



## 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 systems. He consults with the Firm's litigators and new matter development department. He consults with institutional investors from around the world to develop systems 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 international forums. In the increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years, Darren has represented hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds, pension funds, and other institutional investors from North America, Europe, Asia, Australia, and the Middle East.

Darren regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and securities class actions at conferences around the world. He has also been actively involved in the precedent setting Shell and RWE shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against the Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous shareholder actions in the U.S., 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 practiced law 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 bonds issued by the Banco Espirito Santo, S.A. and Novo Banco S.A. in Portugal. The action is an administrative challenge against the Bank of Portugal's December 2014 decision to accept the transfer of €1.5 billion in bonds from the defunct Banco Espirito Santo back to the now defunct Novo Banco S.A. When Banco Espirito Santo was taken over by the Bank of Portugal, the Bank of Portugal created a new bank, Novo Banco, and transferred all assets and some bonds to Novo Banco. Novo Banco then decided 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.

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

- BHP Billiton Limited (Australia)

The Firm is representing and funding a number of institutional investors in securities litigation in Australia against BHP Billiton Limited, an Australian-headquartered, multi-national company that serves as a mining and energy resources company. The case against BHP alleges that BHP knew or should have known as early as 2012 that a mining waste dam at the Germano iron ore mine in Brazil would collapse (which it ultimately did on November 5, 2015, sweeping away a village, killed 19 people, and caused permanent environmental damage). The Firm, its local counsel, and the investors filed a class action complaint in the Federal Court of Australia on May 1, 2017, and the proceedings on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered the case to trial.

- Deutsche Postbank (Germany)

The Firm is representing and funding a number of institutional investors in securities litigation in Germany against Deutsche Postbank AG ("Deutsche Bank"). In September 2008, Deutsche Bank entered into an agreement with Deutsche Post to acquire 99.9% of the shares (representing 99.9% 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 to all shareholders of a company that is seeking to acquire it) because it did not issue a public tender offer for Deutsche Postbank. Deutsche Bank paid the majority of the purchase price to Deutsche Post. By delaying the tender offer, Deutsche Bank was able to make a tender offer significantly lower than the price would have been had it made a public tender offer. The allegations were discovered during the course of separate appraisal action proceedings brought by the investors against Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of investors in the case 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 against Mitsubishi. The case against Mitsubishi arises from Mitsubishi's April 20, 2016 revelation that it had falsely reported to the Japanese regulators that it had sold its interest in its 50/50 joint venture with Toyota Motor Corporation ("TM") to TM. Mitsubishi had been doing business with TM through the joint venture for years, but had been doing business with TM through its own vehicles to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and J. Check filed a class action complaint 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 Dennis, in a securities case against Netflix and Hulu seeking to recover unpaid franchise fees under the Cable Television Act. Under that law, New Jersey municipalities are required to collect a mandatory franchise fee equal to 2% of their subscriptions in the municipalities. The municipalities are seeking to recover unpaid franchise fees for the period when Netflix and Hulu "cut the cord" and move from traditional cable television subscriptions to streaming services offered by the companies. The municipalities have been deprived of the franchise fees that they have collected from traditional cable television providers for decades.

Plaintiffs filed their Class Action Complaint on August 13, 2021, asking the Court to order that Netflix and Hulu pay the unpaid franchise fees and interest to the 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 and the parties are awaiting a decision.

- Nissan Motors Corporation (Japan)

The Firm is representing and funding over 100 institutional investors in securities litigation in Japan against Nissan. On November 19, 2018, Nissan's former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations of financial wrongdoing. An internal investigation at Nissan found not only the financial wrongdoings of Ghosn and other executives, but also that the Company had violated Japanese securities laws by failing to disclose the financial wrongdoing. The Company's financial statements and other financial disclosures were materially false and misleading. The Company's failure to disclose the financial wrongdoing and lack of adequate internal measures also resulted in the Company violating Japanese securities laws. The Firm, its local Japanese lawyers, and the investors filed a class action complaint on June 22, 2020, and the case is currently in the discovery phase.

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 in 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, engaged in 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 arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding its financials, which ultimately led to a ¥38 billion net loss for FY 2014/2015 and a revision of its pre-tax profit figures dated 2014. The Japanese counsel filed a complaint on behalf of a large group of investors in late March of 2017. The case is pending.

- 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's CEO, Arnaud 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 are seeking damages 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" emissions scandal that caused substantial monetary damages to shareholders. The Firm, its partners, and German counsel filed three separate group complaints before the court, which awarded approximately €5 billion in damages. Altogether the Firm's group is the largest group of investors pursuing claims in Germany. The proceedings are being conducted under the German model case proceeding system (or "KapMuG") and the court appointed Deka Investments, one of the largest German pension funds, to serve as the model plaintiff. The court will utilize the KapMuG model case proceedings in order to make available the legal principles that apply to all investors who filed suit against Volkswagen. The parties are currently exchanging pre-trial briefs.

## 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 sale of subprime-related mortgage-backed securities, and the extent to which the decision to acquire ABN Amro was based on faulty information. The acquisition failed, Fortis encountered financial difficulties and broke up in the fall of 2008. Its investors suffered significant losses. Our lawsuit survived rigorous jurisdictional challenges in the Netherlands Court of Appeals and was pending when we were able to successfully negotiate a \$1.5 billion multiparty settlement (including investors from 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 the company, received a portion of the settlement proceedings. However, Kessler Topaz's clients and other investors who had participated in the settlement negotiations received settlement payouts more than a year earlier than the other 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 Belo, 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 the 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 such as Maxwell House, and Velveeta. The Company was formed as the result of the 2015 merger between Kraft Foods and Heinz. That merger was orchestrated by the private equity firm 3G Capital ("3G") and Berkshire Hathaway. 3G sought to eliminate 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.

Plaintiffs alleged that Kraft misrepresented the carrying value of its assets, sustainability of its margins, and the success of its cost-cutting strategy in the wake of the 2015 merger. During the time that Kraft was making these misrepresentations, 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 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 2018. The write-down was not only the result of Kraft's accounting for concealing and "push[ing] forward" the "bad news" and characterized the Company's industry-leading performance. Heightening investor concerns, Kraft also revealed that it received a subpoena from the U.S. Securities and Exchange Commission (SEC) and 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 take a write-down of its accounting practices. Plaintiffs alleged that because of the Company's misrepresentations, the price of Kraft's stock fell during the Class Period.

- Olympus Corporation  
Obtained an 11 billion yen (\$92 million) settlement in an action filed in Japan over an accounting violation. The settlement was the largest accounting recovery ever in that country, if not the largest.  
In 2011, former Olympus CEO and whistleblower Michael Woodford revealed that Olympus had engaged in a series of sham transactions, many of which involved "paying" exorbitant fees for financial advice. The company's 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, the parties settled for 11 billion yen.
- Royal Bank of Scotland  
Recovered £267 million on behalf of a group of institutional investors who participated in the Global Liquidity Offering (GLO) of Royal Bank of Scotland (RBS). The entire GLO 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 had lied about the value of its subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with the GLO. The case was completed in June 2008. Just months later, in September 2008, RBS failed and had to be bailed out by the UK government. The investors in the Rights Offering lost nearly 90 percent of the value of that investment. Our clients, along with other groups with which we worked closely, lost billions in connection with the Rights Offering purchases. RBS, which had 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.
- Royal Dutch Shell  
On behalf of investors in European-based shares of Royal Dutch Shell, recovered more than \$350 million in damages. 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-Velasco, Gamboa, Jaime Fernando Collazo Gonzalez, Xavier Garcia de Quevedo Topete, Armando Ortega Ortega, Corporation

**Overview:** KTMC brought derivative claims on behalf of stockholders of Southern Peru, alleging that 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 done this as a private company in deference to its majority shareholder's interests. Discovery in the case spanned years. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and return the money back to Southern Peru to remedy the overpayment. The Delaware Supreme Court affirmed on appeal, a 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 on the *Global Litigation Report*
- 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 Deutsche Bahn AG
- 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 Governance Network, International Foundation, National Association of Public Pension Attorneys, and 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.

## Publications

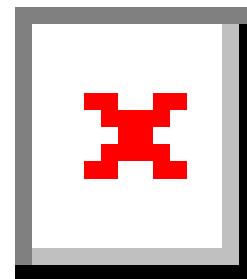
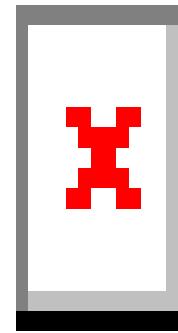
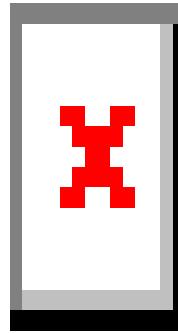
*"Getting Serious About ESG," International Foundation of Employee Benefit Plans Benefits Magazine (April 2021)*

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

"Filing Proofs of Claim: Recovering Money Rightly Owed to Pensioners," *International Foundation of Employee Benefit Plans* (June 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 takes place in Ocean City, NJ on the Jersey Shore. Darren has personally raised significant amounts of money for the event and for the past 10 years he has been the top fundraising team for nearly a decade.