Greetings and Happy New Year! I hope your holidays were bright and full of restful merriment. Before we let 2009 slip away, I’d like to recognize Chris Rahl, our chapter’s outgoing president. Under Chris’ leadership in 2009, our chapter recruited several new members, conducted a chapter-wide membership survey, presented the ACC Value Challenge in conjunction with Womble Carlyle Sandridge & Rice and hosted a rainless, sun-splashed Golf/Spa event in June. As I look towards 2010 (and watch Chris comfortably take a seat as immediate past president), I realize I have incredibly big shoes to fill (and yet, such small feet).

I’d also like to thank our 2009 sponsoring firms:

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We hope to see all of these firms return as sponsors so they may continue to enlighten and enliven our practice areas.

Last, but not in the least, I would like to give a special thanks to our chapter administrator, Stacey Stepek. As many of you know, Stacey works very hard at managing program logistics, as well as assisting in the coordination of many chapter events. We are lucky to have Stacey on board and very lucky that she has agreed to continue her role as chapter administrator.

With the start of the new year, we have a new slate of ACC Baltimore officers. Allow me to introduce this year’s new officers: Fiona Mensah (Fiducial), president-elect, Michael Sawicki (Prometric, Inc.), treasurer, Farah Esmail (Connections Academy LLC), secretary. Chris Rahl (M&T Bank), immediate past president. The remaining board members include: Ward Classen (Computer Sciences Corporation), Lynne Durbin (Adhesives Research, Inc.), Maureen Dry-Wasson (Allegis Group, Inc.), Frank Aquino (EA Engineering, Science, & Technology, Inc.), Andy Lapayowker (Rosemore, Inc.), Dick Ransom (Constellation Energy Nuclear Group, Inc.), Bill Maseth (BP America Inc.), Raissa Kirk (Johns Hopkins University), Kevin O’Neill (A&T Systems, Inc.), Melissa Ader-Duncan (AAI Corporation), Christine Poulon (Bill Me Later, Inc.), Aaron Marshall (Northrop Grumman), and Joe Howard (First Mariner Bank). This year, we welcome two new board members: John Bathon (ARINC Incorporated) and Sheela Kosaraju (PHH).

The 2010 board will continue its efforts in offering membership a variety of useful and interesting programs. In keeping with the board’s newly adopted policy, members and first-time guests will not be charged a fee for the 2010 lunch program series. Non-members attending a program (after the initial visit) will be charged $15.00. We realize that with challenging economic times, education budgets are easy targets for corporate belt tightening. The board’s primary goal is to serve its membership in every possible way. The lunch programs are the heart and soul of our chapter, providing members with a great opportunity to network, sharpen up practice areas and grab a tasty bite to eat.

continued on page 10
Ethical Issues in the New Service Paradigm

Susan Hackett, senior vice president and general counsel, Association of Corporate Counsel, Copyright © 2010, Association of Corporate Counsel (ACC)

Many of you know me lately for my work as an evangelist for the ACC Value Challenge — our project to help corporate counsel and firms reconnect the cost of legal services to their value. But before the ACC Value Challenge dominated my agenda, I spent much of my time working on in-house ethics and professionalism issues.

It’s no surprise then that I would eventually seek to marry these two tranches of work. And so I bring the couple before you for your consideration in this column: my goal will be to give you a short overview of some of the professional, ethical issues that will confront corporate counsel who are working with firms to reinvent the legal service provision model by employing new fee structures, new staffing options, new knowledge management techniques, new technologies and more.

We don’t have the space or time in this column to go in-depth (see below for links to more material), but many of you will first run into new ethical challenges as you seek to restructure fees for service from hourly rates to other options, and then consider the staffing decisions that such fee structures may dictate. Basically, these arrangements seek to shift the risk of cost/profit from clients (who in the past both paid the firm’s “guaranteed” profit, and bore the all the risks of the cost) to firms. Firms in the new paradigm will be asked essentially to “put skin in the game,” making them responsible for not only their own efficiency and costs, but also for more of the outcome risk, which may make them less objective about the method of providing their services and the advice they provide. Firms will also face new (but not insurmountable) issues in professional liability and the responsibility to come up with “solutions,” in cooperation with other service providers who are not lawyers or who may reside outside the four walls and insurance coverage of the law firm.

Both the use of hourly fees and the use of value-based fee arrangements can present ethical issues. And the ABA’s Model Rules of Professional Conduct in the US, and codes of conduct in other jurisdictions such as Canada, Australia and many European jurisdictions, typically purport to detail the ethical considerations in setting and collecting fees, but are usually unhelpful. Indeed, model rule platitudes — such as, “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses” (ABA Model Rule 1.5 on Fees), are not only of no help, but often serve to support the proliferation of everything but the most ethical practices. Unreasonable to a client may not be unreasonable to a firm or an ethics authority.

So what are the ethical risks behind the implementation of both hourly or value-based fee arrangements?

Hourly billing can create disincentives to efficiency or encourage waste; it is often cited as supporting “make-work” for firm lawyers who need to bill a certain number of hours per cycle, regardless of whether the work warrants the additional time and effort; it does not encourage firms to assign the right (as opposed to the available/occupied/needings-to-be-trained) talent to the matter or improve the efficiency of staff members who perform repetitive tasks; it removes accountability from both junior and senior lawyers for the outcome (they see themselves as only responsible for engaging in necessary legal analysis or process), and more, all of which are problems under legal ethics guidelines such as the ABA Model Rules.

Likewise, newly negotiated fee arrangements based on value (and not just hours x rates) are often the result of experimentation between clients and firms with fee and staffing formats they’ve not tried before; thus, firms and clients may set fees for service that may not be based on an understanding of what the cost will actually be, and this could give rise to wildly inaccurate or unrealistic estimates that firms or clients don’t want to be held to. Additionally, new staffing structures can create a lack of responsibility or lack of proper oversight for supervisory relationships (both in poorly coordinated lawyer teams and for outsourced non-lawyers working on matters that the firm used to be entirely responsible for on their own); lawyers without management skill sets will become responsible (a competence issue) for management services or for supervising work done by others that they aren’t competent to supervise; a decrease in diligence might be suffered in matters governed by a fixed fee, which removes incentives for lawyers to continue working on a matter that requires investment beyond the normal amount the fee was intended to cover; and lawyers in firms could be deemed to lack objectivity and independence in their guidance if their fees are determined based on outcome.

But let’s be clear: the challenges associated with value-based fee and staffing arrangements, albeit different than the challenges associated with hourly fees, are no greater in magnitude. Indeed, I would argue that many of the value-based fee structures that clients and firms are experimenting with offer better incentives to better behavior and remove many of the ethical tensions that have continued on page 3
plagued lawyers who increasingly feel
disenchanted with practice, precisely
because they see the misalignment of
their firms’ business models and billing
practices with their client’s best interests,
and their oath to behave according to
the highest principles of professionalism.
Bottom line: Ethical lawyers make sure
that they behave ethically; there are sim-
ply new issues to consider and navigate
in the process.

ACC is developing a line of resources to
help lawyers in both firms and depart-
ments understand these new chal-
eggences and assure that their re-designed
relationships operate both smoothly and
to the highest standards of professional-
ism. Our initial treatise on the topic is
now online on the ACC Value Challenge
homepage at www.acc.com/valuechalleng.
e We are also available to travel to chapters and large departments
to help them plan ethics workshops that
qualify for ethics credits, examine these
issues and discuss both best practices and pitfalls to avoid.

Until then, here are a few ideas to con-
sider to ensure that any “value-based” fee
and staffing structures you implement
are grounded in sound ethical practices:

- Draft agreements that focus the firm
  on diligent representation regardless
  of the fee structure — such as fixed
  fees with “safety valves” or decision
trees that plan for variances in how
  the matter may unfold. Such arrange-
  ments should allow for renegotiation
  or “change orders” when the client
  objectives change during the course of
  the representation or allow the firm to
  assume a new direction when unex-
  pected difficulties arise that could not
  have been planned for;
- Ensure the fees fairly and adequately
  compensate the firm’s lawyers for the
  services provided throughout the
  representation, so as not to provide
  an incentive to improperly curtail ser-
  vices — the issue is usually not to try
to go cheap, but to assure the firm
- that the sustainable profitability that
  makes the work worth their while yet
  aligned with client needs;
- Consider up front (and then stick to
  the agreement) whether firms who
  put skin in the game and “win” will be
  able to keep 100 percent or some por-
tion of the windfall; if the firm takes a
  risk, it should be rewarded so long as
  the client receives the value it negoti-
  ated for.
- Refrain from using a fee arrangement
  with incentives that could impose a
  significant material limitation on the
  lawyers’ representation; or if the mate-
  rial limitation is “consent-able,” obtain
  the client’s informed consent;
- Base fee prices on data and experience
  in previous matters, and communi-
cate early and often, enabling clients
to make informed decisions regard-
ing representation and to incent the
firm to engage in better process and
project management and continuous
improvement; and
- Explicitly state in the agreement when
  fees are to be considered earned.

Also, because many law firms’ internal
cost structures create high-priced fees,
some firms can only “stretch” so far;
many value-based fee arrangements
will make use of legal outsourcing or
off-shoring for parts or stages of the
work that can be done by non-lawyers.
Additionally, many firms are struggling
with the appropriate role of their entry-
level lawyers or para-professional staff
and how they can be trained and con-
tributing. Firms engaging in outsourcing
or “pushing the work down” must
ensure that the service providers they
choose are properly supervised and that
they and their work product complies
with the requirements of the rules of
professional conduct — such supervision
can be contracted to the provider (if an
outsourcer or contract lawyer company)
or made the responsibility of the client’s
law department or the law firm (when
the work is assigned to para-profession-
als). To successfully make use of legal
outsourcing or non-legal staff, lawyers
must:

- Ensure the use of properly skilled
  and well-educated professionals who
  are trained to the client’s needs, and
  ensure that their work is being moni-
tored and checked upon by licensed
  lawyers (in the jurisdiction in which
  the matter takes place);
- Carefully consider when lawyers vs.
  paralegals vs. business or legal process
  staffers are the best choice, and make
  sure that adequate supervision of non-
  lawyer work is in place;
- Ensure the local legal landscape is
  adequate to protect the clients’ inter-
ests or that the contract for services
mandates the standards by which you
wish their work to be performed (con-
licts, professional standards, etc.);
- Assure confidentiality and security
  through non-disclosure agreements
  and mandated IT security procedures;
  and
- Obtain the clients’ informed consent
  regarding any outsourcing plans if
  there is a risk that clients will believe
  the firm’s lawyers are performing
  services and not others.

These are but a few of the issues we see
arising as the new legal service paradigm
shifts the way that clients and firms tra-
ditionally related to each other. Do you
have suggestions or questions about the
ACC Value Challenge and ethics/profes-
sionalism issues affecting in-house prac-
tice and your client’s service? Feel free to
contact me at hackett@acc.com, and let
me know how ACC can help.
An Increasing Number of Courts Are Rightly Rejecting Insurer Attempts to Recoup Defense Costs from Their Policyholders

By John C. Celeste & Joseph L. Beavers, Miles & Stockbridge P.C.

I. Introduction

Pursuant to basic and longstanding principles of insurance coverage law, liability insurers are held to a high standard when it comes to defending their policyholders. The duty to defend is broadly construed, and insurers are typically obligated to provide a complete defense to any claim for which there is a mere “potentiality” of coverage. It is now common practice, however, for insurers to defend their policyholders pursuant to a reservation of rights that includes the reservation of a purported right to later seek reimbursement of certain defense costs from the policyholder. This practice is not easily supported by any language in standard form insurance policies, and, when permitted, can deprive policyholders of much of what they bargained for when they purchased their liability policies.

Fortunately for policyholders, several well-reasoned and relatively recent cases (including at least one applying Maryland law) suggest there are strong grounds upon which to deny insurers any claimed right to recoup defense costs from their policyholders. Indeed, although allowing insurers to seek reimbursement of defense costs was once considered the majority rule, several state and federal courts have now considered and roundly rejected any such right under standard form insurance policies. Policyholders should take comfort in these decisions but should also be guarded when faced with an insurer that asserts a right to seek reimbursement of defense costs.

II. The Erosion of the Duty to Defend Via Insurer Attempts to Recoup Defense Costs

Under a standard form Commercial General Liability policy, the insurer typically has “the right and duty to defend the insured against any suit” seeking damages for “bodily injury” or “property damage” to which the insurance applies (emphasis added). “Suit,” in turn, is typically defined, in part, as “a civil proceeding in which damages because of ‘bodily injury’, ‘property damage’ or ‘personal and advertising injury’ to which this insurance applies are alleged.” The defense obligations of insurers have thus been broadly defined and, resultantly, broadly construed. Importantly, “any doubt or ambiguity in coverage is generally resolved in favor of the insured.” See Lee R. Russ and Thomas F. Segalla, Couch on Insurance § 200:12 (3d ed. 2009). The duty to defend, moreover, is broader than the duty to indemnify, and insurers are generally obligated to defend all claims asserted in an action even if only some claims fall within the coverage of the insurance policy. See, e.g., St. Paul Fire & Marine Ins. Co. v. Green Tree Fin. Corp., 249 F.3d 389, 391 (5th Cir. 2001).

Despite these longstanding principles, insurers have experienced some success in their efforts to create a right to reimbursement of defense costs from their policyholders. Most notably, in Buss v. Transamerica Ins. Co., 939 P.2d 766 (Cal. 1997), and in Scottsdale Ins. Co. v. MV Transp., 115 P.3d 460 (Cal. 2005), the Supreme Court of California held that an insurer that “properly” reserves its rights is entitled to recoup defense costs advanced to an insured to defend claims that are ultimately shown to not be covered under the insurer’s policy. A proper reservation of rights regarding this issue, moreover, is the mere unilateral notice to the policyholder that the insurer is exercising this “right” to recoup defense costs. See Buss, 939 P.2d at 784, n. 27. This, according to Buss, is fair in part because the policyholder faced with such a reservation of rights can choose “to accept defense at the insurer’s hands and under the insurer’s control … or, instead, to defend itself as it chooses.” Id. In sum, under Buss and Scottsdale, an insurer that defends a suit seeking damages for both covered and non-covered claims can ultimately recover any defense costs that it shows were allocable to the non-covered claims, so long as it tells the insured at the outset that it intends to do so. See id. at 778.

Several other courts considering this issue, under various insurance policies, have agreed with and followed the Buss line of reasoning. See generally, Knapp v. Commonwealth Land Title Ins. Co., Inc., 932 F. Supp. 1169 (D. Minn. 1996); Cincinnati Ins. Co. v. Grand Pointe, LLC, 501 F. Supp. 2d 1145 (E.D. Tenn. 2007). As a result of the reasoning and holdings of such cases, insurers now typically include boilerplate language in reservation of rights letters that purports to create a right to reimbursement of defense costs from policyholders. For example, this boilerplate language typically advises policyholders that they will “seek and demand reimbursement of payments made by [the insurer] based upon the reservations set forth in this letter.”

Nevertheless, trends suggest the reasoning of Buss and its progeny, although once referred to as the “majority” position, may not ultimately be followed in most jurisdictions. See Westchester Fire Ins. Co. v. Wallerich, 563 F.3d 707, 715 (8th Cir. 2009) (stating that the most recent decisions “have refused to recognize claims by insur-
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III. The Current Trend: Rejecting the Right of Insurers to Obtain Reimbursement of Defense Costs

Although the position that an insurer can recoup defense costs when it is subsequently demonstrated that the costs were allocable to non-covered claims may still be referred to as the “majority” position, an increasing number of courts are embracing the “minority” position and rejecting insurer attempts to recoup defense costs. In particular, two well-reasoned recent opinions, (one of which applied Maryland law), acknowledged the “majority” position of Buss and its progeny before going on to reject the approach and persuasively argue against reimbursement.

In a matter of first impression, the Supreme Court of Illinois in Gen. Agents Ins. Co. of Am., Inc. v. Midwest Sporting Goods Co. held that a liability insurer was not entitled to reimbursement of defense costs paid prior to the court’s determination that the insurer owed no duty to defend. 828 N.E.2d 1092, 1104 (Ill. 2005). The insurer in this case, General Agents Insurance Company of America, Inc. (“Gainsco”), accepted the tender of defense subject to a reservation of rights, “including the right to recoup any defense costs paid in the event that it is determined that the Company does not owe the Insured a defense in this matter.” Id. at 1094. Although it did not appear the insured ever responded to this reservation of rights, it did accept Gainsco’s payment of defense costs. Gainsco subsequently filed a declaratory judgment action seeking, inter alia, a declaration that it did not owe a defense to the insured in the underlying litigation and that it was entitled to recoup all defense costs previously paid to the insured’s independent counsel.

Before rejecting the “majority” position and embracing the “minority” position, the Court noted the “majority” decisions were generally based upon a finding that there was a contract implied in fact or law providing for reimbursement, or a finding that the insured was unjustly enriched when its insurer paid defense costs for uncovered claims. Id. at 1101. The better reasoned “minority” approach summarized in Gainsco rejects both of these findings. As an initial matter, the decisions favoring the “minority” position tend to focus on the insurance policy itself, not on some implied contract, and find that unless the policy provides for the right to reimbursement, the insurer should be liable for all of the costs in defending the action. As stated in these cases, a unilateral reservation of rights letter does not create a contract and cannot create rights for the insurer that are not contained within the policy. An insurer can only reserve those rights and defenses that it has under the policy. To the extent insurers wish to obtain the right to reimbursement, they should do so by amending the terms of their policies, not by placing the insured in the impossible position of either accepting the insurer’s additional conditions on its defense (listed in a unilateral reservation of rights letter) or losing the right to a defense.

The Illinois Supreme Court also rejected the insurer’s position that the insured would be unjustly enriched if insurers were unable to recoup defense costs paid on uncovered claims. Id. at 1103. As the Court pointed out, when an insurer, unsure of its duty to indemnify, offers to defend under a reservation of rights, it is doing so at least as much for its own benefit as it is for the insured’s. Id. To do otherwise would expose it to the risk of an ineffective defense by inept or lackadaisical defense counsel in the event it turns out there is a duty to indemnify. This acknowledgement that both parties benefit from the arrangement was also discussed in Perdue Farms, Inc. v. Travelers Casualty and Surety Co. of Am., 448 F.3d 252 (4th Cir. 2006) (applying Maryland law).

In addition to acknowledging that both parties benefited from the defense arrangement, the Court in Perdue Farms focused primarily on the general concept of insurance law dictating that the duty to defend is broader than the duty to indemnify. Whereas an insurer only has a duty to indemnify covered claims, it has a duty to defend all claims in an underlying lawsuit where the suit contains any claims that are even potentially covered. See id. at 257. The Court referred to this as “litigation insurance,” which protects the insured against the expenses of defending lawsuits. Id. at 259. This litigation insurance is part of what the insured is purchasing when obtaining liability insurance. The Court correctly concluded that allowing recoupment of defense cost would thus amount to a “backdoor narrowing of the duty to defend.” Id. at 258. This would result in liability insurance ceasing to function as “litigation insurance,” as insurers would merely be providing an up-front defense while tabulating line-item costs that would be subject to subsequent litigation.

This “minority” approach does not leave insurers without recourse, however, because in addition to being free to change the policies that they sell, they can also either reject the defense if they are confident there is no coverage, or accept subject to a reservation of rights and subsequently file a declaratory judgment action. By proceeding via a reservation of rights and declaratory judgment action, insurers will be protecting themselves while only paying defense costs up until it is established that they do not have a duty to defend.

IV. Conclusion

Although insurers have experienced some success in establishing a right to recoup certain defense costs from policyholders, several well-reasoned opinions suggest such a right typically should not exist. Policyholder arguments on this issue are generally persuasive and consistent with longstanding tenets of insurance coverage law. Policyholders should thus carefully consider this issue when faced with it and should know there is ample ground upon which to reject insurer attempts to create rights not explicitly provided for in their insurance policies.

John Celeste and Joseph Beavers are associates with Miles & Stockbridge in the firm’s Baltimore office. The opinions expressed and any legal positions asserted in the article are those of the authors and do not necessarily reflect the opinions of Miles & Stockbridge, its other lawyers, or ACC.
By Michael David and Lindsey A. Daly, Whiteford, Taylor & Preston LLP

Patent marking refers to the practice of labeling an article sold in commerce with words implying that a patent or a patent application covers those goods. False marking covers situations where the articles are marked as “patented” or “patent pending” and this is not true. 35 U.S.C. §292. Recent court decisions discussed below have reinterpreted the false marking statute.

Companies are tempted to label their goods as “patented” or “patent pending” as early as possible. It is perfectly legitimate to do so, even on the basis of a pending patent application. Proper marking constitutes a useful notice to the public of the patent rights and can enhance damages collected in a patent infringement action. 35 U.S.C. §287. Moreover, such marking may discourage competition and perhaps creates a suggestion of technical superiority of the product.

However, product development and patent procurement are dynamic processes – the patent system encourages early filing of patent applications before products are entirely finalized; products may be improved and developed in ways that place them outside the scope of the patent’s claims; patent applications get abandoned; patents expire. Deciding when to mark a product as patented can be tricky. Accordingly, a company must look at questions such as: Does my article fall outside of a patent’s claim and, generally, when does liability arise for false marking? What are the consequences? What can I do to deflect liability?

Questions of false marking under 35 U.S.C. §292 have only rarely come to the attention of the Court of Appeals for the Federal Circuit (CAFC). In Contech Labs, Inc. v. Invitrogen Corp., the CAFC determined that to establish a claim for false marking, one must prove both marking of an unpatented article and intent to deceive the public. 406 F.3d 1347, 1352 (Fed. Cir. 2005). The court noted that “to determine if an article is ‘unpatented’ for purposes of section 292 . . . the [patent] claim in question must be interpreted to ascertain its correct scope, and then it must be ascertained if the claim reads on the article in question.” Id. The plaintiff must then prove “by a preponderance of the evidence that the party accused of false marking did not have a reasonable belief” that the article was properly marked in order to show intention to deceive. Id. at 1352-1353 (emphasis added).

35 U.S.C. §292 also addresses the civil penalty for false marking. It provides that “[w]hoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article the word “patent” or any word or number importing the same is patented, for the purpose of deceiving the public . . . Shall be fined not more than $500 for every such offense.” 35 U.S.C. §292(a). The statute was interpreted recently by the CAFC in The Forest Group, Inc. v. Bon Tool Co., No. 2009-1044, (Fed. Cir. Dec. 28, 2009).

In Forest Group, the articles at issue were stilts, and the Forest Group did own a patent covering stilts. However, in November 2007, the Forest Group learned that its patent, albeit valid, did not cover the exact stilts it was marketing. The company nonetheless labeled one more batch of stilts as “patented.”

The key issue in Forest Group on appeal was how to calculate the penalty for false marking. The lower court had imposed a penalty of $500, concluding that Forest Group knowingly made only a single decision to mark the stilts falsely. On appeal, Bon Tool successfully argued that the penalty should not be applied to each decision to mark, but rather to each article that is falsely marked. Obviously, this could make a huge difference in the penalty amount if a company decides once to falsely mark thousands of articles.

At least in part, the court’s decision was made on a policy basis, to encourage the public to become involved in enforcement of the false marking statute. Under the statute, any member of the public may bring a claim of false marking, and, if successful, receive half of the fine. The remaining half goes to the federal government. The court noted that “[p]enalizing false marking on a per decision basis would not provide sufficient financial motivation for plaintiffs – who would share in the penalty – to bring suit.” However, a court will still have discretion to determine the actual penalty for each article marked, which may range from a fraction of a penny to $500 per article.

It should be noted that §292(b) states that “[a]ny person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.” This qui tam action has been interpreted to mean that a plaintiff need not show injury from the marking. Even before Forest Group, pundits have speculated that a cottage industry of “marking trolls” might arise. We do not know if many players would have the appetite to undertake litigation and, in particular expensive patent litigation, in order to collect (and split with the government) the penalty, absent further interest. However, in addition to any “marking trolls,” there are players with a stake in your industry who might come to a different conclusion as to litigation and may be more likely to include the false marking claim in considering the financial aspects of the litigation. The cost/benefit analysis has shifted.

A company, working with its lawyers, should vigilantly monitor the status of articles it marks as “patented.” Changes in the status of the patent or patent application, as well as the scope of the claims vis-à-vis the articles, should be periodically considered. In the event of uncertainty as to the scope of the claims in relation to a product, an opinion of counsel may be desirable. Furthermore, interpreting patent claims is not an exact science. Certainly, an opinion of counsel would go a long way to deflect the assertion that the decision to mark articles as patented was made without a reasonable belief that a valid and enforceable patent covered the articles.

If you have any questions regarding patent marking, please contact Michael David at 410.347.9424, MDavid@wtplaw.com; or Lindsey Daly at 410.659.6436, LDaly@wtplaw.com
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Whiteford, Taylor & Preston LLP is a limited liability partnership. Our Delaware office is operated under a separate Delaware limited liability company, Whiteford Taylor & Preston LLC.
ACC Baltimore has two new board members for 2010. In this newsletter we introduce John T. Bathon.

John is the director of commercial & international contracts at ARINC Incorporated, where he manages a group of attorneys and support staff based in the company’s Annapolis headquarters. ARINC is an IT and engineering support services company with approximately 3,000 employees worldwide. John’s group is responsible for the development and management of ARINC’s commercial IT contracts and service agreements, software licenses, product development agreements, etc. His primary responsibility is supporting ARINC’s air, surface transportation and commercial aviation products and services. He also supports the company’s sale of defense articles overseas and licensing products to the U.S. government.

John’s received his bachelor’s degree from the University of Delaware and he graduated from the University of Baltimore School of Law in 1995 with a JD/MBA. He clerked for Judge James Eyler at the Court of Special Appeals and afterward joined the former firm of Smith, Sommerville & Case until it dissolved. John then followed the commercial litigation group to Hodes, Ulman, Pessin & Katz where he remained until joining ARINC.

John lives with his lovely wife and two young daughters in the Towson area. When asked for a little-known fact about him, John said, “I’m also a licensed master electrician. I tell people I stopped being an electrical contractor to go to law school because I wanted to work harder and make less money.”

Next time to you see John at an ACC Baltimore event, be sure to welcome him to the ACC Baltimore board!

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Featuring ACC Baltimore’s New 2010 Board Members

**ACC News**

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As part of the ACC Value Challenge, the ACC Value Index (www.acc.com/valueindex) is connecting law firm value to client satisfaction. ACC has set a goal to reach 10,000 evaluations by September 30, 2010. Help us reach our goal and make the Value Index a valuable resource for members by visiting the site and rating your firms in the areas of expertise, responsiveness, efficiency, budget management, and results. Volume targets have been set up for each chapter, so begin entering your targets today at http://www.acc.com/valuechallenge/valueindex/index.cfm.

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Strengthen your business and management skills this year and bring added value to your company — ACC’s Mini MBA program helps you achieve that goal! Presented in partnership with the Boston University School of Management, The Mini MBA explores the essential business skills that enhance and sharpen your management knowledge in critical MBA disciplines: accounting, finance, strategy, and organizational behavior. Two sessions are available: March 15–17, 2010 and June 9–11, 2010. Visit www.acc.com/minimba for more information.

**Attend Corporate Counsel University and Jump Start Your In-house Career**

ACC’s Corporate Counsel University* (May 23–25, 2010, Hyatt Regency, Indianapolis, IN) is designed specifically to help attorneys with less than five years of in-house experience get up to speed on topics pertaining to the corporate attorney role. Important aspects of business, including negotiations, contracts, finance, ethics and more, are addressed during this two-day program. In addition, you can earn up to 12 CLE/CPD credit hours, including hours in ethics. For more information and to register, go to ccu.acc.com.
Planning for our 2010 chapter events is already underway. Our first program, sponsored by DLA Piper, was held on Jan. 27, 2010. The program topic was “Supply Chain Issues in the Global Era: Prevention, Protection and Compliance.” Mark your calendars for the May 24, 2010 Golf/Spa Event, which will again be held at The Elkridge Club. The board is also planning a few evening socials for the spring and fall. Stay tuned for further details. For more information on upcoming chapter programs, go to www.accbaltimore.com.

As with any organization, we rely on our members to provide feedback and suggestions for ways to improve the chapter. If you’d like to share your ideas or suggest a potential program topic or restaurant venue, please feel free to contact me, or any of the other board members listed in this newsletter. Together we can make ACC Baltimore the best chapter possible. I look forward to seeing everyone at our upcoming programs.

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**Career Moves!**

Have you made a career move recently? Have you been involved in a particularly large transaction or project? Let us know and we’ll announce it in our next newsletter!

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**Welcome New Members**

**John Bryan**, Regal Bank & Trust  
**Charles Campisi**, Maxim Healthcare Services, Inc.  
**Cynthia Clark**, Pitney Bowes Inc.  
**Dawn Crawford**, Magellan Health Services, Inc.  
**Brian Lee**, Nexion Health Management  
**Havzinei Mugwagwa**, Martek Biosciences Corporation  
**Bill Rathbun**, Prime Retail  
**Lauren Rexroat**, Capital Funding Group, Inc.  
**Malcolm Wiseheart**, Thayer Lodging Group Inc.