

Litigator of the Week: Cristina Arguedas of Arguedas, Cassman & Headley

By Ross Todd

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It's hard to overstate how good Cristina Arguedas was last week during opening arguments in defense of FedEx Corp.

Going into trial last week in U.S. District Judge Charles Breyer's San Francisco courtroom, FedEx faced charges that it conspired with illegal online pharmacies to ship drugs based on bogus prescriptions. But during the course of Arguedas' three-hour presentation to Breyer on June 13, the company came across more as a long-term government cooperator than a conspirator in an illicit drug distribution ring.

Just four days later, prosecutors abruptly dropped the case at the end of the first week of a bench trial that was expected to last deep into the summer. FedEx and Arguedas completely knocked out a case that had carried criminal penalties of up to \$1.6 billion.

Reached by phone Wednesday, Arguedas said that last week's openings were the culmination of five years' work on the case by her and her colleagues Raphael Goldman and Ted Cassman.



Photo: Jason Doiy/ALM

Cris Arguedas.

FedEx brought on Arguedas and her six-lawyer Berkeley, California criminal defense boutique Arguedas, Cassman & Headley around the time she was finishing up representing Major League Baseball home run champion Barry Bonds at trial against perjury charges. She said that about five other firms had pitched FedEx to work on the case and estimates that her firm was the smallest "by a factor of 2,000."

"They were looking for a person who was going to try the case all the way to a jury," said

Arguedas, 62. “They had the will to assert their innocence in a setting that’s obviously fraught with risk ... There are plenty of companies who when faced with the government demanding money from them they just go ahead and pay it because it’s easier for them.”

FedEx gave Arguedas all the necessary resources to mount a fulsome defense. The company added a team from Skadden, Arps, Slate, Meagher & Flom as co-counsel, including Allen Ruby, who tried the Bonds case alongside Arguedas. The company also funded an internal investigation by Berkeley’s Mason Investigative Group, and paid to fly Arguedas and her partners across the country multiple times to meet with potential trial witnesses.

All that digging uncovered two former U.S. Drug Enforcement Administration officials who had met with the company to discuss the online pharmacy problem who weren’t included on prosecutors’ witness list. In her opening, Arguedas featured the two former DEA officials prominently.

One, according to Arguedas, had noted the company’s willingness to cease shipping for pharmacies operating illegally. The other told FedEx that cutting off shipping services to suspect pharmacies could interfere with ongoing investigations.

At the end of Arguedas’ remarks, Breyer encouraged the government to call the officials sooner rather than later.

Arguedas estimated this week that she spent 100 hours drafting her opening. The version that she had intended to present to a jury remained largely unchanged when the company adopted the government’s proposal to try the case to Breyer just as jury selection was set to begin.

Although the bench trial was a first for Arguedas, she said it allowed her to add an additional theme to her opening that she likely wouldn’t have highlighted with a jury.

“The premise of the prosecution’s case is wrong and dangerous,” she said early in her presentation to Breyer.

“What the government is saying to this court, to the world, is if FedEx was aware that government authorities were investigating a group of people, or a business, or taking a regulatory action against a pharmacy ... then FedEx needed to stop picking up packages right then and there,” Arguedas said to Breyer. “In that world, Your Honor, we don’t need any adjudications of anything because if FedEx and UPS stop taking your packages in your business and they do it because [of what] they read in the newspaper ... well, then, we don’t need to have any proceedings because they’re done.”

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