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SuperValu: Relators' SCOTUS Victory Turns Pyrrhic After Jury's Defense Verdict and Denial of Post-Trial Motions

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Last week, after fourteen years of litigation, *United States ex rel. Schutte v. SuperValu, Inc.* arrived at its likely end after the U.S. District Court for the Central District of Illinois rejected relators' bid for a new trial after a jury returned a defense verdict earlier this year. Filed in 2011 and unsealed in 2015, *SuperValu* led to a landmark Supreme Court decision on the FCA scienter requirement in 2023, with SCOTUS holding that scienter turned on a defendant's subjective belief not what an objectively reasonable person may have thought. After remand, the district court held a three-week jury trial in February 2025. The jury found in favor of the relators on scienter but concluded there was insufficient evidence of damages, rendering what was ultimately a favorable verdict for the defense.

The relators alleged SuperValu violated the FCA by reporting prices to Medicare and Medicaid that were higher than those "usually and customarily" charged to the public. In particular, the relators alleged that the reported retail prices did not account for discounts that SuperValu regularly applied to the majority of drug sales to the general public. Relators contended this violated Federal regulations requiring reimbursements paid to pharmacies by Medicare and Medicaid be limited to the "usual and customary" price of the drug as it is offered to the general public.

To prove a violation of the FCA, the relators had to prove SuperValu had scienter—that SuperValu *knew* the claim was false. SuperValu argued it did not knowingly submit any false claims because it adopted applied objectively reasonable interpretation of "usual and customary" by not including discounts in its reimbursement requests. The district court and Seventh Circuit had agreed with *SuperValu* that this defeated the relators' claims. SCOTUS, in a unanimous decision, reversed, however, holding that a defendant's subjective belief of a claim's falsity was the relevant focus in determining scienter. SCOTUS explained that a later-developed, objectively reasonable interpretation could not, on its own, defeat scienter if the defendant did not subjectively believe that interpretation to be true.

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After remand, relators moved for summary judgment, arguing that SuperValu knew it submitted false claims because it was previously informed its discount prices were the "usual and customary" prices, SuperValu subjectively believed its discounted prices were its "usual and customary" prices, and SuperValu tried to hide its discounted prices from regulators. The district court granted summary judgment on falsity and materiality, narrowing the jury's factfinding to scienter and damages. During trial, the jury was presented with two questions: (1) whether SuperValu knowingly submitted false claims, and (2) whether SuperValu's false claims resulted in government damages. On the first question, the jury found SuperValu did knowingly submit false claims to the government. However, on the second, the jury found the relators failed to prove the false claims damaged the government, and the court entered judgment in favor of the defense.

In post-trial motions, relators argued that causation was not a required element of liability under their theory of the FCA violation. Because the FCA provides for two forms of damages, actual damages and civil penalties assessed on a per-claim basis, the relators argued SuperValu could still be liable for per-claim civil penalties based on the submission of knowingly false claims even absent actual damages. The district court rejected relators' arguments, noting that some circuits have adopted a distinction between these two types of liability, but that the Seventh Circuit has not, instead having chosen to "leave [the question] for another day." *United States ex rel. Calderon v. Carrington Morg. Servs., LLC*¸ 70 F.4th 968, 978 (7th Cir. 2023).