

CHAPTER OF THE YEAR!

President's Message

Todd Martin

I am extremely proud to serve the Association of Corporate Counsel as our Dallas Fort Worth Chapter President for 2009 – 2010. There has never been a better time to be involved with the ACC. The economic challenges that we have all endured over the previous year have only made in-house counsel more important than ever to our respective companies. The value of our organization was clearly visible in October at the ACC Annual Meeting in Boston, where our attendance exceeded last year's figures and the theme of the meeting resonated with everyone present: "Don't Just Survive. Thrive!"

Something else that resulted from the meeting in Boston – as you may have heard, the Dallas Fort Worth Chapter was named 2009 ACC Chapter of the Year (for chapters with 250 to 750 members)! This milestone achievement was only possible through the hard work of our volunteer Board of Directors, the enthusiastic support of our sponsors, the overall interest and involvement of our membership – and the focus and selfless dedication of our Past President, Marcia Stuart Cepelcha. There are too many people to thank here, but at the very least, please share your gratitude with Marcia the next time you get a chance. She accepts absolutely no personal credit and instead, generously praises everyone around her. Marcia is one of the most devoted Board members that our chapter has ever had – and is a big reason why serving the DFW Chapter has been so professionally

rewarding for all of us. So a heartfelt thanks and congratulations to Marcia!!

Looking forward to 2010, we have even more in store for our members. Our programs, social events and CLEs will continue to improve upon previous offerings. Our involvement with area law schools and contributions to local pro bono scholarships will climb. We aim to continue our steady upward membership growth as well. We now stand at over 600 members – and hope to achieve large chapter status soon (750 members) to rival the larger major metropolitan areas around our country. Of course, with this growth, comes added resources and opportunity for our members. We learned earlier this year that the ACC as a whole passed the 25,000 member mark and continues to grow around the world in size and stature.

Here in the United States, the ACC's efforts to influence the legal services market on behalf of in-house attorneys are making an enormous impact. For example, the ACC's Value Challenge and trends toward alternative billing practices have become common topics of discussion among outside law firms. The ACC Value Index is also emerging as a powerful tool to increase the value of our outside counsel dollar. Through these advancements, the ACC aims to promote more predictable, cost-



effective legal representation of our corporate employers and we are all the beneficiaries of these efforts.

Looking a little further down the road, please save the date for the next ACC Annual Meeting. On October 24, 2010,

the international in-house legal community will converge in San Antonio. The four Texas ACC Chapters have pledged to host a Texas-sized party that our friends from around the world won't soon forget. So, please join us in San Antonio next year as a fellow Texas delegate and support our cause!

I look forward to a great year and to meeting as many of our members as I can. Please let me know if you have suggestions, or if you are interested in helping with any of our committees. We can always use an extra hand.

ACC DFW is now LinkedIn! Join our new LinkedIn Group: ACC – Dallas Fort Worth. We hope that this new tool will help bring the DFW in-house community a little closer together.

Hope to see you soon – and here's to a great 2010!

International Legal Consideration for In-house Counsel

By Susan Hackett, Senior Vice President and General Counsel, Association of Corporate Counsel

So much of our time is spent attending to the urgent matters on our desks. Many of us complain that we don't have time to deal with the important ones: the ones that should be a priority in terms of long-term success, but are often shuffled to the bottom of the pile. Today, I'd like to talk to you about something that I think is long-term "important," and explain why at some point, if left unattended, it may become a daily "urgent" problem plaguing your practice.

In-house counsel have complex jobs as both generalists and specialists for their company client, and this complexity increases as the number of jurisdictions and related "international" considerations that your practice must contemplate increases. Even companies that largely work in only one country are ever-more likely to contend with suppliers, laws, and other influences from beyond their "home" jurisdiction's borders.

So please consider for a few minutes how a number of developments and emerging trends in international legal practice may affect your ability to get your work done as a lawyer operating across country lines.

Trendlines that will affect your practice as an in-house counsel.

In-house counsel in places like the United States, Canada, Australia and New Zealand have long enjoyed the confidence that their ability to practice as in-house lawyers would be fully recognized and respected, both as lawyers at the bar and amongst the client community they serve. Yes, they fought for it, but no one questions it nowadays.

But in many parts of the world, regulators of the local profession still do not recognize in-house counsel as carrying the same professional rights and responsibilities as lawyers in outside practice. In many jurisdictions in Europe and Asia, for instance, in-house counsel can no longer carry

privilege rights for their clients or aren't seen as sufficiently independent to be allowed to exercise the status of outside counsel in courts or elsewhere. In many of these jurisdictions, an in-house counsel becomes a "non-lawyer" the day they receive compensation by paycheck rather than retainer check. [See, e.g., ACC's International Practice Almanac offering overviews of practice rights for in-house lawyers jurisdiction by jurisdiction - <http://www.acc.com/search.cfm?anytext=International%20Practice%20Almanac>.] In addition, almost every major business jurisdiction in the world places some level of limitation on the ability of lawyers not locally admitted to engage in practicing.

Many jurisdictions around the world have been engaging in MJP (or multijurisdictional practice) reform efforts to help the states or provinces that separately regulate lawyers, figure out how to allow and when to regulate inter/multi-state or inter/multi-province services within the country's borders without requiring separate admissions in each jurisdiction. While the ability of lawyers practicing within these nations has improved, we still have a ways to go before larger MJP authorization systems catch up with 21st century practice realities.

Now these regulators have to figure out solutions that either facilitate or protect both the bar and the public from lawyers practicing in their jurisdictions who are not locally licensed anywhere in the country. It seems that our progress has been limited to figuring out a bit more about how a lawyer licensed in Ontario or California can follow a legal matter they've been retained to handle for a client to Alberta or Georgia (respectively). However, we still really don't have a handle on how a lawyer from the company's office in another country, locally educated and licensed there, can come work at corporate HQ in the company's home country, or how outside counsel in the many jurisdictions abroad doing work for the company in their home jurisdiction can

engage in providing services that are essentially deemed as being provided by a "non-lawyer" since that person is not admitted in the company's home country.

So, here's the important nugget: if you thought that MJP was all but in the bag, it's actually just getting started in the emerging context of multinational practice. The corporate legal community, from both companies and firms, will need to push hard to explain why this is crucial for the bars to do since many are completely disinclined to get involved. They see the issues as a mere administrative inconvenience to the foreign lawyer that can be simply answered by saying "no."

I see an emerging opportunity in many jurisdictions in the next few years as a number of efforts are launched to think more about how to deal with multinational practice issues. Lawyer associations and bar groups around the world are starting to set up commissions, and ACC will be there to help. What is going to drive change more than anything else, according to my small and completely subjective crystal ball, is that these emerging conversations on international licensing authorization will take place at the same time that governments and other stakeholders are also thinking about how to make corporate lawyers better gatekeepers for the client entities they serve. And also how lawyers and the law can become more of a service profession to a larger segment of their society, rather than simply a business venture for the highly educated and well-compensated corporate lawyers of the world.

For instance: The bars in Europe [and elsewhere] are about to begin to consider responses to initiatives such as the Legal Services Act (www.justice.gov.uk/publications/legalservicesbill.htm), which arose in the United Kingdom a few years back; the fundamental precepts are now being replicated/gaining traction throughout Europe through the EU's Services Directive, which will take force at the end of 2009

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[http://ec.europa.eu/internal_market/services/services-dir/index_en.htm]. When both of these initiatives were announced, quite a number of prominent leaders in the US ethics and professionalism community said: “Interesting, but an isolated event in time, and it will never happen here. Our self-regulated profession operates under time-honored traditions of independence and lawyers know best.”

But hear the undertones and think about whether it really is unlikely that this kind of “reform” movement will not seep beyond the four corners of Europe. The Legal Services Act was largely a consumer-driven initiative, responding to the perception and reality that legal services are not affordable or meaningful to most citizens’ basic needs. The Act authorizes the development of new kinds of professional service entities that would include multidisciplinary practices and would liberalize the practice of law to make it more accessible. The EU Services Directive requires EU governments to review their rules governing the liberal professions, to ensure they are necessary and appropriate – that directive may open all kinds of conversations about whom should be allowed the privilege of lawyer in a society and how those persons should be regulated.

So – here’s the nugget: why isn’t it possible for such an over-arching review in Europe to include a discussion of whether companies – can be better served by in-house lawyers who are fully recognized by the bars and carry the privileges that their peers in outside practice have always enjoyed – hold them to the same standards of professionalism, of course, but offer them the same privileges of practice. Since the Akzo-Nobel case (in which ACC filed an intervention) is also still pending and may be decided soon, there will be the added limelight of a decision that either upends or supports the notion of privilege protection in the in-house practice context as interpreted by the highest courts in the EU interpreting local and EU law.

And, of course, for lawyers beyond the physical borders of the EU, EU rules define anyone not admitted in a EU jurisdiction as a non-lawyer for purposes of legal services provided in the EU jurisdiction. That means all of you out there who don’t sit in Europe with a local admission, but have client interests in the EU. And this also applies to your local counsel whom you’d like to deploy in the EU negotiation or who has delivered the memo to your colleague sitting in Brussels, which is now discoverable, because privilege only applies to materials generated by lawyers (not non-lawyers).

At the same time, there are new initiatives in Australia and elsewhere that allow for law firms to seek out capital through public financing -- essentially authorizing firms to become publicly traded companies, and thus be regulated as such. Thus, decisions about legal service modeling and provision in a publicly traded law firm may be influenced greatly by non-lawyers and regulators over time. And in the United States, in response to Enron and other corporate meltdowns, we see entities such as the SEC seeking to regulate the roles, fiduciary responsibilities, and even reporting requirements of lawyers working in public companies.

We see Congress increasingly likely to hold hearings on corporate failures and subpoena lawyers and attorney-client privileged documents as a part of their investigations (and remember, privilege is a court doctrine in the United States, and Congress often maintains that it has no protective status in response to a Congressional subpoena). This all means that folks who aren’t “part of the guild” are increasing likely to have a hand in lawyer regulation.

We live in a new world, quite distinct from the traditions of our profession which allowed us to make decisions about professionalism as lawyers, without much “interference” from other stakeholders, such as clients, shareholders, public company regulators and the media. In an era marked by an alarming number of monumental corporate failures, questions about “where were the lawyers in all this?” will not be answered solely at legal colloquia. Like it or not, living in the new world will have consequences to our regulation and ability to practice for our clients. And we should be out in front of them, not lagging behind to see what others will make of our profession and how it works.

My point is that the consequences may seem remote to you right now. You could look at each of the above events as if they are separate and unrelated to your license, your practice and your client’s service. But I think that is a short sighted view. And if I have only these few minutes with you every now and then to take you away from what’s urgent to talk to you about what’s important, then let this be my call to ACC members: If you want to protect what’s important to you locally, you’d better be prepared to join us in fighting for what’s unfolding internationally. It will directly affect your practice and your capacity to practice in the not so distant future.

Contact me at hackett@acc.com.

Social Networking (SN) Sites - Pitfalls for Employers

By John A. Koepke

Officers or managers “friended” by employees on Facebook? Employees “tweeting” during work hours? Employees “blogging” with negative comments about their supervisor? Investigated potential employee’s profiles on Facebook?

Recent studies found: 74% of managers believe SN sites put the company’s reputation at risk; 15% discuss SN sites at Board of Director level; 60% of managers believe they have the “right to know” what an employee posts on an SN site; 53% of employees believe that SN site content is none of Employer’s business; 33% of employees don’t consider the business implication of their SN postings; 55% of the employees claim to visit SN sites once a week, but off the clock, and only 20% of the employees admit visiting SN sites while on the clock (yeah – right!)¹ 72% of executives surveyed personally visit SN sites at least weekly to read what customers say; 50% monitor a competitor’s use of SN sites; 33% search SN sites to see what their employees say; 25% check the background of prospective employees.²

With all the media attention given to SN sites, Employers awareness of use of SN sites, only 1 in 3 Employers surveyed have a SN site usage policy in place, and surprisingly only 10% conducted relevant employee training on SN site usage.³

¹“Social Networking and Reputational Risk in the Workplace.” Deloitte LLP, 2009. www.deloitte.com/dtt/cda/doc/content/us_2009_ethics_workplace_survey_220509.pdf

²<http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/04/nielsen-online-global-landscapefinal1.pdf>

³Id.

Another study finds 66% of IT administrators worry that employees who share personal information on SN sites will actually put the company’s IT infrastructure at risk, 25% reported they were victims of spam, phishing and malware attacks via sites such as Tweeter, Facebook, LinkedIn, and MySpace. When Employers utilize SN sites for business or allow access on its IT infrastructure, IT implications and dangers of such use must be thoroughly considered.

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Social networking (“SN”) sites are an inescapable part today’s culture. While SN sites help Employers reach customers, promote products or services, use of SN sites can expose Employers to potential liability in several ways.

Use of SN sites in prospective employee vetting provides access to a significant amount of information, much of which is protected information (e.g. age, marital status, familial status, sexual orientation, religious affiliation, political views, etc.).

⁴ Two-thirds of Business Fear That Social Networking Endangers Corporate Security, Sophos Research Reveals.”

Sophos, April 28, 2009

www.sophos.com/pressoffice/news/articles/2009/04/social-networking.html

When Employers “mine” SN sites in the pre-employment investigation process, only non-decision makers should conduct this search and filter out all protected information, before passing the information along to the hiring manager. To avoid potential issues under the Fair Credit Reporting Act or state specific statutes, run all searches in-house, and do not engage a third party to do so. Carefully consider the criteria used in researching SN sites in the evaluation of applicants. Be aware that 21 states and the District of Columbia have sexual orientation discrimination statutes.

Most Employers routinely monitor employee’s internet usage; this should include SN sites and blogging. Any policy should advise all employees that the Employer will monitor SN site usage on its IT infrastructure, including cell phones, PDAs and Blackberries. A more complicated question is whether to monitor an employee’s personal computer off duty SN site usage. The same guidelines apply – if the Employer intends to monitor personal computer off duty SN site usage such should be clearly disclosed, advising if such monitoring reveals prohibited conduct, this can and will be utilized in any disciplinary process. However, there are limits - invasion of privacy, First and Fourteenth Amendment Constitutional protections, and the Electronic Communications Privacy Act of 1986, 18 U.S.C. §2511 et seq. Tread very carefully in formulating an off duty SN site monitoring policy.

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During the employment relationship, other considerations arise. “Cybersmearing” can result in Employer’s liability for acts committed by employees, including defamation of employees, customers or competitors, invasion of privacy and other common law torts. SN sites create potential Employer liability for employee’s actions - harassment, discrimination, intellectual property infringement, dissemination of confidential, proprietary and trade secret information, and, retaliation claims. For publicly held Employers, the SEC has recently published regulations for online communications with investors, including the use of SN sites.

Some Employers “review employees” or “recommend” individuals on LinkedIn and other similar SN sites. Be wary; as a general rule only post reviews to the same extent provided in a written reference. A public forum is not a place to provide information to another potential Employer (that might arguably otherwise be privileged). A review on a SN site can be used by a diligent employee’s lawyer to contradict a poor performance review, reason for termination, or interference with future employment.

Employers should restrict employees from posting disparaging comments about the Employer, coworkers, customers or discussing the Employer’s business, while blogging or on a SN site, by adopting a clear policy stating that such conduct is prohibited and will not be tolerated. Publish the SN site usage policy, obtain acknowledgments from employees, maintain consistent and strict enforcement. A SN site usage policy should consider the following:

- Refer to existing company policies and procedures protecting confidentiality of company information, safeguarding company property, discrimination or harassment policies.

- Prohibit employees from using the name, trademark, logo or other identifying marks or copyright protected material of Employer or its customers, without express written permission from a senior management.

- Prohibit posting any material that is obscene, vulgar, defamatory, threatening, discriminatory, harassing, abusive, hateful or embarrassing to another person or entity, engaging in any activity that may reflect negatively on Employer, its affiliates, employees or customers.

- Harassing or discriminatory comments may be deemed inappropriate even if the company name is not mentioned.

- Employees must specify in any SN site or blog that the views/opinions expressed about work related matters are their own, have not been reviewed or approved by the Employer, and do not necessarily represent the views and opinions of their Employer.

- Policy is not meant to restrict an employee’s use of SN sites or blogs for purely personal reasons where the employee does not identify themselves as an employee.

- Employees are strictly prohibited from listing their employment email address on SN profile, unless the SN site or blog is used purely for Employer business or professional purposes, unless approved by senior management.

- Employee should expect that any information created, transmitted, downloaded, exchanged or discussed on SN sites or blogs on Employer’s IT infrastructure will be accessed by Employer at any time, without prior notice, can and will be used in disciplinary proceedings.

- Policy can and will be amended at any time without notice.

- If Employer monitors SN site usage at Employer or of personal use, employees must be advised that their use of SN sites or blogs has no reasonable expectation of privacy concerning those postings.

- Management or employees must not disclose private information about employees on SN sites. If you would not

post it in a memo in the break room, such does not belong on an SN site or a blog.

- Update confidentiality policies, employment agreements, non-competition agreements, settlement and severance agreements to address SN sites, twitter, and blogs.

- Should the policy address “anonymous” communications.

- Should the policy include both broadcast and peer to peer formats.

- Is prohibiting instant messaging or texting necessary or desirable.

- Is permission or preapproval for SN postings or blogs required.

- Whether to prohibit non work related blogging while on the clock.

- Whether to address personal blogs off the clock.

Avoiding potential exposure from SN site usage requires Employers carefully consider these points when drafting a SN site and blog usage policy.

ACC-DFW 6th Annual CLE and Golf and Spa Event

On September 11, 2009, ACC-DFW Chapter (ACC-DFW) held its 6th Annual CLE and Golf and Spa Event at the Four Seasons Resort and Club of Las Colinas. The morning event began with two interesting continuing legal education presentations provided by the event's platinum sponsors. The first hour of continuing legal education was a presentation on "Ten Things In House Counsel Should Know About Privilege" by Angela Zambrano and Paige Montgomery of Weil Gotschal. The event continued with a presentation titled "A Day in the Life of Liz Lawyer, Deputy General Counsel of Very Best Computer Company by Darren Hauck, Britton Richardson, Jon Shepherd and Alan Struble of Alston+Bird LLP.

The event attendees broke for lunch at The event attendees broke for lunch at the Four Season's Pavillion, which was sponsored by Jackson Walker, where ACC-DFW continued its festivities by presenting awards to the Margolies scholarship winners. The winners were DeJon Rudd from Texas Wesleyan University School of Law and Yon Sohn from SMU Law School.

The ACC-DFW Chapter announced that the Chapter had won the Association of Corporate Counsel's prestigious Chapter of the Year Award for medium size chapters. This award recognizes the Dallas-Fort Worth Chapter for actively promoting member involvement, exhibiting overall excellence in meeting its members' needs and demonstrating leadership. The actual award was presented at the ACC National meeting in Boston in October.

After lunch, attendees made their way to the Four Seasons Spa and the newly designed TPC course for their respective activities. Approximately 62 golfers participated with over 70 attending the spa. The event concluded with a cocktail hour where raffle and golf prizes were awarded.

ACC-DFW thanks the following sponsors for its Annual CLE and Golf and Spa Event a success:

Alston & Bird	Thompson & Knight
Andrews Kurth	Vinson & Elkins
David Carrie	Weil, Gotshal & Manges
Epiq Systems	
Gardere Wynne Sewell	
Haynes & Boone	
IE Discovery	
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Jackson Walker	
Stroz Friedberg	

Thompson & Knight Event

ACC sponsor, Thompson & Knight, hosted our Fall Social on November 3, entitled "What's New and What's Hot in the Dallas Arts District." Guest speaker Valetta Lill, Executive Director of the Dallas Arts District, delivered a brief history of the properties that now comprise what we know as the Dallas Arts District. Ms. Lill discussed the lobbying, fund raising, purchasing and development of the project that has recently gained tremendous acclaim and will eventually transform the worldwide perception of Dallas.

There could not have been a more spectacular and appropriate setting for our program than Thompson & Knight's One Arts Plaza offices. From the 15th floor lobby and conference room windows, attendees could easily identify the featured performance venues and visualize the park system that will eventually unify the entire area – all while being treated to wine and Hors D'oeuvres! Some even topped the evening off with a visit to the Crow Collection of Asian Art down the street. Thanks to Thompson & Knight, Valetta Lill and all ACC members who contributed to such a special evening!

Renew Your ACC Membership Today!

Renew your membership to ensure access to professional training programs, practical legal resources and great networking opportunities with your peers. Renew by December 11, and you will receive a promotion code for a free online educational program! You can renew online at www.acc.com/membership/renew.php, or over the phone with us at 202.293.4103, ext.360.

Pictures of ACC members enjoying the 6th Annual CLE and Golf and Spa Event



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