

UPCOMING MEMBER EVENTS

December 10, 2019
Monthly Luncheon
Sponsored by Arnall Golden Gregory

January 14, 2020
Monthly Luncheon
Sponsored by Parker Hudson

February 11, 2020
Monthly Luncheon
Sponsored by Polsinelli

March 2020
Deep Dive Luncheon
International – Focus on India
Sponsored by Majmudar & Partners

March 10, 2020
Monthly Luncheon
Sponsored by Womble Bond Dickinson LLP

April 2020
ACC Value Challenge

May 6, 2020
Corporate Counsel Awards
Atlanta Business Chronicle

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Join Your ACC Georgia Colleagues on LinkedIn

We've launched a new LinkedIn 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 request to join the group. We look forward to connecting with you online!

DEAR ACC GEORGIA MEMBERS:



*Angela Frazier
ACC Georgia President*

Greetings!

As 2019 comes to an end, so too does my time as president of the Georgia Chapter of the Association of Corporate Counsel. I have thoroughly enjoyed serving as your chapter president during the past two years, and although I am saddened to leave this important role, I look forward to continuing to be active in the chapter.

We have had a very successful year as a chapter. We were fortunate to see an increase in the number of chapter members, we acquired new sponsors and we expanded the number and types of programs we offer to our members. We could not have done this without the generous support of our sponsors and the relentless efforts of our board members and other partners who created a wealth of programs – typically at no cost – designed specifically for in-house counsel. During my time as president, we also implemented processes to improve how we operate as a board and function as a chapter, allowing us to be more efficient in conceiving, supporting and implementing beneficial programs for our members.

A Year of Professional Growth

This year's diverse slate of learning and networking opportunities has included the continuation of our Leadership Development Series, 11 Monthly Luncheons, five Deep Dive Luncheons, five Women's Initiative events, a webinar and an International Practice program on doing business in China.

This year we also offered our members unique ways to grow both personally and professionally. In February, Ogletree Deakins gave in-house counsel a thrilling opportunity to get behind the wheel at the BMW Performance Center in Greer, South Carolina, and to obtain CLE credit. Then in May, Ogletree brought the ACC Georgia and ACC South Carolina chapters together for the first time for a beautiful day of learning and networking at Chateau Elan Winery & Resort. After participating in a CLE session, members could enjoy a choice of experiences, including a zip line over Lake Lanier, wine tasting, culinary classes or exploring the estate's outdoor trails. Additionally, the annual Atlanta Braves event sponsored by Nelson Mullins at SunTrust Park explored trends in privacy and data security. We launched a new LinkedIn group – "Association of Corporate Counsel Georgia" – where members can connect with colleagues. And the CLE Jamboree sponsored by King & Spalding provided a full day of educational sessions and featured Dan Coats, former director of national intelligence in the Trump administration, as the keynote speaker.

Opportunities for in-house counsel to give back to the community included two pro bono events that provided legal services to nonprofits, our annual Street Law classroom education program and the ACC Value Challenge, which allowed our chapter to present a check for more than \$36,000 to the Pro Bono Partnership of Atlanta.

ACC Georgia was proud to sponsor once again the Lori Ann Haydu Memorial Summer Internship program, which provided three fully paid summer internships to rising second year law students, who spent their summers working in two different corporate legal departments.

Looking Ahead to 2020

We look forward to working with the board members who are returning and the new members who are joining the 2020 board. I would like to give a special thanks to Immediate Past President Nancy Kumar, who has been a wonderful advocate and partner throughout my term. Thanks also to Melloney Douce, who is taking the reins as president. The chapter is in excellent hands.

Thank you very much for the opportunity to be your ACC Georgia president. We wish everyone a safe and joyful holiday season and look forward to seeing you at chapter events in the new year!

Angela Frazier
ACC Georgia President
Assistant General Counsel, Cox Communications, Inc.

MEMBER SPOTLIGHT

Guanming Fang Ray

Vice President & General Counsel at WePartner Management, LLC



Q. Did you have another career before becoming a lawyer? How did that experience help you in your current position?

I was a journalist for a few years in Beijing, China. That experience is helpful to me in so many ways and certainly contributed to becoming who I am. My experience as a journalist helps me write in a simple and precise way. As a journalist, I had to process a large amount of information and distill it to something succinct and on point. As we all know, that skill is critical to a lawyer.

Q. What do you like about working at WePartner?

The founders of WePartner have a vision – using the power of real estate to build human connection, happiness and prosperity for all – that I want to be part of. WePartner has a group of exceptionally talented and driven people. We work hard and have fun! And we emphasize getting involved in the community.

Q. What keeps you up at night?

I am the only lawyer in the company and am responsible for all legal matters. Prioritizing competing demands is key in getting things done in the timeframe they need to get done. Making sure that I have not dropped any ball and that I have thought through each matter carefully is always at the top of my mind.

Q. What is your biggest legal challenge?

Being the only lawyer in the company, I frequently come across legal issues that I have not handled before – some more challenging than others. Fortunately, I have a network of lawyer friends and outside counsel that I can call on if I need to talk through any issue.

Q. What makes a successful leader?

A successful leader is someone who has a vision and who inspires others to share that vision and be the best they can be in the pursuit of that vision. A successful leader is firmly in control of every aspect of the entity she's responsible for but allows others to own their tasks. She is also empathetic and open-minded.

Q. What is your best advice for outside lawyers?

Focus on the business. My goal is to get the deal done or to resolve an issue in the most effective and reasonable way. I don't need all the minute details, just the relevant ones. The more you talk, the more I have to pay. I don't need a perfect document, just one that will achieve the business goals, without typos!

Q. What is a proud moment that stands out?

As lawyers, we are often asked to speak at events. These events typically come and go without leaving any mark in our memory. In June, I was asked to be the keynote speaker at a new citizens naturalization ceremony at the U.S. District Court for the Northern District of Georgia. As an immigrant myself, this was the proudest moment about myself that I have ever felt! It was a tremendous honor to share my own immigration journey and my thoughts on being an active citizen and to encourage attendees as they started their new lives as U.S. citizens.

Q. What keeps you busy outside of work?

There is so much to do! I try to run as frequently as I can. I enjoy hiking with my husband and friends. I do some gardening when the weather is good. I like cooking and eating, so my husband and I do a fair amount of entertaining at home. We also go to movies, shows and art exhibitions, and we travel as much as we can.

Q. What interesting books have you read recently?

Two books came to mind. "Educated," by Tara Westover, a memoir of Tara Westover's upbringing in Idaho, is gut-wrenching, gripping and brutally honest. "Okay for Now," by Gary D. Schmidt, is a children's novel about a boy who felt awkward in a new environment but grew confident through learning how to draw, among other things.

Q. What is your favorite travel destination?

My favorite travel destination is always my next one! Traveling not only enriches the mind by seeing the beautiful sceneries, architecture and arts, it also opens the mind to experience different cultures and different ways of life.

Q. What would you like to share about your family?

I am happily married to another lawyer who maintains his solo practice. I have two (almost) grown sons – a U.S. Navy Pilot and a sophomore at the University of Georgia. I am one lucky and proud mama!

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

Hmm ... perhaps a travel blogger.

Thank You to Our Sponsors!

Thank you to our recent luncheon and event sponsors:

September 10 – Monthly Luncheon – Weinberg, Wheeler, Hudgins, Gunn & Dial – “The #MeToo Backlash, Violence in the Workplace and Other Labor & Employment Hot Topics”

September 26 – Women's Initiative Event – Eversheds Sutherland (US), Kilpatrick Townsend, Ogletree Deakins, Taylor English, Bodker, Ramsey, Andrews, Winograd & Wildstein, LawDocsXpress – “Pay Equity”

October 8 – Monthly Luncheon – Fish & Richardson – “Pre-Suit Best Practices for Intellectual Property Litigation”

October 10 – Deep Dive Luncheon – Fisher & Phillips – “Making #MeToo #NotHere”

October 17 – CLE Jamboree – King & Spalding

October 22 – Deep Dive Luncheon – Legality – “How to Land Your Dream Job In-House”

November 7 – Deep Dive Luncheon – BakerHostetler – “Closing Out a Decade: What's Next for Privacy and Digital Innovation”

November 12 – Monthly Luncheon – Squire Patton Boggs – “Trends in Data Privacy: What to Expect in 2020 and Beyond”

November 14 – Legal Checkup with Pro Bono Partnership of Atlanta – Eversheds Sutherland (US) LLP, Cox Enterprises and its affiliated entities

December 3 – Half-Day Seminar – Kilpatrick Townsend – “International Symposium: China”

December 5 – Networking – Winter Social at Under the Cork Tree – FordHarrison

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.



ACC Georgia President Angela Frazier and Eversheds Sutherland Partner Lew Wiener at August's monthly luncheon. Photo credit: Alison Danaceau

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.

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

FROM OUR EVENT SPONSORS

Combating the 'Rambo' Litigator: Learn How to Defeat Lawyers Who Employ Dirty Litigation Tactics to Win at Any Cost

By Brannon J. Arnold

Weinberg Wheeler Hudgins Gunn & Dial

All attorneys will deal with difficult opposing counsel at some point in their career. Some of these lawyers take it to another level. We call these lawyers “Rambo” litigators. They use rudeness as a weapon and violate rules of procedure and professionalism to gain a tactical advantage. However, when combating a Rambo litigator, you can still achieve your objectives with civility, poise and professionalism.

Who is a “Rambo” litigator?

A Rambo litigator is an overly aggressive lawyer who uses intimidation and threat tactics in representing a client and lacks courtesy and professionalism in dealing with other lawyers. Most people are familiar with John Rambo — a troubled war veteran in a series of action movies — who responded to provocation with overwhelming force.

Like the character, Rambo litigators take an overly aggressive approach to their practice. They often use unethical or illegal tactics in hopes of gaining an advantage over opposing parties and counsel.

These are some of the Rambo litigator’s most common dirty tactics:

- **Written discovery:** A Rambo litigator abuses the discovery process by serving excessive discovery requests that are unduly burdensome and overly broad; failing to respond to discovery requests within required timeframes; or submitting inadequate responses.
- **Inspections:** A Rambo litigator initially may disguise his tactics by being extremely cooperative, for example, telling you on the phone that you or your client’s expert may perform an inspection without him. DON’T DO IT! They may later accuse you of tampering with evidence, taking evidence or destroying evidence.
- **Depositions:** A Rambo litigator will often unilaterally give notice of a deposition without clearing the date with you and then refuse to reschedule. When defending a deposition, the Rambo litigator will make inappropriate or excessive speaking objections. Additionally, the Rambo litigator may use “sound-bite questions” intended to elicit responses that are only marginally relevant but can leave a strong negative impression with the jury if entered into evidence.
- **Motions to compel:** Rambo litigators will threaten motions and sanctions at the drop of a hat. They misrepresent your statements and actions to the court so that by the time you get in front of the judge he doesn’t know who to believe.
- **Trial:** Some plaintiffs’ lawyers, including Rambo litigators, employ the Reptile theory, portraying the defendant’s conduct as a threat to jurors’ own safety and the safety of others, at trial in hopes that jurors’ primal instincts will override logic.

Weapons for combat

While the Rambo litigator can test your patience, there are tools that can help you disarm and defeat this difficult adversary:

- **Don’t engage:** As tempting as it might be to fight fire with fire, it does little good to do so. If you respond to Rambo tactics with Rambo tactics, you let your opponent dictate your litigation strategy. As litigators, we don’t like losing, so remember that when you take the bait, you relinquish control of the situation.
- **Document everything:** Rambo lawyers are unreliable and untrustworthy, so protect yourself and your client by documenting everything that is said and done. It is also smart to send your communications in a way that provides a receipt that opposing counsel received them.
- **Pick your battles:** It is tempting to vigorously oppose everything the Rambo lawyer does. But you’re better off distinguishing what conduct is reasonable and what is unreasonable and then responding appropriately. Wait until Rambo has clearly crossed the line before you call his behavior to the attention of the court. If you do so too early, the court may conclude that the lawyers just do not get along.
- **Be prepared:** A Rambo lawyer usually uses incivility to mask insecurities. If you know the facts, the rules and the law, you will be able to battle the Rambo lawyer with brilliance. Be thoroughly familiar with the applicable rules of procedure for the jurisdiction so that you are confident in how you are conducting yourself. Many judges have their own rules, so be intimately familiar with those as well.
- **Prepare your client:** Advise your client in advance of what to expect and direct him or her not to engage on the Rambo lawyer’s level. Specify to which topics your witness will be responding ahead of time and stay within those parameters. Familiarize your witnesses with one or more case themes to which they can return when faced with a question they are unsure how to answer.
- **Don’t be afraid to ask for advice:** If you are a younger lawyer and this is your first time encountering a Rambo litigator, consider reaching out to your mentor or a more experienced lawyer for guidance and advice. The ACC’s Compliance and Ethics Committee is a good resource when you are presented with new and difficult situations.

Dealing with a Rambo litigator is never easy, but armed with the proper weapons, you will be prepared for battle. While Rambo tactics may allow him or her to come out ahead on occasion, more likely than not the judge will catch on eventually, and hopefully justice will be served.

Weinberg Wheeler Hudgins Gunn & Dial Partner Brannon Arnold focuses her civil litigation practice on product liability, catastrophic injury and premises liability. Contact her at barnold@wwhgd.com.



Brannon Arnold and Matthew Gomes, partners at Weinberg Wheeler Hudgins Gunn & Dial, and ACC Georgia President-Elect Melloney Douce at September’s luncheon presentation.

Photo credit: Alison Danaceau

#MeToo Backlash and Other Emerging Trends in Employment Law

By Matthew T. Gomes

Weinberg Wheeler Hudgins Gunn & Dial

#MeToo. Parental leave. Legal marijuana. Ban the box. The workplace is changing, requiring companies to rethink policies and practices.

#MeToo Backlash

In a 2018 survey by Survey Monkey and Leanin, 28% of male managers reported they were uncomfortable participating in common work activities with a woman. Fast forward one year and the number jumped to a whopping 60%. These days, men are treading lightly, fearing the appearance of impropriety. The potential fallout is a #MeToo backlash that could have women, already underrepresented at the C-suite level, restricted in their development and networking opportunities.

Employers should push back on the backlash and apply common sense rules:

- trade chivalry for common courtesy
- focus feedback on talents, performances and competencies, not appearances
- create public environments for meetings and mentoring sessions
- stress the positive aspects of mentoring and professional development in harassment prevention training

Arbitration Agreements

It may become easier to take sex discrimination complaints to court. Federal legislation that would ban companies from requiring employees to resolve legal disputes through mandatory arbitration was introduced this year. The Forced Arbitration Injustice Repeal (FAIR) Act would prohibit predispute arbitration agreements that require arbitration of employment, consumer, antitrust or civil rights disputes as well as agreements that prohibit class or collective arbitrations. The arbitration clause is included in millions of employee contracts. If passed, the act will give employees access to courts in cases ranging from overtime disputes to sexual harassment.

Workplace Violence

The reality is that workplace violence has become the “new normal.” Nearly 10% of fatal workplace injuries were intentionally inflicted by another person, according to data collected by the U.S. Bureau of Labor Statistics.

Companies must enact a zero-tolerance policy covering workers, visitors, contractors and other individuals who may come in contact with personnel. Additional steps recommended include:

- assess the worksite and identify potential risk factors
- be alert to signs of potential workplace violence
- develop an active shooter action and evacuation plan

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FROM OUR EVENT SPONSORS

King & Spalding Presents 10th Annual CLE Jamboree

ACC Georgia's 10th annual CLE Jamboree, hosted by King & Spalding, provided in-house counsel with insights on trending legal topics, highlighted by the impact of technology on the private sector and national security in a keynote talk by former Director of National Intelligence Dan Coats.

King & Spalding Partner Shelby Guilbert and ACC Georgia President-elect Melloney Douce welcomed more than 200 lawyers and guests on October 17 to the firm's newly renovated space. The event culminated with an afternoon networking reception on the rooftop terrace overlooking midtown.

Beginning the day with a conversation moderated by King & Spalding Partner Tom Spulak, Coats described the challenges of leading the intelligence community in an uncertain world. Coats said one of his greatest fears was the emerging threat posed by a technological revolution that enables enemies of all sizes to attack with the click of a keyboard. "Instead of lining up a thousand tanks and 500 planes, you can do major damage by getting on the web and getting in our critical infrastructure systems," Coats said.

Coats said the cyber threat is compounded by a jihadist movement built on martyrdom. The director of national intelligence position was created after 9/11 due to a perceived lack of coordination among U.S. intelligence gathering agencies amid threats from the rising extremist culture in the Middle East. "They had said that what they wanted to do was take down the infidels, and we were the infidels," Coats said.



Former Director of National Intelligence Dan Coats and King & Spalding Partner Tom Spulak discuss cyber threats during the opening session of the CLE Jamboree. Photo credit: Scott Walker

He compared the intelligence agencies' efforts to combat cyber threats to a game of chess. "The bad guys are always looking for ways to make that next chess move around or work over whatever defense put in place," Coats said. "That is a great challenge to all of us in terms of how we protect your secrets."

The private sector can play an important role in detecting and defending against cyber threats, Coats said. "I think we're coming to understand both from the business side and the government side that you have to cooperate."

"We're not there to try to tell the financial world how to run their business," Coats said. "But we are there to say we have capabilities to stop threats from happening and to know about something that's coming that we need to share with each other."

Hot Topics for In-House Counsel

The ramifications of emerging technology came up frequently throughout the day in panels examining various challenges facing corporate counsel. In-house lawyers and King & Spalding counsel provided insight on a wide range of matters including:

- **The U.S. Attorney's Office:** U.S. Attorney Byung J. Pak began the day's sessions with an introduction to the people and priorities of the U.S. Attorney's Office for the Northern District of Georgia. Representing the office were Assistant U.S. Attorney Kelly K. Connors, Cyber & Intellectual Property Crime Section Chief Michael V. Herskowitz, Complex Frauds Section Deputy Chief Christopher J. Huber and Complex Frauds Section Chief Stephen H. McClain.
- **Corporate Law:** RentPath Senior Corporate Counsel, Sameer Asher led a quick-hitting and wide-ranging discussion of hot topics in corporate law. On the panel from King & Spalding were Partners Zach Cochran and Spencer Stockdale and Senior Associate Danielle Chattin.

- **Crisis Management:** King & Spalding Partner Shelby Guilbert moderated a panel on best practices for preparing your company before, during and after disaster strikes. Adding their insights were King & Spalding Partner Adam Sowatzka and PwC Principal David Stainback.
- **Professionalism:** During lunch sponsored by PwC, King & Spalding Partner Rahul Patel led an interactive dialogue with leading Atlanta-based GCs on how to best handle situations professionally, with reflection on the Lawyer's Creed and the Aspirational Statement on Professionalism. Joining the discussion were NCR Corporation Executive Vice President, General Counsel and Secretary Jim Bedore, Rollins, Inc., Vice President, General Counsel and Corporate Secretary Beth Chandler, Federal Reserve Bank of Atlanta Senior Vice President and General Counsel Richard Jones and Harry Norman Vice President and General Counsel Ashoo Sharma.
- **Cyber threats:** King & Spalding Partner Scott Ferber moderated a panel that examined the evolving cyber threat landscape, including the California Consumer Privacy Act. On the panel were King & Spalding Associate Anush Emelianova and PwC Principal Mark Ray.
- **AI and Machine Learning:** King & Spalding Partner Liv Kiser led a discussion on how machine learning, predictive analytics and artificial intelligence are transforming legal practice. Joining her were FirstKey Homes General Counsel Tom DeRue, King & Spalding Partner Bill Gordon and PwC Principal Justin Offen.
- **Georgia's Business Court:** King & Spalding Partner Warren Pope provided an early look at Georgia's new statewide business court in a conversation with its newly confirmed jurist, Judge Walter Davis, and Robbins Firm attorney Carey Miller.
- **Cannabis and Sports Betting:** King & Spalding Partner Randy Bassett led a panel that provided an overview of the legal challenges of two emerging areas of Georgia law. On the panel were AMB Group Senior Counsel Melissa Altman, TriGrow Systems General Counsel Jennifer Liotta and Surterra Wellness General Counsel Sara Loya.



SCENES FROM CLE JAMBOREE



#MeToo Backlash and Other Emerging Trends in Employment Law

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Marijuana in the Workplace

While more than half the states allow marijuana for either medical or recreational use, the fact remains that under federal law, marijuana use is still illegal. Nevertheless, users in some jurisdictions are finding job protection in the courts.

Medicinal users with valid medical certification have had courts rule in their favor over claims of unlawful firings and denial of employment after positive drug testing. While nondiscrimination provisions typically exclude jobs that require drug testing under federal law, companies will need to re-evaluate policies to reduce the risk of litigation, especially as more states consider legalization.

Paternity Leave

Companies are increasingly recognizing the importance of parental leave for fathers. Yet, the benefits for men still lag behind those for women. In some cases, challenges are being taken up in the courts alleging that leave policies discriminate based on sex at certain companies.

It is legal to provide women with more time off after childbirth but only as it relates to physical limitations imposed by pregnancy or childbirth, not for purposes of bonding or childcare. In addition, it is permissible to require employees to use paid time off before collecting parental leave pay as well as to have Family and Medical Leave Act (FMLA) policies run concurrently with parental leave. To mitigate risk, firms should set eligibility for parental leave requirements such as a minimum length of service.

Ban the Box

Momentum is growing to have companies remove the “check box” in job applications asking if applicants have criminal records because of its disproportionate impact on minority candidates. This practice already is prohibited in more than 20 states and 150 municipalities across the country. The Fair Chance Act, which prohibits federal agencies and their contractors from requesting that applicants disclose criminal history before receiving a conditional offer, passed the U.S. House of Representatives in July 2019 and is now in the Senate. Companies should review policies to ensure compliance.

Matthew Gomes is a partner at Weinberg Wheeler Hudgins Gunn & Dial where his practice focuses on labor and employment law. He provides clients with preventative counseling and training involving discipline, discharge, reductions-in-force and other personnel matters, employee handbooks, employment agreements, affirmative action plans, and audits and inspections from government agencies. Contact him at mgomes@wwhgd.com.



Photo credit: Alison Danaceau

COMMUNICATIONS CORNER

When a Crisis Comes, In-House Counsel Can Take on Broader Roles

By Dave Poston, Esq., and Megan Paquin, APR, CPRC
Poston Communications LLC

While in-house counsel frequently are called to lead in a crisis, the role of the legal department has evolved in today's business environment. Now, more than ever, corporate counsel are advancing standard crisis management beyond traditional legal analysis and response. Whether it be in planning, response or recovery, corporate counsel are integrating communications in and out of the courtroom to advocate for their organizations in new and exciting ways.

Change in Perspective and Approach for Managing Crisis



Dave Poston

In its "2019 Global Crisis Survey," PwC details lessons in-house counsel can learn from 4,500 crises. The data shows crisis preparedness is the next global advantage. Corporate leaders are urging executives to view crisis management as a strategic imperative rather than an inconvenient truth. One shift is the changing role of the legal department in hiring communications counsel. Traditionally, public relations firms were retained by C-suite business executives, internal communications departments or law firms. However, legal departments and legal operations professionals are now hiring PR agencies directly and often separately from those hired by their internal communications teams. Here's what in-house counsel should know about managing crisis communications:

- Legal departments bring unique skills and can serve as proactive business counselors to advance business initiatives and innovations. Moving from a traditional legal stance of "no" to a positive starting point of "yes" is critical. One way is to learn about the goals and expectations for internal and external communications professionals. Legal and communications are not operating in conflict with one another and, in fact, can work together!
- A company's own communications executives often are confused by work done by in-house counsel and may be intimidated by the risks involved. Some may believe that litigation work is outside of their scope and hold back when they could contribute to your legal department's success.
- It is important that legal departments oversee communications in many instances to create and preserve attorney-client and work-product doctrine privileges. At some large companies, legal departments already officially oversee communications.
- Failure to control important communications functions equates to a failure to fully advocate for your client. One must master the media in order to be the best attorney possible.

Legal Departments' Roles in Crisis Communications

Leading legal departments and those who assist them, such as outside law firms, are openly accepting the addition of communications to their arsenal. Some examples:

- Insurance companies and others are establishing crisis communications panels as well as legal panels. The pre-screened relationships allow for immediate response.
- Legal departments are adding questions regarding crisis communications and litigation public relations experience of law firms and their PR agency partners into requests for proposals.
- Law firms are bringing crisis communications professionals to new business pitches, to the benefit of in-house counsel.
- Law firms are establishing practice areas for "Crisis Preparedness and Response," which bring together multidisciplinary attorneys to focus on the three crisis management stages – plan, respond and recover. Teams are adding internal staff and external agencies offering services that include training, planning and response.
- Legal operations professionals often have communications experience that enables them to handle the non-legal aspects of services provided by legal departments. They frequently assist attorneys in selecting external PR agencies.
- Companies are switching from using non-disclosure agreements to crafting joint press releases in settlements.
- Legal departments are learning that when they have something positive to say, it is wise to do so. Refraining because "we never comment on ongoing litigation" only increases the chance that the other side's message points will be the only ones used by journalists. This could mean the company gets left out of the story without taking advantage of the opportunity to defend itself.
- In-house counsel are seeing crisis as an opportunity to overcome a sometimes hidden challenge. By communicating well, companies are springboarding to greater success.

Dave Poston is CEO of Poston Communications and is a graduate of Tulane University Law School. He has been involved in law firm marketing for more than 20 years. Poston Vice President Megan Paquin has been trusted to lead communications strategies for some of the world's most respected brands.

Crisis Communications Checklist for Corporate Legal Departments

Here are steps to make crisis communications part of your legal department's overall success.

- Commit the legal department to incorporating communications in crisis and beyond.
- Assign one or more individuals to lead and coordinate the effort.
- List all the ways the legal and communications departments interact.
- List all the ways that legal is involved in crisis communications and the ways that it isn't.
- Document all activities related to the crisis stages of plan, respond and recover. Was a plan created? How many business units were involved? What elements were created? Was the plan tested? How effective was specific incident response? What long-term internal and external communications actions were decided? Were company decisions made differently?
- Establish current benchmarks for risk, revenue, culture and brand value.
- Go on a listening tour of business units. Invite them to join you in the effort, and don't forget about the front-line staff.
- Define your crisis communications team for response, including internal and external communications professionals.
- Interview and select external PR agencies. Sign those to zero-sum retainers, just like one would secure technology partners for handling a cyber breach.
- Finalize goals and establish a timeline.
- Create an annual schedule to bring the legal and communications teams together on a regular basis.
- Establish a training curriculum with programs that teach communications team members about legal and vice-versa.
- Collectively chart and assess risks by plotting them on a matrix, adding a communications risk score.
- Add communications to your case assessment process.
- Map internal and external stakeholders and their relationships for various situations.
- Create a tactics list and establish a forms and templates database.
- Produce holding statements and rapid response plans for various scenarios.
- Develop hidden online microsites and media centers to be used as part of incident response.
- Conduct media training for legal department members as well as company leadership.
- Debrief, measure and report on crisis communications on a regular basis. How much was the legal department's focus on crisis communications a contributor to reduced legal risk? How much did it contribute to increased revenue, improved culture and overall brand value?

FROM OUR EVENT SPONSORS

Best Practices for Intellectual Property: Strategies for Minimizing the Risks of IP Lawsuits

By Noah Graubart, Aamir Kazi, Thad Kodish and Steffen Lake
Fish & Richardson

With few exceptions, businesses prefer to avoid the cost and uncertainty of IP litigation. Where that proves impossible, preparing properly for possible IP disputes can minimize potential risks while maximizing likelihood of success. Thankfully, several strategies exist for in-house counsel to either avoid IP litigation or at least mitigate certain risks from unavoidable lawsuits.

A category where in-house counsel can meaningfully reduce the likelihood of IP litigation is trade secret misappropriation claims. Allegations of trade secret misappropriation can be both costly and disruptive, highlighting the importance of avoiding such claims in the first place.

But what exactly is a trade secret? The short answer is anything a business keeps confidential that provides value by nature of it remaining confidential is a trade secret. Famous trade secrets include the recipe for Coca-Cola and the formula for WD-40. Business information like pricing strategies and customer lists also can be trade secrets. Misappropriating typically requires obtaining or using a trade secret via “improper means.” An area where such allegations frequently arise is the hiring of an employee from a competitor. In this context, an ounce of prevention in the on-boarding of new employees can be worth a pound of cure.

Hiring employees from competitors poses significant risk because they may possess, even unknowingly, trade secrets from their prior employer. Although taking advantage of new employees’ industry experience and wisdom is entirely proper, businesses must also be vigilant to ensure that wisdom does not encompass a former employer’s trade secrets. A helpful strategy to limit that risk is meeting with new hires ahead of their start date to set expectations. Hiring companies can educate new hires on the differences between bringing personal experience and taking confidential information, emphasizing the importance of avoiding the latter. The employer should also go over potential sources of confidential information with the new hire such as cloud storage using Dropbox or Google Drive, personal web-based email accounts, social media accounts, personal computers and smart devices (including texts and photos) and even home offices. In addition, hiring companies can utilize protective agreements requiring new employees to not use or disclose former employers’ confidential information, not possess any nonpublic information from prior employers and not provide ideas to the new employer derived from the old employer’s trade secrets.

ACC GEORGIA IN THE COMMUNITY

In-House Counsel Volunteers Lead Discussion on Cyberbullying in Street Law Program

Bringing legal and civic knowledge into the classroom, ACC Georgia presented its annual Street Law community education program to 40 ninth-grade students at Drew Charter School in Atlanta on October 3. The program was coordinated by Kristen Fancher, chief legal officer and general counsel at Margaritaville Enterprises, LLC, and LaChandra Pye, general counsel and vice president of Caduceus Healthcare Inc.

The Street Law program, which is implemented in classrooms across the nation, aims to advance justice through community education programs that empower people with the legal and civic knowledge, skills and confidence to bring about positive change for themselves and others.

Volunteers divided the class into small groups and led discussions with students about cyberbullying and the First Amendment. Volunteers included:

- Nicole Kibert Basler, Beazer Homes
- Andria Beeler-Norrholm, Elavon, Inc.
- Delia Hobbs, Elavon, Inc.
- Cara Melenzyer, Elavon, Inc.
- Trey McGowan, Cousins Properties
- Kenya Pierre, ARAUCO - North America
- Samantha Rein, Orange Business Services
- Sarah Roback, Elavon, Inc.
- Caitlin Wilson, MuleSoft, a Salesforce company

Despite these and other preventative measures, sometimes IP litigation is inevitable. When it occurs, one aspect of risk warrants special consideration: willfulness. In patent cases, willful infringement permits courts to increase damages by up to three times; willful copyright infringement can lead to a five-fold increase in statutory damages; willful trademark infringement increases risk of disgorgement of profits; and the Georgia Trade Secrets Act allows for exemplary damages (up to twice actual damages) for willful misappropriation.

In patent litigation, the risks of willfulness increased dramatically since 2016. Previously, whether infringement was willful hinged in part on a showing of “objective recklessness” – that the accused infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Frequently, as long as a defendant could mount even a colorable defense, that would suffice to defeat willfulness allegations. In *Halo v. Pulse*, the U.S. Supreme Court did away with that “unduly rigid” test, allowing willfulness findings based solely on the defendant’s subjective willfulness at the time of infringement and lowering the evidentiary standard. Since *Halo*, statistics demonstrate willfulness is both easier to prove and its mere presence as an issue at trial increases the chances of any infringement being found. Notably, because courts often look to patent willfulness case law to interpret willfulness issues in other areas of IP law, *Halo* is likely to have an impact beyond patent law.

Businesses can implement IP policies to mitigate the risks of willfulness. Companies should insist that all IP issues be funneled to the legal department for proper (and legally privileged) analysis and handling. Policies also can urge the maintenance of independent development evidence to combat accusations of copying. Policies should emphasize the need for the legal department and management to act reasonably and in good faith in all interactions with other parties, such as responding promptly and substantively to inquiries and allegations. Lastly, where risk of litigation is high, companies should consider obtaining formal opinions of counsel on which they may rely at trial. Although opinions of counsel are not always necessary nor foolproof, they can affect a factfinder’s view of whether a party acted in good faith, significantly reducing exposure.

Fish & Richardson principals Noah C. Graubart and Aamir Kazi, managing principal Thad Kodish and litigation law clerk Steffen Lake are part of the firm’s Atlanta office, which sponsored ACC Georgia’s October luncheon presentation.



ACC Georgia Donates to Pro Bono Partnership

On October 3, ACC Georgia presented a check for \$36,525.73 to the Pro Bono Partnership of Atlanta. Among those attending the check presentation were:

- Briley Brisendine, executive vice president and general counsel at SiteOne Landscape Supply
- Juliana Dearing, legal client advisor, vice president, SunTrust Bank
- Angela Frazier, ACC Georgia president
- Rachel Spears, executive director of Pro Bono Partnership of Atlanta
- Geoff Frost, director of client development at Bondurant Mixson & Elmore
- Kate Pearch, chief marketing and business development officer at Morris Manning & Martin
- Karen Wilcox, interim marketing director, Taylor English

ACC Georgia has raised more than \$300,000 for PBPA through the Value Challenge event, which started in 2011.

EVENT PHOTOS



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