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Mark Sweet Discusses Supreme Court Ruling on Contractor FCA Liability

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Mark B. Sweet, a partner in Wiley Rein's White Collar Defense & Government Investigations and Government Contracts practices, was quoted by *Federal Computer Week* (*FCW)* in a June 20 article about a ruling by the Supreme Court of the United States that sharpened certain definitions under the False Claims Act (FCA). The ruling widened the scope of contractor FCA liability by adopting an implied certification theory, but also raised the standards of what constitutes a material violation.

The Court addressed the question of whether a contractor's payment invoice to a federal agency implies that the contractor is in compliance with "material" government regulations—even when those requirements are not spelled out in the contract. This is called implied certification.

Implied certification is "bad news for contractors," said Mr. Sweet. He noted, however, the stricter definition of material violation means the latitude of implied certification for contractors must be "fundamental to the type of service you're providing." He added that the standard for "material" will likely be based on historical precedent of whether the government has rejected similar invoices before.

Additionally, the FCA relies on a standard that a contractor "knowingly" deceived. "And there's always room for corrective action," Mr. Sweet said. "Where it turns into fraud is there's evidence you know about it, but you're not doing anything to correct it after some reasonable period of time."

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"Now that they're subject without a doubt to implied certification," companies should "be careful not to make representations in their invoices that aren't necessary," he added. "They need to ask themselves, 'Are we aware of regulatory or contractual violations that we haven't fixed?'"

The article can be found here.