

## Federal Jury Finds No Liability for SuperValu in FCA Case Remanded for Trial by SCOTUS

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Subsequent to remand from the U.S. Supreme Court, *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023) (*SuperValu*) was tried to a jury. On March 5, 2025, the jury found that SuperValu was ultimately not liable in a whistleblower action that has cast a wide shadow over FCA jurisprudence in recent years. Ironically, while plaintiffs successfully argued that the retail pharmacy chain had subjective knowledge that it had submitted false claims to the government, the jury found that plaintiffs failed to prove that the government suffered any damages under the FCA.

### BACKGROUND

In June 2023, the Supreme Court revised how the “knowledge” requirement should be interpreted under the FCA. *SuperValu* centered on whether retail pharmacies SuperValu and Safeway had defrauded Medicare and Medicaid programs by misrepresenting their “usual and customary” drug prices. While the defendants made most of their pharmacy sales through a pharmacy discount program, they reported their higher retail prices as their “usual and customary” prices when seeking reimbursement for the dispensed prescriptions from Medicare and Medicaid.

Whistleblowers argued that the companies knew that “usual and customary” referred to their discounted prices. Relying on *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47 (2007), the defendants argued that an objectively reasonable person could interpret “usual and customary” to refer to their higher prices. SuperValu, therefore, argued that it could not have acted knowingly under the FCA because the “objectively reasonable” standard applies to the scienter element under the FCA.

In a unanimous decision, the Supreme Court disagreed with defendants. It held that the FCA’s scienter element refers to the defendant’s *subjective* knowledge and beliefs at the time of claim submission, not what an objectively reasonable person might have known or believed. The Court emphasized that a defendant can be liable under the FCA if they:

1. Actually knew their claims were false when they were made (actual knowledge);
2. Were aware of a substantial risk that their claims were false and intentionally avoided learning whether their claims were false (deliberate ignorance); or
3. Were aware of a substantial risk that their claims were false but submitted them anyway (reckless disregard).

The Court remanded the case for further proceedings consistent with this standard.

## OUTCOME ON REMAND: THE MARCH 2025 JURY VERDICT

Following the Supreme Court’s remand, the case proceeded to trial in the U.S. District Court for the Central District of Illinois. Plaintiff-whistleblowers presented evidence that SuperValu had subjective knowledge that its claims did not comply with the applicable regulatory reimbursement requirements applied to its pharmacy claims. SuperValu countered that the term “usual and customary” was not defined during the relevant period. The company presented employee testimony indicating that employees did not believe prices from price-matching programs constituted the usual and customary prices.<sup>[1]</sup>

After weeks of trial, the jury found that SuperValu had indeed “knowingly” submitted false claims to the federal government and the state of Illinois under the subjective standard articulated by the Supreme Court. But jurors needed clarity on what amounts were actually paid by the government. After defendants presented evidence that Medicare customers paid the lower of the usual and customary cost, minimum acquisition cost, or copay, jurors unanimously concluded that the plaintiffs had not proved that either the federal or state governments suffered damages as a result of these false claims. Plaintiffs’ failure to satisfy the damages element of the FCA was fatal to their case.

## KEY TAKEAWAYS FOR GOVERNMENT CONTRACTORS

- The SuperValu trial presented a welcome opportunity to assess how juries navigate the Supreme Court’s reinterpretation of the FCA’s knowledge element, focusing on a defendant’s subjective beliefs and knowledge at the time of claim submission.
- The subjective standard makes it more difficult for defendants to prevail at the motion to dismiss or summary judgment stages when FCA claims are based on alleged violations of arguably ambiguous statutes or regulations.
- The jury found persuasive plaintiffs’ evidence of knowing conduct on the part of the pharmacy chain despite significant evidence of regulatory ambiguity.
- SuperValu’s successful defense at trial demonstrates the importance of the damages element in FCA litigations. Here, even though the claims were found to be false, the plaintiffs were not able to establish as an evidentiary matter that the Medicaid program had actually made excessively large reimbursement payments to the retail pharmacies as a result of the mis-priced claims.

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[1] <https://www.law360.com/trials/articles/2306137/supervalu-wins-fca-case-that-went-to-high-court>

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