

Pamela M. Patzke President's Message

We know that for most in-house counsel, every day brings new, widely varying, and challenging issues to be addressed quickly and effectively. Therefore, our membership needs programs that provide practical and actionable information on a wide diversity of topics. We also know that opportunities to informally network with colleagues facing similar issues often prove to be invaluable.

With that in mind, throughout the year, we hold Continuing Legal Education programs focused on current topics for in-house counsel and workshops where members can exchange ideas and solutions around a particular issue.

We recently held the Second Annual Mini ACC Conference at the Osthoff Resort in Elkart Lake, Wisconsin. This program features three program tracks that included 9 separate sessions. There were also two sessions presenting ethics topics of interest to in-house counsel including a 1-hour discussion of recent developments in Wisconsin and a 3-hour session that discussed diverse ethics issues.

On the evening of the second day, there was a reception that allowed our members in attendance to meet with presenters and each other to share experiences and otherwise become acquainted.

This year, we had a great showing at the "Wisconsin Table" at the ACC Annual Meeting that this year was held in Chicago. It provided yet another opportunity to discuss issues of interest to Wisconsin in-house counsel and to meet colleagues.

We are always looking for opportunities that provide members significant value for the investment of their time. Based on the feedback received, we believe that our programs generally accomplish this goal.

One concern we have heard was that the timing of the mini conference in the fall conflicts both with other meetings and commitments for many of our members. While we know that no time can accommodate all, we have decided to move this meeting into the spring. You should have received a "Save the Date" announcement for May 15-16. We are pleased that we will again be going to the Osthoff Resort that proved to be an excellent venue for us.

Finally, on November 30, over 60 in-house counsel attended our annual 3-hour ethics program at the Country Springs Hotel Pewaukee. This was an excellent program featuring Susan Hackett, general counsel of ACC, discussing prosecutor focus on the in-house lawyer, and Mike McCarty, senior counsel with Bucyrus

International, Inc., discussing practical challenges for in-house counsel resulting from recent decisions in Wisconsin.

As you can see, ours is a dynamic organization. Our ability to succeed is dependent on the many talents of the individuals who take the time to become involved. At our meeting in October, the board noted that two of our members had resigned and a third had declined to be re-nominated. The numerous contributions of Jackie Ertl, Johnson Controls and past WisACCA president and vice president; Don Kiesling, Safeway Industries and past WisACCA treasurer; and Catherine Powell, Modine Manufacturing, Inc. and past WisACCA

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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 government 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 con-

sultants.

* 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.

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program chair, cannot be quantified. This organization has developed greatly under their leadership and each will be missed. We are also saying goodbye to our executive director, Lynne McElfresh, as she takes on other challenges. Lynne has been a great asset, making life much easier for the officers and directors.

These changes present new opportunities and we are very fortunate to announce the election of three outstanding individuals with significant experience and impressive records of service to our profession, to fill these board vacancies. Mr. Mike McCarty, Bucyrus International, Inc.; Mr. Bruce Lindl, RegalWare Inc.; and Mr. Mike Rathburn, Johnson Controls were elected at the board's meeting in October. Mike McCarty went beyond the normal call of duty and agreed to take on the role of treasurer. We are also

pleased that Ms. Mary Pat Fenton has accepted the position of executive director. She brings tremendous meeting and event planning experience and has already provided great support to the board. We look forward to working with each of these individuals as they share their ideas and knowledge with our organization.

We encourage you to consider increasing your participation in the organization. Our ability to offer quality programs is very dependent on your participation, so please consider whether you are able to assist. In addition, we are always welcome to program suggestions. Please contact any member of the board with your ideas and suggestions.

We look forward to the coming year with great anticipation for opportunities to work with you and thank you for your continued commitment to our association.

Upcoming Events

The annual *Mini Conference* will be held once again at The Osthoff Resort in Elkhart Lake on May 15-16, 2008. This event is one and a half days of CLE credited sessions and will be combined with the annual member meeting. We are planning a very informative and exciting event and look forward to seeing you there!

For more information on upcoming chapter programs, please check out the Wisconsin Chapter's website at

www.acc.com/chapters/wisc.php, or contact Mary Pat Fenton at wisacca1mpf@wi.rr.com.

We are always looking for new ideas and volunteers to help out. If you are interested in joining a planning committee and/or have a topic of interest, please contact one of our board members or Mary Pat Fenton at wisacca1mpf@wi.rr.com or 262.727.7028.

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.

WISACCA News

Proposed Limited License Procedure for Non-Wisconsin Admitted In-house Lawyers

The State Bar is proposing to the Wisconsin Supreme Court that it adopt a procedure to grant a limited license to non-Wisconsin admitted lawyers that would allow them to practice in Wisconsin without taking the bar exam, or otherwise being admitted to the Wisconsin bar. An application fee and Office of Lawyer Regulation assessment would have to be paid. Some CLE credits may also be required. The Court will hold a public hearing on the proposal on January 9. Both ACC national and the Wisconsin Chapter have been advocating an alternative approach, which would be to simply adopt ABA Model Rule 5.5 (d)(1), which allows in-house practice as an exception to the "unauthorized practice of law" without bar admission. We will file a position statement in opposition to the State Bar's proposal and will also testify at the hearing.

State Bar Ethics Opinion E-07-01

On July 1, 2007, the State Bar Ethics Committee issued a formal opinion dealing with issues concerning contact by adverse counsel with current and former "constituents" of a represented organization. The opinion takes a very narrow view of the protection provided to represented organizations by SCR 20:4.2. It also imposes ethical duties on in-house counsel which are not very realistic in terms of our day to day practice. We are conferring with counsel getting a modification of this opinion.

2007 Annual Mini Conference a Huge Success!

The Wisconsin Chapter of the Association of Corporate Counsel America held its second annual Mini Conference in Elkhart Lake on September 20 and 21 at The Osthoff Resort. We are very pleased that 95 members, partner firm representatives and sponsors attended. Those who attended are eligible for up to 13.0 credits, four of which were approved Ethics credits. It was a day and a half filled with a variety of speakers and programs, all very useful and targeted to the in-house counsel practitioner.

Because of the overwhelming success, the board approved to hold the 2008 Mini Conference in Elkhart Lake on

May 15-16. If you are interested in participating on the planning committee, please contact a board member or Mary Pat Fenton at wisacca1mpf@wi.rr.com or 262.727.7028.

Thank you to the following generous 2007 Mini Conference Sponsors!

\$2500 Level

- Foley & Lardner
- Michael Best & Friedrich
- Reinhart Boerner Van Deuren
- Whyte Hirschboeck Dudek

[more photos and sponsors on page 6](#)



*Jerry Gonzalez and Peter Loughlin,
Assurant Health*



Cindy Guinn, CSC, Kristine Euclide, Madison Gas, James Boll, Madison Gas, Deborah Spanic, Briggs, and Jackie Ertl

Sponsors continued from page 5

\$1000 Level

- ALFA International
- Bridgeway Software
- Cook & Franke S.C.
- Corporate Integrity Services (CIS)



Bob Haig and Mike Mulcahy



Jackie, Laury Schwartz (Gehl), Scott Vandenhouten (Standard Press) and Mike Mulcahy (Gehl)

- Corporation Service Company (CSC)
- DataCert, Inc.
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- RenewData Corp
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Vandenhouten, Steve Dituillio (DeWitt Ross Stevens).

Did You Know?

As remembered by Mike Mulcahy of the Gehl Company...

The first meeting of "WisACCA" was held at Johnson Controls on March 15, 1984, and the board at that time was composed of:

- Robin Irwin of Marcus,
- Ken Voss of Johnson Controls,
- Terry O'Reilly of Universal Foods,

- John Shiely with, at the time, Rockwell,
- Dave Perry with Northwestern Mutual,
- Meri-Jo Ramsey,
- Ron Zemlicka with Wisconsin Gas,
- Lonnie Grigsby,
- Roberty Falat,
- James Johnson of AO Smith,
- Vance Smith of Rexnord, and
- Mike Mulcahy, Gehl Company

Board Members and Contacts

President

Pamela Patzke

Associate General Counsel—Corporate &
Securities
Oshkosk Truck Corporation
920.233.9301
ppatzke@oshtruck.com

Vice President

Patricia Hanz

Assistant General Counsel
Briggs & Stratton Corporation
414.256.1198
hanz.patty@BASCO.com

Treasurer

Donald Kiesling

Contracts Manager & Associate Counsel
Safway Services, Inc.
262.523.6505
donald.kiesling@safway.com

Secretary

Anthony Karabon

Vice President & General Counsel
The Boucher Group, Inc.
414.427.4141
tony.karabon@gordie.com

Board of Directors

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Bruce Lindl
Michael McCarty
Michael Rathburn
Katherine Drewek

Executive Director

Mary Pat Fenton

262.727.7028
Wisacca1mpf@wi.rr.com

Welcome New Members!

Please help us welcome the following members who have joined since January 1, 2007.

Stephanie L. Adamany, WARF

Cindy Ahn, Third Wave Technologies Inc.

Gary Akavickas, SC Johnson & Son, Inc.

Brian Beeler, Schwarz Pharma, Inc.

Elliot Berman, Johnson Financial Group, Inc.

Patrick Berryman, Kerry Inc.

James Boll, Madison Gas & Electric

Rachel Bumer, Johnson Controls, Inc.

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John Chosy, CUNA Mutual Group

Benjamin DeBerry, The Ziegler Companies, Inc.

Joseph Franklin, Assurant Health

John Gabriel, AIG Life Brokerage

Ian Kees, National Preston Industries, Inc.

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Richard Kratz, DR TAB PRODUCTS, LLC

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Steven LaFore, The Northwestern Mutual Life Insurance Company

Vincent Ledlow, Sentry Insurance Company

Bruce Lindl, Regal Ware, Inc.

Lesli McLinden, Northwestern Mutual Advanced Marketing

Christine Meyer, American General Life and Accident Insurance Company

Mark Neidinger, NGL Insurance Group

Michelle Nelson, The Northwestern Mutual Life Insurance Company

Douglas Newkirk, Merge Technologies Inc.

Christopher Osborne, Johnson Controls, Inc.

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Sheila Reynolds, Children's Hospital and Health System, Inc.

Ronald Ritchie, American Family Mutual Insurance Company

Stephen Rogers, Miller Brewing Company

Thomas Scheer, The Northwestern Mutual Life Insurance Company

Steven Schinker, Wausau Tile, Inc.

William Schultz, Jason Incorporated

Pranav Shah, WEA Trust

Jennifer Tenhaeff, S.C. Johnson & Son, Inc.

Kimberly Walker, Johnson Controls, Inc.

Anne Weissmueller, Direct Supply, Inc.

Kevin Whaley, Assurant Health

Jeremy Zielke, American Family Mutual Insurance Company

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