

Health Care MVP: Skadden's Gregory Luce

By **Daniel Wilson**



Gregory Luce

Law360, New York (December 07, 2012) -- Skadden Arps Slate Meagher & Flom LLP partner Gregory Luce's tireless work on behalf of his clients, leading to a number of significant False Claims Act outcomes in their favor, has earned him a spot on this year's Law360 list of Health Care MVPs.

Luce was brought on board at Skadden in 2008 to lend his more than three decades of health care litigation and regulatory advisory experience to the firm's health systems, pharmaceutical and medical device manufacturing, and other health care clients.

While his practice involves expertise in a number of issues — fraud and abuse enforcement matters and Medicare and Medicaid reimbursement issues, among others — FCA litigation makes up the bulk of his work, according to Luce.

"The FCA has been the centerpiece of my practice for almost 20 years," he said.

In keeping with that focus, Luce and his team racked up a number of big rulings involving the statute this year, perhaps none bigger than a September ruling in New Mexico federal court in a qui tam suit accusing hospital chain Community Health Systems Inc. of Medicaid fraud.

In that ruling, U.S. Magistrate Judge Alan C. Torgerson upheld CHS' motion for sanctions against the U.S. Department of Justice for destroying critical records CHS claimed showed the government had known for several years about the allegedly false claims, but did nothing to stop them, undercutting its argument that it was deceived by the claims.

While the government had argued it had no obligation to preserve the evidence until it decided to intervene in the case, Judge Torgerson disagreed, describing its evidence preservation attempts as "woefully inadequate" and "beyond mere negligence." The district judge in the case rejected the government's objections to the ruling in October.

While the outcome of the case is still pending, the ruling established an important precedent for FCA cases, making clear the government is required to follow the same rules for document preservation as private parties, according to Luce.

Luce — who also helped CHS favorably settle a consumer class action related to the FCA suit in August — said the case was the most satisfying litigation he had worked on this year, not only for the "potentially game-changing" sanctions ruling, but also for the discovery production of important facts and documents from the New Mexico and federal governments in the case.

He and his team had pursued the defense of the case “with the type of zeal that is illustrative of the way the firm and I approach the representation of clients — we had an initial setback, but didn’t give up,” he said.

The strong work of Luce and his team was also a big part in FCA victories for other clients this year, including helping medical device maker Kinetic Concepts Inc. convince the federal government not to intervene in two whistleblower FCA suits accusing the company of defrauding Medicare.

“We showed the government through how reimbursement worked in this setting [for a particular KCI wound healing device] and how the company had prevailed in 97 percent of its Medicare payment appeals for the device,” Luce said. “To their credit, the government agreed that this did not present a case for FCA prosecution.”

KCI won dismissal of both suits after the relators proceeded without government involvement, successfully showing the court that critical portions of the relators’ allegations had already been publicly disclosed.

Pennsylvania’s Tyrone Hospital was another Luce client to win a significant victory, escaping a qui tam suit accusing it of allowing a client hospital to pay kickbacks to doctors for patient referrals. Luce’s team won dismissal of the case with leave to amend the complaint, which was voluntarily dismissed after showing the relators had improperly relied on privileged materials taken from the hospital.

Luce’s upcoming year also promises to be busy, with a number of FCA cases in the works. While most of the cases are under seal or otherwise unable to be disclosed, he did reveal that one involved parallel civil and criminal investigations of a company for alleged off-label marketing, and said he would help the company put up a strong fight.

“It’s an honest client with a vigorous defense,” Luce said. “We’ll encourage the government to take a hard look at whether they really want to pursue criminal allegations in the case.”

--Editing by Lindsay Naylor.