KESSLERTOPAZ MELTZERCHECK LLP

# AUSTIN W. MANNING

## ASSOCIATE

**D** 610.822.0274
**F** 610.667.7056

amanning@ktmc.com

### FOCUS AREAS

Securities Fraud

### EDUCATION

Pennsylvania State University
B.S. Economics, 2010

Temple University Beasley School of Law
J.D., 2019 *Magna Cum Laude*

### ADMISSIONS

Pennsylvania

USDC, Eastern District of Pennsylvania

Austin is a litigation associate attorney and is admitted to the Pennsylvania Bar.

Austin graduated magna cum laude from Temple University's James E. Beasley School of Law and received her Bachelor of Science in Economics from Penn State University. During law school, Austin served as a Staff Editor for the Temple Law Review. In her final year, she studied at the University of Lucerne in Lucerne, Switzerland where she received her Global Legal Studies Certificate with a focus on international economic law, human rights, and sustainability.

While in Law School, Austin served as a judicial intern to the Hon. Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania and to the Hon. Arnold L. New of the Pennsylvania Court of Common Pleas. Prior to joining the firm, Austin was a regulatory and litigation associate for a boutique environmental law firm in the Philadelphia area.

### Current Cases

- Apache Corp.

| | |
|---|---|
| **CASE CAPTION** | *In re Apache Corp. Securities Litigation* |
| **COURT** | United States |

| | |
|---|---|
| | District Court for the Southern District of Texas |
| **CASE NUMBER** | 4:21-CV-00575 |
| **JUDGE** | Honorable George C. Hanks, Jr. |
| **PLAINTIFFS** | Court-appointed Lead Plaintiffs Plymouth County Retirement Association and the Trustees of the Teamsters Union No. 142 Pension Fund |
| **DEFENDANTS** | Apache Corporation, John F. Christmann IV, Timothy J. Sullivan, & Stephen J. Riney |
| **CLASS PERIOD** | September 7, 2016 to March 13, 2020, inclusive |

This securities fraud class action arises from Apache's materially false and misleading statements regarding its purportedly groundbreaking oil and gas discovery in West Texas, which it dubbed "Alpine High." Starting in September 2016, Defendants claimed the play held copious amounts of valuable oil and gas on

par with world-class plays like the Marcellus Shale in Pennsylvania and the Eagle Ford in Texas, which Apache could economically exploit, and thus drive company revenues for years to come.

Investors accepted the claims, and Apache's common stock price skyrocketed. However, Lead Plaintiffs' extensive investigation has revealed that Defendants' claims were baseless. Internal studies at Apache prior to September 2016 established that Alpine High was characterized by low-value gas, not valuable oil or gas resources. Confirming this, Apache's own production data from the wells it drilled at Alpine High showed that the area held hardly any oil and gas that could be economically exploited, let alone the vast amounts Defendants repeatedly touted to investors. Scrambling to contain the failure, Defendants fired multiple dissenters from inside the company and shielded Alpine High production data from ordinary disclosure and review—but they could sustain the sham only so long. The truth concerning Alpine High was gradually revealed to the public through a series of disclosures on October 9, 2017, February 22, 2018, April 23, 2019, October 25, 2019, and March 16, 2020, which collectively showed that the play was an unprofitable bust. Apache's stock prices fell sharply on each partial corrective disclosure, causing massive losses to defrauded shareholders.

On December 17, 2021, Plaintiffs filed a Consolidated Class Action Complaint on behalf of a putative class of investors, alleging that Apache, John Christmann IV, Timothy Sullivan, and Stephen Riney violated Section 10(b) of the Exchange Act by making materially false and misleading statements regarding the Alpine High play; and that Christmann IV, Sullivan, and Riney, as controlling persons of Apache, violated Section 20(a) of the Exchange Act. On September 15, 2022, Magistrate Judge Edison issued a Memorandum and Recommendation denying Defendants' motion to dismiss. On November 29, 2022, the Court overruled Defendants' objections to the Recommendation. The case is now in fact discovery, and the parties are engaged in briefing on Plaintiffs' motion for class certification.

**Read Consolidated Class Action Complaint Here**

- General Electric Company

| | |
|---|---|
| **CASE CAPTION** | *Sjunde AP-Fonden, et al., v. General Electric Company, et al.* |
| **COURT** | United States District Court for the Southern District of New York |
| **CASE NUMBER** | 1:17-cv-08457-JMF |
| **JUDGE** | Honorable Jesse M. Furman |

| | |
|---|---|
| **PLAINTIFFS** | Sjunde AP-Fonden and The Cleveland Bakers and Teamsters Pension Fund |
| **DEFENDANTS** | General Electric Company and Jeffrey S. Bornstein |
| **CLASS PERIOD** | March 2, 2015 through January 23, 2018, inclusive |

This securities fraud class action case arises out of alleged misrepresentations made by General Electric ("GE") and its former Chief Financial Officer, Jeffrey S. Bornstein (together, "Defendants"), regarding the use of factoring to conceal cash flow problems that existed within GE Power between March 2, 2015, and January 24, 2018 (the "Class Period").

GE Power is the largest business in GE's Industrials operating segment. The segment constructs and sells power plants, generators, and turbines, and also services such assets through long term service agreements ("LTSAs"). In the years leading up to the Class Period, as global demand for traditional power waned, so too did GE's sales of gas turbines and its customer's utilization of existing GE-serviced equipment. These declines drove down GE Power's earnings under its LTSAs associated with that equipment. This was because GE could only collect cash from customers when certain utilization levels were achieved or upon some occurrence within the LTSA, such as significant service work.

Plaintiffs allege that in an attempt to make up for these lost earnings, GE modified existing LTSAs to increase its profit margin and then utilized an accounting technique known as a "cumulative catch-up adjustment" to book immediate profits based on that higher margin. In most instances, GE recorded those cumulative catch-up earnings on its income statement long before it could actually invoice customers and collect cash under those agreements. This contributed to a growing gap between GE's recorded non-cash revenues (or "Contract Assets") and its industrial cash flows from operating activities ("Industrial CFOA").

In order to conceal this increasing disparity, Plaintiffs allege that GE increased its reliance on long-term receivables factoring (i.e., selling future receivables to GE Capital, GE's financing arm, or third parties for immediate cash). Through long-term factoring, GE pulled forward future cash flows, which it then reported as cash from operating activities ("CFOA"). GE relied on long-term factoring to generate CFOA needed to reach publicly disclosed cash flow targets. Thus, in stark contrast to the true state of affairs within GE Power—and in violation of Item 303 of Regulation S-K—GE's Class

Period financial statements did not disclose material facts regarding GE's factoring practices, the true extent of the cash flow problems that GE was attempting to conceal through receivables factoring, or the risks associated with GE's reliance on factoring. Eventually, however, GE could no longer rely on this unsustainable practice to conceal its weak Industrial cash flows. As the truth was gradually revealed to investors—in the form of, among other things, disclosures of poor Industrial cash flows and massive reductions in Industrial CFOA guidance—GE's stock price plummeted, causing substantial harm to Plaintiffs and the Class.
In January 2021, the Court sustained Plaintiffs' claims based on allegations that GE failed to disclose material facts relating its practice of and reliance on factoring, in violation of Item 303, and affirmatively misled investors about the purpose of GE's factoring practices. In April 2022, following the completion of fact discovery, the Court granted Plaintiffs' motion for class certification, certifying a Class of investors who purchased or otherwise acquired GE common stock between February 29, 2016 and January 23, 2018. In that same order, the Court granted Plaintiffs' motion for leave to amend their complaint to pursue claims based on an additional false statement made by Defendant Bornstein. The Court had previously dismissed these claims but, upon reviewing Plaintiffs' motion—based on evidence obtained through discovery—permitted the claim to proceed.
On September 28, 2023, the Court entered an order denying Defendants' motion for summary judgment, sending Plaintiffs' claims to trial. In March 2023, the Court denied Defendants' motion for reconsideration of its summary judgment decision. Trial is set to begin in November 2024.

**Read Fifth Amended Consolidated Class Action Complaint Here**
**Read Opinion and Order Granting and Denying in Part Motion to Dismiss Here**
**Read Order Granting Motion for Class Certification and for Leave to Amend Here**
**Click Here to Read the Class Notice**
**Read Opinion and Order Here (9/28/23)**
**Read Memorandum Opinion & Order Here (3/21/24)**

- Organogenesis Holdings Inc.,

| | |
|---|---|
| **CASE CAPTION** | *Meyer, et al. v. Organogenesis Holdings Inc., Gary S. Gillheeney, Sr., and David C. Francisco* |
| **COURT** | United States District Court for the Eastern District of New |

| | |
|---|---|
| | York |
| **CASE NUMBER** | 1:21-cv-06845 |
| **JUDGE** | Honorable Diane Gujarati |
| **PLAINTIFFS** | Donald Martin Meyer, Manishkumar H. Bhagat, and Dustin L. Lineweber |
| **DEFENDANTS** | Organogenesis Holdings Inc. ("Organogenesis"), Gary S. Gillheeney, Sr., and David C. Francisco |
| **CLASS PERIOD** | August 10, 2020 through August 9, 2022 |

This securities fraud class action case arises out of Defendants' false or misleading statements and omissions of material fact regarding Organogenesis's revenue growth between August 10, 2020 and August 9, 2022. Organogenesis primarily manufacturers and sells skin substitute products used in the treatment of chronic and acute wounds. During the Class Period, Plaintiffs allege that Organogenesis and Defendants Gillheeney and Francisco, the Company's Chief Executive Office and Chief Financial Officer, respectively, engaged in a scheme to game the Medicare reimbursement system for two of Organogenesis's skin substitute products—Affinity and PuraPly XT—to boost revenues and inflate the Company's stock price. Defendants' scheme centered on illegal marketing efforts that sought to induce physicians to purchase Affinity and PuraPly XT over competing products by marketing the difference, or "spread" between the amount Organogenesis charged physicians for these products and the amount physicians were reimbursed by certain Medicare Administrative Contractors ("MAC"). Plaintiffs further allege that Defendant Gillheeney personally profited from Defendants' scheme by selling $16.8 million of Organogenesis common stock during the Class Period while the Company's stock price was inflated as a result of Defendants' misstatements and omissions.

Defendants' scheme gradually unraveled beginning on October 12, 2021, when a market analyst issued a report alleging that Organogenesis's rapid growth was the result of Defendants' undisclosed marketing of the Medicare reimbursement "spread" for Affinity and PuraPly XT–i.e., the difference between the price paid by a physician and the amount reimbursed by Medicare. This disclosure caused Organogenesis's stock price to decline approximately 14%. Defendants, however, continued to mislead the market and reassure investors that Organogenesis's revenue growth was genuine and sustainable.

Defendants' scheme was thwarted when Medicare set a national Average Selling Price ("ASP") for Affinity that was significantly lower than the amount physicians were reimbursed by the MACs, leading to a rapid decline in Affinity sales. On August 9, 2022, Organogenesis announced its second quarter 2022 financial results, which disclosed that Affinity sales had declined substantially as a result of the recently established ASP. Following this revelation, Organogenesis's stock price declined 20%.

Following an intensive investigation by Kessler Topaz, which included interviews with former Organogenesis employees and obtaining Medicare reimbursement data through the Freedom of Information Act, on October 24, 2022, Plaintiffs filed an Amended Complaint on behalf of a putative class of investors alleging that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. On March 13, 2023, Defendants filed a motion to dismiss the Amended Complaint. Briefing on that motion is complete and pending before the Court.
**Read Amended Class Action Complaint Here**

- Rivian Automotive Inc.

| | |
|---|---|
| **CASE CAPTION** | *Charles Larry Crews, Jr., et al. v. Rivian Automotive Inc., et al.* |
| **COURT** | United States District Court for the Central District of California Western Division |
| **CASE NUMBER** | 2:22-cv-0524 |

| | |
|---|---|
| **JUDGE** | Honorable Josephine L. Staton |
| **PLAINTIFFS** | Sjunde AP-Fonden, James Stephen Muhl |
| **DEFENDANTS** | Rivian Automotive, Inc. (“Rivian” or the “Company”), Robert J. Scaringe, Claire McDonough, Jeffrey R. Baker, Karen Boone, Sanford Schwartz, Rose Marcario, Peter Krawiec, Jay Flatley, Pamela Thomas-Graham, Morgan Stanley & Co. LLC, Goldman Sachs & Co., LLC, J.P. Morgan Securities LLC, Barclays Capital Inc., Deutsche Bank Securities Inc., Allen & Company LLC, BofA Securities, Inc., Mizuho |

| | |
|---|---|
| | Securities USA LLC, Wells Fargo Securities, LLC, Nomura Securities International, Inc., Piper Sandler & Co., RBC Capital Markets, LLC, Robert W. Baird & Co. Inc., Wedbush Securities Inc., Academy Securities, Inc., Blaylock Van, LLC, Cabrera Capital Markets LLC, C.L. King & Associates, Inc., Loop Capital Markets LLC, Samuel A. Ramirez & Co., Inc., Siebert Williams Shank & Co., LLC, and Tigress Financial Partners LLC. |
| **CLASS PERIOD** | November 10, 2021 through March 10, 2022, inclusive |

This securities fraud class action case arises out of Defendants'

representations and omissions made in connection with Rivian's highly-anticipated initial public offering ("IPO") on November 10, 2021. Specifically, the Company's IPO offering documents failed to disclose material facts and risks to investors arising from the true cost of manufacturing the Company's electric vehicles, the R1T and R1S, and the planned price increase that was necessary to ensure the Company's long-term profitability. During the Class Period, Plaintiffs allege that certain defendants continued to mislead the market concerning the need for and timing of a price increase for the R1 vehicles. The truth concerning the state of affairs within the Company was gradually revealed to the public, first on March 1, 2022 through a significant price increase—and subsequent retraction on March 3, 2022—for existing and future preorders. And then on March 10, 2022, the full extent Rivian's long-term financial prospects was disclosed in connection with its Fiscal Year 2022 guidance. As alleged, following these revelations, Rivian's stock price fell precipitously, causing significant losses and damages to the Company's investors.

On July 22, 2022, Plaintiffs filed a Consolidated Class Action Complaint on behalf of a putative class of investors alleging that Rivian, and its CEO Robert J. Scaringe ("Scaringe"), CFO Claire McDonough ("McDonough"), and CAO Jeffrey R. Baker ("Baker") violated Sections 10(b) and 20(a) of the Securities Exchange Act. Plaintiffs also allege violations of Section 11, Section 12(a)(2), and Section 15 of the Securities Act against Rivian, Scaringe, McDonough, Baker, Rivian Director Karen Boone, Rivian Director Sanford Schwartz, Rivian Director Rose Marcario, Rivian Director Peter Krawiec, Rivian Director Jay Flatley, Rivian Director Pamela Thomas-Graham, and the Rivian IPO Underwriters. In August 2022, Defendants filed motions to dismiss, which the Court granted with leave to amend in February 2023. On March 16, 2023, Defendants filed motions to dismiss the amended complaint. In July 2023, the Court denied Defendants' motions to dismiss the amended complaint in its entirety. The case is now in fact discovery and the parties are engaged in briefing on Plaintiffs' motion for class certification.

**Read Consolidated Class Action Complaint Here**
**Read Amended Consolidated Class Action Complaint Here**

## News

- August 19, 2021 - Claims Against Kraft Heinz and 3G Capital Arising From Unprecedented $15.4 Billion Writedown Proceed to Discovery