Robbins Geller Rudman & Dowd LLP

CORPORATE GOVERNANCE BULLETIN

4th Quarter 2013

IN THIS ISSUE

Plaintiffs Score Major Victory in *Barclays* Second Circuit Appeal

On August 19, 2013, the Second Circuit Court of Appeals in Manhattan revived a significant portion of a complex securities lawsuit brought against Barclays Bank PLC and various underwriters. The appellate decision overturned several rulings by a federal judge from the Southern District of New York and allowed lead plaintiffs and a putative class to move forward on claims concerning $2.5 billion in American Depository Shares. Major news outlets, including *Reuters* and *The American Lawyer*, reported on the decision as a noteworthy victory for plaintiffs.

Investors had sued London-based Barclays and its co-defendants in 2009, alleging that, over the course of four multi-billion dollar securities offerings, they had misled the market about Barclays's risk-management practices and failed to adequately disclose the bank's exposure to the credit markets. Between April 2006 and April 2008, Barclays completed the four offerings (known as the Series 2, 3, 4, and 5 Offerings) from which lead plaintiffs and class members purchased hundreds of millions of shares at $25 per share – yielding proceeds of $5.45 billion to Barclays. The final Series 5 Offering involved the sale of 100 million shares for proceeds of $2.5 billion.

Just months after the Series 5 Offering, Barclays disclosed that it had taken a £2.8 billion ($5.5 billion) writedown on credit-related assets, and commenced a several-month binge of private issuances that raised additional billions of dollars. Barclays also set up a hedge fund to buy £7.5 billion of its polluted credit-market assets, allowing it to avoid having to mark-to-market those toxic assets on its balance sheet. Investors in the four offerings were not as fortunate, however; their securities purchased for $25 apiece plummeted nearly 75% in value.

Investors in the offerings filed suit under §§11, 12(a)(2), and 15 of the Securities Act of 1933, alleging material misstatements and omissions in the offering materials. The district court dismissed all claims with prejudice, however, finding them either (i) time-barred under the statute of limitations, (ii) inadequately pleaded, or (iii) lacking an adequate lead plaintiff who had purchased in a particular offering.

Following the dismissal, lead plaintiffs sought reconsideration and leave to file an amended complaint to address the pleading deficiencies identified by the district court – particularly as to claims concerning the $2.5 billion Series 5 Offering. They offered allegations showing that the defendants disbelieved the subjective valuations contained in the offering materials and proffered additional named plaintiffs.

The district court denied reconsideration and leave to amend, reasoning that such amendment would be "futile." It said that the amended allegations of subjective disbelief "would clearly suggest fraud," but that those

Continued on p. 7

Women on Boards: What Investors Should Know

Many studies have documented the benefits of boardroom gender diversity for corporate performance. For example, studies have shown that gender-diverse boards spend more money on auditing when the complexity of the business warrants it, and that male directors have better attendance records at boards that also include women.

Further, a recent study by Credit Suisse found that companies with gender-diverse boards in the MSCI All Country World Index strongly outperformed those with all-male boards in 2005-2011, after controlling for industry and size. What causes these effects? Scholars suggest one important factor is that the interpersonal dynamics characteristic of diverse groups, including mixed-gender groups, make them superior at complex problem-solving. Diverse teams agree less readily, avoiding "groupthink" and examining more aspects of a problem. Members of majority groups also tend to be more diligent around people they view as "different."

Despite the wealth of research on the topic, however, many public companies' nominating committees don't seem to be getting the message. A GMI Ratings study of gender diversity on boards in 45 nations conducted this past March shows strides being made in Europe, where many countries either have, or are considering, legal mandates for female board representation. In the rest of the world, however – where voluntary approaches to the issue predominate – progress is extremely slow.

In a survey of companies including the Russell 3000, the MSCI World, and many other major market indices, women hold 11% of all board seats. This marks an increase of one-half of a percentage point since December 2011 and only 1.7 percentage points since 2009. Europe accounts for most of the change: excluding Europe, female representation on boards has risen only eight-tenths of one percentage point since 2009. Indeed, over half the new female directors since 2009 have joined European boards.

Norway, Sweden and Finland lead the world in their percentage of female directors, with 36.1%, 27.0%, and 26.8%, respectively. France, which recently adopted a board diversity mandate, now ranks fourth, with 18.3%. Italy has seen a sharp increase in female directors following recent legislation, and Germany and the Netherlands have also been adding substantial numbers of women to their boards. In the UK, the proportion of female directors has risen by 4 percentage points since 2009, possibly in reaction to the threat of EU-level regulation, and is now 12.6%. Moreover, GMI research into the effects of gender diversity laws in both France and Italy has validated the oft-heard claim that plenty of qualified women are out there, but simply aren't being tapped. The women recently added to boards in these countries tend to have strong resumes in business, law, or academia, but were often joining public boards for the first time.

Across the Atlantic, however (where any mention of diversity quotas is taboo), the proportion of female directors in the S&P 1500 has risen by fewer than 5 percentage points since 2001, and is now at 14%. Meanwhile, Canadian progress on gender diversity among directors is virtually stalled: the proportion of female directors is 13.1%, unchanged from 2011 and up less than 1 percentage point since 2009. At least gender diversity is still better in North America than in Japan, which ranks worst among the industrialized world, with only 1.1% female directors.

Continued on p. 7

Robbins Geller Obtains $85 Million for Investors in Blackstone's IPO on the Eve of Trial

After over five years of hard-fought litigation, and only three weeks before trial was slated to begin (in September 2013), Robbins Geller has obtained an $85 million settlement in a securities class action against The Blackstone Group L.P. and four of its top executives.

The $85 million cash recovery is an exceptional result and conservatively represents a recovery of nearly 7.7 times more than the median amount of compensation recovered in actions with a similar range of investor losses – a recovery made all the more exceptional because the district court had dismissed the case in its entirety, and Robbins Geller and its co-counsel had to pursue an appeal to bring the case back to life.

Plaintiffs, two individual investors, alleged that Blackstone and its senior executives violated §§11 and 15 of the Securities Act of 1933 by failing to disclose adverse trends and uncertainties facing certain of Blackston's private equity and real estate segment investments at the time of Blackstone's June 2007 initial public offering (the "IPO"). In 2009, the district court dismissed the case, holding that adverse information about Blackstone's investments was not material because each investment comprised far less than 5% of Blackstone's total assets under management (then $88 billion).

Undeterred, plaintiffs appealed. In *Litwin v. Blackstone Group, L.P.,* 634 F.3d 706 (2d Cir. 2011), the Second Circuit reversed and issued an opinion that has become a landmark decision widely followed by other courts. Holding that quantitative and qualitative considerations are critical to a finding of materiality, the Second Circuit ruled – for the first time, in a case involving a private equity firm – that "Blackstone is not permitted, in assessing materiality, to aggregate negative and positive effects on its performance fees in order to avoid disclosure of a particular material negative event." As the Second Circuit explained: "We see no principled basis for holding that an historically 'private' equity company that has chosen to go public is somehow subject to a different standard under the securities disclosure laws and regulations than a traditional public company with numerous subsidiaries." **Samuel H. Rudman**, **David A. Rosenfeld** and **Mark T. Millkey**, of Robbins Geller's Melville, New York office, spearheaded efforts to secure the decision.

As a result of this victory, Blackstone sought review by an *en banc* panel of the Second Circuit, which request was denied, and further review by the United States Supreme Court, which also denied the request. The case then proceeded to discovery, where significant disputes arose almost immediately concerning the scope of discovery – not only of Blackstone, but also of the individual defendants. Working closely with co-counsel, **Joseph Russello** and **Edward Y. Kroub** – a partner and an associate in the Melville office, respectively, who then led Robbins Geller's discovery efforts – secured the production of over five million pages of documents from Blackstone and almost 25 non-parties. **William J. Geddish** and **Christopher T. Gilroy**, associates in the Melville office, led the review and analysis of the documents and assisted in deposition preparation. Russello, along with **Jonah H. Goldstein** and **Robert R. Henssler, Jr.**, partners in the San Diego office, conducted depositions of multiple witnesses and worked with plaintiffs' damages and real estate experts to establish a solid foundation for the summary judgment and trial stages of the case.

As discovery proceeded, plaintiffs continued to develop their case. To establish materiality, Robbins Geller developed evidence to show that the investments at issue represented a significant portion of the assets responsible for generating Blackstone's incentive-based income – its main revenue driver. The firm also developed evidence that Blackstone's accounting practices magnified the importance of these investments, which Blackstone did not technically even own. In addition, Robbins Geller was able to show that the investments were qualitatively material to Blackstone's private equity and real estate segments. By doing so, the firm was prepared to demonstrate at trial that poor performance by even a handful of investments could have a disproportionately negative effect on Blackstone's ability to generate profit from its investments – a key showing that was required to establish liability.

After an unsuccessful attempt to mediate a resolution three months before trial, plaintiffs secured class certification, briefed defendants' motion for summary judgment, and engaged in extensive motion practice to exclude defendants' experts before trial. While these motions were pending, the district court notified the parties that trial would commence in mid-September 2013 – at that time, only a month away. The case quickly went into overdrive, and a team led by **Michael J. Dowd**, along with Goldstein and Henssler, from the San Diego office, and Rudman, Russello, Kroub, Geddish and Gilroy, from the Melville office, spearheaded efforts to prepare the case for trial. Plaintiffs ultimately filed 11 motions *in limine*, seeking various evidentiary rulings, and exchanged trial witness and exhibit lists and objections, as additional discovery of damages experts and further trial preparation took place.

With supplemental expert discovery and briefing on the pretrial motions underway, plaintiffs engaged in a final attempt to negotiate a resolution before trial. After a weekend of marathon negotiations, Robbins Geller attorneys were able to successfully resolve the case for $85 million. Commenting on the settlement, Rudman stated: "Our team's efforts enabled me to negotiate from a position of strength. This case is a testament to the perseverance and dedication of our first-rate lawyers and staff."

On August 30, 2013, the district court granted preliminary approval of the settlement, paving the way for notice to the class. A final approval hearing has been scheduled for December 18, 2013.

Landmen Partners Inc. v. The Blackstone Group L.P., et al., No. 08-cv-03601-HB-FM (S.D.N.Y.). ■

Sustainability Metrics in Executive Pay

There is strong investor interest in the ways that corporations manage sustainability issues, and in particular, how they incorporate them into executive pay plans. Companies may say they care about environmental, social, and governance (ESG) performance, but are executives' paychecks being linked to achievement of non-financial goals?

Data collected by GMI Ratings shows that the answer to that question varies widely, both depending on industry and among companies in the same line of business. For example, among energy sector companies in the S&P 500, 91% say they use ESG factors in some way, 44% disclose the particular metrics they use, and 33% specify target performance levels for those metrics. Among S&P 500 financial services firms, about 60% say they use a sustainability factor, but only about 15% name specific metrics and target levels. In the healthcare and materials sectors, more than half of firms (55% and 53%, respectively) say they use an ESG factor, but well under a fifth of the companies in each sector name metrics or targets. Among retailers, meanwhile, less than a quarter of firms say they incorporate ESG issues, and none specify metrics or targets.

The specific issues incorporated into pay plans also vary by sector and industry. In the energy sector, as might be expected, safety and environmental accidents are the most commonly used factors. Unfortunately, it is much less common for companies to link pay to decreased operational carbon emissions, lower water usage, or other systematic improvements in their environmental profiles. In the financial sector, customer and employee satisfaction, diversity, ethics and regulatory compliance are often mentioned. A smaller number of firms also include measures of capital adequacy, liquidity, and asset quality. These are arguably among the metrics with the highest social impact, given the systemic importance of financial services firms, and the potentially severe human consequences of their failure.

The metrics most often used by healthcare firms include employee and customer satisfaction, as well as risk management and succession planning. Some also include ethics or regulatory compliance as pay plan metrics; however, the number of companies doing this is smaller than one might expect, given the many recent regulatory concerns in pharmaceuticals and other healthcare firms. Retailers, meanwhile, list diversity, customer satisfaction, and general topics such as "social responsibility," but have not incorporated into their pay plans any measures of vendor standards or factory safety, even though many observers consider these the key risk factors for the industry. In sum, across all industries, compensation committees often seem to be neglecting the ESG issues of greatest importance to investors, even when they do use non-financial metrics to award executive pay.

Moreover, even when appropriate sustainability metrics are linked to pay, their impact on payouts remains low, since they often determine only a small part of the annual bonus. Furthermore, although many investors consider sustainability an inherently long-term theme, sustainability metrics are overwhelmingly used for annual bonuses only, and are rarely used in long-term incentive plans.

To be sure, there are some companies who give sustainability factors a prominent position in their pay plans. For example, at Alcoa, safety, carbon emissions reductions, and employee diversity combined make up 20% of the annual bonus. At the Bank of New York Mellon, the achievement of preset capital ratios is a prerequisite for the payout of both short and long-term bonuses. And at Tenet Healthcare, the annual incentive amount is determined by performance of a basket of metrics, including physician satisfaction (as measured by surveys), employee turnover, and regulatory compliance (based on internal and external audits).

It's important to note that the plans described in annual regulatory filings may give an incomplete picture of how pay committees think about sustainability, since they tell us only about the metrics that are explicitly built into plans before the year begins. Committees may also be incorporating sustainability factors into their subjective evaluations of executives or their discretionary bonus decisions (as, for example, when Chevron cut bonuses last spring due to safety problems). Nevertheless, the filings provide a sense of companies' overall approach to incentivizing sustainability performance through pay, revealing both the substantial progress that has been made and how much work remains to be done.

In the years ahead, institutional investors may wish to press companies on this issue. They should ask them both to expand their use of sustainability metrics in executive pay and to focus those metrics more effectively on the issues most material to the firm and its impact on the world. ■

News Brief

PIRC Corporate Governance and Responsible Investment Journalism Awards 2013 Winners

PIRC, the largest independent European provider of corporate governance, proxy voting and corporate social responsibility investment research and advisory services, has proudly announced the 2013 winners of its Corporate Governance and Responsible Investment Journalism Awards. The awards by PIRC recognize journalists who are helping record and clearly explain the issues emerging in these vitally important areas.

The Corporate Governance Journalist of the Year was Tom Bergin of *Reuters*. Bergin has won multiple international awards for his reporting on corporate taxation avoidance and public disclosure issues. His award here is a result of breaking tax avoidance news stories regarding Starbucks and Google. The Responsible Investment Journalist of the Year was Rob Davies of the *Daily Mail*. Davies won for two articles on the health and environmental impact that mining firms Kazakhmys and GCM have on communities, as well as one about the effects of commodity speculation on the food supply.

This is the fourth year the awards have been presented, and they have been organized and sponsored by PIRC and Robbins Geller Rudman & Dowd LLP.

"We are greatly encouraged by the increasing interest shown by the national press in corporate governance and responsible investment issues," said Alan MacDougall, PIRC's managing director. "We believe these are important areas that require proper scrutiny, so we are happy to be supporting those journalists that are bringing them to public attention. As always, this has been a tough competition. Therefore, Tom and Rob deserve our congratulations for winning their respective awards." ■

Litigation Update

Bridgepoint Education Investors Defeat Motion to Dismiss

On September 13, 2013, United States District Judge Jeffrey T. Miller upheld claims pursuant to §§10(b) and 20(a) and Rule 10b-5 of the Securities Exchange Act of 1934 against Bridgepoint Education, Inc. and certain Bridgepoint executives, including Andrew S. Clark, Bridgepoint's Chief Executive Officer, for allegedly false and misleading statements regarding Bridgepoint's Ashford University. In July 2012, shareholders filed a securities class action against Bridgepoint, in the wake of the Western Association of Schools and Colleges' ("WASC") decision to deny Ashford University's application for initial accreditation. The **City of Atlanta General Employees Pension Fund** and **Teamsters Local 677 Health Services & Insurance Plan** are serving as lead plaintiffs.

Based in San Diego, California, Bridgepoint owns and operates Ashford University and University of the Rockies. Despite each brand's physical campus, 99% of Bridgepoint's students attend class exclusively online. In 2011, Bridgepoint announced its intention to switch accreditors for Ashford University from the Higher Learning Commission ("HLC") to WASC. Given the historically poor persistence and graduation rates of students attending for-profit universities, Ashford's persistence and graduation levels "were crucial to obtaining accreditation." Furthermore, "Bridgepoint claim[ed] that it implemented persistence programs at Ashford to remedy . . . problems starting as early as 2010. Throughout the Class Period, Bridgepoint emphasized that student persistence programs were improving student retention." Plaintiffs allege that defendants' statements (*e.g.*, "We did a lot back in 2010 and through 2011 around quality initiatives for our students . . . . That has impacted our persistence in a very positive way.") were false and misleading.

In upholding plaintiffs' claims as they relate to student persistence, Judge Miller found that "WASC, a third party, confirmed that Defendants' statements regarding persistence were unsubstantiated." Given the "crucial" nature of persistence levels to WASC's analysis, "any statements about persistence [were] potentially material." Further, the court recognized that WASC found "persistence could not yet be measured and that a systematic approach to managing persistence was not yet in place," and that if "Defendants were aware that persistence could not be adequately measured and yet made representations indicating that persistence was improving, then scienter could be reasonably inferred."

In addition, the court granted plaintiffs leave to amend dismissed claims and left open the possibility of repleading as evidence develops. Plaintiffs have the option to move toward discovery on the claims upheld.

The Robbins Geller attorneys litigating the case are **David C. Walton**, **Jonah H. Goldstein**, **Francis A. DiGiacco** and **Austin P. Brane**.

In re Bridgepoint Education, Inc. Securities Litigation, No. 3:12-CV-1737 JM (WMC), Order Granting in Part and Denying in Part Defendant's Motion to Dismiss (S.D. Cal. Sept. 13, 2013).

Bringing Down the House: Court Rejects Defendants' Motion to Dismiss in *In re MGM Mirage Securities Litigation*

On September 26, 2013, United States District Judge Gloria M. Navarro issued an order denying in full defendants' motion to dismiss a shareholder action relating to MGM's disastrous CityCenter project, a luxury hotel, condominium and casino project on the Las Vegas Strip.

Beginning as early as August 2007 and continuing until March 5, 2009, MGM and its senior officers and directors artificially inflated the price of MGM's securities by issuing a series of optimistic but false and misleading statements about the company's liquidity and its development of the massive multi-billion dollar CityCenter project. Among other things, defendants failed to disclose the "pervasive construction problems" afflicting the CityCenter project or the true condition of MGM's finances until early 2009, when it (1) notified the SEC that it had delayed filing its annual financial report and was facing potential default on its senior credit facility because of "severe liquidity problems"; (2) revealed to the market that "substantial doubt" existed as to its ability to continue as a going concern; and (3) disclosed that, contrary to its repeated positive class period statements, CityCenter was not on track to open in late 2009, was suffering from severe design defects, was way over budget, and had received several significant construction Notices of Violation from Clark County authorities.

In response to these disclosures concerning MGM's precarious financial condition, the company's securities prices plummeted for five consecutive trading days, beginning on February 27, 2009 and continuing through March 5, 2009.

In rejecting defendants' dismissal efforts, Judge Navarro found actionable defendants' misstatements and omissions (1) regarding MGM's financial security and access to credit; (2) that CityCenter was on budget; and (3) that CityCenter was on schedule, noting that the project was completed at an inflated cost only because of significant modifications and a delayed opening of one of the development's central features, the soon-to-be demolished Harmon building.

Plaintiffs will now proceed to the discovery and class certification phase of the litigation, during which plaintiffs will develop evidence supporting their claims in preparation for trial.

The Robbins Geller attorneys litigating the case are **Arthur C. Leahy**, **Brian O. O'Mara** and **Ryan Llorens**.

In re MGM Mirage Securities Litigation, No. 2:09-cv-01558, Order (D. Nev. Sept. 26, 2013). ■

Recent Institutional Investor Forum Explores the Future of Corporate Reform

Five years into the global financial crisis, numerous public funds have mobilized to reclaim their power to mend critical weaknesses in the regulation of U.S. capital markets. Tired of enduring devastating losses to pension funds caused by reckless governance and fraud, institutional investors gathered at The Future of Corporate Reform 2013 Public Funds Forum to share ideas designed to strengthen governance reform and increase long-term value. The event was hosted by GMI Ratings, the leading independent provider of global corporate governance, ESG and accounting risk ratings and research. Sponsors of the conference included Robbins Geller Rudman & Dowd LLP, the premier plaintiffs' securities litigation firm, and class-action administration experts Gilardi & Co. LLC. The forum provided an opportunity for public fund representatives to join with a diverse panel of speakers.

Convening in Newport Coast, 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 experts, share their experiences, and enjoy networking opportunities.

The conference was opened by Robert A.G. Monks, referred to by *The Economist* and *Fortune* magazines as the leading shareholder activist and governance advocate in the world. Former President Bill Clinton delivered the keynote address, in which he provided an overview on challenges facing the United States today, including a discussion regarding restoring economic growth, job creation, financial responsibility, public pension funds, securities fraud and the mortgage crisis. Panel leaders, including Lord Paul Myners, Finance Minister in the UK, corporate governance expert Nell Minow and shareholder litigation attorneys Darren J. Robbins and Michael J. Dowd, explored a variety of issues of keen interest to public fund representatives, including global investment risks and opportunities, board diversity and oversight, the evolving role of the credit rating agencies, developments likely to affect the performance of institutional portfolios, and how securities litigation can protect assets, secure remedies, and guard against future losses. A treasurers' roundtable session, which included Maine State Treasurer Neria Douglass, California State Treasurer Bill Lockyer, Oklahoma State Treasurer Ken Miller, and South Dakota State Treasurer Rich Sattgast, discussed current investment strategies and an analysis of state and national economic trends and asset allocation.

Other notable speakers included, but were not limited to, Anne Sheehan, Director of Corporate Governance of the California State Teachers' Retirement System; Jonathan Feigelson, Senior Managing Director, General Counsel and Head of Corporate Governance at TIAA-CREF; Michelle Edkins, Managing Director and Global Head of Corporate Governance and Responsible Investment at BlackRock; Guy R. Jubb, Global Head of Governance & Stewardship at Standard Life Investments; Frank Partnoy, Professor of Law and Finance and Founding Director of the Center for Corporate and Securities Law at the University of San Diego; Sandra Guerra, Founding Partner of Better Governance; Mac Van Wielingen, Chairman and Director of ARC Financial; and Chesley ("Sully") Sullenberger, "Miracle on the Hudson" pilot and best-selling author. James Carville, political commentator and consultant and media personality, provided closing remarks at the conference.

More and more stakeholders in public funds now realize that their substantial investments give them the power to help take the lead in shaping corporate governance. Similarly, shareholders have also recognized that greater engagement in crafting new policy is a part of their fiduciary responsibility to protect fund assets. With a concentration of industry and academic experts, The Future of Corporate Reform 2013 Public Funds Forum provided actionable leading-edge information and tools to fund fiduciaries as they tackle the immense challenges of today's economy.

GMI Ratings was once again commended for bringing together distinguished speakers and panelists to discuss current changes and future possibilities in corporate reform, and in particular, the role of institutional investors. ■

Barclays continued from page 1

allegations could not be used, in light of plaintiffs' earlier disavowal of fraud. That ruling ended the case and left plaintiffs only one avenue – an appeal to the Second Circuit.

Following Second Circuit briefing and oral argument, at which Robbins Geller appellate partner **Joseph D. Daley** squared off against defense attorneys representing Barclays and the underwriters, the Second Circuit reversed in significant part. Although the panel affirmed the dismissal of claims relating to the first three offerings as time-barred, it reversed, and upheld as a matter of law, plaintiffs' allegations concerning the $2.5 billion Series 5 Offering: "We conclude, however, that Lead Plaintiffs' amended allegations regarding the Series 5 Offering did state claims under §§11 and 12(a)(2) and leave to amend should not have been denied as futile." As to Barclays's subjective disbelief in its valuations, the panel noted that although the original complaint contained no such allegations, the "Proposed Complaint that Lead Plaintiffs later submitted adequately" pleaded them. The panel also reversed the district court's finding that such allegations rose to actual "fraud." The panel noted that subsequent to the district court's decision, the Second Circuit had decided *Fait v. Regions Fin. Corp.,* 655 F.3d 105 (2d Cir. 2011), holding that allegations of disbelief of subjective opinions *could* be brought under §§11 and 12(a)(2) "in certain circumstances" – and this was one of them. The panel also found that other defects identified by the district court would be remedied through the proposed complaint. In light of the foregoing, the court reversed the judgment dismissing the Series 5 Offering claims and remanded the case to the district court.

Truly the result of a team effort, the Barclays win represents the culmination of litigation strategies in the district court by Robbins Geller partners **Andrew J. Brown** and **Lucas F. Olts** and associates **Eric I. Niehaus** and **Christopher D. Stewart**, with partner **Joseph D. Daley** briefing and arguing the matter before the Second Circuit.

Freidus v. Barclays Bank PLC, No. 11-2665-cv, 2013 U.S. App. LEXIS 17159 (2d Cir. Aug. 19, 2013). ■

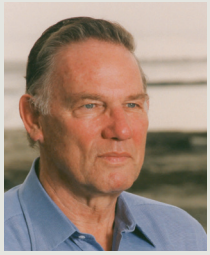
For more information on these and other cases, please visit: www.rgrdlaw.com

Women on Boards continued from page 2

In addition to regional variations, GMI's research has identified industry-related variations in board diversity. For example, in the U.S., consumer products companies tend to have much more gender-diverse boards than those in the energy or technology sectors. Indeed, as of last summer a majority of energy companies in the Russell 3000 – 61% – had all-male boards, as did almost half of that index's IT firms (49%). Meanwhile, only a quarter of Russell 3000 companies in the Consumer Discretionary sector, and 28% of Consumer Staples companies, lacked any women on their boards.

Several years ago, concerns over the slow pace of board diversification led CalPERS and CalSTRS to commission GMI Ratings to create the Diverse Director Datasource (3D for short), a database for self-nominating candidates that is intended to assist companies in locating well-qualified women and members of minority groups. The database is now in use by a number of firms, and we hope to see new appointments result from it over the next few years.

Over the past few proxy seasons, meanwhile, many prominent shareholder advocates have been pressing companies – often successfully – to ensure that nominating committees consider women and minorities as part of any director search. Part of the problem, however, is that there are simply not enough searches going on, because board turnover is so low. A study GMI conducted in May of this year found that over one-quarter of the directors in each of the S&P 500, Russell 1000, and Russell 3000 were men with over ten years' tenure. These figures suggest that term limits could be one way to accelerate the diversification of boards. For example, if fewer than half of the long-tenured men in the S&P 500 retired tomorrow and were replaced by women, that index would reach the often-cited goal of 30% female directors overnight. Shortening directors' terms might have other governance benefits as well, since long-serving directors often form relationships with management and each other that may compromise their ability to exercise independent oversight. Investors concerned with good governance, therefore, may soon be engaging companies on the interconnected issues of independence, tenure, and diversity.



Robert A.G. Monks
Co-Founder, GMI Ratings

Bob Monks, a leading authority on corporate governance, is the co-founder of GMI Ratings, a provider of ESG and accounting research. He has written widely on corporate responsibility topics, and is most recently the author of *Citizens DisUnited: Passive Investors, Drone CEOs, and the Corporate Capture of the American Dream.* ■

Calendar of Upcoming Events

Robbins Geller Rudman & Dowd LLP

Atlanta
Boca Raton
Chicago
Manhattan
Melville
Nashville
Philadelphia
San Diego
San Francisco
Washington, D.C.

(800) 449-4900

Follow Us:

October 20-23, 2013

International Foundation of Employee Benefit Plans (IFEBP)
59th Annual Employee Benefits Conference

Mandalay Bay Resort
Las Vegas, Nevada

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

October 23-24, 2013

American Bar Association (ABA)
17th Annual National Institute on Class Actions

Revere Hotel Boston Common
Boston, Massachusetts

Featured Speaker: **Bonny E. Sweeney**, Robbins Geller Rudman & Dowd LLP

Attendees will learn invaluable, real and practical information about the most important class-action topics and trends; how to grow your practice by recognizing class-action opportunities; and where the practice is going for plaintiffs and defense attorneys.

For more information, visit: www.ambar.org

October 27-30, 2013

National Conference on Public Employee Retirement Systems (NCPERS)
Public Safety Employees Pension & Benefits Conference

Rancho Las Palmas Hotel
Rancho Mirage, California

This conference will bring together pension administrators, trustees, union leaders, and representatives of the financial community to discuss issues related exclusively to retirement and other benefits for public safety employees.

For more information, visit: www.ncpers.org

November 7-8, 2013

Asia Pacific Association for Fiduciary Studies (APAFS)
13th Annual Pacific Region Investment Conference

New World Makati Hotel
Manila, Philippines

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

November 12, 2013

2nd Annual Securities Litigation and Enforcement Institute

New York City Bar
New York, New York

Featured Speaker: **Luke O. Brooks**, Robbins Geller Rudman & Dowd LLP

This full-day program will provide a comprehensive overview of recent trends, developments and cutting-edge issues in securities litigation and enforcement. The panels will include prominent securities litigators, senior enforcement officials, in-house counsel, economists and academics, including Professor John C. Coffee, Jr., the Adolf A. Berle professor of law at Columbia Law School.

For more information, visit: www.nycbar.org

November 24-27, 2013

International Foundation of Employee Benefit Plans (IFEBP)
46th Annual Canadian Employee Benefits Conference

Hilton San Francisco Union Square
San Francisco, California

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 Canada.

For more information, visit: www.ifebp.org

November 26, 2013

Trades Union Congress (TUC)
Member Trustee Network Annual Conference

Congress House
London, England

With automatic enrollment finally underway, and plans in place for a single-tier state pension designed to provide a solid platform for private pensions saving, this conference will explore the next phase of pensions reform in the UK and why the role of pension funds as institutional investors is more important than ever.

For more information, please visit: www.tuc.org.uk

December 4-6, 2013

Pensions Investment Research Consultants Ltd. (PIRC)
18th Annual Local Authority Pension Fund Forum

The Highcliff Marriott Hotel
Bournemouth, England

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

This event will explore a challenging agenda for pension fund stewardship facing the whole asset owner community. Amongst the issues covered will be the role of activist investment funds, corporate tax policy, the corporate license to operate and the future of the Local Government Pension Scheme.

For more information, visit: www.pirc.co.uk

Please direct all inquiries to:
David C. Walton
davew@rgrdlaw.com