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COVER STORY

ABA seeks to lure plaintiffs' bar to its antitrust section



Bruce L. Simon of Pearson Simon Warshaw & Penny LLP

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Two defense attorneys from Washington, D.C. and a California plaintiffs' lawyer are attempting something that until now has been impossible: enticing the powerhouse antitrust plaintiffs' bar in the Bay Area to become active participants in the American Bar Association. The massive 135-year-old legal organization, which publishes influential books and takes legal positions on topics affecting the profession, has long been considered by plaintiffs' attorneys to be biased toward the defense bar. ABA antitrust section chair Theodore Voorhees Jr., partner at Covington & Burling LLP, decided to make it his priority to change that notion.

Voorhees, along with San Francisco-based attorney Bruce L. Simon of Pearson Simon Warshaw & Penny LLP and Richard G. Parker of O'Melveny & Myers LLP, believe plaintiff attorney input is essential to make the organization and its publications and positions more balanced.

"If you really want your voice to be heard, you've got to get involved," Simon said. "I think some of the positions the ABA takes will be more balanced if we can be successful."

Voorhees asked Simon and Parker to co-chair an outreach task force to wrangle more

plaintiffs' attorneys to join and participate. The first stop was an event at Lieff Cabraser Heimann & Bernstein LLP in San Francisco last week. About 50 Bay Area attorneys came out to the ABA-sponsored event, where U.S. district judges Susan Y. Illston and Richard G. Seeborg, who are both presiding over major antitrust cases, spoke to encourage the effort. Simon said many attorneys in the room feel "disenfranchised" by the ABA.

"Tonight is all about knocking that out of the park," he said.

The hottest topic of the evening was ABA

jury instructions. Antitrust plaintiffs' attorneys say they have long been at odds with the organization's model instructions, which they see as defense-friendly, and have seen judges adopt them as if they were objective.

"One of the biggest obstacles has been ABA instructions," longtime San Francisco antitrust plaintiffs' attorney Joseph M. Alioto Jr. said at the meeting. "Judges believe this was a duel contribution. That's what we've been fighting for years."

Guido Saveri, another prominent antitrust plaintiffs' lawyer in San Francisco, also spoke up at the meeting after the formal remarks.

"There are two things — instructions on a conspiracy, and instructions on damages," he said. "What I've seen from the ABA is not too friendly."

That's exactly what Simon and the task force hope to change. And some of the attorneys, such as Alioto, commended the effort.

"It's about time that the plaintiff's voice was in the ABA instructions," Alioto said.

The judges both emphasized the court's desire for balanced model jury instructions to aid them.

Illston, the judicial representative to the antitrust section, told the group that writing jury instructions is one of the most difficult parts of the job, and she admitted to many late nights trying to finish the task.

"To have a complete and usable set of instructions would be an enormous boon to people like me," she said. "If it's more balanced, it will be more useful to the court and we'll have more confidence in it. It really would be improved with a substantial influx from the plaintiff's side."

Seeborg echoed the court's desire for balanced input.

"Antitrust is an area where judges are looking for help," he said. "The more your group can do, the more you will get buy in from the bench."

The task force next plans to host meetings with plaintiffs' attorneys in several East Coast cities. The ABA is offering half off the price of the first year of membership to attorneys who attend those events.