

ACADEMIC POSITIONS

UC Law San Francisco (formerly UC Hastings), San Francisco, CA

Associate Professor, July 2023 – Present

UC Berkeley School of Law, Berkeley CA

Visiting Professor, August 2022 – December 2022

Duke University School of Law, Durham, NC

Lecturing Fellow, July 2016 – June 2023

PUBLICATIONS

IPO Gatekeeper Liability (conditionally accepted in THE BUSINESS LAWYER)

Classic commentaries have argued that liability frameworks are essential to ensure that gatekeepers perform this role where reputational discipline alone is insufficient. IPOs represent a uniquely demanding context for gatekeeping: information asymmetries between issuers and investors are at their highest, and the statutory liability regime is unusually rigid. Yet, using a dataset of over 3,800 IPOs from 1997 to 2019, this study finds that gatekeeper liability under the Securities Act is largely theoretical. Settlements paid by underwriters and auditors are exceedingly rare, even in IPOs with indicia of inadequate gatekeeping. Despite the limited role of monetary liability, the IPO process appears to function relatively well: financial restatements and bankruptcies among newly public firms are uncommon. I suggest that reputational pressures, reinforced by professional norms among lawyers that treat Securities Act liability as real and consequential, help sustain gatekeeper diligence even in the absence of meaningful monetary exposure.

Corporate Law and the End of Injunctions, 77 ALA. L. REV. (forthcoming)

Preliminary injunctions have motivated some of the crown jewels of Delaware jurisprudence. But over the last decade, preliminary injunctions of major transactions have been increasingly difficult for both judicial and pragmatic reasons. The remaining ground for which preliminary injunctions remain readily available – proxy fraud – nonetheless remains fertile ground for nuisance lawsuits.

This paper queries the utility of such injunctions, which entail all the holdup problems of preliminary injunctions generally but do not improve shareholder bargaining power. Proxy fraud claims for damages, by contrast, can reallocate transaction surplus to shareholders, and likely provide better deterrence to managers and a stronger signal of misconduct to shareholders. Accordingly, this article suggests eliminating preliminary injunctions for proxy fraud claims in favor of damages claims after the fact.

Standing and Snitches (Essay), 79 BUS. LAW. 665 (2024)

The SEC's whistleblower program, established in the Dodd-Frank Act and building on Sarbanes-Oxley, purports to preempt state attorney-client privilege laws. Though this provision is likely unconstitutional and gave rise to outcry by the legal community upon the enactment of Sarbanes-Oxley, it has garnered remarkably little attention in the last ten years, and in twenty years, has not produced serious legal challenge. In this Essay, I argue that because of the secrecy shrouding the SEC whistleblower program, establishing standing to challenge the SEC's purported preemption of attorney client privilege is often prohibitively difficult. I assess various paths litigants could take to establish standing for such a lawsuit.

Climate Change and Shareholder Lawsuits, 20 N.Y.U. J.L. & BUS. 95 (2023); featured in the [CLS Blue Sky Blog](#).

In light of the new SEC rule for mandatory climate-related disclosures, this paper assesses whether shareholder litigation relating to the accuracy of firms' climate-related disclosures is likely to serve as effective enforcement. To answer this largely overlooked question, I examine the climate-related lawsuits

to date that shareholders have brought against firms that made voluntary climate-related disclosures, creating a novel typology illustrating where such lawsuits are likely to arise. I find that the dominant types of climate-related shareholder litigation have been either (a) “event-driven” lawsuits that piggy-back off information produced in a regulatory action, or (b) lawsuits that follow detailed reports of inaccuracies by short-sellers who seek to make profits off the diminution in firm value. The analysis of existing cases suggests that although some inaccuracies in climate risk disclosures may be adequately or even excessively litigated, others that do not directly affect the firm’s bottom line – such as greenhouse gas disclosures – might slip through the cracks.

Mutiny for a Bounty (with Joseph A. Grundfest), 66 ARIZ. L. REV. 191 (2024).

This project assesses the SEC’s whistleblower rules, under which attorneys may collect monetary awards for privileged information disclosed to the SEC without client consent. The SEC claims that its rules preempt state attorney-client privilege rules, and its logic could be extended to cover other types of privilege, such as the physician/therapist-patient privilege or the priest-penitent privilege. The article questions the legal basis for such preemption and the policy underlying it.

Suing SPACs, 96 S. CAL. L. REV. 553 (2023); republication forthcoming in the Corporate Practice Commentator; featured in Bloomberg’s Money Stuff.

This article examines the dramatic spike in litigation arising out of the recent SPAC boom. A key rationale for SPACs is to avoid the risk of securities litigation associated with the IPO process, by going public through an acquisition by a public company. Paradoxically, however, these SPACs attract a great deal of merger litigation. This paper is the first comprehensive analysis of SPAC litigation. The key finding is that various measures that proxy for the quality of SPACs, primarily redemption rates, do not appear to be positively related to the likelihood that a SPAC will be sued by investors. The article assesses potential explanations for this finding, and argues that much of the merger litigation arising from SPACs to date – particularly lawsuits brought before the merger closes – has been unmeritorious. The article further explores lawsuits arising after the merger as a more promising means of curbing misconduct by SPAC managers.

Is Everything Securities Fraud?, 12 U.C. IRVINE L. REV. 1331 (2022); republished in the Securities Law Review; included in the Top Ten Corporate and Securities Law Articles of 2023; featured in Bloomberg’s Money Stuff, Reuters, the Business Scholarship Podcast, and the Investor Chronicle.

When a publicly traded company violates laws and regulations that are designed to protect third parties (e.g., environmental laws), the firm’s shareholders often sue under the federal securities laws, on the grounds that the firm failed to appropriately disclose the risks of the violation. This article is the first comprehensive study documenting the characteristics and prevalence of securities lawsuits based on harm to non-shareholder victims. These lawsuits are referred to as “event-driven” lawsuits, because they typically follow news about some catastrophic event (e.g., an oil spill). I find that roughly 16.5% of securities class actions are “event-driven” cases, and that these lawsuits are less likely to be dismissed and settle for higher amounts than other securities class actions. Although these cases have characteristics commonly used as proxies for merit, I argue that they are not necessarily desirable, and may under some circumstances encourage greater risk-taking.

Crisis Construction in Contract Boilerplate, 82 LAW & CONTEMP. PROBS. 163 (2019); featured in JOTWELL (Journal of Things We Like Lots) and Credit Slips (A Discussion on Credit, Finance, and Bankruptcy).

This article explores cases that emerged in the aftermath of the 2007-2009 financial crisis in which courts engaged in what I term “crisis construction:” interpreting contractual language in light of concurrent economic turmoil. Despite the plain language of contracts functionally barring recovery for fraudulent loans, in the aftermath of the crisis, court after court gave trustees of mortgage-backed securities the

leverage to salvage billions of dollars in settlements from the sponsors who had sold the shoddy loans. These cases reassured investors that sponsors would be forced to stand behind their contracts, and thus potentially stabilized the market for these instruments. Crisis construction highlights law's ability to function as a macroeconomic tool in mitigating crisis conditions.

Note, Easing Out the FCPA Facilitation Payment Exception, 93 B.U. L. REV. 235 (2013).

This note argues that Congress should eliminate the facilitation payment exception to the Foreign Corrupt Practices Act, which allows for "grease payments" to officials to perform the tasks that are part of their duties. Global regulatory trends are evolving against such payments, and many firms bar them as they might expose the firm to liability under extraterritorial anti-bribery regimes. However, demands for such payments are often flatly extortionate, and US firms face higher risk of enforcement actions than issuers in other jurisdictions. I argue that the SEC and DOJ should issue guidance mitigating penalties for payments made under extortionate circumstances.

WORKS IN PROGRESS

Disclosures as Warranties

This paper argues that public company disclosures—especially in registration statements and prospectuses—function as express warranties, even if they are rarely treated as such. It shows that the Securities Act of 1933 effectively imposes a non-waivable warranty regime, akin to strict liability, for misstatements in public offerings. In contrast, private securities disclosures are easy to disclaim via contract, leaving buyers with little recourse. The result is a regime where warranty logic applies most clearly in the public markets, but is almost never invoked.

The VC Litigation Ecosystem (with Abe Cable)

This project examines litigation involving venture capital firms that raised funds in 2014–2015, aiming to build a dataset of lawsuits during the unicorn era. By reviewing state and federal court dockets for roughly 850 VC firms, it updates prior studies and explores whether litigation patterns have shifted with changes in deal size, exit timing, or legal context. Unlike earlier work focused on reputational effects, this study looks more broadly at the economic and legal forces that influence VC litigation.

Is Everything Still Securities Fraud?

This project examines securities class actions from 2010 to 2020 to assess the rise and effects of "event-driven" lawsuits—cases tied to public disasters. Though increasingly common, these suits often fail and their deterrent effect is unclear. Using firm-level data, the study finds that legal violations often rise after such lawsuits, especially at the state level, though some federal or safety violations decline. The findings suggest a nuanced relationship between shareholder litigation and public enforcement.

TEACHING INTERESTS

Primary: Business Associations, Securities Regulation, Financial Institutions, Contracts

Secondary: Securities Litigation and Enforcement, Corporate Finance, Mergers and Acquisitions, Civil Procedure

COURSES TAUGHT

Contracts (*Spring 2025 – Present*): Large 1L lecture course in the foundations of contract law, including formation, terms, defenses and damages.

EMILY N. STRAUSS

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Business Associations (*Spring 2022 – Present*): Large lecture course on the foundations of corporate law, including the organization, governance, and financing of corporations and other business forms (4 credits).

Securities Litigation and Enforcement (*Spring 2019 – Present*): Seminar reviewing the general statutory and regulatory frameworks governing securities litigation and enforcement, and introducing students to the skills frequently used in this practice (2 credits) (concurrently co-taught with Andrew Verstein at Wake Forest University School of Law Spring 2019).

Big Bank Regulation (*Fall 2018 – Present*): Lecture class reviewing basic principles of bank regulation, the role of large banks, their business dynamics and the risks they create (4 credits).

Legal Analysis, Research and Writing (*Fall 2016 – Spring 2021*): Mandatory two-semester class for first-year law students (4 credits).

REFeree SERVICE

American Law and Economics Review
Northwestern University Law Review (empirical edition)

PRESENTATIONS

NYU Law and Finance Speaker Series
University of Pennsylvania ILE Junior Scholars Workshop (9 papers accepted)
Conference on Empirical Legal Studies, Emory School of Law, University of Toronto Faculty of Law
University of Texas Business Law Workshop
Corporate Law Conference, University of Athens
Climate and Debt (Professors Quinn Curtis and Mitu Gulati), University of Virginia School of Law (virtual)
Corporate Law at a Crossroads (commentator), University of Wisconsin
Conference Honoring *The Essential Role of Securities Regulation*, Fordham University School of Law and Columbia Law School
UC Berkeley Law, Accounting, and Business Workshop
Vanderbilt Law and Business Workshop
American Law & Economics Association Annual Meeting, Columbia Law School
Corporate Governance (Professors Assaf Hamdani and Kobi Kastiel), Tel Aviv University
Securities Regulation (Professor Joe Grundfest), Stanford Law School (virtual)
Securities Regulation (Professor Da Lin), University of Richmond (virtual)
BYU Deals Conference, Park City
National Business Law Scholars Conference
Conference on Contractual Black Holes, Duke University School of Law
AALS Annual Meeting, Washington DC
SEALS Annual Meeting (forthcoming)

MEDIA

Financial Climate Podcast, *Corporate and Securities Law Expert Emily Strauss on the Potential and Limitations of Climate-Related Shareholder Lawsuits*, Nov. 22, 2023 <https://www.financialclimate.fm/>

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Andrew Ramonas, *ESG Enforcement Emerges as Risk for Oil Firms, Bitcoin Miners*, Bloomberg, July 10, 2023, <https://news.bloomberglaw.com/esg/esg-enforcement-emerges-as-risk-for-oil-firms-bitcoin-miners>

Berkeley Boosts, *Conversations on Civil Justice: Climate Change Litigation*, September 16, 2022, <https://executive.law.berkeley.edu/boosts/conversations-on-civil-justice-climate-change-litigation/>

Business Law Podcast, *Emily Strauss on Everything as Securities Fraud*, Feb. 4, 2021, <https://andrewkjennings.com/2021/02/04/emily-strauss-on-everything-as-securities-fraud/>

EDUCATION

Boston University School of Law, Boston, MA

J.D., *magna cum laude*, May 2013

GPA: 3.87 (Class rank: 5/278)

Honors: Dean's Awards in Securities Regulation and Trusts and Estates, Albert Pettoruto Prize
Boston University Law Review, Note Development Editor; Legal Writing Fellow

Boston University, College of Arts and Sciences, Boston, MA

M.A. in International Relations, May 2013

College of William and Mary, Williamsburg, VA

B.A. with high honors in English Literature and Economics, May 2006

PROFESSIONAL EXPERIENCE

Sullivan & Cromwell LLP, New York, NY

Litigation Associate, November 2014 – June 2016

Engaged in complex civil litigation and criminal and regulatory investigations. Substantive areas of law include securities litigation and fraud, bribery, antitrust, and employment investigations. Responsibilities include researching and drafting expert reports and briefing for dispositive motions, drafting and responding to discovery requests, preparing for and attending depositions and witness interviews, conducting targeted investigatory reviews, and preparing materials for settlement.

Ropes & Gray Fellowship: Lawyers Without Borders, New Haven, CT

Special Counsel, October 2013 – October 2014

Ropes & Gray LLP, Boston, MA

Summer Associate, May 2012 – July 2012 (offer extended)

Office of the Massachusetts Attorney General, Boston, MA

Intern, Enterprise and Major Crimes Division of Criminal Bureau, June 2011 – May 2012

Changsha No. 1 High School, Changsha, China

English Teacher, August 2009 – July 2010

Peace Corps, Belel, Cameroon

Education Volunteer, June 2006 – June 2008

LANGUAGES: French

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