

MEDIA MENTION

Nick Peterson Comments on Use of Granston Memo in Light of DOJ's FCA Suit Dismissal

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P. Nicholas Peterson, of counsel in Wiley Rein's Environment & Safety, White Collar Defense & Government Investigations, and Food, Drug, and Medical Device Law practices, was quoted in a December 4 *Law360* article regarding a recent Department of Justice (DOJ) brief involving a False Claims Act (FCA) case against a major pharmaceutical company. The relators in this case alleged that the company falsified drug test results in order to get Medicare and Medicaid reimbursements. The Ninth Circuit had reversed the district court's dismissal of the case and the defendant is appealing to the Supreme Court. In DOJ's brief regarding defendant's cert petition, DOJ stated that it agreed with the relators' interpretation of "materiality" under the FCA. However, the DOJ also stated that if the case was permitted to move forward, it would exercise its dismissal authority under the FCA and move to dismiss relators' case. Among the questions raised by *Law360* is how the DOJ's Granston memo, which emerged in January 2018, could come into play in similar suits alleging regulatory violations. The Granston memo discusses circumstances in which the government should consider seeking outright dismissal of meritless or burdensome *qui tam* actions under the FCA.

"DOJ's decision indicates that it is never too late for FCA defendants to push the government for dismissal," said Mr. Peterson. "Even if DOJ initially permits the case to go forward, at some point they may find it is no longer worth the price."

The article can be found here (*subscription required*).

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