COSMOS
Navigate the Compliance Universe

Compliance Today - April 2024

James G. Sheehan (james.sheehan@ag.ny.gov, linkedin.com/in/james-sheehan-90264115/) is the Chief of the New York Attorney General's Charities Bureau, which oversees compliance and regulation of the nation's largest charities sector, including the largest nonprofit hospital sector.

Gabriel L. Imperato (gabriel.imperato@nelsonmullins.com, linkedin.com/in/gimperato/) is the Managing Partner of the Fort Lauderdale office of Nelson Mullins and the Team Leader of the Firm's Health Care Criminal and Civil Enforcement, Litigation and Compliance Practice.

The compliance lessons in the wake of the Supreme Court decision in U.S. ex rel Schutte v. SuperValu, Inc.

by James G. Sheehan and Gabriel L. Imperato

The False Claims Act (FCA) permits private individuals to bring lawsuits in the name of the United States—called qui tam—against those they believe have defrauded the federal government: 31 U.S.C. § 3730(b). The FCA thereby incentivizes individuals with knowledge of fraudulent activities to come forward and assist in the government's efforts to deter fraud and recover damages and penalties. Successful qui tam lawsuits have resulted in the whistleblowers receiving a substantial percentage of the recovered amounts as a reward for blowing the whistle.

The FCA holds individuals liable for "knowingly presenting false or fraudulent claims for payment or approval." The "knowingly" requirement is also often referred to as the scienter element. Therefore, when analyzing a potential FCA violation, the two essential elements are (1) the falsity of the claim and (2) the defendant's knowledge of the claim's falsity. In June 2023, the Supreme Court case of *United States et al., ex rel. Schutte et al., v. SuperValu Inc. et al.*, held that it is the subjective intent (as opposed to any objective standard) of a defendant that will be considered relevant when determining whether they acted "knowingly" under the FCA.[1] The definitions of "knowing" and "knowingly" in the FCA are specific to that law. The knowingly standard can be met when one has actual knowledge that the claims are submitted out of also unique and expansive and includes when one has actual knowledge that the claims being submitted are false or fraudulent. This knowing standard, however, is also met if improper claims are submitted out of deliberate ignorance or reckless regard.