

MVP: Morgan Lewis' J. Clayton 'Clay' Everett Jr.

By **Christine DeRosa**

Law360 (September 21, 2022, 2:02 PM EDT) -- J Clayton "Clay" Everett Jr. helped lead a Morgan Lewis & Bockius LLP team to an acquittal for DaVita Inc. and its former chief executive on all counts of conspiring with three other companies to suppress competition in the employment market, earning him a spot among Law360's 2022 Competition MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Everett was part of a legal team that worked alongside co-counsel WilmerHale to defend DaVita and its former CEO Kent Thiry from three criminal antitrust counts brought by the U.S. Department of Justice. For each count, the company and Thiry faced fines of as much as \$100 million.

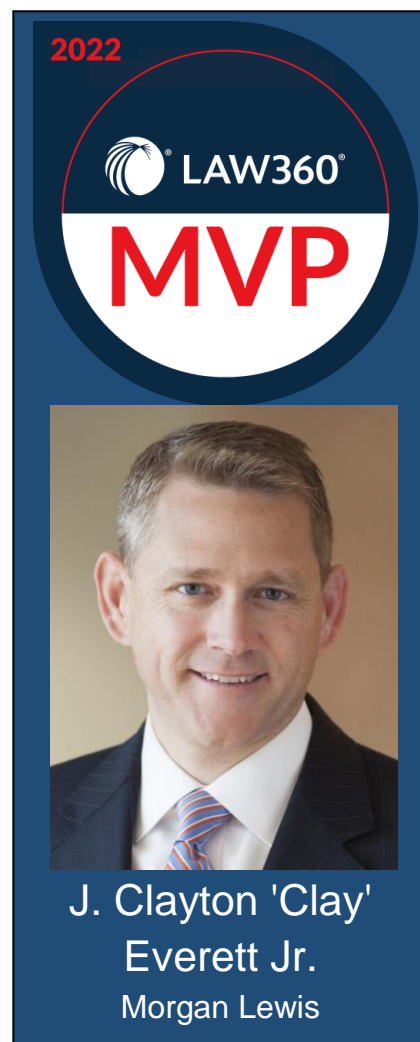
The DOJ alleged there were three agreements with other companies not to solicit DaVita employees. Everett called the case "novel," stating that prior to this case, there had never been a criminal antitrust case that addressed nonsolicitation agreements.

Early on, Everett said they raised the question of whether this conduct should be subject to the per se rule that's used to determine the legality of written or oral agreements between competitors, which would subject the conduct to criminal liability.


The judge found that the per se rule could apply in certain circumstances to nonsolicitation agreements focused on the party's underlying intent, which is an element of a criminal antitrust case but not usually front and center in criminal antitrust trials, Everett said.

Everett said the judge held that the DOJ needed to prove the intent was to cease meaningful competition between the parties, something he called an extension of the law that ultimately led to the jury's decision.

"There was really no way, at least in my view, given the underlying structure of the markets at issue, that the parties that were at issue in the case could have expected ... to have significantly affected market outcomes," Everett said. "There were just frankly too many other competitors which suggested that there was really something else going on. It wasn't really about seeking to end competition."



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MVP

J. Clayton 'Clay'
Everett Jr.
Morgan Lewis

HIS BIGGEST CHALLENGE THIS YEAR:

Everett said his biggest challenge was dealing with the novel issues that came up in the DaVita case, especially given the amount of case law dealing with per se antitrust claims. In the case, the government made reasonable arguments that the same standard should apply in this context, which posed a challenge, he said.

"It was challenging to address differences between the markets at issue here, the conduct at issue in this particular case, and in more traditional sort of sell-side agreements that had been found per se illegal," Everett said.

WHY HE'S AN ANTITRUST AND COMPETITION ATTORNEY:

Everett's plan to become an antitrust attorney was just that — a plan.

Citing his long-standing fascination with economics, Everett said he entered law school knowing he wanted to practice antitrust law despite not directly having exposure to it.

"The organization of economic activity has really important, obvious and in some cases, subtle effects on the way that society is organized and it's really important for our country," Everett said. "It is fascinating to me, even going into law school, how the law and economics enwrap in the context of antitrust."

Everett said antitrust law is a space for creativity and deep thinking, which makes the work endlessly interesting and fascinating each day.

HIS ADVICE FOR JUNIOR ATTORNEYS:

Everett said his most important advice for young attorneys is to seek their interests and passions.

"My advice would be to find something that really interests you and that you can become passionate about so that you can be motivated on a day-to-day basis, to really give it everything that you have, to sink your teeth in and build depth in your thinking through passion," Everett said.

— *As told to Christine DeRosa.*

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