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Supreme Court Rejects Dismissal Requirement for FCA Seal Violations

In *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby*, the United States Supreme Court rejected State Farm's argument that a relator's violation of the automatic seal in a False Claims Act ("FCA") case mandates dismissal of the complaint. In so holding, the Supreme Court affirmed the opinion of the Fifth Circuit and District Court below, and rejected the Sixth Circuit's contrary rule. The Supreme Court cautioned, however, that dismissal of an FCA suit—among other possible sanctions—is a remedy within district courts' sound discretion when relators fail to abide by the FCA's seal provision.

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Background

Prior to Hurricane Katrina, State Farm issued two kinds of homeowner insurance policies: general homeowner insurance, and federal government-backed flood insurance. For homeowners who purchased both policies and suffered a loss due to Hurricane Katrina, the effect was that the federal government paid for flood damage and State Farm paid for wind damage.

Relators Cori and Kerri Rigsby are former claims adjusters for E.A. Renfroe & Co., a contractor of State Farm's. The relators alleged that State Farm "instructed them and other adjusters to misclassify wind damage as flood damage in order to shift [State Farm's] insurance liability to the Government." In April 2006, the relators filed an FCA complaint.

The FCA generally provides that a "complaint 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." 31 U.S.C. § 3730(b)(2). The relators correctly filed their complaint under seal, and the District Court extended the duration of the seal several times at the government's request. Before the seal was lifted, however, the relators' then-attorney, Dickie Scruggs, disclosed the existence of the complaint to journalists at ABC, the Associated Press, and the New York Times. The relators also met with Mississippi Congressman Gene Taylor, who later made public statements about State Farm's alleged fraud. In neither instance was the existence of the pending action publicly reported.

State Farm moved for dismissal of the complaint due to the seal's violation. The District Court denied the motion, and State Farm subsequently lost a "bellwether" trial regarding a single damaged home. The Court of Appeals for the Fifth Circuit affirmed.

Supreme Court Decision

In a unanimous decision delivered by Justice Kennedy, the Supreme Court rejected State Farm's argument that the FCA required automatic dismissal. The Court observed that the FCA's seal provision "creates a mandatory rule the relator must follow," but the FCA "says nothing . . . about the remedy for a violation of that rule."

Construing the statute, the Court determined that the FCA's structure indicates that mandatory dismissal is inappropriate, since the FCA has several express terms requiring dismissal in other contexts but lacks such language in the seal provision. The Court further concluded that a mandatory dismissal rule would run contrary to the seal

provision's purpose. The provision was enacted in the 1980's alongside other reforms meant to encourage *qui tam* suits while also "allay[ing] the Government's concern that a relator filing a civil complaint would alert defendants to a pending federal criminal investigation." Because the seal was intended to protect the government's interests, the Court concluded that "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."

The Supreme Court also rejected State Farm's secondary argument that the District Court had not considered the proper factors when declining to dismiss the complaint. The courts below had applied three factors as set out in *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242 (9th Cir. 1995), namely: (1) the actual harm to the Government; (2) the severity of the violations; and (3) the evidence of bad faith. The Court of Appeals concluded that the Government was not in all likelihood harmed by the disclosures in this case because none had led to the publication of the pendency of the suit before the seal was lifted. Moreover, the violations were not severe because the relators had complied with the seal requirements when the complaint was first filed. The Court of Appeals concluded that Scruggs's bad faith, even if presumed and imputed to the relators, was therefore irrelevant because the first two factors weighed against dismissal.

Ultimately, the Supreme Court held that the District Court did not abuse its discretion in denying State Farm's motion to dismiss. In reaching this conclusion, while observing that the *Lujan* factors "appear to be appropriate," the Court expressly declined to reach that question, noting "[t]hese standards can be discussed in the course of later cases."

Implications

Although the Court rejected a mandatory-dismissal rule, the Supreme Court nonetheless made clear that a sanction of dismissal "remains a possible form of relief" within a district court's sound discretion. The Court also stressed that other remedial tools—including monetary penalties and attorney discipline—remain available in the event a relator violates the seal requirement.

If you would like to discuss the foregoing or any related FCA matter, please contact the Ropes & Gray attorney with whom you regularly work, or any attorney in our [False Claims Act](#) practice.