

Rising Star: Williams & Connolly's Ashley W. Hardin

By Patrick Boyle

Law360, Washington (April 12, 2016, 4:56 PM ET) -- The stakes were enormous in two False Claims Act cases that threatened to expose clients of Williams & Connolly to billions of dollars in damages and penalties — and Ashley W. Hardin played a pivotal role in winning summary judgments tossing both suits. The partner's achievements helped her earn a place on Law360's Rising Stars list as one of the top six health care attorneys under age 40.

Pharmaceutical provider Omnicare Inc. brought in Williams & Connolly in 2014 soon after losing a bid to dismiss allegations the company paid illegal kickbacks to nursing homes in exchange for Medicare and Medicaid referrals. The whistleblower sought \$675 million in damages and \$135 billion in fines.

Hardin joined the legal team that managed the case, and proved instrumental in building a discovery strategy and a new argument, the firm said. The team's strategy was to change the story. What the relator claimed was a scheme to erase debt at eight skilled nursing facilities in exchange for more business was, from the company's standpoint, a standard way of working with financially struggling clients.

In September 2015 a Texas federal judge granted a summary judgment that eviscerated most of the 7-year-old lawsuit, saying the relator's strongest evidence — one "ambiguous" email that might be read as suggesting a trade-off between the companies — paled in comparison to the evidence and testimony amassed by Williams & Connolly that Omnicare's debt collection practices "would not seem exceptional, much less fraudulent."

The key to victory, Hardin said, was the firm's approach to preparing each case as if going to trial, even though False Claims Act suits rarely do. That meant extra hours poring through documents and interviewing employees to understand what they believed they were doing and to prepare them to testify.

"Everything we do in discovery is geared toward: What story would we want to tell at trial?" Hardin said.

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Ashley Hardin
Williams & Connolly

The strategy also paid off when Williams & Connolly won dismissal of a False Claims Act case against Liberty Medical Supply Inc. The suit, filed in 2008, claimed Liberty failed to refund the government more than \$60 million in alleged overpayments for medical supplies. Hardin took the lead in drafting a motion that won summary judgment in 2014 in Delaware Chancery Court, which agreed there was no proof that Liberty, by then bankrupt, tampered with data to avoid reimbursing Medicaid overpayments. Her colleagues continued through two more years of proceedings that culminated with dismissal of the FCA suit by a Florida federal court last December.

Such victories are among the reasons Hardin is a sought-after expert about trends in False Claims Act cases, appearing on an American Bar Association webinar panel this year. She points to a pending U.S. Supreme Court decision on a case that raises questions about the validity of the implied certification doctrine as potentially having a major impact on health care litigation. If the doctrine is declared valid, she hopes the court will establish limits and conditions.

“The Supreme Court is going to settle the lay of the land,” she said. “That’s a huge topic for any company that faces liability claims, which certainly includes health care companies.”

Hardin joined Williams & Connolly right after earning her law degree at Georgetown University in 2004. She earned her bachelor's at the University of North Carolina at Chapel Hill. Her career fulfills a dream that began at age 8, when she was smitten by the TV show "L.A. Law." “Being a lawyer seemed glamorous and really fun,” Hardin said.

For young lawyers, Hardin recommends taking the approach that’s routine at Williams & Connolly, which gives young lawyers lots of responsibility, allowing them to gain important experience and take ownership of cases or pieces of complex cases.

“Take an aspect of a case. Really own it. Become the expert,” Hardin said. “Then you’re indispensable.”

--Editing by Jill Coffey.