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Supreme Court Clarifies the Scope of "Implied Certification" Under the False Claims Act

In its *Universal Health Services, Inc. v. United States ex rel. Escobar* ruling, the Supreme Court endorsed the implied certification theory of False Claims Act (FCA) liability—but with limitations. The Court's construction differs from several lower court interpretations and explicitly rejects a bright-line condition of payment requirement. Instead, the Court adopted a "half-truth" theory of liability that focuses on a "rigorous" and "demanding" materiality standard.

Writing for a unanimous court, Justice Clarence Thomas held that FCA liability can attach under the implied certification theory if at least two conditions are met:

1. A defendant does not "merely request payment" but makes "specific representations about the goods or services provided."
2. The defendant's "failure to disclose [its] noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths."

The full impact of the Court's decision is not immediately clear. Although the decision will permit claims of implied certification going forward, it will only do so where plaintiffs meet the rigorous and demanding standard of materiality under the False Claims Act. Notably, the Court disagreed that its ruling would make it impossible to obtain dismissal of FCA complaints on the pleadings. One potential focus of future litigation will be what factual showing of materiality the plaintiff must make to withstand dismissal. For example, the Court indicated that if the government regularly pays a particular type of claim despite knowledge that certain requirements were violated, that is strong evidence that the requirements are not material.

The Court did not clearly define what a "half-truth" is, nor did it clearly define materiality. Instead, the Court pointed to principles that have been established by common law. For example, a misrepresentation might be material if it goes to "the very essence of the bargain." The Court also clarified that the government's *ability* to refuse payment is not sufficient without more to establish materiality. Nor is a regulation or requirement necessarily material simply because the government has defined it as a condition of payment.

At issue in *Escobar* was the alleged violation of a regulation that related directly to the services for which payment was sought. *Escobar*, therefore, can be distinguished from other cases where the alleged violation is unrelated to the reimbursed services. The *Escobar* defendant provided mental health services to the relators' daughter at a clinic. After adverse reactions to medication, the daughter passed away from a seizure. The parents claimed that the clinic violated the FCA by seeking Medicaid reimbursement for services provided by unqualified and unlicensed staff that, by state Medicaid regulation, could only be provided by licensed providers. The Court concluded that by submitting claims using payment codes that directly corresponded to those services (e.g., individual therapy), the clinic told a "half-truth" when it failed to disclose that its employees could not, in fact, legally provide those services. The Court appeared to suggest—but did not conclude—that the misrepresentation was material. The case is being remanded for that determination.

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If you have any questions, or would like additional information, please contact any of the following:

Brian Boone
704.444.1106
brian.boone@alston.com

Matthew Dowell
404.881.7434
matt.dowell@alston.com

William Jordan
404.881.7850
bill.jordan@alston.com

Dawnmarie Matlock
404.881.4253
dawnmarie.matlock@alston.com

Wade Pearson Miller
404.881.4971
wade.miller@alston.com

Mitch Mitchelson
404.881.7661
mitch.mitchelson@alston.com

Jason Popp
404.881.4753
jason.popp@alston.com

Sam Rutherford
404.881.4454
sam.rutherford@alston.com

Rob Stone
404.881.7270
rob.stone@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

ATLANTA: One Atlantic Center ▪ 1201 West Peachtree Street ▪ Atlanta, Georgia, USA, 30309-3424 ▪ 404.881.7000 ▪ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ▪ Suite 21B2 ▪ No. 7 Guanghua Road ▪ Chaoyang District ▪ Beijing, 100004 CN
BRUSSELS: Level 20 Bastion Tower ▪ Place du Champ de Mars ▪ B-1050 Brussels, BE ▪ +32 2 550 3700 ▪ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ▪ 101 South Tryon Street ▪ Suite 4000 ▪ Charlotte, North Carolina, USA, 28280-4000 ▪ 704.444.1000 ▪ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ▪ 18th Floor ▪ Dallas, Texas, USA, 75201 ▪ 214.922.3400 ▪ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ▪ 16th Floor ▪ Los Angeles, California, USA, 90071-3004 ▪ 213.576.1000 ▪ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ▪ 15th Floor ▪ New York, New York, USA, 10016-1387 ▪ 212.210.9400 ▪ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ▪ Suite 400 ▪ Durham, North Carolina, USA, 27703-85802 ▪ 919.862.2200 ▪ Fax: 919.862.2260
SILICON VALLEY: 1950 University Avenue ▪ 5th Floor ▪ East Palo Alto, CA 94303-2282 ▪ 650.838.2000 ▪ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ▪ 950 F Street, NW ▪ Washington, DC, USA, 20004-1404 ▪ 202.239.3300 ▪ Fax: 202.239.3333