

FDCC E-Newsletter

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Healthcare Section

On December 6, 2016, the Supreme Court of the United States ruled unanimously that violations of the False Claims Act's (FCA) seal requirement do not require dismissal of the relator's suit. State Farm Fire and Casualty Co. v. United States ex rel. Rigsby, 137 S. Ct. 436, 437 (2016) addresses two questions that were presented to the Court. First, do any and all violations of the FCA seal requirement require dismissal of the relator's complaint with prejudice, and second if dismissal is not mandatory, did the District Court abuse its discretion by declining to dismiss respondents' complaint? The Supreme Court cited 42 U.S.C. 3730(b)(2)'s text: "the 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," and went on to acknowledge the use of the word "shall" creates a mandatory rule a relator must follow. However, the Court also noted the statute says nothing about the remedy for a violation of the seal requirements. The Supreme Court opined that because the FCA's seal requirement was intended primarily to protect the Government's interests, it would make little sense to adopt a rigid interpretation of the seal provision and mandate a dismissal of the complaint if the seal is violated.

Notwithstanding the Supreme Court's ruling against mandatory dismissal, there is some good news for FCA defendants. The Supreme Court recognized that FCA defendants may suffer reputational harm when the seal requirement is violated. In such cases, even though a violation of the FCA seal violation does not mandate dismissal of the complaint, the dismissal sanction remains a possible form of relief for FCA defendants through the District Courts' inherent power to impose sanctions for violations of court orders. District Courts may also impose sanctions such as monetary penalties or attorney discipline to punish and deter seal violations even when dismissal is not appropriate. Because State Farm did not request alternative sanctions, it did not preserve the question for appeal and the District Court and Supreme Court refused to address alternative sanctions.