

Health Practice Group Of The Year: Akin Gump

By **Jeff Overley**

Law360, New York (January 09, 2013, 3:48 PM ET) -- Akin Gump Strauss Hauer & Feld LLP rolled the dice by refusing to settle an \$895 million False Claims Act case with the federal government, and hit the jackpot when a judge found no evidence its nursing home client had engaged in illegal kickback activity — one reason the firm landed a place among Law360's Health Groups of the Year.

The stakes were sky-high not only because of the potentially crippling financial penalty, but also because a loss in court could lead regulators to boot the Golden Living senior health company from Medicare and Medicaid, a potential death penalty.

Allegations centered on the government's claim that McKesson Corp. had offered to perform billing work at below-market rates in hopes of receiving a Golden Living medical supply contract. After a 14-day trial that involved 24 witnesses and hundreds of exhibits, a Mississippi federal judge ruled in September that prosecutors had "presented no proof that either party did anything illegal or in bad faith."

Robert S. Salcido, an Akin Gump partner who litigated the matter, said the government's theory of misconduct didn't make sense because McKesson didn't wind up getting the medical supply contract. In addition, its bid for the billing contract wasn't even the lowest, undercutting the government's accusations of financial shenanigans, according to Salcido, who was a U.S. Justice Department trial attorney from 1988 to 1993. McKesson did land the billing deal.

"What was absolutely critical and ultimately dispositive for the judge was putting on the witnesses who described the bidding process and the criteria they took into account when they weighed the different bids," Salcido recalled. "What it ultimately revealed was that the folks at Golden Living were trying to get the lowest price, but at the same time didn't accept the lowest bid because it became clear McKesson was the [superior contractor]."

"My own opinion," Salcido added, "is that the government just made a grave mistake when it decided to intervene in the lawsuit. But once it [intervenes], the government isn't known to concede error."

The Golden Living victory was just one highlight of the past year for a practice that touches virtually every corner of the vast health care universe, including civil fraud, compliance, lobbying and antitrust issues.

"We feel we have a full-service practice," said Jorge Lopez Jr., head of Akin's national health industry practice.

A major point of pride is the firm's work on Medicare reimbursement disputes. Christopher L. Keough, who before joining Akin Gump in 2011 secured a favorable D.C. Circuit opinion in a challenge to a budget neutrality adjustment affecting Medicare payments to hospitals, led talks on behalf of 700 hospitals after joining the firm and in April helped lock down a settlement valued at more than \$4 billion, when proceeds to nonclient hospitals are included.

In another reimbursement matter, a Washington federal judge in January granted summary judgment to Akin Gump client Catholic Health Initiatives, which sued to recover so-called disproportionate share hospital payments it felt it was wrongly denied by the U.S. Health and Human Services Department.

And on yet another front, Akin Gump is representing 17 hospitals in New York and New Jersey in an appeal to the HHS Provider Reimbursement Review Board, challenging exclusion of patient days for patients dually eligible for Medicare and Medicaid from the disproportionate share calculation.

"It sounds like hubris to say, but we'll say it anyway — we're at the top nationally on that reimbursement [issue]," Keough said.

Akin Gump's advocacy on Capitol Hill is another strong suit. This is exemplified by its work, dating back more than 20 years, to preserve a preferential reimbursement rate under Medicare for an alliance of cancer centers including Memorial Sloan-Kettering Cancer Center in New York and the Dana-Farber Cancer Institute in Boston.

"Getting that rate recognizes their unique status [and] recognizes that cancer is a loser under Medicare, so that their losses are the same as other institutions," Keough said.

In the intellectual property realm, Akin Gump attorneys in August snagged a 2-1 ruling from the Federal Circuit, which overturned an injunction blocking Amphastar Pharmaceuticals Inc. and Watson Pharmaceuticals Inc. from selling a generic version of the blood thinner Lovenox after finding that the companies had not likely infringed a Momenta Pharmaceuticals Inc. patent. Momenta has vowed to ask the U.S. Supreme Court to review the ruling, which has implications for Hatch-Waxman Act safe harbors exempting certain activities that normally might be considered infringements.

On the transactional side, Akin Gump represented United Healthcare Services Inc., the nation's largest health insurer, on three health plan acquisitions with a combined value of roughly \$4 billion. The deals, which involved efforts to strengthen United's hand in the Medicare Advantage market, all encountered significant scrutiny from DOJ and state regulators, but ultimately received clearance without the need for divestitures or other concessions, according to Akin Gump.

The list goes on, covering guidance on regulatory matters involving the U.S. Food and Drug Administration, specialized representation of health industry clients during Internal Revenue Service audits, and development of frameworks to ensure companies abide the privacy and security components of the Health Insurance Portability and Accountability Act.

"I don't know if it's unique," Lopez said, "but certainly something exceptional about our practice is we have a very strong presence in every industry in the health care sector, and we have skill sets that go across the board."

--Additional reporting by Scott Flaherty. Editing by Kat Laskowski.