Monday, October 1, 2012
11:00 AM - 12:30 PM

301 – To Dig In or Give In: Risk Analysis in Contract Negotiation

Tammy Brandt
General Counsel
ServiceMesh, Inc.

Stacey Mollohan
Senior Corporate Counsel
Travelport

David Mowry
Senior Counsel
Xerox Corporation

Faculty Biographies

Tammy Brandt

Tammy Brandt is the vice president, general counsel and corporate secretary at ServiceMesh, Inc. in Santa Monica, CA, a cloud application software company. She is responsible for all legal affairs of the company, including negotiating contracts, managing litigation and overseeing human resources and risk management.

Prior to joining ServiceMesh, Ms. Brandt was managing counsel at Toyota Motor Sales, U.S.A. where she was involved in marketing-related transactions, complex corporate matters, and support for the racing division. She previously worked as a corporate attorney at Jones Day and Sheppard Mullin Richter & Hampton LLP where she handled public and private acquisition transactions and related corporate and finance matters.

Ms. Brandt currently is a member of the ACC's Southern California Chapter board of directors. She received a BA from Bluffton University and a law degree from the Notre Dame Law School.

Stacey Mollohan

Stacey A. Mollohan is a senior corporate counsel in the global technology group of Travelport, an international global distribution system and information technology provider. In his role, he is responsible for technology transactions, including acquisitions, licensing and intellectual property prosecution and enforcement, for one of the largest transaction processing facilities in the world.

Prior to Travelport, Mr. Mollohan held the position of patent counsel with Western Digital Corporation and was an IP and business litigator in AmLaw 100 firms.

Mr. Mollohan received his JD from the College of William and Mary in Williamsburg, VA and a degree in pplied physics from Georgia Tech.

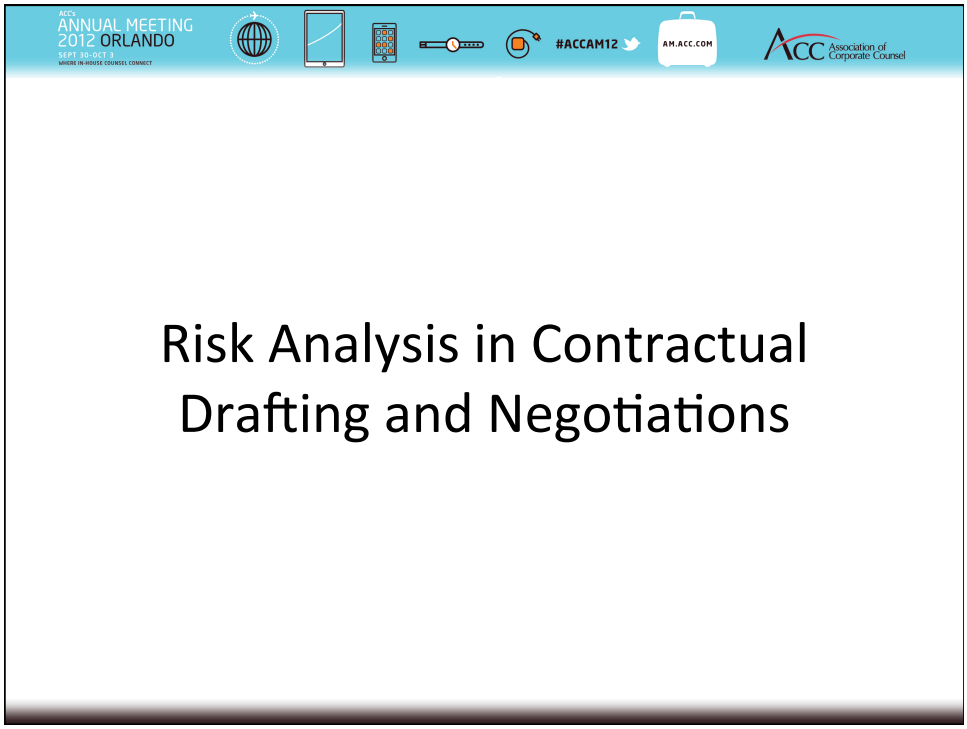
David Mowry

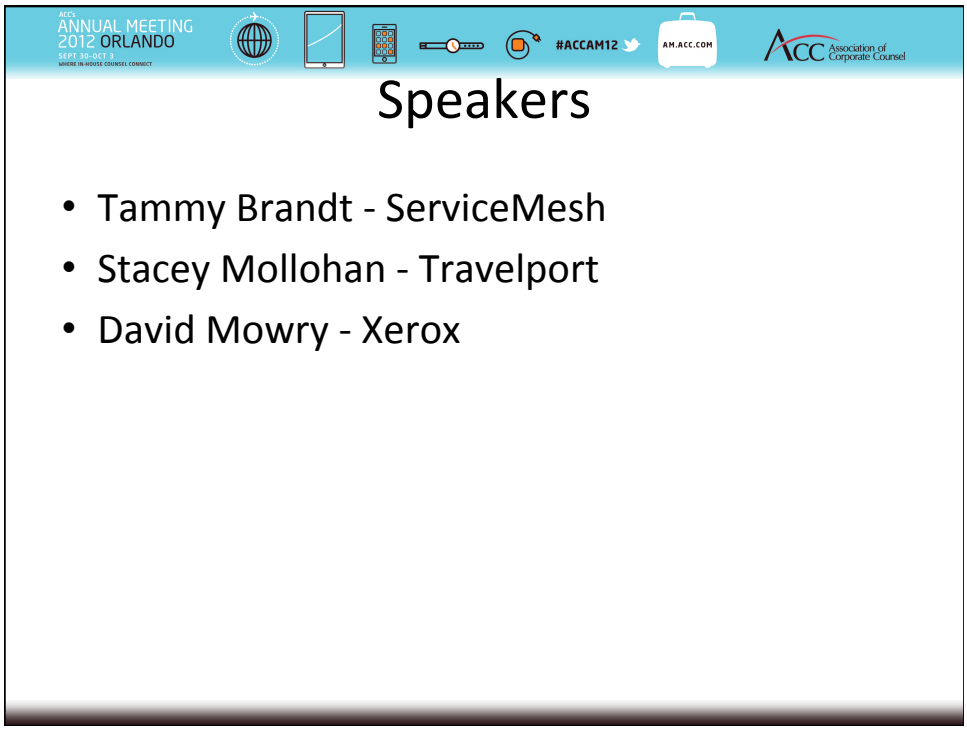
David Mowry is senior counsel for Xerox Corporation. He works primarily on commercial lease transactions, advising clients and negotiating matters in a geography generating approximately two billion dollars in annual revenue. He also manages litigation matters, and advises clients on legal issues such as contracts, intellectual property and human resources.

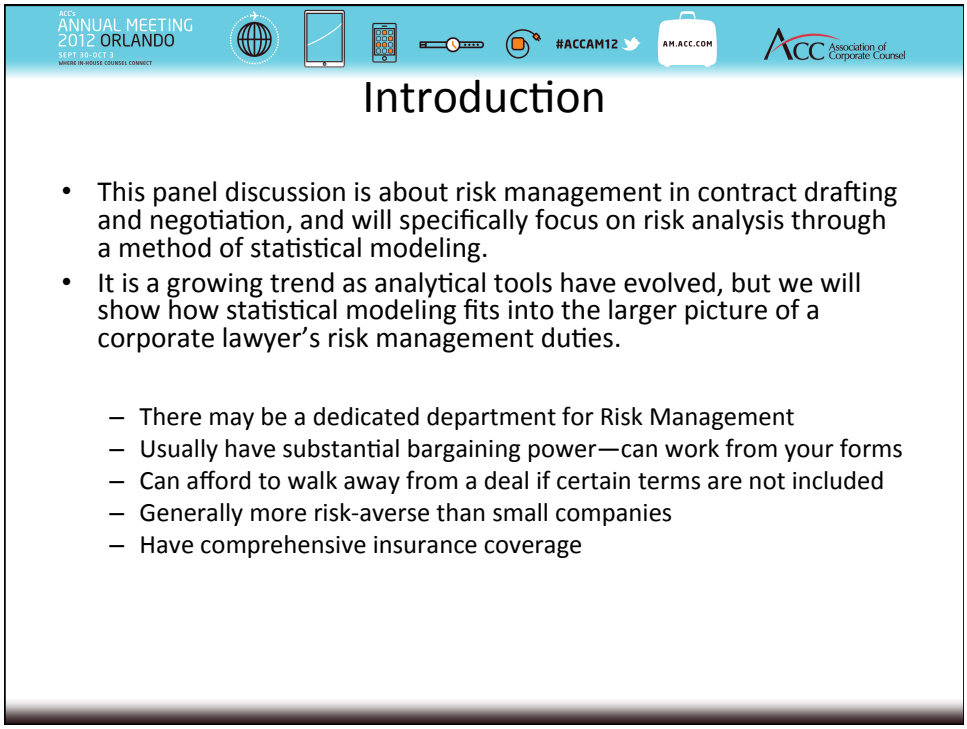
Prior to Xerox, Mr. Mowry litigated at Nixon Peabody in Rochester, NY, and Coudert Brothers in New York City. He also clerked for federal district court judges in the District of Columbia and the Western District of Oklahoma.

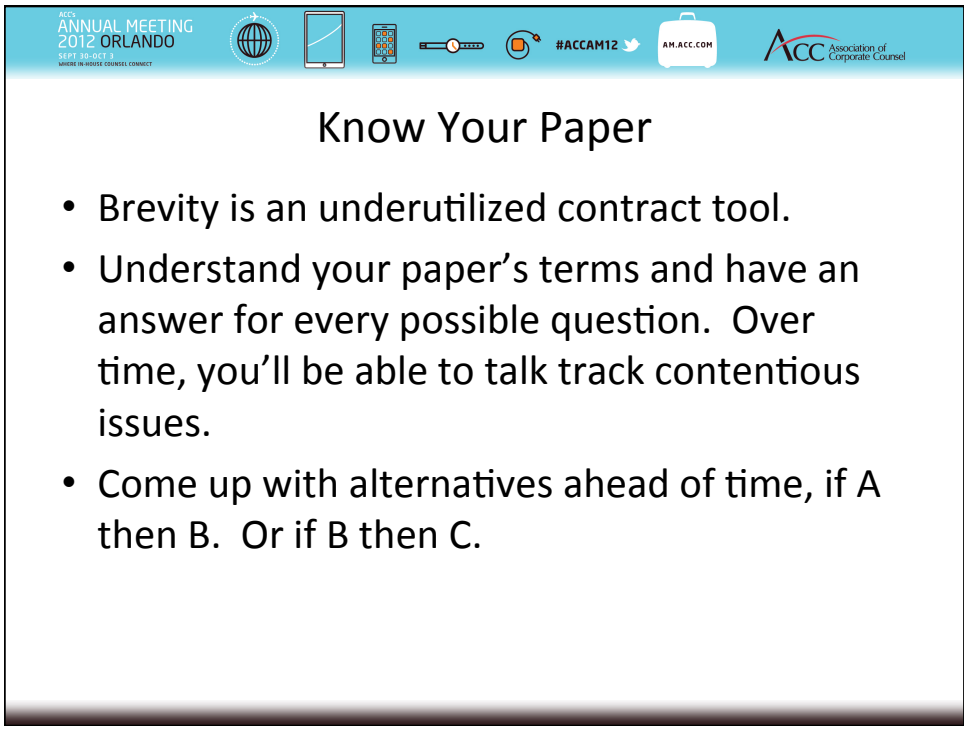
Mr. Mowry is the outgoing chair for ACC's New to In-house Committee. He joined ACC in 2008, and has previously served on the ACC's Western New York Chapter board of directors. He regularly presents at ACC's Corporate Counsel University. Mr. Mowry has written for the *ACC Docket*, and is a regular contributor to *abovethelaw.com*.

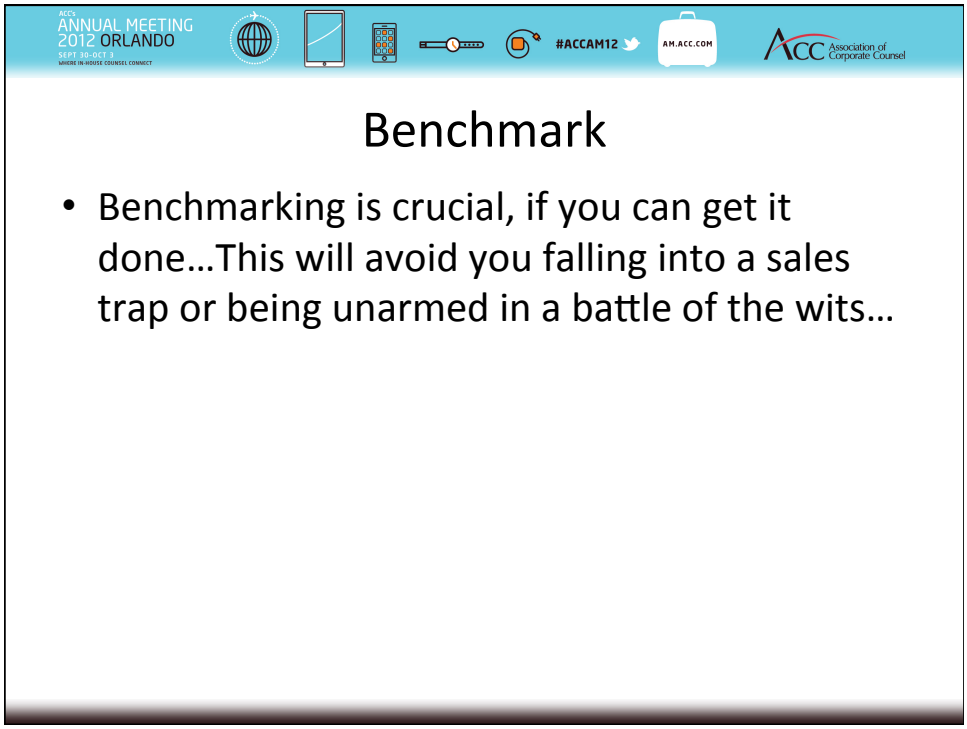
Mr. Mowry is an honors graduate of Brooklyn Law School, an honors graduate of Emerson College, and a graduate of the American Academy of Dramatic Arts in New York City.

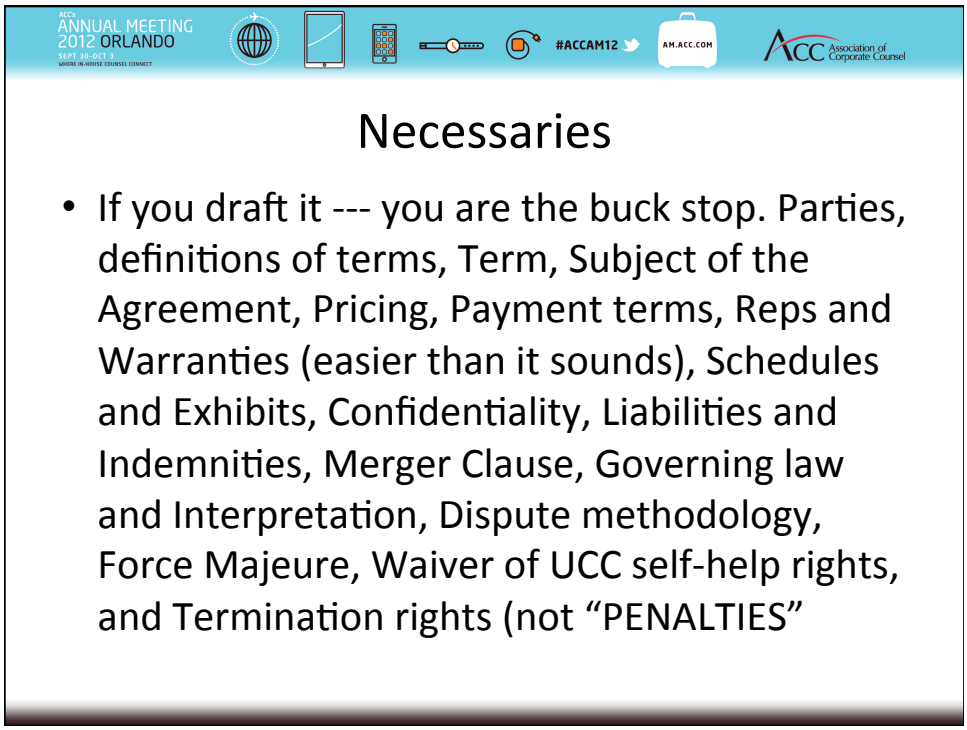


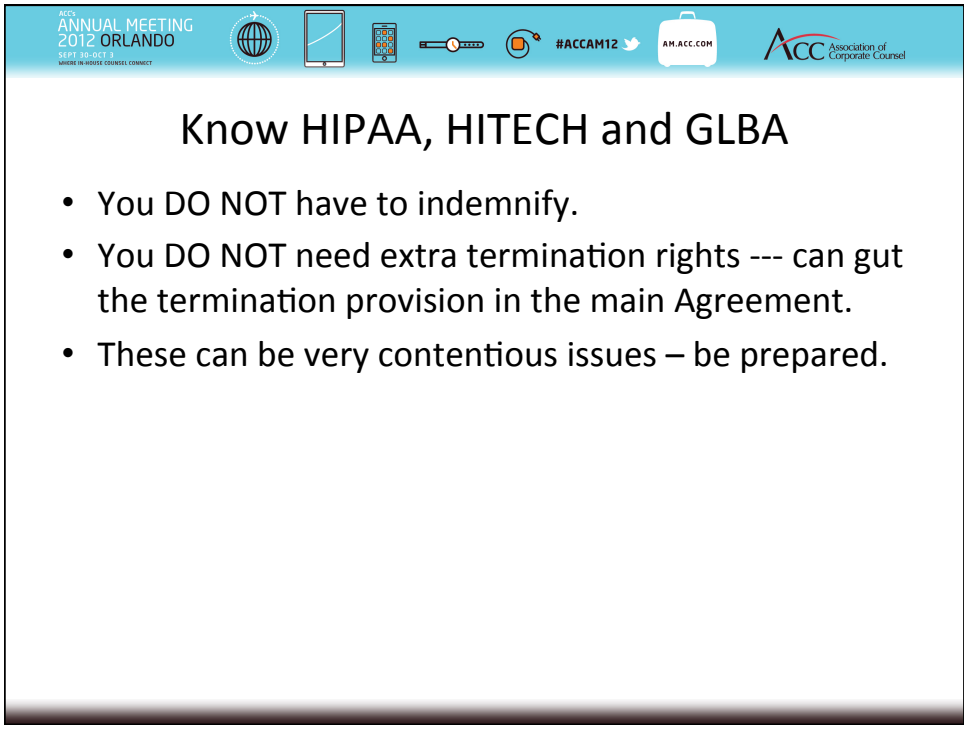


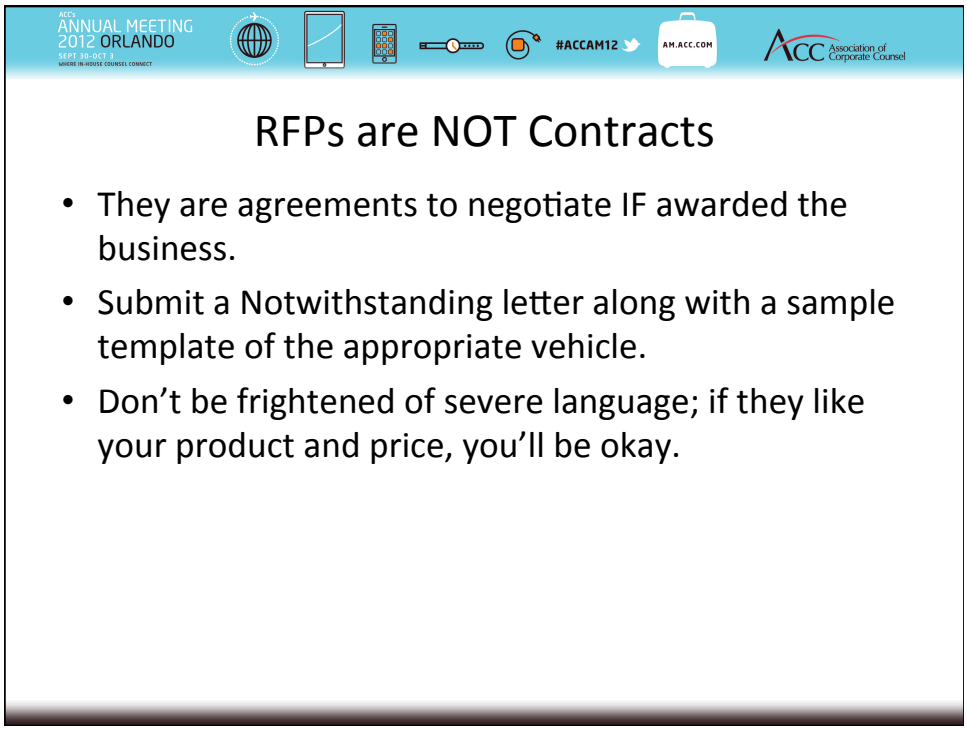


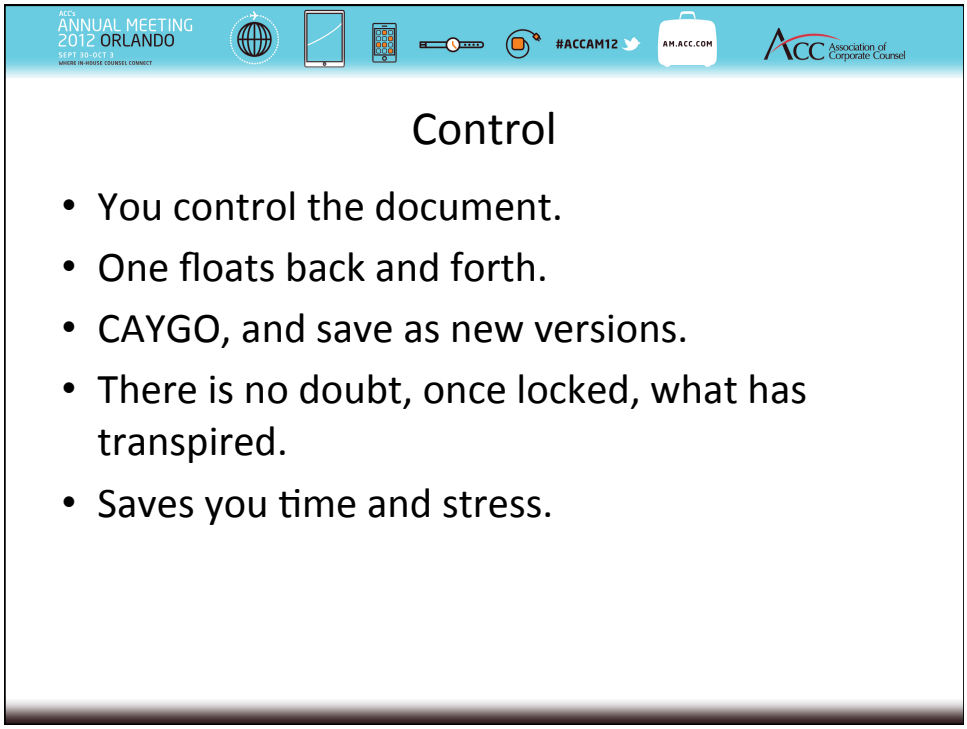


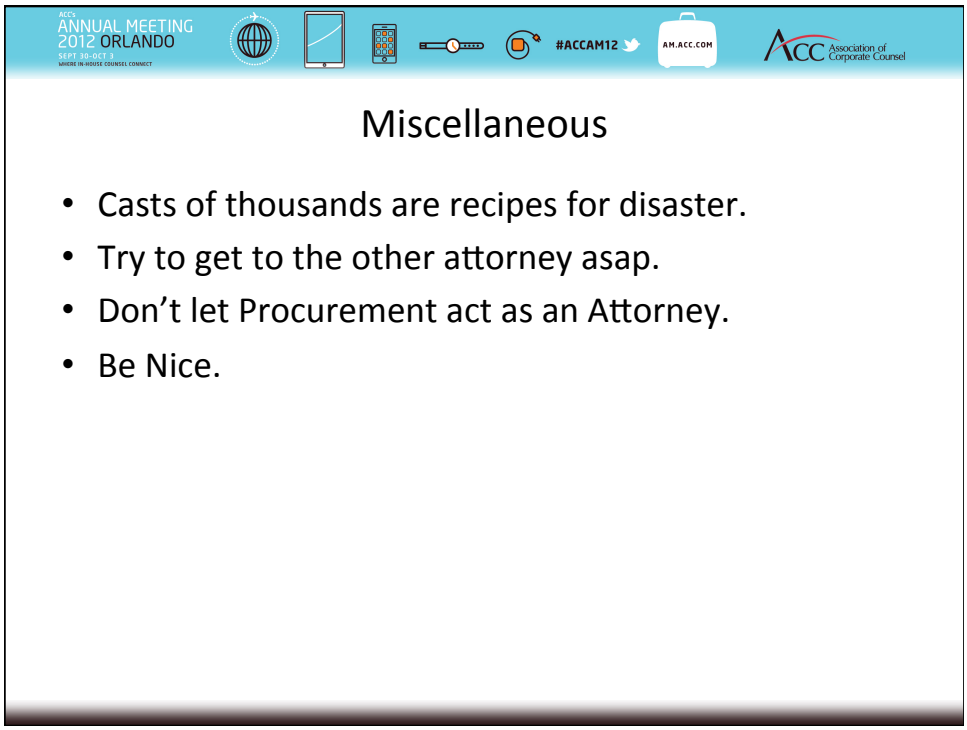


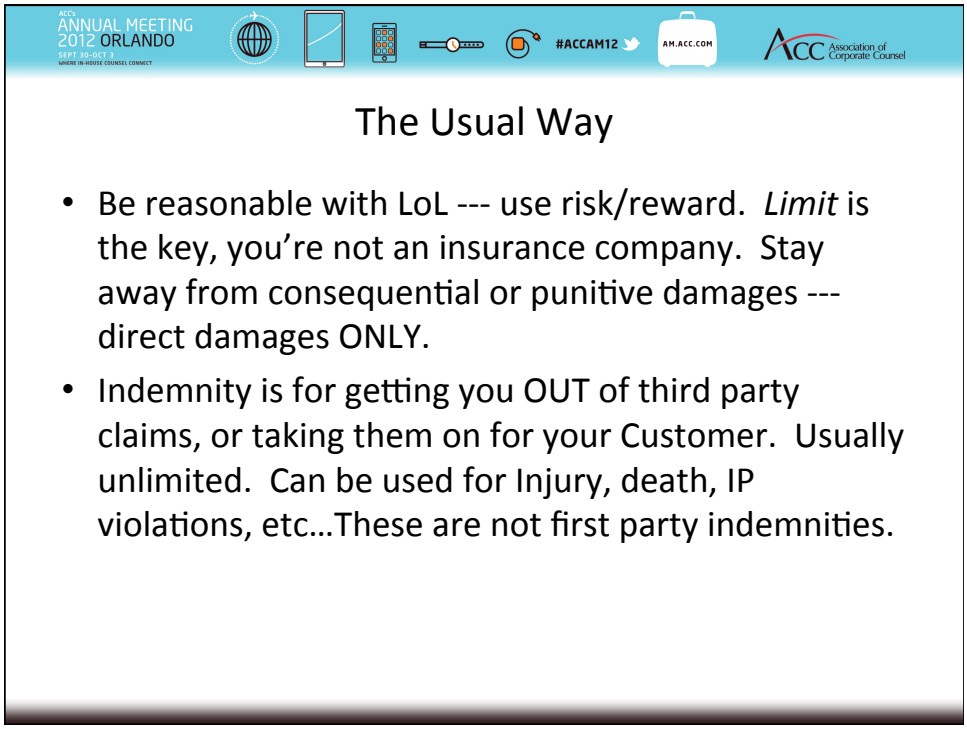


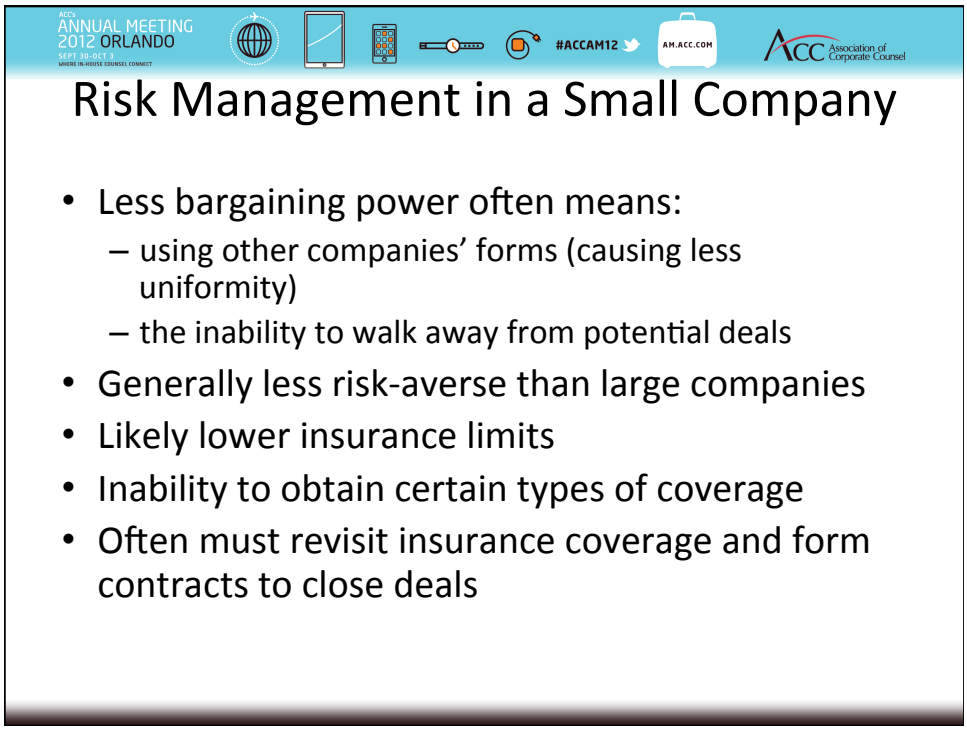


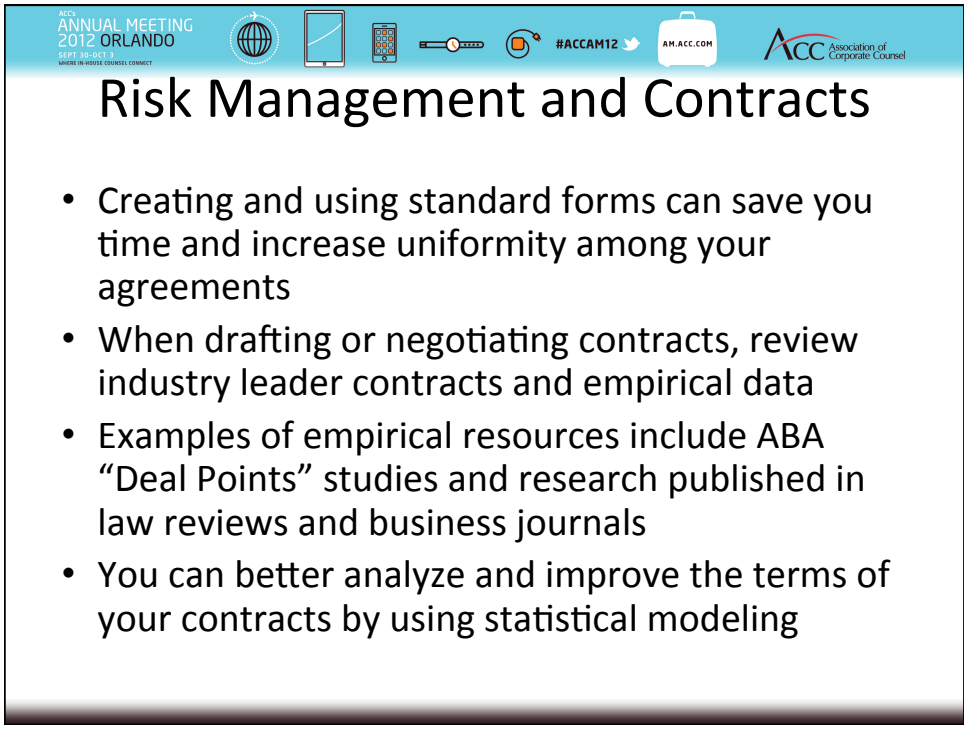


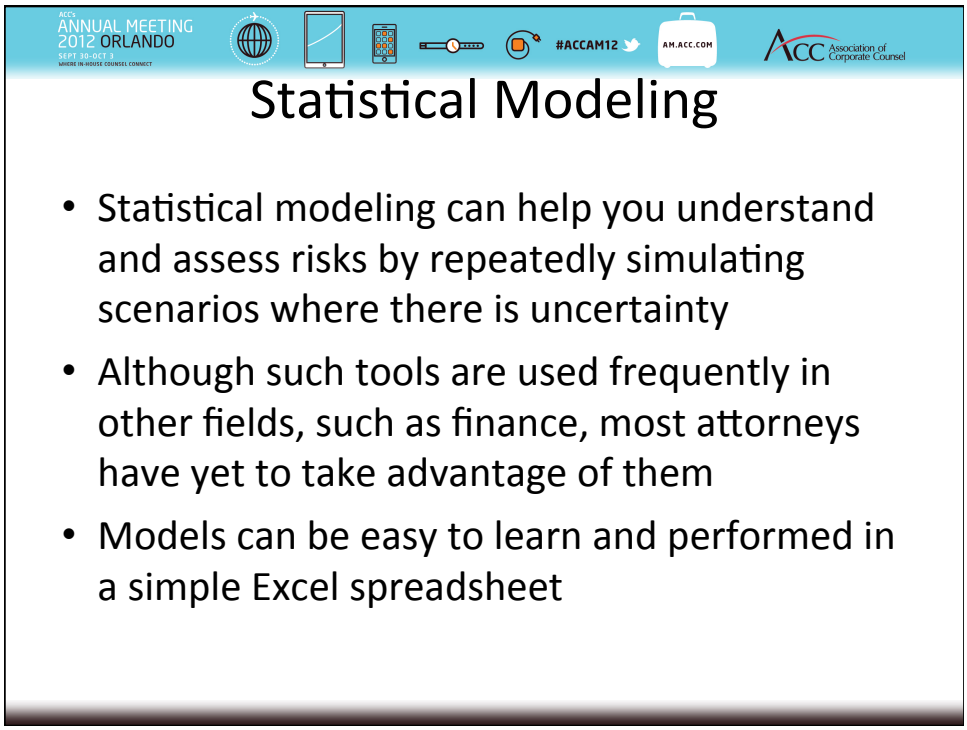












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The "Monte Carlo" Method

- One popular model is called the "Monte Carlo" method, developed in the 40's by physicists working on the Manhattan Project.
- Monte Carlo experiments are computational algorithms that repeat random sampling within weighted probability distributions. This is repeated thousands (or even millions of times), and the result is a large sampling of outcomes, weighted by their probability.

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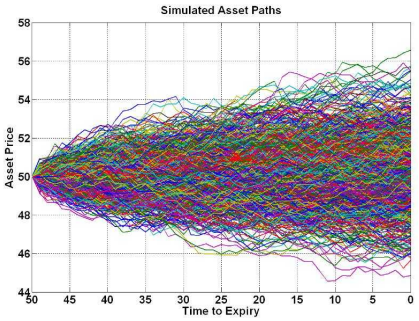
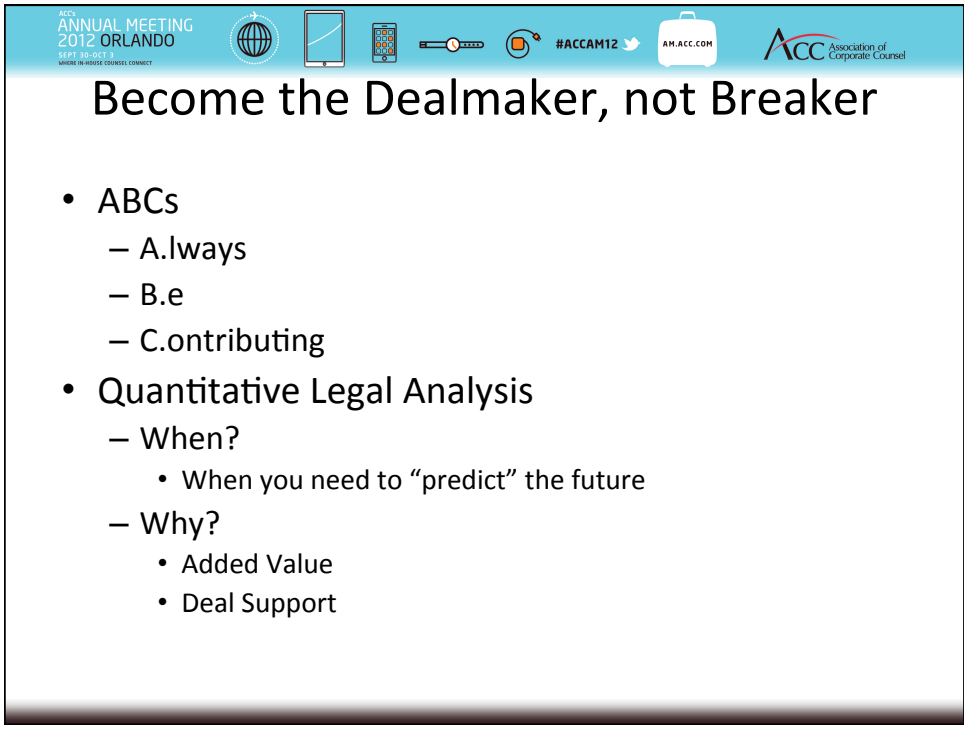
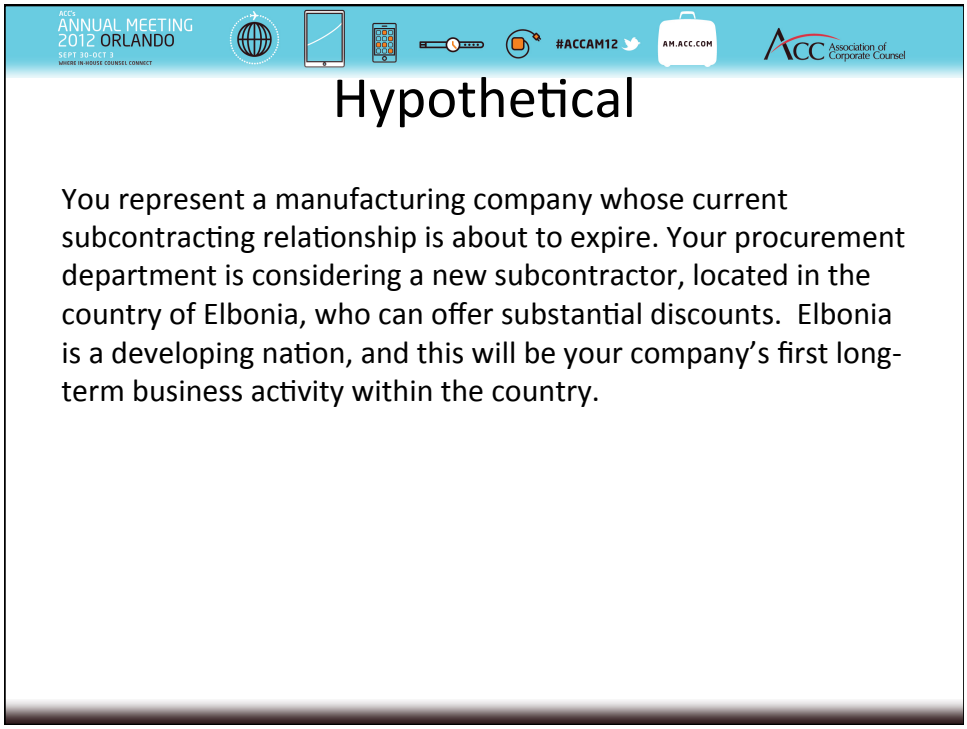
Monte Carlo Explained

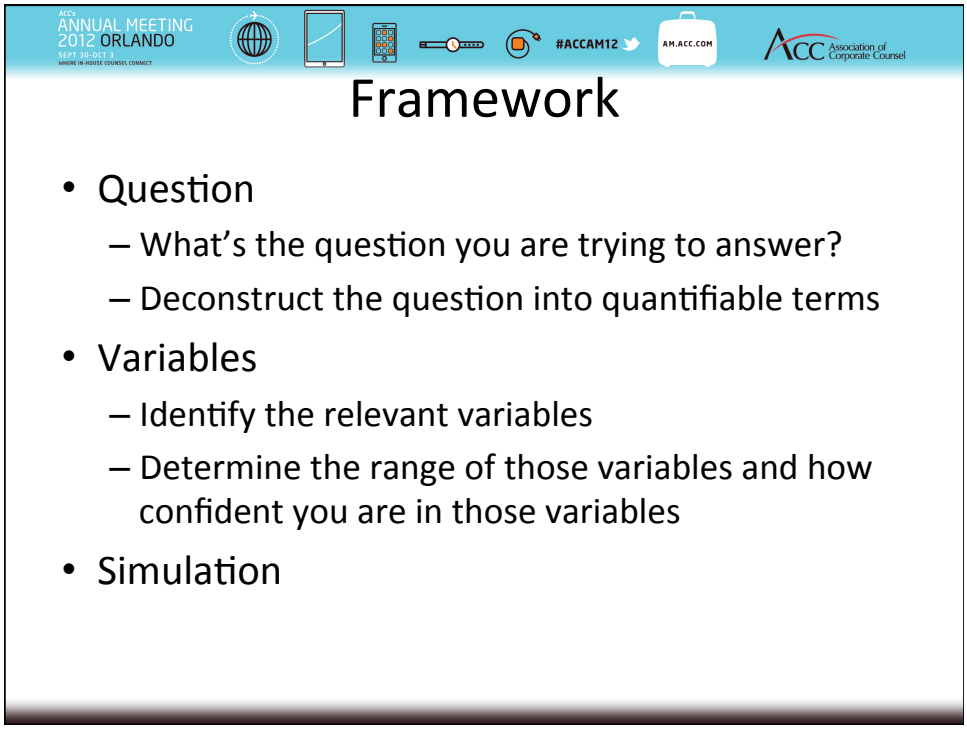
- Example: Monte Carlo is used in option pricing. The output shows thousands of possible price paths, with the more likely ones occurring more frequently.

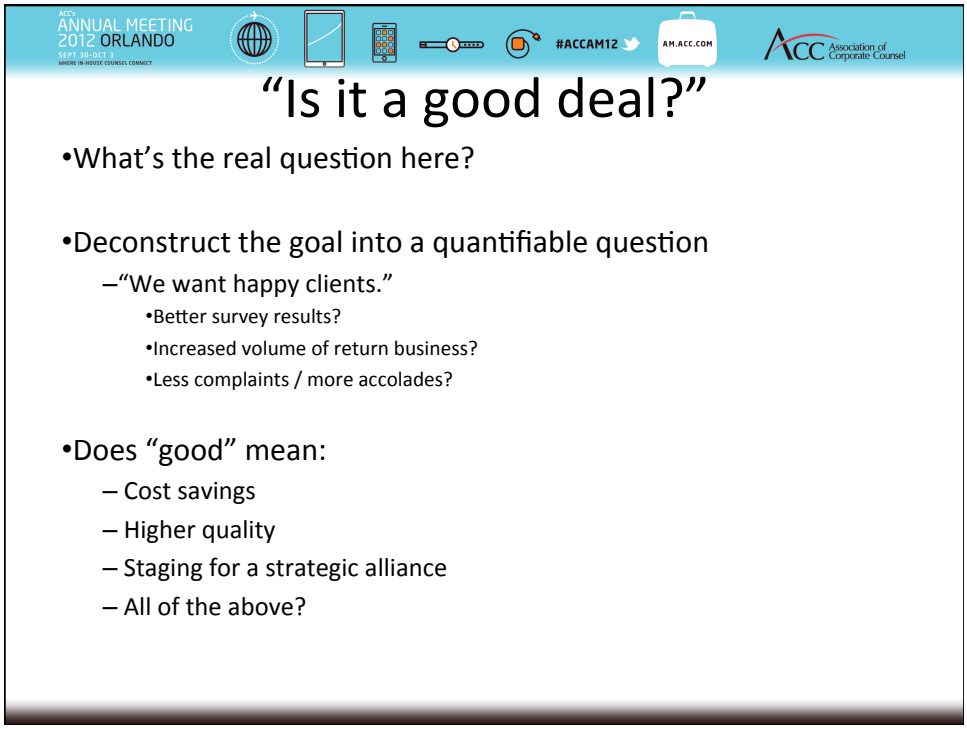


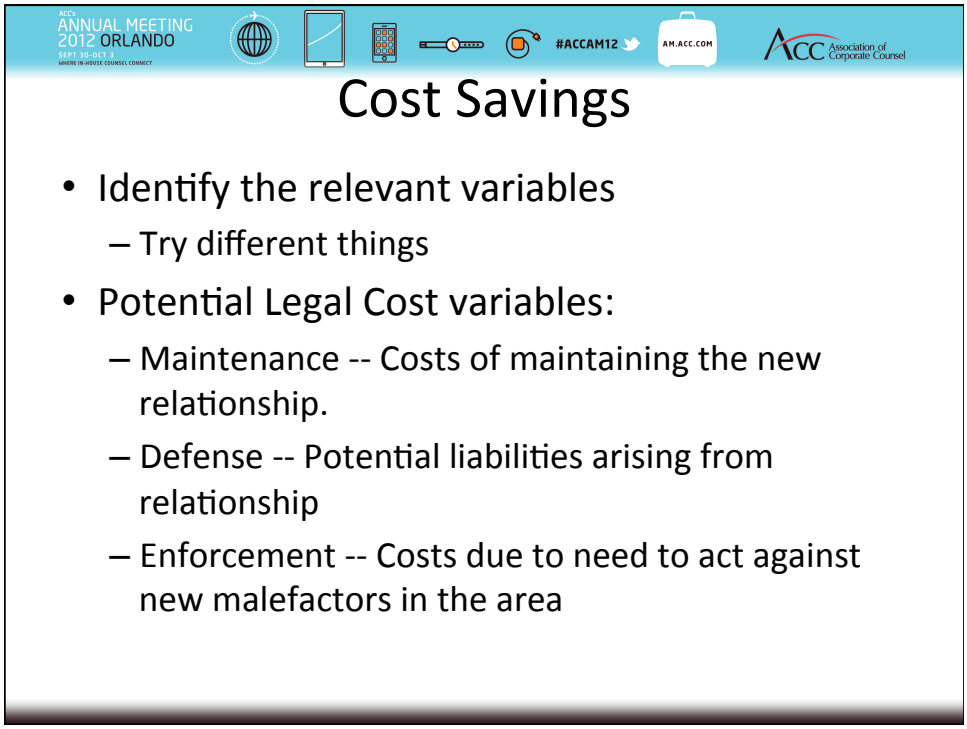
- The rest of this presentation will work through a scenario using a Monte Carlo simulation to assess the risks in a hypothetical contract.

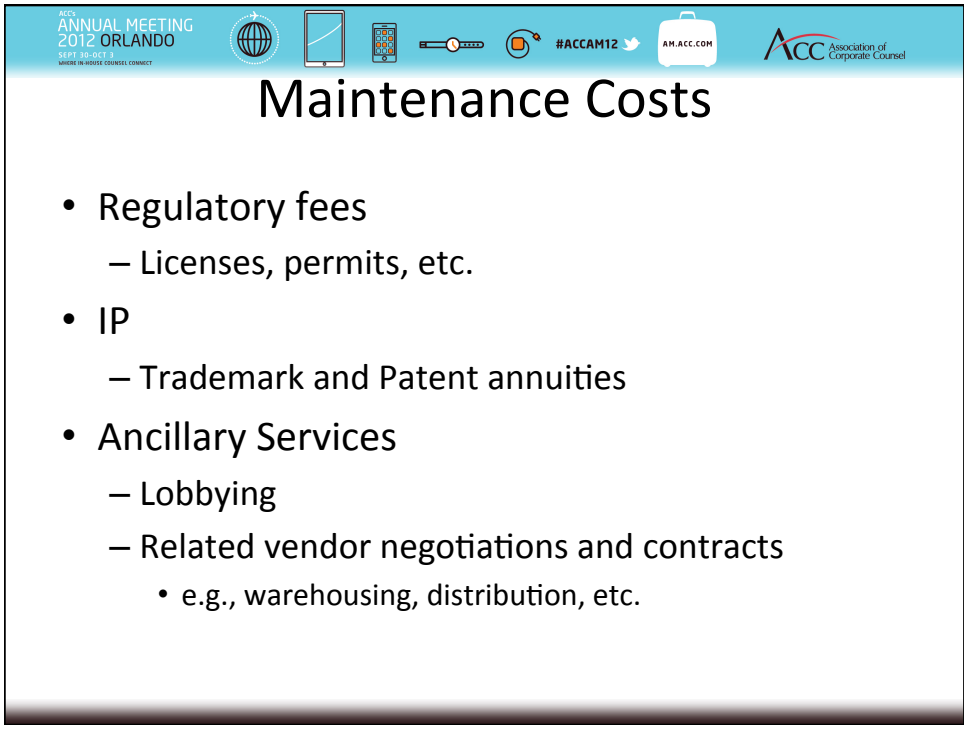


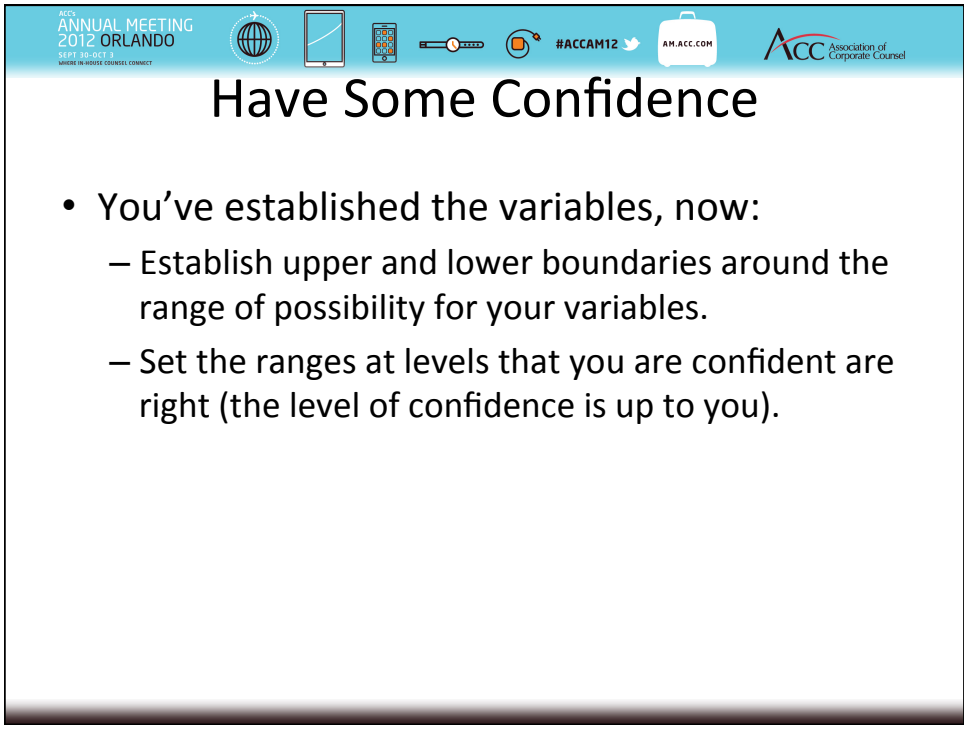


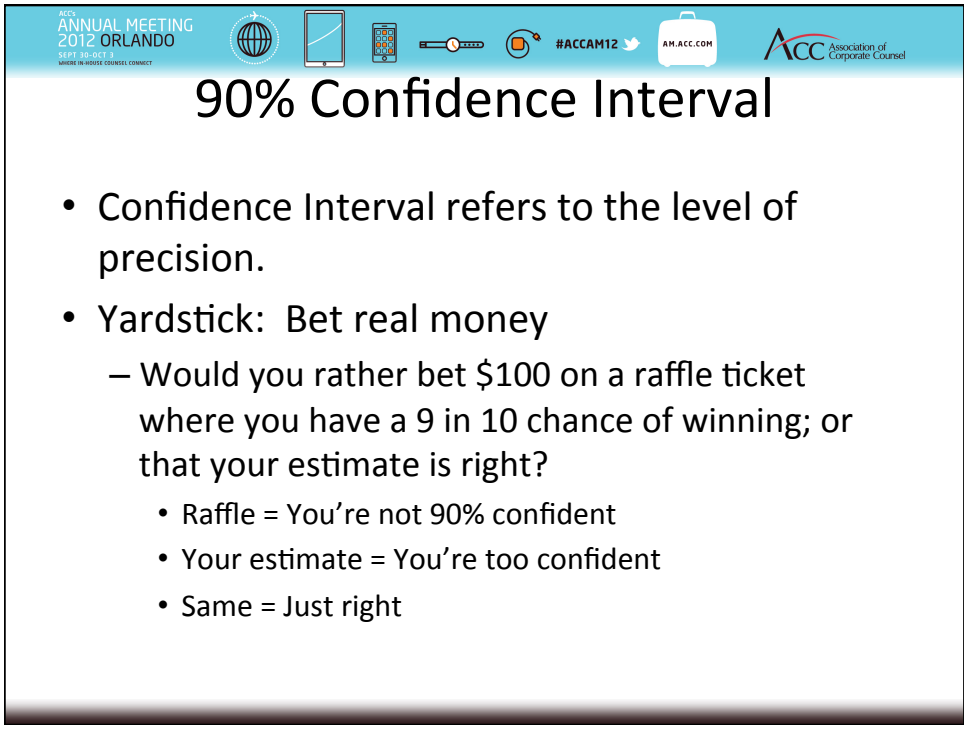


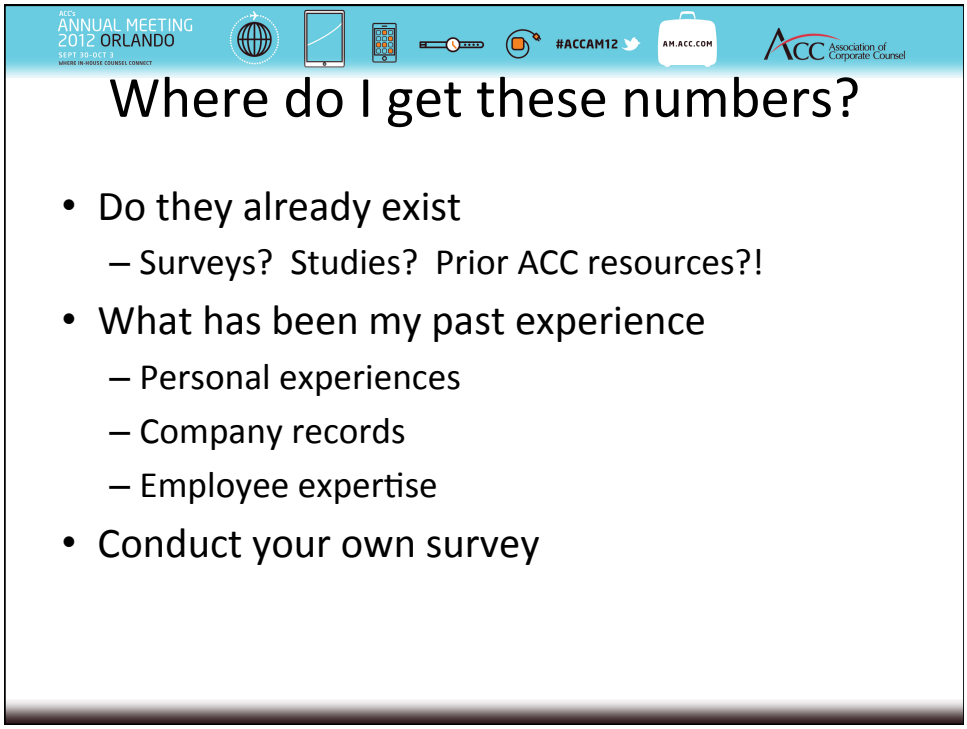


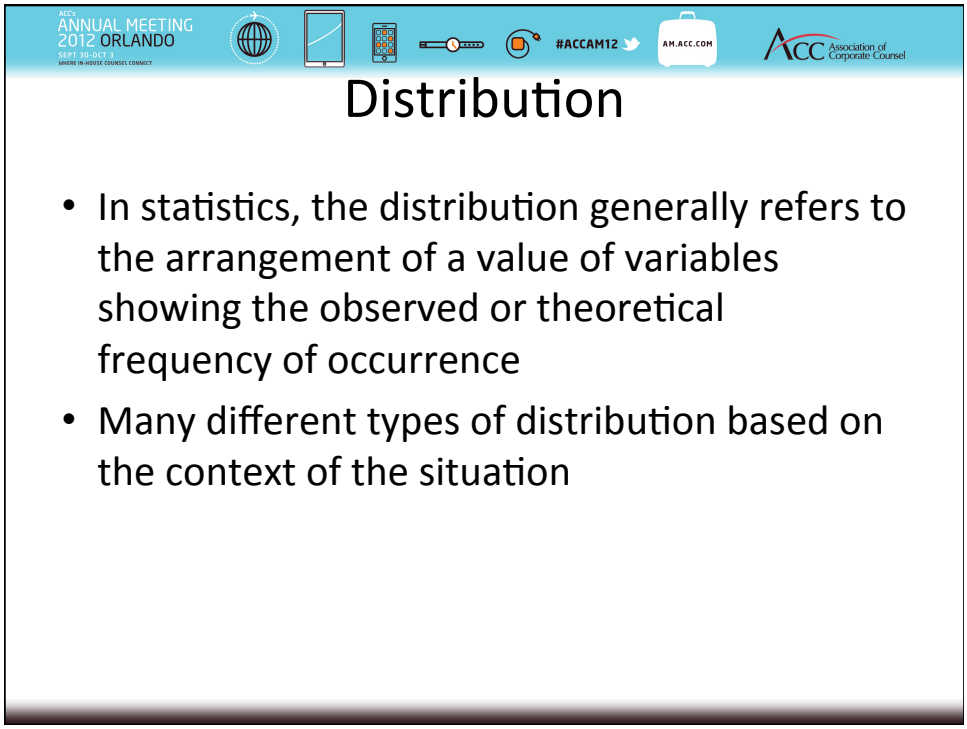












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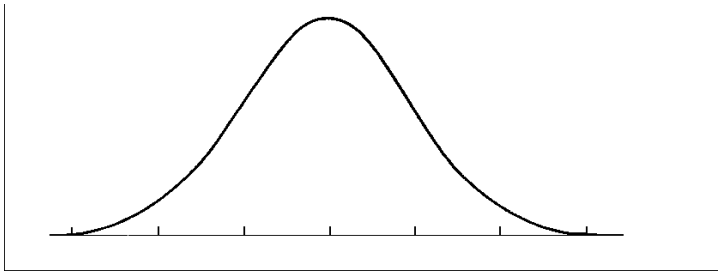
Distribution

- The most familiar kind of distribution is the normal distribution (e.g., the "bell curve"):



- Occurs frequently; often used in social sciences to approximate real world situations.

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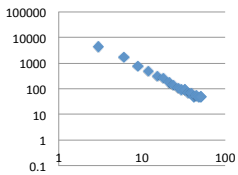
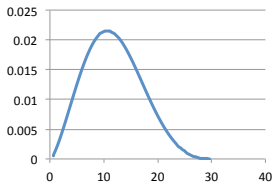
Distribution

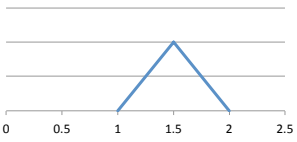
- Examples of other distributions include:



Power Law



Beta



Triangular

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Other Terminology

- μ = Mean (or Midrange)
  - The upper bound of the confidence interval less the lower bound of the confidence interval divided by 2
    - (upper bound – lower bound) / 2
- σ = Standard Deviation
  - Indicates how wide-spread data points are. A smaller standard deviation indicates that a high number of data points lie near the mean value. A high standard deviation indicates a high number of data points lie far away from the mean value.
    - (upper bound of CI – lower bound of CI) /standard deviations corresponding to the CI
    - Z-score

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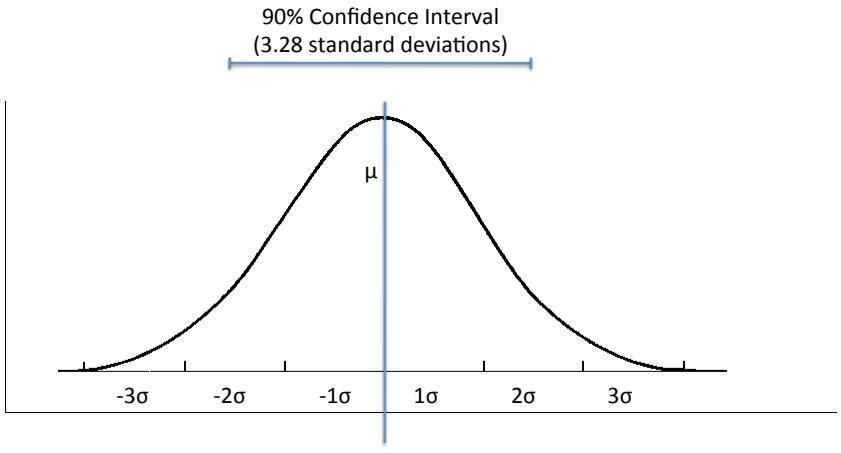
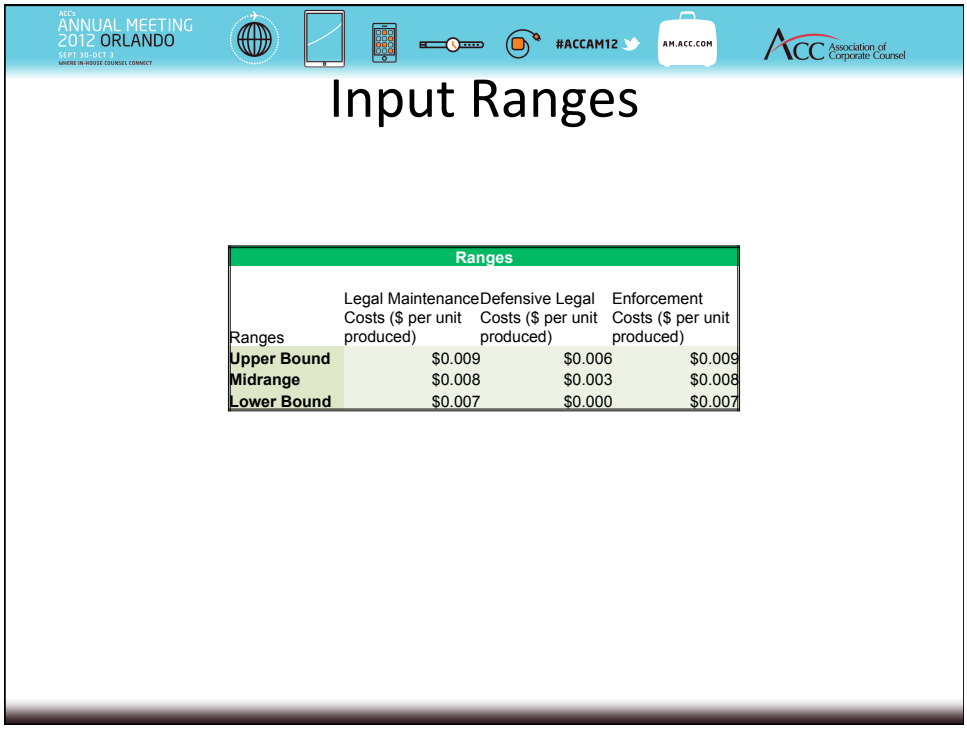
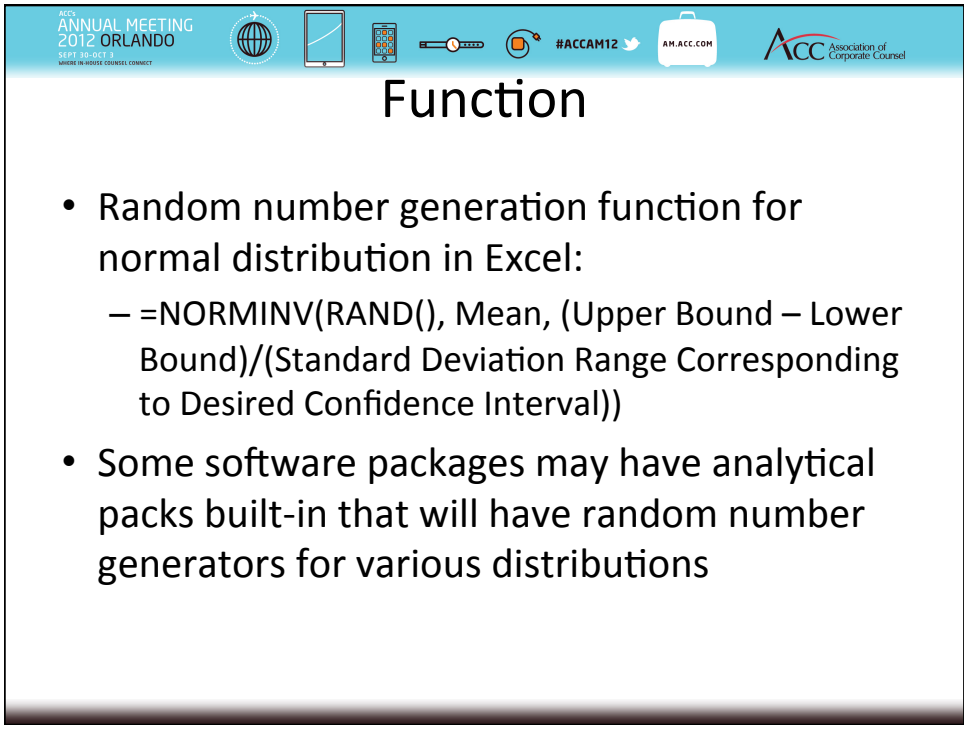
Normal Distribution





Input Ranges

Ranges			
Ranges	Legal Maintenance Costs ($ per unit produced)	Defensive Legal Costs ($ per unit produced)	Enforcement Costs ($ per unit produced)
Upper Bound	$0.009	$0.006	$0.009
Midrange	$0.008	$0.003	$0.008
Lower Bound	$0.007	$0.000	$0.007



Function

- Random number generation function for normal distribution in Excel:
  - =NORMINV(RAND(), Mean, (Upper Bound – Lower Bound)/(Standard Deviation Range Corresponding to Desired Confidence Interval))
- Some software packages may have analytical packs built-in that will have random number generators for various distributions

Perform Monte Carlo

Simulation Runs				
Run #	Legal Maintenance Costs ($ per unit produced)	Defensive Legal Costs ($ per unit produced)	Enforcement Costs ($ per unit produced)	Savings ($ per year)
1	$0.009	$0.004	$0.008	$0.022
2	$0.008	$0.004	$0.008	$0.020
3	$0.008	$0.005	$0.007	$0.020
4	$0.008	$0.002	$0.008	$0.018
5	$0.008	$0.003	$0.008	$0.019
95	$0.010	$0.004	$0.008	$0.022
96	$0.007	$0.003	$0.009	$0.019
97	$0.008	$0.006	$0.007	$0.021
98	$0.008	$0.001	$0.008	$0.017
99	$0.008	$0.005	$0.007	$0.020
100	$0.009	$0.003	$0.009	$0.020

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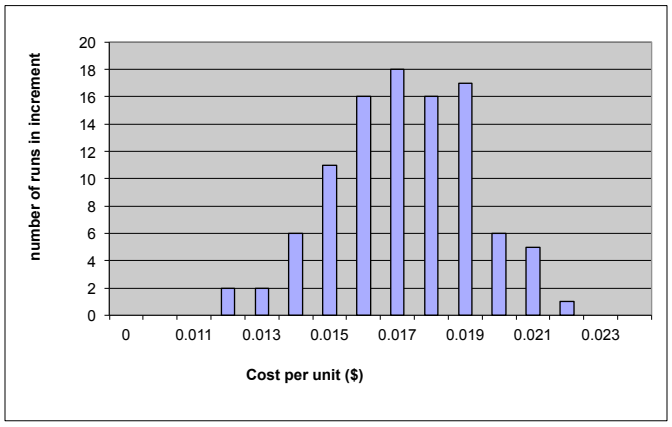
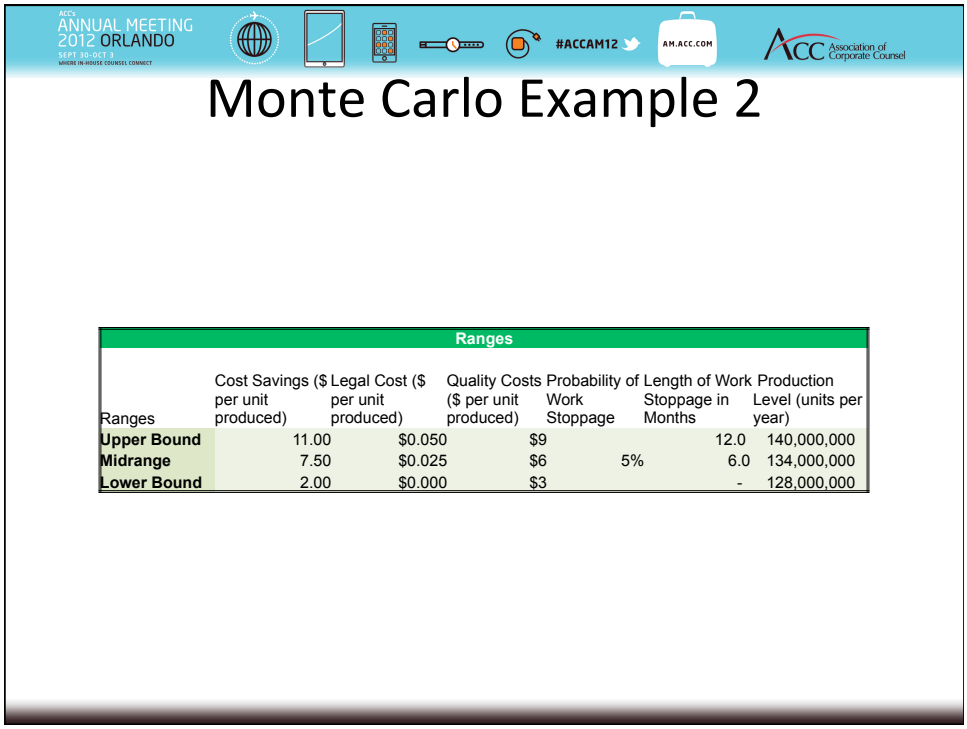
Histogram

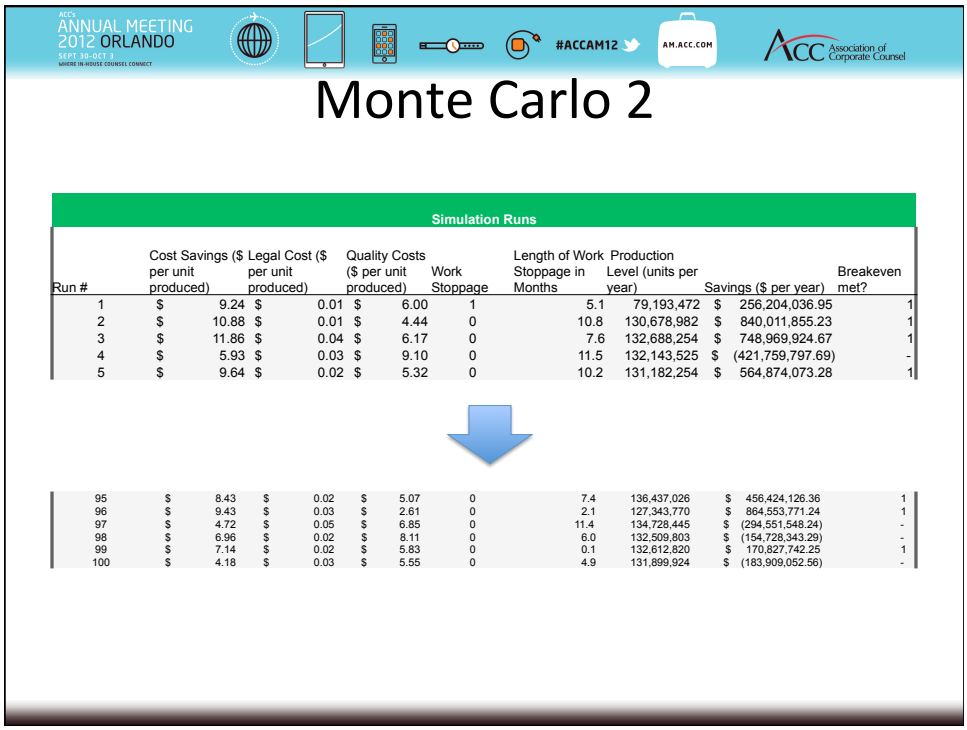




Monte Carlo Example 2

Ranges	Cost Savings ($ per unit produced)	Legal Cost ($ per unit produced)	Quality Costs ($ per unit produced)	Probability of Work Stoppage	Length of Work Stoppage in Months	Production Level (units per year)
Upper Bound	11.00	$0.050	$9		12.0	140,000,000
Midrange	7.50	$0.025	$6	5%	6.0	134,000,000
Lower Bound	2.00	$0.000	$3		-	128,000,000

Ranges



Monte Carlo 2

Simulation Runs

Run #	Cost Savings ($ per unit produced)	Legal Cost ($ per unit produced)	Quality Costs ($ per unit produced)	Work Stoppage	Length of Work Stoppage in Months	Production Level (units per year)	Savings ($ per year)	Breakeven met?
1	$ 9.24	$ 0.01	$ 6.00	1	5.1	79,193,472	$ 256,204,036.95	1
2	$ 10.88	$ 0.01	$ 4.44	0	10.8	130,678,982	$ 840,011,855.23	1
3	$ 11.86	$ 0.04	$ 6.17	0	7.6	132,688,254	$ 748,969,924.67	1
4	$ 5.93	$ 0.03	$ 9.10	0	11.5	132,143,525	$ (421,759,797.69)	-
5	$ 9.64	$ 0.02	$ 5.32	0	10.2	131,182,254	$ 564,874,073.28	1
95	$ 8.43	$ 0.02	$ 5.07	0	7.4	136,437,026	$ 456,424,126.36	1
96	$ 9.43	$ 0.03	$ 2.61	0	2.1	127,343,770	$ 864,553,771.24	1
97	$ 4.72	$ 0.05	$ 6.85	0	11.4	134,728,445	$ (294,551,548.24)	-
98	$ 6.96	$ 0.02	$ 8.11	0	6.0	132,509,803	$ (154,728,343.29)	-
99	$ 7.14	$ 0.02	$ 5.83	0	0.1	132,612,820	$ 170,827,742.25	1
100	$ 4.18	$ 0.03	$ 5.55	0	4.9	131,899,924	$ (183,909,052.56)	-