

Gov't Contracts Group Of The Year: Crowell & Moring

By **Sophia Morris**

Law360 (February 13, 2019, 3:23 PM EST) -- Crowell & Moring LLP handled high-profile cases related to cost-sharing reduction payments owed to insurers under the Affordable Care Act and represented clients including Lockheed Martin Corp. in bid protests, earning it a place as one of Law360's Government Contracts Groups of the Year.

Daniel Forman, a partner and co-chair of the firm's government contracts group, said the practice group's success is driven by a desire to stand out in the competitive government contracts practice world. The team is made up of 60 government contracts lawyers, who bring an unmatched level of depth and experience, and not just at the partner level, he noted, saying the firm's senior associates and counsel are highly skilled and able to offer value to clients.

Forman said the practice group is innovating by "trying to make our clients profit centers instead of cost centers through creative recovery type actions."

"At the moment we're heavily involved in recovery actions for some of our major health care clients in connection with pharma pricing, as well as under the Affordable Care Act," he said. "It's writing checks to your clients as opposed to sending them bills, which is a novel concept in Big Law."

This philosophy of reducing client cost and working to make the client a profit is reflected in the firm's representation of nonprofit health insurance cooperative Montana Health Co-op in a dispute with the federal government over subsidies owed under the Affordable Care Act. A Court of Federal Claims judge found in September that the government owed the nonprofit health insurance cooperative \$5.3 million in Affordable Care Act cost-sharing reduction payments.

It was the first ruling to be issued among the nearly two dozen ongoing lawsuits at the Court of Federal Claims and the Federal Circuit in which the firm is involved. The cases are related to both cost-sharing reduction payments and "risk corridor payments," and the claims are collectively worth more than \$1 billion.

"It's in effect a recovery case, where we're now operating as plaintiffs' counsel to go and to recover amounts that should have been paid back to the company," Forman said.



Forman said these cases are an example of thinking innovatively, because they differ from the normal model in which a client brings an issue to their lawyers and the lawyers file a lawsuit.

"This is a different animal in the sense that we are identifying opportunities where we think our clients have been denied money that they are entitled to, proactively bringing the opportunities to the clients and getting out in front and filing actions. It's an exciting, new, innovative part of our practice," Forman said.

One of the firm's recent successes was its representation of its longtime client Lockheed Martin in a high-profile bid protest in which Raytheon Co. challenged an award for a U.S. Army training simulator maintenance contract with a ceiling of \$3.53 billion

The U.S. Government Accountability Office denied Raytheon's protest in July, finding that Lockheed was properly awarded the contract as it put forward a lower cost proposal and that Raytheon had failed to raise possible Procurement Integrity Act violations within the required time period.

"We had a large team defend that award, it went through multiple rounds of briefing at GAO and ultimately the GAO dismissed and denied the protest," said Peter Eyre, a partner and co-chair of the firm's government contracts group. "It was a significant win for Lockheed Martin on a new program that they had not previously been the incumbent on."

The firm also repped Lockheed in its successful appeal of a \$24 million claim made by the federal government at the Armed Services Board of Contract Appeals over allegedly defective pricing. During the discovery process, the government withdrew its claim, meaning the appeal was dismissed with zero liability to Lockheed, the firm said.

"This was a really nice win for the client, and an example of where we work hard to try to identify off ramps early to resolve matters well before they ever get into a state where we're trying a case," Eyre said. "We look for ways to resolve things early and with as little legal expense as possible."

Eyre said that for all the cases that gain public recognition, there are countless matters that are handled privately with no fanfare. Handling matters discreetly is often what clients in the governments space desire, and resolving matters quietly and confidentially is a "very important part of our practice," he said.

"In addition to the victories and successes that we can talk about publicly, there are many that no one will ever read about, and that's viewed by our clients as hugely important."

--Additional reporting by Daniel Wilson. Editing by Nicole Bleier.