

St. Louis Chapter Newsletter

Pro Bono Opportunities

On September 30, 2006, we will be participating in National Community Service Day sponsored by National ACC by again helping Gateway Greening, a Missouri non-profit agency, keep St. Louis green and clean and working to promote nutrition and local food supplies.

Gateway Greening is dedicated to community development through community gardening. Since 1984, Gateway Greening has helped transform neglected and abandoned lots in St. Louis into productive gardens and beautiful landscaped areas. For more information on Gateway Greening, please visit www.gatewaygreening.org.

ACC members and corporate legal departments, including family and friends, will be pitching in either at the Bell Garden, the City's largest community garden, the Urban Seeds greening projects on Market or Tucker Avenues in Downtown SL (and Kiener Plaza), or at Gateway's newest project, the Urban Farm, a collaborative project including (along with other institutions) the clients of St. Patrick's Center, St. Louis Community College at Meramec horticulture department faculty, and the USDA focused on training/educating a largely formerly homeless population in food production and nutrition. Our work day program will last from 9 a.m. to 1 p.m. Volunteers can work for all or part of the four hours. We will be serving drinks and breakfast snacks.

More info to follow soon but please save the date and make plans to join our team!

September 21, 2006 CLE

Save the date for our September 21, 2006 CLE: "Communicating with the CFO-Speaking in Foreign Languages." A panel discussion among in-house attorneys and their financial officers, reviewing how legal and financial goals may diverge, how to coordinate projects, including liability reserves, and tips for the unwary.

Externship Program

The 2005-2006 school year marked another successful year of the Chapter's law school externship program. Since 1997 the St. Louis Chapter of ACC has sponsored a program in conjunction with Saint Louis University School of Law to provide third year law students with hands-on experience in the in-house practice of corporate law. This spring semester thirteen students were paired with legal departments at ten area companies to further their legal educations by applying their skills and knowledge of legal doctrine to real-life issues faced by in-house attorneys. Students in the program generally spend 6 to 9 hours per week in their corporate settings, and earn 2 to 3 credit hours. The program focuses on providing the students with practical legal skills and problem-solving training through exposure to the realities of corporate practice and instilling in students a sense of professional responsibility to represent the interests of others.

This cooperative program not only benefits the students and sponsoring corporations from a practical standpoint, it also enhances the Chapter's continuing efforts to support programs that provide interaction between in-house practitioners and other legal institutions in the St. Louis area. Professor Alan M. Weinberger administers the program and oversees its academic component for the School of Law. Professor Weinberger has noted that students consistently rate the experience as a highlight of their law school education, and a springboard to successful legal careers. Most of the participating companies have accepted students for a number of years, further attesting to the program's success. If you would like more information please contact the Chapter coordinator for the program Tom Burke at 314-854-4098 or tburke@brownshoe.com.

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President's Message

Summertime in St. Louis means more than just hot and hazy days. For the attorneys, it also means completing our annual ritual of making sure that we cram in those last CLE credits and get our reports in on time. This is a good opportunity then, to call attention to the work of some of your board members, who ensure that our Chapter's tradition of providing excellent continuing legal education programs to its members continues.



Tom Burke

Many of you attended another successful Corporate Counsel Institute day-long seminar this spring. Thanks to Bob Wiegert and Ty Ulmer for their efforts in putting those programs together. Many members also routinely benefit from our monthly luncheon CLE's. Our program committee, Kim Shaw Elliott, Alice Sterkel and Steve Shrage work hard to ensure that we are delivering timely and informative CLE programs in partnership with our sponsors. These are not only good opportunities to obtain CLE credit for topics of unique interest to in-house practitioners, but also provide a chance to visit with colleagues and network. If you have not attended one of the luncheon programs in a while, please consider coming to a future event. If you regularly attend, consider bringing a fellow member or potential ACC member. The committee strives to be responsive and values input from the members on any aspects of the programs. Please contact Kim, Alice or Steve if you have suggestions for speakers, topics, or other aspects of the programs.

On another note, I wanted to mention recent developments affecting the practice of law for all Missouri attorneys. As I am sure you are aware, there have been efforts in Jefferson City over the past number of years to address the salaries of Missouri judges, which have not been increased since 2000. Ensuring adequate and competitive salaries for judges bears directly on the integrity of our court system, and thus our practices and the interests of our corporate clients. The good news is that the legislature passed HJR 55 at the end of the last session. As a result, the issue will be put to the voters in the form of a proposed constitutional amendment that strengthens the work of the compensation commission, which recommends salaries for elected officials, including judges. The proposed amendment requires a two-thirds majority vote by the General Assembly in order to veto the compensation schedule recommended by the commission. In the past few years, our Chapter has

actively advocated in the area of judicial compensation. Last spring, I joined representatives of other St. Louis area bar associations for a discussion of this topic and will continue to look for appropriate opportunities to support this effort. You may have noticed the recent call of other bars to support the proposed amendment. I would likewise encourage all of us to stay on top of this issue and to educate other voters of its importance whenever the chance arises.

I wish everyone a relaxing and enjoyable rest of summer — which hopefully includes vacations or just time off — and I look forward to seeing you at future events.

Tech Tidbit: Looking For a Fellow ACC Member?

Kathleen S. Northcutt

It's easy to find fellow ACC members by logging onto www.acca.com. Once there, click on the tab labeled "Networks" on the far left. Then, scroll down and click on "Member Directory." You will be prompted to login, if you are not currently logged in, because the Member Directory is only available to fellow members.

To login, your username is your ACC member number (conveniently located on the ACC Docket mailing label) and your password is the first eight letters of your last name in all lowercase letters with no spaces. If your name is less than eight letters, the password is simply your complete last name.

Once logged on, you will be taken to an ACC Member Search Form. You can search for fellow members by using one or more of the following categories: First Name, Last Name, Organization, Chapter, City, State, Country, Committee, Law School or Title. To find out who is in our chapter, select St. Louis under the Chapter section. This will bring up a list of all St. Louis Chapter members.

Do You Know of Any Prospective New Members?

The St. Louis ACC Chapter is always looking to welcome new members to our organization. We have a lot to offer fellow in-house counsel. If you know of any in-house attorneys who are not yet members, please put them in contact with our Membership Chair, Sandra Doreson. She can be reached via e-mail at sdoreson@solae.com or via phone at (314)659-3381.

The Chinese Regulatory Landscape In 2006

Charles W. Freeman III

China joined the World Trade Organization (WTO) in late 2001 by promising to dramatically overhaul its legal and regulatory system to make it more transparent and navigable. Nearly five years later, navigating the regulatory environment in China continues to present challenges for U.S. companies and their counsel.



Charles W. Freeman III

On September 8, 2006, the Office of the United States Trade Representative (USTR) in Washington, DC will hold its fifth annual public hearing to solicit testimony from U.S. businesses on their experience with China's implementation and compliance with its WTO commitments. That hearing, and USTR's subsequent report to Congress on China's WTO compliance, is a valuable roadmap for corporate counsel's reviewing legal challenges their companies are facing or will face as they develop their China businesses.

After looking at a broad range of business experiences in China, there are a range of legal and regulatory hurdles that companies face, but these can generally be categorized in three areas: (1) intellectual property rights protection; (2) excessively burdensome or opaque regulatory requirements, including limitations on the ability of companies to establish or expand their businesses; and (3) industrial policies that are designed to favor domestic firms over foreign competition. A brief overview of those areas follows:

Intellectual Property Rights

China's failure to protect and enforce intellectual property rights (IPR) is the largest single impediment to most companies seeking to gain meaningful market share in China; and in many cases presents major challenges to companies in other markets, including the United States. Beijing has done a good job articulating the long-term importance of IPR to the development of the Chinese economy, is emphasizing education and judicial training, and, in general, seems sincerely to believe that better IPR

protection is in China's self interest. Still, the scale of piracy and counterfeiting production is overwhelming, with reported rates of 85-95% in copyright industries, and large scale counterfeiting of every conceivable branded product. It is possible to limit damage done by Chinese pirates and counterfeiters, but this requires careful management of IP, pre-emptive filing for patents and other rights to ensure the minimum of protection, and good relationships with local and national government officials with oversight over IP protection. In many cases even the most effective IP management strategies are only to extend the shelf-lives of technology, rather than eliminate damages done by IPR theft.

Overly Burdensome Requirements

Although China's regulatory environment is improving in the wake of China's entry into WTO, most of the most significant operating challenges facing U.S. companies were unaffected by membership in the WTO. Unclear regulations, excessive bureaucracy, a lack of transparency, and inconsistent regulatory interpretation are major impediments to doing business in China. Likewise, uncertainties related to tax reform, new policies on M&A transactions and the like are regulatory obstacles, and are the result of bureaucratic inefficiencies that are not unique to China. However, there are a range of troublesome areas, including "Catch-22" import-licensing decisions, customs rulings on certain imports, zero-tolerance quarantine policies that lack a clear sound scientific basis, and others, that are not as easily explained and create broader concerns for businesses seeking a level playing field in the China market.

In addition, a number of specific policies that are not directly in conflict with China's obligations at the WTO raise questions about China's willingness to open to foreign competition. These include slow and capricious business licensing decisions, capital requirements in excess of global prudential norms, structural operating rules that encourage inefficiencies, and an incomplete separation of regulatory oversight from commercial activities.

In some cases these impediments can be overcome through solid government relations and clever management of a network of operating entities and

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associated minimum capital (in China, for example, capitalization can in most cases be put to immediate use, rather than be maintained in a bank account). However, companies are frequently encouraged to bend the rules by local practitioners, a tempting process to cut through red tape that has come back to haunt many.

Industrial Policies

In recent years, China has begun to employ a range of industrial policy devices that are not in keeping with the market principles that have been critical to the success of the Chinese economy. In late June, 2006, for example, the State Council issued a striking set of Opinions that identify strategic priorities for development, offer new direct subsidies in these priority areas, and actively discourage foreign participation. Other such policies include tax policies that discriminate against imports; mandatory technical standards that benefit Chinese domestic producers at the expense of competition from overseas innovators; and Anti-Monopoly policies that appear designed to limit the ability of overseas companies to attain significant market shares in China, are the latest example of a new Chinese economic nationalism that bodes ill for both China's own economic growth and for China's integration with the global business community. Continued legacy subsidies for Chinese state companies also lead many U.S. manufacturers to speculate that the "China Price" for component goods is in fact heavily underwritten by the China government.

These concerns will make competition for Chinese market share a fiercely-pitched battle over the next few years. As that market increases in importance to U.S. companies,

corporate counsel are likely to find themselves knee-deep in the arcana of Chinese economic rulemaking. It can be a nasty thicket for the unwary.

Charles W. Freeman III is based in Washington, DC as the Managing Director of the China Alliance of independent Law

Firms. He advises clients on effective strategies to manage the complexities of trade and investment between the North American and Chinese markets. From 2002 to late 2005 he served as the United States' chief China trade negotiator in the Office of United States Trade Representative.

Welcome New Members!

Welcome to the following new members of the St. Louis Chapter of ACC America:

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