



# DEALTALK — Behind every successful activist, there is a lawyer

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NEW YORK (Reuters) — When TPG-Axon Capital launched a proxy campaign against energy company SandRidge Energy Corp, it choreographed an attack worthy of a seasoned activist, even though it was the 8-year-old hedge fund's only second such public fight.

TPG-Axon hired private investigators at Kroll to unearth alleged governance lapses at SandRidge. It found several candidates to nominate on the company's board. It even put up a website for a months-long campaign that eventually led to the ouster of CEO Tom Ward earlier this year.

The hedge fund had experienced help. Even before it launched the campaign, it hired Schulte Roth & Zabel LLP lawyer Marc Weingarten, a 30-year veteran of activist campaigns, and his partner David Rosewater, for advice.

Weingarten, Olshan Frome Wolosky LLP's Steve Wolosky, and a handful of other lawyers are the go-to advisers for activist investors, dominating a field that is often shunned by large law firms that are loath to upset their corporate clients.

These lawyers help activist investors devise campaign strategies, broker introductions with other investors to find common cause, and help find candidates to replace corporate boards. Their analysis includes background checks on the board members, studying the shareholder composition, and proxy advisory reports.

Overall, they help an investor determine if it is worthwhile to stage a campaign.

"It's generally about finding out where are the vulnerabilities and assessing their risk profile," Wolosky said. "If a lot of shareholders are retail investors, for example, it's going to be a harder proxy contest because they don't vote as much."

Wolosky and Weingarten stand out because they have dedicated their decades-long practices largely to advising activist investors. They are joined by a handful of lawyers at the largest law firms that have made exceptions for some big-name activist investors.

Bill Ackman of Pershing Square Capital Management, for example, often turns to Kirkland & Ellis LLP's Stephen Fraidin

and Sullivan & Cromwell LLP's Alan Sinsheimer. Third Point's Dan Loeb has relied on Tariq Mundiya and Michael Schwartz at Willkie Farr & Gallagher LLP, as well as Dennis Friedman from Gibson Dunn & Crutcher LLP.

Paul, Weiss, Rifkind, Wharton & Garrison LLP attorneys Robert Schumer and Steven Williams have Elliott Management as a major client, recently advising the investor on its proxy contest with Hess Corp. Third Point declined to comment, while the other investors did not respond to requests for a comment.

"Just as the best activists are good strategists, the same can be said of activist lawyers," Willkie Farr's Schwartz said.

Still, many large law firms — including Wachtell, Lipton, Rosen & Katz and Skadden, Arps, Slate, Meagher & Flom LLP — have made a policy of not working with activist investors. Wachtell did not respond to requests for a comment. Skadden confirmed its policy of only working with corporate management.

As a result, Schulte Roth, best known as the long-time firm for hedge fund manager Cerberus Capital Management, and Olshan Frome, a New York-based firm with only 85 attorneys, have come to dominate the activism market.

Of the 75 proxy fights launched this year, the Olshan Frome team has advised on 21, according to FactSet SharkWatch data. The team has also been involved in such high-profile fights as Starboard Value LP's effort to break up the proposed \$4.7 billion takeover of Smithfield Foods Inc by Shuanghui International Holdings.

The Schulte Roth team, co-headed by Weingarten and Rosewater, meanwhile, has worked on at least 15 fights this year, according to the data.

Many activist situations are resolved before they ever become public and are not counted in the data.

## FIERCE FIGHTS

Of the 75 proxy fights so far this year, activist investors have scored partial or full victories with 42, according to SharkWatch data. Management won 20 cases and results are pending

for the remaining 13. In 2012, activists scored partial or full victories at half of the 74 proxy fights.

For activists, the importance of a carefully planned strategy is only increasing as companies become more aggressive about defense, bringing in their own advisers at the first signs of trouble.

Nuance Communications Inc, for example, enlisted investment bank Goldman Sachs Group Inc after billionaire investor Carl Icahn revealed a stake in the company as a passive investor, according to people familiar with the matter. Nuance and Goldman declined to comment.

After the financial crisis put an end to the buyout boom, it became harder for activists to agitate for the sale of a company, in part because private equity firms and corporate buyers are more careful about their purchases.

"It was low-hanging fruit — try to force a company to be acquired and there were enough private equity firms eager to buy them," Kirkland's Fraidin said. "Now, private equity firms are not quite so eager to step up and acquire the company, requiring sophisticated strategy from investors."

## LAWYER AS MATCHMAKER

Schulte Roth's Rosewater said they help analyze the governance structures of potential targets to understand what can be done. But their services go far beyond the basics.

They work alongside executive search firms, and use their personal connections to find candidates for dissident board slates.

Sometimes, they even introduce activists to other investors who may have similar views on a company. That is particularly valuable to "accidental activists," or funds that agitate only occasionally, the lawyers said.

Wolosky, who is advising Coppersmith Capital Management in its proxy battle against healthcare company Alere Inc, for example, introduced Scopia Capital Management to the investor. The two funds are now working together against Alere. A shareholder vote is scheduled on Wednesday.

"Sometimes I pair up investors to work together since one investor might not have the capital to do it on their own," Wolosky said. "It's a little bit of matchmaking."

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