



## Darren J. CHECK

### FOCUS AREAS

Securities Fraud

Global

Shareholder

Litigation

Direct & Opt-Out

Fiduciary

Arbitration

SecuritiesTracker™

Corporate

Governance &

M+A

Consumer

Protection

Whistleblower

Banking &

Financial Services

Antitrust

### EDUCATION

Franklin &

Marshall College

B.A. 1996

Darren J. Check, a Partner of the Firm, manages Kessler Topaz's portfolio monitoring & claims filing systems. He manages the Firm's litigators and new matter development department. He consults with institutional investors from around the world to best 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. This includes U.S. based litigation and arbitration, as well as actions in an increasing number of jurisdictions. In an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional shareholder litigation, opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years, Mr. Check has represented investors in hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds and pension funds in North America, Europe, Asia, Australia, and the Middle East.

Darren regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism and shareholder conferences around the world. He has also been actively involved in the precedent setting Shell and Esso shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against Enron, Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous shareholder actions in 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 has litigated 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 issued by the Bank of Portugal. The action is an administrative challenge against the Bank of Portugal's December 2011 decision to retransfer €2 billion worth of bonds from Novo Banco (which has assets) back to Banco Espirito Santo in bankruptcy proceedings. The result is that bondholders lost at least 90% of the value of their bonds.

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

### ▪ BHP Billiton Limited (Australia)

The Firm is representing and funding a number of institutional investors in securities litigation in Australia on behalf of certain of its executives. BHP is an Australian-headquartered, multi-national company that serves as a major iron and steel resources company. The case against BHP alleges that BHP knew or should have known as early as 2004 that a tailing mining waste dam at the Germano iron ore mine in Brazil would collapse (which it ultimately did on January 25, 2010, sweeping away a village, killed 19 people, and caused permanent environmental damage). The Firm, its local Australian counsel, filed proceedings on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered the case.

### ▪ Deutsche Postbank (Germany)

The Firm is representing and funding a number of institutional investors in securities litigation in Germany on behalf of Deutsche Bank (“Bank”). In September 2008, Deutsche Bank entered into an agreement with Deutsche Post to acquire 99% of the total outstanding shares) of Deutsche Postbank, one of Germany’s largest banks and financial services companies. The case alleges that Deutsche Bank violated German law (which requires that a mandatory tender offer be made by an owner owning 30% of the company it is seeking to acquire) because it did not issue a public tender offer for Deutsche Bank paid the majority of the purchase price to Deutsche Post. By delaying the tender offer, Deutsche Bank that allowed it to make a tender offer significantly lower than the price would have been had it made a tender offer. The allegations were discovered during the course of separate appraisal action proceedings brought by the investors in Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of investors in Deutsche Bank 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, Japan. The case against Mitsubishi arises from Mitsubishi’s April 20, 2016 revelation that it had falsely reported the number of vehicles to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and J.P. Morgan on behalf of more than 100 institutional investors. The case is ongoing.

### ▪ Netflix, Inc. & Hulu, LLC

Kessler Topaz represents two New Jersey municipalities, the Borough of Longport and the Township of Longport, and Netflix and Hulu seeking to recover unpaid franchise fees under the Cable Television Act. Under that Act, New Jersey municipalities a mandatory franchise fee equal to 2% of their subscriptions in the municipality. As municipalities move “the cord” and move from traditional cable television subscriptions to streaming services offered by companies like Netflix and Hulu, municipalities have been deprived of the franchise fees that they have collected from traditional cable television for decades.

Plaintiffs filed their Class Action Complaint on August 13, 2021, asking the Court to order that Netflix and Hulu pay what they owe to New Jersey municipalities. On May 20, 2022, after briefing on defendants’ motions to dismiss, the 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 could bring such claims. Plaintiffs have appealed the District Court’s decision to the Third Circuit. The appeal is fully briefed.

### ▪ Nissan Motors Corporation (Japan)

The Firm is representing and funding over 100 institutional investors in securities litigation in Japan on behalf of the Company’s investors. On November 19, 2018, Nissan’s former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations that an internal investigation at Nissan found not only the financial wrongdoings of Ghosn and other executives but also a lack of adequate internal measures also resulted in the Company violating Japanese securities laws. The Company’s investors. On June 22, 2020, the Firm and its local Japanese lawyers filed the first wave of complaints.

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 before the Arbitration Chamber of Brazil. The arbitration stems from the largest corruption scandal in Brazilian history (“Operation Car Wash”) revealed that former executives of Petrobras, the Brazilian state-run energy company, entered into 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 against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding its financial results 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 2011. Japanese counsel filed a complaint on behalf of a large group of investors in late March of 2017. The litigation 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 Messier (Vivendi’s former CEO) arising from the facts tried in the securities class action *In re Vivendi Universal* in the Southern District of New York. We represent investors who purchased Vivendi’s securities on the Paris Bourse and who were adversely affected due to the Supreme Court’s decision in *Morrison*. A trial has recently concluded and we await a ruling.

- Volkswagen AG (Germany)

Kessler Topaz is currently representing and funding a group of over 500 institutional investors in securities litigation against Volkswagen and Porsche concerning Volkswagen’s “dieselgate” emissions scandal that caused substantial monetary losses to shareholders. The Firm, its partners, and German counsel filed three separate group complaints before the German courts for approximately €5 billion in damages. Altogether the Firm’s group is the largest group of investors pursuing claims against Volkswagen. The proceedings are being conducted under the German model case proceeding system (or “KapMuG”) and the court appointed Deka Investments, one of the plaintiffs, to serve as the model plaintiff. The court will utilize the KapMuG model case proceedings in order to determine the facts that apply to all investors who filed suit against Volkswagen. The parties are currently exchanging information.

## Settled

- Fortis Bank

In a case arising out of the subprime mortgage crisis, Kessler Topaz, on behalf of a number of large institutional investors (Fortis) and its successor companies BNP Paribas and Ageas NL for fraud in connection with the acquisition of the bank ABN Amro Holding NV (ABN Amro). Our lawsuit alleged that Fortis misrepresented the value of its investments in subprime-related mortgage-backed securities, and the extent to which the decision to acquire ABN Amro failed, Fortis encountered financial difficulties and broke up in the fall of 2008. Its investors sought recovery of their investments. Our lawsuit survived rigorous jurisdictional challenges in the Netherlands Court of Appeal and was pending when we were able to successfully negotiate a \$1.1 billion multiparty settlement (including Fortis and its successor companies in Belgium). The settlement was the largest settlement in Europe to date. Because of the Dutch procedure (known as the “WCAM”), all investors, including also those who had not participated in lawsuits against Fortis, were a portion of the settlement proceedings. However, Kessler Topaz’s clients and other investors who were not part of the company and driven the settlement negotiations received settlement payouts more than a year later.

- 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 B... Partners, 3G Capital, Inc., 3G Global Food Holdings, L.P., 3G Global Food Holdings GP LP, 3G Capital Partners Ltd

**Overview:** In January 2023, the parties agreed to resolve this securities fraud class action in its entirety. The case arose out of Defendants' misstatements regarding the Company's financial position, including sustainability of the Company's margins, and the success of 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 like Maxwell House, and Velveeta. The Company was formed as the result of the 2015 merger between Kraft Foods Corporation. That merger was orchestrated by the private equity firm 3G Capital ("3G") and Berkshire Hathaway to cut excess costs from the legacy companies. 3G is particularly well-known for its strategy of buying mature companies and then cutting costs using "zero-based budgeting," in which the budget for every expenditure begins at zero each period.

Plaintiffs alleged that Kraft misrepresented the carrying value of its assets, sustainability of its margin strategy in the wake of the 2015 merger. During the time that Kraft was making these misrepresentations, 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 its brands—one of the largest goodwill impairment charges taken by any company since the financial crisis. Kraft also announced that it would cut its dividend by 36% and incur a \$12.6 billion loss for the fourth quarter of 2019, not only by write-down, but also by plunging margins and lower pricing throughout Kraft's core business. In response to the write-down for concealing and "push[ing] forward" the "bad news" and characterized the Company's industry-leading strategy as "heightening investor concerns," Kraft also revealed that it received a subpoena from the U.S. Securities and Exchange Commission to determine if it determined to take this write-down and was conducting an internal investigation relating to the Company's procurement division. Because of this subpoena and internal investigation, Kraft was also forced to disclose its accounting practices. Plaintiffs alleged that because of the Company's misrepresentations, the price of Kraft stock during the Class Period.

- **Olympus Corporation**  
Obtained an 11 billion yen (\$92 million) settlement in an action filed in Japan over an accounting scandal, the largest recoveries ever in that country, if not the largest.  
In 2011, former Olympus CEO and whistleblower Michael Woodford revealed that Olympus had inflated its earnings, and three of its executives pled guilty to the fraud. We represented defrauded shareholders and its officers had violated their duties under Japanese Company Law. Following a two-day mediation, we recovered 11 billion yen.
- **Royal Bank of Scotland**  
Recovered £267 million on behalf of a group of institutional investors who participated in the Greenbridge Structured Finance (GFS) transaction with the Royal Bank of Scotland (RBS). The entire GFS settled for approximately £900 million. At the time, it 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 inflated the value of its subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with the Greenbridge Structured Finance (GFS) transaction completed in June 2008. Just months later, in September 2008, RBS failed and had to be bailed out by the UK government. Shares in the Rights Offering lost nearly 90 percent of the value of that investment. Our clients, a group of institutional investors with which we worked closely, lost billions in connection with the Rights Offering purchases and reported full-year net loss for 2008, represented the largest loss ever for a UK-based company in the world. After the initial September 2008 bailout, the UK government bailed out RBS on two subsequent occasions, but the company.
- **Royal Dutch Shell**  
On behalf of investors in European-based shares of Royal Dutch Shell, recovered more than \$350 million in connection with the company's announced re-categorizations and/or 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 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-Velazco, Jaime Fernando Collazo Gonzalez, Xavier Garcia de Quevedo Topete, Armando Ortega Corporation

**Overview:** KTMC brought derivative claims on behalf of stockholders of Southern Peru, alleging that Grupo Mexico had caused Southern Peru to purchase mining assets from Grupo Mexico for an inflated price. Southern Peru in exchange for \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had operated as a private company in deference to its majority shareholder's interests. Discovery in the case spanned years. Grupo Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and to return the stock back to Southern Peru to remedy the overpayment. The Delaware Supreme Court affirmed on appeal. This verdict in Delaware corporate law history.

## News

- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Firms and Attorneys for 2021
- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The National Law Journal
- February 9, 2017 - Kessler Topaz Partner Darren Check Discusses International Litigation Trends at the 2017 International Litigation Conference
- 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 JPMorgan Chase & Co.
- Kessler Topaz Secures a \$150 Million Recovery for Shareholders in JPMorgan Chase & Co. Securities Litigation

## Speaking Engagements

Darren is a regular speaker at investor conferences around the world and has spoken at conference on topics such as the Governance Network, International Foundation, National Association of Public Pension Attorneys, and more. 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./Temple University.

## Publications

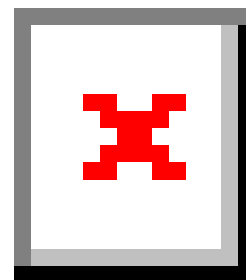
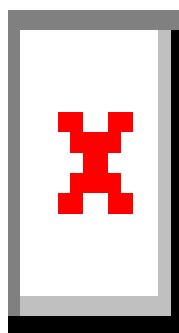
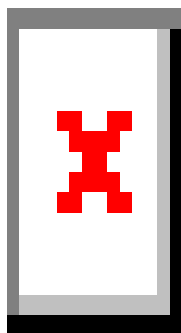
"Getting Serious About ESG," *International Foundation of Employee Benefit Plans Benefits Magazine* (April 2018)

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

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

### Awards/Rankings

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



### 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 runs along the Jersey Shore. Darren has personally raised significant amounts of money for the event and for the p... has been the top fundraising team for nearly a decade.