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Seventh Circuit Weighs Whether FCA Penalties Require Proof the Government Was Harmed

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When the FCA Now blog last wrote about *United States ex rel. Schutte v. SuperValu, Inc.*, we flagged the issue most likely to keep the case alive. The relators had argued that per-claim civil penalties do not require proof of causation, and the district court rejected that argument while noting that the Seventh Circuit had expressly left the question open. On November 10, 2026, a Seventh Circuit panel heard the relators' appeal on that very question (Nos. 25-3134 and 25-3194). Can a relator collect per-claim civil penalties after a jury finds that the defendant knowingly submitted false claims but caused the government no damages?

- **The verdict.** The jury found scienter but found that the false claims did not cause the government damages. It never counted the claims.
- **The ruling below.** The district court held that Seventh Circuit precedent makes causation an element of FCA liability and refused to add penalties to the judgment.
- **The stakes.** According to an amicus brief from the U.S. Chamber of Commerce, the relators seek penalties on "more than a million reimbursement claims" submitted to Illinois Medicaid, which "would exceed $6 billion."
- **The takeaway.** A win for the relators would make penalty exposure turn on claim volume rather than government loss. That matters to every FCA defendant, including pharmacies, payors, device manufacturers, labs, and other organizations that submit a high volume of claims.

A Scienter Win Became a Defense Verdict on Causation

The relators alleged that SuperValu pharmacies reported inflated "usual and customary" prices on government-program claims instead of the discounted price-match prices they charged cash customers. In 2023, the Supreme Court held that FCA scienter turns on the defendant's own knowledge and subjective beliefs. *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023). On remand, the district court granted the relators summary judgment on materiality.

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The case went to trial, and the jury returned its verdict in March 2025. It answered "yes" to the knowledge question but found for the defendants on whether the false claims caused the government damages. Because the verdict form made the claim count and the damages amount conditional on both answers, the jury never reached them. The relators proved that SuperValu knew its claims were false. They did not prove that the government was harmed.

In post-trial motions, the relators argued that "[c]ausation is not an element of liability for civil penalties, which are recoverable [even] in the absence of damages." In contrast, SuperValu relied on precedent to argue that "[t]his Court has repeatedly held that causation is an element of FCA liability." On October 31, 2025, Judge Myerscough rejected the relator's argument and denied a new trial (Order). She relied on the circuit precedent SuperValu introduced, which listed causation among the elements of an FCA claim, including *United States ex rel. Calderon v. Carrington Mortgage Services, LLC*, 70 F.4th 968, 973 (7th Cir. 2023), and *United States v. Luce*, 873 F.3d 999, 1014 (7th Cir. 2017). She distinguished *United States v. Hughes*, 585 F.2d 284 (7th Cir. 1978), because the government there had dropped its damages claim before trial and sought only penalties.

The Seventh Circuit Reserved This Question; Now It Must Answer It

The relators' argument starts with the statute's text. A person who violates the FCA "is liable to the United States Government for a civil penalty . . . plus 3 times the amount of damages which the Government sustains because of the act of that person." 31 U.S.C. § 3729(a)(1). On that reading, the penalty attaches to each false claim. Damages are a separate add-on that requires causation.

The relators have some authority on their side:

- **D.C. Circuit.** *United States ex rel. Schwedt v. Planning Research Corp.*, 59 F.3d 196, 199 (D.C. Cir. 1995), describes "two sorts of liability": penalties for submitting a false claim, and damages for the loss it causes.
- **Seventh Circuit, 1978.** *Hughes* states that "[a] false claim is actionable under the Act even though the United States has suffered no measurable damages from the claim." 585 F.2d at 286 n.1.

SuperValu disagrees that the emphasis should be on 31 U.S.C. § 3729(a)(1), and instead points to section 3731(d) which "identifies 'damages' as an 'essential element.'" SuperValu also has authority to support its position:

- **Seventh Circuit, 2017 and 2023.** *Luce* and *Calderon* require "a plaintiff to establish both actual and proximate cause to recover under the [False Claims] Act." *Calderon*, 70 F.4th at 978–79. *Calderon* expressly reserved the *Schwedt* question: "Whether we agree with the Schwedt approach is a question for another day." *Id.* at 978.

The Chamber's amicus brief adds a constitutional argument. Penalties untethered from any loss, it argues, raise Excessive Fines Clause problems because a fine "must bear

some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). The brief points to two recent reductions:

- *Grant ex rel. United States v. Zorn*, 107 F.4th 782 (8th Cir. 2024): the Eighth Circuit vacated a $6.47 million penalty award on $86,332 in actual damages and directed a single-digit multiplier.
- *United States ex rel. Taylor v. Healthcare Assocs. of Tex., LLC*, No. 3:19-cv-2486, 2025 WL 624493 (N.D. Tex. Feb. 26, 2025): the court cut a penalty exceeding $448 million on $2.8 million in actual damages to three times actual damages. That ruling is on appeal to the Fifth Circuit (No. 25-10842).

The Chamber aptly frames the scale of the mismatch: had the district court imposed the minimum penalty on all 17,630,692 claims, the total "would have been more than $88 billion," an amount that "exceeds the combined total of all FCA judgments and settlements since 1986." The panel appears to have noticed: Law360 reports that one judge called the potential penalties "mind-boggling."

The Chamber also asks the court to reject the district court's materiality ruling. In its view, that ruling adopted a per se "money-is-material" rule that "would effectively eliminate the materiality element in any FCA case involving alleged false claims about money."

Why Your Organization Should Care

The answer will shape FCA exposure well beyond the retail pharmacy, including for payors, device companies, providers, contractors, and every other recipient of government funds.

- **Volume becomes the risk.** Without a causation requirement, exposure scales with the number of claims rather than the size of any loss. Every voucher, invoice and reimbursement claim carrying a knowingly false statement is a potential penalty, even if the government paid the right amount.
- **"No harm" is a strong defense, for now.** In the Seventh Circuit, a defendant that shows the government lost nothing can defeat liability, as SuperValu did. An affirmance keeps that defense intact. A reversal would reduce damages but not penalties.
- **The leverage shifts.** If the Seventh Circuit requires proof of pecuniary loss before penalties attach, FCA defendants gain leverage in settlement negotiations with relators and the government, particularly in pricing, certification and reporting cases where damages are hard to prove.
- **The Excessive Fines Clause is the backstop.** *Zorn* and *Taylor* show courts will cut penalties far out of proportion to loss. Defendants should preserve that argument early and build the record on actual harm.

What to Watch

A decision is likely months away. If the panel adopts *Schwedt*, the relators would return to the district court to prove the number of false claims, and the Excessive Fines Clause

would take center stage. If the panel holds that causation is required for penalties, the Seventh Circuit will be at odds with the D.C. Circuit, and that is the kind of split that draws Supreme Court review. Either way, defendants should test causation and damages from the first day of an investigation. As *SuperValu* shows, those elements can decide the case even after a scienter loss.