

## SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL

### Enclosed:

**New Chapters: 23A, 23B, 25C, 33A, 46C, 49B, 77D,  
77E, 79B**

**Replacement Chapters: 23, 24, 36, 39, 47, 51, 53B, 67, 85  
2020 Supplement**

### **Robert L. Haig, Editor-in-Chief**

Nine new chapters, nine replacement chapters, as well as the 2020 Supplement to *Successful Partnering Between Inside and Outside Counsel*, are enclosed this year. Thus, a substantial portion of this treatise is new this year.

I am particularly grateful for the contributions by the new authors who have joined the ranks of *Successful Partnering* authors this year. These new authors have devoted a substantial amount of time and effort to this treatise this year and have done outstanding work in bringing their skills and wisdom to the treatise's pages.

The new and replacement chapters and the 2020 Supplement cover all of the important developments on issues related to the provision of legal services to corporate clients since the 2019 New and Replacement Chapters and Supplement were shipped last year. The information, advice, forms, cases, and legislative changes reported, analyzed, and synthesized into this work by our distinguished authors enable readers to find the up-to-date corporate legal expertise they need. In addition, these voluminous new materials attest to the continuing importance of providing practical solutions to corporate legal problems in today's challenging climate.

*Successful Partnering Between Inside and Outside Counsel* is a six-volume, 10,000+ page, critically-acclaimed treatise that is a joint project of Thomson Reuters and the Association of Corporate Counsel (ACC).

The 344 authors include the General Counsel of more than 100 major corporations and the senior partners of many major law firms. The 123 chapters in the treatise cover all aspects of corporate law department operations and management, more than 40 substantive law subjects, and all aspects of the relationships between inside and outside counsel. In a world where inside counsel are working to optimize legal spend and outside counsel face tighter competition for fewer opportunities, solid working relationships have never been more critical. This definitive work is a matchless source of in-depth expertise on this crucial, timely subject. As an article in *The Metropolitan Corporate Counsel* put it, “We are not aware of any publication that provides broader or more comprehensive coverage of issues important to corporate counsel.” We plan to add more new chapters and new authors each year, as existing authors continue to prepare replacement chapters and supplements, with the goal of keeping this treatise as current and useful as it was on the day it was published in 2000.

## **HIGHLIGHTS OF NEW MATERIAL INCLUDE:**

### **New Chapters**

**Chapter 23A, Litigating International Disputes in American Courts**, addresses the wide-ranging issues that may arise when U.S. companies litigate civil international disputes within the American court system. It focuses on situations where a U.S. company is involved in litigation in which one or more of the other parties is a foreign individual or entity, and/or where the dispute arises from a transaction that took place abroad. Throughout the chapter, the authors identify issues that often must be confronted by inside and outside counsel navigating these international disputes in U.S. courts. The chapter also discusses matters that inside and outside counsel should consider when commencing or defending these types of actions, including preliminary issues such as forum selection and choice of law. Additionally, it explores subsequent stages of the dispute, including unique issues that may arise with service of process, jurisdiction, venue, discovery, privilege, and settlement negotiations. Finally, the chapter addresses the mechanisms for enforcing judgments abroad entered by U.S. courts. *This chapter was written by John Blood, General Counsel and Corporate Secretary, Anheuser-Busch InBev SA/NA; and Lauren E. Aguilar, Skadden, Arps, Slate, Meagher & Flom LLP.*

**Chapter 23B, Cross-Border Litigation**, discusses cross-border litigation in courts throughout the world and is not limited to representation of U.S. companies. It addresses some of the key issues that surface during cross-border litigation, many of which are best considered and addressed

before litigation has commenced. Considerations like data privacy, legal privilege, conflicts of law and choice of forum can and should inform how a company runs its business, including how it organizes itself internally and where its offices are located, what kinds of internal policies and monitors it implements, which business partners it decides to engage with, and what legal protections it includes in its contracts, both with business partners and employees. This chapter therefore addresses how those, and other issues, arise during or affect cross-border litigation. This chapter also addresses how, in advance of any litigation, both inside and outside counsel can plan for these issues and thereby position their client, the company, best for any litigation that may arise. *This chapter was written by Juan Carlos Mencio, Vice President Legal Affairs and Compliance, LATAM Airlines Group; and Jeffrey A. Rosenthal, Cleary Gottlieb Steen & Hamilton LLP.*

**Chapter 25C, Reinsurance**, addresses issues that confront lawyers representing insurers and reinsurers as parties to reinsurance agreements. This chapter provides an introduction to the global insurance and reinsurance industry and its role as an engine of commerce. Every day, millions of individual insurance risks are written and shared with reinsurers across the globe pursuant to reinsurance contracts that can be quite complex and subject to terms and conditions that are unique to the industry. Every insurer and reinsurer maintains large staffs of lawyers who draft these contracts and work to resolve claims that arise under them, often with the assistance of outside lawyers who are experienced in this niche field. After briefly discussing the objective of reinsurance, this chapter moves on to discuss underwriting of the myriad types of reinsurance used in the industry and the role that in-house and often outside counsel have in that process. The authors discuss the key terms used in reinsurance agreements and explain their significance to the overall agreement between insurer and reinsurers. This chapter then provides an overview of the legal framework within which reinsurance is regulated and policed. The global reinsurance industry involves layers of complicated regulatory and legal oversight thus requiring insurers and reinsurers to retain sophisticated in-house lawyers who often partner with outside counsel to successfully manage this global enterprise. Finally, this chapter covers the major areas of dispute between insurer and reinsurer and the manner in which in-house and outside counsel work together to achieve the best results for their clients. *This chapter was written by Wesley D. Dupont, CEO, Global Legal and Strategy, Allied World Assurance Company Holdings, GmbH; and Jane M. Byrne, Quinn Emanuel Urquhart & Sullivan, LLP.*

**Chapter 33A, Investigation of the Case**, explores investigations in the context of anticipated and/or actual litigation. Specifically, it covers:

(1) the factors that counsel should consider when deciding to conduct an investigation; (2) whether or not to hire an external investigator; (3) issues to keep in mind when retaining an external investigator; (4) tools available in an investigation; (5) investigating in connection with regulatory inquiries; and (6) additional considerations when investigating a case. This chapter discusses investigations that are focused on people, documents, and information beyond the custody or control of the corporate client. *This chapter was written by Andrean Horton, Executive Vice President, Chief Legal Officer and Corporate Secretary, Myers Industries, Inc.; and Julie E. Cohen, Skadden, Arps, Slate, Meagher & Flom LLP.*

**Chapter 46C, Whistleblowers**, addresses how inside and outside corporate counsel can work together effectively to manage and resolve whistleblower issues faced by the inside counsel's company, both domestically and abroad. While whistleblowing (i.e., exposing wrongdoing on the part of an organization to a higher authority or the public) has long occurred and whistleblowers have long enjoyed legal protections, recent developments have now made it even more important for corporate counsel to have a sound understanding of the relevant law and effective means to recognize, respond to, investigate and, if needed, defend against whistleblower reports. Indeed, in light of the ever-increasing recognition of the important role that whistleblowers can play in identifying misconduct, the frequency with which sizable whistleblower awards are being handed out, and the proliferation of laws that further incentivize whistleblowing, it is safe to assume that the incidence of whistleblowing—and the corresponding impacts on the companies involved—will only increase going forward. *This chapter was written by Ed Weiss, Executive Vice President and General Counsel, Fenway Sports Group, LLC; and Theodore T. Chung, Jones Day.*

**Chapter 49B, E-Commerce**, presents key legal and regulatory issues that are specific to electronic commerce, with a focus on e-commerce within the United States. E-commerce is of course simply one mode of commerce, and as a result the body of commercial law and the numerous statutes and regulations that apply to commerce via traditional means also apply to e-commerce. The broader set of topics is covered in other chapters of this treatise; this chapter highlights issues that are either unique to e-commerce or particularly important for lawyers and their clients to consider as they enter the world of e-commerce. This chapter also aims to summarize in one place various key considerations for lawyers advising clients pursuing e-commerce business models. The goal of this chapter is to facilitate successful partnering between inside and outside counsel in order to identify the relevant questions presented by e-commerce and work together to resolve them and provide the most accurate and practical

advice to the client. *This chapter was written by Brian S. Chevlin, Senior Vice President, General Counsel, Pernod Ricard USA; Eric W. McCormick, Senior Counsel, Intellectual Property, Pernod Ricard USA; Louis Ederer, Arnold & Porter Kaye Scholer LLP; Trenton H. Norris, Arnold & Porter Kaye Scholer LLP; and Raqiyyah Pippins, Arnold & Porter Kaye Scholer LLP.*

**Chapter 77D, Aviation**, focuses on the key areas that define the partnership between inside and outside counsel in the aviation industry and provides practice pointers for successfully implementing and building on that partnership, while avoiding potential pitfalls. This chapter focuses on the relationship between inside and outside counsel whose clients are aviation manufacturers (airframe, engine, or other component parts), airlines, other owners or operators of aircraft, and those who deal with such entities. The authors provide: (1) overview of the key players and relationships; (2) transactional and other pre-litigation management considerations; (3) best practices for successful partnering between inside and outside counsel during litigation; (4) managing crisis situations such as accidents, groundings, or a security event and how outside counsel can help guide the company to clearer skies; (5) how outside counsel can enhance inside counsel's ability to advise aviation clients regarding privacy and cybersecurity risks and requirements; (6) how inside and outside counsel can best partner when addressing legal risks associated with new technologies in the aviation sector; and (7) an overview of the legal and regulatory structure. *This chapter was written by Kevin Cabaniss, Vice President and General Counsel, Airbus Helicopters, Inc.; Yvette Ostolaza, Sidley Austin LLP; and Robert Velevis, Sidley Austin LLP.*

**Chapter 77E, Fashion and Retail**, discusses how, as this complex industry continues to develop and evolve, fashion brands and retailers continue to encounter new challenges and questions like how to combat global counterfeiting and how to ensure internal legal compliance programs are not outpaced by the development of new technologies like social media platforms through which employees can disseminate advertisements almost instantaneously. Inside and outside counsel can help brands navigate changing fashions, shifts in the market, technological advancements and legal obligations. At the outset, both inside and outside counsel must fully understand the complexity of running a fashion business, from sketching that first design to selling and re-selling the manufactured product. Inside counsel must communicate and cultivate strong working relationships with the various business units within a fashion brand to address everyday legal issues with practical advice. Outside counsel, in turn, must strive to understand these working relationships to provide the best possible strategic advice regarding the complex, and sometimes niche, legal issues in areas including business, corporate and finance law, intellectual

property law, advertising law, international trade law and labor law. The relationship between inside and outside counsel is necessary to provide advice tailored to the needs of a particular business and paramount to a fashion brand's success. *This chapter was written by Lisa Keith, General Counsel, Steve Madden, Ltd.; and Megan K. Bannigan, Debevoise & Plimpton LLP.*

**Chapter 79B, Economic Sanctions**, addresses the complex sanctions regime in place in the U.S. and examines optimal ways in which inside counsel can utilize outside counsel in establishing an effective Sanctions Compliance Program ("SCP") and in responding to potential sanctions violations. The chapter begins by addressing the preliminary considerations and common problems that inside counsel and outside counsel should raise with their clients when it comes to economic and trade sanctions. This chapter then describes how to best partner with outside counsel in developing, and refining, in-house SCPs so that they are properly tailored to a corporation's risk profile and effectively prevent sanctions violations. It also explores the benefits outside counsel can provide in addressing potential sanctions problems within an institution, including in responding to regulator inquiries and investigations. From there, the chapter provides a basic discussion of the relevant legal principles applicable to economic sanctions, as well as a description of recent enforcement actions and other litigation that provide meaningful lessons regarding the Office of Foreign Assets Control's ("OFAC") regulatory focus. *This chapter was written by Lisa A. Prager, General Counsel and Executive Vice President, Agricultural Bank of China; Adam S. Hoffinger, Schulte Roth & Zabel LLP; Robert Griffin, Schulte Roth & Zabel LLP; Michael Court, Agricultural Bank of China; Hannah Thibideau, Schulte Roth & Zabel LLP.*

## Replacement Chapters

**Chapter 23, Representing European Companies in U.S. Litigation**, discusses factors that U.S. counsel and a European company's in-house counsel should consider in representing the company in litigation in the United States. The authors examine the key stages of the case, with an eye to the specific needs that European companies have when they become embroiled in a lawsuit in the United States. These include the topics to be addressed at the outset of a case, such as retention of U.S. counsel, strategic planning, and those that need to be revisited on a regular basis, such as staffing and billing. The authors examine each stage of the litigation, from service of process, motion practice, document handling, discovery, including cross-border electronic discovery and issues relating to European data protection and privacy laws, depositions of the company's executives, managers and employees, trials, attorney-client and other privilege issues, among many others. *This chapter was revised*

*by Ricardo Cuesta, General Counsel, Dragados, S.A.; and Thomas C. White, Sullivan & Cromwell LLP.*

**Chapter 24, Use of Contract Lawyers**, reviews the numerous reasons corporate legal departments and law firms are increasingly using contract attorneys and discusses the factors to consider when enlisting the aid of a contract attorney. Also discussed are statutory considerations that should be taken into account when using contract attorneys. The statutory considerations include whether to classify the contract attorney as an independent contractor or an employee, which brings with it a host of other considerations, including tax and benefits consequences. Also discussed is whether, and if so, in what manner, the various employment laws, including Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Immigration Reform and Control Act, and the unemployment and workers' compensation laws, apply to contract attorneys. Finally, this chapter discusses the ethical considerations that need to be addressed, including when firms must disclose to their clients that they are using contract attorneys, and the appropriate disclosures and descriptions law firms should use when billing their clients for the work performed by contract attorneys. *This chapter was revised by William L. Deckelman, Jr., Executive Vice President, General Counsel and Secretary, DXC Technology; and Mary B. Winter, President and General Counsel, Firm Advice, Inc.*

**Chapter 36, Licensure and Admittance to Practice**, begins with a discussion of why states require licensure and admittance to practice law, and why these issues are important for inside and outside attorneys for corporations. The chapter goes on to discuss three principal issues. First, it examines the fundamental question of what it means to "practice law." This is the obvious starting point to the licensure and admittance to practice topic because lawyers are required to be licensed for the practice of law. Second, it considers the problems an attorney may face in practicing law outside the attorney's state of bar admission, both in litigation and non-litigation contexts, and discusses various means for dealing with these multijurisdictional problems. Proposed reform to address the multijurisdictional issue took center stage in recent years in the legal community, leading the great majority of states to adopt the ABA amendments to Model Rule 5.5 of the ABA Model Rules of Professional Conduct. Finally, this chapter discusses the topic of licensure generally and delineates the requirements for gaining admission to the bar in a particular jurisdiction. The chapter further discusses how admission to a particular bar is necessary, and often sufficient, to practice in multiple federal forums, both inside and outside the attorney's state of admission. *This chapter was revised by Jacqueline H. Rice, General Counsel, Herman*



*Miller; Robert R. Stauffer, Jenner & Block; and Garrett J. Salzman, Jenner & Block.*

**Chapter 39, Diversity & Inclusion**, discusses workplace diversity and inclusion (D&I) in both tangible and intangible dimensions, offering a functional conception of D&I and what D&I should mean for in-house legal departments and outside law firms. The authors discuss the fundamental beliefs and values that should underpin any commitment to D&I; the basic components for any successful D&I program, regardless of whether the legal organization is in-house or external law firm; and how those respective organizations can partner to learn from and support each other. The authors also elaborate on inclusion, upon which the functional conception of D&I is based, and reaffirm the reality that there is not a single prescription—a single D&I program—that can be implemented across the board. Rather, the authors have identified relevant data points and provided pragmatic content that can assist any legal professional or D&I administrator to customize a program that best suits a specific legal organization’s needs and challenges. *This chapter was revised by Shannon Thyme Klinger, Group General Counsel, Novartis International AG; and Teresa T. Bonder, Alston & Bird.*

**Chapter 47, Compliance**, discusses the need for and benefits of an effective compliance program. The authors examine the strategies for creating it and the potential pitfalls. They also examine the guidelines that exist and the bodies of law and real life experiences that are emerging to provide additional wisdom. In addition, the authors offer an action plan both to assess and improve your existing compliance measures and, if necessary, to build a new program, step by step. Finally, the authors review the background of compliance programs and recent developments. *This chapter was revised by Richard W. Blackburn, former Executive Vice President, General Counsel and Chief Administrative Officer, Duke Energy Corporation; and Jeffrey J. Binder, Jeffrey Binder & Associates.*

**Chapter 51, Valuation of a Business in an Acquisition Context**, addresses the relevant law on valuation methods, including fairness opinions and officers’ and directors’ responsibilities to understand the valuation process. To understand these responsibilities, counsel needs to be familiar with the fundamental concepts of modern corporate finance, especially the discounted cash flow method, and some of the more commonly used alternative valuation methods such as book value, replacement value, price/earnings ratios, earnings capitalization, and the Delaware block method. To help counsel develop the effective planning, decision, and negotiation skills required to advise their corporate clients, the chapter provides a basic background on and a working knowledge of some of the most commonly used valuation methods with a focus on



the important discounted cash flow method. The chapter discusses the financial principles underlying the discounted future cash flow method. This discussion begins with a simple explanation of the time value of money and the concepts of future value and present value, progresses to an explanation of the present value of cash flows for a finite number of years, and sets forth the concepts of net present value and the internal rate of return. The chapter then turns to a more detailed discussion of the underlying rationale and procedures for estimating cash flows for an acquisition candidate and determining the appropriate discount rate. The discussion continues with a review of methods for estimating the terminal or residual value of an acquisition candidate and concludes with an example of a discounted cash flow computation. *This chapter was revised by Richard L. O'Toole, Executive Vice President and General Counsel, The Related Companies L.P.; and Nicholas A. Gravante, Jr., Boies Schiller & Flexner LLP.*

**Chapter 53B, Financial Technology**, discusses the key issues encountered by in-house counsel and outside counsel advising FinTech companies and companies that use FinTech. After providing a brief overview of the FinTech industry, this chapter examines some of the major legal challenges faced by FinTech companies and companies that use FinTech or do business with FinTech companies. By partnering with their business counterparts, counsel to FinTech companies have the opportunity to minimize risk while driving further technological developments. FinTech companies and companies that use FinTech to provide products and services have streamlined traditional procedures for a host of traditional financial activities, and these technological developments promise to improve financial inclusion for traditionally underserved populations. FinTech has already altered consumer expectations with respect to ease of access to financial products and services, as well as speed of transacting and credit decision-making. Moreover, tools like artificial intelligence and machine learning promise unparalleled innovation in the financial services industry. But as this chapter demonstrates, the use of FinTech will also significantly impact financial legal developments, and companies' efforts for legal compliance. *This chapter was revised by Brian P. Brooks, Chief Legal Officer, Coinbase, Inc.; and Elizabeth L. McKeen, O'Melveny & Myers LLP.*

**Chapter 67, High Profile Litigation**, details the special considerations presented by intense and sustained public scrutiny of a case, in assembling a litigation team, establishing lines of communication and methods of coordination among team members, allocating responsibility among team members for developing a litigation strategy and for harmonizing that strategy with short-and long-term business goals. In this chapter, the authors focus only on high profile litigation, but many of the strategies

discussed will be appropriate for bet the company litigation as well. *This chapter was revised by Eric F. Grossman, Executive Vice President and Chief Legal Officer, Morgan Stanley; and Daniel Slifkin, Cravath, Swaine & Moore LLP.*

**Chapter 85, Crisis Management**, provides a guide for how to manage a crisis from start to finish. The chapter breaks down crisis management into four basic phases: assembling a team, developing a plan, executing the plan, and ultimately resolving the crisis. While the chapter takes the relatively simplistic view that each of these phases should follow one another neatly, the chapter also notes that the reality is that crisis management is rarely ever neat. The process requires both in-house counsel and outside counsel to understand many different dynamics and forces, and to find a way to fit them together to achieve the best result for the company. The chapter addresses what is meant, and not meant, by crisis management and emphasizes that not all crises are the same; many can be resolved internally before it becomes the focus of third parties external to the corporation. The chapter goes on to describe a range of different individuals that may play a role on a crisis management team and discusses the kinds of plans these crisis management teams can develop. The chapter also describes how the crisis management team will put these plans into action and includes a discussion of crisis resolution options which may involve taking appropriate remedial action. *This chapter was revised by Robert Waterman, Senior Vice President, General Counsel and Chief Labor Relations Officer, HCA, Inc.; and Bruce E. Yannett, Debevoise & Plimpton LLP.*

## Chapter Updates

The update to **Chapter 4, Selection of Outside Counsel**, suggests adding associate and employee wellness as a factor which merits consideration by inside counsel when evaluating and selecting outside counsel. Does the firm actively invest time and resources in the wellness of its employees and associates? Such efforts are not intended only to benefit outside counsel, as knowledgeable firm managers recognize that wellness initiatives can significantly increase performance while reducing associate turnover (which could impact the handling of your case). [See § 4:32]

The update to **Chapter 10, The Planning Process**, contains additional discussion of logistical planning in connection with the corporation's use of social media as a means of distributing information. The authors note that social media use by corporations has continued, in recent years, to be a ripe area for SEC enforcement. Included in this discussion is coverage of the 2018 SEC suit filed against Tesla, Inc. and its CEO, Elon Musk for false and misleading statements made on Twitter when Musk stated that he was

considering taking Tesla private and that he had secured funding for that purpose. [See § 10:32]

The update to **Chapter 11, Budgeting and Controlling Costs**, notes that law firms are increasingly relying on pricing professionals to round out the lineup of legal professionals, and that it is increasingly common to look to litigation funders in response to staggering litigation costs. [See §§ 11:2, 11:11]

The update to **Chapter 16, The Relationship Between the Legal Department and the Corporation**, adds coverage of the increasing use of legal operations to serve the changing legal needs of the corporation. In a newly added section, this chapter explains what “legal ops” is and how its rise can be traced to the continuing desire of CEOs for their legal departments to provide more work, with fewer personnel and less external spend. [See § 16:30.50]

The update to **Chapter 26, Specialized Approaches to Outsourcing Legal Work**, cites a 2019 survey of more than 360 U.S. law firms with 50 or more lawyers, noting almost half (48%) of all firms—and more than 70% of those firms with over 250 lawyers—reported that they were currently using contract attorneys. More than 62% of the respondents in that survey indicated that the use of contract attorneys has resulted in a significant improvement in firm performance. Approximately 60% of the respondents in that survey indicated that the use of contract attorneys will be a permanent part of the legal landscape. [See § 26:9]

The update to **Chapter 28, Technology**, includes discussion of the integration of artificial intelligence into e-mail programs and how this shift may raise privacy, privilege and related concerns for both clients and counsel. [See §§ 28:5, 28:6]

The update to **Chapter 28B, Social Media**, updates information on the principal social media sites used by businesses, including Facebook, Flickr, Instagram, LinkedIn, Pinterest, Reddit, Snapchat, TikTok, Tumblr, Twitter, Wikipedia, Yelp and YouTube. [See § 28B:4]

The update to **Chapter 30, Benchmarking**, includes a new section discussing how corporate legal departments are frequently asked to cut costs while improving their efficiencies. It explains that the growing prominence of legal operations teams indicates a shift toward legal departments running themselves more like businesses and how including non-legal professionals, who bring with them a completely different skillset, may be especially useful when viewing and managing the legal department as a sort of business unit on its own. Additionally, the chapter points out that having a legal operations team can alleviate

some of the operational burdens that the general counsel has historically handled, and enable the general counsel to allocate more time and energy toward company-wide initiatives and executive-level guidance. [See § 30:8.50]

The update to **Chapter 32, Conflicts of Interest**, includes coverage of issues presented by ABA Formal Opinion 17-479 (Dec. 15, 2017) which addresses the “generally known” exception to former client confidentiality under Rule 1.9 of the ABA Model Rules of Professional Conduct; ABA Formal Opinion 18-480 (Mar. 6, 2018), interpreting the ABA Model Rules of Prof’l Conduct, which takes the position that lawyers who blog or engage in other public commentary may not reveal information relating to a representation, including information contained in a public record, unless authorized by provisions of the ABA Model Rules; ABA Formal Opinion 18-481 (April 17, 2018), interpreting the ABA Model Rules of Prof’l Conduct, which takes the position that Model Rule 1.4 requires a lawyer to inform a current client if the lawyer believes that he or she may have materially erred in the client’s representation; and ABA Formal Opinion 18-483 (Oct.17, 2018), entitled “Lawyer’s Obligations after an Electronic Data Breach or Cyberattack,” which takes the view that when a data breach occurs involving, or having a substantial likelihood of involving, material client information, lawyers have a responsibility to notify clients of the breach and to take other reasonable steps consistent with obligations under the Model Rules. [See §§ 32:4, 32:7]

The update to **Chapter 37, Professionalism**, discusses the number of women and minorities serving in the legal profession, noting that these groups continue to be underrepresented and that they leave law firms at a greater rate than their nonminority and non-women peers. [See §§ 37:33, 37:36]

The update to **Chapter 60B, Expediting and Streamlining Litigation**, adds a new section on early identification of the key non-lawyer(s) for the issues in the case. This new section discusses the importance of the “Key Person”—a non-attorney with enough knowledge of, and seniority within, a given business unit to both (1) direct inside or outside counsel to the correct person, and (2) insure that that person timely and fully responds. [See § 60B:3.50]

The update to **Chapter 67B, Securities Litigation**, discusses, in a new section, the growth of merger-related litigation under Section 14 of the Securities Exchange Act of 1934 which regulates proxy solicitations and tender offers. This new section notes a shift in court approval of “disclosure-only” settlements since the Delaware Court of Chancery rendered its decision in *In re Trulia Inc. Stockholder Litigation* in 2016

and, as a result, that merger objection litigation has become a fixture in the federal court system. [See § 67B:5.50]

The update to **Chapter 68, Patents and Trade Secrets**, covers the United States Patent and Trademark Office’s release of the January 2019 Revised Patent Subject Matter Eligibility Guidance and the October 2019 Update to Subject Matter Eligibility. These documents provide further guidance with respect to subject matter eligibility, with the October 2019 Update seeking to clarify issues that were introduced by the January 2019 Guidance. [See § 68:37]

The update to **Chapter 70, Copyright**, addresses data management within portfolio management with a new section. It notes that some forms of data and data compilations can be protected under copyright law and that others—including raw data, especially individual units of data consisting of facts, such as names, telephone numbers, and home addresses—are generally not protectable. [See § 70:24.50]

The update to **Chapter 74A, Sports**, addresses the keys to successful partnering between inside and outside counsel in the professional sports industry. It discusses recent litigation involving personal seat licenses and whether minor league baseball players are entitled to minimum wage and overtime pay, and also covers 2019 NCAA Board of Governors action that permits student-athletes to profit from the use of their name, image and likeness. [See §§ 74A:35, 74A:60]

The update to **Chapter 77B, Consumer Products**, discusses the 2018 Consumer Product Safety Trilateral Summit wherein product safety authorities from the United States, China, and the European Union focused on product safety challenges presented by e-commerce and products using high energy batteries. The participants in the Summit also agreed to: collaborate in outreach and training activities to strengthen communication regarding product safety requirements and policies; adhere to their commitments of encouraging the adoption of a culture of safety in product design, manufacturing, and marketing, even within the supply chain; and, work together to strengthen collaboration in the studies of risks to manage risks associated with emerging products. [See § 77B:15]

The update to **Chapter 77C, Telecommunications**, discusses net neutrality, noting that in October 2019, a three-judge panel of the D.C. Circuit largely upheld the FCC’s rollback of net neutrality rules, while at the same time holding that state and local governments had authority to enact net neutrality protections of their own. Many states have done just that: California has already enacted its own net neutrality protections, and

more than 30 additional state legislatures have introduced bills to create net neutrality protections and prohibit the blocking or slowing of web traffic, despite the fact that they will likely be challenged by the Justice Department. [*See* § 77C:4]

All royalties from the sale of this publication and its Supplements go to the Association of Corporate Counsel. On behalf of ACC and the many readers and book reviewers who have been generous with their praise for this publication, I would like to thank the distinguished author team for its extraordinary efforts.

Robert L. Haig  
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