



President's Message

Wow! It's hard to believe that the year is almost over. I wanted to take this opportunity to tell you about some exciting changes that are occurring in our Chapter, talk about some leadership opportunities that are coming available, and then close by mentioning an important legal change that ACC has advocated for on behalf of the in-house bar.

First, allow me to introduce our new Chapter Administrator. On September 3rd our Chapter signed a contract with the Association of Management Consultants (AMC) LLC of Houston, Texas. AMC was chosen by the Board as our new administrator based on its demonstrated track record of success with several of our sister ACC Chapters in other states. Specifically, AMC brings our chapter an expansive administrative staff with significant experience handling large-scale events, an expansive cross-flow of chapter best practices, and an awesome information technology capability. In the upcoming months, look for significant improvements to our chapter's website, a host of new and exciting activities – including what we hope will be a highly successful golf and spa event in 2009 – and added information technology capability as we go virtual with many of our CLE programs. Ms. Logan Wright will be serving as our primary chapter focal from AMC and can be reached by dialing 713.839.0808. If you have any questions about chapter events, or just want to learn more about our Chapter, Logan can provide you information or put you in touch with the right person to provide an answer. On behalf of the entire chapter welcome Logan and AMC!

Next, it's already time to start thinking about who will be leading our chapter committees and filling open positions on the Chapter's Board in 2009. Each year, these positions are filled through a nomination process. The Chapter Board assembles a Nominating Committee, chaired by a current Board member with representation from across the chapter. This year the Nominating Committee is being chaired by Tim Luft, legal counsel at Emerson Electric. Tim will be soliciting nominations from across the chapter for members who are interested in serving in a leadership role. Those nominations will then be compiled and the slate of candidates developed that will go before the Chapter Board for review and then to the general membership in January for vote at the annual meeting. If you are interested in serving in a leadership role, or know someone who would be a great candidate, we would like to hear from you! Being an ACC leader offers tremendous opportunity to make a difference in an area of law that interests you. It also offers an opportunity to develop your leadership skills and network with legal leaders from across the in-house community.

Finally, one of the significant benefits ACC brings to in-house counsel is our national advocacy efforts on matters that make a significant difference to the in-house practice of law. A significant example of the product of this advocacy occurred this past month, with a significant shift in law and policy concerning the greater protection of the attorney-client privilege in the Corporate setting. If you have not visited our website on this and other advocacy matters, please take advantage of this benefit. Not only can you find out the latest positions and proposed changes facing the in-house legal community, there are practical products to guide you in your day-to-day practice. To find out more, visit www.ACC.com.

Well that's all for this edition. As always, if you have ideas on how we might better serve you, or if you are interested in becoming more active in the chapter, please contact me any time.

Ty Ulmer
Chapter President

Unclaimed Property: Arcane & Little-Known Area of the Law, but In-House Counsel Must be Aware of Applicable Legal Requirements

By: Steve Shrage, In-House Counsel, CCA Global Partners, Inc.

An area of the law which rarely receives any of our attention as in-house practitioners is the area of unclaimed property. Harking back to Property I class, most attorneys assume it relates to abandoned property, or at the most, unclaimed bank accounts and unclaimed dividend disbursements. However, in the last few years, this area has expanded to cover a much broader scope, including uncashed payroll checks, uncashed checks to vendors, unused gift cards, unused credits on an account, credit balances, and other items. Who among us hasn't been in a meeting of one or more finance executives of our respective companies, and the answer to what to do about a returned check or a payee who has fallen off the radar: "take it to revenue." But that might not be the legally correct answer. Every state has a statute dealing with unclaimed property. Your company, and the unclaimed property you hold, will be subject to the jurisdiction of one or more states. Determining which state has jurisdiction is outside the scope of this article; I will only note that there are general rules based on the state of incorporation of the holder, and the state of incorporation or of residence of the property owner. Holders of unclaimed property must then verify that the Holding Period (sometimes known as the Dormancy Period), the period after which the property is considered abandoned or unclaimed, has passed. This is usually three to five years.

The commonly held notion is that these funds are remitted to the respective states, which then hold them as custodians while state officials attempt to locate the owners. Unfortunately, due to budgetary pressures, many states undertake only a cursory effort to locate the legal owners, if at all, and after only a brief effort "take it to revenue." Thus, these funds become part of the general revenue fund of the respective states. The importance of this as a revenue source cannot be understated: in Delaware, it is the third-highest source of state revenue. Regardless of how the states deal with the property once it comes into their possession, in-house counsel needs to ensure that his or her client has an appropriate compliance program.

Many state UP statutes require the holder to conduct some minimal level of due diligence to attempt to locate the owner of the property. You should be guided by the address(es) contained in your corporate records. There is often no requirement that you go beyond that.

Once you have determined that you are unable to locate the owner of the property in question, you must then comply with the reporting

schemes of the various states. The unclaimed property statutes of most states require periodic reporting of all unclaimed property. If a state suspects that you hold unclaimed property but have not filed a report and remitted the property to the state, they can initiate an audit of your corporate records. If you have never filed an unclaimed property report, be prepared for a lookback during this audit of up to 15 to 20 years (Delaware currently goes back to the early 1980s). If unreported unclaimed property is uncovered, penalties and interest can also be imposed. Many states encourage non-reporters to enter into a voluntary disclosure agreement, known as a VDA. The main advantage of a VDA is you can limit to penalties & interest for non-reporting and also potentially limit the lookback period. The final amount of your client's obligation also ends up being negotiable. For neophytes, there are also consulting firms who can assist you in the initial report to the states, and any potential VDA.

Certain areas or circumstances are more likely to raise the level of scrutiny which you may receive from state regulators. Industries where there are a large amount of transient workers attracts attention, due to the possibility of many uncashed payroll checks. Industries such as retail where gift cards have become popular is another area attracting attention. Acquisitions and divestitures can also raise issues of unclaimed property. As a practice tip, counsel is advised to make sure that the acquiring entity requires a reserve or an escrow to cover such liabilities, or appropriate indemnities, or both.

Additional pitfalls resulting from a failure of compliance include the possibility of a whistleblower action, to the extent that internals are aware of your noncompliance. In addition, your noncompliance could have Sarbanes Oxley implications as well as whether or not your auditors will sign off on the company's independent audit. In certain states, such non-compliance has also led to the filing of class action lawsuits (read: California).

The reporting function with respect to unclaimed property is oftentimes housed with your company's finance department. However, as in-house counsel, (and in many instances, you are also the Corporate Secretary), in fulfilling one or both of these roles, you need to be apprised of your company's compliance efforts in relation to unclaimed property. More importantly, you should be involved in designing your company's compliance with such statutes.

ACC / St. Louis Chapter 2008 - 2009 Officers & Directors

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ACC's Matthew Geekie is Promoted to General Counsel at Graybar

As of August 1, 2008 ACC-St. Louis Chapter Board member Matthew Geekie was promoted to the position of senior vice president, secretary and general counsel at St. Louis based Graybar Electric -- one of the largest privately held companies in St. Louis. As the head of their legal department he will be called upon to handle several new responsibilities, including serving on Graybar's board of directors and leading their risk management efforts. In his new position Geekie, the former general counsel for XTRA, a Berkshire Hathaway company and assistant general counsel at Emerson Process Management, reports to Graybar Chairman, President and Chief Executive Robert Reynolds, Jr.

Best wishes to Geekie on his new position.

Upcoming Events:

ACC St. Louis Chapter Presents

"Business & Intellectual Property Valuation Trends -What In-House Counsel Needs to Know"

CLE - 1 Hour

Thursday, October 16th, 2008

4:30 p.m.

Refreshments served beginning at 4:00 p.m. and immediately following the program.

Complimentary, Sponsored by
UHY Advisors

To be held at:
UHY Football Field
15 Sunnen Drive - Suite 100
314.615.1200

Speakers:

Lynda Lieberman - Lynda is a Senior Manager with UHY Advisors and leads the St. Louis business valuation practice. She is a member of UHY's national business valuation technical committee and a member of the Business Valuation Credentialing Board of the National Association of Certified Valuation Analysts. Lynda is a licensed CPA in the State of Missouri and holds the Accredited Senior Appraiser, Accredited in Business Valuations, and Certified Valuation Analyst designations.

Scott Kozack -Scott is an attorney in the Business Litigation Group of Armstrong Teasdale LLP's St. Louis office. Scott handles business and commercial cases in federal and state courts across the country. He has expertise in a variety of matters associated with general business litigation, including contract and securities disputes, as well as toxic tort and product liability defense.

To RSVP: Please email Maura Jekel at maura.jekel@edwardjones.com or Call (314) 515-5336.



Save the Date

ACC Social Event - Happy Hour

December 4, 2008

5:30 p.m. until ???

Schneithorst's - 1600 S. Lindbergh Blvd.

ACC Annual Dinner

January 26, 2008

More to come

Welcome New Members!

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