

# Whistleblower Topic of the Week: Can I talk about my claim? When do I need to keep silent?

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## **SHHHH...WHEN WHISTLEBLOWERS NEED TO KEEP SILENT**

Many aspects of blowing the whistle take finesse and patience, and discussing your claim isn't always an option. Sometimes a lawyer is the only person a whistleblower can talk to for several years. Upholding this responsibility requires real discipline, but in the end, it pays off.

Here's an example.

The Supreme Court recently agreed to hear a case regarding State Farm Fire's bid to overturn a finding that it fraudulently overbilled the government for damage from Hurricane Katrina. The high court dispute centers on the consequences for violations of the requirement that whistleblower lawsuits remain under seal for the first 60 days. That requirement is designed to give the federal government time to investigate a claim and decide whether to intervene.

The provision of the False Claims Act regarding the seal states, "A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. 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. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information."

Under the Dodd-Frank whistleblower programs established under the SEC and the CFTC, this matter is equally important, regardless of the fact that a similar provision does not exist under Dodd-Frank rule. Although there is no seal, whistleblowers still need to keep their claim under the radar, so as to not compromise the ongoing investigation.

## HAVE MORE WHISTLEBLOWER QUESTIONS?

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# State Farm Gets U.S. High Court Hearing in Katrina Billing Case

The U.S. Supreme Court agreed to hear State Farm Fire and Casualty Co.'s bid to overturn a finding that the insurance company fraudulently overbilled the government for damage from Hurricane Katrina.

The case tests the U.S. False Claims Act, the law that lets whistle-blowers sue on behalf of the federal government and then collect a share of any funds recovered.

State Farm is fighting a lawsuit by two claims adjusters who say the insurer improperly classified hurricane damage from the 2005 storm as having been caused by flooding, rather than by wind, in order to collect federal reimbursement. A federal jury ruled against State Farm in a test case involving a home in Biloxi, Mississippi, and a judge ordered the insurer to pay more than \$3 million in damages and attorneys' fees.

The high court dispute centers on the consequences for violations of the requirement that whistle-blower lawsuits remain under seal for the first 60 days. That requirement is designed to give the federal government time to investigate a claim and decide whether to intervene. [more »](#)