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Law Blog Lawyer of the Day: Richard Marmaro

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With more than 140 companies touched by the stock-options backdating scandal, there is lots of legal work being dished out. Among the busiest lawyers on the scene: Richard Marmaro.

The Skadden Arps partner represents Brocade's former CEO Greg Reyes, who has been charged with criminal and civil securities fraud. He is also representing William Ruehle, the former CFO of Broadcom, whom prosecutors are strongly considering filing criminal charges against, according to the Wall Street Journal.

Reyes has pleaded not guilty to the charges, and Marmaro says that Ruehle didn't break the law. In addition to Reyes and Ruehle, Marmaro says that he's representing several other executives he can't discuss because the investigations are in their early stages. Marmaro has also represented board committees at KLA-Tencor and HCC Insurance Holdings in connection with their internal backdating probes.

Handling multiple backdating cases at once is "empowering," he says, "because it really sensitizes me to seeing all sides of an issue to see what conduct is appropriate, what conduct is defensible and to see all the different shades of gray," Marmaro, 56, told the Law Blog.

The KLA investigation was viewed by the government as one of the tougher and most thorough internal probes of the backdating scandal, according to people familiar with the matter. Upon announcing the results of the investigation, KLA

said its general counsel resigned and that it terminated its employment agreement with its former CEO. Last month, KLA announced that the SEC had informed the company that it was now subject of a formal probe.

Marmaro, who joined Skadden in January 2006 from Proskauer Rose and works out of their West Coast offices, has been very public in defending his clients and expressing his views on the backdating prosecutions. He has made multiple television appearances and been quoted in numerous publications, including an op-ed he co-wrote in the WSJ. And other lawyers involved in backdating cases say that Marmaro has emerged as a thought leader among the white-collar bar in articulating how to defend backdating prosecutions.

"When we get past all the hype, many so-called 'backdating' cases will be seen as good faith misapplications of outdated accounting rules regarding non-cash expenses that were irrelevant to investors," Marmaro says. "Those errors had zero real-world impact on how the marketplace valued companies."

But if the backdating cases amount to a molehill, how does he rationalize that view with, say, the aftermath of his KLA probe, in which executives departed the company and the SEC is now investigating? "The fallout is explained by an overreaction by the SEC to what is essentially an issue of books and records, not securities fraud," says Marmaro. "Since the SEC is being so aggressive in all of these matters, companies have no option but to treat them seriously, and from the perspective of independent board members, the most prudent approach is to sanction the responsible officers as a matter of good corporate governance."