

2014

PENNSYLVANIA LITIGATION DEPARTMENTS OF THE YEAR



CLASS ACTION
WINNER

KESSLER TOPAZ MELTZER & CHECK, LLP

L to R: Darren J. Check, Lee D. Rudy and Andrew L. Zivitz.

The Legal Intelligencer
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DIVERSE CLIENTS, RECORD-SETTING SUCCESS

KESSLER TOPAZ IS MAKING A GLOBAL MARK

By Jeff Mordock
Of the Legal Staff

Kessler Topaz Meltzer & Check's dedication to each client, from small family trusts to the world's largest pension funds, has resulted in record-setting settlements and damages awards in class-action shareholder and consumer litigation throughout the United States and Europe.

The firm made a strategic decision in 2002 to represent institutional investors in shareholder litigation, as well as government agencies and corporations on consumer litigation matters. Since then, Kessler Topaz's client roster has grown to include many of the largest institutional investors and pension funds both in the United States and abroad.

"Ever since we moved toward representing institutional investors in order to be involved in bigger cases, we've had a lot of success courting United States pension funds and larger European investors," said Darren J. Check, a partner in the firm's class-action shareholder litigation unit. "It has kind of snowballed since then and our client base has grown substantially in the U.S. and Europe, allowing us to get the bigger cases we sought."

The firm's current client roster is composed of roughly 200 institutional investors from around the

world, including more than 100 public pension funds at the state, county and municipal levels, Taft-Hartley funds across all trades, insurance companies, hedge funds and other large investors. The firm represents 23 Pennsylvania county pension funds and five California county pension funds.

But the firm hasn't diverted its attention away from smaller clients, such as individual investors and family trusts. In fact, Kessler Topaz set two records representing a family trust in the Delaware Court of Chancery in 2012.

The firm represented the trust and other minority shareholders of Southern Peru Copper Corp. in a Delaware Court of Chancery lawsuit against the company's controlling shareholder, Grupo Mexico. The plaintiffs alleged Grupo Mexico forced Southern Peru to overpay by more than \$1.3 billion to acquire a subsidiary.

The Chancery Court issued a decisive victory for the plaintiffs, awarding \$2.3 billion in damages to them, along with \$300 million in attorney fees. Although Grupo Mexico appealed both awards, the Delaware Supreme Court affirmed the verdict, ruling the evidence of unfairness was "overwhelming."



"It's not only big institutional investors who have big cases that grab headlines," Check said. "One of the things Kessler Topaz really takes pride in is that individual investors with small portfolios and

institutional investors with hundreds of billions of dollars of assets get the same treatment and service. We work just as hard no matter our client's size, and that has developed our reputation for understanding our clients' needs."

Kessler Topaz followed the Southern Peru victory with two record-setting settlements on behalf of larger institutional clients.

Last year, the firm secured a \$2.4 billion settlement in the Bank of America Securities Corp. derivative lawsuit. The firm represented multiple large pension funds alleging Bank of America made false and misleading statements in connection with the corporation's acquisition of Merrill Lynch & Co. Inc.

Less than two months before the case was set to go to trial in the U.S. District Court for the Southern District of New York, the two sides agreed upon the single largest securities class-action settlement ever arising from an alleged violation of Section 14(a) of the Securities

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Exchange Act of 1934. The settlement is also one of the four largest ever funded by a single corporate defendant related to alleged securities law violations and the largest settlement of a securities class action that didn't involve a financial restatement or criminal conviction related to the alleged misconduct.

Kessler Topaz set another record last year when it obtained a \$500 million settlement on behalf of numerous private and public pension funds against Bank of America's Countrywide unit in *Maine State Retirement System v. Countrywide Financial*. The litigation, initiated in the U.S. District Court for the Central District of California, centered on allegations that the pension funds were misled into buying risky mortgage debt from Countrywide.

The settlement, approved in December 2013, represents the largest recovery in a mortgage-

backed securities action to date.

"Individual investors and state-wide pension systems have different needs and expectations, but they both expect you to work hard and represent the class," Check said. "We work hard no matter what size our clients are, and as a result we have earned our reputation for understanding the clients' needs in the courtroom."

Kessler Topaz has taken its track record for success overseas. In 2005, the firm worked as co-counsel representing non-U.S. institutional investors alleging securities fraud claims against Royal Dutch Shell Plc. over the company's restatement of oil reserves. The case, adjudicated in the Dutch Enterprise Court, was the first settlement of classwide claims under the Dutch Financial Settlements Act.

"The Royal Dutch Shell case was our entry into non-U.S. litigation," Check said. "We now have attorneys becoming experts on the law in the United Kingdom and Japan. It's been pretty exciting for us to work with lawyers in those other jurisdictions."

Pursuing European class-action claims has been particularly challenging for the firm since the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank*. The ruling eliminated the right of U.S. investors to pursue fraud

claims when they purchase shares on a foreign exchange.

"The *Morrison* decision was a major blow to plaintiffs firms," Check said. "What we did was bring litigation outside the United States. We don't have offices outside the U.S., so we have been involved with firms in other jurisdictions, such as the United Kingdom, Netherlands and France. We have expanded that greatly so that when one door closed we were able to open another one."

Check said the firm's involvement with class-action litigation outside of the United States has led to even more diversity among Kessler Topaz's client base.

"This work gives our clients a full-service menu when it comes to shareholder litigation," he said. "If you look at the trends, international equities is a major part of any institutional investor portfolio. You need to be involved in these cases and understand how they work." ♦

KESSLER TOPAZ BY THE NUMBERS

Department Headcount

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| Firmwide | 94 |
| Pennsylvania | 89 |

Department as Percent of Firm

| | |
|-----------|----|
| Headcount | 95 |
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