



## President's Message

As the year draws to a close, we wish everyone a Happy Holiday Season and a Wonderful New Year. Our chapter has seen another phenomenal year. At the ACC Annual Meeting in Boston, our chapter won an award called the Chapter Challenge Award. We were also a runner-up for Chapter of the Year. The Chapter Challenge Award is given to the Chapter with the greatest growth in membership, combined with the greatest retained membership of any Chapter in ACC. This is a reflection of both the growth that our Chapter has seen over the past year, and the value provided to our membership. Thank you, all, for making our Chapter such a success. You, our membership, make ACC the resource of in-house counsel, for in-house counsel. The fact we were in contention for Chapter of the Year Award, also speaks highly of how our programs, events, and activities compare to other ACC chapters.

Looking forward to 2010, the first order of business will be our Chapter's Annual Meeting. During the meeting we will elect our chapter officers, board of directors, and committee leaders and members. This year you will see a significant expansion of the Chapter's committee membership and the addition of new Board positions. These additions are consistent with the growth of our Chapter membership and will enable our Chapter to provide even greater service and responsiveness in the year to come. The venue for the meeting will be the fabulous Moulin restaurant. It is going to be a sell-out, so register early!

Look forward in the spring also to several CLE programs and other events. Early in the year you will see another social networking and membership event. Our holiday social this past month at Fleming's Prime Steakhouse & Wine Bar at Plaza Frontenac was a huge success. Thank you to Fleming's for outstanding service, and thank you to Olgetree Deakins for sponsoring the event. In May, mark your calendars, we will see the Annual Corporate Counsel Institute. The Corporate Counsel Institute is already shaping up with an agenda of awesome speaking talent and terrific topics. Watch also for a members-in-transition event. The event will be designed to help members refine their job search. Our 2010 golf and spa event is also in the works.

Lastly, I want to say a special thank you to all our chapter sponsors. Without your generous support, our chapter would not be able to offer the high-level of programs, events, and services to our members. Thank you to our new chapter sponsors for 2010 – welcome! Thank you to our renewing chapter sponsors for 2010 – welcome back! We look forward to working closely with you in the coming year.

Well that's all for this edition. See you at the annual meeting.

Ty Ulmer  
Chapter President

# International Legal Consideration for In-house Counsel

By: Susan Hackett, Senior Vice President & General Counsel, Association of Corporate Counsel

So much of our time is spent attending to the urgent matters on our desks. Many of us complain that we don't have time to deal with the important ones: the ones that should be a priority in terms of long-term success, but are often shuffled to the bottom of the pile. Today, I'd like to talk to you about something that I think is long-term "important," and explain why at some point, if left unattended, it may become a daily "urgent" problem plaguing your practice.

In-house counsel have complex jobs as both generalists and specialists for their company client, and this complexity increases as the number of jurisdictions and related "international" considerations that your practice must contemplate increases. Even companies that largely work in only one country are ever-more likely to contend with suppliers, laws, and other influences from beyond their "home" jurisdiction's borders.

So please consider for a few minutes how a number of developments and emerging trends in international legal practice may affect your ability to get your work done as a lawyer operating across country lines.

Trendlines that will affect your practice as an in-house counsel.

In-house counsel in places like the United States, Canada, Australia and New Zealand have long enjoyed the confidence that their ability to practice as in-house lawyers would be fully recognized and respected, both as lawyers at the bar and amongst the client community they serve. Yes, they fought for it, but no one questions it nowadays.

But in many parts of the world, regulators of the local profession still do not recognize in-house counsel as carrying the same professional rights and responsibilities as lawyers in outside practice. In many jurisdictions in Europe and Asia, for instance, in-house counsel can no longer carry privilege rights for their clients or aren't seen as sufficiently independent to be allowed to exercise the status of outside counsel in courts or elsewhere. In many of these jurisdictions, an in-house counsel becomes a "non-lawyer" the day they receive compensation by paycheck rather than retainer check. [See, e.g., ACC's International Practice Almanac offering overviews of practice rights for in-house lawyers jurisdiction by jurisdiction - <http://www.acc.com/search.cfm?anytext=International%20Practice%20Almanac>.] In addition, almost every major business jurisdiction in the world places some level of limitation on the ability of lawyers not locally admitted to engage in practicing.

Many jurisdictions around the world have been engaging in MJP (or multijurisdictional practice) reform efforts to help the states or provinces that separately regulate lawyers, figure out how to allow and when to regulate inter/multi-state or inter/multi-province services within the country's borders without requiring separate admissions in each jurisdiction. While the ability of lawyers practicing within these nations has improved, we still have a ways to go before larger MJP authorization systems catch up with 21st century practice realities.

Now these regulators have to figure out solutions that either facilitate or protect both the bar and the public from lawyers practicing in their jurisdictions who are not locally licensed anywhere in the country. It seems that our progress has been limited to figuring out a bit more about how a lawyer licensed in Ontario or California can follow a legal matter they've been retained to handle for a client to Alberta or Georgia (respectively). However, we still haven't really gotten a handle on how a lawyer from the company's office in another country, locally educated and licensed there, can come work at corporate HQ in the company's home country, or how outside counsel in the many jurisdictions abroad doing work for the company in their home jurisdiction can engage in providing services that are essentially deemed as being provided by a "non-lawyer" since that person is not admitted in the company's home country.

*So, here's the important nugget: if you thought that MJP was all but in the bag, it's actually just getting started in the emerging context of multinational practice. The corporate legal community, from both companies and firms, will need to push hard to explain why this is crucial for the bars to do since many are completely disinclined to get involved. They see the issues as a mere administrative inconvenience to the foreign lawyer that can be simply answered by saying "no."*

I see an emerging opportunity in many jurisdictions in the next few years as a number of efforts are launched to think more about how to deal with multinational practice issues. Lawyer associations and bar groups around the world are starting to set up commissions, and ACC will be there to help. What is going to drive change more than anything else, according to my small and completely subjective crystal ball, is that these emerging conversations on international licensing authorization will take place at the same time that governments and other stakeholders are also thinking about how to make corporate lawyers better gatekeepers for the client entities they serve. And also how lawyers and the law can become more of a service profession to a larger segment of their society, rather than simply a business venture for the highly educated and well-compensated corporate lawyers of the world.

For instance: The bars in Europe [and elsewhere] are about to begin to consider responses to initiatives such as the Legal Services Act ([www.justice.gov.uk/publications/legalservicesbill.htm](http://www.justice.gov.uk/publications/legalservicesbill.htm)), which arose in the United Kingdom a few years back; the fundamental precepts are now being replicated/gaining traction throughout Europe through the EU's Services Directive, which will take force at the end of 2009 [[http://ec.europa.eu/internal\\_market/services/services-dir/index\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/index_en.htm)]. When both of these initiatives were announced, quite a number of prominent leaders in the US ethics and professionalism community said: "Interesting, but an isolated event in time, and it will never happen here. Our self-regulated profession operates under time-honored traditions of independence and lawyers know best."

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# International Legal Consideration for In-house Counsel

By: Susan Hackett, Senior Vice President & General Counsel, Association of Corporate Counsel

(Continued from page 2)

But hear the undertones and think about whether it really is unlikely that this kind of “reform” movement will not seep beyond the four corners of Europe. The Legal Services Act was largely a consumer-driven initiative, responding to the perception and reality that legal services are not affordable or meaningful to most citizens’ basic needs. The Act authorizes the development of new kinds of professional service entities that would include multidisciplinary practices and would liberalize the practice of law to make it more accessible. The EU Services Directive requires EU governments to review their rules governing the liberal professions, to ensure they are necessary and appropriate – that directive may open all kinds of conversations about whom should be allowed the privilege of lawyer in a society and how those persons should be regulated.

*So – here’s the nugget: why isn’t it possible for such an over-arching review in Europe to include a discussion of whether companies – can be better served by in-house lawyers who are fully recognized by the bars and carry the privileges that their peers in outside practice have always enjoyed – hold them to the same standards of professionalism, of course, but offer them the same privileges of practice. Since the Akzo-Nobel case (in which ACC filed an intervention) is also still pending and may be decided soon, there will be the added limelight of a decision that either upends or supports the notion of privilege protection in the in-house practice context as interpreted by the highest courts in the EU interpreting local and EU law.*

And, of course, for lawyers beyond the physical borders of the EU, EU rules define anyone not admitted in a EU jurisdiction as a non-lawyer for purposes of legal services provided in the EU jurisdiction. That means all of you out there who don’t sit in Europe with a local admission, but have client interests in the EU. And this also applies to your local counsel whom you’d like to deploy in the EU negotiation or who has delivered the memo to your colleague sitting in Brussels, which is now discoverable, because privilege only applies to materials generated by lawyers (not non-lawyers).

At the same time, there are new initiatives in Australia and elsewhere that allow for law firms to seek out capital through public financing – essentially authorizing firms to become publicly traded companies, and thus be regulated as such. Thus, decisions about legal service modeling and provision in a publicly traded law firm may be influenced greatly by non-lawyers and regulators over time. And in the United States, in response to Enron and other corporate meltdowns, we see entities such as the SEC seeking to regulate the roles, fiduciary responsibilities, and even reporting requirements of lawyers working in public companies. We see Congress increasingly likely to hold hearings on corporate failures and subpoena lawyers and attorney-client privileged documents as a part of their investigations (and remember, privilege is a court doctrine in the United States, and Congress often maintains that it has no protective status in response to a Congressional subpoena). This all means that folks who aren’t “part of the guild” are increasing likely to have a hand in lawyer regulation.

We live in a new world, quite distinct from the traditions of our profession which allowed us to make decisions about professionalism as lawyers, without much “interference” from other stakeholders, such as clients, shareholders, public company regulators and the media. In an era marked by an alarming number of monumental corporate failures, questions about “where were the lawyers in all this?” will not be answered solely at legal colloquia. Like it or not, living in the new world will have consequences to our regulation and ability to practice for our clients. And we should be out in front of them, not lagging behind to see what others will make of our profession and how it works.

My point is that the consequences may seem remote to you right now. You could look at each of the above events as if they are separate and unrelated to your license, your practice and your client’s service. But I think that is a short sighted view. And if I have only these few minutes with you every now and then to take you away from what’s urgent to talk to you about what’s important, then let this be my call to ACC members: If you want to protect what’s important to you locally, you’d better be prepared to join us in fighting for what’s unfolding internationally. It will directly affect your practice and your capacity to practice in the not so distant future. Contact me at [hackett@acc.com](mailto:hackett@acc.com).

## Upcoming ACC Programs

ACC’s educational and training programs are designed to meet your diverse legal needs. Don’t miss out the chances to hone your legal skills and connect with your fellow in-house counsel at the following events:

Mini MBA For In-house Counsel, March 15-17, 2010, Boston, MA

ACC 2010 Annual Meeting: Be the Solution, October 24-27, 2010, San Antonio, TX

Corporate Counsel University, May 23-25, 2010, Indianapolis, IN

For more information on ACC programs, go to [www.acc.com/education](http://www.acc.com/education).

# Update on Increased Immigration Enforcement Impacting Employers

By: Melanie Gurley Keeney, Esq., Tueth, Kenney, Cooper, Mohan and Jackstadt, PC

U.S. Immigration and Customs Enforcement (ICE) has begun issuing administrative subpoenas, or Notices of Inspections (NOIs), to employers across the U.S., alerting employers that ICE will audit their hiring records to determine compliance with employment eligibility verification laws. The NOIs require surrender of Forms I-9, Employment Eligibility Verifications, payroll reports, unemployment insurance tax reports, quarterly tax statements, listings of independent contractors and vendors of the targeted business (including IRS Forms 1099), copies of any letters issued by the Social Security Administration related to a social security number "no match," copies of any petitions submitted to the U.S. Citizenship and Immigration Services (USCIS), and documents related to the employer's formation and business activities. In July 2009, ICE issued NOIs to 654 companies which resulted in the filing of Notices of Intent to Fine (NIFs) to 61 firms, resulting in \$2,310,255 in fines. In addition, 267 cases are still being considered for NIFs. ICE closed the other 326 cases after business were found to be in compliance with employment laws or after businesses were served with a Warning Notice in expectation of future compliance.

On November 19, 2009, John Morton, Assistant Secretary of ICE, announced that ICE issued 1,000 NOIs to employers associated with critical infrastructure in the U.S. The 1,000 employers were selected based on investigative leads and intelligence, and because of the employers' connection to public safety, national security, and critical infrastructure. In November, ICE also released new fine schedules for employers who violated the Form I-9 process, for those who "Knowing Hire / Continuing to Employ Fine Schedule" (plus enhancement or mitigation) or have "Substantive / Uncorrected Technical Violations Fine Schedule (plus enhancement or mitigation). The fines are dependent on whether the violation was the employer's first offense and the violation percentage, which is based on the number of employees the employer knowingly hired or the number of violations. Aggravating and mitigating circumstances include business size, good faith, seriousness, unauthorized aliens, and history.

The USCIS' Office of Fraud Detection and National Security (FDNS) also has recently started an assessment of the H-1B program. This action has led to a dramatic increase in post-adjudication audits of H-1B companies, which include unannounced physical site inspections at the employer's principal place of business and/or at the H-1B nonimmigrant's work location as indicated on the I-129 form (regardless of whether the work location is controlled by the H-1B employer). Launched in 2009, USCIS' Administrative Site Visit and Verification Program (ASVVP) performs administrative site inspections (ASV) of H-1B petitions, which are done on a post-adjudication basis, and are randomly selected. The Vermont Service Center has reportedly transferred approximately 20,000 cases to the FDNS and it is presumed that the California Service Center has also forwarded a comparable number of cases for review. This is in addition to the cases that are referred to the FDNS based on a standard profile worksheet, which is completed by USCIS adjudicators as part of the regular H-1B adjudication process.

The audits are generally conducted by FDNS officers and contractors, who collect and report information to immigration officers. The auditors have been equipped with a set of standard questions primarily designed to determine whether an employer actually exists, whether the employer knows it filed the petition, and whether the beneficiary is doing the work and receiving the wage indicated on the petition. Typically, employers have been asked to provide information regarding the company (including the employer's type of business, number of employees); give a tour of the employer's facilities and the auditors have taken photographs of where the H-1B employee works (e.g., cubicle, office, etc.). The auditors also request that the employers provide a copy of the H-1B employee's most recent pay stub(s), and then review the public access file verifying that the employer has complied with the U.S. Department of Labor's Labor Condition Application (LCA) requirements, including verification that the LCA Notices were physically posted at the H-1B employee's worksite. In-house counsel should make all sites aware of the possibility of an audit and prepare HR staff and foreign workers for interview.

In addition to the increased I-9 compliance review and H-1B site visits, certain Federal contractors (depending on size, duration and nature of contract) are now required to verify the employment eligibility of all new hires and existing employees assigned to the contract (who directly perform work) through E-Verify for solicitations issued and contracts awarded after September 8, 2009. A clause will be inserted into eligible Federal contracts committing Federal contractors to use E-Verify for all of the contractors' new hires and all existing employees assigned to the Federal contract to verify they are authorized to work in the U.S. Contracting officers will modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity (IDIQ) contracts to include the E-Verify clause for future orders if the remaining period of performance extends beyond March 8, 2010, and the amount of work or number of orders expected during the remaining performance period is substantial. Federal contractors must continue to use E-Verify for the life of the contract for all new hires and new people assigned to the contract, unless certain exceptions apply. When the Federal contract has ended, the company will no longer be able to verify existing employees through E-Verify.

Finally, the Missouri Attorney General's office issued final rules implementing the State's new immigration provisions set forth at RSMo. §§ 285.525-285.535 (effective January 1, 2009). Those rules can be found at 15 CSR 60-15 (effective August 30, 2009), and require that all employers who contract in excess of \$5,000 with the state or a political subdivision or who receive a state-administered or subsidized tax credit, tax abatement, or loan from the state must enroll in E-Verify and submit documentation detailed in the statute and regulations. Employers should be cognizant of the new obligations and penalties for failing to comply.

# Part-time Representations May Require a Part-time Insurance Policy

By: Christian A. Stiehemeyer, Director of Risk Management, The Bar Plan Mutual Insurance Company

It is a common occurrence for lawyers to take representations outside their primary employment. Usually as a favor to family or friends, lawyers take care of traffic tickets, draft simple wills, review real estate contracts, incorporate businesses, advise boards of social membership organizations...well, you get the idea. The list of possible representations a lawyer can be asked to help on is as long as the kinds of problems people can get in to.

But what may seem to be at first blush a simple situation with an easy resolution always has the potential to turn into a tangled web of problems with the possibility of placing the lawyer in a position of being accused of malpractice. What's even more concerning is the real possibility of a malpractice claim in such a representation being denied by the lawyer's carrier.

The basis for such a denial would lie in the definition of a covered act in the lawyer's malpractice policy. A common requirement for a claim to be covered is that the legal services be performed on behalf of the "insured."

If the policy defines "insured" as the lawyer's law firm or corporate employer, then any services performed outside of the scope of employment of the entity would not be covered by the policy.

To protect against the possibility of not having malpractice insurance coverage in such a situation, lawyers should take several steps. First, review the legal professional liability insurance policy and determine what the policy deems to be a covered act and who or what is considered by the policy to be the "insured."

Then, if the policy would exclude such legal services, investigate purchasing a part-time policy. Such policies are ordinarily quite economical. However, if they may also contain limitations on the type of legal work covered. For example, it is common for such policies to exclude coverage for personal injury representations. Nevertheless, despite the particular limitations in any such policy, they can be valuable tool in plugging potential insurance coverage gaps when a lawyer steps out of this or her normal employment.

## Welcome New Members!

### **Katherine Ashcroft**

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Mike Curoe, ACC St. Louis Board Member and Kathleen Yarborough, Chapter Administrator (middle) receive ACC Chapter Challenge award from ACC President Fred Krebs (far left) and Patricia Hatler, ACC Chair.

## ACC St. Louis Chapter Presents its

### 2010 Annual Meeting Thursday, January 21, 2010

5:30 - 6:30 p.m. - Cocktails  
6:30 p.m. - Dinner

**Location:**

Moulin  
2017 Chouteau Avenue  
St. Louis, Missouri 63103

**Special thanks to our sponsor, Juris Temps, Inc.**

The ACC St. Louis 2010 Board Election  
will take place at this event.

**Dress: Business**

**Cost: \$25**

**RSVP: <https://www.acteva.com/go/stlchapter>**

**This event is for ACC-STL members only.**

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*The ACC St. Louis Board Nominating Committee has nominated the following people to serve as officers and directors for 2010.  
The vote will be taken at the meeting.*

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**Officers**

Kate (Northcutt) Molamphy, President  
Kim Shaw-Elliott, President-Elect  
Patty Larson, Treasurer  
Chris Goddard, Secretary

**New Directors**

Martin Kerckhoff  
Cathy Sison

**Directors at Large Continuing Terms**

Jan Alonzo  
Mike Curoe  
Randy Hayman  
Tim Luft  
Jeana McFerron-Berron  
Tim Mooney  
Debbie Norman  
Steve Shrage  
Mary Tucker  
Ty Ulmer, Immediate Past President

## ACC Would like to Thank Our 2009 Annual Sponsors

### Gold

THOMPSON COBURN LLP



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LATHROP & GAGE LLP

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Littler  
Employment & Labor Law Solutions Worldwide

TUETH  
KEENEY  
COOPER  
MOHAN &  
JACKSTADT  
P.C.

### Upcoming ACC Events:

**January 21, 2010  
Annual Meeting and Dinner**

Location: Moulin

Time: 6:00 pm to 9:00 pm

Cost: \$25

Book online at [www.acc.com/chapters/stlouis](http://www.acc.com/chapters/stlouis)

You can find out more information on all of these events at: [www.acc.com/chapters/stlouis](http://www.acc.com/chapters/stlouis)

### ACC / St. Louis Chapter Officers & Directors

Tyrus Ulmer  
President

Kathleen Northcutt  
President-Elect

David Wilson  
Secretary

Patricia Larson  
Treasurer

Daniel Lett  
Immediate Past President

Board of Directors:

Jan Alonzo

Michael Curoe

Chris Goddard

Randy Hayman

Tim Luft

Jeana McFerron-Berron

Timothy Mooney

Debbie Norman

Mary Tucker

Stephen Shrage

Kathleen Yarborough  
Chapter Administrator

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