KESSLERTOPAZ MELTZERCHECK LLP

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FOCUS AREAS

Securities Fraud

EDUCATION

University of Michigan
B.A., with distinction 1992

Duke University School of Law
J.D. 1995

ADMISSIONS

Pennsylvania

New Jersey

United States Supreme Court

USDC, Eastern District of Pennsylvania

USDC, District of New Jersey

USCA, Second Circuit

USCA, Sixth Circuit

USCA, Seventh Circuit

USCA, Ninth Circuit

USCA, Tenth Circuit

USCA, Eleventh Circuit

Drawing on more than two decades of litigation experience, Andrew L. Zivitz has achieved extraordinary results in securities fraud cases. His work has led to the recovery of more than $1 billion for damaged clients and class members.

Andy has represented dozens of major institutional investors in securities class actions and private litigation. He is skilled in all aspects of complex litigation, from developing and implementing strategies, to conducting merits and expert discovery, to negotiating resolutions. Andy has served as lead or co-lead counsel in many of the largest securities class actions in the U.S., including cases against Bank of America, Celgene, Goldman Sachs, Hewlett-Packard, JPMorgan, Pfizer, Tenet Healthcare, and Walgreens.

Andy's extensive courtroom experience serves his clients well in trial situations, as well as pre-trial proceedings and settlement negotiations. He served as one of the lead plaintiffs' attorneys in the only securities fraud class action arising out of the financial crisis to be tried to a jury verdict, has handled a Daubert trial in the U.S. District Court for the Southern District of New York, and successfully argued dispositive motions before federal district and appeals courts throughout the country.

Before joining Kessler Topaz Meltzer & Check, Andy worked at the international law firm Drinker Biddle and Reath, primarily representing defendants in large, complex litigation. His experience on the defense side of the bar provides a unique

perspective in prosecuting complex plaintiffs' litigation.

Current Cases

- Boeing Company

  This securities fraud class action arises out of Boeing's alleged misstatements and concealment of the significant safety issues with its 737 MAX airliner, which caused two horrific plane crashes. In 2011, under pressure after its main competitor developed a fuel-efficient jet, Boeing announced its own fuel-efficient jet, the 737 MAX. In its rush to get the MAX to market, Boeing deliberately concealed safety risks with its updated airliner from regulators. On October 29, 2018, the 737 MAX being flown by Lion Air malfunctioned and crashed, killing 189 people. While Boeing repeatedly assured the public that the 737 MAX was safe to fly, internally, the Company was quietly overhauling the airliner's systems in an attempt to reduce the risk of another fatal malfunction. Despite Boeing's reassurances to the public, on March 10, 2019 another 737 MAX, this time operated by Ethiopian Airlines, experienced malfunctions before crashing and killing 157 people.

  Even as regulators and Congress investigated the crashes, throughout the Class Period, Boeing continued to convey to the public that the 737 MAX would return to operation while covering up the full extent of the airliner's safety issues. In December 2019, Boeing finally announced it would suspend production of the 737 MAX, causing the dramatic decline of Boeing's stock price and significant losses and damages to shareholders. Since the 737 MAX catastrophe, the U.S. Securities and Exchange Commission has initiated a civil fraud investigation and the U.S. Department of Justice has initiated a criminal investigation into Boeing's fraudulent conduct.

  In February 2020, a Consolidated Class Action Complaint was filed on behalf of a putative class of investors. The complaint alleges Boeing and its former executives—including former President, CEO, and Chairman of the Board Dennis Muilenburg and CFO Gregory Smith—violated Section 10(b) of the Securities Exchange Act by making false and misleading statements regarding the fatal safety issues with its 737 MAX airliner. The complaint additionally alleges violations of Section 20(a) of the Securities Exchange Act against Dennis Muilenburg and Gregory Smith as controlling persons liable for the false and misleading statements made by Boeing.

  On August 23, 2022, the Court issued an Opinion and Order denying and granting in part the Defendants' motion to dismiss, finding Plaintiffs had sufficiently pled claims against Defendants Boeing and Mueilenburg. During fact discovery, Plaintiffs filed an amended pleading, which Defendants moved to dismiss. On September 30, 2024, the Court denied the vast majority of Defendants' motion to dismiss. Fact discovery and class certification briefing is completed. The case is currently in

expert discovery.
Read Consolidated Class Action Complaint Here
Read Opinion and Order Denying and Granting in Part Motion to Dismiss Here

- Celgene Corp, Inc.

This securities fraud case involves Celgene's misrepresentations and omissions about two billion dollar drugs, Otezla and Ozanimod, that Celgene touted as products that would make up for the anticipated revenue drop following the patent expiration of Celgene's most profitable drug, Revlimid.

Celgene launched Otezla, a drug treating psoriasis and psoriatic arthritis, in 2014. Celgene primed the market that Otezla sales were poised to sky-rocket, representing that Otezla net product sales would reach $1.5 billion to $2 billion by 2017. Throughout 2015 and 2016, Defendants represented that Celgene was on-track to meet the 2017 sales projection. As early as mid-2016, however, Defendants received explicit internal warnings that the 2017 projection was unattainable, but continued to reaffirm the 2017 target to investors. By October 2017, however, Celgene announced that the Company had slashed the 2017 guidance by more than $250 million and lowered the 2020 Inflammatory & Immunology ("I&I") guidance by over $1 billion. Celgene's stock price plummeted on the news.

Ozanimod, a drug treating multiple sclerosis, is another product in Celgene's I&I pipeline, and was initially developed by a different company, Receptos. In July 2015, Celgene purchased Receptos for $7.2 billion and projected annual Ozanimod sales of up to $6 billion despite the fact that Ozanimod was not yet approved by the U.S. Food and Drug Administration ("FDA").

Celgene told investors that it would file a New Drug Application ("NDA") for Ozanimod with the FDA in 2017. Unbeknownst to investors, however, Celgene discovered a metabolite named CC112273 (the "Metabolite") through Phase I testing that Celgene started in October 2016, which triggered the need for extensive testing that was required before the FDA would approve the drug. Despite the need for this additional Metabolite testing that would extend beyond 2017, Defendants continued to represent that Celgene was on track to submit the NDA before the end of 2017 and concealed all information about the Metabolite. In December 2017, without obtaining the required Metabolite study results, Celgene submitted the Ozanimod NDA to the FDA. Two months later, the FDA rejected the NDA by issuing a rare "refuse to file," indicating that the FDA "identifie[d] clear and obvious deficiencies" in the NDA. When the relevant truth was revealed concerning Ozanimod, Celgene's stock price fell precipitously, damaging investors.

On February 27, 2019, AMF filed a 207-page Second Amended

Consolidated Class Action Complaint against Celgene and its executives under Section 10(b) of the Securities Exchange Act. On December 19, 2019, U.S. District Judge John Michael Vasquez issued a 49-page opinion sustaining AMF's claims as to (1) Celgene's and Curran's misstatements regarding Otezla being on track to meet Celgene's 2017 sales projections, and (2) Celgene's, Martin's, and Smith's misstatements about the state of Ozanimod's testing and prospects for regulatory approval.

On November 29, 2020, Judge Vasquez certified a class of "All persons and entities who purchased the common stock of Celgene Corp. between April 27, 2017 through and April 27, 2018, and were damaged thereby" and appointed Kessler Topaz Meltzer & Check as Class Counsel.

On July 9, 2021, Plaintiff moved to amend the Second Amended Complaint and file the Third Amended Complaint, which alleged a new statement regarding Otezla, and added new allegations based on evidence obtained in discovery regarding Ozanimod. On February 24, 2022, Magistrate Judge James B. Clark granted the motion to amend, which Defendants appealed.

Fact and expert discovery is completed. On September 8, 2023, Judge Vazquez issued an order denying in large part Defendants' motion for summary judgment, sending the case to trial. Specifically, following oral argument, Judge Vazquez found that genuine disputes of material fact exist with regard to the Otezla statements, denying Defendants' motion in its entirety with respect to these statements. The Court also found genuine disputes of material fact with regard to Defendant Philippe Martin's October 28, 2017 statement related to the Ozanimod NDA, and denied Defendants' motion with respect claims based on this statement. On October 27, 2023, Defendants moved for summary judgment on one remaining issue - Defendant Celgene Corporation's scienter for corporate statements related to Ozanimod. Plaintiff opposed this motion on November 17, 2023. In October 2024, the Court denied Defendants' motion. On November 4, 2025, Plaintiffs filed a motion seeking preliminary approval of a $239 million settlement. The settlement is believed to be one of the top ten largest-ever shareholder recoveries in the Third Circuit.
Read Second Amended Consolidated Class Action Complaint Here
Read Opinion Granting and Denying in Part Motion to Dismiss Here
Read Opinion Granting Class Certification Here
Click Here to Read the Class Notice

- Goldman Sachs Group, Inc.

This securities fraud class action case arises out of Goldman Sachs' role in the 1Malaysia Development Berhad ("1MDB") money laundering scandal, one of the largest financial frauds in recent

memory.

In 2012 and 2013, Goldman served as the underwriter for 1MDB, the Malaysia state investment fund masterminded by financier Jho Low, in connection with three state-guaranteed bond offerings that raised over $6.5 billion. Goldman netted $600 million in fees for the three bond offerings—over 100 times the customary fee for comparable deals.

In concert with Goldman, Low and other conspirators including government officials from Malaysia, Saudi Arabia, and the United Arab Emirates ran an expansive bribery ring, siphoning $4.5 billion from the bond deals that Goldman peddled as investments for Malaysian state energy projects. In actuality, the deals were shell transactions used to facilitate the historic money laundering scheme. Nearly $700 million of the diverted funds ended up in the private bank account of Najib Razak, Malaysia's now-disgraced prime minister who was convicted for abuse of power in 2020. Other funds were funneled to Low and his associates and were used to buy luxury real estate in New York and Paris, super yachts, and even help finance the 2013 film "The Wolf of Wall Street."

AP7 filed a 200-page complaint in October 2019 on behalf of a putative class of investors alleging that Goldman and its former executives, including former CEO Lloyd Blankfein and former President Gary Cohn, violated Section 10(b) of the Securities Exchange Act by making false and misleading statements about Goldman's role in the 1MDB fraud. As alleged, when media reports began to surface about the collapse of 1MDB, Goldman denied any involvement in the criminal scheme. Simultaneously, Goldman misrepresented its risk controls and continued to falsely tout the robustness of its compliance measures. Following a series of revelations about investigations into allegations of money laundering and corruption at 1MDB, Goldman's stock price fell precipitously, causing significant losses and damages to the Company's investors.

In October 2020, the U.S. Department of Justice announced that Goldman's Malaysia subsidiary had pled guilty to violating the Foreign Corrupt Practices Act ("FCPA") which criminalizes the payment of bribes to foreign officials, and that Goldman had agreed to pay $2.9 billion pursuant to a deferred prosecution agreement. This amount includes the largest ever penalty under the FCPA.

On June 28, 2021, The Honorable Vernon S. Broderick of the U.S. District Court for the Southern District of New York sustained Plaintiff's complaint in a 44-page published opinion. On July 31, 2023, the Court granted Plaintiff's motion to amend the complaint to conform the pleadings to the evidence adduced during discovery, which is now complete.

Plaintiff first moved for class certification in November 2021. While

that motion was pending, the Court granted Plaintiff's motion to amend the complaint and subsequently ordered that Plaintiff's motion for class certification be newly briefed in light of the amended pleading. On September 29, 2023, Plaintiff renewed its motion for class certification. On September 4, 2025, U.S. District Judge Vernon S. Broderick of the Southern District of New York issued a 35-page opinion adopting the 2024 Report and Recommendation of Magistrate Judge Katharine H. Parker recommending certification of the shareholder class in *Sjunde AP-Fonden v. The Goldman Sachs Group, Inc.*, No. 18-cv-12084. The Court's decision follows a full-day evidentiary hearing and oral argument held in February 2024. Defendants have filed a petition appealing the Court's decision.

Read Third Amended Class Action Complaint Here

Read Opinion and Order Granting and Denying in Part Motion to Dismiss Here

Read the Report and Recommendation on Motion for Class Certification Here

- Mylan N.V.

This securities fraud class action involves claims against Mylan (n/k/a Viatris Inc.), the world's second largest generic drug manufacturer, and its CEO Heather Bresch, President Rajiv Malik, and CFO Kenneth Parks. The case arises out of Defendants' scheme and misrepresentations regarding rampant abuses of federal quality control regulations, including at Mylan's flagship Morgantown, West Virginia manufacturing plant. As is alleged in the complaint, Defendants' scheme involved directing employees to circumvent data safety and quality regulations, including through manipulating drug testing results to achieve passing scores and corrupting testing data to create the false appearance of compliance. Defendants carried out this scheme to boost Mylan's manufacturing productivity, and thus profits, while assuring the investing public that its manufacturing methods complied with FDA standards.

Defendants' misrepresentations and scheme came to light through a series of corrective disclosures, which, together, caused the price of Mylan's common stock to fall by over 50%. The complaint alleges that the relevant truth about Defendants' deceptive conduct began to come to light in June 2018 when Bloomberg publicly revealed the FDA's findings of Morgantown's noncompliant manufacturing practices. The complaint alleges that investors continued to learn the truth of Mylan's violative and deceptive manufacturing practices in subsequent disclosures in August 2018 and February and May 2019 that concerned the company's efforts to remediate the Morgantown facility.

In November 2020, Lead Plaintiff filed the 137-page complaint

alleging Defendants' violations of the securities laws. In January 2021, Defendants moved to dismiss the complaint. Following the completion of briefing on Defendants' motion to dismiss and oral argument, on May 18, 2023, the Court issued an opinion and order denying the motion to dismiss in part. Defendants then moved for judgment on the pleadings arguing that Lead Plaintiff could not establish loss causation for claims sustained in the Court's opinion and order, which Lead Plaintiff opposed. The Court accepted Lead Plaintiff's arguments in a July 2025 ruling denying Defendants' motion.

Read Consolidated Class Action Complaint Here

Settled

- Pfizer, Inc.
  Case Caption: *In re Pfizer Sec. Litig.*
  Case Number: 1:04-cv-09866-LTS-HBP
  Court: Southern District of New York
  Judge: Honorable Laura Taylor Swain
  Plaintiffs: Teachers' Retirement System of Louisiana, Christine Fleckles, Julie Perusse, and Alden Chace
  Defendants: Pfizer, Inc., Henry A. McKinnell, Karen L. Katen, Joseph M. Feczko, and Gail Cawkwell

Overview: This securities fraud class action in Manhattan federal court arose out of Pfizer's concealment of clinical results for two arthritic pain drugs, Celebrex and Bextra. Despite being aware of significant cardiovascular adverse events in clinical trials, Pfizer misrepresented the safety profile of the drugs until the U.S. Food & Drug Administration discontinued a key trial, forced the withdrawal of Bextra from the market, and issued an enhanced warning label for Celebrex. Following a summary judgment order dismissing the case several weeks before trial was set to begin, we successfully appealed the dismissal at the U.S. Court of Appeals for the Second Circuit and the case was remanded for trial.
After twelve years of litigation, the case resolved in 2016 with Pfizer agreeing to pay the shareholder class $486 million, the largest-ever securities fraud settlement against a pharmaceutical company in the Southern District of New York.

- Countrywide Financial Corp.
  Case Caption: *In re W. Conf. of Teamsters Pension Tr. Fund v. Countrywide Fin. Corp.*, No. 2:12-cv-05122-MRP -MAN, and *Luther v. Countrywide Fin. Corp.*
  Case Number: 2:12-cv-05122-MRP-MAN, and 2:12-cv-05125-MRP-MAN
  Court: Central District of California
  Judge: Honorable Mariana R. Pfaelzer
  Plaintiffs: Vermont Pension Investment Committee, Mashreqbank, p.s.c., Pension Trust Fund for Operating Engineers, Operating Engineers Annuity Plan, Washington State Plumbing and Pipefitting Pension Trust, David H. Luther,

Western Conference of Teamsters Pension Trust Fund
Defendants: Countrywide Financial Corporation, Countrywide Home Loans, Inc., CWALT, Inc., CWMBS, Inc., CWHEQ, Inc., CWABS, Inc., Countrywide Capital Markets, Countrywide Securities Corporation, Bank of America Corporation, NB Holdings Corporation, Stanford L. Kurland, David A. Spector, Eric P. Sieracki, David A. Sambol, Ranjit Kripalani, N. Joshua Adler, Jennifer S. Sandefur, Jeffrey P. Grogin, Thomas Boone, Thomas K. McLaughlin, Banc of America Securities LLC, Barclays Capital Inc., Bear, Stearns & Co. Inc., BNP Paribas Securities Corp., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Edward D. Jones & Co., L.P. d/b/a Edward Jones, Goldman, Sachs & Co., Greenwich Capital Markets, Inc. a.k.a. RBS Greenwich Capital now known as RBS Securities Inc., HSBC Securities (USA) Inc., J.P. Morgan Securities Inc., Merrill, Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, and UBS Securities LLC

Overview: As co-lead counsel representing the Maine Public Employees' Retirement System, secured a $500 million settlement for a class of plaintiffs that purchased mortgage-backed securities (MBS) issued by Countrywide Financial Corporation (Countrywide). Plaintiffs alleged that Countrywide and various of its subsidiaries, officers and investment banks made false and misleading statements in more than 450 prospectus supplements relating to the issuance of subprime and Alt-A MBS—in particular, the quality of the underlying loans. When information about the loans became public, the plaintiffs' investments declined in value. The ensuing six-year litigation raised several issues of first impression in the Ninth Circuit.

- J.P. Morgan Chase Bank, N.A.
  Case Caption: *In re JPMorgan Chase & Co. Sec. Litig.*
  Case Number: 1:12-cv-03852-GBD
  Court: Southern District of New York
  Judge: Honorable George B. Daniels
  Plaintiffs: Arkansas Teacher Retirement System, Ohio Public Employees Retirement System, Sjunde AP-Fonden, and the State of Oregon by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board, on behalf of the Oregon Public Employee Retirement Fund
  Defendants: JPMorgan Chase & Co., James Dimon, and Douglas Braunstein

Overview: This securities fraud class action in the United States District Court for the Southern District of New York stemmed from the "London Whale" derivatives trading scandal at JPMorgan Chase. Shareholders alleged that JPMorgan concealed the high-risk, proprietary trading activities of the investment bank's Chief

Investment Office, including the highly volatile, synthetic credit portfolio linked to trader Bruno Iksil—a.k.a., the "London Whale"—which caused a $6.2 billion loss in a matter of weeks. Shareholders accused JPMorgan of falsely downplaying media reports of the synthetic portfolio, including on an April 2012 conference call when JPMorgan CEO Jamie Dimon dismissed these reports as a "tempest in a teapot," when in fact, the portfolio's losses were swelling as a result of the bank's failed oversight.

This case was resolved in 2015 for $150 million, following U.S. District Judge George B. Daniels' order certifying the class, representing a significant victory for investors.

- Tenet Healthcare Corp.
  As co-lead counsel representing the State of New Jersey – Division of Investment, negotiated a groundbreaking multipart settlement in litigation arising from Tenet Healthcare's (Tenet) manipulation of the Medicare Outlier reimbursement system and related misrepresentations and omissions.
  The initial partial settlement included $215 million from Tenet, personal contributions totaling $1.5 million from two individual defendants—an unusual result in class action litigation—and numerous changes to the company's corporate governance practices. A second partial settlement of $65 million from Tenet's outside auditor, KPMG, addressed claims that it had provided false and misleading certifications of Tenet's financial statements. As a result of the settlement, various institutional rating entities now rank Tenet's corporate governance policies among the strongest in the United States.

News

- November 5, 2025 - KTMC Secures $239 Million Recovery for Investors in Celgene Securities Fraud Suit
- September 5, 2025 - Kessler Topaz Secures Class Certification in Goldman Sachs Fraud Suit Involving 1MDB Corruption Scandal
- April 9, 2024 - Kessler Topaz Achieves Class Certification Win in 1MDB Fraud Suit Against Goldman Sachs
- September 13, 2023 - New Jersey Federal Court Hands Kessler Topaz Significant Summary Judgment Win, Sends Celgene Investors' Claims to Trial
- August 28, 2023 - Ninth Circuit Revives "Crypto Mining" Securities Fraud Suit Against NVIDIA
- 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

Speaking Engagements

Andy is a regular speaker at the Firm's annual conferences, including the Rights & Responsibilities of Institutional Investors in Amsterdam and the Evolving Fiduciary Obligations of Pension Plans in Washington, D.C.

Awards/Rankings

- Benchmark National Litigation Star, 2020-2025
- Benchmark Litigation US Awards 2021 & 2022 -- Plaintiff Litigator Of The Year Nominee