

ALFA International

# Business Litigation

Practice Group Newsletter - December 2018

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**Joseph G. Fortner**



**Hartford, Connecticut**

## Featured Member – Joseph G. Fortner

### Practice Description

Joe is the current Chair of the Business Litigation Practice Group, and chaired its 2017 Seminar, “Successfully Trekking Along the Precipice.” He is a partner in and leads Halloran Sage’s Business Litigation and Intellectual Property Groups, providing counselling and representation to clients beyond the litigation and trial arenas. Joe works from the firm’s Hartford, Connecticut, office. Among his areas of focus are trade secret issues and disputes; enforcing client’s marks, as well as defending against infringement claims arising from trademarks and trade dress; commercial claims involving fraud and breach of contract; technology-related claims; trade regulation and competitor claims; unfair trade practices; class actions; and product-related commercial disputes. Joe has represented a Colombian gold mining company; a domestic consumer products manufacturer dealing with a soured relationship with a Chinese supplier; local parts suppliers negotiating with multi-national purchasers; small firms faced with claims by larger competitors seeking to stifle the former’s growth; and a wide array of other business and commercial disputes and issues. While Joe has litigated throughout his career, he is always mindful of the client’s goals, and thus a practical, client-driven solution can be the most harmonious.

### Interesting Career Highlight

Two matters jump out as “interesting.” One was early in Joe’s career at Halloran & Sage, where he was part (and the sole remaining member at the end) of a decades long battle with a family of con artists who, during their storied careers, swindled banks in Connecticut and Texas into loaning millions of dollars as payments for “one pay whole life insurance policies.” When it turned out that there were no insureds on these loans, there were no policies, the life insurance company was not even aware of the loans, and the money went to the miscreant’s own accounts (and from there, to locations far and away), the disputes turned into

protracted litigation. By the end of it, Joe secured an \$11 million judgment against the defendants; the Ninth Circuit upheld a \$756,000 sanctions award against their attorney; and Joe testified as “an expert in American law” in the trial court in Jerusalem. If that whets your appetite for more of this story, information is available at <https://bigcrime.com/images/mmm.html> and <https://bigcrime.com/images/750.html>.

Another involved a claim by Colt's Manufacturing against Joe's client, American Western Arms. Despite the fact that replicas of the Colt Single Action Army revolver had been produced by various companies since the early 1950s, Colt decided that Joe's client's product was “too close,” and brought a trade dress and trademark case against AWA's revolver. During the course of litigation, many of the leading participants in the western-style firearms world were deposed. A leading writer on firearms, John Taffin, voluntarily agreed to serve as Joe's expert. Taffin later wrote an article based on his experience in the case, in which he concluded that he was “no longer in the lawyer-bashing mode.” “No Lawyers,” *Guns Magazine*, October, 2003. After 44 depositions and summary judgment motions, the case resolved.

### Interests Outside the Law

Anyone who has spent more than two minutes with Joe knows that one of his passions outside the law is playing guitar, especially as part of a duo with his wife Holly (also a lawyer). Calling themselves “Blind Date” (because that's how they met freshman year at college), Joe accompanies while his wife sings in a wide variety of genres, ranging from jazz, to blues, to country, to ... just odd. For the past three years, they've put together, hosted and performed at their annual Moosestock event, held in July or August on a lake in Southern Vermont (you can learn more at <https://www.facebook.com/BlindDateMusic/>). Joe also rides motorcycles in New England (and dreams of a European trip), participates in other outdoor sports, and is actively involved (in music and other matters) at St. Mary's in the Mountains Episcopal Church in Wilmington, Vermont.



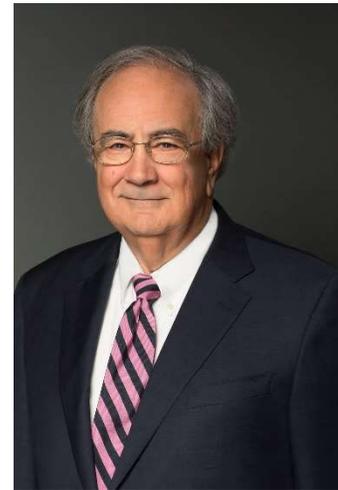
## Case Law Update

### Delaware Court of Chancery Invalidates Federal Court Forum-Selection Provision for Securities Cases

By Albert J. Carroll, Edward M. McNally, Morris James LLP, Wilmington, DE

*Sciabacucchi v. Salzberg*, C.A. No. 2017-0031-JTL (Del. Ch. Dec. 19, 2018)

Delaware law permits a Delaware corporation to include a forum-selection provision in its certificate of incorporation governing all “internal affairs” claims by its stockholders. There is much national debate on the topic of forum-selection provisions in charters governing securities claims, such as whether a corporation can require arbitration. This decision wades into that debate by addressing a charter provision mandating a federal forum for securities claims. In it, the Court of Chancery holds that the Delaware General Corporation Law (the DGCL) does not authorize a Delaware corporation to include a forum-selection provision in its charter governing claims under the 1933 Act. The Court reasons that claims under the Act are external to the corporation—they do not “turn on the rights, powers, or preferences of the shares, language in the corporation’s charter or bylaws, a provision in the DGCL, or the equitable relationships that flow from the internal structure of the corporation.” Because the claim exists outside of the contract between the corporation and its stockholders and does not relate to the corporation’s internal affairs, it is beyond the power of state corporate law to regulate.



Edward M. McNally



Albert J. Carroll

## Upcoming Events

**January 22, 2018** – ALFA BLPG Steering Committee call at 1:00 p.m. EST.

**February 28 to March 2, 2019** – ICS at the Ritz-Carlton, Laguna Niguel - Dana Point, California.