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FOCUS

President's Message

Michael P. Sawicki

It has been another successful year for the ACC Baltimore Chapter. We would not have been able to accomplish so much without our sponsors, members and dedicated Board of Directors. Thanks to our sponsors, we hosted the following events the past few months: DLA Piper hosted a lunch program in September on the FCPA and new UK Anti Bribery Act, Corporation

Service Company hosted a lunch program in October on Private Equity Tips and Traps, and Womble Carlyle Sandridge & Rice hosted a lunch program in November on Winning by Losing: Trying a Losing Case for a Win on Appeal. I would also like to thank Miles & Stockbridge, our premiere sponsor, for hosting our Fall Social in October. The event was held at Vino Rosina in Harbor East and was very well attended and a lot



of fun. Special thanks to Tim Hodge, partner at Miles & Stockbridge, for his support of the ACC and our chapter. Finally, we hosted a joint event

with the Federal Bar Association on December 14, 2011, which was a roundtable discussion with Judge Titus, King & Spaulding and the US Attorney's office to discuss the acquittal of Lauren Stevens, in-house counsel for GlaxoSmithKline, and general trends in the area of attorney client privilege.

The Baltimore Chapter has always strived to make a difference in our community. On October 7, 2011, the Baltimore Chapter once again

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Standing, left to right: Jennie Wyler (Allegis Group), Dana Baughns (Allegis Group), Mike Sawicki (Prometric), Noreen O'Neil (Oceaneering Intern'l), Ward Classen (CSC), Linda Way-Smith (Constellation Energy), Frank Buckley (Allegis Group), Aaron Marshall (Northrop Grumman); Kneeling: Mike Teaford (Habitat for Humanity)



From left to right: Maureen Dry-Wasson (Allegis Group); Mike Sawicki (Prometric), Noreen O'Neil (Oceaneering Intern'l), Aaron Marshall (Northrop Grumman).

Revenge of the Value Champions

By **Amar Sarwal**, ACC Vice President & Chief Legal Strategist

Do you remember the end of the iconic movie, *Revenge of the Nerds*, when Lewis takes the mic from Gilbert and suggests that more of us are nerds than jocks? The pretty cheerleader exclaims she's a nerd too; most of the crowd joins Lewis, Gilbert and his nerd fraternity brothers in an effort to end nerd persecution, and the familiar strains of "We are the Champions" begin to play. Well, that cinematic moment was one of the formative experiences of my youth (I didn't get out much) and it came to mind when I was thinking about ACC's new Value Champions program, our new initiative to identify and celebrate law department and law firm leaders who incorporate value practices into their legal projects.

*I've paid my dues/Time after time
I've done my sentence/But committed no crime
And bad mistakes/I've made a few/I've had my share of sand kicked in my face -
But I've come through*

Three years ago, ACC challenged the legal community to embrace value practices that are commonplace in every service industry, save one. While we heard some folks sing their hosannas, there were, and still are, folks who believe that the legal services industry can remain the same and still meet client expectations. Like the dinosaurs that were unaware of the meteor, the firms and law departments that continue with the old business model will not find the future climate hospitable. Wait a sec. Wrong analogy. Like the jocks who thought that they would continue to rule the campus on their terms. Sorry about that.

But, like Lewis and his new self-proclaimed nerd supporters, those of us implementing change are in a growing group. In fact, outside and inside counsel who focus on value practices, such as effective project management, value-driven fee arrangements and continuous improvement, are fast becoming the norm, not the exception. And, that's what the Value Champions program is all about. We'd like to shine a spotlight on them, so that the world can see their accomplishments and learn from them.

*I've taken my bows/And my curtain calls
You brought me fame and fortune and everything that goes with it/I thank you all
But it's been no bed of roses/No pleasure cruise*

I consider it a challenge before the whole human race/And I ain't gonna lose

Of course, some value practices are easier than others. Some of them require the simple application of business principles from other industries. And, we want to identify and celebrate individuals who have employed those practices, because we believe their accomplishments can be replicated by our members and the rest of the legal community. But, of course, some projects are harder, more complex and more frustrating at times, because the ideas animating them are so novel. Think of the nerds' effort to beat the jocks in the fraternity competition. So, we'd like to celebrate innovative strategies as well. If you've tried something novel *or* something more garden-variety, please let us know about it. Our only requirement is that the submitted project has reduced legal spend, increased predictability and/or reduced the unwelcome types of legal issues confronted by the company over time.

*We are the champions - my friends/And we'll keep on fighting - 'til the end
We are the champions/We are the champions
No time for losers
'Cause we are the champions - of the world*

Our deadline for submission is March 15, 2012. If you're in the legal community and you've ever cared about value enough to incorporate it into your day-to-day practice, turn up the volume on Freddie Mercury's classic and [join us](#) and submit a nomination form. The legal services industry just won't meet client expectations until value persecution ends. We look forward to hearing from you.

ACC Value Champions Celebrate Value Champions

ACC Value Champions are law department and law firm leaders who have made great strides in improving the value of legal spending. By implementing pricing and other management practices advo-

cated as part of the ACC Value Challenge, you could be recognized as an ACC Value Champion.

Eligibility

- Law department leaders can be nominated (or self-nominate) for in-house team projects that did not involve a law firm or firms.
- Law department and law firm leaders can co-nominate firm/client partnerships.
- ACC membership or sponsorship is not required.

Demonstrate Your Leadership

Whether you achieved great results on a single matter, or over a multi-year, multi-dimensional effort, just define the scope and duration of the project and tell us about the results you achieved and how they were measured. For example, you can highlight results measured year-over-year, relative to hourly-based pricing, against an industry benchmark, and/or any other relative metric.

The story is important. Let us know what management tactics you used, bearing in mind that there are many ways to drive value. Innovation and collaboration (whether internal or between clients and firms) are also important, as is creating programs that others can replicate. If you have used or developed tools, templates, or dashboards, please share them as well.

Honors and Recognition

If selected, you will receive public recognition for your innovation and success. You'll receive an engraved, crystal "trophy," media exposure, profiling in ACC's member publication, *ACC Docket*, and the opportunity to present your value initiatives as part of an ACC educational program.

Process and Timing

Nominations are requested by March 15th. A panel of ACC staff and ACC Value Challenge Steering Committee members will review the nominations, and will contact nominees if additional information is needed. The ACC Value Champions will be announced in Spring 2012.



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Social Media: Too Powerful To Ignore

By Heather R. Pruger, Esq., Saul Ewing LLP

[published in June 2011 Federal Bar Association Maryland Chapter Newsletter]

Social media is a powerful tool for individuals and businesses, as well as for attorneys. It has become too popular and too powerful for attorneys to ignore. At the same time, social media also poses too many risks—both to attorneys and their clients—for attorneys to remain uneducated about it and how it works.

Only a few years ago, Internet-based social media was considered to be little more than a pastime for high school and college students. But, particularly over the past two years, a much broader demographic has begun to grasp the broad usefulness of social media. Facebook epitomizes this boom. In January 2009, Facebook had over 42 million registered users in the United States, 40 percent of who were between the ages of 18-24. Remarkably, by January 2010, registered users of Facebook in the United States had increased by 145 percent to over 103 million, almost 30 percent of whom were between the ages of 35-54. The increase in use of social media is at least as drastic among attorneys. According to a 2010 ABA Legal Technology Survey, 15 percent of attorneys had a social media presence in 2008, compared to 43 percent in 2009, and 56 percent in 2010.

The reason for the increase in social media use is obvious—social media is a two-way street that gives all Internet users the ability to generate their own media—news personal to themselves and their interests—while also allowing them to interact with that media and the media created by others. It is the epitome of marketing and networking, combined. The website is now familiar to attorneys—a static, user-created form of social media. But social media goes far beyond that. The movement now is to tap into the robust, interactive functionalities of social media by creating profiles on social media sites, providing webinars, and posting public informational documents. Social media links information available on websites to social media networking sites and moderated discussion groups, where interested people can interact with and discuss this

content, providing an interactive forum for direct and personal interaction with prospective and existing clients and other members of the legal community. Social media also allows us to interact actively with the news, by tailoring news feeds towards specific interests and encouraging and facilitating observation and monitoring of the tendencies and even the news feeds of our own target audiences. By interacting with and observing others' interactions with news and other user-created content, social media provides a tool so that we can tailor the content we release to be more timely, accessible, and useful to a particular audience. And it is highly effective—the 2010 Corporate Counsel New Media Engagement Survey reported that nearly a third of in house counsel reported putting “a lot of weight” on blogs written by attorneys they considered hiring.

It goes without saying that social media is a rapidly emerging area of the law. Take, for example, employment law: By simply being listed on a social media site, an employee who electronically connects with co-workers or work contacts can instantly violate restrictive covenants with a prior employer by simply updating his or her employer. An employee can use social media at home or can bring a cell phone to work and use social media during breaks, and may use social media as a way to “vent” about co-workers or other work-related issues, to name a few.

In response to the pervasiveness and dangers of social media, many employers are rightfully rushing to adopt social media and computer use policies. But these policies are often overbroad and prohibit not just defamatory comments aimed at a company, but also other employee comments, such as negative comments about supervisors. As the National Labor



Relations Board recently indicated, such rushed, overbroad policies may be found ineffective or, worse, violative of employees' rights, even if the policies are not enforced. And, a recent study of large companies showed that a shockingly high, and quickly growing, percentage of employees were being terminated or disciplined as a result of

their behavior on social media sites such as Facebook and LinkedIn. States are also taking action, some more rapidly than others, creating a minefield for employers. For example, in some states, employers may monitor information that an employee posts publicly via social media to determine, for example, whether a sick employee is really unable to work. Other states specifically forbid employers from gathering or recording information about an employee's associations, political activities, or other non-employment activities unless the employee specifically authorizes the employer to do so in writing. And, while an employee may have an expectation of privacy in her password-protected Internet-based email account, even when accessed on a work computer, her expectation of privacy may be lost if she saves her login information on that employer-owned computer.

Social media also creates serious business and ethical problems that are unique to attorneys. For one, advertising social media presents serious advertising concerns. According to a panel of lawyers who presented at LegalTech New York 2011, the practice of artificially inflating the number of followers you have or fellow users who you follow on Twitter to exaggerate your status could be construed as deceptive conduct by the Attorney Grievance Commission or even the Federal Trade Commission. The FTC revised guidelines for commercial bloggers in 2009 to strictly prohibit bloggers from mixing “com-

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mercial puffery” with their posts. Closely related is the concern raised by social media—a concern that stems from one of social media’s greatest strengths—that, once information is posted online, that information is instantly and broadly accessible and can be republished, manipulated, and connected to other content by a myriad of other Internet users. While a published advertisement is carefully edited and controlled by the attorney who is ethically responsible for its content, state ethical guidelines are increasingly requiring attorneys to take at least some measure of responsibility for content published online about them—even when that content is “published” by other users.

Many other ethical concerns are presented by attorney use of social media, including unauthorized practice of law, improper

disclosure of information, improper contact with represented parties, witnesses, or jurors, and assisting a judge in violating the rules of judicial conduct. While a lawyer can report on noteworthy legal developments via social media with relative safety, participation on discussion boards or discussion of legal topics on a blog could constitute unauthorized practice of law. Email listserves can pose similar risks, although to a lesser extent because recipients of an email listserve can be more easily screened. An attorney can also easily run afoul of ethical rules by casually and even inadvertently disclosing client or case strategy information via a Facebook status update. And, while social media creates a wealth of information on opposing parties, witnesses, and jurors, lawyers must take great precautions research of such individuals via social media to avoid impermissible communications. Lawyers and judges

alike must similarly be aware of the effect of including one another in their social media networks, and must be particularly observant as local bars increasingly adopt rules addressing “friendships” between judges and lawyers via social media.

Despite all of the legal and ethical concerns associated with use of social media, these concerns do not justify avoidance. In today’s society, social media has become too powerful and pervasive a tool for attorneys to ignore. Rather, like any powerful tool, social media should be used by educated, informed users who remain alert for inevitable changes as legal and ethical frameworks adjust to account for this new method of social and professional interaction.

Heather Pruger is an associate in the Business and Finance Department and the Labor, Employment and Employee Benefits Practice Group at Saul Ewing, LLP.

Recent NLRB Actions Slant the Playing Field in Favor of Unions

By Laura Pierson-Scheinberg and Rebecca Hielke

The Democratic-controlled National Labor Relations Board (“NLRB”) has recently issued rules and case decisions that enhance organized labor’s ability to organize and take on employers. These rules and case decisions limit the ability of employers to remain nimble and flexible in their decision-making, which could erode productivity and profitability as the nation’s economy continues to struggle with the national unemployment rate hovering over 9 percent. In so doing, the NLRB has greatly aided unions that are struggling to remain relevant in today’s workplace.

The NLRB Expands Protections for Employee Social Media Activity

The NLRB has issued several cases that afford legal protections to employee social media activities which disparage employers and use vulgar or derogatory language towards supervisors and other employees. The NLRB has done so on the basis that the employee complaints are a concerted activity relating to working conditions,

which is afforded protection under Section 7 of the National Labor Relations Act (“NLRA”). This new case law applies to employee activity on company electronic systems as well as public media sites such as Facebook and Twitter. In deciding these cases, the NLRB has ordered reinstatement of terminated employees even in cases where the termination was based on employer policies. The takeaway for employers is that the NLRB will find nearly all work-related complaints aired through electronic media protected under the law. The NLRB is also on a path towards allowing employee use of company computer networks and email systems for union organizing and union activity.

As a result, employers are left without much guidance or recourse when it comes to employees that mix arguably job-related



Laura Pierson-Scheinberg



Rebecca Hielke

gripes with impermissible use of company property or slanderous and defamatory language about the company or co-workers. The best course for employers is to review and/or adopt clear policies regarding social media, computer networks, and email use and follow through with consistent enforcement of those policies. This will help employers retain control over their information technology and

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reputations, and to avoid legal liability for terminating employees for conduct involving the improper use of company systems and data.

The NLRB Breathes New Life into Union Staying Power

In *Specialty Healthcare and Rehabilitation Center*, 357 NLRB No. 83 (8/26/2011), the NLRB altered its long standing precedent regarding what constitutes an appropriate bargaining unit. Under *Specialty Healthcare*, unions can cherry pick pro-union employees to be in the petitioned-for bargaining unit since the union's choice now enjoys a presumption of accuracy. In order to overcome this presumption, an employer must meet the heightened and difficult burden of showing employees share an "overwhelming community of interest." This new standard hinders an employer's ability to be nimble and flexible in response to a union campaign. Specifically, employers are now at risk of having employees performing similar job duties for the same supervisor and for the same wages and benefits governed by differing terms of employment on such things as paid time off, seniority, and scheduling. More troubling is that the new standard empowers unions to hold segments of manufacturing processes and productivity hostage to their demands. As a result, employers should rethink their employee classifications, efforts to cross train employees, and employee interactions at the workplace to position themselves to begin to show that their employees share an "overwhelming community of interest." While *Specialty Healthcare* involved the healthcare industry, the NLRB has made it clear that it will apply this standard in all industries.

In cases of existing unionized workplaces, the NLRB's decision in *UGL-UNICCO Serv. Co.*, 357 NLRB No. 76 (8/26/2011) provides unions with unassailable bargaining rights following a unionized employer's asset sale to a new entity. Prior to *UGL-UNICCO*, an incumbent union's support

following an asset sale could be immediately challenged through an election or other means. The new standard holds that the incumbent union must be recognized by the new employer for a "reasonable period of time," which is now defined as no less than six months, but no more than a year from the first bargaining session. Most employers perform extensive and costly due diligence reviews of potential asset sale transactions, which often hinge on analyses of encumbrances such as costly union wage scales or benefit contribution requirements. As a result, the NLRB's decision may result in a buyer's refusal to hire any employees from the prior entity. Additionally, it may further stymie business transactions by injecting additional costs in the due diligence analysis attributable to existing union obligations.

In another decision, *Lamons Gasket Co.*, 357 NLRB No. 72 (8/26/2011), the NLRB overturned case precedent allowing employees in a voluntarily recognized bargaining unit to determine for themselves whether they should be represented by a union. The new standard is that employees cannot challenge a union voluntarily recognized by an employer for a "reasonable period of time," which is no less than six months, but no more than a year from the first bargaining session. Many employers view this decision as an attack on employee free choice as to who their representative will be.

Republicans in Congress have introduced H.R. 3094 to counter the NLRB's pro-union actions. Organized labor and Democratic politicians beholden to union campaign support have attacked the measure under broad claims about employee rights.

The Democratic NLRB General Counsel Issues New Rule Requiring Employer Posting

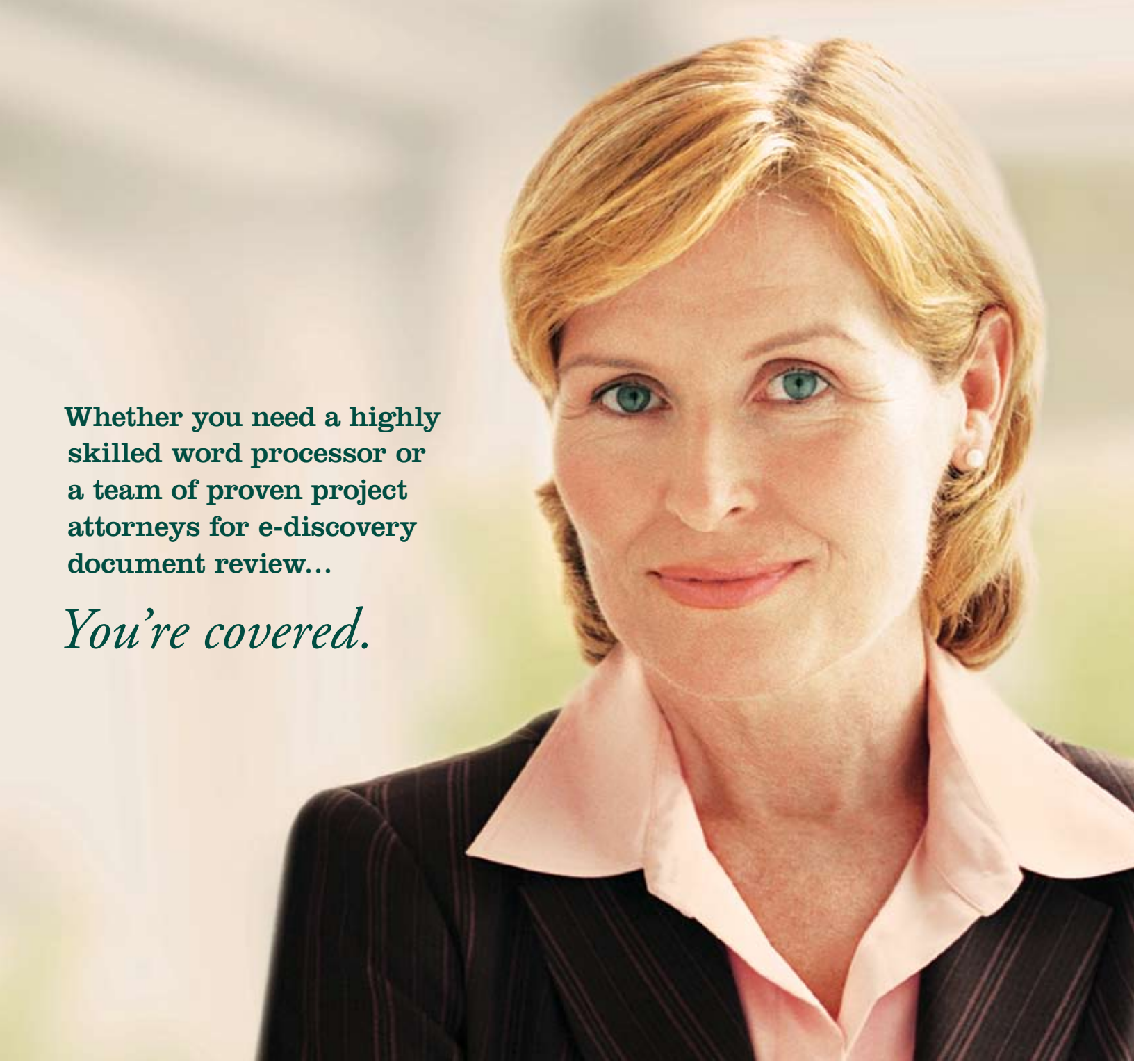
The NLRB issued a final rule requiring all employers to post a notice informing employees of their rights under the NLRA. There has been significant backlash to this

requirement, including at least two federal lawsuits. In response, the NLRB extended the posting deadline from November 14, 2011 to January 31, 2012. If this rule withstands the federal lawsuit challenges, employers should post the poster among its other workplace posters and do nothing further. Any discussion with employees about the poster is likely to create more employee chatter about unions.

Laura Pierson-Scheinberg is a principal and Rebecca Hielke is an Associate in the labor & employment practice group at Miles & Stockbridge P.C.

Miles & Stockbridge is a leading law firm with eight offices located within the mid-Atlantic region. Founded in 1932, the firm represents businesses of various sizes, from national and global companies to local and emerging businesses. Our experience comprises 18 practice areas, more than 100 practice focus areas and 15 industries, including manufacturing and distribution, real estate and finance. For additional information, please visit our website at www.milesstockbridge.com.

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plines including accounting, finance, strategy, and organizational behavior. Multiple program dates are available for you to choose from: Mar 5–7, 2012, Boston; Apr 25–27, 2012, Los Angeles; Jun 4–6, 2012, Boston; and Jun 6–8, 2012, Boston. For more information on this program and other programs developed by ACC and BU, visit www.acc.com/businessedu.

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Welcome New Members!

Theresa Casey, Under Armour, Inc.

Amy Beth Leasure, Allegis Group, Inc.

Dana Lewellen, Under Armour, Inc.

Kelly Loughery, Motorola Solutions, Inc.

Joyce Hall Mellinger, Zurich North America Group

Wesley Muller, Under Armour, Inc.

Bonnie M. Muschett, Connections Education

Lisa F. Orenstein, Magellan Health Services, Inc.

Benjamin Roca, Northrop Grumman Corporation

Susan Saidi, Connections Education

Elizabeth A. Scanlon, KPSS, Inc.

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Board Members and Contacts

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Prometric Inc.
443.455.8535
Michael.Sawicki@prometric.com

Secretary

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ader@aai.textron.com

Immediate Past President

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Chapter Administrator

Stacey Stepek
410.691.6541
sstepek@csc.com

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participated in the Habitat for Humanity Project in Baltimore. The weather was perfect and we actually accomplished something! It is always a great chapter team building event which serves the greater good of making a positive difference in our community. Thanks to all our members that participated, especially the entire law department of Allegis Group, Inc.

The chapter has elected its new officers for 2012. Due to the relocation of Farah Esmail, I will remain as Chapter President, Melisse Ader-Duncan (AAI) will become President Elect and Treasurer, and Sheela Kosaraju (Ciena) will become Secretary. Arielle Harry-Bess (Monumental Life Insurance Company) will join the Board in January as our newest member. I would like to encourage any ACC member who is interested in joining the Board to contact me or any other member on the Board. As our year comes to a close, I would like to thank my fellow Board members for all of their support this past year, which made my job so much easier. It takes a lot of hard work, dedication and commitment to run the Baltimore Chapter. Special thanks to Melisse Ader-Duncan for her efforts as Secretary, Chris Rahl for stepping in as Treasurer, Linda Way-Smith for taking charge of the newsletter, Dawn Resh as social committee chair, Aaron Marshall for planning the Chapter's Community Service Day, Ward Classen and Christopher Smith for co-chairing the Golf/Spa event, Lynne Kane-Van Reenan for overseeing our sponsorship program, Andy Lapayowker for being our chapter web-master and photographer, Maureen Dry-Wasson, Christine Poulon and Chris Rahl for our law school outreach programs, and Raissa Kirk and Lynne Durbin for their coordination of our programs. Special thanks to Stacey Stepek, our Chapter Administrator, for all of her behind the scenes efforts in coordinating the lunch program logistics, Golf/Spa details, chapter filings and Board meetings. I would also like to thank all of the other Board members for their advise, guidance and support.

As always, we welcome feedback about what we can do to make the chapter better. If you'd like to share your ideas or suggest a potential program topic or restaurant venue, please feel free to contact me, or any of the other Board members listed in this newsletter. Together we can make ACC Baltimore the best chapter possible.

Best wishes for a safe and happy holiday season.

Michael Sawicki