

Escobar Proves Potent as Tool for Defendants

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In this [article](#), Adam Feinberg and Jonathan Kossak* discuss the impact of *Universal Health Services v. United States ex rel. Escobar*, the Supreme Court's 2016 decision on the materiality standard of the False Claims Act. "[I]t is clear that *Escobar* didn't just reaffirm the FCA's materiality standard as 'demanding' and 'rigorous' – it has reinvigorated materiality as a potent defense tool that can defeat FCA suits before they get to trial," Feinberg and Kossak wrote. The authors review recent appellate court decisions finding in FCA defendants' favor on the basis of materiality and provide examples of how defendants can apply *Escobar* to their advantage by taking discovery about the government's payment practices. "Disputes regarding the limits of relevancy under the materiality analysis are likely to be litigated heavily in the years to come," Feinberg and Kossak wrote. "But one thing is clear so far: Discovery in FCA cases in *Escobar*'s aftermath is no longer a predominantly one-way street. The government's treatment of not only the defendant but other similarly situated entities is fair game."

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