

Roderick Thomas Discusses Supreme Court Decision on False Claims Implied Certification Theory

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Roderick L. Thomas, partner and co-chair of Wiley Rein's White Collar Defense & Government Investigations Practice, was quoted extensively in a *Bloomberg BNA* article about the recent ruling by the Supreme Court of the United States regarding the adoption of the implied certification theory of liability for False Claims Act (FCA) defendants. In *Universal Health Services Inc. v. United States ex rel. Escobar*, the Court ruled that corporations can face FCA liability if they bill the government while out of compliance with regulations that are not explicit conditions of payment.

Mr. Thomas pointed out the decision will reshape FCA litigation beyond implied certification cases. While he expected the Court to adopt some type of implied certification liability, he said the Court could have issued a broader opinion.

The Court "stressed a couple of limiting principles intended to cabin the potentially expansive scope of liability, which should reverberate to cases beyond the implied certification realm," he said. "The unanimous Court emphasized that the 'demanding' and 'rigorous' requirements of materiality and scienter will be sufficient safeguards against potentially limitless liability. Whether that turns out to be the case in the lower courts, however, remains to be seen."

"It is, however, a striking blow to case law that has diminished the element of materiality in particular," he said.

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Mr. Thomas added that, in a footnote, the Court rejected the idea that materiality is too fact-intensive to dismiss cases on a motion to dismiss or at summary judgment. He noted that the Court “emphasized the need to sufficiently plead materiality under Federal Rules 8 and 9(b), thereby giving further teeth to the new materiality standard the Court expects to be ‘demanding’ and ‘rigorous.’”

Wiley Rein will hold a complimentary **webinar** on June 28 related to the issues surrounding this topic called *Universal Health Services: Reshaping the FCA Liability Landscape for Federal Contractors*. To register for the webinar, please click **here**.