**Updated Syllabus for Law 248.52, M&A On the Ground: Hostiles, Proxy Fights and the M&A Ecosystem**

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**Class Meeting Times**: October 24, 625pm-825pm Pacific; October 25, 10am-1215pm, and 310pm-5:15pm Pacific. October 31, 625pm-825pm Pacific; November 1 10am-1215pm and 310pm-515pm Pacific.

Office Hours: Fridays between two classes, Tuesday-Wednesdays.

**Prerequisites**

There are no particular prerequisites, but classes that would help include m&a, corporate finance, the court of public opinion, corporate governance, and business associations.

**Summary**

This course is taught by a long-time M&A practitioner through the lens of active dealmaking. Steve Lipin has spent over 20 years in the field of communications and investor relations, helping build Brunswick Group’s U.S business as its Senior Partner from 2001-20017. Before that, Steve was a financial journalist for 17 years, including 10 at the *Wall Street Journal*, where he covered mergers and acquisitions and banking.

Steve now runs Gladstone Place Partners, a strategic public relations/investor relations firm specializing in m&a, activism defense and financial transactions. Gladstone Place is involved in Berkeley Law’s Forum on Corporate Governance.

This lively class will give students a real-world perspective on hostile takeovers, activist proxy fights, the marketing of an M&A deal, and the rise of SPACS as an M&A alternative to an IPO. We’ll look at iconic takeovers of Anheuser-Busch and Twitter, and peer into The Walt Disney Company’s back-to-back successful defense against corporate raider Nelson Peltz. We’ll hear from a leading general counsel, the head of an elite New York law firm (Cal Berkeley grad) and a leading business journalist.

The class will look at case studies through the prism of both offense and defense, and broader perspectives beyond the legal aspects of deal making to include the financial, legal, investor relations, and communications strategies deployed.

This class will lean heavily on case studies of deals and contested transactions, some of which Steve worked on, and the class will include guest speakers who are part of the M&A ecosystem, which includes media, bankers, arbitrageurs, shareholder activists and of course clients/CEOs/general counsels. Communication firms that specialize in investor relations, m&a and financial communications as well as proxy solicitors are a core part of the M&A business and an essential part of any deal team. Becoming aware of this ecosystem now will make you a better deal lawyer later.

**Berkeley Law Learning Outcomes**:

• Put context around doctrinal analysis
• How corporate law interacts with corporate transaction work

**Learning Outcomes:**

• Prepare students to work on M&A transactions.
• Understand the full M&A ecosystem, the value other deal advisors provide, and their role in a transaction
• Better flavor for the investor-relations/financial storytelling aspect of deal-making
• Become familiar with the cadence of deals

 We also have special academic rules for these condensed courses:
- Students must attend each course session and cannot attend any course session remotely (even for illness or emergency situations).
- The Registrar’s Office will drop a student who does not attend each course session.

Due to the condensed nature of this course, in-person attendance at all course sessions is mandatory. Absences cannot be excused for any reason, including illness or emergencies. The Registrar’s Office will drop any student who misses a session.

**Assessment:** The final project will be a paper/memo students will write on the scenario of potential acquisition. This is not a legal memo but rather a strategic memo that will help the CEO of a fictional company decide on whether to proceed with a deal. The class is pass fail and students will have two weeks post end of class to write the memo.

The following lays out the six classes and guest speakers.

**October 24, 2024: 625pm Pacific Time**

**Class One: Shareholder Activism**

**This class will look at the rise of shareholder activism, the major players, how they ply their trade and make their case, and the role of others in the ecosystem. We’ll look at the tenets of a successful defense and the use of social and digital media in proxy contests. We’ll review the new so-called universal proxy rules and what that means for defense off individual directors.**

**Readings:**

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**October 25, 10am Pacific**

**Class Two Case Study**:  The Walt Disney Co. Successful Defense again Trian/Nelson Peltz-twice. 10am-10:45am Pacific

After the overview of activism, the class will review a case study about the highest profile battle of the last twenty years, Disney’s defense against Nelson Peltz, where Gladstone Place represented Disney in this contest. The class will look at the arguments of each side and the factors that determined Disney’s success. Then we have the privilege to hear from Horacio Gutierrez, the general counsel of Disney, on his career and running the proxy fight defense.

11:AM Pacific*: Zoom interview with Horacio Gutierrez, senior executive vice president, general counsel, and chief compliance officer, The Walt Disney Company.*

Readings: Peltz white paper, Disney response mini-deck, proxy filings

**October 25: 310pm Pacific**

Class Three: **The M&A Ecosystem and Hostile Takeovers**

**This class will look at the mergers and acquisitions ecosystem, the role of the other advisors, influential media, the role of investors and the proxy advisors and key securities filings. It will then look at the ins and outs of a hostile takeover from the buyer’s and seller’s perspective, the levers that hostile bidders use and the tactics that defense deploys. We’ll review the investor relations and communications aspects of hostile takeovers.**

Readings: Chapter from The Big Deal, Chapter 4

WSJ Piece on M&A

**Class Four:**

**Thursday Oct 31**

**The Brazilians versus the Clydesdales: InBev’s Hostile Takeover of Iconic Anheuser-Busch. October such and such:**

This class will now bring the hostile takeover theory to practice with the 2008 hostile takeover bid of iconic Anheuser-Busch by an upstart Belgian-Brazilian brewer InBev (Steve’s client then and now). We’ll look at the planning, launch and execution of the one of the biggest hostile takeovers in the U.S. during an election year on the precipice of the financial crisis. We’ll look at the hostile tactics deployed and the weaknesses of the defense that allowed InBev to scoop up the owner of Budweiser, the Clydesdales and part of Americana.

Readings: Chapter 8, *Gods at War*, Steven Davidoff Solomon, Berkeley Law professor

Readings: Chapters 1 and 9 from *Dethroning the King,* Julie McIntosh

Press Releases of hostile bid, and agreed deal

Clips about takeover of Anheuser-Busch from 2008-2009

**Friday November 1**

**Class Five:** *Interview (via zoom) with Faiza Saeed, president partner, Cravath, Swaine & Moore, 10am Pacific November 1*

We will open the class with an special guest, Faiza Saeed, the presiding partner of Cravath. Faiza is a California native who went to undergraduate at UCal Berkeley and then to Harvard Law and has been practicing law at Cravath for her entire career. We’ll talk to Faiza about her legal path, working with clients like the Walt Disney Company, and lessons for law students now that she’s a senior statesperson in the field.

*FT piece about Faiza*

**Case Study: AB InBev Takes on the World: The $100 Billion Bid for SAB Miller PLC**

This class will look at the evolution from InBev’s acquisition of Anheuser-Busch and then Anheuser-Busch InBev swallowing up Grupo Modelo’s Corona, only to take on its biggest-ever deal: the hostile bid for rival SAB Miller, owner of global brands such as Castle, Peroni, and Pilsner Urquell. No easy feat: This is a Belgian-domiciled company with a U.S. and Mexico stock listing acquiring a South African-born company with a U.K. listing and domicile needing regulatory approvals around the world.

We’ll look at the planning and execution of the largest ever hostile deal, the creation of a company the size and scale of 100 year-old companies such as Procter & Gamble or Nestle, and then look at the commitments the company made and whether they were fulfilled.

Pre-Reads: Youtube video of Brito’s session at Stanford GSB, 2013

[https://www.youtube.com/watch?v=xhFxw4mBre0Links to an external site.](https://www.youtube.com/watch?v=xhFxw4mBre0)

**Class Six: Elon Musk Takes Over Twitter: A Case Study**

**This class will look at the unique aspects of the Elon Musk takeover of Twitter, where he was first an activist and then an unsolicited acquirer. We will look at the dynamics behind the takeover and hear from Musk directly (via the Walter Isaacson book) to understand what was going through Musk’s mind. Can you put a deal “on hold” and what does waiving due diligence mean?**

Readings: Combined Twitter case study articles

Optional reading: Twitter litigation, X Corp. v Wachtell, Twitter pdf

Class Six**SPAC Attack: About SPACs, and Lucid case study**

This class will look at so-called Special Purpose Acquisition Companies (SPACs) as a vehicle to take companies public in lieu of a traditional Initial Public Offering (IPO) by raising capital before knowing the company in which it will be invested. SPACs were all the range from 2020-2022 before drying up until recently.

If time we will review a case study of Churchill IV and Lucid Air, an electric vehicle, in how this SPAC used social and digital media and tools to “get out the vote” and how retail-oriented stocks exploded without issuers knowing who there shareholders are.

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About Steve
Steve is CEO/Founder, Gladstone Place Partners a communications advisory firm, and a trusted advisor to CEOs and CCOs, management teams and boards. Gladstone was founded Oct 2017. Clients include AB InBev, Apollo, Citi, Novartis, Pfizer, IBM, Vanguard. Steve is one of the deans of the M&A business.

Senior Partner, US, Brunswick Group, 2001-2017, built Brunswick’s U.S. presence over 16 years, Finance Editor, The Wall Street Journal, 2000-2001
M&A Reporter, The Wall Street Journal, 1995-2000, Banking reporter 2001-2004
Nominated for Pulitzer at the Journal.

Board member Columbia Journalism Review, Knight Bagehot Fellowship at Columbia University’s Graduate School of Journalism, and Youth Inc., a New York non-profit
Married with three children, one of whom is in the Jurisprudence and Social Policy PhD program at Berkeley Law.