Law firm Spotlight: Richard Roth, The Roth Law Firm

June 14th, 2013

PAM managing editor Kristen Oliveri sits down with founder Richard Roth of The Roth Law Firm to talk about the law firm's structure, what makes it unique and the critical question on every wealthy person's mind: when do we sue?

Q: What is your practice?

A: I am the owner of a boutique law firm in Manhattan with a highly diversified practice that primarily concentrates in commercial and business litigations with special emphasis in securities, employment, intellectual property, entertainment/sports, white collar criminal litigation and SEC/FINRA enforcement matters. I have personally conducted jury and non-jury trials throughout the country, from Anchorage to Miami, as well as internationally.

On the securities front, while the types of arbitrations/litigations are very diverse and too vast to mention, the firm has attracted and continues to attract wealth management firms, investment bankers, private equity firms, hedge funds, family offices, broker-dealers, registered representatives and public companies. It has successfully defended several hundred securities litigations/arbitrations and has even obtained attorney's fees against its adversaries. The defense practice also includes representations in investigations, enforcement proceedings and civil and criminal actions in federal court commenced by FINRA, the SEC and the United States Attorney's office.

Q: How does your firm differentiate itself from other litigation firms?

A: There are three reasons. The firm looks at litigation not only from a legal perspective, but also from a business person's point of view. That is, we recognize that litigation is a cost of business and is often times a liability to our clients. While many firms view litigation as a two to three year source of revenue, our number one goal is to resolve a dispute as effectively and efficiently as possible. We believe that once we do so, that client will continue to not only use our services in the future, but refer their friends, colleagues and contacts. That critical ingredient – viewing litigation from a business perspective — has been the cornerstone of our success. The firm employs "out of the box" methods of resolving disputes. While we stand ready to go the distance – and often times are called upon to do so – a large percentage of disputes should settle, and in the securities industry there are many tools we employ to make that happen. Additionally, with our sharp legal minds, we are extremely talented at navigating through the legal process, knowing which of the many tools to use in so doing. To us, litigation (and litigation avoidance) not only involves legal talent, but also encompasses a successful plan and the implementation of that plan. As is true of a game of chess, we not only have the knowledge, ability and legal strength to come out victorious, but constantly anticipate our adversary's strategy, course and moves before they occur.

Q: How can financial services firms avoid litigation?

A: There is no one-size-fits all recipe to prevent a lawsuit. Just like preventative medicine, there are, however, several steps a company can take to avoid litigation. We term it "preventative litigation." The general concepts focus on communication, proper documentation and re-educating employees ("CPR"). We discuss with clients each of these areas so that they can reduce that risk.

Q: What steps should be taken if served with a lawsuit?

A: There are three immediate steps that one should undertake when confronted with a lawsuit. While it should be obvious, upon receipt of a Complaint (in a litigation) or a Statement of Claim (in an arbitration), the very first thing to do is to contact an experienced litigation attorney. Some litigations are time sensitive. So, any delay in contacting counsel can be detrimental to a defense. For example, where a form of provisional remedy is sought (temporary restraining order, injunction, attachment, etc.), the fuse is very short. Second, one must immediately make a determination as to whether there is insurance coverage that is triggered or another contractual provision (such as an indemnification clause in a contract) that dictates who is paying for defense costs and any liability that may eventually be incurred from the suit. Finally, the client should immediately implement what is referred to as a "litigation hold." That is, as soon as the company learns of a dispute (even prior to the actual commencement of a lawsuit), it must immediately institute a policy that preserves all documents and communications that refer or relate to the dispute in any way whatsoever. The proper implementation of a litigation hold is vital as even an inadvertent destruction of documents could potentially come back to haunt a defendant during the litigation.

Q: What about taking the offense: When do we sue?

A: As everyone reading PAM is aware, litigations can be prohibitively expensive. We therefore advise clients to attempt to resolve the dispute early in the conflict. Many times that is simply not possible. Again, just like a game of chess, strategy is key. Often times we will send a letter on behalf of a client and yet on other occasions, when the client is at its wits end, we will slam defendants with a detailed complaint. The answer to this question lies in responding to the following: (i) are the damages/losses significant; (ii) have negotiations stalled; and (iii) is there no other method one can employ to accomplish resolving the matter. If the answer to those three questions is "yes," then the client should aggressively pursue its claims by commencing litigation.

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