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In association with

**Robbins Geller
Rudman & Dowd LLP**



INTERVIEW

Turning loss into leverage

RGRD co-founder, *Mark Solomon*, sits down with *Natalie Tuck* to discuss European pension funds' changing attitude to securities litigation, its governance benefits and the fear of finding out

Robbins Geller Rudman & Dowd (RGRD) has been a mainstay for UK and European clients for over 20 years. How have institutional investors here evolved in securities litigation over this period?

■ Securities litigation has developed significantly over the past 20 years. Two decades ago, securities fraud litigation in the USA received little coverage in the UK and, when cases were resolved and settlements won, some UK and other custodians were literally throwing away the related claims forms – which is almost the same as throwing away cash. When that was revealed, there was an effort to make sure custodians filed claims.

This enabled RGRD to explain to asset owners, pension funds in particular, the services we provide and the function we perform in the

USA. As a result, we were able to persuade many pension funds to allow us to monitor their securities transactions, in order to identify when they may have purchased securities at fraudulently inflated prices and, on occasion, act as the plaintiffs in class action securities litigation in the USA.

Today, institutional investors, particularly public sector pension funds, are no longer hesitant participants in litigation – they're strategic actors. More schemes now view securities litigation as part of their fiduciary oversight and risk management function, not just a reactive recovery tool. Private sector schemes and asset managers are also beginning to catch up. Their fiduciary duties are the same, regardless of their scheme or fund sponsor, so it is reassuring to see this evolution and acknowledgement of their role in protecting portfolio value.

So, what sets RGRD apart?

■ When we formed our firm over 20 years ago, we already had a successful record in the practice and were resolute from the outset to excel. We purpose built the firm to be the largest and most impactful in the field. Our investigative capacity means we don't wait for others to file a case – we're often the first, and the only law firm, to identify it.

We've also developed a record of taking cases to jury trial. That has allowed us to leverage the largest settlements in the practice.

The UK's Norfolk Pension Fund is a great example of how its willingness to go to a jury trial in the Puma Biotechnology case, which it won, helped secure its US\$490 million result in its next case against Apple.

Our firm also pioneered the inclusion of governance reforms when resolving cases such as the separation of CEO and chair positions, auditor rotation, ethics and compliance monitoring, shareholder nominated and independent directors and other such measures tailored to discourage recidivism.

Are UK and European pension funds becoming more active in this area?

■ Yes. We're seeing stronger engagement from funds across the UK, Netherlands, Nordics, and even in countries with historically conservative legal cultures. That shift hasn't happened overnight – it's the result of years of educational work,

deep dialogue, and trust-building.

Most recently, some Scandinavian and some Dutch funds have become active, seeking and attaining the lead plaintiff position in significant cases. The first and the second largest results in the USA in 2024 were led by Local Government Pension Scheme funds in the UK – the cases against Apple and Under Armour.

I've heard your colleague mention FOFO – fear of finding out. Can you explain what this is?

■ Some investors may hesitate to investigate losses too closely because they worry it will force them to act. This is where fiduciary responsibility comes in. Once you suspect there's fraud or misrepresentation, it becomes necessary to evaluate available remedies. We've also seen a kind of FOFO 2.0 – fear of following up – where even after identifying a loss, investors worry that filing or leading a case will be too burdensome. Our role is to assume the burden and make the process efficient, informed, and risk-free.

FOFO may also involve an element of shame – in that managers who preside over losses experience fear of being blamed. Of course, it's entirely misplaced because the market has been deceived.

Surely when a big scandal in a company emerges an investor would be aware. How does it work?

■ That's why monitoring by a law firm that knows what it's doing is so important. Asset owners need a law firm that can identify when there's a potential fraud in their portfolio and know how to prosecute it.

Apple is a perfect example. If you look at the Apple stock chart, for a long time it was going up. However, after it dropped temporarily in early 2019, we alleged that the price had been fraudulently inflated beforehand. The claims, which we ultimately resolved for US\$490 million, were assets that investors would never have recovered absent our portfolio monitoring.

The cases follow a classic pattern. Before a fall in the price of a listed U.S. stock, investors may have bought shares at a higher price on the basis of information that turned out to be false. The stock may have gone down when the true facts were revealed and investors will have suffered financial harm. Even though the stock may have

risen again as other positive metrics became recognised, buried in the portfolio will be valuable assets in the form of legal claims.

In an absolute calamity, where the stock goes from 100 to five, for example, you're probably going to know about it. However, important, significant and compensable losses can occur where a stock is otherwise on an upward trajectory and prosecuting those claims both promotes honesty in the markets and provides a means to recover losses.

You've mentioned governance changes as a result of litigation, do you see it as a stewardship tool?

■ It should be. Litigation sits at the far end of the stewardship spectrum – when engagement and voting don't work, and shareholder value has been damaged. Taking legal action isn't just about recovery; it sends a clear signal to the market that misconduct has consequences. As a result, leading funds are already integrating litigation into their escalation policies.

The most recent example of important governance changes enacted via settlement is the Under Armour case, where we represented North East Scotland Pension Fund (NESPF) as lead plaintiff. The settlement included not just a substantial financial recovery of US\$434 million, but also the separation of the role of chair and CEO and changes to the company's remuneration policy.

In terms of the technical details, what should investors know about the 60-day lead plaintiff window?

■ Timing is critical. In the US, once a securities fraud case is filed, there's a 60-day window to seek appointment as lead plaintiff. That decision shapes who steers the litigation, how aggressively it's pursued, and what reforms are sought. Our team monitors these filings daily and alerts clients quickly so they can assess the cases in question and make informed choices.

What's your final message to trustees and general counsels?

■ U.S. securities litigation isn't a risk – in many cases, it's the risk-managed response to fraud. Doing nothing is where the real exposure lies. If you've suffered losses due to misconduct, acting to recover is not just a right – often it's your duty.

EMERGING THEMES

Litigation in a changing world:

10 emerging themes for institutional investors

What the next wave of investor litigation looks like – and why it matters. By Melissa McDonald, Senior Advisor to Robbins Geller Rudman & Dowd LLP

Securities litigation is evolving. Today's cases are increasingly as likely to concern misleading climate claims, biased algorithms, or failures in board oversight, as they are traditional financial misstatements. From environmental exposure to the social impacts of product design, investors are calling time on deception – and using litigation as a last resort where accountability fails.

At Robbins Geller, we track emerging risks to help institutional investors prepare. The following ten themes reflect where the law is heading – and where litigation is already making an impact.

1 DIRTY LYING PLASTICS: Deceptive claims in a world drowning in plastic



The myth of plastic recyclability is collapsing. Investigations and lawsuits reveal that petrochemical firms and FMCGs have known for decades that most plastics cannot be viably recycled. Despite this, they promoted recycling to fend off regulation and maintain production.

STATUS: ▲▲ Escalating

LEGAL EXPOSURE: Greenwashing and false advertising claims related to the recyclability and environmental impact of plastic packaging.

INVESTOR WATCHPOINT: Scrutinise product-level claims in consumer-facing industries, particularly around circularity, biodegradability, and material science innovations.

2 THE FOREVER FALLOUT: PFAS exposure and legal reckoning



PFAS chemicals have become a lightning rod for litigation. Companies across multiple sectors are facing mass claims and regulatory scrutiny as evidence emerges of long-term harm and prior knowledge of toxicity.

STATUS: ▲▲▲ Active

LEGAL EXPOSURE: Class actions and mass torts focused on pollution and nondisclosure of long-term environmental and health risks from PFAS ('forever chemicals').

INVESTOR WATCHPOINT: Assess environmental liability disclosures, historical contamination footprints, and exposure to regulatory tightening.

3 OFFSETTING THE TRUTH: Green claims, carbon offsets, and climate credibility



Carbon offsets are under fire. Investors and regulators are questioning whether 'net zero' claims are credible, verifiable, and appropriately communicated to the market.

STATUS: ▲▲▲ Active

LEGAL EXPOSURE: Class actions and regulatory probes tied to overstated carbon neutrality, use of unverified offsets, and misleading net-zero language.

INVESTOR WATCHPOINT:

Review climate marketing materials, offset procurement processes, and science-based target alignment.

"WHEN ENGAGEMENT FAILS, LITIGATION BECOMES THE FINAL LEVER FOR STEWARDSHIP"

4 THE SKINNY ON BIG PHARMA: Obesity drugs, health risk, and shareholder harm



The GLP-1 drug boom has drawn intense market interest – and mounting legal scrutiny.

Investors are probing whether manufacturers fully disclosed side effects and regulatory uncertainties.

STATUS: ▲▲ Escalating

LEGAL EXPOSURE: Product liability, failure-to-warn, securities fraud, and off-label marketing tied to adverse effects or overstated safety of GLP-1 and other obesity-related drugs.

INVESTOR WATCHPOINT:

Monitor litigation trends in multi-district proceedings and review how companies communicate trial results, regulatory updates, and side-effect risks.

5 **INSTA-HARM:** Social media, mental health, and the legal backlash



Social media's impact on youth mental health has moved from headlines to courtrooms. Platforms are being challenged over features that promote compulsive use and cause psychological harm.

STATUS: ▲▲ Escalating

LEGAL EXPOSURE: Youth mental health lawsuits focused on addictive design, algorithmic targeting, and insufficient parental protections.

INVESTOR WATCHPOINT: Understand the litigation risk around product design and the growing scrutiny of social media platforms' duty of care.

7 **THE ALGO MADE ME DO IT:** AI bias, algorithmic deception, and litigation



AI-powered tools are now business critical – but litigation risk is rising. Bias, discrimination, and algorithmic opacity are triggering lawsuits and investor concern.

STATUS: ▲ Emerging

LEGAL EXPOSURE: Discrimination and fairness lawsuits linked to biased AI tools, opaque algorithms, and false claims of technological capability.

INVESTOR WATCHPOINT: Review AI governance frameworks, explainability measures, and transparency of third-party vendors.

9 **TAP IN AND TAPPED OUT:** Corporate water use and community backlash



Water-intensive companies are under growing scrutiny as community access and environmental justice issues converge. Litigation is following where tension and opacity persist.

STATUS: ▲▲ Escalating

LEGAL EXPOSURE: Water access disputes, environmental justice claims, and litigation over unsustainable abstraction or pollution.

INVESTOR WATCHPOINT: Evaluate exposure to water-intensive operations in high-stress regions and the adequacy of local engagement and permitting.

LITIGATION AS A LENS

Each of these themes reflects a deeper market evolution. As risks become more complex and disclosures come under greater scrutiny, institutional investors are enhancing their approach – not only by monitoring portfolios, but by taking action when misconduct threatens long-term value. In this environment,

litigation is becoming one of the sharpest tools in the stewardship box.

At Robbins Geller, we help our clients navigate this terrain with strategy, speed, and integrity. These themes are just the start of the next litigation frontier.

For every emerging risk, there is also an opportunity – to lead, to protect

portfolios, and to raise the standard of market behaviour. Whether it's guiding trustees through unfamiliar areas of litigation, advising legal teams on relevance and standing, or helping stewardship professionals turn scrutiny into strategy, our role is to be an active partner in pursuit of accountability.

6 **BETS, BRAINS & BROKEN LIVES:** Gambling risks and investor action



The expansion of online gambling is colliding with growing concern about addiction and harm. Legal risk is emerging around targeting practices, disclosures, and duty of care failures.

STATUS: ▲ Emerging

LEGAL EXPOSURE: Consumer harm and regulatory noncompliance in online betting and gaming platforms, particularly in relation to addiction and responsible gambling standards.

INVESTOR WATCHPOINT: Examine board-level governance and disclosures on user protection, VIP targeting practices, and regulatory enforcement.

8 **JUNK JUSTICE:** Processed food, deceptive labelling, and public health



Food companies face litigation over ultra-processed products, sugar content, and misleading health claims. Public health lawsuits are converging with investor expectations.

STATUS: ▲▲ Escalating

LEGAL EXPOSURE: Misleading marketing, labelling lawsuits, and failure to reformulate high-risk products like ultra-processed foods and sugary drinks.

INVESTOR WATCHPOINT: Assess litigation risk tied to health claims, marketing to children, and gaps between public health pledges and actual reformulation.

10 **BLIND SPOTS AND BOARDROOMS:** Governance failures and board accountability



Board inaction on known risks continues to generate shareholder litigation. These 'Caremark-style' cases reveal the cost of governance complacency.

STATUS: ▲▲▲ Active

LEGAL EXPOSURE: Derivative actions and shareholder lawsuits under Caremark and similar doctrines, typically involving board inaction on known risks.

INVESTOR WATCHPOINT: Ensure strong documentation of board oversight, escalation pathways, and responsiveness to whistleblowers or internal audit findings.