ON THE RECORD with Robbins Geller Rudman & Dowd LLP

3rd Quarter 2015

Robbins Geller Achieves Record-Breaking $388 Million Settlement for J.P. Morgan RMBS Investors

The $388 million settlement represents, on a percentage basis, the largest recovery ever achieved in a class action brought on behalf of purchasers of residential mortgage-backed securities ("RMBS"). It stands as a significant recovery for investors who lost money as a result of investments in RMBS, and was achieved by lead plaintiffs and class representatives **Laborers Pension Trust Fund for Northern California** and **Construction Laborers Pension Trust for Southern California**. "We're pleased with the record-setting recovery for our participants and the class," said Ed Smith, Fund Manager for Northern California Laborers. "Our lawyers at Robbins Geller were tireless in their efforts, and the result is a significant victory for the class."

The case dates back to 2009, when a class action complaint was filed against J.P. Morgan affiliates for packaging faulty residential mortgage loans and selling the RMBS to unsuspecting investors. The complaint alleged that offering documents relating to RMBS issued by J.P. Morgan misrepresented and omitted critical information about the true credit quality of the underlying loan collateral. Specifically, plaintiffs alleged that the offering documents contained misrepresentations and omitted material facts concerning (i) adherence to underwriting standards governing the loans supporting the RMBS; (ii) the process used to value the properties that secured the loans supporting the RMBS; and (iii) the true loan-to-value and debt-to-income ratios of the loans securing the RMBS. The falsity of defendants' statements was not revealed until the underlying mortgage assets defaulted at an unprecedented rate and investors suffered massive losses as a result.

In light of the undeveloped law in the RMBS context, Robbins Geller attorneys faced a series of novel legal challenges throughout the litigation. For example, in March 2011, the court granted in part defendants' motion to dismiss plaintiffs' claims, finding that because the lead plaintiff purchased in only one of the RMBS at issue it did not have standing to bring claims relating to other RMBS alleged in the complaint. The following year, however, the Second Circuit decided *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012) – an appeal briefed and argued by Robbins Geller attorneys – and issued a groundbreaking opinion establishing that an investor has standing to bring claims related to RMBS it did not purchase as long as the RMBS share common mortgage loan originators. In light of the *NECA-IBEW* opinion, plaintiffs successfully moved for reconsideration of the court's earlier dismissal, resulting in the reinstatement of claims relating to the previously dismissed RMBS. Hundreds of additional investors who purchased billions of dollars of faulty RMBS would have been denied recovery absent the deft work of Robbins Geller appellate and litigation attorneys.

In the face of significant procedural and legal obstacles, Robbins Geller attorneys also obtained an unprecedented class

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Darren J. Robbins

A Note to Institutional Investors from Darren J. Robbins

2015 has thus far been an eventful year in securities litigation, with large recoveries and important appellate developments. Our Firm has been at the forefront of these developments, including as lead counsel in the Supreme Court's *Omnicare* decision, which rejected the Second Circuit's *Fait* standard and led to the Court also vacating the dismissal of the *Deutsche Bank* action, where *Fait* would have left the case eviscerated.

The Firm also recovered $388 million for our pension fund clients and the class in the *J.P. Morgan* RMBS action, which would not have been possible were it not for the Firm's success at the Second Circuit in the *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* RMBS case, which resulted in reinstated claims on behalf of additional aggrieved investors that would otherwise have been disallowed.

Our ability to obtain results in trial courts across the country led not just to the *J.P. Morgan* settlement, but also to a $90 million settlement in our *Regions* class action after years of tough litigation. The *Regions* settlement comes on the heels of the "robo-signing" derivative settlement achieved with Wells Fargo, which is set to make a difference in thousands of homebuyers' lives with both financial and advisory assistance provided to those in need.

We are pleased to see organizations such as Institutional Shareholder Services and Chambers and Partners recognizing our ability to simultaneously litigate at the highest level on multiple fronts for however long the case requires. We look forward to the continued pursuit of justice on behalf of our clients in the future. ■

In This Issue:

Robbins Geller Tops SCAS 50 Report with More Recoveries and More Money Recovered than Any Other Securities Law Firm in the Country

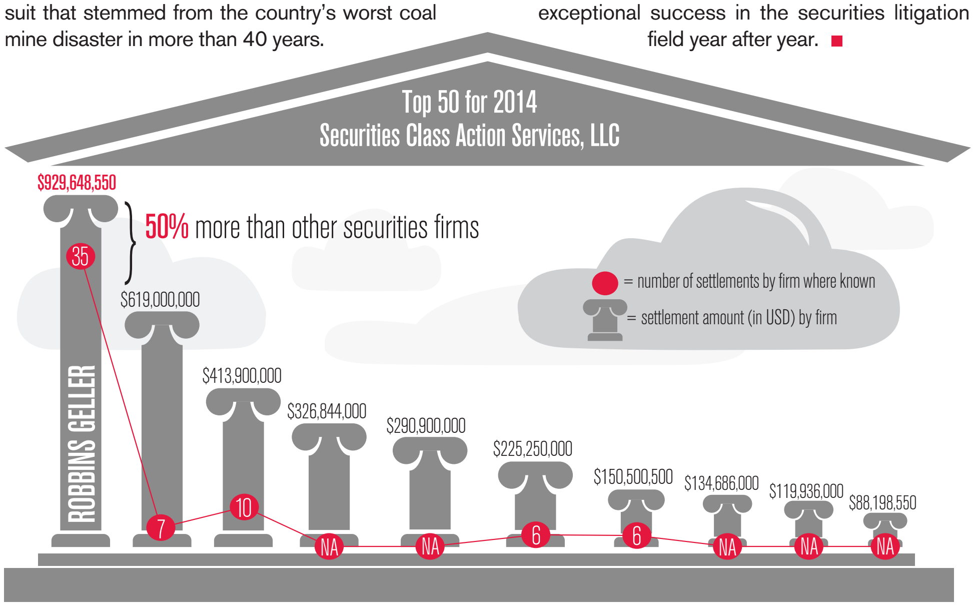
Institutional Shareholder Services (ISS) Finds Robbins Geller the Leader in Securities Class Action Recoveries

According to ISS's Securities Class Action Services ("SCAS") recent "Top 50" report, Robbins Geller recovered 50% more for shareholders than any other securities firm in the country during 2014.

The report identifies the top 50 plaintiffs' securities law firms ranked by the dollar value of final class action settlements occurring in 2014 in which the law firm served as lead or co-lead counsel and also cites the top five law firms based on the number of settlements represented for 2014. Robbins Geller leads the report with 35 settled cases, two to three times more settlements than any other law firm. The Firm also had the highest overall recovery amount, more than $929 million last year, $265 million of which is from the *Massey Energy* case, a shareholder suit that stemmed from the country's worst coal mine disaster in more than 40 years.

Robbins Geller also dominated ISS's recently released SCAS "Top 100 Settlements" report, ranking among the top five firms that are the most frequent lead counsel in the top 100 securities litigation settlements. In the top 10 cases, Robbins Geller achieved both the highest ranked settlement and over 31% of the overall recovery value. In total, Robbins Geller has recovered more than $15 billion in settlements for shareholders from the top 100 cases alone.

ISS's studies are consistent with other objective research covering securities class actions, which regularly rate Robbins Geller as one of the leading firms in terms of total dollar amount of annual settlements and total number of recoveries. These studies further demonstrate Robbins Geller's exceptional success in the securities litigation field year after year. ■



What role does CEO pay have in driving income inequality? In an explicit rebuttal to the work of Thomas Piketty and others, a new academic paper called "Firming Up Inequality" argues that "the wage gap between the most highly paid employees within these firms (CEOs and high level executives) and the average employee has increased only by a small amount, refuting oft-made claims that such widening gaps account for a large fraction of rising inequality in the population."[1]

But Lawrence Mishel of the Economic Policy Institute disputes the paper's finding that "inequality is due to high productivity growth of 'superfirms.'"[2] He says that "[t]his is pure speculation and is completely disconnected from their actual empirical work. A similar study examined productivity trends and contradicts their narrative about superfirms." Among other criticisms, he notes that their data includes firms of just 100 employees, and thus mutes the impact of the largest firms, which are the greatest contributors to income inequality:

> It is well established that the pay of executives in the largest firms grew tremendously over the last few decades. Nothing in Firming Up Inequality challenges or even examines these trends, which are not a matter of dispute among economists across the political spectrum. (The issue is why this occurred and what if anything to do about escalating CEO pay.) In our research … we examine the CEO pay of the 350 largest firms (by revenue) and show that the average compensation (2013) grew from $1.5 million in 1978 to $5.4 million in 1993 and then to $18.5 million in 2007 but fell in the financial crisis so our latest measurement, for 2013, was $15.2 million. CEO pay in these large firms grew 937 percent from 1978 to 2013, while the compensation of a typical worker grew by 10 percent.

Warren Writes to White. Senator Elizabeth Warren has written a very strong, direct, and detailed letter to SEC Chair Mary Jo White, criticizing a series of delays and failures and characterizing her performance as "extremely disappointing."[3] The 13-page letter says that Chair White has broken the promises she made at her confirmation hearing in "four key areas." They include the enactment of regulations requiring corporations to disclose the pay ratio between the highest paid executives and the mean, to reduce the number of waivers granted to corporations who are in violation of securities law and thus would otherwise not be allowed to continue with some of their activities, and to reduce the number of settlements that allow companies to agree to fines without admitting guilt. The fourth item on Senator Warren's list concerns the number of matters that have required Chair White to recuse herself due to previous conflicts of interest, which has slowed the progress of important initiatives. The letter also lists other significant problems, including the failure to enact rules requiring disclosure of political contributions, adding new loopholes to existing Dodd-Frank regulations, and pre-empting important state consumer protections.

Should there be a corporate death penalty? ValueEdge Advisors Vice Chair Nell Minow wrote the following in a *Huffington Post* column calling for capital punishment for corporations:[4]

> The government should never settle a criminal case against a corporation unless:
>
> ▪ The CEO, top executives, and, when appropriate, the members of the board make substantial personal contributions — not reimbursed by the company — to the fines that are imposed.
>
> ▪ The government debars executives involved from serving on the boards of publicly traded companies. They have that authority but almost never use it, so board members who oversaw massive frauds and failures like Enron and the financial meltdown companies were allowed to continue to serve as directors.
>
> ▪ In the case of the most severe violations, the government should impose capital punishment: forced dissolution or break-up.
>
> We are all familiar with the problems created by companies that are "too big to fail." But problems are even more prevalent in companies that are "too big to succeed," "too big to control," and "too big to behave." Perverse incentives reward executives, who can get paid more when the company is bigger instead of when it does better, and investment bankers, who get paid to broker deals that expand the size of companies regardless of the outcome. Therefore, we have encouraged the creation of enterprises that are so monstrously gargantuan they are beyond the capacity of any group of individuals to oversee in a meaningful and cost-effective fashion. The result, as Bob Monks and I wrote in our first book, is that the corporation is an "externalizing machine, in the same way that a shark is a killing machine—no malevolence, no intentional harm, just something designed with sublime efficiency for self-preservation, which it accomplishes without

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"The End of the Beginning"

Robert Monks, who has worked tirelessly for over 30 years as an advocate for improving corporate governance, delivered a challenge in the form of his keynote address to the ICGN Annual Conference in London on June 4, 2015. Hearkening back to World War II, and borrowing from Winston Churchill, Mr. Monks spoke about "The End of the Beginning," because while much has been accomplished, more work remains. With much gratitude to Mr. Monks, here is his speech in its entirety.

A little over 70 years ago, a million Londoners took to the streets of this great city to celebrate the end of World War II in Europe. For people of my generation — those of us old enough to remember what became known in the United States as VE Day — nothing can ever compare to the horror of those war years. To even attempt to do so is banal. Yet there is much about the task facing us today that puts me in mind of the challenges and high stakes of that long-ago time.

Then, the rich self-rule traditions born and nurtured at Runnymede, at Valley Forge, in the barricades of Paris and elsewhere hung in the balance. Hitler's Germany was many evils, but among them were a contempt for democracy, the appropriation of sweeping executive powers, and the intimidation of press and public, coupled with grandiose visions and a wayward moral compass. Unaccountable corporate power, I contend, has brought us perilously close to a similar situation in America today.

This, of course, is not the way things were meant to be. Just as the American political system is legitimated by a belief in the sanctity of the ballot, so the American corporate system, which vests control largely in the hands of privately appointed managers, is legitimated on three major bases. The first is a belief that the shareholders, as the owners of the corporation, have the ultimate right to control it. The second is a belief that corporate managers are accountable for their performance. The third is a belief that placing control of the factors of production and distribution in the hands of privately appointed corporate managers, who are accountable for their performance and who act in the interest and are subject to the ultimate control of those who own the corporation, achieves a more efficient utilization of economic resources than that achievable under alternative economic systems.

In both instances, if you dilute or strip away the foundational beliefs, the legitimacy inevitably begins to collapse. I'll talk later about the political system, but about the corporate system there can be little doubt.

Why that is so I will be detailing in the time allotted me today. First, though, let me say that I am here today more as Winston Churchill than as Jeremiah. On November 10, 1942, two and a half years before he announced the German surrender to his countrymen, Churchill delivered yet another memorable speech at the Lord Mayor's Day Luncheon at London's Mansion House. Rommel had been defeated in the African desert. America had joined the fray. Germany was not yet on its heels, but as happens so often in sports contests, the momentum had shifted in a subtle, subterranean way. "Now, this is not the end," Churchill cautioned. "It is not even the beginning of the end. But it is, perhaps, the end of the beginning." And he was dead-on right.

I've titled this speech "The End of the Beginning" in Winston Churchill's honor and, more important, in yours. All of you here today have good reason to be proud of what you have accomplished over the last twenty years against an implacable foe. In the simplest terms, you have made corporate governance a legitimate subject for discussion; you have defined the issues and generated increasingly sophisticated codes of conduct to inform global enterprise. Beyond that, the great institutions have educated themselves as to how they can best discharge their responsibilities as stewards, how they can responsibly act as activist shareholders and how they can hold managements to account. Peter Butler at Hermes has modeled for us all. We also have witnessed that skilled and persistent activists are welcomed on the best corporate boards even as Chairman – think of Ralph Whitworth at Hewlett Packard.

Clearly, we are ready to advance, but clearly, we also have far to go. We have barely begun the process of persuading managements that their best interests lie in encouraging a system of involved and effective ownership. Until we can achieve this objective, full success will elude our efforts. Our reality checks are not geographic progress but institutional ones. How far we have to go can most pertinently be understood through the lens of executive compensation. The persistent increases disconnected from any objective measures are an ugly and well-recognized part of our culture – and a major contributor to broader economic and social problems of inequality.

We need to go further and witness how the commitment of Western countries

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“The End of the Beginning” continued from page 4

to provide employer-financed pensions has been destroyed – with little notice. There are today virtually no companies offering “genuine pensions” in the sense that a return is guaranteed by their employer or the government. Managements posted immediate profit from abolishing the so-called defined plans, while transferring risk of loss from those most able to overcome it to those least able to, the employees themselves. Worse by far, too many CEOs and their top lieutenants have simultaneously feathered their own nests with executive pensions generous beyond all measure, and far beyond any real need. This huge transfer of wealth stands on its head the old and vital balance between management and worker compensation, with potentially dire social consequences.

Corporate language and priorities have captured the American Republic. The allocation of government resources is directed by the imperatives of short-term profit maximization and by a vocabulary of cost/benefit rather than concern for flesh and blood citizens. While we watched, chief executive officers have acquired autocratic control of the levers of corporate power, which in turn has given them accelerating political power. They are accountable to no one as they direct lobbying and the “legal corruption” of sponsoring political conventions, inaugurations, Presidential debates, and congressional self-monuments, not to mention the “bread and butter” of political campaigns.

More alarming still, these lobbying efforts are increasingly “off the books.” One might take heart in the fact that the number of registered lobbyists in Washington, D.C. has actually declined in recent years — until one realizes that the amount spent on lobbying has grown dramatically thanks to an ever-expanding network of stealth lobbyists taking advantage of ever-weakening lobbying regulations. This has been nowhere more true than in the finance, insurance, and real-estate sector, which has spent somewhere between $450 million and half a billion dollars annually on lobbying ever since the finance-sector driven crisis of 2007-08. Not coincidentally, one suspects, not a single high-ranking executive of any major finance firm has yet been prosecuted for malfeasances that rocked the entire global financial structure, but that is the subject of another discussion.

Suffice it for now to note that, while ownership has awakened to the challenge, CEO accountability remains largely a myth. Shareholders can neither nominate, remove, nor communicate with directors. The tendency is for the largest corporations to become “drones” in the sense of having no effective owners – that is no owner with more than ten percent of the total. What’s more, ownership increasingly is represented by index and algorithm selection in which human decisions as to purchase and sale of particular companies have no relevance. As one might expect, drone corporations on the whole pay fewer taxes, incur larger criminal fines, reward their CEOs with higher compensation, and externalize more liabilities on to society than do corporations having effective owners. That latter point, by the way, includes externalizing onto shareholders fines sometimes in the billions of dollars imposed in civil actions undertaken as the direct result of management actions.

Eighty years ago, Adolphe A. Berle warned that granting management free rein brought with it “the corresponding danger of a corporate oligarchy coupled with the probability of an era of corporate plundering.” Today, this corporate “capture” has found its fullest expression in the decision of the United States Supreme Court in *Citizens United*. That a Supreme Court Justice could actually argue, as Anthony Kennedy did, that there exists “little evidence of abuse that cannot be corrected by shareholders ‘through the procedures of corporate democracy’” shows how far we have sunk into a Never-Never Land of convenient “truths” and rosy shibboleths.

Instead of corporate governance, we have devised a kind of shadow play – Kabuki — in which the various constituents act out their assigned roles, culminating in the Kabuki festival we know as the annual meeting. Even shareholder activism, rather than undermining the legitimacy of the current systems, serves a legitimating function at these yearly events by maintaining the illusion that reform for the better is possible and that shareholders have power.

The endless proposals asking for actions to be subject to shareholder consent have not progressed from Melvin Eisenberg’s classic judgment: “[U]nder current law and practice, shareholder consent to rules proposed by top [management] in publicly held corporations may be either nominal, tainted by a conflict of interest, coerced or impoverished. . . . Under prevailing conditions, however, the limits on the meaningfulness of shareholder consent are so substantial that allowing those rules to be determined or materially varied by top managers with shareholder approval often would be functionally equivalent to allowing those rules to be unilaterally determined or materially varied by top managers.” And yet — more Kabuki — we continue to keep score of proxy contexts and votes as if important issues were in play.

The same can be said of shareholder access to the company proxy for nominations to the board of directors. Here is the drôle de guerre in all its glory – words like nominate, elect, and vote are used for a process that virtually always results in the election of those individuals whose names are on the proxy card, printed and distributed at shareholder expense, but selected entirely by the incumbents.

Similarly, words and phrases like trustee and fiduciary obligation are promiscuously elicited to describe the functional responsibility of the CEO and board members under circumstances in which their pervasive conflicts of interest are manifest. It is almost as if we dumbly recite the words in denial of the certainty that they will have no effect.

What George Orwell wrote of Political Speak is equally true of Corporate Speak: They are both “largely the defense of the indefensible. . . . A mass of Latin words falls upon the facts like soft snow, blurring the outline and covering up all the details. The great enemy of clear language is insincerity.”

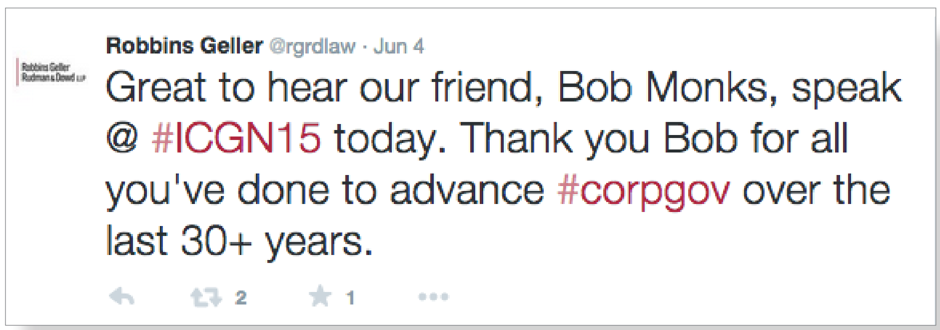
By this time, you must be wondering – what is this all about? Where is he taking us? We now have been confronted with the reality that all manner of professionals are conducting serious discussions about corporate governance and arriving at conclusions based on plainly erroneous understanding of key concepts. Is this just an accident? Is everybody being careless? Is this “equilibrium of misconception” accepted because it provides something of value to the principally interested parties?

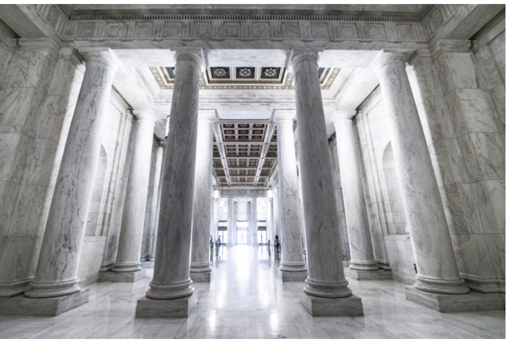
Institutional shareholders can claim to their beneficiaries that they are monitoring trust assets. Corporate directors can solemnly aver that they are subject to excruciating oversight (all of which justifies their otherwise incomprehensibly large fees). And corporate managers can assign professional advisors to play their roles in this Kabuki drama, all the while unthreatened in their virtually absolute control of the corporate assets and direction. Is there an organizing mind that profits from this confusion and engenders its continuance? Is the corporate governance industry a high profile “smoke screen” that enables the present composition of corporate power – hegemony of the CEO?

Answering these questions is the legacy of this speech. All I will say now is – it didn’t get this way by chance, and it won’t be changed by a simple laying on of hands.

The inescapable fact is that corporations cannot be effectively monitored or controlled by elements external to the corporation. Simply, corporations can lobby more effectively, can hire better lawyers to control the process of converting laws into public policy, and now — thanks to *Citizens United* — can commit almost limitless corporate funds to turning the political process in their favor. As Louis Brandeis once put it: “We believe that no method[] of regulation ever [has] been or can be devised to remove the menace inherent in private monopoly and overweening commercial power.” The only internal component of the corporate system with power, motivation, and interest sufficient to act as an effective monitor is the ownership.

Here, though, we do have models to build on. Wars produce unlikely heroes — the meek private who storms an enemy bunker. I don’t put Carl Icahn in that category. Meek he is not, and self-interest enters freely into his calculations. But Carl has shown repeatedly that a single Continued on p. 12





Supreme Court Confirms ERISA Fiduciary's Ongoing Duty to Monitor and Review Investments

It will come as no surprise to any ERISA fiduciary that a general duty to monitor investments exists. But what does that duty entail? And when is it triggered?

In *Tibble v. Edison International*, 575 U.S. __ (2015), the U.S. Supreme Court unanimously reversed a Ninth Circuit Court of Appeals decision which held that a breach of fiduciary duty claim was untimely filed because the initial selection of the investment occurred more than six years before the action was filed. This was an error, the Court explained, because "[u]nder trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones." And, importantly, "[t]his continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset." Thus, "so long as the alleged breach of the continuing duty occurred within six years of suit, the claim is timely."

This holding may strike some readers as commonsensical, so what's so special about *Tibble*?

The underlying dispute in this case was fairly simple. The beneficiaries of a defined-contribution plan argued that the plan sponsors breached their fiduciary duties and acted imprudently by offering six higher priced retail-class mutual funds as plan investments when materially identical lower priced institutional-class mutual funds were available. The beneficiaries argued that there was no credible explanation for why the plan offered higher priced mutual funds that cost the plan participants "wholly unnecessary [administrative] fees," and, consequently, that the plan sponsors failed to exercise the care, skill, prudence and diligence under the circumstances that ERISA demands of fiduciaries.

The glitch with the claim, according to the plan sponsors, was that ERISA breach of fiduciary duty claims are subject to a six-year statute of limitations, and the mutual funds were selected for inclusion in the plan more than six years before the complaint was filed. In short, the case was time barred. The district court agreed with this logic and dismissed the claim. On appeal, the Ninth Circuit affirmed the dismissal.

The Supreme Court disagreed, recognizing that "under trust law, a fiduciary normally has a continuing duty of some kind to monitor investments and remove imprudent ones." Consequently, a "plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones."

As always, whether a fiduciary's monitoring is adequate depends on the circumstances, including the nature of the specific plan and investment at issue.

In reaching its decision, the Supreme Court referenced a well-known treatise on trust law for the proposition that "'[t]he trustee cannot assume that if investments are legal and proper for retention at the beginning of the trust, or when purchased, they will remain so indefinitely.' … Rather, the trustee must 'systematic[ally] conside[r] all the investments of the trust at regular intervals' to ensure that they are appropriate." Similarly, the *Restatement (Third) of Trusts* states:

> [A] trustee's duties apply not only in making investments but also in monitoring and reviewing investments, which is to be done in a manner that is reasonable and appropriate to the particular investments, courses of action, and strategies involved.

§90, Comment *b*, p. 295 (2007).

Based on this commentary, a plan fiduciary may logically wonder whether the duty to continuously monitor investments also requires ongoing consideration of potential claims based upon those investments. And, while we recognize that many of our clients have sensibly opted to monitor for embedded claims lurking within their portfolios, other pension funds do not.

Sixteen years ago, the Secretary of Labor filed an *amicus* brief in response to challenges levied against a public pension fund's ability to serve as lead plaintiff under ERISA. The challengers contended that the public pension fund could not serve as lead plaintiff because to do so would require the fund to put class members' interests above the fund's participants' interests. The Secretary disagreed, explaining that "fiduciaries may take actions that benefit parties in interest as long as the actions are also in the best interest of participants and the decision was made with the interest of the participants in mind." Moreover, the Secretary explained, "[n]ot only is a fiduciary not prohibited from serving as a lead plaintiff, the Secretary believes that a fiduciary has an affirmative duty to determine whether it would be in the interest of the plan participants to do so." The Secretary even went so far as to note that "[t]he Secretary has previously taken the position that it may not only be prudent to initiate litigation, but also a breach of a fiduciary's duty to not pursue a valid claim."

More recently, in 2006, the Government Finance Officers Association ("GFOA") noted that "Public Pension Plan governing bodies (the Board) and chief administrative officers (CAO) have a fiduciary obligation to recover funds lost through investments in public securities as the result of corporate mismanagement and/or fraud." The GFOA also noted that "[a] considerable number of Plans have not been filing proof of claim forms to participate in settlements in which they have eligible claims and, as a result, are forfeiting money." Consequently, the GFOA recommended "that every Public Pension Plan develop and adopt a policy setting forth procedures for monitoring and participating in class action securities litigation."

The Seventh Circuit Court of Appeals' denial of a large pension fund's motion to intervene in a shareholder class action also provides a cautionary tale for any pension fund that invests in publicly traded securities. In *Larson v. JPMorgan Chase & Co.*, 530 F.3d 578 (7th Cir. 2008), a public pension plan appealed a district judge's refusal to allow it to intervene in a securities fraud class action three and a half years after granting summary judgment foreclosing the pension fund's claims. The Seventh Circuit upheld the district judge's denial of the pension fund's motion to intervene because it "almost certainly either knew – and if it did not know it was negligent in failing to learn – back in 2004 that summary judgment had been entered dismissing the early-purchaser claims on the merits and therefore with prejudice." Judge Richard A. Posner continued:

> It is possible that a large, sophisticated investor with a $6 million claim would not know that it was a member of a class in a class action suit, but it is exceedingly unlikely. The statute of limitations for the kind of securities claims involved in this case is only one year, 15 U.S.C. §77m, so someone having such a claim would have to ascertain promptly whether he was a member of a class since if he were not he would have to file his own suit post haste to avoid being time-barred. As a sophisticated member of the late-purchaser class, [the pension fund] would also have known that the original named plaintiffs, at least one of whom had had an early-purchaser claim, had been dismissed as class representatives.
>
> [The pension fund] is not some hapless individual who might be a member of a class in a class action suit without knowing it because the class had not been certified and the class members therefore formally notified. Large pension funds have securities lawyers on retainer, and their lawyers would have known about and monitored the progress of the class action whether or not the fund's trustees did.

In sum, following the logic of *Tibble* and general trust law, it seems prudent for pension fund fiduciaries to have a systematic process in place to regularly assess whether fund assets are affected by securities fraud and the route by which the assets will best be protected. ■

Wells Fargo "Robo-Signing" Settlement Gives Grants to Homebuyers

Thousands of homebuyers, including more than 200 homebuyers in Bakersfield, California, will receive financial assistance with down payments for their home purchases as part of the groundbreaking $67 million settlement of a derivative shareholder suit against Wells Fargo & Co. The suit was filed in 2011 in the Northern District of California by plaintiff **City of Westland Police and Fire Retirement System** and arose from investigations into the now-notorious practice known as "robo-signing," where banks expedited foreclosures through execution and submission of false and/or unverified legal documents.

The applicants for the $15,000 grants from Wells Fargo are eligible even if they do not finance their home purchase mortgages through Wells Fargo. Similar programs in other metropolitan areas impacted by the foreclosure practices addressed in the lawsuit, including the Stockton/Modesto/Fresno area of California, as well as Detroit, Michigan; Albuquerque, New Mexico; Virginia Beach, Virginia; St. Louis, Missouri; and New Haven, Connecticut, will also participate in the $36.5 million designated by the settlement for grant payments to homeowners.

Besides the grants, homeowners will be able to access a network of local HUD-certified, non-profit credit counseling programs that were provided with $6 million as part of the settlement. An additional $24.5 million of the settlement was invested by Wells Fargo to improve its mortgage servicing procedures.

Robbins Geller attorneys **Shawn A. Williams**, **Aelish M. Baig**, **Travis E. Downs III**, **Rachel L. Jensen**, **Christopher D. Stewart** and **Katerina M. Polychronopoulos** prosecuted the case for the Firm.

City of Westland Police & Fire Retirement System v. Stumpf, No. 3:11-cv-02369-SI (N.D. Cal.). ■

Litigation Update

Omnicare Ruling Frees *Deutsche Bank* Case from Jaws of *Fait*

On June 8, 2015, the Supreme Court of the United States granted a petition for a writ of certiorari filed on behalf of petitioners **Belmont Holdings Corp.**, **Norbert G. Kaess**, **Maria Farruggio**, **Edward P. Zemprelli** and **Plumbers' Union Local No. 12 Pension Fund** vacating the Second Circuit's affirmance of judgment for defendants, and remanding the action back to the Second Circuit for further consideration in light of the Supreme Court's decision in *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund,* __ U.S. __, 135 S. Ct. 1318 (2015) ("*Omnicare*").

The Supreme Court's ruling marks a favorable development in this action. Originally filed in 2009 in the United States District Court for the Southern District of New York, plaintiffs alleged that Deutsche Bank AG, several of its senior insiders, and participating underwriters violated Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 by materially misleading investors in Deutsche Bank's $6.2 billion capital raise through multiple offerings of preferred shares. Generally, plaintiffs alleged Deutsche Bank's offering materials misrepresented and omitted facts concerning the company's vast exposure to subprime and non-prime mortgage markets and mortgage-related assets, and failed to comply with accounting rules and SEC regulations in its publicly filed offering materials to shareholders.

On August 19, 2011, plaintiffs defeated defendants' motions to dismiss when the district court upheld the complaint in substantial part. Four days later, however, the Second Circuit issued its decision in *Fait v. Regions Fin. Corp.*, 655 F.3d 105 (2d Cir. 2011), which held an investor must show not only that a statement of opinion included in a registration statement was misleading when made, but that it was also subjectively "disbelieved" by the issuer. Defendants promptly moved for reconsideration in light of *Fait*, contending that the complaint's allegations failed to meet the pleading standard described in *Fait*. On August 10, 2012, the district court entered judgment for defendants in light of *Fait* and denied plaintiffs' request to file an amended complaint that would comply with *Fait's* pleading standard.

Plaintiffs appealed to the Second Circuit following the district court's decision denying leave to amend. However, the Second Circuit affirmed the lower court's dismissal under *Fait* and refusal to permit plaintiffs to file an amended complaint. Plaintiffs thereafter petitioned the Supreme Court to review the Second Circuit's decision, and during the pendency of plaintiffs' petition, the Supreme Court issued its ruling in *Omnicare*, which held that a statement of opinion may be actionable ***either*** because it was not believed, ***or*** because it lacked a reasonable basis in fact. The Court noted that in some contexts, such as securities offerings, a statement of opinion may reasonably be understood as an "'implied assertion, not only that the speaker knows no facts which would preclude such an opinion, but that he does know facts which justify it.'" *Omnicare* specifically rejected the Second Circuit's holding in *Fait*, which required investors to demonstrate that the issuer disbelieved the statements of opinion it made, as well as undercut the district court's basis for denying the relief plaintiffs requested at the lower court level.

The case has now been remanded back to the district court, where plaintiffs – represented by **Andrew J. Brown**, **Steven F. Hubachek**, **Lucas F. Olts**, **Eric I. Niehaus** and **Christopher D. Stewart** of Robbins Geller – will again prosecute their Securities Act claims.

Belmont Holdings Corp., et al. v. Deutsche Bank AG, et al., No. 14-1052, Order (U.S. June 8, 2015). ■

Plaintiffs Repeatedly Prevail at District and Appellate Level, *Regions* Settles for $90 Million

On May 27, 2015, the Honorable Inge Prytz Johnson, Senior District Court Judge in the United States District Court for the Northern District of Alabama, granted preliminary approval of a $90 million settlement in favor of plaintiffs in *Local 703, I.B. of T. Grocery and Food Employees Welfare Fund v. Regions Financial Corporation*. The settlement resolves claims stemming from Regions' accounting for goodwill following its 2006 acquisition of AmSouth Bancorporation, along with claims surrounding the company's improper treatment of loan loss reserves. The settlement marks the end of five years of contentious litigation and extensive motion practice, including two interlocutory appeals to the Eleventh Circuit. The settlement was achieved after extensive and protracted merits discovery, which included reviewing and analyzing several hundred thousand pages of documents and deposing more than 30 witnesses.

Originally filed in 2010, the case concerns false and misleading statements and omissions by Regions and its senior officers that caused Regions' stock price to be artificially inflated during the class period. In particular, plaintiffs alleged that defendants engaged in a fraudulent scheme of intentionally misclassifying non-performing loans in order to mask increasing loan losses during the economic recession. As a result, Regions' loan loss reserves were significantly understated and the company's financial statements did not reflect the company's true financial health. Additionally, plaintiffs alleged that Regions intentionally concealed billions of dollars of impairment to its goodwill for more than a year following the company's acquisition of AmSouth Bancorporation in 2006. Beginning in October 2008, Regions made several revelations that shed light on the fraudulent schemes. Then, in January 2009, the company was forced to write off several billion dollars of its goodwill, causing its stock price to plummet. Regions and several of its officers were subsequently investigated by the SEC and the Federal Reserve for manipulation of the company's loan loss reserves.

Robbins Geller prosecuted claims under the Securities Exchange Act of 1934 on behalf of lead plaintiffs **District No. 9, I.A. of M. & A.W. Pension Trust** and **Employees' Retirement System of the Government of the Virgin Islands** and all investors in Regions common stock during the February 27, 2008 through January 19, 2009 class period. Lead plaintiffs had a series of victories throughout the multi-year litigation, including overcoming defendants' motion to dismiss and repeated motions for reconsideration following the district court's June 7, 2011 order denying defendants' motion to dismiss in full.

The following year, lead plaintiffs moved for and successfully achieved class certification in the district court, and again prevailed over defendants' subsequent appeal of the class certification order to the Eleventh Circuit. After nearly two years and two landmark decisions by the U.S. Supreme Court in other securities actions, on August 6, 2014, the Eleventh Circuit issued its opinion, finding that the district court properly certified the class action and that lead plaintiffs were adequate class representatives. Notably, the Eleventh Circuit rejected defendants' claims that a lack of stock price impact following Regions' partial disclosures was fatal to the action. Instead, the Eleventh Circuit held that a lack of price impact in an omissions case such as this was understandable, given that "Regions's disclosures were designed to prevent a more precipitous decline in the stock's price, not bring about any change to it." Accordingly, the Eleventh Circuit remanded the action for further briefing on the issue of no price impact.

Following additional briefing on remand, lead plaintiffs ultimately prevailed when the district court again granted class certification on November 19, 2014. Thereafter, the parties engaged in a mediation and ultimately agreed to defendants' payment of $90 million in cash to resolve the class claims. The $90 million recovery achieved by Robbins Geller is an impressive result and underscores the Firm's tenacity and ability to prosecute cases over several years in order to Continued on p. 12

"preeminent plaintiff firm"

Darren J. Robbins

Samuel H. Rudman

Patrick J. Coughlin

Chambers USA Ranks Robbins Geller a Top Securities Firm and Names Attorneys to Its Best Lawyers Rankings

Robbins Geller once again received the "Band 1" ranking, the highest rating available by *Chambers USA* in the area of "Litigation: Securities Mainly Plaintiff" in its national, California and New York categories. Chambers & Partners identifies and ranks the most outstanding law firms and lawyers in over 180 jurisdictions throughout the world. *Chambers USA*, a publication by Chambers & Partners, ranks firms that have a national presence and that are the country's best in their respective areas of practice. Robbins Geller has continuously received a top ranking in Chambers & Partners' publications since the practice area was first created to recognize the firms and lawyers who do exemplary work in securities litigation on behalf of plaintiffs.

Chambers USA praised Robbins Geller as the "preeminent plaintiff firm," highlighting the Firm's record of success in obtaining many of the largest recoveries in history, including the largest securities class action recovery, the largest antitrust class action settlement, the largest corporate takeover class action recovery, and the largest opt-out (non-class) securities action recovery, along with recent achievements in 2014. The publication also noted that Robbins Geller is in "good stature with the courts and [has] a very deep bench."

Robbins Geller attorneys **Darren J. Robbins**, **Samuel H. Rudman** and **Patrick J. Coughlin** were also ranked highly for their work in securities litigation. *Chambers USA* commented that Robbins "is a prominent figure in the field of securities litigation" and "one of the leaders of the plaintiff Bar." The publication further stated that Rudman, "a first-class litigator," is "deeply experienced in the securities space," acting as lead counsel on behalf of defrauded shareholders. Additionally, *Chambers USA* commended "well-known and highly respected" Coughlin, describing him as "a dean of the Bar" for prosecuting highly significant cases in the securities field. ■

Protecting Portfolio Value 2015 Public Funds Forum

After witnessing a financial crisis the likes of which Americans had not witnessed in several generations, public funds are reclaiming their power to help mend critical weaknesses in the regulation of U.S. capital markets. Many believed that this time there would be consequences for those whose misconduct precipitated a global financial crisis that vaporized trillions of dollars of assets. Yet little has actually changed, which is why institutional investors are stepping up to new and more active roles in monitoring corporate malfeasance, reforming dysfunctional corporate boards, and safeguarding investor assets for the benefit of plan participants.

This September, representatives from public funds across the country and overseas will meet in Southern California at an exclusive invitation-only three-day educational conference to explore new tools critical to helping create a future that includes robust oversight and accountability in corporate practice and financial markets. Attendees will share analyses with corporate governance thought-leaders and enjoy informal networking opportunities at events centered around the natural beauty of the Pacific coast.

ValueEdge Advisors, co-founded by corporate governance leaders Robert A.G. Monks and Richard A. Bennett, formerly with GMI Ratings, will host the seventh annual Public Funds Forum from September 8-10 in Laguna Beach, California. Sponsors of the conference include Robbins Geller Rudman & Dowd LLP, the premier plaintiffs' securities litigation firm, and class-action administration experts Gilardi & Co. LLC. The exclusive conference sessions are designed to give representatives of public pension systems the knowledge and tools to help repair the markets, reshape corporate reform, and create and protect long-term value.

Educational sessions offered at the conference will be led by a dynamic and diverse group of experts, including luminaries from the communities of academia, pension fund management and private investment. Speakers will include Mohamed El-Erian, Chair of President Obama's Global Development Council and former CEO and Co-Chief Investment Officer of PIMCO; Robert A.G. Monks, referred to by *The Economist* and *Fortune* magazines as the leading shareholder activist and governance advocate in the world; shareholder litigation experts Darren J. Robbins and Michael J. Dowd; Sandy Matheson, Executive Director of Maine Public Employees Retirement System; Jack Ehnes, CEO of the California State Teachers' Retirement System (CalSTRS); Yumi Narita, Vice President of Americas Corporate Governance and Responsible Investment at BlackRock; Attorneys General Janet Mills (Maine) and Wayne Stenehjem (North Dakota); Paul Schneider, Head of Corporate Governance of the Ontario Teachers' Pension Plan; Shaquille O'Neal, 15-time NBA All Star, media personality, entrepreneur and philanthropist; and Michael Lewis, journalist and best-selling author of *Flash Boys*, *Moneyball* and *The Blind Side*, to name a few.

Attendees will actively participate in informative panel discussions to obtain strategies for navigating the current and future challenges presented by today's economy. The conference will include an exciting variety of activities, allowing guests ample opportunity to network and build relationships.

For representatives of public funds such as executive directors, chief executives, administrators, general counsel, investment officers, finance officers, fund trustees, and corporate governance officers, the seventh annual Public Funds Forum is this year's must-attend conference. For the most current information about the conference itinerary, sessions agenda and to register, please visit www.publicfundsforum.com. ■

Distinguished Speakers Include:

Mohamed El-Erian

Chair of President Obama's Global Development Council; CEO and Co-Chief Investment Officer of PIMCO (2007-2014)

Shaquille O'Neal

15-Time NBA All Star, Media Personality, Entrepreneur and Philanthropist

Michael Lewis

Journalist & Best-Selling Author of *Flash Boys*, *Moneyball* and *The Blind Side* certification order that certified the most broadly defined plaintiff class in any RMBS class action to date. Prior to the court's September 30, 2014 class certification order, few certified classes of RMBS purchasers included investors in more than one RMBS offering, and those that did were limited to cases featuring a plaintiff who purchased in each of the alleged RMBS or to class members who purchased the relevant securities within just a few weeks. In contrast, the class certified in this action encompassed investors in nine RMBS offerings who purchased over a period of several *years* – a pioneering victory that allowed many more investors to recover for their losses than previously possible. The court's appointment of Northern California Laborers and Southern California Laborers as class representatives, even though they had not purchased in all of the nine certified RMBS, was also made possible by the *NECA-IBEW* decision.

The $388 million recovery stands alone as the highest percentage of face value recovered in any of the 16 comparable RMBS purchaser class action settlements obtained to date and is more than two and a half times greater than the average percentage recovery in previous RMBS class action settlements.

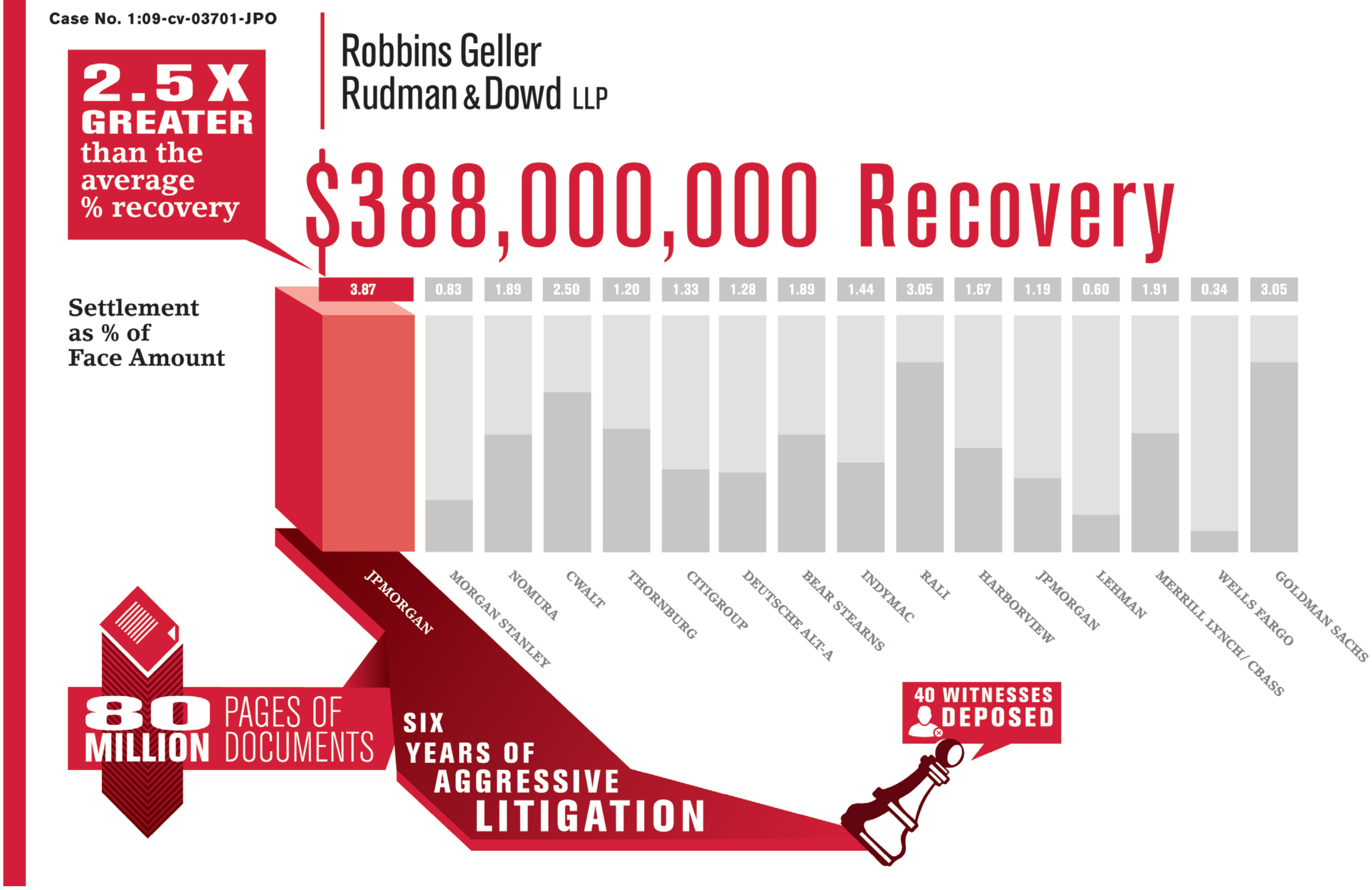
This remarkable result was achieved only after six years of aggressive litigation and an extensive investigation into all facets of defendants' faulty securitization practices – a process that resulted in the production of over 80 million pages of documents from defendants and third parties, more than 40 witness depositions, and consultation with experts in diverse and complex fields such as mortgage re-underwriting, securitization due diligence, statistics and economics. "We were prepared to go to trial, and we almost had to against J.P. Morgan," said Robbins Geller partner **Luke O. Brooks**, one of the lead attorneys on the case. "Ultimately, the skill of our litigation team and our willingness to take the case deep paid off with an extraordinary result."

The Robbins Geller team responsible for this record-breaking achievement consisted of partners **Daniel S. Drosman**, **Luke O. Brooks**, **Lucas F. Olts** and **Nathan R. Lindell** and associates **Darryl J. Alvarado**, **Angel P. Lau** and **Hillary B. Stakem**, as well as a team of highly skilled and dedicated staff attorneys and support staff.

Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co., et al., No. 1:09-cv-03701-JPO (S.D.N.Y.). ■

FORT WORTH EMPLOYEES' RETIREMENT FUND v. JPMORGAN CHASE & CO.

Case No. 1:09-cv-03701-JPO



any capacity to factor in the consequences to others."

New Clawback Rules to Be Announced July 1. *The Wall Street Journal* reports that the SEC will issue new rules forcing companies to claw back, or revoke, some of their top officials' incentive pay if they have to restate the financial results that led to it.

Monks on Integrated Reporting. ValueEdge Advisors Chair Robert A.G. Monks writes:[5]

> Ownership in large corporations is so diffuse that, essentially, we're all owners when you come right down to it. Especially when shares are owned and managed through large institutional funds and retirement plans. You, me and many people we know own stocks in corporations all over the world. These are the very corporations we complain about when we boycott or protest or when we lament the decline of American jobs. We own those companies and it's time we reconcile our ownership with what we want as a society.
>
> There is a solution. It may not be a one-stop shop and it will take work but there is a formula to ensure accountability and put the responsibility for corporate business back on the corporation. All constituencies – corporations, government, institutional owners, managers, trustees and every one of us – need to co-operate on developing a system of integrated reporting – holistic accounting – so that corporations have no incentive to pursue societally destructive practices. The costs of pollutions, health issues, roads, education – whatever is caused by business, whatever is needed by business must figure into the bottom line. We have to revolutionize accounting and all corporations should be held accountable. Then all shareholders and customers can stop being enablers of conduct that they personally deplore.

Proxy Access Update. Proxy access proposals are getting unprecedented levels of support, including some significant majority votes. Terence Corcoran has written an attack on proxy access:[6]

> The idea that corporations are little democracies that should be overseen like mini political institutions has been an insidious corporate governance concept for decades. The good news is that the idea has mostly fizzled, allowing corporations to continue to pursue their prime objective — maximizing shareholder value — with minimum interference from the forces of democracy.
>
> Still, like Marxism and 3D TV, bad ideas never die, as demonstrated … when the Canadian Coalition for Good Governance (CCGG) released a report declaring shareholder involvement in the corporate director nomination process "is an essential component of shareholder democracy."

Our response: The use of ad hominem attacks and snarky language does not obscure the fundamental failures of fact and logic in this tirade. No one needs Hollywood to show that corporate directors are captive to executives and often fail to create shareholder value; the financial pages are sufficient. Mr. Corcoran thinks that 3% of the stock is insufficient to support a singularity of interest to nominate directors, ignoring two key facts. First, 3% is quite often more than the amount held by the members of the board, and therefore those holders are more likely to be aligned with the other shareholders. Second, that is just nomination. It requires more than a majority to actually be elected. Executives like Mr. Corcoran love to rhapsodize about the purity of the free market until it actually works. Really, analogizing it to Marxism? This is capitalism 101; capitalism is not named after the executives. If a majority of the shareholders wish to replace the directors, they should have the right to do so. If management trembles at the idea of persuading shareholders that its candidates are superior or does not like the free market test of being a public company, it can go private, where I assure you the private equity investors will have a great deal to say about who serves on the board. After all, it's their money. As for the claim that all of the investors are fickle and short term? Once again, that is the market speaking. If shareholders do not have the right to replace directors, their only option is to sell the stock and buy shares elsewhere. Proxy access is a modest and vastly more efficient and market-based option. ■

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1 Jae Song, David J. Price, Fatih Guvenen, Nicholas Bloom and Till von Wachter, *Firming Up Inequality*, Nat'l Bureau Econ. Res., May 2015, *available at* http://www.nber.org/papers/w21199.

2 Lawrence Mishel, *New Research Does Not Provide Any Reason to Doubt that CEO Pay Fueled Top 1% Income Growth*, Economic Policy Institute (June 2, 2015), *available at* http://www.epi.org/blog/new-research-does-not-provide-any-reason-to-doubt-that-ceo-pay-fueled-top-1-income-growth/.

3 Letter from Senator Elizabeth Warren to Mary Jo White, Chair of the U.S. Securities and Exchange Commission (June 2, 2015), *available at* http://www.warren.senate.gov/files/documents/2015-6-2_warren_letter_to_sec.pdf.

4 Nell Minow, *If Corporations Are People, Some Crimes Deserve Capital Punishment*, The Huffington Post (May 27, 2015), *available at* http://www.huffingtonpost.com/nell-minow/if-corporations-are-peopl_1_b_7431168.html?utm_hp_ref=business&ir=Business.

5 Robert A.G. Monks, *Where No One Has Gone Before* . . . (June 2, 2015), *available at* http://www.ragm.com/blog/Where-No-One-Has-Gone-Before.

6 Terence Corcoran, *Shareholder democracy – the same old sham*, Financial Post (May 26, 2015), *available at* http://business.financialpost.com/fp-comment/terence-corcoran-shareholder-democracy-the-same-old-sham.

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Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or the "Firm") represents plaintiffs in litigation involving securities fraud, corporate takeovers, shareholder derivative claims, intellectual property, consumer and insurance fraud, and antitrust claims, as well as whistleblower protection and qui tam suits. The Firm's successes in these fields are due to the talents of its attorneys, who have successfully prosecuted thousands of class action lawsuits. With 200 lawyers in 10 offices, Robbins Geller has obtained many of the largest securities class action recoveries in history and was ranked number one in both the amount and number of shareholder class action recoveries in ISS's *SCAS Top 50* report for 2014. The Firm not only secures recoveries for defrauded investors, it also works hard to implement corporate governance changes, helping to improve the financial markets for investors worldwide. Please visit rgrdlaw.com for more information.

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"The End of the Beginning" continued from page 5

activist using his own long-term money can generate long and short-term results, and in doing so, he has offered both compelling evidence that responsible, active involvement is the key to superlative investment performance and shown the way for a generation of imitators, like him capable of being part of the problem as well as of the solution.

Owners with Skin in the Game — that, my friends, is the magic formula! And that is the challenge for the rest of us: How do we organize the trillions of dollars under management so as to emerge with activists capable of and willing to hold management to account? How can we corral Carl Icahn's energies to more holistic ends?

Let me begin to answer that with what is to me a foundational truth: Ownership needs to expand its agenda for the future. In the globalized world of commerce, effective and legitimate corporate functioning will require leadership from the business community and cooperation from governments. The future agenda must deal with at least the following issues:

A – A corporation must have a legal domicile importantly connected with its operations. "Domicile shopping" for the least effective governance regime must stop.

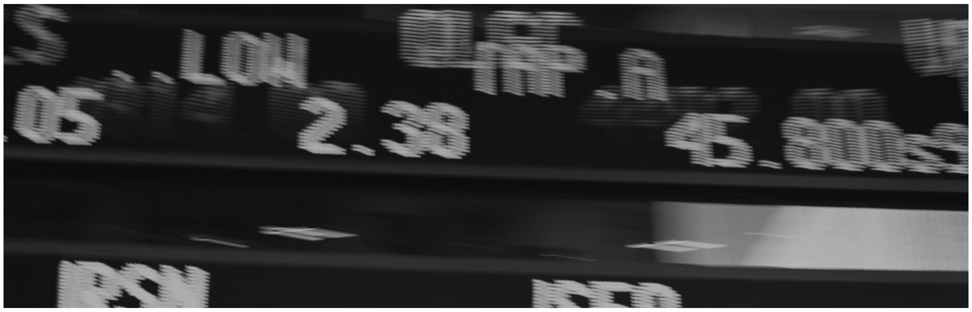
B – All constituencies need to cooperate on developing a system of integrated accounting so that corporations stop having incentive to pursue societally destructive practices, and shareholders and customers stop being enablers of conduct that they personally deplore.

C – All publicly traded companies must have "real owners" – obviously, defining the requisite characteristics will require much flexibility, as there is no shoe that fits every foot. What is critical is that there exist within the corporate framework an energy capable of acting as "steward" or even "fiduciary" for the stakeholders – capable of dealing with such issues as the permissible level of environmental impact and involvement in politics.

Let me leave you with two thoughts that hearken back to the World War with which I began this talk. Both thoughts would be hyperbolic were I not convinced that the social and economic fabrics of my country are at such risk. The first is a riff on the famous "First they came for …" formulation by the German theologian Martin Niemöller, who survived seven years in Nazi concentration camps: "First the CEOs paid themselves royally, and I said nothing because I wasn't a CEO. Then they ended pensions, captured government, corrupted international institutions, and suborned the judiciary. And finally they came for the owners … me."

Lastly, on a more upbeat note and to return to where I began, this abridgement from Winston Churchill's 1942 "End of the Beginning" speech, inspired by Rommel's defeat at El Alamein: "Henceforth, [those who oppose us] will meet equally well armed, and perhaps better armed troops. Henceforth, they will have to face in many theatres … that superiority … which they have so often used without mercy against others …."

The stakes are high. One reads today of daily attacks on government of, by, and for the people. Holding corporate power to account may well be the best, even the only opportunity to restore a civil society based on enduring human values, but the tide, I truly believe, is turning in our favor. Corporate hegemony is on notice. Management excesses will no longer go unchallenged. The fight that remains will be a long one, but I leave the struggle to all of you with great confidence. ■



Regions continued from page 8

vindicate the rights of its clients. The hearing on final approval of the settlement has been set for September 9, 2015.

Attorneys **Andrew J. Brown**, **Matthew I. Alpert** and **Ashley M. Robinson** led the Robbins Geller team in litigating this action on behalf of the plaintiffs.

Local 703, I.B. of T. Grocery and Food Employees Welfare Fund v. Regions Financial Corporation, No. 2:10-cv-02847, Order Preliminarily Approving Settlement and Providing for Notice (N.D. Al. May 27, 2015). ■