ALERT MEMORANDUM

Supreme Court Upholds Expansive Reading of Wire Fraud Statute

May 27, 2025

On May 22, 2025, the Supreme Court unanimously upheld the wire fraud conviction of a government contractor in *Kousisis v. United States*, rejecting the argument that federal wire fraud requires proof of economic loss to the victim. In so holding, the Court endorsed the "fraudulent inducement" theory of wire fraud, marking a victory for federal prosecutors after several recent decisions that narrowed the scope of federal fraud statutes. This decision takes on added significance given the current administration's renewed emphasis on False Claims Act ("FCA") enforcement, as companies now face heightened exposure under both criminal fraud and civil FCA theories for false representations to government agencies, even absent demonstrable financial harm.

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Background:

Alpha Painting & Construction and its project manager Stamatios Kousisis were convicted in 2018 of wire fraud for obtaining multimillion-dollar contracts with the Pennsylvania Department of Transportation (PennDOT) under false pretenses. Alpha won two Philadelphia public works restoration contracts. To meet a PennDOT bidding requirement, Alpha represented that it would purchase significant quantities of paint supplies from a qualifying disadvantaged business enterprise ("DBE"), when in reality Alpha simply paid the DBE a fee to use its name in the bid while the DBE did no actual work.

Notably, there was no evidence that Alpha intended to deprive PennDOT of money, and Alpha supplied the lowest bid and successfully completed all contractual obligations. Alpha and Kousisis moved for judgment of acquittal after trial, arguing that PennDOT had received the benefit of its bargain, and thus the defendants had not defrauded PennDOT of "money or property" as required by the statute. The district court denied the motion, and Kousisis was sentenced to 70 months in prison, while Alpha was required to pay a $500,000 fine and forfeit its profits from the contracts. The Third Circuit affirmed.

The Supreme Court's Decision:

Alpha and Kousisis petitioned for Supreme Court review, citing the Court's recent decision in *Ciminelli v. United States* as grounds for reversal. In *Ciminelli*, the Court had vacated federal fraud convictions on the grounds that the "right to control the use of one's assets" was not a "property" interest within the ambit of the federal property fraud statutes. In other words, the Court held, wire fraud required proof that an object of the fraud was money or property. Alpha and Kousisis urged that this meant that wire fraud required proof that they intended to inflict actual economic harm on the victim.

In a unanimous decision affirming the convictions, the Court rejected this construction, distinguishing *Ciminelli* and a line of cases that had narrowed the ambit of the wire fraud statute. Justice Amy Coney Barret, writing for the majority, concluded that "the wire fraud statute is agnostic about economic loss [as t]he statute does not so much as mention loss, let alone require it." The Court explained that the law simply requires someone to "devise" or "intend to devise" a scheme to "obtain money or property" through "false or fraudulent pretenses, representations, or promises."

The Court stressed that by using a DBE as a pass-through entity, Kousisis and Alpha "devised" a "scheme" to obtain contracts through feigned compliance with PennDOT's DBE requirement, with the goal of obtaining "tens of millions of dollars" from PennDOT by making "false or fraudulent representations."

Justices Thomas, Gorsuch, and Sotomayor issued separate opinions. Justice Thomas concurred separately to address whether the defendants' false statements were "material"—a concept he had previously emphasized in his majority opinion in *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016). Relying on that case's standard for materiality—that the misrepresentation went to the "essence of the bargain"—Justice Thomas expressed "serious[ ] doubt" that the defendants' DBE misrepresentation met that standard, but noted it was uncontested by the parties. Justice Gorsuch concurred in part, agreeing that the wire fraud statute does not require proof that the victim suffered economic loss. However, Justice Gorsuch disagreed with a footnote in the majority opinion suggesting that wire fraud occurs whenever a defendant obtains property that a victim "would not have otherwise parted with" by means of a material false statement. Finally, Justice Sotomayor concurred in the judgment, concluding that the Court could have resolved the case on the narrow ground that tricking a victim into paying money "by promising one thing and delivering something materially different" is fraud.

Key Takeaways:

1. **Economic Loss Not Required for Wire Fraud**: The decision definitively establishes that prosecutors need not prove economic harm to sustain wire or mail fraud convictions. This

maintains the scope of federal fraud prosecutions beyond cases involving monetary losses.

2. **Contract Compliance Representations Carry High Risk:** Transaction documentation often includes certifications and assurances about compliance, qualifications, or intended uses. The decision makes clear that material misrepresentations about contract terms—even where the underlying work is completed satisfactorily—can support both criminal and civil fraud charges.
3. **Government Contracting Requires Heightened Vigilance:** Federal prosecutors maintain particularly robust enforcement when dealing with government contracts, and the new Administration has identified procurement fraud as a priority area. Companies should ensure strict compliance with all representation and certification requirements in government contracts, as the risks of criminal prosecution remain elevated in this context.
4. **Diversity and Inclusion Program Compliance:**[1] The decision comes at a time when diversity, equity, and inclusion programs face increased scrutiny. The decision gives potential legal ammunition for prosecuting false representations about such programs, so long as the statements were material to the contracting decision.
5. **Reversal of Recent Trend:** This unanimous decision reversed a trend in which the Court has repeatedly cut back on how prosecutors pursue white-collar fraud. In recent years, the Court has rejected the government's readings of federal fraud and public corruption statutes, vacating numerous convictions along the way. Thursday's decision represents a divergence from this trend in favor of federal prosecutors.

Practical Implications:

— **For All Contract Management:**

- Review all contract representations and certifications for accuracy
- Implement robust compliance monitoring for ongoing contractual commitments
- Ensure subcontractor and supplier relationships align with contractual representations

— **For Government Contractors:**

- Document business relationships and work performed by certified partners
- Implement clear protocols for contract compliance verification

— **For Compliance Programs:**

- Update fraud risk assessments to account for the broader scope of potential liability
- Strengthen training on contract representations and certifications
- Consider enhanced monitoring of business relationships that are subject to regulatory compliance

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The *Kousisis* decision signals that federal prosecutors maintain broad authority to pursue fraud charges based on fraudulent inducement theories, even absent economic loss. Clients should review their contract compliance procedures and ensure that all representations made in commercial relationships—particularly those involving government contracts or related to regulatory requirements—are accurate and sustainable throughout the contract term.

For questions regarding this development or its implications for your business, please reach out to your regular Cleary Gottlieb contacts.

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[1] A prior alert memorandum on developments in DEI policy is available here.