Supreme Court Hears Argument About Violation of FCA Seal Provision

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This month the Supreme Court heard oral argument in *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby*, a case centered on allegations dating back to Hurricane Katrina. The Fifth Circuit had previously upheld a jury verdict finding State Farm liable for $758,000 in damages based on a claim that State Farm defrauded the government. Whistleblowers, including respondent Cori Rigsby, alleged that State Farm falsely classified 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.

The issue before the Supreme Court is what standard governs the decision whether to dismiss a relator's claim for violation of the False Claims Act's seal requirement. Rigsby operated as a relator in this case, bringing a public lawsuit in the name of the federal government. The False Claims Act mandates that a whistleblower suit be filed under seal so that only the relator and the government know about it. This allows the government to consider how to approach the lawsuit without the alleged bad-actor learning of the suit. The False Claims Act does not contain any specific guidance for how to deal with a situation where the relator has violated this seal requirement. State Farm alleges that the relator's attorney sent evidence about the case to news organizations while the case was under seal. State Farm would like the claim dismissed as a result. In ruling against State Farm, the Fifth Circuit concluded that the strict dismissal rule employed by some courts of appeal goes against the legislative intent behind the seal requirement, and that the balancing test used in other circuits is more appropriate.

Although oral argument did not shed a great deal of light on how this case will turn out, several justices pushed State Farm's counsel, Kathleen Sullivan, on the prudence of dismissing a case even over a very minor disclosure. When the relator's attorneys argued, Justice Breyer addressed a concern about simply excusing a violation as "too light a sanction."

It is likely that the justices have already voted on a preliminary outcome, but we will not

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be privy to any final result for a number of months.

SCOTUSblog has assembled the filings here:
http://www.scotusblog.com/case-files/cases/state-farm-fire-and-casualty-co-v-united-states/?wpmp_switcher=desktop