

EMILY N. STRAUSS

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## **ACADEMIC POSITIONS**

*UC Berkeley School of Law, Berkeley CA*

Visiting Professor, August 2022 – December 2022

*Duke University School of Law, Durham, NC*

Lecturing Fellow, July 2016 – Present

## **PUBLICATIONS**

[\*Suing SPACs\*](#), 96 S. CAL. L. REV. (forthcoming 2023); 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 SPACs with lower redemption rates – frequently thought to signal higher quality – have a higher likelihood of being sued. The article assesses potential explanations for this finding, and argues that much of the merger litigation arising from SPACs is unmeritorious.

[\*Is Everything Securities Fraud?\*](#), 12 U.C. IRVINE L. REV. (forthcoming 2022); 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 in fact 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 “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**

### ***Mutiny for a Bounty*** (with Joseph A. Grundfest)

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. The article questions the legal basis for such preemption and the policy underlying it.

### ***Environmental Shareholder Litigation***

As environmentally conscious investing has made inroads in the U.S., the SEC has met demands for action on climate change with a comprehensive proposal for climate-related disclosures. But what is the existing framework for climate-related shareholder litigation? This project assembles and examines a dataset of the shareholder lawsuits to date attempting to influence firms' climate-related practices. It also assesses paths forward to making private litigation by shareholders an effective and responsible tool for policing firms' climate impact.

## **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 Teaching 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

## **TEACHING INTERESTS**

Business Associations, Securities Regulation, Banking Regulation, Contracts, Securities Litigation, Evidence, Civil Procedure, Trusts and Estates

## **COURSES TAUGHT**

**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). (*Most recent overall evaluation: 4.91/5*)\*

**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). (*Most recent overall evaluation: 4.73/5*)\*

**Big Bank Regulation** (*Fall 2018 – Present*): Lecture class reviewing basic principles of bank regulation as applied to big banks, the role of large banks, their business dynamics and the risks they create (4 credits). (*Most recent overall evaluation: 4.86/5*)\*

**Scholarly Writing Workshop** (*Fall 2017*): Workshop for students to produce original analytic papers of substantial length on student-selected topics (3 credits). (*Most recent overall evaluation: 4.75/5*)\*

**Legal Analysis, Research and Writing** (*Fall 2016 – Spring 2021*): Mandatory two-semester class for first-year law students (4 credits). (*Most recent overall evaluation (Zoom course): 4.55/5*)\*

*\*Teaching evaluations available upon request.*

## **REFeree SERVICE**

American Law and Economics Review

## **PRESENTATIONS**

American Law & Economics Association Annual Meeting, Columbia Law School (forthcoming)  
Conference on Empirical Legal Studies, University of Toronto Faculty of Law  
Corporate and Securities Litigation Workshop, University of Illinois (forthcoming)  
BYU Deals Conference, Park City  
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)  
National Business Law Scholars Conference, University of Utah, UC Berkeley, University of Oklahoma  
Conference on Contractual Black Holes, Duke University School of Law

**LANGUAGES:** French

**BAR ADMISSIONS:** New York, Massachusetts (inactive)