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FOCUS

President's Message

Jean-Paul Durand

Turbulence. Seems like a fitting word to summarize what this year has been like for many of us. However, the real reason turbulence comes to mind is that I am writing this message, my last as our chapter's president, on my considerably bumpy flight back home from Seattle.

I was in Seattle attending the ACC Annual Meeting. As always, the event was a great experience and I am very appreciative of all the hard work and effort the ACC staff puts in to make this the preeminent event for in-house counsel. This year was no exception and Seattle was a beautiful backdrop to host the meeting. The CLE programs were comprehensive, generally well-presented, and there were ample networking opportunities. My thanks go out to the annual meeting sponsors, several of whom are also sponsors of our chapter, for making events like this possible.

My job as an in-house counsel has been greatly enriched by virtue of the many relationships I have built with our fellow members and sponsors. Most importantly, I am proud to now consider many of these people to be great friends. Had I not taken an active role in our chapter, I would likely not have had the chance to say this. For that I must also thank my employer, Tech Data Corporation, and its general counsel, David Vetter. David and Tech Data have been very supportive of my involvement in ACC and provided a great deal of encouragement throughout my terms as our chapter's president.

Our chapter has come a long way over the last few years. Our membership has nearly doubled and we are routinely hosting high quality CLE programs that are free of charge to our mem-

bers. Considering the limitations on travel imposed by several corporations, as well as constrained corporate budgets and the requirement for in-house counsel to obtain CLE credit, I think our chapter offers our member companies an incredible value. And in addition to helping our members address their professional responsibilities, we have reached out to our community in new ways by supporting local charities and engaging in meaningful service opportunities.

For example, our chapter recently worked with Keep Pinellas Beautiful to help clean up the coastal area near Blackthorn Memorial Park. Seeing representatives from our chapter and their families working side by side with our sponsors was probably the most rewarding experience I have had during my tenure as chapter president. It also brought to mind that we can be relevant to our community in ways that we may not have considered before and have fun in the process. Our Community Outreach Chair, Bruce Illes, and Chapter Administrator, Marshall Shirtzer, did a fantastic job and I am already looking forward to next year's event, whatever and wherever that may be.

We have done quite a bit together over the last three years, yet there is still so much more that our chapter can accomplish. To this end, I am fortunate to be succeeded by a great group of people and believe that I am leaving the leadership team in great hands. I wish much success to our next chapter president, Jeff Greenberg, and pledge my support to him as he supported me during my time as chapter president.



We have some great events planned for the rest of this year and our holiday party promises to be the best ever in our chapter's history. And while this year is not yet done, the leadership team is already hard at work

planning next year's programs and events. Your attendance at our meetings is critical to the continued success of our chapter and I please ask that you take time to attend our events.

In closing, I would like to thank the chapter leaders, Jeff, Gina, Liz, Richard, Kevin, Connie, John, and Bruce, as well as Marshall, for all of their hard work and dedication to the chapter this year. The chapter is better off because of them and it has been my privilege to work with such a great group of people.

Last but certainly not least, I thank you my fellow members for allowing me to serve as our chapter's president. I am honored to have served the chapter and am in fact quite humbled when I think about many of the great people in our organization and those that served in the role of president before me; I hope I did the role justice.

As always, I look forward to seeing you at a chapter event in the very near future.

Best regards,
 Jean-Paul Durand
 President

Counseling Around Corners

Susan Hackett

Senior Vice President and General Counsel, Association of Corporate Counsel (ACC)

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The economic downturn is more evident everywhere I go. The impact can be seen and felt all around us: closing businesses, laid off workers, less abundance, less “consumerism,” and an increased focus on family time.

My mother recently reminded me of some things I had since pushed aside. Mom, born in the Depression years, grew up in a very large family that barely made ends meet from day to day. They lived without a lot of frills, and only because all of the kids pitched in at home or to earn money. They focused on frugality, getting good value from everything they purchased, doing everything they could with less. I saw the enduring imprint of the Depression on my mom every time she rolled up and “re-gifted” the paper and the ribbon off her birthday package, or made us carry recycled lunch bags, or carefully washed and stored the empty mayonnaise jars for future use. We teased her mercilessly about this kind of frugal behavior.

In the last few months, those of us who grew up with plenty and who have been living large have seen a glimpse of what was bred in many of our elder parents’ bones: a healthy respect for prudence, a less ostentatious lifestyle. We are stepping back from excess and more carefully shepherding our resources because we are worried about what might come. Those of us fortunate enough to enjoy relative security in our jobs, our homes, and our daily routines cannot escape the unfortunate comparison to some of our neighbors and colleagues who have been harder hit.

By reflecting on the past, we can learn prudence relevant to corporate counseling in today’s volatile environment. As you examine your budgets and look at what can or must be trimmed, or what you can do to drive greater value, outside counsel costs often rise to the top of the pile. Empirically, we know that outside counsel costs constitutes more than 50 percent of the budget for more than half of in-house

departments. While many outside counsel are worth every penny they are paid, we all know there are many more who could be managed to spend a bit less for the work they perform, relative to the value of the services provided. Unless we manage toward those efficiencies, we are going to be caught spending our precious time in unproductive arguments over bills.

ACC has resources readily available to you for your consideration as you hone in on costs and increased value:

Hours, Rates, and Budgets

Don’t ask for a discounted rate or a freeze on fees. Many members have indicated that their approach to their firms this year is to ask for a 10 to 20 percent rate decrease. In part, this plan is fueled by the perception (and reality) that rates charged are out of proportion, and that they have grown exponentially for several years without any corresponding increase or change in the value of the services those counsel provide. Services have gotten more expensive and AmLaw and others continue to report that firms and leading partners are sometimes profiting in an almost unseemly manner. While everyone likes a profit, you have to start to wonder, “Who is in control here?”

Every situation has its own unique drivers, and I believe focusing on reducing outside lawyers’ rates is the wrong way to go in establishing the groundwork for successfully controlling costs. In-house counsel are surprised to find that, despite setting lower billing rates, fee ceilings, or blended rates for their work, the overall bill submitted did not get any smaller. Law firms that overcharge for matters and that agree to freeze or reduce their rates, just bill more hours, involve more billers, or do not properly control other expenses. Bills inevitably gravitate toward a certain amount, regardless of what might have been negotiated.

Set a budget for the project and to hold the firm accountable. Talk about what that project or matter is worth. Do not attach a price to the project, nor accept a fee reduction or a request for a discount. Simply state that this is what the matter is worth to you and then ask, “Is the firm willing to take this matter on for this fee?”

You should clearly articulate that you will not allow adjustments or overruns, except in pre-determined (in writing) extreme circumstances. For the price you agree to, they must finish the project, however that is defined. If it is important to you, tell them which lawyers you want in charge of or working on your matter. Make sure you are playing fair: tell them up front that you will not seek a refund or rebate if they resolve the matter more quickly/less expensively. You want them to profit by working efficiently. While some worry that the work done could suffer as a result of this kind of arrangement, I believe this is a myth of convenience, without any empirical merit. Firms that set flat fees for services begin to value lawyers who provide services not based on hours, but on getting clients what they want quickly.

What do you get from this? Much of the time, you will get lower costs. However, even if costs are not reduced, there is something to be said for managing them predictably for your clients in such tumultuous times, since busted budgets and missed financial targets often cause even more trouble. In addition to the surety of bills inline with your expense expectations, you and the firm will not have to waste time arguing over hours or bills.

Establishing a Budget

A project budget is not something that your outside counsel should prepare. It is something you must drive. Outside counsel should be critical in the process of mining their data. Perhaps they have done 437 of these kinds of cases over the last five years and can average some costs for you as a starting point. In-house departments

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must set—and evaluate—the budget based on the value of the work to the client. If a project is only “worth” \$50,000 to the client, what does it matter if the firm says it will cost \$100,000? You either find another firm or settle out now for \$40,000, and spend your time and effort on something that has a higher value.

While many of us are unsure of how to effectively evaluate the “worth” of some kinds of matters, we have to do this in the process of owning our own budgets and costs. If you do not know what a matter is worth, you certainly cannot expect your outside firm to live up to your cost efficiency expectations. We are developing a highly refined set of evaluation tools for our ACC Value Challenge project that will help in-house counsel determine the value of legal work by some other method than the cost of a lawyer’s hour multiplied by the time the lawyer spends working on the matter. If your goal is to set budgets based on incenting efficient performance from all players, inside and out, be sure to visit www.acc.com/valuechallenge for additional tools and insight.

A significant portion of the time you spend with your firms should be focused on evaluation and review of their services. Most of us, however, do very little to tell our firms what they do that we like and what we want them to do differently. The closest we get is paying or disputing the bill. While your outside firms are not blind, they may not focus on what your needs or concerns are unless you tell them. They are aware that companies are tightening their belts, that legal services are a cost center, and that you are under pressure to do more with less, but what do you expect them to propose without guidance from you? Further, if you work in a larger department, you must also have this “evaluation/review” conversation with your own lawyers internally. You want to incent their better management of firms by rewarding those who drive better performance at lower and predicted costs, and reproaching those that do not. Keep in mind that cost overrun by law firms is often enabled by a lack of good in-house management.

You need to consider adopting evaluation/review criteria for both the in-house staff and the outside firm. Make it clear that compensation and continued retention depends on adherence to a set of criteria that you all understand and are equipped to employ. If you are going to tell internal counsel that they must hire firms and return results and rates within set parameters, you have to allow them to select firms that will accept and abide by those terms, which may mean firing more expensive and less flexible firms that you’ve worked with for years. You have to support your staff’s decisions.

Perhaps one of the best exercises you can go through now is that of data mining to review the kinds of work done in the last year and compare it to previous years, looking at a variety of comparatives. Ask your firms to begin to mine their data for you, too. Given that many of them have long experience performing the kind of work you retain them to do, they should be able to clearly discuss specific types of work, what it costs, when it’s successful, who does it best, etc.

What if You are Unable to Hire Outside Help At All?

When you cannot afford to hire expertise, or the extra hands you need to create a solution to a thorny client problem, your friends in the ACC network can help. There is intrinsic value to what you will derive from a conversation with an experienced in-house peer over the value of analysis of a legal problem that an outside firm might offer. ACC offers several ways to leverage your membership:

- Join an ACC committee to find other practitioners interested in the same subject; (There is no additional cost and no limit on the number of committees you can join as an ACC member)
- Attend your local chapter meetings to find similarly situated peers who are confronted with many of the same issues as you;
- Post questions or requests on any of our many Listservs;
- Visit the online Membership Directory to reach out to a company that is likely to have an answer you want, or has the established best practice you would like to emulate;

- Search ACC’s online database of research, which includes thousands of documents such as articles (including back issues of the *ACC Docket*), how-to’s, ACC InfoPAKS, program materials/outlines, collected member forms, and policies, and links to other useful sites or resources;
- Look through ACC’s Leading Practices Profiles for added insight to member and department practices. These practical benchmarking tools capture how members have tackled tough topics through in-depth interviews that address their experience in getting started, key resources they developed, staffing and expense and lessons learned;
- Contact vendors who support ACC for discounts, ideas and access to their research. Especially helpful may be those vendors in the ACC Alliance program that co-market specialized products and services made for corporate counsel and available to ACC members at a reduced cost.

For those of you who have already been hit by the downturn and have lost, or may be in jeopardy of losing your job, know that ACC is standing right beside you. We offer in-transition membership at no cost (so long as you were a member prior to losing your position), and we also offer a variety of services and the best job postings in the business on ACC’s In-House Jobline.

Please share your thoughts on what you are doing to focus on more prudent management of your client’s time and spend. You can reach me at hackett@acc.com.



Community Service Day Photos



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Chapter News

Call for Articles

Do you have an interesting story to share? A challenging court case? Do you know an in-house lawyer who has made a difference in their community or in someone's life? Please share your stories by sending them to acc-wcf@cfl.rr.com.

Call for Involvement in Chapter

Would you like to be involved more in the chapter? Please let us know. We are always looking for help coordinating events and we are also looking for proposals for new activities that might benefit chapter members. If you are interested in serving on the board of directors or as an officer next year, let us know! For more information, contact jean-paul.durand@techdata.com.

Upcoming Events

Date: December 11, 2008
Title: CLE on "Finding Stability and Opportunity during Turbulent Times" and ACC-West Central Florida Chapter Annual Holiday Party
Time: 11:30 AM, Registration
12:00-5:00 PM, Seminar
5:00-6:00 PM, Fowler White Reception
6:00-9:00 PM, Annual Holiday Party (Buffet Dinner and Cocktails will be served. Featuring Mentalist Chris Carter (www.mindcramp.com)
Sponsor: Premier Sponsor Fowler White Boggs Banker
Location: Feather Sound Country Club
2201 Feather Sound Drive,
Clearwater, FL

For more information on upcoming chapter programs, go to westcentralflorida.acc.com.

Welcome New Members

We wish to welcome the following new We wish to welcome the following new members who have joined the ACC West Central Florida Chapter recently:

Robert Lewis, Gerdau Amristeel

Stephen MacIsaac, Masonite International Corporation

Kathryn Marrero, Corporation Services Company

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Acquisition Activity Continues Despite Credit Crunch While Many Wonder: How Can a Bad Deal be Avoided?

In the Tampa Bay region and across the country, merger and acquisition activity has been impacted by the decline in credit markets. The downturn has significantly slowed the engine driving larger transactions by domestic financial players, including recent deals that resulted in buyouts of Tampa Bay companies OSI Restaurant Partners, Inc. and Catalina Marketing Corporation. The downturn has likewise impacted debt-driven acquisition and financing transactions involving privately held companies. Despite these changes, mergers and acquisitions are still happening here and elsewhere, especially in the case of small- and middle-market deals that are not dependent on debt financing.

Shift in M&A Activity

During the past year, much of the acquisition activity has shifted from domestic financial buyers to bargain-hunting strategic buyers and foreign financial buyers flush with cash and ready to avail themselves of the weak U.S. dollar. Prospective buyers are still looking for good deals, and many potential sellers continue to look for exit opportunities. Although the context is changing, M&A activity in the Tampa Bay area persists, and deals are getting done.

However, buyers beware: In today's economic environment, there is even less room for error by a company making an acquisition. A bad deal can be catastrophic for a business.

Studies show that business acquisitions are often viewed as failures in hindsight. Unfortunately, most deals do not yield the anticipated benefits and promised value, especially relative to the price paid by the buyer. The reasons for perceived failure vary from corporate culture clashes to poor integration to faulty business assumptions.

Throughout an M&A deal, a company's business, financial and legal advisors address

potential risk areas by engaging in extensive due diligence of the acquisition target, drafting protective clauses into legal documents, and preparing detailed and highly analyzed business plans and models. But, in the end, even well-conceived transactions are often viewed as failures.

Avoiding M&A Pitfalls and Positioning for Success

There are several commonly overlooked key factors leading to both good and bad business transactions. When considering a deal, companies should keep the following in mind:

Know When to Pull the Plug

If circumstances warrant, companies should not be hesitant to terminate a deal or simply take a step back at the last minute of a pending acquisition. Second-rate deals occur when transaction momentum builds to the point where completing the purchase becomes an end in itself, thereby impairing the judgment and analysis of the participants.

Do Not Underestimate the Seller

Buyers frequently enter deals with plans to enhance operational efficiencies, increase product sales, and "trim costs" out of an acquired business. However, all too often, buyers underestimate the seller's ability to run its own business. As a result, many of the buyer's anticipated acquisition benefits – including improving the buyer's revenue and market positions (the primary motivators behind an acquisition) – become overstated in the purchaser's business model. Savvy sellers reinforce and support this buyer arrogance by characterizing themselves as being simple and unsophisticated, compelling the buyer to overpay for the target.

Stars Often Fade

Despite the talents of a buyer's "star players," acquisitions often stretch these employees

(including the seller's top workers who will stay with the business) too thin and take them off-task. Buyers naturally look to these employees, whether they are in business development, sales, operations, etc., to shoulder the burden of creating synergy, cost savings, and new business opportunities post acquisition. In theory, the "star players" will be largely responsible for harvesting the anticipated benefits of the transaction after the closing. This often backfires, though. As an example, the buyer's top salesperson may spend too much time integrating the seller's products into his or her product portfolio rather than selling the buyer's core product, thus causing overall sales to suffer.

Two Negatives Do Not Equal a Positive

When considering same-market acquisitions, pay attention to industry trends. If a product or service is fading or negatively changing, a merger will not solve the problem. A combined company will not be strong enough to succeed despite a declining market. Remember: When one desperate company acquires a slightly less desperate company, it makes for a really big desperate company.

While there are countless ways deals can take a turn for the worst, it is important to be aware of bargaining table challenges and ways to overcome common mistakes. Now more than ever, M&A decision-making can seal your fate as a business.

Curt P. Creely is a partner at the law firm of Foley & Lardner LLP and practices in the areas of mergers and acquisitions, securities law, and other corporate business transactions.

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Top Ten Tips for Job Applicants

By Deborah House, Vice President and Deputy General Counsel, ACC

In this difficult economy, ACC knows that many of its members are finding themselves “in transition,” and thus in the job application process. At one time or another we have all been there and know it can be an uncomfortable and difficult place to be.

But take heart. There are many ways you can improve your chances of getting that next job. How do I know this? Over the course of my life as an attorney, by rough estimate, I have seriously pursued and been offered 10 positions and have been rejected for 3. I have also had personal responsibility for hiring in excess of 50 people. Here are the top job seeking tips that I have developed from these experiences.

Information Is Your Friend. There is a wealth of information on the web and elsewhere. Use it! Use a search engine to find out more about the people with whom you are interviewing. Read the company’s latest annual report. Check out recent company press. Review the company’s website in depth. Have informational interviews with other people who work for the company. Having all this knowledge will be invaluable.

Put Your Best Foot Forward. Your Mother had it right. First impressions do count. I regularly weed out applications by eliminating those that have typos, are improperly addressed, or demonstrate a lack of basic research. If an applicant can’t get it right now, then I assume his/her work will be equally unreliable. This information is available! Proof, proof, proof your application. Don’t just rely on Spell Check; it can be deadly! Secure the assistance of a friend, colleague, or significant other who will proof your application for errors and substance.

Follow Directions. Most job ads have directions. Follow them. As an Interviewer, if you don’t follow my directions now I have to ask myself whether I can depend on you to follow them later when you are working for me. So, if the directions tell you to include a cover letter that outlines how your experience relates to the qualifications sought — do it! If you can’t write that letter because realistically you don’t think you meet the job requirements — consider applying elsewhere and not wasting the interviewer’s time. Or, write the letter and tell them why you meet certain job requirements and why you know you can meet others you don’t meet now (e.g., cite parallel or similar experience and how it applies). If the job ad says “No Calls,” then you may very well make them at your peril. If the job ad asks for salary requirements, then provide them. If you don’t know what the salary range should be, ask your colleagues or use ACC resources.

To read all ten tips, go to: www.acc.com/chapterleaders/upload/ACCTopTips.doc.