



## DARREN J. CHECK

### FOCUS AREAS

Securities Fraud  
 Global  
 Shareholder  
 Litigation  
 Direct & Opt-Out  
 Fiduciary  
 Arbitration  
 SecuritiesTracker™  
 Corporate  
 Governance &  
 M+A  
 Healthcare Impact  
 & Consumer  
 Protection  
 Whistleblower  
 Banking &  
 Financial Services  
 Antitrust

### EDUCATION

Franklin &  
 Marshall College

Darren J. Check, a Partner of the Firm, manages Kessler Topaz's portfolio monitoring & claims filing services using *SecuritiesTracker*, and works closely with the Firm's litigators and new matter development department. He regularly consults with institutional investors from around the world with regard to implementing systems to identify, analyze, and monetize claims they have in shareholder litigation.

In addition, Darren assists Firm clients in evaluating opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration as well as actions in an increasing number of jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions (opt-outs), non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years Darren has become a trusted advisor to hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds, central banks, and pension funds throughout North America, Europe, Asia, Australia, and the Middle East.

Darren regularly speaks on the subjects of shareholder litigation, corporate governance, investor action and recovery of investment losses at conferences around the world. He has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Germany, France, Japan, and Australia.

Darren received his law degree from Temple University School of Law and is a graduate of Franklin & Marshall College. He is admitted to practice in numerous state and federal courts across the United States.

### Current Cases

- Banco Espirito Santo (Portugal)

The Firm is representing and funding a group of institutional investors who hold senior Banco Espirito Santo bonds in a recently filed action against the Bank of Portugal. The action is an administrative

B.A. 1996

Temple University  
Beasley School of  
Law

J.D. 2000

## ADMISSIONS

Pennsylvania

New Jersey

New York

United States  
Supreme Court

USDC, Eastern  
District of  
Pennsylvania

USDC, District of  
New Jersey

USDC, District of  
Colorado

USDC, Eastern  
District of  
Wisconsin

challenge against the Bank of Portugal's December 29, 2015 decision to re-transfer certain senior notes from Novo Banco S.A. back to the now defunct Banco Espírito Santo. When Banco Espírito Santo collapsed in August of 2014, the Bank of Portugal created a new bank, Novo Banco, and transferred all assets and some bonds to Novo Banco. On December 29, 2015, the Bank of Portugal decided to retransfer €2 billion worth of bonds from Novo Banco (which has assets) back to Banco Espírito Santo (which has no assets and is currently in bankruptcy proceedings). The result is that bondholders lost at least 90% of the value of their bonds. This case is ongoing.

- BHP Billiton Limited (Australia)

The Firm is representing and funding a number of institutional investors in securities litigation in Australia against BHP Billiton Limited ("BHP") and certain of its executives. BHP is an Australian-headquartered multinational company that serves as the world's largest diversified mining and mineral resources company. The case against BHP alleges that BHP knew or should have known as early as 2013 that there was a significant risk that its Fundão mining waste dam at the Germano iron ore mine in Brazil would collapse (which it ultimately did on November 5, 2015 and caused a toxic mudslide that swept away a village, killed 19 people, and caused permanent environmental damage). The Firm, its partners and its Australian law firm filed proceedings on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered the Firm's group to serve as co-lead in the case.

- Deutsche Postbank (Germany)

The Firm is representing and funding a number of institutional investors in securities litigation in Germany against Deutsche Bank AG ("Deutsche Bank"). In September 2008, Deutsche Bank entered into an agreement with Deutsche Post to acquire Deutsche Post's majority share (50% +1 of the total outstanding shares) of Deutsche Postbank, one of Germany's largest banks and financial service providers. The case against Deutsche Bank alleges that Deutsche Bank violated German law (which requires that a mandatory tender offer be made once an acquirer crosses a threshold of owning 30% of the company it is seeking to acquire) because it did not issue a public tender offer for shares of Deutsche Postbank until 18 months after Deutsche Bank paid the majority of the purchase price to Deutsche Post. By delaying the tender offer, Deutsche Bank benefitted from market changes that allowed it to make a tender offer significantly lower than the price would have been had it made a timely tender offer. The facts leading to the allegations were discovered during the course of separate appraisal action proceedings brought by the German investor Effecten-Spiegel AG against Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of institutional investors: one on April 3, 2017, and the other on December 15, 2017.

- Mitsubishi Motors Corporation (Japan)

The Firm is representing and funding a number of institutional investors in a securities case in Tokyo against Mitsubishi Motors Corporation. The case against Mitsubishi arises from Mitsubishi's April 2016 revelation that it had falsely reported the fuel consumption of certain models of its vehicles to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and Japanese counsel filed a complaint in Tokyo on behalf of more than 100 institutional investors. The case is ongoing.

- Nissan Motors Corporation (Japan)

The Firm is representing and funding over 100 institutional investors in securities litigation in Japan against Nissan Motors Corporation ("Nissan"). On November 19, 2018, Nissan's former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations of financial misconduct. A subsequent internal investigation at Nissan found not only the financial wrongdoings of Ghosn and other executives, but also a lack of adequate internal checks and balances and other effective corporate governance measures at Nissan over a period of many years. The case against Nissan alleges that misconduct and lack of adequate internal controls also resulted in the Company violating Japanese securities and tort laws and causing damage to the Company's investors. On June 22, 2020, the Firm and its local Japanese lawyers filed the first wave of

complaint and submitted demand letters to the Company on behalf of investors.

- Petrobras (Petróleo Brasileiro S.A.) (Brazil)

Kessler Topaz and its partners are representing and funding nearly 100 institutional investors in an arbitration against Petrobras before the Market Arbitration Chamber of Brazil. The arbitration stems from the largest corruption scandal in Brazilian history in which an investigation (dubbed “Operation Car Wash”) revealed that former executives of Petrobras, the Brazilian state-run energy company, had falsely inflated the value of certain projects for their own profit and to pay bribes and kickbacks to politicians. The arbitration is ongoing.

- Toshiba Corporation (Japan)

The Firm is representing and funding a number of institutional investors in securities litigation in Tokyo, Japan against Toshiba Corporation. The case against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding a discovery of accounting irregularities that ultimately led to a ¥38 billion net loss for FY 2014/2015 and a revision of its pre-tax profit figures dating back to 2008. The Firm, its partners, and Japanese counsel filed a complaint on behalf of a large group of investors in late March of 2017. The case is ongoing.

- Vivendi Universal, S.A. (France)

The Firm is representing and funding a number of institutional investors in a direct action in Paris, France against Vivendi Universal, S.A. and Jean-Marie Messier (Vivendi’s former CEO) arising from the facts that underlie the securities class action *In re Vivendi Universal Securities Litigation* in the Southern District of New York. We represent investors who purchased Vivendi’s securities on the Paris Bourse and whose claims were excluded from the U.S. litigation due to the Supreme Court’s decision in *Morrison*. A trial has recently concluded and we await a ruling from the Court.

- Volkswagen AG (Germany)

Kessler Topaz is currently representing and funding a group of over 500 institutional investors in securities litigation in Germany against Volkswagen and Porsche concerning Volkswagen’s “dieselgate” emission scandal that caused substantial monetary damages to Volkswagen and Porsche shareholders. The Firm, its partners, and German counsel filed three separate group complaints between March 2016 and May 2016 alleging a total of approximately €5 billion in damages. Altogether the Firm’s group is the largest group of investors pursuing action against Volkswagen and the claims represent more than 50% of the total claims filed in Germany against Volkswagen. The proceedings in Germany are being adjudicated via the German model case proceeding system (or “KapMuG”) and the court appointed Deka Investments, one of the plaintiffs in our group of over 500 investors, to serve as the model plaintiff. The court will utilize the KapMuG model case proceedings in order to make a determination on common issues of law and fact that apply to all investors who filed suit against Volkswagen. The parties are currently exchanging briefing and oral hearings are ongoing.

### Settled

- Fortis Bank

In a case arising out of the subprime mortgage crisis, Kessler Topaz, on behalf of a number of large institutional investors, sued Fortis Bank, N.V. (Fortis) and its successor companies BNP Paribas and Ageas NL for fraud in connection with the company’s failed 2007 attempt to acquire Dutch bank ABN Amro Holding NV (ABN Amro). Our lawsuit alleged that Fortis misrepresented the value of its collateralized debt obligations, its exposure to subprime-related mortgage-backed securities, and the extent to which the decision to acquire ABN Amro jeopardized its solvency. After the acquisition, Fortis encountered financial difficulties and broke up in the fall of 2008. Its investors lost as much as 90% of the value of their investments. Our lawsuit survived rigorous jurisdictional challenges in the

Netherlands Court of Appeals, and proceedings on the merits were pending when we were able to successfully negotiate a \$1. billion multiparty settlement (including other plaintiff groups in the Netherlands and Belgium). The settlement was the largest settlement in Europe to date. Because of the Dutch procedural mechanism for collective settlements (known as the “WCAM”), all investors, including also those who had not participated in lawsuits against the company, were eligible to file claims for a portion of the settlement proceedings. However, Kessler Topaz’s clients and other investors who had directly pursued litigation against the company and driven the settlement negotiations received settlement payouts more than a year before other eligible Fortis investors.

- Kraft Heinz Company  
**Case Caption:** *In re Kraft Heinz Sec. Litig.*  
**Case Number:** 1:19-cv-01339  
**Court:** Northern District of Illinois  
**Judge:** Honorable Jorge L. Alonso  
**Plaintiffs:** Sjunde AP-Fonden, Union Asset Management Holding AG, Booker Enterprises Pty Ltd.  
**Defendants:** The Kraft Heinz Company, Bernardo Hees, Paulo Basilio, David Knopf, Alexandre Beaudouin, George Zoghbi, Rafael Oliveira, 3G Capital Partners, 3G Capital, Inc., 3G Global Food Holdings, L.P., 3G Global Food Holdings GP LP, 3G Capital Partners LP, 3G Capital Partners II LP, and 3G Capital Partners Ltd

**Overview:** In January 2023, the parties agreed to resolve this securities fraud class action in its entirety for \$450 million.

The case arose out of Defendants’ misstatements regarding the Company’s financial position, including the carrying value of Kraft Heinz’s assets, the sustainability of the Company’s margins, and the success of its recent cost-cutting strategies by Kraft Heinz.

Kraft Heinz is one of the world’s largest food and beverage manufacturer and produces well-known brands including Kraft, Heinz, Oscar Mayer, Jell-O, Maxwell House, and Velveeta. The Company was formed as a result of the 2015 merger between Kraft Foods Group, Inc. and H.J. Heinz Holding Corporation. That merger was orchestrated by the private equity firm 3G Capital (“3G”) and Berkshire Hathaway with the intent of wringing out excess costs from the legacy companies. 3G is particularly well-known for its strategy of buying mature companies with relatively slower growth and then cutting costs using “zero-based budgeting,” in which the budget for every expenditure begins at \$0 with increases being justified during every period.

Plaintiffs alleged that Kraft misrepresented the carrying value of its assets, sustainability of its margins, and the success of the Company’s cost-cutting strategy in the wake of the 2015 merger. During the time that Kraft was making these misrepresentations and artificially inflating its stock price, Kraft’s private equity sponsor, 3G Capital, sold \$1.2 billion worth of Kraft stock.

On February 21, 2019, Kraft announced that it was forced to take a goodwill charge of \$15.4 billion to write down the value of the Kraft and Oscar Mayer brands—one of the largest goodwill impairment charges ever taken by any company since the financial crisis. In connection with the charge, Kraft also announced that it would cut its dividend by 36% and incur a \$12.6 billion loss for the fourth quarter of 2018. That loss was driven not only by Kraft’s write-down, but also by plunging margins and lower pricing throughout Kraft’s core business. In response, analysts immediately criticized the Company for concealing and “push[ing] forward” the “bad news” and characterized the Company’s industry-leading margins as a “façade.” Heightening investor concerns, Kraft also revealed that it received a subpoena from the U.S. Securities and Exchange Commission in the same quarter it determined to take this write-down and was conducting an internal investigation relating to the Company’s side-agreements with vendors in its procurement division. Because of this subpoena and internal investigation, Kraft was also forced to take a separate \$25 million charge relating to its accounting practices. Plaintiffs alleged that because of the Company’s misrepresentations, the price of Kraft’s shares traded at artificially-inflated levels during the Class Period.

- Olympus Corporation  
 Obtained an 11 billion yen (\$92 million) settlement in an action filed in Japan over an accounting scandal—one of the largest securities-fraud recoveries ever in that country, if not the largest. In 2011, former Olympus CEO and whistleblower Michael Woodford revealed that Olympus had lost more than \$1 billion in losses through a series of sham transactions, many of which involved “prohibitive” exorbitant fees for financial advice. Olympus was forced to restate five years of earnings, and three of its executives pled guilty to the fraud. We represented defrauded shareholders in proceedings in Japan alleging that Olympus and its officers had violated their duties under Japanese Company Law. Following a two-day mediation, we reached a settlement agreement for 11 billion yen.
- Royal Bank of Scotland  
 Recovered £267 million on behalf of a group of institutional investors who participated in the Group Litigation Order (GLO) proceedings against the Royal Bank of Scotland (RBS). The entire GLO settlement was approximately £900 million. At the time it was resolved, the settlement of the GLO was the largest securities settlement in UK history.  
 Working with UK counsel, we represented a group of institutional investors in a UK case alleging that RBS misled investors about its exposure to subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with a £13 billion Rights Offering that was completed in June 2008. Just months later, in September 2008, RBS failed and had to be bailed out by the UK government. Investors who purchased shares in the Rights Offering lost nearly 90 percent of the value of that investment. Our clients, and investors who were part of other investors groups with which we worked closely, lost billions in connection with the Rights Offering purchases and subsequent RBS collapse. RBS’s write-downs and reported full-year net loss for 2008, represented the largest loss for a UK-based company and the largest for any commercial bank in the world. After the initial September 2008 bailout, the UK government bailed out RBS on two subsequent occasions, becoming an 82% shareholder of the company.
- Royal Dutch Shell  
 On behalf of investors in European-based shares of Royal Dutch Shell, recovered more than \$350 million in a class settlement of claims related to the company’s announced re-categorizations and restatement of certain oil and gas reserves.  
 The settlement was the first of its kind under Dutch law and arguably began the trend of bringing securities class actions in numerous jurisdictions around the globe.
- Southern Peru Copper Corp.  
**Case Caption:** *In re Southern Peru Copper Corporation Shareholder Derivative Litigation*  
**Case Number:** C.A. No. 961-CS  
**Court:** Delaware Court of Chancery  
**Judge:** Honorable Leo E. Strine  
**Plaintiffs:** Michael Theriault, as trustee of and for the Theriault Trust  
**Defendants:** Americas Mining Corporation, German Larrea Mota-Velasco, Genaro Larrea Mota-Velasco, Oscar Gonzalez Rocha, Emilio Carillo Gamboa, Jaime Fernando Collazo Gonzalez, Xavier Garcia de los Angeles Quevedo Topete, Armando Ortega Gomez, Juan Rebolledo Gout, Southern Peru Copper Corporation

**Overview:** KTMC brought derivative claims on behalf of stockholders of Southern Peru, alleging that Southern Peru’s majority stockholder Grupo Mexico had caused Southern Peru to purchase mining assets from Grupo Mexico for an inflated price. Grupo Mexico sold these mining assets to Southern Peru in exchange for \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder’s interests. The case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and interest. Grupo was forced to pay

amount back to Southern Peru to remedy the overpayment. The Delaware Supreme Court affirmed the appeal. The judgment is believed to be the largest trial verdict in Delaware corporate law history.

### News

- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2021
- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The Intelligence
- February 9, 2017 - Kessler Topaz Partner Darren Check Discusses International Litigation Trends at PLUS Panel
- January 3, 2017 - Kessler Topaz Again Named One of America's Leading Litigation Firms by Benchmark Litigation
- March 15, 2016 - Global Institutional Investor Group Files Large-Scale German Securities Suit against Volkswagen AG over Diesel Emissions Scandal
- Kessler Topaz Secures a \$150 Million Recovery for Shareholders in JPMorgan Chase & Co. Securities Class Action

### Speaking Engagements

Darren is a regular speaker at investor conferences around the world and has spoken at conferences including NCPERS, Cii, International Corporate Governance Network, International Foundation, National Association of Public Pension Attorneys, and the National Association of State Treasurers. In addition, Darren is a regular speaker and moderator at the Firm's annual conferences, the Rights & Responsibilities of Institutional Investors in Amsterdam and the Evolving Fiduciary Obligations of Institutional Investors in Washington, D.C./Tempe, AZ.

### Publications

"Getting Serious About ESG," *International Foundation of Employee Benefit Plans Benefits Magazine* (April 2011)

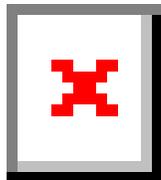
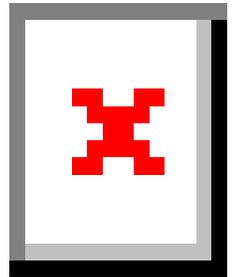
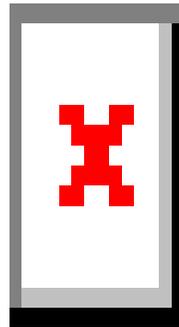
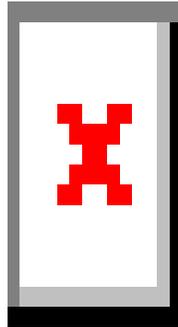
"Living in a Post-Morrison World: How to Protect Your Assets Against Securities Fraud," *National Association of Public Pension Attorneys Working Group* (June 2012)

"Filing Proofs of Claim: Recovering Money Rightly Owed to Pensioners," *International Foundation of Employee Benefit Plans Benefits Magazine* (February 2011)

### Awards/Rankings

- Benchmark Litigation Star, 2019-2025
- Lawdragon 500 Leading Global Plaintiff Lawyers, 2024-2026

- Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019-2024
- The Legal 500's Leading Lawyers, 2019-2025



### Memberships

- Council of Institutional Investors – Market Advisory Committee
- National Conference on Public Employee Retirement Systems (NCPERS)
- Pennsylvania Association of Public Employee Retirement Systems – Advisory Committee Member
- National Association of Public Pension Attorneys
- American Bar Association

### Community Involvement

For over 10 years Darren has been very involved in the American Cancer Society's Bike-A-Thon which place every year from Philadelphia to the Jersey Shore. Darren has personally raised significant amount of money for the event and for the past several years has captained Team KTMC which has been the top fundraising team for nearly a decade.