



FOR IMMEDIATE RELEASE

August 12, 2021

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

In Victory For WLF, Seventh Circuit Joins Other Circuits In Applying *Safeco* Test for Willfulness In FCA Cases

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

“The Seventh Circuit’s decision protects defendants’ due-process rights while also ensuring that companies do not bury their heads in the sand when seeking government reimbursement.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—The United States Court of Appeals for the Seventh Circuit today affirmed a decision dismissing False Claims Act claims premised on the defendants’ mere negligence. The ruling was a victory for Washington Legal Foundation, which filed an *amicus curiae* brief urging the court—like every court of appeals to consider the issue—to hold that the test for willfulness announced by the Supreme Court in *Safeco Insurance Company of America v. Burr* applies in FCA actions.

Two pharmacists sued their former employer—Supervalu—alleging that Supervalu “knowingly” submitted false claims for reimbursement by state and federal healthcare programs. According to the pharmacists, the Supreme Court’s ruling in *Safeco*, interpreting the Fair Credit Reporting Act’s scienter requirement, does not apply in False Claims Act cases. The Seventh Circuit rejected that argument and held that “the scienter standard articulated in *Safeco* applies to the FCA.”

As WLF’s brief showed, applying the *Safeco* standard protects defendants’ due-process rights. Core due-process principles require fair notice of prohibited conduct. The brief explained 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 applauds the Seventh Circuit for ensuring that companies are not held liable under the FCA for mere negligent conduct.

Celebrating its 44th 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.

###