



Richard DePiano, Jr. President's Message

I am privileged to assume the role of 2008 president of the DELVACCA Chapter. As this New Year begins, the chapter and

ACC national enter their 26th year anniversary. This is both an occasion for reflection and celebration! We will celebrate this momentous event with our 25th Anniversary Gala on Saturday, October 18, 2008 at the Marriott Hotel in Downtown Philadelphia. The Anniversary Committee is busy finalizing the details for this important milestone event in the history of our chapter.

We will continually reflect on the accomplishments of the chapter as we report on the successful events and programs planned throughout the year. We have stellar programming planned for the remainder of the programming year, and the committees are actively seeking to cover issues of importance to in-house counsel. Make sure to bookmark the chapter homepage and visit weekly for the most current information on programming and resources.

I also want to pledge my commitment to continue the solid work of the past boards, presidents, and officers, which have sustained DELVACCA's growth and success through the last 25 years. In 2007, Fred Krebs, president of ACC, awarded

The Programming Excellence Award to the DELVACCA Chapter—I cannot think of a more fitting testament to DELVACCA's success.

The recognition of DELVACCA's programming highlights one of our clearest goals and one of my highest priorities for 2008: The delivery of high quality and relevant programming for in-house practitioners. The benefits speak for themselves: increased membership, national recognition, but most of all, value to our members.

Along with this commitment to quality programming, our chapter's commitment to Pro Bono and community service efforts have been expanding. In today's demanding, evolving, and complex daily practices, the goal of service must not be lost upon the chapter, which was formed in the birth place of the Constitution, Declaration of Independence, and the foundation of service by stewards of the law. In fact, twenty-two signers of the Declaration of Independence and the Constitution were lawyers.

Therefore, as we expand our efforts in programming, pro-bono, and membership, I ask for your participation. Your ideas, support, criticisms, leadership, and involvement on any level of contribution that you can give is critical to our future success.

I want to thank all the individuals and businesses that have contributed their time, talent, and support over the past year. I want to also recognize the contributions of our departing board members and committee leaders who have helped in the success and growth of the chapter. I would like to take this opportunity to also thank our new and continuing board members, committee leaders, and especially our chapter administrator, Chris Stewart—all of whom manage to make the chapter look so good. For that is the key to our success: the support of talented individuals.

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Focus on CLOs: CLO ThinkTanks, Chapter Networks, Insights & Beyond

By Renee Danker, associate general counsel, advocacy and CLO services, ACC

ACC focuses many of its services towards different segments of its membership, including those who are new to in-house practice, legal specialists, law department managers, chief legal officers (CLOs), and small and large department practitioners. While resources and programs may be initially created or styled with one of these segments in mind, anyone may find value in these materials. Large law departments, for instance, invest in resources that can then benefit smaller practices; and something created for an IP specialist may inform a legal generalist who has an IP problem arise that needs attention.

Whether you are the CLO for your law department or you ultimately report to the person who is, ACC's CLO materials and services can help provide a window into thought leadership and issues that are top-of-mind in top law departments around the world. Featured below are some of the initiatives and links to materials we've created for our CLO membership segment. For more information on our CLO services or resources, check out our CLO "homepage" at www.acc.com/php/cms/

index.php?id=59, or contact Renee Dankner, associate general counsel, advocacy and CLO services (dankner@acc.com; 202.293.4103 x358), or Susan Hackett, senior vice president and general counsel (hackett@acc.com; 202.293.4103 x318).

ACC CLO ThinkTanks

ACC CLO ThinkTanks are invitation-only discussion forums at which a small group of large company CLO thought-leaders discuss in-depth their ideas, concerns, best practices, and forward-thinking advice on the hot topics confronting the in-house bar and their clients.

To date, ACC has held 14 CLO ThinkTanks in the United States and Canada; sessions have included CLOs from more than 100 top-ranked companies. Topics have included: Corporate Governance and Compliance; Establishing and Sustaining an Ethical Culture in a Global Organization; Managing Corporate Business Information: Ediscovery and Beyond; Hot Topics for Private Companies; Compensation and Career Advancement for In-house Lawyers; and the Law Department's Role in Financial Compliance and Relationships with Auditors.

Advance Participant Briefing Binders and Executive Reports of past CLO ThinkTank sessions are available at www.acc.com/php/cms/index.php?id=264. The Participant Briefing Binders include discussion outlines and links to related resources of interest. The Executive Reports summarize key takeaways and discussion highlights. Stay tuned for materials relating to upcoming sessions on FCPA Enforcement, Enterprise Risk Management, CLO as Gatekeepers, and more.

CLO Chapter Networks

Several of ACC's chapters are implementing exciting initiatives to help promote networking and leadership discussions among CLO leaders in their local communities. From CLO lunch clubs, to general counsel forums, to roundtable dinners or GC Brown Bag lunches, chapters are bringing together CLOs to expand their network of peers and share ideas on challenges and best practices. For more on what the DELVACCA, Mountain West, Charlotte, Central Ohio, San Diego, and WMACCA chapters are doing, see www.acc.com/php/cms/index.php?id=381.

Coming soon: posts for additional chapter CLO initiatives—stay tuned and please send an

email to dankner@acc.com if your chapter is implementing initiatives you'd like us to add, or to request information on how to create or participate in CLO networks within your chapter area.

CLO Executive Bulletin

ACC's *CLO Executive Bulletin* is a periodic electronic newsletter designed for CLOs. Read featured perspectives of leading CLOs on hot topics, find executive briefings on ACC public policy initiatives undertaken on behalf of the bar, and find resources of particular interest to law department leaders. Most issues include a lead article that features insights and perspectives of a leading CLO on a hot topic of interest.

Past issues feature insights on a broad range of topics, including: Optimizing Business Needs Through Risk Management (Mick McCabe, Allstate); Leading with a Vision for Innovation (Mike Dillon, Sun Microsystems); CLO as Spokesperson with the Media (Don McCarty, Imperial Tobacco Canada); and Six Key Principles for Creating an Effective and Sustainable Pro Bono Program (Ken Handal, CA). Links to past issues and featured CLO perspectives articles are available at www.acc.com/php/cms/index.php?id=266.

CLO Club/ACC Annual Meeting CLO Program Series

Each year at its Annual Meeting, ACC offers special programming designed with CLOs in mind. ACC's Annual Meeting 2007 included our signature CLO Club programs (sophisticated networking forum that hosts peer-to-peer discussion groups targeted to the unique executive practice, management, and benchmarking needs of CLOs), plus an entire new line of CLO programs: our CLO Executive Leadership Series sessions.

The CLO Executive Leadership Series sessions are open to all annual meeting participants and feature top CLOs as panelists. In addition, the AM 2007 program slate included ACC insights and presentations on "Cutting Edge Practices from the World's Largest Legal Departments," and "Top of Mind: What General Counsel are Thinking/Worried About." Look for these program materials soon in the Virtual LibrarySM at www.acc.com/vl.

While the CLO Club sessions are open only to CLOs, we've posted session materials and key takeaway summaries on our website to help provide insights into these discussions and possibly even serve as 'tool kits' for hosting these types of discussions within your law departments.

Visit ACC's webpage for more information on ACC's CLO Club and materials, including hypothetical scenarios, reference lists, and key takeaway summaries from this year's sessions on Financial Compliance and Emergency Response Preparedness, available at www.acc.com/php/cms/index.php?id=267.

ACC's CLO Page

In addition to some of the more specialized services and resources noted above, ACC has dedicated a portion of its website to promote the executive, legal and department management roles of today's CLO. Find the resources and connections you need at www.acc.com/php/cms/index.php?id=59.

Welcome New Members

Christine Arasin, Burlington Coat Factory
Glenn Cavanaugh, Metrologic Instruments
Richard Collier, Elan Pharmaceuticals, Inc.
George Collier, Streamlight, Inc.
Brian Corbett, Main Line Health
V.P. dePillis, ARAMARK Corporation
Harold Dichter, ARAMARK Corporation
Marci Donnelly, Sunoco Logistics Partners L.P.
Mark Ehlers, Kroll
Tamsin Newman Fast, ARAMARK Corporation
Robert Feit, Ametek, Inc.
Beth Friel, Harleysville Insurance Companies
Rosemary Goodier, Wilmington Trust Company
John Gray, Basell Polyolefins
Lucy Halatyn, Jacobs Engineering Group Inc.
Alycia Horn, Comcast Cable Communications, LLC
Stephen Kanovsky, Sanofi-aventis

Rita Knepley, AmerisourceBergen Corporation
Angela Kweon, Burlington Coat Factory & Warehouse Corp.
Gregory Lare, ARAMARK Corporation
David Liebman, George Weston Bakeries, Inc.
Robert Marley, Unisys Corporation
Mehrin Masud-Elias, Comcast Corporation
Deborah Pierce, 1st National Bank of Chester County
Robin Piree, PREIT Services, LLC
Cheryl Quain, Syngenta Corporation
Andrew Schaeffer, E.I. du Pont de Nemours & Company
William Schmidt, Buckeye Partners
Amy Schuh, Hewlett-Packard Company
Craig Silberman, IDS Scheer
James Stoltzfus, Corporation Service Company
David Wheat, Brenntag North America, Inc.
William Whitman, Carpathia Corporation

ACC Selects DELVACCA Officer to Serve on 2008 Nominating Committee

Chapter Immediate Past President Robert Talley has accepted a request by ACC President Fred Krebs to serve as chapter representative on the ACC Nominating Committee. The committee fulfills one of the most important tasks of the Association—selection of officers and directors for 2009. The work on this effort will take place over the first half of 2008. Commenting on this appointment, Bob Talley said, “It is an honor to serve DELVACCA and ACC in this essential activity which ensures the continuing vitality of leadership at ACC.”

Mark Your Calendars

**DELVACCA 25th Anniversary Gala
Saturday, October 18, 2008**

DELVACCA President Rich DePiano, announced plans to celebrate DELVACCA’s 25th anniversary milestone in 2008 with the chapter’s first ever black-tie gala. Immediate Past President Robert Talley is serving as Gala Committee Chair. The spacious and grand main ballroom at the Marriott Downtown Philadelphia has been booked for the event and a large block of rooms has been reserved at a discounted rate. The committee is planning a wide array of activities for the weekend to reunite DELVACCA members, officers, and directors, both past and present. Special guests will be invited and various prominent keynote speakers will be featured.

Look for more details to come as they are finalized and contact Bob Talley if you are interested in helping to organize the event. He can be reached at 610.971.3131 or tallerm@jmus.com.

Third Circuit Requires “Strict Compliance” in Age Discrimination Waivers

By Michael D. Homans, Flaster/Greenberg P.C.

Employers looking to implement reductions in force and obtain releases of age discrimination claims, need to be more careful than ever to follow the letter of the law.

A recent decision by the Third Circuit Court of Appeals requires that employers be in “strict compliance” with the Older Workers Benefit Protection Act (“OWBPA”) when obtaining the waiver of federal age discrimination claims—or else the waivers are no good and the employee can still sue the company, even after taking the severance pay.

In *Ruehl v. Viacom, Inc.*, the employee, James Ruehl, challenged the validity of a release of claims under the Age Discrimination in Employment Act (“ADEA”) that Viacom required him to sign in order to receive enhanced severance benefits. Such releases—which require employees to give up almost all of their legal claims against the employer—are typical in RIFs and terminations. They help ensure that employers that provide separation pay to severed employees are not subsequently sued by those same employees for wrongful termination.

However, as most corporate counsel know, the OWBPA provides that such waivers and releases, as they apply to federal age discrimination claims, are valid only if they meet certain requirements, including:

- Providing the individual with at least 45 days to consider the agreement, if it is part of a program offered to a group or class of employees (21 days applies, if only one employee is terminated);
- Informing the individual in writing, in plain language, as to the group of individuals covered by the program, any eligibility factors for such program, and any time limits applicable to such a program; and
- Stating the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or unit who are not eligible or selected for the program.¹

Viacom, *recited* the proper OWBPA language in Ruehl’s release agreement, but *did not actually provide* him or other fired employees with the required information as to eligibility factors, applicable time limits and job titles and ages of those selected and not selected for termination. To cover itself, Viacom placed a clause in the agreement stating that such information had been provided to the employees, and Ruehl signed the agreement with this assertion. Viacom argued that by signing this clause, Ruehl waived his rights and conceded the point, even though the information actually had not been provided to him.

Viacom also argued that providing the information required by OWBPA to each employee would be unduly burdensome and require too much paperwork. Viacom said Ruehl could have requested the missing information from Viacom, and it would have supplied it, but he never did, making the point moot.

The court rejected Viacom’s defense with strong language, noting that the OWBPA places the burden on the employer—not the employee—to provide the required information to employees. The court noted that an age discrimination waiver, to be valid, requires “strict compliance” with the terms of the OWBPA, as recognized by the U.S. Supreme Court in *Oubre v. Energy Operations, Inc.*, 522 U.S. 522 (1998). The statute does not allow for exceptions.

Importantly, the court left open the issue of whether an employer could provide in the release that the requested information was kept in a central location, accessible to the employee “upon request,” rather than actually being attached to the release given to each employee.

Established practice for most employers has been to provide such information to each employee, as part of the release

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1. Other requirements apply under OWBPA, but are not at issue in the case.

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packet, but the “upon request” option may be viable, especially where exceptionally large amounts of information are involved.

So what lessons do we take from *Ruehl v. Viacom*?

- To be safe, employers must strictly comply with each and every requirement of the OWBPA—including disclosing the eligibility factors for the RIF, the ages and job titles of those selected and not selected, and the many other requirements of the statute.
- Employees over the age of 40 who are asked to sign an agreement that does not comply with the OWBPA may be able to have their cake and eat it, too—receive the severance, and then sue for age discrimination under federal

law—and should seek legal counsel before signing such an agreement.

- Being too clever—such as drafting a statement that the necessary disclosures have been provided, even when they have not—will not cure an employer’s violation of the OWBPA, and may actually backfire on the employer and its credibility in court.
- For employers with a large RIF that would require huge amounts of paperwork to be OWBPA compliant, the employer could have the option of keeping the required information in a central location accessible to affected employees, and so informing the employees of their access to this information. This option should be pursued with caution, as it has not yet been expressly approved by the courts.

Program Recap

On January 17, 2008, the **Corporate and Securities Law Committee** held its first CLE event of the year. Sponsored by the Anderson Kill law firm, a program entitled “Employment Practices Liability Insurance” was presented at the Union League in Philadelphia. Speakers included John Ellison, Michael Conley, and Jackie Taylor of the firm. Details for an “On the Road” version of the event are being finalized for a March presentation in the King of Prussia area.

DELVACCA’s **Ethics & Compliance Committee** held its first 2008 CLE event on January 29. Over 70 members attend the “Tone at the Top” ethics program at the offices of Ballard Spahr in Philadelphia, which was presented by Robert Cepielik, Deloitte Financial Advisory Services; Susan Schmidt Pie`, Sunoco, Inc. and DELVACCA member; John C. Grugan, Ballard Spahr Andrews & Ingersoll, and Justin P. Klein also with Ballard Spahr. A portion of the presentation focused on the ethical standards set by senior management and how those standards, or lack thereof, contribute to corporate fraud. If you missed this event, the handout of this presentation is available on our website.

DELVACCA’s **Intellectual Property Law Committee** enjoyed a terrific turnout on a cold February morning for its program “IP Licensing Agreements: How to Protect Your Trademarks, Copyrights, and Patents” sponsored by Thorp Reed & Armstrong. Barry Cohen, partner at Thorp Reed, led the insightful panel discussion which included Paul Bangor, Jr. of Thorp Reed, Hayley Werner of Phillips-Van Heusen Corporation, and Jonathan Rosan of Moody’s Economy.com. The panel managed to cover a lot of ground



Speakers Barry Cohen, Jonathan Rosan, Hayley Werner and Paul Bangor

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in a short timeframe. You can find a copy of the slide presentation on the DELVACCA website.

Congratulations to Gilbert Rudman from Arkema, Inc., who was the winner of the \$100 restaurant gift card given by our sponsor, Thorp Reed & Armstrong.



Attendees enjoy a break and some networking



DELVACCA Past President Linda Madway with Alex Plache



Michele Pilotte with Leon Nigohosian

On February 21, 2008, DELVACCA's **Corporate and Securities Law Committee** introduced a seminar hosted by Morgan Lewis at its Philadelphia offices entitled "Critical Issues in Structuring Successful Outsourcing Arrangements: What Every In-house Counsel Should Know." Over 60 attendees heard presentations by Morgan Lewis partners Michael Pillion and Barbara Melby, from the firm's Global Outsourcing Group, along with in-house counsel Goutham Reddy, senior counsel of CIGNA; and Cara Cuenot, corporate counsel of Wyeth Pharmaceuticals on topics surrounding the negotiation and monitoring of outsourcing transactions. The three-hour seminar provided three CLE credits. Breakfast and lunch were also provided to attendees.

Please visit our web site at delvacca.acc.com to keep abreast of all the activities and CLE events that DELVACCA has to offer.



Speakers Goutham Reddy, CIGNA; Cara Cuenot, Wyeth Pharmaceuticals; Michael Pillion and Barbara Melby, Morgan Lewis & Bockius LLP.

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In addition to those who have provided such outstanding support in the last year, I would like to recognize and thank the individual who has led us in the past year, Bob Talley. Bob worked tirelessly to ensure the success of the chapter and I am personally appreciative of his extraordinary efforts and want to thank him for his outstanding leadership as president during 2007. I wish him well in his coveted new role as past president!

One of Bob's many achievements as president was the passage on December 13, 2007, by the board of directors of the Amended and Restated Bylaws of the DELVACCA Chapter. This action will enable DELVACCA to have a clear roadmap forward for the next 25 years. The Amended and Restated Bylaws are available on the chapter website, but I would like to reflect upon some key items, which include the Chapter Vision, the Chapter Mission Statement, the Chapter Three Year Mission, and DELVACCA's Operating Philosophy; which are the driving principles that have resulted in the success of the chapter's growth, and the principles which will ensure the future success of the chapter.

DELVACCA Vision: Helping Ourselves by Helping Others

DELVACCA Vision Statement: DELVACCA will strengthen its role as the premier bar association serving the diversified and dynamic needs of in-house counsel in its territory located in Pennsylvania, New Jersey, and Delaware. To fulfill this role, in its region, DELVACCA will:

- A. Anticipate and understand the needs of the in-house bar;
- B. Assist members to strengthen their own practices, to ensure the efficient delivery of services to their corporate clients, and to promote the value of in-house services;
- C. Influence the practice of law as it affects the in-house bar; and
- D. Deliver a mix of focused services, including information, education, networking and advocacy.

DELVACCA Mission Statement: DELVACCA promotes the common professional and business interests of attorneys who are employed to practice law by corpora-

tions, associations, and other private-sector organizations in its territory by developing and disseminating information, providing educational initiatives, facilitating networking opportunities, supporting collegiality, engaging in advocacy on behalf of the in-house bar, and supporting pro bono and community service activities.

DELVACCA 3-Year Mission: To make DELVACCA the pre-eminent local chapter of the Association of Corporate Counsel in the United States by:

- A. Increasing new membership numbers and existing members' customer satisfaction;
- B. Continuing and improving existing programs, services and communication;
- C. Initiating and implementing creative new opportunities and services for membership networking, development, involvement, pro bono activities and community service; and
- D. Planning for and improving the development, training, functionality and effectiveness of the leadership structure on a long-term basis.

DELVACCA Operating Philosophy: The primary responsibility of DELVACCA is to work on behalf of its members and maintain a member-responsive organizational culture. To this end, DELVACCA has adopted a core set of operating values to guide its strategic efforts and shape the delivery of its future services. DELVACCA believes that as a professional association committed to serving the in-house bar, it is imperative to:

- A. Ensure in-house attorneys have the opportunity to participate as full and equal members of the legal profession;
- B. Advocate excellence among in-house practitioners, assisting them to effectively represent their clients and efficiently deliver services;
- C. Advance the highest ethical standards governing the practice of law in a corporate setting;
- D. Promote diversity and inclusiveness in its leadership, membership and staff, and encourage law departments, corporations and law firms to embrace diversity;
- E. Encourage public service and a commitment to pro bono service; and

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- F. Foster a sense of collegiality, facilitating networking and interaction among members of the in-house bar; and create an atmosphere of professionalism, openness and candor among members.

The board members and committee leaders will follow these principles to ensure that we are true to our purpose and provide value to our members. Please take a moment now to review the upcoming programming and sign up today for a program that interests you, or add your name to a listserv of a committee in your practice area. Finally, thank you for your membership and I encourage you to provide us with your opinions and suggestions on how we can meet and perhaps exceed your expectations for the chapter in 2008.

Best Regards,
Richard DePiano, Jr.,
President, DELVACCA Chapter
January 2008

Upcoming Events in March... Mark Your Calendars!

March 5 – “Developing and Enforcing a Practical Records & Hold Policy”
5:30–8:00 PM
Union League of Philadelphia
1.5 CLE

March 13 – “Employment Practices Liability Insurance”
(On the Road – Repeat of Jan. 17 event)
8:30–10:30 AM
Dolce Valley Forge Hotel & Conference Center, King of Prussia
1.5 CLE

March 20 – “Top Ten Issues Affecting Non Profit Tax-Exempt Organizations”
5:30–8:00 PM
The Inn at Penn, (University City) Philadelphia
1.5 CLE

March 27 – “Recent Developments in Employment Based Immigration”
11:30 AM–2:00 PM
Doubletree Hotel, Philadelphia
2.0 CLE

Visit our website often at delvacca.acc.com for calendar updates and program info.