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FOCUS



Lisa Fleischer Chief Legal Officer, DeLage Landen Financial Services

A Message From the President

Dear ACC Greater PhiladeDear ACC Greater Philadelphia Members and Friends:

Happy 2023!! As the newly elected President, and long-time member of ACCGP,

I am honored and excited to serve this amazing group of professionals. First, I wish to thank Dan Slawe, our outgoing President, for his dedication and strong leadership in 2022. Dan will continue to serve as Past President, attending Board meetings and serving as Executive Chair of our DIEB Committee.

Next, it is with a heavy heart, that I inform you Chris Stewart, who everyone knows and loves as the heart and soul of this organization, will retire sometime in 2023. Chris has been an ACCGP main-stay for 20 plus years and has been vital to every President during those years. Stay tuned for a tribute to Chris later this year. On a very happy note, with Chris' assistance, we were able to locate and persuade Denise Downing, of Neff & Downing Management Services, to become ACCGP's new Chapter Administrator. If you haven't yet met Denise, please come say hello at our next event. Denise has more than 20 years' experience in association management and has been working side-by-side with Chris and our chapter for more than a year now. Please share a fond welcome to Denise when you see her next. We are so very lucky to have her!

So what's in store for 2023? We are already hard at work preparing for IHCC on April 20, 2023. Expect to see even more tech demos this year, along with our large variety of CLE classes and additional wellness initiatives, including meditation, stretching and a morning session with Lawyers Concerned for Lawyers. Indeed, we plan to add more Wellness sessions to all we do in 2023!

Our DIEB Committee is also hard at work. We are hoping that before long, DIEB will just be a part of all we do, all the time, everywhere we go. This year, expect to see more minority owned vendors working with us – up front and behind the scenes. I am proud of the very diverse make-up of the ACCGP Board, strong leaders whose opinions and insights make ACCGP an incredible experience for all of us.

Here are just a few of our upcoming events:

- GC/CLO Luncheon, Feb. 10
- MYC in Center City with Blank Rome, Feb. 16
- Labor and Employment Institute, Feb. 22
- GC/CLO Summit, March 8
- Contracts Institute, March 22

I thank you for allowing me to serve ACCGP and look forward to seeing all of you at future events!

Warmest regards, Lisa Fleischer President ACC Greater Philadelphia

In-Transition Membership

If you are a member who is in transition, take advantage of the opportunity to continue your membership AT NO COST. ACC will waive dues for existing members for up to one year, and offer a reduced membership rate for up to an additional two years if you are displaced but actively seeking a new inhouse position. [In-Transition/Retired Application] For more information about In-Transition Membership, please visit: https://www.acc.com/membership/become-a-member/in-transition-member.

Retired Membership

Recently retired ACC members may continue their membership at a **reduced rate of \$95 annually**. You can email membership@acc.com to request an invoice for this great rate, or submit the In-Transition/Retired Application, and be sure to select the RETIRED option. For more information about Retired Membership, please visit: https://www.acc.com/membership/become-a-member/retired-member.

If you have questions, please contact ACC's membership department at 202.293.4103, ext. 360 or at membership@acc.com.

Pennsylvania Courts Reaffirm Insurance Companies' Broad Obligations to Defend Policyholders

By Bruce Strong and Pamela D. Hans, Anderson Kill

Pennsylvania Courts Reaffirm Insurance Companies' Broad Obligations to Defend Policyholders

By Bruce Strong and Pamela D. Hans

Key Points:

- Two federal court decisions in 2022 illustrate forcefully that an insurance company's duty to defend is broad and deep.
- If even one allegation in a suit against the policyholder is potentially covered, the duty to defend kicks in.
- Policy exclusions that negate coverage for some or even potentially all allegations in a suit may not negate the duty to defend.

Pennsylvania policyholders should remember: You paid an insurance company substantial premiums not only to indemnify you for covered losses, but also to defend you against lawsuits even potentially covered. That is no small bargain.

Two recent Pennsylvania decisions reinforce the broad promise you obtain with your insurance policy. These decisions serve as helpful reminders that policyholders should insist on a defense even if (a) some claims in the lawsuit aren't covered; (b) an insurance company characterizes a lawsuit unfavorably; (c) the lawsuit alleges intentional conduct; or (d) even if facts may eventually come to light that preclude coverage.

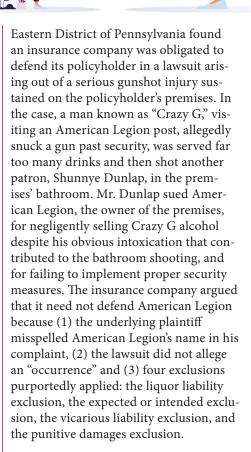
In Vitamin Energy, LLC v. Evanston Ins. Co., 22 F.4th 386 (3d Cir. 2022), the Third Circuit held that an insurance company had to defend a policyholder accused of improper advertising. In the underlying lawsuit, the makers of 5-hour Energy alleged that Vitamin Energy committed "false and misleading comparative advertising" and trademark infringement. Vitamin Energy's insurance policy insured against "advertising injury," including injury "arising out of oral or

written publication of material that libels or slanders . . . a person's or organization's products, goods or operations or other defamatory or disparaging material." The insurance company denied coverage, arguing that the advertisements in question only contained false or misleading statements about Vitamin Energy's own product, not 5-hour Energy's.

On appeal, the court found for coverage. It held that two allegations in the underlying complaint are "best read as saying not only that Vitamin Energy's own products" have certain vitamins "but also that 5-hour Energy's products do not." *Id.* at 393. Even though most of the underlying complaint discussed Vitamin Energy's statements about its own products, "the underlying complaint need only contain . . . one allegation" for the duty to defend to be triggered. *Id.* at 394 (emphasis added).

Next, the insurance company attempted to avoid coverage through application of an intellectual property exclusion, two "knowing" exclusions, and an "incorrect description" exclusion. The IP exclusion barred coverage for certain IP-related claims including unfair competition and trademark infringement; the "knowing" exclusions barred coverage for acts the policyholder knew "violated the rights of others" or for statements the policyholder knew were false; and the incorrect description exclusion applied to misrepresentations about Vitamin Energy's own products. Again, the court found that these exclusions might apply to the allegations in the underlying complaint or after development of the factual record. But because "at least one allegation" in the complaint is potentially covered, the insurance company must defend.

Similarly, in *AIX Specialty Ins. Co. v. Am.* Legion Dep't of Pennsylvania, No. CV 21-2338, 2022 WL 767834 (E.D. Pa. Mar. 14, 2022), U.S. District Court for the



The court rejected each of these arguments. First, the court rejected the "misnamed defendant" argument because it found that the plaintiff meant to name American Legion, the named insured in the policy. Second, the complaint alleged the policyholder's negligence, which is an "occurrence" under the policy. Third, the

continued on page 3

court found that none of the four exclusions relieved the insurance company from honoring its duty to defend. The liquor liability exclusion did not apply because the complaint also alleged negligent security, not only negligent service of alcohol. The expected and intended exclusion did not apply because American Legion did not expect or intend for Crazy G to shoot Mr. Dunlap (even if Crazy G did). The vicarious liability exclusion did not override the duty to defend because Mr. Dunlap sought to hold American Legion either vicariously liable or directly liable. And the punitive damages exclusion did not impact the duty to defend because that exclusion raises an issue of indemnity, not defense.

Taken together, these cases stand as a reminder that an insurance company's duty to defend its policyholder is sacro-

sanct, not easily cast aside or ignored. An insurance company must defend even if every single allegation in the complaint, except one, is otherwise excluded; even if facts may eventually come out precluding coverage; even if the lawsuit alleges intentional conduct; and even if the insurance company characterizes the lawsuit unfavorably. If there is some potential outside chance of coverage when liberally construing the allegations in the lawsuit, an insurance company must defend its policyholder

"...the court found that none of the four exclusions relieved the insurance company from honoring its duty to defend."

Bruce Strong, a shareholder in Anderson Kill's Philadelphia office, is a policyholder's attorney

and litigator who has represented clients in multi-million dollar property and liability insurance coverage disputes and multi-district class action litigation, including a landmark case brought by thousands of 9/11 families against sponsors of terror.

Pamela D. Hans, the managing share-holder of Anderson Kill's Philadelphia, PA office, is a Chambers-recognized policyholder's attorney and a member of the American College of Coverage Counsel.



Bruce Strong Anderson Kill



Pamela D. Hans Anderson Kill

Career Path: Persuade Like Aristotle

By James Bellerjeau, Lecturer at University of Zurich

If you want to know which students will become successful lawyers, it turns out the law school admissions test is not the best predictor. A few years ago professors Marjorie Schultz and Sheldon Zedeck identified 26 lawyer effectiveness factors that serve as better predictors of career success.

The whole list makes for interesting reading. Today, I want to focus on one set of skills the professors grouped under the "Communications" heading:

Influencing and advocating. Persuades others of position and wins support.

Writing. Writes clearly, efficiently, and persuasively.

Speaking. Orally communicates issues in an articulate matter consistent with issue and audience being addressed.

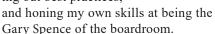
Listening. Accurately perceives what is being said both directly and subtly.

Master Skills to be Effective In-house Counsel

- Why It's So Hard Being a Good In-house Lawyer (the challenge);
- The Day You Became Smarter (writing plainly and clearly);
- Write Better Emails Today (taming the email monster);
- Maybe Don't Go to that Meeting (avoiding time-wasting meetings);
- Influencing others (this article); and
- Listen Up Already! (engaging with others).

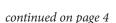
You can be well-liked, rigorous in your legal analysis, and correct in your conclusions. But inevitably, someone whose pay depends on disagreeing with you is going to challenge your views. It thus will come as no surprise to all of you practicing law in the real world that being persuasive is pretty important.

With all this in mind, I was annoyed that no one told me the secret to effective persuasion is no secret at all. That, in fact, it has been known for over 2,000 years thanks to Aristotle's Rhetoric. I spent the better part of 20 years watching, teasing out best practices,





One of the things I learned is that no matter how strong your persuasion skills, you can get better. Although I bet you're already pretty good, today I will give you a condensed version of time-tested advice on how to persuade, together with





Ververidis Vasilis /

a few modern tweaks. I personally put the lessons here into practice every time I have to teach or present.

You build credibility by never lying or shading the truth, even when it hurts your case.

Here are five elements Aristotle believed were critical to effective persuasion,* to which I will add a few observations:

1. Ethos (Credibility)

Ethos is that part of your talk where you give the audience insight as to why you are credible. This can come by virtue of your position or from your specific experience. I find you build credibility by never lying or shading the truth, even when it hurts your case. Admitting a weakness up front is a great way to show you can be trusted. It also helps to be transparent about your interests. People know you are representing a position, so go ahead and tell them what you want.

2. Logos (Appeal to reason)

Having set the stage about your credentials as a person, this is where you use facts and data to form a rational argument. Everyone likes to think they are logical, rational thinkers. So help them see a clear path to your point of view. Think of it as a fact-based hook for people to hang their hat on, something that allows them to agree with you.

3. Pathos (Human emotion)

Notwithstanding what we just said about the appeal to reason, the most powerful persuasion is carried on the wings of emotion. And the single best vehicle for arousing emotions is the story. The bulk of your presentation therefore comes in the form of storytelling. This doesn't have to be a fully fledged plotline. You do well to call upon a simple anecdote or episode from your life.

People know you are representing a position, so go ahead and tell them what you want.

4. Be tangible

Particularly when you are trying to get your audience to accept or understand a new idea, analogies and metaphors are great tools. They give the impression that the new thing is really just something the audience already understands. And they make otherwise abstract ideas tangible and vivid.

5. Be concise

People have short attention spans, now more than ever. Don't fight it. Instead, make your argument short and simple. Start strong and end strong.

In the business context, I assume your audience knows you and knows why you are there. Don't waste time and valuable attention on introductions, background, or other unimportant topics. I say jump right in to the heart of your story and grab the audience's curiosity. Storytelling is so important to persuasion that I start with it always, even when I have to take pains to later build credibility and the logical argument.

Practiced prepared remarks enough so that you can speak fluidly. Speak written remarks out loud at least once, even if only to yourself. This will help you catch awkward phrases that don't sound right.

Be animated, speak with energy, and show interest and enthusiasm in your

subject. Your excitement shines through to your listeners. But don't let your enthusiasm carry you away. Speak clearly and pace yourself. Get a friend to point out your "ums" and "ahs" and similar empty words.

Watch your audience carefully for clues as to how you're doing. Help them keep the thread of your story by stepping back on significant transitions: "This is where we are. I just discussed X, and now I am going to move on to Y."

I hope the law and the facts will always be on your side. When they are not, you need to be the best persuader in the room. And that is more a matter of preparation than anything else. I hope today's discussion arms you well for the battles ahead.

Be well.

* I was inspired in the discussion of Aristotle's Rhetoric by The Art of Persuasion Hasn't Changed in 2,000 Years.

Question, comment? Contact Career Path columnist James Bellerjeau.

<u>Learning, networking, and growing.</u>
<u>Join us. Become an ACC member now.</u>

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New Board Member Spotlight

Marko W. Kipa Assistant Deputy General Counsel, Comcast, Corp.

1. Tell us a bit about your current position, and the year that you started it.

I am an Assistant Deputy General Counsel at Comcast. I handle a broad range of matters related to compliance, government contracting, mergers and acquisitions, and ethics and integrity, amongst other legal and compliance matters. I joined Comcast in April 2021.

2. In what year did you first work inhouse, and how did you end up in your current position?

I first went in house in 2012 as an attorney for IBM. I was the lead lawyer supporting the company's work with the US Department of Defense. After several years in that role, I transitioned to the compliance side of the house and served as Counsel and Trust & Compliance Officer for IBM's US Public & Federal Market. Several years into that position, Comcast had an opening for a senior legal compliance position focused on government contracts and compliance. It was a perfect fit!

3. What law school did you attend? Where did you attend college and graduate school? What degrees do you hold?

I earned an LL.M. with highest honors in Litigation and Dispute Resolution from the George Washington University Law School and a J.D. with honor from the University of Maryland School of Law. I earned my B.A. cum laude in History, with a minor in Political Science, from Muhlenberg College.

4. Can you tell us how you successfully navigated your career from law school to your current position?

I have worked for the federal judiciary (US Court of Federal Claims), an AM Law 100 law firm (Sheppard Mullin LLP), and two Fortune ranked companies (Comcast and IBM). At each juncture, I was required to simultaneously apply my existing skill set and expand it. It was critical to take on increased responsibility and go outside my comfort zone – as the saying goes "what

got you here won't get you there." It is important to have a growth mindset, to embrace learning opportunities, and to develop a network of mentors/advocates who help steer and champion your professional development.

5. What do you consider to be your most pivotal career move?

My clerkship at the US Court of Federal Claims in Washington, DC. Whenever I am advising law students, I always recommend that they apply for a clerkship after law school. During my clerkship, I was able to witness top notch legal representation from the Department of Justice and private practitioners – briefs, motions, trials, oral advocacy, etc. – along with getting a behind the scenes look at the judicial decision-making process. It set the standard for my career.

6. What is the best thing about your current job?

Working for a world class company in a great city and collaborating with passionate people on interesting matters!

7. What is the worst job you have ever had?

I would not call it the "worst job", but it was my first job, and a great learning experience at that time in my life. I spent a summer working at a rest area on the turnpike rotating shifts between the frozen yogurt store and the coffee/snack shop.

8. What is the most valuable life lesson you still apply today?

Take advantage of every opportunity. How your life will look 5 years down the road depends on the decisions you make today. You are more likely to regret the things you did not do than those you tried and failed. Dive in. And, even if it does not work out, it is better to have tried and failed "while daring greatly" so that one's "place shall never be with those cold and timid souls who neither know victory nor defeat." Theodore Roosevelt, April 23, 1910.

9. What do you consider to be the best thing about ACC membership?

The people, the events, and the opportunities. It is a privilege to be able

to network and engage with other inhouse practitioners, especially in the same geographic area. The ACC has opened doors and allowed me to make connections I otherwise would not have made.

10. What tips do you have for attorneys new to in-house?

A large number of in-house lawyers come from law firms. While the law firm experience most likely got them the in-house position, moving in-house comes with its own set of challenges. The lawyers should not expect to work on a single matter around the clock for weeks or months on end. They should be prepared to handle numerous matters at the same time and to effectively collaborate with various parts of the business and stakeholders. To be successful, they will need to learn the business, the players, and the company's objectives, along with its risk tolerance.

11. What are your interests outside of work? What do you do to decompress and relax?

I enjoy skiing, ice hockey, racquetball, and reading for pleasure. I also love spending time with my six-year-old son and passing along some of these interests. We ski and ice skate together (with ice hockey up next!), and I am currently reading him Harry Potter and the Chamber of Secrets.

12. If I were not practicing law, I...

Would be a teacher. Both my parents were teachers, and I am only a few credits short of receiving my secondary education teaching certification.

13. My favorite vacation spots are:

Reykjavik, Iceland; British Virgin Islands; Wildwood Crest, New Jersey; and sundry ski areas.

14. A place I have never been but would most like to visit is:

Jackson Hole, Wyoming. It is on my ski area bucket list.

15. My all-time favorite movies are:

The Godfather, Tombstone, and Miracle on Ice.

New and Returning Members

Lauren Abbott

Marlette Holdings, Inc.

Louis Abrams

Brown Brothers Harriman

Jamie Augustinsky

Penn Entertainment, Inc.

Hilary Barrett

Penn Entertainment, Inc.

Andrea Brockway

Lannett Company Inc

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Anuja Desai

PNC Bank

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Oracle America, Inc.

Joseph Glyn

ARAMARK Corporation

Rachael Greeley

Wawa, Inc.

Samantha Haggerty

Penn Entertainment, Inc.

Damian Hamme

InterDigital Inc.

Andrew Heffler

Attorney

Kathleen "Sue" Heisinger

Johnson & Johnson

Ashley Howard

The Siegfried Group, LLP

Rachel Keene

Accolade, Inc.

Katharina Kilmer

ARAMARK Corporation

Lauren Kiss

Lumen

Harper Ko

Penn Entertainment, Inc.

Carlos Lummus

Attorney

Catherine Martin

Resolve to Save Lives

Brian McEntee

CID Entertainment, LLC

Ross Oehler

Veranova, L.P.

Ada Okafor

Attorney

Jaime Petenko

Cengage Group

Whitney Pfeffer

Imperial Dade

Robin Pinder Herndon

Varian A Siemens Healthineers Company

Emily Plowcha

ARAMARK Corporation

William Reynolds

Marlette Holdings, Inc.

Lara Ruggerio

Wish Inc.

Bijal Shah Creamer

The Chemours Company

Josh Sidsworth

Penn Entertainment, Inc.

Molly Simon

DeLage Landen Financial

Services, Inc

Russell Smith

Deloitte Global Services

Limited

Christopher Soriano

Penn Entertainment, Inc.

Lakisha Spence

B. Braun Medical Inc.

Jean Traub

Marlette Holdings, Inc.

William Viss

Toll Brothers, Inc.

Leo Wan

Penn Entertainment, Inc.

Ludwig Wang

Exelon Business Services

Company, LLC

Michael West

Penn Entertainment, Inc.

Kevin Yoegel

SAP America, Inc.

Mary Ziegler

Chatham Financial

Wiliam Zitelli

MetLife

ACC News

ACC CLO Survey - Download Today

The 2023 ACC Chief Legal Officers Survey, conducted in partnership with Exterro, seeks to better understand the role of the CLO in the modern business environment. The survey covers four general topics: the role and reach of the CLO, the value of the legal department to the company, the political and regulatory landscape, and the outlook for the legal department in the coming year. This report provides unparalleled insights directly from CLOs as they share the trends, challenges, and opportunities for the year ahead.

Almost 900 general counsel and chief legal officers from 35 countries representing 20 industry sectors participated in the survey. The results continue to bring focus to the immense value that Legal brings to the business, the growing influence of the CLO within the company's leadership, and the increase in CLO oversight of various corporate functions.

Professional Development Opportunities with your ACC Membership

Do you have goals for professional growth this year? ACC has resources to help you achieve them. Visit ACC's <u>Career Development Portal</u> to gain insight into improving your in-house career, upload your résumé to ACC's Jobline, or schedule a session with one of the coaches in ACC's Directory of Career Coaches. All in-house counsel are eligible to receive a complimentary 30-minute session with one of ACC's established coaches.

ACC365 App Now Available to Download

Your work goes beyond your desktop and now so does the ACC member experience. The brand-new ACC365 app is now available to <u>download</u>. Stay connected and get the ACC experience in the palm of your hand. With one tap, you are plugged into the people, resources, and knowledge that accelerate your career.

In Case You Missed It

MYC

Harper's Garden

February 16, 2023







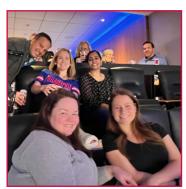




76er's Game February 1, 2023







Garces Trading Company

January 25, 2023





Holiday Party/Board InstallationDecember 13, 2022





























Diversity Summit

December 8, 2022





























2023 Upcoming ACCGP Events

Visit ACC Greater Philadelphia for the most current event details or to register for chapter events.

MARCH

March 8

GC/CLO Summit at the Loews Philadelphia (In-person)

March 22

Contracts & Commercial Law CLE Institute (Virtual)

March 23

Global Membership Month Networking Wine Tasting/ Dinner at the Restaurant School at Walnut Hill College (In-person)

March 30

Women's Summit at the Marriott Philadelphia West (In-person)

APRIL

April 20

Annual In-house Counsel
Conference at PA Convention
Center (In-person)

April 27

Meet Your Counterparts
Networking Reception
(In-person)

MAY

May 5

GC/CLO Lunch Club at the Eddie V's in King of Prussia (In-person)

May 10

Litigation CLE Institute in Center City (In-person)

May 11

Annual Spring Fling (In-person)

May 16

Meet Your Counterparts
Networking Reception in King
of Prussia (In-person)

May 17

Litigation CLE Webinar (Virtual)

May 21

Philadelphia Bar Association's 5K Run/Walk for Charity (In-person)

Be on the lookout for calendar updates!



Sponsors for 2023

We thank our 2023 Sponsors for their support of our chapter. Without them, we could not achieve the levels of success that the chapter consistently reaches.

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Chief Legal Officer
De Lage Landen Financial
Services

President-Elect

Joseph Nullmeyer

VP, General Counsel Mitchell Martin Inc.

First Vice President

Frank R. Borchert, III

General Counsel & Corporate Secretary Marlette Funding, LLC

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Director, Senior Counsel Burlington Stores, Inc.

Michael Donnini

Counsel Comcast Corporation

Tara Gibbons

Senior Legal Counsel Wawa, Inc.

Tonya Harris

Senior Counsel PPL Services Corporation

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Yan Ling (Winnie) Wang

Senior Legal Counsel De Lage Landen Financial Services, Inc.

Michelle Warner

Counsel and Chief Ethics Officer Delaware River and Bay Authority

Chapter Administrator

Christine Stewart ("Chris")

ACC Greater Philadelphia

Assistant Chapter Administrator

Denise Downing

Chapter Assistant

Joanne Ray

ACC Greater Philadelphia