

**11-1274 GABELLI, ET AL. V. SEC**

DECISION BELOW: 653 F.3d 49

LOWER COURT CASE NUMBER: 10-3581-cv, 10-3628-cv, 10-3760-cv

QUESTION PRESENTED:

Section 2462 of Title 28 of the United States Code provides that "except as otherwise provided by Act of Congress" *any* penalty action brought by the government must be "commenced within five years from the date when the claims first *accrued*." (emphasis added). This Court has explained that "[i]n common parlance a right accrues when it comes into existence." *United States v. Lindsay*, 346 U.S. 568, 569 (1954).

Where Congress has not enacted a separate controlling provision, does the government's claim first accrue for purposes of applying the five-year limitations period under 28 U.S.C. § 2462 when the government can first bring an action for a penalty?

CERT. GRANTED 9/25/2012