

## MVP: Cravath's David R. Marriott

By Bryan Koenig

*Law360 (October 6, 2023, 1:08 PM EDT)* -- David R. Marriott of Cravath Swaine & Moore LLP scored an important early win against a Federal Trade Commission merger challenge, successfully defending Illumina's purchase of Grail on agency complaint staff's own turf, earning him a place among Law360's 2023 Antitrust MVPs.

### ***His biggest accomplishment:***

Marriott was on the Cravath team that helped convince the FTC's administrative law judge in September 2022 to reject the agency's in-house challenge to Illumina's \$8 billion reacquisition of Grail. The commission itself ultimately upended that decision, in a ruling on appeal to the Fifth Circuit, where Marriott represented Illumina in oral arguments Sept. 12. But convincing an in-house judge to reject the challenge from the agency's own staffers, approved by its own commissioners, was still an extraordinary win.

"Certainly I think that it hasn't happened in at least 40 years," Marriott said. "I think it is extraordinarily rare in a merger case for that to happen."

### ***His biggest challenge:***

Marriott had an exceptionally busy year that required balancing many things at once.

It included not only representing Illumina but also working on the team that successfully represented Imperial Sugar in a U.S. Department of Justice lawsuit contesting the company's acquisition by U.S. Sugar. A Delaware federal judge rejected the merger challenge in September 2022 and the Third Circuit affirmed the following July.

"The challenge has just been balancing a bunch of relatively complex and competing matters. All of which were a lot of fun. Some of which still are a lot of fun," he said.

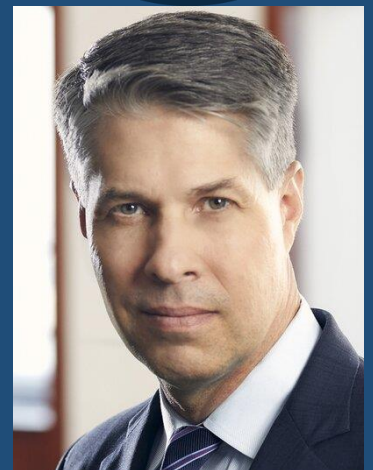
### ***His proudest moment:***

Marriott is proud of many little moments, including in representing Illumina, which contends that in buying Grail, it will be able to accelerate regulatory approval and marketing of that company's lifesaving multiple cancer early detection tests. The FTC contends that Illumina could withhold or degrade access

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by would-be MCED rivals to its crucial DNA-sequencing technology, a possibility the administrative law judge rejected because other companies are years behind Grail.

Marriott said he's proud not only of helping people but also helping his client.

"It's the kind of mix of moments where you feel like you're getting for the client a result that's not only good for them but in those cases at least, that's going to be good for a lot of other people. Because the Illumina test is going to be beneficial for people worldwide as they screen for cancer," Marriott said.

"Feeling like you got a good result for the client but in a way that's really going to benefit significant numbers of people, who have nothing whatever to do with the transaction. That's the part that kind of makes you feel like there's something extra good going on and it's more than just a job."

#### ***Why antitrust:***

As a litigation attorney, Marriott didn't start out in antitrust law and still handles other kinds of cases. But he had many opportunities to handle antitrust cases and he found himself drawn to the area of the law and the chance to jump into and learn about different industries.

"Over the years, I got repeated opportunities to do competition cases. I found them to be comparatively complex. I found them to be a lot of fun," he said. "They present opportunities to do more than just help particular clients. But they kind of reverberate beyond a particular matter and have effects, especially the ones that are consumer oriented, that have ... a way of potentially really helping and matter in people's lives."

#### ***His motivation:***

For Marriott, it's all about helping clients solve complicated issues.

"It's figuring out how to distill them down to the really simple and look towards the winning solution," he said. "Finding common ground with your decision makers, whether it be the court or the jury or even the joint defense group or a plaintiffs' group."

*--As told to Bryan Koenig*

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