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FINDLAW DAILY OPINION SUMMARIES U.S. 1ST CIRCUIT COURT OF APPEALS

Criminal Law & Procedure, Sentencing

US v. Razo, No. 13-2176

Defendant was convicted and sentenced for a number of drug trafficking charges. Defendant now asserts various errors both at trial and at sentencing. The judgment is affirmed, where there are no reversible errors among defendant's many challenges.

Criminal Law & Procedure, Sentencing, White Collar Crime

US v. Foley, No. 13-1048

Defendant appeals his conviction and sentence for wire fraud and money laundering arising from his role in a mortgage fraud scheme. Defendant challenges the sufficiency of the evidence as to 28 of the wire fraud counts and all of the money laundering counts, contending that the district court abused its discretion in three of its evidentiary rulings, and contending that the prosecutor engaged in misconduct in his closing statement. Defendant also challenges the procedural and substantive reasonableness of his 72-month sentence and the district court's methodology in ordering restitution. The judgment is affirmed as to the conviction and sentence, and affirmed in part and vacated in part as to the restitution order, where: 1) substantial evidence supports the convictions; 2) the district court did not abuse its discretion in making three adverse evidentiary rulings; 3) the prosecutor's closing statement remarks were within the latitude allowed and there was no impropriety; 4) the sentence is well below the Guidelines range; and 5) the district court miscalculated the restitution award.

Criminal Law & Procedure, Sentencing

US v. Melendez-Rivera, No. 13-2136

In this case, defendant pleaded guilty to conspiracy to import over five kilograms of cocaine into the United States and conspiracy to distribute over five kilograms of cocaine. Defendant now appeals his sentence. The denial of a mitigating role adjustment is affirmed, the denial of a second-tier acceptance of responsibility adjustment is vacated, and the case is remanded with directions to vacate the sentence and conduct a new sentencing hearing, where: 1) the denial of a mitigating role-in-the-offense adjustment was proper, as defendant's role in the conspiracy was not minor, and he was present for the planning of the scheme and deeply involved in its execution; and 2) the district court's conclusion that it lacked discretion to grant the requested acceptance of responsibility adjustment without a government motion overlooked the US v. Beatty exception, and was thus incorrect as a matter of law.

Civil Procedure, Government Law, Labor & Employment Law

Montanez-Allman v. Garcia-Padilla, No. 13-2384

This interlocutory appeal concerns a preliminary injunction, granted on due process grounds, that inter alia, reinstated plaintiff Montanez-Allman and vacated the political appointment of his replacement following the legislature's enactment of Law 75-2013 which abolished four positions, including Montanez-Allman's. When this extraordinary relief issued, the Puerto Rico Supreme Court had not yet issued its opinion in the nearly identical case of Diaz-Carrasquillo v. Garcia-Padilla, which confirmed the availability of relief in Commonwealth court. This case is remanded to the district court with instructions to vacate the preliminary injunction in light of the extraordinariness of the relief sought, the importance of this case to the Commonwealth's own constitutional balance of powers, and the relief now available under Diaz-Carrasquillo, which both parties agree is adequate.

Attorney's Fees, Civil Procedure

Law Offices of David Efron v. Matthews & Fullmer Law Firm, No. 14-1001

Plaintiff and defendants dispute over how to split attorneys' fees due them as a result of their mutual clients' recovery in the personal injury lawsuit that gave rise to this action. The district court awarded plaintiff 40 percent of the attorneys' fees despite the fact that the parties never modified the original 20-80 arrangement, finding that plaintiff was entitled to more than 20 percent on a quantum meruit basis for the unanticipated work he performed in trying the case. Plaintiff filed a Rule 59(e) motion asking the district court to omit certain findings that indicated that plaintiff made misleading statements and was not credible with respect to aspects of his dispute, which the district court denied. The judgment is affirmed, where: 1) the district court's control over \$1,000,000 of the partially executed underlying judgment conferred authority to determine the proper recipients of those funds; 2) there is no basis to disturb the district court's findings as to plaintiff's credibility; and 3) plaintiff fails to show that the district court abused its discretion in determining the relative value of plaintiff's legal services.

Insurance Law

Matusevich v. Middlesex Mutual Assurance Company, No. 14-1370

Defendant insurance company denied plaintiff's flood loss claim following a flood that damaged the lower level of his home and numerous belongings. Summary judgment in favor of defendant is affirmed, where the district court did not err in holding that the lower level of plaintiff's home qualified as a "basement" under the Standard Flood Insurance Policy issued by defendant and authorized by the Federal Emergency Management Agency as part of the National Flood Insurance Program.