



CASE STUDY

# A bite of the apple

Norfolk Pension Fund head of funding and investment, Alex Younger, and Robbins Geller Rudman & Dowd co-founder and partner, Mark Solomon, speak to Natalie Tuck about the pension fund's recent success in a class action case against the tech giant Apple

**Norfolk Pension Fund has recently secured a USD 490 million settlement in a class action against Apple, in which it was the lead plaintiff. How did the situation arise?**

■ **Alex Younger (AY):** Like most pension funds, Norfolk Pension Fund has had exposure to shares of Apple in its portfolio, some of which were acquired in late 2018 shortly after Tim Cook had made his allegedly false representation concerning iPhone demand in China.

Years before we had retained Mark and his law firm Robbins Geller Rudman & Dowd to monitor our portfolios of listed securities and report instances of losses attributable to possible securities fraud and assist us in monitoring the collection of settlements arising from the hard work of other plaintiffs. As part of this relationship, in early 2019, Mark reported to us that the fund had suffered potential losses on its recent purchases of Apple shares.

The prices had fallen after the truth was revealed at the beginning of that January. From a responsible ownership and stewardship perspective, we were motivated to act.

Coincidentally, I had just attended and had given evidence in a successful three-week securities fraud jury trial against Puma Biotechnology and its CEO in California following over three years of litigation, in which, again, Norfolk was the lead plaintiff.

**Apple contested the accusations at every stage, was this expected and how did you overcome this?**

■ **Mark Solomon (MS):** There are a few certainties; death, taxes, and the fact that defendants will always file motions to dismiss in every case, no matter how meritorious the case may be.

Given that these defendants had the limitless resources of Apple available to pay their lawyers, we expected the fight to continue through the multi-year discovery phase in the USA and UK; we expected them to fight class certification; and we expected them to continue to contest the case through their attempt to have the court award them summary judgment after all of the evidence had been gathered, presented to, and considered by the court.

True to form, many tens of

# Pension Fund

millions of dollars were surely expended on defendants' lawyers in all of these futile efforts and more while, throughout, we provided our services to Norfolk and the class on a wholly contingent fee basis at no-out-of-pocket cost to Norfolk or the class.

We were able to reach the proposed settlement and overcome the defendant's often scorched earth defence tactics by being tenacious, focused and determined to invest whatever resources necessary in both our lawyers' time and capital outlay to optimise the outcome. In that effort, we were fully supported and assisted by Alex and Norfolk who, from their track record in winning a jury verdict of over USD 54 million with us in the Puma case, presented themselves as a formidable adversary.

## What extra work is involved for a pension fund acting as a lead plaintiff in a class action? How involved was Norfolk Pension Fund in the legal process?

■ **AY:** Every case needs a lead plaintiff otherwise there is no case and no recovery. No law firm other than Robbins Geller identified the claims we made and successfully pursued, so we were concerned that if we didn't act, the wrongdoing could go unaddressed either entirely or in sub-optimal fashion.

Seeking and occupying the lead plaintiff position required us to marshal our data and liaise closely with Mark and his team throughout the case. That required close attention at times to ensure we did all we should to produce evidence of our transactions and process, prepare and sit for my deposition, as well as engage with Mark and team on status updates, strategy, the mediation process, and ultimately oversee the USD 490 million resolution. We believe it is crucial to take the role of lead plaintiff extremely seriously as

part of our duties to the class.

The involvement did not impede my ability to perform my regular duties and Norfolk Pension Fund is allowed to seek reimbursement for the time I and colleagues devoted to supporting the case.

## What are the next steps?

■ **MS:** An important aspect of the American system is the respect, at the end of the day, for the fact that these class claims are the aggregation of thousands of individual claims.

So, the judge must approve the settlement and allow class members to object or opt-out. That process will occur over the next few months and, if the settlement garners final approval, the claims process will begin leading to distribution of the settlement funds to Norfolk, and the other investors, on a pro-rata basis.

## Are there any other class actions that Norfolk Pension Fund is currently involved with or using stewardship to change procedures/strategies at any companies it invests in?

■ **AY:** Yes, we are lead plaintiff of a case in which Mark and his colleagues at Robbins Geller again are lead counsel against Anadarko Petroleum and its former executives which is pending in Houston, Texas.

Essentially, it's alleged that Anadarko was drilling in dry wells, knew it, but kept that information from investors. The Texas judge is about to have a second look at his class certification of the case after the

court of appeals instructed him to allow another submission from defendants.

## What should pension funds consider when looking for a legal representative for a class action?

■ **Alex and Mark:** Any investor considering retaining a US firm to undertake securities fraud class action representation should conduct a careful analysis of the following: Track record – Examine the law firm's track record in securities litigation; its size and capacity; its standing both in terms of the amounts of its historic recoveries and the significance of any corporate governance reforms achieved.

Preferably the information will be derived not just from what the firm advertises but will be supported by commentary from objective third parties, clients, and even judges.

Trial experience – Inquire of the identity and experience of the trial lawyers assigned to the case. Many self-identified securities fraud firms have no trial lawyers or any experience in trying a securities case before a jury. Inquire because it's impossible to maximise the outcome of a case without a credible threat of trial.

Financial strength – Does the firm have the financial capacity to fund the case and is it willing to go toe to toe against defendants with effectively limitless corporate coffers to pay their corporate lawyers? Find out if the firm borrowed from the government during the Covid crisis. All firms that did, thereby attesting that they lack financial capacity, are far less likely to be both able and willing to finance large cases to the optimal extent when the going gets tough.

Cross-border expertise – Does the firm have dual qualified lawyers capable of weighing any competing interests or potential conflicts associated with any proposed course of legal action?

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**“WE BELIEVE IT IS  
CRUCIAL TO TAKE THE  
ROLE OF LEAD PLAINTIFF  
EXTREMELY SERIOUSLY  
AS PART OF OUR DUTIES  
TO THE CLASS”**