

“Our 2021 matters are likely to reshape the law – and possibly save thousands of lives”



Interview with

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One of Cravath, Swaine & Moore’s many superb trial lawyers, and one of the best trial lawyers in America for complex cases, talks us through some of the firm’s fiercest, most impressive litigation from 2021.

LEADERS LEAGUE: Which of Cravath’s cases stand out from the previous year, and why? Could you talk us through a couple in as much detail—especially in terms of complications and legal strategies—as possible?

David Marriott: 2021 was a great year for our complex trial team despite the pandemic. Let me give a few examples: one notable matter we worked on was defending a closely watched administrative challenge brought by the Federal Trade Commission concerning Illumina’s acquisition of cancer-screening test developer GRAIL. We believe the transaction, if allowed, could save thousands of lives from cancer. We also continue to represent Alcon Laboratories in connection with more than 50 class actions and related matters alleging antitrust and unfair competition claims. We expect to try that case before a jury in Florida later this year.

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Another example is the firm’s representation of Epic Games as plaintiff in two separate antitrust actions against Apple and Google. The case alleges Apple’s abuse of market power and anticompetitive behavior in the distribution of mobile apps and processing of in-app purchases, so it gets at the heart of how developers, not to mention all of us relying on apps for work and play, will experience the app

marketplace in the future. Because it occurred during the pandemic, we coordinated with our client entirely virtually until the trial against Apple began in California this past May, which was a new experience but entirely appropriate for a case about the future of the tech industry—and possibly a sign of how we might practice law in the future.

We also represented Goldman Sachs in securing a unanimous appellate ruling which affirmed the dismissal of an action brought by its former client United Natural Foods, relating to the syndication of financing for a \$3 billion acquisition.

As a last example, I have to mention the major Ninth Circuit victory for our client Qualcomm, which vacated a district court ruling that certified a class estimated to be the size of the entire U.S. adult population. These matters, and others the firm is handling, should not only favorably shape multiple industries but also save lives.

Could you tell us about Cravath’s white-collar crime capabilities? Is this an area that is of strategic importance to the firm?

Our Investigations and Regulatory Enforcement group advises domestic, foreign and multinational corporations and financial institutions, boards of directors and senior executives regarding internal and government investigations, regulatory enforcement proceedings, and white-collar criminal defense matters and related civil litigation. This group is made up of trial-ready attorneys who also routinely defend clients in regulatory or civil proceedings that run parallel to or arise from investigations. Speaking to our cross-border capabilities, these lawyers have deep experience with issues arising in Asia, Africa, the Middle East, Europe and the Americas.

Our Investigations and Regulatory Enforcement practice is of critical strategic import to the firm. Over the past several years, the group successfully handled two of the largest and most complex multi-agency, multi-country criminal investigations on the public record. We secured a global “first-of-its-kind settlement” for Telia Company (with no monitorship or other reporting obligation), which involved a coordinated resolution with the US Department of Justice, Securities and Exchange Commission, the Dutch Public Prosecution Service and the Swedish Public Prosecutor in an international corruption investigation, as well as a favorable settlement for SBM Offshore in a DoJ FCPA investigation concerning Petrobras and other legacy bribery issues. We also recently concluded our role as monitor of the Takata airbag recall—the largest, most complex recall in US history—and served as monitor of the worldwide operations of Takata Corporation itself.

Looking to the future, as the legal landscape continues to undergo rapid change in the wake of increasingly complex cybersecurity technology, our newly assembled team of Data Security and Privacy attorneys is poised to address the full range of our clients’ cyber-related concerns, such as a rise in cyberattacks across the globe and regulators’ imposition of new, cyber-related obligations on companies.

Our firm-wide interdisciplinary approach continues to be vital to our success and extends to our Investigations and Regulatory Enforcement group, which is composed of highly experienced litigators—several of whom have held senior positions at DoJ and the SEC. Other team members include a former federal judge from the Southern District of New York and prosecutors from the US Attorney’s Office for the Southern and Eastern Districts of New York, including a former Chief of the National Security and Cybercrime Section of the US Attorney’s Office for the Eastern District of New York.

Cravath’s dispute resolution partners see themselves first and foremost as trial lawyers. What makes them so consistently successful in court?

Experience, battle-hardened skill and a commitment to securing favorable outcomes. We devote ourselves to being trial-ready, no matter the circumstances. From day one we prepare as if every matter were going to trial, and we take a case to trial when it serves the best interests of our clients. We regularly handle the most high-profile and complex matters—with some examples being *U.S. v. American Express*, *U.S. v. AT&T* and *Apple v. Qualcomm*—and clients hire Cravath because they know we litigate to win. Trials are a regular undertaking for our Litigation department, and clients receive the full resources of the firm when they hire us.

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Our trial practice is supported by a deep bench of experienced attorneys equipped with the tools to tackle complex cases from every angle. Our lawyers handle multiple trials each year across a wide range of practice areas and industries, and we believe one of our talents is delivering creative approaches to the problem regardless of subject matter or a client’s role in a particular dispute—in part because of our courtroom advocacy experience. This big-picture perspective allows us to find the argument that will yield the best result, even if it has never been used before. We find solutions where conventional wisdom, or more conventional lawyers, might not. That allows us to produce results that are tremendously important to our clients. We’re proud that this can sometimes create innovation in the law as well. ♦