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FOCUS

President's Message

Mark Rogers

I've just returned from the ACC Annual Meeting in Seattle, and I'm pleased to report that the meeting was a tremendous success. There were great CLE programs, more networking opportunities, and more sponsors.

A few more notes on the meeting:

- The annual meeting was a reminder of the tremendous value of membership in ACC— membership dues are significantly less than many professional organizations and the CLE costs are a lot lower (the entire conference costs less than many one-day seminars offered by other providers);
- ACC recognizes that the economy is hitting many in-house counsel hard and is working on ways to help keep attorneys involved in the organization through this time of crisis; and
- The number of ediscovery vendors at the meeting continues to multiply, underscoring the need for compa-

nies to take control of data, discovery, and review costs.

Translating these items into the business of the Arizona Chapter:

- We'll stay focused on providing high-quality CLE, designed for you, at a low cost and will hold meeting costs steady for the upcoming year;
- We'll likely increase the number of sponsors this year so that we can offer more opportunities and more types of opportunities (smaller, invitation-only events and larger forums with speakers from the business community) and offer some of these at no cost to attendees;
- We'll continue to watch trends in the profession and do our best to offer CLE and other programs that are timely and relevant (there will be programs on ediscovery and if you'd like to see programs on other topics, please send us an email at accarizona@yahoo.com); and

- We'll support the advocacy and community involvement initiatives of the national organization, notably the "Values Challenge" recently announced—an effort to establish a meaningful dialogue with outside counsel about the economic model around legal billing and law firm profitability.

I am pleased by the number of new members and welcome many in-house counsel, some are new to the Valley and some are new to in-house, to the Arizona Chapter.

Many thanks to Thomson Reuters, which has provided content for this quarter's newsletter. Thomson Reuters has agreed to return as a Gold Level Sponsor of the Arizona Chapter, and we're pleased to have them back. Thank you for your membership, thanks for your participation in Chapter programs, and I hope to see you at an upcoming meeting soon.

Counseling Around Corners

Susan Hackett

Senior Vice President and General Counsel, Association of Corporate Counsel (ACC)

Contact: hackett@acc.com

The economic downturn is more evident everywhere I go. The impact can be seen and felt all around us: closing businesses, laid off workers, less abundance, less “consumerism,” and an increased focus on family time.

My mother recently reminded me of some things I had since pushed aside. Mom, born in the Depression years, grew up in a very large family that barely made ends meet from day to day. They lived without a lot of frills, and only because all of the kids pitched in at home or to earn money. They focused on frugality, getting good value from everything they purchased, doing everything they could with less. I saw the enduring imprint of the Depression on my mom every time she rolled up and “re-gifted” the paper and the ribbon off her birthday package, or made us carry recycled lunch bags, or carefully washed and stored the empty mayonnaise jars for future use. We teased her mercilessly about this kind of frugal behavior.

In the last few months, those of us who grew up with plenty and who have been living large have seen a glimpse of what was bred in many of our elder parents’ bones: a healthy respect for prudence, a less ostentatious lifestyle. We are stepping back from excess and more carefully shepherding our resources because we are worried about what might come. Those of us fortunate enough to enjoy relative security in our jobs, our homes, and our daily routines cannot escape the unfortunate comparison to some of our neighbors and colleagues who have been harder hit.

By reflecting on the past, we can learn prudence relevant to corporate counseling in today’s volatile environment. As you examine your budgets and look at what can or must be trimmed, or what you can do to drive greater value, outside counsel costs often rise to the top of the pile. Empirically, we know that outside counsel costs constitutes more than 50 percent of the budget for more than half of in-house

departments. While many outside counsel are worth every penny they are paid, we all know there are many more who could be managed to spend a bit less for the work they perform, relative to the value of the services provided. Unless we manage toward those efficiencies, we are going to be caught spending our precious time in unproductive arguments over bills.

ACC has resources readily available to you for your consideration as you hone in on costs and increased value:

Hours, Rates, and Budgets

Don’t ask for a discounted rate or a freeze on fees. Many members have indicated that their approach to their firms this year is to ask for a 10 to 20 percent rate decrease. In part, this plan is fueled by the perception (and reality) that rates charged are out of proportion, and that they have grown exponentially for several years without any corresponding increase or change in the value of the services those counsel provide. Services have gotten more expensive and AmLaw and others continue to report that firms and leading partners are sometimes profiting in an almost unseemly manner. While everyone likes a profit, you have to start to wonder, “Who is in control here?”

Every situation has its own unique drivers, and I believe focusing on reducing outside lawyers’ rates is the wrong way to go in establishing the groundwork for successfully controlling costs. In-house counsel are surprised to find that, despite setting lower billing rates, fee ceilings, or blended rates for their work, the overall bill submitted did not get any smaller. Law firms that overcharge for matters and that agree to freeze or reduce their rates, just bill more hours, involve more billers, or do not properly control other expenses. Bills inevitably gravitate toward a certain amount, regardless of what might have been negotiated.

Set a budget for the project and to hold the firm accountable. Talk about what that project or matter is worth. Do not attach a price to the project, nor accept a fee reduction or a request for a discount. Simply state that this is what the matter is worth to you and then ask, “Is the firm willing to take this matter on for this fee?”

You should clearly articulate that you will not allow adjustments or overruns, except in pre-determined (in writing) extreme circumstances. For the price you agree to, they must finish the project, however that is defined. If it is important to you, tell them which lawyers you want in charge of or working on your matter. Make sure you are playing fair: tell them up front that you will not seek a refund or rebate if they resolve the matter more quickly/less expensively. You want them to profit by working efficiently. While some worry that the work done could suffer as a result of this kind of arrangement, I believe this is a myth of convenience, without any empirical merit. Firms that set flat fees for services begin to value lawyers who provide services not based on hours, but on getting clients what they want quickly.

What do you get from this? Much of the time, you will get lower costs. However, even if costs are not reduced, there is something to be said for managing them predictably for your clients in such tumultuous times, since busted budgets and missed financial targets often cause even more trouble. In addition to the surety of bills inline with your expense expectations, you and the firm will not have to waste time arguing over hours or bills.

Establishing a Budget

A project budget is not something that your outside counsel should prepare. It is something you must drive. Outside counsel should be critical in the process of mining their data. Perhaps they have done 437 of these kinds of cases over the last five years and can average some costs for you as a starting point. In-house departments

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must set—and evaluate—the budget based on the value of the work to the client. If a project is only “worth” \$50,000 to the client, what does it matter if the firm says it will cost \$100,000? You either find another firm or settle out now for \$40,000, and spend your time and effort on something that has a higher value.

While many of us are unsure of how to effectively evaluate the “worth” of some kinds of matters, we have to do this in the process of owning our own budgets and costs. If you do not know what a matter is worth, you certainly cannot expect your outside firm to live up to your cost efficiency expectations. We are developing a highly refined set of evaluation tools for our ACC Value Challenge project that will help in-house counsel determine the value of legal work by some other method than the cost of a lawyer’s hour multiplied by the time the lawyer spends working on the matter. If your goal is to set budgets based on incenting efficient performance from all players, inside and out, be sure to visit www.acc.com/valuechallenge for additional tools and insight.

A significant portion of the time you spend with your firms should be focused on evaluation and review of their services. Most of us, however, do very little to tell our firms what they do that we like and what we want them to do differently. The closest we get is paying or disputing the bill. While your outside firms are not blind, they may not focus on what your needs or concerns are unless you tell them. They are aware that companies are tightening their belts, that legal services are a cost center, and that you are under pressure to do more with less, but what do you expect them to propose without guidance from you? Further, if you work in a larger department, you must also have this “evaluation/review” conversation with your own lawyers internally. You want to incent their better management of firms by rewarding those who drive better performance at lower and predicted costs, and reproaching those that do not. Keep in mind that cost overrun by law firms is often enabled by a lack of good in-house management.

You need to consider adopting evaluation/review criteria for both the in-house staff and the outside firm. Make it clear that compensation and continued retention depends on adherence to a set of criteria that you all understand and are equipped to employ. If you are going to tell internal counsel that they must hire firms and return results and rates within set parameters, you have to allow them to select firms that will accept and abide by those terms, which may mean firing more expensive and less flexible firms that you’ve worked with for years. You have to support your staff’s decisions.

Perhaps one of the best exercises you can go through now is that of data mining to review the kinds of work done in the last year and compare it to previous years, looking at a variety of comparatives. Ask your firms to begin to mine their data for you, too. Given that many of them have long experience performing the kind of work you retain them to do, they should be able to clearly discuss specific types of work, what it costs, when it’s successful, who does it best, etc.

What if You are Unable to Hire Outside Help At All?

When you cannot afford to hire expertise, or the extra hands you need to create a solution to a thorny client problem, your friends in the ACC network can help. There is intrinsic value to what you will derive from a conversation with an experienced in-house peer over the value of analysis of a legal problem that an outside firm might offer. ACC offers several ways to leverage your membership:

- Join an ACC committee to find other practitioners interested in the same subject; (There is no additional cost and no limit on the number of committees you can join as an ACC member)
- Attend your local chapter meetings to find similarly situated peers who are confronted with many of the same issues as you;
- Post questions or requests on any of our many Listservs;
- Visit the online Membership Directory to reach out to a company that is likely to have an answer you want, or has the established best practice you would like to emulate;

- Search ACC’s online database of research, which includes thousands of documents such as articles (including back issues of the *ACC Docket*), how-to’s, ACC InfoPAKS, program materials/outlines, collected member forms, and policies, and links to other useful sites or resources;
- Look through ACC’s Leading Practices Profiles for added insight to member and department practices. These practical benchmarking tools capture how members have tackled tough topics through in-depth interviews that address their experience in getting started, key resources they developed, staffing and expense and lessons learned;
- Contact vendors who support ACC for discounts, ideas and access to their research. Especially helpful may be those vendors in the ACC Alliance program that co-market specialized products and services made for corporate counsel and available to ACC members at a reduced cost.

For those of you who have already been hit by the downturn and have lost, or may be in jeopardy of losing your job, know that ACC is standing right beside you. We offer in-transition membership at no cost (so long as you were a member prior to losing your position), and we also offer a variety of services and the best job postings in the business on ACC’s In-House Jobline.

Please share your thoughts on what you are doing to focus on more prudent management of your client’s time and spend. You can reach me at hackett@acc.com.

Counseling Board Members During Troubled Times

Thesis: During troubled times such as these, we in-house lawyers have extra value to impart to the members of our employers' boards of directors.

Introduction: It seems like every company in the U.S. is facing economic difficulties these days. What started out looking like a downturn that largely would be contained in the housing industry now has people talking about a global recession. But, as we know, when the going gets tough, the tough get going. In-house counsel now have lots of extra opportunities to demonstrate the extra value that only in-house counsel can provide.

We have the benefit of providing legal services informed by our day-to-day interactions with the rest of the company's employees. We should spend extra time meeting with the key players in Sales, Marketing, Procurement and Production, getting their sense of how the current economy affects how they do their jobs. Armed with that sharpened insight, we can think about what we should ensure gets reported to the board.

Here are some extras we should provide to the board, right now:

1. Extra Communication. GCs should be having regular telephone calls with individual board members. Ask each member what extra information she thinks the company should add to its regular information flow. Many of your board members serve on other company boards, or are executives at other companies. Ask them what types of extra information they see flowing to and from those companies. Also ask them to think about the different feedback they are getting from customers, suppliers and shareholders. Look for trends. Be sure to keep up with any changes in the types of information that boards commonly receive. For example, it is probably time for the board to get regular updates on the impact of the credit crunch.

2. Extra Hand-Holding. Serve as a sounding board (no pun intended). Members will appreciate knowing that you care, and you will learn even more about what each

one considers important. In turn, you will be able to feed back to Management the thinking of the board.

These conversations will also give you opportunities to remind Management and the board that you represent the whole company. People who are new to serving on a board of directors may labor under the impression that you are Management's lawyer, or the CEO's lawyer. They may be reluctant to be completely open with you. Help them to feel at ease by educating them on the special role of in-house counsel.

3. Extra Documentation. Brush up on the Business Judgment Rule. Now is the time to figure out what the board will later on (e.g., when the D&O strike suit strikes the company) need to prove that it considered when making decisions concerning the company. Get busy providing the information and start documenting that the board is giving it due consideration. By the same token, resist the temptation to recommend that the board impose a bunch of tightened approval requirements on Management. Such requirements will almost certainly impede business, and they increase the risk that someone will violate an approval requirement. In accordance with Murphy's Law, that inadvertent violation will show up as one of the claims in a class action against the company.

Even if your company has a great compliance record, some of the company's practices are probably ripe for review. Executive compensation is one such area. Do you think that any of the company's compensation policies or practices would draw negative attention from shareholders, regulators, politicians, auditors, the press, or class action lawyers? Salaries, perks, deferred compensation, and golden parachutes that seemed reasonable during times of economic growth should be re-thought in light of the current climate. One of the nicest things you can do for Management and the board is to keep them from being ambushed by *60 Minutes* or *The O'Reilly Factor*.

4. Extra-Company Legal Analysis.

Spend extra time communicating with fellow ACC members. Look for trends in what they are doing to help their board members. Take extra advantage of this key benefit of your ACC membership!

Your peers might be doing acquisitions or divestitures. If so, ask them how the terms of their current deals differ from deals they did last year. For example, you might want to get insurance to cover the reps and warranties your company makes. See also the discussion, below, about business risk & insurance brokers.

Find out if indemnification provisions contained in many standard contracts are giving rise to claims and disputes. It might be prudent to consider modifying your company's contract forms, to update all of the risk allocation provisions. Be sure that you get buy-in from your business people before you change those forms. Any increase in the number or severity of risks that you want to shift to the company's customers or suppliers adds to the risk that you will slow down the flow of commerce and be perceived as the "Deal-Prevention Department."

5. Extra-Company Resources. Do you have regular conversations with your company's business risk & insurance broker? If not, now would be a very good time to start. Ask the broker to review your current insurance policies (especially Director & Officer liability) in light of your company's new risk profile. It may be prudent to save some money by dropping or reducing coverage in areas of low risk, while adding or increasing coverage in areas of increased risk. A first-rate risk & insurance broker can be an excellent partner in your quest to protect your company. If you don't already have a relationship with one, email the author for help connecting with one.

HR/Compensation consultants are also great people to add to your professional network. They can help you figure out how to identify and retain the employees who are key to your employer's survival and long-term success.

Conclusion: A little extra time spent on the extras above will make you Extra Valuable during these troubled times. Make sure your executives and your board members know that you are more than just a cost center! You hear people talk all the time about cutting costs. When is the last time you heard anyone say “We just have to cut value?” or “It is time to weed out our top performers?”

The author is the chief operating officer of The General Counsel, LLC. This article was edited by Alan S. Gutterman, publisher of “Business Transactions Solutions”, a publication of Thomson West and a Westlaw Library consisting of transaction forms, checklists, commentary and work-flow tools.

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in California. He is a past board of directors of the ACC Southern California (ACCA-SoCal) Chapter. Contact him at moswald@thegeneralcounsel.net. For further information about Westlaw and “Business Transactions Solutions,” contact rob.gitell@thomsonreuters.com.

Renegotiating and Managing Contracts When Markets Turn Sour

Business and financial markets have turned sour for almost all companies and it is now commonplace for companies to find themselves in a bind with regard to performing their obligations under a contract with a vendor, customer or other business partner. For example, a company may have agreed to sell raw materials to a customer over a two-year period at a fixed price only to find that the deal suddenly became unprofitable because of an unforeseen rise in the company’s costs of procuring the raw materials that it was obligated to sell. At that point the company can continue to try and perform under the contract, and risk significant financial damage to its business, or can simply cease deliveries and hope for the best when the customer begins threatening litigation. A strategy of stopping deliveries is often accompanied by any attempt to find fault on the customer side that would allow the company to claim that the customer has breached its duties under the contract thus relieving the company from its obligations. Unfortunately, arguing over the words of the contract at that point will only benefit the lawyers involved and the better course for the senior management of the company is to attempt to sit down with the customer and try and work out a restructuring of the contract that makes sense for all parties.

When attempting to restructure a problematic contract an attempt should be made to align the interests of both sides and offer the other party, the customer in this case, an incentive to cooperate other than the prospect of costly litigation. In the illustration above the company might offer to substitute a new pricing formula for the fixed price arrangement which offers

the customer reasonable pricing under all market conditions plus assurances that the company will not seek and obtain unfair profits from the restructured relationship. For example, assume the fixed price was \$1.00 per unit and at the time the contract was first entered into the company’s cost was \$0.85 per unit. At that time the company’s profit was \$0.15 per unit. If the market price went down to \$0.50 per unit the company’s profit would increase to \$0.50; however, the contract became unprofitable for the company—and advantageous for the customer—when market prices rose to \$1.50 and looked like they were going to stay there for the balance of the contract term. In that situation the company might suggest that contract price be set at the market price plus 10% which means that the customer would enjoy a price that is in line with the market and the company is entitled to a modest profit at all times during the contract term. The customer waives the right to the attractive pricing in relation to the market that it would have received under the initial contract but is spared the costs of litigating the breach and finding a new vendor. The company gets to keep the customer, and stay in business, but the days of 50% profit margins are gone. The company may throw in other incentives, such as more robust customer service plans, to sweeten the deal.

Obviously there are risks in attempting to informally renegotiate a contract. The major concern is that if discussions are not successful the non-defaulting party, the customer in this case, has been given a substantial amount of information that can be used in subsequent litigation and information provided in good faith as a

basis for striking a new deal can be turned into a harmful weapon in the hands of the party’s attorneys. In many cases, however, the rewards exceed the risks and companies can resolve problems by providing the other side with sufficient information to allow them to make an informed decision and understand the benefits of a proposed compromise.

Several safeguards should be used when entering into negotiations to restructure a troubled contract. First of all, any documents provided to the non-defaulting party that contain sensitive information should be marked “confidential” and only disclosed after the other party has agreed to sign and return a confidentiality and non-disclosure agreement. Second, while it is usually obvious that the reasons for the discussion are that the terms of the initial contract have become significantly unfavorable an effort should be made to avoid using language that the other party might reasonably interpret as being an admission of impending non-performance such that the other party might claim anticipatory breach. Third, try to continue complying with the terms of the contract as they stand during a limited negotiation period even if this means incurring modest losses on the contract during that time. If possible, start talking about restructuring a contract as soon as it appears that problems are on the horizon but before they reach a crisis level. Fourth, try and determine if the other party has specific problems of its own that might be solved or managed in some way during the negotiation process. For example, the other party might have an immediate need for cash that might open

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the door to discussing a buyout of the contract with an immediate lump sum payment that represents a substantial discount from the costs of performing for the entire term. Finally, if litigation is a real possibility and there are legitimate concerns about misuse of information disclosed in good faith consider holding the discussions through a mediator. A mediator is not only trained to get both parties to find common ground, and ignore emotions and anxieties, but it is also possible to have discussions with a mediator protected as confidential and privileged so that they do not later come back to cause harm in the event of litigation.

Consideration should also be given to other contract-related issues and problems that may arise when markets turn crazy. Things that you might consider include the following:

1. Review representations, warranties and covenants in major agreements to ensure that the company remains in compliance at the current time and that anticipated changes in business and financial condition of the company will not trigger a default in the foreseeable future. If a potential issue is identified pro-active steps should be taken to contact the other party to the agreement before a crisis emerges in order to arrange for a modification to the terms or a waiver. Remember, however, that the other party may be seeking a way to exit the contract due to changes in its own situation and any communications should include a potential solution to the issue and acceptance of the fact that it may just be the first step in restructuring the entire arrangement. Dispute resolution provisions in the contract should be reviewed and preliminary litigation plans should be prepared in the event that less formal discussions are not successful. By the way, representations, warranties and covenants provided by other parties should also be reviewed to determine whether they might be heading toward a default of their own.

2. If the company's performance under a major agreement turns on the ability of another business partner, such as a supplier, to fulfill its promises it is important to take a hard look at the contract with that business partner and conduct some basic business and financial due diligence to ensure that market problems will not cause the partner to declare a default. Hopefully the contract with the business partner calls for delivery of regular financial information. If it does and reports are delayed this may be a "red flag" of potential problems.

3. Some of the company's customers may seek to get out from under payment obligations by making warranty claims based on purported defects in the company's products. If elements of the company's products are provided by third party vendors the contracts with those vendors should be checked to ensure that indemnification provisions are adequate and that the vendors are obligated to provide necessary support so that customers are not able to back away from their obligation to pay for the products.

4. Many contracts include obligations on the company to obtain and maintain various types of commercial liability insurance. Given the issues that have arisen with many major insurance carriers attention should be paid to the company's insurance portfolio and communications should be made to the company's insurance broker to verify that all coverage remains in effect and that the chosen carriers are financially able to meet their obligations. If required insurance is coming up for renewal it may make sense to begin shopping around well in advance of the policy expiration date. If a change is made make sure that the contract partner is given appropriate notice.

5. Review the entire roster of parties to major contracts with the company to identify any business partners that are known to be experiencing financial difficulties and make sure that any potential contract claims against them are documented and asserted as quickly as possible. One of the goals is certainly to perfect any legal rights against the

partner in the event that it goes into bankruptcy; however, every effort should be made to have the complaint accompanied by ideas to resolve the problem without forcing the partner into bankruptcy where the company may find that its rights are diluted or completely overwhelmed by the claims of other parties. Even if the company cannot assert any contract claims it may be a good time to use a bit of leverage to force the other party to negotiate pricing and other terms in a way that is more favorable to the company.

6. If the company itself is having business or financial difficulties make sure that there is an effective communications policy for sharing information with contract partners to minimize the risk that customer, suppliers and other strategic alliance partners do not begin looking for ways to void their contractual obligations to the company. Major contracts should be carefully scrutinized to identify all important ongoing obligations to make sure the company does not inadvertently let something slip that can be used as an excuse to trigger a relationship crisis around the contract.

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Rights of Publicity

For this month's Westlaw column, I'm focusing on how the right of publicity is defined, argued and where it's headed. Attorney Mark Lee has been closely involved in right of publicity matters in recent years, both in and out of court-rooms all the way to the United States Supreme Court as a litigator, author, lecturer and consultant for states looking to define their laws. Lee, partner at Manatt Phelps and Phillips, LLP in Los Angeles, has a client list that includes Tiger Woods, Barbra Streisand and the estate of Elvis Presley.

He's also the author of *Entertainment and Intellectual Property Law*, published by West.

"The right of publicity is probably the newest form of intellectual property recognized in the United States," says Lee. "I also think it's the most intuitive. It basically allows each of us to control how our names and likenesses are commercially exploited by others."

Exploitation comes easy in our 24/7 news and information cycle of broadcast media and Web coverage of people and businesses. New media and the Internet are continually straining traditional legal standards.

"What I've seen develop over the past 10–15 years is an increasing tension between rights holders and third parties who want to use the rights without permission," says Lee. "These days, it seems that every right of publicity claim I deal with involves a First Amendment defense.

Of course, the First Amendment is real and important. But what tends to happen is we end up with some kind of hybrid in which a marginally expressive item, such as a medal, t-shirt, greeting card, or Web site is also largely a commercial product or service. Is the use of an image speech, or is it commerce? That can create very difficult legal issues"

Since there are no federal guidelines on right of publicity, it's been up to states to define it. About 40 have right of publicity laws that protect the living. 18 states expressly extend those rights to the dead. New York is the only state that clearly outlaws posthumous protection.

"The fact that it is governed by state law makes it an especially complex area," says Lee. "I've called the present state law regime a crazy quilt of inconsistent laws that make it very difficult for third parties to know what they can do, and for rights holders to know what they can stop."

Lee says it's always possible for one state to have a law that prohibits something that's allowed in another state. "I think there would be a number of advantages to having good federal laws on the subject that would bring uniformity, and hence predictability, to commercial transactions," adds Lee.

So how can the companies you counsel avoid violating someone's right of publicity in terms of the use of a photo or other potential pitfall? Lee's advice is simple, yet often ignored.

"Make sure you have clearance to use what you're using," says Lee. "Permission from the copyright owner isn't enough. If there's a release form signed by a model or person depicted in the photo, make sure it covers exactly how you intend to use their name and likeness. If there isn't a release, get one or don't use the photo. You'll come out ahead in the long run."

For additional insight on the right of publicity, the following Westlaw databases are available:

Entertainment and Intellectual Property Law (ENT-IP)

The Rights of Publicity and Privacy (RTPUBPRIV)

Entertainment Law: Legal Concepts and Business Practices (ENTERTAIN)

Lindey on Entertainment, Publishing, and the Arts, 3d, (LINDEY3D)

Law of Defamation 2d. (LEDF)

Media, Advertising, & Entertainment Law Throughout the World (MEDIAWORLD)

Eckstrom's Licensing in Foreign and Domestic Operations (ECKLICN-FO)

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Welcome New Members

We wish to welcome the following new members who have joined our chapter recently:

Lawrence Corte, Freeport-McMoRan
Copper & Gold

Donna Diamond, Freeport-McMoRan
Copper & Gold

Jeffrey Hansen, Troon Golf

Bridget Lovett, Apollo Group, Inc.

Matthew Mitchell, Apollo Group, Inc.

Renee Nail, Apollo Group, Inc.

Wendy Neal, Arcadia Biosciences, Inc.

Candace Person, Apollo Group, Inc.

Deanna Pickering, Lumension
Security, Inc.

Phillip Quintana, Apollo Group, Inc.

Austin Rhodes, Apollo Group, Inc.

Mark Schmidt, SVN Equities, LLC

Anne Shousha, Apollo Group, Inc.

Thomas Wilson, Sunquest Information
Systems

IP Monitor

By Thomson Reuters

Managing your company's intellectual property (IP) today is complex. As general counsel, you routinely advise your company on the IP risks in mergers and acquisitions, the development and introduction of new products and services and the activities of your competitors. West's IP Monitor™ can help counsel take an active role in gathering and assessing this essential information.

It collects, analyzes and maps key patent and trademark information from sources like the Derwent World Patent Index®, the United States Patent and Trademark Office and other Westlaw databases. I wanted to take a closer look at it for this month's column, with the help of Mark Medice, national brand manager for West.

IP Monitor is used by corporate counsel to quickly compare a company's IP portfolio with its competitors, its industry and how other companies are handling similar portfolios. "Getting insights about how companies are evolving in the IP marketplace is critically important to help a company anticipate risks when introducing new products and when advising on mergers and acquisitions," Medice says. "It's also important for any company that wants to identify trends and monitor their competitors."

IP Monitor can be used to answer key strategic IP questions such as:

- Which patent types are subject to the greatest litigation, and where are the risks?
- Who are the active litigants?
- What technology areas are being protected by filings and grants?
- What are the international trends?
- What are the domestic trends by foreign filers?
- Who are the key buyers and sellers?

IP Monitor, part of a broader information and analysis tool called West Monitor Suite™, aggregates data from docket summaries, as well as patent and trademark filings, in a way that allows for

unprecedented analysis of intellectual property prosecution and litigation activity combined. "With one click, you can align the critical competitive data buried in the USPTO and international patent databases," said Medice.

With IP Monitor, you can:

- Focus your analysis by industry, company, inventor location, patent class, firm or attorney.
- View complex trend analysis in clear, easy-to-read reports.
- Link directly to patent and docket summaries for further insight.

"This type of intelligence is important to corporate counsel to enable them to provide basic information to the company around who's doing what, who has what wallet share, which companies are involved in what activities and how to better anticipate trends," Medice says. "This information also helps general counsel manage their company's IP portfolios and examine their commercialization strategies," according to Medice.

In addition to providing docket, news, and detailed company information, IP Monitor draws from these powerful Westlaw sources:

U.S. Patents (US-PAT)

The US-PAT database contains the full-text of all patents issued by the USPTO since 1976 plus U.S. patent applications beginning with March 2001 (applications were not published before then). Document types include Utility, Plant, Design, Reissue, Statutory Invention Registrations and Defensive Publications.

U.S. Patent Applications (US-PAT-APP)

The US-PAT-APP database contains all published U.S. patent applications (pre-grant publications). Publishing of patent applications began in March 2001, as mandated by the American Inventors Protection Act of 1999 (AIPA), and represents one of the most fundamentally significant changes to the U.S. patent system in a century.

U.S. Patent Assignments (US-PAT-ASSIGN)

The US-PAT-ASSIGN database contains complete records of U.S. patent assignments. Records include the number and the affected patent(s), assignor(s), assignee(s), type of assignment (full interest, security interest, etc.), date signed, date recorded, contact information, and the reel and frame number of the USPTO microfilm containing the full image of the assignment deed.

International Patents (Derwent World Patents Legal®) (DWPL)

The DWPL database contains over 14 million patent family documents covering more than 20 million patents issued from 40 international authorities. Coverage of patents varies by country, and extends as far back as 1963. Each document represents a patent family and describes where an invention is patented worldwide. Each document contains the basic patent and related member patent(s) information.

U.S. Trademarks (TRADEMARKSCAN®) (NA-TM)

The TRADEMARKSCAN - North America database (NA-TM), produced by Thomson CompuMark, provides complete information on both federal and state trademarks. Both federal and state documents contain information on trademark name, status, registration, international class(es), goods and services, assignments and so on. Federal information also includes pending applications (actual-use and intent-to-use), design codes and information about Trademark Trial and Appeal Board (TTAB) actions.

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***We note with sadness
the passing of our
friend and colleague,
John Kaminsky.***

Top Ten Tips for Job Applicants

**By Deborah House, Vice President and
Deputy General Counsel, ACC**

In this difficult economy, ACC knows that many of its members are finding themselves “in transition,” and thus in the job application process. At one time or another we have all been there and know it can be an uncomfortable and difficult place to be.

But take heart. There are many ways you can improve your chances of getting that next job. How do I know this? Over the course of my life as an attorney, by rough estimate, I have seriously pursued and been offered 10 positions and have been rejected for 3. I have also had personal responsibility for hiring in excess of 50 people. Here are the top job seeking tips that I have developed from these experiences.

Information Is Your Friend. There is a wealth of information on the web and elsewhere. Use it! Use a search engine to find out more about the people with whom you are interviewing. Read the company’s latest annual report. Check out recent company press. Review the company’s website in depth. Have informational interviews with other people who work for the company. Having all this knowledge will be invaluable.

Put Your Best Foot Forward. Your Mother had it right. First impressions do count. I regularly weed out applications by eliminating those that have typos, are improperly addressed, or demonstrate a lack of basic research. If an applicant can’t get it right now, then I assume his/her work will be equally unreliable. This information is available! Proof, proof, proof your application. Don’t just rely on Spell Check; it can be deadly! Secure the assistance of a friend, colleague, or significant other who will proof your application for errors and substance.

Follow Directions. Most job ads have directions. Follow them. As an Interviewer, if you don’t follow my directions now I have to ask myself whether I can depend on you to follow them later when you are working for me. So, if the directions tell you to include a cover letter that outlines how your experience relates to the qualifications sought — do it! If you can’t write that letter because realistically you don’t think you meet the job requirements — consider applying elsewhere and not wasting the interviewer’s time. Or, write the letter and tell them why you meet certain job requirements and why you know you can meet others you don’t meet now (e.g., cite parallel or similar experience and how it applies). If the job ad says “No Calls,” then you may very well make them at your peril. If the job ad asks for salary requirements, then provide them. If you don’t know what the salary range should be, ask your colleagues or use ACC resources.

To read all ten tips, go to: www.acc.com/chapterleaders/upload/ACCTopTips.doc.