## WILMERHALE M

# Supreme Court Upholds Implied Certification Liability, While Emphasizing Materiality Requirement

#### AUGUST 11, 2016

Authors Jonathan G. Cedarbaum, Karen F. Green and David W. Ogden explain the US Supreme Court's recent unanimous decision to uphold the "implied certification" theory of liability under the False Claims Act and discuss the implications for future False Claims Act cases; published in the August 2016 edition of *Pratt's Government Contracting Law Report*, Vol. 2, No. 8.

In *Universal Health Services v. United States ex rel. Escobar*, the US Supreme Court unanimously upheld the "implied certification" theory of liability under the False Claims Act (FCA), while emphasizing that only material misrepresentations are actionable. In particular, the Court held that liability can attach if the defendant submits a claim for payment that makes "specific representations about the goods or services provided, but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement," which the defendant "knows is material to the Government's payment decision." Read the full article

### Authors



#### David W. Ogden

PARTNER

Chair, Government and Regulatory Litigation Practice Group

david.ogden@wilmerhale.com

+1 202 663 6440

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 2100 Pennsylvania Avenue, NW, Washington, DC 20037, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/solde-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2004-2024 Wilmer Cutler Pickering Hale and Dorr LLP