

CORPORATE COUNSEL

February 2018 – Second Edition

IN THIS ISSUE

This newsletter is devoted to making recommendations to those attending the IADC Midyear Meeting for programs that are sponsored or co-sponsored by the Corporate Counsel Committee. These programs are highlighted for the consideration of all IADC members. Keep in mind, that each of these programs offers CLE credit for attendance.

Sponsored Programs at the Midyear Meeting

ABOUT THE AUTHOR



Joseph F. Speelman is currently serving as General Counsel for a private, Swiss based energy information group. He has directed successful defense efforts against Public Nuisance lead paint litigation in 15 states, gaining defense verdicts in those states including achieving a defense verdict before the state of Rhode Island Supreme Court that reversed a lower court trial verdict and rendered a defense verdict by the high court. He can be reached at jfspeelman49@gmail.com.

ABOUT THE COMMITTEE

The Corporate Counsel Committee is composed of in-house counsel and others who, although in private practice, serve as general counsel for corporate clients. The Committee provides its members with educational programs and networking opportunities to address common concerns of corporate counsel. It also works to ensure that the IADC and its committees, through their work and offerings, meet the needs of corporate counsel. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

1. “Coverage Issues for Non-Coverage Counsel: A Simple Primer for Issue Spotting Some Complex Stuff”

For those who are new to being a Corporate Counsel as well as outside counsel who are dealing with insurance coverage questions for their clients this is a critical program. Insurance coverage, or the lack thereof, has become a significant issue the last few years for attorneys representing businesses, especially small or mid-sized companies. The reasons for this are a.) certain issues, such as cyber security/attacks, have become difficult coverage issues as insurers begin to realize the potential size of risks associated with such coverage and b.) as general commercial policies come up for renewal, the insurers seek to minimize their risk profile on certain types of claims, and also seek to increase the costs of coverage, including discussions regarding increased Self Insured Retention (SIR) or more reliance upon such coverage.

It is important to have a good understanding of this area of business operations as a Corporate Counsel to ensure that you can understand the risk profile of the company on insurance and know when to engage outside coverage counsel on large issues.

Sunday, February 11th; 7:30 to 8:30 am

2. “Two Sides of the Same Coin: Perspectives of a New Inside Counsel”

Every Corporate Counsel should attend this program as it is a tale that is often told, always different, always poignant, in need of always being updated, and a good way to

support new attorneys to the world of “Single Client Counsel”. Outside counsel will find it useful to be more helpful to their clients and their in-house counsel colleagues.

Please plan to attend and ask questions about the Corporate Counsel – Outside Counsel relationship, as our presenters have been both.

Monday, February 12th; 7:30 to 8:30 am

3. “Human Trafficking: Legal and Regulatory Pitfalls For Corporations”

This will be one of the most important programs of the Midyear Meeting, in my view, and it will be the most difficult one to attend. The Department of Homeland Security defines Human Trafficking as modern day slavery. It involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act. The DHS has the “Blue Campaign” to help educate, discover, address and stop human trafficking.

1. It happens in the U.S. and all across our world.
2. It is estimated that over \$9 billion in profits are generated annually in this illegal activity, second only to drug trafficking in criminal enterprise.
3. It is, of course, morally as well as legally reprehensible and unthinkable, however companies, legitimate businesses, in the US and internationally, can inadvertently or negligently

become entailed or involved in some aspect of this criminal enterprise.

4. Federal and US state regulations and laws have been passed, as well as foreign laws across the globe, that require all businesses involved as government contractors directly or indirectly, to comply with these newly enacted measures.
5. This panel, which includes very experience outside counsel as well as Corporate Counsel, will lead you through not only the legal pitfalls that companies must avoid, but also how to help stop these crimes by being alert to evidence or indications of such activity.

Please attend this program. I told you it will be the most difficult program and here is why: I want you to simply “google” (or use your own system), the phrase “Human Trafficking”. It will bring tears to your eyes. I was not prepared for what I read and what I saw.

Monday, February 12th; 10:30am–12:00pm

4. “Waking Your Jury Up With Creative Demonstrative Exhibits”

When you have the chance to see very good courtroom advocates discussing and showing ways to “connect” with a jury based upon their own recent experience, it is critical that you attend such a program. It is always different than other such programs in the past, it is thoroughly entertaining, and you get some new, useful insight on your client, how to represent them, and getting a step on what often is a “schooled” plaintiff counsel as opposing counsel.

The panel consists of experienced and successful trial counsel with many instances of “tried to verdict” cases upon which they draw upon in telling you a story that you will want to hear.

Tuesday, February 13th; 7:30-8:30 am

5. “Legal Counsel in the Investigative Crosshairs”

Increasingly, federal prosecutors as well as some state prosecutors are focusing their criminal investigative processes on attorneys, both Corporate Counsel and outside counsel in conjunction with some fraud or anti-corruption prosecutions they are conducting. The general theories that such prosecutors pursue in these types of cases assert that the counsel, while performing their duties as attorneys, are involved and complicit as accomplices, enablers, or co-conspirators with business leaders or employees that are being prosecuted for committing crimes associated with their positions in a business, investment funds, or other business institutions.

Prosecutors quite often view attorneys who represent their clients in investigations or prosecutions as “obstructionist” or overly zealous in the performance of their duties in defending a case. Now, the apparent approach to such behavior is, increasingly, to attempt to intimidate such counsel by investigating the counsel and attempting to make them co-defendants with their clients. The law, and attorney codes of ethics, since the beginning of our Republic, charge legal counsel with the duty to provide a “zealous” representation of defendants, in civil or

criminal cases. That is still true today. But it seems this responsibility is eroding under the attacks by “zealous” prosecutors.

This very issue, and key cases pending presently across the country, will be the subject of discussion and close scrutiny by a panel of four imminently qualified counsel. The panel includes Corporate Counsel who are experienced in internal investigations and representing an organization in criminal proceedings; a skilled former federal prosecutor with significant experience in these situations; and outside counsel with the same experience levels in such matters. One pending case is the Evan Greebel matter in which an outside counsel advised his client, Retophin and its CEO Martin Shkreli on numerous business issues but when federal prosecutor filed criminal charges against the CEO, they also took after Greebel. Another case involves disputes between Waymo and Uber which has pulled Corporate Counsel for Waymo into a criminal proceeding. Other cases wherein Corporate Counsel have found themselves targets of aggressive prosecutors will be examined by the panel.

This will be one of the most intense and informative programs at the Midyear Meeting and you should not miss it. Can attorneys provide their clients, in many cases employers, with the zealous defense that ethics requires and, if so, what are the limits to such representation and what are the limits on zealous prosecutors and investigators? These are fundamental issues, going to the core of individuals and organizations’ rights to counsel and the duty of attorneys in the delivery of legal advice to such clients. Where are the lines? Where is

this heading? An hour of Ethics Credit is available for attending this program!

Wednesday, February 14th; 7:30 – 8:30 am

6. “Preparing a Corporate Witness for Deposition – Perspectives from a Corporate Witness and from Defense Counsel”

As required reading for Corporate and Outside Counsel, you should have a full chapter on persons who are your day to day clients. People who work for your company or your client, who perform many critical functions within a business operation are, in many respects, your client. In a small business they might be owners or officers, in larger organizations, they might be department heads or senior managers. If your business client builds, creates, buys, or sells things, it is most likely that the people you deal with will be engineers. Manufacturing companies, high tech companies, production companies are actually “nests” of engineers. Engineers, such as those people described above, are quite likely to be a witness in litigation, either a defense case or a plaintiff case. Either way, they will be engineers.

Engineers are fascinating people. They are very intelligent and accomplished in their field. They are instinctively honest, straightforward, and very open people. Many have never had dealings with a legal matter or, for that matter, with attorneys. They see things and explain them very clearly and they expect that to be the way all people deal with them. Well, enter the opposing counsel. I have seen very accomplished and high ranking employees become quite confused by the deposition

process, the testifying process, the entire legal process. It can become a very bad experience to them, and it can become a very bad experience for their counsel and the company. Counsel, both corporate and outside trial counsel, must understand the above and work with corporate witnesses in any matter to ensure they understand and have a degree of comfort and understanding of depositions, law suits and the adversarial process they are entering into.

comfortable evenings of Southern California!

Attendance at this program is essential for Corporate Counsel and outside trial counsel. These days, the litigation process is unrelentingly adversarial from the beginning of a dispute. Getting the best performance from key corporate witnesses is outcome determinative in lawsuits. It is much harder than it sounds.

The counsel on the panel will demonstrate key aspects of a deposition of a company witness. The company witness will comment upon that experience as well. It will be a very educational program for all. If you have a spouse or family member who is not an attorney, this might be a good program for them to attend. Then, afterward, ask them for their reaction. An hour and a half of Ethics Credit is available for attending this program!

Wednesday, February 14th; 8:45 – 10:15 am

The Midyear Meeting is always a great meeting because of the excellent CLE programs available. This year's meeting is no exception. The above programs are sponsored or co-sponsored by the Corporate Counsel Committee of IADC. Please plan to attend each one of them. And....enjoy the entire meeting in the sunny days and

Past Committee Newsletters

Visit the Committee's newsletter archive online at www.iadclaw.org to read other articles published by the Committee. Prior articles include:

FEBRUARY 2018

Finding and Closing Judicial Hellholes
Molly Jones and Sherman Joyce

JANUARY 2018

Cyber Security: The Dark Side of the Internet
Joseph F. Speelman

Corporate Counsel Perspectives on Cybersecurity Insurance Procurement
Joseph F. Speelman

OCTOBER 2017

A Tidal Wave of Public Nuisance Law Suits across the US Involving Opioid Litigation
James K. Holder and Joseph F. Speelman

SEPTEMBER 2017

What Next Rough Beast....The Second Coming of Nuisance Law Litigation
Joseph F. Speelman

DECEMBER 2016

Please Call Again: The Supreme Court Declines to Rein in TCPA Litigation
W. Jason Rankin and Charles N. Insler

NOVEMBER 2016

No Harm, but Still a Foul? Application of the Supreme Court's Punitive Damages Jurisprudence to Actions Seeking Statutory Damages
Jeffrey A. Holmstrand

OCTOBER 2016

Drone Law and Drone Regulation: A Primer
Lem Montgomery

APRIL 2016

Proportionality and Reasonableness: Using the 2015 FRCP Amendments to Rein in Discovery
Martin J. Healy and Joseph D. Fanning