

- 2 ... Five years after landmark E.U. case, ACC renews European advocacy efforts
- 3 ... ACC News
- 4 ... Who Owns Your Company's Social Media Account – You, Or One Of Your Employees?
- 4 ... LA Chapter 2016 Continuing Legal Education Calendar

- 6 ... Membership Fees
- 6 ... ACC Member Benefits
- 6 ... About FISHER & PHILLIPS
- 7 ... A Look Back at 2016 Past Events
- 8 ... Chapter Leadership

FOCUS

President's Message

Message from the Board

As the Board continues in its second year under the leadership of our Chapter president, Sophia Ryan, we are excited about the many educational, professional and social opportunities that the Chapter is making available to our members.

As a Board, one of our primary goals is to provide members with information, tools and contacts that they can use to succeed in their careers. Through the generosity of our Chapter's sponsoring organizations, the Chapter offers a continuing education program almost every month, covering topics in the field of employment law, immigration law, cybersecurity, and more. In addition to our lunch time CLEs, we will offer again this year the full day CLE program in conjunction with Loyola University College of Law. We thank our fabulous sponsors, who make continuing legal education events both informative and pleasurable, with the events often hosted in some of Louisiana's finest restaurants. Also, this year, several sponsors have arranged social events for our members which are built around Louisiana's cultural heritage, like Mardi Gras and the Jazz and Heritage Festival in New Orleans.

The Board has also resolved this year to find avenues for members to participate in meaningful pro-bono work in Louisiana which is consistent with our members' skill sets and interests. We are actively pursuing opportunities for our members to conduct pro-bono legal research and provide critical thought

contributions on social issues which require legal solutions, working with the Louisiana Appleseed organization.

The Board also remains committed to the Chapter's philanthropic presence in our community, such as the Chapter's financial support of the Louisiana Appleseed organization and the Pro Bono Project, as well as the scholarship programs supported by the Chapter at each of Louisiana's four law schools.

The Board is also working to make Chapter events more accessible throughout the state. As in past years, we will have events this year in Baton Rouge and Lafayette as well as New Orleans, and we hope to make events available in other parts of Louisiana as well.

While the Louisiana Chapter of ACC focuses on local issues, our members have the advantage of drawing upon the vast national resources of the Association of Corporate Counsel. ACC is a global network of over 40,000 in-house counsel members. Through their ACC membership, our Chapter's members have access to all of the ACC's many resources, including web based access to legal policies, forms, and contracts, law department benchmarking information, and more. Also, through ACC, members can participate in member-to-member



**Chapter President
Sophia Ryan**

eGroups for specialty areas of practice. As a Board, we hope to share with the members practical ways to better utilize these ACC resources.

We hope that you will take full advantage of all the opportunities provided through the Chapter and the national organization.

As Board members, we have

been elected to serve you. We encourage you to contact us if you have any questions about making the most of your ACC membership.

Five years after landmark E.U. case, ACC renews European advocacy efforts

By Mary Blatch, Director of Government and Regulatory Affairs

Here's a legal anniversary that seems to have been all but forgotten: Last fall marked five years since the European Court of Justice's decision in *Akzo Nobel Chemicals Limited and Ackros Chemicals Limited v. European Commission*. If you're not familiar with that case, the court held that in-house counsel in the European Union could not assert privilege over their legal advice to company employees in the context of a competition proceeding before the European Commission. While the decision was not a surprise (it confirmed case law from 1982), it was a disappointment to the in-house legal community, which had hoped that changes in the in-house profession might cause the court to take a different view.

While the five-year anniversary of the *Akzo* case has not received much attention in the wider legal industry, at ACC, we remembered the pivotal case by retaining a Brussels-based public affairs consultant to help ACC move the needle on the important issues of in-house counsel role and status and attorney-client privilege in Europe.

Advocacy on attorney-client privilege

The ACC has been heavily focused on advocacy supporting the attorney-client privilege in the corporate context since its inception. In the United States, in-house counsel enjoy the same rights and privileges as their law firm counterparts, but often face a steeper challenge to maintaining privilege over their communication of legal advice than do outside counsel. ACC has intervened in countless cases to protect the ability of in-house counsel to assert attorney-client privilege.

In Europe, where the attorney-client privilege is often called the legal professional privilege (LPP), ACC has been active on the issue since the early 2000s, when European Commissioner Mario Monti began a campaign of aggressive dawn raids in competition investigations that did not

respect LPP for in-house counsel communications of legal advice. Even leaving aside the in-house counsel issue, the contours of the LPP vary widely in Europe, but ACC has consistently advocated that whatever level of protection is afforded communications with outside counsel should also be afforded communications for legal advice with in-house counsel.

When *Akzo Nobel Chemicals Limited and Ackros Chemicals Limited v. European Commission* raised the in-house privilege issue before the European Court of Justice, ACC and ACC Europe intervened in the case in support of the company's assertion of privilege. When the ECJ issued its opinion in September 2010, confirming its position that in-house counsel legal advice was not privileged (even though the in-house counsel in *Akzo* was licensed), many were worried that the ECJ's decision would lead to a gradual erosion of the LPP that would extend beyond European Commission competition proceedings.

Developments since *Akzo* encouraging?

In contrast to post-*Akzo* fear, what has happened in the five years since the *Akzo* decision could be considered encouraging, especially with respect to developments at the national level within Europe:

- In Netherlands, where in-house counsel may assert privilege if they are members of the bar, the Supreme Court of the Netherlands issued a ruling in 2013 refusing to follow the *Akzo* rule and allowing for the assertion of privilege by properly licensed in-house counsel.
- In Belgium, where there is a separate bar that in-house counsel may join and gain the right to assert privilege, the highest court rejected the Belgian Competition Authority's attempt to rely on the *Akzo* decision to discover in-house counsel communications.

- In Germany, where a 2014 decision by the Federal Social Court (pension court) had called into question the ability of in-house counsel to join the German bar associations, legislation was passed in December 2015 confirming the ability of in-house counsel to join the bar and assert LPP under certain circumstances.
- In Switzerland, there are continued attempts to introduce a legislative proposal to extend LPP to Swiss in-house counsel. Although the latest initiative was voted down in March, the committee examining the proposal recognized the need to address the issue.

These developments overall are positive, but the majority of in-house counsel in Europe are still without the ability to become licensed by a bar association or to assert LPP over their legal advice to their employer-client. Moreover, in-house counsel who are licensed and may assert LPP in their countries are still unable to do so in E.U. competition proceedings. Over the next several years, ACC will be working to raise the profile of this issue in Europe and hopefully move the needle so that more jurisdictions, and ultimately the European Union recognize in-house counsel on equal terms to outside attorneys.

ACC's public affairs consultant has been meeting with representatives of European bar associations as well as European business associations to introduce them to ACC and the importance of LPP in the business world. ACC is highlighting the advantages that LPP offers in terms of encouraging robust corporate compliance, as well as the disadvantages that European companies suffer from lack of in-house privilege when they are litigating against companies that can assert privilege over in-house legal advice. We see the LPP as a key issue, not only to our European members, but to any member whose practice involves the European Union.

continued on page 3

continued from page 2

Foreign privilege – U.S. problem

U.S. attorneys are sometimes surprised to learn of the unequal status many of their European counterparts are subject to under E.U. and national European laws. They may be even more surprised if they learn of this unequal status in the midst of an international dispute where their European in-house colleagues have provided written advice that is now subject to discovery in U.S. courts.

Such disclosure of legal advice from foreign in-house counsel is not just a theoretical possibility. For example, in *Anwar v. Fairfield Greenwich Ltd*, No. 09 Civ. 118 (S.D.N.Y. July 8, 2013), plaintiffs deposed defendant's Dutch in-house lawyer, and defendant's counsel instructed the Dutch lawyer not to answer certain questions on the basis of attorney-client privilege. On a motion to compel the answers, the court held that because the Dutch lawyer was not licensed in the Netherlands, he was not entitled to assert attorney-client privilege. In the case of *Veleron Holding, B.V. v. BNP Paribas SA*, 2014 WL 4184806 (S.D.N.Y. Aug. 22, 2014), defendant Morgan Stanley was able to compel disclosure of plaintiff's communications with in-house counsel in the Netherlands and Russia, because neither lawyer was licensed or able to assert a privilege in their home jurisdictions.

The privilege laws of other countries can have quite an impact on the legal interests of U.S. companies and their in-house counsel, especially when it comes to litigation involving foreign subsidiaries. This is because when dealing with issues of attorney-client privilege and foreign attorneys, U.S. courts will follow a foreign country's privilege rules if the communication at issue "touches base" with that country – i.e., the foreign country has the most direct and compelling interest in determining whether the communication is privileged. This analysis often results in foreign privilege rules applying to communications advising on foreign legal issues. When the foreign jurisdiction's rules for in-house counsel differ from the U.S. rules, disclosure often is the result.

Towards uniformity

One of the reasons cited by the *Akzo* decision for not recognizing LPP for in-house counsel was that lack of privilege for in-house counsel was the dominant national practice among E.U. member states. Thus, the lack of in-house LPP at the E.U. level is connected to the lack of in-house LPP at the national level in Europe. ACC is pursuing a strategy to raise the profile of the LPP issue at the E.U. level while also supporting national-level efforts to improve the status of in-house counsel



and extend LPP to them. This will be a long-term advocacy and education effort, but one of utmost importance to the in-house profession globally.

As legal systems in developing economies continue to evolve, the issue of in-house counsel privilege may begin to be reconsidered outside of Europe as well. If there is a preference among more developed economies for allowing in-house counsel to assert LPP, that may lead to more jurisdictions choosing to follow the practice as well. The more jurisdictions that recognize the value of in-house counsel legal advice and protect it accordingly, the better for the in-house legal profession worldwide.

If you have a story about how international legal privilege rules have affected your practice or your company, we'd love to hear from you. Please contact Mary Blatch, ACC's director of government and regulatory affairs at m.blatch@acc.com.

ACC News

ACC Annual Meeting: Exclusively for In-house Counsel

Attend the ACC Annual Meeting (October 16-19, San Francisco, CA), the largest gathering of in-house counsel and an unparalleled value in legal education. In less than three days you can choose from over 100 substantive sessions to fulfill your annual CLE/CPD requirements, meet leading legal service providers and network with your in-house peers from around the world. This meeting is the event that you cannot afford to miss. Register today for best selection of programs. Visit am.acc.com.

Mind Your Business

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend these business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, September 13-15, November 2-4
- Project Management for the In-house Law Department, November 7-8

Learn more and register at www.acc.com/businessedu.

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 12-14, San Diego, CA), combines practical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights from experienced in-house counsel, earn CLE/CPD credits (including ethics credits and specialty credits) and build relationships and expand your network of peers. Register at ccu.acc.com.

continued on page 4

continued from page 3

Share the Wealth

When your in-house peers join ACC, you create opportunities to engage with colleagues, expand your professional network, and share ideas and expertise. When you recruit a new ACC member, you are automatically entered into a monthly drawing to win a US\$200 gift card! As an added bonus, your new recruit is automatically entered into a drawing to win a US\$100 gift card when they join! Contest ends September 30. Visit <http://www.acc.com/membership/recruit.cfm> for more information.

ACC Alliance Partner Jordan Lawrence has introduced a Vendor Risk AssessmentSM service that defensibly automates and organizes the third-party vendor diligence and risk management process. Jordan Lawrence leverages proven technology to slash the time and cost required to ensure your company is protected from one of your most vulnerable risk areas: third-party vendors. For more information, visit www.jordanlawrence.com.

Wolters Kluwer Legal & Regulatory U.S. offers comprehensive legal resources and tools so you and your team can efficiently

find the information you need to provide confident answers. Designed by in-house counsel, **General Counsel NAVIGATOR™ (GCN)** allows you to pinpoint practical answers across a wide-range of topics within a single platform. ACC Members can choose a complimentary add-on product when you purchase a base GCN subscription. For more information, visit www.wolterskluwerlb.com/gcn or call 1-877-347-6108.

Who Owns Your Company's Social Media Account – You, Or One Of Your Employees?

By Arthur Lambert, Fisher & Phillips, LLC

Tuesday, 12th April 2016

Employers have been asking an important question with more frequency in recent times: who owns the company's social media account – the employer or the employee running the account?

Business social media accounts often contain a lot of pertinent and valuable information, and unfettered access to that account could give a departing employee a fast head start towards competing with you.

While the last few years have seen a slew of litigation about these issues, there has been a scarcity of reported decisions by courts. One such decision is a recent federal court opinion from Illinois in the case of CDM Media USA, Inc. v. Simms. Although the court's decision doesn't settle any issues, it does highlight some important steps you can take to safeguard your information.

Control Of LinkedIn Group In Question

When Robert Simms was an employee of CDM, a marketing and media services company, he was the contact person for a special LinkedIn group started by the company containing its customers and potential customers.

After Simms left the company, CDM wanted the group contact switched over to one of its current employees. It also demanded that Simms relinquish any names, addresses, conversations, etc., garnered from the LinkedIn account. Simms refused to turn over the information.

CDM sued Simms for breach of contract, misappropriation, and violation of the state's trade secret act. The ex-employee responded by asserting that the company had no property rights to the information. He claimed that he was not contractually required to transfer the information because transfer of control of the LinkedIn group was not covered by the confidentiality provision in his non-compete agreement. He also argued that the LinkedIn group account and pertinent communications did not fall under the state's trade secrets act, and thus were not subject to a claim under that statute.

Lack Of Definitive Agreement Led To Confusion

Simms filed a motion to dismiss, asking the court to toss out the claim. The judge split the baby on the motion but essentially left all causes of action intact. In making his ruling, the judge noted that the ownership or control of the LinkedIn

group account was not nailed down by the company in any agreement or policy it had relating to Simms or any other employee. If the company had created some concrete proof of ownership, the unresolved factual issues described by the judge's opinion would not exist.

Other Cases Starting To Crop Up

The CDM case is not the only case of its kind that provides guidance for employers on how to best protect your social media accounts. There have been other lawsuits where at least part of the legal claim at issue is ownership of a company social media account.

In a California case, a Twitter feed was found to be company property because of the time and expense the company put into developing and maintaining the account (PhoneDog v. Kravitz). Also, in a New York case, a court held that a social media account was owned by the company due to a written agreement which provided for ownership (Ardis Health, LLC v. Nankivell).

Lessons To Be Learned

At the very least, you should develop a social media policy that addresses issues

continued on page 5

continued from page 4

including retention of company social media accounts, account information, and communications. You should ensure that all of your employees sign the policy. As part of the policy, make clear that any posting on company social media is the property of the company along with the accounts, the names, etc., associated with the accounts.

Further, the policy should clearly state that when an employee leaves, all account information and communications are to be transferred back to the company. Further, the policy should describe what, if any, information you consider to be confidential. This way, when an employee leaves, the account information stays with your company.

Of course, if you have an employment agreement, you should consider including these provisions in the “Confidentiality” section and inserting a clause requiring the return of all information and cooperation in the transfer of any company accounts. This will at least let your employees know where they stand if they leave the company and will provide you with extra ammunition to keep your information where it belongs.

Final Warning

Before finalizing any policy, you need to keep in mind that several states have enacted statutes that limit the interception and monitoring of social media. Laws are different across state lines, but a typical one can be found in California,

where you are prohibited from requiring or requesting employees or applicants to disclose their username or password for their social media account.

Many state laws also prohibit you from requiring the employees or applicants to access their social media account in your presence. However, in many states, you may make a reasonable request that an employee divulge personal social media account information if it is relevant to an investigation of employee misconduct.

Because of the varied obligations you face across the country, you need to stay up-to-date on all the developments in the states in which you do business, particularly if you operate in multiple jurisdictions.

LA Chapter 2016 Continuing Legal Education Calendar

January 28th

Ralph’s on the Park, New Orleans.
What Employers Need to Know About Hiring Foreign Nationals,
sponsored by Ware Immigration

March 18th

Ruth’s Chris- Metairie. *Effective Responses to Agency Changes & The Best Ways to Get Sued Over Leaves and Accommodations*,
sponsored by Fisher & Phillips LLP

April 19th

Ruth’s Chris-New Orleans. *Avoiding Top Employment Pitfalls*,
sponsored by Thomson Reuters

April 22nd

CLE & JAZZ FEST *Social. Stress, Strain and Racial Strife at Work*,
sponsored by the New Orleans and Lafayette Offices of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

May 5th

Ralph’s on the Park. *A CLAIM! And what to do about it; Louisiana Business & Tax Update*,
sponsored by Baldwin Haspel Burke & Mayer, LLC

May 19th

City Club at River Ranch. *Recent Developments in Louisiana Oil and Gas Law & Louisiana Oil Well Lien Act and the Effect of Bankruptcy Proceedings on Claimant’s Rights*,
sponsored by Gordon Arata McCollam Duplantis & Eagan LLC (Lafayette)

June TBD

Kean Miller, LLP

June 14th

Galatoire’s Bistro
Sponsored by Phelps Dunbar, LLP (Baton Rouge)

August TBD

Sponsored by Courington, Kiefer & Sommers, L.L.C.

September 30th

Courtyard Marriot, New Orleans.
ACC Louisiana/Loyola University College of Law CLE

October TBD

Sponsored by Jackson Lewis, P.C.

October TBD

Sponsored by McGlinchey Stafford (Baton Rouge)

November TBD

Sponsored by Stone Pigman Walther Wittman L.L.C.

December

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. *“Last Chance” Ethics and Professionalism*

December TBD

Sponsored by The Kullman Firm (Baton Rouge) *“Last Chance” Ethics and Professionalism*

Membership Fees

The Chapter is pleased to announce that the membership fee for 2016 is only \$335 per year. Considering the discounts on Chapter sponsored CLE programs which are available to our members, along with the other member benefits, the modest membership fee can easily “pay for itself.” We also encourage recently retired members to take advantage of the special rate available to retired members—only \$95 a year. Also, for those members who are in transition or between jobs, the ACC provides a waiver of fees in most instances.

ACC Member Benefits

As a member of the ACC, at no additional cost you have access to legal resources posted on the “members only” section of the ACC Website or sent to your e-mail address by the ACC.

The **ACC Docket**, which is published 10 times a year, is the ACC’s award-winning journal, which features articles written by corporate counsel on issues faced daily by corporate counsel, offering solutions that members can implement immediately.

The **ACC Newsstand**, which is published each workday, is a newsletter that provides customizable updates on more than 40 practice areas in jurisdictions around the world.

An **InfoPAK** is an information package developed by ACC that include articles; sample forms and policies; case law on conflicts and waivers, records retention, outside counsel management; and much more. InfoPAKs recently posted for downloading include: *Corporate Governance and Directors’ Duties Guide*, *How to Handle an OSHA Inspection*, *Guide to Handling Contract*

Negotiations for IT Technology License, Employment Agreements, and Commercial Leasing Contracts, and Influencing Government: The Rules of the Game (US Campaign Finance, Lobbying Disclosure, and Gift Laws).

ACC’s Leading Practice Profiles, which elaborate on corporate best practices, can also be downloaded free of charge by members. Recently posted profiles include: *A Brief Overview of Legal Knowledge Management, Leading Practices in Privacy and Data Security*, and *Leading Practices in Board Orientation and Education*.

The **Compliance Training Portal** bundles all relevant materials maintained by the ACC regarding a subject matter. The material available through the Portal can be used as a primer, as a basis for corporate policies and procedures, and for corporate-wide training. The ACC has put together compliance bundles which address workplace issues (e.g., FMLA, FSLA, and ADA), financial integrity (e.g., insider trading, money laundering, and internal controls and investigations), data privacy and security (e.g., HIPAA and records management), general business (e.g., patents and trademarks and codes of conduct), and more.

Forms and Policies available from the ACC Resource Library include over 3000 forms and policies that members can use when drafting legal instruments. Recently added forms and policies include provisions relating to lease assignments, licensing agreements-trademark, escrow agreements, executive employment agreements, non-competition agreements, joint defense/common interest agreements, guarantee agreements, and severance agreements.

To learn more, go to www.acc.com.

About FISHER & PHILLIPS - a Premier Sponsor of the Louisiana Chapter

The Louisiana Chapter proudly recognizes Fisher and Phillips, LLP, as a premier sponsor of our Chapter. Walter Fisher & Erle Phillips started a law firm committed to taking a practical, business-like approach to solving labor and employment problems. Seventy years later, Fisher & Phillips has grown to become a national law firm with more than 330 attorneys and 32 offices, and they still share that commitment of their founders. Fisher & Phillips is national and local, with attorneys admitted in just about every U.S. jurisdiction. They represent a wide range of public and private employers. Their clients include employers in the agriculture, automotive manufacturing, automobile dealership, banking, broadcasting, casino and gaming, construction, health care, hospitality, insurance, legal and professional services, manufacturing, mining, real estate, retail, technology, transportation, and wholesale and distribution industries, as well as state and local government entities, non-profit organizations, schools, colleges and universities.

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW

A Look Back at 2016 Past Events



Chapter Members enjoyed the Appleseed Gala, sponsored by the Chapter



Elaine Kimbrell of Ware Immigration presents in January CLE



Ed Harold of Fisher & Phillips presents at a CLE in March



Kate Bally of Thompson Reuters speaks at CLE Event at Ruths' Chris



Chapter Members enjoyed Mardi Gras with Adams and Reese

Chapter Leadership

President

Sophia Ryan

Senior Counsel and Chief Compliance
Officer, Fluor Federal Petroleum Operations
Company
(504) 734-4254
sophia.ryan@spr.doe.gov

Vice President

Daniel E. LaGrone

Vice President, Associate General Counsel,
Pan-American Life Insurance Company

Immediate Past President

George Ditta

General Counsel and
Director of Human Resources
Emeril's Homebase, L.L.C.

Vice President

Molly K. Vigour

Corporate Counsel, Canal HR, Inc.

Secretary

Daniel E. LaGrone

Vice President, Associate General Counsel,
Pan-American Life Insurance Company

Treasurer

Franck LaBiche

Corporate Counsel, Laitram, L.L.C.

Board of Directors

Clay Beery

General Counsel and Secretary
Laitrim, L.L.C.

D. Clayton Cambre

Corporate Counsel, Tidewater Inc.

Jose Corrada

Vice President, Associate General Counsel,
Pan-American Life Insurance Company

Kurt Duncan

Assistant General Counsel
Special Assets and Litigation
Capital One, N.A.

Edmund Giering

General Counsel, Baton Rouge Area
Foundation

Megan H. Guy

Executive Counsel, Gillis Ellis and Baker

James Moran

Vice President and General Counsel, Pellerin
Milnor Corporation

Kimberly Theriot-Smith

Contracts Administrator/Corporate Counsel
Conrad Shipyard, L.L.C.