



Supreme Court Agrees to Hear FCA Case

On January 13, 2023, the U.S. Supreme Court agreed to resolve a circuit split related to the *False Claims Act* (FCA) in granting certiorari in two lawsuits. The decision is expected to be the most significant development for the FCA in recent history, as it will finally resolve the necessary state of mind needed to violate the FCA.¹ This Health Capital Topics article will discuss the FCA, the two cases being decided by the Supreme Court, and potential implications for stakeholders.

In 1863, the FCA (a federal statute) was enacted in response to fraud committed by a defense contractor during the Civil War.² The FCA established that any person who knowingly submitted false claims to the government was liable for double the government's damages, plus a penalty; since its enactment, the law has been amended several times. Now, violators are liable for treble damages, along with a penalty linked to inflation.³ Not only does the FCA give the U.S. government the ability to pursue fraud, it also enables private citizens to file suit on behalf of the federal government through what is known as a "*qui tam*" or "*whistleblower*" suit.⁴

For one to be held liable under the FCA, the perpetrator must act with "scienter," i.e., "knowingly," which is defined as acting with actual knowledge, deliberate ignorance, or in reckless disregard to the truth or falsity of the information.⁵ Notably, "specific intent to defraud" is not required.⁶ Defendants in such cases will often argue that their interpretation of complex statutes and regulations was reasonable, and not rising to the level of scienter.⁷

In deciding on the necessary state of mind required for liability under the FCA, the Supreme Court will review the lower court decisions of two cases: *Schutte v. SuperValu* and *Proctor v. Safeway*.⁸ In *Schutte v. SuperValu*, two private citizen plaintiffs allege that SuperValu, a grocery store chain with 2,500 locations, knowingly submitted false payment claims to federal healthcare programs, and incorrectly reported drug prices.⁹ SuperValu had implemented a price matching program for customers, but they did not report the price match amounts as their customary pricing, violating Medicaid regulations. A lower court ruled that the plaintiffs failed to prove the element of "scienter," i.e., they failed to demonstrate that SuperValu had an objectively unreasonable interpretation of the reporting requirement.¹⁰

In *Proctor v. Safeway*, the *qui tam* plaintiff alleged that Safeway, a grocery chain with over 900 locations, reported retail prices to government healthcare programs for certain drugs when customers actually paid less through price-matching and discounts.¹¹ In *Safeway*, lower courts ruled against the plaintiff, finding they had failed to prove the element of "scienter," and affirmed that Safeway had not acted in disregard to regulations and the grocery chain's interpretation of the law was objectively reasonable.¹²

Stakeholders will be closely watching the Supreme Court's analysis and ultimate decision as to whether a defendant's belief or understanding about the lawfulness of its conduct is relevant in determining whether the defendant knowingly violated the FCA. Previous legal rulings have established that defendants can avoid liability under the FCA as long as the defendant could prove an "objectively reasonable" interpretation of the law they are accused of violating.¹³ The Department of Justice (DOJ) has expressed concern that if the Supreme Court finds that the *Safeway* and *SuperValu* defendants interpreted the law with objective reasonability, defendants in future litigation could potentially escape FCA liability.¹⁴ On the other hand, if the Supreme Court rejects the standard set by the lower courts (that plaintiffs had failed to prove that the defendants had an objectively unreasonable interpretation of the law) and the "objective reasonability" shield is removed, it will become harder for defendants to argue that they did not possess the requisite knowledge (regardless of whether or not their actions were objectively reasonable), and clearing the path for the Department of Justice to reach FCA judgments and settlements, ultimately increasing recovery amounts.¹⁵ In fiscal year 2022 alone, \$2.2 billion was recovered through false claims and fraud (\$1.7 billion of which was related to healthcare matters).¹⁶

Oral arguments for the two cases are scheduled for April 18, 2023.¹⁷ Regardless of the outcome, stakeholders can expect that such a ruling from the Supreme Court will significantly impact future FCA cases¹⁸ and could even prompt amendments to the FCA, potentially changing the way federal agencies and government contractors may issue any guidance.¹⁹

- 1 “Supreme Court to Consider False Claims Act ‘Objectively Reasonable’ Knowledge Standard” National Law Review, January 24, 2023, <https://www.natlawreview.com/article/supreme-court-to-consider-false-claims-act-objectively-reasonable-knowledge-standard>, (Accessed 1/30/23).
- 2 “The False Claims Act” U.S. Department of Justice, February 2, 2022, <https://www.justice.gov/civil/false-claims-act> (Accessed 1/30/23).
- 3 *Ibid.*
- 4 *Ibid.*
- 5 “False Claims” 31 U.S.C. § 3729(b)(1).
- 6 *Ibid.*, (B).
- 7 “US Supreme Court to Address Scienter Standard Under False Claims Act” Morgan Lewis, January 17, 2023, <https://www.morganlewis.com/pubs/2023/01/us-supreme-court-to-address-scienter-standard-under-false-claims-act> (Accessed 2/1/23).
- 8 National Law Review, January 24, 2023.
- 9 “U.S. ex rel. Schutte v. SuperValu Inc.” No. 21-1326 (7th Cir. 2022), available at: <https://www.oyez.org/cases/2022/21-1326> (Accessed 2/1/23).
- 10 *Ibid.*
- 11 “Proctor v. Safeway, Inc.” No. 20-3425 (7th Cir. 2022), available at: <https://law.justia.com/cases/federal/appellate-courts/ca7/20-3425/20-3425-2022-04-05.html> (Accessed 2/1/23).
- 12 *Ibid.*
- 13 “Supreme Court Justices Agree to Hear Second FCA Issue This Term” By Samantha Kingsbury and Kevin McGinty, Mintz, January 19, 2023, <https://www.mintz.com/insights-center/viewpoints/2146/2023-01-19-supreme-court-justices-agree-hear-second-fca-issue-term> (Accessed 2/1/23).
- 14 *Ibid.*
- 15 Morgan Lewis, January 17, 2023; “Supreme Court to Weigh In on Fraud Standard under False Claims Act” By Michael Christensen, KnobbeMartens, January 30, 2023, <https://www.knobbe.com/blog/supreme-court-weigh-fraud-standard-under-false-claims-act> (Accessed 2/1/23).
- 16 “False Claims Act Settlements and Judgments Exceed \$2 Billion in Fiscal Year 2022” Office of Public Affairs, Department of Justice, February 7, 2023, <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022> (Accessed 2/22/23).
- 17 “U.S. ex rel. Proctor v. Safeway, Inc.” SCOTUSblog, <https://www.scotusblog.com/case-files/cases/united-states-ex-rel-thomas-proctor-v-safeway-inc/> (Accessed 2/21/23); “U.S. ex rel. Schutte v. SuperValu Inc.” SCOTUSblog, <https://www.scotusblog.com/case-files/cases/u-s-ex-rel-schutte-v-supervalu-inc/> (Accessed 2/21/23).
- 18 Morgan Lewis, January 17, 2023.
- 19 National Law Review, January 24, 2023.



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