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## WLF Urges Seventh Circuit to Join Other Circuits in Applying *Safeco* Test for Willfulness in FCA Cases

*(United States ex rel. Yarberry v. Supervalu)*

**“*Safeco* ensures due process by not penalizing government contractors for mere negligence. It does so while accomplishing Congress’s goal of ensuring that companies do not bury their heads in the sand when submitting claims for reimbursement.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Court of Appeals for the Seventh Circuit to protect defendants’ due-process rights in False Claims Act cases. Adopting the position taken by every court of appeals to consider the issue, the U.S. District Court for the Central District of Illinois held that the test for willfulness announced by the Supreme Court in *Safeco* applies in FCA actions. WLF’s brief urges affirming that decision.

The appeal arises from two pharmacists’ *qui tam* lawsuit against their former employer—Supervalu. The relators claim that Supervalu “knowingly” submitted false claims for reimbursement by state and federal healthcare programs. Before a 2016 Seventh Circuit decision clarifying the effect of price-matching programs on a drug’s “usual and customary price,” Supervalu excluded participants in its price-match program when calculating usual and customary prices. The relators argue that omission constituted knowingly submitting false claims.

As WLF’s brief shows, applying the *Safeco* standard is necessary to protect defendants’ due-process rights. Because submission of false claims carries both punitive civil sanctions and criminal penalties, defendants are entitled to heightened due-process protections. At the core of these protections is the right to fair notice of prohibited conduct. The brief explains that *Safeco* ensures “due process by not penalizing” government contractors “for mere negligence. It does so while accomplishing Congress’s goal of ensuring that companies do not bury their heads in the sand when submitting claims for reimbursement.” WLF therefore urges the Seventh Circuit to promote due process of law by affirming the District Court’s decision.

*Celebrating its 43rd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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