



## ANTITRUST

### Fairness For All

Competitive markets are at the heart of the United States economy. Kessler Topaz helps ensure competition against those who would curtail choices, control prices or otherwise interfere with fair markets by representing consumers and businesses who have been harmed by price fixing, monopoly abuse and other violations of federal and state antitrust laws.

Kessler Topaz has done pioneering work in the highly specialized field of pharmaceutical antitrust litigation where we have helped recover over a billion dollars in settlements for our clients from some of the largest pharmaceutical companies in the world as a result of alleged anticompetitive and unlawful conduct involving reverse payment and generic suppression schemes.

For example, Kessler Topaz was appointed co-lead counsel on behalf of a class of direct purchasers in *In re Loestrin 24 Fe Antitrust Litig.*, MDL No. 2472 (D.R.I.) challenging the alleged unlawful delayed entry of generic versions of Loestrin 24, Minastrin 24 Fe and Lo Loestrin Fe into the marketplace. After several years of hard-fought litigation, the case settled for \$120 million on the eve of jury selection. In approving the proposed settlement, Judge William E. Smith, District Court of Rhode Island, praised the work of counsel in achieving the result.

The degree to which you all litigated the case is – you know, I can't imagine attorneys litigating a case more rigorously than you all did in this case. It seems like every conceivable, legitimate, substantive dispute that could have been fought over was fought over to the max. So you, both sides, I think litigated the case as vigorously as any group of attorneys could. The level of representation of all parties in terms of the sophistication of counsel, was in my view, of the highest levels.

Among the Firm's additional successes for its clients in this arena is *In re Flonase Antitrust Litig.*, 2:08-cv-03149 (E.D.Pa.) where Kessler Topaz was appointed co-lead counsel on behalf of a class of direct purchasers of the blockbuster drug Flonase. Plaintiffs alleged that GlaxoSmithKline submitted a series of sham citizen petitions to the United States Food and Drug Administration to purposefully delay the approval and entry of generic versions of Flonase into the market, which resulted in a \$150 million

settlement. GSK's alleged unlawful abuse of the citizen petition process allowed it to unlawfully maintain monopoly profits and inflict millions of dollars in overcharges on direct purchasers.

The Firm's experience and ability to pursue novel legal theories was on display in *In re Ranbaxy Generic Drug Application Antitrust Litig.*, MDL No. 2878 (D.Mass.). KTMC was counsel for three distinct classes of direct purchasers alleging that generic drug manufacturer, Ranbaxy, Inc. 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 from the market while its own applications languished. As a result, purchasers paid significantly higher prices for these drugs. On the eve of trial, Plaintiffs negotiated a \$340 million settlement on behalf of the three classes of direct purchasers.

More recently, 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 concerning the drug Zetia. In order to resolve its patent infringement case against Glenmark, Merck entered into an unlawful reverse payment settlement significantly delaying the entry of generic versions of Zetia and, as a result, direct purchasers paid significantly higher prices. During several years of litigation, a number of significant victories were achieved leading up to trial. And 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.

Kessler Topaz will continue to pursue pharmaceutical companies for anticompetitive conduct as the payment for the skyrocketing cost of prescription drugs in America has become economically untenable for consumers, payors and other purchasers.

KTMC's success in *In re Zinc Antitrust Litig.*, 14-cv-3728 (S.D.N.Y.) is illustrative of the Firm's dedication, skill and experience in the complicated area of antitrust. There, KTMC was appointed interim co-lead counsel on behalf of direct purchasers of zinc. Plaintiffs alleged that after Glencore—one of the world's largest multinational trading houses—acquired Access World, they engaged in a multi-faceted, sophisticated scheme to monopolize the market for Special High-Grade Zinc artificially raising the price of physical zinc and related zinc premiums in the United States. A settlement was ultimately negotiated for \$9.85 million providing a significant recovery for the class.