

TOP BOUTIQUES IN CALIFORNIA 2016



Juliane Backmann / Special to the Daily Journal

From left, Clifford H. Pearson, Bruce L. Simon and Daniel L. Warshaw.

CLASS ACTION LITIGATION

Pearson, Simon & Warshaw LLP

The 13-lawyer Pearson, Simon & Warshaw LLP files outside cases, like the mammoth attack on the world's largest banks over credit default swap market manipulation that led to a \$1.86 billion settlement. In re: Credit Default Swaps Antitrust Litigation, 13-md-2476 (S.D. N.Y. April 18, 2016).

The firm and co-counsel Quinn Emanuel Urquhart & Sullivan LLP netted about \$254 million in fees from the case.

Now, the firm is back, again punching above its weight with a new potential blockbuster over alleged price fixing in the \$30 billion U.S. broiler chicken industry, in which major producers are claimed to have frozen out small competitors. *Maplevale Farms Inc. v. Koch Foods Inc.*, 1:16-cv-08637 (N.D. Ill., filed Sept. 2, 2016).

Foster Farms LLC, Perdue Farms Inc., Pilgrim's Pride Corp. and Tyson Foods Inc. are among the big name defendants, Bruce L. Simon said. "They and

SAN FRANCISCO AND SHERMAN OAKS

the others agreed to keep production down to keep prices high since 2008," he added. "Our motion to be appointed lead counsel has not been ruled on yet."

He and law partners Clifford H. Pearson and Daniel L. Warshaw said they're proud that the *Maplevale* case resulted from the firm's own detailed probe into the anticompetitive practices they claim to have found. "There has been no government investigation or whistleblowing by industry insiders," Simon said. "We are really taking on, ourselves, the entire way the broiler chicken industry operates."

In that way, the case is similar to the potash antitrust litigation his firm settled for \$80 million in 2013 on allegations the major suppliers of the agricultural fertilizer sold in the U.S. since 2003 conspired to fix, raise, maintain and stabilize prices.

"Poultry and potash — this is what we can do, investigate for a long period of time on our own be-

fore filing a case," Simon said.

Additionally, Pearson, Simon & Warshaw lawyers served as co-lead counsel in the TFT-LCD flat panel antitrust claims, which in 2012 went to trial against the remaining defendant, resulting in an \$87 million jury verdict before trebling and \$473 million in total settlements. The firm also is lead counsel on the lithium ion batteries case, an ongoing potential class action alleging a price fixing conspiracy against the world's largest manufacturers of the product. In re: Lithium Ion Batteries Antitrust Litigation, 4:13md2420 (N.D. Cal., filed Feb. 6, 2013).

In April, U.S. District Judge Denise L. Cote of New York, in granting final approval of the credit default swaps settlement, stated, "I think there is a public policy that is important in this land to encourage top-tiered litigators to pursue challenging cases like this. Antitrust violations go to the heart of our economy. Our economic health and stability as a nation depend on the rule of law and trust in the fairness and transparency of our marketplace. These issues are interwoven. I think all of us can agree on that. All of us want to live in a country where law is respected, where the court system can be effectively used to reach justice, and where are marketplaces are places that have investor confidence, so people, when they put their money down, can trust that they're in a level playing field."

Currently, Warshaw is pursuing a series of class actions against major movie studios by parties, including actors, directors, writers and producers, over profit participation contracts. The allegation is the studios paid profit participants based on 20 percent, rather than the agreed-upon 100 percent, of the revenue derived from the sale of home videos such as DVDs and permanent electronic sales through iTunes and Amazon.com. One case resulted in a settlement last December totaling \$26 million in separate funds for class members and for accounting relief.

"This will be industry changing," Warshaw said. "The studios will have to agree going forward to pay 100 cents on the dollar. Things are different now." The first case to settle was *Colin Higgins Productions Inc. v. Universal City Studios LLC*, BC499180 (L.A. Super. Ct., filed July 8, 2012).

Warshaw said Pearson calls him "the young guy" at the firm, but that is no longer the case as the partners have brought on a cadre of fresh lawyers, including Pearson's and Simon's sons. "Bruce and Cliff are my mentors; they trained me," he said. "Now, I'm working with their sons and the other fine young associates we have hired. They bring a lot of energy, and they're the future of our firm."

—John Roemer