

MVP: Williams & Connolly's Enu Mainigi

Law360, New York (December 21, 2017, 2:03 PM EST) -- Enu Mainigi, the head of Williams & Connolly LLP's False Claims Act and qui tam practice, pushed CVS Caremark Corp. to two major victories in suits questioning its charges to Medicare Part D and insurers, earning her a spot as one of Law360's 2017 Health MVPs.

HER BIGGEST ACCOMPLISHMENTS THIS YEAR:

In November, the Third Circuit issued a major interpretation of the U.S. Supreme Court's 2016 *Universal Health Services Inc. v. Escobar* decision, finding that something couldn't be fraud under the FCA if the government knew something technically wrong was happening and decided it didn't matter.

More specifically, the appeals court decided that CVS didn't have to face a whistleblower's suit accusing it of submitting false claims to Medicare Part D by using dummy prescriber identification numbers on valid reimbursement requests that kept hitting computer errors. Mainigi and her team said the government had known about the issue and still reimbursed CVS, meaning the issue clearly wasn't material to the government's decision to repay the claim, as required by *Escobar*.

A district court had dismissed the case on summary judgment, and the Third Circuit refused to revive it.

"It has its own value, in that it's one of the first Medicare Part D cases to wind itself through the court system, and it's got a government knowledge element to it, which makes it something that's pretty critical to government contractors," Mainigi said. "It defined when something could be material or not material vis-à-vis *Escobar*. If the government knows you're doing xyz and candidly does not raise an issue with it, is it really a false claim at that point? I think *Escobar* would say it's not."

She then helped CVS escape another lawsuit on summary judgment, this one with customers accusing



the company of overcharging third-party payors for drugs, leading to higher copays.

The pharmacy had a membership program which allowed patients without insurance to access discounted drugs. The suit said those prices should have defined the usual and customary prices for the drugs, which is a metric used to decide how much insurers should then pay. Here, insurers were misleadingly charged a higher amount than those with the membership, leading to customers paying higher copays, the suit alleged.

In the end, the court said CVS never lied to pharmacy benefit managers — the middlemen between pharmacies and insurers — about whether the prices it charged members of this program were in fact the UCR price, so there were no misrepresentations.

“[That] was an extremely hard fought case,” Mainigi said. “This case had potential ramifications for other such matters throughout the country, not just for us.”

Winning at the summary judgment stage isn’t an accident, Mainigi said. Her team’s method going in is to play the case backward from summary judgment or trial in order to get the result they want, even if the case is just at the investigation stage.

“We guide ourselves accordingly, and let what we see as the ultimate path for us to victory help guide where we go,” she said.

WHAT’S NEXT FOR HER:

Mainigi will be serving as lead counsel for distributor Cardinal Health Inc. in a wide range of litigation accusing it and other drugmakers and suppliers of furthering the nation’s opioid crisis. The company has denied the allegations, emphasizing its role as a middleman between pharmacies and manufacturers.

“There are a number of cases that have been filed all over the country related to the opioid crisis by governments at all levels, and there are some novel issues at play here,” she said.

WHY SHE’S A HEALTH CARE ATTORNEY:

Mainigi had considered going to medical school, given that her family “has a bit of a health care background,” but ultimately she went for law school. Even though she said health care “always fascinated me and interested me,” falling into it in the legal sector still came down to chance.

“I never intended to be part of what I’m doing,” Mainigi said. “It’s something I fell into really the minute I walked in the door at Williams & Connolly nearly 21 years ago. One case led to another.”

But that’s not to say she doesn’t enjoy it. In fact, Mainigi said she’s compelled by how “cutting edge and fascinating” the area is.

“Someone’s always trying out something different in the health care world, so it creates a lot of new,

interesting issues and opportunities,” she said. “At the same time, I think I've been around this world enough where I've noticed that there's the concept of what's old is new again.”

Particularly, she said, matters involving kickbacks, doctor's relationships with hospitals and Employee Retirement Income Security Act claims against pharmacy benefit managers are things she saw a lot of early in her career that have recently had a resurgence.

“I feel old now, but in a good way,” she said of being able to defer to that experience.

Additionally, she mixes up her practice by working with banks and other financial services clients on matters relating to that world.

HER ADVICE FOR OTHER ATTORNEYS:

“Just work on as many cases as you can in [your] area, because it both gives you a macro perspective and it doesn't frankly take long to develop an expertise, not as much as one would think,” Mainigi said. “In a relatively short time period, one can develop, I think, a really terrific expertise in this area.”

— *As told to Dani Kass*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

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