

## Titan Of The Plaintiffs Bar: Joseph Saveri

By **Melissa Lipman**

*Law360, New York (October 30, 2014, 3:02 PM ET) --*

While the news that the federal government had found evidence that Apple Inc. and other tech giants had agreed not to cold call each other's developers grabbed headlines, it took an out-of-the-box thinker like Joseph Saveri to see the potential for a class action case to recoup damages for the workers.

When Saveri, who runs his own Joseph Saveri Law Firm, began reading about a series of agreements between Apple and other tech giants, there wasn't much interest in pursuing a private antitrust case that dealt with employment law issues and ended with a series of consent agreements with the U.S. Department of Justice.

But for the San Francisco lawyer, a case involving "pillars" of the local tech industry was intriguing.

"I looked at it and said, 'Well geez, that's kind of amazing, that's kind of shocking. If that's what happened, that violates the antitrust laws,'" Saveri said.

Still, despite the DOJ injunction, it was hardly clear that the government probe would lend itself to a class action, according to Berger & Montague PC's Eric Cramer.

"He inspired the case and really spearheaded and convinced other lawyers that this was going to be a good case to take," Cramer said. "Yes, the Department of Justice sought an injunction and tried to stop the conduct ... but it wasn't clear what effect that that conduct had on all of the workers for all those companies and whether we could seek and win class certification."

"It was his creativity and optimism that turned me and others around to see how this case could be proven on a classwide basis," Cramer added.

Indeed, not only did the plaintiffs eventually win class certification, but the judge overseeing the case found the evidence against the tech giants so compelling that she refused to sign off on a \$324 million



Joseph R. Saveri

settlement in the case. The judge reasoned that the case was simply too strong for the defendants to get off the hook so easily.

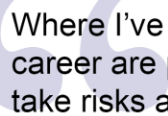
While the case continues, Saveri said he wasn't bothered by having to either negotiate a better deal or take the case to trial.

"Where I've really had success in my career are places where I decided to take risks and pursue cases that other people wouldn't necessarily do," Saveri said. "There are a lot of people who file cases on heels of government price-fixing guilty pleas, but the cases where I've had the most success are things like ... the high-tech case where there was some government investigation but really I was the only person who wanted to file that case."

Saveri had similar success with a class action accusing De Beers SA of unfairly monopolizing the rough diamond market that eventually yielded a \$295 million settlement and another suit accusing a group of chemical companies of fixing the price of titanium dioxide that led to \$165 million in settlements.

One of Saveri's biggest wins, however, came from a seemingly small role as local counsel in a case brought by GlaxoSmithKline PLC accusing Abbott Laboratories of jacking up the price of HIV drug Norvir.

The firms running the case chose Saveri to run the jury selection process for GSK.



Where I've really had success in my career are places where I decided to take risks and pursue cases that other people wouldn't necessarily do.

— **Joseph Saveri**  
Founding partner  
Joseph Saveri Law Firm

"Opposing counsel for Abbott Labs in that trial sought to strike a particular juror and it appeared that Abbott was doing that because that juror was gay," said Cramer, who was co-lead counsel on the case. "None of us thought to do anything, but Joe stood up and made an objection."

Though the judge overruled the objection and GSK largely lost at trial, Saveri's move gave the company grounds to appeal to the Ninth Circuit, which eventually ruled that sexual orientation fell within the U.S. Supreme Court's rule against discrimination in the jury selection process.

"It was Joe's act that saved GSK in that trial," Cramer said. "It was a stroke of genius to stand there and do that, because it wasn't totally clear in the courtroom what was happening, but it made new law in the Ninth Circuit."

For Saveri, none of that might have come about, however, had he not grown up surrounded by the first big generation of California antitrust plaintiffs attorneys, including his father and uncle who founded Saveri & Saveri.

"I can't tell the story of how I got involved in the law or antitrust law without talking about my father's law practice," Saveri said. "I spent a lot of time in my father's law office running around as a little kid. I thought a law office was an exciting place to be."

Saveri followed that interest to a degree in economics from the University of California, Berkeley, and later to law school at the University of Virginia. He got his first real taste of antitrust litigation while working as a paralegal at his father's firm as an undergraduate when he was tasked with reviewing

documents in a case over glass price-fixing.

"They sent me off to Gibson Dunn and put me in a room with documents for weeks," Saveri said. "I didn't think it was drudgery. Far from it, I thought working on a big, complex case like this ... was interesting. Even at that time I hoped I would have more of a major role on the cases as time progressed."

Still, Saveri didn't start out doing plaintiffs work. After law school, he joined what was then McCutchen Doyle Brown & Enersen — now Bingham McCutchen LLP — as a general commercial litigator. But under the guidance of antitrust giants like Tom Rosch and David Balabanian, Saveri began doing more antitrust work and even occasionally found himself on the opposite side of issues or cases from his father and uncle, an experience Saveri described as "kind of odd" but a "really good experience."

Balabanian, who had developed an admiration for the rest of the Saveri clan after years of facing off against them in court, helped recruit Saveri to McCutchen at the time to "see how a member of that distinguished family of plaintiffs lawyers might enjoy walking on our side of the street."

"I was hoping like we do with every lawyer we hire that they will find a home here or prosper," Balabanian said. "It was obvious that he had the makeup as well as the personal qualities — charm, he makes a very good impression on people — and I knew he would be very effective in court. As it turned out the pull from the plaintiffs side was just too much."

Still for his four years at the firm, Saveri demonstrated not just the "instincts and judgment of an effective litigator" but energy, imagination and an ability to home in on the key, controlling issues in a case, "which is often the place where so many bright young lawyers fall down," Balabanian said.

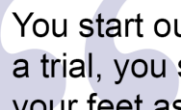
When Saveri left McCutchen for Lieff Cabraser Heimann & Bernstein LLP, the firm was still fairly small and had no antitrust practice to speak of. His first antitrust case there was a suit over milk price-fixing in California supermarkets that Saveri worked on alongside his father's firm.

"I knew a fair amount of antitrust law and knew a fair amount about class action proceedings but had never put them together," Saveri said. "It was successful ... and it was a place I felt, for someone relatively early in my career, I could dictate the direction of litigation."

Though Saveri worked on many of the big antitrust multidistrict litigations of the 1990s at Lieff Cabraser, a series of cases in federal and state court accusing drug manufacturers of charging retail pharmacies far more than wholesalers for brand-name drugs ultimately led him to the world of pay-for-delay litigation.

As the brand drug litigation was wrapping up in the late 1990s, Saveri's interest turned to the Hatch-Waxman Act pharmaceutical settlements between brand and generic-drug makers that were beginning to garner attention.

"We got together with a relatively small group of lawyers and started figuring out these were cases we were interested in," Saveri said, filing a California state antitrust law case against Bayer AG and several generic-drug makers over Cipro in 2000.



You start out early in the morning with a trial, you spend all day standing on your feet asking questions and then spend all night [preparing for the next day]. Joe does that and he doesn't leave things for other people to do. He does everything.

— **Francis Scarpulla**  
Partner  
Zelle Hofmann Voelbel & Mason LLP

Though a few early cases trended in the plaintiffs' favor, the momentum had swung firmly in the drugmakers' direction in the mid-to-late 2000s until a circuit split and ultimately a U.S. Supreme Court decision paved the way for the reverse payment suits to get past a motion to dismiss.

"The hard part was what we thought were really good cases didn't go so well starting in the early-to-mid 2000s," Saveri said. "We were the only ones who hung in there in Cipro."

Though the case has since generated a \$74 million settlement from Bayer — the first settlement in a pay-for-delay case after the Supreme Court's 2013 decision — and is now awaiting a decision from California's Supreme Court, Saveri said the "easy thing" would have been to drop the case once the law started to get bad for the plaintiffs.

"Really what we tried to do was to keep the flame alive ... we were always conscious that as things were going badly in trial courts and appellate courts that at some point there'd be a conflict in the circuits and the Supreme Court had to look at it," Saveri said. "We just felt we had a chance, maybe a slim chance, for the law to be clarified in a way that favored us."

In the meantime, Saveri has since left Lieff Cabraser to set up his own firm, Joseph Saveri Law Firm, in 2012. Despite having spent two decades at Lieff, much of it in a management role, Saveri found that setting out on his own still held a strong pull for him.

"In a lot of ways it feels like a very natural thing, it's something I grew up around," Saveri said. "I saw my father and uncle run a small business, and I think I've always been entrepreneurial and the kind of business of a law firm has always been something that's interesting to me."

Saveri's willingness to stick with hard cases and put in long hours has served him well throughout his career, according to Zelle Hofmann Voelbel & Mason LLP's Francis Scarpulla, who has known Saveri all his life and worked with him on several cases over the years.

"You start out early in the morning with a trial, you spend all day standing on your feet asking questions and then spend all night [preparing for the next day]. Joe does that and he doesn't leave things for other people to do," Scarpulla said. "He does everything."

--Editing by Mark Lebetkin.

---