2017 Forum on Construction Law Annual Meeting
A Capital View: Best Practices in Inside and Outside Construction Counseling
Opening Remarks

Forum Chair

Will Hill
Mintz Levin
Boston, MA
Capstone Sponsor

CLARK CONSTRUCTION
Cornerstone Sponsors

1. pillsbury
2. KIRLIN GROUP
Platinum Sponsors

The American Institute of Architects
Capital Project Management, Inc.
Exponent, Engineering and Scientific Consulting
Cumming, Building Value Through Expertise
JS Held
LitCon Group
Synergens Consulting
HK A
Opening Remarks

Program Co-Chairs

Lori Y. Baggett
Carlton Fields Jorden Burt, PA
Tampa, FL

Nicholas K. Holmes
Devine, Millimet & Branch, PA
Manchester, NH
The NEW App!

GO TO THIS ADDRESS ON YOUR PHONE:
www.tripbuildermedia.com/apps/abaconstructionlaw365
Division Member?
Username = FirstLast
Password = ABA365

NOT a Division Member?
Create a new username & password!
Annual Meeting

Content on the App!

Passcode = 2017DC
A Capital View: Best Practices in Inside and Outside Construction Counseling

J.W. Marriott, Washington, DC
Pennsylvania Avenue
April 20-22, 2017
Advisory Panel

• Jeff Cruz, New York, NY
• Michael Kamprath, Tampa, FL
• Deborah Mastin, Miami, FL
• Wendy Venoit, Boston, MA
• Andrew Wailgum, Boston, MA
• Andrea Woods, Conway, AR
Session Coordinators

Erin Cannon
Jeff Gilmore
Kelli Goss
Mary Beth Hagan
Julia Hunting
Joe Imperiale
Katie Kohm
Chi Lam
Michelle Lipkowitz
Dito Mas
Jason Rodgers-da Cruz
Jean Terry
Roy Wagner
2016 By The Numbers:

- **1,600,000** Meals Distributed
- **73,000** Individuals Reached with Healthy Food
- **18,000** Volunteers Supported Martha’s Table Mission
- **200** Students in Quality Education Programming
- **35** Monthly Pop Up Grocery Markets
The Relationship Between In-house and Outside Counsel:

A Match Made in Heaven?
A Match Made in Heaven? In-House – Outside Counsel Relationships: The Good, the Bad, the Ugly!

Michael B. Rynowecer  
The BTI Consulting Group

Tonya P. Johannsen  
The Beck Group

Moderator  
James S. Schenck, IV  
Conner Gwyn Schenck PLLC

Douglas Green  
Perkins+Will
Understanding the Outside Counsel Relationship:

The Role of Outside Counsel as Seen by In-House Legal Decision Makers
Delivering More Value Remains a Top Goal; Cost Control Doubles

Top Goals for Legal Decision Makers in 2017 (Percent of Respondents)

<table>
<thead>
<tr>
<th>Goal</th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliver (and Receive) More Value</td>
<td>32.2%</td>
<td>36.9%</td>
</tr>
<tr>
<td>Control Legal Costs</td>
<td>16.9%</td>
<td>7.4%</td>
</tr>
<tr>
<td>Ensure Compliance</td>
<td>11.9%</td>
<td>11.9%</td>
</tr>
<tr>
<td>Resolve Litigation</td>
<td>16.6%</td>
<td>7.0%</td>
</tr>
<tr>
<td>Mitigate Risk</td>
<td>8.5%</td>
<td>18.5%</td>
</tr>
<tr>
<td>Implement New Technology</td>
<td>New goal in 2017</td>
<td>6.8%</td>
</tr>
<tr>
<td>Transactions</td>
<td>5.1%</td>
<td>5.9%</td>
</tr>
</tbody>
</table>

Source: BTI Legal Spending & Staffing Benchmarks 2016
Understanding the Outside Counsel Relationship:

Do outside lawyers need to know or care about the business goals of our clients?

What can go wrong if we are just doing what we were hired to do?
Selecting Outside Counsel:

Why in-house legal decision makers engage outside counsel;

What sort of firms they look for; and how they find their outside counsel.
Key Factors?

- Prior relationships with the client
- Recommendations
- Reputation
- Track record
- Skill fit
- Firm size
- Fees
- Insurance counsel
On Average, Companies Use 37 Law Firms to Help Manage their Legal Needs

Number of Law Firms Used (2016)

- 80% of the outside counsel legal budget is concentrated with 15 law firms

Source: BTI Legal Spending & Staffing Benchmarks 2016
Managing the Outside Counsel Relationship:

Implementing the In-House Counsel’s Strategic Plan
Outside Counsel’s Role:

Lawyers should “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”

RPC 1.3
Resolution Rates Remain Robust

Percent of Active Matters Settled

- 2009: 22.2%
- 2010: 36.9%
- 2011: 41.6%
- 2012: 36.5%
- 2013: 40.1%
- 2014: 47.8%
- 2015: 49.3%
- 2016: 46.5%
- (Projected) 2017: 46.5%

Source: BTI Litigation Outlook 2017: Changes, Trends and Opportunities for Law Firms
Balancing Zeal and Cost

And what about settlement strategy?

The better part of valor is discretion, in the which better part I have sav'd my life.

*Henry The Fourth, Part 1 Act 5, scene 4, 115–12*
Evaluating Outside Counsel

What matters most?
Comportment or outcome?
The Best Payback on Litigation Spending

1. Very Early Assessment Process
2. Develop A Risk Assessment Screen
3. Budgeting Strategies And Techniques
4. Work With Fewer Law Firms

Source: BTI Litigation Outlook 2017: Changes, Trends and Opportunities for Law Firms
Evaluating Outside Counsel

Is litigation about return on investment?

What else?
Evaluating Outside Counsel:

What are the top three things outside counsel do that exasperate in-house counsel?

What are the top three things outside counsel do that gratify in-house counsel?
A Match Made in Heaven?

Final Comments