

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

<b>IN RE THORNBURG MORTGAGE, INC. SECURITIES LITIGATION</b>	CASE NO. CIV 07-815JB/WDS
THIS DOCUMENT RELATES TO:	
ALL ACTIONS	

**DECLARATION OF DAVID KESSLER IN SUPPORT OF  
CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF  
KESSLER TOPAZ MELTZER & CHECK, LLP**

I, David Kessler, declare as follows:

1. I am a partner of the law firm of Kessler Topaz Meltzer & Check, LLP. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in the above-captioned litigation (the "Litigation") from the inception of this case through July 19, 2012 (the "Time Period"), as well as for reimbursement of expenses incurred by my firm in connection with the Litigation.<sup>1</sup>

2. My firm, which served as Co-Lead Counsel in this Litigation, was involved in all aspects of the prosecution of the Litigation and settlement reached with the Settling Defendants as set forth in the Joint Declaration submitted by Co-Lead Counsel in support of final approval of settlement, plan of allocation and application for an award of attorneys' fees and expenses.

3. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time spent by each attorney and professional support staff of my firm who was involved in this

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<sup>1</sup> Time and expenses incurred in connection with the ongoing appeal against the non-settling, Underwriter Defendants are not reflected in this declaration.

Litigation during the Time Period, and the lodestar calculation based on my firm's current billing rates. For attorneys and professional support staff who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in my firm set forth in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

5. The total number of hours expended on this Litigation by my firm during the Time Period is 6,589.17 hours. The total lodestar for that work is \$3,097,934.75, consisting of \$2,719,540.00 for attorneys' time and \$378,394.75 for professional support staff time. These figures exclude time incurred by my firm that was solely related to the ongoing litigation against the non-settling, Underwriter Defendants or any time incurred in preparing this application for fees and expenses.

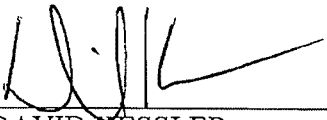
6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in the schedule attached hereto as Exhibit 2, my firm has incurred a total of \$102,931.48 in unreimbursed expenses in connection with the prosecution of this Litigation during the Time Period. This figure excludes any expenses incurred by my firm that were solely related to the ongoing litigation against the non-settling, Underwriter Defendants.

8. The expenses incurred in this Litigation are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were principally involved in this Litigation.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on July 20, 2012.

  
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DAVID KESSLER

**Exhibit 1*****In re Thornburg Mortgage, Inc. Securities Litigation***  
**CASE NO. CIV 07-815JB/WDS****KESSLER TOPAZ MELTZER & CHECK, LLP****TIME REPORT**

Time Period: Inception through July 19, 2012

<b>PROFESSIONAL</b>	<b>STATUS</b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS TO DATE</b>	<b>TOTAL LODESTAR TO DATE</b>
Handler, Sean	P	\$650.00	36.00	\$23,400.00
Nelson, Christopher	P	\$625.00	27.00	\$16,875.00
Sweet, Benjamin	P	\$625.00	1,779.00	\$1,111,875.00
Topaz, Marc A.	P	\$735.00	26.75	\$19,661.25
Zivitz, Andrew	P	\$700.00	644.80	\$451,360.00
Cagan, Jonathan	A	\$435.00	26.50	\$11,527.50
Cummings, Tammy	A	\$395.00	23.30	\$9,203.50
Enck, Jennifer	A	\$475.00	291.50	\$138,462.50
Kaskela, Seamus	A	\$400.00	38.70	\$15,480.00
Newcomer, Michelle	A	\$450.00	939.17	\$422,626.50
Onasch, Margaret E.	A	\$345.00	37.75	\$13,023.75
Russo, Richard	A	\$450.00	1,038.70	\$467,415.00
Verma, Neena	A	\$345.00	54.00	\$18,630.00
Bochet, Jason	I	\$325.00	34.50	\$11,212.50
Eisenberg, Emily	I	\$225.00	73.75	\$16,593.75
Evans, John	I	\$325.00	62.00	\$20,150.00
Maginnis, Jamie	I	\$325.00	104.75	\$34,043.75

Rabbiner, David	I	\$450.00	171.65	\$77,242.50
Stratos, Nicole	I	\$325.00	122.25	\$39,731.25
Cashwell, Amy	PL	\$175.00	198.00	\$34,650.00
Chiappinelli, Christiane	PL	\$225.00	69.00	\$15,525.00
Chuba, Jean	PL	\$200.00	37.00	\$7,400.00
Cooke, Enjoli	PS	\$150.00	65.90	\$9,885.00
Cruice, Jennifer	PS	\$195.00	229.30	\$44,713.50
Dickinson, Gayle	PS	\$125.00	93.75	\$11,718.75
Eng, Benjamin	PS	\$150.00	64.00	\$9,600.00
Frost, Ashli	PS	\$125.00	24.00	\$3,000.00
Griffin, Deborah	PS	\$125.00	45.50	\$5,687.50
Guaracino, Kathleen	PS	\$150.00	48.50	\$7,275.00
Hilton, Gretchen	PS	\$150.00	64.50	\$9,675.00
Kessler, Myrna	PS	\$150.00	38.90	\$5,835.00
Ouch, Sundaly	PS	\$195.00	37.75	\$7,361.25
Smith, Christopher	PS	\$150.00	20.00	\$3,000.00
Worsham, Tanisha	PS	\$195.00	21.00	\$4,095.00
<b>TOTAL:</b>			6,589.17	\$3,097,934.75

Partner (P)

Associate (A)

Paralegal (PL)

Investigator (I)

Professional Staff (PS)

**Exhibit 2**

***In re Thornburg Mortgage, Inc. Securities Litigation***  
**CASE NO. CIV 07-815JB/WDS**

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**EXPENSE REPORT**

Time Period: Inception through July 19, 2012

<b>EXPENSE</b>	<b>TOTAL AMOUNT</b>
Duplicating	19,360.09
Postage	73.51
Telephone/Fax	54.62
Filing Fees	474.95
Transcripts	1,521.42
Computer Research	19,630.61
Federal Express	4,471.22
Expert Fees	41,215.98
Travel/Meals	15,959.08
Notices	170.00
<b>TOTAL</b>	<b>\$102,931.48</b>

**Exhibit 3**

***In re Thornburg Mortgage, Inc. Securities Litigation***  
**CASE NO. CIV 07-815JB/WDS**

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**FIRM BIOGRAPHY**



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## FIRM PROFILE

Kessler Topaz Meltzer & Check, LLP is one of the largest law firms in the world specializing in the prosecution of complex litigation on a contingent basis. Since the Firm's founding in 1987, Kessler Topaz has developed a global reputation for excellence in the areas of shareholder, ERISA, consumer protection & antitrust, fiduciary and intellectual property litigation. With a team of highly skilled attorneys and an experienced support staff, the Firm has been entrusted to lead some of the most important actions being litigated in our field today. Kessler Topaz proudly notes that it has recovered billions of dollars on behalf of its clients and is poised to continue protecting rights worldwide.

Kessler Topaz is one of the leading securities class action litigation firms in the country. The Firm's securities litigation practice focuses on the prosecution of securities fraud claims brought against public companies as well as their officers, directors, and advisors. With a large and sophisticated client base — including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors from around the world — Kessler Topaz has been at the forefront of successfully representing investors, and in particular, institutional investors, as plaintiffs in various types of securities actions. Our Securities Litigation Department is currently prosecuting numerous high-profile class actions against a variety of defendants around the globe.

## NOTEWORTHY ACHIEVEMENTS

*During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:*

### Securities Fraud Litigation

#### *In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):*

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record \$3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers, LLP ("PwC"). The \$2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the \$225



million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, “[i]t is difficult to overstate the complexity of [the litigation].” Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over seven hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and “put [Plaintiffs] at the cutting edge of a rapidly changing area of law.”

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

***In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):***

Kessler Topaz serves as Co-Lead Counsel in this action. A partial settlement was approved on May 26, 2006. The partial settlement was comprised of three distinct elements, including a substantial monetary commitment by the company in the amount of \$215 million, personal contributions by two of the individual defendants totaling \$1.5 million and the enactment and/or continuation of numerous changes to the company’s corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet’s precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — counsel was concerned that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, Kessler Topaz, on behalf of the Plaintiffs’ class, was able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Kessler Topaz also obtained a rarity in securities class action litigation — personal financial contributions from individual defendants. Following the partial settlement with the Tenet defendants, Kessler Topaz actively litigated the case against Tenet’s external auditor, KPMG. After more than two years of hard-fought litigation, including dispositive motion practice and merits and expert discovery, Kessler Topaz, on behalf of the Plaintiffs’ class, settled the matter against KPMG for \$65 million. Kessler Topaz is very pleased with the result as it stands, as one of the largest recoveries against an auditor in U.S. history.

***In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS):***

This recovery of \$627 million on behalf of purchasers of Wachovia Corporation preferred securities issued between July 31, 2006 and March 29, 2008 is one of the most significant recoveries from litigation arising out of the financial crisis. Plaintiffs alleged that the registration statements, prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. The settlement included a \$37 million recovery from Wachovia Corporation’s outside auditor.

***In re Lehman Brothers Equity/Debt Securities Litigation, Master File No. 09 MD 2017 (LAK):***

Plaintiffs alleged that the registration statements and prospectuses used to market Lehman’s numerous offerings leading up to its bankruptcy contained false and misleading information and omitted material facts regarding Lehman’s net leverage, risk management and concentration of risks. A \$516,218,000 settlement was reached on behalf of shareholders — \$426,218,000 of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, \$90 million came from Lehman’s former directors and officers, which is significant considering the diminishing assets available to pay any future judgment.

***In re Brocade Sec. Litig., Case No. 3:05-CV-2042 (N.D. Cal. 2005):***

This \$160 million recovery on behalf of investors was initiated to remedy the company’s violations of federal securities laws by backdating options grants to top executives which ultimately caused the company to restate all of its financial statements from 2000 to 2005.

***In re Satyam Computer Services, Ltd. Sec. Litig.*, Case No. 1:09-MD-2027 (S.D.N.Y. 2009):**

This \$150.5 million settlement on behalf of investors brought to a close allegations that the company harmed investors by making falsifications resulting in the overstatement of numerous financial indicators including company profits, cash flows, cash position, bank balances and related balance sheet data. The settlement included a \$25.5 million recovery from the company's outside auditors, in addition to the ability to recover from Satyam's former officers and directors, as well as a 25% share of any recovery that Satyam achieves against its auditors.

***In re BankAtlantic Bancorp, Inc. Sec. Litig.*, Case No. 07-CV-61542 (S.D. Fla. 2007):**

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp, Inc., its chief executive officer and chief financial officer. This case was just the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995. Following a four-week trial, the jury spent almost four days deliberating before rendering its decisive verdict. Perhaps the most significant development in this case was the Court's pre-trial ruling granting partial summary judgment for Plaintiffs on the issue of objective falsity. U.S. District Judge Ursula Ungaro ruled as a matter of law that four statements made by BankAtlantic's CEO, Alan Levan, during a July 2007 earnings call with investors concerning the quality of the Fort Lauderdale bank's commercial real estate loan portfolio were false and misleading. Summary judgment rulings in favor of plaintiffs are exceptionally rare in securities fraud actions, but it did not deter the Defendants from taking the case to trial.

Following the close of the trial, the jury found that an additional four statements made by Levan and BankAtlantic's CFO, Valerie Toalson, concerning the real estate loan portfolio were also false and misleading. The jury found that both officers "knowingly" made these false statements to investors. The jury ultimately determined that investors who purchased BankAtlantic securities between April 26, 2007 and October 25, 2007 paid in excess of \$2.41 per share as a result of the Defendants' false and misleading statements that inflated the stock price. Following extensive post-trial motion practice, the district court upheld all of the jury's findings of fraud but vacated the damages award on a narrow legal issue. The Firm looks forward to a favorable review of that issue by the appellate court.

***In re AremisSoft Corp. Sec. Litig.*, C.A. No. 01-CV-2486 (D.N.J. 2002):**

Kessler Topaz is particularly proud of the results achieved before the Honorable Joel A. Pisano in this case. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, some of whom are now fugitives. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new Company which allowed for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. Pursuant to the Settlement, the litigation trust has distributed more than 16 million shares of the reorganized Company to members of the class. The Court-appointed co-trustees, Joseph P. LaSala, Esq. and Fred S. Zeidman, retained Kessler Topaz to continue prosecuting the actions on behalf of the litigation trust. After extensive litigation in the Isle of Man, including the successful freezing of more than \$200 million of stolen funds, the trust settled its action against one of the principal wrongdoers and recovered approximately \$200 million. Thus far, the trust has distributed to beneficiaries of the trust more than 28% of their recognized losses (excluding the value of the equity of the new Company), and is poised to recover even more. Recently, the trust commenced further litigation in Cyprus, where it obtained a Mareva injunction and interim ancillary relief against various bank accounts and assets owned and/or controlled by the other principal wrongdoer.

***In re CVS Corporation Sec. Litig.*, C.A. No. 01-11464 JLT (D.Mass. 2001):**

After more than three years of contentious litigation and a series of protracted mediation sessions, Kessler Topaz, serving as Co-Lead Counsel, secured a \$110 million recovery for class members in the CVS Sec. Litig. Specifically, the suit alleged that CVS violated accounting practices by delaying discounts on merchandise in an effort to prop up its earnings. In addition, the suit charged that in 2001 the Company and its Chief Executive Officer, Thomas M. Ryan, improperly delayed announcement of its intention to close approximately 200 underperforming stores, and that an industry-wide pharmacist shortage would have a materially negative impact on the Company's performance. Settlement was reached just days prior to the commencement of trial, and shortly after the district court had denied the defendants' motions for summary judgment. This substantial recovery represents the third-largest settlement in a securities class action case in the First Circuit.

***In re Delphi Corp. Sec. Litig.*, Master File No. 1:05-MD-1725 (E.D. Mich. 2005):**

In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen

Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for \$38.25 million on behalf of Delphi investors.

***In re Royal Dutch Shell European Shareholder Litigation,***

**No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):**

Kessler Topaz was instrumental in achieving a landmark settlement worth at least \$352 million in cash on behalf of non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz. This settlement was approved by Order dated 6/26/08.

***In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):***

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

***In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):***

The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over \$170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

***In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):***

After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration ("FDA"). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. ("TKT") and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT's prospects for FDA approval of Replagal, TKT's experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a \$50 million settlement from the Defendants during a complex and arduous mediation.

***In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):***

Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors and its outside auditor, Ernst & Young, LLP ("E&Y"), relating to the conduct of defendants in establishing, accounting for and making disclosures concerning three special purpose entities ("SPEs") in the second, third and fourth quarters of PNC's 2001 fiscal year. Plaintiffs alleged that these entities were created by defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank's performance with respect to its



non-performing assets. Kessler Topaz was instrumental in obtaining a \$30 million recovery for class members from PNC and the assignment of certain claims it may have had against its audit and other third party law firms and insurance companies. An additional \$6.6 million was recovered from the insurance company and the law firms and an agreement in principle was reached with the audit to resolve all claims for another \$9.075 million, providing for a total recovery from the Sec. Litig. of \$45.675. When coupled with the \$156 million restitution fund established through government actions against some of the same defendants and third parties, the total recovery for class members exceeds \$200 million, which was distributed with PNC paying all costs associated with notifying the Class of the settlement.

***In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005):**

Plaintiffs alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earnings. As sole Lead Counsel, Kessler Topaz successfully negotiated a \$13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its “extremely credible and competent job.”

***In re Riverstone Networks, Inc. Sec. Litig.*, Case No. CV-02-3581 (N.D. Cal. 2002):**

Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company’s financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of \$18.5 million.

***In re Computer Associates Sec. Litig.*, No. 02-CV-1226 (E.D.N.Y. 2002):**

Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company’s business, materially overstated the company’s revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of \$150 million in cash and stock from the company.

***Kaltman, et. al. v Key Energy Services, Inc., et. al.*, No. 04-CV-082-RAJ (W.D. Tex. 2004):**

Kessler Topaz served as sole Lead Counsel on behalf of plaintiffs, alleging that Key Energy, as well as certain of its officers and directors, had made materially false and misleading statements in the company’s public filings and press releases relating to its financial results, particularly its net income and fixed asset records. After nearly four years of litigation, Kessler Topaz secured a settlement of \$15.425 million.

## **Shareholder Derivative Actions**

***In re Southern Peru Copper Corp. Shareholder Derivative Litigation*, C.A. No. 961-CS:**

On October 14, 2011, Kessler Topaz achieved a historic victory after trial against Southern Peru’s majority shareholder Grupo Mexico. After six years of litigation, with discovery spanning multiple continents, Delaware Chancellor Leo Strine agreed with plaintiff that Southern Peru’s board of directors had overpaid Grupo Mexico by more than a billion dollars in a conflicted transaction where Southern Peru acquired Minera Mexico – a cash-strapped private mining company – from Grupo. In evaluating the transaction, Southern Peru’s independent directors had hired sophisticated financial and legal advisors. Grupo argued throughout the litigation that these well-advised directors had negotiated aggressively with Grupo to achieve a fair price. Through discovery and at trial, Kessler Topaz attorneys unraveled and debunked the board’s various rationales for agreeing to the transaction. The court ultimately concluded that rather than aggressively negotiating, “the special committee and its financial advisor instead took strenuous efforts to justify a transaction at the level originally demanded” by Grupo. Chancellor Strine ordered Grupo to reimburse the Company for the excess value it had extracted from the Company – \$1.26 billion, plus interest of nearly \$700 million – the largest judgment ever issued by the Delaware Chancery Court, and one of only a handful of trial victories ever achieved by shareholders in an M&A case.

***In re Comverse Technology, Inc. Derivative Litigation*, 601272/2006 (Supreme Court, NY 2006):**

Kessler Topaz attorneys negotiated a settlement that required the Company’s founder/Chairman/CEO and other executives to disgorge more than \$62 million in ill-gotten gains from backdated stock options back to the Company

and overhauled the Company's corporate governance and internal controls, including replacing a number of members on the board of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

***Wanstrath v. Doctor R. Crants, et. al. Shareholders Litigation,*  
No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999):**

Kessler Topaz served as Lead Counsel in a derivative action filed against the officers and directors of Prison Realty Trust, Inc., challenging the transfer of assets from the Company to a private entity owned by several of the Company's top insiders. Numerous federal securities class actions were pending against the Company at this time. Through the derivative litigation, the Company's top management was ousted, the composition of the Board of Directors was significantly improved, and important corporate governance provisions were put in place to prevent future abuse. Kessler Topaz, in addition to achieving these desirable results, was able to effectuate a global settlement of all pending litigation against the backdrop of an almost certain bankruptcy. The case was resolved in conjunction with the federal securities cases for the payment of approximately \$50 million by the Company's insurers and the issuance of over 46 million shares to the class members.

***In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005):***

Kessler Topaz represented the Public Employees Retirement System of Mississippi and served as lead counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-CEOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, Kessler Topaz alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52million, and \$52million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as Kessler Topaz overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

***In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796*  
(Mecklenburg County, NC 2006):**

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

***In re Barnes & Noble, Inc. Derivative Litig., Index No. 06602389 (New York County, NY 2006):***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Barnes & Noble, Inc., and against certain of Barnes & Noble's current and former officers and directors. This action was pending in the Supreme Court of New York, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Barnes & Noble and its shareholders. Through Kessler Topaz's litigation of this action, Barnes & Noble agreed to re-price approximately \$2.64 million unexercised stock options that were alleged improperly granted, and certain defendants agreed to voluntarily repay approximately \$1.98 million to the Company for the proceeds they received through exercise of alleged improperly

priced stock options. Furthermore, Barnes & Noble has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; at least once per calendar year, preset a schedule of dates on which stock options will be granted to new employees or to groups of twenty (20) or more employees; make final determinations regarding stock options at duly-convened committee meetings; and designate one or more specific officer(s) within the Company who will be responsible for, among other things, compliance with the Company's stock option plans. The settlement was approved by Order of the Court on November 14, 2007.

***In re Sepracor, Inc. Derivative Litig., Case No. 06-4057-BLS (Suffolk County, MA 2006):***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Sepracor, Inc., and against certain of Sepracor's current and former officers and directors. This action was pending in the Superior Court of Suffolk County, Massachusetts, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Sepracor and its shareholders. Through Kessler Topaz's litigation of this action, Sepracor agreed to cancel or re-price more than 2.7 million unexercised stock options that were alleged to have been improperly granted. Furthermore, Sepracor has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; not alter the exercise prices of stock options without shareholder approval; hire an employee responsible for ensuring that the Company's complies with its stock option plans; and appoint a director of internal auditing. The settlement was approved by Order of the Court on January 4, 2008.

***In re Monster Worldwide, Inc. Stock Option Derivative Litigation, 06-108700 (Supreme Court of NY, NY County):***

This derivative litigation resulted in the recipients of backdated stock options being forced to disgorge more than \$32 million in unlawful gains back to the Company plus the implementation of significant corporate governance measures. 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. . . ."

***Denbury Resources, Inc. Shareholder Litigation, 2008-CP-23-8395 (Greenville County, SC 2008):***

This derivative litigation challenged the Board's decision to award excessive compensation to the Company's outgoing President and CEO, Gareth Roberts. Kessler Topaz negotiated a settlement that included both the disgorgement of ill-gotten compensation by Mr. Roberts as well as numerous corporate governance improvements. In approving the settlement, the Court acknowledged that the litigation was a "hard-fought battle all the way through," and commented, "I know you guys have very vigorous and able counsel on the other side, and you had to basically try to knock your way through the wall at every stage."

***The South Financial Group, Inc. Shareholder Litigation, 09-09061 (Dallas County, TX 2009):***

This derivative litigation challenged the Board's decision to accelerate "golden parachute" payments to the Company's CEO Mack Whittle as the Company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan ("TARP"). Kessler Topaz attorneys sought injunctive relief to block the payments and protect the Company's ability to receive the TARP funds. The litigation was settled, with Whittle giving up a portion of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes which were described by one commentator as "unprecedented."

## **Mergers & Acquisitions Litigation**

***In re Genentech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Chancery Court):***

Kessler Topaz represented Alameda County in this shareholder class action brought against the directors of Genentech and Genentech's former majority owner, Roche Holdings, Inc., in response to Roche's July 21, 2008 attempt to acquire Genentech for \$89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech's shareholders. Following an agreement between Plaintiffs and Roche that ensured that the Affiliation Agreement applied and that Roche owed fiduciary duties to Genentech's shareholders, on February 9, 2009, Roche commenced a hostile tender offer to acquire Genentech for \$86.50 per share. Thereafter, Kessler Topaz supplemented its pleadings to allege that the Affiliation Agreement prevented Roche from conducting the tender offer consistent with Delaware law, and prevented Genentech's shareholders from exercising their valuable appraisal rights in connection

with the tender offer. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for \$95 per share, approximately \$3.9 billion more than Roche offered in its hostile tender offer. The litigation was settled on this basis and for supplemental disclosures in the proxy materials which clarified the relationship between Roche and Genentech and the mechanics of the merger agreement.

***In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):***

Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buy out of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share. The court complimented Kessler Topaz attorneys for causing an “exceptionally favorable result for Amicas’ shareholders” after “expend[ing] substantial resources.”

***In re American Italian Pasta Company Shareholder Litigation, CA 5610-VCN (Del. Ch 2010):***

This expedited merger litigation challenged certain provisions of a merger agreement, whereby the board had granted the acquiring company a “Top-Up Option” to purchase additional shares in the event that less than 90% of the shares were tendered. Kessler Topaz attorneys asserted that the Top-Up Option was granted in violation of Delaware law and threatened the rights of shareholders to seek appraisal post-closing. In settling the litigation, the parties agreed to substantially rewrite provisions of the merger agreement and issue substantial additional disclosures prior to the closing of the transaction. The Delaware Chancery Court approved the settlement, noting that “the issues were novel and difficult,” and that the “litigation was brought under severe time constraints.”

## **Consumer Protection and ERISA Litigation**

***In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):***

Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990’s tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) to certain company-provided 401(k) plans and their participants. These breaches arose from the plans’ alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs’ claims restoring \$79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

***In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):***

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company’s 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the “Plans”) whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans’ committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants’ motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being “more than a reasonable recovery” for the Plans, is “one of the largest ERISA employer stock action settlements in history.”



***In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):***

Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a \$14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

***Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. Ill. 1999):***

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: "... I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. ... The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

**Antitrust Litigation**

***In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):***

Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for \$36 million.

**PARTNERS**

**RAMZI ABADOU**, partner-in-charge of the Firm's San Francisco office, received his Bachelor of Arts from Pitzer College in Claremont, California and his Master of Arts from Columbia University in the City of New York. Prior to attending law school, Mr. Abadou was a political science professor at Foothill College in Los Altos Hills, California. Mr. Abadou graduated from Boston College Law School and clerked for the United States Attorney's Office in San Diego, California. Prior to joining the Firm, Mr. Abadou was a partner with Coughlin Stoa Geller Rudman & Robbins LLP in San Diego, California.

Mr. Abadou concentrates his practice on prosecuting securities class actions and is also a member of the Firm's lead plaintiff litigation practice group. Mr. Abadou has been associated with a number of significant recoveries, including: *In re UnitedHealth Group, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 40623 (D. Minn. 2007) (settled - \$925.5 million); *In re AT&T Corp. Secs. Litig.*, Case No. 00-cv-5364 (D.N.J.) (settled - \$100 million); *In re SemGroup Energy Partners Secs. Litig.*, Case No. 08-md-1989 GFK (N.D. Ok.) (settled - \$28 million); *In re Direct Gen. Corp. Sec. Litig.*, 2006 U.S. Dist. LEXIS 56128 (M.D. Tenn. 2006) (settled - \$15 million) and *Minneapolis Firefighters v. Medtronic Inc.*, Case No. 08-cv-0624 (D. Minn.) (settlement pending - \$ 85 million).

Mr. Abadou was a featured panelist at the American Bar Association's 11th Annual National Institute on Class Actions and is a faculty member for the Practising Law Institute's Advanced Securities Litigation Workshops. Mr. Abadou was named as one of the Daily Journal's Top 20 lawyers in California under



age 40 for 2010, and was selected for inclusion in Super Lawyers – Rising Stars Edition 2011. In 2012, Mr. Abadou was honored by Benchmark as one of the preeminent plaintiffs litigation practitioners in the country. Mr. Abadou has also lectured on securities litigation at various law schools throughout the country – including the Second Annual Director’s Program on Corporate Governance at Boston College Law School. He is admitted to the California Bar and is licensed to practice in all California state courts, as well as all of the United States District Courts in California and the United States Court of Appeals for the Ninth Circuit.

**NAUMON A. AMJED**, a partner of the Firm, has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02—Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

Prior to joining the Firm, Mr. Amjed was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. Mr. Amjed is a graduate of the Villanova University School of Law, cum laude, and holds an undergraduate degree in business administration from Temple University, cum laude. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Court for the District of Delaware.

**STUART L. BERMAN**, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm’s institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm’s European institutional clients.

In connection with these responsibilities, Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

Mr. Berman is an honors graduate from Brandeis University and received his law degree from George Washington University National Law Center.

**MICHAEL J. BONELLA**, a partner of the Firm, concentrates his practice on intellectual property litigation and particularly complex patent litigation. He earned his law degree *magna cum laude* from the Duke University School of Law. Michael is one of a few attorneys who is both registered to practice before the Patent and Trademark Office and that also holds an LLM degree in Trial Advocacy, which he obtained from Temple University. In addition, Michael obtained a bachelor of science degree *cum laude* in mechanical engineering from Villanova University. Michael also served five years in the U.S. Naval Submarine program. While serving in the Navy, Michael was certified by the U.S. Navy as a nuclear engineer and received advance training in electrical engineering.

Michael is currently the co-chair of the Firm's intellectual property department. Michael has served as the lead lawyer on patent litigations involved pharmaceutical and consumer products. Michael was the case manager for TruePosition, Inc. and was instrumental in achieving a settlement valued at about \$45 million for TruePosition, Inc. in *TruePosition, Inc. v. Allen Telecom, Inc.*, No. 01-0823 (D. Del.). Michael has also been the attorney that was primarily responsible for obtaining favorable settlements for defendants (e.g., *Codman & Shurtleff, Inc. v. Integra LifeSciences Corp.*, No. 06-2414 (D. N.J.) (declaratory judgment action). Michael has litigated patent cases involving a wide range of technologies including balloon angioplasty catheters, collagen sponges, neurosurgery, sutures, shoulder surgery, knee surgery, orthopedic implants, pump technology, immunoassay testing, cellular telephones, computer software, signal processing, and electrical hardware. Michael has also served as a case manager for a plaintiff in a multidistrict patent litigation (MDL) involving multiple defendants and complex signal processing.

Michael has written numerous articles and most recently authored an article entitled *Valuing Patent Infringement Actions After the Supreme Court's eBay Decision* (2008). In 2005, Michael was named a Rising Star by Pennsylvania SuperLawyer.

**GREGORY M. CASTALDO**, a partner of the Firm, received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as Kessler Topaz's lead litigation partner in *In re Tenet Healthcare Corp.*, No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of \$281.5 million for the class, including \$65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — \$13.8 million); *In re Sodexo Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — \$166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D. Tex. 2005) (settled — \$7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — \$16.5 million).

**DARREN J. CHECK**, a partner of the Firm, concentrates his practice in the area of securities litigation and institutional investor relations. He is a graduate of Franklin & Marshall College and received his law degree from Temple University School of Law. Mr. Check is licensed to practice in Pennsylvania and New Jersey.

Currently, Mr. Check concentrates his time as the Firm's Director of Institutional Relations and heads up the Firm's Portfolio Monitoring and Business Development departments. He consults with institutional investors from around the world regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Check assists clients in evaluating what systems they have in place to identify and monitor shareholder and consumer litigation that has an effect on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. He currently works with clients in the United States, Canada, the Netherlands, United Kingdom, France, Italy, Sweden, Denmark, Finland, Norway, Germany, Austria, Switzerland and Australia.

Mr. Check regularly speaks on the subject of shareholder litigation, corporate governance, investor activism, and recovery of investment losses. Mr. Check has spoken at or participated in panel sessions at conferences around the world, including MultiPensions; the European Pension Symposium; the Public Funds Summit; the European Investment Roundtable; The Rights & Responsibilities of Institutional Investors; the Corporate Governance & Responsible Investment Summit; the Public Funds Roundtable; The Evolving Fiduciary Obligations of Pension Plans; Understanding the New Era of Corporate Governance; the International Foundation for Employee Benefit Plans Annual Conference; the Florida

Public Pension Trustees Association Annual Conference, the Pennsylvania Association of Public Employees Retirement Systems Annual Meeting; and the Australian Investment Management Summit.

Mr. Check has also been actively involved in the precedent setting Shell settlement, direct actions against Vivendi and Merck, and the class action against Bank of America related to its merger with Merrill Lynch.

**EDWARD W. CIOLKO**, a partner of the Firm, received his law degree from Georgetown University Law Center, and an MBA from the Yale School of Management. He is licensed to practice law in the State of New Jersey, and has been admitted to practice before the United States District Court for the District of New Jersey and the United States Courts of Appeals for the First, Fourth, Ninth and Eleventh Circuits. Mr. Ciolko concentrates his practice in the areas of ERISA, Antitrust, RESPA and Consumer Protection.

Mr. Ciolko is counsel in several pending nationwide ERISA breach of fiduciary duty class actions, brought on behalf of retirement plans and their participants alleging, inter alia, imprudent investment of plan assets which caused significant losses to the retirement savings of tens of thousands of workers. These cases include: *In re Beazer Homes USA, Inc. ERISA Litig.*, 07-CV-00952-RWS (N.D. Ga. 2007); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355 (E.D. Mich. 2006); *Gee v. UnumProvident Corp.*, 03-1552(E.D. Tenn. 2003); *Pettit v. JDS Uniphase Corp. et al.*, C.A. No. 03-4743 (N.D. Ca. 2003); *Hargrave v. TXU, et al.*, C.A. No. 02-2573 (N.D. Tex. 2002); *Evans v. Akers*, C.A. No. 04-11380 (D. Mass. 2004); *Lewis v. El Paso Corp.* No. 02-CV-4860 (S.D. Tex. 2002); and *In re Schering-Plough Corp. ERISA Litig.* No. 03-CV-1204 (D.N.J. 2003).

Mr. Ciolko's efforts have also helped achieve a number of large recoveries for affected retirement plan participants: *In re Sears Roebuck & Co. ERISA Litig.*, C.A. No. 02-8324 (N.D. Ill. 2002) (settled — \$14.5 million recovery); and *In re Honeywell Intern'l ERISA Litig.*, No. 03-CV-1214 (DRD) (D.N.J. 2003) (settled — \$14 million recovery, as well as significant structural relief regarding the plan's administration and investment of its assets).

Mr. Ciolko has also concentrated part of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practices including *In re Wellbutrin SR Antitrust Litigation*, 04-CV-5898 (E.D. Pa. Dec. 17, 2004); *In re Remeron End-Payor Antitrust Litigation*, Master File No. 02-CV-2007 (D.N.J. Apr. 25, 2002); *In re Modafinil Antitrust Litigation*, 06-2020 (E.D. Pa. May 12, 2006); *In re Medtronic, Inc. Implantable Defibrillator Litigation*, 05-CV-2700 (D. Minn. 2005); and *In re Guidant Corp. Implantable Defibrillator Litigation*, 05-CV-2883 (D. Minn. 2005).

Before coming to Kessler Topaz, Mr. Ciolko worked for two and one-half years as a Law Clerk and Attorney Advisor to Commissioner Sheila F. Anthony of the Federal Trade Commission ("FTC"). While at the FTC, Mr. Ciolko reviewed commission actions/investigations and counseled the Commissioner on a wide range of antitrust and consumer protection topics including, in pertinent part: the confluence of antitrust and intellectual property law; research and production of "Generic Drug Entry Prior to Patent Expiration: An FTC Study," and an administrative complaint against, among others, Schering-Plough Corporation regarding allegedly unlawful settlements of patent litigation which delayed entry of a generic alternative to a profitable potassium supplement (K-Dur).

**ELI S. GREENSTEIN** is a partner in the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded a Presidential Scholarship. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein was a judicial extern for the Honorable James Ware, Chief Judge of the United States District Court for the Northern District of California.

Mr. Greenstein's significant federal securities decisions and recoveries include: The *AOL Time Warner* opt-out actions (\$618 million in total recoveries for investors); *Parnes v. Harris (In re Purus)*, No. C-98-20449-JF(RS) (\$9.95 million recovery); *In re Terayon Communs. Sys. Sec. Litig.*, 2002 U.S. Dist. LEXIS 5502 (N.D. Cal. 2002) (\$15 million recovery); *In re Endocare, Inc. Sec. Litig.*, No. CV02-8429 DT (CTX) (C.D. Cal. 2004) (\$8.95 million recovery); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc.*, 2005 U.S. Dist. LEXIS 12971 (N.D. Ill. 2005) (\$7.5 million recovery); *In re Nuvelo, Inc. Sec. Litig.*, 668 F. Supp. 2d 1217 (N.D. Cal. 2009) (\$8.9 million settlement pending); *In re Am. Serv. Group, Inc.*, 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn. 2009) (\$15.1 million recovery).

Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for PricewaterhouseCoopers LLP's International Tax and Legal Services division, and clerking on the trading floor of the Chicago Mercantile Exchange in the S&P 500 futures and options division.

Mr. Greenstein has been a member of the California Bar since 2001 and is admitted to practice in all California state courts, as well as federal courts in the Northern, Central and Eastern Districts of California and the Northern District of Illinois.

**SEAN M. HANDLER**, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property.

As part of these responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country, including the United States Court of Appeals for the Ninth Circuit.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler then earned his Juris Doctor, *cum laude*, from Temple University School of Law.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

**KIMBERLY A. JUSTICE**, a partner of the Firm, graduated *magna cum laude* from Temple University School of Law, where she was Articles/Symposium Editor of the Temple Law Review and received the Jacob Kossman Award in Criminal Law. Ms. Justice earned her undergraduate degree, *cum laude* and Phi Beta Kappa, from Kalamazoo College. Upon graduating from law school, Ms. Justice served as a judicial clerk to the Honorable William H. Yohn, Jr. of the United States District Court for the Eastern District of Pennsylvania. Ms. Justice is licensed to practice law in Pennsylvania and admitted to practice before the United States District Court for the Eastern District of Pennsylvania.



Ms. Justice joined the Firm after several years serving as a trial attorney and prosecutor in the Antitrust Division of the U.S. Department of Justice where she led teams of trial attorneys and law enforcement agents who investigated and prosecuted domestic and international cartel cases and related violations, and where her success at trial was recognized with the *Antitrust Division Assistant Attorney General Award of Distinction* for outstanding contribution to the protection of American consumers and competition. Since joining Kessler Topaz, Ms. Justice concentrates her practice in the area of securities litigation.

Ms. Justice began her practice as an associate at Dechert LLP where she defended a broad range of complex commercial cases, including antitrust and product liability class actions, and where she advised clients concerning mergers and acquisitions and general corporate matters.

**JOHN A. KEHOE**, a partner of the Firm, received his undergraduate degree from DePaul University, Masters of Public Administration from the University of Vermont, and Juris Doctorate, *magna cum laude*, from Syracuse University College of Law, where he was associate editor of the Syracuse Law Review, associate member of the Syracuse Moot Court Board and alternate member on the National Appellate Team.

Prior to joining Kessler Topaz Meltzer & Check, Mr. Kehoe was associated with Clifford Chance LLP, a global law firm based in London, where he represented Fortune 500 companies in complex securities and antitrust civil litigation and in enforcement actions brought by the Department of Justice, the Securities and Exchange Commission and Federal Trade Commission.

From 1986 to 1994, Mr. Kehoe served as a police officer in the State of Vermont where he was a member of the tactical Special Reaction Team and the Major Accident Investigation Team. Mr. Kehoe also received advanced police training instructed by the Florida Institute of Police Technology and Management.

Mr. Kehoe is currently admitted to practice in Pennsylvania and New York, and is admitted to the U.S. District Court for the Southern District of New York, the Court of Appeals for the Second and Eleventh Circuits. He also serves as a deposition skills program faculty member with the National Institute of Trial Advocacy and is an adjunct faculty member for the Trial Advocacy Training Program at the LSU School of Law.

As a member of Kessler Topaz's internationally recognized securities department, Mr. Kehoe has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases:

- *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09 Civ. 6351 (S.D.N.Y. 2008) (\$627 million class settlement).
- *In re Lehman Brothers Securities and ERISA Litigation*, No. 09 MD 2017 (S.D.N.Y. 2008) (\$516 million class settlement).
- *In re Initial Public Offering Securities Litigation*, 21 MC 92 (S.D.N.Y. 2002) (\$586 million class settlement resolving 309 consolidated actions).
- *Smajlaj v. Brocade Communications Sys., Inc., et al.*, 05-CV-02042 (N.D. Cal. 2005) (\$160 million class settlement).
- *In re Marvell Technology Group Ltd. Securities Litigation*, 06-CV-06286 (N.D. Cal. 2006) (\$72 million class settlement).
- *Johnson v. Aljian et al.*, CV 03-5986 DMG (C.D. Cal. 2004) (\$8.1 million class settlement).
- *Reynolds v. Repsol YPF, S.A., et al.*, 06-CV-733 (S.D.N.Y. 2006) (\$8 million class settlement).

Prior to joining Kessler Topaz, Mr. Kehoe was counsel of record in the following cases:

- *Ohio Public Employees Retirement System et al. v. Freddie Mac et al.*, 03-CV-4261 (S.D.N.Y. 2003) (\$410 million settlement).
- *In re Bristol Myers Squibb Securities Litigation*, 02-CV-2251 (S.D.N.Y. 2002) (\$300 million class settlement).
- *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.) (more than \$2 billion in federal and state class action and direct action settlements).

**DAVID KESSLER**, a partner of the Firm, graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler manages the Firm's internationally recognized securities department and in this capacity, has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases:

*In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002): This landmark \$3.2 billion settlement on behalf of investors included the largest securities class action recovery from a single corporate defendant in history as well as the second largest auditor settlement in securities class action history at the time.

*In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (RJS): This recovery of \$627 million is one of the most significant recoveries from litigation arising out of the financial crisis and is believed to be the single largest pure Section 11 recovery in securities class action history. The settlement included a \$37 million recovery from Wachovia Corporation's outside auditor.

*In re: Lehman Brothers Securities and ERISA Litigation*, Master File No. 09 MD 2017 (LAK): A \$516,218,000 settlement was reached on behalf of purchasers of Lehman securities — \$426,218,000 of which came from various underwriters of corporate offerings. In addition, \$90 million came from Lehman's former directors and officers, which is significant considering Lehman's bankruptcy meant diminishing assets available to pay any future judgment. The case is continuing against the auditors.

*In re Satyam Computer Services Ltd. Sec. Litig.*, Master File No. 09 MD 02027 (BSJ): This \$150.5 million settlement on behalf of investors resulted from allegations that the Company had harmed investors by falsifying numerous financial indicators including company profits, cash flows, cash position, bank balances and related balance sheet data. The settlement included a \$25.5 million recovery from the Company's outside auditor and the case is continuing against the Company's officers and directors.

*In re Tenet Healthcare Corp. Sec. Litig.*, No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002): This recovery of over \$280 million on behalf of investors included a substantial monetary commitment by the company, personal contributions from individual defendants, the enactment of numerous corporate governance changes, as well as a substantial recovery from the Company's outside auditor.

*In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS): This action settled for \$586 million after years of litigation overseen by U.S. District Judge Shira Scheindlin. Mr. Kessler served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

Mr. Kessler is also currently serving as one of the Firm's primary litigation partners in the Bank of America, Citigroup, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as "Litigator of the Week" by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report. Mr. Kessler also serves as a trustee for the Philadelphia Bar Foundation.

**PETER ("Tad") H. LeVAN, Jr.**, a partner of the Firm, graduated with distinction from the University of Cincinnati College of Law, where he was a member of the *University of Cincinnati Law Review* and received the Awards for Excellence in Criminal Law and Conflicts of Law. Mr. LeVan received his undergraduate degree, cum laude and Phi Beta Kappa, from Miami University. Upon graduating from law school, Mr. LeVan served as judicial clerk to the Honorable John M. Manos of the United States District Court for the Northern District of Ohio. Mr. LeVan is licensed to practice law in Pennsylvania, New Jersey and Ohio. In addition, he is admitted to practice before the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey, and the Northern District of Ohio, as well as the United States Courts of Appeals for the Third, Sixth and Federal Circuits.

Mr. LeVan's practice focuses on ERISA and other complex litigation. A Fellow of the Academy of Advocacy at the Temple University School of Law, Mr. LeVan was the Recipient of the Equal Justice Award, given in recognition of his outstanding dedication and pro bono service to the cause of equal justice.

Prior to joining Kessler Topaz, Mr. LeVan was a shareholder at the law firm of Hangley Aronchick Segal & Pudlin, where he also served on the Firm's Board of Directors.

**JOSEPH H. MELTZER**, a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA, including cases against El Paso Corp., Global Crossing, AOL Time Warner, and National City Corp. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover well over \$300 million for clients and class members including some of the largest settlements in ERISA fiduciary breach actions.

As part of his fiduciary litigation practice, Mr. Meltzer has been actively involved in actions related to losses sustained in securities lending programs including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank* and *CompSource Okla. v. BNY Mellon*; in addition, Mr. Meltzer is representing a publicly traded company in a large arbitration pending against AIG, Inc. related to securities lending losses. Mr. Meltzer also represents an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

A frequent lecturer on ERISA litigation and employee benefits issues, Mr. Meltzer is a member of the ABA's Section Committee on Employee Benefits and has been recognized by numerous courts for his ability and expertise in this complex area of the law.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices,

including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer currently serves as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation* pending in the Eastern District of Pennsylvania and has served as lead or co-lead counsel in numerous nationwide actions, representing such clients as the Pennsylvania Turnpike Commission, the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Sidney Hillman Health Center of Rochester. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska.

Mr. Meltzer lectures on issues related to antitrust litigation and is a member of the ABA's Section Committee on Antitrust Law.

Mr. Meltzer is an honors graduate of the University of Maryland and received his law degree with honors from Temple University School of Law. Honors include being named a Pennsylvania Super Lawyer.

**PAUL B. MILCETIC**, a partner of the Firm, concentrates his practice in the area of patent and intellectual property litigation. He earned his law degree from the Cornell Law School, received an LLM in trial advocacy from the Temple University School of Law and also holds a degree in Computer Science from Rutgers University, summa cum laude. He is licensed to practice law in Pennsylvania, New York and New Jersey.

Mr. Milcetic is currently co-chair of the Firm's intellectual property litigation department, and has been the lead trial lawyer on multiple patent litigations. In 2007, he achieved a \$45 million patent infringement verdict as lead trial lawyer in *TruePosition v. Andrew Corp.* and in 2009 he successfully argued for a \$20 million post verdict punitive damages award. He was quoted in the following articles that spotlighted some recent achievements: "Philadelphia Lawyers Win \$45 Mil in Patent Case," *The Legal Intelligencer*, September 19, 2007 and "Cell Phone Co. Loses Gamble, Ordered to Pay \$20 Mil. More in Damages," *Delaware Law Weekly*, May 20, 2009. According to the IAM 1000 World's Leading Patent Practitioners (2012) Mr. Milcetic is "a bright lawyer with a solid combination of technical, legal and commercial skills" that has "enjoyed immense success since joining" the firm "in 2010 and switching to its popular contingency fee model."

Mr. Milcetic is the author of a book about standards related patent litigation that was published in January 2008 entitled "Technology Patent Infringement Case Strategies." In 2009-2012, Mr. Milcetic was named a Pennsylvania Superlawyer. He is also listed in the Chambers USA Guide to America's Leading Lawyers for Business (2009-2012), the Best Lawyers in America® 2012 Edition and more recently he was named a fellow of the Litigation Counsel of America.

**PETER A. MUHIC**, a partner of the Firm, is a graduate of Syracuse University and an honors graduate of the Temple University School of Law, where he was Managing Editor of the Temple Law Review and a member of the Moot Court Board.

Mr. Muhic has substantial trial and other courtroom experience involving complex actions in federal and state courts throughout the country. In addition to his trial recoveries, he has obtained significant monetary awards and settlements through arbitrations and mediations. In 2009, Mr. Muhic was co-lead trial counsel in one of the few class action ERISA cases ever to be tried, which involved claims against the fiduciaries of the 401k plan of an S&P 500 company for imprudent investment in company stock and misrepresentations to plan participants. Mr. Muhic primarily prosecutes class actions and/or collective actions concerning ERISA, FLSA, FHA, ECOA and numerous state consumer protection statutes and laws. He has served as lead counsel in numerous nationwide actions. He is licensed to practice law in Pennsylvania and New Jersey and also is admitted to the United States Courts of Appeals for the Third, Fifth, Seventh, Ninth and Eleventh Circuits, the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the District of Colorado.



Mr. Muhic serves as a Judge Pro Tem for the Court of Common Pleas of Philadelphia County, is a former Board Member of the SeniorLAW Center in Philadelphia and a past recipient of the White Hat Award for outstanding pro bono contributions to the Legal Clinic for the Disabled, a nonprofit organization in Philadelphia.

**MATTHEW L. MUSTOKOFF**, a partner of the Firm, is an experienced securities, corporate governance and intellectual property litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation and mergers and acquisitions.

Mr. Mustokoff is currently prosecuting several nationwide securities cases including *In re Citigroup Inc. Bond Litigation* and *In re Johnson & Johnson Securities Litigation*. He was one of the lead trial lawyers for the shareholder class in the *BankAtlantic Bancorp Inc. Securities Litigation* which culminated in a five-week jury trial in Miami federal court and a historic verdict for investors. The jury found that BankAtlantic, its chief executive officer and chief financial officer made fraudulent statements to the investing public regarding the state of the bank's troubled real estate loan portfolio. The case marked the first securities fraud class action arising out of the financial crisis to be tried to verdict. On April 25, 2011, Judge Ungaro vacated the jury's verdict. The Firm is looking forward to a favorable review of the issues by the appellate court.

Mr. Mustokoff also concentrates his practice in patent litigation and is active in the Firm's prosecution of complex patent infringement and trade secret claims on behalf of individual inventors and corporations, spanning a wide range of technologies and industries.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.

Mr. Mustokoff currently serves as Co-Chair of the American Bar Association's Subcommittee on Securities Class Actions and Derivative Litigation. He was a featured panelist at the ABA Section of Litigation's 2010 Annual Conference on the subject of internal investigations and has lectured on corporate governance issues at the Cardozo School of Law. His publications include: "The BankAtlantic Case: Jury Returns Securities Fraud Verdict in First Credit Crisis Trial," *Securities Litigation Report* (March 2011); "Statistical Significance, Materiality and the Duty to Disclose in Pharmaceutical Securities Fraud Class Actions," *Securities Litigation Journal* (Fall 2010); "Delaware and Insider Trading: The Chancery Court Rejects Federal Preemption Arguments of Corporate Directors," *Securities Regulation Law Journal* (Summer 2010); "The Pitfalls of Waiver in Corporate Prosecutions: Sharing Work Product with the Government and the Future of Non-Waiver Agreements," *Securities Regulation Law Journal* (Fall 2009); "Scheme Liability Under Rule 10b-5: The New Battleground in Securities Fraud Litigation," *The Federal Lawyer* (June 2006); "District Court Weighs Novel Theories of Rule 10b-5 Liability in Mutual Fund Market Timing Litigation," *Securities Regulation Law Journal* (Spring 2006); "Sovereign Immunity and the Crisis of Constitutional Absolutism: Interpreting the Eleventh Amendment After *Alden v. Maine*," *Maine Law Review* (2001).

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law, where he was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law.

Mr. Mustokoff is admitted to practice before the courts of New York State and Pennsylvania and the United States District Courts for the Southern and Eastern Districts of New York.

**SHARAN NIRMUL**, a partner of the Firm, focuses on securities and corporate governance litigation. He has represented investors successfully in major securities fraud litigation including financial frauds involving Global Crossing Ltd, Qwest Communications International, WorldCom Inc., Delphi Corp., Marsh and McLennan Companies, Inc. and Able Laboratories. Mr. Nirmul has also represented shareholders in derivative and direct shareholder litigation in the Delaware Chancery Court and in other state courts around the country. Prior to joining the firm, Mr. Nirmul was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Sharan Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996).

Mr. Nirmul is admitted to practice law in the state courts of New York, New Jersey, Pennsylvania and Delaware and in the U.S. District Courts for the Southern District of New York, District of New Jersey, District of Delaware, and District of Colorado.

**LEE D. RUDY**, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. 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. Most recently, Mr. Rudy served as co-lead trial counsel in the *In re Southern Peru* (Del. Ch. 2011) derivative litigation filed against Southern Peru's majority shareholder, which resulted in a landmark \$1.3 billion plaintiff's verdict. Previously, Mr. Rudy served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options, including litigation against the directors and officers of Converse, Affiliated Computer Services, and Monster Worldwide. Mr. Rudy has significant courtroom experience, both in trial and appellate courts across the country. 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). He received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania.

**BENJAMIN J. SWEET**, a partner of the Firm, received his Juris Doctor, cum laude, from The Dickinson School of Law of the Pennsylvania State University, and his BA, cum laude, from the Schreyer Honors College of The Pennsylvania State University. While in law school, Mr. Sweet served as Articles Editor of the *Dickinson Law Review*, and was also awarded Best Oral Advocate and Best Team in the ATLA Mock Trial Competition.

Mr. Sweet concentrates his practice exclusively in the area of securities litigation and has helped obtain significant recoveries on behalf of class members in several nationwide federal securities class actions, including *In re Tyco, Int'l Sec. Litig.*, No. 02-1335-B (D.N.H.) (\$3.2 billion total recovery for class members), *In re CVS, Inc. Sec. Litig.*, No. 01-11464-JLT (D. Mass.) (\$110 million recovery for class members), *In re PNC Fin. Svcs. Group Inc. Sec. Litig.*, No. 02-CV-271 (W.D. Pa.) (\$39 million recovery for class members) and *In re Wireless Facilities, Inc. Sec. Litig.*, No. 04-cv-01589, (S.D. Ca.) (\$12 million recovery for class members).

Mr. Sweet is currently serving as one of the litigating partners in several nationwide federal securities class actions, including *In re Pfizer Inc. Sec. Litig.*, No. 04-Civ 9866 (LTS) (S.D.N.Y.), *In re Thornburg Mortgage, Inc. Sec. Litig.*, 1:07-cv-00815-JB-WDS (D.N.M.), *In re Citigroup Inc. Bond Litigation*, No. 08-Civ-9522 (SHS), (S.D.N.Y.), *In re Wachovia Preferred Securities and Bond/Notes Litig.*, No. 09-Civ. 6351 (RJS), (S.D.N.Y.) and *In re NeuroMetrix Inc. Sec. Litig.*, No. 08-cv-10434-RWZ (D. Mass.).

Prior to joining Kessler Topaz, Mr. Sweet practiced with Reed Smith LLP in Pittsburgh, where he specialized in antitrust and complex civil litigation. Mr. Sweet is licensed to practice law in the

Commonwealth of Pennsylvania, the United States District Court for the Western District of Pennsylvania, and the United States Courts of Appeals for the Second, Third and Ninth Circuits. Honors include being selected by his peers as a Pennsylvania Super Lawyers *Rising Star*, a distinction bestowed annually on no more than 2.5% of Pennsylvania lawyers under the age of 40.

**MARC A. TOPAZ**, a partner of the Firm, received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania. Mr. Topaz oversees the Firm's derivative, transactional and case development departments. In this regard, Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — \$3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

**MICHAEL C. WAGNER**, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients.

A graduate of Franklin and Marshall College and the University of Pittsburgh School of Law, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients in business and corporate disputes across the United States. Mr. Wagner has also represented Fortune 500 companies in employment matters. He has extensive nationwide litigation experience and is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery since joining Kessler Topaz, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions, including: *In re Genentech, Inc. Shareholders Litigation*, Consolidated C.A. No. 3911-VCS (Del. Ch.) (litigation caused Genentech's stockholders to receive \$3.9 billion in additional merger consideration from Roche); *In re Anheuser Busch Companies, Inc. Shareholders Litigation*, C.A. No. 3851-VCP (Del. Ch.) (settlement required enhanced disclosures to stockholders and resulted in a \$5 per share increase in the price paid by InBev in its acquisition of Anheuser-Busch); *In re GSI Commerce, Inc. Shareholders Litigation*, C.A. No. 6346-VCN (Del. Ch.) (settlement required additional \$23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); and *In re AMICAS, Inc. Shareholder Litigation*, 10-0412-BLS2 (Mass. Super.) (litigation resulted in a third-party acquisition of the company, with stockholders receiving an additional \$26 million in merger consideration). Mr. Wagner was also a part of the team that prosecuted *In re Southern Peru Copper Corp. Shareholder Derivative Litigation*, C.A. No. 961-CS, which resulted in a \$1.9 billion post-trial judgment.

Mr. Wagner has also had a lead role in litigation that resulted in enhanced shareholder rights and corporate reforms in merger contexts, including: *In re Emulex Shareholder Litigation*, Consolidated C.A. No. 4536-VCS (Del. Ch.) (litigation caused company to redeem “poison pill” stock plan and rescind supermajority bylaw); *Solomon v. Take-Two Interactive Software, Inc.*, C.A. No. 3064-VCL (Del. Ch.) (settlement required substantial enhanced disclosures to stockholders regarding executive compensation matters in advance of director elections, and litigation caused company to redeem “poison pill” stock plan); and *Olson v. ev3, Inc.*, C.A. No. 5583-VCL (Del. Ch.) (settlement required a merger’s “top-up option” feature to be revised to as to comply with Delaware law).

In shareholder derivative cases involving executive compensation matters, Mr. Wagner has also had a lead role in cases that achieved substantial financial recoveries and reforms for publicly traded companies, such as *In re KV Pharmaceutical Co., Inc. Derivative Litigation*, Case No. 4:07-cv-00384-HEA (E.D. Mo.) (litigation caused executives to make financial remediation of approximately \$3 million and resulted in enhanced internal controls at the company concerning financial reporting); *In re Medarex, Inc. Derivative Litigation*, Case No. MER-C-26-08 (N.J. Super.) (settlement resulted in approximately \$9 million in financial remediation and substantial corporate governance reforms related to executive compensation); *Harbor Police Retirement System v. Roberts*, Cause No. 09-09061 (95<sup>th</sup> District Court, Dallas County, Texas) (settlement required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation); and *In re Comverse Technologies, Inc. Derivative Litigation* (Index No. 601272/06, N.Y. Supreme Ct.) (settlement required disgorgement of more than \$60 million from the company’s executive officers for their receipt of backdated stock options).

**JOHNSTON de F. WHITMAN, JR.**, a partner of the Firm, focuses his practice on securities litigation. Mr. Whitman graduated cum laude from Colgate University. He received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal. He is licensed to practice in Pennsylvania and New York as well as before the United States Courts of Appeals for the Second and Fourth Circuits. Prior to joining the Firm, Mr. Whitman was a partner of Entwistle & Cappucci LLP in New York, where he also concentrated his practice on securities litigation.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (settled -- \$1.1 billion); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (D. Del. 2000) (settled -- \$300 million); and *In re Dollar General, Inc. Sec. Litig.*, No. 01-cv-0388 (M.D. Tenn. 2001) (settled \$162 million). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Qwest Communications International, Inc. and Merrill Lynch & Co., Inc.

**ROBIN WINCHESTER**, a partner of the Firm, received her Bachelor of Science degree in Finance from St. Joseph’s University. Ms. Winchester then earned her Juris Doctor degree from Villanova University School of Law, and is licensed to practice law in Pennsylvania and New Jersey. After law school, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

After joining KTMC, Ms. Winchester concentrated her practice in the areas of securities litigation and lead plaintiff litigation. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions, and, most recently, has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions*, Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation*, Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation*, Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns