

ITT's Former Top Executives Settle Fraud Charges With SEC

The Washington Post [reports](#) that former top executives at ITT Educational Services, the parent company of defunct ITT Technical Institute, have settled fraud cases with the Securities and Exchange Commission, avoiding a trial slated to begin Monday.

ITT chief executive Kevin Modany and former chief financial officer Daniel Fitzpatrick were charged with civil fraud in 2015 for allegedly deceiving investors about high rates of late payments and defaults on student loans backed by the company, writes [Danielle Douglas-Gabriel](#).

Although they didn't admit or deny any wrongdoing, they agreed to pay penalties of \$200,000 and \$100,000, respectively. The agreement bars them from serving as officers and directors of public companies for five years.

[Read the Washington Post article.](#)

**Warren Biro Joins Barnes &
Thornburg Entertainment,**

Media and Sports Practice Group

Barnes & Thornburg LLP has added Warren Biro as an associate in the firm's Entertainment, Media and Sports Practice Group in Los Angeles.

Biro focuses on media finance and entertainment transactional matters, where he works with independent production companies, financial institutions and high net worth individuals on the legal and business issues of financing, producing and distributing film and television projects.

"Warren has been involved in a multitude of motion picture and television transactions, often involving prominent financiers and studios," said Jason Karlov, chair of Barnes & Thornburg's Entertainment, Media and Sports Practice Group. "He's the latest premier talent to join the firm, which continues to add entertainment practitioners in key markets across the country."

Biro's arrival comes on the heels of Variety's 2018 Legal Impact Report, where five Barnes & Thornburg attorneys were recognized for their representation of high-profile entertainment industry clients. Members of the firm's Entertainment, Media and Sports Practice Group have a thorough understanding of the business, financing, distribution and licensing needs of the film, television, music, technology, gaming and sports industries. They represent motion picture producers and distributors, serve as outside general counsel for musicians and entertainers, and negotiate significant marketing and promotional agreements.

Biro joins Barnes & Thornburg from Akin Gump Strauss Hauer & Feld LLP. He received his J.D. from UCLA School of Law with a specialization in entertainment, media and intellectual

property, and has been named a 2018 Southern California “Rising Star” in the field of Entertainment & Sports by Super Lawyers.

Seventh Circuit Hands Win to Merchants in Data Breach Case



The number of cases involving consumer data breaches is rapidly growing, points out [Ehren M. Fournier](#) in a post on the website of [Schoenberg Finkel Newman & Rosenberg LLC](#). Data breaches inflict additional costs on financial institutions, leading those institutions to turn to litigation to recoup their losses from merchants.

Fournier discusses a recent case in which the United States Court of Appeals for the Seventh Circuit Court dealt a significant blow to attempts by financial institutions to bring negligence claims against merchants for failing to adequately safeguard their customers' data:

In 2012, hackers infiltrated Schnuck Markets, a large Midwestern grocery chain, and stole the data of about 2.4 million credit and debit cards. Financial losses from the unauthorized purchases and cash withdrawals made with the stolen data reached into the millions. Because federal law requires the consumers' banks to indemnify the consumers for losses incurred as a result of fraudulent activity, four

banks brought a class action lawsuit against Schnucks to recover their losses. The plaintiff banks had no direct contract with Schnucks, and instead resorted to common-law negligence/tort claims, common-law contractual claims, and several claims under Illinois statutes. The Seventh Circuit affirmed the lower court's decision to dismiss all claims, and its decision on the economic loss doctrine bears some discussion. The federal appellate court anticipated that the high courts of both Illinois and Missouri would reject imposing tort liability under these circumstances.

[Read the article.](#)

BofA's Merrill Admits Misleading Customers, to Pay \$42 Million SEC Fine

The Merrill Lynch unit of Bank of America Corp. agreed to pay a \$42 million fine under a settlement with the U.S. Securities and Exchange Commission for misleading brokerage customers about which firms processed their trades, according to a [Reuters report](#).

Reporters [Lisa Lambert](#) and [Jonathan Stempel](#) write that Merrill "fell far short of the standards expected of broker-dealers in our markets," preventing customers from making informed decisions about their orders and broker-dealer relationships, according to Stephanie Avakian, co-director of the SEC

enforcement division.

“The SEC said the masking ran from May 2008 to May 2013, and that Merrill kept it hidden after it ended. It said Merrill falsely told customers that more than 15.8 million orders worth over \$141 billion had occurred in-house,” according to the reporters.

[Read the Reuters article.](#)

Citigroup Agrees to Pay Fine Over State Libor Probes



Image by [Mike Mozart](#)

Bloomberg is [reporting](#) that Citigroup Inc. agreed to pay a combined \$100 million to 42 U.S. states to resolve a probe into fraudulent conduct tied to interest-rate manipulation that affected financial instruments worth trillions of dollars.

The states had alleged Citigroup misrepresented the integrity of the Libor benchmark to state and local governments, not-for-profit organizations and institutional trading counterparties, sometimes to protect the bank's own reputation, reports [Erik Larson](#).

"The accord is the latest development in probes by governments around the globe into manipulation of benchmark interest rates, one of the key scandals that led to a cultural overhaul of the industry over the past decade," Larson writes. "Global fines have topped \$9 billion. In October, Deutsche Bank paid 45 states \$220 million in penalties and disgorgements to resolve U.S. and U.K. probes."

[Read the Bloomberg article.](#)

Dallas Attorney Indicted for Allegedly Stealing From Client

Dallas attorney Walter Thomas Finley was indicted after police said he stole \$365,000 from a client, according to Dallas-Fort Worth NBC affiliate [KXAS](#).

"The indictment came weeks after the FBI seized money from the lawyer in a separate case, according to forfeiture.gov, a government website that posts seizure notices," writes reporter [Scott Gordon](#).

Finley, 70, is charged with felony theft in a case involving the trust fund of an East Texas woman. The woman's family gave Finley \$416,000 in late 2012 to set up the fund and make quarterly payments to her, but he stopped after a year, according to a Highland Park police report and court records.

[Read the KXAS article.](#)

Defrauded Students of For-Profit Schools Will Stay Indebted, Judge Rules

Courthouse News Service [reports](#) that Education Secretary Betsy DeVos need not provide full debt relief to more than 60,000 defrauded students, but she must stop collecting on their loans, a federal judge said in court Monday.

A proposed class of borrowers had asked U.S. Magistrate Judge Sallie Kim to revive an Obama-era policy that promised full debt forgiveness to students defrauded by the now-defunct, for profit Corinthian Colleges, according to reporter [Nicholas Iovino](#).

Kim sided with the federal government's position that returning to the "status quo" means delaying processing claims for debt relief, not going back to the Obama-era policy of forgiving all loan debt. She acknowledged that borrowers will still suffer harm to their credit and interest growing on their loans, even though she has ordered the government to stop collecting.

[Read the CNS article.](#)

Wells Fargo Not the Only Bank to Have Created Unauthorized Accounts – But Regulator Won't Identify Others

A federal bank regulator that has fined Wells Fargo more than \$500 million over its creation of unauthorized accounts and other consumer abuses has found evidence of sales practice problems at other large and midsize banks – but is refusing to name those institutions, reports the [Los Angeles Times](#).

The Office of the Comptroller of the Currency found “bank-specific instances of accounts being opened without proof of customer consent” as part of a review of more than 40 banks spurred by the Wells Fargo scandal, according to reporter [James Rufus Koren](#).

But an agency spokesman said the agency will not be naming the banks where it found potentially unauthorized accounts or providing details on banks' specific conduct.

[Read the LA Times article.](#)

SEC Litigator Jessica Matelis Rejoins Foley in Washington, D.C.

[Foley & Lardner LLP](#) announced that Jessica Matelis, who most recently served as a senior counsel in the Division of Enforcement at the U.S. Securities and Exchange Commission, is joining the firm's Washington, D.C. office as a partner in the Securities Enforcement & Litigation Practice.

While at the SEC, Matelis led investigations into a wide range of potential violations of the federal securities laws, including financial statement fraud, disclosure fraud, auditor misconduct, insider trading, conduct of investment companies and investment advisors, and market manipulation. In addition to her investigations, Matelis litigated a complex, multi-year insider trading case in the U.S. District Court for the Central District of California.

Prior to her time at the SEC, Matelis spent more than 10 years in private practice at international law firms in Washington, D.C., including a four-year stint as an associate at Foley. In her private practice, she represented public companies, boards of directors, officers, investment advisors, and accounting and auditing firms in various securities regulatory, enforcement and compliance matters before the SEC, the U.S. Department of Justice, the Public Company Accounting Oversight Board, the Financial Industry Regulatory Authority, the Federal Deposit Insurance Corp., and other federal and state regulatory agencies.

“Jessica’s experience in private practice combined with her deep knowledge of the SEC enforcement process further strengthens and diversifies the firm’s Securities Enforcement & Litigation Practice,” said the group’s chair, Beth Boland. “Our attorneys and clients will particularly benefit from her recent government experience, and we are pleased to welcome her back to Foley.”

“The unique experiences and insights that Jessica brings from her time at the SEC in Washington, along with her specialized knowledge of the securities industry, enhances our effectiveness in representing clients before the SEC and PCAOB,” said Scott Fredericksen, managing partner of Foley’s Washington, D.C. office. “Jessica adds significant expertise to the firm’s already deep bench of securities and enforcement litigators and further expands the capabilities of our securities team in D.C.”

Goldman Sachs Vice President Charged With Insider Trading

Reuters [is reporting](#) that federal prosecutors charged a vice president at Goldman Sachs Group Inc. on Thursday with insider trading by illegally using non-public information about several companies that were clients of the investment bank.

Woojae “Steve” Jung, a 37-year-old Korean citizen, is charged with trading illegally on confidential information relating to upcoming transactions and merger negotiations that he was

privy to through his job. Reporter [Brendan Pierson](#) writes that Jung made more than \$130,000 through the scheme.

Prosecutors said Jung conducted his trades through a brokerage account in the name of a friend living in South Korea. The brokerage account was accessed from internet addresses that were traced to Jung, according to the U.S. Securities and Exchange Commission.

[Read the Reuters report.](#)

Seizures, Regulatory Scrutiny Follow Cryptocurrency Hype



State and federal authorities are picking up the pace of investigations into cryptocurrency markets, digital investment promotions and so-called initial coin offerings (ICOs) after being caught unprepared by the rapid adoption of cryptocurrency and blockchain technology behind digital currency transactions, according to a post on the website of [Androvett Legal Media & Marketing](#).

“Until now, the explosive growth and soaring cryptocurrency valuations have occurred within a Wild West atmosphere of limited regulatory oversight,” said white collar defense attorney [Douglas Richards](#) of Denver-based [Richards Carrington](#). “Regulators have taken notice and we’re starting

to see a broad range of state and federal enforcement actions.”

State securities regulators in Texas, Colorado and other states recently took part in “[Operation Cryptosweep](#),” a coordinated crackdown targeting fraudulent cryptocurrency operations that has resulted in the shuttering of certain investment websites and seizures of cryptocurrency and other assets. On the federal level, the Securities and Exchange Commission is examining whether certain cryptocurrency should be considered a commodity or an investment vehicle, which could trigger extra regulatory oversight.

“Blockchain technology and cryptocurrency are playing an important place in our modern economy, but parties raising funds through ICOs and individuals interested in cryptocurrency as an investment need to make sure they understand what they’re trading and do everything they can to protect themselves from fraud and regulatory scrutiny,” Richards said.

Square Paid Big for a Super Star Tech Lawyer, Then She Quit After 16 Months on the

Job

Just 16 months after joining the \$22.5 billion payments company Square as general counsel, Hillary Smith stepped down from the role, reports [Business Insider](#).

Smith joined Square in 2016 with an \$8 million compensation package. She'll stay on as an employee at the company through September to manage the transition, according to reporter [Becky Peterson](#).

"It's unclear why Smith is stepping down. She did not respond to a request for comment and Square would not provide details about the change in its top legal post, which will be occupied by Sivan Whiteley," Peterson writes.

[Read the Business Insider article.](#)

A Lawyer for Payday Lenders Is Confirmed for FTC Job

The new director of the Federal Trade Commission's consumer protection unit, a watchdog with broad investigative powers over private companies, stands out even in an administration prone to turning over regulatory authority to pro-industry players, reports [The New York Times](#).

Andrew M. Smith was part of the legal team that in 2012 defended AMG Services, the payday lender founded by the

convicted racketeer Scott Tucker, whose predatory practices against impoverished borrowers eventually led to a \$1.3 billion court-ordered settlement, the biggest in the commission's history, , according to reporters [Glenn Thrush](#) and [Jack Nicas](#).

Because of his representation of companies like Facebook, Uber and Equifax, banks, lenders and credit-reporting agencies – all companies with matters before the commission – he will have to recuse himself from dozens of cases.

[Read the *Times* article.](#)

GC and CEO of Bank That Hid Drug Cash Face U.S. Criminal Probe

Bloomberg [is reporting](#) that the Justice Department is considering whether to accuse Rabobank NA's ex-Chief Executive Officer John Ryan, former general counsel Dan Weiss and its past compliance chief of obstructing U.S. bank examiners' efforts to dig into the firm's failures to prevent money laundering.

Reporters [Jesse Hamilton](#) and [Tom Schoenberg](#) based their report on information from two people with knowledge of the probe who asked not to be named because the investigation is ongoing.

“The potential charges could close a dark chapter for Rabobank

Groep, a Netherlands banking titan with \$723 billion of assets,” they write. “Thousands of miles away from its Dutch headquarters, California bank branches near the Mexican border became a pipeline for the profits of organized crime starting in 2009, according to the Justice Department. In February, the U.S. unit admitted guilt to felony conspiracy allegations and agreed to pay \$369 million, including a \$50 million OCC fine.”

[Read the Bloomberg article.](#)

Banks Cannot Skirt Contract Remedies in Data Breach Suit Against Retail Merchant



Attempting to advance a novel theory of law, several banks filed a class action in Illinois federal court against a grocery store chain arising out of a data breach that resulted in the theft of 2.4 million credit and debit cards, reports [Jackson Lewis PC](#).

After the breach, the banks were required to issue new cards and reimburse its customers as required by federal law for financial losses due to unauthorized purchases, estimated by the plaintiffs to be in the tens of millions of dollars. With the litigation, the financial institutions sought to recover some of their costs from the grocery store chain that was allegedly responsible for the loss of the data.

[Jeffrey M. Schlossberg](#) explains the outcome: “Despite seemingly compelling arguments, the Seventh Circuit ultimately upheld the lower court’s dismissal of the banks’ claims finding that they were bound by the contractual provisions of their agreements. Essentially, the court ruled, by joining the credit card system, the banks accepted some risk of not being fully reimbursed for the costs of another party’s mistakes.”

[Read the article.](#)

Look Before You Sign ... the Pitfalls of Personal Guaranties

Although limited liability protections normally insulate business owners from personal liability for their business’s debts, lenders routinely require a small business owner to sign a personal guaranty as a condition for a commercial loan to the business entity, points out [Thomas C. Wolff](#), writing for [Ward and Smith](#).

This requirement essentially circumvents the statutory protection against personal liability, he writes.

“Any potential guarantor should read a proposed guaranty agreement carefully and understand each contractual provision. Often the terms can be negotiated, even if a business entity is a startup and has limited assets and income,” writes Wolff.

In the article, he discusses continuing guaranties, unlimited and limited guaranties, joint and several liability, the obligation of contribution, guaranty of payment vs. guaranty of collection, the lender's right to set-off, and the death of a guarantor.

[Read the article.](#)

With Its 2018 Tax Cut, Wells Fargo Could Pay Its \$1 Billion Fine 3 Times and Still Have Cash to Spare

The \$1 billion fine levied by federal regulators against Wells Fargo is unlikely to hobble or even slow down the bank, thanks to the massive corporate tax cut passed by Congress last year, reports [The Washington Post](#).

Reporter [Rena Merle](#) explains: "Just in the first quarter, Wells Fargo's effective tax rate fell from about 28 percent to 18 percent, saving it more than \$600 million. For the entire year, the tax cut is expected to boost the company's profits by \$3.7 billion, according to the Goldman Sachs report."

"Despite its regulatory headaches, Wells Fargo remains massively profitable. The bank reported Friday that although the fine drove down its first-quarter profits by \$800 million, it still netted \$4.7 billion," Merle writes.

[Read the Post article.](#)

Wells Fargo Faces \$1 Billion Fine to Settle Loan Abuses



Image by firedoglakelakedot.com

[Reuters reports](#) that Wells Fargo & Co. has been offered a penalty of \$1 billion by regulators to resolve outstanding investigations related to auto insurance and mortgage lending abuses, the third-largest U.S. bank by assets said on Friday.

The news agency previously had reported that the Consumer Financial Protection Bureau and Office of the Comptroller of the Currency were preparing a fine of up to \$1 billion for Wells Fargo's auto insurance and mortgage lending abuses.

"The U.S. Federal Reserve has also imposed restrictions on the bank's growth, forbidding it to expand its balance sheet

beyond 2017 levels until it makes internal changes that addressed its board and risk management,” according to the latest Reuters report.

[Read the Reuters article.](#)

May 3 Live Event: Explore the Value of ESOPs By Studying a Proven Implementation



Bloomberg Tax will present a live event designed to help business owners, tax, finance directors, in-house counsel, bankers and investment professionals including PE & hedge fund managers to learn how employee stock ownership plans (ESOPs) can provide more than just an exit strategy. They may be an opportunity for a growing business and its employees, the company says.

The event will be Thursday, May 3, 2018, 2:30-6 p.m., at Bloomberg L.P., 120 Park Avenue, New York 10165.

[“New Era of Material Wealth Creation With ESOPs”](#) will look at all the benefits associated with ESOPs, including top performer retention, growing capital, and future planning.

Presenters will move past theory into the practical implementation of an ESOP. Through a case study, thought

leaders will explore all of the stages of the process, including crafting the right design, securing employee buy-in, and more, Bloomberg says on its website.

[Register for the event.](#)

Enforcement Actions at Consumer Watchdog Agency Halt Under Trump



*Image by
Aliman Senai*

In the 135 days since the Trump administration took control of the nation's consumer watchdog agency, it has not recorded a single enforcement action against banks, credit card companies, debt collectors or any finance companies whatsoever, according to an [Associated Press review](#).

Reporter Ken Sweet writes that's likely no fluke: "Mick Mulvaney, appointed acting director of the Consumer Financial Protection Bureau in late November, promised to shrink the

bureau's mandate and take a much softer approach to enforcement, and records reviewed by The Associated Press indicate he has kept his word."

The bureau issued an average of two to four enforcement actions a month under former Director Richard Cordray, President Obama's appointee. But the database shows zero enforcement actions have been taken since Nov. 21, 2017, three days before Cordray resigned.

[Read the AP article.](#)