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FOCUS

President's Message

John Tanner

The Greatest Game Ever Played

Last month, thanks to the generous support of Nelson Mullins, our chapter enjoyed a great night of CLE education and baseball at Turner Field. John Schuerholz, president of the Atlanta Braves, gave a keynote address to those fortunate enough to have gotten a seat in the 755 Club conference room before the game. Nelson Mullins attorneys did a great job with the CLE program, and the Braves topped it off by beating the Giants 4-2. The program and outing received high marks from those in attendance and we greatly appreciate Nelson Mullins' continued support.

We will resume our regular monthly lunch programs (held the second Tuesday of every month except July) at Maggiano's - Cumberland Mall on Tuesday, August 11. Silver Sponsor Kilpatrick Stockton LLP will be teaching us how to protect our corporate clients' intellectual property and trade secrets. We would like to thank them for their sponsorship and continued support of our regular monthly programs.

We would also like to give special thanks to the firm for its role as Title Sponsor of this year's third annual charity golf, tennis and spa event,

scheduled for Monday, October 5 to benefit Pro Bono Partnership of Atlanta. If you can't get excited enough about a golf, tennis or spa outing with friends and colleagues (on a work day), think about how your sponsorship and participation can help change lives. Pro Bono Partnership of Atlanta (www.pbpatl.org) provides free legal assistance to community-based nonprofit organizations that serve low-income or disadvantaged individuals. A significant share of the proceeds from this year's event will once again go to this worthy cause.

It is time to get excited. I recently watched the Disney movie classic, *The Greatest Game Ever Played*. It is a fantastic film based on a true story about an amateur golfer who beats all odds to win the 1913 US Open against the great British champions Harry Vardon and Ted Ray. As the former caddie turned golfer Francis Ouimet is walking to the first tee of the playoff round, you hear the sportswriter taking notes — "one David against two Goliaths" — and discussing the improbable circumstances facing the young amateur. It would be, says the sportswriter,



"the greatest game ever played." Ouimet goes on to beat two seasoned champions and become the first amateur to win the US Open.

So inspired was I that I went out and played a round of golf later that week, which resembled

the worst game ever played. But that doesn't matter. This event is about charity. Whether you play like a seasoned champion or like Happy Gilmore the beginner, you will have a great time!

Don't miss out on a great opportunity to support pro bono legal services while also highlighting your firm's capabilities to Georgia's in-house legal community! Law firms or legal vendors interested in participating in this year's event should contact Evan Glover at evan.glover@sage.com or log onto www.magnoliagolfgroup.com/acc2/info.html.

Additionally, if you have a vacation home or other great item to offer in the silent auction, please contact Rachel Spears at rachel.spears@pbpatl.org.

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Oxymorons and Indexes

Susan Hackett

Senior Vice President and General Counsel, Association of Corporate Counsel

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I couldn't decide which topic I really wanted to write about most for this quarter's chapter newsletter. One describes an incredible advance for in-house counsel and the value returned for their client's legal spend; and the other, which describes what may be the greatest bite into your practical ability to assert attorney work product protections in the history of my tenure here. So you get both — I told you I couldn't decide!

Bad News First: "Work-Product Protection" is now an oxymoron

On August 13, 2009, the First Circuit Court of Appeals issued an *en banc* opinion that has severe and negative ramifications for corporate clients — and even greater consequences for the in-house lawyers and financial teams that prepare corporate tax, accounting and financial statements for them.

In *US v. Textron*, the court overruled its own previous panel decision (and departs from the precedent of virtually every other US court), protecting the traditional and widely accepted interpretation of what constitutes attorney work product in the disclosure and financial reporting context. The IRS sought production of Textron's lawyers' estimates of the company's potential liability for tax positions it pursued, Textron asserted attorney-work product protections and refused to disclose the files, and the ping pong of decisions in this case began. (ACC filed two amicus briefs in the case, available online along with the court's decisions, at the URLs listed at the end of this article.)

This most recent *Textron* decision is final, unless the company decides to take the case to the US Supreme Court (and we'll be there again as amicus, if they decide to go forward). It is important to overturn this ruling and have the Supremes resolve this important issue,

or public companies' in-house lawyers will be hamstrung with little alternative except to avoid any documentation of estimated litigation liabilities and, perhaps by extension, other forms of litigation reserves if the lawyer wishes to be able to assert confidentiality over such work product.

Perhaps more importantly, from a policy perspective, this case could be a watershed moment in establishing and defining work product protections that truly make or break the role of lawyers in a public company context.

The court's ruling replaces a long-standing test that protects documents prepared by attorneys because of or in anticipation of litigation (constituting protected attorney work product as defined in the US Federal Rules of Evidence, Rule 26(b)) in favor of one that suggests a much narrower standard, if any remaining protection at all. The court argued that Textron's attorneys' assessments of potential litigation liability for tax positions were not protected because financial reporting and accounting requirements dictate creation of such liability estimates, and thus any resulting work papers are mere "business" documents created pursuant to those requirements.

According to the court, "any lawyer" would call Textron's counsel's assessment of potential liability mere tax or business documents, not litigation documents. But by "any lawyer," the court sure wasn't talking about the 24,000 members of ACC. If a lawyer's assessment of the company's potential legal liability for a position it asserted — which the government now challenges — isn't attorney work product, what the heck is? The court makes a twisted and Herculean effort to reach the perverse result it adopts.

In adopting this standard, the court seeks to promote greater convenience for government investigators at the expense of the public interest in promoting accurate and complete preparation of corporate financial documents and audits. By ignoring or setting aside clear precedent to protect attorney work product, such as estimation of potential liabilities, this court eviscerates the notion that the in-house lawyer should create or share legal assessments with internal financial colleagues or the company's auditors.

As noted by the dissent in this case (who are the judges who wrote the panel opinion that this *en banc* court overturns): "In adopting its test, the majority ignores a tome of precedents from the circuit courts and contravenes much of the principles underlying the work-product doctrine. It also brushes aside the actual text of Rule 26(b)(3), which "[n]owhere . . . state[s] that a document must have been prepared to aid in the conduct of litigation in order to constitute work product." *Adlman*, 134 F.3d at 1198." The result is that companies that empower their lawyers and auditors to work together in an effort to ensure that their financials and accounting disclosures are accurate and well-informed are punished by this decision. The court thus suggests the inconceivable: that it is more advisable for lawyers to avoid documenting or sharing information that could be used against the company's interests in litigation. In citing to ACC's amicus brief in this matter, the dissent notes further: "Thus, as *amici* worry, the majority's new rule will have ramifications that will affect the form and detail of documents attorneys prepare when working to convince auditors of the soundness of a corporation's reserves."

And that means that the role of in-house counsel is not only hamstrung, it's permanently damaged. The court's ruling

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diminishes the value of the important preventive and strategic roles that in-house counsel play in complex, publicly traded companies. And calls into question the entire notion public policy presumption that confidential legal counsel encourages better corporate decision-making and more reliable and accurate public statements of financial position on which our markets must rely. In pursuit of greater transparency for IRS investigators in this one case, the court ends up promoting opposite result in the larger marketplace. Bad facts made bad law here. ACC will continue to fight to protect your client's right to expect candid and confidential counsel, and your ability to protect the work product that makes your contributions to the company's good fiscal health possible.

To read ACC's amicus briefs and the court's decisions, go to ACC's Advocacy Homepage (www.acc.com/advocacy) or use the following URLs:

[U.S. v Textron Decision, 8/13/09:](http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=07-2631EB.01A)
www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=07-2631EB.01A

[ACC-US Chamber Amicus Brief in US v. Textron, 4/22/09:](http://www.acc.com/vl/public/AmicusBrief/loader.cfm?csModule=security/getfile&pageid=207212)
www.acc.com/vl/public/AmicusBrief/loader.cfm?csModule=security/getfile&pageid=207212

[ACC-US Chamber Amicus Brief in US v Textron, 4/8/08:](http://www.acc.com/vl/public/AmicusBrief/loader.cfm?csModule=security/getfile&pageid=15823)
www.acc.com/vl/public/AmicusBrief/loader.cfm?csModule=security/getfile&pageid=15823

Remember: ACC advocacy is the voice of the in-house bar. We perform that function by engaging in work that protects individual members' practice rights and their companies' rights to counsel of choice: in-house lawyers. Textron came to us for help in taking this case on. You should, too, if your company faces a problem that impacts in-house practice and professional standards like this one does. We don't have the resources to become involved in every case but we can't be the voice of the in-house bar unless we speak out on

matters that truly impact YOU. Call me when you see those cases; that's how we move the needle and make sure that the in-house bar is your voice.

I'd rather leave you with the good news: The ACC Value Index is about to turn inefficient and non-aligned law firm business models "inside out."

The premise of the ACC Value Challenge (our project to reconnect the cost of legal services to their value) is our belief that far too often, what drives the definition of success in outside law firms is size, expensive reputation and profitability. While we can't stop folks in firms from reading the AmLaw 200 rankings and measuring themselves against these metrics, maybe we can redirect the definition of success toward something more closely aligned with what *clients* value.

That's where the ACC Value Index comes in: the idea is to ask ACC members to share information about the firms they value most on an online database (the ACC Value Index). The intake form for the ACC Value Index is now up and online for ACC members to go to to pre-populate the system with data for launch. The form presents you with a simple scoring system, asking you to give 1 to 5 stars to firms you use on six different value criteria. Once launched (at the ACC Annual Meeting in Boston in October), members will also be able to go to the database to search for returns — information about firms they might be considering or to see how their own firms stack up. If you want to find the firms that scored well for value in other members' hearts — say, attorneys in California who do employment law or lawyers in France who do commercial litigation — the system will return the information. Data can be further sliced and diced, too. With the ACC Value Index, you'll be able to see what other members think of their firms and then connect with them for more information if you need it. It's not designed to be complex. It's designed to give a quick, down-and-dirty sense of

which firms are most valued, and then connect members who have experience with a firm to members who want more info on them.

If you are willing to help us pre-populate the system, go to www.acc.com/evaluate and tell us how you feel about your firms and the value they offer. Fill in multiple forms for each firm you feel strongly about: the form only takes about 30 seconds to complete and submit, unless you wish to write explanatory comments or accolades for your favorite lawyers at the firm in the comment box.

The full system that allows searching of the data will be out in beta soon for those who entered data as part of this push so that you can see how the system works, play around with it and decide if you want to keep the postings you made, and either edit or remove them. So this is a no-risk proposition — but imagine the upside of having candid peer reviews of firms ("candid" since the system is only open to ACC members) at your fingertips 24/7, covering firms around the world and allowing you to find the "value-based" expertise you need from outside counsel.

Imagine also the impact on the law firm community: maybe it will become at least as important to have satisfied clients promoting your value than to advertise that you're the most expensive firm in the market and your profit-per-partner is 20 times the salary of the in-house counsel who hire you. Kind of makes you feel like maybe we're the folks who hold the purse strings after all, doesn't it?

If you would like more info on the ACC Value Index, feel free to contact my team leaders at accvalueindex@acc.com. Your peers (and your firms) are anxiously waiting to hear who you like and who it is that drives value in your outside legal relationships and spend.

Upcoming Programs

Meet-Talk-Relax: ACC-GA Chapter's Third Annual Charity Golf and Tennis Tournament and Spa Day

Please mark your calendars — Monday, October 5 — for ACC Georgia's third annual Charity Golf and Tennis Tournaments and Spa Day. This is our chapter's largest and most significant philanthropic event, benefiting Pro Bono Partnership of Atlanta ("PBPA"), which manages legal services for nonprofit agencies throughout the metropolitan area. The day's events will end with a cocktail reception at the Golf Club of Georgia and a silent auction. Over 200 attorneys are expected to participate. Your support — and that of the event sponsors — is critical to fulfilling the mission of the organization.

We are still seeking additional sponsors to ensure a successful event. If you know of an organization that might be interested in supporting, visit www.magnoliagolfgroup.com/acc2/sponsors.html for additional details. This year, the sponsorships have increased in value, allowing even more sponsor participation. Our generous sponsors are:

Presenting Sponsor — Kilpatrick Stockton
Diamond Sponsor — Troutman Sanders

Spa Day Sponsor — Bondurant Mixon & Elmore

Silver Sponsors — Alston & Bird, Duane Morris, Ogletree Deakins, Seyfarth Shaw, West and Burr & Forman

Bronze Sponsors — Butler Wooten & Fryhofer, Littler, Smith Gambrell & Russell, Swift Currie, Weinberg Wheeler Hudgins Gunn & Dial and Womble Carlyle

Copper Sponsors — Hunton & Williams and Kelly Law Registry

Individual participation by chapter members is also important. You can volunteer, improve your golf game at an exclusive private club, play in a tennis tournament or relax at Massaggio Spa. Additional details for individual participation will be sent to the membership in the next couple of weeks.

Please contact Evan Glover, ACC-GA vice president of special programs, at

770.793.7345 or Evan.Glover@sage.com for sponsorship opportunities, event details or to volunteer.

The Spa

As part of the ACC-GA Chapter's third annual Charity Golf and Tennis Tournaments, ACC members will also have an opportunity to unwind and enjoy a day of spa treatments at the Massaggio Spa in Alpharetta.

Sponsored by Bondurant, Mixson & Elmore, available spa treatments will include massages, facials, hot stone treatments and reflexology. Guests will also have the option to choose two treatments while relaxing in the great event space at the Massaggio Spa.

Unlike previous years, the spa facility is much closer to the golf course and tennis courts, and will allow spa guests the opportunity to join golfers and tennis players at the silent auction following the golf tournament.

Registration information will soon be available at www.magnoliagolfgroup.com/acc2/info.html

Special thanks to ACC members Carolyn Wingfield of Southern Company and Scott Nader of AMEC for their assistance in planning the event, for which Bondurant, Mixson & Elmore is proud to be sponsor. As a firm comprised of complex business litigation trial lawyers, Bondurant, Mixson & Elmore certainly understands the need for taking time to forget about the stresses of the job.

For more information on Bondurant, Mixson & Elmore, please visit www.bmelaw.com.

The Silent Auction

The day's golf, tennis and spa activities will be followed by an evening reception and silent auction to benefit PBPA. The organization's staff and advisory committee are seeking unique and fun items for this year's auction.

Last year's event exceeded expectations by raising over \$80,000 for the PBPA. The auction alone raised nearly \$18,000.

"We are very grateful to be chosen as the recipient of the proceeds of this event once again and are pleased to be a working partner with ACC-GA by spearheading the silent auction," said PBPA Executive Director Rachel Spears.

"In addition to all the great items we had last year, this year we are looking to increase variety and obtain items that are one-of-a-kind and unavailable on the open market," said Duane Morris, LLP attorney, and Mona Maerz, ACC-GA silent auction donation chair.

PBPA will again auction off CNN VIP tour passes and a celebrity lunch with *Headline News' Morning Express* host Robin Meade. The winner of this item will have the opportunity to get a firsthand account of Ms. Meade's recent skydiving expedition with President George H.W. Bush in celebration of his 85th birthday.

PBPA has also secured an item so unique that it will be offered in a live auction. "We are very excited to announce that Atlanta artist Steve Pendley will be donating an original painting for this event," said Ms. Spears.

A sampling of the items donated to date includes AT&T wireless devices, handmade jewelry, cigars, event tickets and cooking class gift certificates.

"Although we certainly appreciate big ticket items, lower-priced items such as spa or restaurant gift certificates are always favorites with event-goers and really boost the overall proceeds," added Ms. Maerz.

Proceeds from the event will allow PBPA to further its mission of providing in-house and transactional counsel opportunities that assist local Atlanta nonprofits with high-quality, free legal services to strengthen and protect their organizations.

If you or your company would like to donate an item for the auction, please contact Rachel Spears at rachel.spears@pbpatl.org or 404.407.5019.

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Value Challenge Update

Phase two of the Chapter's Value Challenge initiative begins in August. The focus will be on the "Meet-Talk-Act" concept, and helping in-house and outside counsel learn how to create smart alternative billing arrangements that properly align the incentives of the outside law firm with those of the client in a manner that can maximize value for both parties.

Our meetings will combine small groups of in-house and outside counsel in brainstorming sessions where both sides can learn more about the challenges and obstacles they may face when implementing alternative billing arrangements. The ultimate goal will be a greater understanding of the best types of arrangements

for each particular matter and a step-by-step process for achieving the value proposition.

Any ACC members interested in participating in these sessions should contact the chapter liaison, Jim Thomas, at jthomas@gtga.gov. For more information about ACC's Value Challenge initiative, visit www.acc.com and click on "Learn About the ACC Value Challenge."

Career Enhancement/ Members in Transition Update

The chapter is not taking a break from its efforts to provide meaningful aid to our members in transition. Updated job resource lists are available from the Career Enhancement Committee and

posted to our chapter webpage. We now have monthly networking breakfasts in Alpharetta, East Cobb, Marietta, Gwinnett and Buckhead. We are also in the process of finalizing a pilot pro bono/members in transition support project and Matt Schwartz, our VP of outreach initiatives, will provide details to our membership very soon.

The chapter board of directors will be holding its next meeting on Friday, August 28, 2009. If you have any questions or issues you would like for us to consider, please let any board member know. Contact information is available in the list of board members and contacts. My door is also open to all. You can reach me at jtanner@mcgriff.com or 404.847.1607.

Program Recap

Navigating Non-Compete and Non-Solicitation Agreements

Seyfarth Shaw, LLP's Atlanta office and national trade secret, computer fraud and non-compete group sponsored the ACC Georgia Chapter's April 14th luncheon program entitled "Navigating Non-Compete and Non-Solicitation Agreements: Where We Are and Where We Are Going."

Seyfarth Shaw attorneys Erika Birg, Michael Elkon and Erin Wetty were joined by Georgia State Representative Kevin Levitas of the 82nd District in discussing the basics of employment-related restrictive covenants; how to draft non-compete, non-solicitation and non-disclosure agreements to comply with Georgia's ever-changing laws; best practices with incoming and departing employees; the practicalities of restrictive covenant litigation; and the new statute (HB 173) recently passed by the Georgia General Assembly that updates and revamps Georgia's law on restrictive covenants.

A packed audience learned the key elements to deciding when and how to use restrictive covenants in employment. For example, Ms. Wetty helped the audience understand that restrictive covenants are

not for all employees. Instead, employers should be careful to evaluate what company interests they are trying to protect before asking employees to sign agreements. The goal of the covenants will help guide counsel in determining the best type of agreement for the circumstances.

In certain instances, because of Georgia's enforceability restrictions, an agreement that may be enforceable for one employee may not be enforceable for another. Ms. Wetty noted that the potential for such situations should drive employers to consider the end game before relying on a non-compete or non-solicitation agreement as bulletproof protection against competition.

Michael Elkon then led the audience through a concise approach to making sure existing agreements comply with Georgia law. As Mr. Elkon noted, Georgia law in this area is based on judicial decisions.

Seyfarth Shaw distilled hundreds of Georgia appellate decisions into three succinct, helpful flowcharts, which were provided to attendees upon request. The flowcharts helped to determine whether existing agreements would be enforceable and how to draft enforceable agreements

in the future. Indeed, many ACC members were surprised to learn that under Georgia law, a non-compete clause containing a restriction based on a geographical area that might shift even slightly over time is unenforceable. So if your employee's agreement has a geographic clause that reads "miles from the Atlanta office," Mr. Elkon advised that, based on prior precedent, a Georgia court may not enforce the agreement. Another eye-opener was that non-disclosure agreements in Georgia require a time limit. The only other state in the US to mandate a time limit is Wisconsin. And finally, the attendees discovered that careful drafting is key — if an agreement contains both a non-compete provision and a non-solicitation provision and either is unenforceable, then both will fail.

Concluding the "Where We Are" portion of the program, Erika Birg addressed what to expect if litigation over the agreement becomes necessary. First, she highlighted some additional protective measures to prevent litigation, including new hire acknowledgments regarding obligations owed to prior employers and steps to take at termination to protect the company from litigation. Noting that most cases brought to enforce an agreement or to

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declare an agreement unenforceable eventually settle, Ms. Birg gave ACC members a few tips on what to expect in the early part of litigation. If a company's interests are in jeopardy because of a breach of a restrictive covenant or misappropriation of a trade secret, immediate relief is warranted. In such an event, litigation should be swift, with counsel seeking to obtain a temporary restraining order and/or injunctive relief. Because a front-loaded litigation process like this can be demanding, in-house counsel needs to prepare their business-people to work diligently with outside counsel to ensure the greatest likelihood of success. Finally, Ms. Birg provided the audience with some tips regarding settling these matters in a manner that achieves the ultimate business objective in bringing or defending the litigation.

Representative Kevin Levitas presented the "Where We Are Going" portion of the program with a lively discussion of the recent legislation passed by the Georgia General Assembly that revamps Georgia's law on restrictive covenants. Representative Levitas explained that because of a prior ruling by the Georgia Supreme Court stating that the Georgia General Assembly did not have the authority to enact legislation in this area, the Legislature had chosen to make the statute effective only upon the passing of a related constitutional amendment that addresses the Georgia Legislature's ability to act in this area. That amendment should appear on the general election ballot for Georgia voters in 2010. Representative Levitas noted that the law would:

- (1) remove the anomaly that if the geographic restriction is capable of shifting even slightly over time, it is unenforceable;
- (2) limit non-compete provisions to certain key or sales personnel;
- (3) address franchise relationships as well as distributorship and independent contract arrangements;
- (4) provide presumptions for courts to apply in determining whether an agreement is reasonable;
- (5) eliminate the time-limit requirement for non-disclosure agreements; and

- (6) allow a court to enforce an agreement only to the extent it is reasonable through what is known as "blue penciling."

Representative Levitas concluded by noting that the legislation is not retroactive and will apply only to agreements executed after the legislation becomes effective. Seyfarth Shaw included a copy of the statute in the attendees' materials. The attendees asked insightful and thought-provoking questions, prompting an excellent dialogue between the panel and ACC members. Seyfarth Shaw received high marks in the reviews for presenting such a timely and well-prepared program.

Those interested in more information on the program may contact Erika Birg at 404.888.1038 or ebirg@seyfarth.com.

How to Make the Value Challenge the Law Firm's Problem

In May, the ACC Georgia Chapter and the International Network of Boutique Law Firms ("INBLF") engaged in a panel discussing the role of boutique law firms as outside counsel as part of the ACC Value Challenge. The program was moderated by Susan Hackett, vice president and general counsel of ACC, and featured H. Lamar "Mickey" Mixson of the litigation firm Bondurant, Mixson and Elmore; Robert Banta of Banta Immigration Law; Charles M. "Mac" Cushing of the transactional firm Cushing, Morris, Armbruster & Montgomery; and Jeff Kuester of Thomas, Kayden, Horstemeyer & Risley, which specializes in intellectual property law.

While many interesting topics were covered during the event, the participants felt forcing firms to use alternative billing arrangements is the most important and effective way to create real change in the legal industry. These arrangements will separate the firms that claim to provide value and those that truly deliver it.

Below is an excerpt from the event hand-out, detailing the advantages of using alternative billing arrangements.

How can alternative billing arrangements transform the legal industry?

- Alternative billing arrangements have the ability to transform the legal landscape by better aligning the goals of the firm with the goals of the client.
- Alternative billing arrangements make the value challenge the law firm's problem.
 - o It is up to the firm to properly staff cases.
 - o It is up to the firm to perform only necessary tasks.
 - o It is up to the firm to achieve desired results and client objectives.
 - o It is up to the firm to invest in technologies that make it more efficient and effective.
- Corporate counsel will spend less time fly-specking bills and arguing with outside counsel about whether work was necessary and will never have to explain to their executives why they unexpectedly received a bill five times more than the previous month.
- It will force law firms to manage pricing and scope the way other service providers do.
- Alternative billing arrangements create trust and transparency between the firm and the client by eliminating the reverse incentives in the billable hour model.
- Alternative billing arrangements keep a firm from doing work outside of its area of specialization and encourage it to do work it has done before in the most efficient and effective way possible.
- If more law firms and clients begin using alternative billing arrangements, there will be a ripple effect throughout the industry that will cause firms to adapt and become more efficient and effective service providers.
- The more firms and clients use alternative billing, the better both will get at pricing and budgeting for different types of matters.
- The current situation will never change unless corporate counsel force firms to enter more alternative billing arrangements and removes the billable hour as the only metric used in determining the value of legal work.

What should an alternative billing arrangement include?

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- A smart alternative billing arrangement includes the following elements:
 - o An aspect of risk-sharing between the firm and the client
 - o A predictable budget from the outset of the engagement
 - o Incentives for the firm to achieve specific results as quickly and efficiently as possible
 - o Encourages transparency in fee arrangements between the firm and the client

The ACC-Georgia Chapter will host a “meet, talk and act” discussion program that will combine small groups of in-house and outside counsel in brainstorming sessions where both sides can learn more about the challenges and obstacles to implementing alternative billing arrangements. The ultimate goal will be a greater understanding by everyone involved about the best types of arrangements for each particular matter and a step-by-step process for setting them up.

We are looking for in-house counsel interested in participating in these programs. Those involved will be given the opportunity to truly understand how these arrangements work in the real world and how they have the ability to transform the legal industry.

Please email Jim Thomas at jim.thomas@ga.ga.gov if you are for more information.

Applying Six Sigma to the Legal Process

Ever since the economic downturn began, companies have been under extreme pressure to lower expenses and improve productivity without sacrificing quality. In the midst of the downturn, it's no secret that in-house legal departments are also under more pressure than ever to save money and do more work with fewer resources.

The legal process can be expensive and has become a prime target for scrutiny. In companies where the Six Sigma approach to cost-cutting is part of the culture, the legal department may find itself being questioned by management on how and where they can incorporate Six Sigma into the legal process.

On June 9, ACC Georgia Chapter and Burr & Forman presented a program on Six Sigma and its application to corporate matters and litigation case management. Betsy Collins, a litigation partner with Burr & Forman, led a panel discussion that included Tom Best, senior counsel for The Home Depot and John Goselin, corporate counsel for ING Americas, as well as Phillip Cassady of Paragon Legal Technology Support.

Put simply, Six Sigma is a methodical, highly logical style of project management that originated in the manufacturing industry. Senior management in numerous other industries have begun to utilize this approach to improve processes and achieve greater efficiencies in all aspects of their business — including their in-house legal departments.

For example, the litigation process — especially e-discovery — is a prime target. Applying some of the principles of Six Sigma to the electronic discovery process can reduce costs, increase the quality of document review and provide metrics to determine effectiveness and accuracy. New technologies are emerging in the marketplace that allow fewer attorneys to review more documents faster and more effectively. When properly used, these technologies can aid in the Six Sigma process by improving the quality of the discovery review and saving money in the process.

The panel also discussed potential pitfalls, such as implementing a Six Sigma framework during work on a major case and “analysis paralysis,” which can stifle creativity.

Burr & Forman provided thumb drives to program attendees containing several reference documents, including a white paper co-authored by Betsy Collins entitled “Six Sigma, the Discovery Process and the Corporate Legal Department” that was presented to the American Bar Association litigation section earlier this year. The paper was co-authored by John Goselin and Caroline B. Keller, assistant general counsel at Gulfstream Aerospace Corp. and Joe Mann, a managing director at Navigant Consulting. A checklist of ediscovery best practices was also provided.

It is worth noting that the subject of Six Sigma is inherently linked to the ACC's Value Challenge because it seeks to add value through increased efficiency and accuracy while reducing costs.

Because many in-house law departments are under pressure to implement Six Sigma methods into various legal activities, outside law firms can expect some of that pressure to be passed along to them.

Panel members agreed that even in environments where Six Sigma is not a strong part of the culture, many of its underlying principles can be extracted and applied to discrete projects to improve processes and help save money.

Counsel's Role and Opportunity in Managing Information to Maximize Enterprise Value

The ACC Georgia Chapter held a timely and interesting program on July 22 on corporate counsel's role in influencing corporate valuation through forward-looking information management policies and practices. For several years, we have seen digital-based technology enable changes in many core business operations involving personal information in the form of IT and business process outsourcing. These technologies are also enabling virtually all businesses to interact with their customers and employees in new ways that result in the collection of valuable information about their preferences and behavior.

Such information is useful in setting business strategy, reducing costs, and improving customer and employee relationships. Businesses embracing these new communications tools and distribution channels effectively transform their companies into media/communications companies with the ability to reach and connect to a target audience in a multimedia environment. The program, entitled “Corporate Counsel's Role in Managing Information Risk to Maximize Value,” was sponsored by the firm of Nelson Mullins Riley & Scarborough. To realize the value inherent in both the new communications methodologies and the information available through those platforms, care must be taken to develop thoughtful guidelines and social norms around use of the technology

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and information. Our distinguished panel included Donna Lewis, Jon Neiditz and Rusty Pickering from the Nelson Mullins office in Atlanta.

The program began with a keynote address by John Schuerholz, team president for the Atlanta Braves. Mr. Schuerholz set the stage for the CLE program by providing an overview as to how much information has changed the business of baseball over his 40-year career, with significant changes in the type of information available and the communications tools available to process and disseminate that information. Nelson Mullins opened the CLE portion of the program with a general discussion of corporate valuation, the specific role information plays in that valuation, and corporate counsel's opportunity to positively influence valuation through sound contracting and advisory practices customized to support core business strategies.

They then reviewed the impact of electronic messaging on internal and external business operations, highlighting certain tragic flaws inherent in the various forms of communications and exploring oppor-

tunities for improvement through the use of new communications tools. The panel also discussed unique information-based risks inherent in outsourcing contracts and specific suggestions for the effective management of those risks. Addressing some of the most recent trends, the panel reviewed the various legal issues associated with the collection and use of information from social networking sites and online behavioral targeting.

Nelson Mullins then provided a look ahead at some of the issues counsel will face in the near future as communication technologies continue to evolve. Behavioral targeting and other proposed uses of personal information for commercial gain are perceived by many as threats to privacy and consumer protection, but questions about the legitimacy of those concerns remain. There is an opportunity to minimize those concerns by adopting responsible policies and practices for the collection, storage, use and disposal of information that foster trust with customers and employees through transparency and control. Through responsible information management practices, it may be possible to balance privacy concerns with

business needs and simultaneously support the generation of quality digital content. The importance of establishing a trusted relationship between businesses and their customers and employees will only increase with new opportunities associated with cloud computing and web 3.0 applications.

It was an excellent program that provided an overview of the challenges and opportunities afforded by the new type of personal information available to businesses through new communications technologies. The written materials for the program provide timely "best practices" takeaways in several key areas of information management and highlight counsel's opportunity to influence information management practices to drive value to the business. The CLE materials are available to ACC members upon request.

For more information on upcoming chapter programs, go to georgia.acc.com. Please contact Virginia Wadsworth, ACC-GA vice president of sponsorship and programs, at 678.225.1001 ext. 2164 or vwadsworth@easycare.com if you are interested in participating in or sponsoring a future program.

Emory Public Interest Committee Grant Recipient: Angela Oliver

Angela Oliver, a rising third-year student at Emory University School of Law, has the opportunity to intern this summer with the Region IV, Regional Counsel's Office for the United States Department of Housing and Urban Development (HUD) in Atlanta, Georgia. She was selected for this internship through a HUD Regional Counsel's Office interview, established through Carolyn Roan-King, Emory University School of Law's assistant director of recruiting, as part of the school's on-campus interview program. Angela is supported this summer by an Emory public interest committee grant, sponsored by the ACC Georgia Chapter.

HUD's mission is to increase homeownership, support community development and expand access to affordable housing free from discrimination. Attorneys with HUD handle a wide range of housing-related matters, including issues and

cases, to assist in HUD's mission. Angela is interning this summer in the Fair Housing and Employment Law Division within the Regional Counsel's Office for HUD, where the focus is civil rights enforcement and litigating cases of discrimination to ensure equal access to housing.

Angela is working with the senior fair housing attorney in the division. Her work has included assisting with counseling program clients on investigations, aiding in the preparation of civil rights investigations, and helping with the analysis and review of case files. Through this experience, she is enhancing her skills and abilities by writing legal memorandums and conducting research assignments. She is also learning about various aspects of the litigation process, including legal document review, preparation of privilege logs (seeking to protect confidential information) and researching privilege issues.

Angela has had a wide range of experiences this summer, including helping to file charges with administrative law judges, participating in various housing, employment and legal-related trainings, assisting with document preparation, conferring with headquarters on novel and complex cases, conducting research and strategizing with attorneys regarding cases.

Angela has the opportunity this summer to participate in public service firsthand by directly serving others. Through these internship experiences, she is working to enforce civil rights statutes to protect individuals and others from unlawful discrimination. Angela is an active member of the Emory Public Interest Committee (EPIC) and is committed to public service. During her first two years in law school, she has been active in community service and participated in several pro bono opportuni-

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ties. Through her internship this summer, Angela is able to further her commitment to public service by working to enforce federal laws that prohibit discrimination and provide equal access to housing.

The EPIC promotes and supports public interest opportunities at Emory and in the local and global community through educational, networking and social events. Every year in February, EPIC hosts the annual Inspiration Awards, which honor the efforts of local public interest law heroes in the Atlanta community. The event also raises money for summer grants for students taking otherwise unfunded public interest summer jobs. EPIC is grateful for the generosity of the ACC Georgia Chapter this year that made Angela's internship experience and public service possible.

ACC News

Mark your calendar now to attend the 2009 ACC Annual Meeting on October 18–21 in Boston, MA. This conference offers valuable CLE training along with many networking opportunities. Please visit am.acc.com for more information.

Give Back to the Community by Participating in ACC Community Service Month

Throughout August and September, ACC chapters all over the country will support National Public Lands Day (npld.com) by participating in their own community service events. They will help to preserve local parks and other public lands as well as working with local schools and other community-based non-profit organizations. More members are expected to participate this year. Join your local chapter's event, and give back to your community today!

ACC Introduces QuickCounsel

Too busy to research legal topics? No worries. Check out ACC's newest online resource: *QuickCounsel*. These resources provide top-level information on important in-house topics, such as unrelated business income tax, selecting and

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In-house Counsel Summer Internship Recipient: Michael Urbina

The ACC Georgia Chapter is pleased to announce that it is continuing its tradition of sponsoring and coordinating an in-house counsel summer internship for worthy first-year laws students with minority backgrounds. This year, over 60 applications were submitted from Georgia law schools. After careful review and deliberation, the chapter's outreach initiatives committee unanimously selected an extremely compelling candidate in Michael Urbina.



Michael was born and raised in Guaynabo, Puerto Rico. As a young boy, he became the Puerto Rican equestrian sub-champion in the 6- to 9-year-old division. He developed a keen interest in the law from observing his grandfather, who is a renowned lawyer, judge, senator and legislator in Puerto Rico. Ten years ago, Michael moved to Georgia at the age of 13. A year later, he helped his father start his family business. In an effort to meet new people, Michael joined several service groups in the Hispanic community in Cartersville, Marietta, Norcross and Atlanta. These groups were branches of the "Experiencia Cristo" project, which is designed to edify young adults by improving their communication skills, strengthen their character to avoid lives of vice and encourage them to become leaders in their community. By the age of 15, Michael had become a director in several of these groups.

Michael resolved to create a program specifically tailored to Hispanic teenagers between the ages of 13 and 18. He proposed a workshop to Renovación Conyugal, Inc., that would build character and leadership skills for teens while promoting durable communication skills within their families. Michael then created several committees and organizational

procedures that have rendered the project enormously successful. Since 2005, the program, named "Renovación Juvenil" ("RJ"), has reached over 1,500 teenagers in Georgia and South Carolina, averaging 120 teenagers per workshop. As a result of this success, RJ is in high demand throughout the Southeastern region of the United States.

Michael attended Georgia State University and graduated with a BBA in managerial sciences. In 2008, Michael enrolled in the John Marshall Law School, where he has recently finished his first year within the top ten percentile of his class. Michael has also participated in numerous school events and became the service committee chair for the Phi Alpha Delta legal fraternity.

Michael enjoys reading, movies, playing basketball, traveling and learning about new concepts in the field of law, theology, history, politics, communications and business. He hopes to improve his academic achievements, increase his involvement in school and fraternity functions, and continue to develop the RJ project in the future. He would like to practice corporate law when he graduates from law school.

Michael will be participating in three different company rotations throughout this summer, which will be graciously hosted by our colleagues at Invesco, Crawford & Co. and Kemira Chemicals, Inc.

Please join us in congratulating Michael Urbina on this special achievement and in wishing him the best as he acquires meaningful experience in diverse corporate practices.

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managing international law firms, and marketing yourself in a challenging economy. Each *QuickCounsel* includes an overview and links to supporting materials for deeper information on the particular legal topic. To access *QuickCounsel*, go to www.acc.com/quickcounsel.

New Additions to ACC Website

New resources are posted to the ACC website everyday! Here are a few examples:

InfoPAK: "The In-house Counsel Survival Guide for an Office Company or Move,"

Webcast: September 15, "Managing Risk with Counterparties Facing Financial Difficulties: Practical Strategies for Nonprofit,"

Quick references: Immigration Classifications and Visa Categories,

Sample forms: Social Media Policy; Sample Arbitration Clauses with Comments.

For more information, go to www.acc.com.

Welcome New Members

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

Elizabeth Chandler, Asbury Automotive Group, Inc.

Lucy Clark Dougherty, TriServ Alliance, LLC

Paul Cohen, Golder Associates Ltd.

Christopher Courts, Novelis Inc.

Andrew Devin, Attorney

Angela Dirr, Federal Reserve Bank of Atlanta

Jay Ferguson, Randstad General Partner

Caitlin Gill, Barco, Inc.

Kirk Gonzales, Logisticare Solutions, LLC

W. Michael Hale, Georgia-Pacific LLC

Evan Halsey, Props, Inc.

John Ingram, Georgia-Pacific LLC

Richard Jones, Federal Reserve Bank of Atlanta

Anita Kamenz, The Coca-Cola Company

Cheri Kennelly, The Home Depot USA, Inc.

Michael Kline, The Coca-Cola Company

Angela Ligouri, Ambient Air Corporation

Matthew Nozemack, BlueLinx Corporation

Russell Owens, Vanderlande Industries Inc.

Tama Retherford, Atreus Homes & Communities

Elizabeth Robertson, Crawford & Company

Dara Steele-Belkin, Global Payments Inc.

Eugene Thomas, TitleMax Holdings

R Scott Tobin, Health Discovery Corporation