

- 3...Five Years of the ACC Value Champions
- 4...Join the CPBO Challenge® Initiative!
- 4...ACC News
- 6...New Federal Law Provides Additional Trade Secret Protection
- 8...Chapter Leadership

FOCUS

President's Message

By TJ Fund, OpenEdge, General Counsel

This summer I had the opportunity to spend some time in France and England with my family. I am always touched by the opportunity to experience living history presented through the edifices of time past. Whether it is an imposing cathedral or a humble parish church, a 500 year-old castle or a 4000 year-old cave dwelling, these buildings witnessed history, writ large and small, turn around their walls through the passage of time. Lifetimes came and went, battles were fought, marriages were celebrated, plans were made, weapons wrought, tears shed. In our modern time of free and ubiquitous access to information, part of me finds it only natural that there should be a way for me to "plug in" to those walls and download the benefit of all they have seen! That hasn't worked yet, and I'm assuming it won't for some time to come, so I am left to ponder my own imaginings of what those lives were like and what useful knowledge could be gleaned from their cumulative experience.

As we visited these countries whose histories are so intertwined with our own, I was particularly drawn to reflection on how the American experience has grown out of their influence – out of the turning of all those lives over all those years. Our language is largely a mixture of the two, formed over hundreds of years of exchanging lands (and their inhabitants) through conquest and marriage. Our legal system derives from the English system, as we all know, and the French

are nothing if not America's twin in their principles of liberty and the sovereignty of the people. The success of the American experiment is, I think, a testament to the fact that we have generally been successful in taking all of that experience, sifting through it and trying to keep and develop those ideas and principles that are most productive in advancing the liberty and well-being for all.

As this newsletter is disseminated, we will be closing in on Election Day in what is one of the most divisive political atmospheres in our history. We suffer from both too much information and not enough information simultaneously from our candidates. The problems presented by an increasingly "small" world are abundant and their implications complex. Rapid cultural development, fueled by almost limitless virtualization and customization, is fraying many of the common fibers that have constituted our Nation's fabric throughout its experience. Like the castles and cathedrals of old Europe, history is turning rapidly around our walls as we pass through this formative period in our history and we should do all we can to ensure that the best of our experience survives the maelstrom. Consistent with our training and the privilege of our position as attorneys, my invitation is for each of



us to try to engage in this political process thoughtfully and purposefully. We can and need to look deeper than the shocking soundbite or the latest hot-button issue and look to the lessons of our past, present and future to determine those principles that are most valuable. Then, no matter what party most

aligns with our personal values, we will be armed to engage in meaningful discourse leading toward productive solutions.

And just maybe, 500 years from now, someone hiking through our beloved mountains will look down at some old building in the valley and think, "You know what? I'm glad they lived."

Five Years of the ACC Value Champions

By Veta T. Richardson, President and CEO, Association of Corporate Counsel

This year marked the fifth straight year ACC has named innovative law departments and law department/law firm collaborations as ACC Value Champions. By recognizing their accomplishments, we hope to draw attention to some of the strategies top corporate legal departments have employed to improve results, cut costs, reduce turnaround times, and improve client and employee satisfaction. The program is about sharing what works best so that other companies interested in the “value movement,” the ACC Value Challenge, can find inspiration and learn about new strategies and tactics to help achieve similar time and cost savings, as well as better outcomes.

The ACC Value Challenge was launched in 2008 so that inside and outside counsel could reconnect value to the delivery of legal services—an especially fitting mission upon the onset of the financial crisis. When I became CEO in 2011, we added the ACC Value Champions program to celebrate the law departments and law department/legal service provider collaborations achieving measured results through their value-focused innovation. Again, perhaps most importantly, these companies also provide inspiring examples for others to follow.

Across five years of ACC Value Champions, each corporate legal department or department/legal service provider collaboration that we honor has had a different signature

initiative, or suite of initiatives. However, all lead to the same achievements: lower costs, higher predictability, and better outcomes (the three pillars of the ACC Value Challenge proposition).

Themes Among the 2016 ACC Value Champions

One theme we saw running through many of the 12 honorees this year was a proactive approach to hallmark areas of corporate legal department work, including discovery, contracting and procurement, employment law, and patent protection. We saw teams take a close look at their past successes and roadblocks in these areas in order to create smarter workflows and processes. We also saw a huge focus this year on reaping the benefits of the time savings generated from these new processes. For example, with additional time, corporate legal departments next identified where they could best add value to the business. They then instituted programs to reduce litigation (e.g. Palace Entertainment and hhgregg with Ogletree Deakins), create global legal staff rotation programs (e.g. Aon plc), and build proprietary technology platforms to allow access to legal analysis and metrics in real time (e.g. Red Robin with Bryan Cave).

Meanwhile, another theme across many of this year’s honoree companies was empowering internal clients to become more self sufficient when legal needs arise. The honored legal departments achieved this with thorough training for specific business units, such as human resources (HR) and sales, depending on the topic at hand. These internal clients were then able to locate answers to common legal dilemmas and obtain legal documents using tech platforms the legal department established. One strong example of this was at BT Group plc Employment Law, based in London. The legal department completely overhauled the company’s reactive mindset when it came to labor disputes and litigation. Using IT solutions, the team redesigned many legal processes

and offered training to HR and business colleagues. These departments are now frequent users of the newly implemented self-service systems. With resulting time savings, the department had time to take on more strategic projects, and handled 267 transactions in 2014, including an \$18 billion acquisition of EE (the largest corporate acquisition in UK history). By bringing high-value legal work in-house, the department saw its outside legal spend drop by 73 percent between 2013 and 2015 – a huge savings for the company.

Making the Most Impact and Getting Started

The ACC Value Champions achieve impressive time and cost savings, yet for companies looking to mirror these efforts, the question of where to begin can seem daunting. Year after year, we see that many ACC Value Champions start by gauging where their efforts can be most immediately effective – where the “pain points” are. While it’s important to start somewhere (anywhere!) to spur law department management change, it’s even better to start with what will make a big impact. For some legal departments, this means not limiting themselves to their department but also looking at where they can have the most impact on the business as a whole. At Aegean Motorway SA, a highway operating company in Greece, the corporate legal department took on a business-wide problem – government protest-inspired toll violations by up to 40 percent of drivers, causing a €7 million (\$8.05 million) annual loss. The department created templates and a database to track and notify toll violators, led a publicity campaign, and even managed all follow up. The nimble team the law department created encompassed both lawyers and non-legal staff. The efforts saved more than €2.5 (\$2.9) million in outside legal costs. Meanwhile, the publicity campaign dropped violation rates to 0.7 percent and recouped funds, as revenue lost due to toll infractions dropped 42 percent.

continued on page 3



continued from page 2

Another innovative approach was at Staples Australia and New Zealand, where the legal department led Project Reinvention to support the business' drive to diversify. The legal team led a cultural shift away from risk aversion and towards risk tolerance and risk management and fostered an environment of teamwork and accessibility. By educating the sales team on legal matters and simplifying contracting processes, the law department cut its workload on low-risk transactional services by 40 percent, yielding more time for high-value projects. With less high-value work being outsourced, Staples cut outside legal spend by more than 50 percent.

Using Management Tactics and Employing Non-Legal Skills

ACC research indicates many chief legal officers (CLOs) and general counsel (GCs) seek to develop non-legal skills among their lawyers. According to the *ACC CLO 2016 Survey*, business management and project management skills rank numbers two and three on the list of most desired non-legal skills among CLOs (just behind executive presence). The ACC Value Champions demonstrate that among the most savvy law departments, many teams have already mastered these areas. We have seen frequent successes by adopting Lean Six Sigma methodology, including among the 2016 ACC Value Champions. For example, Aon plc included Lean Six Sigma training as part of its Law Department Strategic Improvement Project. In-house and law firm lawyers attended the training together in order to map processes and identify areas for improvement. The other elements of the Strategic Improvement Project included an RFP standardization process with the procurement department (enabling 40 percent of all U.S. legal matters to move under flat fee arrangements) and offshoring of all contracts work to in-house centers in India and Poland. Finally, Aon created a global rotation program to cut costs and boost law department employee engagement, a technique other industries have found equally successful.

Harnessing the Power of Inside/Outside Counsel Partnerships

The ACC Value Champions program celebrates department-wide and company-wide accomplishments but in many cases, these results are also the work of outside counsel or legal service providers. In 2016, ACC honored three corporate legal departments in tandem with their law firms, Axalta Coating Systems with Hunton & Williams LLP, hhgregg with Ogletree Deakins, and Red Robin with Bryan Cave.

In all instances, the law department was able to achieve strong results from the partnership with outside counsel due to a thorough selection process and a close working relationship benefiting from the use of fixed fees (no ticking clock to limit law firm involvement!). Appliance retailer hhgregg conducted a review and selected Ogletree Deakins as its sole partner firm. As such, they created a relationship under a valued-based fee arrangement that ensured a successful scenario for both inside and outside counsel when it came to budget and workflow predictability. Red Robin also took a single provider approach and implemented flat fees. In these cases, hiring a single provider law firm enabled the law firm to work very closely with the various business units beyond the legal department. At hhgregg this meant working with HR to revolutionize the process for labor and employment claims. Meanwhile, at Red Robin, the department and firm collaborated on a contract management system that was accessible business-wide and at Axalta, the in-house lawyers worked with the partner firm to create templates and playbooks useful for the procurement department. These partnerships show that once the law department finds the right law firm match, results can improve exponentially, with wide impact on the company as a whole.

Companies looking to replicate these sorts of successful in-house/outside counsel relationships should focus on correct communication above all else. Corporate

legal departments need to know what they want out of their relationship with outside counsel. Why are they hiring them and what goals are you trying to achieve in the short term and the long term? GCs need to ask for the type of improvements, fee arrangements, and other value levers you want to implement – and then communicate this all again in a few months, with an eye towards continuous improvement. CLOs looking for a playbook to get started should turn to *“Unless You Ask: A Guide for Law Departments to Get More from External Relationships.”* a just-released resource from ACC Legal Operations.

The other critical factor to start these conversations is data. A law department should know its key performance metrics and measure these important factors on a regular basis. It should communicate these metrics to the law firm. On the flip side, the law firm should be speaking the same language, able to provide key performance data in near real-time. With a clear understanding of current metrics and where these data points should be in the future, the law department and law firm can implement a plan for success. Of course, this understanding of data remains relevant for legal departments going it alone – those who retain outside counsel in very limited circumstances.

Across this year's 12 ACC Value Champions and the dozens who have preceded them in the past five years, corporate legal departments have saved thousands of hours of time, billions of dollars, and countless frustrations, all while achieving better results. There is no one recipe for success, so for corporate legal departments looking to replicate these accomplishments, there are countless case studies and best practices to guide you to the starting line.

Nominations for the 2017 ACC Value Champions will open in November 2016. Visit the ACC Value Challenge page, <http://www.acc.com/valuechallenge/valuechamps/>, to find out more.

continued on page 4

continued from page 3



Veta T. Richardson is president & CEO of the Association of Corporate Counsel (ACC), the largest global legal association serving in-house counsel. Veta's priorities as CEO are to expand ACC's global footprint and

solidify ACC's position as the preeminent voice for in-house counsel worldwide. Since Veta became president & CEO of ACC in 2011, membership has grown by 44 percent, and non-U.S. membership has more than doubled. ACC members work at more than 10,000 organizations, including 98 percent of the Fortune 100 and 51 percent of the Global 1000, look to ACC for advocacy, legal and business

education, practice resources and peer-to-peer networking. Prior to her current role, Veta held executive-level positions in the nonprofit association realm. She started her legal career as in-house counsel at Sunoco, Inc., where she was responsible for corporate governance, securities disclosure, financings and M&A transactions. She holds a B.S. in Business Management and a J.D. from the University of Maryland.

Join the CPBO Challenge® Initiative!

CPBO, ACC's partnership project with Pro Bono Institute, is excited to announce the CPBO Chapter Challenge and invite your legal department to join the Corporate Pro Bono Challenge® initiative!

Demonstrate your commitment to pro bono legal services by signing the CPBO Challenge® statement or encouraging your CLO to do so. The ACC chapter with the most new signatories to the Corporate Pro Bono Challenge® initiative by October 1 will be recognized along with new department signatories at the CPBO In-House Pro Bono Breakfast hosted at the ACC Annual Meeting in San Francisco.

The CPBO Challenge® initiative enables legal departments to identify, benchmark, and communicate their support for pro bono service. Launched ten years ago at the urging of CLOs, it has become the industry standard for in-house pro bono, with 155 signatories, representing departments of all sizes and across all industries, engaging in pro bono in more than 44 countries.



To learn more about the CPBO Chapter Challenge or become a signatory, please contact CPBO.

Much regards,

Eve L. Runyon
President and CEO
Pro Bono Institute

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ACC News

Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend these business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, September 13-15, November 2-4
- Finance and Accounting, September 21-23
- Project Management for the In-house Law Department, November 7-8

Learn more and register at www.acc.com/businessedu.

ACC Annual Meeting: Rates Increase After September 14

Attend the ACC Annual Meeting (October 16-19, San Francisco, CA), the largest gathering of in-house counsel and an unparalleled value in legal education. In less than three days you can choose from over 100 substantive sessions to fulfill your annual CLE/CPD requirements, meet leading legal service providers and network with your in-house peers from around the world. This meeting is *the* event that you cannot afford to miss. Register today for best selection of programs. Visit am.acc.com for more information.

Learn. Lead. Advance

Law Department Leadership 2.0 is returning to Toronto on 19 September 2016.

This popular program will provide you with the skills you need to be an effective leader in your company. Sessions will focus on getting the most out of your team, selling your ideas to senior management, trends in the in-house market, and essential project management skills for in-house leaders. Register today at www.acc.com/ldl.

Save the Date: 2017 ACC Mid-Year Meeting

The second annual ACC Mid-Year Meeting will take place April 2-4 in New York, NY. This two-day program offers intensive education for senior in-house counsel. Engage your peers in meaningful conversations and receive practical guidance from faculty in inmate sessions. For more information, visit www.acc.com/mym.

continued on page 6



Our case for clean

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Live clean

continued from page 4

Announcing the Second Tuesday Webcast Series

Join us on the second Tuesday of every month to learn about ACC online resources and how to maximize the value you receive from your membership. We will demonstrate how to identify and act upon key in-house legal practice trends and emerging law department issues, and access the knowledge and expertise of thousands of in-house counsel through benchmarking data, policy and contract templates, best practices, and other legal

materials across key practice areas. Register today at www.acc.com/SecondTuesday.

Share the Wealth

When your in-house peers join ACC, you create opportunities to engage with colleagues, expand your professional network, and share ideas and expertise. When you recruit a new ACC member, you are automatically entered into a monthly drawing to win a US\$200 gift card! As an added bonus, your new recruit is automatically entered into a

drawing to win a US\$100 gift card when they join! Contest ends September 30. Visit www.acc.com/2016mgm for more information.

Recent news about lawyer salary hikes at some of the nation's leading law firms has the legal field abuzz. Will small to midsize firms be able to compete? Read our point of view and learn more about legal retention strategies you can implement today. [Read the full post.](#)

New Federal Law Provides Additional Trade Secret Protection

By Chris Martinez, Partner, Dorsey & Whitney LLP

To take advantage of a new federal law that helps protect companies' trade secrets and other confidential information, Utah companies need to update their employment agreements with an immunity provision.

Earlier this year, the federal Defend Trade Secrets Act (the "DTSA") was signed into law by President Obama. The civil remedies provided by this act are mostly the same as the remedies available under the Uniform Trade Secret Act, which Utah adopted years ago. Those remedies are recovery of the damages caused by the misappropriation of the trade secret, disgorgement of the amount earned by the defendant through use of the trade secret, and in the case of a willful misappropriation, double damages and attorneys' fees.

Under the federal law, however, the theft of a trade secret and the use of a trade secret are criminal offenses. This means that theft, possession or use of trade secrets is a predicate act for the Racketeer Influenced and Corrupt Organizations Act ("RICO"), which gives rise to a civil action for treble damages and attorneys' fees. Importantly, this civil RICO action could be used to state a claim not only against the ex-employee who misappropriated the trade secret, but also against the new employer who is benefitting from that misappropriation.

The DTSA also includes one additional remedy that is unavailable under Utah law. Specifically, the DTSA allows a plaintiff to obtain a civil seizure order. This means a party could obtain an order seizing the defendants' property, to the extent necessary to prevent the propagation or dissemination of the trade secret. For instance, the court could order the seizure of the computers used by a competitor, on which the stolen trade secret is stored. Or, the court could issue an order seizing the phone of an ex-employee who has taken a trade secret customer contact list. These orders can be obtained ex parte – meaning the order can be obtained before the defendant has received notice of the request for the civil seizure. This remedy could be significant when misappropriation is detected early and aggressive action is needed to prevent disclosure or dissemination.

Before employers can take full advantage of the DTSA, however, they must revise their employment agreements. The DTSA provides immunity for certain trade secret disclosures and requires that every employment agreement contain a notice provision of this immunity. Specifically, every employment agreement should include notice that an employee is immune from civil or criminal liability if the employee discloses a trade secret or other confidential information in the

course of reporting a suspected violation of law to a governmental entity. In addition, an employee is immune from liability if the employee discloses the trade secret to his or her attorney and/or a court under seal, in the course of a lawsuit alleging retaliation for reporting a suspected violation of law to a governmental entity.

The DTSA's notice requirement applies to agreements entered after the enactment of the DTSA. It is important to note that the DTSA requires that this notice provision be included in agreements with employees and also independent contractors and consultants. Alternatively, an employer can amend its employment policy manual to include the notice outlined above and then include a paragraph in its employment agreements that specifically references that employment policy. Failure to provide this notice required by the DTSA means the employer cannot recover double damages or attorneys' fees. Failure to include this notice will not affect the remedies available under the Utah Trade Secret Act.

In addition to this important change in federal law, Utah recently enacted a statute that makes all noncompete agreements void if they restrict competition for longer than one year following an employee's termination. Given these

continued on page 8



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Dorsey has grown the Salt Lake office during the last two decades with careful attention towards helping our clients achieve goals and resolve problems. As trusted legal advisors, Dorsey thrives on helping companies succeed and overcome obstacles through global experience in corporate transactions, finance, restructuring, natural resources, intellectual property, and real estate.

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continued from page 6

recent changes in federal and state law, now is the time for Utah employers to conduct a review of their employment agreements and make the revisions necessary to comply with these changes.

At the same time, employers should review their policies to ensure that procedures and safeguards are in place to protect the confidentiality of their trade secrets and other confidential information. A trade secret is only protected if it is kept secret. In today's social media world, once a trade secret is disclosed, it can be instantly distributed worldwide through social media, causing the loss of trade secret status. Accordingly, taking inventory of trade secrets, reviewing and/or establishing reasonable measures to

protect the confidentiality of those trade secrets, and revising employment agreements to take advantage of the DTSA and to ensure compliance with Utah law are necessary steps for employers who want to be in a strong position to protect their confidential information.

About Chris

Chris Martinez is a partner at Dorsey & Whitney. His practice is focused in the areas of commercial litigation, products liability defense, and health care litigation. He also has significant experience representing receivers and bankruptcy trustees in adversary



proceedings and asset recovery litigation. He has successfully represented clients in disputes involving trade secrets, shareholder derivative claims, non-competition agreements, partnership disputes, and real property litigation. Chris' products liability experience includes defending claims of wrongful death and personal injury due to defective design,

manufacturing defects, and/or inadequate warnings. He has represented manufacturers and suppliers of pharmaceuticals, automobiles, off-road recreational vehicles, and consumer appliances in all stages of litigation. More information can be found at www.dorsey.com.

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