



Cravath's David Marriott: America's Top Trial Lawyer

David Marriott is continuing to succeed. In mid-March, the Cravath senior partner was named Trial Lawyer of the Year for the United States at the annual awards of an American publication dedicated to litigation, while later that month, his status among the creme de la creme of US attorneys was cemented when the NYU School of Law graduate made Forbes' inaugural list of America's Top 200 Lawyers.

What the legal and financial press are recognizing more and more is something Marriott's peers and clients have known for some time, namely that the 56-year-old stands out among the top trial lawyers practicing today, thanks to an uncommon ability to consistently win complex cases of every hue, often against all odds.

"A spectacular advocate, with excellent judgment." "A litigation maestro." "A brilliant strategist and out-of-the-box thinker." "Smart, fair, wise, personable, always fully prepared." "One of the best trial lawyers I have witnessed in the courtroom".

This is just a sprinkling of the praise clients, judges and peers lavish upon David Marriott, who grew up in the West and joined Cravath in 1996 (making partner in 2002) and whose list of clients reads like a Who's Who of corporate America, including AT&T, Bank of America, Delta Air Lines, Tesla, Colgate-Palmolive, IBM and Live Nation.

Peerless track-record

Marriott never shirks from a challenge, no matter how daunting odds or opposition. From his office at Cravath, Swaine & Moore's global headquarters in New York, he has masterminded a string of stunning trial victories.

He took on the United States government in three of the most significant antitrust cases of the last decade. He spearheaded Illumina's defense in a pair of lawsuits brought by the US Federal Trade Commission (FTC) to stop Illumina's \$7 billion acquisition of Grail.

He led Amgen's defense in a challenge by several states' attorneys general and the FTC to Amgen's \$27 billion

acquisition of Horizon Therapeutics. And he was a key part of the team that represented Imperial Sugar in fending off a challenge by the United States Department of Justice (DOJ) to the Imperial-US Sugar merger.

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The results in all three cases were remarkable (if not unprecedented). In the Illumina/Grail matter, Marriott led Illumina to victory in an administrative trial before the FTC's administrative law judge, marking the first time ever the FTC lost a merger trial on its home court. The American Lawyer called the win an "against-all-odds sort of affair". In the Amgen/Horizon matter, Marriott brought the FTC and several states attorneys general to their knees on the eve of trial in an Illinois courtroom, forcing the agency to admit defeat and permitting the transaction to close. According to the Wall Street Journal, this was "a rare instance of the FTC under Chair Lina Khan throwing in the towel on litigation".



Christine Varney, Former FTC Commissioner and Assistant Attorney General for Antitrust at the U.S. Department of Justice, says “these wins are the most impressive string of wins ever in M&A antitrust litigation.”

Brent Whisenant, the managing director of Medley Partners, is effusive in his praise for the man Law360 dubbed an MVP: “When it comes to winning tough cases, Dave has the magic touch. I’ve never seen anyone better in the courtroom; he’s pretty special. He digs into every detail, knows the record inside and out and fiercely exploits opponent’s weaknesses and mistakes. His tenacity, creativity and careful tactical execution are just uniquely effective.”

Other lawyers familiar with the matters had these things to say about Marriott’s role: “clients love him; judges trust him; he’s down to earth; he tells it like it is; he’s masterful in the courtroom”; “you better be ready, because if he’s on the other side, he’s coming for you”; “he is somehow super aggressive while remaining reasonable and polite”; “his ability to tell it like it is without scorched-earth divisiveness creates confidence in clients, peers, courtroom professionals and even opposing attorneys.”

Landmark judgements

Marriott’s magic touch is not limited to antitrust cases. When the independent board of Ben & Jerry’s sued Unilever for breaching its obligations to uphold the ice-cream maker’s social mission, Marriott defeated a motion for a preliminary injunction in a New York federal court. When one of the largest banks in the United States was sued for patent infringement in Texas (after other banks lost four straight patent cases there), Marriott and team brokered a favorable resolution of the case. And when shareholders accused Forward Air and its directors of breaching their fiduciary duties under Tennessee law, Marriott beat back a motion for a temporary restraining order and preliminary injunction.

Marriott’s win for generic drug manufacturer Mylan (now known as Viatris) and its officers and directors is one of the most significant victories in the history of securities class actions. Shareholders claimed the company misled them by failing to disclose its alleged misclassification (for Medicare purposes) of its EpiPen product and its alleged involvement in widespread price fixing and

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market allocation. Marriott managed to get the case thrown out at summary judgment, despite guilty pleas, 5th Amendment invocations, and plaintiffs’ claims of overwhelming evidence of collusion. The win is seen as the legal equivalent of pulling a very big rabbit out of a very small hat.

No less notable are the judgments Marriott secured earlier this year in widely watched copyright cases against Richard Prince, one of the world’s most famous (or infamous) artists, and his galleries. On behalf of two photographers, Marriott sued appropriation artist Richard Prince and his galleries for infringing copyrights in two photographs, one of a Rastafarian smoking a joint and the other of rock star Kim Gordon. The judgments found Prince and his galleries to be willful infringers, dismissed their fair use defense with prejudice, enjoined them from further infringement and ordered them to pay damages that were three times the sale price of the infringing works. Keith Kupferschmid, CEO of the Copyright Alliance, described the cases as “among the most important fair use decisions in decades,” a dramatic step forward in the positive development of copyright law”.

Up next on the trial maven’s docket are another set of closely watched cases. IBM has tapped Marriott to represent it in a case alleging the computer giant engaged in anticompetitive conduct by allocating the market with Linux leader Red Hat. Corteva has engaged him to defend it against a challenge to its loyalty programs for certain of its crop protection products. And Live Nation is counting on Marriott to defeat claims brought by the U.S. Department of Justice and twenty-nine states and the District of Columbia to break up the live entertainment company.

Few would bet against the man from the Beehive State securing decisive victories for his clients in these matters, further burnishing his already gleaming credentials.

Editing by S.McG & J.S.