

Supreme Court Says False Claims Act Does Not Enact So Harsh a Rule: Dismissal Not Required for Violation of FCA's Seal Requirement, But Still Available

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Earlier this month, in *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby*, the Supreme Court held that the False Claims Act ("FCA or Act") does not require that a FCA *qui tam* complaint be dismissed because of a violation of the seal requirement. Writing for a unanimous Court to resolve the split among precedent and based on the facts that we recently wrote about [here](#), Justice Kennedy explained that the Act's text, structure, and purpose do "not enact so harsh a rule." Op. at 6. Instead, the Court concluded that deciding the remedy for violating the seal requirement "should be left to the sound discretion of the district court." Op. at 10. Thus, importantly for *qui tam* defendants rightfully concerned about the reputational harm that may result from breach of a seal, dismissal remains an available form of relief. Watch this space for analysis of how the lower courts interpret this decision.

The FCA's seal requirement provides that a *qui tam* complaint must be filed under seal and remain under that seal for sixty days. 31 U.S.C. § 3730(b)(2). During those sixty days, the Government can intervene in the case or request an extension of time. Meanwhile, the plaintiff may not disclose the existence of the suit to the public.

The FCA Does Not Mandate Dismissal for a Violation of the Seal Requirement

To conclude that the Act does not mandate dismissal upon a violation of the seal requirement, the Court began with the Act's text. Although the Court interpreted the Act's statement that a complaint "shall" be kept under seal to "create[] a mandatory rule the relator must follow," the Court recognized that the Act is silent "about the remedy for a violation of that rule." Op. at 6.

Next, the Court determined that the Act's structure indicates that Congress did not intend to mandate dismissal. Adhering to the general principle that Congress' use of an explicit limitation in one provision cautions against inferring the same limitation in another provision where no such limitation exists, the Court contrasted the seal requirement with other FCA provisions that require dismissal

when certain conditions are present, such as the public disclosure bar. Op. at 7. The Court reasoned that because the Act does not specifically provide for dismissal upon breach of a seal Congress must not have intended to mandate dismissal because of such a violation.

Lastly, the Court reflected upon the purpose of the seal requirement, which the Court surmised “was enacted in the 1980’s as part of a set of reforms that were meant to ‘encourage more private enforcement suits.’” Op. at 7 (quoting S. Rep. No. 99-345 at 23-24 (1986)). After noting that the Senate Committee Report “indicates that the seal provision was meant to allay the Government’s concern that a relator filing a civil complaint would alert defendants to a pending federal criminal investigation,” the Court concluded that, “[b]ecause the seal requirement was intended in main to protect the Government’s interests, 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.” Op. at 7.

Although the Act Does Not Mandate Dismissal for a Violation of the Seal Requirement, Dismissal is Still a Viable Remedy

Importantly for *qui tam* defendants, the Court noted the reputational harm that may result from a violation of the seal requirement. To calm such concerns, the Court emphasized that, “even if every seal violation does not mandate dismissal, that sanction remains a possible form of relief.” Op. at 10. In addition to dismissal, the Court listed monetary penalties and attorney discipline as some of the remedies that should deter violations of the seal requirement.

Concluding only that “the question whether dismissal is appropriate should be left to the sound discretion of the district court,” the Court did not go so far as to establish the factors that a district court must analyze when determining a remedy. Op. at 10. Instead, the Court, indicated that the factors applied in the lower court’s decision under review “appear[ed] to be appropriate.” Op. at 10. Those factors, as originally articulated in *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242, 245-47 (9th Cir. 1995), are: (1) the actual harm to the Government; (2) the severity of the violations; and (3) the evidence of bad faith. Thus, until factors are established in later cases, when faced with a breach of the seal requirement, *qui tam* defendants would be wise to frame their arguments in support of sanctions therefor around the *Lujan* factors. Indeed, the broad nature of those factors allows *qui tam* defendants to craft persuasive, creative arguments that serve their interests.