



## Darren J. CHECK

### FOCUS AREAS

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

### EDUCATION

Franklin &  
Marshall College  
B.A. 1996  
Temple University

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 through various methods. This includes U.S. based litigation and arbitration, as well as actions in an increasing number of jurisdictions. In this increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional shareholder 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 bonds from Novo Banco S.A. back to the now defunct Banco Espirito Santo. When Banco Espirito Santo created a new bank, Novo Banco, and transferred all assets and some bonds to Novo Banco, the Bank of Portugal 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.

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 large mining waste dam at the Germano iron ore mine in Brazil would collapse (which it ultimately did on January 25, 2019, sweeping away a village, killed 19 people, and caused permanent environmental damage). The Firm, its local Australian counsel, filed its complaint on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered the Firm to proceed with its 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 Firm alleges that Deutsche Bank violated German law (which requires that a mandatory tender offer be made by a company 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, the Firm alleges that allowed it to make a tender offer significantly lower than the price would have been had it made a public tender offer. Allegations were discovered during the course of separate appraisal action proceedings brought by the Firm on behalf of Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of institutional investors 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 on behalf of institutional investors. The case against Mitsubishi arises from Mitsubishi’s April 20, 2016 revelation that it had falsely reported the number of vehicles sold to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and J. Check filed a 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 Longport, and Netflix and Hulu seeking to recover unpaid franchise fees under the Cable Television Act. Under that Act, the New Jersey municipalities a mandatory franchise fee equal to 2% of their subscriptions in the municipality. The municipalities have been deprived of the franchise fees that they have collected from traditional cable television subscriptions 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 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 institutional investors. On November 19, 2018, Nissan’s former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations of financial fraud. 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 and defrauding the Company’s investors. On June 22, 2020, the Firm and its local Japanese lawyers filed the first wave of complaints on behalf of institutional investors.

Company on behalf of investors.

- Perrigo Co. plc

These seven shareholder opt-out actions stem from drug maker Perrigo's efforts to mislead investors and pharmaceutical rival Mylan in 2015. The plaintiff investment funds allege that Perrigo and its senior company's \$4.5 billion acquisition of Omega Pharma, an over-the-counter healthcare company based in Belgium, to withstand pricing pressure from the influx of competing drugs in the generic drug markets.

In 2018, we filed the first of these actions in the United States District Court for the District of New Jersey. The United States, the United Kingdom, France, and Kuwait. The Honorable Madeline Cox Arleo denied Docket No. 18-cv-01000. The parties concluded discovery in November 2021 and are awaiting summary judgment motion practice.

[Read Charles Schwab v. Perrigo Amended Complaint Here](#)

[Read First Manhattan v. Perrigo Amended Complaint Here](#)

[Read First Manhattan v. Perrigo Motion to Dismiss Opinion Here](#)

[Read Kuwait v. Perrigo Complaint Here](#)

[Read Nationwide v. Perrigo Complaint Here](#)

[Read Nationwide v. Perrigo Motion to Dismiss Opinion Here](#)

[Read Principal v. Perrigo Complaint Here](#)

[Read Aberdeen v. Perrigo Complaint Here](#)

[Read Carmignac Gestion v. Perrigo Complaint Here](#)

[Read Carmignac Gestion v. Perrigo Motion to Dismiss Opinion Here](#)

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

Kessler Topaz and its partners are representing and funding nearly 100 institutional investors in an arbitration proceeding 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, used their positions to advance 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. The litigation against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding its financial performance. The disclosures ultimately led to a ¥38 billion net loss for FY 2014/2015 and a revision of its pre-tax profit figures dating back to FY 2012/2013. 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. The litigation involves Messier (Vivendi's former CEO) arising from the facts tried in 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 who were adversely affected by the decline in value of the securities 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 in Germany and Porsche concerning Volkswagen's "dieselgate" emissions scandal that caused substantial monetary losses to investors and shareholders. The Firm, its partners, and German counsel filed three separate group complaints before the court in September 2015 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 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

## Settled

- Fortis Bank

In a case arising out of the subprime mortgage crisis, Kessler Topaz, on behalf of a number of large investors (Fortis) and its successor companies BNP Paribas and Ageas NL for fraud in connection with the sale 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 acquisition failed, Fortis encountered financial difficulties and broke up in the fall of 2008. Its investors lost 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. billion multiparty settlement (including Fortis and 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 ABN Amro, a portion of the settlement proceedings. However, Kessler Topaz’s clients and other investors who had not participated in 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 Bommelaere, 3G Capital 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 its 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 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 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, its 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, a 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 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 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. Recoveries ever in that country, if not the largest.

In 2011, former Olympus CEO and whistleblower Michael Woodford revealed that Olympus had inflated its

series of sham transactions, many of which involved “paying” exorbitant fees for financial advice, 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 company agreed to pay \$1.5 billion yen.

- **Royal Bank of Scotland**  
Recovered £267 million on behalf of a group of institutional investors who participated in the Greenbridge Securities Litigation (GLO) against the 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 misrepresented the value of its subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with its Rights Offering completed in June 2008. Just months later, in September 2008, RBS failed and had to be bailed out by the UK government. Our clients' 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 purchase. RBS 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, totaling over £100 billion, 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 shareholder litigation 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, Jaime Gamboa, 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 caused Southern Peru to purchase mining assets from Grupo Mexico 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 to return the assets back to Southern Peru to remedy the overpayment. The Delaware Supreme Court affirmed on appeal. This was a landmark verdict in Delaware corporate law history.

## News

- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation

and Attorneys for 2021

- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The
- February 9, 2017 - Kessler Topaz Partner Darren Check Discusses International Litigation Trends
- January 3, 2017 - Kessler Topaz Again Named One of America's Leading Litigation Firms by Bench
- March 15, 2016 - Global Institutional Investor Group Files Large-Scale German Securities Suit aga
- Kessler Topaz Secures a \$150 Million Recovery for Shareholders in JPMorgan Chase & Co. Securiti

### 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 & R Amsterdam and the Evolving Fiduciary Obligations of Institutional Investors in Washington, D.C./Tem

### Publications

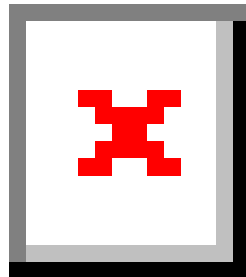
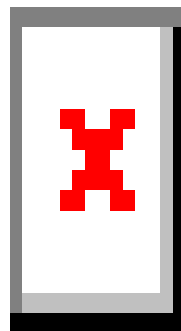
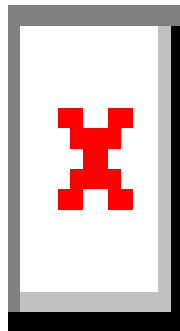
"Getting Serious About ESG," *International Foundation of Employee Benefit Plans Benefits Magazine* (Apr

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

"Filing Proofs of Claim: Recovering Money Rightly Owed to Pensioners," *International Foundation of E* (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.