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Q&A With Robins Kaplan's Roman Silberfeld

Law360, New York (August 10, 2009) -- Roman M. Silberfeld is the regional managing partner of the Los Angeles office and a member of the executive board at Robins Kaplan Miller & Ciresi LLP. His trial and appellate experience includes complex civil litigation including business and high-technology matters, product liability, professional negligence, and mass tort litigation, with particular emphasis upon multistate, multiparty and class action litigation. He represents both plaintiffs and defendants in complex litigation. Silberfeld received his J.D. from Loyola Law School, Los Angeles.

Q: What is the most challenging case you've worked on, and why?

A: I have been privileged to work on a number of very complex matters, but a case I am currently handling is probably the most challenging.

My team represents a very large (1,000+ stores) retailer in a putative national class action alleging race and gender discrimination in almost all aspects of employment on behalf of approximately 600,000 potential class members.

Through nearly four years of motions and negotiations the claims have narrowed significantly, and we are optimistic that the recently argued class certification motions will be denied.

A case this size presents a lot of challenges. Effectively and efficiently locating, retrieving, organizing and reviewing over 100 million pages of documents requires a great team, both in the law firm and at the client's offices.

Working with that team to identify from among that mass of material the documents that really tell your client's story is perhaps the greatest challenge.

Q: What accomplishment as an attorney are you most proud of?

A: Negotiating effective and fair settlements on behalf of very deserving clients in several high-risk, high-profile cases has been my proudest professional accomplishment.

For example, in Structured Settlement we represented a class of 250 individuals who all had catastrophic injury and wrongful death claims settled long in the past.

Those settlements were intended to provide periodic payments to them, often for decades to come. Without our clients' knowledge, the trust and enabling instruments that created their structured settlements were changed, the funding sources looted and the settlement payments stopped.

We were successful in recouping 100 percent of the money owed each and every client, plus attorneys' fees and litigation costs, making each and every client truly whole.

Q: What aspects of law in your practice area are in need of reform, and why?

A: Two items come to mind, both related to the burden and costs of class action litigation.

First, the cost of discovery in complex litigation is too high, and the ESI discovery rules, while commendable for providing structure and practice guidance, now drive business data storage practices and do little to rein in costs.

Phased discovery (when ordered) can restrain discovery costs in the early stages of a putative class action case, but the obligation to capture potentially relevant data still imposes a significant burden on the parties (usually the defendant).

Secondly, all trial courts should be attentive to the Supreme Court's admonition in General Telephone of Southwest v. Falcon to undertake a "rigorous analysis" when plaintiffs assert class claims.

While many suits merit class treatment, many more do not, and motions seeking certification are accorded too great deference by some trial courts. Once certified, many cases settle without regard to the ultimate merits because the litigation burden is so heavy, and others go through additional (and avoidable) decertification proceedings.

Q: Where do you see the next wave of cases in your practice area coming from?

A: We handle a wide variety of complex litigation cases, so it is hard to choose one for crystal ball gazing.

I foresee no ebb in employment-related class action cases, but I think that class action suits related to battered financial institutions will provide the flow.

Thousands of bondholders and claimants were injured (seemingly with little recourse) by the collapse and bankruptcies of Chrysler and the “old” General Motors.

Thousands more businesses and individuals with debt and equity interests in the financial sector increasingly will turn to the courts to challenge not only decisions made during our recent, highly leveraged past, but also management attempts to “reorganize” entities — separating “good assets” from the “bad assets” — outside the protection of the bankruptcy court.

Q: Outside your own firm, name one lawyer who’s impressed you and tell us why.

Bill Lann Lee of Lewis Feinberg Lee Renaker & Jackson. I have known Bill for more than a decade, and admired his work at the NAACP and at the Department of Justice.

More recently I have had a premium seat from which to observe Bill’s qualities as we sit across the table from one another in a major employment class action.

In addition to being a brilliant lawyer, Bill is a gentleman. Without retreating in his zealous representation of his client’s interest, he remains a sensible and reasonable person — the consummate professional.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: I offer two pieces of advice:

1. Be creative — don’t let the minutiae blind you to the bigger picture and opportunities to move in unexpected directions.

2. Master the rules of procedure. While they are important in all litigation, it is crucial that counsel appreciate how procedural rules can be employed to control and win putative class action cases at the earliest possible opportunity — whether representing plaintiff or defendant.