Robbins Geller Rudman & Dowd LLP

Corporate Governance Bulletin

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Robbins Geller Attorneys Prevail Against Regions Financial Corp. in 11th Circuit Decision

Finding that District Court Properly Certified Securities Class Action

In the first post-*Halliburton II* decision handed down by a federal circuit court of appeal, Robbins Geller scored a major victory – for both the certified class of defrauded Regions Financial investors and securities fraud plaintiffs everywhere – with the Eleventh Circuit's opinion in *Local 703, I.B. of T. Grocery & Food Employees Welfare Fund, et al. v. Regions Financial Corp., et al.*, No. 12-14168, Opinion (11th Cir. Aug. 6, 2014).

After nearly two years and two major Supreme Court decisions in securities fraud class action litigation (*Amgen* and *Halliburton II*), the Eleventh Circuit affirmed the district court's grant of class certification, and its appointment of lead plaintiffs **District No. 9, I.A. of M. & A.W. Pension Trust** ("District 9") and **Employees' Retirement System of the Government of the Virgin Islands** ("Virgin Islands") to serve as class representatives, and Robbins Geller to serve as class counsel. While the Eleventh Circuit remanded the case back to Judge Inge P. Johnson to clarify her holding on the issue of whether defendants' fraudulent misrepresentations affected the price of Regions common stock during the February 27, 2008 through January 19, 2009 class period, the appellate court made sure to emphasize that *Halliburton II* was in no way any help to either the defendants here or securities fraud defendants on the whole.

Specifically, the Eleventh Circuit held that even absent a price increase, a company's stock price can still be impacted by defendants' class period misrepresentations in cases such as this, where "***Regions's disclosures were designed to prevent a more precipitous decline in the stock's price, not bring about any change to it***." Opinion at 12 (emphasis added). The Eleventh Circuit also rejected defendants' arguments that the claims of lead plaintiffs District 9 and the Virgin Islands were not typical of other class members because they either sold some shares during the class period (District 9) or bought Regions stock at the end of the class period (Virgin Islands). Lastly, the court in *Regions* emphatically held that the use of outside, professional investment advisors/managers by institutional investors such as the lead plaintiffs did not detract from District 9's and the Virgin Islands' standing to represent the class of defrauded Regions shareholders, but in fact enhanced it. The court found that "a large institutional investor is likely to rely on investment advisers to make investment decisions on its behalf. And yet both Congress ***and the courts have recognized that these sorts of investors are generally preferred as class representatives in securities litigation***." Opinion at 21 (emphasis added).

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A Note to Institutional Investors from Partner Paul J. Geller

Paul J. Geller

In what has been a truly exciting quarter, Robbins Geller attorneys have been active in every phase of complex litigation on behalf of shareholders and consumers. Our performance has not gone unnoticed. The Firm and individual attorneys have been honored repeatedly in recent months by legal and business publications and organizations for service on behalf of our clients and the community in completed and ongoing actions. Along with honors and accolades came even more litigation successes. We achieved a $76 million judgment (in addition to a previous $11.6 million settlement) in the *Rural/Metro* case, we reached a settlement with the last remaining defendants in our antitrust lawsuit against various private equity firms (aggregate settlements of over $590 million), and we successfully resolved our class action against *Psychiatric Solutions* and our robo-signing derivative action against *Wells Fargo* – each for $65+ million.

While Robbins Geller trial lawyers were winning in the trial courts, our appellate team continued its successful track record as well. Our appellate lawyers achieved a significant post-*Halliburton II* class certification decision in the Eleventh Circuit *Regions* appeal, and also scored an important victory in the Ninth Circuit in the *Allergan* derivative case.

Moving along the litigation path, the last defendant in the seven-year-old private equity antitrust case settled as trial was looming. Meanwhile, Robbins Geller attorneys are preparing for a trial against *Apple Inc.* in the decade-old iPod iTunes antitrust case after defeating summary judgment. After winning at trial in the *Rural/Metro* action late last year, our attorneys also obtained a meaningful post-trial damages judgment against *RBC*.

From taking the lead in the early stages of the elaborate high-frequency trading case to successfully opposing a dismissal motion in the *Wal-Mart* bribery shareholder suit, to getting classes certified in *HCA*'s IPO case and *J.P. Morgan*'s $10 billion MBS sale, we remain very active in the opening and middle rounds of ongoing litigation and look forward to serving our clients in the upcoming quarter. ■

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Ninth Circuit Court of Appeals Issues Significant Shareholders' Victory in *Allergan*

On September 2, 2014, the Ninth Circuit issued a significant – and rare – reversal in plaintiffs' favor in the *Rosenbloom v. Pyott* ("*Allergan*") derivative lawsuit appeal. A three-judge Ninth Circuit panel unanimously concluded that the district court had abused its discretion when it dismissed the action for plaintiffs' purported failure to show that a pre-lawsuit "demand" upon Allergan's board of directors should be excused. Notably, the *Allergan* reversal joins another reversal in *Lynch v. Rawls* ("*Finisar*"), 429 Fed. Appx. 641 (9th Cir. 2011), as the two most prominent demand-futility decisions in the Ninth Circuit – with both wins resulting from the efforts of Robbins Geller litigators and appellate specialists.

The *Allergan* lawsuit had its genesis in a shareholder derivative action brought on behalf of nominal defendant Allergan against various Allergan insiders, including the pharmaceutical company's board of directors and its Chief Executive Officer and board Chairman, David Pyott. Plaintiffs allege that defendants illegally promoted Allergan's flagship drug "Botox" for therapeutic uses not approved by the Food and Drug Administration; such unapproved uses of prescription drugs are known in the medical and pharmaceutical communities as "off-label" uses. Although physicians are permitted to prescribe drugs for off-label uses, under federal law pharmaceutical companies are prohibited from promoting and marketing them as such.

Despite that prohibition, the *Allergan* defendants engaged in the systematic, decade-long illegal marketing and promotion of therapeutic Botox for off-label uses. Among the illegal actions were the intentional targeting of medical specialists in off-label fields and promoting Botox as a treatment for afflictions like "spasticity," pain, and migraine headaches – all off-label uses, and all years away from FDA approval. The promotion efforts worked: over the years, therapeutic Botox became a star performer for Allergan, adding up to $500 million annually to the company's coffers.

The board's illegal actions led to severe consequences for Allergan and its shareholders. The FDA issued several warning Continued on p. 10

SEC Should Reconsider Proxy Access to Allow Nomination of Directors by Shareowners

A recent study by the CFA Institute renews the call to give shareowners access to corporate proxies for the purpose of nominating public company directors. Accountability of corporate directors to company owners is a bedrock principle of effective corporate governance. Leading investors have long maintained that the right of shareowners to nominate directors is critical to director accountability. While such a right would only rarely be exercised, proponents of proxy access affirm that the establishment of clearer lines of accountability through the director selection process would have a beneficial effect on board performance.

Following the 2008 financial crisis, the Dodd-Frank financial reform law required the SEC to pass a rule to allow for proxy access for board nominations. In 2010 the SEC passed such a rule, but stayed its implementation when the rule was opposed and the agency was sued by the Business Roundtable and the U.S. Chamber of Commerce. The D.C. Circuit Court vacated the SEC rule in July 2011, citing insufficient cost-benefit analysis by the SEC and raising questions that such an analysis should address. Because these events took the investment community by surprise, the adoption of the rule (and then its striking down by the court) actually provided an opportunity to conduct event studies on the value the market placed on the rule itself.

The CFA Institute's comprehensive study reviewed five separate event studies assessing that value. At the same time, the CFA Institute reviewed the effectiveness and value of proxy access regimes outside the U.S. market, particularly focusing on the U.K., Australia, and Canada as the most similar to the U.S. proposal. In these regimes the actual nomination of directors by shareowners is a rare event, occurring only 10 times per year over the period from 2011 to 2013.

On the basis of its analysis, the CFA Institute made the following notable conclusions:

- Limited examples of proxy access and director nominations globally, coupled with the limited availability of corresponding market impact data, challenge whether a more detailed cost-benefit analysis was possible in the context of the court's decision.
- The results of event studies suggest that proxy access has the potential to enhance board performance and raise overall U.S. market capitalization by between $3.5 billion and $140.3 billion.
- Assessing and measuring increased board accountability and effectiveness is challenging. None of the event studies indicate that proxy access reform will hinder board performance.
- Proxy access is used infrequently around the world, even where low thresholds for ownership and duration of ownership exist. Evidence in these markets suggests that proxy access has not disrupted the election process in jurisdictions that allow it.
- Likewise, there is limited evidence to suggest that special-interest groups can use proxy access to hijack the election process or to pursue special-interest agendas.

CFA Institute, *Proxy Access in the United States: Revisiting the Proposed SEC Rule*, at 8-9 (2014).

In sum, the CFA Institute concluded "that proxy access would serve as a useful tool for shareowners in the United States and would ultimately benefit both the markets and corporate boardrooms, with little cost or disruption to companies and the markets as a whole." *Id.* at 9.

There are other regimes in developed markets where shareowner participation in director selection is not only permitted, but expected or required. In Italy, where many companies have controlling insider or founder groups, minority shareowners are permitted to elect directors through nomination by Assogestioni, an institutional investor collaborative organization. In Sweden, the largest shareowners are expected to put forward director candidates, effectively acting as company nominating committees. As one would expect, these systems have yielded real accountability of boards to shareowners.

Even prior to the SEC's consideration of proxy access, shareowner involvement in directorial nominations had been recognized as a value-adding governance reform in the U.S. market for many years. Sixteen years ago, Ralph Whitworth of Relational Investors, as a Continued on p. 11

Over $590 Million Recovered for Shareholders in Private Equity Antitrust Case

After nearly seven years of hard-fought litigation, Robbins Geller attorneys have obtained preliminary approval of several settlements with the world's largest and most powerful private equity firms – Bain Capital Partners, Goldman Sachs, The Blackstone Group, Kohlberg Kravis Roberts & Co., TPG Capital, Carlyle and Silver Lake Technology Management – to resolve claims that they suppressed competition in certain leveraged buyouts ("LBOs") from 2003-2007, and as a result, paid shareholders less per share for their stock holdings. As part of the settlements, defendants have agreed to pay a total of $590.5 million to compensate shareholders who sold or exchanged stock in connection with some of the largest LBOs in history, including the $45 billion TXU, $32 billion HCA, and $17.5 billion Freescale LBOs.

First filed in the District of Massachusetts in December 2007, plaintiffs alleged that the world's largest private equity firms violated the Sherman Act, 15 U.S.C. §1, by conspiring to suppress the prices paid to shareholders in large LBOs, where purchasers, often private equity firms, acquire most of a company's outstanding shares with a substantial amount of debt financing, subsequently take the company private by withdrawing its shares from the public exchange, operate it for a period of time, and thereafter sell it or conduct an IPO. The settlements are the culmination of years of intense litigation in the face of defendants' repeated and steadfast attempts to defeat plaintiffs' claims.

After the court denied defendants' motion to dismiss, concluding that plaintiffs had sufficiently pled their Sherman Act claim, plaintiffs obtained discovery as to nine LBOs. As the case proceeded, the parties fought numerous battles over the scope of discovery. Plaintiffs filed two successful motions to expand discovery into additional phases, which allowed plaintiffs to uncover further conspiratorial conduct in an additional 18 transactions. Plaintiffs obtained and reviewed over 13 million pages of documents and took the depositions of 48 fact witnesses, including many of defendants' senior-most executives.

Defendants next filed individual and omnibus summary judgment motions on the overarching conspiracy claim, and certain defendants filed a separate motion on the HCA claim. After extensive briefing totaling over 1,000 pages, the submission of nearly 2,500 exhibits, and a two-day hearing, the court denied summary judgment on both claims and narrowed the overarching conspiracy to an overarching agreement between defendants to refrain from "jumping" each other's announced proprietary deals. The court found that TPG's statement regarding the Freescale LBO that "KKR has agreed not to jump our deal since no one in private equity ever jumps an announced deal," the fact that no announced proprietary LBOs were ever "jumped," and other incriminating evidence "suggests that the practice was not the result of mere independent conduct."

Defendants then filed renewed motions for summary judgment as to their participation in the redefined overarching conspiracy, which the court largely denied on July 18, 2013. The court found the evidence as to each of the seven settling defendants sufficient "to exclude the possibility that each of the . . . [d]efendants [was] acting independently when choosing not to 'jump' announced proprietary deals." Silver Lake subsequently moved for reconsideration of the July 18 order, which the court summarily denied. Carlyle filed a motion to amend the court's order to permit interlocutory review, which was also denied. Additionally, the court rejected Goldman Sachs, Carlyle, TPG, and Blackstone's attempt to seek reconsideration of the denial of summary judgment as to the HCA claim.

With a hearing fast approaching on plaintiffs' motion to certify the classes, trial scheduled for November 2014, and in the wake of numerous mediations and further informal settlement discussions, plaintiffs secured their first settlements with Bain and Goldman Sachs for $54 million and $67 million, respectively, in June 2014. The following month, plaintiffs reached a settlement with Silver Lake for $29.5 million, and subsequently settled with Blackstone, KKR and TPG for $325 million.

Carlyle, the lone remaining defendant, moved for summary judgment yet again, and moved to strike plaintiffs' expert witnesses. In advance of trial, plaintiffs and Carlyle exchanged trial exhibits, witness lists, deposition designations and multiple expert reports. With trial only two months away, plaintiffs obtained a $115 million settlement with Carlyle, bringing the total settlement amount with all defendants to $590.5 million.

Patrick J. Coughlin was to be the lead trial lawyer from the Firm and was involved in each of the negotiations that led to the Continued on p. 11

Robbins Geller Obtains $75.7 Million Judgment against RBC Capital Markets, LLC on Behalf of Former Rural/Metro Corporation Shareholders

On October 10, 2014, Delaware Vice Chancellor J. Travis Laster ordered RBC Capital Markets ("RBC"), an investment banking arm of Royal Bank of Canada, to pay former Rural/Metro shareholders over $75 million in an award *TheStreet.com* described as stunning and "one of the largest in the history of the Court of Chancery."

As described in the 2Q14 *Corporate Governance Bulletin*, Robbins Geller attorneys and their co-counsel at Bouchard, Margules & Friedlander (now Friedlander & Gorris) were victorious in a bench trial where Laster found defendant RBC liable for aiding and abetting breaches of fiduciary duty by Rural/Metro's board of directors in connection with the merger/buyout of Rural/Metro. Following that decision on liability, the parties briefed the issue of damages, and a hearing was held in June. Laster's 95-page opinion quantifies how plaintiffs had been underpaid for their Rural/Metro shares in the merger and how RBC now bore the bulk of the financial responsibility.

Prior to the trial, other defendants had reached agreements to settle and to have plaintiffs' claims against them severed, leaving RBC as the sole defendant at trial facing the remaining claims. The settlements were for $5 million from financial advisor Moelis & Co. and $6.6 million from the individual director defendants. RBC contended that its liability should be reduced by the amounts of the previous settlements and that the liability should be apportioned equally among the six individuals, Moelis and RBC. This reasoning would have left RBC only "liable for 12.5% of the total damages suffered by the Class." However, in his October 10th order, Laster wrote that the "unclean hands doctrine" applied where plaintiffs had shown that RBC engaged in fraudulent conduct against fellow defendants, and accordingly explained his analyses where RBC was only entitled to a settlement credit of 17%, and RBC's share would be 83% of the total damages of $4.17 per share, amounting to an award of $75,798,550.33 plus pre- and post-judgment interest calculated from June 30, 2011 to the date of payment.

At trial, Laster found that plaintiffs had successfully established their allegations against RBC with liability claims classified in two types: sale process claims and disclosure claims. Disclosure claims involved affirmative representations to the board and in the proxy statement for the buyout. Citing RBC's "manipulation" of analyses and "false justifications proffered for certain changes," Laster found "information that RBC provided the Board … was false, and that false information was repeated in the Proxy Statement." As Laster further noted, "[P]laintiffs also proved at trial that information RBC provided about [RBC's] conflicts of interest was false." The sale process claims included both failures to disclose material information and also affirmative representations. Where the directors breached their fiduciary duty in approving the proxy content and buyout, "they did so," Laster held, "because RBC misled them." Laster wrote that "if RBC were permitted to seek contribution for these claims from the directors, then RBC would be taking advantage of the targets of its own misconduct."

Laster described a methodology for breaking damage claims up 50-50 between sale process and disclosure. Of the 50% for sale process, because of the unclean hands doctrine, RBC was "not entitled to any settlement credit for the breaches of duty that occurred during final approval" of the Rural/Metro buyout, which accounted for 25% of the total claims. From the other 25% of sale process damages, Laster held that two individual defendants had 17% responsibility for initiating the sale process without authorization from Rural/Metro's board, with RBC allocated the remaining 8% damages liability. As to the 50% of damages from disclosure claims, Laster noted that "by committing fraud against the very directors from whom RBC would seek contribution, … RBC was solely responsible for the Disclosure Claim," giving RBC overall responsibility for 83% of the damages. Combined with the $11.6 million recovered earlier in the action, this post-trial judgment gives shareholders a recovery of over $87 million – over 95% of their damages – an outstanding result in a case where Robbins Geller and Friedlander & Gorris were appointed as new lead counsel (and their client as new lead plaintiff) after objecting when the previous lead firm had agreed to settle in 2012 for nothing but supplemental disclosures and defendants' agreement not to oppose that plaintiff's fee application.

The result compelled *The American Lawyer's AmLaw Litigation Daily* to name Robbins Geller's Randall J. Baron and Friedlander & Gorris' Joel Friedlander as their "Litigators of the Week," observing that "[t]he decision was immediately recognized as a tidal event for dealer advisers," and the near-$100 million end result was "[n]ot bad for a lawsuit that one of the directors' lawyers pooh-poohed at a hearing last November as 'a nothing case.'"

Robbins Geller attorneys **Randall J. Baron** and **David A. Knotts** are co-lead counsel for the lead plaintiff.

In re Rural/Metro Corp. Stockholders Litigation, No. 6350-VCL, 2014 Del. Ch. LEXIS 202 (Del. Ch. Oct. 10, 2014). ■

$65 Million Settlement Obtained in *Psychiatric Solutions*

On September 5, 2014, Robbins Geller reached a $65 million settlement in the securities class action lawsuit *Garden City Employees' Retirement System v. Psychiatric Solutions, Inc. et al.*, filed in the United States District Court for the Middle District of Tennessee before Chief Judge William J. Haynes, Jr. The settlement represents the third largest securities recovery ever in the Middle District of Tennessee and the largest in more than a decade.

The case was filed on September 21, 2009 on behalf of purchasers of Psychiatric Solutions, Inc. ("PSI") stock during the February 21, 2008 through February 25, 2009 class period. Investors were represented by **Central States, Southeast and Southwest Areas Pension Fund**. The complaint names as defendants PSI, its former President and CEO Joey Jacobs, its former Continued on p. 12

High-Frequency Trading Case Heats Up

From flash crashes, dark pools, alarming and best-selling publications like Michael Lewis's *Flash Boys*, to state and federal probes, the moral and legal outrage brought about by high-frequency trading ("HFT") firms is showing no sign of letting up. While investigations on behalf of state and federal regulators and law enforcement are ongoing, private institutional plaintiffs are also taking legal action on behalf of their members and the investing public. On September 2, 2014, plaintiffs filed a Consolidated Amended Complaint for Violation of the Federal Securities Laws in the Southern District of New York alleging that seven public stock exchanges, as well as an alternative trading venue (or "dark pool") operated by Barclays PLC, manipulated U.S. securities markets, enriching defendants and diverting billions of dollars from plaintiffs.

Robbins Geller filed the initial complaint in April 2014 on behalf of the **City of Providence, Rhode Island**, and was appointed as co-lead counsel for five lead institutional plaintiffs, including **Plumbers and Pipefitters National Pension Fund**, **Employees' Retirement System of the Government of the Virgin Islands**, **State-Boston Retirement System** and **Första AP-fonden**. The action is brought on behalf of a proposed class of all public investors who purchased and/or sold shares of stock on the defendant exchanges on or after April 18, 2009. The seven exchanges include the gigantic New York Stock Exchange and the NASDAQ, as well as exchanges run by BATS Global Markets, Inc. and Barclays' dark pool. The complaint alleges that defendants collaborated with HFT firms in schemes where the defendant exchanges were paid billions of dollars in kickbacks by the HFT firms for preferential access to exchange floors and enriched data feeds in order to take advantage of the trading plaintiffs.

Over the last decade, the U.S. trading markets have been regulated with the stated intent of maintaining "efficient, competitive, fair, and orderly markets that are in the public interest and protect investors," with the SEC declaring that the national market system ("NMS") "was being structured to favor the interests of long-term investors over short-term traders." Because NMS regulations were enacted in part to get investors the best bid and offer prices displayed by any participating exchange, high trading volume became an important metric of perceived price efficiency, as the best prices and "a heavy flow of orders could increase the perception that the exchange was offering the best prices." The exchanges began to offer incentives and rebates to trading firms who actively bought and sold shares on their exchanges. The added complexity of the system would lead to rebate arbitrage (with traders deciding on an exchange because of the rebate paid) and a system that incentivized HFTs firms and predatory practices. Exchanges were happy to let HFT firms place and cancel thousands of stock orders to detect demand. If the algorithms of sophisticated HFT firms could detect when a large institutional investor was trading in a stock, they "would rush to buy (or sell) it first and then sell it back to that Class member at a higher or lower price, pocketing the difference." In utilizing this method against index funds while they rebalance, it has been estimated that the difference amounts to "21 to 28 basis points annually for S&P 500 index funds, and at least 38 to 77 basis points per year for Russell 2000 funds."

Gaming the exchanges' systems with their cooperation has proved extremely profitable for the HFT firms, whose success was documented in the complaint: Virtu Financial had "just one day of trading losses in five years." Another "had not had a losing day of trading in four years and typically held stocks for only 11 seconds," while "proprietary trading desks of JP Morgan, Bank of America, Citigroup and Goldman Sachs combined posted 244 winning trading days against zero losses in the first quarter of 2010."

Meanwhile, the exchange defendants were being paid handsomely to let the HFT firms put their servers "in close proximity to the Exchanges' own order matching servers" in a practice known as "co-location." Exchanges charged both up-front and monthly rental fees for those who, in the NYSE's own marketing words, "need high-speed market access for a competitive edge." The edge here being, in the NASDAQ's case, connectivity that was "an average of 8 to 9 microseconds faster [roundtrip]." Co-location services alone made an estimated $1.8 billion annually for the exchanges as of 2010.

Not only do the HFT firms get the exchanges' trading data faster due to closer proximity, they also get data faster through different, enhanced feeds, unlike the consolidated feeds the regular investing public uses. These feeds also assist the HFT firms in "predicting short-term price movements with near certainty," thanks not only to the speed differential, but also to the greater depth of data provided. Plaintiffs contend the price for access is more than traditional buy-and-hold Continued on p. 7

Darren J. Robbins

Robbins Geller Honored by *The National Law Journal*, Named to List of America's Elite Trial Lawyers

In early September, *The National Law Journal* ("*NLJ*") named Robbins Geller to its inaugural list of Elite Trial Lawyers in America. In a detailed article published later in the month, the *NLJ* noted that Robbins Geller has "found perfect partners to extract meaningful recoveries in securities cases and ensure that related governance reforms are instituted." The *NLJ* praised the Firm's work "to right wrongs in headline-grabbing business disasters" in cases such as *Household International*, the largest securities class action judgment ($2.46 billion), and *Enron*, the largest securities class action in history ($7.3 billion). Another notable victory the publication lauded was *UnitedHealth*, the largest stock option backdating recovery in history ($925 million) – more than four times larger than the next largest recovery of its type – which "changed the way corporate America did business."

The *NLJ*'s Elite Trial Lawyers list honors U.S.-based firms that have done exemplary and cutting-edge work on behalf of plaintiffs. The *NLJ* recognized firms that have had a successful trial record and achieved "big victories in complex cases that have a wide impact on the law."

"Juries have a really good nose for what is fraud and what isn't," said partner **Darren J. Robbins**. "The job is to lay the story out there and boil down what often are very complex activities that are just as often driven by very simple, easy to understand motives."

This most recent recognition is further confirmation of the Firm's dedication to vigorously and diligently representing its clients' interests. ■

investors would ever pay, and that "[t]he only reason HFT firms are willing to pay such exorbitant fees is that the informational and technological advantages sold by the Exchanges give them an unfair advantage over plaintiffs and the Class."

The exchanges created numerous new complex order types that enabled HFT firms to take priority over and advantage of regular investors. The expansion of order types were, in the words of an exchange officer, "to ensure [an HFT] customer achieves certain economics" so that the exchange "will attract more volume." Another industry insider put it bluntly, "[W]hen HFTs ask for a new order type, they get a new order type." These special order types allowed HFT firms to "jump to the head of the queue" and gave them "guaranteed economics," but were not available to brokers for institutions. Because of these order types, everyday "long-term" investors "were buying stocks for a slightly higher price than they should, and selling for a slightly lower price and paying billions in 'take' fees along the way."

Brokerage firms earn rebates for trading their customers' accounts on exchanges, and the exchanges sell information on these trades to HFT firms for hundreds of millions of dollars annually. Plaintiffs contend that "[i]n so doing, and in combination with the other advantages provided to HFT firms … the Exchanges [profit from and] provide HFT firms the opportunity to purchase and sell securities while in possession of material non-public information" in violation of the Securities Exchange Act of 1934 and Rule 10b-5.

Registered national stock exchanges must comply with the Securities Exchange Act and SEC rules to ensure fair treatment of investors, in the "self-regulating" NYSE's own words, guaranteeing them "a fair and level playing field along with equal access to information and guidance." In previous decades, as non-profit, self-regulating entities, the older exchanges had been afforded a measure of immunity from liability. However, the newer, for-profit exchanges (and older but now-public and for-profit exchange defendants) generated massive revenues selling "enhanced data feeds" and faster speeds to HFT firms. Plaintiffs noted that "[t]he Exchanges' sale of advanced access to market data has nothing to do with their former roles as market regulators and everything to do with their private business interests."

Robbins Geller has been appointed co-lead counsel for plaintiffs. Attorneys litigating the case are **Samuel H. Rudman**, **Andrew J. Brown**, **Patrick J. Coughlin**, **David W. Mitchell**, **Susan G. Taylor** and **Brian O. O'Mara.**

City of Providence, Rhode Island, et al. v. BATS Global Markets, Inc., et al., No. 1:14-cv-02811, Consolidated Amended Complaint for Violation of the Federal Securities Laws (S.D.N.Y. Sept. 2, 2014).

Plaintiffs Defeat Wal-Mart Stores, Inc.'s Motion to Dismiss Securities Case Arising Out of Mexico Bribery Scandal

On September 26, 2014, Judge Susan O. Hickey of the United States District Court for the Western District of Arkansas issued an order allowing lead plaintiff **City of Pontiac General Employees' Retirement System** ("Pontiac") to pursue its securities fraud claims against defendants Wal-Mart Stores, Inc. and its former CEO, Michael T. Duke. Pontiac's complaint concerns Wal-Mart's misleading statements about a multi-million dollar Mexican corruption scheme.

Wal-Mart had portrayed itself to investors as a model corporate citizen that proactively uncovered potential corruption and promptly reported it to law enforcement. In truth, a former in-house lawyer had blown the whistle on Wal-Mart's corruption years earlier, and Wal-Mart concealed the allegations from law enforcement by refusing its own outside counsel's calls for an independent investigation.

The New York Times exposed Wal-Mart's fraud, and Robbins Geller obtained the internal emails on which the *Times* had relied, as well as other emails that were later published by the Congressional Committee on Energy & Commerce. Recognizing the devastating nature of these emails, and despite having quoted most of them in its own publicly filed exhibits, Wal-Mart waged a year-long fight in two different federal district courts to strike Pontiac's complaint and strike the emails from the public record. Robbins Geller fought these efforts and exposed Wal-Mart's dishonest tactics. Ultimately, Wal-Mart had to withdraw its challenge as to all of the emails that Robbins Geller had included in Pontiac's complaint in the Western District of Arkansas and it lost its bid to strike two other emails from the public docket in the Middle District of Tennessee.

Having rejected Wal-Mart's efforts to strike all or portions of Pontiac's complaint, Judge Hickey referred Wal-Mart's motion to dismiss the complaint to United States Magistrate Judge Erin L. Setser for a report and recommendation. On May 8, 2014, Judge Setser issued a Report and Recommendation recommending that Judge Hickey deny Wal-Mart's motion to dismiss, agreeing with Pontiac that "[w]ithout any reference to the 2005 and 2006 events, a reasonable investor could have certainly been left with the impression that Defendants only learned of the suspected corruption in fiscal year 2012, and that, upon learning of the suspected corruption at that time, Defendants promptly began investigating and referred the matter to the DOJ and SEC."

On September 26, 2014, Judge Hickey adopted Judge Setser's Report and Recommendation in its entirety. Judge Hickey's order repeatedly corrected Wal-Mart and Duke's attempt to mischaracterize Judge Setser's findings. In addition, Judge Hickey concluded that "[t]he information that Defendants consciously chose to omit include[s] facts about when and how Defendants first learned of the suspected corruption and how they first responded to these allegations." The court also found that "[t]he inference that Defendants intentionally omitted certain information is just as strong, if not stronger, than any competing plausible inference."

Instead of investing in the model corporate citizen Wal-Mart portrayed itself to be, investors wound up with shares of a company that has had to bear hundreds of millions of dollars of ongoing legal and investigative fees ($20 million per month), has had to make significant changes to its executive team (including the replacement of defendant Michael Duke as CEO), is subject to new scrutiny for its expansion plans, and faces the likelihood of criminal fines and penalties that could easily exceed $1 billion. Pontiac's pursuit of its claims means that investors will have the opportunity to recover what they overpaid for Wal-Mart's shares.

"It's obvious that Wal-Mart believes it's above the law. That's why they thought they could get away with bribing their way to the top in Mexico, concealing their corruption, rewriting history, bullying us, and insulting the court," said Robbins Geller partner **Jason A. Forge**. "Now they've been brought down to earth, and we have the level playing field we've wanted since day one."

City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc., et al., No. 5:12-cv-5162, Order (W.D. Ark. Sept. 26, 2014).

Class Certification Obtained in *HCA Holdings* Case

On September 22, 2014, shareholders of HCA Holdings, Inc. moved a significant step closer to redressing the wrongs associated with HCA's massive $4.3 billion initial public offering, the largest in 2011, by obtaining class certification from United States District Judge Kevin H. Sharp.

Heading into its IPO, HCA was experiencing and would continue to experience declines in several significant revenue streams. In the quarters immediately preceding the IPO, HCA's high margin cardiology procedures, accounting for about 25% of HCA's Medicare inpatient revenue, were declining. HCA knew about this decline and knew that it would continue because HCA's internal reporting and its own internal investigation had revealed that unnecessary cardiac procedures were occurring across several HCA hospitals. An investigation by the Department Continued on p. 8

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of Justice into HCA's cardiac procedures further supported this finding. As a result, HCA knew that the number of certain cardiac procedures performed at its hospitals (and the revenue generated by those high-profit procedures) would continue to decline significantly. Despite this knowledge, HCA failed to disclose the decline prior to its IPO.

In the months following the IPO, HCA's stock dropped to $18.81 per share – a decline of over $11 per share, or 38%, from the IPO offering price – because of HCA's declining revenue. As a result, the class of HCA shareholders who purchased in the IPO or traceable to it suffered more than $1 billion of harm. Plaintiff filed a motion to certify the class to recover these damages.

In addressing the merits of plaintiff's motion, the court found that common issues predominated over any potential individual issues and should be determined on a class-wide basis. By doing so, the court denied defendants' arguments that publicly available information regarding HCA presented significant individual issues because investors may have varying degrees of knowledge of the alleged misstatements and omissions. Despite this challenge, the court stated that it "is not convinced that the question of 'knowledge' will predominate over the other common issues in this case." As part of the ruling, the court appointed **New England Teamsters & Trucking Industry Pension Fund** as class representative.

"We're quite happy with the decision," said **Scott Saham**, a Robbins Geller partner. "It is a very important case, at its center focusing on allegations that a for-profit hospital company was using unnecessary procedures to bolster earnings and revenue."

The Robbins Geller attorneys litigating the case are **Scott Saham**, **James I. Jaconette**, **Debra J. Wyman**, **Robert R. Henssler**, **Jr.**, **Francis A. DiGiacco** and **Kevin A. Lavelle**.

Schuh v. HCA Holdings, Inc. et al., No. 11-cv-01033, Memorandum and Order (M.D. Tenn. Sept. 22, 2014).

Robbins Geller Obtains Class Certification in J.P. Morgan MBS Litigation

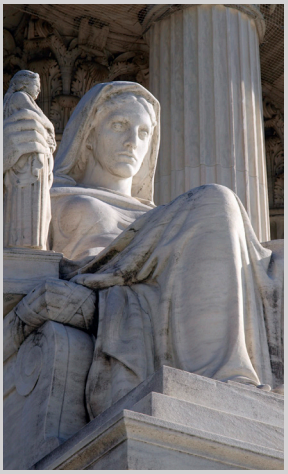
In a lawsuit against four J.P. Morgan-related entities and six individual defendants, the Honorable J. Paul Oetken of the Southern District of New York certified a plaintiff class made up of all persons or entities who, prior to March 23, 2009, purchased or otherwise acquired any certificates from any of the nine 2007 J.P. Morgan Chase mortgage-backed securities offerings identified in the opinion, which collectively issued approximately $10 billion in certificates. In certifying a liability class, the court designated the lead plaintiffs, **Laborers Pension Trust Fund for Northern California** and **Construction Laborers Pension Trust for Southern California**, as class representatives. In his order dated September 30, 2014, Judge Oetken also appointed Robbins Geller as class counsel, noting that courts had "repeatedly found" Robbins Geller to be "well-qualified" and a "highly competent plaintiffs firm," and that "as counsel to Plaintiffs, [the firm was] experienced in securities class action litigation and qualified to conduct this lawsuit."

Plaintiffs allege that defendants violated Sections 11 and 15 of the Securities Act of 1933, which impose liability for making false statements or omitting material information from the registration statement and prospectuses through which the mortgage-backed securities were issued. Specifically, plaintiffs allege that the loans underlying the certificates were not originated in accordance with the underwriting guidelines, appraisal values were inflated, and loan-to-value ratios were falsified. Given that Section 11 does not require proof of fraudulent intent, reliance or loss causation, defendants attempted to evade liability by mounting a vigorous challenge to class certification, including attacks on the adequacy of the plaintiffs and their counsel. The court rejected J.P. Morgan's attacks.

Furthermore, Judge Oetken, who rejected J.P. Morgan's arguments that the case could not be certified as a class action because it was based on the practices of many originators, wrote he was "unconvinced" by contentions that more than 8,000 underwriting guidelines made the case too complex to try as a class action, and found that the presence of more "sophisticated investors in the class" or "differences in public information over time do not undermine predominance" of common class questions.

In order to defeat defendants' arguments and satisfy their burden at class certification, plaintiffs retained an expert in economics and financial institutions, Dr. Joseph R. Mason, who the court found was qualified to offer an expert opinion in the litigation. After an exhaustive analysis of the evidence in the case, Dr. Mason concluded that (1) the securities within each offering were subject to related risks caused by underwriting deficiencies, inflated appraisals and incorrect LTV values; (2) the false statements and omissions in the offering documents impacted all mortgage-backed securities similarly; (3) there were at least 1,360 investors in the class; and (4) the mortgage-backed securities can be valued on a classwide basis using one of three methods.

Although Judge Oetken found that plaintiffs had satisfied the predominance requirements for liability purposes, he determined that he had insufficient information to assess whether damages can be calculated Continued on p. 12



Supreme Court Will Not Settle Tolling Issue

The Supreme Court has reversed its decision to hear a highly anticipated appeal in the case of *Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.*, which would have settled an important question regarding the outside time limits – a/k/a "statutes of repose" – that investors have to file claims for false and misleading statements in securities offerings. The case had been scheduled for oral argument on October 6, 2014, the first day of the Court's October Term 2014. Following revelations that most (but not all) of the underlying litigation had settled, and after ordering briefing as to whether the matter should nonetheless go forward in light of that settlement, on September 29, 2014, the Court issued a one-line order dismissing its review of the case.

The Supreme Court's dismissal leaves intact the Second Circuit's 2013 *IndyMac* decision dismissing the claims of investors who had argued that the timeliness of those claims had been preserved – or "tolled" – by the earlier, timely filing of a class action asserting those same claims. The Second Circuit held, however, that the Securities Act of 1933's three-year statute of repose was an absolute limit that required investors to intervene in pending class actions or file their own claims before that three-year statute expired.

The Second Circuit's ruling directly conflicts with a contrary holding by the Tenth Circuit Court of Appeals and appears to be in tension with the Supreme Court's landmark ruling in *American Pipe & Construction Co. v. Utah*, which in 1974 established statute of limitations tolling for class actions. As many courts have recognized, these tolling rules allowed class members to safely delay filing their own actions while a class action was pending. In the wake of the *IndyMac* dismissal, those sensible rules applied to statutes of repose will remain in question – at least in the Second Circuit. ■

Settlement Update

Court Approves Landmark Wells Fargo Robo-Signing Derivative Settlement

On July 25, 2014, United States Senior District Judge Susan Illston of the Northern District of California granted final approval of a settlement reached by the parties in *City of Westland Police and Fire Retirement System v. Stumpf, et al.*

The settlement, believed to be the first of its kind involving shareholder derivative claims, provides $67 million in funding for initiatives designed to realign Wells Fargo & Company's ("Wells Fargo") position and reputation in communities adversely impacted by alleged "robo-signing," *i.e.*, the execution and submission of false legal documents in courts across the country without verification of their truth or accuracy in order to expedite foreclosures, and the financial crisis that ensued. The initiatives will be concentrated in cities severely impacted by the foreclosure practices and include $36.5 million for down payment assistance in the Stockton/Modesto/Fresno Metropolitan Statistical Areas ("MSA") ($7.5 million); Bakersfield, California MSA ($4.75 million); Detroit, Michigan MSA ($5.25 million); Albuquerque, New Mexico MSA ($4.75 million); Virginia Beach, Virginia MSA ($4.75 million); St. Louis, Missouri MSA ($4.75 million); and New Haven, Connecticut MSA ($4.75 million).

The settlement also provides for $6 million in credit counseling programs to be implemented through a network of local HUD-certified, non-profit housing counselors for the benefit of Wells Fargo customers experiencing mortgage payment challenges. These counselors will provide Wells Fargo customers with credit-related counseling designed to prevent and recover from foreclosure, manage debt, understand housing opportunities, and maintain overall financial health. The settlement further provides that Wells Fargo shall invest at least $24.5 million for the integration of Wells Fargo's mortgage servicing computer systems to enhance the execution and efficiency of Wells Fargo's mortgage servicing procedures nationwide.

In addition to foreclosure-related relief, the settlement also calls for Wells Fargo to adopt a comprehensive system for the analysis and review of shareholder proposals by directors, as well as a strict ban on stock pledges by Wells Fargo executives. To aid in the oversight of the implementation of the settlement terms, the Honorable James Ware, United States District Judge (Ret.), has agreed to assist in the monitoring of the settlement and to resolve disputes, if any, that may arise during the implementation of the settlement. Robbins Geller is one of the two firms appointed to serve as lead counsel.

City of Westland Police and Fire Retirement System, an institutional investor, commenced the action on May 13, 2011, by filing a shareholder derivative complaint in federal court in San Francisco, California. The complaint alleged that the Wells Fargo board of directors breached its fiduciary duty of loyalty in connection with the company's alleged robo-signing.

On October 5, 2011, defendants filed a motion to dismiss the operative complaint, which the district court, after briefing and oral argument, denied in part and granted in part on February 9, 2012. The district court found, among other things, that the complaint "sufficiently alleged that defendants breached their duty of loyalty by failing to disclose that, in the course of government investigations, Wells Fargo had opposed discovery requests, filed motions to quash, and refused to provide details concerning the [c]ompany's policies." The court further found that "[d]efendants explicitly recommended that shareholders vote against the proposal for a new internal investigation in order to ensure that the [c]ompany would fully cooperate with government regulators. The fact that the [c]ompany was allegedly stymying the government regulators is certainly material to stockholders when considering whether to authorize a more serious internal investigation. If, as alleged, defendants did not disclose material information within the Board's control, defendants breached their duty of loyalty to the [c]ompany."

Between April 2012 and December 2012, the parties engaged in extensive document and deposition discovery, as well as filed numerous requests to compel discovery with the district court. Additionally, on April 13, 2012, defendants filed a motion to bifurcate discovery, which the district court denied on May 17, 2012.

As pretrial preparation continued, the parties engaged in preliminary discussions regarding resolution of the disputed claims. In early December 2012, the discussions resulted in an agreement between the parties to pursue formal mediation. Towards that end, between December 2012 and January 2014, the parties engaged in a formal mediation process before the Honorable Layn R. Phillips, United States District Judge (Ret.). The year-long mediation proceedings ultimately resulted in the parties reaching an agreement on the material terms of the settlement on January 16, 2014, which the court finally approved on July 25, 2014.

"The settlement is an extraordinary result for Wells Fargo and its shareholders. It affords Wells Fargo the opportunity to restore its reputation by regaining trust and rebuilding strong ties in communities adversely impacted by the alleged robo-signing and the mortgage foreclosure crisis," said Robbins Geller partner **Shawn A. Williams**.

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 and Fire Retirement System v. Stumpf, et al., No. 3:11-cv-02369-SI (N.D. Cal.). ■

Robbins Geller Partners Bonny E. Sweeney and Alexandra S. Bernay Named Litigators of the Week by *Global Competition Review*

Alexandra Bernay & Bonny Sweeney

This past month, the buzz around the world has been about Apple's latest product, the iPhone 6. Meanwhile, for almost the past 10 years, Robbins Geller partners **Bonny E. Sweeney** and **Alexandra S. Bernay** have been at the forefront of an antitrust class action case against Apple. Robbins Geller is lead counsel for the class of iPod purchasers who challenged Apple's use of iPod software and firmware updates to prevent consumers who purchased music from non-Apple sources from playing it on their iPods. Apple's conduct resulted in monopolies in the digital music and portable digital music player markets and enabled the company to charge inflated prices for millions of iPods. The certified class includes individuals and businesses that purchased iPods directly from Apple between September 12, 2006 and March 31, 2009. Because Sweeney, Bernay and other Robbins Geller attorneys presented sufficient evidence in court in late September, U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California denied defendants' motion for summary judgment and the case now proceeds to trial in November. Estimated damages are expected to be around $350 million.

According to *Global Competition Review*, "Robbins Geller has been with it on every step, and partners Bonny Sweeney and Alexandra Bernay say they look forward to the plaintiffs' day in court after a long nine years of pre-trial litigation." Sweeney also said, "I think we have a very strong case and an excellent economist expert witness."

Sweeney was recently honored by the *Daily Journal* and named to its "Annual List of 100 Leading Lawyers in California." As one of the "Top Women Lawyers," the print and online legal publication cited Sweeney's years of litigating on behalf of merchants alleging that Visa and MasterCard had engaged in years of illegal price fixing of card swipe fees in *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, No. 05-MD-1720 (E.D.N.Y.). A New York federal judge approved the proposed multi-billion dollar settlement of the case last December. The case is the largest class action antitrust settlement to date.

Bernay, also part of the *In re Payment Card Interchange Fee* litigation team, specializes in antitrust and unfair competition class action litigation. She represents businesses and individuals in lawsuits challenging unlawful price-fixing, monopolization, false advertising, and unfair and deceptive business practices. She has also worked on some of the Firm's largest securities fraud class actions, including the *Enron* litigation, which recovered an unprecedented $7.3 billion for investors. ■

Regions Financial Corp. continued from page 1

Further supporting lead plaintiffs' claims, on June 25, 2014, during the pendency of the appeal, the SEC announced that Regions had agreed to pay a total of $51 million to resolve allegations brought by the SEC, Federal Reserve Board, and Alabama Department of Banking that mirrored those brought by lead plaintiffs more than three years prior. As both Robbins Geller and, later, these governmental entities alleged, high-ranking executives at Regions intentionally misclassified loans that should have been recorded as impaired for accounting purposes, and as a result, the bank overstated its income and earnings per share in its financial reporting. Two of the executives identified in the February 2011 complaint filed by Robbins Geller have settled with the SEC, and one has decided to fight the charges – a trial is scheduled to take place in Atlanta this December.

Andrew J. Brown of Robbins Geller represents the lead plaintiffs. According to Brown, "In the years since we began this action, Regions has answered to state and federal authorities, and now with the Eleventh Circuit's affirmation of class certification and lead plaintiff adequacy, we look forward to Regions answering to our clients and other injured investors."

The attorneys litigating the case are **Andrew J. Brown**, **Matthew I. Alpert** and **Eric Alan Isaacson**. ■

Allergan continued from page 2

letters to Allergan, numerous whistleblowers filed *qui tam* actions against Allergan, and the FBI began investigating Allergan's off-label marketing. In September 2010, Allergan pleaded guilty to the off-label promotion of Botox, and the United States Department of Justice announced $600 million in sanctions to be paid by Allergan to resolve civil and criminal claims and penalties. Plaintiffs commenced the underlying shareholder derivative lawsuit against Allergan's board of directors that same month.

Despite being presented with a detailed 89-page complaint explaining defendants' extensive promotion of Botox for off-label uses, the district court dismissed the underlying lawsuit with prejudice in January 2012. The lower court held that plaintiffs had not presented any "evidence" that Allergan's board of directors had expressly decided to promote off-label Botox sales, and that plaintiffs' pre-lawsuit demand upon the board was not excused. Plaintiffs appealed the dismissal to the Ninth Circuit Court of Appeals.

Following appellate briefing and oral argument, a three-judge Ninth Circuit panel reversed the dismissal in a unanimous, published decision. Writing for the court, Judge Stephen Reinhardt explained that the district court had "misapplied governing … law and improperly drew inferences against Plaintiffs rather than in their favor," as is required at the pleading stage. Moreover, contrary to the district court's conclusion that plaintiffs had offered no "evidence" of the board's culpable actions, Judge Reinhardt noted that plaintiffs had actually presented "a battery of particularized factual allegations that strongly support an inference at this stage of the litigation that the Board knew of and did nothing about illegal activity." Taken together – and with the inferences viewed in plaintiffs' favor – the complaint's factual allegations painted a vivid picture that Allergan's board of directors was "committed to the *very* aggressive off-label promotion of Botox."

Robbins Geller appellate partner **Joseph D. Daley**, who briefed and argued the appeal, applauded the Ninth Circuit's ruling: "Demand-futility dismissals are notoriously difficult to get overturned – especially given the deferential standard of review that applies to the lower court's rulings, and particularly in the Ninth Circuit. Here, the rare reversal secured is a testament to the complaint's detailed allegations compiled by Robbins Geller litigation partners **Aelish M. Baig** and **Travis E. Downs III**."

The Ninth Circuit's decision is reported at *Rosenbloom v. Pyott*, No. 12-55516, 2014 U.S. App. LEXIS 17078 (9th Cir. Sept. 2, 2014). ■

SEC Should Reconsider Proxy Access continued from page 3

director, convinced Apria Healthcare to adopt a process to empower shareowner nomination of directors. After the bankruptcy of MCI 10 years ago, former SEC Chairman Richard Breeden, as an agent of the SEC, convinced the company to adopt a protocol for shareowner nomination. The implementation of shareowner nomination of directors in these cases, and in more recent ones, has not yielded "special interest" directors; indeed, the candidates nominated and elected have been individuals of the highest quality, keenly able and committed to fulfilling their fiduciary duties.

For many years Robbins Geller, on behalf of its institutional clients in a number of securities cases, has negotiated shareowner nomination of directors as part of settlements of securities litigation. The principals of ValueEdge Advisors have worked with Robbins Geller's clients to establish effective programs for director nomination by shareowners at many companies – Hanover Compressor, Microtune, CryoLife, Ashland, Dynegy, Broadcom, and UnitedHealth, among others. Invariably, such programs have yielded superbly qualified candidates, identified by actively soliciting the largest unaffiliated shareowners for their input and involvement in director nomination.

Peter Drucker, the late management guru, long raised the question as to whether the current standard of board functioning is so unsatisfactory as to require structural change: "Whenever an institution malfunctions as consistently as boards of directors have in nearly every major fiasco of the last forty or fifty years, it is futile to blame men. It is the institution that malfunctions."

It is time to strengthen corporate boards in the U.S. and improve their accountability by instituting proxy access for shareowner nomination of directors. ■

Private Equity continued from page 4

overall recovery. "Each one of these settlements was much like an entirely separate case. The aggregate $590.5 million is the largest antitrust settlement in which there was no underlying civil or criminal governmental antitrust action."

On September 29, 2014, Judge William G. Young preliminarily approved the settlements and scheduled a hearing to consider their final approval for February 11, 2015.

"This excellent result, after nearly seven years of hard-fought litigation where there were no charges or allegations made by governmental authorities, demonstrates our Firm's resolve to vindicate the rights of shareholders," said **David W. Mitchell**, one of Robbins Geller's lead trial attorneys.

Robbins Geller attorneys prosecuting this action include **Patrick J. Coughlin**, **David W. Mitchell**, **Randi D. Bandman**, **Phong L. Tran** and **Vincent M. Serra**.

Kirk Dahl, et al. v. Bain Capital Partners, LLC, et al., No. 07-12388 (D. Mass.). ■

Attorney Spotlight

Regis C. Worley

Robbins Geller attorney **Regis C. Worley** recently returned from a year-long tour of duty in Afghanistan in support of Operation Enduring Freedom. An Engineering Duty Officer in the reserve component of the U.S. Navy, Worley served as the Branch Chief of Operations and Integration for the Engineering Directorate of the Combined Security Transition Command – Afghanistan. He was responsible for operations of a $9.1 billion infrastructure program comprising over 1,100 projects for the Afghan National Army and the Afghan National Police and worked shoulder-to-shoulder with his Afghan counterparts supporting the development of the Afghan National Security Forces (ANSF). Additionally, Worley spearheaded deep-dive analyses of ongoing U.S.-funded ANSF construction projects, leading to project revisions and construction cost savings of over $800 million.

Worley's legal practice emphasizes complex litigation, involving patents and securities class action matters. He also provides *pro bono* legal services, including representation of persecuted aliens who are seeking asylum in the United States. As a result of his volunteer work, he received Casa Cornelia Law Center's "Inn of Court Pro Bono Publico Award" for outstanding contribution to the legal profession representing victims of human and civil rights violations. Worley is currently representing individual shareholders and institutional investors in litigation involving securities fraud and mergers and acquisitions. ■

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

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Robbins Geller represents hundreds of institutional investors in the United States and around the globe in contingency-based securities and corporate litigation. The Firm's attorneys have shaped the law in the areas of securities litigation and shareholder rights and have recovered tens of billions of dollars for defrauded investors. Robbins Geller works hard to enforce corporate governance changes, helping to improve the financial markets for investors worldwide. Please visit rgrdlaw.com for more information.

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Psychiatric Solutions continued from page 5

Executive Vice President and Chief Accounting Officer Jack Polson, and its former Executive Vice President, Finance and Administration, Brent Turner.

The complaint alleges that PSI, which operated more than 95 psychiatric facilities for at-risk children and teens, deceived investors about the strength, financial condition and sustainability of its business, the quality of care it delivered to patients, and manipulations of its malpractice reserves. The complaint alleges that PSI failed to sufficiently staff its facilities, resulting in alarming incidents of abuse, neglect, and even death of its patients, and downplayed the significance of these events when they became public. After raising its earnings guidance throughout the class period, on February 25, 2009, PSI stunned investors by missing earnings guidance due to rising malpractice costs and regulatory expenses related to an investigation at its Riveredge Hospital in Chicago, Illinois. On this news, PSI's stock fell $9.79 per share (35%), causing damage to members of the Class. In April 2009, Illinois regulators issued a scathing report describing "egregious quality failures" at Riveredge Hospital and other PSI facilities, causing another 8% decline in the value of PSI stock and further harm to investors.

Central States and Robbins Geller aggressively litigated this action for more than four years – up to the eve of trial, which had been scheduled for September 16, 2014. Central States overcame defendants' motion to dismiss on March 31, 2011, and defeated defendants' subsequent motion for reconsideration or certification to the Sixth Circuit Court of Appeals. Central States then successfully obtained an order certifying this case as a class action on March 29, 2012, and once again overcame a petition to the Sixth Circuit for appellate review. During this time, the attorneys from Robbins Geller were engaged in expansive discovery, spanning more than three years, developing evidence that would demonstrate fraud at trial. Robbins Geller attorneys obtained more than seven million pages of documents from PSI's corporate headquarters and from its facilities across the country. They also deposed more than 40 individuals, including the defendants, high-ranking PSI executives and the company's accountants, regulators and securities analysts to further support the claims alleged.

Confronted with the extensive evidence of fraud that Robbins Geller developed in discovery, and facing a seasoned team of litigators primed to take this case to trial, PSI finally agreed to settle the action by making a substantial payment to investors harmed by the fraud perpetrated by defendants. Preliminary approval of the settlement was granted on October 22, 2014.

Robbins Geller attorneys **Dennis J. Herman**, **Daniel J. Pfefferbaum**, **Tor Gronborg**, **Jonah H. Goldstein**, **James E. Barz**, **Jerry E. Martin**, **Christopher M. Wood**, **David J. Harris, Jr.**, and **Brian E. Cochran** obtained this settlement for the class.

Garden City Employees' Retirement System v. Psychiatric Solutions, Inc. et al., No. 3:09-cv-00882 (M.D. Tenn.). ■

J.P. Morgan continued from page 8

on a classwide basis. Thus, the court held that "Plaintiffs have shown that liability may be proven on a classwide basis." Oetken also noted that the court's "denial of Plaintiffs' motion as to damages is without prejudice to a renewed certification motion providing additional evidence regarding whether damages can be proven on a classwide basis."

The Robbins Geller attorneys litigating the case are **Arthur C. Leahy**, **Daniel S. Drosman**, **Luke O. Brooks**, **Darryl J. Alvarado**, **Angel P. Lau** and **Hillary B. Stakem**.

Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co., et al., No. 1:09-cv-03701, Opinion and Order (S.D.N.Y. Sept. 30, 2014). ■