An ALM Publication

THE AMERICAN LAWYER | THE AM LAW LITIGATION DAILY

# How Robbins Geller Beat the Feds in Walmart Settlement

By **Jenna Greene**
June 25, 2019

Looking for the real winner in last week's $282 million settlement between Walmart, the Justice Department and U.S. Securities and Exchange Commission that resolved charges of overseas bribery?

Robbins Geller Rudman & Dowd.

Because while government officials in press releases were busy patting themselves on the back ("The Department of Justice will continue to aggressively investigate and prosecute foreign corruption" and "Through our efforts, we delved through layers of transactions and uncovered the bribery of foreign officials" and "The FBI will hold corporations responsible when they turn a blind eye to corruption"), they neglected to mention one thing: Robbins Geller lawyers extracted a bigger settlement from Walmart than either the DOJ or SEC for the same underlying misconduct, and they did it more quickly.

For those who might question the value of a private right of action in securities litigation, this case is a good example of its efficacy.

In December, Robbins Geller litigators led by Jason Forge hammered out a $160 million deal with Walmart, which was represented by Latham & Watkins lawyers including Peter Wald, for covering up suspected overseas corruption in Mexico.

Six months later, the SEC on June 20 announced that Walmart would pay $144 million to settle charges of violating the Foreign Corrupt Practices Act, while the DOJ settled FCPA criminal charges for $138 million. The federal cases also covered alleged wrongdoing in India, Brazil and China.

**Walmart store**

It's like backwards day. Usually the class action rides on the coattails of the federal case, and the DOJ or SEC gets the biggest payout.

So what happened here?

For one thing, it wasn't some years-long federal investigation that cracked the case. It was New York Times reporter David Barstow, who in April of 2012 broke the story that Walmart's largest foreign subsidiary, Wal-Mart de Mexico "had orchestrated a campaign of bribery to win market dominance," and that when company leaders were informed, they hushed it up.

Once Walmart knew the story was coming, it allegedly disclosed in an SEC filing a few months prior to publication that it had launched an internal investigation into its FCPA compliance.

For once, this meant that private lawyers and the government started their cases on relatively equal footing.

Still, the feds have far more investigative tools at their disposal. Robbins Geller actually filed a Freedom of Information Act suit against the SEC in a bid to force the agency to share thousands of documents Walmart had turned over to the government. The SEC refused, successfully arguing that the documents were part of an ongoing investigation.

This meant Robbins Geller had to build its case with less information than the feds.

The government also has far more leverage to exact settlement concessions. "The SEC can ban people from serving on corporate boards, the DOJ can put people in jail," Forge noted. "The government has a way bigger stick."

All he could do was threaten Walmart's bottom line.

To Forge, it's "absolutely shameful" that he and his co-counsel reached the settlement finish line before the feds. "I'm disgusted at the pace the government worked," he said.

Moreover, he said he knows of no other cases where the SEC and DOJ each brought separate charges, but neither recovered as much as a parallel private securities suit.

"I think the reason the government took so long and came up short was largely because of politics," Forge said, noting that the case spanned both the Obama and Trump administrations.

By contrast, he said, "There was no incentive for us to do anything but maximize the recovery."

They did.

The class action settlement terms are generous—shareholders who purchased or otherwise acquired Walmart common stock between December 8, 2011 and April 20, 2012 stand to receive at least 50% of their damages. By comparison, the average shareholder recovery in comparably-sized 10b-5 class actions  is 3% of damages, according to Robbins Geller.

It was Walmart's first-ever securities class action settlement, as well as the largest confirmed settlement ever obtained in a single case against Walmart—a record that still stands after the SEC and DOJ cut their deals.

As Forge put it in a court papers, "As the largest retailer in the world with hundreds of billions of dollars in annual revenues, Walmart has a proven track record of aggressively, and successfully, defending itself. It does not simply throw money at plaintiffs to make them go away."

The firm was awarded attorneys' fees of 30% of the $160 million settlement (a cool $48 million), plus expenses in the amount of $616,964.66.  Barrett Johnston LLC served as additional counsel and Patton Tidwell & Schroeder was liaison counsel.

"The court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the 'percentage-of-recovery' method," wroteChief U.S. District Judge Susan Hickey of the Western District of Arkansas, who approved the payment on April 8. "Lead counsel conducted the litigation and achieved an exceptional settlement with skill, perseverance, and diligent advocacy."

The DOJ and SEC might take a page from their playbook.

***Jenna Greene*** *is editor of The Litigation Daily and author of the "Daily Dicta" column. She is based in the San Francisco Bay Area and can be reached at jgreene@alm.com*