



***Celebrating 20 Years
1998 - 2018***

August 27, 2018

NEWS ABOUT TOWN

We look forward to seeing everyone at our upcoming fall 20th Anniversary member conference event scheduled to take place on September 21 - 22, 2018 at the Marriott Sawgrass Resort and Spa located in Ponte Vedra Beach, Florida. If you have not already done so, please be sure to send in your registration forms as soon as possible. Also, please be sure to PDF Marion a copy of your registration form.

As follow-up to our request for referral information, reports indicate that many of our member firms have experienced referrals-in as well as sent referrals-out. We need to keep this effort going by continuing to encourage our members to take advantage of the experience, wisdom and esprit de corps that exists within the organization and to make our colleagues in our respective firms aware of who Business Counsel is and how it can be of assistance to clients in many locations.

We are pleased and excited to announce that our Spring 2019 conference will take place on May 3 ó 4, 2019 at the **Omni Royal Orleans** located in New Orleans, LA and our Fall 2019 event will take place on October 4 ó 5, 2019 at the **Edgewood Tahoe Resort** located in Stateline, NV.

News to Share

Many of our member firms reported several items of interest and we have noted them below for your information.

Beiten Burkhardt – Please log onto Business Counsel's website (www.businesscounsel.org) to view a copy of J erg Bielefeld's presentation at our Arizona Conference regarding GDPR Compliance (General Data Protection Regulation).

Day Pitney ó Please log onto Business Counsel's website (www.businesscounsel.org) to view a copy of Mark Morgan and Dennis Reznick's presentation at our Arizona Conference regarding "Supervising Commercial Litigation with Technical Experience".

Day Pitney LLP announced today that Michael W. Kaufman has joined the firm as a partner in the Finance Group in its Stamford office. He was previously a partner at Robinson & Cole LLP.

"Michael brings deep experience with complex financing transactions across a wide range of industries, which will directly benefit our clients," said R. Scott Beach, Chair of Day Pitney's Corporate and Business Law Department. "He will strengthen our commercial finance capabilities and enhance our private equity practice. We are delighted to have him join us." (Please go to www.daypitney.com for more information.)

Downey Brand ó Please see the News Articles below which our firm thought would be of interest to the organization.

Will the Army Corps of Engineers lose the Civil Works mission? Looks like the Department of Defense is making some plans. In late June, President Trump unveiled his administration's plan to reorganize the federal government. The proposed shakeup is entitled "Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations." On page 15 of the proposal you will find: "**Move the Army Corps of Engineers (Corps) Civil Works** out of the Department of Defense (DOD) to the Department of Transportation (DOT) and Department of the Interior (DOI)." This proposal has left many people asking questions, such as how would it work? Would it be better? Does Congress need to approve it? And how is this different than every other proposal made in the past? Indeed, during a recent Senate hearing, Senators voiced inquiries about the Department of Defense's views:

- "I also would like the Department of Defense's view on picking up the Corps of Engineers and dropping it in various parts of the United States government." *Sen. Angus King, (Maine-Independent)*.
- "Where is DoD on some of the Corps issues?" *Sen. Lisa Murkowski (R-Alaska)*.

Please go to www.downeybrand.com for more information.

SCOTUS Upholds Class Action Waivers in Arbitration Agreements, June 28, 2018, Employment Law: In *Epic Systems Corp. v. Lewis*, the U.S. Supreme Court reaffirmed that employers subject to the Federal Arbitration Act ("FAA") can require employees to arbitrate their

disputes individually and waive the right to pursue claims through a class or collective action. The decision has significant implications because class action waivers allow employers to block workers from banding together in alleging workplace violations, such as wage and hour violations. Moreover, these waivers allow employers to circumvent litigation in the courtroom, generally reducing legal fees and time spent resolving employment disputes. In answering whether class action waivers are valid, the Supreme Court addressed the apparent conflict between the FAA, which provides that an agreement to arbitrate "shall be valid, irrevocable, and enforceable," and the National Labor Relations Act ("NLRA"), which gives employees the right to work together for "mutual aid or protection." The Court explained that the issue turned on whether the NLRA's provision trumps the FAA's requirement that courts enforce arbitration agreements. Granting a huge victory for employers, the Court found that the NLRA's reference to employees' right to engage in concerted activity for "mutual aid or protection" focuses on unions and collective bargaining, not on arbitration or class action procedures. Thus, the Court held that absent fraud, duress, or other contractual defenses, employers' arbitration agreements requiring employees to waive class or collective claims are valid and enforceable. If employers have not already done so, they should therefore consider implementing an arbitration agreement or updating existing arbitration agreements to specifically include a class action waiver in order to circumvent litigation and block class-wide claims. (Please go to www.downeybrand.com for more information.)

Godfrey Kahn – Our firm is working with the Ice Miller firm in a matter involving a real estate development dispute in northern Wisconsin. We are also working with the Lind Jensen firm in litigation matters in Minnesota.

SEC Adopts Targeted Changes to Public Liquidity Risk Management Disclosure on June 28, 2018, the SEC adopted amendments to public liquidity-related disclosure requirements for certain open-end funds. The amendments rescind the requirement in Form N-PORT that funds publicly disclose aggregate liquidity classification information about their portfolios and create a new requirement that funds disclose information about the operation and effectiveness of their liquidity risk management program in fund shareholder reports. In addition, the SEC adopted amendments to Form N-PORT that will allow funds to report multiple liquidity classification categories for a single position under specified circumstances and adds a new requirement to report holdings of cash and cash equivalents. The amendments are effective September 10, 2018. (Please go to www.gklaw.com for more information.)

Hill Ward Henderson - "Hill Ward Henderson (HWH) advised clients in these selected publicly announced mergers and acquisitions (M&A) deals which occurred within the last six months. Our engagements were both buy-side and sell-side and involved strategic and private equity clients. These deals reflect our participation in the very active mergers and acquisitions deal market. We also handled a number of confidential transactions that are not listed, bringing the total to over \$500 million." (Please go to www.hwlaw.com for more information.)

Ice Miller – We have made several referrals to various Business Counsel members including, Stites Harbison, Turner Padgett, Godfrey Kahn, Solcargio, Day Pitney and Hill Ward Henderson. Many of the referrals resulted in our clients retaining the referred firm for representation.

We are pleased to welcome Michael Chabraja, a partner in Ice Miller's Tax Exempt Group. Michael concentrates his practice on representing large trade associations and other nonprofit entities in a variety of risk management issues. He provides advice on matters relating to antitrust, governance, intellectual property and member disputes for nonprofit organizations, including professional societies and trade associations. (Please go to www.icemiller.com for more information.)

We are also pleased to welcome Heather Renee Adams, of counsel, to the Firm's Labor, Employment and Immigration Group. Heather is a business-oriented attorney who regularly advises and represents clients in high-stakes whistleblower actions and various other areas of employment law before the United States Supreme Court, state and federal appellate courts, federal district courts and administrative agencies, such as the Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA) and various other state employment and labor agencies. (Please go to www.icemiller.com for more information.)

Jaburg Wilk ó Our firm is working with Solomon Ward in a real estate referral relating to the development of a commercial aquarium alongside San Diego Bay at Seaport Village

Please go to www.jaburgwilk.com to view a copy of Gary Jaburg's recent presentation at our Arizona Conference "The JW Way".

Lind Jensen Sullivan & Peterson ó Our firm frequently works with the Godfrey Kahn firm concerning litigation matters in Minnesota. We are assisting the Varnum firm concerning several matters in Minneapolis. We also represent Walgreens in Minnesota in a matter related to opioid litigation.

Our Partner, Paul Peterson is representing Dr. Michael Schulenberg in a wrongful death suit filed by Prince's family in Minnesota. (Please go to <https://www.rollingstone.com/music/music-news/princes-family-files-lawsuit-against-doctor-that-prescribed-him-pain-pills-715793> for more information.)

On August 8, 2018, the Minnesota Supreme Court clarified its 2013 decision Dykhoff vs. Xcel Energy. In Dykhoff, the Supreme Court applied the long-standing "increased risk" test to state that an Employee who falls on a flat, dry surface generally does not have an injury that "arises out of" her employment. (Please go to www.lindjensen.com for more information.)

Locke Lord ó Our firm is working with the Solcargio firm in an immigration matter and we are assisting the Varnum firm as local counsel in a contract dispute matter pending in Houston

On July 31, 2018, the Office of the Comptroller of the Currency (the "OCC") announced that it would begin accepting applications for special-purpose national bank charters from certain FinTech companies ó including those that do not take deposits.¹ The announcement came immediately after the Treasury Department voiced its support for the plan in a 200-page report calling for changes to regulations surrounding FinTech companies and other financial industry innovators,² and on the heels of the Bureau of Consumer Financial Protection's appointment of Paul Watkins to lead its newly-created Office of Innovation. Locke Lord Quick study "New Kid

in the Sandbox: Bureau of Consumer Financial Protection to create FinTech Regulatory Sandbox". (Please go to www.lockelord.com for more information.)

Oldham Li & Nie – The Firm recently received the following awards:

Benchmark Litigation – Hong Kong 2018

- **Commercial and Transactions – Domestic firms**
- **Family and Probate**

Asian Legal Business – Intellectual Property Rankings 2018

- **Patents – Hong Kong**
- **Copyright / Trademark – Hong Kong**
- **Patents – China**
- **Copyright / Trademark – China**

Launching a Startup in Hong Kong? These are the Legal Issues You Need to Know. To succeed with your startup, you have to find ways to monetize your ideas that comply with the law and use the law to protect your business, all without letting it become a distraction. (See attached news release.)

Osler ó Please visit www.osler.com to view a copy of our guidelines for "Doing Business in Canada".

Perlman Vidigal ó Newest PVG short video about Brazilian business and legal matters can be viewed at: <https://vimeo.com/278319636>.

Our firm's different practice areas and partners have been recently recognized by the publication *Lacca Approved*, 2019, and partners Luciano Godoy, Rubens Vidigal and Marcelo Perlman have been ranked as recommended lawyers in the most recent edition of *Chambers Latin America*.

Partner Marcelo Perlman has been interviewed by major business publication *Época Negócios* about blockchain and the law.

PVG partners Rubens Vidigal and Matheus Bueno hosted a breakfast event for guests to discuss new Brazilian fintech regulations and tax aspects thereto.

PVG partner Marcelo Perlman participated in M&A panel in health industry event in June hosted by CBEXs ó a local think tank and networking association for executives of health care providers and suppliers.

Finally, in June, partner Luciano Godoy moderated a panel on arbitration and the Judiciary at an international conference run by the American Chamber of Commerce.

Potter Anderson – We are pleased to report that we are working with Bill Warne of Downey Brand in a matter concerning a dissolution petition in Delaware Chancery Court related to LC

Therapeutics, a Delaware corporation. The matter corresponds to a larger fraud action brought in California by Downey Brand on behalf of Mr. Somers.

We are also working with Bill Bayliss at Williams Mullen. We recently completed litigation representing Southern Coal and related parties in breach of contract and fraud litigation in the District of Delaware. Following a bench trial, the parties settled the case in mediation.

Several recent developments have reinforced our reputation as a preferred firm of choice for clients and counsel with Delaware legal needs:

- Led by longtime BCI participants Don Wolfe and Matt Fischer, Potter Anderson is representing National Amusements Inc. and director Shari Redstone in Delaware litigation against CBS Corp. The suits arise from an attempt in May by the CBS board to issue a stock dividend aimed at diluting the controlling interest in the company held by NAI. The case is expedited, and trial will take place in early October.
- Potter Anderson partner and BCI participant Tim Dudderar is currently representing ice cream manufacturer Blue Bell Creameries in two derivative actions in the Delaware Court of Chancery related to a highly publicized 2015 recall. In July 2018, the Court dismissed all but one claim in one of the cases and a decision on a motion to dismiss the other case remains pending.
- To mark the 30th annual Tulane Corporate Law Institute held in the spring of 2018, Potter Anderson published *The State of Appraisal in the Delaware Courts*, a compilation of articles focused on recent developments in appraisal cases. (See attached compilation.)

LexisNexis will soon be publishing a 20th anniversary edition of *Corporate and Commercial Practice in the Delaware Court of Chancery*, which is widely recognized as a comprehensive resource on practice in the Court of Chancery and has been relied on by courts in Delaware and elsewhere in approximately 500 published opinions. The publication is often referred to as the Wolfe/Pittenger treatise after Potter Anderson partners Don Wolfe and Mike Pittenger, the two primary authors.

Rousaud Costas Rousaud Costas Duran has renewed its corporate identity under the brand RCD. The firm has also changed its main web domain online, which becomes www.rcd.legal, making use of the new extension to designate the legal sector while showing once again its disruptive character. <https://www.rcd.legal/en/rousaud-costas-duran-renews-corporate-identity-rcd>

- RCD expands the Corporate and commercial area with two new partners: the firm is joined by Federico Belausteguigoitia, a recognized expert in the Corporate and Energy/Aviation sectors, and José María Pastrana, who has more than 15 years of experience in M&A, finance and listed companies. <http://www.rousaudcostasduran.com/en/rcd-expands-corporate-commercial-area-two-new-partners>

- RCD has been recognized as a top legal advisor in Private Equity and Venture Capital:
 - Chambers Europe 2018 distinguishes the firm in Band 1 in the area of Private Equity: Venture Capital, and also recommends its other 12 practices and distinguishes 22 of RCD's lawyers. Legal 500 recognizes RCD as one of the main law firms in the Spanish legal market with 12 recommended practices and 18 individual mentions. <https://www.rcd.legal/en/rousaud-costas-duran-reinforces-standing-in-prestigious-legal-directories-chambers-and-partners-and-legal500>
 - PitchBook has ranked us among the most active firms globally and as the second most active firm in the Venture Capital market across Europe in 2017. We are the only Spanish firm to be ranked both in the European and Global Ranking.
- More news is available about these and other matters on our website: <https://www.rcd.legal/en/news-events>

Solcargó ó Our firm is working with the Locke Lord in a litigation matter in Mexico. We are also assisting the Varnum firm in a litigation matter and the Rousaud Costas firm in establishing a business in Mexico.

The new Financial Technologies Law and other amendments to financial regulations have been published and Fintechs will have between six months and a year to adjust to the new regulations. (Please go to www.solcargó.com.mx for more information.)

Solomon Ward ó Our firm is working with Jaburg Wilk in a real estate referral relating to the development of a commercial aquarium alongside San Diego Bay at Seaport Village.

Stites Harbison - We continue to be focused on the non-coastal southeast, and lower and mid-Ohio Valley, regions, with healthy small to mid-sized offices in Tennessee (Nashville and Memphis), Atlanta, Southern Indiana, the Washington, DC/Alexandria, VA area, and large offices in our home area of Kentucky. We need for BCI Member Firms to remember us for referrals in "fly-over" country. I believe that we remain the primary BCI Member Firm for Kentucky and maybe for Tennessee. But, we can help BCI Member Firms in ALL of the areas of our region, from Southern Indiana and Southern Ohio on the North, to Memphis on the west, to Atlanta on the South, and to the Washington/Alexandria area (particularly for IP work) in the East.

We are also pleased to announce the expansion of our Construction Service Group with the addition of two attorneys. (Please go to www.stitesharbison.com for more information.)

Turner Padgett ó Turner Padgett Graham & Laney, P.A. announces the addition of three attorneys. Dalhi N. Myers joins as of counsel in the firm's Business Litigation and Transactions practice and is based in Columbia. Cheslyne Shea Brighthop and Marcus J. Brown join as associates in the firm's Insurance Litigation practice, both based in Columbia. Their arrivals bring the total number

of new attorneys to join the firm this year to ten. (Please go to www.turnerpadget.com for more information.)

Varnum ó Our firm is working with the Lind Jensen firm in litigation matters in Minnesota. We are also working with the Locke Lord firm in a matter involving a contract dispute pending in Houston, TX.

Williams Kastner ó The firm congratulates Williams Kastner Member, Marshall Ferguson, on his appointment by Governor Inslee to the King County Superior Court. Marshall replaces Judge Helen Halpert who retired last month. Williams Kastner is proud of Marshall's achievement and values his contributions to the firm for over the years. We wish him the best in his new role as a King County Superior Court Judge. (Please go to www.williamskastner.com for more information.)

Williams Mullen ó Our firm is working with the Potter Anderson firm in Delaware. That firm recently completed litigation representing Southern Coal and related parties in breach of contract and fraud litigation in the District of Delaware. Following a bench trial, the parties settled the case in mediation.

The Tax Cuts and Jobs Act, which was enacted in late 2017, included a tax incentive for investments in "qualified opportunity zones," or QO zones. On June 20, 2018, the U.S. Treasury issued Notice 2018-48, which included the designations of QO zones in all 50 states and the District of Columbia. (Please go to www.williamsmullen.com for more information.)

COMMENTS:

Perlman Vidigal ó Suggestion to consider increasing efforts to expand the organization's international base of firms; organizing meetings in different countries; adopting initiatives to spread out information about BCI and its coverage within member firms in their various locations so that partners (even if not actively involved with the organization) know of the multi-state/jurisdictional legal resources that may be available to them and their clients. Specific initiatives suggested in prior newsletter.

Stites Harbison ó Suggestion to consider that BCI use more meeting time trying to bring Member Firms together to discuss the changing threats and opportunities that are there for all of us in our current legal marketplaces. Members of BCI are uniquely positioned to lead such discussions, since we have a great cross section of differently sized law firms in the Network, and we have widely varied, individual firms, national and international home markets that are in different stages of development. With the hope that we could all learn even more from each other, both defensively on how to protect our existing practices and offices, but also offensively on what works for the different Member Firms for healthy and sustained growth. Collectively, we may even know of practice development opportunities, and other business and management opportunities and ideas

that could help each other's Firms, maybe even dramatically. The more we focus on what our different Firms believe make them successful now, and what they believe will lead them to even more success in the future, the more useful this Network could be to its Members. Obviously, excellent individual and Firm referrals and relationships remain important and a critical element of Law Firm success. The Network could be even more essential to its Members if it also focused even more of its time and effort on larger offensive and defensive strategic and other initiatives. Not to leave out other recent Network presentations we have had, but, the two recent BCI presentations are great examples. The recent presentations from Gary Jaburg at Jaburg Wilk at the Arizona meeting, and the one from Rich Hewlett and Peter Smit at the Varnum Firm and the Turner Padgett Firm in South Carolina at the Michigan meeting, were very good examples of such discussions, explaining how Gary and Larry's Firm in Arizona decided that building and sustaining a unique culture that they believe in, has been an essential building block for their Firm, and how both Turner Padgett and Varnum have very thoughtfully and creatively re-imagined how to successfully develop business from the start-up market in their regions. We believe that Business Counsel needs even more of these types of presentations and discussions.

Business Counsel will be sending emails on a regular basis to all our members to continue the effort of constant contact and dialogue between our members. We want to be sure to keep Business Counsel in the spotlight to make all members and their colleagues aware of who we are and what we can do to assist all member firms cross-market their practices and firms across our organization.

I look forward to seeing you all at our upcoming conference scheduled to take place on September 21 - 22, 2018 for our 20th Anniversary Celebration Event scheduled to take place at the Marriott Sawgrass Resort and Spa located in Ponte Vedra Beach, FL.

Safe travels!

~Ken

J. Kenneth Carter, Chair
Business Counsel, Inc.