FROM THE BAR

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Message from the Editor's Committee



Sarika J. Angulo-Velázquez | Linette Figueroa-Torres | Cecilia M. Suau-Badía

We are really pleased and honored to be publishing this issue of *From the Bar* dedicated to longstanding and emerging legal topics of current interest It features articles ranging from Cryptocurrency Law, Act 75, The Hobbs Act, and of North Korea. We thank all the authors who submitted articles for their contribution to this issue.

We are also very happy to include a section dedicated to the current members of the Board of Directors of the Hon. Raymond L. Acosta PR Chapter of the Federal Bar Association. In this section, you will find a brief profile and picture of all the members of the Board. Thanks to the continuous efforts of the past and current Board of Directors, the Hon. Raymond L. Acosta PR Chapter of the Federal Bar Association (previously the Antilles Chapter of the FBA) has been active since 1967.

Lastly, the cover picture of this issue of *From the Bar* is dedicated to the new façade of the U.S. District Court for the District of Puerto Rico. Our Chapter has been blessed with the unwavering support from the judges, magistrates, law clerks, staff, and bar members of the U.S. District Court for the District of Puerto Rico. A special thanks to María Antongiorgi, Esq., Clerk of the Court, and Jorge Soltero-Palés, Esq., Chief Deputy Clerk, for their unremitting help with our Chapter and with the "Clerk's Tidings" section included in every issue of the *From the Bar*.

We hope you enjoy this issue of *From the Bar* as much as we enjoyed putting it together and invite you to submit your articles or notes for publication in upcoming issues by e-mail to: sangulo@amgprlaw.com; lft@tcm.law; cms@mcvpr.com.

President's Message

Linette Figueroa-Torres
President
Hon. Raymond L. Acosta Chapter
Federal Bar Association

I want to thank you for your membership in our Chapter and let you know that your Board of Directors will continue working hard to offer cutting-edge legal education and organize opportunities to socialize within the federal legal community, despite the challenges of the ongoing pandemic.

Over the past couple of years, most FBA chapters across the country have experienced a decrease in membership, largely due to financial constraints, and limitations on in-person social gatherings, caused by the pandemic. And, unfortunately, our Chapter was no exception. In fact, our decline in membership actually started even earlier with the challenges presented by Hurricane María. Recently, however, your Board has focused on finding ways to not only re-engage and provide meaningful value to our current members, but also to reach out to potential new members.

Among other things, we began providing and have already scheduled for the future free virtual learning opportunities (webinars) on emerging federal legal topics, such as cryptocurrency, medicinal cannabis, and the rights of transgender people in the workplace. We also resumed the publication of *From the Bar*, our award-winning newsletter, to create an additional source of news and insights on litigation and developments in the law. In an effort to grow our membership in the future, we reached out to the FBA student chapters of the law schools in Puerto Rico to assist them in organizing seminars and social activities, invite them to participate in our newsletter, and provide them with opportunities to interact with current members of the federal bar.

But there is still more that we plan to do, including working with other FBA chapters and various legal associations to co-sponsor and provide additional learning opportunities, increase our presence on social media to promote and highlight the achievements of our Chapter and members, and strengthen the Chapter's relationship with the federal bench in Puerto Rico, which has always been one of our most-valued supporters. We appreciate your membership and are excited for what is to come.

Upcoming Events in 2022

Local

- **Webinar: Nuts and Bolts of IP Litigation**
  - Wednesday, June 15
- **Cocktails with the Bar**
  - Third week of June (venue to be announced)
- **Desarrollos Recientes del Cannabis Medicinal: el Derecho Laboral, Legislación y Reglamentación (In-person)**
  - Wednesday, June 22 (venue to be announced)
- **Webinar: Cryptocurrency Considerations for Counselors at Law**
  - Wednesday, June 29
- **Webinar: Legal Aspects of Correctional Management**
  - Mid July
- **Webinar: Qui Tam Actions**
  - Date to be announced
- **Panel on United States v. Vaello-Madero case (In-person)**
  - Date and venue to be announced

National

- **The New Biden Antitrust Regime**
  - Wednesday, June 8
- **Elevating Your ADR Practice, Profile, & Appointments**
  - Friday, June 17
- **Holding Our Ground: Protecting LGBTQ+ Rights at the Front Lines**
  - Wednesday, June 22
- **Insights into the Two Most Popular Types of PTAB Proceedings: Appeals & Inter Partes Reviews**
  - Friday, July 22
- **2022 FBA National Meeting & Convention (Charleston, SC)**
  - September 15-17

Suing North Korea

by Manuel San Juan

One sunny afternoon 14 years ago, as I sat in my little office, feet up on my desk, lazily whitling away the hours, I was startled out of my reverie by a ringing telephone. At the time, this was a relatively rare occurrence, so I quickly picked up and in my best radio DJ voice proclaimed: "Law Offices of Manuel San Juan, may I help you?"

It was, to my surprise, a lawyer from the New York firm of Osen, LLC named Naomi Weinberg. After introducing herself, she asked if I would be interested in handling a case in Federal Court against the government of North Korea. After a pregnant pause, I asked, incredulous: "North Korea? You mean the dictatorship of Kim Jong-il?" "Precisely," she responded, unfazed. To say that my curiosity was piqued would be the understatement of the year.

I soon learned that the case involved the infamous terrorist attack upon passengers in the baggage claim area of the Lod Airport, outside Tel Aviv, Israel, on May 30, 1972. Three members of a terrorist group known as the Japanese Red Army ("JRA"), disguised as regular passengers, removed automatic weapons and grenades from their luggage and began shooting and throwing explosives indiscriminately into the crowd of innocent civilians, killing 26 people and injuring 80 others. Two of the attackers were killed, while a third, Kozo Okamoto, was captured after being wounded. Among the dead were seventeen Puerto Ricans who were traveling with a Church group on a long-awaited pilgrimage to the Holy Land.

The Osen firm has an eclectic practice which includes civil counter terrorism litigation, battles to recover looted art, and efforts to obtain restitution for Nazi victims in Germany. In this case their lawyers--Gary Osen, Aaron Schlanger and Naomi Weinberg--had teamed up with another talented New York lawyer, Robert Tolchin, and with Nitsana Darshan Leitner, a famous Israeli attorney and human rights activist. They intended to use the Foreign Sovereign Immunities Act ("FSIA") to file suit against the government of North Korea, who they said had provided material support to the terrorists who perpetrated the Lod Airport attack.

The FSIA generally provides immunity from suit in federal court to foreign states, unless it is expressly waived. However, in 1996, Congress enacted a "terrorism exception" to immunity under FSIA as part of the Antiterrorism and Effective Death Penalty Act of 1996. 28 U.S.C. Sec. 1605(a)(7). Nevertheless, because some courts held that this section did not create a private cause of action against a foreign state, in 2008 the FSIA was further amended to provide that " a foreign state shall not be immune from the jurisdiction of the courts of the United States…in any case…in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment or agency." 28 U.S.C. Sec. 1605A.

Our suit was filed on March 27, 2008, under the caption Ruth Calderon Cardona et al. v. Democratic People's Republic of Korea, et al. The plaintiffs included the adult children of Carmelo Calderón Molina, one of the seventeen Puerto Ricans who were killed in the attack, as well as another member of the Church group, Pablo Tirado Ayala, who had survived the attack but had been seriously injured. The case was assigned to U.S. District Judge Francisco A. Besosa, who had been appointed to the court only two years earlier.

"I soon learned that the case involved the infamous terrorist attack upon passengers in the baggage claim area of the Lod Airport, outside Tel Aviv, Israel, on May 30, 1972… Among the dead were seventeen Puerto Ricans who were traveling with a Church group on a long-awaited pilgrimage to the Holy Land.

To effect service of process pursuant to the FSIA's provisions, the summons and complaint had to be translated into Korean and forwarded to the North Korean government, as well as the "Cabinet General Intelligence Bureau", the North Korean intelligence agency which was also named as a defendant. Sixty days later, the defendants had not filed an Answer or otherwise responded, so we moved for the entry of default, which was granted. However, the FSIA requires that a default judgment be entered against a foreign

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> *Their evidence showed that the government of North Korea provided material support for the terrorists who carried out the Lod Airport attack.*

state only after a plaintiff "establishes his claim or right to relief by evidence that is satisfactory to the Court." 28 U.S.C. Sec. 1608(e). In other words, despite the defendants' conspicuous absence, there would still have to be a full-blown trial in this case.

The trial began on December 2, 2009. The plaintiffs presented evidence to establish the defendants' liability, which began with the testimony of an eyewitness to the attack, Ze'ev Sarig, at the time an Assistant to the Deputy Director of the Lod Airport. He dramatically described the bloody carnage perpetrated by the terrorists, as well as the capture of one of them, Kozo, who was chased down and disarmed near the runway.

To establish the link between the defendants and the terrorists, the plaintiffs presented the testimony of three renowned experts on North Korea: Professor Barry Rubin from Israel's Interdisciplinary University, Professor Bruce Bechtol of the U.S. Marine Corps Command and Staff College, and Professor Rohan Gunaratna of the Nanyang Technological College in Singapore. Their evidence showed that the government of North Korea provided material support for the terrorists who carried out the Lod Airport attack.

As everyone knows, North Korea is a communist dictatorial regime currently run by Supreme Leader Kim Jong-un. He inherited his position from his father, Kim Jong-il, who ruled the country from 1994 until his death in 2011. Prior to that, the first Supreme Leader was Kim Jong-un's grandfather, Kim Il-sung, who founded the country in 1948 and ruled until his death in 1994. It was under the latter that the Lod attack took place in 1972.

At that time, one of North Korea's main goals was to help create additional communist states which would in turn provide it with strategic and economic support. North Korea sought to accomplish this goal by fostering unrest and instability in non-communist countries through its support of domestic terrorist groups striving to violently overthrow their governments. During the early 1970's, North Korea waged a battle with its South Korean rival for diplomatic and trade relations with the Arabic-speaking states, and its policymakers believed that a strike against Israel would increase North Korea's popularity and influence within the Arab world.

At the time, the Palestine Liberation Organization ("PLO") was the principal domestic entity waging a terrorist campaign against the State of Israel. Its main branch, al-Fatah, received support from China, the Soviet Union and Arab states, but its poorer cousin, known as the Popular Front for the Liberation of Palestine ("PFLP"), was forced to seek sponsorship from less prominent and wealthy "second and third-tier" countries such as North Korea. The North Korean authorities set up terrorist training camps, a large proportion of which were attended by PFLP operatives. These training camps provided comprehensive instruction on weapons use, bomb-making, kidnapping, assassination, propaganda and guerilla warfare.

During his interrogation by Israeli au-

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thorities, the captured Japanese terrorist, Kozo, admitted that he and his fellow attackers were members of the JRA and that the attack had been carried out in conjunction with the PFLP. The JRA was a radical communist group founded in 1969 whose first major operation--the hijacking of a Japanese airliner in March of 1970--was financed by North Korea. It numbered only about 40 members and was heavily dependent upon North Korea for financial and logistical support. Because the Japanese government had cracked down on the organization and arrested many of its leaders, the JRA sought targets outside of Japan and was attracted to the Palestinian cause as a vehicle to increase its profile on the world stage.

In Pyongyang, the North Korean capital, PFLP leaders recruited JRA members for the Lod attack, with the cooperation and collaboration of North Korea's Intelligence Service, the Cabinet General Intelligence Bureau. The idea was to use Japanese operatives because, unlike Palestinians of Middle Eastern origins, they were unlikely to arouse the suspicion of the Israeli authorities. Kozo and his two cohorts thus spent seven weeks training with PFLP operatives in North Korea in preparation for the attack.

The plaintiffs' experts described this background in painstaking detail, thereby establishing that the North Korean government and its intelligence branch provided material support and training to the JRA terrorists who carried out the attack. But the plaintiffs were suing for damages, which also had to be proved at trial. Accordingly, we presented copious evidence of the damages they had suffered.

Each of Carmelo's adult children testified about the dramatic loss of their father, and how it affected their lives and that of their mother, who became depressed after his untimely death. Carmelo was indeed an extraordinary individual; a deeply religious and devoted husband and father, who had, among other selfless acts, saved the life of a pregnant woman during the attack by shielding her from the bullets with his body. There was also medical testimony about Pablo's serious physical injuries, and how, years later, he still suffered from nightmares as a result of the attack. All of this evidence was bolstered by the expert testimony of Dr. Alexandra Ramos, a clinical psychologist who examined the plaintiffs and opined as to the significant extent of their emotional trauma.

Judge Besosa issued his ruling on July 16, 2010. The full text of his 104-page Opinion is definitely worth reading. See, Calderón Cardona v. Democratic People's Republic of Korea, 723 F. Supp.2d 441 (D. Puerto Rico 2010). The Judge first determined that the Court had jurisdiction over the defendants, pursuant to the provisions of the FSIA. He then methodically reviewed the evidence of liability submitted by the plaintiffs and found that they had clearly and convincingly established that North Korea and its intelligence service had provided material support for the JRA terrorists who murdered Carmelo Calderón Molina and wounded Pablo Tirado Ayala. The Court further found that the plaintiffs had suffered significant emotional and physical injuries as a result. Consequently, he awarded each of them millions of dollars in compensatory damages. In addition, the Court found, based on the evidence submitted, that there was a need to punish defendants for their egregious conduct and to deter further terrorist attacks, which justified an award of $300 million in punitive damages.

Well, as you might imagine, we were all pleased with the result. Judge Besosa's opinion was comprehensive, detailed and unassailably correct, both on the law and the facts. The plaintiffs felt vindicated, and we lawyers were satisfied that we had proved our case. The ordeal of the trial had brought us all closer together, and we had formed a bond; a friendship borne of the notion that we had done something truly good, dealing a blow to those evil souls who would use violence as a means to advance their political and social goals.

Still, one question remained: was it at all possible to collect the damages awarded? Or was this massive judgment merely a pyrrhic victory; a triumph to be sure, but destined to adorn the walls of someone's law office, cherished only for its value as a conversation starter?

I must admit that I never expected to collect any part of the trifling contingency fee we had agreed upon at the beginning of the case. Yet as I was walking down the street in Old San Juan on a sweltering afternoon in late August of 2017, I was surprised to receive a call from Naomi on my cellphone. "I have some money for you," she said. I was flabbergasted.

By the next day I was in receipt of a serendipitous wire transfer. Frankly, the amount was staggering. Unbeknownst to me, it would be my salvation. The following week, Hurricane Irma struck the Island, followed closely by the devastating Hurricane Maria. The entire island of Puerto Rico was shut down, without power, water or fuel. My office, and the courts, would be closed for months.

Luckily for me, I would survive the crisis intact, thanks in large measure to the generosity of Judge Besosa, and the liability of the Democratic People's Republic of Korea.

Federal court awards Puerto Rico dealer over $855,000 in fees and costs as prevailing party in a Law 75 case

by Ricardo F. Casellas-Sánchez

Litigating and losing Law 75 cases come at a high price. In Casco, Inc. v. John Deere Construction, ---F. 3d--, 2022 WL 1090559 (D.P.R. Mar. 31, 2022) (P. Delgado, J.), the court applied Puerto Rico Law 75's fee-shifting statute and awarded the prevailing party Puerto Rico dealer over $855,000 in attorney's fees, expert witness fees, and statutory costs. After a nine-day trial in 2016, a jury found for the dealer and awarded $1.7 million in damages for termination and impairment of a dealer's contract. The First Circuit affirmed the district court's judgment and rulings. See 990 F. 3d 1 (1st Cir. 2021).

This is the first reported decision that dives into the purpose of the fee-shifting provision in Law 75 and its legislative history. The P.R. Supreme Court and the local appellate courts have not addressed a claim for fee recovery under Law 75, but rather, under Rule 44.1 which requires a showing of temerity. The federal district court observes that the fee-shifting provision of Article 7 in Law 75 is modeled after fee-shifting provisions in federal civil rights statutes. This is significant because under federal law a prevailing party plaintiff ordinarily, absent exceptional circumstances, is entitled to recovery of reasonable fees incurred in the litigation. Further, the lodestar is the accepted methodology to determine the reasonableness of the fee amount. While Article 7's permissive language is like Section 1988 of Title VII by allowing the court discretion to award fees, an award of fees is virtually mandatory in these cases for public policy reasons. Recovery of Law 75 fees does not require a showing of temerity or bad faith. On the other hand, for a prevailing party defendant to recover its fees, the case must have been frivolous or litigated in bad faith. From this rationale, the standards for prevailing party dealers and principals are different for fee recovery in Law 75 cases as they are in civil rights cases.

The federal court also rejected Deere's constitutional attack to Casco's fee recovery. Deere argued that a provision in the 1986 agreement would allow Deere not only to recover its own fees in an action to enforce a breach of contract but also its fees if it lost the case brought by the dealer. The court found the argument contractually and legally untenable. The contract only allowed fee recovery by Deere in an enforcement action by it, not if it illegally terminated the contract and lost the case filed by the dealer. Because the contract could not reasonably be read as precluding the dealer's remedy under the fee-shifting provision enacted in 2000, there was no retroactive application of the statute because applying it would not impair any of Deere's contractually established rights. Casco could not waive rights that did not exist when the contract was executed in 1986, said the court, in declining having to decide whether such a waiver would have been unenforceable.

> *"This is the first reported decision that dives into the purpose of the fee-shifting provision in Law 75 and its legislative history. The P.R. Supreme Court and the local appellate courts have not addressed a claim for fee recovery under Law 75, but rather, under Rule 44.1 which requires a showing of temerity.*

As most of the opinions dealing with fee awards go to great length to evaluate line by line challenges to items of fees and costs, this opinion is no exception. Highlighting only some significant rulings, the court applied First Circuit precedent in 2022 to allow fee recovery for time invested in settlement negotiations. The court also held that Casco could recover fees for time spent on claims or motions it lost be-

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Federal court awards Puerto Rico dealer over $855,000 in fees and costs as prevailing party in a Law 75 case

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cause those claims were factually interrelated to the claims it won.

As a final straw that broke the proverbial camel's back, the court dismissed Deere's attempt to recover its fees under the contract for the counterclaim for collection of monies it won mid-trial. The court held that this claim for contractual fees was an element of the collection of monies counterclaim for damages that should have been briefed in the pretrial conference report and tried before the jury, so it was waived. It was doubly waived too because Deere did not claim contractual fees as a prevailing party in its own Rule 54 motion that the court had previously denied.

What may turn out to be significant in fee litigation in other cases, the court cited federal cases holding that where the opponent puts its own fees at issue the moving party can allow discovery of the opponent's fees to prove the reasonableness of its fee application. Deere claimed that it was entitled to recover $1.3 million in fees it spent to litigate the case it lost. It argued that it was entitled to offset those fees from Casco's fee recovery. The court would have none of it because any such claim was waived and a set off would not have been proper under Puerto Rico law. What is more, the court held that Deere having spent almost twice as much as Casco did to win the case proves that Casco's attorneys litigated the case more efficiently and effectively.

Finally, the court awarded post judgment federal interest on the total fee award accruing from the date in the order determining the amount of the award. While not addressed in the opinion, federal circuit courts, however, are split on the question whether post-judgment interest on a fee award accrues from the date of the original merits judgment or from the subsequent order awarding fees, which in this case, was six years later.

Casellas Alcover & Burgos, P.S.C. was lead counsel for Casco in this 9-year old litigation.

A heightened standard for bribery charges involving campaign contributions?

Edited by Isabel C. Lecompte-Shiba

Campaign contributions garner goodwill between constituents and political candidates by their very nature. To varying degrees, they can impact a government official's decision-making process. However, despite the risks of campaign contributions improperly influencing an official's actions, our current political landscape permits such donations, albeit within certain limits.

State and federal laws, for example, prohibit using campaign contributions to "bribe" public officials. The question then is: when does a campaign contribution become an impermissible bribe? Grappling with the tenuous line between sanctioned conduct and a crime, courts have tried to establish a workable framework to define a bribe in the context of campaign contributions.

In 1991, the Supreme Court, in McCormick v. United States, 500 U.S. 257 (1991), required proof of an "explicit quid pro quo" (i.e., the promise of a specific official action in exchange for something of value such as payment) to convict on charges premised on solicitation or acceptance of campaign funds under the Hobbs Act. The Hobbs Act prohibits extortion under the color of official right -- demanding or receiving payment because of the elected official's position.

In McCormick, an elected official running for reelection sponsored a bill to temporarily allow foreign doctors to practice medicine while studying for local medical exams. After making a statement to a lobbyist advocating for the doctors' group, the official received money neither reported as a campaign contribution nor reported on his federal income tax return. After helping enact another more permanent legislation, he received another cash payment. At trial, the jury found the elected official guilty of violating the Hobbs Act, among other violations. Finding that the jury could convict without evidence of a specific quid pro quo, the Fourth Circuit affirmed.[1]

The Supreme Court reversed the Fourth Circuit and the district court's rulings. The Supreme Court recognized that in election campaigns money is constantly solicited on behalf of candidates who run on specific platforms and "who claim support on the basis of their views and what they intend to do or have done." McCormick, 500 U.S. 257, 272. Thus, any action that benefits certain constituents, including approval of legislation, shortly before or after receipt of a campaign contribution, could be characterized as a bribe. Id. at 272–73.

Facing this reality, the Supreme Court ruled that a violation could only be found if "the payments are made in return for an "explicit promise or undertaking by the official to perform or not to perform an official act. In such situations, the official asserts that his official conduct will be controlled by the terms of the promise or understanding." Id. at 273. Thus, the Supreme Court effectively heightened the specificity of the agreement that the government must prove in campaign contribution bribery cases.

In many cases, the same criminal conduct, e.g., a candidate demanding or accepting a bribe, can be prosecuted under the Hobbs Act (extortion), Section 666 (bribery), which prohibits the offer or acceptance of a bribe for state and local officials, or other federal stat-

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State and federal laws, for example, prohibit using campaign contributions to "bribe" public officials. The question then is: when does a campaign contribution become an impermissible bribe?

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utes. Though premised on a charge of extortion under the Hobbs Act, the McCormick opinion has found resonance in other federal bribery cases involving other statutes such as 18 USC §666 (Section 666).[2] Of importance is a Third Circuit opinion recently issued.

> *"According to the Third Circuit under McCormick, "an official's solicitation or acceptance of campaign funds is presumed legitimate unless the prosecution establishes an explicit quid pro quo, meaning "an explicit promise or undertaking by the official to perform or not to perform an official act" in exchange for the donation."*

United v. Pawlowski

In a recent Third Circuit opinion, United v. Pawlowski, Case No. 18-3390 (3d Cir. 2022),[3] the court discussed the challenges posed by campaign contributions bribery charges under Section 666 and the heightened standard for the government under McCormick.

As the Third Circuit emphasized, the government and the defendant agreed that the heightened McCormick standard applied to the Section 666 charges. Thus, the court did not outrightly decide whether such a standard applies to Section 666 ("Because the parties agree that proof is required, we assume (without deciding) it is").

Citing McCormick, the Third Circuit recognized that "as a practical matter, policing elected officials for requesting or receiving campaign funds "open[s] to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures." Pawlowski at 4 (citing McCormick, 500 U.S. at 272).

The Pawlowski Court defined an "explicit quid pro quo" in the context of campaign contributions. According to the Third Circuit under McCormick, "an official's solicitation or acceptance of campaign funds is presumed legitimate unless the prosecution establishes an explicit quid pro quo, meaning "an explicit promise or undertaking by the official to perform or not to perform an official act" in exchange for the donation." Id. at 5. A "vague expectation of future benefits" is not enough. Id. In other words, the government had the burden of proving that the defendant's conduct showed an "intent to use his public office to provide specific favors in exchange for political donations." Id.

After examining the evidence presented at trial, the Pawlowski opinion concluded that the government's evidence met the explicit quid pro quo standard. Specifically, taped conversations and testimony of Pawlowski's collaborators and campaign contributors showed that Pawlowski and seven prospective donors discussed exchanging specific favors, involving favorable actions for job positions, permits and contracts, in exchange for political contributions. In this scheme, Pawlowski's collaborators, not Pawlowski directly, approached and conducted most of the conversations with the prospective donors.

Whether circuits will continue to expand McCormick to non-Hobbs Act charges remains to be seen. In our circuit, the First Circuit, the application of McCormick has been limited.

Implications for First Circuit Law

Under First Circuit law, bribery charges under Section 666 require proof of a quid pro quo. United States v. Fernandez, 722 F.3d 1, 16 (1st Cir. 2013). Proving a gratuity, or payment given to reward a past or future act, is not enough to convict. Id. at 19. Instead, bribery requires an intent to give or receive something of value in exchange for an official act. Id, see also, United States v. Martinez, 994 F.3d 1, 6–7 (1st Cir. 2021) (First Circuit ruling that "To convict López on Count Eleven, which was for federal programs bribery in violation of 18 U.S.C. § 666, the government was

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required to prove, among other things, that López accepted a thing of value while "intending to be influenced" by it to perform an official act. 18 U.S.C. § 666(a)(1)(B).").

The First Circuit arrived at these definitions by closely analogizing the federal statute, 18 USC §201 (Section 201), and interpreting case law to Section 666. Section 201 similarly prohibits bribery but only applies to federal government officials (congresspeople and federal employees). In contrast, Section 666 can be used more broadly to state government and local officials, subject to specific requirements.[4]

In the context of campaign contributions, the question remains: what must the government prove to meet the quid pro quo explicit requirement? For example, whether it can be proven explicitly or impliedly and how specific the agreement must be.

In United States v. McDonough, 727 F.3d 143, 147 (1st Cir. 2013), an elected official and a lobbyist were convicted for honest services wire fraud and extortion under the Hobbs Act. The First Circuit interpreted the honest services wire fraud charges under 18 USC §201, which prohibits bribery for federal officials (congresspeople or federal government employees), and 41 U.S.C §8701, which prohibits kickbacks.

On appeal, the defendants argued the district court erred by not applying the McCormick instruction to both the honest services wire fraud and Hobbs Act charges, which would have required payments in returns for explicit promises or undertakings. The First Circuit denied the argument in a footnote, merely stating that McCormick only applied "in the context of campaign contributions." Id. at 155.

As in the Third Circuit Pawlowski opinion, the McDonough opinion leaves the door for arguing for an explicit quid pro quo jury instruction even in contexts outside of the Hobbs Act, such as honest services wire fraud, when campaign contributions are at play.

Another Supreme Court opinion, Evans v. United States, 504 U.S. 255 (1992), is also worth mentioning. Evans examined campaign contributions, which examined campaign contributions under the Hobbs Act. In Evans, an undercover FBI agent sought an elected official's assistance with a zoning permit and paid the elected official. The elected official did not report the amount in his federal income tax return and/or his state disclosure form. The Eleventh Circuit affirmed the conviction, finding that a passive acceptance of a benefit is enough if the official knew it was offered in exchange for a "specific requested exercise of his official power." Id. at 255. The Supreme Court affirmed, finding that an inducement or demand of payment was not an element under the Hobbs Act. The Supreme Court stated that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." Id. at 268.

The First Circuit in United States v. Turner, 684 F.3d 244, 253 (1st Cir. 2012), while interpreting Evans, indicated a difference between campaign contribution cases to which the McCormick instruction applied and other payments under the Hobbs Act. The Turner opinion concluded that in non-campaign contribution cases, "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." Id. at 253 (quoting Evans). Based on concurring and dissent opinions in Evans, Turner also suggested that such quid pro quo may be implied in non-campaign contribution cases. In the Turner case, the court emphasized that the defendant did not argue that the payments received were campaign contributions; thus, the McCormick instruction did not apply. Id. (stating that "Turner does not argue that this is a campaign contribution case.").

Lastly, in another First Circuit opinion, United States v. Cruzado-Laureano, 404 F.3d 470, 486 (1st Cir. 2005), the defendant argued that the payment was a campaign contribution, thus requiring the McCormick instruction. Rejecting this argument, the First Court pointed to evidence that discredited that payment was given for the campaign reasons without a detailed discussion of McCormick. Id. at 482 and 486.

District courts in the First Circuit have also extended the application of McCormick to federal statutes other than the Hobbs Act. For example, in United States v. Lopez-Martinez, 2020 WL 5629787 *1, *41 (D.P.R. Sept. 21, 2020), the court discussed the McCormick standard within the context of conspiracy to commit wire fraud charges for one of the defendants who stood accused of receiving campaign contributions in exchange for contracts. Id. at *39.

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Conclusion

Prosecutions of bribery cases can fall under several federal statutes such as the Hobbs Act, Mail & Wire Fraud, and Sections 201 or 666. Thus, the same conduct could be subject to different standards leading to unequal outcomes. In the context of campaign contributions, the concerns are heightened since what is permissible conduct, such as favoring or serving the needs of one's constituents, could be easily characterized as a crime. Following the Supreme Court's reasoning in McCormick, a legitimate argument can be made that the explicit quid pro quo standard should be proven in every case involving alleged bribes and campaign contributions, regardless of the federal statute being prosecuted thereunder.

For additional information, please contact Sonia I. Torres Pabón, Esq., storres@melendeztorreslaw.com, Nereida Meléndez Rivera, Esq., nmelendez@melendeztorreslaw.com, and Isabel Lecompte, Esq., ilecompte@melendeztorreslaw.com.

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This legal update is prepared for general informational purposes only and is not intended as legal advice.

1 The Fourth Circuit established a multi-factor test to determine whether a campaign contribution was legitimate, that required examining: "(1) whether the money was recorded by the payor as a campaign contribution, (2) whether the money was recorded and reported by the official as a campaign contribution, (3) whether the payment was in cash, (4) whether it was delivered to the official personally or to his campaign, (5) whether the official acted in his official capacity at or near the time of the payment for the benefit of the payor or supported legislation that would benefit the payor, (6) whether the official had supported similar legislation before the time of the payment, and (7) whether the official had directly or indirectly solicited the payor individually for the payment."

2 Section 666(a)(1)(A), Theft or bribery concerning programs receiving Federal funds, states that "whoever, being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof, embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies property that is valued at $5,000 or more, and is owned by, or is under the care, custody, or control of such organization, government or agency, where the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, shall be fined, imprisoned or both." 18 U.S.C. § 666(a)(1)(A) and (b).

Section 666(a)(1)(B), Theft or bribery concerning programs receiving Federal funds, states that "whoever, being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof, corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more, where the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of financial assistance shall be fined, imprisoned or both." 18 U.S.C. § 666(a)(1)(B) and (b).

3 The Third Circuit decision was issued on March 4. 2022 and the full citation is not yet available.

4 18 USC §201 (c) 1 (A) & (B) also contains another section that prohibits gratuities. However, gratuities have a maximum sentence of two years, as opposed to bribery charges, which carries a penalty of up to 15 years in prison.

Virtual Currency Activities and Money Service Businesses (MSBs)

by Isabel C. Lecompte-Shiba

Now, more than ever, cryptocurrencies or convertible[1] virtual currencies (such as Bitcoin) are becoming an accepted and mainstream medium of exchange.[2] Those seeking to profit from the cryptocurrency boom should carefully consider whether their activities comply with federal and local regulations.

Cryptocurrency businesses engaged in money transmitting activities likely qualify as Money Service Businesses ("MSBs"), triggering registration, reporting, and anti-money laundering (AML) compliance requirements.

The U.S. Department of Treasury Financial Crimes Enforcement Network (FinCEN) is the main enforcer of the Bank Secrecy Act ("BSA"), the main federal law addressing AML, registration, and compliance requirements for MSBs.[3]

Money Service Businesses

Under the BSA, MSBs are considered to be any person doing business as a: (1) dealer in foreign exchange, (2) check casher, (3) issuer of traveler's checks or money orders, (4) provider and seller of prepaid services or access, (5) U.S. Postal Service, and (6) money transmitter.[4] In general, sending "value that substitutes for currency" (such as cryptocurrency) to another person or to another location constitutes money transmission.[5] Individuals or businesses involved in the transmission of cryptocurrencies can qualify as money transmitters.

Once a business is deemed an MSB, it must comply with several regulations, including registration and licensing requirements, or be exposed to civil and criminal penalties.[6]

In 2013, FinCEN published guidance defining when businesses engaged in cryptocurrency activities would be considered money transmitting MSBs. FinCEN distinguished between three types of persons commonly involved in cryptocurrency activities: (1) users, persons that obtain cryptocurrency to purchase goods or services for their own behalf; (2) administrators, persons that issue or redeem cryptocurrency; and (3) exchangers, persons that exchange cryptocurrency for real currency, funds, or other virtual currency.[7]

Users are not considered money transmitters subject to MSB related regulations. However, administrators or exchangers that accept and transmit cryptocurrency or buy or sell cryptocurrency are considered money transmitters unless a limitation or exemption applies.[8]

FinCEN has issued administrative rulings regarding the cryptocurrency activities that trigger compliance with MSBs regulations. According to a 2014 FinCEN administrative ruling, "when [a] Company invests in a convertible virtual currency for its own account, and when it realizes the value of its investment, it is acting as a user of that convertible virtual currency within the meaning of the FinCEN guidance." This guidance has been interpreted to mean that if a business limits its activities strictly to investing in virtual currency for its own account, it is not acting as a money transmitter and thus is not an MSB, as per FinCEN's definitions.[9] FinCEN, however, warned that "should the Company begin to engage as a business in the exchange of virtual currency against currency of legal tender (or even against other convertible virtual currency), the Company would become a money transmitter under FinCEN's regulations." (Emphasis supplied).

In another administrative ruling,[10] FinCEN specified that independently of whether a user obtains virtual currency through "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," what determines if a person will be considered an exchanger is "what the person uses the convertible virtual currency for, and for whose benefit." Mining, by itself, does not constitute accepting and transmitting currency.

Further, users who, from time to time, convert cryptocurrency into real or another virtual currency will not be deemed "exchangers" of virtual currency as long as the conversion is "solely for the user's own purposes and not as a business service performed for the benefit of another." However, transfers of virtual currency to third parties at the request of a seller, creditor, owner, or counterparty to a transaction may constitute "money transmission services."

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Virtual Currency Activities and Money Service Businesses (MSBs)

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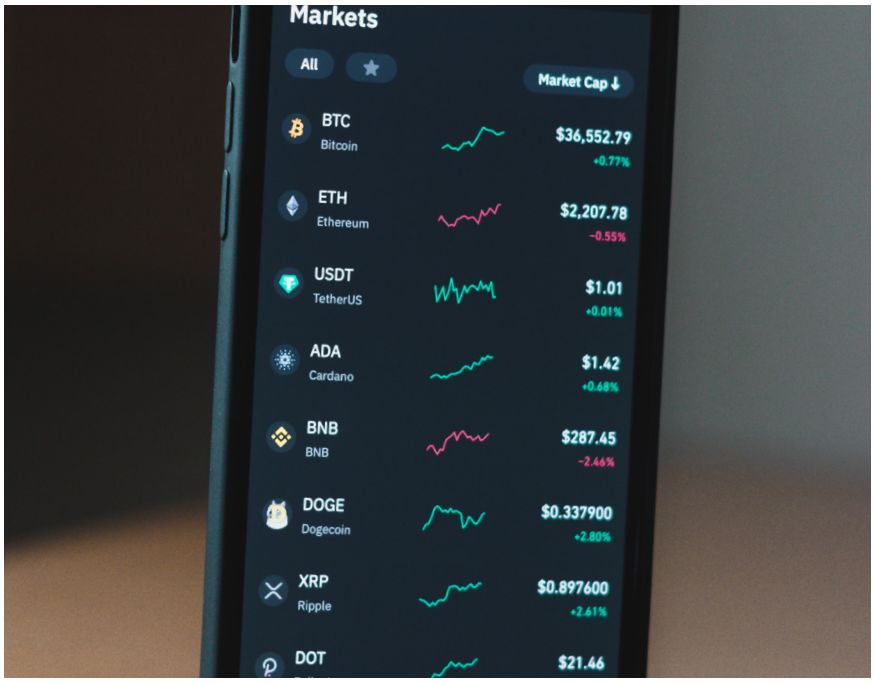

With regards to third party services, FinCEN has stated that if a "Company rents a computer system to third parties that will use it to obtain convertible virtual currency to fund their activities as exchangers, such rental activity, in and of itself, would not make the Company a money transmitter subject to BSA regulation."[11] However, a Company offering virtual currency-based payment services to merchants was deemed a money transmitter even though the Company argued that it would store large quantities of its own Bitcoins to pay the merchants.[12]

With regards to whether a trading platform qualifies as an MSB, FinCEN has ruled that "the method of funding the transactions is not relevant to the definition of money transmitter. An exchanger will be subject to the same obligations under FinCEN regulations regardless of whether the exchanger acts as a broker (attempting to match two (mostly) simultaneous and offsetting transactions involving the acceptance of one type of currency and the transmission of another) or as a dealer (transacting from its own reserve in either convertible virtual currency or real currency)."[13]

In 2019, FinCEN issued guidance clarifying how the BSA applies to certain virtual currencies businesses, including providers of hosted and unhosted wallets, trading platforms operators, and peer to peer (P2P) exchangers.[14] As to P2P exchangers, FinCEN explained that they must comply with BSA regulations as money transmitters, unless they engage in activities on an infrequent basis and not for profit or gain.

Recent FinCEN Enforcement Actions

Recent FinCEN enforcement actions show the potential penalties of operating an unregistered cryptocurrency MSB.

In Larry Dean Harmon d/b/a Helix (Number 2020-2), FinCEN imposed $209 million in civil monetary penalties against Harmon, the CEO and primary operator of Coin Ninja LLC. FinCEN found that Harmon: (1) conducted over a million transactions for customers involving virtual currency wallets and sent or received over $311 million in a period of three years; (2) worked with "darknet" marketplaces to launder illicit coin proceeds and advertised his business as an anonymity-enhancing service that used mixers or tumblers of virtual currency to send the Bitcoin to an address in a manner designed to conceal and obfuscate the source or owner of the Bitcoin; and (3) charged a fee for those services.[15]

In Eric Powers (Number 2019-01), FinCEN found that Powers facilitated transactions through peer-to-peer operations supporting illicit activity, including those done through a darknet marketplace. Though Powers conducted millions of dollars in transactions, FinCEN assessed a penalty of $35k after considering various factors including his ability to pay, other sanctions imposed by state and federal agencies, and his extensive cooperation. Power also agreed to permanently cease providing money transmission services.

More recently, FinCEN imposed $100 million in civil penalties against BitMEX, which consented without admitting or denying FinCEN's allegations. According to FinCEN, BitMex, one of the largest and oldest virtual currency exchangers, was a "futures commission merchant" that was required to register with the Commodity Futures Trading Commission (CFTC) but failed to do so. BitMex allegedly accepted deposits, including Bitcoin, to margin, guarantee, or secure resulting trades on its platform.

Moreover, according to FinCEN, BitMex provided money transmission services but failed to implement an effective anti-money laundering program. According to FinCEN, BitMex processed transactions with darknet and illicit marketplaces, high-risk and prohibited jurisdictions, and mixing services belonging to unregistered MSBs. In October 2020, the DOJ also filed criminal

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Virtual Currency Activities and Money Service Businesses (MSBs)

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charges against four BitMex executives for BSA violations.

Recent Judicial Opinions

The DOJ has also pursued actions against unregistered MSBs. Roman Sterlingov was arrested earlier this year on charges for money laundering, operating an unlicensed money transmitting business, and money transmission without a license in the District of Columbia. Sterlingov was accused of operating Bitcoin fog, a cryptocurrency "tumbler" and "mixer," which was allegedly used by criminals to hide their illegal assets.[16]

In US v. Stetkiw, No. 18-20579, 2019 WL 417404, at *1 (E.D. Mich. Feb. 1, 2019) (Not Reported), Stetkiw was accused of violating 18 U.S.C. §1960 for operating an unlicensed MSB. He operated a Bitcoin exchange service that did not comply with registration requirements. According to the accusation, Stetkiw transferred Bitcoin to the purchasers' Bitcoin address or account after the purchaser paid Stetkiw the value of the Bitcoins plus a commission or fee. In a motion to dismiss, Stetkiw argued that Bitcoin did not qualify as "money" under the offending statute and that the statute only applies when a person acts as an intermediary to transfer money from one person or entity on behalf of another but does not cover two-party transactions. When denying these arguments, the court concluded that 18 U.S.C. §1960 pertains to the transmission of funds and cited several federal court opinions that found that Bitcoin constitutes money within the meaning of 18 U.S.C. §1960.

Moreover, the court found that, as alleged, Stetkiw was a money transmitter because his transactions involved the transmission of funds to another location. The court also distinguished FinCEN Ruling FIN-2014-R002 (mentioned above), finding that the government had alleged that Stetwik engaged as a business in the exchange of Bitcoin for real currency and charged a fee, and thus his activities were not strictly done for his own account.

In 2018, Theresa Lynn Tetley, the so-called Bitcoin Maven, pled guilty to operating an unlicensed Bitcoin-for-cash exchange business and money laundering. Tetley facilitated money laundering from individuals suspected of receiving Bitcoins from illegal activities, including drug sales. After pleading guilty, she was sentenced to 12 months in prison, three years of supervised release, a $20,000 fine; and had to forfeit 40 Bitcoins, $292k in cash, and 25 assorted gold bars.[17]

In United States v. Mansy, No. 2:15-CR-198-GZS, 2017 WL 9672554, at *1 (D. Me. May 11, 2017), the court found that Bitcoin fell within the purview of 18 USC §1960 (prohibiting operations of an unlicensed MSB) because they constituted funds or money as contemplated in the statute. Mansy was accused of buying and selling $2.4 million worth of Bitcoin for profit without registering as an MSB. He then funneled the monies through a business bank account of TV TOYZ, a corporation he owned. According to a press release, Mansy was sentenced to a year in prison, three years of supervised release, and a forfeiture of $118k worth of cash and Bitcoins.[18]

It is also worth noting that other government agencies such as the SEC and the CFTC have also investigated and/or pursued actions against cryptocurrencies businesses.

In October 2021, the DOJ also announced a special task force, the National Cryptocurrency Enforcement Team, dedicated to enforcing cryptocurrency related regulations.[19] Thus, we can likely expect additional enforcement actions in the coming year.

"In a motion to dismiss, Stetkiw argued that Bitcoin did not qualify as "money" under the offending statute and that the statute only applies when a person acts as an intermediary to transfer money from one person or entity on behalf of another but does not cover two-party transactions. When denying these arguments, the court concluded that 18 U.S.C. §1960 pertains to the transmission of funds and cited several federal court opinions that found that Bitcoin constitutes money within the meaning of 18 U.S.C. §1960.

Puerto Rico Regulations

Virtual currency financial institutions, established as offshore operations, can be licensed under the Puerto Rico Office of the Commissioner of Financial Institutions (OCFI).[20]

In a recent circular letter, CIF-CC-2021-03 (published in April 2021), OCFI indicated that convertible virtual currencies are included under the definition of Puerto Rico Act 136, Section 1.2 (p), which defines all businesses that offer currency transfer services.

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Virtual Currency Activities and Money Service Businesses (MSBs)

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Analogizing the Section 1.2 (p) definition to the federal definition of MSBs, it went on to state that all MSBs, including Bitcoin Teller Machines (BTM) operators, had to obtain a license from OCFI before initiating installations or operations in Puerto Rico.[21] Though the letter examined whether certain kiosks or ATM-styled machines known as BTMs were operating without an approved licensed, OCFI's interpretation of Act No. 136 appears to be extensive to all MSBs dealing with virtual or cryptocurrencies. Thus, businesses that qualify as MSBs under the BSA should also evaluate whether they need to register with the OCFI.

Conclusion

Whether an individual or a business's virtual currency activities qualify them as MSBs involves a particularized inquiry based on guidance, rulings, and regulations that are constantly evolving. Failing to register as an MSB or complying with the ensuing AML obligations can lead to steep civil and even criminal penalties. Thus, individual and businesses engaging in virtual currency activities should become familiar with, and seek expert legal advice regarding, the applicable regulatory framework to avoid costly and time-consuming legal risks.

For additional information, please contact Sonia I. Torres Pabón, Esq., storres@melendeztorreslaw.com Nereida Meléndez Rivera, Esq., nmelendez@melendeztorreslaw.com, or Isabel Lecompte Shiba, Esq. ilecompte@melendeztorrezlaw.com.

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1 Non-convertible virtual currencies are cryptocurrencies created to be used in a specific virtual domain such as in certain online games. Convertible cryptocurrencies like Bitcoin and Ethereum generally have an equivalent value in fiat currency (such as the dollar), and thus can be substituted for fiat currency.

2 In Puerto Rico, virtual currencies are eligible for incentives concerning capital gains for resident investors and may qualify for preferential tax rates.

3 Under different federal statutes, virtual currencies may be considered an asset or property, a security, commodities or derivatives (even if not a security) or currency (money). Moreover, based on the type of activity, person or institution, FinCEN, the SEC or the CFTC may regulate the person as money transmitter, national security exchange, broker, swap dealer, etc. In addition, the IRS, and PR tax law, considers cryptocurrency to be property and general tax principles and laws apply to transactions involving cryptocurrency, which may create taxable events. Other federal agencies that regulate cryptocurrency exchanges are the Internal Revenue Service (IRS), the U.S. Securities and Exchange Commission (SEC), U.S. Treasury's Office of Foreign Assets Control (OFAC) and the Commodity Futures Trading Commission (CFTC).

4 31 CFR § 1010.100(ff)(1)-(7).

5 31 C.F.R § 1010.100(ff)(5) defines a money transmitter as "A person that provides money transmission services. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. "

6 31 U.S.C. §5311. FinCEN requirements apply to domestic and foreign MSBs if the MSBs does business in whole or substantial part in the United States.

7 FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013. https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf. The guidance provided by FinCEN are not formal rules or regulations, and thus its applicability can be uncertain since it does not have force of law.

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Virtual Currency Activities and Money Service Businesses (MSBs)

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8 According to the FinCEN guidance "[a]n administrator or exchanger is not a provider or seller of prepaid access, or a dealer in foreign exchange, under FinCEN's regulations."

9 FIN-2014-R002, "Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity." January 30, 2014. Available at https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf

10 FIN-2014-R001, "Application of FinCEN's Regulations to Virtual Currency Mining Operations," January 30, 2014. Available at https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R001.pdf
See also, FIN-2015-R001, "Application of FinCEN's Regulations to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals," August 14, 2015. (Reaching a similar conclusion regarding a Company that offered internet brokerage services between buyers and sellers of precious metals, which included payments in Bitcoin). Available at https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2015-R001.pdf

11 FIN-2014-R007, "Application of Money Services Business regulations to the rental of computer systems for mining virtual currency," April 29, 2014. Available at https://www.fincen.gov/sites/default/files/shared/FIN-2014-R007.pdf

12 FIN-2014-R012, "Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Payment System," October 27, 2014. Available at https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R012.pdf

13 FIN-2014-R011, "Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform," October 27, 2014. Available at: https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R011.pdf

14 FIN-2019-G001, "Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies," May 9, 2019. Available at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf

15 The DOJ also pressed criminal charges against Harmon. See, United States v. Harmon, 474 F. Supp. 3d 76, 95 (D.D.C.), reconsideration denied, 514 F. Supp. 3d 47 (D.D.C. 2020)(finding that Helix, as described in the indictment satisfied the definition of unlicensed money transmitting business because its core business was receiving customer's Bitcoin and transmitting that Bitcoin to another location or person).

16 DOJ Press Release titled, "Individual Arrested and Charged with Operating Notorious Darknet Cryptocurrency "Mixer," April 28, 2021. Available at https://www.justice.gov/opa/pr/individual-arrested-and-charged-operating-notorious-darknet-cryptocurrency-mixer

17 DOJ Press Release titled, "'Bitcoin Maven' Sentenced to One Year in Federal Prison in Bitcoin Money Laundering Case." The United States Department of Justice, July 9, 2018. Available at https://www.justice.gov/usao-cdca/pr/bitcoin-maven-sentenced-one-year-federal-prison-bitcoin-money-laundering-case

18 DOJ Press Release titled, "Detroit Man Sentenced to a Year and a Day for Operating an Unlicensed Bitcoin Business," December 4, 2017. Available at: https://www.justice.gov/usao-me/pr/detroit-man-sentenced-year-and-day-operating-unlicensed-bitcoin-business

19 DOJ Press Release titled, Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team," The United States Department of Justice, October 6, 2021. https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team.

20 See OCFI Statement and Guidelines: "Availability of the IFE Charter under Puerto Rico Act 273-2012 to engage in certain financial activities related to Blockchain technology and virtual currencies, dated April 12, 2018.
Available at https://ocif.pr.gov/Concesionarios/Formularios%20para%20Solicitar%20Licencias/Entidad%20Financiera%20Internacional/OCFI%20Guidelines%20for%20IFEs%20with%20activities%20related%20to%20Blockchain%20and%20virtual%20currencies%20Ver.%202.pdf

21 The circular letter is titled "Licensing Requirement for all Monetary Business Services Pursuant to Act No. 136 from September 21, 2020, as amended." Available at:
https://ocif.pr.gov/DocumentosLegales/CartasCircularesInternas/CIF-CC2021-03%20Licensing%20Requirement%20for%20all%20Monetary%20Business%20Service%20Pursuant%20to%20Act.%20No.%20136%20from%20Sept.%2021,%202010,%20as%20ammended.pdf

CLERK'S TIDINGS

By: Maria Antongiorgi, Esq.
Clerk of Court
U.S. District Court for the
District of Puerto Rico

This is a section with news items, notices, and general information from the Clerk's Office of the U.S. District Court for the District of Puerto Rico, as part of a joint effort with the FBA to keep the Bar appraised of events and information, and to provide a better, expedited service to its members. As part of this effort, we sometimes provide Internet link addresses to sites over which the Clerk's Office, or the U.S. District Court exercise no control, and thus, take no responsibility for their organization views, accuracy, contents, standards, copyright, or trademark compliance or legality.

The Court

United States District Court for the District of Puerto Rico

The District is currently composed of four district judges, three senior judges, and five magistrate judges. There are three judgeship vacancies in our District.

District Judges

Hon. Raúl Arias-Marxuach, Chief Judge
Hon. Aida M. Delgado-Colón
Hon. Pedro A. Delgado-Hernández
Hon. Silvia L. Carreño-Coll

Senior District Judges

Hon. Daniel R. Domínguez
Hon. Jay A. García-Gregory
Hon. Francisco A. Besosa

Magistrate Judges

Hon. Camille L. Vélez-Rivé
Hon. Bruce J. McGiverin
Hon. Marcos E. López
Hon. Marshal D. Morgan
Hon. Giselle López-Soler

The Honorable Gustavo A. Gelpí designated to the United States Court of Appeals for the First Circuit

On May 12, 2021, President Joe Biden nominated Judge Gustavo A. Gelpí to the United States Court of Appeals for the First Circuit. Judge Gelpí was subsequently confirmed by the U.S. Senate on October 18,2021 and sworn-in as Circuit Court Judge by the Honorable Jeffrey R. Howard, Chief Judge of the U.S. Court of Appeals for the First Circuit.

The Honorable Raúl Arias-Marxuach Sworn-in as Chief Judge for the United States District Court for the District of Puerto Rico

On October 22, 2021, Judge Raúl Arias-Marxuach was sworn-in as Chief Judge for the United States District Court of Puerto Rico by the Honorable Aida M. Delgado-Colón in a private ceremony. Chief Judge Arias-Marxuach praised Judge Gelpí's collegiality and commitment to the Court's mission during 20 years of distinguished service to the District of Puerto Rico, especially during his tenure as Chief Judge.

Chief Judge Arias-Marxuach obtained his bachelor's degree from Boston College in 1989 and his Juris Doctor degree Magna Cum Laude from the University of Puerto Rico School of Law in 1992. From 1992

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to 1993, he was a law clerk to the Honorable Antonio S. Negrón-Garcia, Associate Justice of the Supreme Court of the Commonwealth of Puerto Rico. In 1994, he obtained a Master of Laws degree from Harvard Law School. Thereafter, Chief Judge Arias-Marxuach practiced law in prominent law firms in San Juan, Puerto Rico until 2019. He frequently litigated civil and commercial matters before the District of Puerto Rico for 24 years. Chief Judge Arias-Marxuach also worked as an adjunct professor for the Inter American University of Puerto Rico School of Law in 2011, 2013 and 2016. He is a Judicial Fellow of the American College of Trial Lawyers and a member of the American Bar

In 2019, President Donald J. Trump appointed Judge Arias-Marxuach for the position of United States District Judge for the District of Puerto Rico. Upon confirmation by the U.S. Senate, Judge Arias-Marxuach was sworn in by the Honorable Gustavo A. Gelpí on May 16, 2019.

Federal Rules

Federal Rulemaking

The following amended rules and new forms became effective December 1, 2021. The changes to the federal rules follow recommendations by the Judicial Conference of the United States. These amendments affect the Appellate and Bankruptcy Rules.

December 1, 2022

- Appellate Rules 25 & 42
- Bankruptcy Rules 1007, 1020, 2009, 2012, 2015, 3002, 3010, 3011, 3014, 3016, 3017.1, 3017.2 (new), 3018, 3019, 5005, 7004, and 8023.
- Civil Rule 7.1 and Supplemental Rules for Social Security Review Actions Under 42 U.S.C. § 405(g).
- Criminal Rule 16.

December 1, 2023

- Appellate Rules 2 & 4.
- Bankruptcy Rules 3002.1, 3011, and 8003; new Rule 9038; Official Forms 101, 309E1, 309E2, and 417A; and new Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R
- Civil Rules 15, 72, and new Rule 87
- Criminal New Rule 62.
- Evidence Rules 106, 615, and 702.

For more information on Federal Rulemaking please refer to: https://www.uscourts.gov/rules-policies/current-rules-practice-procedure.

Court Orders

On February 28, 2022, the Court unanimously approved the adoption of the amendments to Local Civil Rule 9 (Social Security Cases), effective immediately. Pursuant to 28 U.S.C. 2071(b) and Rule 83 of the Federal Rules of Civil Procedure, the Court gave public notice and provided opportunity for comment concerning the proposed amendments. All comments filed were duly considered. After giving notice and opportunity for comment, the Court unanimously adopted the amendments to Local Civil Rule 9, effective immediately. On March 4, 2022, Chief Judge Raul M. Arias-Marxuach, issued a Standing Order in Adoption of Local Civil Rule 9 (Social Security Cases), in Misc. 03-115 (RAM). On March 7, 2022, public notice of the adoption of the Local Civil Rule 9 (Social Security) and given to members of the bar. Local Rules are available on the Court's website.

Order of Final Adoption of Amendments to Local Civil Rule 9 (Social Security Cases)

http://www.prd.uscourts.gov/sites/default/files/Order%20on%20Final%20Adoption%20LCR%209%20DPR%203.04.22.pdf

Local Rules of the United States District Court of Puerto Rico (most recent version)

https://www.prd.uscourts.gov/sites/default/files/documents/ajax/20220304-USDCPR-Local-Rules.pdf

Standing Order on Continuing Civil and Criminal Proceedings during COVID-19 Outbreak

As per Thirteenth Amended Order Continuing Civil and Criminal Proceedings, the Court will continue the use of video ("VTC") and/or telephone conferencing ("TC") systems to hold eligible civil and criminal proceedings until June 22, 2022. As of April 4, 2022, trial and in-person hearings will be held in accordance with the Court's Third Amended Protocol for In-Person Hearings and Trials during COVID 19 Pandemic.

Thirteenth Amended Order Continuing Civil and Criminal Proceedings until June 22, 2022 (Updated March 22, 2022)

http://www.prd.uscourts.gov/sites/default/files/13AO%20Cv%20Cr%203.22.22.pdf

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Third Amended Protocol for In-Person Hearings and trials during COVID 19 Pandemic (Eff. April 4, 2022)

http://www.prd.uscourts.gov/sites/default/files/3rdAProt%203.22.2022_0.pdf

Public Notice re: Reappointment of U.S. Magistrate Judge Bruce J. McGiverin

The current term of office of United States Magistrate Judge Bruce J. McGiverin at the District of Puerto Rico, is due to expire on January 18, 2023. The United States District Court for the District of Puerto Rico is required by law to appoint a panel of citizens to consider the reappointment of the Magistrate Judge to a new eight-year term. Comments from members of the bar and the public were received up to May 8, 2022, as to whether the Magistrate Judge McGiverin should be recommended by the panel for reappointment by the Court.

Public Notice for Reappointment of Incumbent United States Magistrate Judge Bruce J. McGiverin:

http://www.prd.uscourts.gov/sites/default/files/documents/notices/Public%20Notice%20Reapp%20USMJ%20BJM.pdf

Public Notice re: Reappointment of U.S. Magistrate Judge Marcos E. López

The current term of office of United States Magistrate Judge Marcos E. López at the District of Puerto Rico, is due to expire on January 23, 2023. The United States District Court for the District of Puerto Rico is required by law to appoint a panel of citizens to consider the reappointment of the Magistrate Judge to a new eight-year term. Comments from members of the bar and the public were received up to May 8, 2022, as to whether the Magistrate Judge López should be recommended by the panel for reappointment by the Court.

Public Notice for Reappointment of Incumbent United States Magistrate Judge Marcos E. López:

http://www.prd.uscourts.gov/sites/default/files/documents/notices/Public%20Notice%20Reapp%20USMJ%20MEL.pdf

New Panel Attorney Hourly Rates and Case Compensation Maximums

Effective January 1, 2022, the panel attorney hourly rates will increase from $155 to $158 for non-capital work and from $197 to $202 for capital work performed on or after January 1, 2022. Where the appointment of counsel occurred before January 1, 2022, the new hourly compensation rate applies to that portion of services provided on or after the effective date. The non-capital rate increase will result in increases to the panel attorney case compensation maximums in non-capital cases.

Notice from the Clerk No. 21-15: Increase to CJA Hourly Rates and Case Compensation Maximums (Effective January 1, 2022)

https://www.prd.uscourts.gov/sites/default/files/documents/notices/Notice%2021-15%20Hourly%20Rate%20%20Case%20Maximum%20Increases%20For%20CJA%20Panel%20Attorneys.pdf

New Mileage Rates

Effective January 1, 2022, the reimbursement mileage rates for privately owned automobiles increased as follows: automobiles $0.585 per mile; motorcycles $0.565 per mile; and airplanes $1.515 per mile. These new rates are effective from January 1, 2022 through December 30, 2022.

Notice from the Clerk: No. 21-16: New Mileage Rates effective on January 1, 2022

https://www.prd.uscourts.gov/sites/default/files/documents/80/Notice%2021-16%20New%20Mileage%20Rates%20Effective%20January%201%202022.pdf

NextGen CM/ECF

On November 21, 2021, the USDCPR upgraded its Case Management Electronic Case Filing System (CM/ECF) to the Next Generation of CM/ECF (NextGen). This upgrade provides users with new tools, including Central Sign-On, that allows e-filing attorneys to use one PACER login and password to access any NextGen court in which they practice. To login to NextGen CM/ECF, attorneys must obtain their own individual PACER account and upgrade it.

For more information, please refer to the URL link in the District Court's website: https://www.prd.uscourts.gov/nextgen-cmecf-what-it-means-you

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Legal Education

District Bar Examination

The Spring 2022 bar exam was administered on April 30, 2022. The Court adopted health and safety protocols and procedures to ensure the wellbeing of all applicants and court proctors. A total of 74 applicants sat for the exam. The next Federal Bar Examination will be offered in Fall 2022. During the period from January 1 thru December 31, 2021, the court conducted eight (8) bar admission ceremonies and a total of 152 attorneys were admitted to practice (this figure includes attorneys who passed the Bar examination in previous years).

Virtual Continuing Legal Education (CLE) Programs by the United States District Court

The District Court, in its effort to provide continuous legal education to members of the Bar during the COVID-19 pandemic, continues to sponsor virtual programs.

On October 14 and 15, 2021, the Court held a two-day, twelve-hour Virtual Continuing Legal Education Program free of charge to members of the Bar in good standing. The Program's featured speakers were Edward J. Imwinkelried, David L. Hudson, Jr., Barry P. McDonald, and Michael B. Landau. The CLE program consisted of the following lectures: The U.S. Supreme Court 2020-2021 Term in Review; Federal Rule of Evidence 404(b); Fourth Amendment Jurisprudence of Justice Sonia Sotomayor; Copyright Infringement, Trademark Infringement, and Social Media. A total of 542 participants attended the virtual CLE Program.

The USDCPR third CLE Virtual event is scheduled for October 27 and 28, 2022.

Judicial Educational Programs

The USDCPR contributes to quality judicial and other educational programs such as the Department of Justice' Judicial Studies Institute Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT), which promotes enhancement to the capabilities of foreign justice sector institutions. The USDCPR regularly hosts OPDAT visitors at least twice a year, which include judges and Clerks of Court from Central and South American Countries. These visits included training sessions and attending various court proceedings before district and magistrate judges; demonstrations of the state-of-the-art technology available in all courtrooms, including an overview of the Case Management/Electronic Case Filing (CM/ECF) system; and presentations on court security by the U.S. Marshals Service. The most recent visits were received on May 8, 2021, November 6, 2021, and April 30, 2022, hosting a total of 354 International Judges.

Educational Outreach Programs

The USDCPR organizes many events that promote the participation of students in courtroom activities which create a unique opportunity to learn about legal system and other careers within the federal judiciary. Some of the most recent events were:

- October 28, 2021 - Moot Court Exercise – Group of 10 Students and Prof. Brenda Rosado-Aponte before Magistrate Judge Marshal D. Morgan

- December 15, 2021- Mock Trial (RESCATE program) – Group of 21 fifth grade students from the Epifanio Fernández Vanga School in Bayamón, U.S. Attorney Joseph S. Muldrow, U.S. Attorney Jackie Novas, U.S. Attorney Héctor Ramírez, and Magistrate Judge Marshal D. Morgan

- December 17, 2021- Mock Trial (RESCATE program) – Group of 32 eighth grade students from the Mariano Feliu Balseiro School in Bayamón, U.S. Attorney Joseph Muldrow, U.S. Attorney Jackie Novas, U.S. Attorney Héctor Ramírez, and Magistrate Judge Marshal D. Morgan

- April 22, 2022 - AO Educational Program - Civil Discourse and Difficult Decisions Program – Group of 20 students from Academia del Perpetuo Socorro and 2 professors and 6 volunteer attorneys before Chief Judge Raúl Arias-Marxuach and Magistrate Judge Giselle López-Soler.

The law firm of Estrella, LLC, and the George Washington University Law School held the eighth annual Estrella Trial Advocacy Competition (ETAC) Estrella, LLC, in the Clemente Ruiz Nazario U.S. Courthouse on April 2 and 3, 2022. Fourteen prestigious law schools participated in this year's event. The last round of the competition was presided by Chief U.S. District Judge Raul M. Arias-Marxuach.

The USDCPR continued to sponsor and collaborate with the Puerto Rico Trial Advocacy Competition (PRTAC) hosted annually by the Interamerican University of Puerto Rico. The 2022 edition was held once again at the Jose V. Toledo U.S. Courthouse from April 7 to April 9, 2022.

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CLERK'S TIDINGS

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Special Educational Outreach Event

In December 2020, the U.S. Attorney's Office in collaboration with the USDCPR, launched the Project LEAD (Legal Enrichment and Decision-making) school program in two public schools in Puerto Rico. Project LEAD was established in 1993 by the Los Angeles County District Attorney's Office in partnership with the Constitutional Rights Foundation. The project's goal is to teach children about the importance of the choices they make. In December 2021, a total of 25 students graduated from the Project LEAD school program in a ceremony held in the USDCPR and presided by U.S. District Judge Silvia Carreño-Coll.

Meet Your Board

Linette Figueroa-Torres
President & Member of the Editor's Committee

Linette Figueroa-Torres has been a member of the FBA since 2010 and was first elected to the Board of Directors in 2016. She currently serves as our Chapter's President and as a member of the Editor's Committee of *From the Bar* newsletter. After obtaining her Juris Doctor (magna cum laude) from the University of Puerto Rico in 2005, she gained experience practicing in both the public and private sectors. In 2011, she joined Toro Colon Mullet, P.S.C. and now holds the position of Principal in the firm's Litigation Department. Linette has 17 years of experience litigating civil, commercial, and bankruptcy-related matters before local and federal courts, and focuses her practice in the areas of creditor rights, warranty and products liability, distribution and franchising, and securities arbitration. She is a Notary Public and is admitted to practice in the Commonwealth of Puerto Rico, the U.S. District Court for the District of Puerto Rico, the U.S. Court of Appeals for the First Circuit, and the U.S. Supreme Court.

Jaime A. Torrens-Dávila
President-Elect

Jaime A. Torrens-Dávila is a Member of the Litigation Department of Ferraiuoli LLC, with seventeen (17) years of experience. He has been an active member of the FBA since law school. He currently is the President-Elect of our Chapter, and served as Secretary from 2021-2022, and as Director from 2018-2020. As a litigator, he practices extensively before the federal and state courts of Puerto Rico, both at trial and appellate levels, and represents clients in administrative proceedings and alternative dispute resolution methods, such as arbitration and mediation. He has substantial experience in complex civil and commercial litigation and handles a broad range of disputes in the following areas of practice, among others: distribution and sales representation, breach of contract, torts and damages, commercial collections and foreclosures, class and group actions, insurance and subrogation, products liability, premises liability, personal injury, and wrongful death. He is a Notary Public and admitted to practice in the following courts: Puerto Rico, District of Columbia, U.S. District Court for the District of Puerto Rico, U.S. Court of Appeals for the First Circuit, U.S. Court of International Trade, U.S. Court of Federal Claims, U.S. Tax Court, and the U.S. Supreme Court.

Juan R. Rivera-Font
Vice President

Juan R. Rivera-Font obtained his Juris Doctor in 2001 after which he has engaged in litigation practice in Puerto Rico in both the state and federal court systems. He continuously provides in-depth employment law guidance and defense to renowned companies (distribution, real estate management, clinical trials) in Puerto Rico. Juan has litigated extensively on behalf of multinational and domestic companies, including cases involving complicated business transactions and corporate law (Law 75, Duty of Loyalty and Care, Non-Competition, Operating Agreements). He also offers ample experience in representing companies and directors and officers before alternative dispute resolution forums (FINRA, AIA). Juan has been a member of the FBA since 2011. He currently is the Vice President of our Chapter's Board of Directors and previously served as treasurer from 2018-2022.

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Cecilia M. Suau-Badía
Secretary & Member of the Editor's Committee

After obtaining her Juris Doctor from Inter-American University of Puerto Rico School of Law (magna cum laude 2010), she has been engaged in the private practice of law as a litigator at McConnell Valdés LLC, where she currently holds the position of Income Member. She has represented clients in complex civil and commercial litigation for over 10 years. She holds licenses to practice law in the Commonwealth of Puerto Rico, Court of Appeals for the First Circuit, the U.S. District Court for the District of Puerto Rico and is a Public Notary. Cecilia joined the FBA in 2018 and became part of the Board of Directors in 2020. At present, she is the Secretary of our Chapter and is part of the Editor's Committee of *From the Bar* newsletter.

Zarel Soto-Acabá
Treasurer

Zarel Soto-Acabá is an appellate and trial litigator who focuses his practice on complex commercial litigation, and international corporate internal investigations. He has experience in the public sector as former Assistant Solicitor General in the Department of Justice, and in private practice as In-house corporate litigation counsel for the largest healthcare provider of Puerto Rico as well as several law firms. Over his ten years of practice, he has represented corporate clients in a wide range of disputes related to antitrust, securities, multi-district litigation, international business transactions involving the Puerto Rico Dealers Act, and a myriad of contractual matters. He has also conducted substantial cross-border corporate internal investigations throughout Latin America in a wide array of topics, such as Foreign Corrupt Practices Act (FCPA) matters, conflict of interests, anti-kickback allegations, market collusion, side-businesses, bribing schemes, and multiple corporate policy violations. Zarel is an active member of the FBA since 2010 and a board member since 2020. He currently serves as our Chapter's treasurer.

Sarika J. Angulo-Velázquez
National Delegate & Member of the Editor's Committee

After obtaining her Juris Doctor from Tulane University School of Law and working in the State of Louisiana, first as a one-year tenured law clerk and then as an associate attorney in the Litigation and Appellate Department of a law firm in the financial district of the City of New Orleans, Sarika moved back home to Puerto Rico in 2012. Since then, she has been working exclusively as a litigator and currently holds the position of Junior Partner at the law firm of Adsuar Muñiz Goyco Seda & Pérez-Ochoa located in the financial district of Puerto Rico where she focuses her practice on complex commercial litigation. She holds licenses to practice law in the states of New York and Louisiana and in the Commonwealth of Puerto Rico. She is also admitted to practice law in the U.S. Supreme Court, Court of Appeals for the First and Fifth Circuits, the U.S. District Court for the Southern District of New York, the U.S. District Court for the Eastern District of New Orleans, and the U.S. District Court for the District of Puerto Rico. Sarika joined the FBA in 2013 and became part of the Board of Directors in 2016. At present, she is the Chapter's National Delegate and a member of the Editor's Committee of *From the Bar* newsletter.

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Carla S. Loubriel-Carrión
Director

Carla is a Non-Equity Partner at Casellas Alcover & Burgos, PSC, where she concentrates in complex civil and commercial litigation. She has over a decade of experience litigating in the federal and state courts of Puerto Rico, both at the trial and appellate levels. Her practice areas currently include distribution franchise law, antitrust litigation, corporate shareholder disputes, health law, insurance litigation, and civil RICO actions. Before joining private practice, Carla served as a judicial law clerk, first to Judge Gustavo A. Gelpí, U.S. District Court for the District of Puerto Rico, and then to Judge Juan R. Torruella, U.S. Court of Appeals for the First Circuit. Carla has been a member of the FBA since 2010 and recently joined the Board of our Chapter as a Director in 2022. In support of the FBA's recent initiative, Carla is assisting our Chapter in creating a local committee dedicated to federal judicial law clerks.

Carolina Velaz-Rivero
Director & Coordinator of FBA Student Chapters

Carolina Velaz-Rivero is a member at Marini Pietrantoni Muñiz LLC and co-chair of the Bankruptcy & Insolvency Practice. She concentrates her practice in all aspects of distressed situations and bankruptcy, in-court and out-of-court restructurings as well as complex commercial litigation, including defense of lender liability suits and contract litigation. She regularly lectures on federal jurisdiction and insolvency and bankruptcy matters. She serves as a member of the Board of Directors of our Chapter and oversees the Chapter's division of FBA Student Chapters of the three law schools in Puerto Rico. Carolina also serves as a member of the Advisory Board for the 2022 Caribbean Insolvency Symposium. Since 2019, she is part of the panel of our Chapter's review course of the federal bar exam. Carolina has been recognized as a leader in her field by the American Bankruptcy Institute (ABI) where she was named to its "40 Under 40 List." Carolina has also been recognized as an "up and coming" attorney in dispute resolution: Bankruptcy by Chambers and Partners 2021 and 2022, Best Lawyers®, Puerto Rico Edition (2021) and (2022) and in Legal 500® (2022) as a Next Generation Partner. She earned her B.A. from Dartmouth College and obtained her Juris Doctor from the University of Puerto Rico.

Nayda I. Pérez-Román
Director

Nayda I. Pérez-Román is a member of the FBA since 2018 and recently joined the Board as a Director in 2022. She is currently the Social Media Chair of our Chapter. Nayda is a principal at Toro Colón Mullet, P.S.C., where she has been working since 2013, focusing on civil and commercial litigation. She has represented clients before administrative forums and state and federal courts, in cases regarding contractual disputes, distribution contracts, requests for proposal and awards of government contracts, municipal license taxes, tax credits, real estate controversies, collections, among others. She also collaborates with corporate matters, such as preparation and revision of commercial leasing and sub-leasing contracts, and endorsement and sponsorship agreements. Nayda holds a B.A. in communications and finances from the University of Puerto Rico (summa cum laude 2009), where she also received her law degree (magna cum laude 2012) and served as Associate Director of the University of Puerto Rico Law Review. She recently completed a LLM in Health Law at the Pontifical Catholic University of Puerto Rico (summa cum laude 2021).

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Roberto Abesada-Agüet
Director

Roberto Abesada-Agüet is a shareholder at Correa-Acevedo & Abesada Law Offices, P.S.C. He has had the privilege of being elected and uninterruptedly serving as an FBA board member of our Chapter for the last 15 years. For much of that time, he has coordinated the FBA's review course for the federal bar exam. Since 2006, he has been an adjunct professor at the Inter American University, School of Law where he teaches American Common Law Torts, Civil Law Torts, Federal Jurisdiction, Federal Appeals, and special seminars in Civil Procedure. Since 2000, Roberto has been an active trial and appellate attorney, with experience in a wide range of general civil and commercial litigation matters in federal, bankruptcy and state courts. In 2020, he was court-appointed, with the consent of the U.S. Justice Department and the Commonwealth of Puerto Rico, to serve as General Counsel to the Chief Federal Monitor in the Puerto Rico Police Department federal consent decree case. He is admitted to practice in the Commonwealth of Puerto Rico, the U.S. District Court for the District of Puerto Rico, the U.S. Court of Appeals for the First Circuit, the State Bar of Texas, and Washington D.C.

Ericka C. Montull-Novoa
Director

Ericka C. Montull-Novoa recently joined the Board of our Chapter as a Director in 2022 and serves as the Chapter's Membership Chair. She has been a member of the FBA for 7 years. Ericka has been practicing complex civil and commercial litigation for over 10 years. Her main experience is in insurance law, contract law and administrative litigation. However, at Casellas Alcover & Burgos, P.S.C., she has represented and advised clients in a wide range of commercial matters, at the trial and appellate levels and in local administrative proceedings.

Camille I. Marrero-Quiñones
FBA Student Chapters Liaison

Camille I. Marrero-Quiñones is an experienced litigator who joined the FBA in July 2015. Camille works at O'Neill & Borges LLC where she litigates complex cases involving commercial disputes, contracts, and insurance law. Camille also represents condominium associations in litigation against insurance carriers for property damage claims arising from hurricanes Irma and Maria. Camille assists our Chapter as liaison with the FBA Student Chapters.

FBA Student Chapters

Inter American School of Law Board

In 2019, the world set the stage for a pandemic. Although restrictions have loosened we were still faced with some virtual learning, remote work, and quarantining when necessary. However, that has not stopped Inter American School of Law. Since 2020, Inter American made the shift from online to in-person learning and it has been such a pleasure seeing everyone on campus this academic year.

Fall of 2021, we are back – with protocols still set in place, of course. We were given the opportunity to hold events in person and collaborate with other organizations.

Currently, our President and Vice-President are graduating law school. While a congratulations are in order for graduating law school, we are very grateful and appreciative of them in helping the rest of the E-board run the FBA and put things forward for the rest of the academic year. While the remaining members of the E-board will stay for the next academic year, we are excited to acquire new E-board FBA members as well who are very enthusiastic to join and provide ideas to promote the FBA around the school.

We are very hopeful of what is to come. The new E-board has a lot of plans and ideas ready to set them in motion! Students will be exposed to learning the different opportunities in the federal field other than being an attorney, learn about the Multistate Professional Responsibility Examination (MPRE), and much more.

We are very excited for what is to come and we cannot wait to be surrounded by students of the FBA this fall!

Highlights of Chapter Events

Happy Hour @ Beer Garden

On March 23, 2022, the FBA-PR Chapter hosted its first in-person, post-pandemic Happy Hour at Beer Garden & Pizza Rústica located at the Convention Center in San Juan, PR. It was great to share a fun and enjoyable evening with our members.

Zarel Soto-Acabá, Manuel San Juan, Linette Figueroa-Torres, Sarika Angulo-Velázquez, Raquel M. Dulzaides, Joseph Feldstein del Valle, Andrés Picó-Ramírez, Jorge Blasini, Katherine González-Valentín and Lloyd Isgut.

Linette Figueroa-Torres, Cecilia Suau-Badia, Rafael Aguiló-Vélez, Katherine González-Valentín and Nayda Pérez-Román.

Rafael Aguiló-Vélez, Roberto Santana-Aparicio, Manuel Fernández-Bared and Giselle Osuna.

José González-Nogueras, Katherine González-Valentín and Raquel M. Dulzaides.

Remembering the Hon. Judge Juan Pérez-Giménez

On April 20, 2022, family, colleagues and friends commemorated the Hon. Juan Pérez-Giménez by sharing stories of the Judge's early years, work ethic, mentorship, and friendship. The special virtual event was moderated by Manuel San Juan with the participation of the Hon. Gustavo A. Gelpí and the Judge's law clerks Mariela Rexach and Priscila Acevedo. Also in attendance were the Hon. Jay García-Gregory, Hon. Marcos López, Hon. Bruce McGivern and Hon. Marshal Morgan from the U.S. District Court for the District of Puerto Rico.

FBA Leadership Summit 2022 @ Arlington, VA

From April 28-30, 2022, the FBA held its annual Leadership Summit at Arlington, VA. Linette Figueroa-Torres and Carolina Velaz-Rivero attended the event in representation of the FBA PR Chapter. The Leadership Summit's objective is to provide current and future leaders an opportunity to expand national networks while strengthening personal, professional, and organizational relationships.

The FBA-PR Chapter president Linette Figueroa-Torres and director Carolina Velaz-Rivero attended the event.

FBA PR Chapter president Linette Figueroa-Torres, FBA National president Anh Le Kremer, Carolina Velaz-Rivero, director of the FBA PR Chapter, and FBA Sacramento president Chi Soo Kim at the reception held in the Supreme Court of the United States on April 28, 2022.

Webinar: La Persona Trans y el Derecho Laboral: Una Guía Para Patronos

This webinar was provided by María Judith (Nani) Marchand-Sánchez on May 5, 2022. It covered areas such as discrimination based on gender identity and sexual orientation, the rights and responsibilities of the employer and the transgender people in the workplace, and state and federal laws and regulations applicable to this type of discrimination. Ms. Marchand is a Capital Member and one of the founders of Ferraiuoli LLC and has vast experience in employment matters.

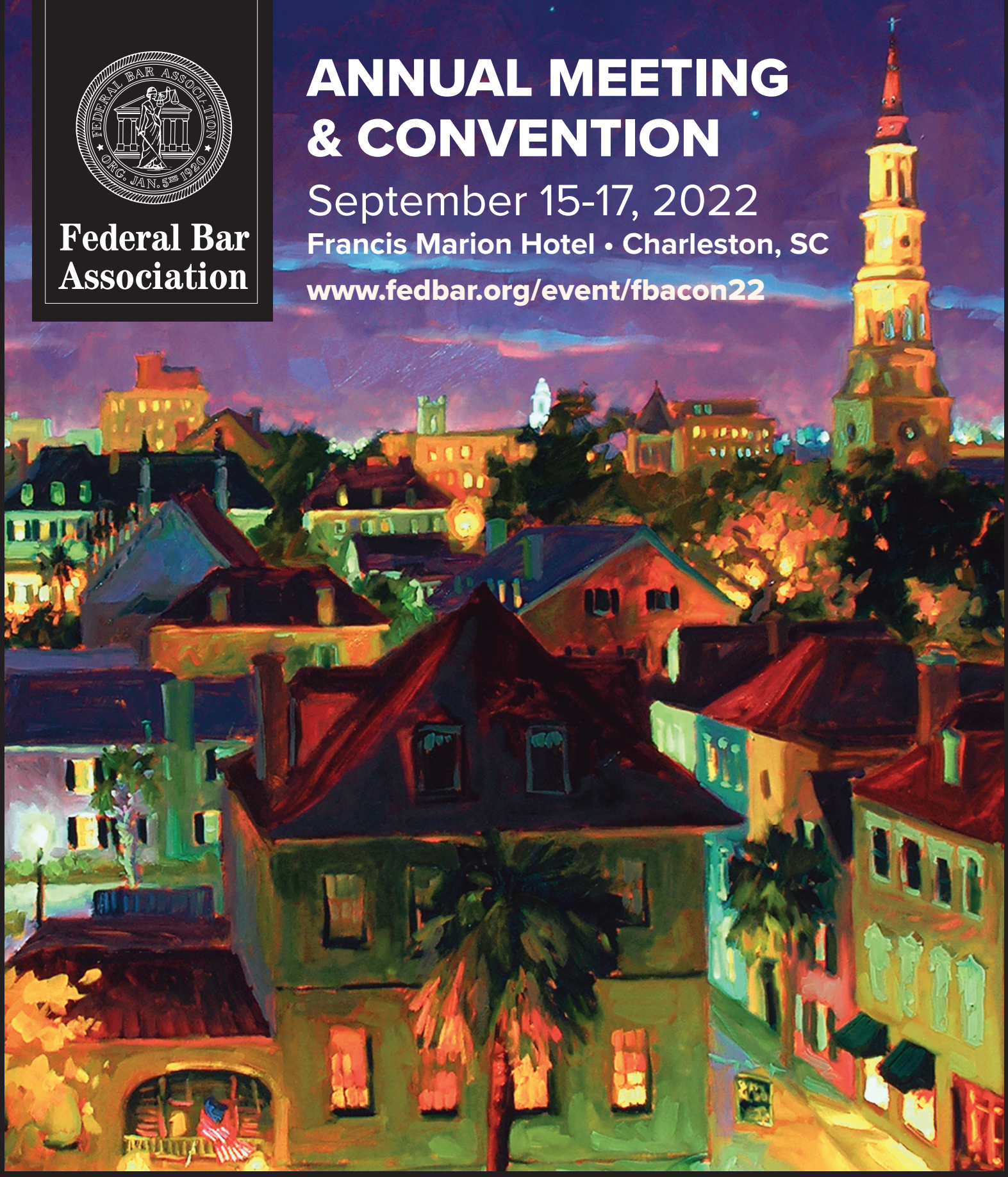
Federal Bar Association

ANNUAL MEETING & CONVENTION

September 15-17, 2022

Francis Marion Hotel • Charleston, SC

www.fedbar.org/event/fbacon22



SAVE THE DATE!

Sponsorship opportunities available! Contact Caroline Bentley at sponsor@fedbar.org

Newsletter

We want to invite our legal community to submit notes, commentaries, and articles for publication in our newsletter of From the Bar. Over the years, our Chapter's newsletter has received awards for its articles and commentary on issues that impact federal litigators, and we want to continue with that proud tradition. Our newsletter strives to be a valued source of news and insights on litigation and law developments, as well as an outlet to report on different educational and networking events aimed at maintaining our members connected.

We invite you to submit writings analyzing substantive legal issues or developments in the law, judicial profiles, notes on experiences litigating cases, commentaries on practice developments and rule changes, among others. There is no requirement on the length of your written submission; it can be a single paragraph or an article up to five pages.

Should you have any questions or would like to provide a submission, **please e-mail the Editor's Committee at puertorico@federalbar.org**. We look forward to hearing from you!