



FOWLER  
RODRIGUEZ  
VALDES-FAULI

New Orleans

Miami

Houston

Mobile

Bogota'

Spring 2009

## New Orleans Chamber of Commerce 2008 Annual Membership Meeting



George Fowler, III & Cristina Fowler Chauvin with keynote speaker, Lt. Gov. Mitch Landrieu



From L to R: Christian Sauce, Jody Fortunato, Michael A. Harowski, Mark Stich, Philip Brickman, Shelley Miller, Alanson T. Chenault, IV and Tony D'Alto

## FRVF Halloween

Halloween is a big event at Fowler Rodriguez Valdes-Fauli. Each year, each office hosts a costume party complete with food and a band. A fierce costume contest is held between all of the offices.



Houston Office



The Wizard of Oz  
(New Orleans Office)



Miami Office

## Snow Day, December 11, 2008 (New Orleans)

New Orleans office enjoying a rare snow day on December 11, 2008. The last time it snowed in New Orleans was Christmas 2004.



1st Row : Cristi Fowler Chauvin, Linda Becnel, Rosa Rodriguez, Jenny Dippel, Chaisa Jenkins, Rachel Ricca, Erica Quirk

2nd Row: Jackie Launey, Dawn Treuting, Denise Lloyd, Margaret Riess, Jennifer Johnston, Catherine Kimel, Christy Cancienne, Shelley Miller, Stuart Ponder, Pat Bridges, Mike Harrowski, LeMoyne Joseph, Janet Beall

## From Disorder in the Court: Great Fractured Moments in Courtroom History by Charles M. Sevilla

**ATTORNEY:** The youngest son, the twenty-year-old, how old is he?

**WITNESS:** He's twenty, much like your IQ.

## EXPERTISE • ADVOCACY • REACH • SUCCESS

### FRVF Gears Up for a Double Legal Battle against Rolls Royce

Carnival Corporation has filed suit over alleged defects in the Mermaid pod propulsion of the QUEEN MARY 2. The QUEEN MARY 2 is operated by Carnival's Cunard Cruise Line. Carnival and Cunard join Royal Caribbean Cruises, also represented by Fowler Rodriguez Valdes-Fauli, in the ongoing legal battle over the Mermaid pod propulsion system. Carnival and Royal Caribbean are the two largest cruise lines in the world. On December 1, 2008, Carnival filed suit in United States District Court for the Southern District of Florida.

The first Mermaid pod was constructed in 1999. Technical problems surfaced shortly thereafter, and in 2003, Royal Caribbean and Celebrity Cruises filed suit



against the producers of the pod propulsion system, originally alleging \$300 million in damages. Perhaps the most important issue was where the case would be litigated. Rolls Royce sought to move the dispute to London, but Royal Caribbean prevailed in both the state and federal courts of the United States and the case stayed in Florida. Rolls-Royce remains the sole defendant as Alstom Power Conversion settled with Royal Caribbean for \$38 million. The case is now in the discovery phase, with alleged damages topping more than \$700 million and is expected to come to trial this year.

(cont.)

### FRVF 'Connects' with Multinational Executives through Breakfast Series

Fowler Rodriguez Valdes-Fauli (FRVF) has partnered with WorldCity to present Government Affairs Connections, an exclusive new event series for the top Public Policy and Governmental Affairs executives representing multinationals in South Florida.

Government Affairs Connections is a bi-monthly "best practices" breakfast series that brings together multinational executives in South Florida for networking opportunities and features guest speakers such as prominent businessmen, politicians, high ranking government representatives and others from the United States and Latin America.

This is an opportunity for the attorneys of FRVF to interact and discuss their shared practices, challenges and experiences with their colleagues in a relaxed setting and also to promote and strengthen the firm's presence in the local international community.

WorldCity is a leading media company based in Coral Gables that serves, informs and connects the more than 1,300 multinationals in South Florida through monthly and annual publications, events, a multinational directory and the Internet to discuss various marketing initiatives.

"The firm has been working to develop marketing initiatives that would highlight our presence and 'connect' us to South Florida's international community. With more than 175 multinational corporations in the city of Coral Gables alone, we consider this group to be a powerful network and worth pursuing to further develop foreign relationships for the firm," said Raul Valdes-Fauli, managing partner in the firm's Miami office.

(cont.)

### FRVF Unites the Miami and New Orleans Construction Business

Ovi Vento, the dynamic president of the powerful Miami based Latin Builders Association, led a South Florida delegation to New Orleans for the Miami to New Orleans Construction Summit late last year. The Miamians were encouraged by the FRVF New Orleans and Miami offices to come see the many new construction and investment opportunities in post Katrina New Orleans. In New Orleans, the effort was led by FRVF's George Fowler and the World Trade Center's Executive Director Eugene Schreiber to organize the November 7, 2008 event. Raul Valdes-Fauli, Miami's managing partner, along with Daniel Diaz Leyva and Lourdes Cuzan, the firm's Managing Director/International Marketing, promoted the merits of the program in Miami.

The summit featured seminars, workshops and speakers, including Roland Doucette, Office of Recovery and Development, City of New Orleans; Don Pierson, Louisiana Assistant Secretary of Economic Development; Tyrone Wilson, Industrial Development Board, City of New Orleans; Henry Charlot, Jr., Economic Development Director; Milton Bailey, president, Louisiana Housing Finance Agency; Mark Madderra, investment banker, Madderra & Cazelat; Jon Luther, executive vice president, Home Builders Association of Greater New Orleans; Belinda Little-Wood, executive director, Economic Development, City of New Orleans; Wade Webster, Fowler Rodriguez Valdes-Fauli; and Meredith Hathorn, Foley Juddell, LLP. In addition, participants went on a guided tour of real estate and investment opportunities in the area.

The event was widely heralded as a success because it compressed into a one-day event (preceded by a great welcome

(cont.)

**George J. Fowler, III** has been named a 2009 Super Lawyer in the areas of Business Litigation & International. He will be featured in Super Lawyers Corporate Counsel edition.

**Antonio J. Rodriguez and Mat Gray, III** have been selected as 2009 Top Attorneys in Louisiana by Super Lawyer Magazine.

**Robert Johnston** has been named to New Orleans CityBusiness' Leadership in Law Class of 2009.

**Wayne Pickering** recently presented a paper at the Fall meeting of the International Association of Drilling Contractors on current and emerging insurance issues, entitled "Don't Take 'No' for An Answer: A Discussion of Recent Cases from the Supreme Court of Texas Affecting Your Rights As a Policyholder." A complete copy of the paper is available on the firm's Web site or by contacting [wpickering@frvf-law.com](mailto:wpickering@frvf-law.com).

**George J. Fowler, III and Antonio J. Rodriguez** have been named Best Lawyers in Maritime Law in the 2009 edition of The Best Lawyers in America.

**Antonio J. Rodriguez** has been named one of the top 20 shipping lawyers in the world in Euromoney's 6th Edition of its Guide to the World's Leading Shipping & Maritime Lawyers.

**Christian Sauce** has been elected as a member of the Board of Directors of the Hispanic Chamber of Commerce of Louisiana.



George J. Fowler, III



Antonio J. Rodriguez



Robert Johnston



Mat Gray



Wayne Pickering



Christian Sauce

## Electronic Evidence Preservation

### The Proliferation of Electronic Discovery in Litigation

By Maria Isabel Hoelle and Frank Quesada



As technology continues to advance, corporations and businesses must stay on top of the legal and technical developments in the area of electronically stored information (ESI). The expansion of electronic records is having a profound impact on litigation. In the past, discovery requests relating to electronic data generally were limited to a request for emails. This is not the case today as more documents and data are retained in electronic format.

Litigation suspends the routine document retention/destruction policies and requires the issuance of a litigation hold to ensure the preservation of relevant documents. Litigation hold notices should be sent via e-mail and regular mail and periodically reissued; contain an overview of the case; identify documents and data to be preserved; provide clear instructions on preservation of documents and data; and contain contact information for legal and technical personnel. Discovery obligations do not end with the implementation of a "litigation hold." You and your counsel must oversee compliance with the litigation hold and monitor the efforts to retain and produce the relevant documents.

Our firm has expertise with electronic discovery. We work very closely with our clients to ensure that the electronic discovery process is approached in accordance with the applicable laws and is as cost effective as possible. Our Miami Office's ESI Task Force has worked with the firm's clients to develop guidelines and to assist them in this process. The greatest concern for many of our clients regarding electronic preservation is the

associated costs involved. We stress the importance of planning ahead. Early attention to electronic discovery issues is essential after the 2006 amendments to the Federal Rules of Civil Procedure. Specifically, F.R.C.P. 26(f) requires parties to initially address issues relating to electronic discovery, including the format of production. The rule addresses preservation of discoverable information, discovery of electronically stored information from sources that are not reasonably accessible and the procedure for asserting a claim of privilege or work product protection after production.

The proliferation of information in the electronic age requires an understanding of not only the legal issues involved, but also the technical issues related to preservation of evidence. Our firm is prepared to assist our clients in this process.

*Maria Isabel Hoelle is a partner in the firm's Miami office. She can be reached at (786) 364-8400 or [mhoelle@frvf-law.com](mailto:mhoelle@frvf-law.com). Frank Quesada is an associate in Miami. He can be reached at (786) 364-8400 or [fquesada@frvf-law.com](mailto:fquesada@frvf-law.com).*

### IGNORE THIS AT YOUR PERIL!

By Luis S. Konski



Now that I have your attention, be aware that there has been a sea change in how litigation discovery and internal corporate investigations are taking place. This article is not to delve in detail on what you as corporate management or as in-house counsel should be doing to preserve electronically stored information ("ESI"). The purpose is to inform you that failure to do so is an unnecessary assumption of risk.

Literally, there is a tsunami of electronic information waiting to swamp all but the most elementary of cases. Management, in-house counsel and information technology professionals will have to learn to communicate and coordinate efforts or you will lose your cases not because of the merits of the case, but

because you failed to preserve electronic evidence. Recent court decisions point to the wave of the future. Learn to surf or you will be swamped.

Once upon a time, all we worried about in trying a case was making sure that all relevant and non-privileged paper documents were provided and received within the bounds of discovery. We would use a simple sequential numbering machine like a Bates™ stamping machine to keep an accounting of what relevant documents are being provided or held back because of privilege. Now, unless you control the electronic documents that may be relevant and prevent their inadvertent disposal, you, as management, and your lawyers may be held liable, regardless of the merits of the case. Sanctions have involved millions of dollars and a judgment against the offending party. You may lose by default.

Here is a summary of the headaches of e-discovery: The costs to preserve, find and review electronic evidence, including e-mails are astronomical. Mistakes in e-discovery are ubiquitous and may force the settlement of a case based on e-discovery and not the merits. ESI is easy to destroy or alter. The amount of electronic evidence stored by corporations is overwhelming. Computer systems and information storage have become so complex that any one expert may not understand it all. Most companies do not have functional ESI management policies. Many judges no longer accept the "empty head and pure heart" defense to ESI mistakes. The new federal rules accelerate the need to provide ESI at the beginning of the case, even possibly before the pleadings are finalized. Most lawyers and law firms are unprepared for e-discovery. And, most corporations and in-house counsel are unprepared for preservation of electronic evidence. This is a cocktail for disaster...

To read this article in full length, please visit [www.frvf-law.com](http://www.frvf-law.com).

*Luis Konski is a partner in the firm's Miami office. He can be reached at (786) 364-8418 or [lkonski@frvf-law.com](mailto:lkonski@frvf-law.com).*

(cont. from cover, "FRVF Unites...")

dinner at Antoine's Restaurant the night before) the relevant information contractors or developers need to know to construct in Louisiana.

This event was a follow-up to the June 2007 Economic Development Forum held in Miami in which over 60 Louisiana executives and economic development officials met with nearly 150 South Florida companies to present a wide range of real estate, investment, construction and other project opportunities in the New Orleans area as part of the rebuilding efforts in the aftermath of Hurricane Katrina.

King, FedEx, MasterCard International, and Discovery Networks Latin America, among others.

The second breakfast was held on February 5, 2009, at the Biltmore Hotel. The featured speaker was Craig S. Prusher, Vice President, Assistant General Counsel for Burger King Corporation. Prusher is responsible for franchising, real estate and government relations in the United States and worldwide.

"This event series is an excellent opportunity for our attorneys to interact with prominent multinational executives in the South Florida region who shared their challenges and experiences in the field in a professional and pleasant atmosphere," said Lourdes Cuzan, Managing Director/International Marketing, FRVF.

The 2009 schedule for the Government Affairs Connections breakfast series is as follows:

April 16, 2009  
June 11, 2009  
August 13, 2009  
October 8, 2009  
December 10, 2009

(cont. from cover, "FRVF Gears Up...")

At the time of filing, Carnival conservatively estimated damages to be in excess of \$100 million, but those damages continue to grow. The Mermaid pods experienced problems, which caused the QUEEN MARY 2 to be taken out of service in order to be repaired. The cases, in which both Royal Caribbean and Carnival will be represented by Fowler Rodriguez Valdes-Fauli, will be litigated separately. "The Royal Caribbean case has set a strong legal and factual case foundation for Carnival's action," said Antonio J. Rodriguez.

"FRVF's experienced team of maritime lawyers in New Orleans and Miami include professional master mariners and engineers which gives our firm a decided edge in ship construction cases," stated George J. Fowler, III.

(cont. from cover, "FRVF Connects...")

The first Government Affairs Connections breakfast was held on December 10, 2008, at the Biltmore Hotel in Coral Gables. Attendees included government and public policy executives for Hewlett Packard, Chevron, Burger

## Nigerian Law Firm Joins Fowler Rodriguez Valdes-Fauli's International Group



In an effort to expand legal services to our oil and gas clients, Fowler Rodriguez Valdes-Fauli (FRVF) has incorporated the Nigerian law firm of Edwin Obiorah into the FRVF International Group of Independent Law Firms.

"Many of our oil and gas clients have operations in Nigeria where the legal challenges are frequent, unusual and dramatic," said George Fowler, who negotiated the new association. The cases include oil well blowouts, maritime disasters, kidnapping of employees and Foreign Corrupt Practices Act issues. FRVF works where our clients do, and therefore, our lawyers frequently

find themselves providing counsel in interesting parts of the world. The firm's Colombian office is a good example. FRVF, through Dr. Luis Cuervo, provides legal counsel in Colombia to important clients such as Halliburton.

Mr. Fowler said that the firm's offices are located where the clients' needs are, but only where the firm has identified the right lawyer to head the office. In Nigeria, the firm was privileged to identify Edwin Obiorah. Mr. Obiorah received his legal education in the United States at Cornell University and at the University of Paris. He practiced law in New York, where he led the international practice of Harris, Beach and Wilcox. Mr. Obiorah's expertise includes corporate, commercial and litigation law. He has appeared before the United States District and Federal Court of Appeals. Mr. Obiorah's law firm includes three other attorneys and practices throughout Nigeria.

Because he is a United States lawyer admitted to practice in New York, he knows what FRVF's clients expect. "Mr. Obiorah is familiar with the needs of our clients and knows how to respond to their frequent requests and properly report on developments," said Mr. Fowler.

Mr. Obiorah came to FRVF through an interesting route. Besides being a lawyer, he is also a Catholic priest. Mr. Obiorah was a colleague of another Catholic priest, Father Udechukwu BedeMoore, who is studying law at Loyola Law School in New Orleans and works with FRVF as a legal assistant. Father BedeMoore, who speaks six languages, is a native of Nigeria but his mission has taken him throughout the world.

"With Father BedeMoore in New Orleans and Mr. Obiorah in Nigeria, we can well serve our clients in Nigeria," concluded Mr. Fowler.



**Margaret Riess**  
New Orleans

*Margaret Riess is a maritime and litigation paralegal in the firm's New Orleans office.*

*She has worked with Managing Partner Antonio Rodriguez since 1981, and joined Fowler Rodriguez Valdes-Fauli in 1992. Ms. Riess resides in Old Jefferson with her husband, a native New Orleanian and her rescued cat, which is not a fan of evacuating for hurricanes.*

**Where did you grow up?**

I grew up in Winter Park, Florida and spent many weekends at Cocoa Beach, New Smyrna Beach and sailing on Tampa Bay.

**What are some of your hobbies?**

I love to travel and read. My friends tell me my hobbies are trying new restaurants, learning about new Louisiana bands and attending Jazz Fest.

**What is your dream job?**

My dream job would be to read to small children at the public library because I believe children need to be taught that reading is fun.

**What is your favorite memory at Fowler Rodriguez Valdes-Fauli?**

My favorite memory would have to be the wonderful kindness demonstrated by the FRVF Houston office upon my arrival in Houston after Katrina. Thank you Houston. Other than that, I really appreciate the opportunity to travel and meet so many people through my work.

**What is something most people don't know about you?**

My husband and I taught Cajun dancing at the local community college for years.

**What are your plans for your future?**

To win the lottery and retire part-time to Italy.



**Consuelo Dausa**  
Miami

*Consuelo Dausa is an accounting-corporate paralegal in the*

*firm's Miami office. She has worked with Managing Partner Raul Valdes-Fauli since 1976, and joined Fowler Rodriguez Valdes-Fauli in 2005. Ms. Dausa resides in Miami Beach, Florida with her husband and has three children and five grandchildren.*

**Where did you grow up?**

Cuba

**What are some of your hobbies?**

I enjoy playing baseball, dancing and relaxing on the beach.

**What is your dream job?**

I love my job at Fowler Rodriguez Valdes-Fauli and wouldn't change a thing.

**What is your favorite memory at Fowler Rodriguez Valdes-Fauli?**

My surprise Birthday Party!

**What is something most people don't know about you?**

That I make the best (tamalitos) Spanish corn dish for appetizers

**What are your plans for your future?**

Continue working for as long as I am able to.



**Robert Johnston**  
New Orleans

*Robert Johnston is a partner in the New Orleans office and has been with the firm*

*for over 15 years. Mr. Johnston resides in Uptown New Orleans with his wife, Michelle, daughter, Elizabeth, 4, and their two dogs.*

**Where did you grow up?**

New Orleans, fortunately.

**What are some of your hobbies?**

I am a semi-retired musician and an avid indoorsman.

**What is your favorite memory at Fowler Rodriguez Valdes-Fauli?**

Making partner. I was sneaking out early to go for a run around Audubon Park. Somebody saw me at the elevators and told me to go back to my office because I was being voted on. I often wonder how things might have turned out if that elevator had arrived 10 seconds earlier.

**What is something most people don't know about you?**

I invented the Internet.

**Current cases?**

I'm heavily involved in defending a putative class action suit for a steel building manufacturer, and in litigation arising from an oil spill as well. My practice really involves everything from drafting contracts to personal injury cases to complex commercial litigation.

**Recent cases you have won?**

All but one that I have tried. And that one still really bothers me.

**Recent awards or publications?**

None greater than being selected to be profiled in this newsletter. I have also been named to New Orleans CityBusiness' Leadership in Law Class of 2009.

### **\$2.8 Million in Customs Fines Against Carnival Corporation Successfully Reduced to \$0**

New Orleans attorneys George Fowler, Antonio Rodriguez and Phil Brickman successfully petitioned U.S. Customs and Border Protection (CBP) to fully mitigate approximately \$2.8 million in fines levied against two cruise ships for alleged violations of the Passenger Vessel Services Act. In February 2004, two Carnival cruise ships departed from New Orleans for their regularly scheduled cruises in the Caribbean. While at sea, a tragic collision occurred near the mouth of the Mississippi River, causing the U.S. Coast Guard to close the river to all traffic. The river remained closed when the ships were scheduled to return. Carnival was forced to divert its ships to Gulfport, Mississippi and Mobile, Alabama to disembark the passengers while passengers waiting to board in New Orleans were bused to Gulfport and Mobile to embark on the next cruises. When the river was reopened, the ships returned to New Orleans.

The CBP levied \$2.8 million in fines against Carnival's two ships for alleged violations of the Passenger Vessel Services Act (PVSA). Under the PVSA, a foreign flagged vessel may not transport passengers between two U.S. ports; vessels must leave from and return to the same port. Failure to do so results in a fine of \$300.00 per passenger. Carnival's vessels were initially fined for diverting its vessels to Mobile and Gulfport and again fined for returning passengers to New Orleans that had embarked in Mobile and Gulfport. Under the PVSA and Customs Mitigation Guidelines, a penalty imposed for violation of the PVSA must be mitigated in full where the violation was not willfully committed or the violation occurred as a result of a force of nature, the vessel being in distress, or for safety or humanitarian concerns. Here, Carnival was forced to divert the cruises and disembark the vessels at alternative ports of call due to the river closure imposed by the U.S. Coast Guard.

The firm filed a petition to mitigate the penalties and the CBP mitigated all the

fines associated with the first deviations to Mobile and Gulfport, but refused to mitigate the fines for the return voyages to New Orleans. The firm filed supplemental petitions seeking reconsideration. Meanwhile, Mr. Fowler and Mr. Brickman negotiated with CBP officials on the most appropriate application of the PVSA given the circumstances. These efforts resulted in reducing the remaining fines to \$0, as the firm successfully demonstrated that Carnival had no intention of transporting passengers between two U.S. ports and did so only because of the unforeseen collision at the mouth of the



river. As a result of the firm's efforts, CBP recently amended its guidelines to allow for mitigation of PVSA violations that occur as a result of port closures mandated by the U.S. Coast Guard.

### **Judge Denies Claim for Overtime**

In *Thibault v. Bellsouth Telecommunications, Inc.*, New Orleans partner Wade Webster was successful in defending Bellsouth Telecommunications, Inc. The plaintiff, a telephone line splicer, sought overtime wages for the three months he worked nearly 80 hours per week following Hurricane Katrina. The plaintiff argued he was an "employee" entitled to time and a half for all hours worked over 40 hours per week under the Fair Labor Standards Act (FLSA). The FLSA applies to any individual em-

ployed by an employer, but not to independent contractors. Courts often consider the right to control when determining whether a person is an employee under the FLSA, examining factors such as who directs when and how the work will be done. Judge Lemmon of the United States District Court for Eastern District of Louisiana granted judgment against the splicer, reasoning that he was an independent contractor, not an employee, in light of the fact that he utilized his own bucket truck and splicing tools to perform the post Katrina repairs. Denied overtime compensation, the plaintiff has appealed the judgment.

### **Piercing the Corporate Veil**

Corporate claimants, represented by George Gaïtas, a partner in the firm's Houston office, brought suit claiming unpaid hire amounts under a time charter with a small privately owned American chartering company. The unpaid hiring claim was already pending in London Arbitration as part of an unsafe berth dispute when the American company halted its business activity and appeared to have become inactive.

The business activity of the American charterer was taken over by an offshore company with a similar sounding name employing the same people. Given these circumstances, the corporate claimants became concerned about the continuing solvency of the American charterer. Corporate claimants sought to attach the charterer's assets under Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. Such attachments are frequently sought in order to provide security for maritime arbitrations or litigations in foreign jurisdictions such as London. Under Rule B, attachment can be sought even before suit is filed or arbitration commences. Here, the result of the claimants' Rule B attachment was unsuccessful as only small sums of money were "caught." Once assets have been caught through Rule B attachment, if any judgment is rendered in the plaintiffs' favor, the judgment is limited to the value of the attached property, not the amount of the entire claim. Claimants were unsatisfied with the small amounts caught under Rule B and thus amended their suit

against the American charterer and the offshore charterer with the similar name, adding as defendants the individuals who acted on behalf of the charterers. Mr. Gaïtas, on behalf of the claimants, sought to pierce the corporate veil, alleging that each defendant was the alter ego of the other defendants and jointly and severally liable to the claimants.

The suit against the various defendants was brought in the United States District Court for the Southern District of Texas. The defendants then filed a series of motions to dismiss the claim, arguing that the London arbitration tribunal had exclusive jurisdiction to hear the claims regardless of whether the claims were based on the original contract- the time charter- or based in tort. In the alternative, the defendants sought to stay the proceedings and submit all claims to the London arbitration tribunal. Mr. Gaïtas disputed the competence of the arbitration tribunal to deal with alter ego issues and argued that exclusive jurisdiction over these matters lay in the U.S. District Court and requested an order seeking limited discovery to probe the alter ego relationship of the defendants. The court denied the defendants' motion to dismiss and granted Gaïtas' request for limited discovery, requiring the defendants to produce documents and records of the charterers. Shortly thereafter, the defendants asked for a negotiated settlement and all claims, including those pending in London, were settled.

## FRVF Successfully Defends the M/V Athena

On August 27, 2008, Stelios Coutsodontis filed suit in the United States District Court for the Eastern District of Louisiana and attached and arrested the vessel Athena under Rules B and D of the Supplemental Rules for Admiralty and Maritime Claims. Coutsodontis demanded \$15 million dollars for release of the vessel. Coutsodontis' claims against the vessel arose out of a land-based shareholder dispute which was being litigated in New York, Spain and Greece. Coutsodontis alleged he owned certain shares in Sea Trade Maritime Corporation, the corporation that holds legal title to the

M/V Athena, and that he was therefore entitled to share in the vessel's profits. Coutsodontis also alleged that his shareholder status equated to part ownership of the M/V Athena itself and brought possessory and petitory and partition actions under Rule D of the Supplemental Rules for Admiralty and Maritime Claims.

New Orleans partners Stephanie Skinner and Skipper Chenault defended the M/V Athena and Sea Trade. They filed a motion to vacate the arrest and attachment of the vessel arguing that the federal court did not in fact have admiralty subject matter jurisdiction, and that as a result, Coutsodontis' attachment and arrest of the M/V Athena were wrongful as a matter of law. The issues were fully briefed by both sides and a hearing on the motion was held before the Honorable Mary Ann Vial Lemmon. Judge Lemmon agreed with the defendants, holding that Coutsodontis' claims did not support federal maritime jurisdiction and that the attachment and arrest of the M/V Athena were wrongful. Judge Lemmon ordered the immediate release of the M/V Athena. Coutsodontis has appealed the decision.

## Summary Judgment for Great Lakes Reinsurance

Houston partner Tim Strickland obtained a summary judgment for Great Lakes Reinsurance (UK) PLC under the doctrine of *uberrimae fidei* or utmost good faith. The doctrine requires parties seeking insurance coverage to disclose all circumstances known to them, which may materially affect insurance coverage. The doctrine, while not steadfast precedent, is applicable to marine insurance contracts governed by New York law. Here, Southern Marine Concepts Inc. entered into an insurance contract with Great Lakes to insure the vessel, the M/V Revenge. The parties agreed that New York law would govern any dispute arising out of the contract. At the time of contract negotiations, Gary Wilkes, the Captain of the M/V Revenge, failed to disclose at least three prior insurance claims made on the vessel. Southern Marine Concepts argued that Texas law, not New York law, applied to the

contract and therefore *uberrimae fidei* did not apply. After Strickland offered evidence of Great Lakes substantial assets in and connections to New York, the court upheld the New York choice of law clause thus rendering the doctrine of utmost good faith applicable. The court, upon finding that a failure to disclose prior claims clearly violates the doctrine of utmost good faith, granted summary judgment in favor of Great Lakes, absolving them of any liability under the policy.

## CEO Destroys Evidence, Caves in Settlement

Miami partner Luis Konski defended Global Patents Corporation and Bersa Group Inc. against Robert A. Day, the former CEO of both corporations. Day, who was terminated for cause, brought suit against the corporations under his employment agreement seeking \$4.9 million as well as seven percent of the shares in each corporation. Konski filed a motion to dismiss the suit against Global Patents Corporation, a British Virgin Islands corporation, for lack of personal jurisdiction. While the motion was pending, Konski sought the return of a corporate laptop that had been in Day's possession during his tenure as CEO. The court ordered that the laptop be inspected by an independent forensic expert who discovered Day destroyed evidence on the laptop using a computer hard-drive scrubbing program named "Evidence Eliminator." After learning of the destruction of evidence, Konski filed a motion for sanctions against Day. Upon Konski's motion, the court issued an order to show cause as to why Day should not be held in contempt for violating the court's order to preserve evidence. The case went to mediation, before a hearing on the order to show cause. To settle the case, Day paid the defendants \$300,000 even before Fowler Rodriguez Valdes-Fauli filed a counterclaim against Day.



Cristina Fowler Chauvin

## **Cristina Fowler Chauvin** Associate – New Orleans

Cristina Fowler Chauvin joined the firm's New Orleans office in 2008, as an associate specializing in maritime and admiralty law. In addition, Ms. Chauvin has a background in construction law/architecture. She was born in New Orleans, LA and received her B.A. in English and a minor in Architecture from Tulane University. In 2007, she received her J.D. and Admiralty and Maritime Certificate from Tulane Law School. Ms. Chauvin was admitted to the Louisiana Bar in 2008. She is a member of the Louisiana State Bar Association, Tulane Latin American Law Institute and the New Orleans Hispanic Heritage Foundation. Ms. Chauvin is proficient in Spanish.



Jody John Fortunato

## **Jody John Fortunato** Associate – New Orleans

Jody John Fortunato signed on as an associate in the firm's New Orleans office in 2008, where he practices in maritime and energy litigation. Mr. Fortunato, a New Orleans native, graduated from Villanova University with his B.A. in 2002. In 2008, he received his J.D. from Loyola University New Orleans College of Law, where he served on the Moot Court Staff. He taught on the faculty of Jesuit High School (New Orleans) from 2002 - 2005. Mr. Fortunato was admitted to the Louisiana Bar in 2008, and he is a member of the Louisiana State, New Orleans, American, and Federal Bar Associations.



Luis S. Konski

## **Luis S. Konski** Partner – Miami

Luis S. Konski joined the firm in 2008, as a partner in the Miami office. He has extensive jury and non-jury trial experience specializing in a number of areas of complex commercial litigation including securities, antitrust, energy, banking, franchising and international litigation and arbitration.

Mr. Konski has advised corporations nationally and internationally on the preservation of electronic documents for purposes of litigation and arbitration, and has been involved in document intensive cases including electronic document evidence.

He attended the University of Florida where he received his Juris Doctor, and his Bachelor's degree, with a Certificate in Latin American Studies.

Mr. Konski is a member of the Executive Committee of the Florida Bar International Law Section, and the Southern Regional Board of



Elisa F. Lucchi

the Anti-Defamation League and chairs the International Section of the Regional ADL. He is AV rated by Martindale-Hubbell. Mr. Konski was born in Havana, Cuba and is fluent in Spanish and Portuguese.

## **Elisa F. Lucchi** Associate – Miami

Elisa F. Lucchi joined the firm in 2008, as an associate in the Miami office. Her practice specializes in taxation (general, corporate and international) and estate planning (domestic and international).

Ms. Lucchi was born in Miami, Florida. She attended the University of Florida, where she received her B.A. in English and History magna cum laude in 2001, her M.A. in History with distinction in 2003 and her J.D. in 2006. Ms. Lucchi was admitted to the Florida Bar in 2006. In 2007, she received her LL.M. in Taxation from the University of Miami.

Prior to joining the firm, Ms. Lucchi was an associate at Cummings & Lockwood, LLC and at The Kelley Law Firm, PL. She also taught summer school at Miami County Day School and lectured at the University of Florida's Department of History with her mentor, Dr. Robert A. Hatch.

Ms. Lucchi is a member of the Florida Bar's Tax and Real Property, Probate and Trust Law sections, where she participates in the following committees: Trust Law, Probate and Trust Litigation, Estate and Trust Tax, Membership Diversity, and the New Tax Lawyer Committee.

Ms. Lucchi is proficient in Spanish and Italian.

## **Wade Webster** Partner – New Orleans

Wade Webster signed on as a partner in the firm's New Orleans office in July 2008. His practice specializes in litigation, corporate law, oil and gas, real estate, successions and taxation. Mr. Webster was born in New Orleans and graduated from Louisiana State University with a B.S. in Accounting in 1978. In 1982, he received his J.D. from Tulane Law School.

He was admitted to the bar in Louisiana in 1982, and the Texas Bar in 1993. Mr. Webster is admitted to practice before the United States Supreme Court, United States Court of Appeals for the Fifth Circuit and the United States Tax Court.

Mr. Webster is a member of the Louisiana Bar Association, Texas Bar Association and the Society of Louisiana Certified Public Accountants. He is a licensed title insurance agent in the State of Louisiana.



Wade Webster