ninth Circuit's holding in Universal Fruits that the government cannot recast withheld duties as damages and sue for them under the FCA.[9]

While the panel's overall conclusion — that Section 1592 remedies do not displace the FCA — may find support in both statutes, the reference to the alternate remedy provision is misplaced.

That provision only applies to actions brought by a relator, which is the scenario in Island Industries. And when the government pursues an alternate remedy regarding the same conduct at issue in a qui tam action, this FCA provision clearly contemplates that the relator's complaint cannot continue.[10]

In other words, the alternate remedy provision indicates that a relator action and a Section 1592 claim by the government for the same underlying import violation cannot coexist.

FCA Liability Can Be Imposed Notwithstanding Agency Decision to Forgo Additional Duties

The Ninth Circuit rejected the remainder of Sigma's challenges to the jury verdict. Of particular interest is the panel's handling of Sigma's argument that it had no obligation to pay the duties — for purposes of reverse false claims liability under FCA Section 3729(a)(1)(G) — because the U.S. Department of Commerce later ruled that duties would only be imposed on entries of product after the entries at issue in the qui tam action.[11]

The panel held the duty to pay under the antidumping duty order in effect at the time of the entries was in fact an obligation, notwithstanding certain regulatory considerations that caused Commerce to collect them only on later entries.

According to the panel, even if Sigma had a reasonable belief at the time of the entries that the duties were not owed, that position would only be relevant to scienter, not to whether the obligation existed.

And, as to scienter, Sigma's contention that its interpretation of the antidumping duty order was objectively reasonable was foreclosed, according to the panel, by the Supreme Court's subsequent **decision** in U.S. ex rel. Schutte v. Supervalu Inc. in 2023.[12]

Finally, the panel gave short shrift to Sigma's compelling argument, that, as a matter of law and fairness, damages had not been proven given Commerce's determination that no additional duties were owed on the entries at issue in the case.

Key Takeaways

Federal courts in the Ninth Circuit continue to lack jurisdiction over FCA actions commenced by the U.S. to recover unpaid customs duties.

The jurisdictional bar to affirmative FCA actions based on customs violations does not apply to relators in the Ninth Circuit. This type of challenge, however, has not been addressed in most other circuits.

Section 1592 does not provide the exclusive remedy for violations of customs laws, and it does not displace remedies available under the FCA.

Under this holding, an importer can be liable under the FCA for knowingly avoiding an obligation to pay customs duties even if the Commerce Department later rules that duties are not owed on the entries in question.

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Disclosure: The authors filed an amicus brief on behalf of the National Association of Manufacturers and the Chamber of Commerce of the United States of America in Island Industries v. Sigma Corporation.

[1] U.S. v. Universal Fruits and Vegetables Corp., 370 F.3d 829 (9th Cir. 2004)

[2] 370 F.3d at 834

[3] U.S. v. Universal Fruits and Vegetables Corp., 30 CIT 706, 712 (Ct. Int'l Trade 2006)

[4] Island Industries, 2025 WL 1730271 at *6.

[5] U.S. ex rel. Eisenstein v. City of New York, 556 U.S. 928 (2009)

[6] U.S. ex rel. Kelly v. Boeing, 9 F.3d 743 (9th Cir. 1993)

[7] Vermont Agency of Natural Resources v. US ex rel. Stevens, 529 US 765 (2000)

[8] Island Industries Inc. v. Sigma Corp., 2025 WL 1730271 at *8.

[9] Universal Fruits, 370 F.3d at 835-36

[10] 31 USC § 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").

[11] Island Industries, 2025 WL 1730271 at *9.

[12] U.S. ex rel. Schutte v. Supervalu Inc., 598 US 739 (2023).