

## Q&A With Faegre Baker Daniels' Jesse Linebaugh

*Law360, New York (April 23, 2013, 1:00 PM ET)* -- Jesse Linebaugh is a partner in Faegre Baker Daniels LLP's Des Moines, Iowa, office and co-chairman of the firmwide securities and financial services litigation practice. He specializes in financial services litigation, noncompete litigation and corporate internal investigations. Linebaugh represents insurance companies, banks and broker-dealers in litigation and regulatory inquiries throughout the United States. He has defended matters before state courts, federal district courts and the Eighth Circuit Court of Appeals, as well as handling arbitrations pending in more than 20 states. Linebaugh has also handled regulatory investigations before the Securities and Exchange Commission, the FBI, the Financial Industry Regulatory Authority, state attorney generals' offices, and state security and insurance divisions.

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

A: On the Friday before a Labor Day weekend, I received a frantic phone call from a member of the board of directors of a medium-sized broker-dealer. The police were on their way over, a FINRA regulator and state securities regulator were on the phone, and at least one customer said he was going to come back to the office with a gun and “get what was stolen from him.” They needed help immediately.

It turned out that a customer of the broker-dealer went to a branch office to ask a question regarding a “special note” he had purchased directly from the president/CEO. The president/CEO had told the customer to always deal with him directly on this investment, but he was in the hospital with a grave illness and did not return the customer’s phone call. The branch office had never seen this investment and called the home office. They eventually discovered that over the course of 15 years, the president/CEO had run a fairly significant Ponzi scheme, which included selling fake shares of the broker-dealer itself. All told, he stole about \$1.5 million from his clients.

Upon receiving this information, I dropped everything and got in the car and drove to the broker-dealer. Our firm conducted a thorough internal investigation. My colleagues and I handled all communications and subsequent regulatory investigation with the state securities division, Financial Industry Regulatory Authority and the Securities and Exchange Commission. We handled the criminal investigations with the FBI and local police. We brought offensive claims against other potentially liable third parties. We defended all 11 separately filed civil suits, and we handled the insurance coverage litigation whereby my client had to bring suit arguing that it should have coverage for the president’s wrongdoing. Finally, the president/CEO passed away and we had to represent the broker-dealer in the president/CEO’s estate process. All of these issues were pending at the same time.

After a two-year ordeal, we were thrilled to report that every dollar the president/CEO stole was paid back to the clients (the vast majority coming from insurance coverage and other potentially liable third parties), and the broker-dealer did not receive as much as a warning from any regulatory body.

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

A: It is too easy for a disgruntled customer to simply make an allegation against a registered representative and have that allegation appear on the registered representative's permanent record. FINRA must relax the motion to dismiss rules to eliminate disgruntled customers from making bogus claims. Such bogus claims allow a disgruntled customer to have a far-reaching effect on the very livelihood of the registered representatives.

Without a motion to dismiss, a registered representative must spend a significant amount of attorneys fees to have the issue handled during an arbitration. A valid and acceptable motion to dismiss hearing would allow a bogus claim to be litigated and heard without spending a lot on attorneys fees. This would prevent so many registered representatives from having to make the tough choice of accepting a bogus claim on their record by settling a nonsensical suit simply because they do not have the resources to pay an attorney to fight until the arbitration.

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

A: On Feb. 10, 2013, the New York Times ran an article entitled: "Complex Investments Prove Risky as Savers Chase Bigger Payoff." The article quotes multiple state regulators explaining how they are dealing with the proliferation of alternative investments, including investments in startup companies and bundles of commercial real estate properties. Many investors nationwide, after considering all available risk, properly invested in these vehicles and they were perfectly suited for the investors' risk tolerance and investment objectives. However, as the article alludes to, there is now a movement to blame broker-dealers and investment advisers if these investments do not perform as they had "hoped." This movement is detrimental to the industry.

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

A: I enjoy working with intelligent and respectable opposing counsel — those who fight hard for their client, but do so in a way that is befitting of the legal profession. I have fortunately worked with many such lawyers on the other side, but Dave Liebrader of the Liebrader law firm in Las Vegas is someone whom I have arbitrated against in California and Louisiana and who continually impresses me.

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

A: In a big firm with a lot of billable work, it was easy as a young lawyer to spend all of my time servicing my clients to the absolute best of my ability. While this should be the top priority for any lawyer and is no doubt the key to a successful practice, when I look back on my first decade of practice, I cherish the times that I turned off the billable timer and asked my senior colleagues to lunch. It is amazing what you can learn in a one-hour lunch from those who came before you — and the knowledge I gleaned from them often empowered me to provide even higher quality legal work to my clients.

*The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*