

# Daily Journal

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## LEADING COMMERCIAL LITIGATORS 2024



**DAVID R.  
MARRIOTT**

Cravath, Swaine  
& Moore LLP

New York  
Litigation

**W**ith a \$27.8 billion acquisition under fire from the Federal Trade Commission, the biopharmaceutical giant Amgen Inc. in May 2023 called in David R. Marriott, a Cravath, Swaine & Moore LLP partner who specializes in litigating complex disputes.

By September 2023, Marriott had secured a consent order that ended all litigation and cleared the path for the deal to close. It was “a rare instance” of the FTC “throwing in the towel on litigation,” the Wall Street Journal said.

Marriott is used to such wins. Benchmark Litigation ranked him among the 2024 top 100 trial lawyers in America. He’s been at Cravath for 28 years, with a client roster that has included Alcon Laboratories Inc., AT&T Inc., Avon Products Inc., Bank of America Corp., Bausch Health Companies, Bristol-Myers Squibb Co., Colgate-Palmolive Co., Delta Air Lines Inc., Eli Lilly and Co., IBM Corp., Tesla, Inc. and Unilever PLC.

In the Amgen case, “The FTC tried to stop the acquisition,” Marriott said. “They rolled out a novel theory about how Amgen would bundle its products in a way that would make it hard for competitors of Horizon,” which makes rare disease drugs targeting thyroid eye disease and chronic refractory gout.

“We showed that was not consistent with what was happening in the marketplace. They didn’t listen and sued, but then they saw they would have a hard time proving their case,” Marriott said.

Marriott and the Cravath team managed extensive fact and expert discovery on an expedited schedule, then moved for

summary judgment on counterclaims challenging the constitutionality of the FTC’s suit and filed a preliminary injunction opposition brief. Soon after, the FTC agreed to the consent order — just days before an evidentiary hearing was set to begin. *Federal Trade Commission v. Amgen Inc., et al.*, 1:23-cv-03053 (N.D. Ill., filed May 16, 2023).

In another major matter last year, Marriott argued the winning motion for summary judgment for pharma client Viatrix Inc. (formed in 2020 from Mylan N.V. and Pfizer’s Upjohn division) in a showdown with plaintiffs who launched a shareholder class action over Mylan’s EpiPen marketing and alleged conduct concerning generic drug price fixing. *In re Mylan N.V. Securities Litigation*, 1:16-cv-07926 (S.D. N.Y., filed Oct. 11, 2016).

The court found insufficient evidence to support the plaintiffs’ claims. It was one of the few resolutions of federal securities fraud litigation at summary judgment that ended entirely in favor of the defendants.

Marriott has been at Cravath for 28 years. “They never let me go,” he said. He moonlights as a lecturer at Columbia University Law School and as an adjunct professor at NYU School of Law.

— JOHN ROEMER