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Antitrust Lawsuit Targets Bar Review Course

By Lorelei Laird
Daily Journal Staff Writer

If you passed the bar in 1998 or later, Eliot Disner probably wants to represent you. Disner's behind a pair of \$300 million antitrust lawsuits filed on behalf of 300,000 American attorneys who took the BAR/BRI full-service bar review course.

The virtually identical suits, consolidated Sept. 7 in the U.S. District Court for the Central District, accuse BAR/BRI's various parent companies of driving up its prices by making a secret deal with test preparation company Kaplan Inc. *Rodriguez v. West Publishing Corp.*, CV05-3222 (C.D. Cal., filed May 26, 2005); *Brewer v. West Publishing Co.*, CV05-06211 (C.D. Cal., filed Aug. 24, 2005); consolidated Sept. 7.

In exchange for Kaplan's agreement to withdraw from the bar review market, the complaint charges, BAR/BRI agreed not only to withdraw from the LSAT preparation market but also to continue to pay thousands to Kaplan each year.

"There are people all over the country who are upset about this," said Disner, a partner at Santa Monica's Van Eetten Suzumoto & Beckett. "The last few years have seen the price of bar review courses go straight up."

The named plaintiffs in the first suit are Ryan Rodriguez, Reena B. Frailich, Boredana Nesci, Jennifer Brazeal and Lisa Cantz. The named plaintiffs in the second suit are Kari Brewer and Lorraine Rimson.

Disner wants to certify a class of everyone in the United States who took a BAR/BRI course between August 1997 and the first suit's May filing date. In California alone, 41,121 attorneys have been admitted since that time.

The suit seeks \$300 million in damages for the whole class, plus an injunction to stop BAR/BRI's alleged anti-competitive behavior.

The antitrust claims spring from a series of business deals that started in 1995, when West Publishing Corp. formed West Bar to offer full-service bar review courses.



ROBERT LEVINS / Daily Journal
"The last few years have seen the price of bar review courses go straight up. There are people all over the country who are upset about this," said attorney Eliot Disner, left, with two of his plaintiffs, Loredana Nesci and Ryan Rodrigues.

West Bar "began to compete vigorously" with BAR/BRI, said Disner's complaint.

But it was acquired in 1996, when Thomson Co. bought West. After the purchase, Thomson tried to sell West Bar to Kaplan Inc.

While that sale was taking place, the com-

plaint says, BAR/BRI approached Kaplan to neutralize the potential threat to its market dominance. The two companies allegedly struck a secret agreement whereby BAR/BRI agreed to stop offering LSAT and other test preparation courses in areas where Kaplan dominated the market.

As part of the illicit deal, BAR/BRI also is alleged to have agreed to pay \$500,000 per year to Kaplan. In exchange, the complaint says, Kaplan agreed to withdraw its bid to buy West Bar.

Instead, BAR/BRI bought West Bar and
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ended the threat to its dominance of the bar review market, the complaint says. (In 2001, Thomson re-entered the bar review business by buying BAR/BRI outright.)

The trick was repeated with several smaller bar review courses around the country, Disner said, and with PMBR, a service that focuses on preparation for only part of the exam.

The moves helped make BAR/BRI the dominant full-service bar review service; its marketing materials say it prepares 95 percent of all U.S. bar takers.

According to the complaint, the moves also enabled BAR/BRI to raise its prices significantly.

Disner cited Louisiana as an example. In 2003, he said, Louisiana State University offered its own bar review course for \$545. BAR/BRI charged only \$695 in Louisiana that year, less than half what it charged in California and other jurisdictions.

The next year, Disner said, BAR/BRI paid the university \$50,000 to shut down its course, which it did.

"Then BAR/BRI became the only course in Louisiana and promptly raised its price to \$1,095," he said.

Jeffrey LeVee, the Jones Day partner in Los Angeles leading Kaplan's defense, did not return a phone call; a representative of Kaplan declined to comment.

Partner Stephen Molo of the New York office of Sherman & Sterling, an attorney for BAR/BRI and West Publishing, said that the allegations are untrue and that his client intends to "defend the case vigorously."

Disner said the next milestone in the case likely would be in February, when the court considers class certification. It's survived a motion to move the case to New York federal court, which U.S. District Judge Manuel Real turned down Aug. 1.

And Disner anticipates that a possible third federal suit, pending in Georgia, could be joined to his. Trial is set for 2007.

BAR/BRI doesn't hide its rate hikes from its students. In fact, it encourages law students to put down a deposit during their first year in school, to "lock down" the price offered then.

Peers who don't put down the deposit pay a higher price down the road for the same course.

Some observers of the bar review business agree that BAR/BRI dominates the market for full-service bar review courses.

But not everyone agrees that it's a bad thing.

Cameron Kalunian, a third-year student at USC Law School and the president of the school's Student Bar Association, said he felt "slightly peer-pressured" by the company's sales representatives when he was a first-year student.

"You're already intimidated by the entire law-school experience, and then they bring up the big scary bar," Kalunian said. "They definitely tell you, 'Oh, the price is going up next year. Lock up the price now.' It's a pretty hard sell."

Nonetheless, Kalunian expects to get his money's worth. He's heard good things about BAR/BRI but not much about other services.

And passing the bar is too important to take chances, he said.

"I'm going to take BAR/BRI because I know it's been very successful for people," Kalunian said. "I don't want to gamble with anything that high-stakes."

San Jose tax attorney Travis Wise said that's a common sentiment among law students. Wise maintains a Web site called "The California Bar Exam Primer," a clearinghouse of information about the test. He

also speaks on the subject each spring to third-year law students.

Wise said that law students face a lot of pressure to conform. If there's a perception that one bar review company is better than another, students could create a monopoly just by trying to ensure they have their best shot at passing the bar.

"I don't think anybody thinks you'd be regarded as a sucker [for taking a non-BAR/BRI course], ... but I think there's a lot of pressure on law students to follow the herd," he said. "By taking an alternative program, you're kind of making yourself a test case for this program."

And in a way, it's beneficial that BAR/BRI is "the only game in town for most law students," Wise said.

It puts them all on the same footing. They know nobody else has an unfair advantage, and if BAR/BRI teaches something that's not quite right, he said, students are assured that almost everyone will get that part of the exam wrong.

Wise said he wouldn't be interested in taking part in the antitrust suits himself.

"I locked in my price seven years ago, and I think I got a fair value for what I paid," he said.