Lessons From 7th Circ. Decision Affirming $183M FCA Verdict

By **Ellen London, Li Yu and Kimberly Friday** (November 5, 2025)

Ellen London

Li Yu

Kimberly Friday

At least five False Claims Act cases have gone to trial in the last three years — the most since the FCA was revamped in 1986.

In September, the U.S. Court of Appeals for the Seventh Circuit issued the first appellate decision addressing one of these trial verdicts when it affirmed the $183 million award in favor of the qui tam relator in U.S. ex rel. Streck v. Eli Lilly.[1]

The Streck decision is of interest to white collar defense and whistleblower attorneys not only because it illustrates how appellate courts review trial court judgments in complex FCA cases, but also because it engages substantively with materiality and scienter questions that recur in FCA cases that do not proceed all the way to trial.

In affirming the jury verdict on materiality, for example, the Seventh Circuit rejected Eli Lilly's argument that evidence of continued payment by Medicaid despite knowledge of Lilly's conduct negates materiality under the U.S. Supreme Court's 2016 **decision** in Universal Health Services. Inc. v. U.S. ex rel. Escobar.

In its scienter analysis, the Seventh Circuit also elaborated on the application of the Supreme Court's 2023 decision in U.S. ex rel. Schutte v. SuperValu Inc. to specific types of evidence introduced at trial.

Below, we begin with a recap of Streck's factual and procedural history and an overview of the recent spate of FCA trials.

We then analyze how the Seventh Circuit addressed materiality and scienter disputes that frequently arise in FCA cases.

Finally, we offer some suggestions on how Streck informs common scenarios in the white-collar and whistleblower practice.

Background: Streck and the Recent Spate of FCA Trials

In Streck, the relator alleged that Eli Lilly violated its drug price reporting obligations to improperly reduce its rebate payments under the Medicaid Drug Rebate Program.

By way of background, when Medicaid covers a prescription drug, the drug manufacturer must pay a rebate to Medicaid to subsidize the drug cost, with the rebate amount based on the drug's average manufacturer price, i.e., the higher the AMP, the higher the rebate.[2]

Specifically, Lilly allegedly violated the FCA by not reporting to Medicaid the clawback amounts that it received from drug wholesalers when Lilly raised drug prices.

For example, if Lilly sold the drug to a wholesaler for $10 but then increased the price to $11 before the wholesaler resold the drug, Lilly required the wholesaler to remit $1 to Lilly as a clawback.

After the district court granted partial summary judgment to Streck based on a finding that Lilly's AMP calculations were false for not including the clawback amounts, the trial proceeded on the scienter, materiality and damages elements.[3]

The jury returned a verdict in Streck's favor of $61 million in single damages, which the district court trebled to $183 million.

Lilly appealed, challenging the falsity ruling as well as the jury's determination on scienter and materiality. In a lengthy decision, the Seventh Circuit affirmed the judgment in all respects.[4]

Besides Streck, as noted above, there have been four other FCA trial judgments in the last three years:

- U.S. ex rel. Bassan v. Omnicare Inc., in the U.S. District Court for the Southern District of New York;[5]

- U.S. ex rel. Penelow v. Janssen Products. L.P., in the U.S. District Court for the District of New Jersey;[6]

- U.S. ex rel. Behnke v. CVS Caremark Corp., in the U.S. District Court for the Eastern District of Pennsylvania;[7] and

- U.S. ex rel. Schutte v. SuperValu Inc. in the U.S. District Court for the Central District of Illinois.[8]

Appeals from the OmniCare, Caremark and Janssen judgments are pending in the U.S. Court of Appeals for the Second and Third Circuits, and post-judgment motions are pending in SuperValu.

Notably, all four cases were first filed over a decade ago, reflecting how long it often takes to litigate complex FCA cases through trial.

In Omnicare, the DOJ alleged that Omnicare billed Medicare and Medicaid for stale or invalid prescriptions for patients at senior living facilities.

In April, a jury found Omnicare liable for over 3.3 million false claims resulting in more than $135 million in single damages. The jury also found CVS Health, Omnicare's parent, liable for causing it to submit false claims.

After trebling the damages and assessing a $542 million penalty, the district court entered a

$949 million judgment. After Omnicare and CVS appealed from that judgment, Omnicare filed for bankruptcy, resulting in a stay of the appeal under the bankruptcy code.[9]

In Janssen, a declined qui tam case, the relator obtained a $1.64 billion judgment — the highest in FCA history — after a jury trial in 2024. The Janssen relators alleged that Janssen marketed two drugs off-label, i.e., for medical conditions not in their U.S. Food and Drug Administration-approved labels, and thereby caused the submission of false claims.

The jury found that Janssen caused the submission of nearly 160,000 false claims and over $120 million in damages. The district court then trebled the damages and imposed an additional civil penalty of more than $1.2 billion.

Janssen has appealed the judgment to the Third Circuit,[10] challenging materiality, falsity, causation, scienter and the amount of the civil penalty, as well as the constitutionality of the qui tam structure of the FCA.[11]

In CVS Caremark, another declined qui tam case, the relator alleged that Caremark, a pharmacy benefit manager, caused two Medicare Part D plans to report false and inflated prices for generic drugs. As in Streck, the Caremark relator was able to obtain partial summary judgment as to falsity of the reported drug prices. The parties then opted for a bench trial, which began in March.

In June, the district court ruled in relator's favor, finding $95 million in single damages. The court subsequently issued a judgment of $290 million in August. The defendants have appealed.[12]

Finally, SuperValu, another declined drug pricing case that has already resulted in a Supreme Court decision, is likely familiar to FCA practitioners.[13] Following remand back to the district court, SuperValu was tried to a jury in February and March, and resulted in a defense verdict.

While the jury found SuperValu knowingly submitted false claims, it also found that the relators had failed to prove damages. Relators have filed post-trial motions, including seeking a new trial.

Seventh Circuit's Analysis of Materiality Evidence From the Streck Trial

The materiality of Lilly's certifications was a key focus of the Streck trial and appeal.[14] Specifically, Lilly highlighted evidence of "the government's inaction" despite allegedly having been on notice of Lilly's noncompliance with the Medicaid drug rebate regulations.

The Seventh Circuit, however, decided against giving dispositive weight to this evidence due to the "inherently fact-specific nature of materiality," the need for a holistic analysis and the deferential nature of appellate review of the jury's determination.[15]

Following its 2023 decision in U.S. ex rel. Heath v. Wisconsin Bell Inc.,[16] the Seventh Circuit noted that where noncompliance with a regulation results in a large "difference in how much the government owes" or receives, misrepresentation of compliance is very likely material because it goes "to the very essence of the bargain."[17]

Under this standard, the Seventh Circuit found that Lilly's compliance with the AMP reporting requirements "were central to the [Medicaid drug rebate] framework" and

"probative evidence of materiality."[18]

This evidence, according to Streck, outweighed the evidence of alleged government inaction for two reasons. First, the facts presented at trial suggested "reasonable alternative explanations for the government's continued payments."[19]

Second, the evidence at trial, the Seventh Circuit found, did not conclusively establish that CMS had actual knowledge of the "six-hundred-million-dollar implications" of Lilly's decision to not report the clawback payments from the wholesalers.[20]

Seventh Circuit's Application of SuperValu's Scienter Standard to Streck Trial Evidence

The Seventh Circuit focused its scienter analysis in Streck on "reckless disregard," which is "the most capacious of the three mental states" under the FCA.[21] Reckless disregard, according to the Seventh Circuit, targets "the 'ostrich' type situation" where an FCA defendant is aware of a legal risk but "failed to make a reasonable and prudent inquiry[.]"[22]

Further, citing the U.S. Court of Appeals for the Sixth Circuit's 2018 decision in U.S. ex rel. Prather v. Brookdale Senior Living Communities Inc.,[23] the Seventh Circuit noted that a participant in "complex government programs like Medicaid and Medicare … has a duty to make a reasonable and prudent inquiry" to understand its legal obligations.[24]

Under this standard, the court noted that Lilly's interpretation of the Medicaid drug rebate regulations was so unreasonable that the jury was entitled to take this into account in its analysis of scienter.[25]

The Seventh Circuit also highlighted evidence from the trial that Lilly gave a middle manager "unchecked and unreviewed discretion" to exclude the wholesalers' clawback payments from the AMP reporting. The higher-level Lilly executives who submitted certifications to Medicaid, however, apparently exercised no oversight as to that decision.[26]

The court further contrasted this evidence with Lilly's detailed awareness of the value of the clawback payments from the wholesalers and found this sufficient to show a failure to conduct a reasonable inquiry into whether the certifications to the government were accurate. [27]

Additionally, the court emphasized that Lilly's communications with the Centers for Medicare and Medicaid Services about the clawback payments were "revelatory evidence of 'ostrich-like' conduct" that overcame any evidence of deficiencies or inattention on CMS' part.[28]

Specifically, Lilly's employees testified about their close relationship with CMS employees. Yet, the company chose to communicate critical information by letter even after CMS warned that it would not review the letter.[29]

Practice Suggestions

Streck offers meaningful lessons for both whistleblowers' lawyers and white-collar defense practitioners.

First, for whistleblowers' lawyers litigating declined qui tam cases, Streck underscores the

importance of effective pretrial motion practice. By obtaining partial summary judgment on falsity and a robust jury instruction, the relator narrowed the issues for trial and avoided the risk of jury confusion as to the meaning of regulatory language.

Second, Streck also highlights how whistleblowers' attorneys can utilize the absence of certain evidence to satisfy scienter. While the relator could not prove that the Lilly executives submitting certifications to CMS had actual knowledge of noncompliance with the Medicaid drug rebate regulations, he was able to leverage those executives' wholesale delegation of responsibility over whether to report the clawback payments to a mid-level manager to convince the jury that those executives acted with "reckless disregard."[30]

Third, for defense attorneys, Streck is another reminder that the language from Escobar about government inaction being strong evidence of immateriality may not always be a silver bullet in qui tam cases.[31]

As both Streck itself and the prior materiality decisions cited by the Seventh Circuit show, courts have identified several scenarios where government inaction does not defeat materiality when the compliance requirement at issue goes to the essence of the bargain.

Finally, Streck shows that the details are important for the defense as well as for relators. As noted above, what may be an incidental fact in another case — the delegation of duty to a lower-level employee — became a key focus for the Seventh Circuit.

Thus, when formulating arguments about materiality or scienter, a defense counsel must learn facts like who at a company was responsible for what, what their knowledge was and who was supervising them. Such detailed knowledge can help show that a particular oversight was ordinary negligence rather than reckless disregard.

Ellen London is a shareholder at London & Naor PC.

Li Yu is a partner at Bernstein Litowitz Berger & Grossmann LLP.

Kimberly Friday is a partner at Osborn Maledon, P.A.

[1] U.S. ex rel. Streck v. Eli Lilly, 152 F.4th 816 (7th Cir. 2025).

[2] Id. at 826-828.

[3] Id. at 832.

[4] Both sides have petitioned for panel rehearing and rehearing en banc. Relator's petition concerns the calculation of civil penalties.

[5] U.S. ex rel. Bassan v. Omnicare, Inc., 15-cv-04179 (S.D.N.Y. Nov. 6, 2022).

[6] U.S. ex rel. Penelow v. Janssen Prods., L.P., 3:12-cv-7758 (D.N.J. Mar. 28, 2025).

[7] U.S. ex rel. Behnke v. CVS Caremark Corp., 2:14-cv-824 (E.D. Pa. Apr. 2, 2024).

[8] U.S. ex rel. Schutte v. SuperValu Inc., 11-cv-3290 (C.D. Ill. Apr. 26, 2024).

[9] Case No. 25-80486 (N.D. Tex. Bankr. Sept. 22, 2025).

[10] Appeal docketed as 25-1818 (3d Cir. Apr. 29, 2025).

[11] DOJ intervened in the appeal to defend the FCA's constitutionality and the amount of the civil penalty as consistent with the Eighth Amendment. In a twist, DOJ's brief also argues that the district court erred in its falsity determinations and suggests that the judgment should be vacated and remanded for the trial court to reassess its rulings under the correct legal standard.

[12] Appeal docketed as 25-2820 (3d Cir. Sept. 24, 2025).

[13] US ex rel. Schutte v. SuperValu, Inc., 598 U.S. 739 (2023).

[14] 152 F.4th at 846.

[15] Id. at 846-848.

[16] U.S. ex re. Heath v. Wisconsin Bell Inc., 92 F.4th 654, 657-60 (7th Cir. 2023).

[17] 152 F.4th at 847.

[18] Id.

[19] Id. at 847-848.

[20] Id. at 848.

[21] Id. at 842

[22] Id.

[23] U.S. ex rel. Prather v. Brookdale Senior Living Cmtys., Inc., 892 F.3d 822, 838 (6th Cir. 2018).

[24] 152 F.4th at 842.

[25] Id. at 842-843.

[26] Id. at 843-844.

[27] Id. at 844-845.

[28] Id. at 845-846.

[29] Id. at 845.

[30] 152 F.4th at 843-845.

[31] Universal Health Servs., Inc. v. U.S. ex rel. Escobar, 579 U.S. 176, 195 (2016).