

MVP: White & Case's J. Mark Gidley

By Bryan Koenig

Law360 (November 15, 2019, 3:13 PM EST) -- White & Case LLP's J. Mark Gidley scored two huge antitrust case wins, including a rare complete acquittal of a former foreign exchange trader accused of suppressing competition, earning him a spot among Law360's 2019 Antitrust MVPs.

HIS BIGGEST ACHIEVEMENT OVER THE PAST YEAR:

Gidley played a leading role in two massive antitrust cases. He persuaded the First Circuit in October 2018 to decertify a class of drug buyers suing Allergan for allegedly trying to stave off generic drug competition, in a major blow to class actions containing potentially uninjured members. And he represented one of three former foreign exchange traders for Barclays PLC, Citigroup Inc. and JPMorgan Chase & Co. acquitted that same month on charges that they coordinated trading.

Defending former Royal Bank of Scotland and JPMorgan trader Richard Usher may not have had as broad an impact on antitrust law as the Allergan win on the ulcerative colitis drug Asacol, but it was a profoundly personal victory, Gidley said, describing the case as his most memorable jury verdict.

"When you represent a foreign national, if they're convicted, the marshal comes over to the counsel table and takes off their shoes, takes off their belt and that person's gone, they go immediately into custody," Gidley said. "So it is really something to sit next to somebody who ... is looking at 10 years in jail or six years in jail. There wasn't celebrating in the courtroom, there was crying."

Asacol conversely appealed to the less personal "right brain" and more lawyerly side of Gidley, thanks to the First Circuit's conclusion that certification was inappropriate in the face of an estimated 10% of the class being left uninjured by the drugmaker's allegedly anticompetitive conduct. The ruling, Gidley said, means that defendants can now challenge class injury at trial instead of after the fact.

"If you have uninjured class members, we can't punt that issue off to ... a claims administrator," said

The MVP logo features the letters 'MVP' in a bold, blue, sans-serif font. The letter 'V' is partially enclosed by a red circle with an arrow pointing upwards and to the right, suggesting a 'V' for victory or a 'V' that is being highlighted or celebrated.

J. Mark Gidley
White & Case

Gidley, who described the win as one elevating the constitutional right to jury trials.

HIS BIGGEST CHALLENGE:

Defending Usher wasn't just about going up against the U.S. Department of Justice. It also meant tackling the numbers of the government's case built on 4 terabytes of trading data. Going through all that data and deciphering trader chats required a "really good team" that included an outside economics analysis firm.

"A blizzard of transactions. That's what we were dealing with. So I couldn't have done it without a team in London. And the other thing is, the chats were in cockney English. OK, they're not in American English. They're not in standard British English. They're in cockney rhyming slang," Gidley said. "So our London office, working with Richard Usher himself, they were able to decode the chats. But that took months. And the government had a head start."

HIS PROUDEST MOMENT:

Nothing compared to the moment of Usher's acquittal, Gidley said.

"That's kind of heart-stopping," he said.

But a close second was the Asacol win, including when it was stopped days before going to trial. "That was exciting," Gidley said.

ON CHOOSING ANTITRUST LAW:

When he was working at the DOJ early in his career, Gidley jumped at a chance to work at the Antitrust Division, having developed a strong interest in the field after an antitrust class in college, where he majored in economics. That class, he said, "kind of whetted my appetite."

Gidley is still drawn to antitrust by two things, including the study of profit and microeconomics. Internet companies and carmakers may have radically different business models, he said, "but they're all governed by antitrust law and antitrust microeconomics. I know that sounds wonky but it's interesting."

The second factor is the importance that antitrust law has for the economy.

"If antitrust law is wrong, you can damage the whole economy. And I think there have been instances where antitrust law has damaged the economy," he said. "And I think the people who enforce and prosecute under the antitrust laws have to be so careful that they're not prosecuting the free market system."

— *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.