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FOCUS

President's Message

H. Ward Classen

It is hard to believe that summer is over! As we focus our thoughts on cooler weather and the start of school, the board will be contemplating how to better serve its members. We will be holding a day long retreat in October to discuss new ideas for increasing membership and meeting the needs of our members. If you have any ideas that you think should be discussed, please let me know. In November, we will be electing new board members and the officers for 2009. If you are interested in serving as a board member or a committee chair, or know of anybody who may be interested, please let me know. We are always looking for new people and new ideas.

We have a great luncheon series scheduled for this fall. On September 18, Saul Ewing will be speaking on indemnifications in M&A deals at the Capital Grille. Tydings & Rosenberg will be speaking in October on contract litigation lessons and on November 12, Venable will be speaking on corporate finance issues.

Thanks to the efforts of Maureen Dry-Wasson our annual golf/spa event was a rousing success. Everyone enjoyed a beautiful sunny spring day and a new, more convenient location. With the new location, we were able to offer tennis as well as golf. The winning threesome was Tom Dowd, Frank Aquino, and Ron Byrd. Congratulations to Tom, Frank, and Ron. Mark your calendar for June 1, 2009, for next year's event. When you see Maureen, please thank her for all her efforts in making this event a continuing success. I do not know what we would do without her.

As always, we welcome your suggestions and ideas. I personally value any feedback, good or bad. The goal of our chapter is to provide our members with the tools necessary to improve their job performance and to make their lives easier. We cannot accomplish our goals without your help.



H. Ward Classen
 President

The contact information for the board is set forth on the last page so please contact us!

Best wishes for a great fall.

Welcome New Members

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

Marnell A. Cooper, Managing Opportunity, Inc.

Todd Ensminger, SFA, Inc./Defense Products Division

Summer Fun, The Reading Undone, and Everything You Need to Go Back to School This Fall

Susan Hackett

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

Contact: hackett@acc.com

Those of you with kids in your life know that this time of year is when kids who've been enjoying a lazier pace and unlimited play time look around and realize that there is still much to do before they're sentenced to another year in the classroom. And they haven't even started plowing through their summer reading list.

I hope that summer has brought many of you some needed playtime and relaxation. Since we sometimes let the reading pile slide a little in summertime, I thought I'd help you catch up since Fall will bring challenges to you, too, that require you to be on top of your game.

SCARIEST HORROR: STORY BEACH READING

FASB and their proposed new loss contingency reporting rules

Summer started with an unwelcome announcement from the Financial Accounting Standards Board, or FASB (pronounced FAZ-BEE), that they were going ahead with a proposal they'd been urged to discard: a revision of Financial Accounting Standard (FAS) number 5, which regulates public company reporting of disclosures regarding potential losses or liabilities of the company. This proposed rule was issued in June with a comment deadline of August 8. ACC filed comments, co-signed by more than 100 companies and many other organizations. At last count, FASB had received over 225 comment letters protesting the rule, which is a firestorm of activity in terms of these kinds of comment requests, especially considering they snuck it in while everyone was on vacation!

ACC's comments, the FAS 5 revision proposal, and a number of our co-commenter's letters are online for your perusal at www.acc.com/php/cms/index.php?id=84. When you get to this page, you'll notice that this information is housed on the privilege protection page. Why is this story on the privilege page? That's why you need to catch up on your summer reading.

ACC's letter details our concerns over several facets of the proposal, but focuses most on the following three points:

1. These proposals are a solution in pursuit of a problem. The current standards aren't broken: there is no evidence that current disclosure requirements are insufficient or harming market transparency. Adopting significant new and ill-advised proposals without evidence that changes are necessary, without a focus on how the rules will improve reporting (rather than just suggesting we need "more"), or without assurance that the new rules will improve (rather than frustrate) meaningful disclosure is folly.
2. Heightened disclosure requirements will create unprecedented waivers of the company's attorney/client privilege and work product rights. Because the proposed amendments will require clients to produce more sensitive and speculative information about possible losses related to litigation, and require earlier production of loss analyses than currently required (namely, before an exposure is well documented or quantified by "facts" as opposed to by an attorney's initial evaluation of possible liability or harm), reporting will likely increase the risk of waiver of privilege and have related punitive effects. These required "qualitative" disclosures will broadly communicate the company's litigation assessments that previously were carefully guarded in adversarial proceedings. Additionally, independent auditors may seek more detail from counsel to test the estimates and disclosures reported, adding to the risk of privilege waiver to auditors.
3. Deeper disclosures of attorney-client privileged assessments will coerce undesirable outcomes in matters on which companies are only asked to report. The proposed amendments' requirements to provide qualitative assessments of likely outcomes, timing of resolution, and the company's assumptions on loss amounts "give away the store" to any interested

adversaries, providing invaluable detail about the company's litigation strategies and settlement coercion-points. The result would be a perverse twist on the FASB's stated desire to disclose more accurate and timely information about loss contingencies: companies' litigation counsel would likely become more circumspect about providing their clients with legal assessments and detailed contingency analyses to assist in their decision-making in order to avoid unnecessary disclosure or liability. Further, since contingency reporting under the rules must be made earlier and include disclosures on cases that are not well quantified or even likely, there's a concern that setting and publishing such numbers will become self-fulfilling prophecies—the settlement floor, even in cases that otherwise have little merit.

ACC has requested an opportunity to testify before the FASB when they meet to discuss these rules further. We'll keep you posted.

HEARTWARMING "WILL IT ALL TURN OUT ALRIGHT?" NOVELETTE

The saga continues: Can the DOJ overcome tremendous odds to save itself and untold numbers of innocent ACC members's clients from perilous privilege erosion?

In July, U.S. Attorney General Michael Mukasey announced to the Senate Judiciary Committee that new Deputy Attorney General Mark Filip was crafting another U.S. Department of Justice (DOJ) guideline that would replace the McNulty Memo and offer "real, significant proposed changes." The DOJ's McNulty Memo, like its predecessors, the Holder and Thompson Memos, have been criticized by ACC and its coalition partners for including privilege waiver, amongst other inappropriate terms, in the DOJ's list of criteria for cooperation in corporate failure investigations. Deputy Attorney General Filip issued a letter to the Senate Judiciary Com-

mittee leadership that offered an executive summary of the memo he said was still in draft, angering Senator Specter, who called for the DOJ to stop stalling and for the mark-up and passage of *The Attorney Client Privilege Protection Act of 2008*. And yet, the outlined terms of the proposed memo in this executive summary, if realized, are significant steps in the right direction. As always, the proof will be in the pudding, so watch the ACC site for info on the publication of the new DOJ Memo to be issued by the end of August. To read the Deputy Attorney General's executive summary of the memo he's promising and Senator Specter's response, visit the ACC Privilege Protection page at www.acc.com/php/cms/index.php?id=84.

TIMELESS TEAR-JERKER

You done me wrong, but our relationship—while often dysfunctional—is everything to me, so I'm taking you back. But under new terms.

More than 120 top CLOs and law firm managing partners have been in therapy with ACC this summer, and talking about how to get their relationships back in order. This sizzling summer best-seller is about to expose their clandestine meetings in top hotels around the country as they attended focus-group sessions for ACC's new initiative: the ACC Value Challenge. So tune in for this summer's hottest reality show, and see many of them caught on tape, telling everyone who will listen about the errant ways of their inside/outside counsel relationships, and how they plan to make it up to each other (and their clients).

Seriously though, we all recognize that there have been decades of conversations about the problems in-house counsel have with rising costs, a lack of focus on value (rather than profit per partner), the perverse disincentives to efficient service inherent in the billable hour system, and much more. And law firms are tired of arguing over bills, constant RFPs that have replaced the longer-term relationships that made practice satisfying for them, clients' willingness to trade in meaningful project management for a 10 percent discount, and a tendency to suggest they want innovation and a revised relationship, but at the end of the day, a decision that it's easier to chuck all that and continue to purchase over-priced billable hours

from legacy firms. What can be done that will actually move the needle? That's what these focus groups were meeting to discuss this summer. ACC hosted off-the-record discussions to explore how we can change the focus from griping to acting on what is necessary to move us out of these unproductive cycles and help in-house and outside counsel rediscover the value of their relationships.

You can read ACC's magnus opus on how we're planning to help in-house counsel begin a (r)evolution in their outside firm relationships online at www.acc.com/public/accvaluechallenge-overview.pdf. And if you're bored with all the reading and just want to veg in front of the big screen, you can tune into the launch of ACC's Value Challenge by tuning in on your computer or getting your colleagues together in the conference room over lunch to pick up the live, free video feed of the Town Hall Meeting at which we'll "reveal all!" Contact ACCValueChallengeEvents@acc.com for information on how to tune in September 26 (or download the archived version from the website).

Get past "you done me wrong": it's best left in dimestore novels. ACC's Value Challenge is committed to working with you over the course of the coming months and years to help you take control of your outside spend and "(r)evolutinize" your outside counsel relationships and in-house budget and matter management.

THE TRAVEL JOURNAL THAT TAKES YOU PLACES YOU WERE NEVER LICENSED TO GO

ABA House passes model in-house counsel registration guidance for states that are seeking to accommodate in-house lawyers who've moved to a new job, but lack a local license where they're now employed.

Two-thirds of US states have now passed a version of the rule that ACC worked so hard to "encourage" the ABA to adopt: namely, Model Rule of Professional Conduct 5.5, which authorizes lawyers who are licensed and in good standing in their "home" jurisdictions to practice on a temporary basis (when taking a deposition, or negotiating a matter, etc.) in another jurisdiction in which they are not licensed. In-house counsel got further relief under the rule; under the provisions of section

5.5(d), in-house counsel who are licensed and in good standing in one jurisdiction are authorized to engage in "permanent" practice for their employer-clients when they move to a new job in another jurisdiction in which they are not licensed. While 5.5(d) is a complete authorization in and of itself, quite a number of states adopting the rule have coupled it with a registration system that allows the state to keep track of these in-house lawyers and usually collect payment from them comparable to local members' bar dues. Unfortunately, in their zeal to regulate, many state bar licensing authorities lost sight of the purpose of the rule, and the registration systems they adopted became more like mini-Spanish Inquisitions than simple registrations.

Not liking to see great disparity amongst the state rules regulating any aspect of lawyer practice, the ABA formed a group that proposed a model in-house registration system to provide some level of consistency and to suggest best practices. The first versions were overly complex. The new and improved model was adopted by the ABA House at the ABA Annual Meeting, and could be reading that saves you from much more reading studying for the bar exam next time you move to a job in another jurisdiction!

ACC's comment letters, our concerns that the ABA not adopt a model that pre-empts the underlying logic of 5.5(d) (namely, that no registration is needed at all in states that adopt the rule—the authorization is complete and the burdens of administering a rule may not be justified by any quantifiable threat the rules seem to suggest exist), and the new rule all appear online at:

ACC's Fall 2007 comment letter to ABA ([www.acc.com/php/chapters/filespace/All\(admin\)/accabainhousecomment.pdf](http://www.acc.com/php/chapters/filespace/All(admin)/accabainhousecomment.pdf))

ACC's Summer 2008 comment letter to ABA (www.acc.com/public/acc-comment-aba.pdf)

ABA Model In-House Counsel Registration Rules (www.acc.com/public/aba-sect-lega-educ-admi.pdf)

Alright, now that you're caught up on the essentials and can approach fall equipped with the knowledge you need to move to the next grade, enjoy these last few days of warm weather and summer fun!

My Summer Internship...

By Alexis Slater

Each year, the Maryland Public Interest Law Project (MPILP) raises money to fund summer grants for students at the University of Maryland School of Law who spend 10 weeks of their summers working for non-profit, government, and other public interest legal organizations serving underserved populations. MPILP is a 501(c)(3) organization run by the University of Maryland School of Law students. MPILP's primary goal is to increase students' participation in, and commitment to, public interest work. The Baltimore Chapter of the Association of Corporate Counsel (ACC Baltimore) has been a generous donor to MPILP's grant program for eight years. Thanks, in part, to ACC Baltimore's most recent donation, MPILP was able to fund 25 grants this summer. MPILP grantees worked at various organizations throughout the country, including the American Civil Liberties Union of Maryland, Brooklyn Legal Services Corporation (NY), The House of Ruth, and The Lawyers Committee for Civil Rights in San Francisco.

As a MPILP grant recipient, I have spent the past 10 weeks working with the director of Project HEAL (Health, Education, Advocacy, and Law) at Kennedy Krieger Institute (KKI). Project HEAL is a medical-legal partnership between Maryland Volunteer Lawyers Service (MVLS) and KKI. MVLS hosts the only two medical-legal partnerships in the state of Maryland: Project HEAL at KKI and Project HEAL at the Harriet Lane Clinic at The Johns Hopkins Children's Hospital. The director of Project HEAL at KKI, Maureen van Stone, provides direct legal services to low- and moderate-income children who are the recipients of services at KKI.

Working with Maureen has been a unique experience for several reasons. KKI is an internationally recognized facility located in Baltimore and dedicated to improving the lives of children with disabilities through research, education, and training. One of the most prevalent problems shared by children with disabilities is the need for appropriate special education and related services through the public school system.

As a result, Maureen primarily practices special education law, a specialty shared by approximately 20 other attorneys throughout the state of Maryland.

The second reason working for Maureen has been a unique experience is because of the interdisciplinary approach she takes when addressing her client's legal issues. Prior to going to law school, Maureen spent six years working as a behavioral therapist in the Department of Behavioral Psychology at KKI and earning a master's degree in developmental psychology. As a result, she has a comprehensive understanding of the challenges faced by her clients, from both a legal and a clinical perspective. She furthers this understanding by working closely with the health care professionals at KKI. This interdisciplinary approach is vitally important in Maureen's work because of the complicated nature of her special education cases.

When I first began my internship, I was not particularly familiar with federal and state special education laws and regulations, so Maureen gave me a brief overview on the first day of my internship. At the time, I didn't think they sounded particularly difficult; indeed, after struggling through a semester of Real Property, they sounded wonderfully straightforward. The primary purpose of the Individuals with Disabilities Education Act is simple: "to ensure that all children with disabilities have available to them a free appropriate public education." Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004). But after working on my first case, I realized just how difficult it is for Maureen's clients to receive their right to a free and appropriate education in the least restrictive environment. The first problem they face is living in jurisdictions with failing public schools. While these schools struggle to meet the needs of the regular education students, many are unable—or simply unwilling—to make improving the delivery of special education and related services a priority. Second, as all of Maureen's clients are low- and moderate-income children and families, they cannot afford to attend private schools that may

be better suited to address their individual needs. Nor can they afford the specialized tutoring, counseling, or therapeutic services their higher income counterparts can. While many of Maureen's clients qualify for related services through the public school system, these often do not adequately address their complex needs.

After a few days at my internship, I began to fear that I was going to find the practice of special education law depressing and hopeless. However, Maureen accepted a new client that made me realize not only how important, but also how rewarding, her work at Project HEAL is. On the surface, the case was as complicated and heartbreaking as special education cases can be. The client's name was Kevin.¹ He was a six-year old boy suffering from a rare genetic disorder that caused him to engage in continuous self-injurious behaviors (e.g., face slapping, headbanging, and knee to head) and self-restraint. Over the years, Kevin had hit himself so hard that he had broken his nose and eye sockets several times. After several failed attempts with clinically-approved arm restraints, the only way Kevin's mother, Rachel, could keep him from severely injuring himself was to tie his arms to his waist with terry cloth ropes.

Rachel was born and raised in Kentucky, and her entire family and support network still lived there. Over the years, she had taken Kevin to every neurologist and specialist she could find in the states of Kentucky and Tennessee; ultimately, all refused to care for Kevin when they could not identify effective treatments. Kevin's public school in KY was similarly unable to manage his behaviors and illegally refused to permit him to return to school for the last quarter of the first grade. In other words, neither doctors nor educators were willing to help Kevin because his case was simply too difficult. One of Kevin's doctors even wrote a letter to the KY school stating

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1. The client's real name and his mother's name have been changed to respect their privacy.



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“there is no point in educating Kevin.” Rachel, a woman with limited education but strong maternal instincts, did not agree with the professionals. In her desperation to find help for her son, she searched the internet for hospitals that could address her son’s very significant needs—she found KKI.

Upon initial contact with KKI, the Department of Behavioral Psychology (where Maureen formerly worked) seemed to have an appropriate program for Kevin; however, Kentucky Medicaid refused to pay for services at an out of state hospital. With no options remaining, Rachel packed up her son and her few possessions, left her family and friends, and moved to Maryland in search of an effective treatment for her son’s severe problem behaviors.

Like most of her cases, Kevin’s case was referred to Maureen by her former colleagues, a KKI psychologist and social worker. Prior to the family establishing residency in Maryland, the social worker consulted with Maureen regarding potential local school systems that might be able to meet Kevin’s needs. After securing housing, Rachel registered her son in his

neighborhood school and quickly realized it would not be able to meet her son’s educational needs. But she was unable to convince the administrators at the school that Kevin needed an alternative educational placement. After hearing of her difficulties, the social worker at KKI contacted Maureen for legal assistance in obtaining an alternative educational placement (approximately 40 percent of Maureen’s clients are placed in inappropriate educational placements when she accepts the case). The KKI interdisciplinary team, including Maureen and me, met with Rachel to devise a plan for securing an appropriate educational placement for Kevin, as well as developing a behavioral treatment plan for his self-injurious behaviors, while waiting for his inpatient admission. During a one hour meeting, I watched an exhausted, worried, and tearful mother, who had left the only life she knew to help her son, regain some hope. For the first time in years, Rachel said she felt like she was finally going to get her son the help he so desperately needed; the help her family and friends thought to be impossible.

Over the next week, Maureen and I worked with the local school system to secure an alternative educational place

ment for Kevin at a public school for children with severe disabilities. Once Kevin’s Maryland Medicaid is approved, he will be admitted to the inpatient unit at KKI for months of intensive evaluation and treatment to reduce his self-injurious behaviors. When his treatment is complete, he will be ready to attend his new school and work towards achieving his educational goals. I am tempted to send his former doctor a copy of his first report card from his new school.

I cannot begin to express how inspiring it was to be a part of a team of legal and medical professionals working together to address a child’s complex needs, and more importantly, giving hope to a low-income mother and her son. Working at Project HEAL at KKI has shown me the incredible difference a lawyer can make in the lives of children whose educational needs are often ignored or rejected, simply because they require special education and services.

I give ACC Baltimore my sincerest thanks for making my summer internship at Project HEAL at KKI possible. It has been not only the most educational experience in my legal career, but also the most rewarding.

Chapter News

Career Moves!

Have you made a career move recently? Let us know and we’ll announce it in our next newsletter, just like these folks!

John B. Ross, formerly vice president, secretary and general counsel at Williams Scotsman, Inc., is taking a (roughly) year-long sabbatical to work on a number of personal projects (family genealogy, writing, traveling, and setting up a get-away home in West Virginia, amongst other things). John looks forward to his next career move sometime after Labor Day.

David E. Wolfe was recently promoted to general counsel by the board of directors of Alex. Brown Realty, Inc. (ABR). Prior to joining ABR in 2004, David was an attorney at the law firm of Vinson & Elkins L.L.P. in Dallas, Texas. David, who is admitted to practice law in Maryland and Texas, earned his JD from Washington

University School of Law in St. Louis, Missouri.

Providing a Community Service

This September, ACC Baltimore members will be participating in National Community Service Day. Members will have the opportunity to spend the afternoon helping Sandtown Habitat for Humanity, a non-profit that acquires and rehabilitates housing for low-income individuals in Baltimore City. Volunteers will be assigned to a Sandtown house and perform construction-related tasks (painting, framing, demolition, etc)—but volunteers will not need any special skills. This will be the third year that the ACC Baltimore Chapter has worked with Sandtown Habitat and past projects were very successful. Please consider joining your fellow ACC members to help a deserving organization! For more information about the project, please contact Maureen Dry-Wasson at

mdry@allegisgroup.com or Chris Rahl at crrahl@provbank.com.

Baltimore Chapter Website

Be sure to check the chapter website at www.accbaltimore.com for the latest on upcoming meetings, in-house job openings in this area, and useful links for Baltimore area in-house counsel. Recent additions include photos from our 2008 Golf/Spa program on the photo gallery page and, of course, the very latest quarterly newsletters! We have also posted materials from the speakers at virtually every CLE program since March 2007, including the latest on non-compete agreements in May 2008, on the program materials page.

Send website suggestions to our chapter webmistress, Andy Lapayowker, at alapyowker@crowncentral.com



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Board Members and Contacts

President

H. Ward Classen

Associate Deputy General
Counsel
Computer Sciences
Corporation
410.691.6586
hclassen@csc.com

President Elect

Christopher Rahl

Senior Vice President and
Senior Counsel
Provident Bank of Maryland
410.277.2849
crrahl@provbk.com

Secretary

Fiona Mensah

Corporate Counsel
Fiducial
410.910.5855
fiona.mensah@fiducial.com

Treasurer

Lynne Kane-Van Reenan

Attorney
410.269.1441
lkane3@comcast.net

Communications Chair

Melisse Ader-Duncan

Associate General Counsel
AAI Corporation
410.628.6670
ader@aaicorp.com

Program Chair

Michael Sawicki

Vice President, Associate
General Counsel
PHH Arval
410.771.2005
michael.sawicki@phh.com

Immediate Past

President

Richard Ransom
Counsel
Constellation Energy
Group, Inc.
410.470.5731
richard.ransom@
constellation.com

Vice Presidents

Frank Aquino

Maureen Dry-Wasson

Lynne Durbin

Farah Esmail

Raissa Kirk

Andrew Lapayowker

William Maseth

Kevin O'Neill

Chapter Administrator

Stacey Stepek

410.691.6541
sstepek@csc.com

ACC News

Recruit a Member and Win a Prize—Guaranteed!

Each time you use the ACC network, you get access to valuable skills and experience only available through ACC. More members provide improved educational opportunities, enhanced networking, increased online resources, and advancement of the profession worldwide. You can expand your network by taking part in ACC's "Everybody Wins" membership drive. Recruit a member and you will win prizes ranging from Starbucks' Cards loaded with \$5 and cutting edge electronics including portable DVD players, digital cameras, and new computers, to free ACC Annual Meeting registrations and a \$750 travel stipend. ACC's "Everybody Wins" membership drive ends on September 30—so don't delay, recruit today! See the attached brochure for more information. Also, for tips on recruiting members, including a sample email to send to your colleagues, go to www.acc.com/everybodywins.

2008 Annual Meeting: Become Indispensable to Your Company's In-house Legal Team

Don't miss the educational and networking event of the year for corporate practitioners. With over 100 programs with special sessions for new in-house counsel, new legal managers, chief legal officers, small law department practitioners and much more, the 2008 Annual Meeting, October 19–22 in Seattle, WA, has something for every in-house practitioner. To help you become the most informed and indispensable member of your company's legal team, ACC's Annual Meeting offers a variety of opportunities to meet, interact with, and learn from fellow in-house counsel with a wide variety of experience. Check out am.acc.com to register, select your sessions, and book your hotel! Don't delay. Register today for only \$1400. This early rate expires on September 5. Questions? Contact education@acc.com or 202.293.4103, x.451.

ACC Top Ten: Key Questions (and Answers) for Complying with US Export and Embargo/Sanctions Law and Regulations

As markets, supply chains, and workforces become increasingly global, more and more businesses are confronted with the need to comply with US export laws. But, the diversity and complexity of these laws and the implementation of regulations make benchmarking obligations and adopting sensible internal compliance mechanisms a difficult challenge. Read ACC Top Ten at www.acc.com/resource/v9984 to gain a better understanding of US export control laws and learn how to manage the compliance risks inherent to global business.

ACC Blog—Are You Connected?

ACC recently launched the first blog by in-house counsel, for in-house counsel. Help us make the blog a success by expressing your own opinions, or by simply perusing the dialogue. Recent blog discussions include "Why Does Historical Perspective Appear to Minimize the Impact of Change," "Why Federal Courts Do Not Apply the Rule of Law Part 2," "Federal Erosion of Business Civil Liberties: Part 5." Check them out at www.acc.com/blog.