

Titan Of The Plaintiffs Bar: Bruce Simon

By Aaron Vehling

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Back in the 1960s, a young Bruce Simon and his friends would ride their bikes from their homes in the idyllic Jordan Park neighborhood in San Francisco to spots all around the city, occasionally coming across a construction site in the city's Financial District where Simon now brings in millions of dollars in verdicts and settlements for classes of plaintiffs in sprawling MDLs.

Simon and his friends would sneak onto the site when the crews weren't around and ride up the elevators before the building was complete. In those carefree days, Simon certainly had no idea how important that site would become to him decades later, when he would be working on big cases such as the LCD, DRAM and potash antitrust litigations in which companies were accused of fixing the prices of liquid-crystal displays, computer memory and fertilizer ingredients.



Bruce Simon

Simon, name partner at Pearson Simon & Warshaw LLP, has helped rock, R&B and rap artists like Gary Wright, Sister Sledge and Chuck D recover money from record labels for downloads and held electronics manufacturers accountable for a global scheme to fix the price of LCDs in devices such as televisions and cell phones.

Simon says the key to his success in cases such as the LCD MDL, in which he and his firm reached more than half a billion dollars in settlements and a jury verdict, includes a holistic approach to problems, the drive to cut an autonomous path, an appetite for learning new things and a focus on treating people fairly.

The autonomous streak was evident in his time as a young lawyer in the early 1980s at firms such as Gordon & Rees, when Simon was able to carve his own path and choose his own cases, almost always sitting first chair during trial.

Simon, a graduate of the University of California, Hastings College of the Law, started his career working mostly on business litigation and personal injury cases. Never a numbers guy, despite doing well in an economics course as an undergrad at the University of California, Berkeley, Simon had not yet gotten into the complex world of antitrust law. What he knew, though, is that the plaintiffs' side was his calling.

"I found very quickly my heart is on the plaintiffs' side," he said.

In college he spent time as a boxer and a yell leader, leading cheers at football and basketball games, and once he became a lawyer he carried on the role as a fighter and a champion for causes.

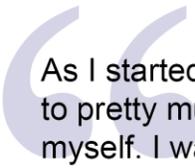
In 1985 he joined what is now Cotchett Pitre & McCarthy LLP, eventually becoming a name partner. There, Simon got involved in large-scale business suits involving securities litigation and Ponzi scheme allegations.

He also worked on the potash antitrust MDL, in which international makers of one of the most important ingredients of fertilizer were accused of forming an international cartel that operated for decades. As he became involved in more antitrust cases, Simon had to learn everything on the fly.

"As I started to get into antitrust, I had to pretty much learn everything myself," Simon said. "I worked with attorneys, but I was really pretty autonomous at Cotchett."

Not everyone finds comfort in that untethered, fly-by-the-seat-of-your-pants experience, but Simon said that is part of what has made him successful.

"I was not influenced by the biases of people who had trained in that area their entire lives," he said. "There's a lot to be said to coming into a case with a fresh perspective."



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— **Bruce Simon**
Partner
Pearson Simon & Warshaw LLP

Even today, as he helps athletes challenge the NCAA's amateur restrictions in the grant-in-aid MDL or represents plaintiffs suing Keurig over its purported monopoly in the coffee pod market, after a long career in antitrust, Simon still approaches cases with that early sense of wonder.

"It allows me to go into these cases with the understanding of a layperson," he said, adding that this comes in handy when trying to explain the profoundly technical and overwhelming facts of an antitrust litigation to a jury. "I think that helps a great deal."

While a lot of firms have people who specialize in certain aspects of a case — they might designate a discovery attorney and a trial attorney — Simon said he likes to be involved in every milestone in a given case "as much as I can, although I probably get too down into the weeds sometimes."

The LCD case, one of the biggest antitrust MDLs in the U.S., stands out for Simon as putting that into

practice. When he first approached the case, he thought about trial strategy from the moment he wrote and filed the complaint and was along for the ride at every twist and turn, maintaining a "constant vision," he said.

"You can only do that if you're with a case from the beginning to the end," he said. "If you jump in at certain points, it's much harder to have that big-picture, holistic view of a case."

By the time Simon stood up to give his opening arguments in the LCD case before a packed courtroom in which spectators were spilling out into the halls, he knew every aspect of the case inside out. That helped during a notable cross-examination of a defense witness, who eventually revealed some key evidence on the cartel that the defense had successfully kept out of the trial, he said.

As co-lead counsel, Simon helped secure an \$87 million jury verdict before trebling, and he and his firm won their clients \$473 million in settlements.

However deep Simon dives into the details and takes the reins of a given case, he never forgets to be a cheerleader for the team involved in negotiating those deals.

He worked closely with a trial team from Lief Cabraser Heimann & Bernstein LLP that had become so tight-knit "it seemed as if we could reach each other's minds," he said. "There were great synergies between our firm and Lief Cabraser. We were truly comrades-in-arms."

Partner Cliff Pearson, who started doing cases with Simon in 1996 before they merged their firms in 2007, speaks to his collaborative nature as a key trait of his success.

He called Simon an excellent case manager. That feat involves the creation of an atmosphere in which everyone understands their roles, and Simon put this on display in notable fashion.

"He's got a great relationship with lawyers," Pearson said. "I view Bruce as a lawyer's lawyer."

It is not just the plaintiffs' counsel who come away from Simon with that view. James McGinnis of Sheppard Mullin Richter & Hampton LLP has been on the defense side of cases with Simon "every day of my professional life" for the past 15 years or more and said the battles never spill over into the personal side of things.

"I've never had the slightest whiff of personal beef with him," McGinnis said.

Simon's boxing past also seems to come through when he is up against the defense. McGinnis said that Simon knows when to fight and when to not waste the energy.

When he is up against Simon, McGinnis said, it's a worthwhile experience because Simon never wastes anyone's time with a "bunch of sideshows" or irrelevant fights.

"Plenty of lawyers get into fights that don't matter," McGinnis said. "Bruce is looking to fight on the merits."

When Simon took on Hynix Semiconductor Inc. and others in the DRAM antitrust cases, in which chip makers were alleged to have fixed the prices of computer memory, he came up against Kenneth R. O'Rourke of O'Melveny & Myers LLP, who was representing Hynix.

O'Rourke echoed McGinnis about Simon's ability to pick battles. "With some others you might expect the plaintiffs' settlement demand will be a big number backed by hyperbole, but Bruce made it different," O'Rourke said.



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— **James McGinnis**
Partner
Sheppard Mullin

From the defense's side, he said, Simon is respected for his forensic skills, case leadership and professionalism.

The potash case also comes up as evidence of Simon putting his principles into practice, and then some.

As with many others, Simon was involved in all aspects of the case, which started in 2008 and involved an international cast of defendant potash manufacturers. Simon stayed with it all the way to a June 2012 en banc rehearing before the Seventh Circuit, a court filled with judges with extensive antitrust experience.

As with LCD, that full-panel hearing was held before a packed courtroom. Simon says more than 250 people gathered to hear the high-level arguments. Despite the potash makers' formidable attempt to argue for the appeals court to overturn an Illinois federal court's denial of their motion to dismiss, the court affirmed that ruling 8-0.

Pearson referred to the potash case as one of their firm's "great victories." The Seventh Circuit had originally ruled against the plaintiffs, and Pearson marvelled at Simon's ability to not only change their minds but to change their minds so comprehensively.

"The results are so phenomenal," he said.

Simon attributes it to various shades of long view. For starters, he "lived the case" from its beginning, he said.

"It's very difficult to learn the nuts and bolts of a case and get a feel for it [without that experience]," he said.

"Enormous preparation," including two moot courts, also paid dividends, he said.

The U.S. Supreme Court would later decline to review the case and Simon would oversee settlement talks that would yield \$90 million for the direct-purchaser plaintiffs.

Amid all that activity, Simon still manages to serve on the board of Hastings College of the Law, as he has

for 12 years. Right now he's helping to re-engineer the courses to shrink the class sizes while enjoying seeing a new class of graduates each year.

Although he has moved a bit farther down the peninsula from his childhood home in northwest San Francisco, every day Simon returns to that construction site at which he and his friends used to play. It's where his firm's office is, and where he keeps fighting, learning and cheering after more than a quarter-century practicing law.

--Editing by Brian Baresch.

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