

PLAINTIFFS' HOT LIST



LEE RUDY

Kessler Topaz Meltzer & Check

Kessler Topaz Meltzer & Check secured more than a billion dollars over the past year in recoveries for pension funds, large-scale institutional investors and other plaintiffs in securities fraud, shareholder derivative and consumer litigation.

The firm, based in the Philadelphia suburb of Radnor, Pennsylvania, secured a \$335 million settlement as lead plaintiffs' counsel in the consolidated litigation against Bank of New York Mellon over

alleged overcharging of foreign securities exchange rates to traders.

Upon approving the settlement in September, U.S. District Judge Lewis Kaplan of the Southern District of New York said, "plaintiffs' counsel deserve a world of credit for taking [the case] on, for running the risk, for financing it and doing a great job."

Partner Joseph Meltzer said the BNY Mellon litigation was "right in our wheelhouse: a big case against a well-financed, well-represented defendant with a lot of money at stake and a lot of factual and legal nuance."

Even though most of their matters go to settlement, Kessler Topaz "is very focused on trying cases," said Lee Rudy, also a partner at the firm.

In one such case, the firm helped win \$148 million in damages for Dole Food Co.'s former shareholders alleging Dole's directors breached their fiduciary duty by driving down the corporation's stock price on the eve of approving the Dole CEO's buyout of the company.

"We were willing to make the big bet and take it all the way through trial. Our clients were well-served by it and our class was well-served by it," said Rudy.

Jay Eisenhofer of Grant & Eisenhofer, a frequent co-counsel of Kessler Topaz, said he had "nothing but positive things to say" about the firm. "I think they're terrific, great lawyers, very honorable people." —MIKE SACKS

FIRM FACTS:

■ **Founded:** 1987 ■ **Based:** Radnor, Pennsylvania ■ **Total number of attorneys:** 100 ■ **Partners:** 30 ■ **Associates:** 39

TRIAL TIPS:

■ Be very careful when disagreeing with the judge—jurors almost always take the judge's side.
■ Avoid choosing examples from "our lives," like

"imagine if your mother/spouse/child said that." You don't know which jurors are estranged from their mothers, divorced or childless. These hypotheticals can backfire.

■ Don't let the courtroom technology get in the way of your story.
■ Try not to knock the water pitcher all over your exhibits. —LEE RUDY



JONATHAN SELBIN

Lieff Cabraser Heimann & Bernstein

Jonathan Selbin's interest in the Telephone Consumer Protection Act was piqued five years ago when a fellow attorney mentioned the endless robocalls banks were making to the cellphones of those who owed money.

Selbin, a partner at Lieff Cabraser Heimann & Bernstein, studied up on the law and realized that the automated debt collection calls—sometimes a dozen or more a day to one person—violated the federal law meant to protect consum-

ers from phone harassment. "The calls are designed to bug people until they pay back the money," Selbin said. "But it's abusive to do it over and over again. The big banks were doing this for many years."

That practice is waning after the firm helped secure more than \$130 million in settlements in multiple TCPA cases in 2015 alone—including two of the largest settlements in the law's 25-year history. Capital One Bank agreed to pay nearly \$75.5 million in February, while HSBC Bank settled for nearly \$40 million in October. The firm used statutory damages—\$500 per call under the law—as a hammer to bring the banks into com-

pliance, Selbin said. "For me, they are great people to have on the team," said Matthew Wilson of Meyer Wilson, co-counsel on the Capital One and HSBC cases. "They've got great judgment. They're smart. They can be tough when then need to be."

Lieff Cabraser attorneys were also co-lead counsel in a high-profile 2013 consolidated class action in which employees of many of Silicon Valley's major tech firms alleged the companies conspired to suppress pay by agreeing to restrict the recruiting of each other's workers. The final settlement, for \$415 million, was approved in September.

—KAREN SLOAN

FIRM FACTS:

■ **Founded:** 1972 ■ **Based:** San Francisco ■ **Total number of attorneys:** 65 ■ **Partners:** 34 ■ **Associates:** 10

TRIAL TIPS:

■ When you are taking on big corporations, they sometimes will try to scare you at the outset. You can't be intimidated.

■ You've got to do the work on the front end. We spent an incredible amount of time on the front end [of the Telephone Consumer Protection Act cases] walking through the legal issues.

■ When you take on a whole industry, it's important to recognize the stakes and bring on other firms, not just go it alone.

—JONATHAN SELBIN



SAMUEL BAXTER

McKool Smith

By the time McKool Smith got involved in 2014 in a whistleblower suit against highway guardrail manufacturer Trinity Industries Inc., there'd been one mistrial.

Lawyers for the whistleblower wanted fresh perspective and a deeper Texas-based bench for the second round. They called McKool principal Samuel Baxter.

Baxter served as co-lead counsel at the second trial in federal court in Marshall, Texas. The jury ruled in favor of whistleblower Joshua Harman, finding that Trinity made false statements to the federal government about its highway

guardrails—guardrails that Harman had long maintained were dangerous. The final judgment, entered in June 2015, came to \$663 million.

Baxter attributed the success at trial in part to humanizing the whistleblower—convincing the jury that Harman pursued claims against Trinity out of concern for public safety, not for the money—and taking apart defense witnesses. Trinity is appealing the verdict.

"You're trying to make it as simple as you can, because a lot of this stuff is complicated. You've got to tell a story. We've got an awfully deep bench of people who can do that," Baxter said.

Boies, Schiller & Flexner partner George Carpinello, another lead attorney

for Harman, called Baxter's defense cross-examination "devastating."

"Sam's a first-rate litigator with a real natural trial lawyer's instinct for what's important to emphasize and what you should cast away," Carpinello said.

McKool's other wins over the past year included a \$36.5 million judgment for the developers of Canyon Ridge Resort in Georgia, who sued financial-services firm Sterne, Agee & Leach and one of its former investment bankers for breach of contract and fiduciary duty.

It was reportedly one of the largest, if not the largest, verdicts in the history of Hamilton County, Tennessee, where the case was tried.

—ZOE TILLMAN

FIRM FACTS:

■ **Founded:** 1991 ■ **Based:** Dallas ■ **Total number of attorneys:** 182 ■ **Partners:** 87 ■ **Associates:** 83

TRIAL TIPS:

■ Remember your audience. Whether it's a judge, a sophisticated jury or a less sophisticated jury, you should always direct your case appropriately.

■ Don't act like it's your first rodeo. Always be prepared and have your witnesses ready and on time. Lastly, in baseball, people say keep your eye on the ball. Well, in court, you are the ball.

Remember that the jury is watching you to see how you react to rulings, how you interact with your client, and, most importantly, how you treat your team. —SAMUEL BAXTER