

Supreme Court Holds That Violations of the False Claims Act's Seal Requirements Do Not Require Automatic Dismissal

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On December 6, 2016, the Supreme Court of the United States ruled unanimously in *State Farm Fire and Casualty Co. v. United States ex rel. Rigsby*¹ that violations of the False Claims Act's (FCA) seal requirement do not require dismissal of the relator's suit. The Court further stated that the appropriate penalty for such violations generally should be left to the sound discretion of the district courts.

Background

The FCA permits private whistleblowers, called "relators," to bring *qui tam* actions on behalf of the federal government against government contractors who have committed fraud and to receive a share of any recovery from such suits. The FCA includes a number of procedural and jurisdictional limitations on whistleblower *qui tams*, including that such complaints "shall be filed *in camera*, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders." 42 U.S.C. § 3730(b)(2). In practice, the government often will request that the seal be extended past the 60 days provided in the statute to give it additional time to investigate the allegations and determine whether to intervene and take control of the litigation.

In April 2006, two former claims adjusters filed a FCA complaint under seal, alleging that State Farm had instructed them and other adjusters to misclassify wind damage as flood damage in order to shift liability from State Farm home insurance policies to government-backed flood insurance policies. While the complaint was under seal, the relators' then-attorney disclosed the complaint's existence to media outlets that later published stories discussing the allegations without disclosing the existence of the lawsuit. The case was then unsealed in August 2007, and the government declined to intervene.

In January 2011, State Farm filed a motion to dismiss the action on the grounds that the relators' now-former attorney had violated the seal requirement. The district court denied the motion, applying the three factors set out in *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F. 3d 242, 245–247 (9th Cir. 1995): (1) actual harm to the government, (2) severity of the violations and (3) evidence of bad faith. In particular, the district court noted that the violation had not prejudiced the government and that the relators now were being represented by different counsel (the former attorney having withdrawn after being indicted for attempting to bribe a state court judge in a separate matter). The action then proceeded to trial on a single bellwether claim, which resulted in a verdict in the relators' favor. State Farm, on appeal, renewed its argument that the action should be dismissed because of the seal violation. Affirming the district court's ruling, the U.S. Court of Appeals for the 5th Circuit held that, first, the FCA did not require mandatory dismissal for seal violations and, second, dismissal was not called for in this instance.

Summary of Opinion

The U.S. Supreme Court agreed with the 2nd, 5th and 9th Circuits that violations of the FCA's seal requirement do not require mandatory dismissal of a *qui tam* complaint. The Court found it significant that, although the language of the seal requirement is mandatory, the statute does not provide a remedy for a violation of that rule. Noting that the FCA contains a number of provisions that do expressly require dismissal of a *qui tam* if they are not met, the Court concluded that if Congress had intended that violations of the seal requirements automatically require dismissal, it would have said so explicitly. Moreover, automatic dismissal would be inconsistent with the intended purpose of the

¹ No. 15-513, — S. Ct. — (Dec. 6, 2016).

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seal requirement, which had been enacted as part of a set of reforms to encourage more private FCA suits and was intended to mitigate the government's concerns that, by publicly filing *qui tam* complaints, relators would alert defendants to pending government investigations. In the Court's view, because the seal requirements were mainly intended to protect the government's interest, "it would make little sense to adopt a rigid interpretation of the seal provision that prejudices the Government by depriving it of needed assistance from private parties."

Although seal violations do not mandate dismissal, the Court noted that dismissal remained a possible form of relief for seal violations, along with other remedial tools such as monetary penalties or attorney discipline, subject to the sound discretion of the district court. In this case, the Court cursorily found that the district court did not abuse its discretion by denying State Farm's motion to dismiss based on the seal violations at issue. Although the Court agreed that the factors set out in *United States ex rel. Lujan v. Hughes Aircraft Co.*, which the lower courts had applied, "seem to be appropriate," it left unanswered what the appropriate test would be for determining whether dismissal was warranted.

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