



## DARREN 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 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 an 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 the 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 Espírito Santo (Portugal)

The Firm is representing and funding a group of institutional investors who hold senior Banco Espírito Santo bonds of the Bank of Portugal. The action is an administrative challenge against the Bank of Portugal's December 2015 decision to retransfer €2 billion worth of bonds from Novo Banco S.A. back to the now defunct Banco Espírito Santo. When Banco Espírito Santo Portugal 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 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 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 2006 that a tailing 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 proceedings on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered summary judgment in 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 99.9% (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 to all shareholders owning 30% of the company it is seeking to acquire) 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 allowed it 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 shareholders of Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of institutional investors in Germany 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 on behalf of Mitsubishi. 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 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 on behalf of Nissan. On November 19, 2018, Nissan’s former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations of financial misconduct. An internal investigation at Nissan found not only the financial wrongdoings of Ghosn and other executives but also a lack of adequate internal measures and other effective corporate governance measures at Nissan over a period of many years. The 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 Nissan 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 proceeding 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, used the company’s 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 on behalf of Toshiba. The case against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding 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 FY 2009. 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 Messier (Vivendi's former CEO) arising from the facts tried in the securities class action *In re Vivendi U.S. Securities Litigation* of New York. We represent investors who purchased Vivendi's securities on the Paris Bourse and who were harmed 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 class actions 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 handled under the German model case proceeding system (or "KapMuG") and the court appointed Deko 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 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 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 is now 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, received 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 Benoit, 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 reduce 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 margins, and its 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. Kraft's 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. Heightening investor concerns, Kraft also revealed that it received a subpoena from the U.S. Securities and Exchange Commission 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 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 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 company received a 11 billion yen settlement.
- **Royal Bank of Scotland**  
Recovered £267 million on behalf of a group of institutional investors who participated in the Global Financial Crisis 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 inflated the value of its subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with its 2007 Rights Offering. 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' shares in the Rights Offering lost nearly 90 percent of the value of that investment. Our clients, a group of institutional investors, lost billions in connection with the Rights Offering purchase. RBS, which 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 derivative 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 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

private company in deference to its majority shareholder's interests. Discovery in the case spanned y Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and back to Southern Peru to remedy the overpayment. The Delaware Supreme Court affirmed on appeal 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. Securit

### Speaking Engagements

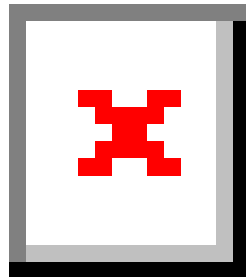
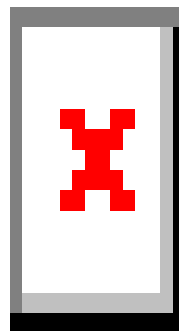
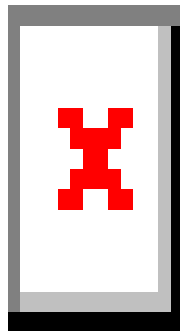
Darren is a regular speaker at investor conferences around the world and has spoken at conference Governance Network, International Foundation, National Association of Public Pension Attorneys, and in addition, Darren is a regular speaker and moderator at the Firm's annual conferences, the Rights & R 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* (April 2012)  
"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.