

Health Care MVP: Morgan Lewis' Eric Sitarchuk

By **Evan Weinberger**

Law360, New York (December 12, 2012, 1:43 PM ET) -- Morgan Lewis & Bockius LLP partner Eric Sitarchuk's crowning achievement for 2012 was a Pennsylvania hospital network's victory in a bitter qui tam battle, but Sitarchuk's year also included quiet negotiations that highlighted his skill in dealing with regulators, earning him a spot among Law360's Health Care MVPs.

Sitarchuk, who for the last three years has led Morgan Lewis's white collar and government investigations practice, has a broad practice that includes defending criminal and civil False Claims Act cases as well as antitrust and securities violations. But he has carved out a role as one of the preeminent healthcare fraud defense attorneys in the country.

And with the increasing scrutiny from federal and state governments on the health care sector, Sitarchuk said he expects that practice to grow even larger.

"Government enforcement tends to follow the money, and there's a lot of money in health care," he said in a recent interview.

Sitarchuk's victories over the course of 2012 show why he is among the tops in the field.

Sitarchuk led Morgan Lewis' team defending Guthrie Healthcare Systems Inc., a Pennsylvania hospital network, in a whistleblower suit alleging Medicare and Medicaid fraud launched by the company's former general counsel.

The Third Circuit in August affirmed a lower court's decision dismissing Rodney Repko's case, bringing the long-running case first filed in 2004 to a close.

A federal district court upheld the lower court's September 2011 ruling that the suit could not move forward because Repko's claims had been made public as part of a plea bargain Repko negotiated after he was charged for allegedly stealing \$2 million by forging the names of Guthrie officials on a loan document.

Sitarchuk said that defending Guthrie against its former general counsel presented some difficulties not seen in the average qui tam case.

Repko was aware of all of the laws related to Medicare and Medicaid, and how they applied to his former employer. The former general counsel was able to use that in his case.

However, Morgan Lewis was able to bring its own vast resources to the case, and defeat all of those arguments, Sitarchuk said.

“It made it a lot more difficult, and that's why our regulatory lawyers were so helpful,” he said. “They knew the law better than [Repko] did.”

A second key to the case was keeping the federal government out. With his background as an assistant U.S. attorney, Sitarchuk was able to negotiate with government attorneys and show them why Repko's claims did not warrant federal support.

“If you can go into the court with the government standing on the sidelines, you have a very level playing field,” Sitarchuk said.

Although Sitarchuk is quick to credit the attorneys he works with when discussing his practice and his wins, his colleagues at Morgan Lewis say Sitarchuk was the driving force behind many of the victories.

“When Eric is on the case, I think we naturally look to him,” said Howard Young, a partner in the firm's health care practice. “We and the client know that we're in good hands when Eric is in charge.”

Part of the reason that clients can feel comfortable is that although Sitarchuk is a skilled litigator who can take a case through a court victory, he also knows when to settle, said Joyce Cowan, a partner in Morgan Lewis's health care practice who focuses on transactional and public policy issues.

“As a nonlitigator, I'm frequently dealing with litigators who, from time to time, are all about taking the toughest posture,” Cowan said. “I definitely want litigators that can also be flexible enough that they can recognize the disruption to a business involved in taking a case to court.”

Sitarchuk's skill as a negotiator was on display in September, when the U.S. Department of Health and Human Services' Office of the Inspector General agreed to let AmerisourceBergen Corp. settle an FCA matter without the imposition of a corporate integrity agreement.

This was after helping the drug company defeat a qui tam suit in the same matter, involving allegations of false or fraudulent claims related to a drug treating anemia in patients with chronic kidney failure, and a relatively small settlement with federal and state regulators.

Sitarchuk said that his experience as a prosecutor, coupled with his willingness to negotiate, helps him fully represent clients in sticky health care matters involving the U.S. Department of Justice and other regulators.

“Credibility and mutual respect are important,” he said. “Justice realizes that if we say that it's a case that shouldn't be resolved, that the client wants to fight, it's going to be a fight.”

--Editing by John Quinn.