



## STUART L. BERMAN

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#### FOCUS AREAS

Securities Fraud

Global Shareholder Litigation

Direct & Opt-Out

Fiduciary

Antitrust

Arbitration

SecuritiesTracker™

Corporate Governance & M+A

#### EDUCATION

Brandeis University

B.A. with honors

The George Washington University Law School

J.D.

#### ADMISSIONS

Pennsylvania

New Jersey

USDC, District of New Jersey

USDC, Eastern District of Pennsylvania

Stuart L. Berman has opened doors for victims of securities fraud to pursue recoveries around the world. As head of Kessler Topaz Meltzer & Check's global litigation practice, Stu actively counsels institutional investors on filing lawsuits in jurisdictions outside the United States and has helped recover billions of dollars for investors worldwide.

The Firm's global litigation focus first began around 2009 through Stu's role in representing European investors in the precedent-setting \$350 million settlement with Royal Dutch Shell in the Netherlands—the first class settlement approved under Dutch law. Since then, Stu has helped organize and lead shareholder actions against companies in the Netherlands (Fortis), Germany (VW and Porsche), France (Vivendi), Japan (Olympus, Toshiba and Mitsubishi), Australia (BHP Billiton), Portugal (BES) and the United Kingdom (Royal Bank of Scotland).

A well-known authority on global litigation and portfolio monitoring, Stu actively engages with institutional clients regarding how they may best protect their investments made in the United States and abroad. Through Kessler Topaz's proprietary Securities Tracker program, which Stu helped create and launch, the firm's institutional clients are able to quickly review and analyze potential claims anywhere in the world. The Firm's clients trust Stu to accurately assess their fiduciary responsibilities and guide them on how best to pursue and recover assets lost to fraud. His experience and judgment are indispensable in determining when there is the right combination of facts, law and source of recovery

USDC, Eastern District of Wisconsin

USCA, Second Circuit

USCA, Ninth Circuit

USCA, Tenth Circuit

to warrant a commitment to active litigation.

In actions brought in the United States, Stu has been instrumental in representing numerous institutional investors through the lead plaintiff, discovery and class certification process in high-profile class actions. He also has represented institutional clients as named plaintiffs in direct (opt-out) actions against companies such as Petrobras, Merck and Vivendi.

Stu is a frequent speaker and panelist at investor meetings and conferences around the world on topics such as shareholder actions, corporate governance, shareholder rights, and the importance of monitoring portfolios and analyzing shareholder claims on a global basis. Stu also serves as General Counsel to Kessler Topaz Meltzer & Check, LLP.

### 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.
- **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.

- 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.
- 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 Deka 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.

- Theodoros Adamakopoulos and Others v. Republic of Cyprus, International Centre for the ICSID Case No. ARB/15/49

Kessler Topaz is co-counsel in an investment treaty arbitration on behalf of nearly 1000 claimants against the Republic of Cyprus before the International Centre for the Settlement of Investment Disputes ("ICSID").

Claimants, nationals of Greece and Luxembourg, were all depositors or bondholders of either Cyprus Popular Bank (also known as Marfin Popular Bank or Laiki Bank) or the Bank of Cyprus, and suffered substantial losses when their bonds/deposits were confiscated as part of Cyprus' response (known as "Plan B") to the Cypriot financial crisis. Claimants allege that Cyprus violated its obligations under two bilateral investment treaties (the Cyprus-Greece BIT and the Belgo-Luxembourg Economic Union – Cyprus BIT). In response to the claims filed by the Claimants, Cyprus contested ICSID's jurisdiction to hear the dispute. On February 7, 2020, in a 2-1 majority opinion, the ICSID Tribunal determined that it has proper jurisdiction over the dispute. The decision is significant in that it involves claims by a number of claimants that is well in excess of most other mass ICSID arbitrations (including being larger than two out of the three cases pursued by bondholders against Argentina following Argentina's debt crisis in the 2000s). The dispute will now proceed to the merits stage.

## 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
- February 12, 2020 - Groundbreaking ICSID Arbitration Decision
- 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

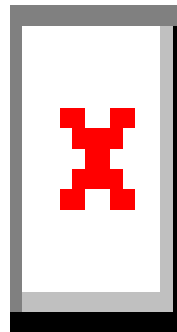
## Speaking Engagements

Stu is a frequent speaker at investor conferences and meetings in the United States and around the world, such as The European Pension Symposium in Florence, The European Investment

Roundtable in Barcelona, The Public Funds Symposium in Washington, D.C., The International Foundation of Employee Benefit Plans in Orlando, The Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, and The New England Pension Summit in Newport. In addition, Stu regularly speaks at the Firm's annual conferences for institutional investor clients at the Rights & Responsibilities for Institutional Investors in Amsterdam and Evolving Fiduciary Obligations of Pensions Plans in Washington, D.C.

### Awards/Rankings

- Benchmark Litigation Stars, 2019-2024
- Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019-2023



### Memberships

- American Bar Association

### Community Involvement

Stu proudly supports and raises awareness and funds for the National Kidney Foundation.