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WLF Urges Supreme Court To Apply *Safeco* Test For Willfulness In FCA Cases

(U.S. ex rel. Schutte v. SuperValu; U.S. ex rel. Proctor v. Safeway)

“*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 Chief Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an amicus curiae brief urging the U.S. Supreme Court to protect defendants’ due-process rights in False Claims Act cases. Every court of appeals to consider the issue has held that the test for willfulness announced by the Supreme Court in *Safeco* applies in FCA actions. WLF’s brief urges the Supreme Court to affirm two of those decisions from the Seventh Circuit.

The appeals arise from *qui tam* lawsuits against SuperValu and Safeway. Petitioners claim that the grocery chains’ pharmacies “knowingly” submitted false claims for reimbursement by state and federal healthcare programs. Before a 2016 Seventh Circuit decision clarified the effect of price-matching programs on a drug’s “usual and customary price,” the pharmacies excluded participants in their price-match programs when calculating usual and customary prices. Petitioners argue that those omissions constituted knowingly submitting false claims.

As WLF’s brief shows, applying the *Safeco* standard is necessary to protect defendants’ due-process rights. Because submitting 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. WLF’s 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’s brief also explains why petitioners’ and their amici’s arguments about the three levels of knowledge described in the statute is a red herring.

Celebrating its 46th 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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