

# Corporate Articles

published by Corporate & Association Counsel Division  
of the Federal Bar Association

Summer 2013

## Interview with Robert McCormick, Chief Policy Officer of Glass Lewis & Co.

by John Okray



*Robert McCormick is chief policy officer of Glass Lewis & Co. where he oversees the policy development of Glass Lewis' proxy voting guidelines and the analysis of 20,000 Proxy Paper research reports on*

*shareholder meetings of public companies in 100 countries. Before joining Glass Lewis, Bob was the director of investment Proxy Research at Fidelity Investments where he managed the proxy voting of securities worth \$1 trillion. Bob earned his law degree from Quinnipiac University School of Law after graduating with honors from Providence College. He chairs the programs committee of the board of the Northern California Chapter of the NACD and serves on the International Corporate Governance Network's Shareholder Rights committee. Bob serves on the advisory board of the University of Delaware's Weinberg Center on Corporate Governance. Bob frequently speaks at industry conferences and has appeared on NPR, CNBC, Fox Business News, Business News Network, BBC, Swiss TV and Bloomberg television. Bob was named one of*

*the 100 most influential people on corporate governance by Directorship magazine from 2008 through 2012.*

**Can you describe the types and scope of services that Glass Lewis & Co. provides to its clients?**

**McCormick:** Glass Lewis provides proxy research, recommendation and voting services to institutional investors throughout the world. Glass Lewis provides research, data and analysis of governance, finance, accounting, legal and political risks in our Proxy Paper research reports at more than 23,000 public companies in 100 plus countries. Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

**How would you describe your role as chief policy officer of Glass Lewis? What do you like most about your job?**

**McCormick:** As chief policy officer I work with all the research teams to develop,

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## Message from the Chair

by John Okray

We hope everyone is enjoying their summer. This issue of *Corporate Articles* includes an interview with Robert McCormick, chief policy officer of Glass Lewis & Co., which in-house counsel of public companies and asset management firms will find of interest. Timely updates on EEOC enforcement of the Genetic Information Nondiscrimination Act and the removal of cases from state to federal courts are also discussed. Members are always encouraged to submit an article for a future issue.



The Corporate & Association Counsel Division would also like to remind members about the division's "Corporate Type" column that appears several times a year in *The Federal Lawyer* magazine. The July 2013 column features an interview with Lanny Breuer, the recent head of the U.S. Department of Justice's Criminal Division, including a discussion of the Foreign Corrupt Practices Act.

As discussed later under "Recent Events," the division recently co-sponsored the 5th Bi-annual Labor & Employment Law Conference in New Orleans. This event provided a tremendous amount of information regarding current trends in federal labor and employment law. The division will be announcing its next CLE opportunities shortly. Also, please see the enclosed flyer for the upcoming FBA Annual Meeting and Convention in San Juan, Puerto Rico on September 26-28, 2013. The annual meeting will provide numerous CLE programs, networking opportunities, and social activities. ■

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refine and implement our proxy voting policies, and I work with the Glass Lewis Research Advisory Council which advises the company on guideline and policy development. I review issues and proposals that fall outside the policy guidelines or that call for escalation based on our case by case approach; I also edit reports of many of the largest companies we cover as well as review reports analyzing nascent or unique issues. In addition, I often represent Glass Lewis at industry conferences and in meetings with clients. I lead the engagement process at Glass Lewis and speak and meet with many companies outside the proxy season. Throughout the year but more frequently during the proxy season, I moderate Proxy Talk conference calls with companies and shareholders to explore issues and proposals in depth.

The best aspect of my job is that I get to work with all the various research teams in our various offices, providing me insight into global governance developments that I can share across the analyst teams. I also really enjoy engaging with both clients and issuers in explaining our guidelines, approach and methodologies as well as learning from both groups how to improve our research and analysis.

**Glass Lewis recently published a report entitled *Board Gender Diversity in 2012*. Can you summarize the research and findings? How well are women represented in the boardroom in the United States and do you see any trends?**

**McCormick:** Although there is a clear trend toward more women directors, they still are underrepresented in U.S. board rooms. Here are some key findings from the study:

- Similar to 2011, 91% of companies in the S&P 500 had at least one woman on their board in 2012.
- Women represented 17% of all S&P 500 directors, up from 16% in 2012.
- U.S. companies in the consumer staples sector had the greatest board gender diversity: 41% of companies in this sector had three or more female directors.
- Only 4% of S&P 500 companies had a female CEO, up from 3% in 2011.
- Females make up only 2.6% of board chairmen and 9% of all lead directors.
- In 2012, 20% of all proposed directors at S&P 500 companies were female, up from 17.7% in 2011.

**The U.S. Chamber of Commerce recently proposed that proxy advisory firms share drafts of their recommendations with corporate issuers and also provide enhanced disclosures of their potential conflicts-of-interests. Do you feel this is in response to increased accountability on executive compensation and/or director elections by institutional investors? Do you feel any of their recommendations have merit?**

**McCormick:** I am not sure what the driver is for the chamber's more recent proposals, but Glass Lewis does not believe it is in the best interests of investors to provide previews of reports to the subject companies. This type of "consultation" would open Glass Lewis up to being lobbied by companies, since companies could use this communication opportunity to push for a change in a recommendation against management. Furthermore, from a practical perspective, given the often tight timeframe between

the issuance of the proxy circular and the vote deadline, any delay in the distribution of reports to investors would further inhibit investors' ability to review the analysis and make fully informed voting decisions. There is no precedent or analogous review of reports on companies by analysts or journalists, and we don't feel it is necessary for proxy advisors.

**Over the last several years, have you seen increased transparency or any other notable improvements in corporate governance best practices in emerging market countries? What systemic reforms or actions by institutional investors might promote positive changes?**

**McCormick:** There have been significant corporate governance improvements in nearly every country including emerging markets. The enhancements range from more transparency, greater and more specific disclosure, particularly around compensation and directors, more opportunities for shareholders to vote on certain issues such as votes on compensation and the removal of voting impediments such as shareblocking, share re-registration and powers of attorney. Some of the changes have been encouraged and promoted by investors through constructive engagement with portfolio companies and continued dialogue is the most effective way to foster positive changes.

**A few years ago, majority voting, pay for performance, and say-on-pay were attracting significant attention. What are the current or emerging hot topics and where are the areas where U.S. issuers still lag in terms of good corporate governance? Are political contributions a corporate governance concern?**

**McCormick:** There have indeed been significant changes in the U.S. corporate governance landscape, but there are some additional areas on which shareholders have been pushing companies. The most high-profile recent issue, although seen at relatively few companies, is shareholder access, i.e., allowing shareholders of a certain size and tenure to nominate directors for inclusion on the management proxy. Shareholder ability to nominate directors is a fundamental right enjoyed, although rarely exercised, by shareholders in most other countries, and the lack of this right, as well as shareholder ability to vote a director off a board without resort to board review of a resignation (i.e., true majority voting), are examples where the U.S. lags behind most developed countries.

Compensation remains a perennial hot topic, and there is continued push by shareholders for companies to remove provisions widely disliked by shareholders including single trigger change in control provisions, tax gross ups and to adopt policies to prohibit hedging and, in some cases, pledging. Shareholders are also encouraging greater use of long-term, performance-based equity awards subject to clawbacks in lieu of cash bonuses, paid out for short-term performance. In addition, shareholders are encouraging more and longer holding periods for equity awards and limitations on the accelerated vesting of equity in a change of control.

Glass Lewis recognizes that it is reasonable for corporations, like any other affected group, to donate to candidates and causes that they believe would serve their business interests. We believe

## Employer Compliance with the Genetic Information Nondiscrimination Act

by John Okray

The Genetic Information Nondiscrimination Act of 2008 (GINA)<sup>1</sup> was signed into law by President George W. Bush on May 21, 2008 after being passed with almost unanimous support in Congress. The late Senator Edward Kennedy, one of the bill's sponsors, called it the "first major new civil rights bill of the new century." Titles I and II of the act prohibit the use of genetic information for health insurance or employment purposes, respectively.<sup>2</sup> There had not been any formal enforcement activities under the act until May 2013 when the U.S. Equal Employment Opportunity Commission (EEOC) filed its first two GINA lawsuits against employers. Corporate counsel should therefore revisit the act's requirements.

In its first case, the EEOC claimed that Fabricut Inc. violated GINA when it refused to hire a candidate after asking for her family medical history in its post-offer medical examination. According to the suit, the candidate had been working for Fabricut in a temporary position as a memo clerk. After applying for a permanent role in the same capacity, Fabricut made the candidate an offer and sent her to a contract medical examiner/laboratory for a pre-employment physical and drug test. The medical service provider required the candidate to complete a questionnaire that asked about any history of various disorders in her family. As part of the physical, the service provider also told the candidate that she might have carpal tunnel syndrome and that she should be evaluated by her physician. The candidate subsequently submitted documentation from her physician stating she did not have carpal tunnel syndrome, but Fabricut nevertheless withdrew its offer. The EEOC also claimed that Fabricut violated the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with, or those erroneously deemed to have, disabilities. Fabricut entered into a consent decree settling the lawsuit, agreeing to pay \$50,000 and to take certain remedial measures (disseminating policies, training, etc.).<sup>3</sup>

In its following case, the EEOC filed a class action lawsuit against Founders Pavilion Inc., claiming that it required post-offer employment candidates and current employees to undergo medical exams where Founders requested family medical history.<sup>4</sup> The EEOC has also claimed that Founders violated the ADA and Civil Rights Act. This case is still pending.

What should employers do to ensure compliance with GINA?

- 1) Develop policies and procedures prohibiting the company's employees and agents from inquiring about a candidate or employee's genetic information. There are a few narrow exceptions when an employer can obtain genetic information without violating GINA which should be reviewed.<sup>5</sup>
- 2) Integrate GINA compliance into training programs.
- 3) Whenever the company requests medical information from a health care provider, ensure the request forms contain safe harbor language. According to the EEOC's final rule implementing Title II of GINA<sup>6</sup>, if an employer uses language such as the following, any receipt of genetic information in response to the request for medical information will be deemed inadvertent, and therefore not violate GINA:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.<sup>7</sup>

- 4) In applicable agreements, require an explicit undertaking from third parties to remain in compliance with GINA and similar state laws.
- 5) Read the EEOC's final rules implementing Title II of GINA<sup>8</sup> and the EEOC's answers to frequently asked questions regarding GINA for employers.<sup>9</sup>
- 6) Review applicable state law(s). Many states have their own laws against genetic discrimination for health insurance and/or employment matters. GINA does not preempt these state laws. Thus, while all applicable employers (generally those having at least 15 employees) are subject to GINA, they could also be subject to any additional protections provided under relevant state laws. ■



*John Okray is chair of the FBA Corporate & Association Counsel Division and Deputy General Counsel of American Beacon Advisors, Inc. He can be reached at johnokray@outlook.com.*

### Endnotes

<sup>1</sup>Genetic Information Nondiscrimination Act of 2008, Public L. no. 110-233, 122 Stat 881 (2008). Print.

<sup>2</sup>This article focuses on employer compliance with Title II of the act.

<sup>3</sup>Case No. 13-cv-248-CVE-PJC (N.D. Okla.) filed on May 7, 2013.

<sup>4</sup>Case No. 6:13-cv-06250 (W.D.N.Y) filed on May 16, 2013.

<sup>5</sup>See *Infra* n. 8, Answer #10.

<sup>6</sup> Available at [www.gpo.gov/fdsys/pkg/FR-2010-11-09/pdf/2010-28011.pdf](http://www.gpo.gov/fdsys/pkg/FR-2010-11-09/pdf/2010-28011.pdf).

<sup>7</sup>75 Fed. Reg. 68934 (Nov. 9, 2010).

<sup>8</sup>See *Supra* n. 5.

<sup>9</sup>*EEOC Questions and Answers for Small Businesses: EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008*, available at [www.eeoc.gov/laws/regulations/gina\\_qanda\\_smallbus.cfm](http://www.eeoc.gov/laws/regulations/gina_qanda_smallbus.cfm).

## Three Common Questions Associated with Removal

by Rachel V. Rose

In today's commercial landscape, it is not uncommon for corporations to assess their operations in light of state, federal and international laws. Because of this complexity, it is possible that corporations will find themselves involved in litigation scenarios that are equally complex. One such scenario involves removing a case from state court to federal court. Although there are various statutes associated with the removal of cases from state court to federal court and, in some instances, the remanding of those cases from federal court to state court, three statutes that cannot be overlooked are 28 U.S.C. §§: 1441 (governs removal for federal questions, diversity of citizenship and joinder of state and federal claims), 1446 (establishes the procedure for removal), and 1447 (sets forth additional requirements for removal and the process of remand). These statutes establish the right to remove a case. As the Supreme Court articulated, federal law governs the process thereafter.<sup>1</sup> Generally, a federal court has jurisdiction to determine its own jurisdiction.<sup>2</sup> Yet, like with the majority of areas in the law, there are exceptions. In certain instances, Congress vests the federal courts with exclusive jurisdiction over certain actions, which are considered federal questions as a matter of law under the preemption doctrine.<sup>3</sup> Examples of exclusive federal jurisdiction and preemption include: the Securities Exchange Act of 1934<sup>4</sup>, admiralty and maritime cases<sup>5</sup>, Clayton Act cases<sup>6</sup>, certain ERISA cases<sup>7</sup>, and the Federal Tort Claims Act.<sup>8</sup> Interestingly, a state court may have concurrent jurisdiction over the Securities Act of 1933<sup>9</sup>, but not the Securities Exchange Act of 1934.

Effective Jan. 6, 2012, Federal Courts Jurisdiction and Venue Clarification Act of 2011 (Clarification Act) modified the removal procedures in various situations including: (1) joining non-removable claims with federal claims, (2) multiple defendants in relation to 28 U.S.C. §1332 (diversity of citizenship/amount in controversy), and seeking removal after one year and a plaintiff's potential bad-faith actions.<sup>10</sup> The Clarification Act should be consulted in addition to case law because few cases exist addressing these issues.

Three questions that relate to the process of removal and remand are:

- How is jurisdiction established?
- Is removal of a counterclaim permissible?
- How is a state court notified of the removal?

### How is Jurisdiction Established?

Akin to bringing a suit initially in a federal court, jurisdiction can be established under 28 U.S.C. § 1331 (federal question subject matter jurisdiction) or 28 U.S.C. § 1332 (diversity jurisdiction plus a monetary threshold).<sup>11</sup> Pleading subject matter jurisdiction, it is a two-step process. First, Article III, Section 2 of the U. S. Constitution expresses:

[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority... and to all Cases of admiralty and maritime Jurisdiction...

Second, Title 28, Section 1331 of the U. S. Code further codified this constitutional decree. Entitled "Federal Question," it provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Essentially, the complaint needs to set forth the language of Article III, Section 2, as well as the specific federal law that connotes jurisdiction upon the Court. If removal is based on a law, for example the Securities Exchange Act of 1934, it is prudent to mention that this statute vests the federal court with exclusive jurisdiction.

If removal is based on diversity jurisdiction, 28 U.S.C. § 1332 provides:

- a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between:
  - 1) citizens of different states;
  - 2) citizens of a state and citizens or subjects of a foreign state;
  - 3) citizens of different states and in which citizens or subjects of a foreign state are additional parties; and
  - 4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a state or different states.

Furthermore, complete diversity of citizenship between all parties is required and these cases are removable only if none of the defendants, who are properly joined and served, are citizens of the state in which the action is brought.<sup>12</sup> If a corporation is named as a party, for suits after the enactment of the Clarification Act, a corporation is considered a citizen of *every* U.S. state and foreign state where it has been incorporated and the U.S. and foreign state where it has its principal place of business.<sup>13</sup> Again, the requirements for a removal action are analogous to a case originally filed in federal court.

### Is Removal of a Counterclaim Permissible?

*Answer:* It depends. In the context of determining subject matter jurisdiction under 28 U.S.C. §1332, courts have held that counterclaims should not be ignored when assessing the amount in controversy and diversity of citizenship.<sup>14</sup>

Utilizing a counterclaim as the basis for removal in a federal question case is a bit more involved. Typically, an opposing party will argue that the determination of a federal question is based on the "well-pleaded complaint-rule," which provides that a federal question exists only if it is presented on the face of the state plaintiff's petition.<sup>15</sup> Like most areas of law, there are counter arguments to this doctrine. First, consider the "artful pleading doctrine." As the U.S. Supreme Court articulated, a plaintiff may not frame its action under state law and omit federal claims that are essential to recovery.<sup>16</sup> Essentially, a federal court may find that the state plaintiff's claim arises under federal law despite the failure of the state plaintiff to plead a federal claim on the face of the petition.<sup>17</sup> The court looks beyond the face of the complaint

to determine the true nature of the claims. Hence, removal is appropriate when federal law completely preempts a plaintiff's state law claim.<sup>18</sup>

Certain causes of action, like the Clayton Act and the Securities Exchange Act of 1934 vest the federal court with exclusive jurisdiction. In turn, they are considered federal questions as a matter of law under the preemption doctrine.<sup>19</sup> As the U.S. Supreme Court articulated in *Metropolitan Life Ins. v. Taylor*, 481, U.S. 58, 67 (1987), “[t]his suit, though it purports to raise only state law claims, is necessarily federal in character by virtue of the clearly manifested intent of Congress. It, therefore, ‘arise[s] under the... laws... of the United States,’ 28 U.S.C. §1331, and is removable to federal court by the defendants, 28 U.S.C. §1441(b).” Even though a plaintiff in state court does not expressly state a federal claim on the face of the petition, the artful pleading doctrine, coupled with preempted actions, prevent a state court plaintiff from escaping causes of action simply because they chose not to expressly include them in their petition. Removal is one vehicle to enable the state court defendant to address those claims that are so related in the forum that Congress provided for in certain contexts.

### How is a State Court Notified of the Removal?

The state court is notified by the party removing the claim (the defendant) pursuant to 28 U.S.C. § 1446(d). The defendant is required to notify the court, in writing, as well as the adverse parties. Once notification has been given, state court proceedings are terminated.<sup>20</sup> From there, the federal court takes over.<sup>21</sup>

### Conclusion

In sum, removal is a complex process involving multiple steps and coordination by the defendant removing the case. In addition to the three statutes, case law and the Clarification Act should be consulted. It is important to establish the existence of either a federal question or complete diversity jurisdiction before the removal action is filed. In certain instances, exclusive jurisdiction may vest in the federal courts. Other times, that area is more gray. Regardless, following the proper procedure can save the courts and the parties time and resources, while ensuring the case is heard in the most appropriate venue. ■



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*regulations. Rose holds an MBA from Vanderbilt University and a law degree from Stetson University College of Law.*

### Endnotes

<sup>1</sup>*Grubbs v. General Elec. Credit Corp.*, 405 U.S. 699, 705 (1972).

<sup>2</sup>*United States v. United Mine Workers of Am.*, 330 U.S. 258, 291 (1947).

<sup>3</sup>*Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987).

<sup>4</sup>15 U.S.C. §78aa(a).

<sup>5</sup>28 U.S.C. § 1333.

<sup>6</sup>15 U.S.C. § 15(a).

<sup>7</sup>29 U.S.C. § 1332(e)(1).

<sup>8</sup>28 U.S.C. § 1346(b).

<sup>9</sup>15 U.S.C. § 77v(a).

<sup>10</sup>Pub. L. No. 112-63, § 105, 125 Stat. 758, 762 (2011); *see also* H.R. Rpt. 112-10 (Feb. 11, 2011).

<sup>11</sup>Under 28 U.S.C. § 1367, supplemental jurisdiction may apply to non-federal causes of action.

<sup>12</sup>*Whalen v. Carter*, 954 F.2d 1087, 1094 (5th Cir. 1992); 28 U.S.C. 1441(b) (2005). It is important to note that there are certain nuances associated with class actions in determining diversity jurisdiction, which need to be considered in those cases.

<sup>13</sup>28 U.S.C. § 1332(c)(1).

<sup>14</sup>*Bristol-Myers Squibb Company, et al v. Safety National Casualty Corp.*, 43. F.Supp.2d 734, 744 (E.D. Texas, Beaumont Division, 1999) (citing *Spector Management Group v. Brown*, 131 F.3d 120 (3rd Cir. 1997); *Fenton v. Freedman*, 748 F.2d 1358 (9th Cir. 1984).

<sup>15</sup>*Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908) (establishing the “well-pleaded complaint”).

<sup>16</sup>*Franchise Tax Board v. Construction Laborers*, 463 U.S. 1, 22 (1983).

<sup>17</sup>*Id.*

<sup>18</sup>*Rivet*, 522 U.S. at 475.

<sup>19</sup>*Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987).

<sup>20</sup>Failing to provide notice, either actual or constructive, renders the removal ineffective. *Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 547 (5th Cir. 1985). But, while constructive notice may be sufficient to terminate the state court proceeding, for removal to be effective, actual, formal filing of the notice is required. *Stephens v. Portal Boat Co.*, 781 F.2d 481, 482 n. 1 (5th Cir. 1986).

<sup>21</sup>*See* 28 U.S.C. § 1450 (2005) (indicating that all orders, injunctions, bonds and other proceedings remain effective until modified or set aside by the federal court).

## CACD Recent Events

### The Division Hosts CLE On Conducting Internal Investigations

In a world of increasingly assertive regulators, conducting internal investigations is of particular importance—and heightened frequency—for our clients. Such investigations are used prospectively as a diagnostic and compliance tool, retrospectively for remediation purposes, and as a routine practice in litigation and discovery. In each context corporate counsel are asked to coordinate the various stakeholders, including the human resources department, the general counsel's office, senior executives, employees, specialized labor and employment lawyers, to name a few. As seen nearly daily in the headlines, transnational companies face particularly thorny issues such as multi-jurisdiction securities regulation, anti-corruption legislation (e.g., the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act), document retention issues, data privacy rules, etc. In conjunction with the Labor & Employment Division, the CACD hosted a one-hour CLE on May 3 in New Orleans to explore the myriad issues faced by corporate counsel when conducting such internal investigations.

The weeks since our presentation have yielded something rarely whispered in CLE post-mortems: praise for actually delivering substance. While many CLE's fall into the categories of "snoozers" or "war stories," several respondents commented that the CACD's hour of discussion proved practical and illuminating. The reason for the success? The panel.



Celeste Yeager



Sid Lewis



Sabrina Mannai

Celeste Yeager, *Gardere Wynne Sewell LLP* and Sid Lewis, *Jones Walker LLP* discussed 10 fundamental lessons when conducting an effective internal investigation, highlighting each point with practical examples and instruction on how to avoid common traps.

Sabrina Mannai, *White & Case LLP*, presently working in Paris, France, came to New Orleans to discuss specific issues faced when conducting cross-border investigations for large, multi-national companies—something of increasing importance in a globalizing world.

The CLE was held at the Westin Hotel in New Orleans on Friday, May 3 and was preceded on May 1 by a Speakers-and-Sponsors dinner at Galatoire's Restaurant in the historic French Quarter.

Based on the success of the CACD's kick-off CLE, we look forward to hosting additional sessions in the near future. To ensure the topics remain relevant and timely, the CACD Board of Directors encourages all division members to submit ideas for future CLE's. We look forward to hearing from you and seeing you at future events. ■

## Federal Bar Association Calendar

**Sept. 26-28, 2013**

2013 Annual Meeting and Convention // The Caribe Hilton // San Juan, PR

**March 29, 2014**

2014 Midyear Meeting // West Arlington Gateway // Arlington, VA

**Sept. 4-6, 2014**

2014 Annual Meeting and Convention // The Westin // Providence, RI

Please watch your email for details on other programs and events. For a full calendar and details of FBA events, see [www.fedbar.org/calendar](http://www.fedbar.org/calendar).

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amounts spent on such activities should be evaluated like any other use of corporate assets, namely what is the return to shareholders from such payments. Therefore, and given the potential risks to the company and therefore to shareholders depending on the amounts given and the nature of the issue or stance taken by a particular donee candidate, we believe it is reasonable for shareholders in turn to want to know if there is board oversight of the donations as well as their amounts and recipients.

**The industry makes references to environmental, social, and governance (ESG). There have been several changes in governance practices in numerous markets. Have there been any material changes in the environmental or social practices of issuers or how shareholders support votes on these topics?**

**McCormick:** The environmental and social (E&S) proposals that get the most support from shareholders seek information and more disclosure; proposals seeking the company to take or cease a specific action tend not to get much support. Therefore, companies are more apt to respond by bolstering their disclosure on E&S issues, particularly regarding sustainability issues. However, companies have become more attuned to shareholder and customer views on risks associated with certain industry practices and operations in areas of the world prone to strife, poor human rights records or employee safety practices as having a potential negative economic effect even if only from a tarnished reputation. Witness the recent response by several companies to the building collapse in Bangladesh. So while most companies have disclosed more information about environmental, social, and governance issues, more and more companies have taken specific actions to mitigate associated ESG risks.

**Many institutional investors are concerned with having “management access,” where portfolio managers have the opportunity to meet with C-level executives of portfolio companies. Do you think this issue can impact how institutional investors vote on executive compensation, director elections, or shareholder proposals, and if so, how can this problem be mitigated?**

**McCormick:** Engagement between companies (generally executives but, to a lesser but growing extent, directors) and investors has greatly increased to the point that most shareholders expect some access to company management and, in more limited cases as appropriate (e.g., CEO compensation), with the board. Such engagement can greatly facilitate more and better understanding of the company (including compensation program philosophy and design) by shareholders, as well, of shareholders’ focus and concerns, if any, by management. I don’t believe most shareholders feel they must always have access to the most senior managers but more realistically want to engage with the most knowledgeable company representatives, regardless of seniority. Having the most appropriate and knowledgeable people available to meet and speak with shareholders should go a long way toward alleviating any problems.

**What advice would you have for an in-house attorney at a public company who was asked to help improve the firm’s shareholder value and reputation with investors?**

**McCormick:** It is difficult to make suggestions that are relevant for a broad group of very different companies, but I do think even

a little shareholder engagement can go a long way, even if it is to find out shareholders are content. Engagement is best begun well before the annual meeting to allow for due consideration of the issues and to establish relationships and a level of trust that promote shareholder understanding and support.

**What are you most proud of in terms of the impact Glass Lewis has had on proxy voting?**

**McCormick:** We at Glass Lewis are proud that we are able to provide investors with independent research and analysis so they can make informed voting decisions, and we strive to improve our approach continuously. Consistent with our founding principle not to consult for companies, we never feel we are in a position to instruct or counsel companies about what they should or should not do, but we often engage in discussions with company executives and directors about enhancements to disclosure. In that respect, we may have played a small role in encouraging improved disclosure by companies in many countries. ■

More information about Glass Lewis & Co. can be found at [www.glasslewis.com](http://www.glasslewis.com).



# JOIN US *in* SAN JUAN, *Puerto Rico*

FEDERAL BAR ASSOCIATION 2013 ANNUAL MEETING AND CONVENTION  
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## Federal Bar Association Corporate & Association Counsel Division Leadership

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Rachel V. Rose-Attorney at Law PLLC

### Corporate Articles Submissions

If you are interested in submitting an article or being considered to be an editor of *Corporate Articles*, please send an email to [johnokray@outlook.com](mailto:johnokray@outlook.com) and [rvrose@rvrose.com](mailto:rvrose@rvrose.com).

# connect



## through the Federal Bar Association

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

### Advocacy

The opportunity to make a change and improve the federal legal system through grassroots work in over 80 FBA chapters and a strong national advocacy.

### Networking

Connect with a network of federal practitioners extending across all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

### Leadership

Governance positions within the association help shape the FBA's future and make an impact on the growth of the federal legal community.

### Learning

Explore best practices and new ideas at the many Continuing Legal Education programs offered throughout the year—at both the national and chapter levels.

## expand your connections, expand your career

**THREE WAYS TO APPLY TODAY:** ① Join online at [www.fedbar.org](http://www.fedbar.org); ② Fax application to (571) 481-9090; or ③ Mail application to FBA, 1220 North Fillmore St., Suite 444, Arlington, VA 22201. For more information, contact the FBA membership department at (571) 481-9100 or [membership@fedbar.org](mailto:membership@fedbar.org).

## FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

### Applicant Information

First Name \_\_\_\_\_ M.I. \_\_\_\_\_ Last Name \_\_\_\_\_ Suffix (e.g., Jr.) \_\_\_\_\_ Title (e.g., Attorney At Law, Partner, Assistant U.S. Attorney) \_\_\_\_\_

Male  Female Have you been an FBA member in the past?  yes  no Which do you prefer as your primary address?  business  home

Firm/Company/Agency _____		Number of Attorneys _____	
Address _____		Suite/Floor _____	
City _____	State _____	Zip _____	Country _____
( ) _____	( ) _____		
Phone _____	Fax _____	E-mail _____	

Address _____			Apt. # _____
City _____	State _____	Zip _____	Country _____
( ) _____	( ) _____		
Phone _____	Fax _____		
// _____			
Date of Birth _____	E-mail _____		

### Bar Admission and Law School Information (required)

U.S.	Court of Record: _____
	State/District: _____ Original Admission: / /

Tribal	Court of Record: _____
	State: _____ Original Admission: / /

Foreign	Court/Tribunal of Record: _____
	Country: _____ Original Admission: / /

Students	Accredited Law School: _____
	State/District: _____ Expected Graduation: / /

### Practice Information

#### PRACTICE TYPE

- Private Sector:  Private Practice  Corporate/In-House  
 Public Sector:  Government  Association Counsel  
 Nonprofit  University/College  
 Military  Judiciary

#### PRIMARY PRACTICE AREAS

- |  |  |
|--|--|
| <input type="radio"/> Administrative         | <input type="radio"/> Health                 |
| <input type="radio"/> Admiralty/Maritime     | <input type="radio"/> Immigration            |
| <input type="radio"/> ADR/Arbitration        | <input type="radio"/> Indian                 |
| <input type="radio"/> Banking                | <input type="radio"/> Intellectual Property  |
| <input type="radio"/> Bankruptcy             | <input type="radio"/> International          |
| <input type="radio"/> Civil Rights           | <input type="radio"/> Labor/Employment       |
| <input type="radio"/> Communications         | <input type="radio"/> Military               |
| <input type="radio"/> Criminal               | <input type="radio"/> Securities             |
| <input type="radio"/> Environment/Energy     | <input type="radio"/> Social Security        |
| <input type="radio"/> Federal Litigation     | <input type="radio"/> State/Local Government |
| <input type="radio"/> Financial Institutions | <input type="radio"/> Taxation               |
| <input type="radio"/> General Counsel        | <input type="radio"/> Transportation         |
| <input type="radio"/> Government Contracts   | <input type="radio"/> Veterans               |

## Membership Categories and Optional Section, Division, and Chapter Affiliations

### Membership Levels

#### SUSTAINING MEMBERSHIP

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5% discount on the registration fees for all national meetings and national CLE events.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years .....	○ \$155	○ \$135
Member Admitted to Practice 6-10 Years .....	○ \$215	○ \$190
Member Admitted to Practice 11+ Years .....	○ \$255	○ \$220
Retired (Fully Retired from the Practice of Law).....	○ \$155	○ \$155

#### ACTIVE MEMBERSHIP

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years .....	○ \$95	○ \$75
Member Admitted to Practice 6-10 Years .....	○ \$155	○ \$130
Member Admitted to Practice 11+ Years .....	○ \$195	○ \$160
Retired (Fully Retired from the Practice of Law).....	○ \$95	○ \$95

#### ASSOCIATE MEMBERSHIP

Foreign Associate Admitted to practice law outside the U.S. .... ○ \$195  
Law Student Associate Currently enrolled in an accredited law school ..... ○ \$30

Dues Total: \$ \_\_\_\_\_

#### Practice Area Sections

<input type="checkbox"/> Alternative Dispute Resolution .. \$15	<input type="checkbox"/> Indian Law ..... \$15
<input type="checkbox"/> Antitrust and Trade Regulation.. \$15	<input type="checkbox"/> Intellectual Property Law..... \$10
<input type="checkbox"/> Banking Law..... \$20	<input type="checkbox"/> International Law..... \$10
<input type="checkbox"/> Bankruptcy Law..... \$10	<input type="checkbox"/> Labor and Employment Law..... \$15
<input type="checkbox"/> Civil Rights Law ..... \$10	<input type="checkbox"/> Securities Law Section ..... \$0
<input type="checkbox"/> Criminal Law..... \$10	<input type="checkbox"/> Social Security..... \$10
<input type="checkbox"/> Environment, Energy, and Natural Resources..... \$15	<input type="checkbox"/> State and Local Government Relations..... \$15
<input type="checkbox"/> Federal Litigation..... \$10	<input type="checkbox"/> Taxation..... \$15
<input type="checkbox"/> Government Contracts..... \$20	<input type="checkbox"/> Transportation and Transportation Security Law..... \$20
<input type="checkbox"/> Health Law..... \$10	<input type="checkbox"/> Veterans Law..... \$20
<input type="checkbox"/> Immigration Law..... \$10	

#### Career Divisions

- Corporate & Association Counsel  
(in-house counsel and/or corporate law practice) ..... \$20
- Federal Career Service (past/present employee of federal government).....N/C
- Judiciary (past/present member or staff of a judiciary) .....N/C
- Senior Lawyers\* (age 55 or over) ..... \$10
- Younger Lawyers\* (age 36 or younger or admitted less than 3 years) .....N/C

\*For eligibility, date of birth must be provided.

Sections and Divisions Total: \$ \_\_\_\_\_

### Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. \*No chapter currently located in this state or location.

<p><b>Alabama</b> ○ Birmingham ○ Mobile ○ Montgomery ○ North Alabama</p> <p><b>Alaska</b> ○ Alaska</p> <p><b>Arizona</b> ○ Phoenix ○ William D. Browning/ Tucson-\$10</p> <p><b>Arkansas*</b> ○ At Large</p> <p><b>California</b> ○ Central Coast ○ Inland Empire ○ Los Angeles ○ Northern District of California ○ Orange County ○ Sacramento ○ San Diego ○ San Joaquin Valley</p> <p><b>Colorado</b> ○ Colorado</p> <p><b>Connecticut</b> ○ District of Connecticut</p> <p><b>Delaware</b> ○ Delaware</p> <p><b>District of Columbia</b> ○ Capitol Hill ○ D.C. ○ Pentagon</p> <p><b>Florida</b> ○ Broward County ○ Jacksonville ○ North Central Florida-\$25 ○ Orlando ○ Palm Beach County ○ South Florida ○ Southwest Florida ○ Tallahassee ○ Tampa Bay</p>	<p><b>Georgia</b> ○ Atlanta-\$10</p> <p><b>Hawaii</b> ○ Hawaii</p> <p><b>Idaho</b> ○ Idaho</p> <p><b>Illinois</b> ○ Chicago</p> <p><b>Indiana</b> ○ Indianapolis</p> <p><b>Iowa</b> ○ Iowa-\$10</p> <p><b>Kansas</b> ○ Kansas</p> <p><b>Kentucky</b> ○ Kentucky</p> <p><b>Louisiana</b> ○ Baton Rouge ○ Lafayette/ Acadiana ○ New Orleans ○ North Louisiana</p> <p><b>Maine*</b> ○ At Large</p> <p><b>Maryland</b> ○ Maryland</p> <p><b>Massachusetts</b> ○ Massachusetts-\$10</p> <p><b>Michigan</b> ○ Eastern District of Michigan ○ Western District of Michigan</p> <p><b>Minnesota</b> ○ Minnesota</p> <p><b>Mississippi</b> ○ Mississippi</p> <p><b>Missouri*</b> ○ At Large</p> <p><b>Montana</b> ○ Montana</p> <p><b>Nebraska*</b> ○ At Large</p> <p><b>Nevada</b> ○ Nevada</p> <p><b>New Hampshire*</b> ○ At Large</p>	<p><b>New Jersey</b> ○ New Jersey</p> <p><b>New Mexico</b> ○ New Mexico</p> <p><b>New York</b> ○ Eastern District of New York ○ Southern District of New York ○ Western District of New York</p> <p><b>North Carolina</b> ○ Eastern District of North Carolina ○ Middle District of North Carolina ○ Western District of North Carolina</p> <p><b>North Dakota*</b> ○ At Large</p> <p><b>Ohio</b> ○ John W. Peck/ Cincinnati/ Northern Kentucky ○ Columbus ○ Dayton ○ Northern District of Ohio-\$10</p> <p><b>Oklahoma</b> ○ Oklahoma City ○ Northern/ Eastern Oklahoma</p> <p><b>Oregon</b> ○ Oregon</p> <p><b>Pennsylvania</b> ○ Eastern District of Pennsylvania ○ Middle District of Pennsylvania ○ Western District of Pennsylvania</p>	<p><b>Puerto Rico</b> ○ Hon. Raymond L. Acosta/ Puerto Rico-\$10</p> <p><b>Rhode Island</b> ○ Rhode Island</p> <p><b>South Carolina</b> ○ South Carolina</p> <p><b>South Dakota*</b> ○ At Large</p> <p><b>Tennessee</b> ○ Chattanooga ○ Memphis Mid-South ○ Nashville ○ Northeast Tennessee</p> <p><b>Texas</b> ○ Austin ○ Dallas-\$10 ○ Del Rio-\$25 ○ El Paso ○ Fort Worth ○ San Antonio ○ Southern District of Texas-\$25 ○ Waco</p> <p><b>Utah</b> ○ Utah</p> <p><b>Vermont*</b> ○ At Large</p> <p><b>Virgin Islands</b> ○ Virgin Islands</p> <p><b>Virginia</b> ○ Northern Virginia ○ Richmond ○ Roanoke ○ Tidewater</p> <p><b>Washington*</b> ○ At Large</p> <p><b>West Virginia*</b> ○ At Large</p> <p><b>Wisconsin*</b> ○ At Large</p> <p><b>Wyoming</b> ○ Wyoming</p>
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Chapter Total: \$ \_\_\_\_\_

## Payment Information and Authorization Statement

### TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ \_\_\_\_\_

Check enclosed, payable to Federal Bar Association  
Credit:  American Express  MasterCard  Visa

Name on card (please print)

Card No.

Exp. Date

Signature

Date

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application and/or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant

Date

(Signature must be included for membership to be activated)

\*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.