



RUTGERS
Law School

Rutgers Center for Corporate Law *and Governance*

NEWSLETTER FROM THE RUTGERS CENTER FOR CORPORATE LAW AND GOVERNANCE 2020-2021 ACADEMIC YEAR

The Center continues to be 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.



MESSAGE FROM OUR CO-DIRECTORS

The sixth year of operation of the Rutgers Center for Corporate Law and Governance took place as the pandemic continued to pose challenges. The Center, however, remained resilient and saw several significant achievements during the year. Although we continued to hold events online and greatly appreciate the participation of our speakers, panelists, and audiences, we look forward to a time when we can once again hold events in person. Classes remained remote for the 2020-2021 academic year, but we returned to the Law School (wearing masks) in August for the beginning of the 2021-2022 academic year. Despite the masks, it has been wonderful to be back in the classroom.

The Certificate in Corporate and Business Law has remained popular with 38 members of the Class of 2021 graduating with the distinction. The Center hosted keynote addresses by former SEC Commissioner Robert Jackson and Council of Institutional Investors Executive Director Amy Borrus; additional programs included "New Jersey's Proposed Rule on Fiduciary Standards for Financial Professionals," "Bankruptcy Review: Important Decisions of the Last Twelve Months," a two-part series looking back on the Dodd-Frank Act, part two of the "Women in Corporate Law" series, and "The UN Guiding Principles on Business and Human Rights +10: Celebrating a Decade of Catalyzing Innovative Human Rights Enforcement."

Over the past year, there have been a number of changes to the Law School leadership. We were pleased to welcome Rose Cuison-Villazor as the Interim Co-Dean of Rutgers Law School in Newark and Anjum Gupta and Stacy Hawkins as Vice Deans of Newark and Camden, respectively. Dean Cuison-Villazor previously served as the Vice Dean, and she is also the Director of the Center for Immigration Law, Policy and Social Justice. Vice Dean Gupta teaches refugee law and professional responsibility and is the Director of the Immigrant Rights Clinic. Vice Dean Hawkins teaches Constitutional Law, Employment Law, and an original seminar on Diversity and the Law.

The Center continues to be 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, 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

INTRODUCING RIHAM AND KATIE



Riham Alzabey, Student Fellow

Riham Alzabey is our new Student Fellow. A third-year law student, Riham is the Senior Articles Editor for the *Rutgers Business Law Review*, a Teaching Associate in the Legal Analysis, Writing and Research Skills course, and a Research Fellow in the Center's Fintech and Blockchain Program.



Katie Sferra, Program Coordinator

Katie Sferra joined Rutgers Law School in August 2021 as the Program Coordinator for the Academic Research Centers, including the Center for Corporate Law and Governance. Katie will assist with CCLG's website, programming, budget, and other needs.

Before joining Rutgers Law, Katie served as International Student Advisor at Princeton University's Davis International Center. She received her Bachelor's degree from Montclair State University.



EVENTS AND PROGRAMS

EVENTS AND PROGRAMS

9/16/2020 OPENING ACADEMIC SESSION

View recording here: <https://go.rutgers.edu/d7wo6yrd>



Our opening academic session featured former SEC Commissioner Robert Jackson. The discussion included prominent issues of corporate governance with which companies and regulators are grappling, including Environmental, Social, and Governance (“ESG”) disclosures, proxy plumbing, and corporate political spending. The discussion analyzed the character and impact of rule amendments proposed by the SEC in 2020, which represented an overhaul to Regulation S-K. The amendments followed a principles-based approach that lack company-specific mandates. Consequently, and despite the calls of large institutional investors to follow the SASB Standards regarding ESG matters, Jackson explained that companies can elect how to respond, and investors will not be able to access a comparable set of data to utilize in making investment decisions. Jackson highlighted the importance of the SEC’s introduction of Human Capital Management disclosures. Jackson also referred to Executive Compensation as another subject, presenting the issue as to whether the SEC should mandate specific disclosure or provide corporate management with the flexibility of a principles-based approach.

10/19/2020 NEW JERSEY’S PROPOSED RULE ON FIDUCIARY STANDARDS FOR FINANCIAL PROFESSIONALS

Co-sponsored by *Rutgers Business Law Review*, Rutgers Institute for Professional Education, and the Rutgers Center for Corporate Law and Governance.

This symposium addressed New Jersey’s proposed rule regarding the fiduciary duties of financial professionals within the state, including the origins of the proposed rule, the scope of the new fiduciary duty, and to whom the duty is owed. The speakers drew comparisons to the U.S. Securities and Exchange Commission’s Regulation Best Interest, adopted in June 2019, as well as similar initiatives in Nevada and Massachusetts. The panel also analyzed the potential outcomes of the New Jersey proposal and best practice tips for legal professionals regarding how their clients may be impacted.

Panelists:

- Christopher W. Gerold, *Chief, New Jersey Bureau of Securities*
- Amy B. Bard, Esq., *Law Offices of Amy B. Bard*
- Hasan M. Ibrahim, *Vice President and Chief Legal Officer, Prudential Advisors*
- Jenice L. Malecki, Esq., *Malecki Law*



Moderator:

- Arthur Laby, *Professor of Law, Rutgers Law School and Co-Director, Rutgers Center for Corporate Law and Governance*

10/28/2020 TEN YEARS AFTER THE DODD-FRANK ACT: LOOKING BACK AND LOOKING FORWARD PART I: PAST IS PROLOGUE

View recording here: <https://go.rutgers.edu/x9kp4s6m>

This was the first event in a virtual symposium series focusing on the Dodd-Frank Act. The webinar included a historical overview of the financial crisis, the legislation, and its designed impact on financial stability, capital markets, consumer protection, and the Federal Reserve's ability to respond to the next crisis. The symposium analyzed how the political economy of the 2008-2009 financial crisis differed from the crisis brought on by the COVID-19 pandemic in 2020 and whether a greater financial crisis is anticipated over the course of the COVID-19 pandemic. The panelists identified the tools with which the Federal Reserve and Congress were able to shift the trajectory of the COVID-19 pandemic on financial markets, with the Fed adopting accommodative monetary policy, quantitative easing, and new emergency lending facilities, essentially providing enough liquidity to help a variety of market participants, from households to large public companies.

Special thanks to Advisory Board member Bruce Ortwine, whose generous financial support made the Dodd-Frank program series possible.

Speakers:

- Thomas C. Baxter, Jr., *Of Counsel, Sullivan & Cromwell, and former General Counsel and Executive Vice President of the Federal Reserve Bank of New York*
- James P. Bergin, *Deputy General Counsel and Senior VP of the Legal Group of the Federal Reserve Bank of New York, and former Chief of Staff to New York Fed President William C. Dudley*
- Professor William Bratton, *University of Pennsylvania School of Law*
- Professor Kathryn Judge, *Columbia Law School*
- Charles Yi, *Partner, Arnold & Porter, and former General Counsel of the Federal Deposit Insurance Corporation*



Moderator:

- Jarryd Anderson, *Counsel, WilmerHale*

1/25/2021 BANKRUPTCY REVIEW: IMPORTANT DECISIONS OF THE LAST TWELVE MONTHS

Co-sponsored by the American College of Bankruptcy Third Circuit Fellows and the Rutgers Center for Corporate Law and Governance.

This program reviewed the most important bankruptcy decisions in the last year, from the bankruptcy courts up through the United States Supreme Court. The panel focused on cases that moved, changed, developed, or significantly affected existing law, covered circuit splits that could make their way to the Supreme Court in the next several years, and analyzed emerging areas of controversy in bankruptcy law which also involve issues of significance in consumer law.

Panelists:

■ Hon. Eric L. Frank,
United States Bankruptcy Court Judge, Eastern District of Pennsylvania

■ Hon. Rosemary Gambardella,
United States Bankruptcy Court Judge, District of New Jersey

■ Hon. Michael B. Kaplan,
Chief United States Bankruptcy Court Judge, District of New Jersey



■ Chrystin Ondersma,
Professor of Law and Judge Morris Stern Scholar, Rutgers Law School

■ Hon. Brendan Linehan Shannon,
United States Bankruptcy Court Judge, District of Delaware

Moderator:

■ Bill Rochelle, *Editor-at-Large, American Bankruptcy Institute*

2/23/2021 IS THERE GENDER BIAS IN CORPORATE LAW? WOMEN IN CORPORATE LAW: PART TWO

Co-hosted by the Business Law Association, Women's Law Caucus, Women's Law Forum, Black Law Student Association, and the Rutgers Center for Corporate Law and Governance.

The panel held a wide-ranging discussion related to gender bias in corporate law. This was the second of a series about women in corporate law. The first program took place in November of 2019.

Panelists:

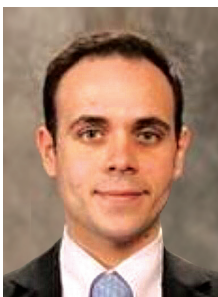
- Sandra Mulrain, *Senior Vice President, Group General Counsel at Reliance Worldwide Corporation*
- Erin T. Elko, *Deputy General Counsel, Horizon Blue Cross Blue Shield of New Jersey*
- Maggie Mezza, *Managing Associate General Counsel, Verizon Connect*

3/3/2021 DODD-FRANK AT TEN: LOOKING BACK AND LOOKING FORWARD. PART 2: "REFORM OF THE REFORM"

View recording here: <https://go.rutgers.edu/1q28ffx0>

In the second part of the Dodd-Frank series, we focused on the rulemakings that arose from the Dodd-Frank Act and what is on the regulatory and legislative horizon. Topics included rulemaking developments relating to capital, enhanced prudential requirements, systemic safety and soundness, derivatives, and foreign banking organizations.

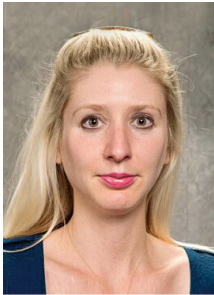
Speakers:



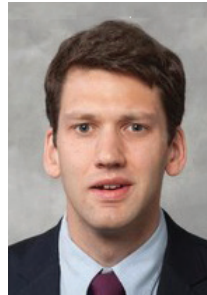
- Jahad (Jay) Atieh, *Executive Director and Assistant General Counsel, J.P. Morgan Chase & Co.*



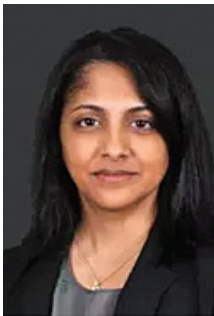
- Seth Carpenter, *Chief US Economist, UBS*



■ Anna Harrington,
*Senior Vice President
and Associate
General Counsel,
The Bank Policy
Institute*



■ Benjamin
McDonough,
*Associate General
Counsel, Board
of Governors of
the Federal Reserve
System*



■ Reena Agrawal
Sahni,
*Partner, Shearman
& Sterling*



■ Curtis Tao,
*Managing Director
& Deputy General
Counsel, Citigroup*

Moderator:

■ Jarryd Anderson, *Counsel, WilmerHale*

5/24/2021 CLOSING ACADEMIC SESSION

View recording here: <https://go.rutgers.edu/5bmtz5vu>



Our closing academic session speaker was Amy Borrus, Executive Director of the Council of Institutional Investors, who gave a talk entitled “The Role of Investors in Corporate Governance During the COVID-19 Pandemic and the Rise of ESG.”

Borrus reviewed the impact of COVID-19 on proxy season shareholder meetings and discussed executive compensation, including the increase in the failure rate of say-on-pay votes. Borrus also addressed stakeholder versus shareholder primacy, CEOs speaking out on social, political, and environmental issues, and investors’ stances on ESG. The discussion then touched on SEC Chair Gary Gensler’s agenda and issues such as meme stocks, dual class stock, and universal proxies.

6/16/2021 THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS +10: CELEBRATING A DECADE OF CATALYZING INNOVATIVE HUMAN RIGHTS ENFORCEMENT

View recording here: <https://go.rutgers.edu/v3j9s07e>

This event was hosted to honor the ten-year anniversary of the United Nations Guiding Principles on Business and Human Rights (the UNGPs). While normatively and prescriptively rich, the UNGPs are a type of “soft law” that cannot be legally enforced on their own. Yet, the UNGPs have spurred major innovations in the legal enforcement of human rights. This webinar explored some of these innovations in different arenas: the courts and litigation; public law initiatives to develop “hard” national, regional, and international norms on business and human rights; and private law initiatives to use contracts as vehicles for protecting human rights.

Panelists:

■ Rachel Chambers,
*Assistant Professor,
University of
Connecticut School
of Business*

■ Sarah Dadush,
*Professor of Law,
Rutgers Law School*



■ Surya Deva,
*Associate Professor,
School of Law of City
University of Hong
Kong and a member
of the UN Working
Group on Business
and Human Rights*

■ Anita Ramasastry,
*Professor of
Law, University of
Washington School
of Law and a member
of the UN Working
Group on Business
and Human Rights*



Moderator

■ Beth Stephens, *Professor of Law, Rutgers Law School*

BLOCKCHAIN AND FINTECH PROGRAM



The Blockchain and Fintech Program is organized under the auspices of the Rutgers Center for Corporate Law and Governance. It is engaged in multidisciplinary blockchain and fintech research, as well as a curriculum- and project-based set of activities designed to advance faculty and student engagement in blockchain, cryptocurrency, cybersecurity, fintech, and related subjects. Related publications from the past year can be viewed in the “Faculty Publications” section of the newsletter under Yuliya Guseva, who is the head of the program.

The Collaboratory is a series of bimonthly gatherings of leading lawyers, former regulators, and academics interested in regulatory and industry developments in fintech, defi, crypto, and blockchain-based businesses. The purpose of the Collaboratory is to create a forum for policy discussion and analysis.

Speakers and Panelists featured during Spring 2021 Meetings of the Collaboratory:

February 2021 meeting:

- David L. Yermack, *Albert Fingerhut Professor of Finance and Business Transformation, Chair, Finance Department, NYU Stern School of Business*

April 2021 meeting:

- M. Todd Henderson, *Michael J. Marks Professor of Law, Chicago Law School*
- Yuliya Guseva, *Professor of Law, Rutgers Law School*

May 2021 panel discussion:

- Francesca Don Angelo, *Deputy General Counsel & Corporate Secretary at Galaxy Digital*
- Elizabeth Lan Davis, *partner at Murphy & McGonigle and former Chief Trial Attorney for the CFTC's Division of Enforcement*
- Merav Ozair, *Fintech Faculty Member at Rutgers Business School*
- Lee Schneider, *General Counsel at Block.one*

A man with a beard is sitting at a desk in a library, working on a laptop. The scene is dimly lit, with a warm red overlay. In the foreground, a desk lamp is visible on the left, and a stack of books is on the desk. The background shows bookshelves and other people working.

FACULTY PUBLICATIONS

FACULTY PUBLICATIONS

JEAN-MARC COICAUD

Apology and the Question of Reconciliation, 87 Soc. Res.: Int'l Q. 863 (2020), <https://muse.jhu.edu/article/787878/pdf>.

"Populisme et la crise de légitimité démocratique – avec quelques références à la France et aux Etats Unis", in Chantal Delsol, *La Démocratie contemporaine en crise* (Paris, Ed. Cerf, 2020).

SARAH DADUSH

Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0, 77 Bus. Law. (forthcoming Winter 2021-2022), <https://ssrn.com/abstract=3829782> (with David V. Snyder & Susan A. Maslow).

Relationship as Product: Transacting in the Age of Loneliness, 2021 U. Ill. L. Rev. 1527 (2021), <https://ssrn.com/abstract=3590786> (with Shmuel Becher).

DOUGLAS EAKELEY

Crypto-Enforcement Around the World, 94 S. Cal. L. Rev. Postscript 99 (2021), <https://ssrn.com/abstract=3713198> (with Yuliya Guseva).

KATIE EYER

Am I Disabled? Disability Identity, Law Faculty, and Social Change, J. Legal Educ. (forthcoming 2021).

The "But For" Theory of Anti-Discrimination Law, 107 Va. L. Rev. (forthcoming 2021), <https://ssrn.com/abstract=3801699>.

Claiming Disability, 101 B.U. L. Rev. 547 (2021), <https://ssrn.com/abstract=3596136>.

JAY FEINMAN

The political significance of the Wisconsin School of Contracts, *Wisconsin Law Review Forward*, Wis. L. Rev. (Apr. 16, 2021), <https://wlr.law.wisc.edu/wisconsin-school-of-contracts/>.

What is a Protection Gap? Homeowners Insurance as a Case Study, 27 Conn. Ins. L. J. 82 (2020), <https://cilj.law.uconn.edu/wp-content/uploads/sites/2520/2021/04/CILJ-Vol.-27.1-Feinman-Article-FINAL.pdf>.

MATTEO GATTI

Creeping Acquisitions in Europe, in *EUROPEAN TAKEOVERS: THE ART OF ACQUISITION* (3rd ed. forthcoming 2021) (with Luca Enriques).

Stakeholder Syndrome: Does Stakeholderism Derail Effective Protections for Weaker Constituencies?, N.C. L. Rev. (forthcoming), <https://ssrn.com/abstract=3793732> (with Chrystin D. Ondersma).

YULIYA GUSEVA

Crypto-Enforcement Around the World, 94 S. Cal. L. Rev. Postscript 99 (2021), <https://ssrn.com/abstract=3713198> (with Douglas Eakeley).

The SEC, Digital Assets, and Game Theory, 46 J. Corp. L. 629 (2021), <https://ssrn.com/abstract=3806116>.

When the Means Undermine the End: the Leviathan of Securities Law and Enforcement in Digital-Asset Markets, Stan. J. of Blockchain L. & Pol'y (forthcoming 2022), <https://ssrn.com/abstract=3917009>.

ROBERT HOLMES

Building an Anti-Racist Prosecutorial System Through the Adoption of a Community Oriented Lawyering Approach, 73 Rutgers U. L. Rev. (forthcoming 2021).

Galvanizing Volunteer Opportunities in the Face of an Unprecedented Medical Emergency: Describing Needed Regulatory Reform Under the Fair Labor Standards Act, 72 Rutgers U. L. Rev. 1491 (2020), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/rutlr72&div=61&id=&page=#heinonline>.

ARTHUR LABY

FIDUCIARY OBLIGATIONS IN BUSINESS, (2021) (co-edited with Jacob Hale Russell).

The Decline and Rise of Fiduciary Obligations in Business, in *FIDUCIARY OBLIGATIONS IN BUSINESS*, 1 (Arthur B. Laby & Jacob Hale Russel eds., 2021), <https://ssrn.com/abstract=3728900> (with Jacob Hale Russell).

Trust, Discretion, and ERISA Fiduciary Status, in *FIDUCIARY OBLIGATIONS IN BUSINESS*, 74 (Arthur B. Laby & Jacob Hale Russell eds., 2021).

DAVID NOLL

Administrative Sabotage, 120 Mich. L. Rev. (forthcoming 2022),
<https://ssrn.com/abstract=3880678>.

An Arbitration Agenda for the Biden Administration, 2021 U. Ill. L. Rev. Online 104 (2021), <https://ssrn.com/abstract=3837938> (with Zachary D. Clopton).

Legal Vigilantes and the Institutionalization of Anti-Democratic Politics (Sep. 2, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3915944 (with Jon D. Michaels).

CHRYSTIN ONDERSMA

Stakeholder Syndrome: Does Stakeholderism Derail Effective Protections for Weaker Constituencies?, N.C. L. Rev. (forthcoming), <https://ssrn.com/abstract=3793732> (with Matteo Gatti).

JACOB RUSSELL

FIDUCIARY OBLIGATIONS IN BUSINESS, (2021) (co-edited with Arthur B. Laby).

The Decline and Rise of Fiduciary Obligations in Business, in FIDUCIARY OBLIGATIONS IN BUSINESS, 1 (Arthur B. Laby & Jacob Hale Russell eds., 2021), <https://ssrn.com/abstract=3728900> (with Arthur B. Laby).

Which Investors to Protect? Evolving Conceptions of the American Shareholder, 1900-Present, in CAMBRIDGE HANDBOOK OF INVESTOR PROTECTION, (forthcoming 2022), <https://ssrn.com/abstract=3861999>.

For Whom Are Non-Profit Managers Trustees? The Contractual Revolution in Charity Governance, in FIDUCIARY OBLIGATIONS IN BUSINESS, 241 (Arthur B. Laby & Jacob Hale Russell eds., 2021), <https://ssrn.com/abstract=3647225>.

FADI SHAHEEN

Treaty Override: The False Conflict Between Whitney and Cook, 24 Fla. Tax Rev. 375 (2021), <https://ssrn.com/abstract=3599664> (with H. David Rosenbloom).

The Underpinnings of International Taxation (forthcoming 2021/2022), (with H. David Rosenbloom).

REID WEISBORD

The Commodification of Public Land Records, 97 Notre Dame L. Rev. (forthcoming 2022), <https://ssrn.com/abstract=3794846> (with Stewart Sterk).

ESTATE PLANNING (Wolters Kluwer / CCH, 2021) (with James Casner & Jeffrey N. Pennell).

Heir Hunting, 169 U. Pa. L. Rev. 383 (2021), <https://ssrn.com/abstract=3543560> (with David Horton).

Inheritance Crimes, 96 Wash. L. Rev. 561 (2021), <https://ssrn.com/abstract=3686773> (with David Horton).

Probate Lending: Data from San Francisco, 169 U. Pa. L. Rev. Online (forthcoming 2021), <https://ssrn.com/abstract=3699100> (with David Horton).

Probate Litigation, U. Ill. L. Rev. (forthcoming 2022), <https://ssrn.com/abstract=3805381> (with David Horton).

Reforming Testamentary Capacity, Wash. & Lee L. Rev. (forthcoming 2022) (with David Horton).

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