

Healthcare Group Of The Year: Williams & Connolly

By **Gianna Ferrarin**

Law360 (April 5, 2024, 2:02 PM EDT) -- Williams & Connolly LLP's recent work securing wins for corporate healthcare defendants, including a jury trial victory in opioid litigation brought by family members of individuals addicted to prescription drugs, has earned the firm a spot as one of Law360's Healthcare Groups of the Year.

Within the Washington, D.C.-based firm, roughly two dozen attorneys focus their practice on healthcare issues, firm partner Enu Mainigi told Law360. The healthcare practice at Williams & Connolly was formed in the 1990s as fraud cases were becoming more prevalent in the industry, she said.

Mainigi, who helped launch the practice after joining Williams & Connolly in 1997, said it has seen "almost everything" in its decades-long history.

"We've seen just a huge number of healthcare cases, and so we have the benefit of a huge breadth of experiences," Mainigi said.

The firm's recent accomplishments include securing a jury trial win for drug distributor Cardinal Health in a case brought by 21 plaintiffs who testified on their experiences with sexual abuse, domestic violence and other traumas linked to their family history with drug addiction.

Mainigi noted the significance of the case, in which the jury found Cardinal Health was not liable to the six families that brought suit under the Georgia Drug Dealer Liability Act, a 1997 statute that allows individuals harmed by illegal narcotics to sue the seller of the drugs.

"It's especially satisfying when — in a highly emotional issue like the opioid issue, for example — that you are able to get, as a defendant, a jury to agree that there is not necessarily liability for your corporate defendant," Mainigi said.

She added the suit risked opening up a new front in opioid litigation, which in recent years has generated multibillion-dollar settlements between state and local governments and drug distributors — including Cardinal. Mainigi said that, as a result of the verdict, plaintiffs' lawyers may "think twice" before suing healthcare companies under the statute.

"If we had lost this jury verdict, then I think you could have seen a lot of cases sprout up in a lot of different forums, and it would be a statute that was perhaps misused by the plaintiffs bar," Mainigi said.



Williams & Connolly notched another victory when it defended CVS Pharmacy Inc. against a suit by New York Attorney General Letitia James. In that case, the attorney general alleged CVS forced hospitals to use a subsidiary for processing claims under the federal 340B drug discount program.

The attorney general lost that suit last year on CVS' motion to dismiss after a state court found she "artificially limited" the relevant healthcare market to only CVS locations. In its decision, the court pointed to publicly available data indicating that roughly 86% of covered New York entities that used contract pharmacies to obtain 340B savings did not contract with any CVS pharmacies.

Mainigi said firm attorneys were "very proud" of securing a win at the dismissal stage.

Williams & Connolly recently won again at the dismissal stage in a subsequent tying suit brought by the attorney general against CVS. In early March, the state court found the attorney general failed to cure the deficiencies of her previous suit.

"It's been a double victory in the context of this antitrust matter," Mainigi said.

Looking ahead, Mainigi said, the firm's healthcare practice will be watching to see how district and appellate courts rule in False Claims Act cases following a new scienter standard set by the U.S. Supreme Court in its decision surrounding allegations that pharmacy retailers SuperValu Inc. and Safeway Inc. overbilled Medicare and Medicaid.

In its decision last year, the Supreme Court vacated wins by SuperValu and Safeway and rejected the scienter standard applied by the Seventh Circuit, which had ruled retailers could not have acted "knowingly" if their alleged overbilling reflected an "objectively reasonable" interpretation of regulations.

The Supreme Court instead found the FCA's scienter element refers to "knowledge and subjective beliefs — not to what an objectively reasonable person may have known or believed."

Following the high court's reversal of the wins by Safeway and SuperValu, Williams & Connolly was tapped to represent the retailers in trials at district court. Trial in the SuperValu case is set to begin in September.

Mainigi noted the significance of the Supreme Court's ruling, adding that attorneys at Williams & Connolly were pleased to be selected to represent the retailers at trial.

"We do a tremendous amount of False Claims Act work at all stages of the False Claims Act, and so we were flattered that they came to us to ultimately try that case if it needs to be tried down the road," Mainigi said.

--Additional reporting by Matthew Perlman, Kelcey Caulder, Daniel Wilson and Jeff Overley. Editing by Linda Voorhis.