

15-7 UNIVERSAL HEALTH SERVICES, INC. V. ESCOBAR

DECISION BELOW: 780 F.3d 504

LOWER COURT CASE NUMBER: 14-1423

QUESTION PRESENTED:

The False Claims Act ("FCA") makes it unlawful to present a "false or fraudulent" claim for government reimbursement. 31 U.S.C. § 3729(a)(1)(A). A claim can be "factually false" because, for example, the contractor has not provided the products or services for which reimbursement is sought. Some courts have held that a claim can be "legally false" for purposes of the FCA because the contractor, while providing the products or services for which reimbursement is sought, did not comply with a condition of payment imposed by statute, regulation, or contract. This latter theory of FCA liability is divided into two categories: "express certification" and "implied certification." The viability and scope of the latter theory is at issue here.

Respondents' complaint alleged that petitioner's reimbursement claims were legally false because petitioner's services did not comply with several specific regulatory provisions with which petitioner impliedly certified compliance. The district court dismissed the complaint pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) because none of the regulatory provisions alleged in respondents' complaint, or otherwise cited by respondents in the proceeding, imposed conditions of payment, except one, and respondents did not plausibly allege any violation of that provision.

The First Circuit below reversed, holding that respondents' complaint (1) alleged conduct that violated a regulation neither pled in respondents' complaint nor cited by respondents at any point in the proceedings below, and that (2) compliance with this unpled and uncited regulation was a condition of payment. According to the First Circuit, respondents thus stated a claim for legal falsity under the FCA. Although the First Circuit has eschewed labels used by other circuits in describing different types of FCA claims, it applied an "implied certification" theory of legal falsity.

The questions presented are:

1. Whether the First Circuit, by *sua sponte* identifying and relying upon a regulatory provision not invoked by respondents at any point in the proceedings below to reverse the district court's dismissal of respondents' complaint, has so far deviated from the adversary system's party presentation rule "so as to call for an exercise of this Court's supervisory power" under this Court's Rule 10(a).
2. Whether the "implied certification" theory of legal falsity under the FCA-applied by the First Circuit below but recently rejected by the Seventh Circuit-is viable.
3. If the "implied certification" theory is viable, whether a government contractor's reimbursement claim can be legally "false" under that theory if the provider failed to comply with a statute, regulation, or contractual provision that does not state that it is a condition of payment, as held by the First, Fourth, and D.C. Circuits; or whether liability for a legally "false" reimbursement claim requires that the statute, regulation, or contractual provision *expressly* state that it is a condition of payment, as held by the Second and Sixth Circuits.

LIMITED TO QUESTIONS 2 & 3 PRESENTED BY THE PETITION.
CERT. GRANTED 12/4/2015