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Fifth Circuit Affirms Dismissal of Qui Tam Complaint Due to Lack of Materiality in Significant False Claims Act Decision

The U.S. Court of Appeals for the Fifth Circuit [affirmed](#) on April 15, 2020 the dismissal of a non-intervened *qui tam* action in *United States ex rel. Porter v. Magnolia Health Plan*¹, because the relator failed to adequately allege that the defendant's purported misrepresentations were "material" to the government's payment decision. The health plan had a blanket statement regarding regulatory compliance and the court also took into consideration the fact that the health plan continued to renew their contract with the organization. The Fifth Circuit's decision is an important application of *Escobar* at the motion to dismiss stage. Moving forward, the main takeaway is that Defendants will be able to cite this decision, as it applies to boilerplate certifications of regulatory compliance and materiality under the *Escobar* standard.

Facts surrounding the case include the relator alleging that the health plan was required by state regulations to use specifically licensed nurses and was not, therefore receiving payments they were not entitled to. Essentially, alleging violation of the False Claims Act. In response, the court held that a vague certification of compliance with all regulations is too general to establish that compliance with every regulation is a condition of payment. In quoting the district court, the Fifth Circuit expounded: "Here, the district court concluded that the contracts between [the health plan] and [Mississippi] 'contain broad boilerplate language generally requiring a contractor to follow all laws, which is the same type of language *Escobar* found too general to support a FCA claim.' We agree."

The Court relied further on the fact that the health plan, once informed, took no further action. Of note, the Court stated that Magnolia "continued payment and renewed its contract with [the health plan] several times" and, even after the relator's suit was unsealed, awarded the health plan a contract for a fourth time. Any case referencing *Escobar* is important to review and understand. Briefly stated again, this is a significant win for defendants as it relates to the motion to dismiss stage with regards to materiality, especially as the rate of Qui Tam actions continues to rise.

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