



DARREN J. CHECK

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FOCUS AREAS

Securities Fraud
 Global Shareholder
 Direct & Opt-Out
 Fiduciary
 Antitrust
 Arbitration
 SecuritiesTracker™
 Corporate Governance & M+A

EDUCATION

Franklin & Marshall College
 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

Darren J. Check, a Partner of the Firm, manages Kessler Topaz's portfolio monitoring & claims filing service, *SecuritiesTracker*, and works closely with the Firm's litigators and new matter development department. He consults with institutional investors from around the world with regard to implementing 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, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as actions in an increasing number of jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions (opt-outs), non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years Darren has become a trusted advisor to hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds, central banks, and pension funds throughout North America, Europe, Asia, Australia, and the Middle East.

Darren regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world. He has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal

USDC, District of New Jersey

USDC, District of Colorado

Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile 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 is admitted to practice 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 in a recently filed action against the Bank of Portugal. The action is an administrative challenge against the Bank of Portugal's December 29, 2015 decision to re-transfer certain senior notes from Novo Banco S.A. back to the now defunct Banco Espirito Santo. When Banco Espirito Santo collapsed in August of 2014, the Bank of Portugal created a new bank, Novo Banco, and transferred all assets and some bonds to Novo Banco. On December 29, 2015, the Bank of Portugal decided to retransfer €2 billion worth of bonds from Novo Banco (which has assets) back to Banco Espirito Santo (which has no assets and is currently in bankruptcy proceedings). The result is that bondholders lost at least 90% of the value of their bonds. This case is ongoing.
- BHP Billiton Limited (Australia)
The Firm is representing and funding a number of institutional investors in securities litigation in Australia against BHP Billiton Limited ("BHP") and certain of its executives. BHP is an Australian-headquartered, multi-national company that serves as the world's largest diversified mining and mineral resources company. The case against BHP alleges that BHP knew or should have known as early as 2013 that there was a significant risk that its Fundão mining waste dam at the Germano iron ore mine in Brazil would collapse (which it ultimately did on November 5, 2015 and caused a toxic mudslide that swept away a village, killed 19 people, and caused permanent environmental damage). The Firm, its partners and its Australian lawyers filed proceedings on May 31, 2018. After entertaining carriage motions, the Australian court ultimately ordered the Firm's group to serve as co-lead in the case.
- Deutsche Postbank (Germany)
The Firm is representing and funding a number of institutional investors in securities litigation in Germany against Deutsche Bank AG ("Deutsche Bank"). In September 2008, Deutsche Bank entered into an agreement with Deutsche Post to acquire Deutsche Post's majority share (50% +1 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 once an acquirer crosses a threshold of owning 30% of the company it is seeking to acquire) because it did not issue a public tender offer for shares of Deutsche Postbank until 18 months after Deutsche Bank paid the majority of the purchase price to Deutsche Post. By delaying the tender offer, Deutsche Bank benefitted from market changes that allowed it to make a tender offer significantly lower than the price would have been had it made a timely tender offer. The facts leading to the allegations were discovered during the course of separate appraisal action proceedings brought by the German investor Effecten-Spiegel AG against Deutsche Bank. The Firm and its local German counsel filed two waves of complaints on behalf of institutional investors: one on April 3, 2017, and the other 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 Motors Corporation. The case against Mitsubishi arises from Mitsubishi's April 20, 2016 revelation that it had falsely reported the fuel consumption of certain models of its vehicles to the Japanese regulators since 2013. In late June of 2017, Kessler Topaz, its partners, and Japanese counsel filed a complaint in Tokyo on behalf of more than 100 institutional investors. The case is ongoing.
- Netflix, Inc. & Hulu, LLC

CASE CAPTION

*Borough of Longport and
Township of Irvington v.
Netflix, Inc. and Hulu, LLC*

COURT

United States District
Court for the District of
New Jersey

CASE NUMBER

21-cv-15303-SRC

JUDGE

Stanley R. Chesler

PLAINTIFF

Borough of Longport and
Township of Irvington

DEFENDANTS

Netflix, Inc. and Hulu, LLC

Plaintiffs filed a Class Action Complaint on August 13, 2021 alleging that, as providers of video programming and cable television

service, Defendants were required to file an application for “individual certificates of approval or a system-wide franchise[.]” See N.J. Stat. Ann. § 48:5A-16. Defendants failed to apply for and obtain certificates of approval and municipal consents and/or a system-wide franchise. Defendants are providing cable television service throughout New Jersey without authorization, and in contravention of the New Jersey Cable Television Act (“CTA”). Such certificates of approval and/or franchise would have authorized Defendants to use public rights-of-way to provide their cable television service and video programming, provided that Defendants make payments to each municipality in which it provides service. The required payment is equal to a percentage of the gross revenues derived from subscription fees paid by subscribers in each municipality. Defendants were required to obtain certificates of approval and municipal consents and/or a system-wide franchise before providing cable television service and video programming in the Borough of Longport and Township of Irvington, and the other New Jersey municipalities. Defendants’ failure to obtain such approval and/or franchise did not relieve Defendants of the obligation to pay fees based on a percentage of their gross revenues derived from subscription fees paid by subscribers in each municipality. Defendants have failed to comply with N.J. Stat. Ann. § 48:5A-30 because they have failed to pay Plaintiffs and the other Class members the required fees. Plaintiffs seek to require Defendants to abide by the CTA, and pay what they owe to New Jersey municipalities.

- Nissan Motors Corporation (Japan)
The Firm is representing and funding over 100 institutional investors in securities litigation in Japan against Nissan Motors Corporation (“Nissan”). On November 19, 2018, Nissan’s former Chairman and CEO, Carlos Ghosn, was arrested in Japan over allegations of financial misconduct. A subsequent internal investigation at Nissan found not only the financial wrongdoings of Ghosn and other executives, but also a lack of adequate internal checks and balances and other effective corporate governance measures at Nissan over a period of many years. The case against Nissan alleges that misconduct and lack of adequate internal measures also resulted in the Company violating Japanese securities and tort laws and causing damages to the Company’s investors. On June 22, 2020, the Firm and its local Japanese lawyers filed the first wave complaint and submitted demand letters to the Company on behalf of investors.
- Perrigo Co. plc

CASE CAPTION

*Carmignac Gestion, S.A. v.
Perrigo Co. plc, et al.; First*

Manhattan Co. v. Perrigo Co. plc, et al.; Nationwide Mutual Funds, on behalf of its series Nationwide Geneva Mid Cap Growth and Nationwide S&P 500 Index Fund, et al. v. Perrigo Co. plc, et al.; Aberdeen Canada Funds – Global Equity Fund, a series of Aberdeen Canada Funds, et al. v. Perrigo Co. plc, et al.; Schwab Capital Trust on behalf of its series Schwab S&P 500 Index Fund, Schwab Total Stock Market Index Fund, Schwab Fundamental U.S. Large Company Index Fund, and Schwab Health Care Fund, et al. v. Perrigo Co. plc, et al.; Principal Funds, Inc., et al. v. Perrigo Co. plc, et al.; and Kuwait Investment Authority, et al. v. Perrigo Co. plc, et al.

COURT

United States District Court for the District of New Jersey

CASE NUMBER

No. 2:17-cv-10467-MCA-LDW;
No. 2:18-cv-02291-MCA-LDW;
No. 2:18-cv-15382-MCA-LDW;
No. 2:19-cv-06560-MCA-LDW;
No. 2:19-cv-03973-MCA-LDW;
No. 2:20-cv-02410-MCA-LDW;
No. 2:20-cv-03431-MCA-LDW

JUDGE

Honorable Madeline Cox Arleo and Honorable Leda Dunn Wettre

PLAINTIFF

Carmignac Gestion, S.A., First Manhattan Co., Schwab Capital Trust, *et al.*, Principal Funds, Inc., Kuwait Investment Authority, *et al.*, Nationwide Mutual Funds, *et al.*, and Aberdeen Canada Funds – Global Equity Fund, *et al.*

DEFENDANTS

Perrigo Company plc (“Perrigo”), Joseph C. Papa, and Judy L. Brown

CLASS PERIOD

April 21, 2015 through May 3, 2017, inclusive

These seven shareholder opt-out actions stem from drug maker Perrigo's efforts to mislead investors to stave off a hostile takeover bid by pharmaceutical rival Mylan in 2015. The plaintiff investment funds allege that Perrigo and its senior officers misrepresented the true state of the company's \$4.5 billion acquisition of Omega Pharma, an over-the-counter healthcare company based in Belgium, and fraudulently touted its ability 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 on behalf of institutional investors in the United States, the United Kingdom, France, and Kuwait. The Honorable Madeline Cox Arleo denied Defendants' motions to dismiss the actions in 2019. 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 against Petrobras before the Market Arbitration Chamber of Brazil. The arbitration stems from the largest corruption scandal in Brazilian history in which an investigation (dubbed "Operation Car Wash") revealed that former executives of Petrobras, the Brazilian state-run energy company, had falsely inflated the value of certain projects for their own profit and to pay bribes and kickbacks to politicians. The arbitration is ongoing.
- Steinhoff International Holdings (The Netherlands)
On February 15, 2022, following three years of complex multiparty investigations, litigations, and court approvals by the District Court of Amsterdam and the High Court of South Africa, a \$1.6 billion global settlement became effective with Steinhoff

International Holdings N.V. and the former Steinhoff International Holdings Proprietary Limited (together “Steinhoff”), Steinhoff’s auditor Deloitte & Touche South Africa and Deloitte Accountants B.V., and Steinhoff’s former directors and officers and their D&O insurers. The settlement is the largest securities settlement outside the United States to date. It resolves claims brought by Steinhoff common stock shareholders before courts in the Netherlands, Germany, and South Africa for losses they sustained as a result of the Company’s December 2017 revelation that it had discovered accounting irregularities and that it had overstated profits by \$7.4 billion between 2009 and 2017. Kessler Topaz, representing over 40 institutional investors from around the globe, initially filed legal action in the Netherlands seeking recovery of investor losses and a judicial examination.

- Teva Pharmaceutical Industries Ltd.

CASE CAPTION

Franklin Mutual Series Funds v. Teva Pharmaceutical Ind. Ltd., et al.; Nordea Investment Management AB v. Teva Pharmaceutical Ind. Ltd., et al.; and State of Alaska, Department of Revenue v. Teva Pharmaceutical Ind. Ltd., et al.

COURT

United States District Court for the District of Connecticut

CASE NUMBER

3:18-cv-01681-SRU; 3:18-cv-01721-SRU and 3:20-cv-01630-SRU

JUDGE

Honorable Stefan R. Underhill

PLAINTIFF

Franklin Templeton Investment Funds, Nordea Investment Management AB, State of Alaska Department of Revenue, and The Alaska Permanent Fund Corporation

DEFENDANTS

Teva Pharmaceutical Industries Ltd. (“Teva”), Erez Vigodman, Eyal Desheh, Yaacov Altman, Sigurdur Olafsson, Kåre Schultz, and Michael McClellan

CLASS PERIOD

February 6, 2014 through May 10, 2019, inclusive

These securities fraud opt-out actions in Connecticut federal court involve Teva's concealment of its role in an industrywide conspiracy to fix the prices of generic drugs. Our clients allege that Teva failed to disclose that the driving force behind its record revenues between 2013 and 2015 was its participation in the price-fixing scheme and reliance on an unsustainable strategy to systematically raise generic drug prices across its portfolio. When Teva's role in the price-fixing conspiracy and the true financial consequences of its pricing strategy were revealed, plaintiffs suffered substantial investment losses.

In addition to representing multiple U.S. and European investment funds, Kessler Topaz was appointed by U.S. District Judge Stefan R. Underhill to serve as liaison counsel to the Court on behalf of the more than twenty-five opt-out plaintiffs in this consolidated litigation.

[Read Franklin Mutual Series Funds et al v. Teva Pharmaceutical Ind. Ltd. Complaint Here](#)

[Read Nordea Investment Management AB v. Teva Pharmaceutical Ind. Ltd. First Amended Complaint Here](#)

[Read State of Alaska et al v. Teva Pharmaceutical Ind. Ltd. First Amended Complaint Here](#)

- Toshiba Corporation (Japan)
The Firm is representing and funding a number of institutional investors in securities litigation in Tokyo, Japan against Toshiba Corporation. The case against Toshiba arises from a series of disclosures Toshiba made beginning on April 3, 2015 regarding a discovery of 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 2008. The Firm, its partners, and 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 Universal, S.A. and Jean-Marie 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 whose claims were excluded from the U.S. litigation 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 Volkswagen and Porsche shareholders. The Firm, its partners, and German counsel filed three separate group complaints between March 2016 and May 2017, alleging a total of approximately €5 billion in damages. Altogether the Firm's group is the largest group of investors pursuing action against Volkswagen and the claims represent more than 50% of the total claims filed in Germany against Volkswagen. The proceedings in Germany are being adjudicated via the German model case proceeding system (or "KapMuG") and the court appointed Deko Investments, one of the plaintiffs in our group of over 500 investors, to serve as the model plaintiff. The court will utilize the KapMuG model case proceedings in order to make a determination on common issues of law and fact that apply to all investors who filed suit against Volkswagen. The parties are currently exchanging briefing and oral hearings are ongoing.

Settled

- Fortis Bank
In a case arising out of the subprime mortgage crisis, Kessler Topaz, on behalf of a number of large institutional investors, sued Fortis Bank, N.V. (Fortis) and its successor companies BNP Paribas and Ageas NL for fraud in connection with the company's failed 2007 attempt to acquire Dutch bank ABN Amro Holding NV (ABN Amro). Our lawsuit alleged that Fortis misrepresented the value of its collateralized debt obligations, its exposure to subprime-related mortgage-backed securities, and the extent to which the decision to acquire ABN Amro jeopardized its solvency. After the acquisition failed, Fortis encountered financial difficulties and broke up in the fall of 2008. Its investors lost as much as 90% of the value of their investments. Our lawsuit survived rigorous jurisdictional challenges in the Netherlands Court of Appeals, and proceedings on the merits were pending when we were able to successfully negotiate a \$1. billion multiparty settlement (including other plaintiff groups in the Netherlands and Belgium). The settlement was the largest settlement in Europe to date. Because of the Dutch procedural mechanism for collective settlements (known as the "WCAM"), all investors, including also those who had not participated in lawsuits against the company, were eligible to file claims for a portion of the settlement proceedings. However, Kessler Topaz's clients and other investors who had directly pursued litigation against the company and driven the settlement negotiations received settlement payouts more than a year before other eligible Fortis investors.
- Olympus Corporation
Obtained an 11 billion yen (\$92 million) settlement in an action

filed in Japan over an accounting scandal—one of the largest securities-fraud recoveries ever in that country, if not the largest.

In 2011, former Olympus CEO and whistleblower Michael Woodford revealed that Olympus had hidden more than \$1 billion in losses through a series of sham transactions, many of which involved “paying” exorbitant fees for financial advice. Olympus was forced to restate five years of earnings, and three of its executives pled guilty to the fraud. We represented defrauded shareholders in proceedings in Tokyo alleging that Olympus and its officers had violated their duties under Japanese Company Law. Following a two-day mediation, we reached a settlement agreement for 11 billion yen.

- Royal Bank of Scotland
Recovered £267 million on behalf of a group of institutional investors who participated in the Group Litigation Order (GLO) proceedings against the Royal Bank of Scotland (RBS). The entire GLO settled for approximately £900 million. At the time it was resolved, the settlement of the GLO 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 misled investors about its exposure to subprime-related assets, collateralized debt obligations, and the inflated value of its assets in connection with a £13 billion Rights Offering that was completed in June 2008. Just months later, in September 2008, RBS failed and had to be bailed out by the UK government. Investors who purchased shares in the Rights Offering lost nearly 90 percent of the value of that investment. Our clients, and investors who were part of other investors groups with which we worked closely, lost billions in connection with the Rights Offering purchases and subsequent RBS collapse. RBS's write-downs and reported full-year net loss for 2008, represented the largest loss ever for a UK-based company and the largest for any commercial bank in the world. After the initial September 2008 bailout, the UK government bailed out RBS on two subsequent occasions, becoming an 82% shareholder of the company.
- Royal Dutch Shell
On behalf of investors in European-based shares of Royal Dutch Shell, recovered more than \$350 million in a class settlement of claims related to 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 securities class actions in numerous jurisdictions around the globe.
- Southern Peru Copper Corp.

Kessler Topaz served as co-lead counsel in this landmark \$2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history.

In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru's majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder's interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

News

- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2021
- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The Legal Intelligencer
- February 9, 2017 - Kessler Topaz Partner Darren Check Discusses International Litigation Trends at PLUS Panel
- 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 Volkswagen AG over Diesel Emissions Scandal
- Kessler Topaz Secures a \$150 Million Recovery for Shareholders in JPMorgan Chase & Co. Securities Class Action

Speaking Engagements

Darren is a regular speaker at investor conferences around the world and has spoken at conference for NCPERS, Cii, International Corporate Governance Network, International Foundation, National Association of Public Pension Attorneys, and the National Association of State Treasurers. 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, AZ.

Publications

"Getting Serious About ESG," *International Foundation of Employee Benefit Plans Benefits Magazine* (April 2013)

"Living in a Post-Morrison World: How to Protect Your Assets Against Securities Fraud," *National Association of Public Pension Attorneys Working Group* (June 2012)

"Filing Proofs of Claim: Recovering Money Rightly Owed to Pensioners," *International Foundation of Employee Benefit Plans Benefits Magazine* (February 2011)

Awards/Rankings

- The Legal 500 - Leading Lawyers, 2019-2022
- Benchmark Litigation Stars, 2019-2022
- Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019-2021

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 every year from Philadelphia to the Jersey Shore. Darren has personally raised significant amounts of money for the event and for the past several years has captained Team KTMC which has been the top fundraising team for nearly a decade.