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Plaintiffs Overcome Scorched-Earth Litigation Tactics to Recover Millions in Unpaid Wages

Some cases are easier than others. But the lawsuit pursued by Robbins Geller Rudman & Dowd LLP against Cintas Corporation, seeking recovery of unpaid overtime wages on behalf of delivery drivers, ranks among the most hard-fought cases in recent memory. Robbins Geller employment attorneys initially filed the case in federal court, and the court ruled that while additional drivers could opt into the litigation, many of their claims would eventually be sent to arbitration. Thereafter, approximately 2,400 Cintas delivery drivers from all over the nation joined the action as opt-in plaintiffs. At the end of a two-year sorting process, approximately 500 plaintiffs were able to continue in the litigation and 1,900 plaintiffs were moved into arbitration. Robbins Geller thus faced a two-front battle: a case in federal court and one in an arbitration proceeding.

Defendant Cintas, a provider of work uniforms, office products and services, opposed joining the claims of the 1,900 plaintiffs in a single arbitration. When the arbitrator appeared to be leaning in favor of allowing such a collective arbitration, Cintas brought 70 separate cases, naming plaintiffs as defendants in federal court actions filed all around the country that sought to compel them to arbitrate in their local districts. Cintas took the unprecedented step of suing 1,900 of its current and former workers to force them into local arbitrations and to prevent the arbitrator from ruling that they could arbitrate collectively before him. To counter Cintas' maneuver, Robbins Geller attorneys moved before the Judicial Panel on Multidistrict Litigation (MDL) to transfer all 70 cases and consolidate them in the Northern District of California, where Robbins Geller had originally filed suit. The MDL Panel granted plaintiffs' motion and transferred the 70 cases to the Northern District of California. In a bold counter-move, Cintas convinced the Northern District of California court to remand all 70 cases to the transferor courts on the ground that the 1,900 plaintiffs were refusing to arbitrate separately and locally as purportedly required by their employment agreements. Robbins Geller immediately appealed that ruling, and the Ninth Circuit held the appeal, which was still pending at the time of settlement, so as to prevent the 70 cases from being sent back to transferor courts around the country.

Throughout this period, the arbitrator was considering whether to allow the 1,900 plaintiffs to proceed in a single arbitration, but concluded his hands were tied after the district court's order remanding the 70 cases. Accordingly, he ruled there could be no collective arbitration. Robbins Geller appealed his ruling (called a "partial award") to the Ninth Circuit, which issued a decision holding that the lower court had improperly interfered with the arbitrator's decision on whether there could be a collective arbitration. After remand from the Ninth Circuit, the arbitrator corrected his earlier partial award, and ruled in favor of Robbins Geller's clients that most of the 1,900 opt-in plaintiffs could proceed before him in a collective arbitration. Cintas appealed that new partial award, and its appeal was still pending when the case settled.

While these pitched battles were occurring before the arbitrator, the MDL Panel, the district court and the Ninth Circuit, Robbins Geller continued to actively litigate the claims of the 500 opt-in plaintiffs who remained in court. After discovery was completed and numerous pretrial motions had been litigated, Cintas filed multiple summary judgment motions against the remaining plaintiffs in the district court litigation. The district court resolved Cintas' summary judgment motions, dismissing some plaintiffs, but also allowing many of them to proceed to trial. Before setting a trial date, the court ordered plaintiffs to another round of settlement talks. After three mediation sessions, in August 2009, the parties accepted the mediator's proposal that plaintiffs compromise and resolve all claims in exchange for a $22.75 million payment from Cintas. The case was still almost two years away from completion, however, because while a settlement had been reached in principle, Robbins Geller was unable to agree with Cintas on specific terms of settlement that had not been spelled out in the mediator's proposal. These issues were resolved through a separate year-long arbitration. Robbins Geller then submitted the proposed settlement to both the district court and

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Former Ohio AG Nominated to Head the Consumer Financial Protection Bureau

Richard Cordray

"Better regulations help honest businesses."
- Richard Cordray

Good news for investor and consumer advocates: former Ohio Attorney General **Richard Cordray**, a respected champion of public funds, has been chosen to head the enforcement division of the Consumer Financial Protection Bureau (CFPB). The CFPB is a new agency mandated by the Wall Street Reform and Consumer Protection Act of 2010 (or "Dodd-Frank"), which was passed in the aftermath of the financial crisis.

The CFPB was in part the brainchild of Elizabeth Warren, who served the new agency in an advisory capacity until this past July. Many investor advocates had hoped Ms. Warren herself would be nominated to run the agency; President Obama has instead tapped Mr. Cordray for the job. Cordray, a veteran of numerous fights on behalf of public funds, must proceed to a Senate confirmation process, which will likely prove both enlightening and contentious.

Cordray will soon hear from his detractors; his advocates are already on the record. Ms. Warren was among the first to laud him when, in December 2010, he joined the agency's enforcement arm, commenting that "Richard Cordray has the vision and experience to help us build a team that ensures every lender in the marketplace is playing by the rules." The new agency that Cordray has been nominated to run is specifically designed to address a gap in existing regulatory structures by providing transparency regarding consumer credit products, such as the fine print (and fee disclosure) in credit card and "payday advance" lending contracts, and providing consumers with stronger enforcement mechanisms regarding their claims.

The implementation of this part of Dodd-Frank represents a significant step toward protecting average Americans from deceptive banking practices, which have been recognized as a major contributing cause of the financial crisis. However, the celebration will be short-lived if Senators in Congress representing Wall Street and their army of lobbyists are able to dilute the agency's effectiveness, which has emerged as their chief tactic. Cordray's confirmation will not be easy: the minority party in the U.S. Senate has threatened to oppose the confirmation of any chair to the Bureau, unless the CFPB's authority is neutered.

If approved, Cordray will bring years of experience in litigation and advocacy to the position. Like Ms. Warren, Cordray's profile includes an established track record of fighting on behalf of the underdog, including taking on powerful financial corporations accused of violating Ohio state law and defrauding pension owners and consumers. Cordray cut his teeth in the rough and tumble Ohio State House, and then went on to serve as Treasurer of Franklin County, home of blue collar Columbus. Cordray was later elected State Treasurer and then further served as the Attorney General of Ohio from January 2009 to January 2011.

As the state's top financial cop, Cordray took on Bank of America in a high-profile case. Representing Ohio's largest public employee pension funds, the **State Teachers Retirement System of Ohio** and the **Ohio Public Employees Retirement System**, cooperatively with the **Teacher Retirement System of Texas** and pension funds from Sweden and the Netherlands, Cordray filed suit against Bank of America, its directors and four executives, including Kenneth D. Lewis and John A. Thain, alleging that the bankers concealed critical information regarding the late 2008 Bank of America merger with the beleaguered Merrill Lynch. No stranger to a good fight, Cordray is looking forward to his new position. As he described to *The Wall Street Journal*, it will be a chance to resume "in many ways doing on a 50-state basis the things I cared most about as a state attorney general, with a more robust and a more comprehensive authority."

It is hoped that Mr. Cordray will bring the same energy he showed as Ohio AG to his role as the head of the enforcement division of the CFPB. The new agency is tasked with making credit card contracts simple and transparent, limiting abusive payday loan rollovers and usurious interest rates and making all interest rates and fees public, helping to clean up the worst abuses perpetuated by mortgage loan originators. Mr. Cordray's well-established track record in fighting for fairness and transparency and against corporate maltreatment of investors and consumers will serve him well in this role. It is imperative that the confirmation proceed quickly; until a chair is in place, many governance experts note that the agency is not legally empowered to proceed with numerous enforcement actions. ■

News Brief

Journalism Awards Announced

Robbins Geller Rudman & Dowd LLP is pleased to announce the winners of the 2011 Corporate Governance and Responsible Investment Journalism Awards. Ruth Sullivan of the *Financial Times* (FT) was awarded Corporate Journalist of the Year, and Nina Roehrbein of *Investment & Pensions Europe* (IPE) is the winner of the Responsible Investment Journalist of the Year award.

The annual competition is sponsored by both Robbins Geller Rudman & Dowd LLP and London-based Pension & Investment Research Consultants, LTD (PIRC) as part of a shared and growing commitment to support a vigorous and ethical public debate around corporate governance and financial abuse.

Commented Robbins Geller partner **Patrick W. Daniels**, "In light of the widespread failure of regulators and politicians in the US, EU and UK to prevent and effectively respond to the abuses exposed by the Financial Crisis, a vigorous (and ethical) Press has been the primary vehicle for exposing the worst abuses in the financial system in the past several years. As investors become increasingly aware that they must take a much more active role in policing the Markets, the Press can continue to fulfill its essential role. We are proud to recognize Ms. Sullivan of FT and Ms. Roehrbein of IPE for their contributions to a vigorous and critical debate over the important issues of corporate governance and responsible investment."

Court of Appeal Doesn't Buy What Morgan Stanley Is Selling

On July 7, plaintiff **China Development Industrial Bank** (CDIB), represented by Robbins Geller Rudman & Dowd LLP, advanced a lawsuit against investment banking giant Morgan Stanley by successfully responding to Morgan Stanley's appeal of an order denying its attempt to have the case dismissed. As detailed in the 2Q11 Corporate Governance Bulletin, Judge Schweitzer of the Supreme Court of the State of New York denied Morgan Stanley's motion to dismiss a lawsuit accusing it of structuring, soliciting and selling a fraudulent $275 million collateralized debt obligation (CDO) to Taiwan-based plaintiff CDIB. A five-judge panel of the Appellate Division of the Supreme Court of New York has now unanimously affirmed Judge Schweitzer's order.

Before the subprime disaster had fully registered, Wall Street banks such as Goldman Sachs and Morgan Stanley had begun a campaign to foist off toxic mortgage assets, including subprime bonds, on industry outsiders (including CDIB) before news of the souring of the subprime market became public. While rating agencies like S&P, Moody's and Fitch still rated the mortgage-backed securities "investment grade," the models used to obtain these ratings were flawed, and according to the complaint, the Wall Street banks and rating agencies knew it. Plaintiff CDIB alleged that Morgan Stanley committed fraud in the creation and sale of a $275 million CDO known as the STACK CDO. The STACK CDO exposure sold to CDIB in April 2007 was supposed to be a high-quality, investment-grade product – allegedly "higher than AAA in safety." So "safe" was the STACK CDO that it was designed to return only 0.52% in interest to CDIB, a low rate of return to compensate for the virtually risk-free investment.

However, ratings given to the notes issued by the STACK CDO were allegedly meaningless: Morgan Stanley had "manipulated the rating agencies' models to create the STACK CDO's balance sheet." According to the plaintiff, Morgan Stanley allegedly "paid the [r]ating [a]gencies 'three times' more to create the CDOs than traditional corporate bonds [and] Morgan Stanley gave them 'repeat player' payments only if the [r]ating [a]gencies gave Morgan Stanley the ratings it wanted." The plaintiff further alleged that Morgan Stanley knew the rating agencies delayed changing their models to reflect changing conditions in the mortgage-backed asset market until "***after*** the STACK CDO was created in June 2006, but ***before*** it sold that investment to CDIB in March 2007." Internally, the rating agencies and Morgan Stanley knew that their models did not accurately reflect the risk of these investments.

The STACK CDO quickly became a financial disaster. As the subprime assets used to build the CDO instrument began to default, Morgan Stanley required that CDIB cover the asset impairment. CDIB paid out over $150 million by April 2008, and over $190 million by the end of 2008. In response to CDIB's outrage over a "safe" investment turning into a financial calamity, "Morgan Stanley threatened to label CDIB with 'default' should it fail to make payments." CDIB lost $228 million in total in the STACK CDO due to Morgan Stanley's continuing margin calls. When similarly structured deals by other banks (including the notorious Goldman Sachs Abacus deal) began to be exposed, and investigations were commenced, CDIB refused to pay a $12 million demand and then filed suit in New York in July 2010.

In denying Morgan Stanley's appeal, the appellate court agreed with Judge Schweitzer that CDIB's allegations of a troubled investment, with flawed ratings due to Morgan Stanley's influence, were sufficiently detailed. In denying Morgan Stanley's motion to dismiss plaintiff's allegation of fraudulent concealment, Schweitzer wrote that Morgan Stanley had a duty to disclose the relevant facts. The appellate court confirmed this position using very similar language, writing that "Morgan had a duty to disclose, inasmuch as Morgan allegedly had peculiar knowledge of the application of grandfathered ratings, the unstable collateral which was sold, and its misstatements regarding the investment risks involved."

The appellate panel agreed with Judge Schweitzer that CDIB's complaint sufficiently alleged that Morgan Stanley participated in, or knew about, the fraud. These allegations of scienter included the description of "Morgan Stanley's close relationship with, and alleged influence over" the agencies giving ratings that Morgan Stanley knew did not reflect the true, flawed nature of the assets underlying the STACK CDO deal and the risk it presented to CDIB. The court of appeals wrote that "[t]he element of scienter can be reasonably inferred from the facts alleged … including e-mails, which support a motive by Morgan, at the time of the subject transaction, to quickly dispose of troubled collateral (*i.e.*, predominantly residential mortgage-backed securities) which it owned at the time."

Like its motion to dismiss, Morgan Stanley's appeal also claimed that CDIB could not have claimed to have justifiably relied on its statements and marketing materials because CDIB had signed the transaction agreement stating it relied on its own judgment and acknowledging that defendant made no guarantee as to the expected results. Judge Schweitzer declined to take Morgan Stanley's position, pointing out its "pitch admitted that the CDO had no employees or operating history and advised that requests for additional information be made to Morgan Stanley." The judge further wrote that CDIB had adequately alleged "a set of circumstances constituting fraud, with respect to the investment here, that could not have been discovered by any degree of due diligence or analysis performed by the most sophisticated of investors." The appellate court agreed, writing that while contractual disclaimers may sometimes preclude a claim, "[n]evertheless, such a rule is not determinative in this case. [CDIB] has sufficiently alleged that Morgan possessed peculiar knowledge of the facts underlying the fraud, and the circumstances present would preclude any investigation by [CDIB] conducted with due diligence." As Robbins Geller Rudman & Dowd LLP attorney **Jason C. Davis** noted at the June 15 oral argument, the STACK CDO was "a credit ratings trap that was destined to fail."

China Development Industrial Bank v. Morgan Stanley & Co. Inc., 927 N.Y.S.2d 52 (N.Y. App. Div., July 7, 2011). ■

Litigation Update

Motion to Dismiss Pfizer: Drug Deal Gone Bad

On August 9, Judge Alvin K. Hellerstein of the United States District Court for the Southern District of New York denied the motion to dismiss filed by Pfizer, Inc. and several of its current and former officers. The amended complaint was filed by lead plaintiff **Stichting Philips Pensioenfonds** and plaintiff **Mary K. Jones**.

Plaintiffs' complaint alleges that senior Pfizer executives defrauded investors by deliberately concealing the pharmaceutical giant's illegal off-label promotion of its drugs. In 2004, Pfizer had paid $430 million to settle civil and criminal charges arising from the illegal off-label promotion of Neurontin. As part of that settlement, Pfizer agreed to a strict internal compliance program. Any credible reports of off-label marketing were to be reported to the Office of Inspector General. The settlement thereby created the impression that Pfizer would take all steps necessary to comply with the law.

Pfizer reinforced that impression by telling investors, in its SEC filings, that it prohibited "false or misleading advertising, or any other form of misrepresentation made in connection with sales." Pfizer explained that "[c]ompliance with all relevant statutes and rules, is both the legacy of our 150-year history and one of our most important advantages." As a result, Pfizer promised its investors to "market products honestly, in accordance with laws and regulations."

Contrary to the statements, however, the complaint alleges that Pfizer engaged in wide-spread off-label marketing before the ink on the 2004 settlement was dry. Moreover, the complaint alleges that the named defendants knew that Pfizer continued to market its drugs illegally. As a result of Pfizer's continued off-label marketing, it was forced to pay $2.3 billion in criminal and civil fines and penalties, including the largest criminal fine in U.S. history and the largest civil fraud settlement ever against a pharmaceutical company. Unsurprisingly, Pfizer's stock price fell when it announced the $2.3 billion in fines. Plaintiffs sued, alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of all persons who purchased Pfizer, Inc. securities between January 19, 2006 and January 23, 2009.

Defendants moved to dismiss plaintiffs' complaint on numerous grounds, prominent among them that Pfizer had disclosed during the class period that it was being investigated for off-label marketing. In denying defendants' motion to dismiss at oral argument, Judge Hellerstein found that Pfizer's disclosures were insufficient to defeat plaintiffs' claims on their face. "[W]hat the plaintiffs are alleging is that there was a persistence of marketing practice that was illegal and contradicted the integrity agreement; and that there was enough credibility in this whole activity to warrant an inference that the insiders knew it. . . . You've just got a one-liner, which I think [the plaintiffs] would argue does not give sufficient credibility and intensity to the risk that is being discussed."

Robbins Geller partner **Henry Rosen** noted, "We are pleased that our legal team has defeated defendants' motion and will look forward to litigation on behalf of our clients."

Jones v. Pfizer, Inc., No. 10-cv-03864-AKH, Summary Order Denying Motion to Dismiss and Transcript of Proceedings (S.D.N.Y. Aug. 9, 2011).

Motion to Dismiss Regions Financial: Banking While Impaired

While many of the nation's largest banks are successfully avoiding responsibility for their roles in bringing about the global financial crisis, Robbins Geller Rudman & Dowd LLP, on behalf of two of its clients, is successfully pursuing a securities fraud case against Regions Financial Corporation. On February 28, lead plaintiffs **District No. 9, I.A. of M. & A.W. Pension Trust** and **Employees' Retirement System of the Government of the Virgin Islands** filed an Amended Complaint for Violations of the Federal Securities Laws against Regions, its former CEO, and two of its former CFOs. Regions, an Alabama corporation with $132 billion in assets, is a member of the S&P 500 Index and one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services.

In the lawsuit, plaintiffs allege that during the February 27, 2008 through January 19, 2009 class period, defendants made false statements to investors about risks and impairments to Regions' real estate loan portfolio, manipulated Regions' non-accrual loan classifications, and failed to properly account for its impaired loans, loan loss reserves and goodwill in accordance with Generally Accepted Accounting Principles. Specifically, in the face of the housing market collapse, defendants misled investors throughout 2008, telling them that Regions' business was "strong" and well positioned to "avoid[] the real troubled areas that are plaguing many [lenders] in this industry." In truth, Regions' real estate loan portfolio – comprised namely of condominium construction loans in troubled markets such as Florida and Georgia, and risky adjustable rate mortgages acquired in its 2006 purchase of AmSouth Bancorporation – was rapidly deteriorating. Defendants also continuously misrepresented in filings with the SEC that the $6 billion the company recorded as goodwill in connection with the AmSouth acquisition remained unimpaired. Even with the SEC questioning the legitimacy of Regions' determination that its goodwill was not impaired, defendants refused to write down the company's goodwill balance as prudent accounting required. Then, on January 20, 2009, Regions shocked the market by reporting a net loss of $5.6 billion for the fourth quarter of 2008, "largely driven by a $6 billion non-cash charge for impairment of goodwill," and a dramatic increase in loan loss reserves.

All of the defendants filed motions to dismiss the lawsuit, but on June 7, the Honorable Judge Inge Prytz Johnson of the United States District Court for the Northern District of Alabama issued a memorandum opinion and order denying defendants' motions in their entirety. Judge Johnson found that plaintiffs sufficiently alleged many facts demonstrating that defendants' statements were both false and made with the requisite state of mind, *i.e.*, scienter. For example, the court held that based in part on statements from former Regions employees, the Amended Complaint demonstrated "how defendants improperly handled and classified loans," knew or should have known of "the collapsing commercial real estate market in Florida yet continued to push for more growth there," and "continued to ignore . . . reports signaling a negative risk-adjusted bottom line." The court also found that defendants' admissions concerning how closely they monitored Regions' loan portfolio, in addition to the massive and sudden $6 billion writedown of goodwill in January 2009, bolstered plaintiffs' allegations that defendants materially misrepresented to the investing public both Regions' goodwill balance and its accounting and risk management practices regarding loan loss reserves.

As a result of defendants' improper classification of non-accrual loans during the class period, the Federal Reserve began an investigation regarding the allegations leveled against Regions and its former top executives. Additionally, as the company's current CEO, Grayson Hall, recently admitted on a July 2011 conference call with analysts, Regions' own Audit Committee is now completing an internal investigation into these allegedly fraudulent accounting practices.

After Judge Johnson issued her order upholding the Amended Complaint, *The Wall Street Journal* ran a front-page article on June 13 entitled, *Bank Probes Its Executives – Regions Financial's Board Investigates if Disclosure of Souring Loans Was Delayed*. In the article, the reporter relied heavily upon the Amended Complaint's allegations and Judge Johnson's order, verifying much of what plaintiffs' investigation uncovered.

According to **Andrew J. Brown** of Robbins Geller, who represents the lead plaintiffs, "Through diligent investigation and hard work by our forensic accountants and attorneys, we have been able to successfully pursue this action on behalf of our clients and shareholders. We intend to hold these defendants accountable for their malfeasance and obtain a substantial recovery for shareholders."

Local 703, I.B. of T. Grocery and Food Employees Welfare Fund v. Regions Financial Corp., No. 2:10-cv-02847-IPJ (N.D. Ala.).

Motion to Dismiss R.H. Donnelley: Court Closes the Book on Defendants' Motion

In August 2010, lead plaintiff **Zhengxu He** filed a Consolidated Class Action Complaint for Violations of the Federal Securities Laws against four senior officers of the recently bankrupt R.H. Donnelley (RHD). A federal judge in Delaware has now denied defendants' motion to dismiss the case, finding in favor of plaintiffs.

RHD's core business and the driving force behind its financial performance was its sale of advertising in the print yellow pages it published. In 2006, RHD had a customer base of 600,000 national and local businesses, and sold $1.9 billion in advertising.

Plaintiff's complaint alleges that during the October 26, 2006 through May 29, 2009 class period, defendants, hiding behind the faulty economy, consistently reassured investors that the company's print directory products were in demand. The truth, however, was that in an effort to combat steeply declining sales and revenues, the company pursued poorer credit quality customers, offered steep discounts that eroded crucial print margins, and made serial exceptions to its credit policies in order to keep customers in its yellow pages books, resulting in inflated revenues, unpaid balances, and quickly ballooning bad debt. After a series of partial disclosures, RHD's fraudulent practices eventually culminated in the company's May 29, 2009 bankruptcy.

On June 14, after hearing oral argument, Judge Michael M. Baylson, writing for the United States District Court for the District of Delaware, denied, in its entirety, defendants' motion to dismiss "the exceptionally detailed Complaint." Applying the "total mix" test articulated by the Supreme Court in its unanimous decision, *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011), Judge Baylson upheld plaintiff's allegations that defendants' materially misleading statements about the strength and stability of the print yellow pages misled the market, stating that a reasonable investor would have wanted to know the information RHD possessed about declining usage of print yellow pages directories, the substantially discounted sales of yellow pages ads, and the lower margins on Internet advertising sales that prevented RHD from making up the loss of revenue from print ads.

Addressing defendants' intent to commit fraud on investors, Judge Baylson stated, "Defendants had access to sales data and internal reports, and had meetings and calls with company insiders about the performance of the business . . . . The inference that Defendants withheld material information because they did not want the market to learn that a secular shift was eroding the commercial viability of their key product, the yellow pages, is at least as cogent and compelling as the opposing inference that Defendants did not know or did not believe a secular shift was occurring." The district court also pointed to defendants' financial motive, highlighting the fact that defendants made unusual and suspicious stock sales which generated almost $19 million in proceeds, "which was equal to approximately one-third of their total $60 million compensation between 2006 and 2009." The court found it was defendants' "motive of personal financial gain that bolsters the inference of scienter."

Robbins Geller Rudman & Dowd LLP is lead counsel for plaintiff. Said plaintiff's attorney **Robert J. Robbins**, "We agree with Judge Baylson's ruling and will continue to aggressively prosecute this case on behalf of the class of defrauded investors."

Local 731 I.B. of T. Excavators and Pavers Pension Trust Fund, et al., v. Swanson, et al., No. 09-799, Memorandum re: Motion to Dismiss (D. Del. June 14, 2011). ■

For more information on these and other cases, please visit: www.rgrdlaw.com

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Cintas continued from page 1

the arbitrator for approval. Notice of the settlement was sent to class members and there were no objections. The settlement was finally approved by the court and the arbitrator in June 2011.

After more than eight years of litigation and arbitration, on July 20, 2011, settlement checks were mailed to more than 5,000 current and former Cintas drivers, who at long last received compensation for their previously unpaid overtime work. Average settlement checks for overtime claims were for several thousands of dollars, with many class members receiving checks between $8,000 and $16,000. Although Robbins Geller had invested millions of dollars in attorney hours to achieve this result, the firm decided to waive all attorney fees to allow a greater recovery for the workers.

Steven W. Pepich, the partner who worked on the case from its inception, explained: "I feel fortunate to have fought to recover overtime pay for Cintas' workers, and the decision to waive our fees was extremely satisfying since many of the workers really need the money during these tough economic times."

Veliz v. Cintas Corp., No. 5:03-cv-01180-RS (N.D. Cal.). ■

GovernanceMetrics International's Forum an "Unqualified Success"

GOVERNANCEMETRICS INTERNATIONAL'S
2011 Public Funds Forum

Three years into the global financial crisis, numerous public funds have mobilized to reclaim their power to mend critical weaknesses in the functioning of U.S. capital markets. Tired of enduring devastating losses to pension funds caused by incompetent governance and fraud, institutional investors gathered at **The Future of Corporate Reform 2011 Public Funds Forum** to share ideas designed to strengthen governance and long-term value. The forum was sponsored by **GovernanceMetrics International**, **Robbins Geller Rudman & Dowd LLP**, the premier plaintiffs' securities litigation firm, and class-action administration experts **Gilardi & Co.** The forum provided an opportunity for public fund representatives to join with a diverse panel of speakers.

Convening in Northern California, attendees shared new tools critical to help create a future with robust oversight and accountability in corporate practice and financial markets. The three days of informative panel sessions permitted attendees to hear analyses from corporate governance thought-leaders, share their experiences, and enjoy informal networking opportunities at events centered around the natural beauty of the Northern California coast.

Robert A.G. Monks, referred to by *The Economist* and *Fortune* magazines as the world's "leading shareholder activist and governance advocate," opened the conference. Former California Governor **Arnold Schwarzenegger** delivered the keynote addess, while **Prince Charles** addressed the gathering via video. Panel leaders, including **Annette Nazareth**, a former SEC regulator now working with Davis Polk, corporate governance experts **Nell Minow** and GovernanceMetrics International Executive Chairman **Richard A. Bennett**, and shareholder litigation expert **Darren J. Robbins** of Robbins Geller Rudman & Dowd LLP explored issues ranging from the new rules on director nominations and "say on pay" to winning governance reforms through securities litigation. Other speakers included **Bill Lockyer**, the State Treasurer of California; **Byron S. Georgiou**, who recently served on the Financial Crisis Inquiry Commission; Professor **Jesse M. Fried** of Harvard Law School; media maven **Arianna Huffington**; and economist/humorist **Ben Stein**.

The merger of The Corporate Library with GovernanceMetrics International created the world's leading independent firm dedicated to monitoring corporate risk ratings and providing suites of tools to active institutional investors. Public funds are partnering with investor advocates to reclaim their power to help repair and strengthen the investment climate. The long-term success of investment strategies that emphasize a focus on corporate governance has been borne out by the economic crisis. A new investment climate calls for new tools to shape policy and protect assets, and GovernanceMetrics International has been praised for helping bring together leaders in the field for powerful panel sessions and useful networking opportunities. ■

Robbins Geller Rudman & Dowd LLP Partner Nominated for Woman of the Year

Robbins Geller Rudman & Dowd LLP partner **Rachel L. Jensen** is a nominee for the 2011 **San Diego Magazine Woman of the Year Award**. The magazine's annual award recognizes dynamic women who work to create positive change and contribute to the San Diego community.

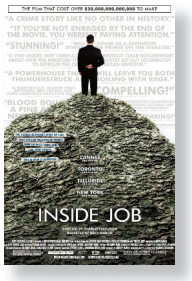
In addition to being a partner in the Robbins Geller consumer department, Ms. Jensen is a co-founder and former president of the Girls Think Tank (GTT). She now serves as GTT's Community Liaison Chair. Founded in October 2006, GTT is a local non-profit organization whose mission is to advance basic human dignity, especially as it relates to homeless individuals and families. In 2010, GTT led a broad-based coalition of organizations and individuals, including law firms, non-profits, labor and religious groups, businesses, and the homeless community, in a "Basic Dignity Campaign" that resulted in the city council setting aside $700,000 for new 24/7 bathroom facilities with clean drinking water in the downtown San Diego area. GTT continues to work to implement the bathrooms, and its newest project is a nascent legal and advocacy clinic for the homeless community.

Ms. Jensen graduated *cum laude* from Florida State University's honors program with a degree in International Affairs, and received her Juris Doctor degree from Georgetown University Law School. Before joining Robbins Geller, Ms. Jensen clerked for the Honorable Warren J. Ferguson on the Ninth Circuit Court of Appeals. She also worked abroad as a law clerk in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, and at the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, Netherlands.

Rachel L. Jensen
Partner
Robbins Geller Rudman & Dowd LLP

Ms. Jensen has prosecuted nationwide consumer, insurance and securities class actions against some of the largest companies in the United States. Most recently, her practice has focused on hazardous children's toys, helping to secure a nationwide settlement with toy manufacturing giants Mattel and Fisher-Price that provided full consumer refunds and required greater quality assurance programs. Ms. Jensen has secured millions of dollars on behalf of policyholders against insurance brokers and carriers for engaging in bid-rigging and other conduct that resulted in higher premiums and inferior coverage and has also successfully prosecuted various cases against insurance companies for selling senior citizens deferred annuities with no long-term value. ■

Recommended Viewing



Inside Job

Directed by Charles Ferguson

Starring Matt Damon, William Ackman, Daniel Alpert

Rated PG-13 – 109 minutes

"Forgive me, I must start by pointing out that three years after a horrific financial crisis caused by massive fraud, not a single financial executive has gone to jail, and that's wrong." Charles Ferguson's bold remarks during his Academy Awards acceptance speech encapsulate the message of his documentary "Inside Job." Before the dust had even settled on the crisis, Charles Ferguson set out to make a film about what he calls "the systemic corruption of the United States by the financial services industry and the consequences of that systemic corruption." Armed with impressive access to high-profile insiders from Wall Street, government, and academia, Ferguson's film weaves together a series of interviews that both inform and infuriate the viewer, particularly galling to those middle class Americans whose jobs and pensions have been decimated as a direct result. What Ferguson discovered shocked him, and from behind the camera he cannot help but interject his disbelief from time to time.

Narrated by actor Matt Damon, this smoothly paced film is split into five parts, which provide a valuable education while building from a calm, reasonable tone towards an inevitable fury of outrage at the conclusion. As the film walks us through "how we got here," the deregulation frenzy of the last 30 years looms large as one of the root causes of the crash. Deregulation of the Savings & Loan industry in the 1980s, the repeal of the Glass-Steagall Act in 1999, the death knell of Brooksley Born's proposed regulation of derivatives in 2000, and a series of mergers within the financial services industry set the table for what became possibly the most catastrophic bubble in history: the explosive growth of derivatives-on-steroids called CDOs, securitized loans fueled by the raw feedstock of newly minted or refinanced mortgages of increasingly dubious and "subprime" quality.

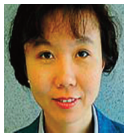
The chief champions of the deregulatory environment were the Fed's powerful Chairman Alan Greenspan (who declined to be interviewed), as well as the Treasury Department's Robert Rubin and Larry Summers. With regulatory constraints removed, the bubble expanded, and new mortgages were needed to fuel the CDO machine at banks like Bear Stearns and Lehman Brothers. Even though the underlying loans were of poor quality, the CDOs were sliced and tranched into securities that the ratings agencies dutifully stamped "AAA" in exchange for lucrative fees. These investment-grade instruments exploded from just a handful in the year 2000 to over 4,000 securities just six years later. When in late 2007 and early 2008 the fraud and deception underpinning the bubble began to unravel, the ensuing crash left the world financial system on life support.

The hallmark of the crisis, according to Ferguson, is that it was completely avoidable. Through interviews with regulators from the U.S. Treasury, economists from Columbia and Harvard Business schools, and crusading New York Attorney General Eliot Spitzer, Ferguson focuses on two major themes which handcuffed regulators and participants from preventing the crisis: incompetence and self-dealing. From behind his lens, Ferguson interrupts former regulator David McCormick, who spins a fantastic yarn with an obvious and audible incredulity, adding to Ferguson's populist leitmotif. A later interview with Glenn Hubbard, a Bush economic advisor and Dean of Columbia Business School, is riveting.

As Ferguson described the deliberate construction of faulty CDO assets for the purpose of betting against them when they collapsed, "If somebody had told me that in the fall of 2008 that this had gone on on a huge scale – tens of billions of dollars – I would have said, 'No, that's just too extreme. People don't do that. And if you do do it, you would go to jail.' They did do it, and nobody's gone to jail."

By the film's end, most reasonable viewers will be boiling over with fury. As far as legal remedies, Ferguson suggests we should not have too much hope that a political system already beholden to Wall Street will spearhead any investigation. Lamentably, the brief window of opportunity for Wall Street accountability was not acted on by new President Barack Obama in 2009. Bank-connected insiders inhabit key positions in the enforcement arms, and the revolving door between D.C. and Wall Street is undeniable. As one of his interlocutors grimly summarized, "It's a Wall Street government."

Noting that the crisis could not occur without widespread and illegal fraud, Ferguson points out that one obvious route to prosecutions would be to use the same aggressive tools used in taking down organized crime networks, rolling up smaller fish en route to larger ones. Ferguson's "Inside Job" is an extremely valuable contribution and definitely recommended viewing. ■



EYE ON WALL STREET

Winifred Jiau

A vast Wall Street insider trading and "expert networks" ring is rapidly being carefully dismantled piece by piece in legal actions brought by the U.S. Attorney's office in Manhattan – and the latest conviction is Winifred Jiau. Ms. Jiau, 43, worked as a consultant for Primary Global Research LLC. According to prosecutors, Jiau obtained and passed on critical nonpublic information from inside sources to hedge fund managers, which they in turn used to make critical trades ahead of the market.

Jiau now joins other insider trading ring convicts Raj Rajaratnam and Michael Kimelman, both of hedge fund Galleon. Having been found guilty of securities fraud and conspiracy, Jiau and Rajaratnam both now await sentencing; in her case, the Taiwanese-born Jiau could face up to 25 years in prison.

According to the prosecutors, in exchange for information, Ms. Jiau demanded air-mailed lobsters, iPhones, and generous cash payments not only for herself, but also for her sources, which she referred to as "cooks" – telling her hedge fund handlers that her "cooks don't talk to [her] without sugar." Ms. Jiau's involvement as part of the "expert networks" of insider trading tips gave hedge fund traders the chance to beat the market to trades on stocks at companies like Marvel and Nvidia. Yet, there is apparently no honor among thieves; hedge fund managers-turned-informants Samir Barai and Noah Freeman recorded their calls with Jiau and provided valuable testimony, facilitating the jury's speedy conviction.

Court documents reveal Ms. Jiau was very insistent about her compensation, and once demanded that her hedge fund client FedEx her a dozen lobsters; yet Jiau failed to pick up the live crustaceans at the delivery site, leaving them to die. According to a news report, while awaiting her sentencing, the convicted Ms. Jiau has traded hedge fund lobster for the modest prison meal of bologna, a food with which Ms. Jiau was previously unfamiliar. (One hopes she develops a taste for it.) Despite the high-profile convictions, the FBI and U.S. Attorney's investigation into hedge fund insider trading networks appears to be far from over, as new indictments continue to surface.

Calendar of Upcoming Events

October 3-4, 2011

Democratic Governors Association (DGA)
Fall Policy Conference 2011

The Westin Hotel
Charlotte, North Carolina

Founded in 1983, the DGA is an independent voluntary political organization organized to support Democratic governors and candidates across the nation. The conference will focus on the new economy with emphasis on emerging technologies in biotechnology, health care, energy and transportation.

For more information, visit: www.democraticgovernors.org

October 13, 2011

IIR & IBC Finance Events
The 9th Annual Local Government Pension Investment Forum 2011

Millennium Gloucester Hotel
London, England

This annual conference is designed for, and attended by, local authority delegates – treasurers, pension investment officers and elected members. The conference focuses on pension investment, making it very topical in today's uncertain investment climate. With inflation hammering investment returns, and major changes such as the 3% employee contribution rate, the event couldn't be more topical!

For more information, visit: www.informaglobalevents.com

October 17, 2011

Practising Law Institute
Securities Litigation & Enforcement Institute 2011

PLI California Center
San Francisco, California

Featured Speaker: **Michael J. Dowd**, Robbins Geller Rudman & Dowd LLP

This institute is designed for the securities practitioner, outside and in-house counsel, compliance officers, regulators, investment bankers and securities dealers. This event will focus on government enforcement initiatives and how to deal effectively with the government; criminal investigation and prosecution of securities violations; the latest on corporate governance litigation; and what the financial crisis means for securities litigation. There will also be a discussion on the view from in-house: advising the board and effectively handling such corporate issues as D&O liability and the effects of M&A transactions.

For more information, visit: www.pli.edu

October 20-21, 2011

Asia Pacific Association for Fiduciary Studies
11th Annual Pacific Region Investment Conference

New World Makati City Hotel
Manila, Philippines

Featured Speaker: **Darren J. Robbins**, Robbins Geller Rudman & Dowd LLP

This conference brings together investment experts and finance professionals in the Asia Pacific region and provides members with meaningful educational forums that cover the most current fundamental understanding of their roles as fiduciaries, focusing on regional specific issues and needs.

For more information, visit: www.apafs.org

October 21, 2011

Teamster Center Services (TCS)
The 18th Annual Health & Benefits Expo

Grand Hyatt Hotel
New York, New York

The Health & Benefits Expo brings together union benefit plan professionals and providers of health care services and investment managers through a variety of educational and networking opportunities. This event provides a wealth of information to anyone involved in the administration of benefit plans. Conference attendees include Trustees, Administrators and key staff of multiemployer and public sector health and pension funds.

For more information, visit: www.teamstercenter.com

October 30, 2011 – November 2, 2011

International Foundation
57th U.S. Annual Employee Benefits Conference

New Orleans Ernest N. Morial Convention Center
New Orleans, Louisiana

This annual conference is designed to meet the specific needs of multiemployer and public sector plan trustees and administrators, attorneys, accountants, actuaries, investment managers and others who provide service or who are involved in the overall management and administration of benefit trust funds in the United States by providing the essential tools to fulfill fiduciary obligation and understand requirements of new legislation and recent regulations.

For more information, visit: www.ifebp.org

November 30, 2011 – December 2, 2011

PIRC
The 16th Annual Local Authority Pension Fund Forum Conference

Bournemouth Highcliff Marriott Hotel
Bournemouth, England

Featured Speaker: **Patrick W. Daniels**, Robbins Geller Rudman & Dowd LLP

This annual conference is designed for, and attended by, local authority delegates – treasurers, pension investment officers, and elected members. The conference focuses exclusively on pension investment, making it very topical in today's uncertain investment climate.

For more information, visit: www.lapfforum.org

December 11-13, 2011

Institute for International Research (IIR)
The 20th Annual Public Fund Boards Forum

New Orleans Marriott
New Orleans, Louisiana

This is a very special year for this conference, as IIR incorporates their Guns and Hoses conference into the program. Pension funds are still reeling from past economic crises and recent criticism in the public sphere. Since fiduciary responsibilities and ethical questions are becoming even more complicated, the agenda is designed to give trustees, administrators, consultants, experts and advisors the tools needed to fulfill duties, protect beneficiaries and grow fund assets.

For more information, visit: www.iirusa.com

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