

UPCOMING MEMBER EVENTS*

Throughout the year, ACC Georgia offers a variety of programs, including opportunities for CLE credit. As the pandemic persists, we are hosting a series of virtual events in lieu of in-person meetings as we strive to operate in a way that ensures the health and safety of our members and their families.

September 14, 2020

Women's Initiative – "Cooking Tour with Chef Jamie Keating" Sponsored by Eversheds Sutherland (US) LLP, Fisher Phillips LLP, LawDocsXpress, Ogletree Deakins Nash Smoak & Stewart P.C. and Taylor English Duma LLP

September 15, 2020

Webinar – Virtual Value Challenge Series – "Employee Health Challenges During a Pandemic – It's More than COVID-19" Sponsored by Taylor English Duma LLP

September 29, 2020

Webinar – "COVID-19 Impacts on Employer-Provided Health Benefits" Sponsored by Fish & Richardson P.C.

September 30, 2020

Webinar – "Managing the Risks and Rewards of Trade Secrets: A Guide for In-House Counsel" Sponsored by Willenken LLP

October 1, 2020

Zoom Event – "Cocktails & Connections" Sponsored by Legal Aid Atlanta

October 7-8, 2020

Webinars – CLE Jamboree Sponsored by King & Spalding LLP

October 12-16, 2020

ACC Annual Meeting (Virtual)

October 21, 2020

Webinar – "Rapid Remedy" Sponsored by Ogletree Deakins Nash Smoak & Stewart P.C. and Pro Bono Partnership of Atlanta

November 12, 2020

Legal Checkup Sponsored by Pro Bono Partnership of Atlanta

December 8, 2020

Monthly Luncheon Sponsored by Eversheds Sutherland (US) LLP

**Programming subject to change as a result of the COVID-19 pandemic.*

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DEAR ACC GEORGIA MEMBERS:



*Melloney Douce
ACC Georgia President*

I come to you now in the midst of a truly historic time in our nation's history. As we navigate together, and as I emailed to you in June, our Georgia Chapter echoes the sentiments of our ACC leadership at headquarters and is committed to following its lead in making strides against discrimination and racism.

"In the face of a global pandemic, we have once again been tragically reminded of an even more pervasive threat that continues to afflict societies around the world — racism and social injustice," said ACC President and CEO Veta T. Richardson in her statement on the death of George Floyd. "As an organization of in-house counsel, we rely on and uphold the laws of business and the land, seeking to ensure equity and fairness 'for all.' Unfortunately, for far too long, people of color have not experienced the same sense of protection and fairness under the law. In fact, the exact opposite is true, as many communities of color have endured decades of disparity, and that experience has led to distrust of law enforcement and the legal system. Blatant discrimination is not and should not be tolerated in our companies and equally cannot be tolerated within our community. Lady Justice may wear a blindfold symbolizing impartiality, but the unacceptable reality for millions of people throughout the United States and around the world proves that we have much work to do to achieve this ideal."

To help bridge this divide, ACC Georgia is sponsoring a series of events, some of which have already taken place, to not only continue the conversation, but also go beyond discussion and take action to make a difference in our community.

- **DE&I Stories:** As emailed in July and displayed on Page 7, we will be highlighting examples of diversity, equity and inclusion among our members as a means to recognize companies for their great work and provide ideas and examples for our community.
- **Town Hall Meeting:** We hosted a chapter-wide town hall meeting on September 3, 2020, in which members heard leaders in our community discuss their experience navigating corporate politics and racial bias. We also provided members an opportunity to share their stories and discuss diversity, inclusion and racial bias.
- **Hate Crimes Legislation: A Primer for In-House Attorneys:** Platinum Sponsor Eversheds Sutherland (US) LLP hosted a webinar on August 25 discussing the Georgia hate crime bill passed in June, which allows enhanced criminal penalties for people who target others because of their race, gender, sexual orientation or other reasons.
- **Virtual Mixer:** We will be hosting a virtual social gathering as an opportunity to engage with fellow members and get to know one another in an informal setting.
- **Diversity Book Club:** We will be hosting our first book club meeting, focused on literature related to diversity, social injustice and racism. This initiative will start this Fall and continue into next year.

Thank you all for your flexibility and willingness to participate in these virtual events in lieu of in-person meetings as we strive to operate in a way that ensures the health and safety of our members and their families. As the pandemic persists and in-person meeting restrictions remain the same, we have cancelled in-person monthly luncheons through November and will be offering a series of webinars in their place that have been expanded with new and innovative topics. We are incredibly grateful to our sponsors for continuing to provide exceptional programming for our members throughout this time. We remain committed to adjusting our services and programs to respond to the needs of our members and welcome any feedback.

ACC Georgia is committed to remaining a resource through the questions and uncertainty of this significant moment in history. In the words of our ACC President, Richardson, "our goal cannot be just to return to 'business as usual,' as the status quo is simply unacceptable. We can and we will build bridges. We are in this together."

We look forward to seeing you at our next virtual event.

Melloney Douce
ACC Georgia President

MEMBER SPOTLIGHT

Andrea Peters

Senior Counsel at Interface, Inc



Q. As a leader of your company, what has your day-to-day been like during the pandemic?

I've always been a jack of all trades, but COVID-19 has stretched me even more into new areas. From participating in daily COVID-19 task force meetings to supporting our HR team in new ways, my responsibilities have certainly experienced a change. My day-to-day has also been different in terms of the hours I am working. While I am working more hours, I am also working at different times of the day in order to cater to family relationships and responsibilities.



Q. What have been the most challenging aspects? What have been your guideposts?

One of the hardest parts of working remotely has been the absence of face-to-face interactions. Because we are not spending in-person time with coworkers in the office, it is more important than ever to be intentional in making sure that everyone feels connected and valued.

I have also felt an increased sense of pressure to meet deadlines since the onset of the pandemic. Resources are more scarce than ever, and timelines are shorter than ever. I think the important guidepost here is to set expectations for clients and other stakeholders to agree upon a timeline that is feasible for everyone.

Q. What attracted you to the type of law you practice?

I get bored easily, so I was always attracted to a career that would keep me on my toes and allow me to wear a variety of hats. I also enjoy learning, so the opportunity to work with colleagues in a variety of roles and learn about other aspects of business excited me. Being an in-house generalist combines these elements nicely, offering daily opportunities to learn and experience new facets of the company.

Q. What do you like about working at Interface?

In addition to enjoying my colleagues, I love being a part of something bigger than myself and knowing that our work is making a difference. Interface is a very environmentally focused company and places a heavy emphasis on sustainability. I always recycled and did my best to be environmentally conscious, but since joining Interface, I've become passionate about its mission called Climate Take Back, which invites companies to join us as we commit to operating in a way that is restorative to the planet and creates a better earth for a future generation.

Q. What makes a successful leader?

Many people think that being a successful leader requires a vast amount of knowledge; however, I think that is one of the least important aspects. In my opinion, successful leaders possess humility and surround themselves with people who are smarter than they are or who have a different perspective or skillset. Two of the most important keys to effective leadership are communication and trust. Good leaders highlight their successful team members and encourage their development, but also swiftly and privately coach team members whose performance is not benefitting the team.

Q. What is your best advice for outside lawyers?

Be responsive, even if just to say you received someone's message and will get back to them tomorrow. This piece of advice is simple, but difficult: do good work. Even if you are more expensive than competitors, you can still win and keep business if you are responsive and produce high-quality work.

Q. What is your last book read, interesting article read or movie seen?

The last full book I read was "The Power of Vulnerability," by Brene Brown. Currently, I'm reading "Why We Can't Sleep," by Ada Calhoun, which explores fascinating research into Gen X women and common stresses this generation of women faces. I'm also re-reading "Nice Girls Don't Get the Corner Office," by Lois P. Frankel, PhD.

Q. What is your favorite travel destination or place you hope to visit?

When I retire, there are three things I want to do: audit hard but interesting classes that I was afraid to take in college, go to culinary school and travel. My ideal travel destinations include "glamping" in Africa, staying in huts over the water in Bora Bora or Fiji, and exploring the west coast of the U.S. via Amtrak's Coast Starlight, a 35-hour train from Seattle to Los Angeles.

Q. What would you be if you weren't a lawyer?

If I had my druthers, I would be an astronaut because I find outer space fascinating. More realistically, I would be a doctor because I like finding the root cause of problems and helping people, and medicine combines those things nicely.



Welcome the newest members of ACC Georgia!

Agnes Gibby	Joseph Blanco
Ailis Burpee	Joy Hodge
Alina Lee	Julie Elgar
Amy Douglass	Julie Kilgore
Andrew Hopkins	Justin McKithen
Andrew Leba	Kabir Uddin
Anne Whitaker	Kaeley Brown
Anu Seam	Karen Kaplan
Ben Thorpe	Kathryn Ray
Betsy Hale	Kathryn Hutton
Brian Strange	Kevin Hembree
Carrie Young	Khushbu Patel
Carrie Ratliff	Kimberly Withrow
Catherine Johnson	Koleen Sullivan
Chris Tuten	Kristi Pearson
Christine Cason	LaShonda Dash
Christopher Graham	Laura Zschach
Christopher Carlson	Lauren Dimitri
Clancy Mendoza	Lauren Sanders
Colin Ford	Lewis Beard
David Abrams	Linda Kittendorf
David Hsu	Linell Rowe
Debbie Cline	Lisa DeCaprio
Destiny Kelley	Lynette Smith
Edward Honkisz	Mary Drake
Elizabeth Way	Matthew Ellis
Eric Dominguez	Meghan Farmer
Erica Brennan	Michael Betz
Erick Burroughs	Molly Haren
Farhaan Merchant	Noshay Cancelo
Geysa Fonzaghi	Nousheen Pirani
Gillian Blitzer	Pamela Kenny
Glenn Williams	Paul McCarthy
Hillary Schmidt	Peter Kessenich
Ian Steves	Peter Turk
James Benson	Phyllis Hogue
James Curry	Rachael Bowens
James Hsiung	Rainsford Ammons
Jasmine Jandrillch	Rebecca Clarkson
Jefferson Blandford	Richard Escoffery
Jeffrey Makino	Robert Beasley
Jennifer Andrews	Robin Larkin
Jennifer Wolff	Robyn Taylor
Jessie Brown	Ronald Hull
Jill Girardeau	Ryan Proctor
Jill Girareau	Sarah Archila
John Ingram	Shaun Willie
John Mello	Stephanie Huber
John Bush	
Jonielle Robertson	

Get Involved with ACC Georgia

Want to get involved in the in-house counsel community? Joining an ACC Georgia committee is the best way to start. For more information, go to <https://www.acc.com/chapters-networks/chapters/georgia/chapter-committees>.

FROM OUR EVENT SPONSORS

Social Justice and Racial Equity: What Can I Do to Make a Difference in the Workplace?

By Daniel T. Sulton and Penny C. Wofford
Ogletree Deakins Nash Smoak & Stewart P.C.



Daniel T. Sulton

The topic of social justice and equity is not easy to tackle. It is a multi-layered problem with contributing factors far more broad than the police brutality that ignited recent protests and public outcry. Social justice is having a fair shot at all levels of living and being. One of its foundations is employment opportunity and the potential to advance financially. Our workplaces can help contribute to or eliminate some of the root causes of inequity.



Penny C. Wofford

Daniel and I have been friends for over 20 years, beginning in our first year of law school. When Daniel worked as an in-house lawyer, he engaged me as an outside counsel for employment work; and when Daniel chose to transition into private practice, I was persistent in suggesting he consider my law firm. We are two people who look and are different, but have had a career-long business and personal friendship. We are sharing three of our suggestions as employment lawyers on how we believe all can influence our workplaces to advance the broader cause for social justice and equity.

Regardless of whether you have responsibility for employment matters, we think these are ideas that any in-house counsel can explore and discuss within your company, as a legal counselor and an employee.

Seek to Provide Second Chances

Penny: Traditionally, employers have used criminal background as a key screening tool for employment, which even if for a well-intended reason, can perpetuate the effects of a historically unfair and biased justice system. Employers can help remedy that by opening employment opportunities to those with a criminal background. With some structured forethought and supervision, there is minimal legal risk to the employer in giving second chances in the right circumstances to those with a criminal background.

Daniel: African-American men are disproportionately represented in American prisons. When released, there are very few opportunities for ex-offenders who then largely end up back in prison. Gainful employment is a key component to reducing recidivism and can help return African-American men to their families and communities as productive citizens. There are also incentives for employers who hire ex-offenders, including federally provided tax breaks on salaries and a fidelity bond to protect company assets.

Evaluate and Enhance Diversity & Inclusion Programs

Penny: Most employers have a stated commitment to diversity and inclusion and provided a plan. However, plans can be more effective if not limited by a lack of focus or fear that a program may be viewed as exclusive, or even worse, as reverse discrimination. An employer can have a data-based, targeted diversity program that is temporary in nature, provided it does not unduly trammel on the rights of the non-diverse class. Within these parameters, employers can more specifically identify, tackle and achieve a diversity goal for their workplace.

Daniel: To move the needle on social justice in particular, look for ways to remove barriers for advancement of blue-collar workers who are in dead-end jobs. Consider ways to provide workers more heavily affected by justice and inequity obstacles with career development skills and training to pivot to other roles within your company with higher pay and job progression.

Develop Culturally and Racially Diverse Relationships

Daniel: Our work provides common ground on which we can build genuine relationships across cultural and racial lines. Beyond the company's diversity programs, an inclusive work environment takes a level of personal intentionality many of us are not used to or comfortable with. But genuine relationships can help us create the type of workplace in which all employees feel welcomed and able to contribute their full self. Like any relationship, we must be willing to be vulnerable. Everyone may not be receptive to your overtures of friendship. That lunch invitation may get rejected. Move on to another co-worker. Be persistent – but not a pest. The juice is worth the squeeze!

Penny: Look for opportunities to develop relationships with racially diverse co-workers in the hourly ranks. Creating an inclusive work environment necessitates that all feel equally valued as people even if our job functions are different. Advancing social justice and racial equity begins with a true understanding of the experiences and challenges of the societal group most affected.

Daniel T. Sutton and Penny C. Wofford are Shareholders with Ogletree Deakins Nash Smoak & Stewart P.C., one of the largest labor and employment law firms representing management.

Thank You to Our Sponsors

The Association of Corporate Counsel Georgia Chapter would like to thank our recent event sponsors, who have pivoted their plans to continue to provide exceptional programming for our members through COVID-19. Without their contributions, we would not be able to deliver the quality events that our chapter members have come to enjoy. We deeply appreciate their generous support.

June 4 – Webinar – “Saving Money Through ADR: What Corporate Counsel Need to Know About Damage and Loss Calculations in Disputes” – Miles Mediation & Arbitration

June 11 – Webinar – “GDPR Revisited: Cross Border Data Transfer, Discovery, Enforcement Activities” – Rittershaus Law Firm

June 17 & July 15 – Women’s Initiative Events – “Accelerating Your Influence Virtually,” featuring Netania Walker – Eversheds Sutherland (US) LLP, Fisher Phillips LLP, LawDocsXpress, Ogletree Deakins Nash Smoak & Stewart P.C. and Taylor English Duma LLP

June 30 – Webinar – “Maintaining Your Virtual Professional Presence” – Smith, Gambrell & Russell LLP

July 22 – Webinar – “Drafting Ethical Cease & Desist Letters for Trademark and Copyright Infringers” – Kilpatrick Townsend & Stockton LLP

July 30 – ACC Value Challenge – Virtual Challenge Series – Morris, Manning & Martin LLP

August 19 – Webinar – “Pandemic Exhaustion: The Talk Show!” – GAPABA and ACC Georgia

August 25 – Webinar – “Hate Crimes Legislation: A Primer for In-House Attorneys” – Eversheds Sutherland (US) LLP

August 27 – Corporate Counsel Awards – Atlanta Business Chronicle

September 3 – Town Hall Meeting – “Navigating Corporate Politics & Racial Bias” – ACC Georgia

Also, ACC Georgia extends a special thank you to Alison Danaceau, legal team lead at Avolin, for serving as our chapter photographer, and Poston Communications, for production of our newsletter, public relations and other activities.

How You Can Sponsor an Event

ACC Georgia welcomes your sponsorship. Sponsors have the opportunity to showcase their expertise and experience to our members in exchange for providing support for substantive programs involving CLE credit. Costs paid by sponsors provide funding for luncheons and special programs, as well as ACC Georgia's community outreach programs that include providing minority internships for deserving law students.

For more information, go to: <https://www.acc.com/chapters-networks/chapters/georgia/sponsorship-information>.

FROM OUR EVENT SPONSORS

Reclamation and Priority Claims: Suppliers' Rights in Insolvency

By Lee B. Hart and Yoojin Lee

Nelson Mullins Riley & Scarborough LLP



Lee B. Hart

2020 has been a tough year. In addition to the health and social concerns on our collective conscience, the result of the stay-at-home orders, layoffs and loss in business has taken a grim toll on the economy. The economic fallout has accelerated some headwinds already causing friction in certain traditional business models and caused new and unforeseen challenges in previously healthy industries. Operating a company that supplies goods in these economically turbulent times can feel like wading through a minefield.



Yoojin Lee

Luckily, the law provides remedies to sellers of goods to insolvent buyers. However, the laws are technical and require quick action to preserve rights. This article focuses on how companies may properly exercise these rights if they learn that they sold goods on credit to an economically distressed company, both outside and inside of a buyer's bankruptcy.

Outside of Bankruptcy. The Uniform Commercial Code (the UCC) provides a seller with the rights to demand return of their goods if they learn that their buyer is insolvent. Section

2-702(2) of the UCC permits a seller, who sells goods on credit to a buyer and finds that buyer to be insolvent, to demand return of the goods. Importantly, this demand must be made within 10 days after the buyer's receipt of goods. Note, however, that this 10-day deadline does not apply – and will not protect a buyer – if that buyer misrepresented its solvency to the seller in writing within three months before delivery of the goods.

In all cases, the seller's right to reclaim the goods is subject to the rights of a subsequent buyer who purchases for value and without notice of the seller's claim to them. Therefore, if the buyer subsequently sells the goods before they are returned to the seller, then the seller's reclamation rights to those goods terminate.

Inside of Bankruptcy. If the buyer files for bankruptcy, the seller's rights are improved, although quick action is still required. There are two types of remedies that sellers of goods to insolvent companies have: (1) reclamation, and (2) allowance of administrative expense claims.

The seller has a longer time period to demand return of the goods from a bankrupt buyer. Section 546(c) of the Bankruptcy Code provides that a seller of goods to a debtor in the ordinary course of business may reclaim the goods if: (1) the debtor received the goods while insolvent within 45 days before the date of the commencement of a case, and (2) the seller demands in writing reclamation of goods (A) not later than 45 days after the delivery of the goods, or (B) not later than 20 days after the bankruptcy filing, if the 45-day period expires after the bankruptcy filing. 11 U.S.C. § 546(c).

In effect, while a seller outside of bankruptcy must demand return of goods in 10 days, a seller to a bankrupt company may demand return of goods any time within 45 days before a bankruptcy filing, and then, depending on timing of the filing, may demand return for an additional 20 days after the bankruptcy filing. Importantly, this rule only applies where the sale was made in the ordinary course of business and when the buyer was insolvent at the time of delivery.

In cases where debtors regularly purchase large volumes of goods on credit, reclamation demands immediately after a bankruptcy filing could be cumbersome and distract from the debtor's business of transitioning into bankruptcy and reorganizing. As a result, in such cases, debtors may, on or shortly after a bankruptcy filing, move the bankruptcy court to implement "reclamation procedures" to provide a consistent and organized mechanism for dealing with reclamation claims smoothly during the case.

The authors have identified three such large cases in 2020, all in the airline industry, in which the debtors sought implementation of reclamation procedures to streamline these processes. See *In re Avianca Holdings S.A., et al.*, Case No. 20-11133 (Bankr. S.D.N.Y., May 12, 2020); *In re LATAM Airlines Group, S.A., et al.*, Case No. 20-11254 (Bankr. S.D.N.Y., May 31, 2020); and *In re Grupo Aeroméxico, S.A.B. de C.V., et al.*, Case No. 20-11563 (Bankr. S.D.N.Y., July 1, 2020). In each case, reclamation procedures were implemented promptly after the bankruptcy filing. The sellers were still required to make quick written demand for reclamation of sold goods, but the debtors had authority to agree with or dispute the reclamation demands a few months thereafter, allowing the debtors room to deal with important bankruptcy-related items while preserving sellers' rights.

As an alternative remedy to reclamation, sellers who deliver goods to debtors within the 20 days prior to the bankruptcy filing are entitled to an "administrative expense" against the bankruptcy estate. 11 U.S.C. § 503(b)(9). These types of claims must be paid in whole dollars (i.e., not "pennies on the dollar") upon confirmation of a Chapter 11 plan. So, while there is always a danger that a Chapter 11 debtor cannot pay its administrative expenses, or that the effectiveness of a Chapter 11 plan could take months, or that other money could become superior to the Chapter 11 administrative expenses, these amounts should be paid in full eventually.

It bears pointing out here that the reclamation and section 503(b)(9) administrative expense remedies are mutually exclusive. A seller's reclamation claim – which stretches to goods delivered within the 45 days before the bankruptcy filing – does not "convert" into an administrative expense automatically if the seller fails to or elects not to reclaim its goods; the seller must still qualify for and seek an administrative expense under section 503(b)(9), which applies only to goods delivered in the 20 days before the bankruptcy filing.

This point was recently emphasized by the District Court in Nebraska in *In re Specialty Shops Holding Corp., et al.*, Case No. 19-CV-405 (D. Neb., July 24, 2020). There, a supplier of pharmaceutical goods sought an administrative expense for the value of the goods delivered in the 45 days prior to the bankruptcy filing. The district court affirmed the bankruptcy court's denial of this request, noting in part that the supplier's administrative expense is limited to goods delivered in the 20 days before the bankruptcy filing under section 503(b)(9). Of particular note is that the court did not close the door on seeking reclamation of the proceeds of goods if the seller could trace the proceeds from the sale of the goods in question, although that argument would seem an uphill battle given revisions to the statute made in 2005.

In summary, sellers of goods to insolvent companies have rights, but the rights are highly dependent upon the applicable timeframes and venue. Companies selling goods on credit to customers who they suspect may be insolvent should consult legal counsel to ensure that their rights are being protected and losses mitigated in context of an insolvency proceeding of their buyers.

FROM OUR PLATINUM SPONSOR

Tackling Spoliation Risk with Artificial Intelligence

By Bob Owen, Greg Kaufman and Anusia Gillespie
Eversheds Sutherland (US) LLP



Bob Owen

Spoliation is the doctrine that governs the destruction of evidence and can derail even a winning case. Spoliation penalties have been striking terror into corporations since the Zubulake decisions in 2003 and 2004. Until December 2015, in some circuits (notably the Second), the mere negligent failure to preserve potentially discoverable documents in reasonably anticipated litigation exposed companies to penalties, leading companies to over-preserve documents in order to guard against painful results. The December 2015 amendment to Fed. R. Civ. P. 37(e) eliminated mere negligence as a justification for such “death penalty” orders and nationalized the standards around spoliation orders.

Corporations must also defend claims brought against them in state courts, and there is no national standard applicable to all 50 states. Standards vary in state, as do courts’ attitudes towards the loss of discoverable material, posing additional risk and financial uncertainties for clients.



Anusia Gillespie

The risks associated with spoliation presented Eversheds Sutherland with a unique opportunity to consider a technological solution through the use of Artificial Intelligence (AI). In partnership with Fastcase, the legal research platform, we developed an innovative tool to harness the power of artificial intelligence to quickly and efficiently assess spoliation exposure in any of the nation’s 50 state and federal courts.

AI technology uses algorithms to classify, analyze and make predictions from data. Our tool, known as the Spoliation Scientist, better enables our firm’s litigators to advise clients on spoliation law in each of the 50 states as well as federal courts. The purpose of the Spoliation Scientist is to provide information about particular states’ precedent on questions of spoliation – allowing clients to quickly assess discovery risk, value a case, and more accurately budget and forecast for specific litigations.

The partnership between the two firms began a year ago – marrying Fastcase’s AI experience with our experience in e-discovery and spoliation. The Spoliation Scientist functions through the categorization of court spoliation decisions. A carefully designed system scores each decision based on significant considerations, including the severity of sanction or remedy and who prevailed (producing party or requesting party).

To ensure the effectiveness of the categorization system, Fastcase worked closely with our attorneys to understand distinctly the severity scale of the scoring system and deployed a small army of professionals to review and analyze each of the cases identified by AI for accuracy.

Through this categorization system, the Spoliation Scientist allows users to navigate from broad statewide questions to narrow, case-specific questions. It offers color-coded “heat maps” that show which jurisdictions have more or fewer spoliation decisions and how friendly or hostile to producing parties the jurisdiction’s decisions are. Users can then narrow their search with the Spoliation Scientist’s ability to instantly drill down into and examine specific jurisdictions’ spoliation decisions dating back to 2015.

In addition, Eversheds Sutherland and Fastcase developed search and coding algorithms to pull spoliation decisions as soon as they are rendered and assess their import for fast and up-to-date reports. The search algorithm pulls from Fastcase’s vast database, containing all of the cases in the U.S., thereby ensuring comprehensive results.

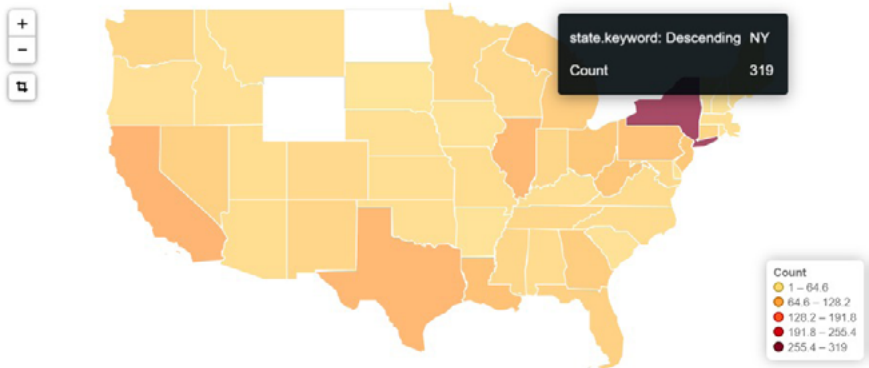


Greg Kaufman

As of today, more than 4,000 cases about spoliation have been analyzed and tagged with critical information on judges, jurisdiction and actual findings. Figure 1 shows the 50 state heat map containing the number of cases for a select state that mention spoliation, destruction of documents and where the judge has ruled on the existence of spoliation. As an example, New York tops the list and already has a combined 319 cases on spoliation tagged, which you can get more details on within the tool as you drill down. We have already identified that New York, West Virginia and Louisiana are states with more cases than expected, while California, Florida and New Mexico have shown less spoliation cases than expected.

Further, we have calculations that compare apples to apples across jurisdictions based on case volume, and have already made some interesting discoveries. As a topline takeaway for federal courts, lower risk states appear to be Arizona, Florida and New Jersey. In state courts, lower risk states appear to be Virginia, Florida and Massachusetts. This tool will equip litigators with an almost instant ability to assess a client’s exposure to an adverse spoliation decision in one or many state and federal courts, or equip them to pick the best state in which to commence a case if they believe the adverse party might have exposure to a spoliation claim.

Spoliation Scientist - About Spoliation



As an example, one of the firm’s clients is a global pharmaceutical company with actions pending against it all around the country. Despite having an excellent system for preserving potentially relevant materials, plaintiffs’ steering committees in the class actions it faces are constantly attempting to create sideshows and seek “discovery on discovery” concerning its practices, so quickly knowing the track record of the courts in a particular jurisdiction will be a great help to its litigators. Consequently, it has expressed a deep interest in using the tool to assess its spoliation exposure on a jurisdiction-specific basis, and it will be one of the first firm clients to have access to the tool upon its launch.

Our litigators are optimistic about the ways in which the Spoliation Scientist will supplement their practice. Rocco Testani, partner in our Atlanta office remarked, “Attorneys who grapple with spoliation issues all over the country are excited by this new tool and look forward to using it.”

The Spoliation Scientist launches in the Fall and is the first tool of its kind, paving the way for the application of our technology to similar areas.

Robert D. Owen and Gregory S. Kaufman are partners in the Litigation Practice Group of Eversheds Sutherland (US) LLP. Anusia E. Gillespie is the firm’s U.S. Director of Innovation.

Join Your ACC Georgia Colleagues on LinkedIn

Without a doubt, one of the most popular benefits of being an ACC Georgia member is the professional networking. There’s an easy way you can show your online network that you’re a member – join the ACC Georgia LinkedIn group. We’ve launched a new group to allow in-house counsel to network with colleagues and stay up to date on chapter news.

Log in to LinkedIn and type “[Association of Corporate Counsel Georgia](#)” in the search bar to submit a request to join our exclusive group.

By joining the group, you’ll add our ACC Georgia badge to your LinkedIn profile, and you’ll have something in common to connect with other in-house attorneys. We look forward to connecting with you online!



FROM OUR EVENT SPONSORS

Implicit Bias in Artificial Intelligence: How to Leverage AI's Benefits While Mitigating Risk

By Gabriella Mas Bell and Leslie F. Spasser
Polsinelli PC



Gabriella Mas Bell

Artificial Intelligence (AI) powers an array of innovations, which can enhance efficiency, create new analytical capabilities and enable novel business models. As technologies leveraging AI become ubiquitous, more companies each year actualize the benefits of AI-powered applications. In-house counsel advising their clients on transactions involving AI-based technology must appreciate and take steps to mitigate the legal risks that accompany these benefits. This article focuses on the risk of bias in AI and outlines ways that corporate counsel can limit their clients' exposure to liability for bias claims and the resulting adverse public relations.



Leslie F. Spasser

To effectively protect clients from the risks associated with AI, counsel should understand basic information about what AI is and how it works. AI is essentially data + an algorithm + human intervention in the form of training. The human element, if deployed correctly, acts as a check on the algorithm involved. The more sophisticated the algorithm, the less human interaction is required to train the AI and the lower the mitigating factor. There are two general types of AI: machine learning and deep learning. Once data is fed into a machine learning system, a human can review the individual decisions leading to a particular result. In contrast, deep learning systems function as a "black box," learning from data input over time and making it difficult to correlate specific data sets to specific results.

Theoretically, AI-based technology creates a level playing field by responding in a predictable manner to data processed through the algorithm. For example, a hiring algorithm can focus only on certain relevant factors (like education and experience) while disregarding others that can lead to implicit bias in human recruiters (like names or addresses, proxies for gender and economic status). However, no system is immune from error; and because AI carries the patina of objectivity, its inadvertent perpetuation of bias can cause considerable societal harm and potential liability to companies using those systems.

Frequently, the data used to train an algorithm is derived from historical information. As such, systems can easily perpetuate historical biases. The issue becomes further complicated in black box systems, where software engineers cannot determine what specific data point led to a given decision. For example, the bias in Amazon's hiring algorithm – which markedly favored male candidates over females – was not detected until hiring decisions were reviewed in the aggregate. Recently, major cities around the U.S. have banned government use of facial recognition software, which, to date, has been trained using mostly Caucasian faces, thereby producing disproportionate error rates when applied to non-Caucasians.

We outline below steps that corporate counsel can take to mitigate risks of bias-related liability and compliance exposure. The most effective approach is a multi-layered one, in which counsel partner with their clients to perform up-front due diligence, negotiate key contractual protections and engage in post-execution enforcements of the negotiated rights.

(1) Conduct Up-Front Due Diligence. In addition to standard due diligence regarding a vendor's financial stability, investors and general reputation; consider exploring whether the vendor has been involved in bias or other performance-related litigation or government proceedings. Also request documentation from the vendor describing its compliance program and the controls it has in place to detect and avoid systemically biased results.

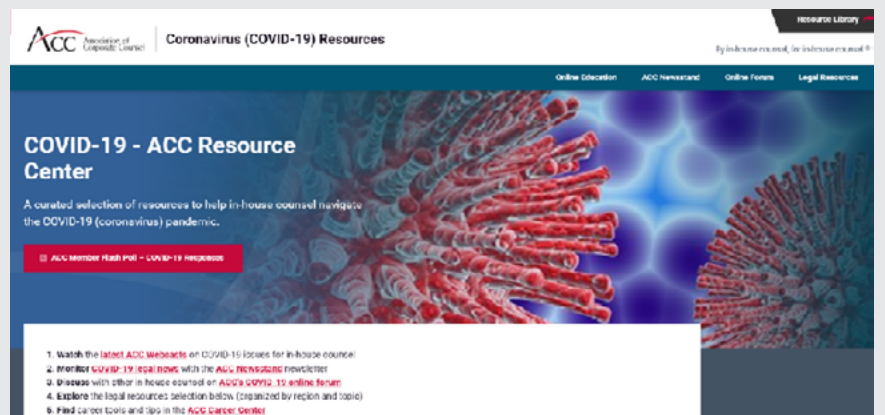
(2) Key Contractual Terms. Counsel should negotiate (a) representations and warranties that the AI vendor complies with applicable laws and has in place a documented process for detecting and addressing biased decisions, such as a meaningful appeals process; (b) requirements that the AI vendor engage in periodic benchmarking or reviews of relevant data sets as a tool to avoid bias; and (c) notice and approval rights over material changes to the AI system and controls during the course of the Agreement.

(3) Trust, but Verify. Establishing pilot programs to evaluate AI-based solutions in a "sandbox" provides a way to identify potential biases in a closed environment.

(4) Contractual Remedies. Because AI applications themselves may not be capable of negligence (fault), indemnification provisions should address the results of the AI's conduct, such as misuse of company data, biased results arising from the AI app, and any related fines or penalties.

(5) Enforcement. Counsel should work with their clients to ensure that they enforce the negotiated rights after execution. For example, record maintenance obligations and audit rights can be very effective ways to mitigate risk; but they only work if enforced.

AI offers enormous potential business benefits. As companies explore how AI-powered applications may advance or transform their businesses, counsel will be called upon to facilitate the related transactions. While there is no single right way to approach the issue, by understanding AI basics, partnering with their clients and taking a multi-layered approach, counsel can meaningfully mitigate their clients' exposure to the risks associated with these emerging technologies.



COVID-19: ACC Resource Center

ACC national headquarters has led the way in COVID-19 efforts, developing discussion forums for members to connect and webinars to continue professional development. They have also created an [online resource page](#) that hosts a curated selection of resources to help in-house counsel navigate the pandemic. From anxiety tips to legal news, this webpage includes a variety of information to support members during this unprecedented time.

As you explore this resource, you will be able to:

- Watch the latest ACC Webcasts on COVID-19 issues for in-house counsel;
- Monitor COVID-19 legal news with the ACC Newsstand newsletter;
- Discuss with other in-house counsel on ACC's COVID-19 online forum;
- Explore the legal resources selection below (organized by region and topic);
- Find career tools and tips in the ACC Career Center; and
- Follow updates regarding ACC's upcoming in-person programs.

For more information, visit <https://www.acc.com/covid-resources>.

MENTORING PROGRAM

MENTOR SPOTLIGHT
Cara Melenzyer



Through its mentorship program, ACC Georgia connects lawyers new in their in-house career to seasoned legal professionals to help each member grow their career and help other attorneys advance theirs.

Q. How did you get involved in ACC Georgia’s mentorship program?

Having volunteered through the ACC in the past, I have experience with the quality programs that they provide. When ACC put out a call for volunteers to mentor law students this summer, I raised my hand.

Q. Why did you choose to participate?

As a member in transition, I had time available to share with someone who is just taking their first steps in the profession. It is an opportunity to give back to the legal profession by helping new attorneys grow and explore career goals.

Q. What has been the most rewarding aspect of the program?

Helping my mentee to make the connections from the education that they are receiving in law school to real-world opportunities within the profession.

Q. What is one thing you learned from the mentorship program?

Young attorneys are eager to learn and be a part of meaningful change in their corner of the world.

Q. How did the COVID-19 pandemic affect this year’s program?

While we could not meet in person, we stayed in contact through telephone calls and text messages and were able to still have meaningful exchanges.

Q. Is there anything else you would like to add?

I believe that mentoring young legal talent is critically important to the future of the profession, and every attorney should find a way to help.



DE&I Stories: Members Making Strides Toward Diversity, Equity and Inclusion

At ACC Georgia, we not only want to continue the conversation surrounding DE&I, but also inspire action to make a difference in our community. As a means of doing so, we are showcasing examples of our members’ companies that are doing great things to make strides toward inclusion in this significant time. Is your company or organization taking action toward DE&I? Share your story with us to be featured on our LinkedIn page or in our quarterly newsletter.



Harry Norman, Realtors.

Harry Norman, REALTORS is Atlanta’s top real estate firm. Guiding this relationship business through a pandemic, CEO Jenni Bonura also put equality vision in high gear. She formalized the Our People, Our Culture initiative to achieve impactful diversity milestones, including:

- Portal and roundtable created for associates to share diversity ideas;
- “People and Culture Council” formed to drive diversity;
- Special training for associates to encourage inclusivity;
- Increased charity efforts through Community Foundation for Greater Atlanta with a focus on new racial equity philanthropy;
- HR (Tamra Asbury) joining Metro Atlanta Chamber Racial Equity Group to shape racial equity action plan; and
- Legal (Ashoo Sharma) joining Georgia Equal Opportunity Commission Board to impact fair employment and housing.



Scientific Games

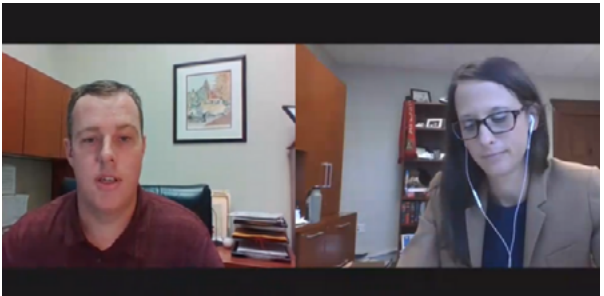
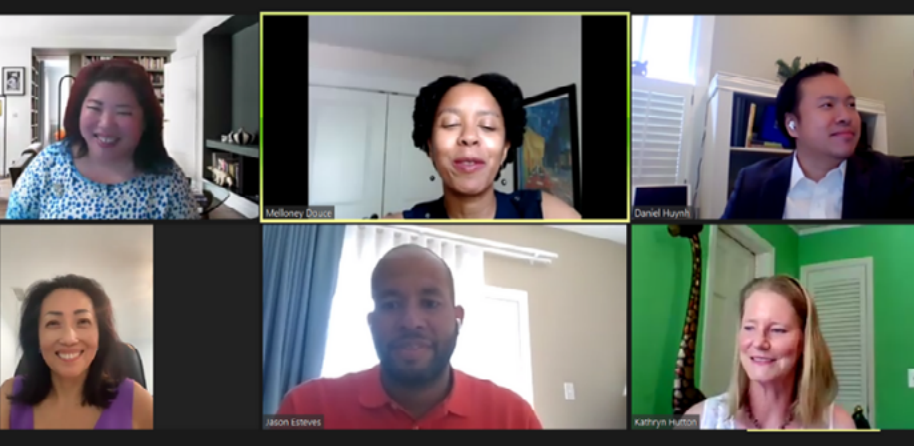
As a global leader in gaming entertainment, Scientific Games strives to create a diverse, equitable and inclusive (DE&I) culture for our 9,000 employees around the world because we believe this powers innovation and performance. Like many other U.S.-based companies, current events have inspired our renewed commitment to DE&I. We created a cross-company DE&I Taskforce as part of a Special Committee established by our Scientific Games Board Chairman. With the oversight of Legal and Human Resources, we have partnered with an external firm to assess and develop sustainable DE&I initiatives, established governance, roles and responsibilities, and are creating new programs for training, recruitment and retention.



VMware, Inc.

VMware, Inc., a leader in infrastructure software and cloud services technology, views fostering an inclusive culture with a strong mix of diverse representation as one of its top business priorities. The company has set specific and measurable goals around increasing representation for women and underrepresented minorities (URM) by ensuring all interview slates have at least one woman or URM candidate. VMware has also invested in our Disability, Veteran and LGBTQ colleagues, for example, by creating Power of Difference Communities (PODs). PODs are spaces for diverse people, perspectives and allies to connect, educate and empower others to foster an inclusive culture through meaningful initiatives, such as the Black@VMware, POD's creation of a social justice fund, to which VMware matched donations.

PHOTOS FROM ACC GEORGIA EVENTS



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CONNIE SWINDELL-HARDING
CHAPTER ADMINISTRATOR

2020 CORPORATE COUNSEL AWARDS



Legal professionals across the state of Georgia joined together virtually on August 27 to celebrate the 2020 Corporate Counsel Award winners, hosted by our partner, Atlanta Business Chronicle, and sponsored by ACC Georgia and Eversheds Sutherland (US) LLP.

For nine years, the Atlanta Business Chronicle's Corporate Counsel Awards have honored outstanding in-house corporate attorneys who

guide companies in compliance, regulatory, legal operations, litigation, privacy and corporate governance issues. Winners were selected by the Atlanta Business Chronicle and the ACC Georgia chapter from nominations submitted by the public.

This year's winners are:

- **Lifetime Achievement** – Loretta Cecil, Executive Vice President and General Counsel, Change Healthcare. The Lifetime Achievement Award recognizes an attorney who has practiced for 20 years or more, shown great leadership inside and outside of their organization, given generously of their time and talents to the legal community, and served the broader community through pro bono work and community outreach initiatives.
- **Community Champion** – Peter Carter, Executive Vice President, Chief Legal Officer and Corporate Secretary, Delta Air Lines Inc. The Community Champion Award honors an outstanding attorney who dedicates their time and talents to serving the less fortunate, preserving our environment, saving the arts, and other causes that make our world a better place.
- **Dealmaker Award** – Paul Huang, Vice President and Associate General Counsel, InterContinental Hotels Group. The Dealmaker Award honors an outstanding transactional attorney.
- **Diversity Champion** – Njeri Nginyo, Vice President and Assistant General Counsel, National Account Services, ADP. The Diversity Champion Award honors an outstanding attorney who makes an effort in their organization and in the legal community to promote equality for women, minorities, the economically disadvantaged and the LGBT community.
- **General Counsel, Large Legal Department** – Norman M. Brothers Jr., Senior Vice President, General Counsel and Corporate Secretary, United Parcel Service. This award honors a general counsel who oversees a large legal department.
- **General Counsel, Small Legal Department** – Erica Cordova Zinkie, Vice President Legal and Compliance, OneDigital Health and Benefits. This award honors a general counsel who oversees a small legal department.
- **Rising Star** – Christopher Cottrell, Division Lead Counsel and Lead Real Estate Counsel, Aaron's Inc. The Rising Star Award honors an outstanding attorney who has shown great promise and exponential potential in their first five years of practice.
- **Specialist Counsel** – Lindsay Victor, Senior Counsel, Collegiate Licensing Company. The Specialist Counsel Award honors an outstanding corporate counsel who specializes in a field such as employment, tax, privacy, IP or real estate.

The event was emceed by Atlanta Business Chronicle Market President and Publisher David Rubinger. Mark Wasserman, managing partner at Eversheds Sutherland (US) LLP, also delivered a special message as Presenting Sponsor of the event.



Loretta Cecil



Peter Carter



Paul Huang



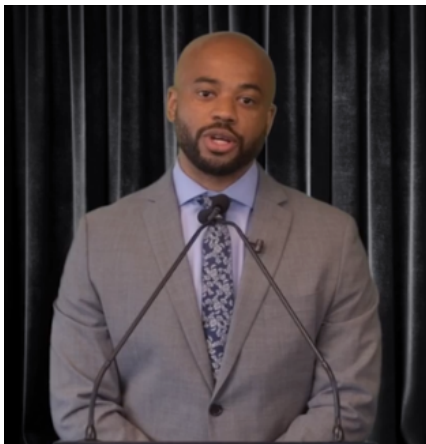
Njeri Nginyo



Norman M. Brothers Jr.



Erica Cordova Zinkie



Christopher Cottrell



Lindsay Victor



David Rubinger



Mark Wasserman