Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

FOR IMMEDIATE RELEASE November 20, 2015

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Asks Supreme Court to Correct Fifth Circuit's Relaxation of Seal and Scienter Provisions in the False Claims Act

(State Farm Fire & Casualty Co. v. United States ex rel. Rigsby)

"When a court does not require dismissal of FCA claims after deliberate *qui tam* seal violations occur, it incentivizes further abuses by relators who wish to damage a defendant's public reputation in an effort to improperly pressure that defendant to settle."—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Supreme Court to review and reverse a decision by the U.S. Court of Appeals for the Fifth Circuit. That ruling not only turns a blind eye to plaintiffs' repeated and flagrant violations of the False Claims Act's mandatory seal provision, but it also allows plaintiffs to establish scienter on the basis of the "collective knowledge" of a corporate defendant's employees. WLF's *amicus* brief filed in support of granting certiorari in *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby* argues that the FCA's seal requirement is not a mere procedural formality, but a mandatory prerequisite to filing and maintaining a *qui tam* suit.

The case arises from allegations that State Farm submitted a false claim to the federal government in connection with a homeowner's property insurance claim after Hurricane Katrina. Although it is undisputed that plaintiffs deliberately violated the FCA's mandatory seal provision by informing news organizations and a Member of Congress about the existence and nature of their *qui tam* suit while it was still under seal, the Fifth Circuit Court of Appeals affirmed the district court's refusal to dismiss plaintiffs' suit for those egregious violations. WLF contends that ruling both exacerbates a widening split among the federal appeals courts and contradicts the plain language and structure of the FCA.

Review is also warranted, WLF argues, because the panel imposed liability in the absence of *any* evidence that a single State Farm employee knew (or had reason to know) the relevant claim was false when submitted to the government. Instead, the panel improperly relied on the post-hoc actions and statements of a mid-level employee who had no connection to the claim in question. WLF's brief contends that permitting plaintiffs to prove FCA liability by relying on the supposed cumulative knowledge of a company's employees improperly relaxes the FCA's scienter requirement.

WLF filed its *amicus* brief on behalf of itself and the Allied Educational Foundation. Upon filing, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: "When a court does not require dismissal of FCA claims after deliberate *qui tam* seal violations occur, it incentivizes further abuses by relators who seek to damage a defendant's public reputation in an effort to improperly pressure that defendant to settle. Moreover, if the panel's 'collective knowledge' approach to FCA scienter is allowed to stand, corporate defendants will find it impossible to defend against—and will face significant liability for—many claims they submitted to the Government in good faith."

WLF is a national, public-interest law firm and policy center that regularly litigates in False Claims Act cases to ensure that unwarranted qui tam *lawsuits do not drive up costs for all consumers.*

###