

**New York State Bar Association Antitrust Section  
Antitrust Experts Training Academy**

**October 29, 30 & 31, 2018**

**Schedule**

This program is intended to provide “learn by doing” training for antitrust attorneys at all levels of experience in the use, preparation and examination of experts at deposition and trial of Antitrust cases. The primary emphasis of the program will be to provide participants with opportunities in performance workshops to prepare for and then perform examinations of experts in simulated deposition and trial settings, followed by individual faculty critique. These performance workshops will be supplemented by lectures on specific issues relating to the use, preparation and examination of experts in the antitrust context. The program will be held on October 29, 30 & 31, 2018 at the Jacob K. Javits Federal Office Building, 26 Federal Plaza, 6th Floor Conference Center, in New York City.

To prepare for this program, it is imperative that you carefully review the case file materials and prepare **in advance** to perform each of the problem assignments in the schedule. NOTE: You will not have time to prepare during the program and failure to prepare will reduce your opportunity to learn from the program.

Each participant has been designated an “A” [Plaintiff] or “B” [Defendant] (See an enclosed schedule of group assignments). All workshop problem assignments will be made with these “A” and “B” designations. You should prepare for each workshop assignment according to your “A” or “B” designation. In addition, except as noted herein, room assignments for each performance session will be set forth in a room assignment schedule distributed at the beginning of the program.

**Materials**

The materials for this program are:

Case File: Wholesale Pharmacy Company, People’s Drug Wholesale, Inc, and All State Distributors v. Trusted Brands Pharmaceuticals.

This program is being offered by the New York State Bar Association Antitrust Section.

## Monday, October 29th

Today's focus will be on preparing for and taking your opposing expert's deposition and defending the deposition of your expert. The day will begin with a lecture on using experts in antitrust cases and deposing experts. In the morning workshop, you will work with your expert to refine your legal, factual and persuasive theory of the case, and to prepare for taking the deposition of your opposing expert and defending the deposition of your expert. In particular, using the economists' reports, (1) educate yourself as to methodologies and analysis, (2) assess the strengths and weaknesses of your theory, and (3) assess the strengths and weaknesses of your opponent's theory. In the afternoon, you will also depose your opponent's expert and defending your expert at deposition.

8:30 - 9:30      Registration and Continental Breakfast (All)  
                         Faculty Meeting (Faculty Only)

9:30 - 11:00    Introduction to the program

9:45 - 11:00    LECTURE/DEMONSTRATION: Using Experts in Antitrust Cases and Taking and  
Defending Expert Depositions  
                         Barbara Hart, Lowey, Dannenberg, P.C.  
                         Andrew L. Rossner, Rutgers Law School - Newark

11:00 - 12:00   CASE THEORY WORKSHOP: Participants will meet in small groups with the  
economists to discuss the legal, factual and persuasive theories of the case  
incorporating the economic analysis. The focus of the workshop will be to (1)  
develop the legal and economic analysis concerning market power and  
damages, (2) assess how to make the analysis persuasive, (3) consider the  
analysis and theories most likely to be advanced by your opponent, (4) evaluate  
the strength of the analysis in light of anticipated expert testimony.

12:00 - 1:00    LUNCH

1:00 - 4:45     PERFORMANCE WORKSHOP AND VIDEO REVIEW  
DEPOSING THE EXPERT

Assume that Jesse Hinkley and Riley Xenias have been sworn and all preliminary  
matters covered.

A's conduct the deposition of Riley Xenias] on no more than two of the following  
topics:

- (1)      Xenias' decision to include other anti-depressant drugs in the market  
            power analysis
- (2)      Basis and validity of Xenias' numbers and calculation of market share
- (3)      Xenias' rejection of prices in excess of marginal cost as an indicator of

- market power
- (4) Xenias' rejection of Hinkley's decision to use SSNIP analysis
- (5) Xenias's rejection of "Blockbuster X" as benchmark for the damages calculation
- (6) Xenias' analysis concerning the effect of "generic bypass" and production delays on plaintiff's damages
- (7) Any other issue you deem appropriate

AND

B's conduct the deposition of Jesse R. Hinkley on no more than two of the following topics:

- (1) Hinkley's decision to use the "Gross Margin" and "SSNIP" analysis
- (2) Basis and validity of the numbers to calculate gross margin
- (3) Hinkley's decision to assess product market at Nirvana and it's generic equivalents
- (4) Basis and validity of using the numbers to apply the SSNIP test
- (5) Hinkley's decision to use "Blockbuster X" as a benchmark to calculate damages
- (6) Basis and validity of his calculation of damages
- (7) Any other issue you deem appropriate

## **Tuesday, October 30<sup>th</sup>**

Today, we turn our focus to preparing and presenting expert testimony in the trial of an Antitrust case. The day will begin with a lecture/demonstration on direct and cross examination of experts, followed by a performance workshop in which you will prepare your expert for direct and cross examination. In the afternoon, you will be conduct direct and cross examination of the experts on qualifications and their opinions as to the defendant's market power.

8:30 - 9:30                      Continental Breakfast (All)  
    Faculty Meeting (Faculty only)

9:30 - 11:00                      LECTURE/DEMONSTRATION: Presenting Expert Testimony at Trial -  
    Persuasive Direct Examinations and Effective Cross Examinations  
    Aidan Synnott, Paul Weiss  
    Andrew L. Rossner, Rutgers Law School - Newark

11:00 - 12:00      WORKSHOP: Preparing the expert for trial.  
A's and B's will meet separately with their expert to:  
(1)    refine your theory of the case  
(2)    prepare your expert for testifying  
(3)    consult with your expert in preparation for cross examination

12:00 - 1:00      LUNCH

1:00 - 4:45      PERFORMANCE WORKSHOP AND VIDEO REVIEW  
DIRECT, CROSS AND REDIRECT AS TO QUALIFICATIONS AND  
OPINIONS - MARKET POWER ANALYSIS

A's examine Jesse Hinkley regarding the market power analysis on  
no more than 2 of the following:

- (1)    Hinkley's qualifications related to the facts of this case
- (2)    Hinkley's choice of methodology as to determining market  
power
- (3)    Hinkley's analysis of market power based upon gross margin
- (4)    Hinkley's analysis of market power based upon the SSNIP  
test
- (5)    Any other issue you deem appropriate as to Hinkley's market  
power opinion

B's conduct cross examination on the same topics

AND

B's examine Riley Xenias regarding market power analysis on no  
more than 2 of the following:

- (1)    Xenias' qualifications related to the facts of this case
- (2)    Xenias' choice of methodology as to determining market  
power
- (3)    Xenias' analysis of market power
- (4)    Any other issue you deem appropriate as to Xenias' market  
power opinion

A's conduct cross examination on the same topics

## Wednesday, October 31<sup>st</sup>

Today, we will continue to focus on direct and cross examination of the experts, focusing on each expert's opinion as to the amount of damages suffered by the plaintiffs, as well as differentiating theories of adverse witnesses.

8:30 - 9:30	Continental Breakfast (All) Faculty Meeting (Faculty only)
9:30 - 12:30	<p>PERFORMANCE WORKSHOP AND VIDEO REVIEW DIRECT, CROSS AND REDIRECT AS TO OPINION CONCERNING DAMAGES</p> <p>A's examine Jesse Hinkley regarding the calculation of damages on no more than 2 of the following:</p> <ol style="list-style-type: none"><li>(1) Hinkley's choice of methodology as to determining damages</li><li>(2) Hinkley's analysis of damages</li><li>(3) Any other issue you deem appropriate as to Hinkley's damages opinion</li></ol> <p>B's conduct cross examination on the same topics</p> <p>AND</p> <p>B's examine Riley Xenias regarding the calculation of damages on no more than 2 of the following:</p> <ol style="list-style-type: none"><li>(1) Xenias' choice of methodology as to determining damages</li><li>(2) Xenias' analysis of damages</li><li>(3) Any other issue you deem appropriate as to Xenias' damages opinion</li></ol> <p>A's conduct cross examination on the same topics</p>
12:30 - 1:30	LUNCH & LECTURE: Working Effectively with Economic Experts from the Expert's Perspective

1:30 - 4:30

PERFORMANCE WORKSHOP AND VIDEO REVIEW  
DIRECT, CROSS AND REDIRECT AS TO DIFFERENTIATING OPINIONS OF  
ADVERSE EXPERT WITNESSES:

A's examine Jess Hinkley as to Xenias' opinions as to market power and damages on no more than 2 of the following:

- (1) Why Hinkley disagrees with Xenias' methodology as to market power
- (2) Why Hinkley disagrees with Xenias' calculation of market power
- (3) Why Hinkley disagrees with Xenias' methodology as to damages
- (4) Why Hinkley disagrees with Xenias' calculation of damages
- (5) Any other issue as to Hinkley's disagreement with the methodology or basis of Xenias' opinions

B's conduct cross examination on the same topics

AND

B's examine Riley Xenias as to Hinkley's opinions as to market power and damages on no more than 2 of the following:

- (1) Why Xenias disagrees with Hinkley's methodology as to market power
- (2) Why Xenias disagrees with Hinkley's calculation of market power
- (3) Why Xenias disagrees with Hinkley's methodology as to damages
- (4) Why Xenias disagrees with Hinkley calculation of damages
- (5) Any other issue as to Xenias' disagreement with the methodology or basis of Hinkley's opinions

A's conduct cross examination on the same topics.

4:30 - 4:45

CLOSING REMARKS