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Q&A With Robins Kaplan's Ryan Marth

Law360, New York (May 14, 2013, 1:23 PM ET) -- Ryan W. Marth is a principal in Robins Kaplan Miller & Ciresi LLP's Minneapolis office. He focuses his practices on antitrust and trade regulation litigation and general business litigation. Marth is part of the team of trial lawyers currently representing a class of 8 million U.S. merchants in In re Payment Card Interchange Fee and Merchant Discount Litigation.

Q: What is the most challenging case you have worked on and what made it challenging?

A: In re Payment Card Interchange Fee and Merchant Discount Litigation. For me, this case started in my first month of private practice when I asked Craig Wildfang, the senior lawyer in our antitrust group, for work. He handed me a folder and said, "Why don't you write a complaint?" Eight years later, that complaint turned into a $7.25 billion settlement with the defendants, which is the largest known settlement in the history of the antitrust laws. Before we could reach this point, however, we dealt with a number of cutting-edge legal and factual issues, including defendants (MasterCard and Visa) that restructured in the midst of our case, attempting to mitigate liability in ours and similar cases.

In addition to the complex legal and factual landscape surrounding our case, the payment-card industry was under heavy scrutiny from regulators and legislatures in the United States and abroad. This resulted in caps on debit-card fees to merchants and loosening of restrictions on Visa and MasterCard's point-of-sale rules while we were litigating the case. And while the legal landscape was evolving, the payment-card industry was changing from an industry dominated by magnetic-stripe cards to one that was opening to new payment platforms. All these things put together made this case both more interesting and complex than the "typical" cartel case where the cartel had broken up years before settlement or trial.

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

A: Pleading standards should not be set unrealistically high. In the antitrust context, Rule 12 practice serves an important function of weeding out unmeritorious cases and those that lack factual support. Some courts' interpretation of Twombly and Iqbal seem to impose an unrealistically high expectation on a plaintiff before it has access to discovery. Some courts seem to be realizing this, however, notably Judge Richard Posner's decision in In re Text Messaging and the Second Circuit's decisions in Starr v. BMG and Anderson News v. American Media seem to recognize the danger of "overcorrection" based on Twombly and Iqbal.

Q: What is an important issue or case relevant to your practice area and why?

A: The reach of Section 1 of the Sherman Act into joint ventures and more novel business promises to be an important issue in the coming years. Especially in the health care field, I can see this issue arising in the Accountable Care Organization context and other situations. The U.S. Supreme Court clarified the law somewhat in Dagher and American Needle, but there remains significant gray areas between what is clearly unilateral conduct and what is clearly an "agreement." These gray areas pose challenges for litigants, courts and corporate counselors.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: H. Laddie Montague of Berger Montague. Laddie is one of our co-counsel in the In re Payment Card matter and has the honor of being one of the true pioneers in the plaintiff-antitrust bar. Laddie's reputation and experience give him an air of credibility that is difficult for others to copy. When he speaks, he therefore has a unique ability to capture the attention of either the court room or the board room. He also demonstrates a courtesy and respect for others — colleagues, courts and opponents — which is often absent from the practice of law and which I strive to emulate.

Q: What is a mistake you made early in your career and what did you learn from it?

A: In an early case, I made the decision that it was not worth my time to pursue minor issues with the opposing party's discovery responses and scheduling of depositions. While none of these issues were major standing on their own, their accumulation led to delay in the case that was detrimental to — and not appreciated by — my client. While we eventually reached a result that the client was satisfied with, I learned to view even the most minor issues in a case in the context of the "bigger picture" of the client's litigation and business goals.

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