

FOCUS

President's Message

Ken Bunge

Dear Fellow Connecticut Chapter Members:

It is hard to believe that this is the last newsletter of the year! It has been a tumultuous year for the economy and our companies. I hope that we will all work together as a nation to make 2009 the year we "right the ship" and at the same time commit to learn from all of the mistakes that have been made.

The Association of Corporate Annual Meeting was held in Seattle October 19-22. There were several sessions dealing with the ACC Value Challenge program. This major initiative has as a primary objective, created a constructive dialog and developed practical resources to help both in-house and outside counsel better align legal costs with client objectives and the value of services provided. A number of CONNACCA members attended the meeting and CONNACCA board member Phil

Wellman and I participated on panel discussions. The meeting was very informative and I encourage everyone to consider attending the next annual meeting to be held in Boston in October 2009.

On the local scene, on October 8, attorneys from Saxe Doernberger & Vita hosted a program entitled: "Commercial Insurance: What Every General Counsel Should Know" at The Hartford Club. On December 4, Day Pitney will present a program on the role and legal responsibilities of in-house counsel when facing government investigations. Panelists will include in-house attorneys who will share their experiences. In conjunction with this last event of the year, we are planning a special reception for all members to follow immediately after the program. We may also



have an additional seminar program in November. Additional details will be provided via email and will be posted on our chapter website at connecticut.acc.com.

In other news, Priya Morganstern, director of the Hartford office of the Pro Bono Partnership, was elected to our board. On behalf of all members, we want to welcome Priya and look forward to her contributions to our goals and objectives! If anyone of you is interested in becoming a board member, please contact me. We particularly need more representation from small law departments.

Finally, in closing, I want to wish all of you and your families a happy holiday season!

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.

Board Members and Contacts

President

Kenneth Bunge

KEB Advisory Services, LLC
860.663.0567
bunge_kenneth_e@sbcglobal.net

Vice President

Amy Gallent

The Hartford Financial Services Group, Inc.
860.547.8712
agallent@thehartford.com

Secretary

Robin Smith

LEGO Systems Inc.
860.763.6888
robin.smith@america.lego.com

Treasurer

Dennis Mayer

Otis Elevator Company
860.438.5028
dennis.mayer@otis.com

Immediate Past President

Philip Wellman

MassMutual Financial Group
413.744.7575
pwellman@massmutual.com

Board of Directors

Catherine Bashaw

United Technologies Corporation
860.728.7809
catherine.bawshaw@utc.com

John Beers

The Phoenix Companies, Inc.
860.403.5050
john.beers@phoenixwm.com

Douglas Brown

Kuehne & Nagel, Inc.
203.597.5352
douglas.brown@kuehne-nagel.com

William Longa

Pfizer Inc.
860.732.6158
william.c.longa@pfizer.com

Priya Morganstern

Pro Bono Partnership, Inc.
860.541.4950
pmorganstern@probonopartner.org

Frank E. Rudewicz

UHY Advisors
860.549.8500
frudewicz@uhy-us.com



1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425

Welcome New Members

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

Jeffrey Chanin, Hamilton Sundstrand

Nancy Clark, Barnes Group Inc.

Ryan Costantini, United Technologies Corporation,
Pratt & Whitney Division

Kay Mann, Noble Environmental Power

Kathryn Sherer, The Stanley Works

Amy Wergeles, Henkel of America, Inc.