

BUSINESS & CAREERS



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As stocks fall lawsuits rise

CHRISTOPHER GULY OTTAWA

The recent market meltdown that has left holdings in many investment portfolios down or depleted has also led to “an unprecedented” number of investors wanting to sue their investment advisors, according to Toronto lawyer Hugh Lissaman, who has never witnessed such a litigious atmosphere during his 16 years practising in the area of stockbroker-investment dealer litigation.

On any given week, Lissaman receives at least six phone calls from potential clients who’ve lost money in the market.

Usually, they don’t want to commence legal action against their advisors — but some feel they have no choice, explains Lissaman, who, nine years ago, established a solo practice that now deals mainly with this type of plaintiff work.

After reviewing a would-be client’s brokerage statements, he decides whether any dips are the result of a decline in the market or caused by alleged broker negligence, where there may be a cause of action.

“If someone is looking to the brokerage firm for

some resolutions or mediation down the road or to a pre-trial judge or judge, the question I put is: ‘I lost money on the market too. What makes your case a negligence case?’” offers Lissaman, who was counsel for the defendant in the precedent-setting Ontario case, *Blackburn v. Midland Walwyn Capital Inc.*, [2003] O.J. No. 621 (S.C.J.), which addressed such legal issues as the duty of firms to warn clients about rogue stockbrokers who have recently had their employment terminated.

Yet sometimes the signs are quite obvious that something untoward has occurred.

For instance, a 78-year-old woman, who had lost money in 14 mutual funds, contacted Lissaman for help. He, in turn, passed her portfolio to veteran securities industry compliance expert Douglas Fox, the founder and principal of Toronto-based Risk Management Services Inc., for review.

Fox determined that of the 14 mutual funds she held, 12 were considered “high-risk” and the remainder “medium-risk,” according to industry analysts.

“That lady had no business being in those mutual funds,” says Lissaman. “She was relying on her portfolio

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Draft, edit docs in real time



HI-TECH

**LUIGI
BENETTON**

Drafting and editing legal documents in real time looks different when the co-authors aren’t in the same room. Just ask Brock Smith.

“We log in through a secure portal using NetMeeting,” says the Vancouver-based partner in the technology and IP group at Clark Wilson LLP, adding that participants also use phones since web connections sometimes choke voice traffic.

“We see the changes real-time,” Smith continues. “It doesn’t remove the need to get a copy after the call as for any other document you advise a client on, but you get a good feeling for what’s coming on and you reduce the number of surprises when the next draft comes back.”

Lawyers are discovering methods of document collaboration that don’t involve travel to a designated location. Whether real-time (like NetMeeting) or asynchronous (such as wikis and document management systems), these methods enable legal teams to leave behind less efficient processes.

The asynchronous model may better support lawyers whose schedules don’t jibe easily.

“In a law firm or department, documents flow in many directions... back and forth between parties in their drive to negotiate and finalize documents,” says Darren Traub, the CIO of Markham-based Legalwise Outsourcing Inc.

Legalwise honed its grasp of this flow as it developed systems to shuttle documents from North American clients to lawyers in India and back.

The Legalwise setup offers security insights worth embedding in file management systems. All users, for instance, access the application and the documents it houses using secure Internet connections. “All of the documents remain on servers in datacentres

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Canada-U.S. dual law degrees grow

KAREN MCDUGALL EDMONTON

Globalization is changing how we study and practise law.

In a global environment, those with knowledge of more than one legal system are clearly at an advantage. Canadian law schools are reacting to that idea through the recent trend of joint LL.B./J.D. degree programs with law schools south of the border. Under these programs, Canadian law students divide their time between a Canadian and an American law school and emerge with a degree from each.

The University of Windsor's faculty of law has had such a program for several years, in partnership with the University of Detroit Mercy School of Law. So has the University of Ottawa, which offers participants a choice of one of two American law schools — Michigan State University College of Law or American University Washington

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Online document collaboration way of the future

Drafting

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in Canada," explains Legalwise founder Gavin Birer. "Lawyers view documents remotely without the ability to change, copy, print, download or perform modifications to those documents."

"We assign role-based permissions to our lawyers to restrict access to areas that they should not be in," Birer adds.

Since security need not pose a concern, modern document collaboration systems attract increasing amounts of attention from lawyers due to the business challenges they enable firms to meet.

"We don't have to delay meetings to the point where we can get everybody in the same room," Smith points out. "It allows parties and counsel to bring their knowledge and positions together."

"In large-scale transactions, everybody has a common goal," Smith adds. "There's pressure on lawyers today to get things done as quickly as possible."

"Working in an online environment forces you to move away from paper," says Birer. "If lawyers are in the same geographic location, they can still sit around a table and flip the pages

on a document. You don't have that luxury if you're remotely dispersed. You can't rely on paper documents anymore. That speeds up the process in terms of searching, error-checking, document comparison and so forth."

Smith offers a potentially contentious opinion: "You reduce the lag time using the old-fashioned way, circulating documents by e-mail," he says.

"If you take a major, 100-page transaction document and circulate it to 15 people, every one of them will have comments," Smith explains. "You will have 15 print-outs of a 100-page document and you get to figure out how to assimilate all those comments into a usable draft that can be circulated to everybody else."

"Then you have 15 extra drafts of a document that you have to buy storage for."

Omar Ha-Redeye, a University of Western Ontario law student, shares Smith's point of view. "It's all incredibly inefficient, especially in light of the technology we have today," he says, adding that lawyers will need to better their productivity using such measures. "If they don't, their competitors will," he says.

Mark Rotman, president of Mississauga-based MessageWare Inc., points out another flaw with

e-mail. "If you use Outlook Web Access natively," he says, "and you save a document to edit it by choosing 'Open' instead of 'Save' from the pop-up in a web browser, underneath the covers, the file is stored in the temporary cache area of the browser and it stays there."

"If you walk away from the machine, even though you think you're done with the document, it stays in the temporary files area and is visible to third parties."

The drive to retain associates may also play a part in adopting modern document collaboration tools. "The majority of graduating lawyers are now female, and the majority of practising lawyers are not," Ha-Redeye notes. "Legal practise is not conducive to having a family, picking up kids, dropping off kids and those types of responsibilities, which are not necessarily gender-specific but tend to be, given our history."

Why haven't modern collaboration tools permeated the legal industry? "Two perceptions seem to block adoption," says Smith. "One is that the technology is complex, though I'm not so sure it is. All you're really doing is logging into a common server where one person takes charge by loading a Word document."

"Ultimately, you challenge the author to show off decent word-

processing skills," he adds, chuckling.

The second perception: "The web is not as secure as sitting in a room with people around a table looking at paper on that table or an offline document projected on a wall," Smith says.

Ha-Redeye believes that collaboration systems might strengthen groupthink in organizations as hierarchical as law firms. "They're different from anonymous tools like Wikipedia," he says. "People may be highly deferential to those higher in a hierarchy than they are."

Document collaboration, by its nature, encourages input into documents, and that might not always be desirable. Smith offers the following example: "A company might have a standard form lease or a standard form software licence that it wants to put out, and if you put it on screen, you almost invite people to make changes when you might not want that," he says.

Of course, there's also aversion to change. "If something's new, many people just dismiss it out of hand," Smith says. "But you could hand pieces of paper or project a document onto the wall for people gathered in the same room. Online remote access is just the next step." ■



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