

Paul Khoury Quoted in Coverage of Top Government Contracts Cases of 2018

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Paul F. Khoury, co-chair of Wiley Rein's Government Contracts Practice, was quoted by *Law360* in a July 17 article highlighting important legal decisions so far this year for federal contractors.

Several of those cases relate to the landmark 2016 *Escobar* decision, in which the Supreme Court affirmed that "implied false certification" – a false implication by a company that it has met all required statutory, regulatory, or contractual terms when submitting a claim for federal payment – is a valid basis for a False Claims Act (FCA) claim.

Some aspects of the *Escobar* decision, the article noted, were left open to interpretation – including a requirement that alleged false claims must be "material" to payment in order for an FCA suit to move forward. This materiality standard was addressed in *United States ex rel. Folliard v. Comstor Corp.*, in which the U.S. District Court for the District of Columbia rejected an FCA suit in March 2018. The suit alleged that a technology distributor sold the government thousands of networking products that violated the Trade Agreements Act (TAA). The TAA requires that products supplied under federal contracts must be produced in the U.S. or in countries that have a trade agreement with the U.S. – but the court found that the relator failed to show that the alleged noncompliance was actually material to the payment.

"I did like that case – that's sort of how I interpret materiality," said Mr. Khoury. "TAA is becoming a huge, huge issue for a number of our clients ... [and] the *Folliard* decision offered the recognition that oftentimes the agency wants to work with you and doesn't really care

Related Professionals

Paul F. Khoury
Partner
202.719.7346
pkhoury@wiley.law

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that much [about TAA issues]; they want to make sure they're getting their product and at the end of the day will try to help you get to 'yes.'"

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