



## JOSEPH H. MELTZER

### PARTNER

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#### FOCUS AREAS

Arbitration

Antitrust

Data Privacy & Cyber Security

Healthcare Impact & Consumer Protection

Banking & Financial Services

#### EDUCATION

University of Maryland

B.A. 1993, with honors

Temple University Beasley School of Law

J.D. 1997, with honors

#### ADMISSIONS

Pennsylvania

New York

New Jersey

United States Supreme Court

United States Court of Federal Claims

USDC, Eastern District of Pennsylvania

USDC, Southern District of New York

USDC, District of New Jersey

Joseph H. Meltzer leads the firm's Fiduciary, Consumer Protection and Antitrust groups.

A pioneer in prosecuting breach of fiduciary duty cases, Joe has been lead or co-lead counsel in numerous nationwide class actions brought under fiduciary laws including ERISA. Joe represents institutional investor clients in a variety of breach of fiduciary duty cases and has some of the largest settlements in fiduciary breach actions including several recoveries in the hundreds of millions of dollars.

The firm also has a robust Consumer Protection department which represents individuals, businesses, and governmental entities that have sustained losses as a result of defective products or improper business practices. Kessler Topaz is highly selective in these matters – the firm litigates only complex cases that it deems suitable for judicial resolution.

In his antitrust work, Joe represents clients injured by anticompetitive and unlawful business practices, including overcharges related to prescription drugs, health care expenditures and commodities. Joe has also represented various states in pharmaceutical pricing litigation as a Special Assistant Attorney General.

#### Settled

**Some examples of recoveries below. Joe's recoveries for clients and the classes they represent are in the billions.**

- *In re: Loestrin Fe 24 Antitrust Litigation*, MDL No. 2472 (D.R.I.)

USDC, Eastern District of Michigan  
USDC, Eastern District of Arkansas  
USDC, Western District of Arkansas  
USCA, First Circuit  
USCA, Third Circuit  
USCA, Fourth Circuit  
USCA, Ninth Circuit  
USCA, Eleventh Circuit  
Special Assistant Attorney General for  
several states

Kessler Topaz represented direct purchasers in an antitrust litigation challenging the alleged unlawful delayed entry of generic versions of Loestrin 24 Fe, Minastrin 24 Fe, and Lo Loestrin Fe into the marketplace. After several years of litigation, which included dozens of depositions, expert reports and rebuttals, two separate rounds of summary judgment, successful certification of a class, the submission of motions *in limine*, pre-trial memoranda, trial exhibits, and proposed trial deposition testimony, the case settled for \$120 million on the eve of jury selection.

- *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1833 (E.D. Pa.) Kessler Topaz represented a class of end payors in an antitrust action alleging that Defendants violated federal antitrust, consumer protection, and unjust enrichment laws by participating in an unlawful “reverse payment” scheme involving the wakefulness promoting drug Provigil. The prosecution of claims asserted in the action spanned over 12 years, involving the retention of highly qualified experts, intensive and protracted discovery, dozens of depositions, extensive motion practice, lengthy court hearings concerning discovery, class and dispositive issues, appellate proceedings, and involvement in ancillary proceedings. The case ultimately settled for \$65.8 million on behalf of certain end payors with total recoveries exceeded \$100 million.
- *In re: Flonase Antitrust Litigation*, No. 08-cv-3149 (E.D. Pa.) Kessler Topaz served as a lead counsel on behalf of a class of direct purchaser plaintiffs in an antitrust action brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, alleging, among other things, that defendant GlaxoSmithKline (GSK) violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by engaging in “sham” petitioning of a government agency. Specifically, the Direct Purchasers alleged that GSK unlawfully abused the citizen petition process contained in Section 505(j) of the Federal Food, Drug, and Cosmetic Act and thus delayed the introduction of less expensive generic versions of Flonase, a highly popular allergy drug, causing injury to the Direct Purchaser Class. Throughout the course of the four year litigation, Plaintiffs defeated two motions for summary judgment, succeeded in having a class certified and conducted extensive discovery. After lengthy negotiations and shortly before trial, the action settled for \$150 million.
- On behalf of the Attorneys General of Alaska, Montana and Utah, successfully prosecuted lawsuits asserting various claims arising out of the marketing, promotion and sale of certain atypical antipsychotic drugs. Millions of dollars were paid to those states in settlement of the actions.
- Kessler Topaz represented plaintiffs in actions against

depository institutions BNY Mellon, CitiGroup, and JPMorgan Chase Bank, all of which alleged the same misconduct involving ADR conversions. Plaintiffs alleged that the depository institutions assigned improper conversion rates to ADR holders, resulting in dividends and cash distributions that were owed to ADR holders but were instead unlawfully retained by the depository institutions. Each of the three actions resulted in settlements on behalf of the ADR holders: BNY Mellon - \$72.5 million; CitiGroup - \$14.75 million; and JPMorgan Chase - \$9.5 million.

- Plaintiffs Reach Settlement with BNY Mellon over its Forex Practices - Launched the first class action brought on behalf of Bank of New York Mellon Corp's (BNY Mellon) Forex (FX) trading clients. On behalf of the Southeastern Pennsylvania Transportation Authority (SEPTA) Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, Plaintiffs alleged that BNY Mellon secretly assigned a spread to the FX rates in BNY Mellon's automated "Standing Instruction" FX service. BNY Mellon determined this spread by executing its clients' transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was undertaken by the bank despite BNY Mellon's contractual promises that its Standing Instruction service was designed to provide "best execution," was "free of charge" and provided the "best rates of the day." The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon's custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices. The case was litigated in collaboration with separate cases brought by state and federal agencies. Kessler Topaz served as lead counsel and Mr. Meltzer was a member of three person executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of \$335 million. Additionally, the settlement was administered with separate recoveries by state and federal agencies which brought the total recovery for BNY Mellon's custodial customers to \$504 million. The settlement was finally approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel for a "wonderful job," recognizing that they were "fought tooth and nail at every step of the road." In further recognition of the efforts of counsel, Judge Kaplan noted that "[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job."

- *Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A.* – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.) Plaintiffs brought this action on behalf of all entities that were participants in JPMorgan's securities lending program that incurred losses on investments made by JPMorgan, in its capacity as a discretionary investment manager, in medium-term notes issued by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class were approximately \$500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed hundreds of thousands of pages of documents, took dozens of depositions (domestic and foreign) and exchanged numerous expert reports. The case settled for \$150 million two days before trial was set to begin.
- Transatlantic Holdings: Reinsurer paid \$75M in binding arbitration - Arbitrator's award of \$75 million for Transatlantic Holdings, Inc., and its subsidiaries (TRH) in a case alleging that American International Group, Inc. (AIG) breached its fiduciary and contractual duties and committed fraud in connection with its securities lending program. Until June 2009, AIG was TRH's majority shareholder and administered TRH's securities lending program. Plaintiffs alleged that AIG breached its fiduciary obligations by imprudently investing the majority of the cash collateral obtained from TRH under its lending program in risky mortgage-backed securities, including Alt-A and subprime investments. Plaintiffs further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH.

### Current Cases

- Amarin Pharma, Inc.

Plaintiffs filed a Consolidated Class Action Complaint alleging that, having pursued and lost patent infringement litigation against would-be generic competitors as well as exhausting every regulatory means to prevent and delay the launch of generic competitors, Amarin adopted an unlawful strategy to artificially extend its monopoly for its sole product Vascepa. By locking up every viable supplier of the key ingredient needed to manufacture generic Vascepa, Amarin boxed generic manufacturers out of the market. This scheme left Amarin free to continue charging supracompetitive prices and obtain the most profit it could out of Vascepa, at the expense of the Plaintiffs and other purchasers of

the drug.

- Netflix, Inc. & Hulu, LLC

Kessler Topaz represents two New Jersey municipalities, the Borough of Longport and the Township of New Jersey, in a putative class action against Netflix and Hulu seeking to recover unpaid franchise fees under the Cable Television Act. Under that Act, cable television companies are required to pay New Jersey municipalities a mandatory franchise fee equal to 2% of their subscriptions in the municipality's jurisdiction. As more and more people "cut the cord" and move from traditional cable television subscriptions to streaming services offered by companies like Netflix and Hulu, New Jersey municipalities have been deprived of the franchise fees that they have collected from traditional cable television companies and relied upon for decades.

Plaintiffs filed their Class Action Complaint on August 13, 2021, asking the Court to order that Netflix and Hulu abide by the Cable Television Act and pay what they owe to New Jersey municipalities. On May 20, 2022, after briefing on defendants' motions to dismiss, the District Court held that the Cable Television Act did not confer a private right of action and that only the New Jersey Board of Public Utilities (the "BPU") had the right to assert such claims. Plaintiffs have appealed the District Court's decision to the Third Circuit. The appeal is fully briefed and awaiting a decision.

- Social Media Adolescent Addiction/Personal Injury Products Liability

Kessler Topaz partners Joseph H. Meltzer and Melissa L. Yeates are currently serving in court-appointed leadership positions, representing school districts and local government entities nationwide (the "Local Government Entity Plaintiffs"), seeking redress for the youth mental health crisis caused by social media companies in a large multi-district litigation.

The Local Government Entity Plaintiffs allege that social media companies including Facebook, Instagram, Snapchat, TikTok, and YouTube, have deliberately designed, developed, produced, operated, promoted, distributed, and marketed their social media platforms to increase revenue at the expense of the nation's minors. Allegations include that the social media companies use design mechanisms, such as algorithms, feeds, and filters to maximize minors' screen time and addict adolescent users, which in turn has caused a youth mental health crisis. This youth mental health crisis has been highlighted by various authorities, including the U.S. Surgeon General, the American Academy of Pediatrics, the

American Academy of Child and Adolescent Psychiatry, and the Children’s Hospital Association. While Defendants profit off their harmful conduct, which keeps young users glued to their social media platforms, school districts and local communities have been forced to expend, divert, and increase human and financial resources to address the harmful consequences of Defendants’ conduct in causing the youth mental health crisis.

After local communities and school districts filed lawsuits seeking to hold social media companies responsible for their actions in courts across the country, these cases were consolidated for pre-trial proceedings before the Honorable Yvonne Gonzalez Rogers in the Northern District of California. The Local Government Entity Plaintiffs filed a Master Complaint on December 18, 2023. Defendants’ response to the Master Complaint is due on February 5, 2024.

Settled

- Ranbaxy Generic Drug Application Antitrust Litigation

CASE CAPTION	<i>In re Ranbaxy Generic Drug Application Antitrust Litigation</i>
COURT	United States District Court for the District of Massachusetts
CASE NUMBER	MDL No. 2878
JUDGE	Honorable Nathaniel M. Gorton
PLAINTIFFS	Meijer, Inc. and Meijer Distribution, Inc.
DEFENDANTS	Ranbaxy Inc., Ranbaxy Laboratories LTD., Ranbaxy USA, Inc. and Sun Pharmaceutical Industries, LTD.

KTMC was counsel for direct purchasers alleging that generic drug manufacturer, Ranbaxy, Inc., violated the racketeering laws by recklessly submitting grossly inadequate generic drug applications to the FDA for generic versions of Nexium, Diovan and Valcyte; and intentionally deceiving the FDA into granting tentative approval to secure statutory exclusivities for each application. These improperly obtained approvals gave Ranbaxy the power to exclude other generic manufacturers’ versions of these drugs while its own applications floundered. Had Ranbaxy not made blatant misrepresentations to the FDA, the FDA would not have granted Ranbaxy the tentative approvals and resulting exclusivities, and

other companies would have entered the market with generic versions of each drug several years earlier. As a result of Ranbaxy's unlawful conduct, purchasers paid significantly higher prices for these drugs than they otherwise would have.

After several years of hard-fought litigation, Judge Nathaniel M. Gorton certified three separate classes of direct purchasers of each drug and denied Ranbaxy's motion for summary judgment. On the eve of trial, Plaintiffs negotiated a \$340 million settlement on behalf of the three classes of direct purchasers.

- Zetia Antitrust Litigation

<b>CASE CAPTION</b>	<i>In re Zetia Antitrust Litigation</i>
<b>COURT</b>	United States District Court for the Eastern District of Virginia
<b>CASE NUMBER</b>	18-md-2836
<b>JUDGE</b>	Honorable Rebecca Beach Smith
<b>PLAINTIFFS</b>	Direct Purchasers
<b>DEFENDANTS</b>	Merck & Co., Inc., Merck Sharp & Dohme Corp., Schering-Plough Corp., Schering Corp., MSP Singapore Co., LLC, Glenmark Pharmaceuticals LTD., and Glenmark Generics, Inc.

KTMC was counsel for direct purchasers alleging that brand company Merck & Co., and generic company Glenmark Pharmaceuticals, entered into an anticompetitive pay-for-delay agreement over the drug Zetia ("ezetimibe"). Following Glenmark's submission of its application to the FDA for approval of a generic version of Zetia, Merck sued Glenmark alleging it had infringed Merck's patents covering Zetia. Glenmark was the first generic company to seek FDA approval and had secured the right to a 180-day period without competition from other generic companies.

Merck however had the right to launch its own generic version of Zetia (an "authorized generic") during the 180-day period of Glenmark's exclusivity. In order to resolve its patent infringement case against Glenmark, Merck entered into an unlawful reverse payment settlement with Glenmark in 2010 to delay generic entry until 2016. In exchange for this significant delay, Merck agreed not to launch an authorized generic to compete with Glenmark's generic Zetia during the first 180 days Glenmark's product was on the market. The direct purchasers paid significantly higher prices as a result of delayed generic entry and the absence of competition

from an authorized generic.

During several years of litigation, direct purchasers achieved a number of significant victories leading up to trial. For example, Judge Rebecca Beach Smith granted the purchasers' motion for summary judgment as to market power and held that "Simply put, on this record, no reasonable juror could remain faithful to controlling precedent and cast the relevant market as broadly as Defendants suggest. Stretching the ambit to include non-ezetimibe drugs would blunt the procompetitive purpose of antitrust law and render the market power analysis inconsequential." In addition, the Court denied Defendants' motion for summary judgment finding there were disputes of material fact about on several key issues in the case.

On the eve of jury selection, a global settlement for all plaintiff groups (including the indirect purchaser class and several large retailers) of over \$600 million was negotiated.

### News

- August 17, 2023 - California Federal Court Certifies Advertiser Classes in Consumer Fraud Case Against Google
- February 23, 2022 - New York Federal Court Approves Settlement in Zinc Market Manipulation Antitrust Case
- January 10, 2022 - Michigan Federal Court Approves Settlement for Vehicle Owners in Ford Motor Co. Exhaust Fumes Consumer Litigation
- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2021
- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The Legal Intelligencer
- March 14, 2016 - Kessler Topaz Meltzer & Check earns a spot on The National Law Journal's "2016 Plaintiffs' Hot List"
- November 24, 2015 - Kessler Topaz Again Named One of America's Leading Litigation Firms by Benchmark Litigation

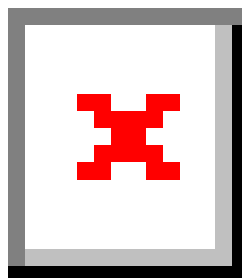
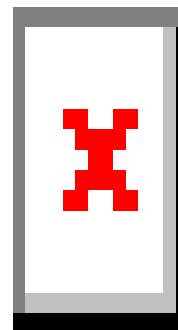
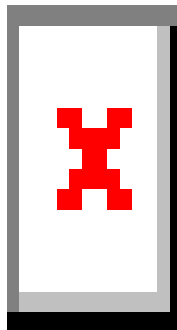
### Speaking Engagements

Joe lectures on ERISA litigation, Fiduciary Litigation and Antitrust Litigation as well as on issues related to class certification. He is a member of the ABA's Section Committees on Employee Benefits and Antitrust Law and has been recognized by numerous courts for his ability and expertise in these complex areas of the law.



### Awards/Rankings

- Benchmark Litigation Star, Multiple Years
- Lawdragon 500 Leading Plaintiff Financial Lawyer, Multiple Years



### Memberships

- American Bar Association
- American Bar Association Antitrust Law Committee Member
- American Bar Association Employee Benefits Committee Member
- Class Action Preservation Committee

- New York State Bar Association
- Philadelphia Bar Association
- Public Justice Foundation

#### **Community Involvement**

- American Cancer Society—Supporter
- Southern Poverty Law Center—Supporter
- Supreme Court of Pennsylvania Disciplinary Board – Senior Hearing Officer
- University of Maryland Alumni Association
- University of Maryland College of Behavioral and Social Sciences – Board of Visitors