Elia Diaz-Yaeger, Editor-in-Chief

Elia Diaz-Yaeger is a Shareholder in the law firm of Lugenbuhl, Wheaton, Peck, Rankin and Hubbard, her primary areas of practice are industrial employment/long-latency lung disease litigation, insurance defense and coverage, environmental law, commercial litigation, and Board Governance/Cybersecurity. In the last twenty years, Ms. Diaz-Yaeger has successfully defended thousands of occupational exposure claims, including exposure to asbestos and silica-containing products. Mrs. Diaz-Yaeger’s extensive litigation experience enables her to provide clients with an early strategic plan, vigorous defense and efficient litigation.

As an AV-rated attorney, Mrs. Diaz-Yaeger was selected for the inaugural edition of the Martindale-Hubbell® Bar Register of Preeminent Women Lawyers™. Her recent professional credentials include the 2014-2015 Recipient of the Louisiana State Bar Association Human Rights Award. She is also a 2015 CityBusiness “Women of the Year” recipient and honoree.

Mrs. Diaz-Yaeger actively promotes diversity and inclusion of women and Hispanics in the legal professions through various professional organizations. She is a long standing member of the Hispanic National Bar Association (“HNBA”), where she currently serves as the National Secretary. Mrs. Diaz-Yaeger is also a member of International Association of Defense Counsel, Defense Research Institute, American Bar Association, and Louisiana State Bar Association. She is a frequent speaker and CLE presenter. Her recent professional engagements include: presenting at the 2015 DRI Asbestos Medicine Seminar; 2015 LSBA presenter on professionalism speaker at the 2012 American Bar Association mid-year meeting and 2011 HNBA National Corporate Conference; leading round-table discussions at several in-house corporate meetings; serving as a diversity facilitator for the LSBA; participating in the LSBA’s diversity and inclusion video.

In addition to her professional pursuits, Mrs. Diaz-Yaeger also serves on the Board of Directors of ASI Federal Credit Union, a Community Development Financial Institution, whose mission is to strengthen the financial health of underserved communities through financial service and education. Mrs. Diaz-Yaeger also volunteers and participates in a number of social and community programs including, Taking Steps for Crohn’s and Colitis, New Orleans Ballet, Kingsley House “friendraising”, and New Orleans Opera Association. Additionally, she is a founding member of Candy Girls/Life Savers of New Orleans, a non-profit group that supports and provides services to families in need.

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The Key to Success for Latinos: Breaking Into the Tech Sector

It’s a ritual that’s becoming more rampant across the nation. The alarm on your smartphone goes off, and before jumping in the shower or brushing your teeth, you first check your email, Facebook or both. While some of us may lament this new intrusion on our morning routine, it’s a simple fact of life that smartphones and other forms of new technology are becoming an integral part of our daily lives.

In fact, technology is now the key to success in this increasingly digital economy, especially for younger generations. Latinos, whose median age (27 years old) is a full decade lower than that of the U.S. overall, stand the most to gain from this changing economy, but only if we acquire the skills, knowledge, and resources necessary to take full advantage of the opportunities that lie ahead.

This is why over a thousand Latino attorneys, judges, lawmakers and law students congregated in Las Vegas in March for the Hispanic National Bar Association’s Corporate Counsel Conference, which was themed “Embracing Technology.” We chose to host our conference in Nevada not only because it is an important state with one of the fastest growing Latino populations in the nation, but also because Las Vegas is widely anticipated to become a major incubator for tech startups; the next “Silicon Valley” if you will.

But Las Vegas won’t be leading the tech revolution if almost half of its student population—who are Latino—is left behind. Nationwide, Hispanics are simply not sufficiently exposed to STEM (science, technology, engineering and mathematics) education in their K–12 education. Studies have shown that only 16% of Latino students who began college as STEM majors completed a STEM degree. And although STEM jobs are the fastest growing sector, less than 2% of the STEM workforce is Hispanic. We need to change these statistics, not just for the sake of our children’s future, but for the sake of the entire nation.

The growing importance of technology affects not only our businesses, but also increasing personal aspects of our lives. Just two years ago, the Supreme Court, in Riley v. California, ruled that warrantless searches of cellphones were unconstitutional. The Court rightly understood that cellphones are not simply communication devices. A smartphone with just 16GB of storage—and that’s the minimum storage on most smartphones these days—translates into millions of pages of text, thousands of pictures, or hundreds of videos. And with GPS tracking, those mobile devices know exactly where we’ve been each and every day. That’s a lot of data that needs to be protected. Whether we are talking about smartphones and data privacy, intellectual property, cybersecurity, body cameras on law enforcement officers, or voting machines, technology intersects with the practice of law in very real and tangible ways.

Unfortunately, the tech business and the legal profession are two of the least diverse industries in the nation. If we truly believe diversity is a strength for our businesses and our economy, then all of us, whether we’re educators, lawyers, policy makers, business owners, or angel investors, need to recognize that goal and work proactively towards it.

This means we need to update our educational standards on the local and state level as well as increase access to STEM education to empower Latino and other minority small business owners. It means we must ensure that Broadband access is available to all communities. It means that we must continue to pressure well-known tech companies to look beyond their usual applicant pools and hold themselves accountable for the recruitment, hiring and retention of diverse employees.

The tasks at hand may seem daunting at first, but if we succeed, we will not only usher in a new and sustainable era of prosperity; we will ensure that more Americans wake up to a secure and good-paying job in this 21st century economy. And that is the best morning ritual we can look forward to.

Robert T. Maldonado
HNBA National President
The HNBA Responds to the Puerto Rico Financial Crisis

The Hispanic National Bar Association is the national voice of the Latino legal community. As such, our Association also advocates on issues of importance to the Hispanic community. As a Latino, and as a Boricua, the current financial situation of the Commonwealth of Puerto Rico is of great concern to me, to the Association, and to the many members it represents.

The situation in Puerto Rico is real and dire. As it has been widely reported, the Commonwealth faces about $72 billion in debt, and has consistently stated it is unable to pay it. Its public debt has been downgraded to junk status, effectively locking the Island out of financial and credit markets. And the uncertainty created by the Commonwealth’s finances has certainly impacted its population, which has declined in the last eleven years by over five percent. Forty-two percent of those emigrants cited job-related reasons for leaving the Island. With the Commonwealth’s current unemployment rate at 18.9 percent (far higher than the average such rate in the United States), and per capita income a paltry $10,960, that survey result should not be a surprise. If you think for a moment this crisis does not affect those of you in the Mainland, think again: the costs of infrastructure and other types of assistance to both the federal government and the states to which Puerto Ricans are relocating are already increasing dramatically, and will continue to rise if this migration pattern is not curtailed.

The HNBA has acted diligently to address this situation. To that end, President Maldonado and I have been engaged in discussions with White House and Treasury Department officials to provide our views on possible long- and short-term solutions to this crisis. President Maldonado has formed a Puerto Rico Task Force, composed of highly-regarded HNBA members from across ideological and professional backgrounds, and charged them with issuing recommendations to both Congress and the White House, a Task Force I had the honor of co-chairing. In addition, we held a Plenary Session on the Puerto Rico Debt Crisis during this year’s Corporate Counsel Conference in Las Vegas, which was moderated by our Vice-President of Regions and Affiliates, Jaime Areizaga-Soto.

This is the time to act. Become informed and engaged. Your participation and support are of the utmost importance. Let your voice be heard during the Task Force’s upcoming town hall meetings. Contact your Senators and Representatives in Congress and urge them to take action on this critical issue. Help us find adequate and effective solutions for our fellow citizens in Puerto Rico that will place the Commonwealth on a path to sustained economic growth.

Manos a la obra…

Pedro J. Torres-Díaz
HNBA National President-Elect
Thank You!

Through the tireless efforts, strategic thinking and innovative ideas of our Executive Committee, Board of Governors and National Office, the HNBA has continued to grow, and our voice is strong and loud. We are so grateful for your service and dedication to the HNBA, our mission, and our programs. Thank you to each of you for your hard work and commitment to building a strong and effective organization.

Robert T. Maldonado
HNBA National President

Pedro J. Torres-Díaz
HNBA National President-Elect
We are proud to sponsor the Hispanic National Bar Association's 7th Annual Corporate Counsel Conference.
How to combat security breaches is a pivotal question for the public, IT, and financial services industry. Legal issues arise when hard drives are stolen from someone’s office, a laptop goes missing, or a smart phone is lost. Or, even worse, when rogue external attackers acquire the name, phone number, social security number, driver’s license, credit card number, password, PIN, and/or other personal identifiers from a computer. Victimized customers tend to seek redress from the victimized financial institution whose data network was breached.

Root Causes of Data Security Breaches
The highest incidence of breach stems from unintended disclosure by the unsavvy PC user and the loss or theft of portable devices. As technology advances, hackers, hacktivists, fraudsters, and other trespassers are also developing more efficient schemes to pilfer funds and threaten the improper use of private, client information from the customer’s trusted advisors. The cyber criminal is taking advantage of the lack of internal monitoring of certain companies’ networks. This creates property like and casualty like exposure. For better or worse, after a breach is usually when perpetrated companies start to seriously consider active oversight of their e-network.

In 2015, the Ponemon Institute, LLC (“Ponemon”) conducted a study of 350 companies representing 11 participating countries: (1) the United States, (2) the United Kingdom, (3) Germany, (4) Australia, (5) France, (6) Brazil, (7) Japan, (8) Italy, (9) India, (10) the Arabian region (United Arab Emirates and Saudi Arabia), and (11) Canada. The report entitled, “2015 Cost of Data Breach Study: Global Analysis” identified three main causes of a data breach: (a) a malicious or criminal attack, (b) system glitch, or (c) human error. The report found that the cost of a data breach varies according to the cause and the safeguards in place at the time of the data breach.

Ponemon found that the likelihood of a data breach involving a minimum of 10,000 records is estimated at approximately 22 percent over a 24 month period, whereas the likelihood of a data breach involving 100,000 records is less than one percent. In turn, the likelihood of a data breach steadily decreases as the size increases. Not surprisingly, the more records lost, the higher the cost of the data breach. The cost increase may be correlated with the price paid to implement networks to avoid a breach at the outset and the cost of living of the country.

But despite that, Ponemon’s research revealed that data breaches cost the least in Brazil ($78 average per capita cost of data breach1) and India ($56). They cost the most in the United States ($217). Not surprisingly, the more records lost, the higher the cost of the data breach. The cost increase may be correlated with the price paid to implement networks to avoid a breach at the outset and the cost of living of the country.

The Standing Defense in Cyber Breach Class Actions
While cybersecurity is still a developing area of law, it is quite complex and technical.

A trend in recent court holdings is that businesses that acquire ‘highly sensitive information’ undertake a covenant to safeguard it. If a business compromises that protection, it breaches a fiduciary duty. Daly v. Metropolitan Life Ins. Co., 782 N.Y.S.2d 530, 535 (Sup. Ct. N.Y.Cty. 2004). Releasing confidential information to third parties including vendors without safeguards is a breach of fiduciary duty as well. United States v. District Council of NYC, 90 Civ. 5722 (S.D.N.Y. June 5, 2013).

Of late, some plaintiffs will file a lawsuit alleging damages due to a cyber breach when in actuality they lack standing (i.e., no actual injury). In order to establish standing, there must be a ripe “case” or “controversy” under Article III of the U.S. Constitution. In the cybersecurity context, an example

For instance, the California Court of Appeals dismissed a case for lack of standing under the Confidentiality of Medical Information Act ("CMIA"), where the plaintiff alleged there was a theft of a computer hard drive from a hospital but there was no allegation of unauthorized or wrongful access to the information therein. *Regents of the Univ of California v. Sup. Ct. (Platter)*, 220 Cal. App. 4th 549, as modified on denial of reh’g (2013). In a similar vein, California’s Court of Appeal held that a healthcare provider cannot be held liable under the relevant portions of the CMIA for the release of an individual’s personal identifying information that is not coupled with that individual’s medical history, mental or physical condition, or treatment (“medical information” as defined by the statute). *Eisenhower Med. Center v. Sup. Ct. (Malanche)*, 2014 WL 2115216 (Cal. App. 4th Dist., May 21, 2014).

Often times, plaintiffs allege that the mere risk of identity theft is sufficient to constitute damage. The U.S. Supreme Court expressly opined, “[W]e have repeatedly reiterated that threatened injury must be certainly impending to constitute injury in fact, and that allegations of possible future injury are not sufficient.” In applying this standard, the Northern District of Illinois dismissed allegations made against Barnes & Noble of untimely notification, breach of statute, improper disclosure of personally identifiable information, and loss of privacy. The Court reasoned that plaintiffs must have injury in fact that is fairly traceable to the action of the defendant that will likely be redressed with a favorable decision; injury that is certainly impending may satisfy this standard, but possible future injury will not.

The Court of Appeals in West Virginia took this standard one step further and found that violation of the privacy right, even without any adverse monetary consequence, sufficiently establishes standing. In *Tabata v. Charleston Area Med. Center*, 2014 WL 2439961 (W.Va. App., May 28, 2014), the plaintiff alleged the defendant was responsible for placing personal medical information on a database accessible to the public. On appeal, the court reversed the order where the court below denied class certification and found no standing on the ground that the named plaintiff sustained no actual injury or economic loss. The appellate court determined that this plaintiff did have a legal interest in having his medical information maintained confidential. The court went on to find that when a medical provider violates this interest, it is an invasion of that interest and that establishes standing. The class certification order was reversed because all of the class members were in the same position as the named plaintiff, and a common injury of invasion of privacy interest was alleged.

### Protecting Data Privacy: Implementing Network Security

The intersection between technology and people to data is the source of weakness. Companies can make themselves less vulnerable to being forced to defend against litigation when they plan their offense early before complaints can be made. Implementing a good breach response plan in the event of a data breach is useful because prior assumptions about antivirus software cannot wholly be relied upon to prevent attacks anymore. The starting point for a breach response plan should include:

1. Determining if there is an initial risk to an organization’s operations, assets, or individuals;
2. Detecting, stopping, and/or containing attacks based on a record of the types of information that vendors can access;
3. Pinpointing and replacing out of date software that intruders rely on to break in;
4. Redirecting and managing online traffic away from websites that contain confidential and personal client information; and
5. Documenting an organization’s findings, results, and evidence from its information security controls.

Having some incident assessment, response and management in place can mitigate opportunity costs associated with security breaches and curtail the detrimental effects of diminished trust from customers. Typical activities for detection or discovery and the immediate response to the data breach should include the following:

1. Conducting investigations and forensics to determine the root cause of the data breach;
2. Determining the probable victims of the data breach;
3. Organizing the incident response team;
4. Conducting communication and public relations outreach;
5. Preparing notice documents and other required disclosures to data breach victims and regulators; and
6. Implementing call center procedures and specialized training.

The following are typical activities conducted in the aftermath of discovering the data breach:

1. Audit and consulting services;
2. Legal services for defense;
3. Legal services for compliance;
4. Free or discounted services to victims of the breach;
5. Identity protection services;
6. Lost customer business based on calculating customer churn or turnover;
7. Credit report monitoring;
8. Reissuance of a new account or credit card; and
9. Communications with victims of a breach to ask additional questions or obtain recommendations in order to minimize potential risks.

In short, the objective when there is a data breach is to keep operations under control and customers happy in order to avoid lawsuits. Being ready means having a reasonable response plan in place and a legal and compliance team to manage each case before and after the breach goes public.

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3. Id. at *3*-6.
It is official. Latinos are the second largest population demographic in the country. Numbering 55+ million strong, we are 18% of the U.S. population and projected to reach nearly 30% by 2060. With $1.5 trillion dollars in annual purchasing power, Latinos are also the fastest growing group of small business owners and entrepreneurs, opening businesses at a rate of three times faster than any other ethnic group. Latino contributions to the advancement and development of this nation are significant, as we help fuel the American economy.

Despite our growth and positive impact on the economy, labor force and culture, Latinos need access to information, services and resources. This need is the premise of the HNBA/MassMutual Su Negocio Program—a key strategic partnership that aims to empower Latino small business owners through motivation, education, access, and networking. Su Negocio works to provide information and tools to ensure a sustainable and successful future for Latino small businesses, and consequently, for our community at large.

Thanks to the support of the MassMutual Financial Group, we launched Su Negocio in Miami, Florida, on February 19, 2016. More than 100 attendees engaged in the 3-hour programming, which included a prominent keynote speaker, informational tracks for both startups and established businesses, and a networking reception. In addition to the HNBA and MassMutual leadership, the program featured representatives from the U.S. Small Business Administration and SCORE.

The HNBA/MassMutual Su Negocio Program is a great example of what the HNBA is doing to make a difference and to help Latinos succeed. We are fulfilling our commitment to serve not only Latino legal professionals, but the Latino community, through legal, financial and educational literacy initiatives.

Stay tuned for the next Su Negocio programs in Texas, New York/New Jersey, Illinois and California!
REAL INSIGHT
COMES FROM THOSE WHO LIVE IT.

You’re driven by success. And we’re here to help. Our realBUSINESS seminars provide a forum to talk about real stories and challenges from real business owners just like you. Find out how we can help you develop a plan to protect your business and ensure its long-term success at MassMutual.com/SmallBusiness

We’ll help you get there.*
The Latina Commission is proud to announce that the Coalition of Bar Associations of Color (CBAC) honored former HNBA President Dolores Atencio, along with three co-founders of CBAC, on March 1, 2016, in Washington, DC. Ms. Atencio and three other pioneering women of color co-founded CBAC in 1992 to act as a collective voice for issues of common concern and to advocate in support of the shared interests of its member organizations. The groundwork of the four co-founders still guides the organization today—almost a quarter of a century later.

The four co-founders are:

- Dolores Atencio, former President of the Hispanic National Bar Association
- Paulette Brown, current ABA President and former President of the National Bar Association
- Peggy Nagae, former President of the National Asian Pacific American Bar
- Tricia Tingle, former President of the National Native American Bar Association

Ms. Atencio notes that this was the first time in the history of the bars of color that all were being led by women at the same time! She explains that “we all realized that the national bars had not been meeting on a regular basis and that there was plenty of mutual ground to do so.” A hearty congratulations to Ms. Atencio, and continued thanks for her substantial contributions to the Latina Commission, the HNBA, and to all bars of color!
Microsoft Continues Funding for the HNBA/Microsoft Intellectual Property Law Institute (IPLI)

By Mick Konowal

Microsoft and The Hispanic National Bar Association teamed up in 2013 to create The HNBA/Microsoft IP Law Institute (“IPLI”) to increase Hispanic representation in the field of intellectual property law. This year, from June 5th through June 10th, the IPLI will hold its fourth annual program in Washington, DC with a select group of Hispanic law students from around the country interacting with top practitioners and gaining unprecedented access to the people and institutions that create and enforce IP law and policy. The event will again be hosted by The George Washington University Law School.

The students will be provided substantive instruction, hands-on practical experience, writing workshops, and programming by professors, leading IP practitioners and government agencies involved in the creation and practice of IP law, including the U.S. Patent and Trademark Office, U.S. International Trade Commission, U.S. Copyright Office, the Federal Trade Commission, lawyers for both the U.S. House and Senate Judiciary Committees, and the White House. The 2016 IPLI will be anchored by a briefing on issues in an active patent case followed by attending live oral arguments on the case before the U.S. Court of Appeals for the Federal Circuit (“CAFC”). The Honorable Jimmie V. Reyna from the CAFC will sit on the panel and host the group at the court afterward, speaking to the students about his philosophy of legal writing and the court’s role in the development of IP law. The IPLI will close the week with a graduation ceremony and reception at the Microsoft office in Washington, DC.

The IPLI was created through a grant by Microsoft and is sustained through the yearly contributions of 12 Fellowship law firms who also provide attorneys to act as mentors for the students through the remainder of their law school careers and to supervise the students’ preparation of a scholarly submission on IP law for potential publication in a special IP edition of the HNBA’s Journal of Law and Policy. Additionally, the participation of the Fellows is designed to provide the students with networking opportunities to increase their contacts and avenues for potential employment. The 2015 IPLI Fellows were:

- Cadwalader, Wickersham & Taft
- Covington & Burling
- Davis Wright Tremaine
- Finnegan
- Fish & Richardson
- Lowenstein Sandler
- Merchant & Gould
- Morrison & Foerster
- Perkins Coie
- Sheppard Mullin
- Shook Hardy & Bacon
- Sidley Austin

The IPLI has been unparalleled in scope and access and has already been successful in setting the great majority of its student participants on the road to careers in IP law. Microsoft has been so pleased with the success of the program that they have committed another $300,000 to continue the programming over the next three years and to create additional aspects to the program which will further help the IPLI Scholars become successful practicing IP attorneys. For more information on the IPLI, go to: http://www.hnba.com/main/view_event/18/1.
Our landmark 40th annual convention was an extraordinary success thanks to all the participants, sponsors, and volunteers without whom, this “grand slam” convention would not have been possible. The four-day event was held at the Westin Boston Waterfront Hotel from September 2-5, 2015. The theme reflected Boston’s place at the forefront of American history and the cutting edge of our nation’s future. The HNBA and the Massachusetts Association of Hispanic Attorneys (MAHA) welcomed over 900 participants who traveled from across the nation to join us in historic Boston, Massachusetts. The plenary sessions and the continuing legal education tracks were presented by world class leaders and speakers for all to enjoy. The conference provided four CLE tracks—(1) Public Interest & Litigation, (2) Corporate & Business Law, (3) Solo/Small Firm, and (4) Professional Development.

Among the most notable highlights of the convention, we hosted the HNBA Business Development Institute Corporate Board Training, in partnership with Axon Global Services and American University’s Kogod School of Business Center for Cyber Governance. This training was focused on Cyber Enterprise Risk Management. The HNBA Latina Commission also held its annual Latina Leadership Academy program, an initiative exclusively sponsored by Wal-Mart. What’s more, we held our annual career fair, which attracted 40 highly competitive employers from across the nation, and is the largest Hispanic career fair for legal professionals in the country. We furthermore hosted our annual Youth Symposium for high school, college, and law students. The Youth Symposium featured breakout sessions in the morning and a panel of distinguished speakers in the afternoon.

On Thursday evening, our guests were treated to a visit to one of the most beloved ballparks in America, Fenway Park, home to the Boston Red Sox. That reception was co-hosted by the Massachusetts Bar Association (MBA), and we had the privilege of witnessing our own, Robert Harnais, being sworn in as the first Hispanic President of the MBA at Fenway Park. We closed the convention by unveiling an unprecedented strategic partnership with Mass Mutual Financial Group, Su Negocio—a program designed to empower Latino small business owners at all stages of business formation, funding and expansion. A special thank you to all who joined us during HNBA’s historic 40th Annual Convention in Boston, you made the occasion a smashing success!
Today’s presidential campaign cycle has elevated anti-immigrant, anti-Latino rhetoric and policy proposals to new heights. These attacks target a community that is already marginalized. But with more than 58 million Latinos in the U.S.—28 million of whom are eligible to vote in this year’s presidential election, Latinos remain determined to counter such fear-mongering by cultivating a culture of civic engagement in this nation’s public affairs. As such, any serious candidate for federal office must address the issues that impact America’s Latino community.

By 2050, Latinos will number over 100 million, comprising more than a quarter of the entire population. The community’s electoral significance is growing. Indeed, registered Latino voters have grown by 26 percent between each of the last four presidential elections. Latinos have a decisive role in the outcome of this election and the future political landscape.

Despite the tremendous demographic change, Latinos continue to face profound challenges, including wealth gaps, health disparities and the harsh realities of flawed immigration and criminal justice systems. This is why we at the National Hispanic Leadership Agenda (NHLA)—a coalition of the nation’s 40 leading Latino advocacy organizations—release a comprehensive policy agenda every four years. This agenda provides policymakers a roadmap to address the Latino concerns and outlines opportunities for partnerships beyond the community in working toward a more inclusive society.

Released in February, the 2016 Hispanic Public Policy Agenda presents recommendations to strengthen the economy, education, immigration, civil rights, the environment and health, and addresses Latino representation in government. The report highlights policies to improve the lives of Latina women and girls, the criminal justice system, violence prevention, and LGBT community.

On immigration, we continue to call for a fix to our nation’s failed system by providing a path to legal status and citizenship for the majority of undocumented immigrants currently in the country. We call on the next administration to continue the Deferred Action for Childhood Arrivals (DACA) program for DREAMers, youth brought to the U.S. as children. The next president will have discretion to decide whether DACA continues. Without it, we would deprive our nation of much-needed skilled and well-educated workers by curtailing young people from starting their careers or pursuing higher education. The NHLA will push for relief from deportation to a larger number of individuals, as President Obama’s executive actions of November 2014 would do, but which are currently under Supreme Court review.

The agenda also calls for the next president to address the underrepresentation of Latinos in the federal workforce. In 2014, Hispanics represented 16.1 percent of the civilian labor force, yet only 8.4 percent of the Federal Government’s workforce and 4.4 percent of the career Senior Executive Service. If we want a government that reflects America’s diversity and be effective for all, then these numbers must change. We are calling for an executive order on Hispanic employment that firmly requires managers to meet Hispanic hiring goals or face negative performance ratings, and eliminate the citizenship requirement for federal employment unless constitutionally mandated.

Last September, we launched outreach to all of the presidential candidates and have met with three of them so far. Now, concurrent with the agenda release, we are sending each candidate a questionnaire, requesting that they decisively state how they will address the community’s concerns. Their responses will provide an additional tool for all Americans to understand where the candidates stand on the diverse issues reflected in our policy agenda.

We are undertaking this effort in good faith, to educate our nation’s next chief executive. But we are also frustrated that a share of the population as large as ours, which contributes to the economic, social and cultural life and security of our nation, and which continues to grow in importance, is used as a political punching bag.

It is, therefore, all the more significant that we, as a united coalition, stand together in presenting our priorities this year, which also coincides with NHLA’s 25th anniversary. It is time for Latinos to be taken with utmost seriousness. Those seeking the nation’s highest office must tell us precisely where they stand on our most pressing priorities. We want action not rhetoric. It is time for real solutions.

Sanchez is the chair of the National Hispanic Leadership Agenda (NHLA) and executive director of the Labor Council for Latin American Advancement. The HNBA is a member of NHLA, a coalition of the nation’s 40 leading Latino advocacy organizations. This article was originally published on The Hill’s Congress Blog.
HISPANIC BAR ASSOCIATION OF D.C.

William Rivera, HBA-DC Past President, started as Senior Vice President for Litigation at the AARP-Foundation.

Ruben Reyna, HBA-DC Secretary, was recognized by his firm, Segwick LLP, with the 2015 Community Service Award for giving generously to the communities and pro bono clients served by the firm.

Juan M. Sempertegui concluded his term as President of the Hispanic Bar Association of DC on January 14, 2016. In 2015, the Board of Directors engaged in numerous initiatives including:

- Establishment of two $2,500 scholarships for DC law students.
- Largest number of members in HBA-DC history with an increase of over 35% in 2015.
- Establishment of a Quarterly Newsletter.
- Winning the HNBA’s 2015 Affiliate of the Year Award.
- Largest mentorship program to date with 76 law student mentees and 69 lawyer mentors.
- Completion of the first Know Your Rights video titled: Cómo Encontrar Un Abogado (How to Find a Lawyer).
- Organizing the first HBA-DC Latina Leadership Academy.
- Implementing the Lifetime member category.

MEMBERS, AFFILIATES AND REGIONS ON THE MOVE

On January 23, 2016, former HNBA President Dolores Atencio was honored by the Colorado Hispanic Bar Association with a Lifetime Achievement Award.

REGION II: Cesar Vargas, First Openly Undocumented Immigrant, Admitted to Practice Law in New York

By all accounts, Cesar Vargas’ work ethic, intelligence, and sense of justice made him a stellar candidate for admission to the New York State Bar. He attended the City University of New York’s School of Law from 2008-2011, commuting approximately 5 hours to attend classes. During the summers, Mr. Vargas interned at the Brooklyn District Attorney’s Office, New York State Supreme Court, and a U.S. Congressman’s field office. Upon graduation from law school, in 2011, he passed the New York State Bar Exam on his first try. Mr. Vargas, an HNBA member, promptly applied to become a New York licensed attorney. But Mr. Vargas did have one problem. He was an undocumented immigrant from Mexico who came to the US when he was five years old.

With the assistance and support of the HNBA, LatinoJustice PRLDEF, numerous elected officials, community leaders, and various bar associations, Mr. Vargas was finally admitted to the New York State Bar on February 3, 2016. His admission only came after protracted litigation that resolved in 2015, when a five-judge panel of the New York State’s Appellate Division, 2nd Department, ruled that undocumented immigrants could be considered as candidates for the New York State Bar. The import of the Court’s decision is that an individual’s undocumented status alone, without other supporting factors, does not detract from her/his ability to adequately represent a client in court, or from exercising her/his ability to protect and uphold the rule of law. Despite Congress’s failure to pass comprehensive immigration reform, the decision chips away at the presumption that undocumented individuals are limited by their status. If the legal community can open its doors to qualified undocumented individuals, it beg the question, why any door should remain closed. Mr. Vargas was represented by LatinoJustice PRLDEF in his fight to gain entrance as a lawyer.

New York, California and Florida have expressly admitted undocumented attorneys. Other jurisdictions, such as New Jersey, Oregon and Maryland, have unofficially admitted undocumented individuals to practice law. The HNBA looks forward to providing support to other individuals whose undocumented status is the sole barrier preventing them from being admitted to the bar of any state.

Photo from left to right: Juan Cartagena, President and General Counsel of LatinoJustice PRLDEF, Cesar Vargas, co-founder Dream Action Coalition, Elba Galvan, HNBA Deputy Regional President (Region II), Natasha Lycia Ora Bannan, Associate Counsel, LatinoJustice PRLDEF.
HBA-DC ELECTS 2016–2017 OFFICERS AND DIRECTORS
On January 14, 2016, the Hispanic Bar Association of the District of Columbia (HBA-DC) held its Annual Meeting and Elections at the St. Gregory Hotel in Washington, DC. Attendees included U.S. District Court Judge Rudolph Contreras, D.C. Superior Court Judge Marisa Demelo, D.C. Superior Court Magistrate Judge Kenia Seoane-Lopez, President-Elect of the Hispanic National Bar Association Pedro Torres-Díaz, and more than sixty members of the D.C. legal community. Edgar Class ascended to the Presidency and Juan M. Sempertegui will serve on the Board as Immediate Past President.

The 2016–17 HBA-DC Officers and Board of Directors are as follows:

• President: Edgar Class
• President-Elect: Ben Hernández-Stern
• Vice President for External Affairs: Richard V. Rodríguez
• Vice President for Internal Affairs: Leila Jade Levi
• Vice President for Membership: Adam Acosta
• Secretary: Ruben F. Reyna
• Treasurer: Erik J. Burgos
• Immediate Past-President: Juan M. Sempertegui
• At-Large Directors (in alphabetical order): José E. Arvelo, Holli Feichko, Giselle Fuentes, Carlos A. Gutiérrez, Chris Kyle, Pilar Velásquez McLaughlin, Yisel Valdés.

HBA-DC PRODUCES “KNOW YOUR RIGHTS” SERIES VIDEO: COMO ENCONTRAR UN ABOGADO (HOW TO FIND A LAWYER)
For a number of years, HBA-DC has been working on a “Know Your Rights” series of videos to educate the Latino community about the legal system and their legal rights. The first video in the series was completed in 2015 and is titled Cómo Encontrar Un Abogado (How to Find a Lawyer). The video, which may be found at https://www.youtube.com/watch?v=pUO2ua25bkU, features HBA-DC members Adrian Alvarez, Yisel Valdés and Carla Davis-Castro as the actors. In the coming year, the video will be shown at community centers that serve the Spanish-speaking community in Washington, D.C. For questions regarding the video series, please contact HBA-DC Public Service Committee Co-Chair Adrian Alvarez (adrian.e.alvarez00@gmail.com).

HBA-DC SPONSORS NATURALIZATION CEREMONY
On December 8, 2015, HBA-DC co-sponsored the monthly U.S. Citizenship and Immigration Services naturalization ceremony held at the United States District Court for the District of Columbia. District Judge Rosemary M. Collyer presided over the ceremony, during which 122 applicants for naturalization took the oath of U.S. citizenship. HBA-DC President Juan M. Sempertegui addressed attendees after they took their oath. Following the ceremony, HBA-DC hosted a reception for the new citizens and their family members.

THE HNBA CONGRATULATES THE FOLLOWING MEMBERS OF OUR FAMILY WHO WERE NAMED IN THE TOP 25 LATINO ATTORNEYS IN THE U.S. BY LATINO LEADERS MAGAZINE
• Ramon Abadin, Partner, Sedwick, Miami, FL
• Benny Agosto, Jr., Partner, Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, Houston, TX
• Brigida Benitez, Partner, Steptoe & Johnson, Washington, DC
• Yesenia M. Gallegos, Partner, Fox Rothchild, Los Angeles, CA
• Gerardo “Jerry” Gonzalez, Partner, Gonzalez, Saggio & Harlan, Milwaukee, WI
• Raul R. Herrera, Partner, Arnold & Porter, LLP, Washington, DC
• Robert Maldonado, Partner, Cooper Dunham, NY, NY
• Danny Marti, U.S. Intellectual Property Enforcement Coordinator at The White House, Washington, DC
• Richard J. Montes, Partner, Mauro Lilling Naparty, Woodbury, NY
• Monica Neuman, Partner, McDermott Will & Emery, Boston, MA
• Regina Rodriguez, Partner, Faegre Baker Daniels, Denver, CO
• Jesse H. Ruiz, Partner, Drinker Biddle, Chicago, IL
• Stephen N. Zack, Partner, Boies, Schiller & Flexner, LLP, Miami, FL
MEMBERS, AFFILIATES AND REGIONS ON THE MOVE

continued

REGION VIII: Miami Region Lo Nuestro en La Ley

In January 2016, the HNBA’s Region VIII created a unique series of monthly luncheon roundtable, invitation only events titled “Lo Nuestro en La Ley” to showcase and highlight the depth and talent of Hispanic attorneys in the region. Each event extends invitations to an in-house counsel, a partner of a law firm, and/or a member of the judiciary to speak about challenges and breakthroughs within the Hispanic legal community. The luncheon is purposely kept small to provide for an intimate setting where HNBA members can have a one on one conversation with the guest of honor.

The inaugural event, held on January 21, 2016 featured Ernesto Luciano, General Counsel of Yahoo! Hispanic Americas. The event sold out within hours! The luncheon was held at BrickTop’s in the beautiful city of Coral Gables. It brought an array of private practice and in-house lawyers eager to hear from the General Counsel on his thoughts ranging from career trajectory, hiring of the legal team, and working with outside counsel. The occasion earned great reviews and left the attendees eager and excited for the next month’s event.

The second luncheon took place on February 11, 2016 at La Loggia in downtown Miami. Judge Beatrice Butchko of Florida’s Eleventh Judicial Circuit spoke to a group of HNBA long standing members. Once again, the event immediately sold out. Judge Butchko is a staunch supporter of the HNBA. Judge Butchoko shared her thoughts and gave insight on the challenges of being a judge and a Hispanic woman.

Region VIII is proud of this series and the excitement it has garnered in bringing the HNBA to the forefront of South Florida’s diverse legal community. The planning committee has already secured the attendance of several high profile GCs and members of the judiciary to serve as guests of honor for the upcoming events. Based on the outstanding reception and success of this event, Region VIII is now planning to launch the event in other parts of the state, including Tampa and Orlando.

Photos from top left to bottom right: Ret. Chief Judge Juan Ramirez; Pedro J Torres-Díaz; Judge Beatrice Butchko; and Maria Dantes Sanchez; Attendees; HNBA President Elect, Pedro J. Torres-Díaz, Judge Beatrice Butchko, and Region VIII President Maria Dantes Sanchez
ROMÁN D. HERNÁNDEZ REAPPOINTED TO THE FEDERAL RESERVE BANK OF SAN FRANCISCO, PORTLAND BRANCH

Román D. Hernández was recently appointed to a second term on the Board of Directors of the Portland Branch of the Federal Reserve Bank of San Francisco. The Federal Reserve Bank of San Francisco serves the Twelfth Federal Reserve District which includes Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, Guam, American Samoa and the Northern Mariana Islands.

Román will serve a second three-year term on the Portland Branch board, where he contributes to the mission of the Federal Reserve System, which is to promote low inflation, full employment and financial stability, and provide services to financial institutions and the U.S. Treasury. Only 274 Americans serve as directors within the Federal Reserve System’s 12 banks.

Photos from top left to bottom right: Cambridge Mayor Dennis Benz HNBA Reception; Hispanic Heritage White House Event; HNBA Staff Convening in NJ for President of the United States Criminal Justice reform speech; HNBA Top 40 Under 40 Reception; Reception for Horacio Gutierrez, General Counsel of Microsoft; Ticket to President of the United States Criminal Justice reform speech
By The Honorable Peter M. Reyes, Jr.
HNBA Liaison to the ABA & Representative to the ABA House of Delegates

This is an exciting time to have our voice heard in the American Bar Association (ABA). The ABA has at its helm the first African-American female, Paulette Brown, who has made diversity and inclusion a priority during her term. This is consistent with the objectives of Goal III of the ABA, which is to: (1) Promote full and equal participation in the association, our profession, and the justice system by all persons, and (2) Eliminate bias in the legal profession and the Justice System. These are lofty goals, but they are ones that are aligned with the mission of the HNBA and its members.

President Brown is well-known by the HNBA and its members. She has been a frequent participant in HNBA events, such as the Corporate Council Conferences in New Jersey and San Antonio, and the 2015 HNBA Annual Convention in Boston. One of President Brown’s initiatives during her term is to meet regularly with the leaders of the other bars of color, including the HNBA, to increase communication and collaboration between them. She also increased the appointment of women and people of color through her presidential appointments as she began her year.

In addition, the first Hispanic president of the ABA, Stephen N. Zack, in 2010 created the ABA Commission on Hispanic Legal Rights and Responsibilities to study and provide solutions regarding the key legal issues affecting the Latino community. The ABA Hispanic Commission released a landmark report. Then in August of 2012, the ABA Board of Governors formalized the ABA Hispanic Commission as an ongoing entity within the ABA Center for Racial and Ethnic Diversity. Since then, a number of HNBA members have served on that commission, including HNBA National President Robert Maldonado, past HBA-DC president Juan Sempertegui, and past HNBA National President the Honorable Peter M. Reyes, Jr.

The HNBA continues to partner with the ABA in other initiatives, including the Collaborative Bar Leadership Academy (CBLA). The CBLA, now in its fourth year, is a joint program between all the bars of color (HNBA, NNABA, NBA and NAPABA) and the ABA that develops future bar leaders from all the bars and promotes collaboration between them.

The ABA seeks diverse members to become more involved in the ABA and to take leadership positions. HNBA members are encouraged to apply to any number of approximately 600 presidential appointments that are made each year to standing and special committees, commissions and other entities and initiatives. HNBA members are strongly encouraged to apply to ones of interest. Interested persons can self-nominate or be nominated by others.

At every ABA Mid-Year and Annual Meeting the ABA House of Delegates (HOD) passes resolutions pertaining to the practice of law for all lawyers, judges, and law students throughout the country. The HNBA, through its representative at the HOD, votes on and speaks out on issues that affect the Latino community and the greater community.

This year the Fellows of the American Bar Foundation (ABF) undertook a strategic plan in a number of areas, including diversity and inclusion. The Fellows is a prestigious honorary organization of attorneys, judges, law faculty, and legal scholars elected by their peers who have demonstrated outstanding achievements and dedication to the welfare of their communities and to the highest principles of the legal profession. The Fellows support the research work of the ABF, including this year’s project on Latinos in the United States discussed further below.

Finally, the ABF is engaging in a comprehensive research project entitled, “The Future of Latinos in the United States: Law, Opportunity and Mobility.” This project is being undertaken in conjunction with a number of entities in the ABA, including the ABA Hispanic Commission, and featured a presentation and discussion about it at that ABA Mid-Year in San Diego held on February 5, 2016. This project is a nation-wide, interdisciplinary research initiative devoted to understanding the current condition of Latinos in the United States, the structural barriers that impede full equality and integration of Latinos, and areas of intervention that will have the most impact in promoting opportunity and mobility through law and policy. With our Latino population projected to account for 30% of the nation’s population by 2050, it is imperative that we understand the barriers to progress and how opportunities can be promoted.

In sum, opportunities abound in the ABA and in the HNBA’s partnership with the ABA!
HNBA Applauds ABA’s Selection of HNBA Past-Presidents, Hugo Chaviano and Víctor Márquez, as “Spirit of Excellence Awards” Honorees

On February 6, 2016, at the American Bar Association’s Midyear Meeting in San Diego, California, two of HNBA’s Past-Presidents were honored during the 21st annual Spirit of Excellence Awards Luncheon, sponsored by the Commission on Racial and Ethnic Diversity in the Profession. The Spirit of Excellence Award celebrates the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse legal profession. Awards are presented to lawyers who excel in their professional settings; who personify excellence on the national, state, or local level; and who have demonstrated a commitment to racial and ethnic diversity in the legal profession.

The Governor of Illinois, Hon. Bruce Rouner, appointed Hugo Chaviano as Director of the Illinois Department of Labor in January 2015. Chaviano was born in Havana, Cuba, and emigrated alone to the United States at the age of thirteen. He is a graduate of Rutgers University and Northwestern University School of Law. He is licensed to practice law in Illinois, New York and Pennsylvania. Mr. Chaviano’s practice has been characterized by distinguished service to the legal profession and to the Hispanic communities in the United States and abroad. He has been named one of the 100 Most Influential Hispanics in the United States by Hispanic Business Magazine.

Víctor Márquez is a Principal at the Marquez Law Group in San Francisco, California. Mr. Márquez is an immigrant from a small mining town in Mexico and was the first in his large family to attend college. He is a graduate of the University of California Santa Barbara and Santa Clara University School of Law. He is licensed to practice law in the State of California. A long-standing mentor and leader in the national, state, and local LGBT community, Mr. Márquez has been at the forefront of advocating for the inclusion of the LGBT community in the leadership and programming of racial and ethnic organizations. Mr. Márquez is the first openly LGBT individual to receive the Spirit of Excellence Award.

Recognizing Latina/o Leaders, such as Victor Márquez and Hugo Chaviano, is an important step forward in acknowledging the significant contributions HNBA members have made toward the advancement of diversity in the legal profession.
A Leading Example: Creating Opportunity through Inspiration and Leadership

By Xochitl Carrion and Daniel R. Hernandez

Past Chair of HNBA’s LGBT Division (2014–2015) and Associate Dean for Administration and Counsel to the Dean of the University of Miami School of Law Raquel Matas has, for years, been inspiring others through her advocacy, leadership, and legal expertise. Raquel Matas has been at the forefront of making the LGBT Agenda part of the mainstream. Ms. Matas believes that LGBT individuals must be involved in all spheres, explaining, “the voice of the LGBT community must be at every table, at the top management of law firms, and at boardrooms, and also at the grassroots organizing efforts. We need to be everywhere and normalize the experience of being around LGBT persons.”

“The voice of the LGBT community must be at every table, at the top management of law firms, and at boardrooms, and also at the grassroots organizing efforts. We need to be everywhere and normalize the experience of being around LGBT persons.”

Under her leadership, the HNBA LGBT Division transitioned from Section to Division, giving it a seat and vote on the Board of Governors, an integral part of the HNBA governance. Ms. Matas led the Division’s strategic plan process, currently in its implementation phase. In a significant accomplishment, the Division, with co-sponsorship from the National LGBT Bar, held its first ever HNBA LGBT Summit on March 16, 2016 in conjunction with the HNBA Corporate Counsel Conference in Las Vegas, Nevada. The Summit brought together LGBT leaders and advocates, and LGBT allies, to exchange information and ideas and help define an agenda for LGBT Latinos/as in the Legal Profession. Ms. Matas has always supported a collaborative relationship between the Division and the HNBA at large, noting that such relationship is very much the mission of the Division. Our work informs the work of HNBA and vice-versa. As a result, we produce great leaders inside the HNBA, like National HNBA President Robert Maldonado (former LGBT Section Chair), Gonzalo Martinez (current Division chair) and Luis Avila (Region IX President), who are both 2016 recipients of the HNBA Top Lawyers under 40 Award, and Dan Mateo (former HNBA GC). We foster leadership outside the HNBA, as in Division founder Victor Marquez, HNBA Past President and recipient of the ABA’s 2016 Spirit of Excellence Award, and New York City Court Judge Javier Vargas.

In addition to her HNBA work, Ms. Matas is an active community member in South Florida. She is a member of the Board of Directors of Totalbank, a member of Grupo Banco Popular Español, and she sits on the Advisory Board of Aqua Foundation for Women, an organization that assists the lesbian, bisexual, and transgender community through grants, scholarships, and initiatives. Through Aqua, Ms. Matas created the Latina Lesbian Leadership Scholarship Initiative to mentor and develop the next generation of Latina lesbian leaders.

Raquel Matas is a leader and advocate in every sense of the word. Her exemplary work within and outside the LGBT community continues to create opportunities and change for future generations of LGBT individuals and Latinas/os.
DIVERSITY LETS US REACH NEW HEIGHTS.

The MetLife Legal Affairs Diversity Committee works to attract employees, vendors, and outside counsel that bring fresh ideas, new perspectives, and well-rounded experience. It’s a complex marketplace, and MetLife recognizes the value of diverse and unique perspectives in touching the lives of our customers, shareholders and business partners.

MetLife and MetLife Legal Affairs are proud to have received the following awards:

- Human Rights Campaign Foundation’s Corporate Equality Index “Best Places to Work”
- Diversity MBA “Top 50 Companies for Diverse Managers”
- National Association for Female Executives (NAFE) “Top Companies for Executive Women”
- Employer of Choice for the Northeast Region by Minority Corporate Counsel Association (MCCA)
- National Association of Women Lawyer’s President’s Award in recognition of initiatives to advance women and minority attorneys both in-house and in outside law firms
- Working Mother Magazine’s “100 Best Companies”
- DiversityInc “Top 50 Companies for Diversity”
- Hispanic Business Magazine’s “Diversity Elite”
- MetLife has received a series of awards throughout their partnership with INROADS, including “Sponsor of the Year” award for consistently demonstrating support of INROADS’ mission around enrollment, and providing development opportunities for interns
- LATINA Style Magazine’s “50 Best Companies for Latinas”
- DiversityBusiness.com’s “America’s Top 50 Organizations for Multicultural Business Opportunities”
- The 2014 Hispanic Association on Corporate Responsibility (HACR) Corporate Inclusion Index

For more information visit metlife.com.
Rock Band’s Controversial Name Brings Trademark Law under First Amendment Scrutiny

By Michael Garcia, Esq., Associate, Knobbe Martens

Few things stir up as much patriotism as the First Amendment. “Congress shall make no law ... abridging the freedom of speech...” While seemingly absolute, this restraint on government comes with its fair share of caveats. Famously, one cannot falsely shout “fire!” in a crowded theater or expect constitutional protection for speech that incites unlawful and immediate violence. Less ubiquitous however, is the restriction on speech found in § 2(a) of the Lanham Act, the federal statute that governs the registration of trademarks. Among other things, the law excludes the registration of “scandalous, immoral, or disparaging marks.”

Until recently, courts did not believe that the Lanham Act’s ban on disparaging marks implicated the First Amendment. The reasoning was straightforward: a refusal to register a trademark does not affect an applicant’s right to use the mark. No conduct is proscribed, and no tangible form of expression is suppressed. Thus, a person’s freedom of speech was not considered abridged.

This reasoning was pivotal in the recent Washington Redskins ruling. After decades of contentious litigation surrounding the controversial name, the Redskins received a mighty blow in July 2015. A district court judge affirmed the Trademark Office’s decision to strip the football team of their trademark registrations. This was done because the term “REDSKINS” may disparage a substantial composite of Native Americans in violation of § 2(a). In dismissing the team’s freedom of speech argument, the court concluded that “[c]ancelling the registration of a mark under Section 2(a) of the Lanham Act does not restrict the public debate on public issues as the mark owner is still able to use the mark in commerce.” Further, the district court ruled that issuing trademark registrations, much like issuing car license plates, amounts to government speech and is therefore exempt from First Amendment scrutiny.

While many celebrated the decision to cancel the football team’s insensitive trademark registrations, the recent In re
Tam decision from the Federal Circuit may change the legal landscape. Trademark applicant Simon Tam named his Asian-American rock band “The Slants” to reclaim and take ownership of Asian stereotypes. However, literal ownership of the name was exactly what Mr. Tam was denied—the Trademark Office refused to register THE SLANTS because the mark may disparage persons of Asian descent. When Mr. Tam appealed the Trademark Office’s ruling, the Federal Circuit affirmed the refusal to register the disparaging mark and rejected Mr. Tam’s First Amendment arguments.

However, after ordering a rehearing sua sponte, the Federal Circuit vacated its previous decision and ultimately found that § 2(a) violates the First Amendment. In coming to its decision, the Federal Circuit ruled that trademark registrations do in fact implicate the First Amendment because trademark registrations affect private speech. The court reasoned that federal registration grants owners a slew of benefits. While a refusal to register does not necessarily restrict an individual from using a disparaging mark, it does withhold valuable legal rights. As a result, § 2(a) creates a strong incentive for applicants to choose a non-disparaging mark and thus significantly chills private speech.

With the First Amendment implicated, the court considered the nature of § 2(a)’s restriction on speech. Any laws that aim to regulate speech based on its content or viewpoint are subject to strict scrutiny and are presumptively invalid. The Federal Circuit found that the disparagement provision in § 2(a) undoubtably discriminates based on viewpoint. “The PTO rejects marks under § 2(a) when it finds the marks refer to a group in a negative way, but it permits the registration of marks that refer to a group in a positive, non-disparaging manner.” Due to its unabashed leaning towards Kumbaya-feel-good speech, the court found that § 2(a) is subject to strict scrutiny and is presumptively invalid.

The government, in an effort to escape the high burden of strict scrutiny, argued that trademarks are commercial speech and are subject to a less stringent standard of review. The Federal Circuit didn’t bite. Instead, the court underscored the expressive nature of trademarks using The Slants as an example.

This case exemplifies how marks often have an expressive aspect over and above their commercial-speech aspect. Mr. Tam explicitly selected his mark to create a dialogue on controversial political and social issues. With his band name, Mr. Tam makes a statement about racial and ethnic identity. He seeks to shift the meaning of, and thereby reclaim, an emotionally charged word. He advocates for social change and challenges perceptions of people of Asian descent. His band name pushes people. It offends. Despite this—indeed, because of it—Mr. Tam’s band name is expressive speech.

In another attempt to avoid First Amendment scrutiny, the government argued that trademark registrations amount to government speech and, as a result, § 2(a) is exempt from the First Amendment. Again, the Federal Circuit was unpersuaded. “Trademark registration is a regulatory activity. These manifestations of government registration do not convert the underlying speech to government speech.” The court took some pleasure in identifying a number of approved registrations that demonstrate the ridiculousness of the government’s position: RADICALLY FOLLOWING CHRIST IN MISSION TOGETHER; THINK ISLAM; GANJA UNIVERSITY; CAPITALISM SUCKS DONKEY BALLS; TAKE YO PANTIES OFF; and MURDER 4 HIRE. These registered trademarks, the court concludes, can never be thought of as government speech.

With the First Amendment implicated, the court considered the nature of § 2(a)’s restriction on speech. Any laws that aim to regulate speech based on its content or viewpoint are subject to strict scrutiny and are presumptively invalid.

Taking the government’s argument to its logical conclusion, the court considers whether a copyright registration converts private expression into government speech. The court found that much like the public does not associate the copyrighted work Fifty Shades of Grey with Uncle Sam, the public neither associates individual trademarks such as THE SLANTS with the government.

Having concluded that expressive trademarks are unjustifiably restrained by § 2(a), the court held the disparagement provision unconstitutional in violation of the First Amendment.

The Tam decision carries heavy implications for trademark law. While The Slants seek to reappropriate a racial slur, the decision paves the way for less admirable use. Conceivably, companies would be permitted to build brands under genuinely hateful marks and rely on federal law to protect their hurtful intellectual property. While this may be unnerving for some, protection of unpopular speech is the crux of the First Amendment. According to the Tam court, a denial of trademark rights because a mark is disparaging is akin to a denial of free speech.

Should § 2(a) become another allowable caveat of the First Amendment? Or should the Trademark Office freely register disparaging marks? The Supreme Court is likely to hear the case and weigh in this year.

Michael Garcia is an associate of Knobbe Martens. The views of the author expressed in this article do not represent the views of Knobbe Martens or the views of the HNBA.
Ways to Get Your Cyber Insurance Company to Pay Claims

By Joshua Gold and Vianny M. Pichardo

As companies incorporate ever-evolving technology, daily headlines show escalating cyber risks. Cyber risks can run the gamut, from personally identifiable information (PII) data breaches, to “internet of things” perils, to regulatory and class actions. Faced with these across-the-board cyber risks, businesses are looking toward their insurance policies to cover resulting losses. However, the current state of the cyber insurance market makes it difficult to navigate these risks and adequately protect companies from liability through reliable insurance coverage. A number of lawsuits and arbitrations have arisen involving cyber insurance companies disputing insurance coverage for cyber claims under cyber-specific insurance policies.

To help policyholders maximize the chance of an insurance recovery from cyber-related losses, below is our list of 10 cyber insurance recovery tips.

1. Make sure your cyber insurance matches the way you conduct online business and host data. For example, if you use cloud computing or other vendors for hosting and processing data, make sure you have cyber-risk insurance policies that can be tailored to reflect that the policyholder may delegate to a third-party data management and hosting. Further, it may make sense to see if you can become an additional insured under the vendor’s insurance program to enhance the chances that insurance protection will be available.

2. If you do business with individual consumers and obtain their PII, make sure you have coverage (including attorneys’ fee coverage) for the inevitable expenses of responding to informal inquiries and formal proceedings that ensue from state attorneys general, the FTC and potentially others when a breach occurs.

3. Make sure that your cyber insurance covers breaches arising from mobile devices that may or may not be connected to the company’s computer network. More and more employees can access systems through tablets, smartphones, and PCs. The ever-growing capacity of hard drives and the ubiquity of portable drives mean that some employees may create security risks, even when the device is not logged into the company servers. This is especially true when sensitive data has not been properly encrypted.

4. With the latest technological trend to “wire” all manner of gadgets, electronics, and transportation (the so-called internet of things), risks abound involving bodily injury, property damage and invasion of privacy. Such perils are usually covered under CGL policies. However, many policyholders are seeing
exclusions for cyber related claims in their CGL policies. Couple this reality with the fact that some cyber policies actually have exclusions for bodily injury and property damage claims, and businesses have a possible defect if the circumstances are just bad enough. Therefore, make sure to properly construct your insurance program, being mindful of not only cyber policy terms, but the terms of other insurance policies in the portfolio.

Underwriters will be focusing more and more on cyber risk areas, and insurance application responses often are used against policyholders to contest insurance claims.

5 In light of recent cyber related derivative lawsuits against company directors and officers, D&O underwriters are focusing more and more on cyber risks. Making sure D&O insurance (primary, excess, Side A, etc.) responds to suits targeting company managers and directors can be done by removing any cyber-related exclusions or sublimits.

6 Do not forget about business income coverage and reputational damage coverage in addition to class action privacy and securities litigation coverage. An increasing number of cyber attacks are launched without a profit motive, where the main intent is to paralyze a company’s business operations. As such, cyber insurance coverage that pays time-element claims resulting from reputational damage and business interruptions is often important for a company that may attract the attention of hackers with a “cause.”

7 Complete insurance applications carefully, including D&O applications. Underwriters will be focusing more and more on cyber risk areas, and insurance application responses often are used against policyholders to contest insurance claims.

8 Avoid cyber insurance policies with contractual liability exclusions. If your underwriters will not remove them, pick the policy terms that keep such exclusions as narrow as the market place affords. Unless you only do business with the general public, it is not uncommon to see contractual liability claims arise in conjunction with statutory claims, negligence claims and other forms of relief.

9 If you are buying or renewing specialty cyber insurance policies, make sure you work with an experienced broker. While dedicated cyber insurance products are flooding the market, the marketplace is in flux, fragmented and confusing to navigate. Because there is presently a lot of competition in the cyber insurance marketplace, policyholders in many industries will find that an array of coverage terms are open for negotiation.

10 Provide notice to your insurance companies promptly after a breach. Significant costs are incurred quickly once a breach is detected, and insurance companies particularly hate being handed bills before they have had notice of a claim. Providing relevant notices and advising of these costs promptly can increase the odds of recovering from your insurance companies without a wrestling match.

Joshua Gold, Chair of Anderson Kill’s Cyber Insurance Recovery Group, represents numerous corporate and non-profit policyholders in a broad range of industries in insurance coverage disputes. His practice involves matters ranging from data breaches to international arbitration, D&O, business income/property and commercial crime claims, and marine insurance.

Vianny M. Pichardo is an attorney in Anderson Kill’s New York office. Vianny’s practice concentrates in insurance recovery, exclusively on behalf of policyholders, in corporate and commercial litigation and environmental law.
Since the U.S. government began to ease travel restrictions and trade with Cuba following the December 17, 2014 joint announcement by President Obama and Raul Castro that Cuba and the United States would normalize relations, there has been much excitement and speculation in the U.S. technology sector about opportunities that could be created in Cuba. Cuba’s Information & Communications Technology (“ICT”) sector could be a key driver of growth and economic expansion for the island country, supporting the development of other industries, such as tourism, trade and commerce, and agriculture. History has demonstrated that technology and innovation play a key role in stimulating job growth, productivity and economic success.1

Access to modern ICT services would offer benefits to the Cuban population, including: (1) improving flow of economic and market information; (2) creating channels of communication to avert humanitarian disasters; (3) facilitating e-commerce/use of payment systems; and (4) expanding access to credit, through for example mobile banking applications.2 ICT has the power to reduce poverty and foster growth—mobile telephones provide market links for farmers and entrepreneurs; the Internet provides vital information and knowledge to hospitals and schools; computers increase productivity.3

Cuba has invested resources in the development of human capital necessary for an ICT community to thrive. In 2002, Universidad de las Ciencias Informáticas, or UCI, was founded, and since then, other Cuban universities have added technology sciences to their curricula, with more than 5,000 graduating ICT engineers in recent years.4 The computer programming sector has the potential to flourish—many programmers who work at UCI, or at the José Antonio Echeverría Higher Polytechnic Institute, moonlight as freelance programmers, using the institutes’ broadband to transfer large files.5

With its investment in human capital—a highly educated population, 100% literacy rate, and public investment in technology and research—some optimists envision Cuba transforming itself into a tech start-up hub, the Silicon Valley of the Caribbean.

Before Cuba can transform into a tech hub, it must overcome serious hurdles, including a lack of critical infrastructure, laws that limit foreign investment, and government control of access
Cuba still lags behind other Latin American countries on internet access, with one of the lowest levels of internet penetration in the hemisphere and one of the lowest in the world. According to published reports, only 3.4% to 5% of Cuban households are connected, and a mere 5% of the population has occasional access to the Web. Internet access in the country of 11 million people is available primarily through shaky Wi-Fi at scattered spots, or slow dial-up service at state regulated computer labs.

Despite incredible challenges, Cuba’s nascent ICT startup community has benefited tremendously from the reestablishment of diplomatic relations between the United States and Cuba, and from the Obama administration’s regulatory changes allowing great travel and trade to Cuba. The new U.S. regulations allow joint ventures with qualified Cuban tech entrepreneurs (both private individuals and cooperatives), as well as the import of their services to the U.S. Such services include software coding, website design, and the sale of innovation applications under development. The U.S. regulations permit U.S. companies to engage in “infrastructure creation”. Certain types of financings are also permitted under the new regulations unveiled by the Obama administration.

Influential members of Cuba’s government favor the development of a technology sector in Cuba. A plan leaked by Cuba’s Ministry of Communications in June, 2015, “National Strategy for the Development of a Broadband Infrastructure in Cuba”, calls for converting the existing low speed switched services to faster broadband. The strategy calls for 50% of households to have broadband connections by 2020. A delegation of U.S. technology executives, led by Daniel Sepulveda Deputy Assistant Secretary of State of International Communications and Information Policy, visited Cuba in January 2016, and was advised about the Cuban government’s plan for achieving its commitments for increased connectivity and access to technology throughout the country, which will be key for development of other sectors in Cuba, including tourism, energy, mining and construction.

There is a window of opportunity in Cuba right now for technology companies. It is important for U.S. companies that are interested in exploring business opportunities in Cuba to consult with attorneys who have an understanding of the ever-evolving laws and regulations, and can assist clients in the process of evaluating opportunities relating to Cuba.

Barbara Alonso’s practice focuses on international and domestic corporate matters, including corporate and project finance, and debt and equity capital markets. Barbara regularly advises clients on cross-border transactions across a wide range of sectors and has represented institutional investors in connection with their equity and debt investments in Florida based companies.

1 See, Council of the Americas, 2015 Washington Conference Report.
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Puerto Rico’s Debt and Humanitarian Crisis

By Natasha Lycia Ora Bannan

Puerto Rico is facing one of the greatest financial crises of our time. The island is home to 3.5 million residents, and the homeland of another roughly five million Puerto Ricans in the diaspora, many of who are actively trying to prevent the island’s economic collapse.

The Governor of Puerto Rico, Alejandro Garcia Padilla, has unequivocally stated Puerto Rico’s inability to pay the $72 billion in outstanding debt, more than it’s Gross National Product (GNP). The actual estimate of the debt, including replacement of the public employees retirement fund, stands at somewhere between $114–$142 billion. Restructuring the debt, which was incurred in part as a result of decades of borrowing from bondholders, or not paying the debt, have been expressed as the only solutions to the economic crisis in order to be able to continue providing the residents of Puerto Rico with basic services, thereby averting a humanitarian crisis. Overall the creditors holding the debt, many known as “vulture funds,” which bought junk-rated municipal bonds at extremely low prices with high interest rates, have resisted all efforts to allow Puerto Rico to restructure or renegotiate the debt. Puerto Rico was excluded from bankruptcy protections, and in particular Chapter 9 of the bankruptcy code, in 1984 and, therefore, cannot seek federal bankruptcy protection. As a result, Puerto Rico passed a domestic version of bankruptcy protection in 2014, however, creditors sued immediately to prevent the law from being enacted. On March 22, 2016 the United States Supreme Court will hear arguments in

Puerto Rico v. Franklin California Tax-Free Trust, No. 15-233

and

Acosta-Febo v. Franklin California Tax-Free Trust, No. 15-255,

on whether Puerto Rico is preempted from enacting its own domestic bankruptcy code that would allow it to restructure municipal and agency debt.

Much debate has generated much over the debt and its legitimacy, and the devastating impact it is having on the people of Puerto Rico. The government has implemented steep austerity measures over the past several years, including firing teachers, closing over 150 schools, increasing taxes, laying off public sector workers, proposing to reduce the minimum wage, elongated wait time for medical care, forcing migration to the United States, increasing unemployment and underemployment, separating families, and food insecurity. More than 1,000 individuals migrate to the United States every week as a result of economic conditions on the island. The Governor indicated that a choice must be made between making the impending payments to the island’s bondholders or paying for the continuity of basic services, such as healthcare and education.

Coalitions have formed to advocate for modifications to the bankruptcy code in order to allow Puerto Rico to restructure part of its debt. Calls have been made directly to creditors to reduce the debt, as well as to the U.S. Department of the Treasury, to pressure reluctant creditors to engage in debt renegotiations. Additional proposals include modifying the Jones Act, the 1920 law that includes the Cabotage Law, which is disproportionately applied to Puerto Rico, resulting in extremely high shipping costs to the island for basic necessities like food; elimination of disparities in healthcare funding and reimbursements to the island under Medicaid and Medicare; and extending federal tax credits to working families and parents to Puerto Rico. Creditors have primarily advocated for increased austerity measures, like the ones adopted that are crippling the island. None of the options listed would necessarily relieve the unbearable economic and social burden on the people of Puerto Rico. However, under the principles of odious debt, an equitable remedy borrowed from the transitional justice context, debt relief would allow the government to focus on rebuilding its weakened economy in order to address both the debt crisis and the underlying economic crisis as a result of ill-advised economic policies.

Ultimately, the debt crisis has provoked a human rights crisis, which are now inseparable from each other. To solve one means inevitably tending to the other, and inherently involves a reassessment of Puerto Rico’s political relationship to the United States. Action is needed urgently in order to avoid the island’s continued bleeding of citizens, funds and resources that could be used to strengthen its economy and allow it to meet all its obligations, with citizens and creditors alike.
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