



## News Release

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### **DRI Submits Amicus Brief to High Court in *State Farm Fire and Casualty Co. v. United States ex rel. Rigsby***

*At Issue Is Deliberate Breach of Mandated Confidentiality Seal In False Claims Act Suit*

**CHICAGO – (August 5, 2016)**— DRI-The Voice of the Defense Bar has filed a merits-stage amicus brief supporting State Farm’s position in *State Farm Fire and Casualty Co. v. United States ex rel. Rigsby*, No. 15-513. The brief was filed through DRI’s Center for Law and Public Policy.

The federal False Claims Act allows a private individual, known as a “relator,” to file a district court “*qui tam*” suit, that is, one filed on behalf of the United States to recover federal payments or reimbursements allegedly obtained by a company or other organization through submission of false or fraudulent claims to a Government department or agency.

The Act requires the relator’s complaint to be filed in the judge’s chambers, and to remain under seal, while the U.S. Department of Justice investigates the allegations and determines whether to intervene on behalf of the United States and take over pursuit of the litigation. Regardless of whether the Government intervenes, relators and their attorneys are awarded a substantial share of any settlement or judgment amounts that are recovered from the defendant.

The issue in the *Rigsby* case is the standard that a federal district court should apply in determining whether to dismiss a *qui tam* suit where the relators, or their counsel, or both, have intentionally violated the seal by publicizing the litigation to the media before the Justice Department has completed its investigation and decided whether to intervene. Some circuits, including the Fifth Circuit from which *Rigsby* arises, have adopted a balancing test that takes into account the nature of the violation and the harm to the Government caused by the seal violation. DRI, however, supports the view of the Sixth Circuit, which has held that dismissal should be mandatory where the seal is deliberately breached.

DRI’s amicus brief argues that the statutory seal requirement should be strictly enforced because it enables the Justice Department to fulfill an important case-screening role. Statistics indicate that relators are far-less

successful in *qui tam* suits where the Justice Department has determined that Government intervention is unwarranted. The seal requirement not only protects the Government's interests, but also the defendant's interests.

Disclosure of *qui tam* litigation before the seal is lifted by a district court can subject a corporate defendant to reputational, competitive, and other financial harm, and may pressure a defendant to seek a settlement requiring payment of millions of dollars, even though the relators' allegations are unwarranted or unproven and the Justice Department has not made a decision about intervention. DRI argues that a mandatory dismissal rule for intentional breaches of the seal requirement is needed to effectuate congressional intent and to deter unscrupulous *qui tam* relators or their bounty-hunter counsel from using premature disclosure as a litigation tactic.

Amicus brief author [Lawrence S. Ebner](#) serves as vice-chair of DRI's Amicus Committee. He is available for interview or expert comment through DRI's Office of Public Policy. The complete text of the DRI brief can be found [here](#).

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### **About DRI – The Voice of the Defense Bar**

*For more than fifty-five years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to [www.dri.org](http://www.dri.org)*