

St. Louis Chapter Newsletter

President's Message



The ACC is now in its 25th year. Our own St. Louis Chapter celebrated its 21st anniversary this year. It has been a busy Fall for both ACC National and ACC St. Louis. ACC National hosted its Annual Meeting in Chicago which, by all accounts, was a great success. Our St. Louis Chapter pre-

sented a successful "home grown" CLE program with a panel of its own members. We are not done yet for 2007. Our November 15 CLE program will review the timely topic of Campaign Contributions and Lobbying. On December 11, we will host a holiday social event at Schneithorst's. It was great to see so many of you at our last social event at Ruth's Chris. We encourage the interaction and networking among our members and hope to foster a close-knit community for in-house counsel in the St. Louis area. Our members help make the ACC what it is today, a reliable resource "by in-house counsel, for in-house counsel," as described by ACC National President Fred Krebs. I hope you appreciate the commitment of your Chapter's Board to make the ACC the preferred association for St. Louis in-house counsel.

Dan Lett, President, ACC of St. Louis

Upcoming Events

Annual Meeting

The Annual Meeting for the Saint Louis Chapter of The Association of Corporate Counsel will be held at Busch's Grove Restaurant, 9160 Clayton Road in Ladue Missouri on Thursday, January 17, 2008.

The meeting will begin with a reception from 5:30 p.m. -- 6:30 p.m. followed by dinner and the election of the Board of Directors and officers for 2008.

Holiday Social

Tuesday, December 11, 2007
5:00 p.m. -- 7:00 p.m.
Schneithorst's
Clayton & Lindbergh

Details on both programs will be e-mailed soon

ACC St. Louis 2007 Chapter Officers, Directors & Committee Chairs

President
VP/President Elect
Treasurer
Secretary

Daniel J. Lett
Tyrus R. Ulmer
Timothy W. Luft
Kathleen S. Northcutt

General Counsel - Sarah A. Siegel
Law School Liaison/Extern Program - Thomas C. Burke
Membership - Randy Hayman
Pro Bono - Harry Greensfelder III
Programs - Kimberly Shaw Elliott,
Matthew W. Geekie and Stephen T. Shrage
Social Committee - James R. Bowlin

Directors

Jan Alonzo
Michael R. Curoe
Kim Shaw Elliott
Matthew W. Geekie
Harry Greensfelder III
Randy Hayman
Patricia Larson
Stephen T. Shrage
David E. Wilson

Committee Chairs

Corporate Counsel Institute - Tyrus R. Ulmer

Ex Officio Members

Michael Bante
James R. Bowlin
Thomas C. Burke
Thomas M. Byrne
Ann Smith Carr
Ron Gieseke
Craig Ingraham
Tamee V. Reese
Sarah A. Siegel

Chapter Administrator -- Jim Susman

“Interacting With Elected Officials and Government Agencies: *Campaign Contributions and Lobbying*”

This program will satisfy 1.5 hours of Missouri CLE

Featured speakers:

Tom Campbell: Gallop, Johnson & Neuman, L.C.

Michael Reid: Director, Governmental Relations for the Missouri School Boards' Association

CLE Seminar and Reception
Thursday, November 15, 2007
4:00 p.m. -- 5:30 p.m. with Reception immediately following

Gallop, Johnson & Neuman, L.C.
101 S. Hanley, Suite 1700, Clayton, MO

There is no charge for the program for ACC members or prospective members.

Reservations are encouraged by calling Jim Susman, Chapter Administrator at
314/997-3390 or susgrp@charter.net

Armstrong Teasdale, LLP Sponsors October Membership Program

Armstrong Teasdale, LLP in conjunction with Lex Mundi Services hosted an evening social interaction at Ruth's Chris Steakhouse in Clayton. Nearly 50 ACC members and prospective members attended the program.



Kim Shaw Elliott, program chair for ACC St. Louis thanks Armstrong Teasdale representatives for sponsoring the event.



Corporate Counsel Institute — *In the Planning Stages*

The Planning Committee for the annual Corporate Counsel Institute sponsored jointly by ACC of St. Louis and BAMSL is in the planning stages, according to Craig Ingraham, a member of the planning committee. Anyone with suggestions for topics should contact either Craig Ingraham (csingraham@sbcglobal.net) or Ty Ulmer (tyrus.r.ulmer@boeing.com).



The EEOC's Recently Issued Enforcement Guidance on Unlawful Disparate Treatment of Workers with Care Giving Responsibilities

On May 23, 2007, the EEOC issued enforcement guidance on unlawful disparate treatment of workers with caregiving responsibilities. The guidance stemmed from many cases that have been brought over the years based on various statutory provisions, including Title VII, the Family and Medical Leave Act, the Pregnancy Discrimination Act, and other federal and state laws. The most common claims have been failure to hire, failure to promote, denial of benefits, or interference with FMLA rights, retaliation and hostile work environment. These cases are commonly referred to as Family Responsibility Discrimination (“FRD”) cases. In the last decade as compared with the prior decade, the Center for Work Life Law has reported a 400% increase in FRD claims.

The guidance makes very clear that no additional “protected status” of “caregiver” is being created. Thus, it is important to note that if all employees – male, female, African American, White, Hispanic, etc. who have similar caregiving responsibilities are treated in exactly the same manner – even if it is unfavorably – there is no cause of action against the employer.

The problem comes in when the employer treats females with caregiving responsibilities as compared with males with similar responsibilities less favorably, or employees of color less favorably than white employees, etc. The guidance contains numerous examples to illustrate the purpose of the guidance. One is a situation where a female arrives late to a scheduled meeting due to caregiving issues with a family member. Another attendee is a male who has arrived late to meetings on more than one occasion who receives a promotion, and the employer cites the female arriving late to the meeting as evidence that she was not

“dependable” despite the fact that co-workers remember the female arriving late only once and the male arriving late more than once. The employer acknowledged the job performance of both individuals was good. Based on the foregoing facts, the investigator would conclude the decision not to promote the female was based on her sex.

However, the guidelines also make clear that having caregiving responsibilities does not relieve an employee of the obligation to fulfill their job duties. An example provided in the guidelines is a situation where an employee misses deadlines due to absenteeism resulting from caregiving issues and as a result the employer loses a major client. The employee received discipline but continued to miss further deadlines due to childcare issues. The employee was moved to another department with fewer time constraints but where she would not work on high profile cases. Because the employer’s reason for the action was based on actual job performance issues (attendance), there was no violation of the law in this scenario.

The guidance is a good tool for employers to review to ensure that all employment-related decisions are based solely on job performance (to include attendance) and that consideration is never given to any employee’s race, age, sex, religion, national origin or any other legally protected characteristic. The guidance is available on the EEOC’s website.

If you would like additional information, please contact Karen Milner at The Lowenbaum Partnership, (314) 746-4820; kem@lowenbaumlaw.com.

September CLE Program Recap

“Interpreting, Drafting and Negotiating Common Contractual Terms”



Kim Shaw Elliott, ACC St. Louis Program Chair and Craig Ingraham, ACC Ex Officio Member, presented a CLE program on Contractual Terms at a luncheon meeting at the Marriott West Hotel.



General Counsels Meet for Conversation and Dinner



Catherine Hanaway, U.S. Attorney for the Eastern District of Missouri, was the guest speaker at the September 26th General Coun-

sel Dinner. Ms. Hanaway discussed issues of mutual interest to her Office and the business community including immigration policy, white collar crime, and attorney-client privilege. Her talk was followed by a lively "Q & A" session. All the General Counsels attending agreed that this was a very informative and thought-provoking event.

General Counsel Dinners are held 3 – 4 times each year. All full-time St. Louis area general counsels are welcome to attend. For more information, please contact Sarah Siegel, Vice President and General Counsel of Dierbergs Markets, Inc. at (636) 812-1351 or siegels@dierbergs.com.

Welcome New Members!

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Illinois Supreme Court Institutes Minimum Continuing Legal Education Requirements

If you are licensed in Illinois, you need to be sure that you are keeping track of your Minimum Continuing Legal Education ("MCLE") credits. In general, attorneys licensed in Illinois are required to obtain 20 MCLE credit hours, including four professionalism (ethics) credits, in the first two-year reporting period. If your last name begins with A through M, the first reporting period is July 1, 2006 through June 30, 2008. If your last name begins with N through Z, your first reporting period is July 1, 2007 through June 30, 2009. Then, for the next two-year reporting period, attorneys will be required to obtain 24 total hours, including four ethics credits. Thereafter, the hourly requirement will be set at 30 MCLE credit hours, including four ethics credits. Similar to Missouri, attorneys must maintain their own certificates of attendance or other proof of MCLE compliance, and must file reports to evidence compliance. In general, ten hours may be carried over into subsequent reporting periods; however, one cannot use carryover hours to count towards the ethics requirements.

The St. Louis Chapter of the ACC is currently trying to become an authorized provider of MCLE credit so that future local ACC sessions count in both Missouri and Illinois. For more information on obtaining Illinois MCLE credits, please visit the Illinois MCLE Board website at www.mcleboard.org or call the MCLE Board at 312.924.2420.

Changes to Commonly Utilized Securities Exemptions on the Horizon

*By Kara L. Horton and Paul J. Cambridge
Polsinelli Shalton Flanigan Suelthaus PC*

The Securities and Exchange Commission (“SEC”) recently proposed amendments to the provisions of Regulation D, one of the most widely used exemptions from registration under the Securities Act of 1933, as amended (the “Securities Act”), for limited and private offerings of securities. According to the SEC, the intent of the amendments is to clarify and modernize the rules under Regulation D and provide additional flexibility to issuers while continuing to protect investors. These amendments, if adopted as currently proposed (the comment period on the amendments expired in October), changes the landscape of Regulation D offering exemptions by, among other proposed changes, (i) creating a new Rule 507 exemption from registration for offers and sales of securities to “large accredited investors” that would allow limited advertising of the offering, (ii) updating the definition of “accredited investor”, (iii) shortening the time period of the integration safe harbor, and (iv) applying the “bad actor” disqualification provisions of Rule 505 uniformly to all Regulation D offerings.

The proposed Regulation D Rule 507 would exempt from registration offerings made solely to investors falling into a newly created category of “large accredited investors.” A large accredited investor will generally include (i) entities with assets over \$10 million and (ii) individuals with a net worth of \$2.5 million or annual income of \$400,000. As is true under Rule 506 of Regulation D with respect to unregistered offerings to accredited investors, Rule 507 will allow an unlimited dollar amount of securities to be sold to an unlimited number of large accredited investors. In addition, as is the case with accredited investors under the existing Regulation D, large accredited investors will be considered “qualified purchasers” under Section 18(b)(3) of the Securities Act. This would classify the securities sold in Rule 507 offerings as “covered securities” and thereby preempt state securities regulation.

The major innovation of the proposed Rule 507 is that advertising and general solicitation of the offering, which is currently prohibited in connection with Rule 506 offerings upon which the new Rule 507 is modeled, would be permitted under limited circumstances. This ability to advertise is limited to an issuer soliciting only large accredited investors through a limited published announcement of the offering. The announcement must be in written form, such as published in a newspaper or on the Internet. This announcement would be required to prominently state that sales will be made only to large accredited investors, that no money or other consideration is being solicited or will be accepted through the announcement, and that the securities have not been registered with or approved by the SEC and are being offered and sold pursuant to an exemption from federal and state securities laws. Because of the risk to unsophisticated investors the SEC associates with allowing advertising in any form, Securities offered under Rule 507 may only be offered to large accredited investors, a departure from the ability to sell securities to up to 35 non-accredited investors under Rule 506. For many issuers, however, the advantage of being able to advertise the offering in the limited form outlined above will outweigh the inability of selling securities to those not meeting the large accredited investor qualifications.

Whether or not an investor qualifies as an accredited investor is an important distinction in many Regulation D offerings. The current definition set forth in Rule 501(a) of Regulation D lists a number of categories of accredited investors, generally providing that entities must have assets of at least \$5 million and individuals must have net worth of at least \$1 million or annual income above \$200,000 or \$300,000 with their spouse. If the amendments become effective as proposed, an “investments-owned” standard will be included to determine accredited investor status. The “investment-owned” standard provides that entities will be accredited if they have investments totaling \$5 million and individuals will be accredited if they have investments of over \$750,000. “Investments” under the proposed rule will include investments in securities, real estate, cash and cash equivalents and other investments. The SEC hopes that this change will provide a more accurate standard of targeting those investors requiring the protection of a registration statement and simplify the compliance burdens of issuers by providing a standard that is generally more accurate and simpler to determine. In addition to these effects, the amendment can benefit issuers by adding another category to the accredited investor definition, opening offerings to more investors.

Another noteworthy aspect of the amendments to the accredited investor definition is that a mechanism will be created to adjust the dollar thresholds in the accredited investor determination to reflect inflation, preventing the accredited investor standards from losing their effectiveness over time. The SEC is cognizant of the danger of adjusting the thresholds upward too quickly or in too great an amount, which could cause issuers to offer securities under other exemptions without the protection of the Regulation D safe harbor or be unable to engage in an offering because it is too difficult for an investor to achieve the status of an accredited investor. To balance these concerns, the first adjustment to the dollar thresholds used in determining whether an investor qualifies as an accredited investor is proposed to begin in 2012 and to continue to adjust every five years thereafter.

To prevent an issuer from avoiding registration by conducting several offerings that would not be exempt if combined, Rule 502(a) of Regulation D contains a five-factor test to determine whether offerings made by an issuer should be integrated for purposes of Regulation D exemptions. To be sure multiple offerings do not integrate, many issuers take advantage of the integration safe harbor provided in Rule 502(a). Under this safe harbor, offerings made more than six months before or after a Regulation D offering are considered separate. Waiting such a long period can cause serious impairment of a company’s ability to raise capital. Noting this

Check Out the ACC National Website: Spotlight on the INFOPAK

The Association of Corporate Counsel website (www.acc.com) is packed with good information. To log on, you need your member number and your password (typically the first 8 letters of your last name). The site includes a prompt if you have forgotten your number/password, and the ACC will e-mail it to you.

The ACC site maintains a vast library of documents, forms, articles, and resources pertaining exclusively to in-house practice, management techniques, and networks. Check out the INFOPAKs - they offer you the opportunity to tap into the in-house legal community's storehouse of knowledge and experience so that you can provide the best possible client service. They contain helpful articles and other substantive materials which address some of our more frequently posed questions.

InfoPAKS are available FREE to members. One top pick: the Small Law Department Human Resources Manual. This INFOPAK includes labor and employment information for various states, Canada and Mexico. Be sure to check out www.acc.com for other INFOPAKS and information that can help you in your in-house practice.

Attorney Position

Legal Services of Eastern Missouri, Inc. is seeking an Attorney to manage its Immigration Unit. The attorney will provide legal representation to low-income people in a wide variety of immigration matters, including relief from removal proceedings, Board of Immigration Appeals motions, and appeals. Some federal court work anticipated. Community education and outreach is an important component of the job. The attorney must be licensed and have good writing and oral advocacy skills. If not licensed in Missouri, the attorney would be expected to sit for the first Missouri bar exam. Minimum of 3-5 years immigration law experience required. Managerial experience preferred. Spanish or other foreign language ability preferred. Salary is \$50,000+, depending on experience. Send resumes to Beth Roper, Legal Services of Eastern Missouri, 4232 Forest Park Ave., St. Louis, MO 63108, no later than December 31, 2007. E.O.E.

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If effect, the integration safe harbor under Rule 502(a) is proposed to be reduced to 90 days, thereby allowing more flexibility to issuers.

Rule 505(b)(2)(iii) of Regulation D currently provides that certain issuers are disqualified from making offerings under Rule 505. Under this provision, issuers are barred from relying on Rule 505 where the issuer and certain persons connected with the issuer have committed violations of relevant laws and regulations. The SEC proposes to replace this section with disqualification provisions in Rule 502(e) that will apply these "bad actor" disqualifications to all offerings made in reliance on Regulation D. The proposed disqualification provisions do not limit disqualification to issuers, but extends to predecessors and affiliates of the issuer; directors, executive officers, general partners, or managing members of the issuer; any beneficial owner of 20% or more of any class of the issuer's equity securities; and any promoter connected with the issuer. Unlike the current rule, underwriters will not be included. The disqualification provisions will require a determination by a government official or agency, or self-regulatory organization, that the relevant person has violated the law or engaged in wrongdoing.

If enacted, the amendments to Regulation D outlined in this article will impact the manner issuers conduct limited and private offerings of securities under the Regulation D exemptions from registration. Public and private companies of all sizes and structures who engage in capital raising through exempt offerings should follow the status of these amendments as they continue through the rulemaking process, as they have potential to broadly impact capital raising through Regulation D offerings.

Kara L. Horton is a shareholder and Paul J. Cambridge is an associate with Polsinelli Shalton Flanigan Suelthaus PC, in its St. Louis, Missouri office. Each concentrates a majority of their practices in the areas of Corporate and Securities law, serving a wide variety of needs of public and private companies. If you have questions about this article or any other matter, please contact Kara or Paul at (314) 889-8000.

Member News

UniGroup, Inc. is pleased to announce that **Susan Fox** has joined UniGroup's Corporate Law Department in the role of Staff Attorney in the Business Operations Section. Prior to joining UniGroup, Susan was a senior associate at McMahon Berger, PC, one of the nation's largest law firms specializing in labor and employment law.

Shelby Watson has been promoted to Staff Attorney in UniGroup's Corporate Law Department's Cargo Litigation Section. Shelby had previously worked for UniGroup's Vanliner Insurance Company as an insurance attorney. She is a 2001 graduate of Washington University Law School.

Calling All Articles

Do you want to be published? The St. Louis Chapter of the ACC is always looking for articles to include in our newsletter. If you prepare in-house memos for your executives and think the membership might benefit, please send a submission to Jim Susman, Chapter Administrator, at susgrp@charter.net.

**For membership information,
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