An ALM Publication

THE AMERICAN LAWYER

THE AM LAW LITIGATION DAILY

Litigators of the Week: Motley Rice and Robbins Geller Land an $809M Securities Settlement From Twitter

By Ross Todd
September 24, 2021

The Litigation Daily was on the record about being excited about the prospects of an actual, real-life securities class action set for trial within striking distance of the home office here in Berkeley, California.

Such trials are nearly as rare as hens' teeth. Or thereabouts.

And this case was against Twitter, no less. Jack Dorsey, the MVP of CEO facial hair, was on the potential witness list.

So here's Exhibit A in our case that the Litigation Daily does not hold a grudge: Our Litigators of the Week are **Lance Oliver** of **Motley Rice** and **Dan Drosman** and **Tor Gronborg** of **Robbins Geller Rudman & Dowd** who secured an $809 million settlement agreement with Twitter this week on the morning that the case had previously been set for trial.

Courtesy photos

(L-R)Dan Drosman, Tor Gronborg of Robbins Geller and Lance Oliver of Motley Rice.

Litigation Daily: Who were your clients and what was at stake?

Lance Oliver of Motley Rice: Our client is KBC Asset Management NV, but as class counsel, we are always cognizant that we represent all investors from the largest institution to individual investors. The money they lost is real, and it's important to them for many reasons, such as college savings and retirement. So in a way, we represent the integrity of the market.

Tor Gronborg: Robbins Geller represents the National Elevator Industry Pension Fund and the class of Twitter investors. The National Elevator Industry Pension Fund supports tens of thousands elevator constructors – the people who build, install and repair the elevators we all use. The money recovered in this settlement will provide retirement benefits for these workers, and, more broadly, the fund's leadership in stepping up and serving as a class representative plays a critical role in upholding the federal securities laws.

Who all was on the plaintiffs' team and how did you divide the work?

Oliver: For Motley Rice, our primary attorney team included **Bill Narwold**, myself, **Gregg Levin**, **Meghan Oliver**, **Chris Moriarty**, **Max Gruetzmacher**, **Meredith Weatherby**, **Kelly Quillin** and **Vanessa Davis**, which is a fairly large attorney team for us. Within this group each attorney had his or her role, but generically, we divided labor into the pretrial discovery litigation team, the settlement team and the trial team. For example, I was not really that involved in the case until it became clear that there was a real possibility of it going to trial. Then, of course, there were so many staff members who were also integral to our success. They really are the unsung heroes of any large-scale litigation and deserve recognition and credit for the results.

Dan Drosman: Besides me, our trial team consisted of **Tor Gronborg**, **Luke Olts**, **Maureen Mueller**, **Marco Janoski**, **Heather Schlesier**, **Chris Kinnon** and forensic accountant **Terry Koelbl**. Throughout the litigation, I'd characterize our approach as highly collaborative, a true "team-wide"

approach, with everyone taking responsibility for critical aspects of the litigation regardless of seniority. That's something we pride ourselves on here – staying lean and giving responsibility to our younger lawyers.

Give me the thumbnail sketch of the individual defendants and the claims you had teed up for trial.

Oliver: The individual defendants were Dick Costolo, Twitter's former CEO, and Anthony Noto, Twitter's former CFO. Throughout the litigation our claims and allegations remained very consistent. We alleged on behalf of the class that between February 2015 and July 2015, these defendants and Twitter knew that the company had a problem of flagging user growth and engagement that was most embodied by a specific metric, "daily active users." Because we claimed they knew this metric showed a negative trend and did not disclose it, and that when they ultimately did in July of 2015, a lot of investors lost a lot of money. That's the case we were preparing to bring to the jury in Oakland.

Gronborg: Both Costolo and Noto had come in to run Twitter after it had gone public and the founders, including Jack Dorsey, had stepped down from their executive positions. Along with Twitter, both of the individual defendants were alleged to have made false statements and material omissions in conference calls with investors and violated §10(b) and §20(a) of the Securities Exchange Act of 1934.

This settlement was announced the morning jury selection was initially set to start in Oakland, although the parties had stipulated to push the trial date to November. How would you characterize just how close we were to seeing a securities class action actually go to trial here?

Oliver: In the world of high-stakes trials, the proverbial "courthouse steps" are a very common location for reaching a settlement. So it's very hard to say just "how close" the parties were to trying the case, particularly without delving into confidential material. With that said, I feel comfortable saying it was as close I personally have gotten in one of these cases. My work for the first week of trial was done and prepared. That's how serious we were.

Drosman: This case was as close as you can get to trial. We had already moved our entire San Diego trial team to the Bay Area and set up a trial office. We had prepared our opening statement and witness examinations, held multiple meetings with our experts and subpoenaed trial witnesses. Up until just before trial was scheduled to begin, we were ready to go and expected that we would try the case.

Is there part of you that would have liked to go to trial?

Gronborg: Yes. After years of litigation, the delays brought on by the pandemic, and intensive trial preparation, including multiple mock trials, you want to see how a jury will react to your case. But that is tempered by our conviction that the settlement is in the best interests of our client and the class – and the recognition that prevailing at trial would likely have been just the beginning of years of post-verdict litigation.

Oliver: There always is. If you are really a trial lawyer, you want to try cases, particularly large high-profile ones because that is what you like to do for a living. I enjoy this. So every time a case settles – even when I know it's the best result for the clients, I am a little disappointed. That never changes.

What can you tell me about the decision process about pulling the trigger on a settlement when you've got a case to this point?

Oliver: Again most of that is confidential. Generally it involves a lot of judgment and you need someone with experience calling the shots. For us, it's a huge advantage to have Bill Narwold and **Darren Robbins** heading that up. Hard to find better negotiators. The best thing I can say from the trial lawyer standpoint is that nothing is ever certain in these situations until you know you have a signed agreement.

Drosman: You have to weigh the immediate benefits to your clients and the class versus taking what we believed to be a strong case to a jury and the inherent uncertainties that involves. One of the interesting dynamics at play here was whether the court would mandate vaccinations for all jurors, how that would affect each of the parties and whether any mandate would become a ground for appeal should we have prevailed at trial.

Your firms have litigated securities cases against some of the biggest companies in the world in a wide range of industries. What were the particular challenges of bringing a case like this against an attention-economy company like Twitter?

Oliver: I think the biggest challenge up front is learning the language of social media. Because they are an "attention-economy" company, they talk about subjects

and concepts that most of us haven't really considered in our daily lives (though our attention spans are in a sense their product). Once you learn it, by far the biggest challenge is making it understandable and relatable for a jury. Our teams had years to learn about this. The jury in this case would have had two, maybe three weeks. That's quite a task: teaching a jury of laypeople to understand the case the way you understand it in just three weeks. By far this was the biggest challenge.

Gronborg: When the case was filed and through much of the litigation, Twitter was Donald Trump's pulpit. Then Twitter banned him. So it was going to be a challenge identifying what segments of the jury pool had strong feelings about Twitter and how those feelings would impact jurors in a case that, of course, had nothing to do with national politics. There was also the fact that jurors were almost certain to have used social media and have strong feelings about social media companies. Collectively, it meant that the prior beliefs people had coming into the case were not likely to have played out along traditional pro-plaintiff or pro-defendant lines.

The company announced that it intends to use "cash on hand" to pay this settlement amount and that Twitter and the individual defendants "continue to deny any wrongdoing or any other improper actions." Aside from the amount, which we can all agree is substantial, what else points to this settlement being a win for investors?

Oliver: Well, given that this is a top twenty settlement of its nature, as measured by ISS, I think that's the number one factor. But if you set that aside, as you note, the biggest thing that jumps out is just the company. This is Twitter. It's one of the world's most successful and some might say "powerful" tech/social media companies. Twitter deals in information, and yet it is still accountable to our nation's laws. To me this is the number one thing that makes it a win for investors, particularly in today's environment where folks have a lot of questions about the value of social media and its effects on us

Drosman: By any measure, the $809.5 million settlement is extraordinary. Hundreds of millions of dollars will now be returned to the class of Twitter investors. This settlement is the largest securities fraud settlement in the Ninth Circuit in the last 20 years and the largest securities fraud settlement of all time against a social media company. Settlements of this size are typically associated with accounting scandals and other frauds that make front-page news when they are uncovered. Think HealthSouth, Refco and Lehman Brothers. This case had none of the traditional indicia of massive frauds, such as a DOJ inquiry, SEC investigation or financial restatement. The settlement is really a tribute to plaintiffs and plaintiffs' counsel for uncovering the alleged fraud and working tirelessly to bring it to the brink of trial.

What will you remember most about this matter?

Oliver: Securities fraud cases just do not get this close to trial this often. So it was really memorable to work with such a great team at Robbins Geller; a firm – with deep securities fraud experience – that is not afraid to try these large cases. In this industry, that's unique and refreshing.

Drosman: I will long remember taking this case from its infancy, where my colleague, Terry Koelbl, and I spent many months interviewing witnesses, analyzing earnings call transcripts, media articles and analyst reports, and putting the pieces together before we filed the complaint. We then ran the gauntlet of defendants' years-long efforts to gut the case. This outsized settlement is truly a vindication of the teams' hard work and persistence over the last five years in readying this case for trial.

Gronborg: The team I got to work with. One week out from trial, the whole team got up before sunrise and did a run across the Golden Gate Bridge and back. It was emblematic of the camaraderie we had and a great reminder that in a world full of conference calls and Zoom meetings, it is the personal connections that make the work worthwhile. From fellow attorneys to forensic accountants, secretaries, paralegals, and document clerks, it was simply a great group of people to work with and we would not have succeeded in the case without every one of them.