



RUTGERS

Law School

Rutgers Center for Corporate Law *and Governance*

NEWSLETTER FROM THE RUTGERS CENTER FOR CORPORATE LAW AND GOVERNANCE

WINTER 2020



The Rutgers Center for Corporate Law and Governance is an interdisciplinary forum for research, analysis, and discussion of current issues in corporate law and governance.

MESSAGE FROM OUR CO-DIRECTORS

The fourth year of operation of the Rutgers Center for Corporate Law and Governance was marked by achievements on multiple fronts. Some thirty-two students participated in our Entrepreneurship Clinic, now located in both Newark and Camden, providing legal services to a wide variety of for-profit and non-profit start-ups. Thirty-seven members of the Class of 2019 graduated with Certificates in Corporate and Business Law. The Center sponsored the Fourth Annual Corporate Compliance Institute, the Third Annual Hon. Rosemary Gambardella Bankruptcy Scholarship Competition, keynote addresses by BlackRock Vice Chair Matthew Mallow and SEC Commissioner Hester Peirce – as well as hosting or co-hosting ten panel discussions. The Center concluded a two-year research project with The Conference Board ESG Center on board-shareholder engagement practices and proxy voting trends.

The Center received a five-year grant from The Connell Company to support the Entrepreneurship Clinic, a grant from Center Advisory Board Member Bruce Ortwine to fund a course and conference on Banking and Financial Institution Regulation, and a grant from Ripple to fund a multi-faceted initiative focused on blockchain, cryptocurrencies and fintech. The Center also received a grant from the Association of Corporate Counsel – NJ to provide annual scholarships to two rising 3L students demonstrating an interest in and aptitude for corporate and business law.

These achievements were due in large part to our dedicated Advisory Board, active Alumni Steering Committee, dynamic Affiliated Faculty, committed students, and superb Program Coordinators, Tania Bentley and Habibah Johnson.

The Center has become a recognized forum for research, analysis and discussion of current issues in corporate law and governance, and a valued resource for faculty, alumni, students and the business and non-profit communities. We remain committed to providing our students with a strong foundation for practice in the business law area and to building bridges between and among Rutgers Law School, the business and non-profit communities, government officials, and other Rutgers University units, as we seek to promote best corporate and governance practices and to stimulate potential law reform.

Yours truly,

Douglas S. Eakeley and Arthur B. Laby

CO-DIRECTORS, RUTGERS CENTER FOR CORPORATE LAW AND GOVERNANCE



NEW CCLG FELLOW DOUGLAS K. CHIA

The Center for Corporate Law and Governance is pleased to announce that Douglas K. Chia, former Executive Director of The Conference Board ESG Center, has joined the Center as a Fellow. Doug will be helping us grow the Center's prominence in the business community, recruit other constituents for our Advisory Board, develop programming and program participants, and contribute to our ongoing research and teaching.

Before joining The Conference Board, Doug served as Assistant General Counsel and Corporate Secretary of Johnson & Johnson. Previously, he served as Assistant General Counsel, Corporate of Tyco International, and practiced law at the global firms Simpson Thacher & Bartlett and Clifford Chance, both in New York and Hong Kong.

Doug has held a number of central leadership positions in the corporate governance field, including Chair of the Board of the Society of Corporate Secretaries & Governance Professionals, President of the Stockholder Relations Society of New York, and member of the New York Stock Exchange Corporate Governance Commission. He is currently a member of the Corporate Laws Committee of the American Bar Association and the National Asian Pacific American Bar Association.

A photograph of a conference room with a long table and several chairs, overlaid with a red tint. The room has wood-paneled walls and a whiteboard. The text is overlaid on the left side of the image.

“When you ask people what exactly a board member is supposed to be doing in this job, you get a whole range of responses.”

— DOUGLAS K. CHIA

We do care what the oil company thinks about climate and climate change, and climate change disclosure. And what are they doing to prepare for the day when hydrocarbons aren't the basis for our society.

— MATTHEW J. MALLOW





**INSTITUTE OPENING ACADEMIC SESSION
WITH KEYNOTE SPEAKER MATTHEW J. MALLOW,
VICE CHAIR OF BLACKROCK, IN NEWARK**

September 6, 2018

Members of the Center's Advisory Board, Alumni Steering Committee and Affiliated Faculty met in Newark for the Center's Opening Academic Session. A public meeting followed, with BlackRock Vice Chair Matthew Mallow giving the keynote address on Shareholder Engagement.

Watch full event here: <https://www.youtube.com/watch?v=RRbFXR4dIts&list=PL6x-j6ovkb9B4jsFDRKCUBfL-V4Fivav1&index=7>



THIRD ANNUAL HON. ROSEMARY GAMBARDELLA BANKRUPTCY SCHOLARSHIP COMPETITION

November 19, 2018

On November 19, 2018, the Center and the New Jersey Turnaround Management Association co-hosted the 3rd Annual Honorable Rosemary Gambardella Scholarship Competition in Newark. The Competition is named in honor of Judge Rosemary Gambardella, U.S. Bankruptcy Judge for the District of New Jersey and a longtime NJTMA member (and Law School alumnae).

Four students – two from Professor Chrystin Ondersma’s bankruptcy law class at Rutgers Law School and two from Professor Stephen J. Lubben’s class at Seton Hall Law School – competed in a bankruptcy case study competition. The Rutgers students were Sam Taddeo and David Idokogi and the Seton Hall Law students were Conor McMullan and T.J. Nichols.

A total of \$5,000 in scholarship money from the NJTMA was awarded. After the competition, NJTMA hosted a reception for the students, professors, and members of NJTMA at Barcade in Newark.

*The third annual Hon. Rosemary
Gambardella Scholarship Bankruptcy
Competition in Newark, NJ*





FOURTH ANNUAL CORPORATE COMPLIANCE INSTITUTE

April 12, 2019

The Center hosted its Fourth Annual Corporate Compliance Institute on April 12 in Camden.

Hui Chen, former Compliance Counsel Expert for the U.S. Department of Justice Fraud Section, kicked off the conference with introductory remarks. This was followed by two panel sessions, a lunch keynote by Eugene Soltes, Harvard Business School Professor and author of “Why They Do It: Inside the Mind of the White Collar Criminal,” and two breakout sessions, which provided an opportunity for conversations between and among attendees on industry-specific topics of concern.

The first panel was entitled *Recent Trends in Corporate Compliance (trade sanctions, antitrust, and immigration)* and the speakers included:

- Elizabeth Piotrowski, Federal Trade Commission
- Manuela Morais, Law Offices of Manuela Morais
- Bryan Early, University of Albany
- Moderator: Hui Chen

The second panel was entitled *Data Governance, Stewardship, and Privacy* and the speakers included:

- Sean McDonald, Frontline SMS and Stanford Digital Civil Society Lab
- David Allen, Oracle
- Jeffrey Rosenthal, Blank Rome LLP
- Moderator: David Wishnick, University of Pennsylvania Law School

The Institute also featured two breakout sessions, the first on *Health Care & the Pharmaceutical Industry: Current Topics in Compliance*, co-sponsored by the HealthCare Institute of New Jersey. The speakers were Tony Pozos, Drinker Biddle, Reath LLP and Sally Molloy, U.S. Department of Justice.

The second breakout session was entitled *Financial Services & Securities: Current Topics in Compliance* and the speakers were Todd Cipperman, Cipperman Compliance and Joan Heminway, University of Tennessee.



Students learned about limited liability companies from experts that included Vice Chancellor Travis Laster of the Delaware Court of Chancery.

THE HON. J. TRAVIS LASTER TEACHES NEW BUSINESS LAW COURSE ABOUT LIMITED LIABILITY COMPANIES

Center Affiliated Faculty member Professor Jacob Russell launched a new business law class, along with The Hon. J. Travis Laster, Vice Chancellor of the Delaware Court of Chancery, on Advanced Business Organizations, focused on the law of limited liability companies.

LLCs may be mentioned in business law classes, but the topic is not covered in depth, despite LLCs having grown to be the most popular structure for business formation in recent years. Small businesses are attracted to LLCs because they can be cheaper to form and have more flexible governance structures than corporations. More complex deals also frequently use LLCs and limited liability partnerships because of their flexibility and tax advantages.

Students benefitted from having Vice Chancellor Laster in the classroom. He is a highly respected jurist and has deep expertise in LLC litigation. The bulk of Fortune 500 companies make Delaware their legal home, and the state and its Chancery Court are well known for business litigation in the country.

The new course, which started in January in Camden, covered the full life cycle of an LLC. Topics included the history of the LLC statute, how LLCs differ from corporations, how to form an LLC, how to structure and manage an LLC, how disputes are resolved, litigation issues involving LLCs, and how an LLC is terminated.

The course was popular from the beginning, with 25 students, the maximum allowed in a skills course. To provide hands-on skills experience, the course included regular drafting assignments, as well as a mock litigation exercise.

A hand is raised in the foreground, reaching towards the top of the frame. The background is a blurred crowd of people, suggesting a public event or conference. The entire image is overlaid with a semi-transparent red filter. A white rectangular box is centered horizontally, containing the text "PANEL DISCUSSIONS, PRESENTATIONS AND WORKSHOPS" in a bold, white, sans-serif font.

PANEL DISCUSSIONS, PRESENTATIONS AND WORKSHOPS

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AUGUST 29, 2018 — “BLOCKCHAIN, ICOS AND FINTECH: NEW WAYS TO RAISE CAPITAL AND NEW MARKET REGULATIONS,” IN NEWARK

The Center hosted a public lecture on “Blockchain, ICOs and FinTech: New Ways to Raise Capital and New Market Regulations.” Our guest lecturer was Lewis Cohen, co-founder of DLx Law, who was joined by his colleague Rodrigo Seira.

SEPTEMBER 12, 2018 — “BANKRUPTCY 2018: IMPORTANT DECISIONS OF THE LAST TWELVE MONTHS,” IN NEWARK

The Center, along with the American College of Bankruptcy Third Circuit Fellows and the Rutgers Institute for Professional Education, presented a panel discussion of the most important bankruptcy decisions in 2018, from the United States Supreme Court down to the bankruptcy courts. Emphasis was on cases that move, change, develop, or significantly affect existing law. The panelists covered a multitude of circuit splits that should make their way to the Supreme Court in the next several years. The panels also analyzed emerging areas of controversy in bankruptcy law, involving issues of significance in consumer law and with respect to corporate reorganization.

The panel discussion was moderated by Bill Rochelle, Editor-at-Large, American Bankruptcy Institute; the panelists were Hon. Kevin J. Carey, United States Bankruptcy Judge, District of Delaware; Hon. Ashely M. Chan, United States Bankruptcy Judge, Eastern District of Pennsylvania; Hon. Rosemary Gambardella, United States Bankruptcy Judge, District of New Jersey; Hon. Christopher S. Sontchi, United States Bankruptcy Judge, District of Delaware, and Chrystin Ondersma, Professor of Law and Judge Morris Stern Scholar, Rutgers Law School.

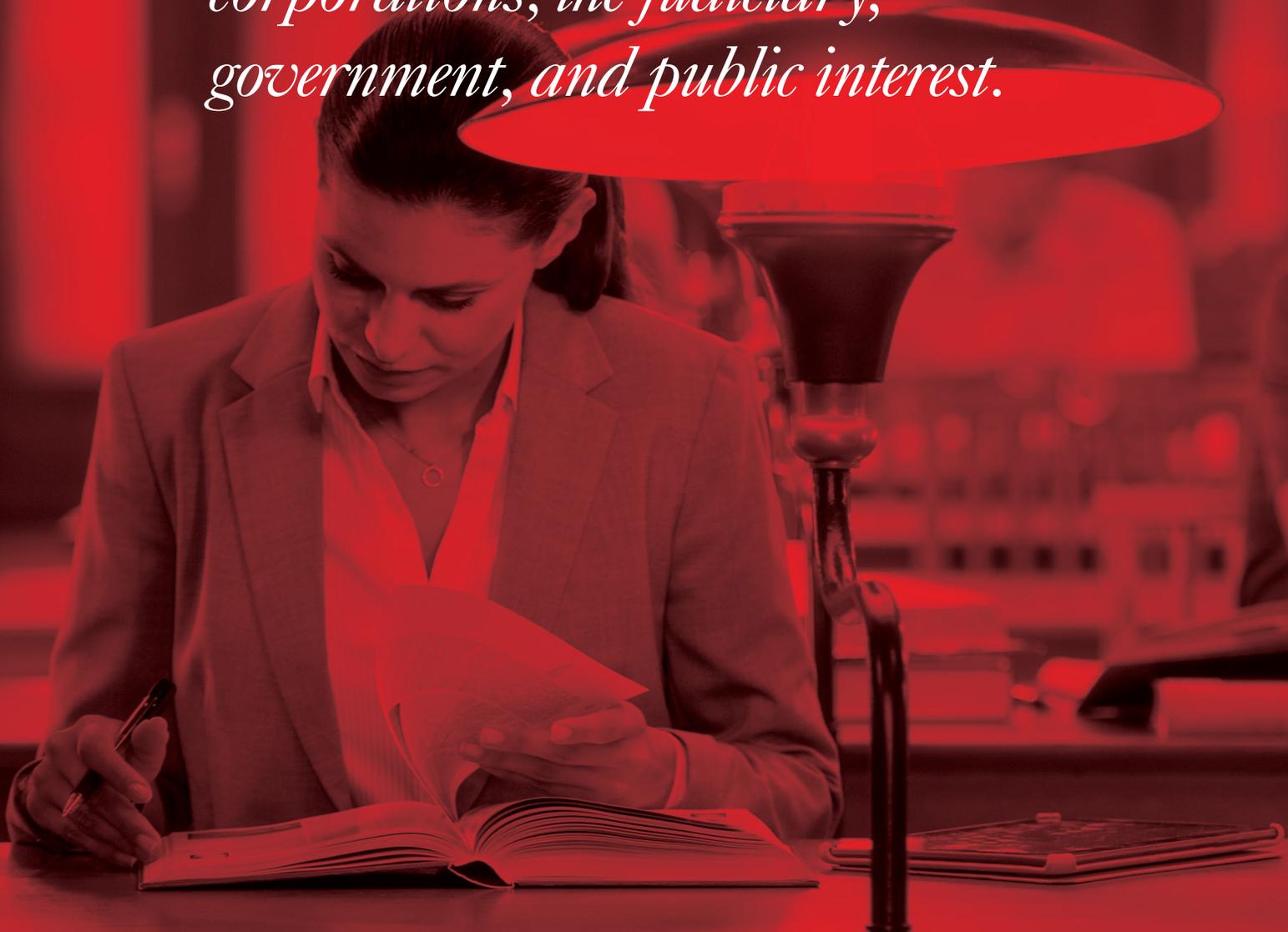


OCTOBER 30, 2018 – “ADVANCING WOMEN IN THE LEGAL PROFESSION,” IN NEWARK

Funded by a generous grant from The New Jersey Women Lawyers Association, the Center, in collaboration with the Center for Gender, Sexuality, Law and Policy, hosted an engaging and interdisciplinary “Advancing Women in the Legal Profession” panel discussion on October 30, 2018. The panelists focused on promotion and retention of women in the legal profession and women’s opportunities and leadership in private practice, corporations, the judiciary, government, and public interest.

The panel was moderated by Sheila Jain Kaushik, RU’09, Senior Legal Counsel – Intellectual Property at Ansell; the panelists were Jessica Kitson, RU’02, Managing Attorney at Volunteer Lawyers for Justice; Courtney McCormick, Vice President, Internal Auditing Services at PSEG; Wendy B. Reilly, RU’00, Counsel at Debevoise & Plimpton LLP; and Natalae Velez, RU’11, Assistant District Attorney in the Manhattan District Attorney’s Office.

A diverse educational and networking program focused on women's opportunities and leadership in private practice, corporations, the judiciary, government, and public interest.





OCTOBER 25, 2018 – “CHINESE COMPANIES IN THE CURRENT U.S. LEGAL AND REGULATORY ENVIRONMENT,” IN NEWARK

Chinese companies investing in the United States encounter vast institutional gaps, and crossing the gaps has become more challenging due to the deterioration of U.S.-China relations. How do and should the Chinese companies react? On October 25, 2018, the Center hosted a panel discussion that focused on the adaptation (or lack thereof) by Chinese companies to the current U.S. legal and regulatory environment.

The panel was moderated by Center Co-Director Douglas Eakeley, and consisted of the following speakers, who discussed the topic from a variety of perspectives:

- Hui Chen, Distinguished Research Fellow at Rutgers Law School and a corporate ethics and compliance leader, who served as the first Compliance Counsel Expert at the U.S. Department of Justice from November, 2015 to June, 2017.
- Alex Hao, partner at JunHe’s New York office. Alex has been practicing law in New York since 2003, and joined JunHe in 2011 after eight years at two leading U.S. law firms.
- Stephanie Xiaofeng Lin, Associate General Counsel of Greenland USA’s New York/Eastern Region office, representing Greenland on the development of Pacific Park Brooklyn, a \$6 billion public-private mixed-use project in Downtown Brooklyn being developed by a Greenland USA and Forest City Ratner Companies joint venture.
- Jiang Liu, partner in Morrison & Foerster’s Financial Services Practice in the firm’s New York office.
- Anne Salladin, special counsel at Strock & Strock & Lavan LLP, and formerly with the Office of the Assistant General Counsel for International Affairs of the U.S. Department of the Treasury, which chairs the Committee on Foreign Investment in the United States (CFIUS).
- Ji Li, former Professor of Law at Rutgers University and a member of the Associate Faculty of the Division of Global Affairs.



NOVEMBER 8, 2018 – “CASE CLOSED: CELL PHONE PRIVACY IN THE MODERN WORLD,” IN NEWARK

On November 8, the Center and the Rutgers Computer and Technology Law Journal hosted “Case Closed: Cell Phone Privacy in the Modern World,” a panel discussion addressing the impact of the recent U.S. Supreme Court decision, *Carpenter v. United States*, and its effect on privacy law and law enforcement’s ability to track historical or real-time cell phone location

The panel explored how other types of electronically-gathered information, such as data stored by wearable technologies and location-tracking applications, will be affected in the post-*Carpenter* era.

The panel was moderated by Center Co-Director Douglas Eakeley, and consisted of the following speakers:

- Ronald Chen, University Professor, Distinguished Professor of Law and Judge Leonard I. Garth Scholar | Rutgers Law School
- Sabrina Comizzoli, Assistant U.S. Attorney | U.S. Attorney’s Office, District of New Jersey
- Mary Hildebrand, Partner, Founder and Chair, Privacy & Cybersecurity | Lowenstein Sandler LLP.
- Todd Schulman, Associate General Counsel | Verizon



NOVEMBER 13, 2018 – “A VERY EUROPEAN MESS: THE LEGAL COMPLEXITY OF BREXIT,” IN CAMDEN

The Center hosted a public lecture in Camden entitled “A Very European Mess: The Legal Complexity of Brexit,” presented by Professor Matthias Lehmann, Professor at the University of Bonn and Director of the Institute for International Private and Comparative Law.

While the US has managed to renegotiate its trading relationship with Canada and Mexico, the UK and the EU are struggling to define their future relationship post-Brexit. From an outside perspective, both sides appear to be irrational. But there are constraints that explain their behavior, many of which are legal in nature. Dr. Lehmann’s talk highlighted some of these constraints – such as the “guillotine clause” of Article 50 of the Treaty on European Union, the difference between a Free Trade Agreement and an Internal Market, and the indivisibility of the four freedoms – and showed why they complicate Britain’s departure from the EU.

JANUARY 18, 2019 – A VISIT TO THE PHILADELPHIA EXCHANGE TRADING FLOOR

Rutgers Law students visited the Nasdaq’s Philadelphia headquarters to see the live opening derivative trading on one of the country’s oldest securities exchanges. After watching the trading in action, they had the chance to meet and talk with Nasdaq’s regulatory and legal officials who manage the options, futures, and equities exchanges, and to learn how these financial instruments work and why they matter, how they’re traded, and how they’re regulated.

Speakers included:

- Angela Saccomandi-Dunn (Principal Associate General Counsel)
- Michael Blackson (Senior Director of Options Surveillance)
- Dan Carrigan (President of Nasdaq Futures)
- Allen Broadbent (Senior Surveillance Specialist – Options)

The trip was hosted by Professors Arthur Laby and Jacob Russell.



MARCH 26, 2019 – “INNOVATION & CAPITAL TRENDS FOR ENTREPRENEURIAL VENTURES: CONVERGENCE OF FINANCIAL, INTELLECTUAL & HUMAN CAPITAL,” IN NEWARK

The interaction of significant changes in law, finance and business are dramatically changing the environment for entrepreneurial companies. In this program, Rutgers Entrepreneurship Clinic Adjunct Professors Theodore Weitz and Mukesh Patel discussed those changes and their impact, and how companies are adapting to the new reality in every aspect of their operations.

APRIL 11, 2019 – “SUSTAINABLE SUPPLY CHAINS: STRENGTHENING THE LINKS,” IN NEWARK

The Center hosted a panel discussion entitled “Sustainable Supply Chains: Strengthening the Links” on April 11, in Newark.

Panelists discussed the increased focus on the substantiality of global supply chains and addressed the questions: What is driving multinational corporations to enhance the social, human rights, and environmental performance of their supply chains? How are companies working to meet the (sometimes conflicting) expectations of their various stakeholders, including investors, shareholders, employees, consumers, NGOs, and government? And what norms are they developing to make global supply chains more sustainable?

The panelists were:

- Dave Yawman, Executive Vice President, Government Affairs, General Counsel and Corporate Secretary, PepsiCo.
- Sarah Dadush, Associate Professor of Law, Rutgers Law School
- Kevin Kolben, Associate Professor, Rutgers Business School
- Jaren Dunning, Legal Counsel and Human Rights Director, PepsiCo.
- Nathan Fleisig, Director of Corporate Social Responsibility, Outerstuff

APRIL 17, 2019 – “NEW DEVELOPMENTS IN SECURITIES LAW AND LITIGATION WITH LESLIE SILVERMAN,” IN NEWARK

On April 17th, the Center hosted Leslie Silverman, Senior Counsel, Cleary Gottlieb Steen & Hamilton, LLP, who gave a public lecture on the most recent developments in securities litigation and recent shareholder proposals to require that shareholders arbitrate, rather than litigate, claims of securities fraud.



CLOSING ACADEMIC SESSION WITH KEYNOTE SPEAKER HESTER M. PEIRCE, COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION MAY 8, 2019

Members of the Center’s Advisory Board, Alumni Steering Committee and Affiliated Faculty met in Camden for the Closing Academic Session, which was followed by a public session, at which SEC Commissioner Hester M. Peirce presented the annual Distinguished Lecture on Corporate Law.

ANNUAL FIDUCIARY LAW WORKSHOP IN CAMDEN JUNE 14-15, 2019

Center Co-Director Arthur Laby hosted the Annual North American Fiduciary Law Workshop on June 14 and 15. The workshop rotates each year to a different school and Rutgers Law School – Camden was selected to host this year. The workshop featured scholars writing in the area of fiduciary law from North America, as well as several speakers from Europe.

An example of some of these papers presented include the following:

- Mandatory Arbitration Agreements, Private Domination and the Rule of Law:
 - A New Member of the Family: Crowdfunding Campaign Organizers
 - The Internal Limits on Fiduciary Loyalty
 - Are Two Employers Better Than One? An Empirical Assessment of Multiple-Employer Retirement Plans
 - Fiduciary Duties on the Thresholds of Agency Relationships
 - The Corrosion Critique of Benefit Corporations
-

PROGRAMS DURING FALL 2019...

September 11, 2019 – 2020 Academic Year Opening Session, in Newark

September 11, 2019 – Bankruptcy 2019, in Newark

September 27, 2019 – “The Rise of Self-Expressive Investment,” in Newark

October 4-5, 2019 – Fiduciary Duties in Business Workshop in Camden

November 22 and 23, 2019 – The Center for Corporate Law and Governance
Fall Transactional Competition, in Newark

The image shows a stack of books with a red overlay. A white rectangular box is centered on the stack, containing the text "FACULTY PUBLICATIONS".

FACULTY PUBLICATIONS

FACULTY PUBLICATIONS

HUI CHEN

Driving Transparency in Corporate Compliance: A Suggested Approach for Using Technology to Influence Behavior for the New Decade (July, 2019).

US DOJ's Compliance Guidance: Take Aways for International Enforcers and Regulators. *Revue Internationale de la Compliance et de l'Éthique des Affaires*, No. 3, June 2019.

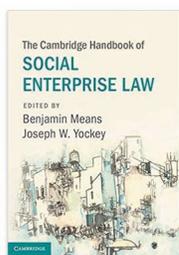
Tips for Using DOJ Guidance In A Compliance Program (May, 2019).

Toward Outcome-Focused Evaluation. *Revue Internationale de la Compliance et de l'Éthique des Affaires*, No. 39, September 2018.

SARAH DADUSH

Contracting for Human Rights: Looking to Version 2.0 of the ABA Model Contract Clauses, 68 AM. U. L. REV. 1519 (2019) [Symposium: New Perspectives: A Discussion on Modern Global Supply Chains].

The Law of Identity Harm, 96 WASH. U. L. REV. 803 (2019).



A New Blueprint for Regulating Social Enterprises, Cambridge Handbook of Social Enterprise Law (Benjamin Means & Joseph Yockey eds., Cambridge University Press, 2018).

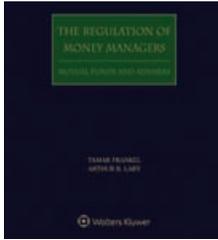
YULIYA GUSEVA

Russian Capital Markets and Shareholder Litigation: Quo Vadis?, Global Securities Litigation and Enforcement (Pierre-Henri Conac & Martin Gelter eds., Cambridge University Press 2019).

Blogposts:

"The SEC and Foreign Corporations: A Path to Optimal Public Enforcement," The Harvard Law School Forum on Corporate Governance and Financial Regulation, September 30, 2018.

"Securities Litigation Against Foreign Private Issuers," Oxford Business Law Blog, September 21, 2018 (the post is based on *Extraterritoriality of Securities Law Redux: Private Litigation Five Years After Morrison v. National Australia Bank*, 2017 Colum. Bus. L. Rev. 199, and *The SEC and Foreign Corporations: A Path to Optimal Public Enforcement*, 59 B.C. Law Rev. 2055 (2018)).



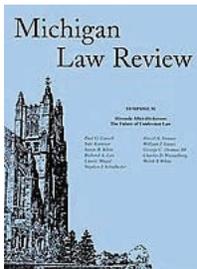
ARTHUR LABY

“The Regulation of Money Managers: Mutual Funds and Advisers” (4 Volumes), New York, New York: Wolters Kluwer (2019 Annual Update) (with Tamar Frankel).

“Fiduciary Principles in Investment Advice,” in Evan J. Criddle, Paul B. Miller, & Robert H. Sitkoff, eds., *Oxford Handbook of Fiduciary Law*, Oxford, UK: Oxford University Press (2019).

DAVID NOLL

Arbitration Conflicts, 103 Minn. L. Rev. 665 (2018)



The Rule of Law in Multidistrict Litigation, forthcoming in Michigan Law Review. Politico Story.

Slate Story.

Brief in *Kisor v. Wilkie*.

JACOB RUSSELL

Unconscionability's Greatly Exaggerated Death, 53 U.C. Davis L. Rev. (2019).



REID WEISBORD

Inheritance Forgery, 69 Duke Law Journal, (forthcoming 2020) (with David Horton).

Boilerplate No Contest Clauses, 83 Law & Contemporary Problems, (forthcoming 2020) (with David Horton).

Fiduciary Powers and Duties in Probate Estates: An Empirical Study, UC Davis Law Review (forthcoming 2020).

Postmortem Defamation in a Society without Truth for the Living, Rutgers University Law Review (forthcoming 2019).

Postmortem Austerity and Entitlement Reform, 71 Stanford Law Review Online 132 (2018), Reviewed by Ariel Stevenson on TaxProfBlog.

The Governmental Stake in Private Wealth Transfer, 98 Boston University Law Review 1229 (2018).

Essay Response to *Asymmetries in the Generation and Transmission of Wealth* by Felix Chang, 78 Ohio State Law Journal Furthermore (2019).

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