

MVP: Cravath's Evan Chesler

Law360 (December 3, 2018, 5:25 PM EST) -- Evan R. Chesler of Cravath Swaine & Moore LLP earned a win for American Express in front of the Supreme Court this year after a decade of work on a challenge to the credit card company's merchant rules, while also putting in time on important cases for Qualcomm and other clients, earning him a spot among Law360's Competition MVPs.

HOW HE GOT INTO ANTITRUST LAW:

Chesler's first assignment when he joined Cravath was to a large team defending IBM Corp. from the U.S. Department of Justice in what would become a 13-year legal battle over the company's alleged monopolization of the computer market and 20 or so private follow-on suits. The experience Chesler gained from that early assignment included his first deposition, taken on his fourth day, and the preparation of cross-examination materials for three witnesses.

"It wasn't a question of whether I was going to do it, it was 'show up and start to learn the facts and the law.' I really loved the experience, it was spectacular training," Chesler said. "I've done a lot of cases in a lot of other fields in the years since, but I've always come back to antitrust litigation throughout my career."

WHAT HE FINDS MOTIVATING ABOUT ANTITRUST LAW:

Chesler said that the issues presented by antitrust cases often go to the very heart of a company's business. Other types of disputes — like contract or intellectual property disputes — generally focus on discrete issues or pieces of a business, but with antitrust that isn't the case.

"Antitrust cases really relate to the whole experience of a company, they're really life stories of a company," Chesler said. "It's really a different kind of representation in the sense that it's much more holistic about the business and it requires you to learn all aspects of what the company does."



Evan Chesler
Cravath

HIS MOST SIGNIFICANT CASE THIS YEAR:

Chesler has helped lead the defense team for American Express in the anti-steering rules case since 2007, when the issue was still under investigation. The Justice Department and a group of states filed suit in 2010, alleging that AmEx rules preventing merchants from steering customers to cheaper payment methods violate the antitrust law, because they result in merchants paying higher fees. Visa and MasterCard were also targeted, but agreed to change their rules in a settlement when the suit was filed.

After a loss at the district court in 2015, Chesler successfully argued an appeal to the Second Circuit, which remanded the case saying that the lower court failed to properly analyze the credit card market and the fact that the higher merchant fees were passed on to cardholders through better benefits.

The Supreme Court took the case up in October last year at the request of several of the states involved, despite the fact that the U.S. solicitor general had decided not to pursue the appeal and urged the justices not to take the case.

"Frankly, it was surprising," Chesler said of certiorari being granted. "We thought that when the Second Circuit reversed the trial court and entered judgement for American Express, that that was the end of that phase of the litigation."

WHAT HE FOUND SIGNIFICANT ABOUT THE CASE:

Chesler argued the case in front of the Supreme Court in February, and the justices issued an opinion siding with AmEx in June. The decision recognized the two-sided nature of the credit card market, with cardholders on one side and merchants on the other, and that AmEx's platform facilitated transactions between the groups. Chesler said this type of market has become increasingly common in recent years with the rise of e-commerce and other developments, and that the AmEx decision will help courts understand how to view these types of businesses as they play an increasingly important role in the economy.

"What the AmEx case did was articulate an antitrust framework for how competition will be evaluated on those new business platforms. I think that's going to be a critical standard by which many, many businesses and many disputes of the future will be evaluated," Chesler said. "It's quite an important case that's provoked a lot of discussion among academics and practitioners since, and I suspect will provoke a lot more discussion as the years unfold."

OTHER SIGNIFICANT CASES HE'S WORKED ON THIS YEAR:

Chesler is also representing Novartis in litigation alleging the company reached an unlawful agreement with Par Pharmaceuticals that delayed the launch of a generic version of hypertension medication Exforge. He's also representing Mylan in litigation over alleged "reverse-payment" patent settlements for narcolepsy medication Provigil. He said those cases are examples of how central antitrust issues can be for companies.

"Although the pharmaceutical cases do involve specific contracts, they implicate, broadly, the business

of the pharmaceutical company," Chesler said. "You're dealing with a holistic view of the way the company conducts its business."

Chesler is also working for Qualcomm on the constellation of litigation the chipmaker is embroiled in over the licensing practices for its standard-essential patents. This includes an enforcement action from the Federal Trade Commission, class actions and a related dispute with Apple.

"The Qualcomm case is literally about the business model that drives the Qualcomm Corporation," he said. "It is about as holistic as you can get."

— *As told to Matthew Perlman*

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