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# CLIENT ALERT

## Unanimous Supreme Court Holds that Implied Certification Can be Basis for FCA Liability

**June 16, 2016**

On June 16, 2016, the Supreme Court handed down *Universal Health Services v. United States ex rel. Escobar*, holding unanimously that the "implied certification" theory can be a basis for False Claims Act (FCA) liability when a defendant submitting a claim makes specific representations about the goods or services provided, and fails to disclose noncompliance with material statutory, regulatory, or contractual requirements, thereby making those representations misleading. Although the Court rejected the First Circuit's broad materiality standard (that any legal noncompliance is material so long as the defendant knows that the government would be entitled to refuse payment were it aware of the violation), it made clear that the underlying statutory, regulatory, or contractual requirement need not be an explicit condition of payment to trigger liability under the implied certification theory; rather, the test is whether the representation would likely influence government payment, a determination that may be made using both objective and subjective standards.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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