# LEE D. RUDY

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### FOCUS AREAS

Securities Fraud

Global Shareholder

Whistleblower

Corporate Governance & M+A

### EDUCATION

Fordham University School of Law
J.D. 1996

University of Pennsylvania
B.A. 1992, *cum laude*

### ADMISSIONS

New York

Pennsylvania

USDC, Eastern District of Pennsylvania

United States Court of Federal Claims

Lee D. Rudy, a partner of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders.

Lee regularly practices in the Delaware Court of Chancery, where he served as co-lead trial counsel in the landmark case of In re S. Peru Copper Corp. S'holder Derivative Litig. (2011), a $2 billion trial verdict against Southern Peru's majority shareholder, and In re Facebook, Inc. Class C Reclassification Litigation (2017), which forced Facebook and its founder Mark Zuckerberg to abandon plans to issue a new class of nonvoting stock to entrench Zuckerberg as the company's majority stockholder. Lee also recently served as lead counsel in In re Allergan, Inc. Proxy Violation Securities Litigation (C.D. Cal. 2017), which was brought by a class of Allergan stockholders who sold shares while Pershing Square and its founder Bill Ackman were buying Allergan stock in advance of a secret takeover attempt by Valeant Pharmaceuticals, and which settled for $250 million just weeks before trial. Lee previously served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options.

Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ), where he tried dozens of jury cases to verdict. Mr. Rudy received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania. Mr. Rudy is licensed to practice in Pennsylvania and New York.

## Current Cases

- CBS Corporation

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| **CASE CAPTION** | *In re CBS Corporation Stockholder Class Action and Derivative Litigation* |
| **COURT** | Delaware Court of Chancery |
| **CASE NUMBER** | Consolidated C.A. No. 2020-0111-JRS |
| **JUDGE** | Honorable Joseph R. Slights |
| **PLAINTIFF** | Bucks County Employees Retirement Fund |
| **DEFENDANTS** | ViacomCBS, Inc., Joseph Ianniello, Candace K. Beinecke, Barbara M. Byrne, Gary L. Countryman, Brian Goldner, Linda M. Griego, Martha L. Minow, Susan Schuman, Frederick O. Terrell, Strauss Zelnick, Thomas J. May, Judith A. McHale, Ronald Nelson, Nicole Seligman, National Amusements, Inc., NAI Entertainment Holdings LLC, Shari E. Redstone, Robert N. Klieger and the Sumner M. Redstone National Amusements Trust |

Plaintiff challenges the 2019 merger of CBS Corporation and Viacom Corporation (the "Merger"), alleging that the Merger was orchestrated by Shari Redstone, the controlling stockholder of both CBS and Viacom. Plaintiffs allege that the Merger was the culmination of a years-long effort by Shari Redstone ("Redstone") to combine the two companies in order to save the floundering Viacom, despite the lack of economic merit of the Merger and the opposition of CBS directors and stockholders alike. Plaintiffs alleged that Redstone wrested control of NAI (the holding company that controls CBS and Viacom) from her ailing father Sumner Redstone, and twice previously attempted to merge CBS and Viacom and failed. The first time she was rebuked by the CBS board of directors, after which she publicly proclaimed that "the merger would get done," even if Redstone had to "use a different process."

Two years later, Redstone was back at it, attempting to force a CBS-Viacom merger. This time the CBS board was so concerned that Redstone would force a merger over their objections, that they took the "extraordinary" measure of attempting to dilute her control of CBS to protect CBS and its stockholders from her influence. After hard-fought, expedited litigation, a settlement was reached that resulted in the CBS board turning over, and the addition of six new directors hand-picked by Redstone. Importantly, Redstone and NAI also agreed that they would not propose that CBS and Viacom merge for a period of two years following the settlement.

Nonetheless, only four months after the settlement, Redstone again caused the new CBS board to evaluate a merger with Viacom. Redstone sidelined carry-over directors who opposed her, and enticed CBS's acting CEO Joseph Ianniello (who previously opposed the Merger) to support her with a hefty compensation package. The Board approved the Merger in August 2019, and it closed on December 4, 2019.

Plaintiff commenced the action by seeking documents pursuant to 8 Del. C. § 220, which allows stockholders to review a company's "books and records." After reviewing these materials, Plaintiff filed its complaint on February 20, 2020. Plaintiffs allege that the Merger forced the poorly performing Viacom on CBS and destroyed value for CBS and its stockholders for NAI's benefit. The Court appointed Plaintiff and another stockholder to lead the case on March 31, 2020. Defendants moved to dismiss. On January 27, 2021, the Court denied the motion, in a 157-page opinion containing references to diverse sources as Rolling Stone magazine, Game of Thrones author George R.R. Martin, and Greek mythology.

Since February 2021, Plaintiff has been engaging in document and deposition discovery. At the same time, Plaintiffs are coordinating their efforts with former Viacom stockholders who assert the opposite of what Plaintiffs allege, namely that the Merger underpaid them.

A ten-day trial is set to commence on April 17-28, 2023.

**Read Plaintiffs' Verified Consolidated Class Action and Derivative Complaint Here**

**Read Memorandum Opinion on the Motion to Dismiss Here**

- Fannie Mae/Freddie Mac

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| **CASE CAPTION** | *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase* |

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| | *Agreement Class Action Litigations* |
| **COURT** | United States District Court for the District of Columbia |
| **CASE NUMBER** | Misc. Action No. 13-mc-01288 (RCL) |
| **JUDGE** | Honorable Royce C. Lamberth |
| **PLAINTIFF** | Joseph Cacciapalle |
| **DEFENDANTS** | Federal Housing Finance Agency ("FHFA"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac") |

KTMC represents shareholders in a lawsuit against the Federal Housing Finance Agency ("FHFA"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac") regarding their conduct in connection with the implementation of the Third Amendment to the Senior Preferred Stock Purchase Agreements between Fannie Mae, Freddie Mac, and the United States Treasury, dated August 17, 2012.

On September 6, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship. Acting as conservator, the FHFA then agreed to a Senior Preferred Stock Purchase Agreement ("PSPA") between each company and the Treasury. Under each PSPA, Fannie Mae and Freddie Mac issued Senior Preferred Stock to the Treasury in exchange for the Treasury's commitment to provide funding up to a specified cap. The principal value of the preferred stock in each of Fannie Mae and Freddie Mac was equal to $1 billion (in exchange for the commitment) plus any dollars actually invested into the company. The PSPAs generally gave Treasury a dividend equal to 10% per year (if paid in cash) of the amount Treasury invested in the company paid out quarterly with senior priority plus a fee for Treasury's commitment to invest additional funds if needed.

Four years later, on August 17, 2012, the Treasury and FHFA agreed to the Third Amendment to the PSPAs (the PSPAs were previously amended twice) under which the 10% dividend was converted into a "Net Worth Sweep" that required Fannie Mae and Freddie Mac to pay the full amount of their net worth to Treasury every quarter.

As a result of the Third Amendment to the PSPAs, Plaintiffs allege that it became impossible for private shareholders to ever receive any dividend or liquidation distribution from Fannie Mae and Freddie Mac, regardless of the profitability of the companies. Plaintiffs allege that the Third Amendment was implemented just as the housing market was recovering and the companies were returning to robust profitability and that the Defendants' conduct in agreeing to the Third Amendment just as Fannie Mae and Freddie Mac were returning to profitability violated the contractual implied covenant of good faith and fair dealing inherent in Plaintiffs' stock certificates.

The case is titled *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*, No. 13-mc-1288 (RCL) and is pending in the United States District Court for the District of Columbia.

A ten-day jury trial is set to begin on October 17, 2022.

- Tesla, Inc.

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| **CASE CAPTION** | *In re Tesla Motors, Inc. Stockholder Litigation* |
| **COURT** | Delaware Court of Chancery |
| **CASE NUMBER** | Consol. C.A. No. 12711-VCS |
| **JUDGE** | Honorable Joseph R. Slights |

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| **PLAINTIFF** | Arkansas Teacher Retirement System ("ATRS") |
| **DEFENDANTS** | Elon Musk |

Plaintiff challenges the $2.1 billion acquisition of SolarCity, Inc. by Tesla Motors, which closed on November 21, 2016 (the "Acquisition"). Plaintiff alleges that the Acquisition was essentially a bailout of the financially struggling SolarCity, which was founded and run by Elon Musk's cousins. At the time of the acquisition, Elon Musk was chairman of both boards of directors and the largest stockholder of both Tesla and SolarCity. Plaintiff alleges that Musk proposed the Acquisition in an effort to save SolarCity from going bankrupt, and the rest of Tesla's board of directors approved the Acquisition despite knowing that it was not in Tesla's best interests.

On October 19, 2016, ATRS and KTMC were appointed co-lead plaintiffs and co-lead counsel. On March 9, 2017, plaintiffs filed a consolidated complaint, naming Musk and the other Tesla directors as defendants. On March 28, 2018, the Court denied defendants' motion to dismiss the case. Plaintiffs then took discovery, including reviewing 3 million pages of documents and taking 22 fact and expert depositions. Trial was originally set for March 16, 2020. After two mediation sessions, on January 22, 2020 plaintiffs agreed to settle the case for $60 million against all of the defendants except Elon Musk. On February 4, 2020, the Court denied motions for summary judgment. On August 17, 2020, the Court approved the partial settlement and set the case for trial against Elon Musk alone. On March 13, 2020, the Court adjourned the trial because of the COVID-19 pandemic.

Plaintiffs tried the case as a bench trial before the Court from July 12 to July 23, 2021. Plaintiffs called Elon Musk, his brother (Tesla board member) Kimbal Musk, and three expert witnesses in their case-in-chief. Plaintiffs cross-examined Musk's 13 fact and expert witnesses. At trial, Plaintiffs sought to prove that Musk breached his fiduciary duties to Tesla by proposing the Acquisition and pushing it through, while knowing that SolarCity was worth nowhere close to the $2.1 billion Tesla paid for it. Plaintiffs also sought to prove that Tesla stockholders who voted to approve the Acquisition were not given true information about Musk's involvement in the Acquisition negotiations or SolarCity's true financial condition, among other things. After hearing witness testimony, the Court adjourned the trial for post-trial briefing.

The parties conducted post-trial briefing between October 1, 2021 and December 17, 2021. Post-trial oral argument took place on January 18, 2022. On April 27, 2022, the Delaware Court of

Chancery ruled for Elon Musk, holding that Musk did not breach his fiduciary duties and that the price paid by Tesla for SolarCity was fair. On May 27, 2022, Plaintiffs appealed this ruling to the Delaware Supreme Court.

**Memorandum Opinion, dated April 27, 2022**

### Settled

- Allergan Inc.

  Allergan stockholders alleged that in February 2014, Valeant tipped Pershing Square founder Bill Ackman about its plan to launch a hostile bid for Allergan. Armed with this nonpublic information, Pershing then bought 29 million shares of stock from unsuspecting investors, who were unaware of the takeover bid that Valeant was preparing in concert with the hedge fund. When Valeant publicized its bid in April 2014, Allergan stock shot up by $20 per share, earning Pershing $1 billion in profits in a single day.

  Valeant's bid spawned a bidding war for Allergan. The company was eventually sold to Actavis PLC for approximately $66 billion.

  Stockholders filed suit in 2014 in federal court in the Central District of California, where Judge David O. Carter presided over the case. Judge Carter appointed the Iowa Public Employees Retirement System ("Iowa") and the State Teachers Retirement System of Ohio ("Ohio") as lead plaintiffs, and appointed Kessler Topaz Meltzer & Check, LLP and Bernstein Litowitz Berger & Grossmann, LLP as lead counsel.

  The court denied motions to dismiss the litigation in 2015 and 2016, and in 2017 certified a class of Allergan investors who sold common stock during the period when Pershing was buying.

  Earlier in December, the Court held a four-day hearing on dueling motions for summary judgment, with investors arguing that the Court should enter a liability judgment against Defendants, and Defendants arguing that the Court should throw out the case. A ruling was expected on those motions within coming days.

  The settlement reached resolves both the certified stockholder class action, which was set for trial on February 26, 2018, and the action brought on behalf of investors who traded in Allergan derivative instruments. Defendants are paying $250 million to resolve the certified common stock class action, and an additional $40 million to resolve the derivative case.

  Lee Rudy, a partner at Kessler Topaz and co-lead counsel for the common stock class, commented: "This settlement not only forces Valeant and Pershing to pay back hundreds of millions of dollars, it strikes a blow for the little guy who often believes, with good reason, that the stock market is rigged by more sophisticated players. Although we were fully prepared to present our case to a jury at trial, a pre-trial settlement guarantees significant relief to our class of investors who played by the rules."

- Alon USA Energy, Inc.
  On October 29, 2021, Chancellor McCormick of the Delaware Court of Chancery approved a $44.75 million settlement to resolve class action litigation concerning the July 1, 2017 acquisition of Alon USA Energy by its controlling stockholder, Delek US Holdings. Representing the Arkansas Teacher Retirement System, Kessler Topaz brought this class action on behalf of former stockholders of Alon against Delek and Alon's board of directors. Through years of discovery, Kessler Topaz built a record demonstrating that Delek abused its power over Alon to secure an unfairly low price in the acquisition. The case settled just weeks before a June 2021 trial was set to commence.

- Apple REIT Ten, Inc.
  This shareholder derivative action challenged a conflicted "roll up" REIT transaction orchestrated by Glade M. Knight and his son Justin Knight. The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional $32 million in merger consideration.

- Arthrocare Corporation
  Kessler Topaz, as co-lead counsel, challenged the take-private of Arthrocare Corporation by private equity firm Smith & Nephew.
  This class action litigation alleged, among other things, that Arthrocare's Board breached their fiduciary duties by failing to maximize stockholder value in the merger. Plaintiffs also alleged that that the merger violated Section 203 of the Delaware General Corporation Law, which prohibits mergers with "interested stockholders," because Smith & Nephew had contracted with JP Morgan to provide financial advice and financing in the merger, while a subsidiary of JP Morgan owned more than 15% of Arthrocare's stock. Plaintiffs also alleged that the agreement between Smith & Nephew and the JP Morgan subsidiary violated a "standstill" agreement between the JP Morgan subsidiary and Arthrocare. The court set these novel legal claims for an expedited trial prior to the closing of the merger. The parties agreed to settle the action when Smith & Nephew agreed to increase the merger consideration paid to Arthrocare stockholders by $12 million, less than a month before trial.

- ExamWorks Group, Inc.
  On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a $86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.
  The settlement caused ExamWorks stockholders to receive a 6% improvement on the $35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a $46.5 million contribution from ExamWorks' outside legal counsel, Paul Hastings LLP.

- Facebook, Inc.
  Just one day before trial was set to commence over a proposed reclassification of Facebook's stock structure that KTMC challenged as harming the company's public stockholders, Facebook abandoned the proposal.
  The trial sought a permanent injunction to prevent the reclassification, in lieu of damages. By agreement, the proposal had been on hold pending the outcome of the trial. By abandoning the reclassification, Facebook essentially granted the stockholders everything they could have accomplished by winning at trial.
  As background, in 2010 Mark Zuckerberg signed the "Giving Pledge," which committed him to give away half of his wealth during his lifetime or at his death. He was widely quoted saying that he intended to start donating his wealth immediately.
  Facebook went public in 2012 with two classes of stock: class B with 10 votes per share, and class A with 1 vote per share. Public stockholders owned class A shares, while only select insiders were permitted to own the class B shares. Zuckerberg controlled Facebook from the IPO onward by owning most of the high-vote class B shares.
  Facebook's charter made clear at the IPO that if Zuckerberg sold or gave away more than a certain percentage of his shares he would fall below 50.1% of Facebook's voting control. The Giving Pledge, when read alongside Facebook's charter, made it clear that Facebook would not be a controlled company forever.
  In 2015, Zuckerberg owned 15% of Facebook's economics, but though his class B shares controlled 53% of the vote. He wanted to expand his philanthropy. He knew that he could only give away approximately $6 billion in Facebook stock without his voting control dropping below 50.1%.
  He asked Facebook's lawyers to recommend a plan for him. They recommended that Facebook issue a third class of stock, class C shares, with no voting rights, and distribute these shares via dividend to all class A and class B stockholders. This

would allow Zuckerberg to sell all of his class C shares first without any effect on his voting control.

Facebook formed a "Special Committee" of independent directors to negotiate the terms of this "reclassification" of Facebook's stock structure with Zuckerberg. The Committee included Marc Andreeson, who was Zuckerberg's longtime friend and mentor. It also included Susan Desmond-Hellman, the CEO of the Gates Foundation, who we alleged was unlikely to stand in the way of Zuckerberg becoming one of the world's biggest philanthropists.

In the middle of his negotiations with the Special Committee, Zuckerberg made another public pledge, at the same time he and his wife Priscilla Chan announced the birth of their first child. They announced that they were forming a charitable vehicle, called the "Chan-Zuckerberg Initiative" (CZI) and that they intended to give away 99% of their wealth during their lifetime.

The Special Committee ultimately agreed to the reclassification, after negotiating certain governance restrictions on Zuckerberg's ability to leave the company while retaining voting control. We alleged that these restrictions were largely meaningless. For example, Zuckerberg was permitted to take unlimited leaves of absence to work for the government. He could also significantly reduce his role at Facebook while still controlling the company.

At the time the negotiations were complete, the reclassification allowed Zuckerberg to give away approximately $35 billion in Facebook stock without his voting power falling below 50.1%. At that point Zuckerberg would own just 4% of Facebook while being its controlling stockholder.

We alleged that the reclassification would have caused an economic harm to Facebook's public stockholders. Unlike a typical dividend, which has no economic effect on the overall value of the company, the nonvoting C shares were expected to trade at a 2-5% discount to the voting class A shares. A dividend of class C shares would thus leave A stockholders with a "bundle" of one class A share, plus 2 class C shares, and that bundle would be worth less than the original class A share. Recent similar transactions also make clear that companies lose value when a controlling stockholder increases the "wedge" between his economic ownership and voting control. Overall, we predicted that the reclassification would cause an overall harm of more than $10 billion to the class A stockholders.

The reclassification was also terrible from a corporate governance perspective. We never argued that Zuckerberg wasn't doing a good job as Facebook's CEO right now. But public stockholders never signed on to have Zuckerberg control the company for life. Indeed at the time of the IPO that was nobody's expectation. Moreover, as Zuckerberg donates more of his money to CZI, one would assume his attention would drift to CZI as well. Nobody wants a controlling stockholder whose attention is elsewhere. And with Zuckerberg firmly in control of the company, stockholders would have no recourse against him if he started to shirk his responsibilities or make bad decisions.

We sought an injunction in this case to stop the reclassification from going forward. Facebook already put it up to a vote last year, where it was approved, but only because Zuckerberg voted his shares in favor of it. The public stockholders who voted cast 80% of their votes against the reclassification.

By abandoning the reclassification, Zuckerberg can still give away as much stock as he wants. But if he gives away more than a certain amount, now he stands to lose control. Facebook's stock price has gone up a lot since 2015, so Zuckerberg can now give away approximately $10 billion before losing control (up from $6 billion). But then he either has to stop (unlikely, in light of his public pledges), or voluntarily give up control. There is evidence that non-controlled companies typically outperform controlled companies.

KTMC believes that this litigation created an enormous benefit for Facebook's public class A stockholders. By forcing Zuckerberg to abandon the reclassification, KTMC avoided a multi-billion dollar harm. We also preserved investors' expectations about how Facebook would be governed and when it would eventually cease to be a controlled company.

KTMC represented Sjunde AP-Fonden ("AP7"), a Swedish national pension fund which held more than 2 million shares of Facebook class A stock, in the litigation. AP7 was certified as a class representative, and KTMC was certified as co-lead counsel in the case.

- Harleysville Mutual Insurance Co.

  Kessler Topaz served as co-lead counsel in expedited merger litigation challenging Harleysville's agreement to sell the company to Nationwide Insurance Company. Plaintiffs alleged that policyholders were entitled to receive cash in exchange for their ownership interests in the company, not just new Nationwide policies.

  Plaintiffs also alleged that the merger was "fundamentally unfair" under Pennsylvania law. The defendants contested the allegations and contended that the claims could not be prosecuted directly by policyholders (as opposed to derivatively on the company's behalf). Following a two-day preliminary injunction hearing, we settled the case in exchange for a $26 million cash payment to policyholders.

- Safeway, Inc.

  Kessler Topaz represented the Oklahoma Firefighters Pension and Retirement System in class action litigation challenging the

acquisition of Safeway, Inc. by Albertson's grocery chain for $32.50 per share in cash and contingent value rights.
Kessler Topaz argued that the value of CVRs was illusory, and Safeway's shareholder rights plan had a prohibitive effect on potential bidders making superior offers to acquire Safeway, which undermined the effectiveness of the post-signing "go shop." Plaintiffs sought to enjoin the transaction, but before the scheduled preliminary injunction hearing took place, Kessler Topaz negotiated (i) modifications to the terms of the CVRs and (ii) defendants' withdrawal of the shareholder rights plan. In approving the settlement, Vice Chancellor Laster of the Delaware Chancery Court stated that "the plaintiffs obtained significant changes to the transaction . . . that may well result in material increases in the compensation received by the class," including substantial benefits potentially in excess of $230 million.

- Southern Peru Copper Corp.
  Kessler Topaz served as co-lead counsel in this landmark $2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history.
  In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru's majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than $3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder's interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than $2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

- Stock Option Backdating Litigation
  In 2006, the Wall Street Journal reported that three companies appeared to have "backdated" stock option grants to their senior executives, pretending that the options had been awarded when the stock price was at its lowest price of the quarter, or even year. An executive who exercised the option thus paid the company an artificially low price, which stole money from the corporate coffers. While stock options are designed to incentivize recipients to drive the company's stock price up, backdating options to artificially low prices undercut those incentives, overpaid executives, violated tax rules, and decreased shareholder value.

Kessler Topaz worked with a financial analyst to identify dozens of other companies that had engaged in similar practices, and filed more than 50 derivative suits challenging the practice. These suits sought to force the executives to disgorge their improper compensation and to revamp the companies' executive compensation policies. Ultimately, as lead counsel in these derivative actions, Kessler Topaz achieved significant monetary and non-monetary benefits at dozens of companies, including:

*Comverse Technology, Inc.*: Settlement required Comverse's founder and CEO Kobi Alexander, who fled to Namibia after the backdating was revealed, to disgorge more than $62 million in excessive backdated option compensation. The settlement also overhauled the company's corporate governance and internal controls, replacing a number of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

*Monster Worldwide, Inc.*: Settlement required recipients of backdated stock options to disgorge more than $32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b) implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted "the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results…."

*Affiliated Computer Services, Inc.*: Settlement required executives, including founder Darwin Deason, to give up $20 million in improper backdated options. The litigation was also a catalyst for the company to replace its CEO and CFO and revamp its executive compensation policies.

- Towers Watson & Co.
  On May 25, 2021, Chancellor McCormick of the Delaware Court of Chancery approved the $15 million portion of a $90 million global settlement of Delaware and federal litigation challenging the January 4, 2016 merger of Towers Watson & Co. and Willis Group Holdings plc.  Both actions challenged the fairness of the merger based, in large part, on a six-figure compensation package that Towers' chief negotiator, defendant John Haley, stood to earn at the post-merger entity, and hid from Towers' board and stockholders.  The global resolution provides a $1.52 per share payment to the vast majority of former Towers stockholders who are members of the overlapping classes in the Delaware and federal actions.  The settlement

consideration largely closes the gap on the high end of the price range that Haley unsuccessfully bid when he re-negotiated the merger's original terms in order to secure stockholders' approval of the unpopular deal.
The Delaware action was dismissed in July 2019, when then-Vice Chancellor McCormick concluded that Haley's undisclosed compensation package was immaterial to Towers' board and stockholders. In June 2020, however, the Delaware Supreme Court reversed and remanded the action back to the trial court, holding that the Delaware plaintiffs had sufficiently plead that Haley breached his duty of loyalty by failing to disclose the compensation proposal and selling out Towers stockholders in the merger renegotiations.

## News

- May 27, 2021 - Delaware Court of Chancery Approves $90 Million Global Settlement of Stockholder Litigation Challenging Towers-Willis Merger
- 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
- June 30, 2020 - Kessler Topaz Wins Reversal From Supreme Court of Delaware
- 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
- December 29, 2017 - Kessler Topaz Represents Investors in $290 Million Total Settlement Recovery Reached with Valeant Pharmaceuticals and Bill Ackman's Pershing Square Over Insider Trading Claims
- September 22, 2017 - Facebook and Founder Mark Zuckerberg Capitulate To KTMC On Eve Of Trial
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The Legal Intelligencer
- January 3, 2017 - Kessler Topaz Again Named One of America's Leading Litigation Firms by Benchmark Litigation
- May 5, 2016 - Kenneth Cole Productions: Kessler Topaz argued before New York's highest court
- 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
- May 1, 2015 - Investors Opposing Fee-Shifting Bylaws

- April 1, 2015 - Delaware Legislature Weighs Fee Shifting Legislation — Legislation Bans Fee Shifting While Authorizing Other Litigation-Restricting Bylaws
- September 1, 2014 - Bylaw Madness: Boards Writing Their Own Rules for Litigation
- September 1, 2014 - KTMC Still Slugging at Billionaire Harold Hamm Despite Legislative "Home-Towning"

## Awards/Rankings

- National Law Journal Trailblazers Plaintiffs' Lawyers, 2022
- Benchmark Litigation Stars, 2020, 2021 & 2022
- Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019-2021