

Supreme Court Concludes that Violation of FCA Seal Provision Does Not Necessarily Mandate Dismissal of Qui Tam Suits

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by Peter R. Mayer

The Supreme Court held yesterday that a violation of the False Claims Act's seal provision does not mandate dismissal of a relator's complaint. Justice Kennedy authored the Court's opinion in the unanimous 8-0 decision. State Farm was accused of defrauding the government by falsely classifying wind damage caused by Hurricane Katrina as flood damage, which would allow State Farm's costs to be covered by the National Flood Insurance Program. A relator, Rigsby, filed a False Claims Act suit under seal—where only the federal government and Rigsby would know of the suit. Rigsby then allegedly violated the seal when her attorney sent evidence about the under-seal case to news organizations. State Farm believed that this violation should result in dismissal of Rigsby's complaint. Today, the Supreme Court disagreed.

Although dismissal was not appropriate here, the Court noted that dismissal might be appropriate in some instances, but it needn't be mandatory. The Court left it up to later cases to nail down the exact standards to apply when evaluating whether or not to dismiss a case for violation of the FCA's seal provision, noting that "the factors articulated in *United States ex rel. Lukan v. Hughes Aircraft Co.* appear to be appropriate...." *Slip op.* p. 10.

The Court explained that a violation of the seal provision in the present case might justify the use of, "[r]emedial tools like monetary penalties or attorney discipline...." *Id.* However, because State Farm "did not request any sanction other than dismissal," they did not preserve "the question whether a lesser sanction is warranted...." *Id.* As such, the Fifth Circuit's judgment, that State Farm was not entitled to dismissal, was affirmed.

The Court's opinion is available here: https://www.supremecourt.gov/opinions/16pdf/15-513_43j7.pdf

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