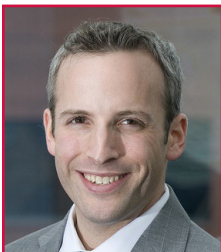


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FOCUS



A Message From the President

Daniel R. Slawe

Dear ACC Greater Philadelphia Members and Friends:

As we enter the Association of Corporate Counsel's 50th year and ACC Greater Philadelphia's 39th,

Daniel R. Slawe
Assistant General Counsel,
SAP America, Inc..

I want to start by thanking you all for electing me to serve as Chapter President for 2022. It has been an honor and a privilege to serve in a leadership capacity for our chapter for the last 9 years and I am so humbled to try to fill the shoes of the many great Chapter Presidents who have come before me. Each has left the Chapter much better off than when they arrived, and I will work tirelessly to do the same. I won't do it alone, but with the help of our dedicated team of chapter leaders, network leaders and, of course our Chapter Administrators, who all work as a team to make ACC Greater Philadelphia one of ACC's premier chapters – not to mention an ACC Gold Chapter of Distinction!

Our team will continue that dedication this year by focusing on what we do best: Providing amazing **education, networking, and advocacy** opportunities for our nearly 1700 in-house legal and legal operations members. We will have plenty of engaging and informative CLE programs (free to our members) tailored to the in-house bar, including institutes, webinars and roundtables. In May we will host our **13th Annual In-house Counsel**

Conference in-person at the Pennsylvania Convention Center once again! We also look forward to getting back to face-to-face social programming – such as our popular monthly **Meet Your Counterparts** events, our **Spring Fling** and our **Fall Gala** – and doing so safely.

Another thing our Chapter does best is innovating. We do not simply hit the repeat button and run the same programming year after year. Just as our membership evolves, so does our programming. For example, we recognize that in-house lawyers are being asked to do so much more in the area of **legal operations and legal technology**. All of our positions have been fundamentally changed by the proliferation of technology and services designed to help us operate more efficiently and more effectively. I am proud to announce that our first-ever **Legal Tech Expo** will take place at this year's In-house Counsel Conference! A full day of product demos and sessions is planned to help you make sense of the options that are available. More details to come... In addition, we will continue our Chapter's renewed and explicit dedication to fostering a **more diverse, inclusive, equitable, and accepting legal community** by holding our **First Annual Diversity Summit**, a dynamic in-person event taking place on February 7. The Summit will bring together in-house counsel, law firm leaders, and DIE&B/Human Resources professionals for next-level presentations and interactive conversations about DIE&B.

In-Transition Membership

If you are a member who is in transition, take advantage of the opportunity to continue your membership **AT NO COST**. ACC will waive dues for existing members for up to one year, and offer a reduced membership rate for up to an additional two years if you are displaced but actively seeking a new in-house position. [[In-Transition/Retired Application](#)] For more information about In-Transition Membership, please visit: <https://www.acc.com/membership/become-a-member/in-transition-member>.

Retired Membership

Recently retired ACC members may continue their membership at a **reduced rate of \$95 annually**. You can email membership@acc.com to request an invoice for this great rate, or submit the [In-Transition/Retired Application](#), and be sure to select the RETIRED option. For more information about Retired Membership, please visit: <https://www.acc.com/membership/become-a-member/retired-member>.

If you have questions, please contact ACC's membership department at 202.293.4103, ext. 360 or at membership@acc.com.

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I cannot write this letter without recognizing the difficult and, frankly, strange times the world has gone through over the last two years. As we enter our third year grappling with the **COVID-19** pandemic, it is so important that we **come together** as a legal community and **support each other** both professionally and personally. I hope that ACC Greater Philadelphia can help in that regard with two major areas of focus:

First, we recognize that, with 1700 members, it is unrealistic to expect everyone to share the same personal and professional interests. We have long maintained [Practice Area Networks](#), which have helped organize our CLE programming. However, we know that these networks can be so much more! Over the course of this year, we hope to foster our Practice area Networks into **Communities of Practice**, which can **meet regularly**, share knowledge via our **Network Forums**,

and **socialize** on a smaller scale. I am so excited to see our members come together in a more targeted fashion!

Second, the pandemic – and associated uncertainty, disruption and isolation – have taken an incalculable toll on the physical and mental well-being of our members. Impairment in our profession is at an all-time high and, again, we feel that our chapter can help. To that end, we have formed a brand-new **Lawyer Health and Wellness Committee** (a.k.a. the President’s Council on Attorney Fitness)! The committee has been tasked with finding opportunities to improve the health and wellness of our members. We will strengthen our relationship with **Lawyers Concerned for Lawyers**, conduct regular **yoga and meditation** sessions, expand our Team DELVACCA activities to **organize local runs** around the community. We’ll even have **standing tables** at our in-person CLE events! We’d love to have more people

involved in coming up with more great ideas. Please reach out if you are interested.

In coming months, you’ll be hearing more about these efforts as well as other ideas to keep **ACC Greater Philadelphia moving forward**. Making all these initiatives a success will require the efforts of a large number of people, and I thank you in advance for your feedback, your ideas, your help and support. You can always reach me directly at daniel.slawe@sap.com or 610.661.1591. I look forward to seeing all of you over the course of the year and I hope you will stay actively engaged in the wonderful opportunities that our Chapter has planned for 2022!

All my best,



Daniel R. Slawe
President
ACC Greater Philadelphia

Effective Risk Transfer to a Business Partner or Service Provider

By Pamela D. Hans, Managing Shareholder (Branch), Anderson Kill

When a loss or liability occurs that involves business partners, service providers, or subcontractors, the first question put to in-house counsel is often whose problem is it?

While the answer is always at least partially “ours,” the solution depends in large part on your company’s risk transfer arrangements – your own insurance, and any risk transfer provisions woven into contracts with other parties. Effective risk transfer can minimize your costs.

Risk is typically transferred through insurance, indemnity agreements, waivers of subrogation and limitation of liability. These approaches can be used individually or in combination with each other. We will focus the discussion on indemnity and additional insured agreements.

1. Indemnity Agreements.

The simplest way to transfer risk is to require that your counterparty defend and indemnify you in the event of a loss,

through an “indemnity and defense” or “indemnity” provision within the contract. These can be drafted such that the duty to defend and indemnify is tied to the negligence of the indemnitee (the party being indemnified). In some cases, indemnity provisions are drafted so that the indemnitee is fully indemnified so long as the loss was not caused by the sole negligence of the indemnitee.

This contractual provision has the benefit of preserving your insurance in the event of a loss, establishing a contractual obligation for your counterparty to defend and indemnify, and also triggering an obligation for your counterparty’s insurance to pay for that defense and indemnity obligation through the “insured contract” provision in the typical commercial general liability insurance policy.

When drafting indemnity agreements, it is important to understand limitations imposed by law. In Pennsylvania, an agreement that indemnifies an architect,

engineer, or surveyor for any damages arising from either the preparation or approval of designs or the giving of or failure to give instructions is void as against public policy and wholly unenforceable. ([PA ST 68 P.S. § 491](#)). The legislature in Pennsylvania is also considering a more comprehensive anti-indemnity statute. Practitioners should be mindful that the scope of permitted indemnity may be in flux.

Indemnification may also prove of limited value if the indemnifier’s insurance is inadequate or refuses coverage. For that reason, companies obtaining services or work from counterparties often include insurance provisions in their contracts to move the risk of loss from their own insurance program to a counterparty’s. This can be done by requiring that your counterparty purchase insurance and/or name you as an additional insured.

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a. Insurance requirements

Imposing a straightforward requirement that your counterparty purchase insurance as a condition of embarking on a project is a means of making sure that in the event of a loss for which the counterparty is responsible, it will have adequate insurance to respond. This method of risk transfer does not necessarily give you rights under the counterparty's insurance policies. However, in terms of balance-sheet protection, making sure that your counterparty has sufficient insurance to cover its liabilities in the event of a loss is a basic way to protect your own balance sheet.

b. Additional insured requirements

Contracting parties sometimes ask to be named as an additional insured on their counterparty's insurance. While this is thought by some to be a "belt and suspenders" to the protections afforded by an indemnity and defense provision in the contract, it adds potentially crucial advantages. First, it removes ambiguity as to whether the indemnified party – now an "additional insured" -- is covered by the named insured's policy. Second it empowers the "additional insured" party to sue for coverage in the event of a coverage denial.

Additional insured status can be achieved by obtaining a counterparty's agreement to provide a specific additional insured endorsement. Some contracts specify the endorsement by form number. Sometimes, however, the named insured seeks but cannot obtain the specified AI endorsement and accepts a different but

substantively similar one. That can lead to a breach of contract dispute.

It is not necessary to specify the AI coverage by form number or name when seeking additional insured coverage. Instead, parties may describe in ordinary terms, the scope of additional insured coverage that is required and agreed to by contract. Through this approach, although the parties do not have the comfort of specifying a particular additional insured endorsement, they may avoid disputes with their counterparty and insurance company about the agreed upon and provided scope of additional insured coverage.

How (and why) does this work? Certain insurance policies automatically make entities that the policyholder is contractually obligated to name as an additional insured, additional insureds under the policy. Understanding the specifics of your counterparty's insurance program and the type of additional insured coverage that it can automatically grant through contract can help you to avoid conflict in the event of a loss.

One potential pitfall of requiring additional insured status is that absent careful drafting, a conflict may arise between the indemnity provision and the additional insured requirements. For example, the additional insured coverage required may be narrower than the protections provided through the indemnity and defense provision -- which may open the door to disputes where none should arise. Careful attention to the substance of an agreement – matching the scope of additional

insured coverage to the scope of indemnification – is more effective than a rigid requirement to obtain a specific endorsement form number.

When assessing the question of "who's problem is it", it is critical to understand what insurance policies are implicated and how they should respond to a tender. A careful analysis of any reservation of rights or coverage denial and an informed response to it, can make the difference between risk that is retained and risk that is transferred.

When assessing a counterparty's response to a tender under an indemnity agreement, business considerations may call for a more nuanced approach. While the critical assessment of a response to a tender is still appropriate, business relationships or litigation strategy may call for a response that is informed by legal considerations and guided by business.

As in contracts generally, clarity and precision with respect to indemnification and additional insured provisions minimizes the likelihood of conflict and expensive litigation. The more transparency you have into the named insured's coverage, the more likely that coverage is to respond effectively to your loss or liability.



Pamela D. Hans,
Managing Shareholder-
Philadelphia Office,
Anderson Kill



ACC Association of
Corporate Counsel
GREATER PHILADELPHIA

March 17, 2022
Women's Summit

Resilience in Action: Boosting Your Superpowers

The Essential Lawyer's Toolkit: The Home/Mobile Office

By Greg Stern, Consultant, Chubb Group, and Former Global Integration Counsel

In-house counsel often find that they do a substantial amount of work remotely, either at home or while traveling. So, it makes sense to have both the right equipment and the systems in place to do that as efficiently and easily as possible.

Most of you likely have laptops supplied by your company. But most of you can also access and work on company files through the cloud, meaning you can use a variety of gear to access it.

Since work-from-home or on-the-road situations often occur on a spur-of-the-moment basis, it is sensible to ensure you have strategies to enable you to pack up quickly and do your work comfortably, wherever you may be.

Home office physical requirements

To the extent practicable in your own home situation, you should set aside a specific place to serve as your home office.

Having a designated office space is important because being able to focus on your work — to immerse yourself in a [state of flow](#) — is one of the best productivity hacks you can master.

Try to arrange an office space that is quiet, has adequate lighting and ventilation, and, preferably, a door you can close to let housemates know you are at work.

I have a spare bedroom available because our children have moved on. In that room, I have two different “workstations.” One is a comfortable reading chair, where I can do research, planning, brainstorming and mind-mapping, videoconferencing, and short segments of typing.

The other is a standing desk, which I usually use in the standing position, and a comfortable and supportive office chair. Placed on the desk is a stand designed to raise my laptop closer to a more ergonomically correct eye level, and a good keyboard and trackpad connected by Bluetooth to my laptop.

Don't overlook the benefits of freshening your perspective by occasionally taking your work into another room in your house, or your garden, or even at a local coffee shop. I have found this can be an invigorating change.

If you spend any meaningful amount of time working at home, you should look into setting up your workspace(s) in a way that will work best for you.

Gear

Anecdotally, more employers are taking a Bring Your Own Device (BYOD) approach to personal equipment.

If your employer allows it, take full advantage; study what is currently available and select gear that not only will make your work easier and more fun now, but will also be future proof for at least three or four years.

If BYOD isn't currently approved, be patient. I think the BYOD approach will soon become much more widespread.

Laptops

If you have a choice, select a good laptop.

Laptops have become standard issue for most companies, but if you are outfitting your own home office you may be tempted to get one of the new iMacs or similar large desktop computers with a big beautiful screen. Don't do it unless you are lucky enough to be able to get that in addition to a laptop, because you want to be able to take your computer on the road.

While you can use a tablet for many things as a replacement for a laptop, I am always finding things I can do on my laptop more easily. Furthermore, you can get a display for your laptop that will give it the advantages of a large desktop computer but still allow the flexibility of a laptop.

I think laptops with a screen between 13-16 inches are the sweet spot in the

tradeoff between weight and bulk on the one hand and useable screen size on the other.

If you travel a lot, a smaller laptop may make more sense because it will be easier to carry and will fit an airline tray better. But if you do a lot of spreadsheets or side by side document comparisons, you may be better off with the larger size.

Of course, a good convertible or hybrid laptop/tablet like a Microsoft Surface or a Lenovo ThinkPad X1 Yoga can serve double duty as both a laptop and tablet. However, I recommend getting a good, dedicated tablet if you can; in my experience these hybrids are not quite as good as a standalone tablet and laptop combo.

Tablets

Why get a tablet? Tablets are great for reading and research, answering emails, DMs, and the like, marking up PDFs, and taking notes. And some things like making diagrams or flowcharts are much easier and more natural on a tactile surface like a tablet. They can also provide entertainment and leisure reading while on the road.

Here too, size matters. I am an unrepentant tech enthusiast, so I have a 12.9- and a 11-inch iPad Pro as well as one of the new iPads Mini because I wanted to see how different sizes might affect my usage.

Not surprisingly, I like the big Pro for watching movies, marking up PDFs and other documents, and doing other more complicated or simply larger work. I like the mini best for reading and mobility — I can fit it in a jacket pocket without any trouble. But if I could only pick one, it would be the 11-inch, as a compromise solution that can handle both the other use cases, though not quite as well as either.

Printers and scanners

For your home office, I recommend getting a good color laser printer scanner to help you address situations in which

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you need to generate or process paper documents.

I especially like some of the fast sheetfed scanners like Fujitsu ScanSnaps, which can scan stacks of 50 or more pages in just a few minutes and OCR them at the same time. You can couple that with Fax apps on your laptop to meet the increasingly rare times when you might need to fax something.

Headphones

My house is quiet. But if yours isn't, or for occasions when you are on the road and in a noisy airport or other environment, it is nice to have a pair of good active noise canceling headphones or earbuds.

I especially like the ones that offer noise transparency, which manage to do a pretty good job of blocking out background noise but let you hear the flight announcements or conversations you would want to hear.

Smartphones

Finally, make sure you have the best smartphone you can get. These went from being luxuries in 2005 to being necessities now. They are such great utility players, able to do almost anything their larger brethren can do in a pinch. I have typed long memos, scanned documents, modified PDFs, done research, sent email, and so many other things.

In a pinch, even if you have no other tools, you will be able to do your work on a good smartphone.

Travel gear

If you have a good laptop, tablet, and smartphone you are well set, but you will also need at least one bag to carry them.

I don't recommend a satchel or a briefcase with a handle because it will eventually cause shoulder strain. I also don't recommend any bag with one strap, unless it is able to be worn across the body or is very light, for the same reason.

I have a professional looking backpack that I use when I need to take a large amount of gear, and a smaller cross-body bag that I can use with my iPad and Magic Keyboard when I am traveling light.

In each of these, I keep multiple cables, adapters, charging batteries, etc. If you need to go somewhere in a hurry, you will be glad that you had the foresight to consider not only the laptop or tablet you may need, but all the accessories that make them work.

I would enjoy hearing back from some of you on your own recommendations. In the meantime, stay or travel safe.



Greg Stern
Former Global
Integration Counsel

2022 Upcoming ACCGP Events

Visit [ACC Greater Philadelphia](#) for the most current event details or to register for chapter events.

March 15

Litigation CLE Webinar with Dechert (Virtual)

March 17

**Women's Summit
@ Loew's Philadelphia Hotel (In-Person)**

March 23

**GC/CLO Summit with Cozen O'Connor, Dechert,
and Duane Morris @ The Union League (in-person)**

March 24

**Meet Your Counterparts Networking Reception
with Dechert @ P.J. Clark's, Phila. (In-Person)**

March 29

Roundtable with Womble Bond Dickinson

April 1

GC/CLO Lunch Club (In-Person)

April 5

**Meet Your Counterparts Networking
Reception with Duane Morris
@ Top Golf, Mt. Laurel, NJ (In-Person)**

April 6

**Labor & Employment CLE Institute, Part I with
Stradley Ronon and Fisher Phillips (Virtual)**

April 7

**Labor & Employment CLE Institute, Part II with
Ogletree Deakins and Jackson Lewis (Virtual)**

April 12

**IT/Privacy & e-Commerce CLE Webinar
with Saul Ewing (Virtual)**

April 21

Litigation CLE Webinar with Blank Rome (Virtual)

April 26

**Meet Your Counterparts Networking Reception
@ Lola's Garden, Ardmore (In-Person)**

May 4

**Annual IN-HOUSE COUNSEL CONFERENCE
@ PA Convention Center (In-Person)**

May 12

Annual Spring Fling @ Insectarium (In-Person)

Be on the lookout for calendar updates!



New Board Member Spotlight

Gabriel Holdzman,

Senior Vice President and General Counsel, PTC Therapeutics, Inc.

1. Tell us a bit about your current position, and the year that you started it.

I am SVP, Legal & General Counsel – Americas for PTC Therapeutics, Inc., a global biopharmaceutical company focused on rare disorders. I joined PTC in 2018.

2. In what year did you first work in-house, and how did you end up in your current position?

I first went in-house in 2002 when I joined the legal team at AmerisourceBergen, a pharmaceutical distributor. After several successive positions at other life science companies, I was recruited to join PTC.

3. What law school did you attend? Where did you attend college and graduate school? What degrees do you hold?

I attended Delaware Law School in Wilmington. Prior to that I graduated from Drexel University in Philadelphia with a Bachelor of Science in Communications.

4. Can you tell us how you successfully navigated your career from law school to your current position?

The long and winding road from law firm litigator to a general counsel role required a lot of persistence, humility, and intellectual curiosity. It helps to have a good judgment, good business sense and well-developed emotional intelligence.

5. What do you consider to be your most pivotal career move?

The move from working as a litigator to working in-house for a pharmaceutical distributor was transformational. Having the opportunity to work closely with

the business leaders and support their objectives was exciting and rewarding. It set the course for the rest of my career. It was also a terrific introduction to the life sciences industry which is where my focus has remained.

6. What is the best thing about your current job?

I lead an excellent team of lawyers, paralegals, and support staff, and we are all focused on one thing: helping the company discover and develop products for patients with rare diseases. We are passionate about our purpose. Also, the pharmaceutical industry is constantly changing and evolving, which means we must constantly learn and adapt. It is extremely challenging and fulfilling.

7. What is the worst job you have ever had?

During college I worked at a seafood restaurant “shucking” oysters. It was difficult, smelly, and paid poorly.

8. What is the most valuable life lesson you still apply today?

My parents worked all their lives in food service. I watched them struggle to support our family, and I learned much from their example that has informed who I am and how I treat others. I learned about kindness, courtesy, and consideration. I came to understand the importance of good communication skills, as well as the value of the dollar. And I believe I inherited their strong work ethic, grit, and resilience.

9. What do you consider to be the best thing about ACC membership?

The best thing about ACC membership is the supportive network of in-house lawyers. In-house lawyers sometimes lack the resources and camaraderie of a law firm environment, especially in smaller companies. When I have a question or I am facing a new issue, I can always turn

to someone I have met through ACC for answers, similar experiences, guidance, materials or more.

10. What tips do you have for attorneys new to in-house?

Take time to learn the business. Understand the products and services your company offers, and the business objectives. Then focus on the external environment – relevant laws, regulators, suppliers, and competitors. This will equip you to be an effective “business partner.”

11. What are your interests outside of work? What do you do to decompress and relax?

I enjoy time with family. I play guitar. And I study aviation: I have a pilot license and I am working on earning an instrument rating.

12. If I were not practicing law, I... would be starting a business.

13. My favorite vacation spots are:
Road trip!

14. A place I have never been but would most like to visit is:
Israel

15. My all-time favorite movies are:
Too many to say. But if I am going through the channels, I will always stop for *Goodfellas*, *Rocky*, *Silver Linings Playbook*, and *Talladega Nights: The Ballad of Ricky Bobby*.

16. If applicable, please tell us about your pet(s):

Gus is a 90-pound Boxer we rescued from the Montgomery County SPCA. We also have three goats (Betty, Irv, and Myer).

Sponsors for 2022

We thank our 2022 Sponsors for their support of our chapter. Without them, we could not achieve the levels of success that the chapter consistently reaches.

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SILVER



À LA CARTE

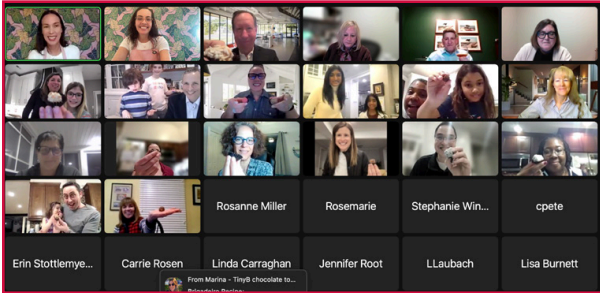
VENDOR



In Case You Missed It

Cozen's Virtual Brazilian Chocolate-making

March 3, 2022

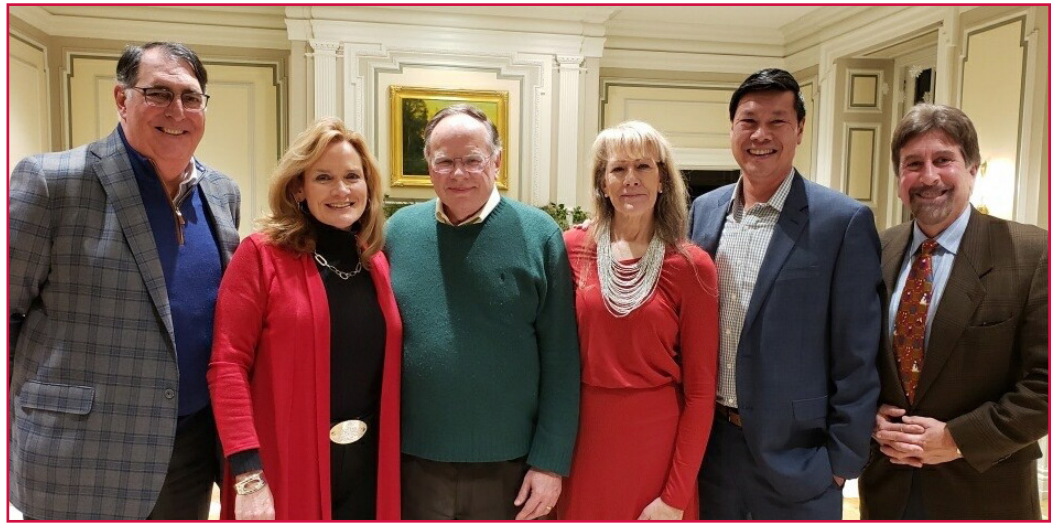


First Annual Diversity Summit

Philadelphia
Westin Hotel
February 7, 2022



**Annual Holiday Party
and Board Installation**
Radnor Valley Country Club
December 14 , 2022



New and Returning Members

Shawn Allison

Victaulic

Andrew Callahan

Cabrillo Coastal General
Insurance Agency, LLC

C. Andrew Cliver

Siemens Medical Solutions
USA, Inc.

Nicholas Collura

Adaptimmune

Jessica Colon

West Pharmaceutical Services,
Inc.

Kevin Coughlin

Draeger Medical Systems, Inc.

Denise DeArmond

EPAM Systems, Inc.

Tori DeMarco

DeLage Landen Financial
Services, Inc

Sarah di Francesca

Incyte Corporation

Eboni Frempong

Subaru of America, Inc.

Chris Hafer

GlaxoSmithKline

Ben Halpert

GoBrands, Inc.

Derek Hardy

Syngenta Crop Protection AG

Sandra Hashima

AmerisourceBergen
Corporation

Kemar Hinds

TE Connectivity

Alice Huang

Independence Blue Cross

Nicole Huerter

International SOS Assistance,
Inc

Eleanor Huyett

Comcast Corporation

Vik Jaitly

Wawa, Inc.

Elizabeth Johnson

ARAMARK Corporation

William Johnston

Toll Brothers, Inc.

Alex Joseph

Hamilton Lane Advisors,
L.L.C.

Parker Justi

Justi Group, Inc.

Brian Kabosius

AmerisourceBergen
Corporation

Pamela Lee

Attorney

Kevin Levine

Sellers Dorsey

Leo Li

FMC Corporation

Jenna Loadman

QVC, Inc.

Madison Melinek

Attorney

Richard Mosback

Delaware River Port
Authority

Laura Najemy

Attorney

Michael Paolillo

Marlette Funding, LLC

Ellen Pierce

Independence Blue Cross

Joanne Radie

AmerisourceBergen
Corporation

Thomas Reilly

Comcast Corporation

Steven Resnick

Angeion Group

Jennifer Reynolds

GF Hotels & Resorts

Sandra Richardson

Russell Investments

Priya Sankar

Passage Bio

David Selinger

GoBrands, Inc.

Lorraine Marie Simonis

Chubb Group

Phillip Skaliy

Hamilton Lane Advisors,
L.L.C.

Teri Spradlin

DeLage Landen Financial
Services, Inc

Laura Stavetski

Hamilton Lane Advisors,
L.L.C.

Gregory Stern

Attorney

Melissa Strickland

PBF Energy

Alfian Teo

FMC Corporation

Andrew Terranova

Ferguson Enterprises, Inc.

Allan Thoen

Siemens Medical Solutions
USA, Inc.

Matthew Vahey

CSL Behring LLC

Stephen Voit

AmerisourceBergen
Corporation

Paul Weiss

PMC Group Inc.

Janine Wilkins

Lehigh Valley Adult Services

Operational GC: Journeying Beyond the Law

By Neil Peretz, Sawa Credit Inc.

As a lawyer, whenever we encounter a new potential legal problem, we are rarely provided answers on the spot. Instead, our most common refrain is, “Let me go look that up and study it.” We answer this way because law is inherently retrospective. We are studying the past to give guidance to our clients for the future.

But what we do when there is not a sufficiently similar “past” to examine?

Recent technologies and new business models are often unaddressed by laws, regulations, and prior cases. In common law jurisdictions, we are particularly challenged because it is this case law that fills the gaps when statutes and regulations are not sufficiently on point.

In civil law jurisdictions, the court may at least have a guiding principle espoused in law that can be applied to a de novo scenario by the court. By contrast, common law courts have less flexibility in their decision-making due to stare decisis.

It’s true some fields are governed by umbrella laws that provide more general principles to follow, such as laws against unfair, deceptive, and abusive Acts and practices (UDAAP). These umbrella laws were created because Congress and regulators could not predict every possible future violation of the law.

Thus, regulators, and possibly private litigants, may develop new causes of action based on broad concepts embodied in these laws. In practice, however, these umbrella laws provide scant prospective guidance because most market participants and litigants wait for regulators to identify which types of fact patterns fall under these umbrella laws.

Given the retrospective nature of law, how should we counsel our clients as in-house attorneys when they are contemplating a new business model or the application of new technologies that are distinct from those covered by existing laws?



In common law jurisdictions, we are particularly challenged because it is this case law that fills the gaps when statutes and regulations are not sufficiently on point.

Rules from the road

Almost a decade ago, I was asked to help a new ridesharing company find a path to legally provide ridesharing services while avoiding becoming saddled by regulations that were inappropriate for their business model. Providing them legal guidance in a truly emerging field taught me many lessons.

1. Set expectations about conflict

In any market where there are incumbent players, someone will be unhappy with a new entrant and even the most airtight legal positioning will not ward off potential litigation and regulatory inquiries.

For example, in ridesharing, the taxi and limousine companies, many of whom held oligopolistic licenses for certain territories, were sure to raise a fuss. Accordingly, my first step in advising my clients was to advise them to set aside a budget for litigation and potential regulatory investigations. Even on the sturdiest legal footing,

my clients would be challenged by those seeking to create a public spectacle or perhaps bankrupt my client.

Make sure your client is ready to invest in a fight!

2. Cover stories matter

Even in a strict liability setting, one’s state of mind and intentions matter to human factfinders. In a regulatory inquiry or tribunal, one will be treated more sympathetically when one has demonstrated a concerted effort to comply with the law before taking any actions.

For the ridesharing company, I advised my client that we should develop a detailed examination of all potentially applicable legal classifications, regardless of how ill-fitting to their business, and either how my client might be able to comply with each or why the classification was inapplicable.

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This study enabled my client to say that its intentions were law-abiding because it did not take a single operating step until it uncovered all the applicable laws and determined how it would comply.

3. Find the best basket

A key goal for the in-house attorney is to examine all possible categorizations that could apply to your business and influence the business model or application of technology itself to fit into the most preferred basket.

You should not just be reactive and feel obliged to find a legal home for any technology or business model thrust at you.

You should not just be reactive and feel obliged to find a legal home for any technology or business model thrust at you. You need to learn the levers in the business model and technology that can be twisted without breaking the economics and market impact that your company is seeking.

Think about how manipulating these levers can potentially shoehorn your business into your most favored categorization or escape from the ambit of the most oppressive regulatory schemes.

In the ridesharing world, for example, we looked at a variety of business categorizations: were we a new kind of common carrier? Could we form a private club of company customers, and would it exempt us from certain rules? If we limited ridesharing to friends, how might one define that term “friend” and would it encompass social media friends or friends-of-friends?

A common theme across many regulatory categorizations that were ill-fitting for the business was that they were all on receiving fares. To escape those categorizations, I suggested changing the business model to eliminate charges for transportation and find other ways to recoup costs.

The result was we launched a free ridesharing service, where riders were given an opportunity at the end of the ride to provide a gratuity to the driver. In order to help everyone assess what might be an appropriate tip, we shared

information about how much others tipped for a ride of a similar length.

4. Train your people’s people

As an attorney, it’s likely you will deal with only the most senior executives in the company or your division. Remember that scores of other team members (perhaps thousands) in your organization are describing your business and business model to the public daily.

In the case of ridesharing, each one of our drivers could be asked by a reporter, regulator, or a spy for a competitor about our business terms and business model. If a single driver were to erroneously report that she received a “fare” instead of an “optional tip,” this would be duly recorded and used as a weapon to undermine our carefully developed regulatory positioning. To address this, we created talking points for all drivers that explained the business model and requested that they pass inquiries about it to a particular senior executive in the company.

Once you develop the appropriate positioning for the company, make sure that even part-time workers can understand it and communicate it clearly and uniformly.

5. Remember the fragility of the commerce clause

My ridesharing client heard about federal laws and license frameworks that sounded on paper, like a regulatory shortcut for the business that could preempt a complicated patchwork of state laws. In reality, the federal government had not occupied the local transportation field, so it was unlikely that a magic federal silver bullet could solve all our regulatory challenges across the country.

But how could I, the in-house attorney, counteract the enthusiasm of the allegedly expert outside counsel?

The answer: Caselaw.

Not surprisingly, we had outside counsel eager to generate fees by studying these federal options and seek vaguely structured meetings with federal officials on our behalf. My client had a very limited legal budget, and I was worried

that the time waiting for the completion of such a study could lead to incorrect representations to investors about our corporate legal positioning.

But how could I, the in-house attorney, counteract the enthusiasm of the allegedly expert outside counsel? The answer: Caselaw.

My law clerk and I looked across the country for cases where a local transportation law violation was preempted by federal law. Not surprisingly, we found extensive caselaw to the contrary. Summarizing the facts and holdings of these cases proved decisive in convincing the business’ senior executives to not rely on a non-existent federal solution to inherently local issues.

6. Remember your audience when trying to change laws

As soon as we launched our service, we actively engaged legislators across the state about how current laws were not well-suited to our new business model. While the legislators were polite, they did not want to hear about new opportunities for societal efficiency that our business offered. Nor were they persuaded that the advent of new technologies necessitates the creation of new laws.

Instead, what the regulators cared about was their voting base. We needed to couch our regulatory requests in terms of jobs we could create and pollution we could reduce, because those messages would resonate with the legislators’ voting base.

Focus legislative advocacy efforts on how you can help the legislator look effective instead of droning on about your new technology.

Conclusion

The core requirement for implementing each of the lessons discussed herein is that you develop a deeper understanding of your business’ economics and building blocks. This represents a great opportunity for you to join the advance party for the next business expedition, rather than being left to pick up the pieces afterward.

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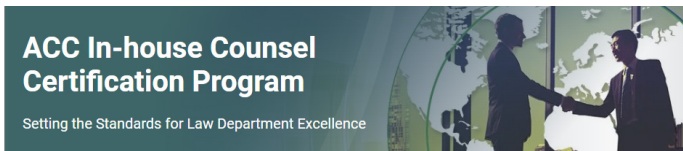
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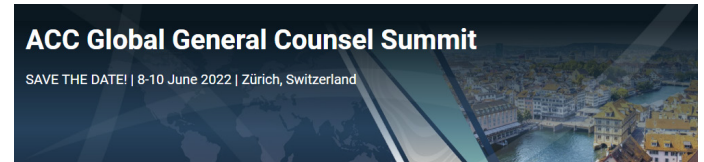
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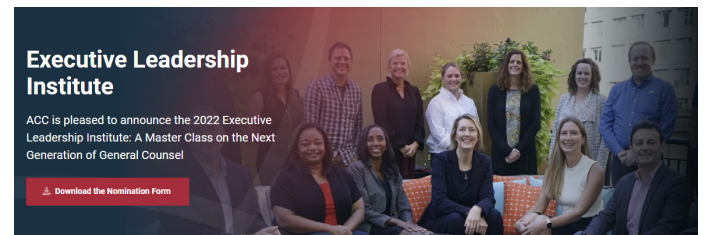
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