



## JOSHUA A. MATERESE

### PARTNER

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#### FOCUS AREAS

Securities Fraud Litigation  
 Global Securities Litigation  
 Direct and Opt-Out Actions  
 Fiduciary Litigation

#### EDUCATION

Syracuse University, Newhouse School  
 B.S.-Communications 2006, *magna cum laude*

Temple University Beasley School of Law  
 J.D. 2012, *cum laude*

#### ADMISSIONS

Pennsylvania  
 New Jersey  
 USDC, Eastern District of Pennsylvania  
 USDC, District of New Jersey  
 USDC, District of Colorado  
 USCA, Second Circuit  
 USCA, Third Circuit  
 USDC, Northern District of Illinois

Josh Materese, a partner of the Firm, concentrates his practice primarily in the areas of securities litigation and corporate governance. He represents institutional investors and individual clients at all stages of litigation in high-stakes cases involving a wide array of matters, including financial fraud, market manipulation, anti-competitive conduct, and corporate takeovers.

Since joining the firm directly after law school, Josh has helped recover hundreds of millions of dollars for investors harmed by fraud. These matters include: *In re Allergan, Inc. Proxy Violation Securities Litigation* (C.D. Cal.), a case alleging unlawful insider trading by hedge fund billionaire Bill Ackman in connection with a hostile takeover attempt, which settled for \$250 million just weeks before trial; *In re JPMorgan Chase & Co. Securities Litigation* (S.D.N.Y.), a securities fraud class action arising out of misrepresentations and omissions about the trading activities of the so-called "London Whale," which resolved for \$150 million; and, most recently, *Baker v. SeaWorld Entertainment, Inc.* (S.D. Cal.), a securities fraud class action arising out of misrepresentations and omissions about the impact of the documentary *Blackfish* on SeaWorld's business, which settled for \$65 million days before trial. Josh has also assisted in obtaining favorable settlements for mutual funds and institutional investors in securities fraud opt-out actions, including in several actions against Brazilian oil giant Petrobras arising from its long-running bribery and kickback scheme.

In addition to his securities litigation practice, Josh has represented plaintiffs in shareholder derivative actions, consumer class actions stemming from violations of the Employees Retirement Income Security Act of 1974 ("ERISA"), and antitrust matters arising out of violations of the Sherman Act.

### Ongoing Cases

- Perrigo: Institutional Investors Bring Shareholder Opt-Out Actions Against Drugmaker in Hostile Tender Offer Fraud

In early 2018, Kessler Topaz filed the first of seven opt-out securities fraud actions in New Jersey federal court on behalf of U.S., European, and Middle Eastern institutional investors against Perrigo and its former chief executive and chief financial officers. These actions stem from Perrigo's efforts to mislead investors to stave off a hostile takeover bid by pharmaceutical rival Mylan NV in 2015. The plaintiffs allege that Perrigo failed to disclose problems concerning the company's \$4.5 billion acquisition of Omega Pharma NV, an over-the-counter healthcare company based in Belgium, and misrepresented its ability to withstand pricing pressure from the influx of competing drugs in the generic drug markets.

On July 30, 2019, Judge Madeline Cox Arleo of the U.S. District Court of New Jersey denied defendants' motions to dismiss the actions. Discovery is ongoing.

- Allergan Generic Drug Pricing Securities Litigation: Investors Pursue Fraud Claims Based on Concealed Price-Fixing Conspiracy

Kessler Topaz serves as co-lead counsel in a securities fraud class action brought on behalf of Allergan plc shareholders, based on the company's participation in an industry-wide conspiracy to fix the prices of generic drugs. Shareholders allege that notwithstanding Allergan's prominent role in this illicit price-fixing scheme, the company repeatedly misrepresented to investors that it was not engaged in anticompetitive conduct—even as the company became ensnared in an investigation by the U.S. Department of Justice and 46 state attorneys general.

On August 6, 2019, the Honorable Katherine S. Hayden of the U.S. District Court for the District of New Jersey issued a lengthy opinion denying defendants' motions to dismiss the complaint and sustaining investors' claims in full. The case is now in discovery.

- Kessler Topaz Defeats Motion for Summary Judgment in Securities Fraud Class Action Against SeaWorld Concerning Impact of Blackfish on Business

The win keeps this case on track for a February 18, 2020 jury trial.

Since December 2014, Kessler Topaz has served as co-lead counsel on behalf of two institutional Lead Plaintiffs and a Class of investors who acquired SeaWorld Entertainment, Inc., common stock in the period from August 29, 2013 through August 12, 2014 (the "Class Period"). Lead Plaintiffs claim that SeaWorld and its former executives ("Defendants") issued materially false and misleading statements during the Class Period about the impact of *Blackfish*, an highly publicized documentary film released in 2013, on SeaWorld's business, in violation of Section 10(b) of the Exchange Act of 1934 and SEC Rule 10b-5. Defendants repeatedly told the market over the roughly 11-month Class Period that the film and related public outrage were not affecting SeaWorld's attendance or business at all—representations that Lead Plaintiffs maintain were false and misleading. When the underlying truth of *Blackfish's* impact on the business finally came to light in August 2014, SeaWorld's stock price lost approximately 33% of its value in one day, injuring Class members. In November 2017, Judge Michael M. Anello of the U.S. District Court for the Southern District of California certified the Class, appointed Lead Plaintiffs as Class Representatives, and appointed Kessler Topaz as co-Class Counsel. The Ninth Circuit Court of Appeals rejected Defendants' petition to appeal that order in mid-2018. And in April 2019, after the close of fact and expert discovery, Defendants moved for summary judgment on all claims.

Summary judgment represented Defendants' last and best opportunity to avoid a jury trial on the Class's claims through a dispositive motion. But, after full briefing and an October 2019 oral argument, the Court held, in a 98-page Order dated November 6, 2019, that Lead Plaintiffs had successfully shown that genuine issues of material fact precluded summary judgment on all elements of their claims, and the claims should go to a jury. The Court set a trial date of February 18, 2020. Kessler Topaz, along with co-lead counsel, will prosecute the case on behalf of Lead Plaintiffs and the Class.

### Settled

- JP Morgan Chase: \$150 Million Recovery for Shareholders in "London Whale" Trading Scandal Case

This securities fraud class action in the United States District Court for the Southern District of New York stemmed from the "London Whale" derivatives trading scandal at JPMorgan Chase. Shareholders alleged that JPMorgan concealed the high-risk, proprietary trading activities of the investment bank's Chief Investment Office, including the highly volatile, synthetic credit portfolio linked to trader Bruno Iksil—a.k.a., the "London Whale"—

which caused a \$6.2 billion loss in a matter of weeks. Shareholders accused JPMorgan of falsely downplaying media reports of the synthetic portfolio, including on an April 2012 conference call when JPMorgan CEO Jamie Dimon dismissed these reports as a “tempest in a teapot,” when in fact, the portfolio’s losses were swelling as a result of the bank’s failed oversight.

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

- **Apple REIT Ten: Conflicted REIT Roll-Up Leads to \$32 Million Settlement on Eve of Trial**  
This shareholder derivative action challenged a conflicted “roll up” REIT transaction orchestrated by Glade M. Knight and his son Justin Knight.  
The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional \$32 million in merger consideration.
- **Green Mountain Coffee Roasters: \$36.5 Million Recovery in Inventory Fraud Case**

This securities fraud class action in Vermont federal court involved allegations that Green Mountain and its former chief executive officer and chief financial officer misrepresented the true state of demand for the coffee giant’s products. The investor class alleged that the defendants concealed the company’s ballooning inventory and slackening demand in order to prop up Green Mountain’s stock price, while the company’s CEO and CFO were engaged in massive insider selling, reaping tens of millions of dollars at the expense of shareholders.

The case was resolved in 2018 for \$36.5 million, following a significant appellate victory at the U.S. Court of Appeals for the Second Circuit which reversed the district court’s initial dismissal of the action and provided important guidance on the role of insider trading allegations in establishing scienter (or intent to defraud) under the federal securities laws. This is believed to be the largest settlement of a securities suit in the history of the District of Vermont.

- **JPMorgan/Sigma: Securities lending case settles after massive discovery**  
Led class action on behalf of participants in JPMorgan Chase Bank’s (JPMorgan) securities lending program that incurred losses on JPMorgan’s investments in medium-term notes issued by Sigma Finance, Inc.  
Our clients, the American Federation of Television & Radio Artists Retirement Fund and the Imperial County Employees’ Retirement System, asserted claims for breach of fiduciary duty

under ERISA, as well as common law breach of fiduciary duty, breach of contract and negligence. During discovery, the parties produced and reviewed hundreds of thousands of pages of documents, took 40 depositions and submitted 21 expert reports. The case settled on the eve of trial for \$150 million.

- Petrobras: Kessler Topaz Secures Significant Recoveries for Investors in Securities Fraud Opt-Out Actions Against Brazilian Oil Giant Embroiled in Historic Corruption Scandal

Kessler Topaz represented several prominent U.S. and overseas mutual funds and pension funds as opt-out plaintiffs in securities fraud actions in Manhattan federal court against Petrobras, Brazil's state-owned oil conglomerate. These cases arose out of a decade-long bribery and kickback scheme that has been called the largest corruption scandal in Brazil's history and resulted in dozens of criminal convictions. The plaintiff funds alleged that Petrobras concealed bribes to senior officers and government officials and improperly capitalized these bribes as assets on the company's books in order to inflate the value of its oil refineries.

The Honorable Jed S. Rakoff of the U.S. District Court for the Southern District of New York appointed Kessler Topaz to serve as liaison counsel to the Court on behalf of the 27 opt-out plaintiffs in this sprawling litigation. In October 2015, Judge Rakoff denied Petrobras' motions to dismiss our clients' complaints. Following expedited discovery and with trial on the horizon, these actions were favorably resolved less than a year later as part of a confidential settlement.

### News

- March 31, 2020 - On the Eve of Trial, Investors Reach \$65 Million Settlement in Securities Fraud Class Action Against SeaWorld Entertainment and the Blackstone Group