



LAW360

2016 Rising Star Elizabeth Hess

Whether it's helping Abbott Laboratories beat a \$219 million False Claims Act suit or piloting companies through high-stakes government probes, Kirkland & Ellis LLP partner Elizabeth Hess occupies a crucial seat in the corner of some of health care's biggest names, putting her among *Law360's* top health attorneys under 40.

For the Rising Star, Abbott's victory this month over a whistleblower's claims that the company improperly marketed bile duct stents for off-label uses was satisfying not only due to the fact she had worked on the case since 2011, when it was still in its investigation stages, but also because the suit marked a rare moment of an FCA case going to trial.

Indeed, a Texas federal jury had taken only three hours to rule 10-1 in favor of Abbott, convinced after nearly three weeks of trial proceedings that Abbott acted reasonably by promoting its stents to treat common blood-vessel problems despite having approval to treat only relatively uncommon bile-duct problems.

"We were really humbled by our client's willingness to let us try [the case] and get it to a verdict," said Hess,

who acknowledged that "there was no clear outcome" expected given the fact such cases usually settle before going the distance. "It was a great case, a great trial, and we're very appreciative to have had the opportunity."

Hess also co-leads the Kirkland team representing Abbott spinoff AbbVie Inc. in another FCA suit alleging Abbott committed off-label marketing, this one concerning cholesterol reducer TriCor, and has represented Boehringer Ingelheim Pharmaceuticals, and others in several Medicare and Medicaid overpayment suits, achieving favorable settlements for her clients.

Hess has practiced in the health care sphere since joining Kirkland in 2004, after graduating from the University of Chicago Law School. She jokingly

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refers to herself as a "lifer" of the Windy City-based firm, having started there as a summer associate even before graduation.

But for all her experience in the civil litigation, Hess has become a go-to attorney for clients on the business side of a government enforcement action, civil investigative demand, subpoena or investigation related to possible violations of federal law.

For instance, Hess helped lead a legal team in concluding a yearslong investigation into alleged violations of the Anti-Kickback Statute in connection with a confidential entity's payment of physicians and trainers, while she is currently handling a major internal investigation for a pharmaceutical manufacturer.

"It doesn't make for great dinner party conversation because they are confidential matters, but it is always very interesting work and it is always very important for my clients," she said.

Hess said the investigation side of her practice can also present significant challenges compared with what can often be yearslong battles in a civil suit, such as an FCA case.

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"[In government investigations] you're developing facts and trying to understand them real-time while making sure the government is getting what it needs," Hess said. "That is very much unlike major civil litigation, which for better or for worse, tends to be a slow-moving iceberg these days."

Hess said she plans to stay at Kirkland, alluding to its "great teams of people."

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