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The False Claims Act After Escobar: A Three-Part Test

Stanley A Twardy Jr. and Liz Latif wrote an article, "The False Claims Act After Escobar: A Three-Part Test," for the *Business Crimes Bulletin*. The article is about the decision in *Universal Health Servs. V. United States ex rel Escobar*, in which the Supreme Court provided a new framework for assessing false certification liability under the False Claims Act. The false certification theory of liability arises when a government contractor fails to comply with contractual provisions, statutes, or regulations, and the contractor has either expressly or impliedly certified such compliance. Twardy and Latif explain Escobar's three-part test for establishing such liability:

1) Does the request for payment contain a “specific” representation about the goods or services provided?

2) If yes,

a) Was it false? or

b) Did the representation omit that the requestor had not complied with a statutory, regulatory, or contractual requirement, such that it made the representation a half-truth?

3) Was the misrepresentation material to the government's payment decision?

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