

FINAL TRANSCRIPT

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****ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel**

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Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

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PRESENTATION

Kathie Lee -- Attorney

Good afternoon or good morning, depending on your time zone. My name is Kathie Lee and I'm the Chair of the Litigation Committee of the Association of Corporate Counsel America. On behalf of the Litigation and the New to In-House Committees, I would like to welcome you to this webcast.

In the next hour Mel Merzon (ph), Henry Walker, Michael Carroll, Philip Strauss, and I will provide the new to In-House counsel the benefit of our collective thoughts and perspectives on the importance of our relationships with outside counsel, internal clients, your direct supervisor and/or the general counsel among others and how those relationships help us to achieve success in our daily activities.

As always -- and I believe Michael Carroll, the Chair of the New to In-House Committee would concur -- we welcome participation in our respective committees from those of you who may have an interest.

At this juncture the Litigation Committee is busy developing program topics for the 2005 annual meeting, planning topics for future webcasts, and potentially becoming involved in commenting on pending legislation.

I am sure that Michael can provide the audience with information concerning some of the activities of the New to In-House Committee. As such, if you have any interest in either of our committees, please feel free to contact Jacqueline Windley at ACC in Washington, D.C., I believe at Windley@acca.com.

So without further ado, I will now turn this program over to Michael Carroll, who will be the moderator for this session.

Michael?

Michael Carroll - Medallion Financial Corp. - Senior Vice President and General Counsel

Great. Thank you, Kathie. Thank you very much.

Yeah, my name is Michael Carroll, Senior Vice President and General Counsel of Medallion Financial Corp. in New York City. I've been asked to be the moderator of this webcast and it's a real honor to do so as the new chairperson of the New to In-House Committee. And I would just like to extend an invitation to New to In-House ACC members to be a part of our group. You can, of course, contact Jacqueline -- as Kathie stated, or on the ACC website as well there's also contact information.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

I'd like to spend a minute, if I could, introducing the panel. And following that, mention the email address where you could email in with questions to my assistant, which we will ask over the webcast, related to the subjects and then get underway.

First, the chairperson of the Litigation Committee, Kathie Lee, has been an active member of the Litigation Committee for the last 4 years. She was most recently Vice President, Corporate Counsel for Prudential Financial. Prior to that position, she was Vice President for Legal at Descendent Corporation. And Kathie also clerked for two federal bankruptcy judges after graduating from law school.

Phil Strauss is Corporate Counsel at Adobe Systems in San Jose, California, where he handles human resources, strategic licensing and M&A for the intelligent document business unit. Before joining Adobe, Phil was Vice President, General Counsel, and Secretary at Brio Software in Santa Clara and held associate positions in the structured finance department at Shearman & Sterling in New York and in the general litigation department at Jones Day in Chicago. Phil began his legal career as a clerk for the Alaska Supreme Court. And I would also like to say that Philip is also the former and immediate past chairman of the New to In-House Committee and writes a column for the docket magazine called The Biz, which covers business aspects of in-house practice.

Melvin Merzon, in his 23 years with International Truck and Engine Corporation, serves as the Senior Counsel.

He works closely with the company people in sales, engineering, reliability, purchasing, publications, and with local counsel as necessary, principally handling product liability and warranty claims in transactional matters. In addition, Mel reviews numerous company publications, along with advertising and promotional literature for truth, accuracy, and legal compliance. I'd also like to add that Mel is an adjunct instructor at Harper College in Palatine, Illinois.

Finally, Henry Walker, who is on our panel, is the Chief Litigation Counsel for BellSouth Corporation. At BellSouth, Henry directs a team of attorneys and paralegals who are responsible for litigation involving BellSouth and its subsidiaries. Before joining BellSouth, Henry was a partner in the litigation group in the law firm of Kilpatrick Stockton. While at Kilpatrick, he litigated and tried a wide variety of cases including lawsuits involving business torts, contracts, product liability, and fraud.

And that is the background of our panel, obviously a very esteemed group. And it's a real honor to introduce them and to moderate this. And let me -- before I go into the actual outline and the subjects to be covered, just mention the email address where any of the listeners can email my assistant with any questions they may have and we'd be glad to ask them over the webcast. And that email address is simply dlopez@medallion.com.

The 4 general areas we will be discussing today are relationships with outside counsel; relationships with internal clients; relationships with your supervisor and the general counsel; and relationships with the insurance department. And Henry has been good enough to help us kick off the first area of discussion, which is under relationships with outside counsel, which is the choice of counsel and advantages and disadvantages of preexisting and current relationships going in-house.

So, Henry?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Thank you, Michael.

Obviously, the hiring of outside counsel in litigation matters is an important task. When you're choosing outside counsel, it's my belief that your theme needs to be that it's a meritocracy. In other words, who is the best counsel to handle a particular litigation matter? Are you trying to eliminate the politics, eliminate intangible issues and decide, based on some substantive factors, who's the best counsel?

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

I think in that regard you need to come up with a list of reasonably objective factors in choosing outside counsel. And some of them are pretty obvious. But obviously, legal skills, their expertise in a certain matter, ability, the value quotient, and then some other matters that are a little -- other things that are a little less tangible, trust and chemistry.

One of the things you're faced, when you're a new to in-house counsel is there are going to be, obviously, existing outside counsel. For most instances there are existing outside counsel that have been used in the past. And there's some real advantages to using them. And then there also may be some disadvantages to using them. On the advantage side, as far as using existing counsel, they should be familiar with the company, the cases, the people, and the basic modus operandi or the way that the company does things and handles litigation. That oftentimes can be a great benefit to a new to in-house counsel. They also probably have internal supporters within the company that it might cause problems if you were to switch and to use other counsel.

Finally, there are, however -- at least in my experience -- some disadvantages. They can be rather set in their ways. They may not be willing to do it the way you believe it should be done because they've done it another way for a long period of time. And they may take you or your client for granted.

On the other hand, obviously, for new counsel, some of them, I think would particularly if it's new matter, it's -- they're usually a little hungrier, they have new ideas and take a new look at things; however, they lack the familiarity with the matters that old counsel might have, or existing counsel might have.

What I've tried to do in many instances is to continue to use the existing counsel in certain matters but to at least interject a new counsel that I feel brings a significant expertise and skills to the company in order to make sure that existing counsel doesn't take you for granted. In other words, make sure that there is -- your existing counsel knows that there is competition for your business.

So those are, to my mind, the basic advantages and disadvantages. I welcome the group's comment on that. I think it's important to recognize that you need to understand and evaluate these relationships as quickly as you can upon being a new to in-house counsel.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Thanks, Henry. Does anyone else on the panel, would they like to add to that?

Kathie Lee - *Attorney*

This is Kathie. I guess going back to the whole issue of advantages and disadvantages, I mean, there is some advantage as a new in-house counsel, walking in the door, to maintaining or at least retaining the counsel that has been representing the company for a period of time until you get the lay of the land. And until you become more familiar with the company and its inner workings, the personnel, it's probably a big help.

But I guess one word of caution would be to make sure that if that is how you want to handle it at the beginning, that all contact really must funnel through you as the in-house counsel and to try to limit the -- an avenue where you start to become the odd person out and be left out in a relationship that has been ongoing.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Mel, here. Another thing you have to be aware of is a possibility that this local counsel may have worked with your predecessor for many, many years and had developed a relationship which was -- which is now being cut short, which ends. And you are

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

replacing that other individual, in the company, who had dealt with local counsel. He's used to the other person's way of dealing and he will make the assumption that he will deal in the same with you.

This isn't always the case. You may have a different style, which is fine. And it's not your job to get used to his style or her style, it's the obligation of local counsel to accommodate your working style. But you have to go easy, this is a new relationship, and like any new relationship requires time and effort so that the bonding will take place. And it is indeed a bonding which does occur. But you need to initially tread lightly and use caution instead of, that is, saying -- Well, this is the way I want it; this is the way it's going to be and that's it. You have to be a little more genteel, if I may use the word, about the relationship. Because it is, in fact, a relationship that goes beyond, in many instances, I'll call you when I need help and you'll call me and we'll get the case done kind of thing. Your relationship becomes a much more personal one.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. I agree, Mel. One of the things -- this is Henry -- that I have noticed and when I've talked to outside counsel about it -- and I've still been out with outside counsel longer than I've been in-house, they talk about is the need for in-house counsel to really get into the case or the matter and understand it. In other words, there's a certain amount of respect and deference that is given. There's also a certain amount of respect that's earned. And that's earned by understanding the legal issues, by knowing the law that applies, by making timely decisions, and by meeting the commitments, by doing the things you say that you're going to do as an in-house counsel. So it is a bonding and a process that takes place over time. But I think it's oftentimes you get what you give out of it, as far as you're putting into a relationship.

I hope I didn't sound like a marriage comment.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

If I could, before we exit this subject, if I could ask the group and Mel and Henry, something that came up personally for me, when I came aboard early last year, may be relevant to other people participating on the call -- and you guys did touch on it a bit -- to the extent that you come aboard and there is a outside litigation relationship -- in my case it was an arbitration, that bas-- it was clear through review of the billing, et cetera, that there was a relationship just between sort of a personal executive and the outside counsel and it was unequivocally clear that the outside counsel just wasn't providing the proper advice and was sort of effectually -- in effect turning the client and now having an in-house counselor new to the scene, any comment on sort of how to maybe go about that? I know Mel used the word gingerly, but . . .

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Well, I think you've got to gather your facts and go with the problem directly. That's how I would try to handle it. That would include frank discussions with the -- I guess the business executive and with the outside counsel. And make sure you fully understand it and that you're not jumping to a conclusion as far as this goes, but then -- and then you make a decision about commitments as to how you're going to handle it going forward. As far as the billing, get them on a budget, get them under some processes that you think will help control the spend. And also make sure that the strategic decisions are on track with where you believe they should be.

But I think that those are the things that if you gather the facts quickly -- but you've got to address them -- address it quickly. And I think that's a very common problem that a lot of new to new to In-House litigators are going to see as far as the things we're -- or the status quo is not exactly as they believe it should be.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

And you raise an important point that the relationship extends beyond simply the relationship between you, as in-house counsel, and local counsel. You have a business person involved in it as well.

We're not going to get into a discussion today on relationships of in-house counsel to the business people at this moment, but bear in mind that that individual must be part of it as well.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

And put on your helmet.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

And don your helmet and your gear.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Yeah, right.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Yeah, it's -- I'm sure it's something that perhaps we've all faced. Well, thank you all for that.

The next topic under relationships with our outside counsel are substantive matters that would involve budgeting for litigation, case monitoring, review of counsel billing and the like.

And, Mel, could you take the lead on that?

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Thank you.

In budgeting for litigation, and I assume that every corporation, in some way, is budgeting for its litigation, whether it's a formal process or an informal process. There has to be some idea of how much you're going to spend on litigation and how these expenses are going to be made.

Now, some corporations bill out the internal client for litigation handled on their behalf. Others do it differently. It varies from company to company. But irrespective of the way in which the budget is formed, the budget is constructed for the litigation process, there is still far more to it than merely building the budget.

Obviously, you have a goal behind setting a budget. You want to contain, you want to reduce all the costs of these legal services to the corporation. Obviously, there are times when you can have a piece of litigation that carries you well over the budgeted amount, but these are rare circumstances.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Your goal, then, is to contain these costs and even reduce them. At the same time as you realize what the costs of litigating are, you must strive to retain or even improve the quality of the legal results. Company's keep scorecards. How many cases did we litigate this year? How many cases did we settle? How much did we pay? And if the case went to judgment, how much were the damages? And some even break them down by a per-case expense or a per-case cost.

And you, as new to in-house counsel are a contributor towards this statistic. This is not to say that you can control litigation absolutely. Anyone who's ever been in it for any period of time knows full well that there are many aspects of litigation over which we have no control. But we should be able to estimate how much it's going to cost us to litigate a matter. We should be able to know how much we're going to have to spend on a case for legal services. We should have an approximate cost of support services. And given this, we must maintain the quality of the work that we are doing on behalf of the company. And there are times when you wonder -- Well, should I spend the money? Am I getting my money's worth? And that's important with spending this money.

One example, we had a recent case which involved a wrongful death, a very serious matter, and we had some jury issues which we didn't know how they'd play out in this area of the country. And so we did a focus group. And I had to think long and hard before bringing on this focus group because it wasn't inexpensive. It added considerably to the expenses, but we did. We decided -- it was my decision we were going forward with it and in retrospect it was worthwhile. We learned a lot about how we are going to conduct this case.

So these are considerations for budgeting in litigation.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. One general comment about budgeting is, when I was outside counsel you thought you could be -- you know, we can't form a budget, we just don't -- there's too many different things that can go wrong, things -- too many different ways the case could go. And when we tried that on an in-house basis, the general response from clients is -- Well, I've got that same issue in my business. I've got revenue commitments. I've got expense commitments. There's a hundred different ways that that could change, but I live by a budget, so you do too. You have to as well.

The analogy I've often heard is -- they build a 50-story building and they have to come in on budget. You can handle a litigation matter and come in on budget.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

You've got to do your best.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Although it is difficult.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Indeed. Next is monitoring your cases. This is the nature of your job. You must keep a handle on every case that goes across your desk. You must not only monitor the case itself, but you must monitor your handling of it as well as the handling by your local counsel. Are you going to use technology as you do discovery? How are you going to know what's going on in that case?

And so you have to have a procedure, a method, a means to periodically and frequently review your files, making sure that your local counsel does likewise. There are other people involved in file review and case monitoring. If you have a lawsuit which

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

involves a highly technical matter, you will probably have someone from the -- in our instance, it would be an engineer who would have an interest in it. It could be a financial person. These are experts -- in-house experts who can help you keep on -- keep your case on track.

You need to have periodic meetings. Most of the time you can do this very inexpensively by telephone calls, conference calls. It is no longer necessary that you need to meet somewhere and run up that expense. A conference call by telephone, a teleconference call has worked out very well, too, with a television at each of the locations.

How do you keep your case records? Where do you store them? What kind of technology are you using to store your records? Have you gone beyond the paper age? And as time goes by you can assess the progress that your case is making towards either trial or settlement or dismissal.

Early case assessment is something you should keep in mind. It's not something you do once in awhile, but it's something you must do periodically. And the earlier you can get enough information to make a case assessment, the more easily you'll know the direction in which it's heading.

So make sure that your suits, your claims or what other matters in litigation come to you, to keep a handle on that constant reporting and the constant meeting. Very, very -- I cannot stress that too much.

Third is counsel billings. Many firms charge strictly an hourly wage, an hourly salary, an hourly fee -- call it what you want -- they -- these fees are worked out between the attorney and the corporation. I know of some corporations that run beauty contests which include fees that will be assessed by the law firm to the corporation, others use a negotiated fee with the attorney. One fee for the head attorney, another fee for a non-partner attorney, fees for paralegals, and fees for other technical persons in the law firm.

Such fees must be established ahead of time. You cannot just say we'll work it out. It doesn't work that easily. They must know early on, before you assign them anything, what the fees will be and what the expenses will be.

Some firms will make their copy machine a profit center, if you let them do it. And they will track on extra charges for certain expenses. These are within your jurisdiction to negotiate. And the control of these expenses rests on you, as well as the control of legal fees.

It's a very competitive field these days and there have been times when we have had to -- and I'm sure my colleagues would agree -- when we have had to sadly leave the company of local counsel because the partners in the law firm will not permit him to charge a rate that we can reasonably re-pay. But bear in mind, at the same time there are other good attorneys out there who can handle it just as well. So this is the control you have to maintain over billings.

And one final point on that, review your bills when they come in very carefully. There are sometimes duplications. There are sometimes incorrect fees. There are sometimes fees that you wonder why they're charging so much for doing so little. You have a right and a duty to go back to the attorney and say why are you charging this? What is this for? What is this expense for? I've never seen any of our local counsel, if you do it in the proper way, take any umbrage over the fact that you are questioning their bill. So if you do it in an amenable fashion, they will respond equally.

So these are the three points you have to bear in mind budgeting, case monitoring, counsel billing.

Kathie Lee -- Attorney

I would agree with Mel, especially with the counsel billing. You really review and closely monitor the legal invoices. That's critical. I think we've all had experiences where we would review a bill and there would be duplicate entries or entries from another

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

matter placed into that particular invoice. So there are some things that I think I would agree with Mel that we have an obligation to review and just make sure that everything in that invoice is in order.

And I would also agree with Mel on issues on expenses that you will cover. Those items should really be agreed upon up front, whether it's expenses or the types of billing, whether you're going to do a flat fee billing for a particular matter, whether it's blended, discounted. All of that really should be negotiated up front so that it's very clear, during the relationship, as to what you will or will not cover.

And I think that that would avoid a lot of problems down the line and issues that may be raised on what you would be willing to cover in that particular case and just maintain a better relationship between you and the outside counsel.

Philip Strauss - *Adobe Systems - Corporate Counsel*

This is Phil Strauss. A I come from my prior company, Brio Software, was a small company. We had three lawyers. But in a little bit of counterpoint, I think for a small company like that with a discreet litigation matter in a jurisdiction where you're not going to be a gravy-train client, it is sometimes difficult to negotiate. And in some cases I think the best you can hope for is the blended rate where you don't get charged for meals, photocopies, secretary time. You may pay a little more on the hourly rate, but in my opinion, that may be worth it.

Second point is if you have the -- if you have some experience as a litigator, you can do a lot in house. You can ask them to prepare the form -- their standard form of discovery responses or something like that and then you can liaise with your clients and do a lot of that work yourself and then send it to outside counsel for finalization.

The last thing is the one sort of black hole for you on the budget side is research. And you really need, at the beginning, to tell counsel how much you're willing to pay for research in both time and electronic research expenses. If you want to put a cap on dollars, a cap on hours, do it by email, save that email and it will be very valuable when they come back with twice as much time spent.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Thank you, Phil.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. And I think that's a good point. And also most, or many companies have outside counsel guidelines. And if your company has them, obviously, you need to review them and be very familiar with them. If they don't, it might be a good idea to develop some so that you can make sure that your outside counsel have a clear understanding of your expectations as far as fees and expenses.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

One question that I would have for the group would be this -- and I think Phil hit on it partially, does the group have any thought or any feedback on the -- many of us, including myself, were large law firm junior associates at one point. How about the idea of paying to train the junior associates of the law firm? I think that probably many of us have uncovered bills, as Mel said, but we review very closely and often they -- there's a lot of time spent on finding answers to things that more senior people, spending one minute, can answer for us or have accomplished for us.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Is there any way to sort of guard against that? Understanding that there is -- has to be some baseline -- junior associate work, if you will -- but in many ways a lot of clients find that they end up subsidizing the law firm's training of junior associates.

Philip Strauss - *Adobe Systems - Corporate Counsel*

This is Phil.

I think you can just say -- I don't -- if it's appropriate, say -- I don't want someone younger than a third year working on this.

On the other hand, if you're just doing a basic discovery response or drafting discovery requests, you can say to your partner contact "please don't do this yourself, push this down as far as you feel comfortable."

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah, I think that's a good point. Our outside counsel guidelines say that we're not going to train attorneys. Obviously, there's a little bit of a learning curve on many litigation matters, but I like Phil's comment about not -- that making sure that you don't have the newest attorneys working on matters where they're going to have to figure out how to draft just a form Motion to Dismiss or items like that or responding to form discovery.

And if so, if you're doing that, you need to be doing it knowingly and the outside counsel need to take that into account and either make sure the hours are monitored properly so that the bills are appropriate.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

And in many instances, when he uses young associates, and it's clear that he's taking up much more time than needed to work on some kind of document, the handling attorney will be more than happy to cut his time in half. I've seen that happen before. He is aware that it shouldn't take as long as he did take to do something and he cuts the bill in half, or makes some other adjustment, and is done quite willingly.

Kathie Lee - *Attorney*

That's right, Mel. I've had experiences like that as well, where a new associate was brought into our team from outside counsel and they would cut the time that was spent, recognizing that that was time that they were learning and that should not be appropriately billed to the client. So I think that's happened in many instances.

What I've done is I've tried to have a team representing the -- representing you, essentially having three or four associates that would become familiar with the company, the operation of the company so that you don't have that learning curve on a consistent basis by bringing in new associates to your cases.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Thank you. I just want to point out on a technical basis, if everyone could please just raise their voices, our participants -- there might not be an ability for everyone to hear so well, I understand.

The third topic -- or really the second major area is relationships with internal clients, which would include managing client expectations, building a litigation team and providing frequent case assessments.

And, Philip, if you could take the lead on that.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Philip Strauss - *Adobe Systems - Corporate Counsel*

I think the first point with managing client expectations is that unlike the law firm situation where everyone is at least familiar with some sort of litigation, when you get in-house, a lot of your clients, this will be their first contact with litigation. And they will be very, very scared. And I think you need to reassure them -- I recall a frantic payroll clerk running into my office saying we were being sued and do we need to tell audit committee. Well, it was a standard garnishment notice from some debt that an employee owed.

So I think you really need to -- half the time you need to calm them down first and sort of reassure them that this is not the end of the world. You do need to be very honest with them about what the litigation means and tell them what they can expect. And that's going to be different for a CEO and different for a salesperson.

There's a pretty famous ACCA article called, "250 Things I Wish I Knew When I Became General Counsel." I think the theme of that is that as a general counsel, you know you're prepared when -- I believe the author makes this point, if someone sent a due diligence request to buy your company tomorrow, could you respond?

And so to take that situation and move it over to the litigation context, I think you're ready for litigation when you have thought about in events -- What are the kinds of suits that I am likely to receive in my business? And then, for each one of those, think about where -- What kinds of discovery requests would I get? And do I know tomorrow where I would go? Because if you haven't thought about that, you're going to lose a week or ten days of your valuable response time just thinking about -- Well, what's available electronically? What's our email retention policy? Where does finance keep their files? Where does sales operation keep their files?

So I think this is a combination of thinking ahead and then when something does come up, to be there to hold your client's hand at the beginning and then to guide them properly.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Would anyone else like to add to that?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

One of the things I want to add is we've talked the outline briefly about building the litigation team. And I think it's real important, early in the process, that you identify who the key players are in the litigation and make sure that you meet with them, that they understand what you're doing in order to defend or to pursue the litigation and that they have -- that they're supporting you.

It's been my experience that in the cases we've oftentimes got the best result, we had the best team. And it also helps internally in that whatever the result, they will have been along for the process, so they'll understand why it came out the way it did.

The one other thing I would add and kind of a tip is -- Know who the decision-maker -- to the extent there's a client decision-maker in the cases -- and usually there is -- know who that decision-maker is and make sure that decision-maker is kept up to speed throughout the litigation process and that you do your best to resist there being significant buffers between the lead litigator -- that's you -- and the decision-maker. Because oftentimes the communications are lost in the translation if there is a substantial buffer between you and a decision-maker.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Added to that is the notion on the part of some of your clients that you, the attorney, must make all the decisions in the litigation and that they have no responsibility for making any decision on the matter. And this isn't the way it works. They have a responsibility as well and they have to know that many of the decisions are theirs.

Okay. Let's settle this case you say to them. It seems we're better off settling than litigating it. How much are you willing to pay? What do you people want to spend to settle this case? Now, you, as the attorney, you have an idea of what it'll settle for, you can tell them. Is this an amount that you can live with?

So the determination of these kinds of issues are not to be hoisted off on you, but that's part of the partnership as well. And working with your internal client, you have to decide, if, indeed you're going to settle, and if you're going to settle, at what level you can afford to do it.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

We received a question I would just like to bring up to the group. And the question had to do with intake. Do any of you use a sort of an intake process that resolves around a form or some type of a document or required email before you begin evaluations?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

We don't have an intake form for litigation. Usually it comes in through our service of process and consequently then we handle it. No, we don't really have an in- -- we do have kind of what I would consider an intake process as to who the matter is assigned to. What we do, we have a playbook as to what we do once the case has been filed. But no, I don't really have a form that we would use for that.

Anybody else?

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

We do it much the same way. We have a processing form so that we know who the attorney is assigned to the case and who is the paralegal who's assigned to it and the nature of the litigation. In our business, would it be a warranty litigation or would it be a product case? And the same time as when we take it in, we set initial reserves on it.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

And there's usually some sort of case management system or some sort of inventory system that you use to keep up with --

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Right.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

-- certain cases.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Kathie Lee - *Attorney*

And I believe I've used it more in a spreadsheet form so that as matters come in, they're listed under the particular type of case and the attorney handling, the paralegal. It's easier for everyone to be aware of cases and status if you can track it in a spreadsheet form.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. I would encourage everybody to have kind of an inventory of the matters that you're working on. I keep that on my desk, as far as -- and the status. And there's a contact list, as well as a general kind of objective for the matter as to what we're trying to accomplish in it.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Do you want to add -- I think you probably just said, Henry, but that form would be a name of case, the status, the sort of company objective.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. And that's also kept in a case management system. Now, I know -- I understand not all companies are going to have that. But, yeah, I think what you need -- obviously, an inventory of the matters that you're responsible for, including the name, your contact list, to the extent you need a refresher on what it's about.

But then I also kind of -- I make sure that we -- and we do keep this in the case management system, we have this kind of the path to victory. How we plan to get a good result in the matter. And that's what you focus on.

And then you -- from there, you can get into the details of how you're going to get there, but it's really understanding what your objective is very early in the case that has helped me keep a lot of different matters on track. You're usually going to have -- obviously, your matters are going to be in the tens and not the hundreds.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Great. Thank you all.

The next topic -- Relationships with your supervisor and the general counsel.

And, Henry, could you speak a little about that?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Right. Obviously, that's a situation that's going to be somewhat case-by-case depending on the personality and the requirements of your supervisor or your general counsel.

I think the best thing to do there -- and what I've tried to do is to -- is simply to ask. Ask what -- make sure I understand what's expected of me. Do you want frequent reporting on all cases? Or do you want frequent reporting on just the significant matters? How do you prefer to get that reporting? Do you -- is it email or do you want me to set up weekly meetings? In certain circumstances, I've had weekly meetings with my supervisor on matters, just to make sure we're all on the same page.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

In any event, I think it's important that there be frequent communications. Oftentimes, unfortunately, if you're not communicating with a supervisor or with a general counsel, they're not going to have any other way of knowing generally what you're doing except hearing it from third parties. And I think, generally speaking, you'd rather them hear it from you.

And so I would -- I'd encourage you to try to get some sort of a reporting process in place and you don't want to forward them every email that you get on a case. But you do want to make sure that they're up to speed on events in the case and that they don't hear it from somebody else. The last thing you want the general counsel to do is to hear something in the press or from the CEO that he should have heard up from his own legal department.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Or from someone on the board of directors.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Right.

You have to be proactive in your communications because sometimes you can be working so hard on a matter and you're doing exactly what you need to do, but if you're not letting other people know what you're doing or letting other people know what your strategy is, oftentimes you're not going to get the -- I guess for lack of a better word, the credit for the hard work that you put into it.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Anybody have an example they'd like to share? No names required on in terms of a surprise.

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Anybody that's been in litigation for a while and hasn't had a few surprises is probably not being forthcoming.

Kathie Lee - *Attorney*

I'm sure we've all been surprised and it's not always necessarily a positive. But I would just echo Henry with respect to the relationship with general counsel or your supervisor. And that is that you really need to make sure that your supervisor knows what you're doing. You may think that every day you're doing what you need to do and that's it and no one needs to know, but at some point, there are things that are going out that may just blow up.

So I guess you have to use some discretion, but it's just very important that your supervisor is aware of all of the activities that you're involved with, whether it is by having a weekly status meeting or monthly or at least a weekly report -- a written report of vital or active matters would at least keep your supervisor informed as to your activities and would minimize or help to prevent any surprises.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

We've got a question that came in. Would anyone like to comment on this? Please jump in. Does anyone see any differences in terms of the types of supervisor, whether it be a actual attorney as a supervisor or a business person as a putative supervisor? In this question it's, for example, a CFO.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Well --

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

I think it's like you say, usually, at least, a different setting in a lawyer supervisor and a -- particularly a CFO-type supervisor. You're going to be -- most -- no, you don't -- it's really hard -- I don't want to categorize folks too much. It's been my impression, and generally speaking -- or actually, I've only had legal -- or lawyer supervisors, but I've worked with CFOs and people in our finance group. It's a much more dollars and cents type approach as opposed to legal issues. With a CFO, it's usually a little bit more of a rigid numbers issue as opposed to a broader thinking legal policy issues.

Now, that doesn't mean that the general counsel is not going to be very cognizant of budget issues, or the CFO's not cognizant of policy issues, but I think your -- you do see different focuses, and also, generally speaking, a little bit of a different personality type. Although, that's not always the case.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Usually the -- because you're new to in-house, your way of operating isn't known very well by your supervisor, who is usually a lawyer. And so you have to make your business lifestyle known to that person. It's very common that you're left to do your work as you see fit to do it, subject only to the company's guidelines.

Your supervisor -- at least this is what I see -- your supervisor won't tell you how you must do something or the manner in which certain things must be accomplished. You're hired because you are a professional. You're hired because you know what to do. You're hired to get it done. This is the expectation. How you do it is of your choosing, subject only to company guidelines. But it's a wise practice, it's a good practice to let your supervisor know just how you do things. What is your corporate lifestyle and develop a relationship between your supervisor and yourself.

As you've seen in this entire discussion we've been conducting today, that the relationship you have are not limited. You've seen relationships you have to establish with your local counsel. You've seen relationships you've had to establish with your client. You've seen relationships you have to establish with your supervisor. And in a number of respects, they're quite the same, but I suggest to you that in many important respects, they are very, very different from one another and you have to cultivate each one. You have to please all of these folks because that's the way it's done in the corporate life.

And when I say "please them," I don't mean you have to cater to them, you have to kowtow to them. Quite the contrary. But they have to know what you're doing, and the manner in which you are doing it. And that establishes and helps to establish relationship you are forging.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Great. Thank you.

Now, before we go to our fourth and final topic, I would just like to repeat the email for questions again, if anyone has any questions, to please go ahead and email dlopez@medallion.com, which is dlopez@medallion.com. We'd be glad to ask questions of the panel as they come in.

The fourth topic -- relationships with the insurance department picks up issues understanding coverage and reporting to carriers and excess carriers.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

And, Kathie, could you please say a few things about that?

Kathie Lee - *Attorney*

Sure. It's been my experience that you need to work with your risk management group and/or your outside carriers to understand completely the coverages implicated under the various policies, whether the claim that's under would fall under a general liability, vicarious employment, the discussion must be had. And the policies, as lengthy as they are, unfortunately, must be read so that you can understand what's included, what's excluded. And that's really critical as you file claims.

And then secondly, you need to report to carriers and excess carriers. It's been my experience all claims. If an understanding can be reached that certain types of claims can be filed on a periodic basis, that's fine. But all of that would have to be agreed to early on in the relationship with the insurance carrier. And to avoid any missed time frames, it is probably a better practice, really, to report claims as they come in.

And there's usually a time frame to report for coverage basis. It's felt -- whether it's 30 days, 60 days, 90 days, it's critical that claims are reported within the set time frame or your claim may be denied. So that's a very important issue to remember and make sure that you comply with the requisite time frame for reporting claims.

An additional test may be just in terms of trying to manage the claims that come in and manage the status of the claims is to develop some type of spreadsheet, which is really for the benefit of you, as in-house counsel, as well as internal clients that are on a need-to-know basis would need an update on the status of certain types of cases, as well as the insurance carrier to track the cases, note when a claim was reported to the carrier, the amount in controversy, legal fees expended, and the status of reimbursement from carriers as well.

So that always has kept being the problem with -- especially if you're dealing with a lot of claims that come in and a lot of litigation matters is trying to control the -- and at least of understand the status of the cases. And really the only way to manage is to have some type of spreadsheet that will track the status of each and every matter of -- and when and where such a matter was reported to carriers.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

A question just came in, Kathie, and maybe for the group as well -- How important has it been for the group to ensure that the primary or favored outside counsel of your client is listed upon panel counsel with your insurance carriers?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

Yeah. I think that's a good question. Obviously, there are various types of litigation, some of which -- and under some policies at least -- the insurance company is going to be able to direct or certainly influence who is chosen for -- as your outside counsel. And it helps to have a counsel, in my opinion, that you're familiar with, that you trust and that you think have at least some relationship with in the past. So I would say that I think it's real important. And it certainly, I think, helps you encourage outside counsel to do what you think they need to do if there is that existing relationship with them and they're not just a panel counsel assigned by an insurance company.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Mel or Philip, would you like to add to that?

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

I can simply agree.

Philip Strauss - *Adobe Systems - Corporate Counsel*

Me, too.

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

There's nothing to add to it, yeah.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Okay. We have no more questions that have come in. If anyone does have a question, please do send it, at this time, to dlopez@medallion.com.

I just wanted to ask if -- was there anything that anyone on our panel wanted to add or clarify or bring up while we still have some time left on our webcast?

Henry Walker - *BellSouth Corp. - Chief Litigation Counsel*

I think one thing I want to add is that when you're new to an in-house job, initially you -- I think you have a honeymoon period somewhat in which you're given a fair amount of deference into making some decisions, at least to the extent you're responsible for certain litigation. And you need to make sure you take advantage of that.

I also think that one of the things that -- as we were putting this program together, that really became clear to me is that these relationships that you develop with the various different industries we've discussed -- outside counsel, clients, supervisors, insurance departments -- are very important. And similar to a situation as an outside counsel, you have to somewhat treat it like developing a client relationship and you have to work at it, whether or not it's going to lunch with them, whether or not it's making sure that you spend time with them, not just as you're required to do -- in order to get a matter done, but to actually develop an understanding of them as a person and to developing an understanding as to their work styles.

So I think that's an important factor and you can -- generally speaking, if you do that in your first 90 days or so, I think it's easier to do just because you're new and it seems to be more natural that you're out there trying to make these connections.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Great. Thank you, Henry.

Does anyone else have anything to add?

Mel Merzon - *International Truck and Engine Corp. - Senior Counsel*

Like any other position, whether it be in-house or in another -- in a law firm is a -- like starting a new job, any kind of job. You have to learn the ropes and you have to show people that you are capable. You have to prove that what you can do is of value to your company. And in so doing, you will, yourself, feel more comfortable, more secure. And with the improvement of your

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

capabilities in handling these matters, you will find a -- if this is what you want, of course -- you will find a permanent niche for yourself within the corporate law department.

Michael Carroll - Medallion Financial Corp. - Senior Vice President and General Counsel

Great. Thank you. And thank you, everyone. We're coming up on our hour. I'd just like to point out if anyone has any additional questions or offline questions, please go ahead and send them to that email address and we will do our best to try to answer them.

I would like to point out two things -- that the New to In-House Committee is sponsoring a survey that will be going out to New to In-House members of ACC that will allow us to determine how to program future events for New to In-House. So please do, if you receive that, respond.

And there will be a drawing for an iPod. Members of this panel are not eligible -- joking -- joking, of course. But there will be an iPod give-away courtesy of Baker & Hostetler law firm.

I would like to also mention that a replay of this presentation will be available and can be accessed through the same link as the live presentation. And this replay will be available one hour after the end of the presentation and will remain available for one year after the date of the live presentation.

And on behalf of the New to In-House Committee -- I know Kathie will want to thank our panelists on behalf of the Litigation Committee -- but to all of our panelists, thank you very much for spending a few moments of your very precious time talking to New to In-House members, the bar association of the importance of forging relationships and outside counsel relationships, in particular, from a litigation perspective, and we thank you for that.

Philip Strauss - Adobe Systems - Corporate Counsel

Thank you.

Kathie Lee - - Attorney

Great.

Mel Merzon - International Truck and Engine Corp. - Senior Counsel

Thank you.

Kathie Lee - - Attorney

Thank you, Michael. Michael, thank you very much for moderating. And thank you to all of the panelists today for participating and taking time out of your day to be involved in this webcast.

Michael Carroll - Medallion Financial Corp. - Senior Vice President and General Counsel

Great. My pleasure. Thank you, Kathie. Thank you for hosting this for New to In-House. Take care, everyone.

Dec. 01. 2004 / 1:00PM, **ACC - Forging Relationships: Keys To Success For The New In-House Litigation Counsel

Philip Strauss - *Adobe Systems - Corporate Counsel*

Okay.

Kathie Lee - *Attorney*

Bye.

Michael Carroll - *Medallion Financial Corp. - Senior Vice President and General Counsel*

Okay. Bye-bye now.

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