

MVP: Crowell & Moring's Stephen J. McBrady

By Alyssa Aquino

Law360 (September 27, 2022, 2:02 PM EDT) -- Crowell & Moring LLP's Stephen McBrady scored precedent-setting victories for Lockheed Martin in its \$143 million battle with the Air Force over C-5 Galaxy repair costs and helped a Colorado health plan recover \$25 million from the federal government, landing him a spot among Law360's 2022 Government Contracts MVPs.

HIS BIGGEST ACCOMPLISHMENT OVER THE PAST YEAR:

The state of Colorado had appointed McBrady as a special assistant attorney general to sue the federal government to recover \$25 million that were withheld in Affordable Care Act reinsurance funds owed to the estate of Colorado HealthOp. That insurer filed for bankruptcy and was later taken over by the state.

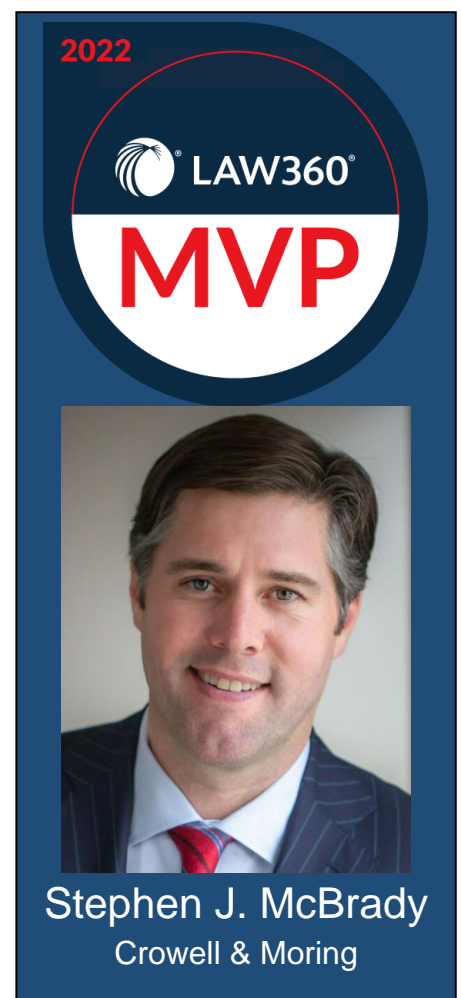
Even though McBrady has handled many lawsuits against the federal government, he said the Colorado case was important as it dealt with the intersection between the federal government's and states' rights when it came to bankruptcy. McBrady argued that the move was improper under Colorado's rules detailing which creditor debts are prioritized in bankruptcy proceedings and that the federal government needed to "get in line" and obey the priority scheme. The Court of Federal Claims and the Federal Circuit both agreed.

"It was the kind of precedent-setting case where there isn't a lot of case law on the point, and you have really creative arguments. At the end of the day, as a government contracts lawyer, having the opportunity to litigate against the government in a high-profile case is what we live for," he said.

HIS BIGGEST CHALLENGE IN THE PAST YEAR:

Entering the third year of the COVID-19 pandemic, McBrady was searching for ways to keep his team connected, both to each other and to their clients.

The issue, he said, is that people have evolved alongside the pandemic. There are seasoned lawyers whose expectations of firm life have changed, as well as young attorneys fresh out of law school with



different ideas of what it means to work at a firm, he said. Most of the firm has switched to a hybrid work setup, and providing proper support has proven difficult, he said.

"One of the challenges for this year was to make sure that we have the opportunity to continue to provide mentoring for junior lawyers and our young talent coming up while we're all continuing to navigate the hybrid," he said.

HIS OTHER NOTABLE CASES:

Over the past year, McBrady has steered Lockheed Martin Corp.'s legal attempts to recover \$143 million worth of extra costs that built up as it was upgrading the C-5 Galaxy, the largest military aircraft in the world.

The U.S. Air Force had refused to cover the extra work, saying Lockheed's claims were barred by the six-year statute of limitations. Although Lockheed picked up the underlying contract more than six years before it submitted its claim to the U.S. government, McBrady and his team had successfully argued to the Armed Services Board of Contract Appeals that Lockheed Martin's claim was timely filed, as it began accruing each time the government approved a repair.

That same litigation also touched on other novel legal issues. McBrady had argued that the Air Force couldn't claim that Lockheed had unreasonably delayed seeking the \$143 million, that is, assert a laches defense, as the Contract Disputes Act's six-year statute of limitations already applied to the claim.

In making the argument, McBrady had relied on a U.S. Supreme Court ruling concerning patents. The board agreed that the Air Force couldn't assert a laches defense under that ruling.

"These are the kinds of cases of first impression where clients turn to Crowell & Moring," McBrady said of the case, which goes to trial in October. He declined to comment further.

WHY HE'S A GOVERNMENT CONTRACTS ATTORNEY:

A former legislative aide for Sen. Susan Collins, R-Maine, McBrady said he was interested in the intersection of public policy and business. That interest drew him into government contracts, as the federal government buys all types of goods and services, he said.

"When you're dealing with the government, you're exposed to almost every industry under the sun. We like to joke that if your company is in The Wall Street Journal, or the local paper, you're probably dealing with the government," he said.

WHAT MOTIVATES HIM:

A youth hockey coach, McBrady said he loves building teams. Watching those teams get better year after year and succeed is a constant source of motivation, he said.

"When I look down the pipeline at our young and emerging superstars, they are incredibly smart, incredibly talented, incredibly diverse and really nice people," he said. "Where I'm spending a lot of my time these days is helping to mentor that next generation."

Part of his pride in that Colorado health care case was the "unique team" that was assembled to take on the federal government, which included government contracts, administrative, health care and bankruptcy law experts.

HIS ADVICE FOR JUNIOR ATTORNEYS:

McBrady wants his younger colleagues to understand that their clients are running companies, not legal departments. Attorneys need to read their clients' annual reports, understand their businesses and see what their priorities are, he said.

On several occasions, McBrady said, he's had to help clients navigate "really thorny problems" by stepping out of the courtroom and reaching, effectively, a business deal.

"We really dug in, learned the technology, understood what the government's desire was ... and understood what the company's capabilities were to deliver that technology and ended up crafting resolutions with the government to make sure the government got what it needs, and the client is rewarded for its effort," he said.

— *As told to Alyssa Aquino.*

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2022 MVP winners after reviewing more than 900 submissions.