



Kevin McMurray
President's Message

As we close out the third quarter, I want to say "thanks" to every-

one who helped plan and organize and all those chapter members and sponsors who participated in some very successful chapter events.

On August 17, ACC chapter members in the Boise, Idaho area celebrated the end of the summer with the Boys and Girls Clubs of Ada County, at a fun-filled party held at the Mosely Center. Thanks to the generous sponsorship of Supervalu/Albertsons and The Mountain West Chapter of the Association of Corporate Counsel, the Boys & Girls Club had one of the best "End of the Summer" parties ever that included a dunk tank, karaoke, and all-you-can eat barbeque.

On September 21, we held our third annual Nutritional Law Symposium and golf tournament at Thanksgiving Point in Lehi, Utah. More than 80 in-house counsel, regulatory specialists, and other corporate executives participated in this event that is fast becoming one of the premier forums for discussion relating to issues affecting the dietary supplement industry. US Congressman Rob Bishop (R-UT) was the keynote speaker at the event, and the weather that day was ideal for a fun round of golf.

On September 22, several of our chapter members and their families participated in a service day event at Snowbird Resort where we enjoyed a fun-filled day of activities with the boys and girls from the Boys and Girls Clubs of Greater Salt Lake. Despite cool and rainy weather, everyone had a great time riding the alpine tram, hiking the Interpretive Trail, playing games, and making crafts at this event sponsored by ACC and the law firm of Ray Quinney & Nebeker.

We also held an exciting CLE luncheon in Salt Lake City on September 26, where we listened to John Hueston, a former US Attorney and lead federal prosecutor of former Enron Executives Kenneth Lay and Jeffrey Skilling. Mr. Hueston shared invaluable lessons on the topic of corporate governance that he learned from the Enron investigation and trial.

It was definitely a busy three months, but I believe everyone who helped with and participated in these events would agree that our time was well spent.

In reflecting on the preparation and execution of these events, I can really relate to the importance of volunteerism and teamwork. We never would have pulled it off without the selfless efforts of board members, chapter executive director, chapter members and our families, as well as

the generous financial support of our law firm sponsors. Our successes this past quarter were truly the result of a great team effort. This reminds me more than ever that the success of our chapter rests entirely on the efforts of its members—no one individual is responsible for this success. The late Alex Haley, author of "Roots," hung on his office wall a picture of a turtle sitting on a fence post. The picture always reminded him of a lesson he learned from a friend: "Anytime you see a turtle on the top of a fence post, you know he had some help." As much as we may admire individual achievement, let's remember that nothing of any significance has ever been achieved by an individual acting alone! If we want our chapter to succeed, we need the continuing support of every chapter member and our law firm sponsors.

Best wishes!

Discover Best Practices from
ACC's Annual Meeting2

Welcome New Members5

Early Renewal Rate Expires on
December 155

Discover Best Practices from ACC's Annual Meeting

Susan Hackett,
Senior Vice President and General Counsel
Association of Corporate Counsel
hackett@acc.com

I recently attended ACC's annual meeting in Chicago ... heck, who's kidding whom? It's a command performance for ACC staff and we fight over the privilege of attending and spending such high-quality time interacting with members!

There's an adage here at ACC that a former ACC Board Chairman (Bill Lytton, now retired CLO of Tyco, then CLO of International Paper) used to help us define a meeting's success for members: With so much information and so many "opportunities" flying by at light speed in their day jobs, anytime a member can go to a meeting and pick up even one really good, practical idea to take back home and implement, they will feel that the time was spent well. So here's my review of several really good ideas collected from the ACC Annual Meeting that I'd like to share with those of you who weren't there.... Maybe next year (October 19–22, 2008 in Seattle) you'll be able to pick up some gems without a middleman!

In no particular order:

■ **The first thing you do is send everybody home.** A ton of great ideas for responding to government investigations emerged from a wide variety of programs at the meeting, but one that resonated with many attendees is the idea of establishing a policy that if uniformed, government agents invade your premises and begin a sharp edged investigation, you should send the staff home immediately. The govern-

ment often uses the "raid" tactic not so much to collect documents, but to catch employees unaware and to scare them into saying things that damage the company—they don't do this in a formal interview environment, but they will storm an employee's office and begin unpacking their desk drawers. So if they show up, leaders from the law department and other designated staff should surely escort government officials around and cooperate fully, but only after the staff has "evacuated" the premises—the government is not entitled to interview employees without notice and authority, especially without counsel present (either the company's or the individual's personal counsel). They won't be happy with you for killing their fun, but if they're investigating your company in this manner, it's too late to wonder if you'll get extra points for serving coffee and cookies.

■ **On the subject of lawyers as targets in criminal enforcement actions or prosecutions:** There's a whole lot of stuff out there on increasing lawyer liability for client failures, as well as why it is that lawyers are more likely to be targets, along with their clients, when the government comes calling. A number of programs focused on these issues, but one of the most troublesome worries repeatedly raised was whether there was anything that lawyers can do to avoid being called as fact witnesses (especially since many corporate counsel wear multiple hats in their jobs and carry business responsibilities). One idea discussed was for the in-house lawyer to file an appearance as counsel of record for the case. It makes it far more difficult for the government's counsel to call

the defense counsel on a matter as a fact witness, especially, as is almost always the case, when there are non-lawyers in the company who can testify to facts that the government wants to explore and document them. Calling a lawyer to do this endangers the client's ability to assert privilege over anything the lawyer worked on in the past (subject matter waiver) or, for that matter, in the future.

■ **Outside counsel budgets—an oxymoron?** Unfortunately, it seems so. One great idea presented by a large law department that has trouble getting certain high profile firms to follow clearly negotiated and detailed budgets for large matters is to have the board (or a relevant board committee) "approve" the outside counsel's budget for major projects. Then, when the outside counsel suggests that they're going to have to bust the budget or calendar because of "unforeseeable" events, you can ask them: "Would you like to notify the board of this recent development in person, or by report for their next meeting?" Let them know that the in-person presentation is preferred since they'll be able to answer board members' questions directly onsite. Heck, maybe you could sell tickets to your in-house counsel friends and colleagues?

■ **More on outside counsel costs:** Institute a system of shadow bills for outside counsel matters you're most concerned stay within budget or on track. Shadow billing is a law department-driven mechanism for reviewing outside counsel bills as each one comes in, and checking on whether they're on track with cost estimates that the department calculates, usually based on historical experience but

maybe based on other criteria, such as the spending cap for the matter/its value. For each relevant billing period, you compare the actual bill with the shadow bill you've predicted; if you know that monthly costs should be averaging \$35,000, and you start receiving bills for \$3,000 or \$300,000, you know that the matter is not proceeding as planned and is likely to miss budget. You know to ask outside counsel NOW for an explanation of what is causing the variance. You may find their answers completely satisfactory, you may have estimated poorly, or you may decide early out that your outside counsel is not properly managing, supervising, or budgeting the matter and can nip errant behaviors in the bud. After all, it's worse to have this conversation after the matter is irreversibly out of control and over budget.

■ **Think about establishing a more active role for lawyers in government relations.** An increasing number of law department leaders are either leading or supporting their company's "capital" office presence to stay abreast of developments that will affect your company or industry, and to influence emerging regulations when possible. The role of company lawyers is to help ensure that legislation doesn't lead to regulatory nightmares for the company. Involvement of the legal staff does not always entail directly lobbying activities, but usually does include responsibilities that confer new career challenges and personal development for lawyers somewhat trapped within the glass ceilings of their current in-house positions.

■ **Carefully consider the evolving relationship you may have with your**

company's outside auditors: while that primary relationship is "owned" by the CFO, you are likely to be increasingly involved in managing the auditor's requests, and likely also increasingly concerned about what auditors are asking to see in the conduct of their regular reviews of the company's fiscal health. The jewel: focus on a more proactive (rather than waiting to be placed in a reactive) role in anticipating some of these issues and negotiate them with the auditors in advance of retention. A panel addressing this subject and reporting on an ACC initiative to improve the lawyer-auditor relationship offered lots of specific ideas. Catch some of them in the material archived at www.acc.com/php/cms/index.php?id=368.

■ A number of programs touched on the issue of helping counsel prove (as in "quantify") their value to their clients, in spite of their status as a "cost center" within the company. Some counsel discussed their efforts to create what amounts to "dashboards" for their client leadership (a dashboard generally appears on the client's screen when opened and provides a ticker of information). These dashboards provide real-time status and dive-down detail on the costs that the client's area has "incurred," whether charged back to the client or not. This provides a method of linking law department costs more concretely to services and to client actions. Obviously, someone has to feed the dashboard beast, but it's worth thinking about, especially if the information could be entered by non-lawyer staff, outside counsel, or consultants.

* I'm going to let you see all the "substantive law" good ideas by logging onto the ACC website and checking out the course materials posted on the annual meeting's homepages.

One last reminder on picking up pearls at the meeting:

If you attend the meeting in Seattle, set aside time to shop the exhibit hall for more good ideas than you can shake a stick at. I mean it. Unless you've been to an ACC annual meeting before, you have no idea what I'm talking about, but ask anyone who's been. The exhibit hall/trade show floor is the busiest place at the meeting. There are almost 200 firms (outside counsel, legal services providers, legal tech experts, staffing and professional consultants, etc.) present and they all bring their tippy top people who understand your business and can fashion solutions designed just for law departments. If you're in the market to interview firms, preview technologies, or discuss consulting services, come to the meeting with your pencil sharpened and your exhibit hall map marked with the most direct routes to visit the folks you need to see. You will have an unparalleled opportunity to meet with the top providers of virtually everything a law department needs: you can talk to them for 30 seconds or 3 hours, with as little or as much specificity as you like; if you're not interested, you walk to the next booth (usually with some nice swag in tow!). This is so much easier than inviting a line of prospects to interminable meetings in your offices and finding out they've sent a local account rep that can't answer your questions.

Comments or ideas for me? Contact me at hackett@acc.com.

Holland & Hart Proudly Supports the Mountain West Chapter of the Association of Corporate Counsel



Serving individuals, businesses, and communities in Idaho for more than 70 years, Holland & Hart offers straightforward legal advice and representation for local, national, and international clients in the areas of business, litigation, and natural resources. Our Boise office has grown to 35 attorneys who provide tailored, sophisticated, and cost-effective representation to support our clients' needs.

Corporate • Mergers & Acquisitions • Licensing and Technology
Intellectual Property • Project Finance • Real Estate
Employment Law • Employee Benefits • Tax • Bankruptcy
Tort Defense and Insurance • Commercial Litigation • Natural Resources

HOLLAND & HART
ATTORNEYS



Contact: Larry Prince (208) 342-5000
U.S. Bank Plaza, 101 S. Capitol Blvd., Suite 1400, Boise, ID 83702
www.hollandhart.com/boise

BOISE ASPEN BILLINGS BOULDER CHEYENNE COLORADO SPRINGS DENVER
DENVER TECH CENTER JACKSON HOLE LAS VEGAS RENO SALT LAKE CITY SANTA FE WASHINGTON D.C.

Board Members and Contacts

President

Kevin McMurray
USANA Health Sciences, Inc.
801.954.7816
kevin.mcmurray@us.usana.com

Vice President

Peter Webster
Rio Tinto Services Inc.
801.238.2433
peter.webster@riotinto.com

Treasurer

Nathan Nelson
Albion Laboratories, Inc.
801.820.1122
nnelson@albion-an-.com

Secretary

Katherine R. Lofft
Alliance Legal Services, LLC
435.659.1688
lofftpc@msn.com

Immediate Past President

Stanley E. Soper
Nutraceutical Corporation
435.655.6072
ssoper@nutracorp.com

Board of Directors

Edwin Apel
Washington Group International Inc.
208.386.5010
win.apel@wgint.com

Dawn Call
Management & Training Corporation
801.693.2700
dcall@mtctrains.com

Craig Hale
Xango, LLC
801.766.3092
craigh@xango.net

Vonda Hall
Supervalu Inc.
208.395.4922
vonda.hall@albertsons.com

Rashelle Perry
Merit Medical Systems, Inc.
801.208.4343
Rperry@merit.com

Chapter Administrator

Nalisa Dunford
mountainwest@acc.com

Welcome New Members

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

Tyrie Barrott, Melaleuca, Inc.

Jeanne Baughman, Washington Group International

Neil Smith, Young Electric Sign Company

Michael Wardle, Young Electric Sign Company

Kevin Baker, Rio Tinto Services Inc.

Jake Donnelly, WRT-INC

Shane Orians, Rio Tinto Services Inc.

Blake Schroeder, MonaVie, Inc.

Mark Taylor, Rio Tinto Services Inc.

Lynn Cardey-Yates, Rio Tinto Services Inc.

Chris Patterson, ForeverGreen, International

Greg Pesci, ProPay, Inc.

Early Renewal Rate Expires on December 15

Most of our members are scheduled to lapse on December 31. Renew your membership by December 15 to receive this year's rate of \$225 and to avoid interruption in benefits. If you don't renew by December 31, you will miss out on chapter program announcements and other chapter broadcast email messages as well as ACC Docket issues featuring articles on records retention, outsourcing, litigation management, and compliance. Access to the Virtual Library and InfoPAKs will also be cut off, restricting you from accessing the hundreds of sample forms, policies, articles, checklists, and helpful web references available in these publications. To ensure that you don't experience an interruption in services, simply renew your membership now at <http://www.acc.com/membership/renew.php>. Questions? Contact the membership department at 202.293.4103, ext. 360; membership@acc.com.