

## Q&A with Schulte Roth's Marty Perschetz

Law360, New York (January 10, 2011) – Martin L. Perschetz is a partner in the New York office of Schulte Roth & Zabel LLP, co-chairman of the firm's litigation group and a member of the firm's executive committee. Perschetz concentrates his practice in the areas of white collar criminal defense, U.S. Securities and Exchange Commission enforcement, securities litigation and accountant liability.

He was previously an assistant U.S. attorney for the Southern District of New York, where he was chief of the Major Crimes Unit and led a team of prosecutors in the investigation and prosecution of federal criminal cases involving a wide variety of complex business and tax frauds. He also served as chief counsel to the Mayor of New York City's Special Commission to Investigate City Contracts and as deputy commissioner of the New York City Department of Investigation.

Perschetz has represented clients in matters involving federal and state prosecutors, the SEC, the New York Stock Exchange and the Financial Industry Regulatory Authority, as well as in private civil litigation and in corporate internal investigations. His clients in recent securities and financial statement matters have included PricewaterhouseCoopers LLP and Big Four accounting firm auditors; investment funds Millennium Partners and The Clinton Group; and former senior officials at Merck, Vivendi Universal SA, Kmart Corp. and other large companies.

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

A: The federal securities class action brought by shareholders of Vivendi Universal SA, in which we successfully represented Vivendi's former chief financial officer, Guillaume Hannezo, who was charged with violating, inter alia, Sections 10(b) and 20(a) of the Securities Exchange Act.

To our knowledge, of the many large and complex such lawsuits that have been brought over the years, only a very small handful actually have gone to trial, as almost all get settled or dismissed on the pleadings or on summary judgment. Vivendi, we believe, is the largest such case ever to go to a jury verdict. The complaint originally was filed in the summer of 2002. The four-month trial ended this past January, following seven years of arduous discovery (and mostly French depositions taken in Paris), complicated Hague Convention procedures and extensive motion practice. It involved massive

amounts of evidence and numerous highly sophisticated and nuanced issues of accounting and financial reporting. The trial vividly reflected the difficulties and challenges of organizing, synthesizing, corraling within the Rules of Evidence and most significantly, presenting to the jury — in something resembling an understandable fashion — a mountain of complex factual and expert material.

There are many aspects of jury trial rules and practice that are, to put it mildly, not a perfect fit for such lengthy, complex cases. The key challenge could be summarized as adjusting to make this fit as comfortably as possible. I am glad to say that we seem to have met this challenge, as the jury found Hannezo to be not liable on any of the claims against him — a very gratifying result after so much hard work, for so long a period of time, by our trial team.

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

A: In the heat of white collar, regulatory and civil litigation battles, the danger of unpleasantness and hubris is always lurking. Zealous advocacy over important issues should not be inconsistent with perspective, some humility and a sense of humor. I (at least) hope that in over 30 years I have practiced in a way that reflects this.

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

A: The mere filing of a white collar indictment or an enforcement complaint in a major matter has become so harmful economically, and this, too often, is used by prosecutors and regulators as leverage to extract guilty pleas or settlements. In addition, in the complex civil litigation arena, pretrial discovery and motion practice has wildly proliferated well beyond the boundaries of what is truly necessary in order to proceed to trial or otherwise dispose of a case, causing undue expense, inefficiency and inconvenience to parties and witnesses. More meaningful limits are sorely necessary.

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

A: Everyone seems to be waiting for the big “wave” of cases arising from the recent economic debacle, but so far this seems to be more of a ripple than a wave. Perhaps the problems leading to the crisis related less to violations of laws and regulations, and more to the absence of applicable laws and regulations, or perhaps this wave is still building to a crescendo that will prove to be substantial. Foreign Corrupt Practices Act-related matters also seem to be on the rise.

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

A: With luck, one has during a career a mentor and role model who through personal example teaches, inspires and serves as an example of what this profession is really supposed to be about. I have been extraordinarily fortunate to have had John S. Martin Jr. fit that bill at such an extraordinarily high level for me. I worked for John beginning with my first day as a

lawyer at what was then Martin Obermaier & Morvillo — and was lucky to have all of those guys (John, Otto Obermaier and Bob Morvillo), as well as fourth partner Tom Fitzpatrick — from whom to learn and with whom to develop lifelong friendships.

I then became an assistant U.S. attorney under John, chief counsel to a special New York City commission that he headed, and later his partner at Schulte Roth, from which he left 20 years ago to be a federal judge. (As John is so fond of saying, I have never gotten a job without him!) Now back in private practice as a mediator, he remains a great friend and, still, a true role model. He taught me how to practice "the right way."

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

A: As I frequently emphasize to our newest, youngest lawyers at the firm, take an avid interest in professional development that goes well beyond the boundaries of mere "assignments." Watch trials and oral arguments. Attend depositions. Ask questions. Litigation is a profession in which opportunities to learn from real-life examples abound. No amount of classroom or CLE training is a substitute, and no accumulation of mere billable hours is enough for full professional development as a litigator.

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