

MVP: Jenner & Block's Stephen L. Ascher

By Sam Reisman

Law360 (October 5, 2021, 1:41 PM EDT) -- Stephen Ascher of Jenner & Block LLP has represented some of the biggest cannabis companies in North America in complex securities litigation, including securing the dismissals of securities fraud class actions against cannabis giants Curaleaf and Aurora, earning him a spot as one of Law360's 2021 Cannabis MVPs.

HIS BIGGEST RECENT ACCOMPLISHMENT:

Ascher was on the front lines when the first wave of securities class actions hit the cannabis industry in 2019, about a year after a glut of cannabis companies went public and their valuations subsequently took a dive.

"They were challenging because it's a new industry with this twist that [cannabis is] federally illegal," he said. "But it's also interesting because the securities plaintiffs bar has really been trying to get a foothold in terms of suing cannabis companies."

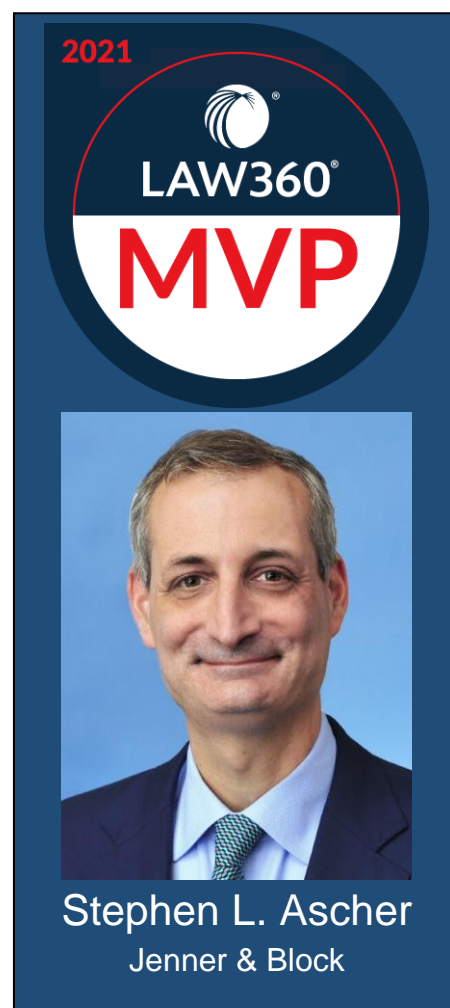
Ascher and his colleagues secured the dismissal of two lawsuits — an action against Curaleaf in New York and another against Aurora Cannabis in New Jersey — which he described as "two very nice wins for us."

In the Curaleaf case, shareholders accused the company of minimizing the fact that CBD products are not federally approved. But the court found the company's prospectus had explicitly warned that the U.S. Food and Drug Administration had not approved any cannabis-derived products and that the agency could very well take enforcement action.

"One of our arguments was that everyone knows that cannabis is federally illegal," he said. "So notwithstanding that we made some very specific disclosures on this topic, nobody could possibly have been misled into thinking this product was FDA-approved."

ON THE PITFALLS OF CANNABIS LAW:

Ascher recalled that his involvement in cannabis law began when a potential new client introduced



themselves as a "cannabis general counsel," and his first thought was: What?

"At that point I didn't know that that was a thing," he said. "At that time it was not on my radar."

For years, cannabis lawyers worked in a legal gray area, and law firms were uncertain whether they could ethically advise clients whose business amounted to federal drug trafficking. Ascher, a seasoned litigator by the time he began taking calls from cannabis clients, went for it anyway.

"When Curaleaf first came to us, our bank wouldn't take their money and it was unclear whether we could get paid," Ascher recalled. "And because I recognized that this was a new and exciting opportunity, I did work for Curaleaf for several months without knowing when they would accept their money."

He credits his firm for having the mettle to take the plunge.

"I think ultimately we were more entrepreneurial than most of our peers," he said. "We were entrepreneurial and looking forward to getting into this industry."

HIS ADVICE FOR YOUNGER ATTORNEYS:

Attorneys looking to get into the space now can't claim the same ignorance, and the most important thing they can do is keep their eyes and ears open and begin making connections now, he advised.

"It's an incredibly active field right now," he said. "I have been amazed at how many people I know are starting companies in this space, transitioning to roles as executives in this space, are investing in this space."

While federal legalization always seems to be on the horizon, Ascher said he expects to see more gradual, incremental changes — such as banking reform — before full national decriminalization.

The upshot for litigators is they must be mindful of venue, he said, because there are certain disputes in the cannabis space that a federal court may be unwilling to hear, such as anything involving transfer of ownership or a bankruptcy proceeding for a "plant-touching" cannabis company.

"At the outset of every case, the question litigators think about the most is what forum do we want to be in?" he said. "In a case relating to cannabis, you have to consider the possibility that federal court is off the table."

ON WHAT MOTIVATES HIM:

As a litigator, Ascher says he lives for the "adrenaline moments."

"The thrill of discovering an exciting new fact that gives rise to a new legal argument, or coming up with a new legal theory or cross-examining someone and nailing them," he said. In a word: "Winning."

He added, "When clients tell me about their concerns, I sometimes say to them, you can't be a litigator unless you really, really want to win. So don't think I don't want to win as badly as you do."

— *As told to Sam Reisman*

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 2021 MVP winners after reviewing nearly 900 submissions.

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