Press Release

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WLF Asks Supreme Court To Clarify That Rule 9(b)'s Heightened Pleading Standard Governs *Qui Tam* Claims

(*Molina Healthcare of Illinois v. Prose*)

> **"Applying Rule 9(b)'s heightened pleading standard to *qui tam* claims ensures that the False Claims Act is used only for its intended purpose—as a curb on those who knowingly defraud the United States by submitting false claims for payment."**
> —Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review, and ultimately reverse, a decision by the U.S. Court of Appeals for the Seventh Circuit that allows vague, generalized, and speculative allegations of fraud to survive a motion to dismiss in False Claims Act (FCA) cases.

The petition arises from a *qui tam* suit against Molina Healthcare of Illinois, a provider of Medicaid-reimbursed services in skilled-nursing facilities. The relator's complaint describes no false claim submitted to the government, no express falsehood in the enrollment forms, and no specific misleading statement by Molina or its agents. Instead, the complaint speculates only upon "information and belief" that Molina agreed to provide certain Medicaid-reimbursed services when it did not intend to do so. The district court correctly dismissed the complaint under Federal Rule of Civil Procedure 9(b), which requires all fraud allegations to "state with particularity the circumstances constituting fraud." The Seventh Circuit reversed.

The complaint's lack of specificity should have doomed it—and would have in at least the First, Sixth, Eighth, or Eleventh Circuits. Those circuits all require relators to allege particularized details about specific false claims submitted to the government—names, dates, places, amounts, and the like. But here the Seventh Circuit joined the Third, Fifth, Ninth, Tenth, and D.C. Circuits by holding, in an acknowledged circuit split, that FCA plaintiffs need not identify any specific fraudulent claim for payment at the pleading stage.

As WLF explains in its brief urging review, the entrenched circuit split is untenable. Allowing the lower courts to abdicate their responsibility to apply Rule 9(b) as a check on FCA relators who allege no specific false claims with particularity gives a green light to abusive litigation. And defendants targeted by these dubious lawsuits will face hydraulic pressure to settle, yielding *in terrorem* settlements that are a deadweight loss to the economy.

Celebrating its 45th 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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