



J. CHECK

FOCUS AREAS

Securities Fraud

Global

Shareholder
Litigation

Direct & Opt-Out

Arbitration

SecuritiesTracker™

Corporate
Governance &
M+A

Healthcare Impact
& 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 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 an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, 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 Röhm & Haas shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against the Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous shareholder 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 has practiced law in numerous state and federal courts across the United States.

Current Cases

- Banco Espírito Santo (Portugal)

The Firm is representing and funding a group of institutional investors who hold senior bonds issued by Banco Espírito Santo, a bank based 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 Banco Espírito Santo to Novo Banco S.A. back to the now defunct Banco Espírito Santo. When Banco Espírito Santo failed, 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 Espírito 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 against certain of its executives. BHP is an Australian-headquartered, multi-national company that serves as a mining and 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 Australian counsel, filed a complaint on behalf of investors in the case.

- Deutsche Postbank (Germany)

The Firm is representing and funding a number of institutional investors in securities litigation in Germany against Deutsche Postbank ("Deutsche Bank"). In September 2008, Deutsche Bank entered into an agreement with Deutsche Post to acquire 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 investors against Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of investors in the case, the first 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 the value of its vehicles to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and Japanese counsel filed a complaint 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. 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's financial reporting, accounting, and other effective corporate governance measures at Nissan over a period of many years. The lack of transparency and lack of adequate internal measures also resulted in the Company violating Japanese securities laws and regulations. On June 22, 2020, the Firm and its local Japanese lawyers filed the first wave of complaints on behalf of investors against 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 in the Arbitration Chamber of Brazil. The arbitration stems from the largest corruption scandal in Brazilian history, known as "Operation Car Wash" (Operação Lava Jato) which revealed that former executives of Petrobras, the Brazilian state-run energy company, engaged in corruption to secure 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. The case against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding its financial statements, which ultimately led to a ¥38 billion net loss for FY 2014/2015 and a revision of its pre-tax profit figures dated March 2015. The Firm and its local 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 SA (Vivendi) and its former CEO, Arnaud *Messier* (Vivendi's former CEO) arising from the facts tried in the securities class action *In re Vivendi U.S. Securities Litigation* in the United States District Court for 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 class actions 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 in Germany seeking 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 Firm's clients, to serve as the model plaintiff. The court will utilize the KapMuG model case proceedings in order to make available to all investors the same legal rights and defenses 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, filed a securities class action against Fortis NV (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 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 was based on false and misleading 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. billion multiparty settlement (including with investors 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, 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 before the final judgment.

- 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 Bégin, 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 carrying value of its assets, 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 Group, Inc. and Heinz North America, Inc. That merger was orchestrated by the private equity firm 3G Capital ("3G") and Berkshire Hathaway, Inc. 3G removed 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 for each new period.

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 brands—one of the largest goodwill impairment charges taken by any company since the financial crisis. Kraft announced that it would cut its dividend by 36% and incur a \$12.6 billion loss for the fourth quarter of 2018, not only due to the goodwill write-down, but also by plunging margins and lower pricing throughout Kraft's core business. In response, plaintiffs alleged that Kraft was responsible for concealing and “push[ing] forward” the “bad news” and characterized the Company's industry-leading financial results as misleading. Heightening investor concerns, Kraft also revealed that it received a subpoena from the U.S. Securities and Exchange Commission (“SEC”) in January 2019, which Kraft was 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 goodwill accounting practices. Plaintiffs alleged that because of the Company's misrepresentations, the price of Kraft's Class A Common Stock was artificially inflated during the Class Period.

- **Olympus Corporation**
Obtained an 11 billion yen (\$92 million) settlement in an action filed in Japan over an accounting recoveries 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 Overlay (GLO) program of 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 had lied about the value of its subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with the financial crisis. 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. Our clients, along with other groups with which we worked closely, lost billions in connection with the Rights Offering purchased by RBS. RBS 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, and the company filed for bankruptcy protection in 2010.
- **Royal Dutch Shell**
On behalf of investors in European-based shares of Royal Dutch Shell, recovered more than \$350 million in a case challenging 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 derivative cases 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 Caceres, 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

private company in deference to its majority shareholder's interests. Discovery in the case spanned years in Mexico. 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, 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

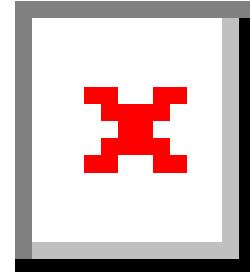
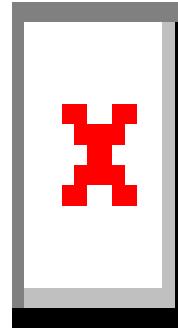
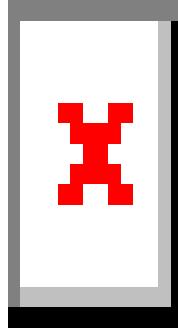
"Getting Serious About ESG," International Foundation of Employee Benefit Plans Benefits Magazine (April 2021)

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

"Filing Proofs of Claim: Recovering Money Rightly Owed to Pensioners," *International Foundation of Employee Benefits Research* (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 the Jersey Shore. Darren has personally raised significant amounts of money for the event and for the past 10 years has been the top fundraising team for nearly a decade.