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FOCUS

President's Message

Joseph Santos

Dear Members,

On June 10, 27 attendees were fortunate to hear Robinson & Cole's Bradford Babbitt, chair of the firm's Business Litigation Group, and William Egan, counsel with the firm, present "Bulletproofing Your Deals—Lessons from The Litigation Battlefield on Commercial Contract Clauses." This presentation provided very practical information to avoid the drafting pitfalls that both lead to litigation and then make litigation much more expensive. The presentation included a review of highlights and recent developments in the law. In addition, practical advice and drafting tips based on actual litigation and trial experience were offered.

Attendees received useful takeaways, including a CD with numerous sample clauses that address the problem areas discussed during the presentation. The following areas were covered: Arbitration, Indemnification, Ipso Facto, Survival, and Forum/Venue Selection Clauses; Limitations on Liability and Warranty Disclaimers.

The event was the final seminar in the first half of this year's series of timely topics presented by our law firm sponsors and included: "Departing Employees and Intellectual Property" (Kelly, Drye and Warren LLP), "Congressional Investigations—Watch Out!" (Kelly, Drye and Warren LLP), "News from the ESI Front—What Every Organization Needs to Know Now" (McCarter & English LLP), and "Employment Law Case Updates—Recent Decisions and What They Mean to Your Business" (Berchem, Moses & Devlin, P.C.).

The series will continue after the summer break with another exciting lineup beginning in September. Once again, a hearty thank you to all of our seminar presenters and attendees! I hope that many of you will take advantage of this outstanding benefit of membership in CONNACCA.

Please let us hear your thoughts about seminar topics that you think



would be of interest to CONNACCA members.

Get Active In CONNACCA

The position of secretary is open on CONNACCA's board of directors. Get more value from your ACC membership by serving

on the board of directors. You will meet other Connecticut in-house counsel, work on areas of interest, and create a wonderful network of colleagues and friends. Please join us! Email CONNACCA Administrator, Ann Coolidge Randall, at connacca.ann.randall@comcast.net if you are interested or need more information.

I encourage all of you to bring your business cards to our next event and reach out to fellow members. If you reach out to them, they'll probably do the same for you.

Your feedback is important. We welcome your thoughts and we encourage you to get involved with CONNACCA.

The Emerging Role and Responsibilities of Corporate Counsel and CCOs

**Susan Hackett, senior vice president and general counsel,
Association of Corporate Counsel (ACC)**

I remember when I arrived at ACC in 1989 and was learning the ropes of in-house counseling and how fascinated I was, as an outsider then, to see how ACC members were defining and re-defining the role of the law department in the company. In my early years at ACC, I used to tell people who didn't know much about corporate counsel that what made in-house counsel's role unique was their focus on how to keep the milk in the glass, rather than doing what outside firms usually did, which was to respond and defend once the milk was spilt. In-house counsel were all about compliance and preventive law, which was still an emerging theory in the pre-Enron world: one that in-house counsel understood and embraced, but one that most other lawyers or observers did not.

Events in the intervening years, along with the continuing development of the in-house legal department's role, have led to a much stronger concern about (and fight over) the evolving role of compliance in the modern corporation. In recent years, regulators and commentators — such as those who proclaim to set the standards for what constitutes good corporate governance — seem to be most interested in physically moving the compliance function into the core of the business, with both good and bad effect for the role of in-house lawyers as compliance leaders. Many folks now suggest that the right way to structure corporate compliance is to give it a separate

and independent home in the company's management structure (or even house it in each of the company's many lines of business), through the appointment of a Chief Compliance Officer (CCO) and her reports, all of whom occupy a separate (and sometimes somewhat independent) office in the corporate hierarchy.

Everyone agrees that “the business” needs to own compliance, just like they need to own the decision to promote and live in an ethical culture. Tone starts at the top, and execution is the responsibility of each person in the company. Got it — I don't think anyone is arguing over that. And for that exact reason, is compliance (or for that matter, ethics?) really a separable silo? And for purposes of this issue, are law and compliance really severable “functions”?

Post-Sarbox, when the movement to appoint a separate position as Chief Compliance Officer gathered wide-spread popularity, the first CCOs appointed were usually part of the law department's staff, and even the office was housed within the legal department: either the CLO or a deputy GC or someone similar was awarded the title, and the function remained a largely “legal” one, directed and implemented by lawyers with a legal focus. Now, CCOs span a much wider universe of credentials and responsibilities, and management or the board often appoints a CCO who may not be a lawyer, none-

theless someone drawn from the corporate legal staff. Today's CCO is very often an independent silo of authority in the corporate entity (intentionally so!). Sometimes the CCO function operates as a compliance czar who does not have staff, but has oversight for measuring and reporting to the board on how or whether each business function has fulfilled compliance directives; sometimes the CCO is a senior manager with a large staff, bureaucracy, and defined responsibilities to execute. But whatever their resume or operational mandate, today's CCO may or may not think about the relationship of compliance to the legal function, or even understand how to coordinate the role closely with the company's lawyers.

What does this mean to the role of in-house lawyers and the structure and responsibilities of legal departments? Did the company create a CCO position because management or the board wanted to be able to conduct training and investigations in concert with, but separate from, lawyers who carry privilege and defense responsibilities? Did the company create this role in response to perceived “best practice” requirements imposed by groups such as shareholder lobbies or consultants, such as ISS or The Corporate Library or the Ethics Officer associations? Did the role emerge while we weren't looking because management was concerned that lawyers didn't have the compliance skill sets or operational

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authority that is needed? Was the appointment awarded to a great achiever in the company title in order to allow that person to exercise vision and strategic re-direction in the aftermath of a failure the company hoped to recover from?

However the CCO office gets started, it is precisely because an embedded culture of compliance is indispensable to today's businesses that in-house counsel should want to either own or better understand how to coordinate the compliance officer function with the legal department's role and responsibilities.

ACC recently hosted a meeting with an astute group of CLOs who work in heavily regulated industries; the topic of conversation was the shifting focus of the CLO from what is strictly "legal" work to better managing risk, and especially entity-threatening risk. There was a significant conversation on whether the issue in most companies was even one of "legal" standards any longer: legal compliance has become the floor, and public expectations often stretch far higher than "did you comply?"

There is almost universal agreement that risk issues are far more likely to dominate board and executive management agendas today. The concern expressed was whether there was a misplaced presumption that "independent" compliance offices were consistent with the role of the CLO who is grappling with how to help the company assess, prepare for, and manage risk. Where separate compliance offices exist, there was a general

concern over whether the company's focus on compliance becomes one designed to train and measure, rather than one that seeks to help companies navigate far more complex waters, where judgment, risk, reputation, media, regulation, and legal requirements all interact. Everyone agreed that when the perfect storm combines all these elements under the umbrella of a potential disaster, the resulting challenges require a response and the ability to demonstrate corporate character that baseline compliance programs don't afford. How will law departments address these concerns if compliance is no longer their job — when some other corporate function is technically charged with "keeping the milk in the glass," to go back to my easy descriptor from days gone by.

Personally, I think this issue will be a dominant challenge to departments in the coming years as thoughtful leaders in companies struggle with increasing scrutiny from regulators, investors, commentators, and the media to manage risk and assure company compliance. And our concerns are augmented by the suspicion shared by many in the in-house world that the focus of many regulators on embedding compliance functions outside the legal department is partly designed to "remove" lawyers from the investigation process or prevent management from "hiding" from direct responsibility and liability for corporate failures. (After all, it is easier to show "compliance failed" (a strict standard) than whether management assessed and managed legal risk and developed appropriate and sufficient responses (a negligence or criminal

standard that requires proof of malintent or misconduct, and allows for defenses).

ACC is not only watching the trends and trying to assemble knowledge and best thinking, but is considering what our role should be in helping CLOs better shape the role and responsibilities of both compliance and legal departments (whether married or separated in the corporate hierarchy). Our goal, as always, is to find the best ways to help corporate clients both stay out of trouble, and successfully operate their businesses in a forward-thinking fashion.

What are you doing or thinking about in your company and as you develop your role as an in-house counsel. Is this a "false" discussion? Is it one that will drive the perceived value of legal departments in the future? Should CCOs be independent from or part of the legal function? How will the CCO's role, as it continues to emerge, be best coordinated with Legal?

We're interested in your opinions and experience. What do you think? Contact me at hackett@acc.com, or comment on this article as it appears on our blog post, Inhouse ACCess at www.inhouseaccess.com/.

Want More Info?

To follow and engage on topics of particular concern to law department leadership, please see any of our CLO ThinkTank reports, briefing materials and resource listings, which include several sessions on this and related topics, all available at:

<http://www.acc.com/community/clo/thinktanks/CLO-ThinkTank.cfm>

VALUE PRACTICE:

Hartford Financial Services: Legal Intranet Enhances Communication, Consistency and Efficiency

Amy Gallent, Interviewed while senior vice president, associate general counsel and chief of staff

Mary Scott, Interviewed while director of technology for Hartford Financial Services' Law Department

Background

Hartford Financial Services' law department includes around 400 people worldwide, with most located in Hartford and Simsbury, Conn., and some law department personnel located in other states within the United States, and in the United Kingdom and Japan.

A finding from a 2004 employee survey identified the need to improve communication within the law department. Up to that date, email was the primary communication vehicle. To explore options to enhance communications, the law department created a task force that included representatives each of the law department's groups. One of the key recommendations of the task force was to develop a department intranet website.

Following is a summary of technology practices Hartford Financial Services' law department has implementing with regard to its legal intranet.

Primary features of legal intranet

An objective in creating the legal intranet was to make the intranet a 'go-to' place for information. A key benefit is that information that may be of broad interest to law department members is now all in one place; staff knows where to go for the information and has access to the same information. All law department events are listed centrally on the intranet. In addition, the department uses Sharepoint for projects and key information on eDiscovery, Sharepoints are organized and accessible through the intranet.

Primary features include:

- **Directory** — lists all members of the law department, and includes photographs, biographies and supervisory relationships.
- **Calendar** — lists all law department events.

- **Office floor plans** — includes locations of conference rooms and printers.
- **News presence** — includes RSS feeds to news items relating to insurance.
- **Law department news** — includes staff arrival and departure notices.
- **Training materials** — includes information on training sessions, links to webinars, manuals for systems, and information and links on disaster recovery.
- **Career path resources** — includes career paths for job categories and law department job postings.
- **Records management and document preservation** — includes information on the law department's records management guidelines, and a set of tools used for document holds and ediscovery.
- **Pro bono landing page** — includes a link to a pro bono landing page with links to the law department's pro bono partnership information.
- **Diversity landing page** — includes information posted by the law department's Diversity Committee.
- **Law department's outside counsel billing guidelines** — the most current version of the department's outside counsel billing guidelines is posted; allows anyone from the law department anywhere in the world to access the guidelines and promotes consistency and efficiency.
- **Outside counsel engagement letters** — includes a sample retention form.
- **Relationship manager guidelines** — the law department's outside counsel management approach includes having designated relationship managers within the law department for each of the firm's preferred counsel; guidelines for relationship managers are posted on the intranet.
- **Financial data and billing rates** — accessible on a more limited basis depending on need and role, the intranet includes access to the law

department's budget, forecasts and financial information, as well as information on outside counsel billing rates for key firms.

- **Group-level information** — each of the law department's groups may post information relevant to their practice areas on the intranet.
- **Government affairs portal** — the government affairs group has an external-facing portal to share information more broadly within the company.
- **Intellectual property portal** — the intellectual property group has an external-facing portal that allows the group to share information more broadly within the company.

Nuts and bolts

Some nuts and bolts on the law department's intranet:

- **Developed in-house** — the law department's intranet is 'home-grown.'
- **Populating/refreshing content** — a team of five people is on point to populate and refresh content as part of their broader roles.
- **Internal-facing and access** — access is restricted to members of the law department; the intranet also includes the ability to limit access to information based on need and role.
- **Daily email** — a daily email is sent to everyone within the law department informing them of new additions.
- **Go-to place for law department communications** — the law department's intranet is the destination for all department-wide communications.

Value and efficiency

Three ways the intranet adds value and enhances efficiency:

- **Reduces confusion** — posting information of interest to the department helps promote efficiency by reducing confu-

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sion about staff members, where to find things, the latest templates, policies and more.

- **Same information at the same time** — posting important information of broad interest to the law department on the intranet helps to ensure that everyone receives the same information at the same time; it's posted and everyone can access it.
- **Most current information** — rather than wondering what the most current document retention policy is or what the most current outside counsel billing assumptions are, members of the law department can access this information real-time on the intranet.

Tips for success

Asked about getting started and tips for success, the director of technology and senior vice president, associate general counsel & chief of staff share the following:

- **Be patient** — start small and keep efforts and expectations manageable; it takes time to change behaviors and drive people to use the intranet.
- **Have access to technology expertise** — work with company information technology staff and/or have someone within the law department who understands both the legal and technology components.
- **Identify goals up-front** — think about the law department's use objectives.
- **Make it the destination for information** — communicate department-wide information on the intranet; Hartford's law department also sends a daily 'push' email informing legal staff of new additions, but the intranet is the information destination.
- **Keep it current** — refresh information so the intranet is the 'go-to' place for the most current guidelines, information and material.

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Welcome New Members

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Terrence Foran, Travelers Insurance Company

Keith Knauerhase, ABB Inc.

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