



Monday, October 1, 2012

2:30 PM - 4:00 PM

**402 – Shotgun Wedding in the Boardroom:
Negotiating Joint Venture Agreements with
Your Worst Enemy**

David Kruse

Partner

Blake, Cassels & Graydon LLP

David Miller

Vice President, General Counsel & Secretary

Rogers Communications S.E.N.C.

Joe Napoli

General Counsel

U. S. Steel Kosice, s.r.o.

Jeremy Ouchley

Senior Counsel

McKesson Corporation

Faculty Biographies

David Kruse

David C. Kruse is a partner at Blake, Cassels & Graydon LLP in its Toronto office. He advises businesses of all sizes on a wide range of corporate and commercial matters. His practice focuses primarily on transactions involving mergers, acquisitions, divestitures, reorganizations, and international and domestic joint ventures. His experience also includes structuring and negotiating various domestic and cross-border commercial agreements, including shareholder, partnership and services agreements of all kinds.

Mr. Kruse regularly advises foreign companies on establishing and structuring their Canadian operations. He provides strategic advice to private and publicly traded businesses in industries such as health care, oil and gas, automotive, logistics, consumer goods, technology, media, communications and financial services.

He serves on the board of directors of several corporations, advises not-for-profit organizations and is actively involved in pro bono work. He also serves on the Blakes Legal Personnel Committee and is co-chair of the firm's Toronto Student Committee. Mr. Kruse is committed to participating in legal education. He often leads seminars and lectures on several facets of business law.

David received a BA from McGill University and is a graduate of Dalhousie University Law School.

David Miller

After obtaining his BComm from McGill University, David Miller entered McGill University's faculty of law and successfully completed the national programme, obtaining a BCL and LLB degree.

After completing two and one half years in private practice in Toronto, he joined Lavalin Inc., one of the world's largest international engineering and construction companies, and subsequently became its general counsel. Mr. Miller joined Rogers Communications Inc., Canada's national communications company with interests in cable television, wireless, telephony, radio and television, and sports as vice-president and general counsel and later became vice-president, general counsel and secretary of Rogers Wireless Communications Inc. Most recently, his position title was changed to senior vice president, general counsel and secretary.

Mr. Miller is based at Rogers Communications Inc.'s headquarters in Toronto.

402 Shotgun Wedding in the Boardroom: Negotiating Joint Venture Agreements with Your Worst Enemy

Joe Napoli

Joe Napoli is currently the general counsel of U.S. Steel Košice, s.r.o., a subsidiary of United States Steel Corporation. He obtained a BA in communications and international relations from Duquesne University and a JD from the Duquesne University School of law. He joined U.S. Steel with eight years experience in public and corporate finance.

Before accepting his current position in Europe, his diverse practice centered around corporate law, finance and mergers and acquisitions including major strategic partnerships and the acquisition of U.S. Steel Košice in 2000. He has also negotiated and navigated several joint venture agreements for U.S. Steel in the U.S. and abroad. He represented U.S. Steel's credit division in loan origination, work-outs, restructurings and collections until its portfolio paid off in the late 1990s. That work included negotiating loan participation agreements, negotiating workouts among lenders and borrowers and negotiating joint development agreements.

Mr. Napoli was named "Outstanding Volunteer Attorney of the Year" by the Executive Service Corps in 2003, has written for the *ACC Docket*, and served as a member of the Fellows Committee of the Allegheny County Bar Foundation and the Business Law Council of the Allegheny County Bar Association. He also served on the board of the ACC's Western Pennsylvania Chapter and was its president in 2009.

Jeremy Ouchley

Jeremy Ouchley is currently senior counsel with McKesson Corporation. In this role, he serves as the primary business transactions attorney for McKesson specialty health, an \$8 billion division of McKesson.

Prior to this role, he served in a similar capacity for U.S. Oncology, a private-equity backed company acquired by McKesson in 2010. He started his legal career as a corporate and securities attorney for Baker Botts LLP.

Mr. Ouchley received a BBA from the University of Louisiana-Monroe and is a graduate of The University of Texas School of Law.


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12



AM.ACC.COM






Shotguns in the Boardroom


Negotiating Joint Venture Agreements with Your Competitor

October 1, 2012


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12



AM.ACC.COM



Panel Discussion

Panelists:


David Miller
*Senior Vice President, General Counsel & Secretary
Rogers Communications*

Joe Napoli
*General Counsel
U. S. Steel Kosice, s.r.o.*

Jeremy Ouchley
*Senior Counsel
McKesson Corporation*

Moderator:

David Kruse
*Partner
Blake, Cassels & Graydon LLP*



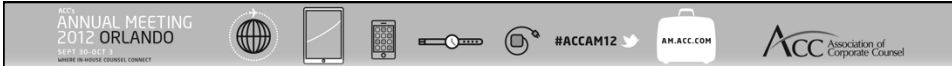
ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

Acc Association of Corporate Counsel

Overview

- Introduction
- A. Preliminary Matters
- B. Formation / Ongoing
- C. Governance
- D. Liquidity and Exit
- E. Post Deal Management
- Questions



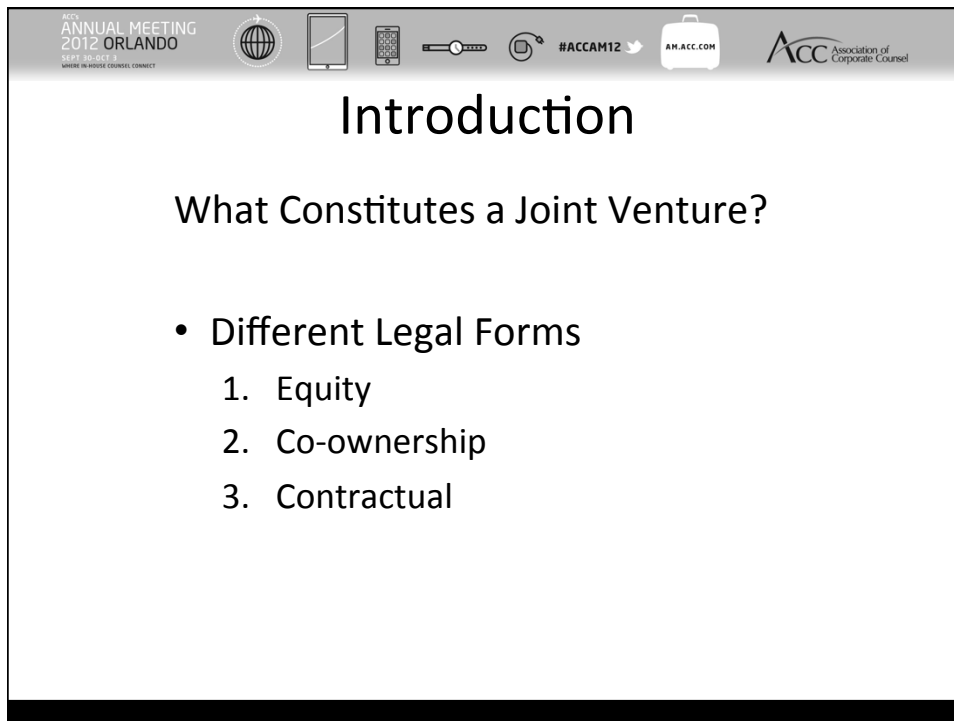
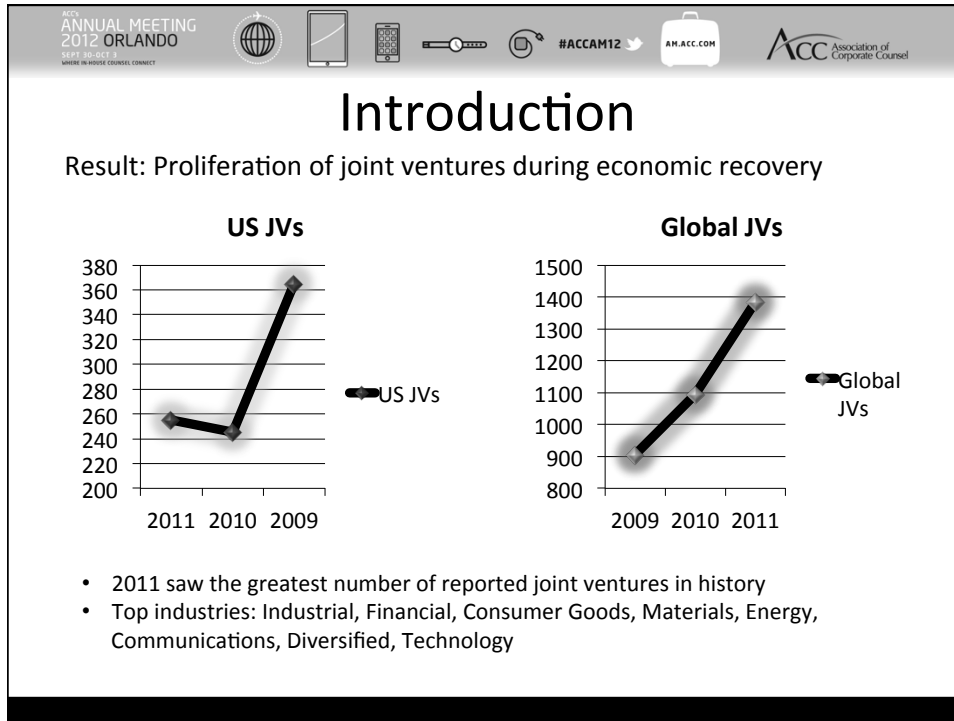
ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

Acc Association of Corporate Counsel

Introduction

- Post-credit-crunch world drivers
 - enter new markets
 - access resources and capital
 - mitigate risk
 - controlling expenses
- Joint venture - the vehicle of choice
 - manage risk in periods of economic uncertainty
 - even if it means partnering with your competitor



ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

Introduction








- A Word About Competition / Anti-Trust
 - Legitimate strategic alliances/joint ventures are governed by the civil provisions of most anti-trust statutes
 - U.S. “rule of reason” test: Does the arrangement substantially harm competition
 - Facts driven analysis:
 - Whether agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the agreement
 - Cease and desist order is common remedy with fines or injunctions for non-compliance
 - Disgorgement of profits also possible
 - Canada: Applies to arrangements between competitors (or potential competitors) that are likely to result in a substantial lessening or prevention of competition
 - Various factors will be considered:
 - Whether agreement is likely to create, maintain or enhance the ability of the parties to exercise market power, including by hindering the development of future competition
 - Efficiencies defense available
 - Enforcement limited to remedial orders; no private right of action

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM








Introduction

- A Word About Competition / Anti-Trust
 - Legitimate strategic alliances/joint ventures are governed by the civil provisions of most anti-trust statutes
 - U.S. “rule of reason” test: Does the arrangement substantially harm competition
 - Canada: Applies to arrangements between competitors (or potential competitors) that are likely to result in a substantial lessening or prevention of competition
 - Various factors will be considered
 - Efficiencies defense available
 - Enforcement limited to remedial orders; no private right of action
 - Caution: must ensure that arrangement is not a naked restraint on trade between competitors or potential competitors (i.e. to fix prices, bid rig, allocate markets or restrict output)
 - Criminal prohibition (fines and jail time); private right of action
 - No need to demonstrate an effect on competition
 - If arrangement has anti-competitive elements, defense available if ancillary to a broader separate legitimate arrangement between the same parties and directly related and reasonably necessary for giving effect to that separate legitimate arrangement

ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT#ACCAM12 AM.ACC.COM Acc Association of
Corporate Counsel

Preliminary Matters






- Choosing the right partner
- Objectives and rationale
- Initiating discussions
- Role of counsel
- Internal communications
- Do's and don'ts checklist
- Confidentiality
- Regulatory concerns and required consents
- Exclusive negotiating period
- Record keeping

ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT#ACCAM12 AM.ACC.COM Acc Association of
Corporate Counsel


Formation / Ongoing

- Type of entity / structure
- Equal ownership v. majority/minority
- Contributions / working capital / borrowings and guarantees
- Choosing name (and who owns post-dissolution) / use of parent IP
- Term sheet / memorandum of understanding
- Term (fixed or termination rights)
- Defining scope (business, products, geography, time)
- Amendments to the agreement
- Financing, tax and accounting considerations (cross-border complications)
- Shareholder business with the joint venture
- Governing law – jurisdiction where JV organized?


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




Governance

- Board and management structure
- Board v. shareholder decisions
- Deadlock
- Ongoing legal input
- Hiring of personnel
- Appointment of Auditors
- Non-competition / other restrictive covenants


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12




AM.ACC.COM



Liquidity and Exit

- Pre-exit dispute resolution
- Pre-emptive rights
- Liquidity provisions
- Permitted transfers
- Right of first offer
- Going public
- Puts and calls
- Tag alongs and drag alongs
- Shotguns / buy-sell
- Valuation methodology

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE CORPORATE COUNSEL CONNECT



Post Deal Management

- Executive summaries
- Use of decision making matrix / flow chart
- Establish tickler system for trigger dates
- Periodic review / legal audit

Joint Venture Checklist

Shotguns in the Boardroom: Negotiating Joint Venture Agreements With Your Competitor ACC Annual Meeting - October 1, 2012

A. Preliminary Matters

1. Choosing the right partner
2. Objectives and rationale
3. Initiating discussions
4. Role of counsel
5. Internal communications
6. Do's and don'ts checklist
7. Confidentiality
8. Competition / anti-trust concerns
9. Regulatory concerns and required consents
10. Exclusive negotiating period
11. Record keeping

B. Formation

1. Type of entity / structure
2. Equal ownership v. majority / minority
3. Contributions / working capital
4. Choosing name (and who owns post-dissolution) / use of parent IP
5. Term sheet / memorandum of understanding
6. Term (fixed or termination rights)

7. Defining scope (business, products, geography, time)
8. Amendments to the agreement
9. Financing, tax considerations; cross-border complications
10. Shareholder business with the joint venture. Governing law - jurisdiction where JV organized?

C. Governance

1. Board and management structure
2. Board v. shareholder decisions
3. Consider deadlock issues
4. Ongoing legal input
5. Hiring of personnel
6. Appointment of Auditors
7. Non-competition and other restrictive covenants

D. Liquidity and Exit

1. Pre-exit dispute resolution
2. Pre-emptive rights
3. Liquidity provisions
4. Permitted transfers

5. Right of first offer
6. Going public
7. Puts and calls
8. Tag alongs and drag alongs
9. Shotguns / buy-sell
10. Valuation methodology

E. Post Deal Management

1. Executive summaries
2. Decision making matrix / flow chart
3. Establish tickler system for trigger dates
4. Periodic review / legal audit