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BAR/BRI And Kaplan Class Action

By Anayat Durrani

A complaint filed against BAR/BRI bar review and the West Publishing Corporation and Kaplan, Inc., in Los Angeles, claims more than 300,000 lawyers and law students were each charged an estimated \$1,000 extra for bar review courses.



The April 29 lawsuit against the country's biggest bar exam and LSAT preparation companies, filed as a class-action lawsuit in the U.S. District Court for the Central District of California, alleges that BAR/BRI and test-preparation company Kaplan, Inc., agreed

to illegally dividing the LSAT and bar exam test-preparation market.

The suit claims that under the alleged agreement, BAR/BRI withdrew from the LSAT preparation business and Kaplan agreed not to enter the bar-review course market. The complaint charges that "without substantial competition, BAR/BRI's net prices per student then increased substantially in most states." It claims that from 1997 to the present, Kaplan and BAR/BRI "have concealed their conspiracy to divide the market." The lawsuit claims BAR/BRI students were overcharged about \$300 million since August 1997 and said customers may deserve \$1,000 each in refunds.

"I do think it's curious that there's a single dominant provider nationwide," said Eric Goldman, a law professor at Marquette University Law School. "There's no indicia that the bar exam-preparation market is a natural monopoly, and most other test-prep areas have competition. So why is there only one dominant vendor in the bar exam-preparation area?"

For law students facing the bar exam, BAR/BRI is a giant in bar-review preparation. BAR/BRI claims that it prepares more than 95 percent of all students sitting for the bar exam in any year.

"I, for one, would definitely appreciate some more competitive pricing," said David N. Oskin, a law student at Chicago-Kent Law School who will be taking the bar next July. "The prices seem excessive, but people keep paying them because BAR/BRI appears to be the only reputable choice."

Oskin said he found some alternatives on the Internet, but BAR/BRI is the only one that he's seen at his school. He said BAR/BRI is very prominent at his school and enlists student representatives to help them spread the word about the bar-prep company.

"It seems to be the school-sanctioned choice, and I don't know anyone who has signed up for another method," said Oskin.

Like Oskin, University of Arizona College of Law student Jared Hautamaki said that though there are other prep courses available, they are not in schools, like BAR/BRI is. He said BAR/BRI recruits and pays students to try to get other students to sign up. He said many students have signed up and attend review sessions and materials in each of the class topics—Contracts, Property, etc.—that Bar/Bri provides to early signups.

"[They're a] Big Dog because of access, reputation, size, and market share. They're everywhere," said Hautamaki, a first-year law student. "Eventually, everyone takes a bar-review course after graduation, but I'll cross that bridge when I come to it. No one has ever given me a definitive reason for one or the other."

Professor Goldman said he personally encourages students to take a bar exam-preparation course. "The bar exam generally tests 'bar law,' a hybrid set of rules that is different from the actual law in every jurisdiction in the country," Goldman said. "Therefore, law schools generally don't teach bar law, and students don't practice bar law; the only way to learn bar law is by studying the unique doctrines, and a bar exam preparation course is the best way to learn this new rule system."

Goldman does note that BAR/BRI's bar exam-preparation course is a bit pricey for students. He said that while some students do not care about the price because their law



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firm covers the expense, for others who must pay for it themselves, the cost could be a huge barrier to taking the course.

"Some students try to cut corners by studying on their own, but this puts them at a material disadvantage in learning bar law," said Goldman. "If BAR/BRI's prices are inflated because of the lack of competition due to illegal behavior, then some legitimate competition in the market is much needed and will make a difference between some students' realizing their dreams and failing to overcome the bar exam."

Rod Borlase is an attorney-mediator and said law students have been easy targets for exploitation because they often buy into the intense competitive nature of law school and of bar- and other prep courses.

"Practice aids throughout law school, particularly first year, then bar review courses after graduation—it's just one blood-sucking vulture after another," said Borlase. "On the other hand, I wouldn't want to take a bar exam without a review course, although I know some who have successfully."

But Oskin believes that law students will continue to pay because they cannot afford to fail or fall behind their peers.

"When compared to their loans and the money to be made in a legal profession, BAR/BRI seems to be a reasonable

expenditure, though that doesn't mean that students are not being taken advantage of," said Oskin.

How the allegations in the suit will pan out remains to be seen.

"If the plaintiff's allegations are true, then it's about time that the wrongs are corrected," said Goldman. "However, we just don't know yet if the allegations are true; so we have to wait and see."

The named plaintiffs, Ryan Rodriguez and Reena B. Frailich, are suing on behalf of law students and attorneys to recover damages plus costs. Representing the plaintiffs is the law firm of Van Etten Suzumoto & Becket, LLP, of Santa Monica, CA. The lead attorney is antitrust trial lawyer Eliot G. Disner.

In a prepared statement, Disner said the goal of the suit is to restore competition in the market and break up BAR/BRI "so that future law school grads will have a choice and will pay reasonable prices, rather than prices that are illegally inflated."

Disner added, "It's tough enough to become a lawyer these days. The cost of the bar-review course should not make it any tougher."

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