

55th Annual Spring Meeting Agenda
Thursday, April 19, 2007
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8:15 – 9:45 am



Antitrust Litigation After the Class Action Fairness Act of 2005: The Experience So Far – Salon IV

Presented by the Civil Practice & Procedure and Trial Practice Committees

The Class Action Fairness Act of 2005 significantly expanded federal jurisdiction over class actions by making it easier for defendants to remove class actions to federal court based upon diversity jurisdiction. This session will discuss the impact of this statute on antitrust litigation from the perspectives of the judiciary and the defense and plaintiffs bar.

Session Chair:

Milton A. Marquis, Dickstein Shapiro LLP, Washington, DC

Moderator:

Michael A. Lindsay, Dorsey & Whitney LLP, Minneapolis, MN

Speakers:

Honorable Susan Illston

U.S. District Court, Northern District of California, San Francisco, CA

Bruce L. Simon, Cotchett Pitre Simon & McCarthy, Burlingame, CA

James A. Wilson, Vorys Sater Seymour & Pease LLP, Columbus, OH

8:15 – 9:45 am

Antitrust Limits on Intellectual Property Rights – Holeman (NPC)

Presented by the AALS Committee

The complex intersection between IP rights and antitrust law is one of the fastest-changing areas of law today. The panel will include presentations by leading scholars on a number of key issues at this interface, including mergers, pharmaceutical settlements, agency guidelines, and *Walker Process* claims.

Session Chair and Moderator:

Mark A. Lemley, Stanford Law School, Stanford, CA

Speakers:

Daniel Crane, Cardozo School of Law, New York, NY

Christopher Leslie, Chicago-Kent College, Chicago, IL

Scott Hemphill, Columbia University, New York, NY

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Breakfast with State Enforcers – First Amendment (NPC)

Presented by the State Enforcement Committee

State enforcement continues to be an important part of the antitrust landscape. Learn where state enforcers are focusing their efforts, as five senior enforcers describe recent state activities and future areas of interest.

Session Chair and Moderator:

Robert W. Pratt, Chief, Antitrust Bureau
Office of the Illinois Attorney General, Chicago, IL

Speakers:

Ellen Cooper, Chief, Antitrust Division
Office of the Attorney General of Maryland, Baltimore, MD

James Donahue, Chief Deputy Attorney General
Office of the Attorney General of Pennsylvania, Harrisburg, PA

Rebecca Fisher, Chief, Antitrust Section
Office of the Attorney General of Texas, Austin, TX

Robert L. Hubbard, Director of Litigation
Office of the New York Attorney General, New York, NY

8:15 – 9:45 am

Court of First Instance and Microsoft – Moving Toward Convergence or Widening the Atlantic? – Salon I

Presented by the Computer and Internet Committee



This program will offer an analysis of the CFI decision in the EC's Microsoft case and its implications for technology companies in tying/bundling and required sharing of intellectual property rights with rivals.

Session Chair:

Eugene Burrus, Microsoft Corporation, Redmond, WA

Moderator:

R. Hewitt Pate, Hunton & Williams LLP, Washington, DC

Speakers:

Robert Pitofsky, Arnold & Porter LLP, Washington, DC

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Joshua H. Soven, Attorney Advisor to Chairman Deborah Platt Majoras
Federal Trade Commission, Washington, DC

Thomas Vinje, Clifford Chance LLP, Brussels, Belgium

David Wood, Gibson Dunn & Crutcher LLP, Brussels, Belgium

8:15 – 9:45 am

How Buying At ‘Low Prices’ Can Violate the Antitrust Laws: Monopsony Lessons from Healthcare Antitrust Cases – Ballroom (NPC)

Presented by the Health Care Committee

Buyer conduct raises antitrust concerns in many healthcare contexts, including health plan mergers, GPO exclusive dealing, and use of drug formularies and MFNs. Analysis of such practices illustrates how to distinguish between efficient conduct and the exercise of monopsony power in health care as well as other industries.

Session Chair and Speaker:

Mark Botti, U.S. Department of Justice, Antitrust Division, Washington, DC

Moderator:

Rebecca Dick, Dechert LLP, Washington, DC

Speakers:

Robert E. Bloch, Mayer Brown Rowe & Maw LLP, Washington, DC

Michael Hausfeld, Cohen Milstein Hausfeld & Toll PLLC, Washington, DC

Thomas McCarthy, NERA Economic Consulting, Los Angeles, CA

8:15 – 9:45 am

Is 5 Really More than 1 + 2? Section 5 After *Valassis* and *Rambus* – Salons D & E
Presented by the Federal Civil Enforcement Committee



In light of recent FTC actions in matters such as *Valassis* and *Rambus*, the panel will comment upon and evaluate the reach of the prohibition on “unfair methods of competition” embodied in Section 5 of the FTC Act. Specifically, the panel will examine this provision’s utility and appropriate limitations on its use with respect to conduct that does not violate the Sherman or Clayton Acts. The panel will take into account statements by enforcement authorities, relevant legislative history, Commission and federal court precedents, and broader policy perspectives.

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Session Chair and Speaker:

M. Sean Royall, Gibson Dunn & Crutcher LLP, Dallas, TX

Moderator:

Helene D. Jaffe, Weil Gotshal & Manges LLP, New York, NY

Speakers:

David Balto, Washington, DC

Honorable Jon Leibowitz, Commissioner
Federal Trade Commission, Washington, DC

Joe Sims, Jones Day, Washington, DC

8:15 – 9:45 am

**What Comes Next? Market Definition Involving Intellectual Property in a Post
Illinois Tool Works Era – Salons F & G**

Presented by the Intellectual Property Committee



In *Illinois Tool Works*, the Supreme Court held that the presence of a patent in an antitrust tying case does not create a rebuttable presumption of market power. Now what? Do any rules of general application still exist in defining markets when patents are involved? How do we know whether another patented product or a non-infringing product is in the same relevant market as the patented product? Do antitrust plaintiffs now face an insurmountable burden of proof, particularly when a patented technology is just emerging? The panel will address these and other issues raised by the Supreme Court's decision.

Session Chair:

Lauren S. Albert, Axinn Veltrop & Harkrider LLP, New York, NY

Moderator:

Paul Saint-Antoine, Drinker Biddle & Reath LLP, Philadelphia, PA

Speakers:

Thomas Brown, O'Melveny & Myers LLP, San Francisco, CA

Roy J. Epstein, Belmont, MA

Fiona Schaeffer, Weil Gotshal & Manges LLP, New York, NY

Daniel M. Wall, Latham & Watkins LLP, San Francisco, CA

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10:00 am – noon

Chair's Showcase Program – Grand Ballroom

The Antitrust Modernization Commission, a bipartisan commission created by Congress in 2002, has been charged with evaluating whether the U.S. antitrust laws need to be updated to reflect changes in legal and economic conditions in the United States and around the world. After receiving more than 150 comments, holding 17 hearings, conducting multiple meetings, and extensive deliberations, the amC will release its report to Congress and the President on April 2, 2007. Join us as we take a first look at this report and examine the prospects for changes to the U.S. antitrust legal regime.

Section Chair:

Joseph Angland, Heller Ehrman LLP, New York, NY

Speakers:

William J. Baer, Arnold & Porter LLP, Washington, DC

Roxane C. Busey, Baker & McKenzie LLP, Chicago, IL

Stephen Calkins, Wayne State University, Detroit, MI

Deborah A. Garza, Fried Frank LLP, Washington, DC

1:30 – 3:00 pm

Best Practices for Economist Testimony – Salon G

Presented by the Economics and Trial Practice Committees



In this session, a judge, plaintiff and defense counsel, and an economist will discuss issues and approaches to improving the presentation of economics and economist testimony to courts and juries.

Session Chair:

David T. Scheffman, LECG, Washington, DC

Moderator:

Donn P. Pickett, Bingham McCutchen LLP, San Francisco, CA

Speakers:

Max Blecher, Blecher & Collins, Los Angeles, CA

Honorable Marilyn Patel

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U.S. District Court, Northern District of California, San Francisco, CA

Laura Shores, Howrey LLP, Washington, DC

Darrell Williams, LECG, Los Angeles, CA

1:30 – 3:00 pm

Ear to the Ground: Legal Fallout from Product Promotion and Disparagement by Consumers – Holeman (NPC)

Presented by the Consumer Protection Committee

Viral marketing. Bloggers. Participatory product review sites. Corporate hate sites. YouTube. Consumer "opinion leaders" are reaching a wider audience of consumers with evaluations of products and services. Do consumers need to be protected from their fellow consumers? How might public raves and rants by consumers impact the FTC's and attorneys general's enforcement agendas and companies' options and exposures?

Session Chair and Speaker:

John E. Villafranco, Kelley Drye Collier Shannon, Washington, DC

Moderator:

Steven B. Malech, Wiggin & Dana LLP, Hartford, CT

Speakers:

Jane Azia, Assistant Attorney General
New York State Attorney General's Office, Albany, NY

Darren A. Bowie, America Online, Inc., Dulles, VA

Mary K. Engle, Assistant Director for Advertising Practices
Federal Trade Commission, Washington, DC

1:30 – 3:00 pm

Antitrust Compliance vs. Privacy Compliance: When Worthy Goals Collide – Salons D & E

Presented by the Compliance & Ethics Committee

In Europe and elsewhere, laws and regulations designed to protect personal information constrain the ability of businesses to divulge employee data, including e-mail and telephone records. How does compliance with these regulations interact with antitrust compliance, both in the context of proactive measures such as audits and "spot checks" of company records, and also in the context of pending investigations by enforcement

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authorities, development of information in efforts to cooperate with enforcers, and defending against cartel allegations. (30 minutes of ethics credit applied for with the states.)

Session Chair and Moderator:

Thomas D. Fina, Howrey LLP, Washington, DC

Speakers:

Maureen Cooney, Hunton & Williams LLP, Washington, DC

Wes Edwards, Koch Industries Inc., Wichita, KS

Daniel P. Cooper, Covington & Burling LLP, London, England

1:30 – 3:00 pm

Predatory Buying: Do Antitrust Laws Protect Buyer Competition? Should We Care? – Salon F

Presented by the Price Discrimination and Sherman Act Section 2 Committees

A panel of antitrust policy experts discusses the complex economic and legal policy issues raised when an aggressive exercise of buyer power is deemed unlawful exclusionary conduct. Topics include the *Weyerhaeuser* case pending before the Supreme Court, which illustrates the difficulty in deciding whether and when “predatory” bidding should be prohibited.

Session Chair:

Alicia L. Downey, Bingham McCutchen LLP, Boston, MA

Moderator:

Mary Anne Mason, Hogan & Hartson LLP, Washington, DC

Speakers:

Stephen V. Bomse, Heller Ehrman LLP, San Francisco, CA

Honorable J. Thomas Rosch, Commissioner
Federal Trade Commission, Washington, DC

Steven Salop, Georgetown University Law Center, Washington, DC

Richard O. Zerbe, Jr., Evans School of Public Policy
University of Washington, Seattle, WA

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1:30 – 5:00 pm

International Dominance – Salon IV



Presented by the International and Sherman Act Section 2 Committees

Session Chair:

J. Bruce McDonald, Deputy Assistant Attorney General
U.S. Department of Justice, Antitrust Division, Washington, DC

Introductory Remarks: The Dominance Debate

Philip Lowe, Director General
DG Competition, European Commission, Brussels, Belgium

Panel A: Dominant Positions and Monopoly Power -- Do You Know It When You See It?

What defines a “monopolist” and a “dominant” firm? What is the role of “shared,” “collective,” and “relative” dominance? How should one counsel a firm whose conduct may be closely scrutinized under multiple standards? How are the major reviewers – ICN, EC, amC, DOJ/FTC – treating monopolies and dominant firms?

Moderator:

James R. Modrall, Cleary Gottlieb Steen & Hamilton LLP, Brussels, Belgium

Speakers:

Theofanis Christoforou, Principal Legal Adviser
Legal Service, European Commission, Brussels, Belgium

Janusz A. Ordovery, New York University, New York, NY

Donna Patterson, Arnold & Porter LLP, Washington, DC

Panel B: Dominant Positions and Monopoly Power -- Refusals to Deal

When a firm may be obliged to share resources with rivals is and has been controversial. What is required for a refusal to deal claim (*Trinko, IMS Health*)? Is there a viable essential facilities doctrine (*Aspen, Magill*)? Are the rules different for IP? For regulated industries? What are the policy implications of aggressive or cautious approaches?

Moderator:

Robert E. Kwinter, Blake Cassels & Graydon LLP, Toronto, Canada

Speakers:

Henri Piffaut, LECG, Brussels, Belgium

Debra A. Valentine, Vice President and Associate General Counsel

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United Technologies Corp., Hartford, CT

Spencer W. Waller, Loyola University Chicago, Chicago, IL

Panel C: Dominant Positions and Monopoly Power -- Non-Price Abuses (Tying, Bundling, Exclusive Dealing, Fidelity Rebates)

Vertical, non-price monopolization issues are vexing. The EC takes a particularly hard line on single firm branding, rebates, and bundling issues. When is this conduct likely to be anticompetitive? How should it be tested? How can a dominant firm proceed with confidence in this area?

Moderator:

Elizabeth F. Kraus, Counsel for Multilateral Affairs
Federal Trade Commission, Washington, DC

Speakers:

Cani Fernández, Cuatrecasas, Brussels, Belgium

Patrick J. Greenlee, U.S. Department of Justice, Antitrust Division, Washington, DC

Paul Lugard, Head of Antitrust
Philips International B.V., Eindhoven, The Netherlands

1:30 – 5:00 pm

Mock Trial: United States of America v. Petrol Inc – Ballroom (NPC)

Presented by the: Trial Practice Committee



The jury in this mock trial will decide whether Petrol Inc. is guilty or not guilty of conspiring with other companies to fix the price of petroleum resin sold in the U.S. and elsewhere. One company is the amnesty applicant. A second company has already pled guilty. A third company was not prosecuted because it did not do business in the U.S. And the fourth company is the Defendant. (A parallel EC enforcement action already has occurred.) The United States will be represented by two current DOJ trial lawyers in the Antitrust Division, and they will be opposed by two leading criminal defense lawyers. There will be four witnesses - one from each alleged conspirator. A 10-person jury selected with the assistance of a consultant to ensure a representative cross-section of the greater DC area will hear the case. A Federal Judge will preside. The jury deliberations will be televised "live" to the audience, and afterwards the jury, the trial lawyers and Judge will comment and answer questions.

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Session Chair and Moderator:

William J. Blechman, Kenny Nachwalter PA, Miami, FL

Speakers:

William Dillon, U.S. Department of Justice, Antitrust Division, Atlanta, GA

John W. Kecker, Kecker & Van Nest LLP, San Francisco, CA

Deana Timberlake-Wiley
U.S. Department of Justice, Antitrust Division, Atlanta, GA

Reid Weingarten, Steptoe & Johnson, Washington, DC

Judge:

Judge William Young
United States District Judge, District of Massachusetts

Witnesses:

Mildred Calhoun, Corporate Counsel, BP Corporation

Kevin Chu, Corporate Counsel, Henkel Corporation

Andrew McBride, EC Competition Law Counsel, BP

Michael Rickman, North American Counsel, The Goodyear Tire & Rubber Co.

3:15 – 5:00 pm

Developments in Deception: The Evolution of the Deception Doctrine in False Advertising Law Through Recent Cases and Enforcement Actions – Holeman (NPC)

Presented by the: Consumer Protection Committee

The doctrine of deceptive advertising practices continues to evolve to cope with new technology and new means of deceiving and defrauding consumers, while still addressing venerable deceptive tactics and ploys. Our panel of government enforcement officials and a private practitioner examine developments in the deception doctrine that have emerged from recent cases and enforcement actions.

Session Chair and Speaker:

August T. Horvath, Heller Ehrman, LLP, New York, NY

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Moderator:

Christie Grymes, Kelley Drye Collier Shannon, Washington, DC

Speakers:

Julie S. Brill, Assistant Attorney General
Vermont Attorney General's Office, Montpelier, VT

Lesley Fair, Federal Trade Commission, Washington, DC

3:15 – 5:00 pm

Hot Topics – Salons D & E

This panel will focus on hot topics in antitrust and competition law around the world, including possible continuation in the trend towards erosion of *per se* rules with the *Leegin* case, the surge in Supreme Court attention on antitrust issues over the past two terms, possibilities for direct settlements of cartel cases in Europe (akin to plea bargains in the US without the criminal element), extradition of foreign nationals to the US for antitrust offenses, and the possible legislative agenda on antitrust in light of the Supreme Court pick-up, change in control of Congress and the recent recommendations of the Antitrust Modernization Commission.

Spring Meeting Co-Chair:

Michael G. Egge, Latham & Watkins LLP, Washington, DC

Speakers:

Tyler Baker, Fenwick & West LLP, Mountain View, CA

Harry First, New York University School of Law, New York, New York

Julian M. Joshua, Howrey LLP, Bussels, Belgium

3:15 – 5:00 pm

McCarran-Ferguson in the Trenches – the *In re Insurance Brokerage Litigation* Decision – Salon G

Presented by the Insurance Industry Committee

This program explores the Court's ruling on the applicability of the McCarran-Ferguson Act to the conduct alleged in the *In re Insurance Brokerage Antitrust Litigation*, the implications of the ruling for the insurance industry, and the possible impact of the ruling on McCarran reform legislation.

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James M. Burns, Vorys Sater Seymour & Pease LLP, Washington, DC

Moderator:

David S. Turetsky, Le Boeuf Lamb Greene & MacRae LLP, Washington, DC

Speakers:

Mitchell Auslander, Willkie Farr & Gallagher, New York, NY

Edith M. Kallas, Whatley Drake & Kallas LLC, New York, NY

J. Stephen Zielezienski, General Counsel
American Insurance Association, Washington, DC

3:15 – 5:00 pm

Mock Oil Company Merger: Presenting Your Case to the FTC – Salon F
Presented by the Economics and Fuel & Energy Industry Committees

This program will follow a mock oil company merger through the agency review process. In the first segment, participants taking the roles of the oil company general counsel, its antitrust counsel, and economist discuss the possible arguments and strategies they may pursue with the FTC. The second segment will portray the meeting between the oil company representatives and an attorney and economist from the agency. In the third segment, the participants will discuss the presentations, possible divestiture remedies, how third parties would voice concerns to the agency, and what other strategies might be persuasive.

Session Chair and Moderator:

James T. McKeown, Foley & Lardner LLP, Milwaukee, WI

Speakers:

Brian Byrne, Cleary Gottlieb Steen & Hamilton LLP, Washington, DC

Mary Coleman, LECG, Washington, DC

Janet L. McDavid, Hogan & Hartson LLP, Washington, DC

Ramsey Shehadeh, NERA Economic Consulting, White Plains, NY

Jolanta Sterbenz, Federal Trade Commission, Washington, DC

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7:30 pm
Spring Dinner – Grand Ballroom

Speaker: Michael Beschloss

Michael Beschloss is an award-winning historian and the author of nine books, including most recently the acclaimed *New York Times* best-seller *The Conquerors: Roosevelt, Truman and the Destruction of Hitler's Germany, 1941-1945*. He serves as NBC News' Presidential Historian—the first time any major network has created such a position—and appears regularly on *Meet the Press*, *Today*, and all NBC network programs. He is a regular on *Imus in the Morning* and PBS's *The NewsHour with Jim Lehrer*.

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