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HIGHLIGHTS

KESSLERTOPAZ MELTZERCHECK LLP

KTMC ACHIEVES $239 MILLION RECOVERY FOR INVESTORS IN CELGENE SECURITIES FRAUD CASE

Matthew Mustokoff, Esquire and Aubrie Kent, Esquire

Following seven years of vigorous litigation, Kessler Topaz recently secured a landmark $239 million settlement in *In re Celgene Corp. Securities Litigation*, 2:18-cv-04772 (MEF) (JBC) (D.N.J.). The case, led by Lead Plaintiff AMF Tjänstepension AB ("AMF"), was prosecuted through every phase of litigation short of trial, and the parties reached the settlement with a January 2026 trial date looming. The settlement is believed to be one of the top ten largest shareholder recoveries in the Third Circuit, which includes all the federal courts in New Jersey, Pennsylvania, and Delaware.

The litigation arises out of drugmaker Celgene's statements to investors about two of the company's drugs — Ozanimod, a multiple sclerosis and ulcerative colitis drug, and Otezla, a drug that treats psoriasis and

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KTMC ATTAINS $78 MILLION RECOVERY FOR INVESTORS IN CATALENT QUALITY CONTROL AND ACCOUNTING FRAUD CASE

Joshua D'Ancona, Esquire and Ryan Shelton-Benson, Esquire

After nearly three years of litigation in New Jersey federal court, on December 22, 2025, the parties in *City of Warwick Ret. Sys. v. Catalent, Inc.*, et al., No. 3:23-01108 (ZNQ) (D.N.J.) announced a settlement of all claims for $78 million. If approved, the settlement will provide a substantial recovery for shareholders, resolving securities fraud claims arising from statements made by Catalent, a contract development and manufacturing organization for pharmaceutical companies, concerning its quality controls and financial reporting during a class period that ran from August 2021 to May 2023.

Background of the Action

During the COVID-19 pandemic, due to the extraordinary need for rapid vaccine production, Catalent experienced a hurried expansion across its manufacturing divisions, both in its number of employees and facilities. Catalent initially benefited from this overnight growth, and in early 2021,

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SEC CHAIRMAN SIGNALS INTENT TO CURTAIL SHAREHOLDER LITIGATION

Karissa Sauder, Esquire

During his ten months as Chairman of the United States Securities and Exchange Commission (the "SEC"), Paul Atkins has indicated that the SEC intends to reduce not only its own regulation of public companies and public enforcement of the federal securities laws, but also *private* shareholder litigation.

On October 9, 2025, SEC Chairman Paul Atkins delivered a speech in which he declared that one of his "top priorities" is to "Make IPOs Great Again" by, among other things, "reform[ing] the litigation landscape for securities lawsuits to eliminate frivolous complaints."[1] Given that Congress *already* reformed the securities litigation landscape more than 3 decades ago through the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), which provided courts with multiple avenues to dismiss frivolous shareholder actions, securities law experts have warned that Atkins's comments signal increased hostility toward investor-led efforts to enforce the federal securities laws.

One way the SEC has already attempted to limit shareholder litigation is a recent change to the agency's policy on mandatory arbitration

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[1] Securities and Exchange Commission, *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala* (Oct. 9, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala.

KESSLER TOPAZ FINALIZING $70 MILLION SETTLEMENT AFTER CHECK-UP OF VETERINARY COMPANY MERGER

Mike McCutcheon, Esquire

Kessler Topaz is in the process of finalizing a $70 million cash settlement concerning a lawsuit brought by former stockholders of veterinary company Covetrus, Inc. ("Covetrus," or the "Company") in connection with the Company's sale to private equity firms Clayton, Dubilier & Rice, LLC ("CD&R"), the Company's largest stockholder, and TPG Global, LLC ("TPG"). In serving as co-lead counsel and representing one of two named plaintiffs in the action,[1] Kessler Topaz achieved this substantial and soon-to-be-finalized cash settlement after years of hard-fought litigation.

Factual Background

On May 24, 2022, Covetrus announced that CD&R and TPG were taking the Company private for $21 per share (the "Merger"). Leading up to the Merger, Covetrus was a publicly traded company with several business segments, including its valuable "Technology Business." CD&R owned a 22% stake in Covetrus, making it the largest stockholder, and appointed two members of the Company's eleven-member board of directors (the "Board"), Ravi Sachdev and Sandra Peterson, each a partner at CD&R. In connection with its investment, CD&R was bound by a standstill agreement (the "Standstill") that precluded CD&R from a broad array of actions, including making a proposal to acquire Covetrus absent prior written Board approval.

Litigation Ensues

In light of the low buyout price and apparent Standstill violations, Kessler Topaz served Covetrus with a letter pursuant to Section 220 of the Delaware General Corporation Law demanding to inspect certain Company books and records. On November 13, 2023, armed with information gleaned from the Company's books and records productions, Kessler Topaz and its co-counsel filed a plenary complaint in the Delaware Court of Chancery.

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[1] *See generally Bucks Cnty Emplys' Ret. Sys., et al v. Clayton, Dubilier & Rice, LLC, et al*, C.A. No. 2023-1151-LWW (Docket).

COURT DENIES SOCIAL MEDIA COMPANIES' REQUEST FOR SUMMARY JUDGMENT; SCHOOL DISTRICT TRIALS WILL BEGIN THIS SUMMER

Dan Dicce, Esquire

On February 9, 2026, Judge Gonzalez Rogers of the Northern District of California denied Meta, Snap, TikTok, and YouTube's ("Defendants") attempt to prevent the School District Plaintiffs (the "School Districts") from proceeding to trial on their negligence and public nuisance claims in the multidistrict litigation *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 22-md-03047 (N.D. Cal.) (the "MDL"). The MDL actions relate to the ongoing youth mental health crisis fueled by the Defendants' social media platforms.[1] The ruling followed a six-hour oral argument held on January 26, 2026, where KTMC partner and Co-Chair of the Local Government and School District Committee in the MDL, Melissa Yeates, argued, along with co-counsel, on behalf of the School Districts. This is the latest victory for the School Districts in the MDL, which includes cases filed by hundreds of school districts and local governments from across the country. When denying summary judgment, the Court announced that the first school district trial, seeking to compensate Breathitt County School District ("Breathitt") for harms caused to the District by Defendants' negligent and nuisance creating conduct, will begin in June 2026 in Oakland, California.

Discovery Has Provided Extensive Evidence to Support the School Districts' Claims

As whistleblowers and scientific studies exposed the role of Defendants' social media platforms in causing the ongoing youth mental health crisis, hundreds of suits were filed by school districts and local governments asserting negligence and public nuisance claims against Defendants. In 2022, the Judicial Panel on Multidistrict Litigation centralized these cases before Judge Gonzalez Rogers in the Northern District of California. Thereafter, the MDL Court selected 12 districts to proceed as discovery bellwether plaintiffs, including Breathitt (the "Bellwethers").

After the selection of Bellwethers, the parties engaged in extensive discovery for nearly three years. This led to the production of millions of documents by Defendants and the depositions of numerous Defendant employees, including Meta founder and CEO Mark Zuckerberg. The Bellwethers also made substantial document productions and their employees,

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[1] While the Court's opinion specifically focused on the evidence submitted by Breathitt, the Order addressed cross-cutting issues common to all School Districts.

KTMC FILES NOVEL ANTITRUST ACTION BASED ON IMPROPER PATENT LISTING

Matthew Macken, Esquire

KTMC recently filed a novel antitrust action alleging that Novartis Pharmaceuticals Corporation ("Novartis") illegally extended its monopoly for the blockbuster heart failure drug Entresto by improperly listing a patent in the FDA's Orange Book. In this proprietary case, Plaintiff Iron Workers Local 580 Insurance Fund alleges that this improper listing delayed generic competition for Entresto by at least six months, allowing Novartis to maintain market exclusivity and generate an additional $2 billion in sales. KTMC's complaint alleges that Novartis's conduct violates state antitrust and consumer protection statutes and seeks to recover the overcharges that purchasers were forced to pay.

The Drug Approval Process, Generic Competition, and the FDA's Orange Book

In order to market a new drug, a company must submit a New Drug Application (NDA) and obtain FDA approval.[1] If the applicant demonstrates in its NDA that the drug is safe and effective for its intended uses, FDA will approve the application.[2] Under the Hatch-Waxman Act, companies seeking to market generic versions of an approved drug — which are significantly cheaper than brand versions — can file an Abbreviated New Drug Application (ANDA).[3] This process reduces the time and cost of approval by allowing the ANDA filer to rely on the FDA's previous finding of safety and efficacy provided the ANDA filer can establish that its product has the same active ingredients as an approved drug and is bioequivalent.[4]

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[1] 21 U.S.C. §§355(a)–(b).
[2] *Id.*
[3] *Id.* § 355(j).
[4] *Id.* §§ 355(j)(2)(A)(ii), (iv).

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KTMC ATTAINS $78 MILLION RECOVERY FOR INVESTORS IN CATALENT QUALITY CONTROL AND ACCOUNTING FRAUD CASE

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achieved record revenues from the historic demand. By mid-2021, however, Catalent was beleaguered by acute quality control challenges resulting from the surge in demand at several key facilities. Inspections by the U.S. Food and Drug Administration ("FDA") resulted in the issuance of multiple "Form 483" adverse inspection reports identifying serious objectionable conditions. In addition, Catalent's internal controls over financial reporting and related accounting systems were breaking down and unable to keep pace with the company's precipitous growth. At the same time, demand for Catalent's services shifted and declined significantly, leaving the company with excess production capacity and a bloated headcount.

Despite these challenges to Catalent's business, the company's senior-most officers repeatedly assured investors throughout late 2021 and 2022 that its manufacturing facilities were in good condition, that any regulatory issues it confronted were of limited operational impact, and that its accounting and financial reporting systems were adequate to support its operations. The true state of affairs, however, began to come to light on September 20, 2022, when a *Washington Post* article disclosed that FDA officials had raised concerns about quality issues at Catalent's key Bloomington, Indiana facility. Over the next seven months, additional disclosures revealed similar operational and quality issues at Catalent's plants in Brussels, Belgium and Harmans, Maryland. Finally, in May 2023, Catalent announced that it would restate its financials for fiscal year 2022 due to the improper recognition of $26 million in revenue. These disclosures led to massive investment losses.

The Litigation

In February 2023, investors filed a securities fraud class action against Catalent, its former CEO John Chiminski, its current CEO Alessandro Maselli, and its former Chief Financial Officer Thomas Castellano. In June 2023, Judge Zahid Quraishi appointed two institutional investors, SEB Investment Management AB and the Public Employees' Retirement System of Mississippi, to serve as Lead Plaintiffs in the action. The Court also appointed Kessler Topaz to serve as Lead Counsel. Following an extensive investigation, Lead Plaintiffs filed an amended complaint on September 15, 2023, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and SEC Rule 10b-5.

The 189-page amended complaint alleged that, rather than be transparent with investors about the quality control breakdowns and financial reporting lapses occurring inside the company, Catalent and the named executive officers made a series of statements falsely touting the quality control systems at Catalent's key production facilities and the Company's compliance with Generally Accepted Accounting Principles ("GAAP"). Defendants unsuccessfully moved to dismiss the amended complaint. On June 28, 2024, following full briefing, Judge Quraishi issued a 31-page opinion denying Catalent's motion to dismiss. The Court found that Defendants' alleged misstatements regarding quality control and GAAP compliance were actionable. *See City of Warwick Ret. Sys. v. Catalent, Inc.*, 2024 WL 3219616 (D.N.J. June 28, 2024). Additionally, Judge Quraishi held that Lead Plaintiffs adequately alleged "scienter," or intent to defraud, given the facts showing that Defendants were repeatedly put on notice of serious quality control issues requiring remediation at the Brussels and Harmans facilities.

Following Lead Plaintiffs' victory at the pleading stage, the parties engaged in extensive fact discovery for nearly eighteen months. This discovery involved the review of nearly four million pages of documents produced by Catalent and third parties, as well as depositions of several managers and other senior-level employees with knowledge of Catalent's operations, quality systems, and financial reporting during the class period. At the time the parties settled the case, Kessler Topaz attorneys were preparing for the depositions of the individual Defendants. In parallel with fact discovery, Lead Plaintiffs filed a motion for class certification on July 1, 2025, and conducted expert discovery that was directed toward issues of damages and "price impact," an issue that has been a particular focus of securities class certification litigation in recent years.

Following significant efforts in discovery and toward class certification, the parties engaged in settlement discussions. On November 19, 2025, the parties participated in a 10-hour mediation, preceded by the submission of substantial briefing on the merits of the case and the range of claimed damages. The mediation ultimately concluded with the mutual acceptance of the mediator's double-blind proposal of a $78 million cash settlement.

Lead Plaintiffs filed a motion for preliminary approval of the settlement on December 23, 2025, which the Court granted six days later. The final settlement hearing is scheduled for June 10, 2026. The settlement represents a meaningful shareholder recovery, particularly in light of the substantial risks and delay of continued litigation. ■

KTMC ACHIEVES $239 MILLION RECOVERY FOR INVESTORS IN CELGENE SECURITIES FRAUD CASE

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psoriatic arthritis. AMF and the shareholder class alleged that investors knew and were concerned that Celgene's blockbuster cancer drug and largest source of revenue, Revlimid, was set to lose its patent exclusivity in 2022. Faced with this impending loss of revenue, Celgene claimed that two drugs from its Inflammation & Immunology (or "I&I") franchise, Ozanimod and Otezla, were poised to replace Revlimid as the company's primary revenue sources. In reality, the plaintiffs claimed, Celgene knew that Otezla sales were plummeting and that Ozanimod, a drug that was being prepared for regulatory approval by the U.S. Food and Drug Administration ("FDA"), had not been adequately tested in toxicology and clinical studies. When Celgene ultimately reduced its earnings guidance due to Otezla's struggles and announced that the FDA had rejected the new drug application for Ozanimod, the company's stock price declined, causing massive investor losses.

The Otezla Claim

Celgene had unveiled a five-year strategic growth plan in 2015, claiming that Otezla would lead the I&I franchise to $3 billion in net sales by 2020. Throughout 2015 and 2016, the President of I&I, Terrie Curran, made multiple statements representing that Otezla would achieve these net sales, and communicated to the market that Otezla was well-positioned for sustained growth in market share. In reality, Defendants knew that Otezla's sales growth was flat, and that various factors, including competition from more well-established drugs and comparatively low efficacy for Otezla, barred the drug from further market penetration. As the plaintiffs alleged, Celgene and Curran knew that these and other fundamental barriers prevented Otezla from achieving sufficient sales to support the 2017 guidance. Despite this, Defendants repeatedly misrepresented information regarding Otezla's performance in statements to investors.

Ultimately, on October 26, 2017, after priming the market for Otezla's success for months, Celgene admitted that Otezla would not hit the net sales guidance issued by the company for 2017 and cut its Otezla sales guidance by a quarter of a billion dollars. As a result, the price of Celgene's common stock fell $19.57 per share.

The Ozanimod Claim

Ozanimod was the "crown jewel" of Celgene's $7.2 billion acquisition of the drug company Receptos. AMF and the class alleged that Celgene projected FDA approval and launch by year-end 2018, with up to $6 billion in sales per year. In truth, the development of Ozanimod was at serious risk due to a lack of testing of Ozanimod's metabolites. Metabolites are chemical byproducts produced by the body in breaking down a drug, and can be active or inactive. Per FDA guidance, active metabolites, which produce their own effects on the body and can impact the functioning of drugs, must be addressed in new drug applications (or "NDAs"). FDA guidance warns that metabolite testing should be undertaken as early in drug development as possible, since a failure to adequately ascertain metabolite effects can delay development and marketing. Despite this guidance, Celgene pushed ahead with large-scale clinical trials of Ozanimod before conducting all of the required toxicology and clinical testing.

When Celgene finally began testing Ozanimod for metabolites in later 2016, it discovered the presence of a highly active metabolite — dubbed RP112273 by the company. Per FDA guidance, additional testing was required on RP112273 before Celgene could submit the Ozanimod NDA to the FDA. AMF claimed that the discovery of the metabolite was well known within Celgene. However, Celgene misleadingly told investors that Ozanimod would be submitted for FDA approval by the end of 2017 — but never disclosed the late discovery of RP112273 or the risks it posed to the timeline for regulatory approval. Despite receiving feedback from FDA that the NDA would not be approved without further toxicology and clinical pharmacology testing on the metabolite, Celgene submitted the NDA in December 2017 and continued to tout Ozanimod to the market in the ensuing months.

On February 27, 2018, Celgene disclosed that the FDA had refused to file the NDA for regulatory review, essentially telling the company that it would not review the submission until the requisite testing was completed. This announcement came as a shock to the market and caused Celgene's stock to fall by $8.66 per share. Celgene disclosed additional information about the metabolite in late April 2018, prompting Morgan Stanley to publish a report that the required metabolite testing would delay the refiling of the NDA by up to three years. This report caused the price of Celgene stock to fall a further $4.08 per share.

Discovery, Class Certification, and Prep for Trial

Discovery in this case was protracted, spanning almost three years and in the midst of the Covid-19 pandemic. Due to the pandemic, the parties conducted every deposition in the case remotely — thirty-three in total. At the time, remote depositions had been a fairly new phenomenon in litigation. Nevertheless, KTMC developed a fulsome discovery record which would ultimately withstand Defendants' summary judgment motion.

During the discovery phase, AMF filed its motion for class certification, which the Court granted on November 25, 2020. Following the certification of the class, Defendants filed a petition for leave to appeal the order under Federal Rule of Civil Procedure 23(f), which allows a party to appeal an order granting class certification. In their Rule 23(f) petition, Defendants argued that the Court had erred in certifying the class by finding that Defendants had failed to rebut the presumption of reliance by showing a lack of price impact, the cause-and-effect relationship between relevant news and the company's stock price. AMF and the Class opposed the petition, which was denied by the U.S. Court of Appeals for the Third Circuit on March 2, 2021.

On August 30, 2021, following the U.S. Supreme Court's decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), Defendants filed a motion to modify, or shorten, the class period. Defendants argued that the Court had failed to consider all evidence related to price impact as required by *Goldman*. Defendants requested that the class period be shortened by two months, which would have reduced the recoverable damages by hundreds of millions of dollars because the April 2018 stock price decline would have been eliminated from the case. Plaintiffs opposed the motion on September 27, 2021, arguing that the Court had properly considered all price impact evidence and was correct to find that Defendants did not rebut the presumption of reliance. On April 13, 2022, the Court denied the motion, finding that the motion amounted to an untimely motion for reconsideration that, in any event, failed on its merits.

After defeating in large part Defendants' summary judgment motion in 2024, the parties began to prepare for trial in earnest, which was set to begin in January 2026. As part of these preparations, the parties submitted and fully briefed seventeen pre-trial motions, including evidentiary motions and motions regarding the structure of the trial. While these motions were pending, the parties engaged in extensive, arms'-length negotiations facilitated by Judge Layn Phillips, a former federal district judge and a preeminent mediator. After three full-day mediation sessions over several months, the parties ultimately accepted the mediator's double-blind proposal to resolve the action for $239 million. The Court preliminarily approved the settlement on December 19, 2025, and the final settlement hearing is set for May 4, 2026.

This significant recovery for Celgene shareholders — among the largest in Third Circuit history — represents years of hard-fought litigation that the firm pursued to the precipice of trial. ■

SEC CHAIRMAN SIGNALS INTENT TO CURTAIL SHAREHOLDER LITIGATION

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provisions. Specifically, in September 2025, the SEC issued a new policy statement allowing companies to include mandatory arbitration provisions in company registration statements.[2]

Prior to the new policy statement — which was issued without any opportunity for public comment — the SEC operated under an unofficial policy of blocking initial public offerings for companies that included mandatory arbitration provisions in their registration documents. This informal policy implicitly recognized the importance of shareholder litigation to the effective operation of financial markets. Now, in contrast, the SEC will allow companies conducting initial or secondary public offerings of securities (as well as established companies amending their bylaws and other registration statements) to include provisions forcing shareholders into arbitration, thereby avoiding shareholder lawsuits, including class action litigation.

While Atkins has stated that the policy statement's intent is simply to "provide clarity that [mandatory arbitration] provisions are not inconsistent with the federal securities laws," former SEC Commissioner Caroline A. Crenshaw (who left the SEC in January 2026) and other critics have warned that the policy change may prevent many shareholders — particularly those with relatively small holdings — from recouping losses resulting from securities fraud. In many instances, shareholders' losses would not outweigh the costs of pursuing arbitration, and shareholders who otherwise could have recovered as class members in a class action lawsuit could be left with no viable recourse.

Additionally, a shift away from litigation toward private (and potentially confidential) arbitration may have deleterious effects on the market as a whole. The Unites States Supreme Court has repeatedly recognized civil shareholder litigation as a critical market enforcement mechanism that works alongside government regulators.[3] Private actions promote deterrence of fraudulent behavior, market transparency and consistency, and other highly valuable market elements.[4] Limiting shareholder litigation would force markets to increasingly rely on government enforcement to retain their integrity — a risky proposition, given the shrinking workforce and limited resources of the SEC.

For this reason, Atkins's comments have drawn criticism from securities lawyers and other experts, who have noted that the SEC has historically valued shareholder actions. Indeed, as former SEC officials explained in an October 2024 amicus brief filed with the Supreme Court, the agency's "[e]nforcement resources are stretched thin, and the SEC alone simply cannot ensure a level playing field for honest market participants," making private enforcement "a much needed supplement to the SEC's enforcement efforts."[5]

Atkins's new appeal to concerns about "frivolous litigation" — a phrase that's long been used to downplay the importance of litigation in holding large companies accountable for illegal behavior — raises concerns that the SEC no longer views itself as aligned with private enforcement efforts and may take further steps that threaten shareholder securities actions, as it has already done by permitting companies to mandate arbitration in their registration statements. Indeed, while Atkins claims to value "maintaining an avenue for shareholders to continue to bring meritorious claims,"[6] mandatory arbitration policies do not only eliminate "frivolous" lawsuits — they eliminate *all* lawsuits, including meritorious ones.

Notably, however, it is far from certain whether the SEC's new policy statement about mandatory arbitration will actually serve to

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[2] Securities and Exchange Commission, *Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions* (Sep. 17, 2025), available at https://www.sec.gov/files/rules/policy/33-11389.pdf.

[3] *See, e.g.*, *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 568 U.S. 455, 478 (2013); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

[4] *See Tellabs*, 551 U.S. at 318-19.

[5] *NVIDIA Corp. v. E. OhmanJ:or Fonder AB*, Brief of Former SEC Officials as Amici Curiae in Support of Respondents, No. 23-970, at 9-10 (Sup. Ct. Oct. 2, 2024).

[6] Securities and Exchange Commission, *Keynote Address* (Oct. 9, 2025).

reduce the volume of shareholder litigation. Companies' ability to rely on forced arbitration may turn on factors outside of the SEC's control, such as issues of state and federal law that are likely to be litigated in the coming years. For example, mandatory arbitration provisions were recently prohibited in Delaware, where more than half of all U.S.-based publicly traded companies are incorporated. If Delaware's prohibition is upheld by courts, it may deter many companies from attempting to use or enforce mandatory arbitration provisions.

Further, given the potential for challenges to the new policy statement under the Administrative Procedures Act for failure to engage in notice-and-comment rulemaking, courts may yet determine that the new policy was improperly enacted or that anti-waiver provisions of the federal securities laws prohibit companies from forcing shareholders to give up their right to securities litigation, regardless of the SEC's own position as to mandatory arbitration.

Also, while the SEC's new policy is generally expected to restrict investors' options and rights, investor behavior may still affect the results of this policy change. For example, if large institutional investors refuse to invest in companies that employ mandatory arbitration provisions to shield themselves from shareholder litigation, other companies may be dissuaded from using such provisions. Similarly, pressure from investor proxy advisor firms may also deter the use of mandatory arbitration provisions.

Indeed, since the SEC's policy change in September 2025, only one company — Zion Oil & Gas Inc., a small energy company that relies on Bible verses to search for oil deposits in Israel and has no revenue — appears to have incorporated a mandatory arbitration policy into its own bylaws, suggesting that there may be little appetite at this time for mandatory arbitration policies amongst larger companies.

Some companies, however, may also be waiting for a peer to adopt a mandatory arbitration policy first so they can observe investor reactions before choosing to do the same, meaning that it may only be a matter of time before a number of companies move in that direction and investors must choose how to respond.

Additionally, given Atkins's stated goal of "reform[ing] the litigation landscape for securities lawsuits," the SEC may take additional actions that could threaten shareholders' ability to use litigation as a tool to enforce securities laws and recover losses resulting from securities fraud. For example, in Atkins's October 2025 speech, he urged Delaware lawmakers to eliminate the state's prohibition of mandatory arbitration (as well as its prohibition of fee-shifting for federal securities law claims), demonstrating that his commitment to reducing shareholder lawsuits is serious and extends beyond the scope of policies he can alter or enact within the SEC.

KTMC will continue to monitor developments surrounding the SEC's new mandatory arbitration policy, as well as other possible SEC efforts to reduce private securities enforcement, and advise investors regarding their options for pursuing shareholder litigation and other methods of vindicating their rights. ■

KESSLER TOPAZ FINALIZING $70 MILLION SETTLEMENT AFTER CHECK-UP OF VETERINARY COMPANY MERGER

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The complaint brought claims against Sachdev, Peterson, and the Company's CEO, Ben Wolin, each under a *Revlon* theory of liability.[2] Plaintiffs alleged that Sachdev and Peterson, as partners of CD&R, ensured that Covetrus would be sold to CD&R at a buyer-friendly price in lieu of superior available alternatives. Plaintiffs alleged Wolin did the same in return for post-Merger employment. The complaint also brought an aiding and abetting claim against CD&R for its efforts in supporting and facilitating the foregoing breaches.[3] The defendants each filed motions to dismiss, and the Court denied all but Wolin's.

Discovery Supports Plaintiffs' Claims

Discovery revealed that, by mid-2021, Sachdev and Wolin understood the market undervalued Covetrus on a sum-of-the-parts basis and secretly laid the foundation for CD&R to capitalize on this through a take-private of the Company. Specifically, they realized the Technology Business could be sold to unlock the Company's intrinsic value. Sachdev coaxed the Board into providing CD&R with diligence to confirm this theory. Once CD&R confirmed, Sachdev submitted a proposal to acquire the Company on behalf of CD&R for $24 per share — a direct violation of the Standstill. The Board was then forced to initiate a sale process, playing directly into CD&R's hands.

In addition to the preferential timing and exclusive diligence afforded to CD&R prior to the formal commencement of the sale process, the resulting process was profoundly tainted by CD&R's influence, resulting in a less than value-maximizing result. Sachdev had a long-standing friendship with the lead banker of the Company's financial advisor, adding another valuable sell-side ally for CD&R. Additionally, Sachdev and Peterson implored the Board not to pursue a sale of the Technology Business to an interested party, hoping instead that CD&R would acquire the whole Company and subsequently unlock the sum-of-the-parts value for itself. CD&R eventually reneged on its initial $24 per share proposal and co-opted TPG's lower bid, the only other bid for a whole-company transaction. Indeed, CD&R eliminated its remaining competition by teaming up with TPG and submitting a joint proposal equivalent to the low end of TPG's and CD&R's prior offers. This too violated the Standstill. Discovery further revealed that CD&R valued Covetrus above the deal price up to the announcement of the Merger.

The foregoing conduct appears to fall squarely within the type of behavior that *Revlon* scrutinizes, *i.e.*, that which does not reflect an earnest attempt by fiduciaries to maximize value for all stockholders in the sale context. And given CD&R's extensive participation in Sachdev's and Peterson's breaches, aiding and abetting liability appeared in reach as well.

The Parties Reach a Settlement

Despite the apparent strength of its claims, plaintiffs were willing to participate in mediation to avoid the costs and inherent risks of continued litigation. In the Fall of 2025, the parties engaged in mediation and received a mediator's recommendation of $70 million, which the parties accepted.

In mid-April 2026, the Court will hold a hearing to consider final approval of the settlement, which is an excellent result for the former public stockholders of Covetrus. ■

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[2] *See Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (holding fiduciaries may breach their duties by failing to act in a manner consistent with maximizing stockholder value during the sale of a company); *see also In re Mindbody, Inc., Stockholder Litig.*, 332 A.3d 349, 382 (Del. 2024) ("The 'paradigmatic' *Revlon* claim involves a conflicted fiduciary who is insufficiently checked by the board and who tilts the sale process toward his own personal interests in ways inconsistent with maximizing stockholder value.").

[3] The elements of an aiding and abetting claim in Delaware are: "(1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty, ... (3) knowing participation in that breach by the defendants, and (4) damages proximately caused by the breach." *Mindbody*, 332 A.3d at 389.

COURT DENIES SOCIAL MEDIA COMPANIES' REQUEST FOR SUMMARY JUDGMENT; SCHOOL DISTRICT TRIALS WILL BEGIN THIS SUMMER

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including superintendents, principals, school counselors, and IT personnel,a submitted declarations and testified during depositions, detailing the significant negative impacts Defendants' social media platforms have had on their schools. The parties also exchanged numerous expert reports, with six experts specifically opining on school district-specific issues, including the negative impact on school district operations, learning, the school environment, and associated costs.

Kessler Topaz Partners Joseph H. Meltzer and Melissa L. Yeates serve on the Local Government and School District Committee, co-chaired by Ms. Yeates. The Kessler Topaz team led the efforts to identify, develop and work with the School District experts, who submitted a total of 62 expert reports.

The School Districts Succeed at Summary Judgment, Clearing the Way for Trial

Last Fall, after the close of fact and expert discovery, Defendants filed motions for summary judgement, levying a host of challenges to the School Districts' claims. Among other things, Defendants argued that the School Districts: (1) failed to offer any evidence that Defendants caused their harm; (2) sought impermissible damages; and (3) failed to establish Defendants' duty to warn the schools that their products cause harm. Defendants also challenged the Plaintiffs' experts—a wide-ranging group, including data scientists, neurobiologists, former school superintendents, doctors, economists, mental health practitioners, and a leading national expert on school mental health systems—who generally opine that Defendants' platforms caused the youth mental health crisis and caused harm to schools and the school environment.

Fourteen days after the six-hour oral argument, on February 9, 2026, Judge Gonzalez Rogers issued a 31-page opinion denying summary judgment, finding that the evidence demonstrates genuine issues of material fact such that that the School Districts' claims should be tried to a jury and indicating that the School District experts will not be excluded from offering their opinions at trial. *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 22-md-3047, ECF No. 2728. In doing so, the Court rejected nearly all of Defendants' arguments.

First, regarding Defendants' causation argument, the Court determined that there was sufficient evidence in dispute supporting the School Districts' claim that Defendants have caused them harm. In particular, the Court credited Breathitt's evidence that each platform's defects "foster compulsive and detrimental use," that its students *actually* use each of Defendants' platforms, and that the Defendants' platforms are those most frequently used. *Id.* at 10. The Court also rejected Defendants' argument that that the School Districts failed to disentangle conduct protected under Section 230 of the Communications Decency Act of 1996 and the First Amendment from unprotected conduct. The Court found that the Schools Districts adduced sufficient evidence that each Defendants' (1) defective age verification measures, (2) defective parental controls, (3) failure to offer meaningful screen-time restrictions, and (4) barriers to account deactivation/deletion create triable issues on causation related to features of Defendants' platforms that do not involve protected publishing activities.

Second, the Court rejected the Defendants' argument that the lost time of school district teachers, counselors, and other school personnel is not compensable as damages. The Court found lost time damages, which seek to compensate the School Districts for the time diverted to address the distraction and disruption caused by Defendants' platforms, may be presented to the jury. Judge Gonzalez Rogers also allowed the School Districts to present strategic plans to address their harms—designed by Dr. Sharon Hoover, one of the nation's leaders in school mental health policy and implementation—to the jury to support future damages. As the Court explained, the plans address Defendants' "impact on school operations, school climate and environment, learning and performance, teaching effectiveness and classroom dynamics, teacher morale and job satisfaction, and student mental health" and offer concrete proposals to address these harms. *Id.* at 22.

Finally, the Court found "no basis to reconsider its prior analysis" that a jury could reasonably find Defendants knew or should have known that their platforms posed a foreseeable risk of harm to the schools. *Id.* at 26. In rejecting Defendants' argument that harms to schools were not foreseeable, Judge Gonzalez Rogers cited the School Districts' veritable "trove of evidence to support their theory that defendants did not merely passively target school-aged students, but in fact specifically targeted school districts via a 'years-long campaign.'" *Id.* at 26-27.

The Court's Opinion is a significant victory for the School Districts and a meaningful recognition of the challenges educators nationwide have faced on the front lines combatting the youth mental health crisis Defendants caused.

The Breathitt Trial is Set for June 2026

The Court further announced that the first school district trial, on behalf of Breathitt, will take place this Summer. The parties will hold jury selection on June 12, 2026, and proceed to trial on June 15, 2026, in Oakland, California. The trial is projected to last approximately six weeks and is expected to be followed by a second school district trial in the Fall of 2026. ■


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KTMC FILES NOVEL ANTITRUST ACTION BASED ON IMPROPER PATENT LISTING

(continued from page 3)

To ensure NDA applicants receive the patent protection to which they're entitled, while also promoting the availability of generics, the Hatch-Waxman Act (and subsequent amendments) requires NDA holders to "list" certain patents with their NDA application. Specifically, the NDA holder must list "each patent for which a claim of patent infringement could reasonably be asserted . . . and that — (I) claims the drug for which the applicant submitted the application . . . or (II) claims a method of using such drug for which approval is sought or has been granted in the application."[5] That is, an NDA applicant must list *only* those patents which: (1) claim the subject drug; and (2) would be infringed by the manufacture, use, or sale of that drug.[6] The FDA performs only a ministerial role in this process, meaning the manufacturer has significant discretion and control over the patents that are submitted and, ultimately, listed.

Patents submitted with an approved NDA application are listed in an FDA publication entitled *Approved Drug Products with Therapeutic Equivalence Evaluations*, commonly known as the "Orange Book."[7] This listing has a significant impact on generic competition by erecting two regulatory barriers: (1) an automatic 30-month stay temporarily preventing the FDA from approving an ANDA for the same drug (in effect, an automatic preliminary injunction); and (2) a 180-day exclusivity period awarded to the first ANDA applicant (bottlenecking approval of all later-filed ANDAs until after the first applicant enters the market).[8] Additionally, if an NDA applicant performs certain pediatric clinical studies, as Novartis did here, an additional six months of drug exclusivity attaches to patents listed in the Orange Book.[9]

Novartis Maintained Market Exclusivity by Improperly Listing a Patent in the Orange Book

Entresto is an angiotensin receptor-neprilysin inhibitor (ARNI) used to treat heart failure by relaxing blood vessels and decreasing sodium and fluid in the body.[10] Entresto is Novartis's best-selling drug, driving significant revenue and profit for the company. In 2024 alone, Novartis grossed more than $4 billion in sales of the drug in the United States.[11] Entresto was approved by the FDA on July 7, 2015, and from 2015 until generic entry in July 2025 it was the only ARNI drug on the market.[12]

The active ingredient in Entresto is a valsartan-sacubitril complex that was discovered in 2006.[13] When Novartis submitted its NDA, however, it included a 2002 patent — Patent Number 8,101,659 (the "'659 patent") — which does not claim the Entresto "complex," and instead claims simply a "composition" of valsartan and sacubitril that is administered in "combination" in a 1:1 ratio.[14] Critically, the Federal Circuit, a federal appellate court that routinely hears patent matters, determined in a patent infringement action brought by Novartis against generic manufacturers that because "valsartan-sacubitril complexes were *undisputedly unknown* at the time of the invention, the '659 patent *could not have been construed as claiming those complexes as a matter of law*."[15]

Following this unambiguous determination that the '659 patent does not claim Entresto (i.e., the invention), Novartis nevertheless maintained its Orange Book listing and prevented the FDA from approving generic competition for Entresto until July 16, 2025 (by listing the '659 patent in the Orange Book and performing pediatric clinical studies, Novartis was able to secure six months of pediatric exclusivity that it would not have been entitled to absent the improper listing).[16] This netted Novartis an additional $2 billion in competition-free sales.[17]

On August 29, 2025, KTMC filed a complaint on behalf of Plaintiff Iron Workers Local 580 Insurance Fund, alleging that Novartis violated state antitrust and unfair competition laws by excluding generic competition through its improper listing of the '659 patent.[18] The case is assigned to the Honorable Lewis J. Liman. The Court held an initial case management conference on December 2, 2025, and Novartis has moved to dismiss Plaintiff's complaint. KTMC expects the Court to schedule argument, and issue a decision on the motion to dismiss, in the coming months. ■

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[5] *Id.* § 355(b)(1)(A)(viii).

[6] *Id.*

[7] *Id.* §§ 355(c)(1)(A), (d).

[8] *Id.* §§ 355(j)(5)(B)(iii), (iv)(I).

[9] *Id.* §§ 355a(b)(1)(B)(i), 355a(c)(1)(B)(i).

[10] Amended Complaint, *Iron Workers Local 580 Insurance Fund v. Novartis Pharmaceuticals Corp.*, Case No. 1:25-cv-07230 (S.D.N.Y. Aug. 29, 2025), ECF No. 36 ¶ 65-66 ("Compl.").

[11] *Id.* ¶ 67.

[12] *Id.* ¶¶ 64-65.

[13] *Id.* ¶¶64-65, 93.

[14] *Id.* ¶¶83-85.

[15] *In re Entresto*, 125 F.4th 1090, 1099 n.5 (Fed. Cir. 2025).

[16] Compl. ¶¶ 102-111.

[17] *Id.* ¶ 2.

[18] *Iron Workers Local 580 Insurance Fund v. Novartis Pharmaceuticals Corp.*, Case No. 1:25-cv-07230 (S.D.N.Y. Aug. 29, 2025), ECF No. 1.

EVENTS

WHAT'S TO COME

APRIL 2026

Pennsylvania State Association of County Controllers (PSACC) 2026 Spring Conference

April 22 – 24

Harrisburg, PA ■ The Central Hotel

Texas Association of Public Employee Retirement Systems (TEXPERS) 2026 Annual Conference

April 26 – 29

Galveston, TX ■ San Luis Resort

MAY 2026

State Association of County Retirement Systems (SACRS) 2026 Spring Conference

May 12 – 15

Olympic Valley, CA ■ Everline Resort & Spa

JUNE 2026

National Association of Public Pension Attorneys (NAPPA) Legal Education Conference 2026

June 16 – 19

Grand Rapids, MI ■ Amway Grand Plaza

Florida Public Pensions Trustees Association (FPPTA) 42nd Annual Conference

June 28 – July 1

Orlando, FL ■ Renaissance Orlando SeaWorld

AUGUST 2026

County Commissioners Association of Pennsylvania (CCAP) Annual Conference & Trade Show

August 2 – 5

Monroe County, PA
Kalahari Resorts and Conventions

SEPTEMBER 2026

Georgia Association of Public Pension Trustees (GAPPT) 12th Annual Trustee School

September 27 – 30

Athens, GA ■ Classic Center

Council of Institutional Investors CII Fall Conference 2026

September 30 – October 2

Boston, MA ■ Westin Boston Seaport

Illinois Public Pension Fund Association (IPPFA) 2026 Mid-America Pension Conference

September 30 – October 2

Schaumburg, IL ■ Marriott Schaumburg

OCTOBER 2026

Michigan Association of Public Employee Retirement Systems (MAPERS) 2026 Fall Conference

October 3 – 6

Kalamazoo, MI ■ Radisson Plaza Hotel

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