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# Litigators of the Week: Robbins Geller Duo Seals $1B Settlement

## 'The bottom line is: if we can take on what we took on, and achieve the result we achieved, we can do anything.'

**By Jenna Greene**
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*Our Litigators of the Week are Robbins Geller Rudman & Dowd partners Debra Wyman and Jessica Shinnefield, who just won final approval of an eye-popping $1.025 billion settlement in a securities litigation class action against real estate investment trust Vereit, formerly known as American Realty Capital Properties.*

*U.S. District Senior Judge Alvin Hellerstein in the Southern District of New York also awarded $100 million in attorneys' fees, plus $5 million in expenses, recognizing that the Robbins Geller team "has pursued the litigation and achieved the settlement with skill, perseverance, and diligent advocacy."*

*Wyman and Shinnefield discussed the case with Lit Daily.*

**Who is your client and why did they bring this suit?**

Debra Wyman: TIAA is the client. TIAA is one of the most respected financial institutions in the country and has approximately one trillion dollars under management. TIAA spearheaded this litigation in light of the egregious misconduct, including the defendants' significant alleged self-dealing and accounting fraud.

Plaintiffs alleged that beginning with the company's 2012 financial statements, ARCP's CEO, CFO and other senior accounting and finance personnel had manipulated the AFFO calculations that ARCP was providing to the markets in an effort to meet the operating performance numbers the company had provided to the market. These misstatements were alleged to have enabled ARCP to complete acquisition spree that transformed the company from one with a market capitalization of $260 million to a $21 billion behemoth—in a little more than two years.

L-R Debra Wyman and Jessica Shinnefeld, Robbins Geller.

Plaintiffs also alleged that ARCP's former CEO and CFO accomplished this incredible growth through a series of related party transactions in which ARCP acquired other REITS managed by a partnership that ARCP founder Nicholas S. Schorsch controlled, and in which CFO Brian Block was a partner. Transactions were allegedly structured such that related companies owned and controlled by Schorsch and Block's partnership received work for which fees and commissions were paid to them by ARCP.

All told, plaintiffs alleged that Schorsch and Block enriched themselves through the payment of hundreds of millions of dollars in so-called "fees and commissions" paid to their partnership. Plaintiffs also alleged that this egregious conduct was possible due to the lack of internal financial controls, and an outside auditor, Grant Thornton, who was asleep at the wheel.

**In court papers, you wrote that "Defendants were represented by a host of the finest law firms in the City of New York, and they pressed every issue imaginable." Tell us a bit about who was opposing counsel and the scope of the five-year fight.**

Debra Wyman: ARCP, Grant Thornton, Schorsch and Block were represented by premier members of the defense bar. ARCP was represented by Milbank, who coordinated the defense side, which also included Sidley Austin; Paul Weiss; Weil Gotshal; Kirkland & Ellis and Kellogg Hansen among others.

Defendants vigorously opposed plaintiffs' claims and fought to have them dismissed at every opportunity. They left no stone unturned and presented a skilled and thorough presentation of their clients' arguments, conceding no issues along the way.

**Who were the other members of your team and what individual strengths did they bring to the representation? Did you also work with co-counsel?**

Debra Wyman: Robbins Geller assembled a tremendous team to litigate this case, including skilled and experienced trial lawyers Patrick Coughlin, Michael Dowd and Jason Forge. And the litigation team assembled—Dan Drosman, Robert Rothman, Jonah Goldstein, Christopher Stewart, Ashley Price and Jennifer Caringal—in addition to Jessica and I—fought tooth and nail against defendants' attacks.

Judge Hellerstein complimented our advocacy in approving the class settlement, stating: "The role of lead counsel was fulfilled in an extremely fine fashion by Ms. Wyman and her colleagues. At every juncture, the representations made to me were reliable, the arguments were cogent, and the representation of their client was zealous."

Additionally, we were also incredibly fortunate to have on staff two of the country's finest forensic accountants who provided invaluable skill and expertise in helping us unravel the complex and convoluted GAAP and non-GAAP accounting issues here. We would not have been able to build the evidentiary record we did without them.

**There aren't many women on the plaintiffs or defense side first-chairing major securities cases like this. How did the opportunity arise here? Do you think as women you might approach certain situations differently?**

Debra Wyman: I can't speak to what happens in other law firms, but at Robbins Geller, case assignments are made strictly on merit, and so we have a number of trial teams with key roles filled by the dozens of women partners and senior associates at the firm.

For example, our Trump University trial team included partner Rachel Jensen, who headed up the litigation team and prepared the case for trial. Likewise, our PSLRA class action against CBS, arising out of alleged misconduct by Les Moonves is being led by Ms. Jensen as well.

Erin Boardman heads up the litigation team in the case arising out of the Grupo Televisa scandal, where the court appointed our firm to serve as sole lead counsel. And our key role in the effort to address the nationwide opioid scandal is being driven by partner Aelish Baig, who works out of our San Francisco office.

We did not approach any litigation decision differently than any other lawyer. That is not to say that we were not mindful of how we are perceived by defendants' counsel and the court. Let's just say, the practice of law may still be largely dominated by men, but we have come a long way since Sandra Day O'Connor was offered a job by a large defense firm as a legal secretary even though she graduated at the top of her class from Stanford Law School.

In this case, not only were the lead lawyers for both the lead plaintiff and ARCP women, so too were the senior legal officers for both the lead defendant (ARCP) and lead plaintiff (TIAA).

In the end, credibility with the court and opposing counsel is key. We prefer to be the most knowledgeable people in the room about the law and the facts. Having respect for and showing civility toward your opponents matters. However, kindness and courtesy should not be mistaken for weakness.

Jessica Shinnefield: The only thing I would add here is that not only were the lead attorneys on this case female, two of the main associates on this case from start to finish were female as well. And I hope that for them, to see two attorneys who look like them, be entrusted by our firm with a case of this magnitude and to achieve the result our team achieved, empowers them, and gives them the confidence to know that they can run a case like this too someday.

**Funds including BlackRock, PIMCO, Vanguard and Atlas opted out of the class. How did their non-participation affect your strategy? How did the recovery of the opt-out plaintiffs compare to your settlement?**

Debra Wyman: From the outset of the case, we were focused on maximizing the net recovery for TIAA and the other class members. We recognize the right of investors to remain in the class or pursue their rights individually. Sometimes it makes sense for a putative class member to bring an individual claim in order to optimize that investor's recovery. Other times it does not.

This time it did not—class members did much better sitting back and letting a very committed and capable lead plaintiff optimize the recovery. The decision to remain a class member or opt-out and bring an individual claim is a nuanced one that must be assessed carefully on a case-by-case basis.

Here, because of the lead plaintiff's extraordinary effort and the way the class action was prosecuted and resolved, class members will recover between 2 and 3 times more than the individual litigants recovered.

**Is it unprecedented to recover 50% of class damages in a major PSLRA class action settled prior to trial?**

Jessica Shinnefield: The recovery we obtained here, approximately 50% of maximum recoverable damages and almost 4 times the amount that would have been recoverable had we limited the case to the time period focused on by the government, is pretty exceptional, and represents a percentage of damages that has been achieved only once before in a major PSLRA class action—Household Finance.

Household was a case prosecuted by our partners Mike Dowd, Spence Burkholz, Dan Drosman, Luke Brooks and Maureen Mueller who settled that case for $1.575 billion in 2016. The Household case recovered a higher percentage of maximum recoverable damages, but there, they tried the case and won, and then, after an appeal, had to prepare to try it a second time. In fact, our firm settled that case on the day the second trial was set to begin. So yes, the percentage of damages recovered in this case is extraordinary.

One other aspect of this case that is equally extraordinary is the amounts recovered from the individual defendants who were alleged to have benefited from wrongdoing at issue in this case. The $237.5 million of personal contributions here dwarf those achieved in any prior PSLRA class action, including in cases such as Enron and WorldCom.

**What do you think were some of the key factors in your ability to reach such a historic settlement?**

Jessica Shinnefield: The firm's commitment to the case, our ability to commit the human and financial resources to the prosecution of the case, and the lead plaintiff's commitment to holding those who benefited from the alleged wrongdoing personally responsible were all key factors in this historic result.

Our team, including me and Debra and Rob Rothman, from the outset were firmly committed to this case. Robbins Geller spent 100,000 hours on this case over the last five years. And as the case progressed, many of our partners and associates joined us. By the time we were ready to try this case in the fourth quarter of 2019, our trial team consisted of more than 10 attorneys. We did not do this with teams of lawyers from other law firms or co-lead counsel.

The strength of our team gave us the confidence to push this case to trial—because we believed we would prevail. But when, after more than four years of difficult negotiations and hard-fought litigation against a dozen of the country's most capable law firms, defendants finally placed more than $1 billion on the table, it was readily apparent that discretion was the better part of valor given the trial risks we faced.

I also think the fact that the auditors were named in our case, even though many of the opt-outs did not bring claims against the auditors, was critical. It created a dynamic that we don't' typically see in these cases, where the defendant auditors and the defendant company were at odds with one another, rather than being in lockstep.

We always felt this tension would have created an even more interesting dynamic at trial—with the auditors and defendants pointing their fingers at one another—and would really inure to the benefit of the class.

**Jessica, I gather you moved from San Diego to New York in anticipation of the trial. Do you often relocate for trials? Do you think doing so underscored how willing you and the team were to try this case?**

Jessica Shinnefield: Both Deb and I are based in the San Diego office, which is where our firm is headquartered.

Our entire 20-person trial team was scheduled to move to New York the month before trial, so we could focus exclusively on trial preparation without any distractions. That's a tradition at this firm; it's something we do to ensure we're focused and ready to go when a case heads to trial.

Once ARCP settled, I actually ended up moving to Phoenix for a month instead to join a separate trial team that was preparing for the trial of the First Solar class action, which was scheduled to start on January 7, 2020, but settled the day before the jury was empaneled. And I know that Deb moved to New Jersey for the AT&T trial many years ago now.

So like I said, moving to different places throughout the country to prepare for trial is just what we do to ensure that we are prepared and focused when it's go-time. Additionally, I think moving to these trial venues a month in advance really convinces the very capable opposing counsel we face (and their clients), that were are willing and able to try our cases, which in turn, helps us maximize the recoveries we are able to achieve for the classes we represent.

**One notable aspect of the settlement is that the individual wrongdoers primarily responsible for the alleged misconduct contributed financially to the resolution. Why was this important to your client? What message does it send?**

Jessica Shinnefield: Given the nature of the misconduct here, it was very important that personal contribution be made by those who benefited the most from the defendants' alleged misconduct.

It was made very clear to the defendants from the very beginning of the case that this case would not settle without significant contributions from those who profited from the alleged misconduct. I think it's fair to say that the record contributions here made by the former CEO and CFO qualify in that regard.

**Were there objections to the settlement? Concerns by Judge Hellerstein?**

Jessica Shinnefield: There was not a single objection to the settlement. The absence of objection in a case of this magnitude is unprecedented. It is my understanding that in the 24 years since the enactment of the PSLRA, there has never been a case involving a recovery or more than $1 billion where an objection (meritorious or otherwise) has not been lodged.

Judge Hellerstein took all the steps a conscientious judge takes to ensure that the settlement reached was fair and reasonable to the class. And at the end of a hearing this past Tuesday, in which Judge Hellerstein walked through all those fairness factors very thoroughly, he approved the settlement.

**What will you remember most about this case?**

Jessica Shinnefield: For me, I will remember the complexity of it. With 40 different defendants—various inter-related companies, officers, directors, auditors, underwriters—and a multitude of claims and offerings, it looked nothing like an ordinary securities case, which is already complex.

Most of the depositions I took in this case were three days long. Our summary judgment hearing lasted a full day, which I guess should be no surprise given there were more than 12 summary judgment motions to be decided. There were 20 plus experts, etc.

For me, the bottom line is: if we can take on what we took on, and achieve the result we achieved, we can do anything.

Debra Wyman: I completely agree with Jess. The recovery here is remarkable, and NOTHING about this case was straight-forward, or conceded by defendants. Our team tackled it head on in an unrelenting fashion. I am proud of this work and of every single person who contributed to this outcome.

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