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# Lessons learned from litigation

Most legal cases involving brokers/advisors show they were focused on product, not process. As Don Trone of The Center for Fiduciary Studies said, "Fiduciary liability is not determined by investment performance, but rather by whether prudent investment practices were followed. It's not whether you win or lose, its how you play the game."

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A provider's focus on product over process can lead to improper diversification, unsuitable investments and overconfidence about their advice. Sometimes, cases involve investment providers who were dishonest or greedy. But usually they stemmed from terrible mistakes made that were against the grain of common sense, prudent investment practices and years of case law.

• Conflicts of interest - Proprietary products taint objectivity, and an investment provider can't serve two masters - the investor and the firm. When compensation is driven by the solution, a conflict exists. It's not just the initial sale, but also the ongoing monitoring and evaluation of the proprietary products that are questionable.

• Lack of experience - Some firms have solid reputations, but experience can vary tremendously among brokers and advisors. This inexperience often led to huge overconfidence in the late 1990s and, therefore, concentrated growth equity positions.

Alternatively, the bear market from 2000-02 caused many providers to react like a deer in the headlights as the stock market retraced its steps. Education and credentials can't overcome experience.

• Lack of oversight - Many of these same firms not only placed inexperienced professionals in key positions with clients, but failed to adequately supervise them. Although many promote "process" and fiduciary responsibility, it appears many of the advisors were really on an island.

• Too many clients - The time of the more experienced brokers/advisors can get stretched, including by clients that don't fit in their niche. We have seen brokers/advisors with a focus on retail customers but also having one or two large clients, such as an institution or family office, who are outside their scope of expertise.

A process-oriented approach enables investment providers to better understand their client's objectives. Make sure you know your advisor as well. Go far beyond getting references, as the advisor's handpicked ones almost always will be good.

Check out reputations of the firm and the specific advisor with your well-connected friends, business associates and their contacts. If no one can vouch for them, that's a sign of inexperience.

Visit the SEC Web site for a compliance check, and review parts one and two of SEC Form ADV. Talk to other trusted advisors, such as your CPA and attorney.

A reputation - good or bad - spreads like a wildfire and it's only prudent to investigate before making a decision.

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