

MVP: Morgan Lewis' Steven A. Reed

By Bryan Koenig

Law360 (November 20, 2019, 2:51 PM EST) -- Morgan Lewis & Bockius LLP's Steven A. Reed built on a notable 2018 district court win to establish a powerful appellate level precedent stifling the Federal Trade Commission's ability to challenge conduct that happened exclusively in the past, netting him a spot as one of Law360's 2019 Competition MVPs.

HIS BIGGEST ACCOMPLISHMENT:

Reed capitalized on the win for which he was recognized as a Law360 MVP last year, turning a district court victory for a Shire PLC unit over the FTC into an important Third Circuit decision holding that the agency can't challenge purely past conduct in federal courts.

In March 2018, a district court judge rejected the case against Shire unit ViroPharma Inc. over allegations that it delayed generic competition for a gastrointestinal infection drug through sham regulatory filings. The Third Circuit augmented that decision in February of this year, holding that the FTC Act only permits the agency to seek injunctions in federal court to stop conduct that's currently occurring or about to occur and rejecting agency assertions that it's enough to show a past violation and the "reasonable likelihood" of future recurrence.

The agency authority under review in the case, Reed said, is used by the FTC to seek financial penalties.

"So it is a significant part of the FTC's enforcement agenda. Having a federal court of appeals interpret the scope of the FTC's authority ... has significant potential broader implications," Reed told Law360. "The question will be whether the FTC has the ability to go into federal court to seek disgorgement or instead should use the authority that it was originally granted by Congress in the FTC Act to pursue administrative proceedings in which its remedies in the competition context are more limited."



HIS BIGGEST CHALLENGE:

Winning the Shire case on appeal required prevailing over the FTC in a matter of first impression, meaning that no court had ever had to address the question of the agency's powers to challenge past conduct so directly before. The agency authority at issue was added to the FTC Act through a 1973 update, court records show.

"We didn't have a lot of authority to point to to say that other courts over the past 45 years have ... agreed with us, with our arguments," Reed said. "Nor were there any cases that were directly on point that rejected our arguments. So it really was an issue of getting the court to take a fresh look at this issue and decide it on the merits."

WHY HE CHOSE ANTITRUST LAW:

Antitrust law wasn't so much a conscious choice for Reed as it was a field he fell into and eagerly decided to remain in, he told Law360.

"I don't know that I decided to be an antitrust lawyer. In some ways I happened into this area of the law," he said. "I find antitrust to be really interesting, challenging work. It gives you an opportunity to work with clients on matters that often are among their most important litigation matters."

"In order to represent a client in antitrust cases, you need to understand their business and their industry. So it really gives you an opportunity to develop relationships with your clients and understand their priorities and help them to achieve them," Reed added.

OTHER NOTABLE CASES HE'S WORKED ON:

Reed said he's particularly fond of his work representing Glenmark Pharmaceuticals against a **lawsuit** alleging it conspired with Merck & Co. to put off generic competition to the Merck cholesterol drug Zetia. The reason, he said, is the caliber of the people involved on the other side of the aisle and on the bench.

"I enjoy cases where ... you're up against talented opposing counsel and you've got a smart judge. In this case, we have a very smart judge and a very smart magistrate," he said. "I think that's what I enjoy most is when you're dealing with a talented adversary and a good court. You have a chance to make your best arguments."

— *As told to Bryan Koenig*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.