

Roderick Thomas Discusses Implied Certification Theory in SCOTUS 'Escobar' Ruling as One-Year Anniversary Approaches

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Roderick L. Thomas, partner in Wiley Rein's White Collar Defense & Government Investigations Practice, was quoted in a *Bloomberg BNA* article discussing outstanding issues involved in the U.S. Supreme Court's nearly one-year-old decision, *Universal Health Servs., Inc. v. United States ex rel. Escobar*. The Court unanimously upheld the implied certification theory of False Claims Act (FCA) liability, which attaches FCA liability to contractors that request payments while concealing that they have not met certain requirements.

Among other issues, the article poses the question of whether a series of successful outcomes for defendants that rely on this defense could prompt congressional intervention to amend the FCA. Mr. Thomas pointed out that plaintiffs' attorneys would like to see a diluted materiality requirement that views the "tendency to influence" standard as objective, without seeking to determine what had actually occurred within the agency.

"That crabbed reading should be long gone," Mr. Thomas said. The government's continued payments even though it is aware of noncompliance should preclude materiality "based on how [other] courts have read the Supreme Court decision," he added. "However, we doubt the defense will become so strong that Congress would adopt a myopic view of materiality," Mr. Thomas concluded.

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