

AMERICAN ANTITRUST INSTITUTE

Private Antitrust Enforcement Conference

DECEMBER 4, 2012
NATIONAL PRESS CLUB, WASHINGTON, DC

AGENDA

8:15 a.m. – Continental Breakfast

9:00 a.m. – Welcome

Bert Foer, President, American Antitrust Institute

9:25 a.m. – AAI Jury Instruction Project

An update on progress on the antitrust jury instructions project, including materials prepared on one or more instructions. The AAI jury instructions will provide an alternative to the ABA Model Jury Instructions. We will also discuss possible next steps such as focus groups and testing for comprehension.

Joshua P. Davis, Professor and Director, Center for Law and Ethics, University of San Francisco School of Law
Shannon Wheatman, Kinsella Media, LLC

9:45 a.m. – Employment Antitrust Litigation

A discussion of key issues in major cases involving hospital nurses, petroleum industry employees, high tech employees, medical residents, and others. Such issues include: Can a class be certified? How can monopsony power be proved? When are information exchanges unlawful? What damages models are available?

Moderator: Dan Small, Partner, Cohen Milstein Sellers & Toll PLLC
George G. Gordon, Partner, Dechert LLP
Joseph R. Saveri, Founder, Joseph Saveri Law Firm
William E. Reynolds, Bond, Schoeneck & King, PLLC
Gregory Vistnes, Vice President, Charles River Associates

10:45 a.m. – Break

11:00 a.m. – Current Status and Trends in Use of Truncated or "Quick Look" Analysis

Andrew Gavil presents his new paper "Moving Beyond Caricature and Characterization: The Modern Rule of Reason in Practice" and Jonathan Baker presents his new paper "Exclusion as a Core Competition Concern" followed by a discussion of the history and recent development of truncated analysis including how courts are wrongly confining its use and might apply it more effectively across a wider range of conduct.

Presenters:

Jonathan Baker, Professor, American University's Washington College of Law
Andrew I. Gavil, Director, Office of Policy Planning, Federal Trade Commission

Commentator:

Kathleen Foote, Senior Assistant Attorney General, California Department of Justice

12:00 p.m. – Networking Break

12:30 p.m. – Luncheon Address

Diane P. Wood, Circuit Judge, United States Court of Appeals for the Seventh Circuit;
Senior Lecturer in Law, University of Chicago Law School

2:00 p.m. – Litigation in Regulated Industries

Our experienced panel of litigators and expert economists will discuss the policy, practice and future of litigating in regulated industries. These experts will explore recent developments in the law related to insurance, energy, shipping and health care industries among others and how litigating in those regulated areas of commerce affect the private enforcement of the antitrust laws. Included in this session will be discussions of the specific antitrust immunities offered by the state action doctrine, the filed rate doctrine, McCarran-Ferguson, Noerr Pennington and more and how to navigate around them in litigation.

Moderator: Daniel E. Gustafson, Gustafson Gluek PLLC

Peter C. Carstensen, Professor of Law, University of Wisconsin Law School

Tim Cornell, Counsel, Clifford Chance

Peter Kohn, Partner, Faruqi & Faruqi, LLP

Chris Sagers, Associate Professor of Law, Cleveland-Marshall College of Law

3:30 p.m. – Class Action Developments

Panel will discuss recent developments in Rule 23 jurisprudence in antitrust cases, including continuing developments in the law of predominance post-Hydrogen Peroxide, the effects of the Supreme Court's decisions in *Concepcion* and *Dukes*, and the changing role of economists at the class certification stage. Panel will also consider what the Advisory Committee on Civil Rules has in store for possible changes to Rule 23.

Moderator: Eric Cramer, Managing Shareholder, Berger & Montague, P.C.

F. Paul Bland, Jr., Senior Attorney, Public Justice

Elizabeth J. Cabraser, Partner, Lief Cabraser Heimann & Bernstein, LLP; Federal Civil
Rules Advisory Committee

Russell Lamb, Principal, Advanced Analytical Consulting Group

5:00 p.m. – Closing

Bert Foer, President, American Antitrust Institute

5:00-6:30 p.m. – Cocktail Reception