

SCOTUS Rules Breach of Seal Requirement Doesn't Sink FCA Whistleblower Case

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On Dec. 6, the Supreme Court of the United States decided *State Farm Fire and Casualty Company v. U.S. ex rel. Rigsby*, an important [False Claims Act](#) (FCA) case that could have a major impact on whistleblowers and their lawyers. The Court ruled 8-0 in favor of the whistleblowers, with Justice Kennedy writing the Court's opinion.

The Facts

Cori and Kerri Rigsby worked as insurance claims adjusters for a State Farm contractor in 2005 during the aftermath of Hurricane Katrina. At the time, State Farm offered its customers two types of home insurance policies: one backed by the federal government's National Flood Insurance Program and one solely covered by State Farm.

The government-backed policies only covered damage caused by flooding, while the State Farm-backed policies covered wind damage. While working at State Farm, the Rigsbys learned that State Farm was routinely fraudulently classifying property damage as flood damage instead of wind damage, thus causing the government to pay the insurance claims instead of State Farm.

In April 2006, the Rigsbys brought a [FCA qui tam](#) case against State Farm Fire and Casualty Company. The Rigsbys proceeded to trial and won. However, the Rigsbys' attorney made a grave error, which threatened to unravel their momentous victory.

The Issue

Under the FCA, private plaintiffs called "relators" are required to file their complaint under seal, serve the complaint on the government and keep the existence of the complaint completely secret for at least 60 days. The purpose of this seal requirement is to allow the government time to consider its course of action before the existence of the whistleblower case becomes public. For instance, the government may already be secretly investigating the defendant for criminal charges, and the government may want to take certain actions before the defendant learns of the relator's lawsuit.

Shortly after filing the complaint under seal and serving it on the government, the Rigsbys' attorney sent portions of the complaint to major media outlets. The attorney's blatant disclosure of the existence of the complaint clearly violated the seal requirement, and State Farm argued that the claim should thus be automatically dismissed. Such a mandatory dismissal rule was adopted by the Sixth Circuit Court of Appeals.

Both the district court and the Fifth Circuit declined to follow the mandatory dismissal rule, instead applying a multi-factor test adopted by the Ninth Circuit to determine the severity of the breach of the seal requirement. Both courts held that, although the lawyer did violate the seal requirement, dismissal was not an appropriate remedy because the breach of the seal requirement did not have any substantial negative consequences. They reasoned that the seal requirement was implemented

to benefit the government, and that the government's interests were not harmed by the attorney's disclosure. After losing in the Fifth Circuit, State Farm petitioned the Supreme Court for review.

The Court's Decision

In its unanimous decision, the Court affirmed the Fifth Circuit's ruling in favor of the Rigbys. The Court agreed with the Rigbys and the government that requiring mandatory dismissal would undermine the purpose of the FCA: to recruit the help of private whistleblowers in exposing fraud against the government and recouping taxpayer dollars. If breaches of the seal requirement, which did not negatively impact the government, nonetheless resulted in dismissal of the relator's complaint, then the government would needlessly lose the assistance of private whistleblowers.

Therefore, the Court reasoned that the FCA does not require mandatory dismissal as a punishment for every breach of the seal requirement. Rather, it is within the discretion of lower court judges to fashion appropriate remedies depending on the severity of the breach.

Whistleblowers may breathe a sigh of relief knowing that every minor breach of the seal requirement will not cost them their cases. However, it is notable that the Court specifically declined to decide what standard lower courts should apply when sanctioning breaches of the FCA's seal requirement. Instead, the Court simply held that the trial court in this case did not abuse its discretion. Whistleblowers and their attorneys should keep an eye on the Court's docket because the Court may one day address the issue left unresolved by the *State Farm* decision.