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ACC AMERICA
Association of Corporate Counsel
San Francisco Bay Area Chapter

FOCUS

President's Message

Laurence Denny

Dear San Francisco Bay Area ACC members:

On behalf of your San Francisco Bay Area (SFBA) Board of Directors and chapter leadership team, I am excited to provide you the following information about your local ACC chapter, its upcoming 2013 events and how you can make the most of your membership.

I am greatly honored to be the ACC-SFBA President for 2013. Having previously served as Vice President, Treasurer, and chair of the Corporate & Securities Committee, I am excited to take on this new role. Over the past few years the ACC-SFBA chapter has made amazing strides in providing chapter members with CLE programs, networking activities, pro bono opportunities, and career development guidance.

We are now the ACC's largest chapter, both in the US and internationally, with over 2,200 members. In 2010, we were fortunate enough to garner the (Large) Co-Chapter of

the Year award for the ACC in recognition of the high-quality programs and services we deliver to our local members. In 2012, through your efforts on behalf of the less fortunate in our community through our pro bono clinics in a box and matching pro bono funds programs, San Francisco's Volunteer Legal Services Program awarded us its 2011 Outstanding Corporation in Public Service Award — an award usually bestowed on large for profit companies, not ones, like the ACC-SFBA, made up of volunteers.

In 2012, we provided or co-sponsored nearly one hundred CLE and networking events for our members and we are looking forward to improving on this in 2013 — events that were, with one or two exceptions, entirely free for our members to attend. We again held two all-day CLE events, iACC, our spring dual-track CLE program that covers a variety of 12 or more dif-



ferent topics, and our fall all-day contracts program, Deal or No Deal (DOND), which again had attendance of over 400 members and received glowing reviews. For the first time in 2012, we held a program focused on start-ups and their legal needs, entitled "Start-Up Essentials," which provided our members guidance and practical materials on how to be the first in-house counsel at a start-up. This program was such a success that we are looking forward to expanding it in 2013, in addition to our Advanced Contracting (iACC) and Deal or No Deal (DOND) all-day events.

On top of the great number of CLE programs we provide our members, we continually sponsor social and networking events for our members to meet in an informal and relaxed setting. In 2012 and returning by popular demand in 2013, we will have our "ACC at the Ball Park"

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Internal Investigations: Short Sheet Guidelines

There are certain principles that you should keep in mind every time you conduct an internal investigation. Following these principles will help ensure the appropriate resolution of important issues.

- **Act Pursuant to Clear**

Authorization. In order to protect the integrity of the investigative process and minimize disruptions to normal business operations, it is important that investigations be handled in an organized manner from the beginning. At the outset of an investigation, you should document who is responsible for conducting the investigation, who is responsible for supervising the investigation, and the scope and purpose of the investigation. The integrity of the investigation can be compromised if individuals who are not authorized to conduct the investigation decide to play “Sherlock Holmes” and insert themselves inappropriately in the process. A clear written authorization and statement of scope can prevent such problems. In addition to documenting who will do the investigating (and therefore making it clear who will not), you should document who will have access to the investigation’s findings.

- **Ensure Appropriate**

Confidentiality. The fact that an internal investigation is being conducted does not mean that misconduct has, in fact, occurred. Respect the privacy of everyone involved. You should conduct your internal investigation in a way that mini-

mizes the opportunity for employees to jump to conclusions or gossip about other employees. Limit your discussion of the investigation and information learned during the investigation to persons who have a legitimate “need to know” the status. Witnesses should be told not to discuss the investigation among themselves or with others, especially outside the Company.

- **Be Independent.** You should ensure that you are unbiased and do not have a conflict of interest that could influence your conduct of the investigation. Conflicts can occur in many circumstances, including when the investigator has a personal interest in the outcome of the investigation, or is assigned to investigate the actions of a supervisor or friend. Bias can occur with respect to the issues or persons involved, and exists when an investigator’s personal beliefs or opinions cloud his or her judgment. It is up to you to determine honestly whether you can be fair and impartial. If you believe that you cannot complete an investigation objectively, for whatever reason, you should notify the person who assigned you the investigation as soon as possible.

- **Conduct a Thorough Investigation.** At the outset of your investigation, make a preliminary list of the people who may have information relevant to the investigation, which may include: witnesses to the incident, the person reporting possible misconduct, the person alleged to have com-

mitted misconduct, custodians who may have control of relevant documents, and people who can help you understand technical issues that may be relevant to the situation, such as how something works or who normally performs a task. You should also make a preliminary list of potentially relevant documents. Taking this first step will help you organize your investigation and keep track of relevant information.

- **Be Objective and Open-minded.** You should avoid reaching conclusions until you have interviewed all of the witnesses and reviewed all of the relevant documents. When interviewing a witness, make every effort to avoid influencing the witness’s answers. A witness should be encouraged to present “his side of the story.” Avoid asking questions in a way that indicates that you expect a certain answer, which may improperly – even if unintentionally – limit the witness’s willingness to present “his side of the story.”
- **Conduct a Timely Investigation.** The best investigations are completed without unnecessary delay. This is true because as time passes, relevant facts and documents are harder to find and memories are less reliable. Timely resolution also enables the Company to promptly take any needed remedial or corrective measures. You should do your best to complete the investigation within the assigned time frame. If circumstances dictate

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that more time will be required to complete the investigation, notify the person who assigned you the investigation as soon as possible. Ensure that you have reviewed all relevant documents and have interviewed all witnesses who may have relevant information.

- **Document Your Investigation.**

You should record everything that you do as part of the investigation on an investigation log or in another format provided by the person or department that assigned you the investigation. You should keep track of what documents you collected and reviewed, who you talked to and what was learned from each person, and when each interview occurred. In most cases, you will prepare a written report, usually in a narrative form, outlining the issues, your investigation process, your factual findings, and your conclusions. Whenever possible, try to identify the source of each factual finding. Attach all relevant documents as exhibits to your investigation report. Investigation

reports are usually retained for at least five years. Consult the person or department that assigned you the investigation to confirm the appropriate document retention period for your report.

- **Finally, Know When to Seek Help.**

From time to time investigations lead to unexpected findings or involve issues with which you may be unfamiliar or uncomfortable. When this occurs, it is best to suspend your investigation and seek advice from the person or department that assigned you the investigation, or from the legal department. For example, in the course of investigating a fairly routine safety violation, you may begin to suspect that an employee is engaged in a serious environmental violation that you are not qualified to investigate. Or perhaps during a Human Resources investigation you come to believe that an employee may have been involved in a criminal activity such as fraud or theft. In each of those cases there may be certain additional steps that will need to be taken to protect the

rights of employees involved as well as the Company. Never hesitate to take the time to ask for advice or help whenever you encounter something unusual.

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ACC's 2012 Compliance and Ethics Training Program
May 1-2, New Orleans, LA

Additional Resources:

[Longform Template Internal Investigations Guidelines](#)

[Statutes and Rules Relating to Codes of Conduct](#)

[Internal Investigation: Keeping a Lid On It](#)

[Internal Investigations](#)

Welcome New Members!

Hamed Adib, Pacific Convenience & Fuels LLC

Mani Aliabadi, Google, Inc.

Tonik Barber, Autodesk, Inc.

Jonathan Brown, Apple Inc.

Marisa Brutoco, Google, Inc.

Sharda Caro, Square, Inc.

Jennifer Chaloemtiarana, Levi Strauss & Co.

Athanasia Charonis, Google, Inc.

Paul Choo, QUALCOMM Atheros, Inc.

Michael Culver, Elance, Inc.

Deborah Davis Boykin, SAP America, Inc.

Alexander Eagle, Tavistock Restaurants

Lisa Glover-Gardin, Google, Inc.

Raju Goyal, Google, Inc.

Jennifer Gregg, Graniterock

Kevin Gross, Chevron Corporation

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Stacey Hagen, Robert Half International Inc.

Aaron Haggarty, Ruckus Wireless, Inc.

Jason Hannigan, SunEdison

Sara Harrington, LinkedIn Corporation

Erin Hawthornthwaite, Google, Inc.

Jonathan Hicks, Cadence Design Systems Inc.

Kimya Hoffmann, Facebook, Inc.

Lisan Hung, Kovio, Inc.

Omar Jabbour, SysIQ, Inc.

Elizabeth Jay, Onyx Pharmaceuticals, Inc.

Jeffrey Jimenez, IGN Entertainment, Inc.

Stephen Johnson, One Mind for Research

Pierre Keeley, LinkedIn Corporation

Sandra Knox, DataDirect Networks, Inc.

James Knox, TIBCO Software Inc.

Karen Koeppe, Cadence Design Systems Inc.

Ryan LeBlanc, Yingli Green Energy Americas, Inc.

Brian Lee, QUALCOMM Atheros, Inc.

Mike Levy, Square, Inc.

Lloyd Llewelyn, Ca' Momi

Patrick Lonergan, TiVo Inc.

Nancy Lynch, Adobe Systems Incorporated

Julie Matsumoto Busette, OL2, Inc.

Ellen McDonald, MobiTV

Susan Meyer, Attorney

Philip Milestone, Excelligence Learning Corporation

Julie Missud, Ricoh US IP Office

Allison Mull, Facebook, Inc.

Ross Nadel, Square, Inc.

Tim Nestler, Wilbur-Ellis Company

Rashmi Nijagal, Paradigm Management Services, LLC

Alaleh Nouri, Accuray Incorporated

Jeffrey Paik, Zuckerberg Media, LLC

EunHae Park, Oracle America, Inc.

Paula Quintiliani, Visa Inc.

Stephen Radack, Moody's Corporation

Sherin Rashedi, SAP America, Inc.

Sally Rau, Velti plc

Alexandra Ross, Attorney

David Rothenberg, LinkedIn Corporation

Priya Sanger, Google, Inc.

Marla Scharf, Attorney

Sydney Schaub, Square, Inc.

Stephen Schirle, Pacific Gas & Electric Company

Douglas Scrivner, Attorney

Karyn Smith, Meltwater Group

Margo Smith, QuinStreet, Inc.

Christine Starkie, Asus Computer International

Paul Starrett, UBIC North America, Inc.

Jose Miguel Suarez, SanDisk Corporation

Adam Tachner, QUALCOMM Atheros, Inc.

Henry Tang, SAP America, Inc.

Richard Taylor, Nordic Naturals, Inc.

Evelyn Tom, Sybase, Inc., an SAP Company

Hong Hanh Vo, LinkedIn Corporation

Dana Wagner, Square, Inc.

Juan Walker, Varian Medical Systems, Inc.

Monica Zent, FW Inc.

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event where we start the evening with a pre-game CLE program followed by a reception in two large suites to watch a World Champion San Francisco Giants baseball game as well as our “Wine Tour in Napa Valley”, where we provide a CLE program on the bus up to Napa and then spend the day wine tasting. ACC-SFBA will put on numerous other social and networking events throughout the year so please look for upcoming invitations!

If you have not had an opportunity yet, we encourage you to come out and join us at one of our many diversity events — which provide great opportunities for our members to get together and focus on this important issue in our profession in a social and networking setting. We will continue putting on

events focusing on how in-house counsel can continue to progress in their careers, develop their professional skills both as attorneys and executives in corporations, and learn the subtler art of networking and executive management. If you have not had the opportunity, I encourage you to attend our annual program on law department management that is typically held in the fall each year and focuses on the issues facing senior lawyers in managing the operations of a corporation’s legal department.

I hope you agree with me that this is a great time to be a member of the ACC-SFBA. The resources provided by the National organization and made available to each of us through acc.com are both plentiful and incredibly helpful for the practice of in-house counsel. When

you combine those resources from the National ACC organization with the value that your local ACC-SFBA chapter is able to deliver to you throughout the year in terms of free CLE programs, networking, and social and career development events, I truly believe (and hope you do too) that there is no better association for in-house counsel than ACC and your local ACC-SFBA Chapter.

I look forward to seeing each of you at one of our upcoming events in 2013.

Best,
Laurence Denny
President
ACC San Francisco Bay Area
Chapter

Crowell & Moring Litigation Special Report

Crowell & Moring is pleased to announce that our “[Litigation Forecast 2013: What Corporate Counsel Need to Know for the Coming Year](#)” is now available. Click [here](#) to read the Forecast.

In house lawyers need to know more than ever to succeed, both about their clients and about the legal landscape. At the same time, that landscape—particularly the U.S. litigation landscape—is becoming increasingly complex. Because everything from protecting innovation and winning contracts to growing through acquisitions and avoiding compliance penalties may be at stake, it is critically important that in house counsel and outside counsel alike understand litigation trends.

The Forecast identifies and discusses those trends in a concise, accessible, and proac-

tive fashion. It is neither a treatise nor a year in review. For the corporate GC or head of litigation—or for a broad range of in house lawyers and outside counsel who seek to bring more value to their clients—the Forecast offers a practical look at the most important trends, including key cases and emerging challenges from the plaintiffs’ bar, trade secret thieves, regulators, and other quarters.

We hope that you will find this report useful. For more information about Crowell & Moring, contact:

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Greg Call



Doug Sullivan

ACC News

Register Now and Save: Early Bird Deadline Ends April 3

Register by April 3 to save \$200 off the regular registration rate for ACC's 2013 Annual Meeting in Los Angeles (Oct 27–30). Offering a year's worth of CLE/CPD credits and top-notch educational programs, this meeting is the one-of-a-kind event for you to enhance your legal skills, meet leading legal service providers, and expand your professional networks. For more information and to register, visit am.acc.com.

How to Bring More to the Table

Your organization wants your ideas and solutions, as well as your legal advice. Develop the necessary skills with business courses exclusively for in-house counsel from the Association of Corporate Counsel and the Boston University School of Management.

Choose from four programs:

- Mini MBA for In-house Counsel
- Project Management for the In-house Law Department
- Risk Management & In-house Counsel
- Advanced Mini MBA for In-house Counsel

Visit www.acc.com/businessedu for more information.

Compliance Training to Protect Your Company

ACC's Compliance & Ethics Training program returns this year with more topics and CLE/CPD credits! Join your peers in New Orleans from April 29–30 for two days packed with compliance essentials. Return to the office with practical samples and checklists, insights from compliance industry experts, and a stronger professional network. Arrive early and celebrate the birthplace of jazz at the historic New Orleans Jazz & Heritage Festival. View the program schedule and register at www.acc.com/ce.

New to In-House? Need to Sharpen Your Basic in-house Practice Skills?

At ACC's Corporate Counsel University® (May 19–21, New Orleans, LA), you will earn CLE/CPD credits while gaining valuable skills from experienced corporate counsel on important topics such as contracts, compliance and employment. New for 2013 — more programs to boost your business savvy and additional networking opportunities outside the classroom. Learn more and visit ccu.acc.com.

Build Skills to Thrive in the Evolving Legal Field

Seats are filling up quickly for the Legal Service Management Workshop — an intensive, two-day workshop designed to help you develop skills in structuring value-based firm/client relationships through business school style case study. Join us in Philadelphia on May 1 & 2 for a one-of-a-kind opportunity for corporate counsel to work alongside law firm leaders. To learn more and register, visit www.acc.com/legalservicemanagement, or contact Catherine J. Moynihan at moynihan@acc.com or +1 202.293.4103 x398.

Make A Difference. Become a Mentor or Mentee Today.

With ACC's Mentoring Program, mentees can get career tips and first-hand professional advice from successful in-house peers, and mentors can help others navigate career challenges, share lessons learned, and impart new ideas. Plus, program participants will receive guidance from ACC to help maximize their experience. It's quick and easy to participate, and hundreds of your peers are already benefiting from this program. To get started, visit community.acc.com/mentoring.

Tap Into the Collective Wisdom of the ACC Community

Check out ACC's newest resource — Wisdom of the Crowd. This resource provides compiled knowledge of highly relevant in-house topics from your fellow members, as shared on ACC's eGroups. Don't miss these valuable insights from your peers, many of whom work in a company similar to yours. This resource will also be featured every month in ACC Docket. Learn more at acc.com/wisdom

The ACC Alliance – Saving You Time and Money

Partners in the ACC Alliance program have been reviewed and approved by ACC members as companies you can trust to bring quality legal services with exclusive offers for ACC members. How can they help? For example:

- Imagine that you are investigated for the failure to provide legal advice even though no one sought your counsel. Is your silence a viable defense to liability or could a court find that you had a duty to speak up? Our ACC Alliance partner, **Chubb**, can help. **Learn more** from Chubb about malpractice issues unique to in-house counsel.
- **West** offers products, like the WestLawNext search engine, for in-house counsel and compliance professionals that cover compliance, mergers, acquisitions, transactions, litigation, and more. With each purchase of a West product or service, members earn "ACC Dollars" that can be used toward any ACC-related purchase, such as membership dues, registration fees or local or national ACC programs.

The ACC Alliance: No need to look further; the providers you need are right here. www.acc.com/alliance.

Gearing Up For 2013 Proxy Litigation

By Ted Hollifield, Esq. and Gidon Caine, Esq. of Alston & Bird LLP

The 2012 proxy season saw more than two dozen lawsuits filed alleging inadequate disclosure in annual proxy statements. Most related to advisory say-on-pay proposals or proposals related to equity incentive plans. Following a successful request for a preliminary injunction in *Knee v. Brocade Communications Systems, Inc.* related to expansion of an equity incentive plan, several high profile companies entered into settlements of such claims and unsuccessful cases were filed against blue-chip companies Microsoft and Clorox.

The Current State of Play

In *Gordon v. Symantec Corporation*, Symantec successfully defeated a proxy lawsuit based on inadequate disclosure regarding an advisory say-on-pay proposal by submitting an expert report prepared by Stanford Law Professor Robert Daines showing that Symantec's disclosures were consistent with similar disclosures made by 15 peer firms and the top 26 high technology hardware and software companies listed in the San Jose Mercury News' ranking of the Silicon Valley 150. In subsequent cases, Symantec's success was replicated by similar analyses showing disclosure was consistent with "customary industry standard."

When the Superior Court of the County of Alameda in *Mancuso v. The Clorox Company* failed to enjoin the annual meeting of Clorox based on allegations of inadequate disclosure related both to an advisory say-on-pay proposal and a binding proposal approving an expansion of the company's 2005 Stock Incentive Plan, some were prepared to declare vic-

tory and view the case as a definitive expansion of *Symantec* to binding shareholder proposals. A fair reading of the order shows that the court reached its determination as a result of a "meager evidentiary presentation" that the plaintiff could succeed on the merits and a "more critical deficiency" on the showing of irreparable harm. The court found that even a binding shareholder proposal voted on in the annual meeting was susceptible to "complete relief" because "these shareholder actions could be voided by court order, proxies re-solicited with full disclosures and a new vote taken."

When it comes to binding proposals, it appears likely that state courts will continue to entertain questions regarding the adequacy of proxy disclosures and enjoin the holding of an annual meeting where such disclosures are found lacking.

Best Practices

One conclusion to be drawn from last year's litigation is that to assess whether state law fiduciary obligations are met, in addition to the Exchange Act rules themselves, reporting companies will need to be familiar with the disclosure policies of their peer companies and endeavor to provide a rationale in the proxy for the disclosure decisions made. Reporting companies will also need to assess their general risk for proxy lawsuits based on the proposals to be put to shareholders in



Ted Hollifield



Gidon Caine

2013, and perhaps think more strategically than they might otherwise about the timing of discretionary matters to be voted on. Addressing equity incentive plans a year earlier than needed can give a company greater latitude to respond to a proxy suit should it occur, while deferring such a vote to 2014 provides an additional year for the creation of more comforting precedent. Lastly, the continued threat of proxy litigation can be viewed as an opportunity to expand a disciplined approach to direct shareholder engagement consistent with the proxy. Certainly, Microsoft's arguments resulting in successful dismissal were advanced by having one of its largest shareholders assert for the record that the company's proxy disclosures were, in their opinion, "sufficient."



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