

Health Care Group Of The Year: Williams & Connolly

By **Y. Peter Kang**

Law360 (February 3, 2022, 2:02 PM EST) -- Williams & Connolly LLP won a key trial for CVS in a long-running class action dispute and scored an appellate victory for Aetna after a California court tossed a challenge to the company's coverage policy, earning it a spot among Law360's 2021 Health Care Groups of the Year.

The Washington, D.C.-based firm's health care practice is known for handling any given health care company's toughest litigation matters, according to practice group co-chair Enu Mainigi, a Law360 2021 Health Care MVP.

"We aren't the deal lawyers, we aren't the regulatory lawyers," she told Law360. "We get to come into significant pieces of litigation our clients hire us for and look at it with a fresh set of eyes, with no preconceived notions from prior regulatory work or deal work. People come to us with their biggest cases."

Mainigi said the group's approach to litigation — using a goal-focused strategy to obtain a client's desired outcome — has been in place for years and has served the firm well.

"It's imperative and incumbent for us to start from the endgame and work our way backward," she said. "We want to deliver a cohesive strategy for a client on any particular matter. When they hire us, they know they are hiring us to try a case if needed. So we work backwards from [a potential trial]. It's a tried and true practice for us to do it that way."

One of the cases that reflects the group's goal-oriented strategy was its successful defense against a class action accusing CVS Health Corp. of overcharging generic-drug customers by more than \$120 million, in violation of various states' consumer protection laws.

A California federal jury in June unanimously cleared CVS of allegations brought by insured drug buyers from six states that the national pharmacy chain unfairly overcharged them for prescriptions under the company's now-defunct nationwide discount program called Health Savings Pass.

Mainigi said the team earmarked a certain piece of evidence that they had obtained early on in discovery, knowing that if the case went to trial it would help CVS emerge victorious. Despite having



won the case on summary judgment, the Ninth Circuit later revived the suit, which put that key piece of evidence back on the table.

"We knew [that evidence] would serve us well in a trial," she said, which reflects the team's emphasis on a client's endgame. "We always try to practice what we preach on that."

The long-running dispute over CVS' Health Savings Pass program landed before a jury roughly six years after the lawsuit was first filed and after multiple delays due to the COVID-19 pandemic. After the Ninth Circuit revived the dispute in 2019 on remand, the consumers won a bid to certify classes of drug buyers in New York and Arizona, adding to certified classes of buyers from California, Florida, Illinois and Massachusetts.

One challenging aspect of the case, Mainigi said, was the fact that counsel and the jury were all required to wear masks during the trial.

"You're always concerned with how you'll fully connect with a jury when everybody is masked," she said. "You're worried you were missing some major piece of intel when you can't see the juror's expressions, so you learn to look a little more carefully and rely on your instincts. We made it work — we knew if we got our strong points out we would prevail with the jury, and we did."

Williams & Connolly also helped Aetna defend against a suit brought by the California Medical Association seeking to enjoin the health insurance company's policy of protecting patients from surprise out-of-network costs when in-network doctors refer patients to out-of-network health care providers. The CMA alleged that Aetna is threatening doctors who refer their patients to out-of-network providers, in violation of California's unfair competition law.

But a Court of Appeals panel in April found that the CMA lacked standing to bring the suit, prompting a further appeal to the California Supreme Court, which granted certiorari in July.

The lower appeals court's ruling will put a damper on future attempts to use litigation to enjoin the policies of health insurance companies and others, according to Williams & Connolly.

Mainigi noted that industry groups such as the CMA are increasingly using the courts to regulate health care policy.

"I've seen it across several different cases," she said. "We have won at the lower court level, but certainly it's a phenomenon that's not going to go away, unfortunately."

--Additional reporting by Dorothy Atkins. Editing by Steven Edelstone.