KESSLERTOPAZ MELTZERCHECK LLP

MELISSA L. YEATES

PARTNER

D 484.270.1409
F 610.667.7056

myeates@ktmc.com

FOCUS AREAS

Antitrust

Consumer Protection

Fiduciary

Securities Fraud

EDUCATION

Syracuse University
B.A. *magna cum laude*, Phi Beta Kappa

University of Pennsylvania Law School
J.D. *cum laude*, Order of the Coif

ADMISSIONS

Pennsylvania

New York

Delaware

United States Court of Federal Claims

USCA, Fifth Circuit

USCA, Fourth Circuit

USDC, Eastern District of Michigan

USDC, District of Delaware

Melissa L. Yeates is a Partner in the Firm's Fiduciary, Consumer Protection, and Antitrust Group. Ms. Yeates' practice is focused on class action litigation with an emphasis on litigating consumer fraud and deceptive trade practices, data breach and privacy, Racketeer Influenced and Corrupt Organizations Act (RICO), and antitrust matters. She also focuses her time on case evaluation and development and is an active member of the Firm's Human Resources Committee. Ms. Yeates received her law degree, Order of the Coif, cum laude, from the University of Pennsylvania Law School and her Bachelor of Arts, Phi Beta Kappa, magna cum laude, from Syracuse University. Prior to joining the firm, Ms. Yeates worked for several large defense firms and clerked for the Honorable Stanley S. Brotman in the District of New Jersey. She is licensed to practice in Pennsylvania, New York, and Delaware.

Ms. Yeates is a mother of four and a seasoned litigator with over two decades of experience litigating in federal courts nationwide. She has played a leading role in Kessler Topaz's successful litigation of claims against numerous corporations accused of defrauding consumers and engaging in anticompetitive conduct, recovering hundreds of millions of dollars on behalf of injured parties. Ms. Yeates has been named a Lawdragon 500 Leading Plaintiff Financial Lawyer for the past five years.

Ms. Yeates serves as Co-Chair of the Local Government and School District Committee in the multidistrict litigation, *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation,* No. 4:22-md-03047 (N.D. Cal.). In this role, she represents local governments and school districts from across the nation seeking to hold the largest social media companies accountable for designing and marketing addictive social media platforms to minors and causing the youth mental health crisis in schools and communities. She also serves as Co-Lead Counsel for the TPP PBM track in the multidistrict litigation, *In re Insulin Pricing Litigation*, No. 2:23-md-03080 (D.N.J.), representing a putative class of third-party payors asserting RICO and Robinson-Patman Act claims against insulin manufacturers and pharmacy benefit managers for engaging in an unlawful kickback scheme to

artificially increase the price for insulin and derive secret profits from rebates and fees.

In addition, Ms. Yeates is class counsel for a class of health and welfare funds that recently won a $185 million judgment against the U.S. government based on the government's wrongful seizure of funds in *Electrical Welfare Trust Fund v. United States*, No. 1:19- cv-00353 (Fed. Cl.). Other recent litigations in which Ms. Yeates served as class and/or settlement counsel have resulted in substantial settlements, including *In re Volkswagen Timing Chain Product Liability Litigation,* No. 2:16-cv-2765 (D.N.J.) ($50 million value); *Seeligson v. Devon Energy Production Company, L.P.*, No. 3:16-cv-00082 (N.D. Tex.) ($28 million); and *In re Zinc Antitrust Litigation,* No. 2:14-cv-3728 (S.D.N.Y.) ($9.8 million). She currently serves on the *Plaintiffs' Steering Committee in Speerly v. General Motors, LLC,* No. 2:19-cv-11044 (E.D. Mich.) and *Battle v. General Motors, LLC,* No. 2:22- cv-10783 (E.D. Mich.). Ms. Yeates also served as class trial counsel in *Cardenas v. Toyota Motor Corporation,* No. 1:18-cv-22798-FAM (S.D. Fla.), one of the rare class actions litigated through jury verdict.

Current Cases

- Netflix, Inc. & Hulu, LLC

CASE CAPTION	*Borough of Longport and Township of Irvington v. Netflix, Inc. and Hulu, LLC*
COURT	United States District Court for the District of New Jersey
CASE NUMBER	21-cv-15303-SRC
JUDGE	Honorable Stanley R. Chesler
PLAINTIFF	Borough of Longport and Township of Irvington
DEFENDANTS	Netflix, Inc. and Hulu, LLC

Kessler Topaz represents two New Jersey municipalities, the Borough of Longport and the Township of New Jersey, in a putative class action against Netflix and Hulu seeking to recover unpaid franchise fees under the Cable Television Act. Under that Act, cable television companies are required to pay New Jersey municipalities a mandatory franchise fee equal to 2% of their subscriptions in the municipality's jurisdiction. As more and more people "cut the cord" and move from traditional cable television subscriptions to streaming services offered by companies like Netflix and Hulu, New Jersey municipalities have been deprived of the franchise fees that they have collected from traditional cable television companies and relied upon for decades.
Plaintiffs filed their Class Action Complaint on August 13, 2021, asking the Court to order that Netflix and Hulu abide by the Cable Television Act and pay what they owe to New Jersey municipalities. On May 20, 2022, after briefing on defendants' motions to dismiss, the District Court held that the Cable Television Act did not confer a private right of action and that only the New Jersey Board of Public Utilities (the "BPU") had the right to assert such claims. Plaintiffs have appealed the District Court's decision to the Third Circuit. The appeal is fully briefed and awaiting a decision.

- The Electrical Welfare Trust Fund, et al. v. United States of America

CASE CAPTION	*The Electrical Welfare Trust Fund, The Operating Engineers Trust Fund of Washington, D.C., and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund v. United States of America*
COURT	United States Court of Federal Claims
CASE NUMBER	19-cv-00353-EMR
JUDGE	Eleni M. Roumel
PLAINTIFFS	The Electrical Welfare Trust Fund, The Operating Engineers Trust Fund of Washington, D.C., and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund
DEFENDANT	United States of America
CLASS PERIOD	N/A

Serving as Lead Counsel in *Electrical Welfare Trust Fund, et al. v. U.S*, this case in the U.S. Court of Federal Claims, sought to recover monies illegally collected from plaintiff and similar health plans through the U.S. Government's interpretation and application of Section 1341 of the ACA. The ACA imposed a reinsurance "Contribution" on group health funds, which was intended to fund reinsurance payments to health insurance issuers during the implementation of the ACA, but did not apply to self-administered plans. The Court denied the Government's motion to dismiss and held that the Government wrongfully interpreted the ACA to include self-administered, self-insured group health plans, including plaintiff, as contributing entities. Thereafter, the primary questions became whether a Class could be certified, whether judgment should be entered in favor of plaintiff and the Class, and the amount of damages. On June 22, 2022, an illegal exaction opt-in Class was certified. We conducted an extensive notice campaign and 357 health plans opted into the class. After extensive discovery, in May 2023, the Court granted plaintiff's motion for summary judgment and entered judgment for the Class, ordering the Government to pay the Class $185.2 million.

Settled

- Devon Energy Production Company, L.P.

CASE CAPTION	*In re Seeligson v. Devon Energy Production Company, L.P.*
COURT	United States District Court for the Northern District of Texas

CASE NUMBER	3:16-cv-00082
JUDGE	Honorable Ed Kinkeade
PLAINTIFFS	Henry Seeligson, John M. Seeligson, Suzanne Seeligson Nash, and Sherri Pilcher
DEFENDANT	Devon Energy Production Company, L.P.
CLASS PERIOD	January 1, 2008 through February 28, 2014

On October 24, 2014, Plaintiffs brought this class action to recover damages for Devon Energy Production Company, L.P.'s ("DEPCO") unlawful calculation and intentional underpayment of millions of dollars in royalties owed to Plaintiffs and other lessors for the extraction of oil and gas from their Texas properties that was moved, gathered, transported and/or processed through the Bridgeport Gas Processing Plant. Specifically, DEPCO breached its duty to market by selling the raw, unprocessed gas to its corporate affiliate, Devon Gas Services, LP ("DGS"), at the wellheads at a price impacted by an unreasonably high processing fee. DEPCO then passed this processing fee on to the royalty owners. As a result, DEPCO imposed hidden fees on Plaintiffs and Class members that were not related to actual or reasonable costs, which were pocketed by its corporate affiliate. In fact, DEPCO imposed artificially inflated fees as high as 17.5% of the price of the gas flowing through the Bridgeport Plant.

The Parties engaged in significant discovery and Plaintiffs moved to certify the action as a class action on June 11, 2015. The Court first granted class certification on May 4, 2016, and DEPCO appealed that decision to the Fifth Circuit. The Fifth Circuit affirmed most of the Court's findings, including, without limitation, that (i) the Class was ascertainable, (ii) all of the class leases imposed the same duty to market on DEPCO, and (iii) Plaintiffs could demonstrate that DEPCO breached its implied duty to market by basing its price on a higher processing fee than the fee that a reasonably prudent operator would have received at the wellhead. Seeligson v. Devon Energy Prod. Co., L.P., 761 F. App'x 329, 334, 336-37 (5th Cir. 2019). But, the Fifth Circuit remanded on a narrow issue related to predominance.

Plaintiffs moved again for class certification on May 7, 2019. On February 11, 2020, after a full-day evidentiary hearing, the Court certified a Class, including all persons or entities who, between January 1, 2008 and February 28, 2014, (i) are or were royalty owners in Texas wells producing natural gas that was processed through the Bridgeport Gas Processing Plant by DGS; (ii) received royalties from DEPCO on such gas; and (iii) had oil and gas leases on the following forms: Producers 88-198(R) Texas Paid-Up (2/93); MEC 198 (Rev. 5/77); Producers 88 (Rev. 10-70 PAS) 310; Producers 88 Revised1-53—(With Pooling Provision); Producers 88 (2-53) With 640 Acres Pooling Provision; Producers 88 (3-54) With 640 Acres Pooling Provision; Producers 88 (4-76) Revised Paid Up with 640 Acres Pooling Provision; Producers 88 (7-69) With 640 Acres Pooling Provision; and Producers 88 (Rev. 3-42) With 40 Acres Pooling Provision (the "Class Lease Forms"). DEPCO again sought leave to appeal the class certification decision, but on May 15, 2020, the Firth Circuit denied DEPCO's request.

Following an October 7, 2020 mediation, the Parties reached an agreement in principle to resolve the matter on a classwide basis, and informed the Court of such in a Joint Mediation Report, filed on October 16, 2020. Under the Settlement, DEPCO was required to pay $28 million into a Settlement Fund

to be distributed among eligible Class Members in accordance with a plan of allocation approved by the Court. On December 30, 2020, Plaintiffs moved for Preliminary Approval, which the Court granted on January 14, 2021. The Court then granted final approval on June 16, 2021. Distribution of Class Notice and payment of Settlement Funds to Class Members took place in 2021.

- Ranbaxy Generic Drug Application Antitrust Litigation

CASE CAPTION	*In re Ranbaxy Generic Drug Application Antitrust Litigation*
COURT	United States District Court for the District of Massachusetts
CASE NUMBER	MDL No. 2878
JUDGE	Honorable Nathaniel M. Gorton
PLAINTIFFS	Meijer, Inc. and Meijer Distribution, Inc.
DEFENDANTS	Ranbaxy Inc., Ranbaxy Laboratories LTD., Ranbaxy USA, Inc. and Sun Pharmaceutical Industries, LTD.

KTMC was counsel for direct purchasers alleging that generic drug manufacturer, Ranbaxy, Inc., violated the racketeering laws by recklessly submitting grossly inadequate generic drug applications to the FDA for generic versions of Nexium, Diovan and Valcyte; and intentionally deceiving the FDA into granting tentative approval to secure statutory exclusivities for each application. These improperly obtained approvals gave Ranbaxy the power to exclude other generic manufacturers' versions of these drugs while its own applications floundered. Had Ranbaxy not made blatant misrepresentations to the FDA, the FDA would not have granted Ranbaxy the tentative approvals and resulting exclusivities, and other companies would have entered the market with generic versions of each drug several years earlier. As a result of Ranbaxy's unlawful conduct, purchasers paid significantly higher prices for these drugs than they otherwise would have. After several years of hard-fought litigation, Judge Nathaniel M. Gorton certified three separate classes of direct purchasers of each drug and denied Ranbaxy's motion for summary judgment. On the eve of trial, Plaintiffs negotiated a $340 million settlement on behalf of the three classes of direct purchasers.

- Zetia Antitrust Litigation

CASE CAPTION	*In re Zetia Antitrust Litigation*
COURT	United States District Court for the Eastern District of Virginia
CASE NUMBER	18-md-2836
JUDGE	Honorable Rebecca Beach Smith

PLAINTIFFS	Direct Purchasers
DEFENDANTS	Merck & Co., Inc., Merck Sharp & Dohme Corp., Schering-Plough Corp., Schering Corp., MSP Singapore Co., LLC, Glenmark Pharmaceuticals LTD., and Glenmark Generics, Inc.

KTMC was counsel for direct purchasers alleging that brand company Merck & Co., and generic company Glenmark Pharmaceuticals, entered into an anticompetitive pay-for-delay agreement over the drug Zetia ("ezetimibe"). Following Glenmark's submission of its application to the FDA for approval of a generic version of Zetia, Merck sued Glenmark alleging it had infringed Merck's patents covering Zetia. Glenmark was the first generic company to seek FDA approval and had secured the right to a 180-day period without competition from other generic companies. Merck however had the right to launch its own generic version of Zetia (an "authorized generic") during the 180-day period of Glenmark's exclusivity. In order to resolve its patent infringement case against Glenmark, Merck entered into an unlawful reverse payment settlement with Glenmark in 2010 to delay generic entry until 2016. In exchange for this significant delay, Merck agreed not to launch an authorized generic to compete with Glenmark's generic Zetia during the first 180 days Glenmark's product was on the market. The direct purchasers paid significantly higher prices as a result of delayed generic entry and the absence of competition from an authorized generic.

During several years of litigation, direct purchasers achieved a number of significant victories leading up to trial. For example, Judge Rebecca Beach Smith granted the purchasers' motion for summary judgment as to market power and held that "Simply put, on this record, no reasonable juror could remain faithful to controlling precedent and cast the relevant market as broadly as Defendants suggest. Stretching the ambit to include non-ezetimibe drugs would blunt the procompetitive purpose of antitrust law and render the market power analysis inconsequential." In addition, the Court denied Defendants' motion for summary judgment finding there were disputes of material fact about on several key issues in the case.

On the eve of jury selection, a global settlement for all plaintiff groups (including the indirect purchaser class and several large retailers) of over $600 million was negotiated.

- Zinc Antitrust Litigation

CASE CAPTION	*In re Zinc Antitrust Litigation*
COURT	United States District Court for the Southern District of New York
CASE NUMBER	14-cv-3728-PAE
JUDGE	Honorable Paul A. Engelmayer
PLAINTIFFS	Oklahoma Steel and Wire Co., Inc.; Iowa Steel and Wire Co.; Southwestern Wire, Inc.; and Jasper Materials, Inc.

DEFENDANTS	Glencore Ltd. and Access World LLC (f/k/a Pacorini Metals USA, LLC)
CLASS PERIOD	September 14, 2010 through February 11, 2016

In *In re Zinc Antitrust Litigation*, Plaintiffs alleged that after Glencore—one of the worlds' largest multinational trading houses—acquired Access World, they engaged in a scheme to monopolize the market for Special High-Grade Zinc and artificially raised the price of physical zinc and related zinc premiums in the United States. Plaintiffs further alleged that Glencore and Access World engaged in anticompetitive conduct to carry out the monopolization scheme, including: (i) manipulating rules set by the London Metal Exchange—the global hub of metals trading, on which 85% of global exchange traded metals futures, including 90% of zinc, is traded, (ii) shuttling Zinc between warehouses for no reason other than to cause and exacerbate anticompetitive effects; (iii) making incentive arrangements to hoard zinc in warehouses in relatively inconvenient locations; (iv) engaging in shadow warehousing and strategically delisting warehouses to manipulate perceived supply; and (v) falsifying shipping records for zinc that never actually left warehouses. As a result, Plaintiffs paid artificially inflated price premiums. Kessler Topaz's lawsuit was consolidated with others, and on July 24, 2014, and Kessler Topaz was appointed as interim co-lead counsel on behalf of a class of direct purchasers of zinc. After successfully overcoming Defendants' motion to dismiss in January 2016, Plaintiffs filed a second amended complaint in February 2016. Defendants then filed a motion for judgment on the pleadings. During this time, the parties were also engaged in substantial discovery. Based on information learned from documents produced by Defendants during discovery, plaintiffs sought leave to file a third amended complaint, which was filed in January 2020. The parties engaged in settlement negotiations over the course of several months, agreeing to resolve the case for a $9,850,000 to be distributed to direct purchasers of zinc. On February 16, 2022, Judge Paul A. Engelmayer approved the settlement agreement, providing an excellent recovery for Plaintiffs and the class they were appointed to represent.

News

- March 31, 2022 - Kessler Topaz is Proud to Recognize and Honor Women's History Month by Profiling our Female Partners and Recognizing the Amazing Work They Do | Melissa Troutner, Partner
- February 23, 2022 - New York Federal Court Approves Settlement in Zinc Market Manipulation Antitrust Case

Awards/Rankings

- Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019-2021
- Law Clerk for The Honorable Stanley S. Brotman, United States District Court for the District of New Jersey

Memberships

- American Bar Association
- Delaware Bar Association

Community Involvement

Melissa has a strong commitment to pro bono work and has volunteered for the Office of the Child Advocate, Philadelphia Reads and Delaware Volunteer Legal Services. She is an active supporter of the Make-A-Wish Foundation and Story Changers, an organization which helps African children receive an education, daily meals, medical aid and emotional support.