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GENERAL COUNSEL AWARDS

Awards Nominees By Industry...26

Recent Public Co. Legal Issues...28

Elsewhere in Today's Paper: GCs Expand Reach...1

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General Counsel Awards Nominees Start on Page 72

Trends

➔ from page 1

also manages units overseeing product medical safety and quality affairs.

"I'm starting to take on more operational roles," he said, indicating he's also expanded into corporate governance and institutional shareholder relations.

"I've really enjoyed that, having that direct line of communication with our investors. To hear directly from our investors of what's on their minds is so valuable. It gives us a stronger voice in the boardroom."

Corporate and outside attorneys who work for corporations say that due to increased regulation, they're being called to identify landmines before they can become more damaging and costly. They made it clear that they're taking on more work that historically hasn't been in their job descriptions.

Angela Grinstead, deputy general counsel at Irvine-based analytics and data provider **CoreLogic Inc.** (NYSE: CLGX), said her role has broadened to take on issues such as corporate governance and risk management.

"Here at CoreLogic, we're seeing a focus on in-house lawyers being more part of the business and thinking about things strategically," she said. "Lawyers are becoming part of the business strategy."

Robert Sjogren, general counsel at Irvine-based bank **First Foundation Inc.** (Nasdaq: FFWM), said he often attends meetings in various company departments to identify products in development that might pose unacceptable problems.

"We're providing the legal and risk perspectives in many different disciplines," he said. "For me, it's fantastic. It keeps me engaged."

Hot Issues

The most pressing needs for corporations today are for attorneys who can handle California's ever-changing employment laws, Sjogren said.

"That's where employers are spending money."

The #MeToo movement has energized some employees to file complaints regarding sexual harassment or unfair pay. Besides responding to the complaints, companies have instituted more preventative training, said **Keith Carlson**, a



Davis: Glaukos GC
enjoys new functions



Grinstead: CoreLogic
GC helps company
think strategically



Sjogren: First Founda-
tion GC appreci-
ates engagement of
product-develop-
ment meetings



Chala: Arbonne GC
says data security
growing issue

partner in Newport Beach-based law firm **Carlson & Jayakumar LLP**, which specializes in healthcare and employment regulations.

"There is a noticeable increase in ... sexual harassment complaints," Carlson said.

Another hot area for outside legal work locally is managing privacy laws recently enacted in California and in Europe.

"In general, we're seeing an increase in inquiries regarding data privacy and security and an increasing awareness regarding these issues in general," said **Bernadette M. Chala**, chief legal officer and general counsel at Irvine-based beauty products maker and distributor **Arbonne International LLC**.

"People are asking about this because they have more awareness from the general news media that it can be an issue," Chala said by email.

Legal Bonuses

Controlling outside legal costs is also high on the to-do list, local lawyers said.

Bruce Fischer, co-managing shareholder at the Irvine office of **Greenberg Traurig LLP**, has heard about trends from GC colleagues. "The overwhelming response was a greater emphasis on cost controls."

The subject is more complicated than at first glance. It would seem intuitive that costs would fall because of an increasing use of technology in the place of outside legal work, along with a glut of attorneys. "There are too many lawyers in many law firms," said a 2018 report by legal consulting firm **Altman Weil**, which surveyed 801 firms with at least 50 lawyers.

But none of the general counsels or outside contractors the Business Journal interviewed

said they're observing a widespread decrease in fees. For one thing, they said the strong economy is causing increased demand.

"Rates are going up, as well," Fischer said. "It's happening even more now."

Corporations are striving to develop alternative arrangements to control costs, such as detailed outside counsel budgets upfront or prior approvals for going over-budget, Fischer said.

CoreLogic is minimizing the number of vendors it hires in general, including law firms.

"There's less a focus on an hourly rate and more a focus on the efficiency that you'll get from your outside counsel," said Grinstead at CoreLogic. "We're focusing more on the package of what we'll get."

Glaukos' Davis said that while fees are "trending upwards slightly," his company is trying to offset them by paying "success fees," such as bonuses for certain outcomes.

"We're pushing for that, and we're getting it," he said. "We're trying to align them with how we get compensated, performance based."

Arbonne's Chala said her company is working with high-caliber law firms "to make sure costs are trending down and that we are using IT solutions to make smarter, more efficient legal solutions, which also happen to be cheaper."

The IT Answer

Technology can be a help and a challenge in corporate legal offices.

"Technology is now front and center in our lives, personally and professionally," said **Aimee Weisner**, general counsel and corporate vice president at Irvine-based heart valve maker **Edwards Lifesciences Corp.** (NYSE: EW), the biggest publicly traded company based in

Orange County.

"Whether it's privacy, cybersecurity, legal technology platforms, big data or social media, legal departments are learning and adapting on a daily basis," Weisner wrote in an email. "The challenge is to stay current and to guide our organizations in such an uncertain time. This requires agility and solid judgment. It is also an opportunity to shine."

Technology's importance is growing in areas such as discovery, due diligence and leases.

"A lot of law firms are partnering with technology companies or are implementing some form of artificial intelligence," Grinstead said. "We're not seeing rates going down, but I do see overall transaction costs staying flat with the implementation of technology."

While corporations want to use artificial intelligence to keep research costs down, it's not yet an industry disruptor ala Uber.

"We're reading about AI doing legal research, but we're not seeing it," Carlson said. "We're still at a point where clients want an associate to do research."

But AI is making inroads in areas including real estate leases, Fischer at Greenberg Traurig said.

"It works for certain things. The majority consensus is that it's a helpful tool, but we're not comfortable relying on it yet. Going forward, that process will get better."

Strategic Advice

Many GCs said they're interested in how fellow GCs spend their days. First Foundation's Sjogren is focused on efficiency, which he said is a major concern because he doesn't have a staff at the bank, which has almost 500 employees.

"You don't have a body who can do everything," he said. "You have to be efficient in identifying the important issues with a broad scope."

It's not just general counsels whose roles are expanding. So are those of outside legal firms, which are now also hired to provide strategic advice on a company's direction rather than just on litigation and contractual matters, Fischer said.

"They're looking for a trusted adviser, which is becoming more and more important. Fees again seem to be going up. Clients continue to be disappointed because of the failure of some of their counsels to act as advisers and give them recommendations. I keep hearing that over and over again." ■

General Counsel

INDUSTRY REPRESENTATION

Nominees for 2018 Business Journal awards

57

Nominees

12

Healthcare

7

Finance

7

Manufacturing

6

Apparel, Cosmetics

6

Real Estate

6

Services

6

Technology

4

Media

3

Restaurants, Food



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Orange County Business Journal's

2018 General Counsel of the Year Award Winners and Nominees

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Mussallem: Edwards Lifesciences CEO



Gordon: Opus Bank CEO



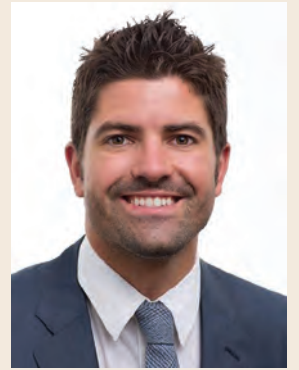
Niccol: Chipotle CEO



Bowers: Banc of California CEO



Saunders: Allergan CEO



Kovacevich: KushCo CEO

Regulatory Filings Reveal Hidden Legal Stories

Publicly traded corporations are often involved in lawsuits that stay under the radar, yet involve large amounts of money, not to mention the time of well-compensated executives.

The filings are written in dry legalese, often obfuscating fascinating backstories. Here are some highlights from Orange County companies' regulatory filings this year:

■ Irvine-based **Edwards Lifesciences Corp.** is involved in a number of lawsuits to protect its patents. The following paragraph from its 2017 annual report reveals two interesting items:

"In November 2017, we recorded a \$112.5 million litigation gain related to the theft of trade secrets. We incurred external legal costs related to intellectual property litigation of \$39.2 million, \$32.6 million and \$7.0 million during 2017, 2016 and 2015, respectively."

As it turns out, Edwards got the windfall after acquiring CardiAQ in 2014 for \$378 million. CardiAQ won a 2016 jury trial against service provider **Neovasc Inc.**

The millions Edwards paid in outside legal costs last year represented a fivefold two-year increase.

■ Irvine-based **Opus Bank** (Nasdaq: OPB) sued cross-town rival **First Foundation Inc.** (Nasdaq: FFWM), alleging theft of employees. The banks settled in March, and it looks like Opus immediately benefitted on expenses for professional services, which fell 62% year-over-year in the first quarter to \$1.72 million. Its first-quarter report, which didn't mention First Foundation, said:

"The decrease of \$2.8 million in professional services for the three months ended March 31, 2018 as compared to the same period last year was due to a \$2.9 million recovery related to a legal settlement."

An Opus spokesperson declined to comment on whether the recovery was related to First Foundation, saying the settlement was private.

■ **Chipotle Mexican Grill Inc.** (NYSE: CMG), which recently moved from Colorado to Newport Beach, showed how costly a computer system hack can be. Its annual report said:

"In April 2017, our information security team detected unauthorized activity on the network that supports payment processing for our restaurants, and immediately began an investigation with the help of leading computer security firms ... During the year ended December 31, 2017, we recorded an expense of \$30 million [\$18.2 million after tax], or \$0.64 per diluted earnings per share, as an estimate of potential liabilities associated with anticipated claims and assessments by payment card networks in connection with the data security incident."

The filing said malware searched for data that may include cardholder names, card numbers, expiration dates and internal verification codes.

In August, the U.S. Department of Justice revealed it arrested three Ukrainians who are accused of hacking thousands of fast-food restaurants, including Chipotle, through email messages containing malware to infiltrate a company's network.

■ Santa Ana-based **Banc of California Inc.** (NYSE: BANC) had a contentious fight with several former executives over their employment, including former Management Vice Chairman **Jeffrey T. Seabold**, who on the day he quit in September 2017, filed a lawsuit against the bank in a Los Angeles court. Five months later, the two sides settled.

The annual report noted the bank paid Seabold benefits such as \$38,000 in health insurance premiums and \$650,000 in attorney fees. In exchange, it extracted a promise from Seabold to not agitate shareholders for changes:

"Mr. Seabold will receive lump sum cash payments from the Company and/or the Bank aggregating \$4.3 million ... The Settlement Agreement contains certain standstill provisions that, prior to December 31, 2018, generally restrict Mr. Seabold and his affiliates from, among other things, acquiring beneficial ownership of any shares of the Company's common stock ... in excess of 4.99% ... or initiating any stockholder proposal."

■ **Allergan PLC**, based in Irvine before it was involved in a bitter 2014 acquisition battle that ended in 2015 when it was bought, annually reports a line item for "litigation-related reserves and legal fees." Note the trend at the drug-maker, which still has an Irvine presence:

2014: \$415.3 million

2015: \$191.7 million

2016: \$101.1 million

2017: \$78.3 million

■ Garden Grove-based **KushCo Holdings Inc. (OTC: KSHB)** supplies paraphernalia to the cannabis industry. Its 2017 annual report has the following caveat emptor for potential stock buyers:

"Twenty-nine states and the District of Columbia currently have laws legalizing marijuana in some form. We do not believe that federal or any state laws prohibit us from selling our packaging products to cannabis growers and dispensers. See, however, the risk factors in Item 1A - Risk Factors under the captions U.S. Federal and foreign regulation and enforcement may adversely affect the implementation of marijuana laws and regulations may negatively impact our revenue and profit or we could be found to be violating the Controlled Substances Act or other U.S. federal, state or foreign laws ... and We and our customers may have difficulty accessing the services of financial institutions and related financial services, which may make it difficult to sell our products and services."

■ It's easy to see why lawyers like **Acacia Research Corp.** (Nasdaq: ACTG), a Newport Beach-based firm that relies on enforcing patents to collect royalties. It's a litigation machine.

"We spend a significant amount of our financial and management resources to pursue our current litigation matters," its annual report said. "We believe that these litigation matters and others that we may in the future determine to pursue could continue for years and continue to consume significant financial and management resources. The counterparties to our litigation are sometimes large, well-financed companies with substantially greater resources than us."

For example, Acacia reported \$15.8 million in "contingent legal fees" in the first quarter. That's almost a fourth of the quarter's revenue of \$62.1 million. At least its inventors got paid, picking up \$21.7 million in royalties.

■ Irvine-based **ChromaDex Corp.** (Nasdaq: CDXC) is a "nutraceutical" company "devoted to improving the way people age." Its flagship ingredient, Niagen, is "backed with clinical and scientific research as well as extensive intellectual property protection."

It's attracted investors that include Hong Kong billionaire **Li Ka-shing** and the investment arm of **Facebook** co-founder **Mark Zuckerberg**.

In late 2016, ChromaDex sued New York-based **Elysium Health Inc.**, which describes itself as a life sciences company developing clinically validated health products based on aging research, and that's entered into an exclusive license agreement with the **Mayo Clinic** and **Harvard University**.

Elysium has "maliciously" misappropriated ChromaDex's trade secrets and failed to pay for products received, Chromadex said in its second-quarter report.

Elysium countersued, accusing ChromaDex of failing to issue certain refunds or manufactured Niagen to a defined standard, and "fraudulently" inducing Elysium into a trademark license and royalty agreement in 2014.

Elysium has also filed petitions with the U.S. Patent and Trademark Office to review patents for which ChromaDex is the exclusive licensee.

ChromaDex said its legal costs in the first half of the year climbed to \$5.1 million, up from \$1.4 million year-over-year. The costs amounted to more than a third of its \$14.3 million in sales.

"The ongoing litigation with Elysium and our increased efforts to file and maintain patents related to the proprietary ingredient technologies were the main reasons for the increase in legal expenses," the second-quarter report said.

— Peter J. Brennan



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Diversity and inclusion have been woven into the fabric of Carothers DiSante & Freudenberger LLP since its inception in 1994. Today, as we near a quarter-century in business, diversity is visible at all levels of the firm – with women and minorities making up nearly 60 percent of CDF attorneys – and many holding key CDF leadership positions. For more than two decades, CDF has been committed to the recruitment, development and retention of the best and brightest from all backgrounds and all walks of life.

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GIBSON DUNN

New California Privacy Law Will Require Significant Changes In The Business Practices of Companies That Collect Personal Information About California Consumers

On June 28, 2018, Governor Jerry Brown signed the California Consumer Privacy Act of 2018 ("CCPA"), which has been described as a landmark privacy bill that aims to give California consumers increased transparency into and control over how companies use and share their personal information. The law will be enacted as several new sections of the California Civil Code. While the law has already been amended once, and lawmakers and others are discussing further amending the law prior to its January 1, 2020 effective date, as presently enacted the law would require businesses collecting personal information about California consumers to:

- (1) disclose what personal information is collected about a consumer and the purposes for which that personal information is used;
- (2) delete a consumer's personal information if requested to do so, unless it is necessary for the business to maintain that information for certain purposes;
- (3) disclose what personal information is sold or shared for a business purpose, and to whom;
- (4) stop selling a consumer's information if requested to do so (the "right to opt out"), unless the consumer is under 16 years of age, in which case the business is required to obtain affirmative authorization to sell the consumer's data (the "right to opt in"); and
- (5) not discriminate against a consumer for exercising any of the aforementioned rights, including by denying goods or services, charging different prices, or providing a different level or quality of goods or services, subject to certain exceptions.

The CCPA also empowers the California Attorney General to adopt regulations to further the statute's purposes, and to solicit "broad public participation" before the law goes into effect. Those regulations must be developed and published by July 1, 2020, and the Attorney General may not enforce the CCPA until either July 1, 2020, or six months after the publication of the regulations, whichever comes first. In addition, the law permits businesses to seek the opinion of the Attorney General for guidance on how to comply with its provisions.

The CCPA does not create any private rights of action, with one notable exception: the CCPA expands California's data security laws by providing, in certain cases, a private right of action to consumers "whose nonencrypted or nonredacted personal information" is subject to a breach "as a result of the business' violation of the duty to implement and maintain reasonable security procedures," which permits consumers to seek statutory damages of \$100 to \$750 per incident (and which potentially may be aggregated in a class action lawsuit). The other rights embodied in the CCPA may be enforced only by the Attorney General—who may seek civil penalties up to \$7,500 per violation.

I. Background and Context

The CCPA was passed quickly in order to block a similar privacy initiative from appearing on election ballots in November. The ballot initiative had obtained enough signatures to be presented to voters, but its backers agreed to abandon it if lawmakers passed a comparable bill. The ballot initiative, if enacted, could not easily be amended by the legislature, so legislators quickly drafted and unanimously passed AB 375 before the June 28 deadline to withdraw items from the ballot. While not as strict as the EU's new General Data Protection Regulation (GDPR), the CCPA is more stringent than most existing privacy laws in the United States.

II. Who Must Comply With The CCPA?

The CCPA applies to any "business," including any for-profit entity that collects consumers' personal information, which does business in California, and which satisfies one or more of the following thresholds:

- (A) has annual gross revenues in excess of twenty-five million dollars (\$25,000,000);
- (B) possesses the personal information of 50,000 or more consumers, households, or devices; or
- (C) earns more than half of its annual revenue from selling consumers' personal information.

The CCPA also applies to any entity that controls or is controlled by such a business and shares common branding with the business.

The definition of "Personal Information" under the CCPA is extremely broad and includes things not considered "Personal Information" under other U.S. privacy laws, such as location data, purchasing or consuming histories, browsing history, and inferences drawn from any of the consumer information. (This expansive definition does not apply to the law's data breach provisions.) As a result of the breadth of these definitions, the CCPA likely will apply to hundreds of thousands of companies, both inside and outside of California.

III. CCPA's Key Rights And Provisions

The stated goal of the CCPA is to ensure the following rights of Californians: (1) to know what personal information is being collected about them; (2) to know whether their personal information is sold or disclosed and to whom; (3) to say no to the sale of personal information; (4) to access their personal information; and (5) to equal service and price, even if they exercise their privacy rights.

The CCPA purports to enforce these rights by imposing several obligations on covered businesses, including, among other things:

- (1) including more robust disclosures in online privacy policies (among other places);
- (2) permitting consumers to request that copies of their personal information be provided to them;
- (3) permitting consumers to request that their personal information be deleted (subject to certain exceptions); and
- (4) permitting consumers to request disclosure of the categories of personal information that are sold or disclosed for a business purpose, and to opt out of the sale of their personal information.

Subject to certain exceptions, the CCPA also prohibits a business from discriminating against a consumer for exercising any of their rights in the CCPA.

The law contains many additional (and detailed) requirements, and in the months ahead, businesses that collect personal information about California consumers will need to carefully assess their data privacy and disclosure practices and procedures to ensure they are in compliance when the law goes into effect on January 1, 2020. Businesses may also want to consider whether to submit information to the Attorney General regarding the development of implementing regulations prior to the effective date.

Joshua Jessen is a partner in Gibson, Dunn & Crutcher's Orange County and Palo Alto offices. Mr. Jessen's practice focuses on data privacy and cybersecurity, consumer law and class actions, and complex commercial litigation. He routinely represents companies in putative data privacy and data security class actions, and has been instrumental in obtaining dismissals or other successful resolutions of those actions. He also regularly counsels companies on compliance with California and federal privacy laws. In 2017, Mr. Jessen served as a Lecturer at the University of California, Irvine School of Law, where he taught the Cyber Victims Defense Clinic.



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Likes, Tweets & #'s, Oh My! Elevate Your Social Media Audit

Don't be alarmed! While the word "audit" is often an alarming term to most businesses, it need not be. It refers to any situation where a company takes stock of its assets, including its intellectual property. A traditional IP audit covers trademarks, domain names, copyrights, patents and trade secrets. A modern audit should also include an evaluation of a company's online presence, or social media footprint, via pages and profiles on social media platforms. This article provides key steps for elevating your social media audit.

Let's look at two examples of social media platforms widely used by businesses: Facebook and Twitter. A Facebook page contains a public profile of information, including the business name, address, phone number, and photos. If users "like" a page, they will see updates from the page.

A Twitter profile has a Twitter handle, profile picture, bio, header image, and pinned tweet. A Twitter handle is in the format "*@business or other name*" and can have up to 15 characters. The profile photo is typically a visual representation of the business or brand, and is the icon displayed in every tweet that is posted. The bio can have up to 160 characters, and typically includes information about the business, location, hours or a link to a website. The header image appears behind the profile picture and is used to promote news or events. The pinned tweet is the first tweet you see when visiting the profile.

5 Key Steps in Evaluating a Social Media Footprint

1. Conduct a Search

The company should maintain a comprehensive list of its key social media information for each platform: link, handle, owner, administrator, password, and content (profile photos and bios). Locating the links should be easy if the company's social media is already integrated into its marketing strategy. Links to Facebook and Twitter may already be on the company's homepage.

Other platforms that counsel should check are Instagram, Pinterest, YouTube, LinkedIn, Yelp, Tumblr, and Snapchat. A company may want to conduct an Internet search to identify all relevant platforms. Such a search may uncover forgotten accounts, or platforms where the company should have a presence but does not. The company should maintain a record of who has access to and manages each platform, and should evaluate if the proper individuals or employees are managing each account. The company can then correct the situation if necessary. If businesses have not controlled who owns or has access to user names and passwords, they may find out who those people are the hard way when an employee is terminated.

2. Identify Unauthorized Profiles

Unfortunately, the search may also reveal unauthorized or even fake accounts in the company's name or for its brands. If there are any accounts that are not recognized or look suspicious, now is the time to investigate and determine if they belong to the company or not. If they do not, the general advice is to make note of these profiles and take action to either acquire them or shut them down as appropriate. Sending the creator or owner of the account a message may be all that is needed in some cases. However, sometimes a business will need assistance from the platform. In such instances, a review the platform's terms of service, FAQs and help sections will set forth the options and how best to proceed. Keep in mind that "fan sites" and "gripe sites" will often require special consideration.

3. Check Each Profile

After the search, visit each platform directly and review for completion and consistency. Platforms do vary in the amount of information a business can list. For example, Yelp has identifiable fields for business hours and locations that other platforms may not. It is important to include all the information possible so customers can recognize the page and find the information they need. A business would generally want to make sure every input option or field is completed. Also note that some platforms may vary depending on which device they are viewed. Mobile versions and desktop versions are not always presented the same and so that should be taken into consideration.

Check the content of each profile and make sure it is consistent with the overall marketing strategy of the business. It is important that logos and brand names be the same across all profiles, and that colors be consistent with the company's other branding. Images, videos or other content should generally relate to each other, but you will still want to ensure that the unique aspects of each platform is utilized. Certain content may also be more compatible with different platforms. For example, short videos should be on the Facebook page and the longer videos should be on YouTube. In addition, having some unique content of each site

provides a reason to follow all of a company's profiles. Messages and communications should be the same unless it is platform-specific. For example, a Twitter post will need to comply with parameters that are not required for a LinkedIn post.

4. Consider Demographics

Certain demographics gravitate towards different platforms. For example, Snapchat is more popular with teens, and teens think that Facebook is "for old people." As to gender, it is estimated that of the 175 million Pinterest users, somewhere between 70 to 95 percent are female. It is also estimated that two million Pinterest users move pins to their shopping board every day. Look at the demographics of each social media platform to evaluate how to best utilize each platform in marketing your business or its brands.

5. Consider Goals

Evaluate which platforms are most important to the business. Track how frequently each profile is updated, and evaluate how often viewers and followers respond to posts or make posts. Examine the reactions to posted content. What are the tone and content of the comments? Are they complimentary, or are customers unhappy? Online issues are very important because they can be viewed by many customers and potential customers. They should be dealt with as quickly as possible.

With over 70 percent of Americans using social media, a company's social media footprint needs to be in line with its overall marketing. A social media audit can determine if this is true. It can also give the company an opportunity to correct it if it is not. These key steps will help elevate your social media audit.

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Jeffrey L. Van Hoosear is a partner in the Orange County office of Knobbe Martens, where he is chair of the Trademark Group. His practice focuses on trademark selection and clearance, intellectual property licensing, domain name and website content issues, rights of publicity, and proceedings before the Trademark Trial and Appeal Board. He can be reached at (949) 760-0404 or jeff.vanhoosear@knobbe.com.



Monica Johnson serves as General Counsel for Bonduelle Fresh Americas and Bonduelle Americas Long Life. An accomplished attorney and executive, she has worked with both large and small companies to achieve their business goals. Monica has experience in a broad range of industries, including foodservice, technology, manufacturing, and supply chain/logistics. Immediately prior to joining Bonduelle, Monica was Assistant General Counsel at Ventura Foods and also served as Senior Counsel at Western Digital.



Monica has also served in the administrations of three California governors. She currently serves as a board member of the Southern California chapter of the Association of Corporate Counsel. She received her JD from Southwestern University School of Law and holds a BA in Rhetoric/Communications and Political Science from U.C. Davis.

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Gender Diversity in the Boardroom Gains Momentum

The movement toward greater diversity in the boardroom continues to gain momentum as market and legal forces drive boards to increase their gender and ethnic diversity. Companies are taking steps to address their board composition for the long term.

Under a new law, SB 826, California will require each public company headquartered in the state to include:

- ▶ At least one female director on its board of directors by December 31, 2019
- ▶ At least two female directors if the board has five directors, and three female directors for boards of six or more by December 31, 2021

Noncompliance would result in a fine of US\$100,000 in the first year of violation and US\$300,000 each year thereafter until corrected, with a separate US\$100,000 fine for failing to provide required information to the state.

While SB 826 may ultimately not be enforceable against companies that are not incorporated in California, it highlights an international trend that has taken hold among US investors and which has also gained the attention of US boards of directors.

US investors endorse growing global trend

A number of non-US jurisdictions have instituted gender quotas for corporate boards over the last decade. For example, Norway mandates that women generally hold 40 percent of board seats. Spain, Belgium, France, Italy, and the Netherlands have similar laws. In 2016, Germany - the largest economy to adopt such a requirement - set a 30 percent quota for women on boards. The UK has adopted a non-binding target, currently set at 33 percent, for women on boards of directors at FTSE 100 and FTSE 350 companies. India requires public company boards to include at least one woman.

Recently, some US institutional investors have urged greater gender diversity in the boardroom. Last year, State Street Global Advisors adopted a policy to vote against nominating committee chairs of companies whose boards have no female directors and fail to take corrective steps (400 companies in 2017). BlackRock expects, as stated in its proxy voting guidelines, "at least two women directors on every board." Similarly, CalPERS and CalSTRS advocate for gender and other diversity on boards.

Gender diversity correlates with better performance

Gender diversity correlates with improved corporate performance, according to studies. Companies with three or more women directors in at least four out of five years outperformed those without any women directors in at least four out of five years, with 84 percent higher return on sales, 60 percent higher return on invested capital, and 46 percent higher return on equity. A greater number of women on boards and in senior management roles correlates with higher earnings, higher total shareholder return, and higher excess return. Additionally, boards with a greater number of women had superior valuations on average.*

How are boards improving diversity

1. Recruiting director candidates using broader networks

Boards are increasingly involving outside search firms to extend their search for new directors, rather than relying on incumbent directors and their existing networks.

2. Expanding board member search criteria

Boards are enlarging their search criteria to ensure a wide pool of women candidates. Searches can include management personnel at smaller or private companies from other complementary industries and from a variety of roles, including finance, law, marketing, product management, or operations.

3. Thinking longer term about board composition and vacancies

Boards are developing forward-thinking plans to address upcoming vacancies that

will arise and the skills that the board will require in the medium to long term. Nominating committees are increasingly beginning their search process earlier to find a larger and more diverse pool of talent.

4. Increasing diversity across the enterprise

Boards are focused not only on their own diversity, but also diversity in senior management positions and at every level of the enterprise, reflecting an increased emphasis on the value of gender diversity.

5. Communicating with investors

Boards are communicating to investors about these efforts in their publicity materials, proxy statements, websites, and other media, recognizing the importance that investors and other stakeholders accord to a company's commitment to diversity.

6. Engaging diverse candidates

Above all, boards are increasingly recognizing the need to facilitate meaningful diversity by including women and other diverse directors who are fully engaged and involved as members of the board and the board's committees.

* Nancy M. Carter and Harvey M. Wagner, "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004-2008)," Catalyst, March 2011, p. 1, www.catalyst.org/knowledge/bottomline-corporate-performance-and-womens-representation-boards-20042008.

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New Legislation Impacting California Employers

In the waning days of his final term of office, and on the last possible day under the legislative calendar, on September 30, 2018, California Governor Jerry Brown signed bills into law that should have a dramatic effect on the ability of workers to bring claims for harassment and discrimination in the workplace. The new legislation makes it more difficult for employers to resolve such claims, either by way of settlement or by dismissal through a motion for summary judgment. The new legislation also attempts to increase education and training regarding harassment in California's entertainment industry.

Senate Bill No. 820

Under existing law, employers have been free to enter into settlement agreements containing nondisclosure provisions that prevent parties from discussing not only the amount of a settlement being paid but also the factual foundation surrounding claims of workplace sexual harassment. Such provisions have been very much in the news in light of Harvey Weinstein, Bill O'Reilly, and other prominent figures known to have settled prior sexual harassment claims. Senate Bill No. 820, effective January 1, 2019, adds a new section to the California Code of Civil Procedure that prohibits public and private employers from entering into settlement agreements that prevent the disclosure of information regarding

- ▶ acts of sexual assault;
- ▶ acts of sexual harassment as defined in section 51.9 of the Civil Code;
- ▶ acts of workplace sexual harassment;
- ▶ acts of workplace sex discrimination;
- ▶ the failure to prevent acts of workplace sexual harassment or sex discrimination; and
- ▶ retaliation against a person for reporting sexual harassment or sex discrimination.

However, under this provision parties are still able to enter into agreements preventing the disclosure of claimants' identities and amounts paid in settlement of claims.

While the goal of this statute is to prevent situations in which serial harassers are allowed to continue their unlawful behavior, its effect could be to impede parties from reaching arms-length resolutions of workplace disputes. It may also make it more difficult for employers to resolve unfounded or weak claims, as accused employees may refuse to cooperate in settlements without the opportunity to clear their names through litigation.

Senate Bill No. 1300

Governor Brown also signed into law Senate Bill No. 1300 (SB 1300), which amends the California Fair Employment and Housing Act (FEHA) to prohibit other nondisclosure agreements related to alleged claims of sexual harassment and overturn prior court rulings that limited harassment lawsuits.

Among other things, SB 1300 prohibits, in exchange for a raise or bonus, or as a condition of employment or continued employment, an employer from requiring the execution of a release of a FEHA claim or the signing of a nondisparagement or nondisclosure agreement related to unlawful acts in the workplace, including sexual harassment. The statute also provides that an employer may be liable for nonemployees' sexual harassment or other unlawful harassment of the employer's employees, applicants, unpaid interns, volunteers, or contractors, if the employer or its agents or supervisors knew or should have known of the conduct and failed to take immediate and appropriate corrective action.

In addition, the legislation rejects two notable federal court decisions, thereby making it more difficult for employers to obtain summary judgment in harassment claims. For example, it explicitly rejects the application of the majority opinion in the Supreme Court of the United States' decision in *Harris v. Forklift Systems*, 510 U.S. 17 (1993), and instead holds that the FEHA applies the lower standard set forth by Justice Ruth Bader Ginsburg in her concurrence: "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment." It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the

plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.'" It also rejects the Ninth Circuit's decision in *Brooks v. City of San Mateo*, 229 F.3d 917 (2000), by confirming that a single incident of harassing conduct is sufficient to create a triable issue of hostile work environment harassment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment.

Further, the new legislation provides that the legal standard for sexual harassment should not vary by type of workplace and that it is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. As such, it explicitly rejects the California appellate court decision in *Kelley v. The Conco Companies*, 196 Cal. App. 4th 191 (2011). SB 1300 also explicitly rejects the so-called "stray remarks doctrine" by providing that the existence of a hostile work environment claim depends upon the totality of the circumstances and that a discriminatory remark, even if not made directly or in the context of an employment decision or uttered by a nondecision maker, may be relevant. Accordingly, it explicitly affirms the California Supreme Court's decision on this issue in *Reid v. Google Inc.*, 50 Cal. 4th 512 (2010).

Vince Verde is a founder of the Orange County office of Ogletree Deakins and is the managing shareholder of the office. He is a litigator and former prosecutor with extensive jury and non-jury trial experience. He has tried and won jury trials in multiple jurisdictions and represents employers in state and federal courts in single and multi-plaintiff actions. His diverse practice includes the representation of regional and national clients in all phases of litigation involving employment and labor matters, unfair competition, trade secret and non-compete matters, work place violence, class action lawsuits and complex business disputes. He has extensive experience in all areas of employment law, including wrongful termination, retaliation and 1102.5 claims, discrimination, harassment, wage and hour issues, family and medical leave, disability discrimination and accommodation and employee privacy. Mr. Verde draws on his skills as a trial attorney in order to successfully resolve matters early in the litigation or obtain dismissals through summary judgment.



Lori Bowman has 30 years of experience in all aspects of labor and employment law. She has represented employers in hundreds of state and federal employment litigation cases, including numerous wage and hour class actions and discrimination and wrongful termination cases. She has defended employers in employment and labor arbitrations and before California and federal administrative agencies including the DOL, DLSE, EEOC, DFEH and NLRB. Bowman counsels employers in all areas of labor and employment law including policies and procedures and litigation avoidance. She also conducts audits, training, and investigations of employee misconduct and frequently lectures on employment law issues.



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State Mandated Gender Diversity on Corporate Boards

Although many studies have shown that diversity on corporate boards of directors provides many corporate benefits, women continue to hold just a small number of corporate board seats. According to a recent report by PricewaterhouseCoopers, only twenty-five percent of S&P 500 companies have more than two women on their boards. To address this disparate representation, the California legislature has passed a new law that will require a minimum number of women directors on the boards of certain corporations. SB 826 (codified in Sections 301.3 and 2115.5 of the California Corporations Code), which was approved by Governor Brown on September 30, 2018, provides that by the close of the 2019 calendar year, certain corporations must have a minimum of one female on its board of directors. No later than the close of the 2021 calendar year, the bill increases the required minimum number to two female directors if the corporation has five directors or to three female directors if the corporation has six or more directors. This new law applies to California general corporations and foreign corporations that are publicly held, whose principal executive offices, as reported on the corporation's SEC form 10-K, are located in California.

The Secretary of State has been tasked with publishing various reports on its website documenting, among other things, the number of corporations in compliance with these provisions. The bill would also authorize the Secretary of State to impose fines for violations of the bill, and would provide that funds collected as a result of these fines are to be available, upon appropriation, to offset the cost of administering this new law.

Although the actions of the California legislature were undoubtedly made with the best intentions, SB 826 will certainly face legal challenges on several grounds. SB 826 will undoubtedly be challenged as an unconstitutional gender quota that violates the 14th Amendment's requirement of equal protection. The Supreme Court has previously struck down fixed diversity quotas as unconstitutional. See, e.g., *Regents of the University of California v. Bakke* (1978). Lower courts have also rejected the proposition that "diversity" justifies gender quotas. See, e.g., *Lamprecht v. FCC*, 958 F.3d 382 (1992). Notably, even California Constitution's own equal-protection clause prohibits race and gender proportionality requirements.

In order for SB 826 to survive strict scrutiny under the Equal Protection Clause, California must show that it has a compelling interest and the law itself is necessary in order to achieve California's diversity objective. If there is a less discriminatory means of achieving the same goal, the law will be struck down as unconstitutional. See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967). Due to the rigorous standard that California must satisfy, it is unlikely that SB 826 would survive an equal protection challenge.

Even if SB 826 does manage to survive such a legal challenge, it will also likely be challenged on constitutional grounds that it violates the Dormant Commerce Clause. The Dormant Commerce Clause (also known as the "Negative Commerce Clause") is a legal doctrine that courts have inferred from the Commerce Clause in Article I of the US Constitution, which provides "[t]he Congress shall have Power... [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...". The Dormant Commerce Clause generally prohibits state legislation that discriminates against or unduly burdens interstate commerce.

Since SB 826 may apply to publicly traded corporations that are incorporated outside of the State of California, California's imposition of board composition mandates on such companies may be viewed as an undue burden on interstate commerce.

Lastly, SB 826 will also likely be challenged on the grounds that it violates the "internal affairs doctrine". The "internal affairs doctrine" is a legal principle that

"recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands." *Edgar v. MITE Corp.* 457 U.S. 624, 645 (1982). Under the internal affairs doctrine, California is permitted to impose governance restrictions and mandates on corporations that are incorporated in the state. However, the internal affairs doctrine would generally prohibit California from imposing those same restrictions on corporations that are incorporated elsewhere, even if those corporations have a principal executive office in the state of California.

Nevertheless, the general rule of the internal affairs doctrine may not apply if a different state can show that it has a more significant relationship to the parties and the transaction. See e.g., *Rest. 2d Conf. of Laws*, § 309, p. 332. Thus, if California can make a compelling showing that its interests are stronger than those of the state of incorporation, it is possible that California may be able to assert power over the foreign (non-California) corporations. California would need to show that the location of a corporation's principal executive offices is more significant for purposes of board composition than the state of incorporation.

Aside from the legal challenges that SB 826 will likely face, there are non-legal concerns that have been raised as well. Some believe that quotas can be applied in order to correct a previous gender imbalance. However, others believe that gender quotas on boards may not be the best way of overcoming the effects of historic disproportionate representation. In fact, such a mandate may inadvertently create a further divide due to the involuntary nature of the government mandate, and the penalties that ensue for failure to comply. Women selected for the mandated positions may also be viewed as receiving the position because of their gender and not for their qualifications or merits.

Until the legal challenges to SB 826 are resolved, implementation of SB 826's diversity mandate will likely be suspended. While the likelihood of the law's survival remains dubious, board gender diversity is expected to remain an important issue for corporate stakeholders. Thus, publicly and privately held businesses may be well-advised to focus their efforts in this area, regardless of whether such a legal mandate ultimately survives legal scrutiny.

Rachel Simon provides sophisticated legal services in the areas of business, tax, and estate planning. Her practice emphasizes mergers and acquisitions, tax planning, tax litigation, financings, estate and succession planning, and general corporate practice. She can be reached at (714) 641-3476 or rsimon@rutan.com



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New Investment Tax Incentive: Qualified Opportunity Zones

The Tax Cuts and Jobs Act, signed into law on December 22, 2017, introduced a new tax incentive for “qualified opportunity zones” (“QOZs”) designed to spur investment in certain designated low-income communities across the country by providing for deferral and, in some cases, complete elimination of federal income taxes on gains from the sale of certain assets. Although there has been a tremendous amount of interest in this new tax incentive, little investment has occurred to date because of the statute’s lack of clarity in many key areas. In response, Treasury is expected to issue interim and proposed regulations shortly to address some QOZ program gating issues, with final regulations expected to be issued sometime in 2019. Assuming these Treasury Regulations provide enough clarity that investors feel comfortable moving forward, we expect to see significant activity in this tax incentive program beginning in the fourth quarter of 2018.

Overview of QOZs

The QOZ program incentivizes taxpayers to invest in underdeveloped areas designated as QOZs by the Treasury. On June 14, 2018, the Treasury and IRS announced the final list of designations for QOZs, which include designations in all 50 states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. A list and map of QOZs can be accessed on the Treasury’s Community Development Financial Institutions Fund website.¹

To qualify for the incentive, the taxpayer must invest gains from a sale of capital assets in a vehicle known as a “qualified opportunity fund” or QOF within 180 days after the sale of the asset that generated the gains. At this point, it is unclear whether gains other than long-term capital gains qualify for this deferral. A taxpayer will be able to defer paying taxes on those gains until the earlier of the date on which they sell their interest in the QOF or December 31, 2026 and, depending on how long the investment in the QOF is held, may be able to eliminate taxation on some of those proceeds.

Specifically, a taxpayer who holds its interest in the QOF for at least five years will eliminate 10 percent of the gains from taxation. If the taxpayer holds its investment in the QOF for at least seven years, that is increased to 15 percent. If the taxpayer has not yet sold the investment by December 31, 2026, any deferred gain that hasn’t been eliminated will have to be included in taxable income for that year. If the taxpayer then sells or exchanges its investment in the QOF after holding it for more than ten years, any appreciation in the interest in the QOF is never taxed.

To qualify as a QOF, the investment vehicle must be a corporation or partnership organized for the purpose of investing in QOF property that holds at least 90 percent of its assets in QOZ business property or QOZ stock or partnership interests acquired solely for cash. QOZ business property is tangible property used in a trade or business of the QOF, if such property was acquired by the QOF after December 31, 2017. The QOF must either be the original user of the QOZ business property or must substantially improve the QOZ business property by an amount equal to the initial purchase price of the property. The statute only seems to permit a six-month period in which to meet the 90 percent test. This time period is too short for typical real estate development transactions and Treasury is expected to permit a longer period of time for this initial development period.

At the time of acquisition, QOZ stock or partnership interests must be operating a QOZ business (or, in the case of a new entity, must be organized for purposes of operating a QOZ business) and must continue to operate a QOZ business during substantially all of the QOF’s holding period. A QOZ business is a trade or business which (1) is not a so-called “sin business” (i.e., golf course, country club, massage parlor, hot tub or suntan facility, racetrack or gambling establishment), (2) substantially all of the tangible property owned or leased is QOZ business property, (3) at least 50 percent of total gross income is derived from the active conduct of a business, (4) a substantial portion of intangible property is used in the active conduct of the business, and (5) less than 5 percent of the property is

attributable to nonqualified financial property (i.e., debt, stock, options, futures, etc.). The statute does not contain a definition of “substantially all” or “substantial portion” and the Treasury guidance is expected to clarify this. A QOF self-certifies that it meets these requirements when filing its tax returns.

The following is an example of the tax benefit provided by this program:

Taxpayer X sells shares of stock on November 1, 2018 and realizes a gain of \$1,000. X invests the entire \$1,000 gain in a QOF on April 1, 2019. Because X invested the proceeds attributable to the gain within the 180-day period, the recognition of that gain is temporarily deferred and is not subject to tax in 2018.

If X sells its QOF investment on April 2, 2029 for \$3,000, then (1) X will be permitted to entirely eliminate from taxation 15 percent or \$150 of the original gain of \$1,000 because it held its interest at least seven years, and (2) X will not owe any tax on the appreciation in the QOF investment (\$2,000), which permanently escapes taxation because X has satisfied the 10-year holding rule. Note that X would have to pay tax on the portion of the deferred gain on the original investment that is not eliminated (\$850 in this example) in 2026.

Conclusion

This new QOZ incentive can provide a great investment and tax planning opportunity for taxpayers. However, guidance from the Treasury is needed to clarify the statute in order for taxpayers to move forward with such investments. For further information on this topic and under no obligation, please reach out to Michael Haun at (213) 683-6119.

Michael Haun is a partner in the Tax practice of Paul Hastings and is based in the firm’s Los Angeles office. Mr. Haun provides tax and business advice to a broad range of domestic and international clients in a wide variety of partnership and limited liability company transactions; acquisitions, mergers and dispositions involving corporations, including cross-border transactions; restructuring matters; tax issues involving credit agents; real estate investments; and tax incentive and subsidized transactions involving low-income housing tax credits, opportunity zone funds, new market tax credits, historic tax credits and energy tax credits.



Anna Twardy is an associate in the Tax practice and is based in the firm’s Chicago office. Her practice focuses on federal tax credits, including low-income housing tax credits, opportunity zone funds, new market tax credits, historic tax credits and energy tax credits, and federal income tax issues related to corporate transactions for the M&A and Private Equity practice groups, including structuring considerations. Ms. Twardy also provides tax advice related to credit agreements and conducts tax specific underwriting for representations and warranties insurance policies and renewable energy insurance policies.



¹<https://www.cdfifund.gov/pages/opportunity-zones.aspx>

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AGENDA



Director Dysfunction – Shine a Light

Why is “dysfunction” growing within groups that we expect to collaborate? The U.S. Congress comes to mind, but they have certainly not cornered the market on dysfunction. Other governing bodies, such as the boards of corporations, can experience debilitating dysfunction, and while no two situations are identical, there are ways to address this behavior. But the solution means discerning whether board dysfunction is “legitimate” or “illegitimate.”

Confrontation and verbal aggression can be rooted in directors’ having distinct opinions about strategy, business plans and performance. There is nothing wrong, impaired or abnormal about this type of disagreement or opinion, even if it becomes emotional or lacks etiquette. Accordingly, legitimate “dysfunction” is not something that should be avoided or castigated. It is a natural part of the process of reconciling views and competing objectives. However, the hallmark of “legitimate dysfunction” is that all directors are working toward the best interests of shareholders without conflict or improper purpose.

By contrast, “illegitimate dysfunction” is often rooted in directors’ serving improper purposes, acting in the face of conflicts or failing to keep shareholder interests at the forefront of their deliberations and objectives. Examples of illegitimate dysfunction include disengaged directors, overly powerful or dominating directors/executives, stacked boards, personal power and control struggles, conflicted directors, rubber-stamp boards, and poorly trained/uneducated directors — just to name a few.

Illegitimate dysfunction can be discerned objectively through a variety of red flags. Frequent turnover of employees, managers and directors can be a sign of problems and conflict within the company. Conversely, a lack of turnover or addition of new blood on a board can also be a bad sign that directors are disengaged. Excessive or overly generous compensation arrangements might indicate that the board is rubber-stamping management’s requests or that the directors are being paid off to look the other way. Litigation between or against directors is a red flag. The lack of an integrated and competent general counsel can be a sign of a dominating CEO or CFO and a board that has failed to rein in management. Frequent claims by former employees and whistle-blowers may suggest that a board is not properly overseeing management or addressing risk within the organization. Unusual “attention” from regulatory agencies can also be a sign of internal problems.

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Fixing an illegitimately dysfunctional board depends on the root of the dysfunction. In situations where the dysfunction is driven by a “bad actor,” directors can move to take action to recuse the conflicted director or directors and meet/act in executive session. Some of the most effective changes can come from the appointment and work of independent special committees, the audit committee or a compensation committee. Directors, particularly at public companies, must be familiar with company committee charters. Typically, each of these committees is authorized to retain independent advisors that are empowered to investigate and make recommendations on problems within management or on the board. When conducting an internal review, directors must retain independent counsel who in turn can retain experts to assist counseling the committees. Committees may need to avoid using the company’s regular outside counsel, given the risk of personal relationships with members of management and/or particular directors.

As with any powerful tool, committees, information requests and executive sessions can be corrupted and deepen problems if directors are seeking to consolidate power or are more interested in effecting personal gain. The motives and intentions of those with power and control must keep the creation and protection of shareholder value as the primary objective. Directors must also be wary of attempted ousters of company counsel by law firms engaged for committee purposes but who ultimately eye expanding the business relationship with the company.

Ultimately, if there are bad actors within management and/or a board, sunshine through factual investigation and independent review of the conduct is the starting point for finding remedies.

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John F. Cannon is a shareholder in Stradling’s Newport Beach office and chair of its Litigation Department and Securities Litigation practice group. He represents public and private companies in connection with the defense of allegations of violations of the securities laws, including class action and derivative claims, allegations involving fraud on the government, and complex business litigation. He also counsels clients on corporate governance, compliance programs, and is called upon to lead internal investigations. He can be reached at (949) 725-4107 or jcannon@sycr.com



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Important Legislative Changes for California Employers in the Wake of #MeToo Movement

By Dawn M. Knepper

#MeToo just passed its first anniversary, and this movement is proving to be more than just a passing fad. Earlier this month, several pieces of key legislation passed which will have a direct impact on businesses of all sizes in the state of California, and their relations with their employees. As the effective date for some of these is just months away, it is time to take note and make sure your business will be compliant.

New Restrictions On Confidentiality Of Sexual Harassment/Discrimination Settlements

Often settlement agreements include a broad scope of confidentiality provisions that often preclude the claimant from discussing the terms of the settlement and the underlying factual basis of the original claim. Senate Bill 820 will limit that practice for settlement agreements entered into on or after January 1, 2019. SB 820 prohibits confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct – unless the party alleging the harm desires confidentiality language to protect his or her identity.

The law does not void confidentiality provisions that prevent disclosure of the amount paid in the settlement of a claim.

New Restrictions Regarding Preventing Future Testimony

Another piece of legislation that requires a critical look at your settlement agreements is Assembly Bill 3109, which applies to a contract or settlement agreement entered into on or after January 1, 2019. AB 3109 adds Section 1670.11 to the Civil Code, which voids provisions in settlements that would prevent someone from testifying about alleged criminal conduct or alleged sexual harassment in an administrative, legislative, or judicial proceeding where the individual is requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the legislature.

New Requirements For Sexual Harassment Workplace Training

Senate Bill 1343 radically changes the requirements for workplace sexual harassment prevention training in the #MeToo era. The bill amends California Government Code Section 12950.1 and changes several workplace training requirements, including the following:

Training required by small businesses: Employers with at least five employees are now required to provide training to their employees (the previous threshold being 50 employees);

Training is no longer limited to supervisory employees: Employers are now required to provide sexual harassment prevention training to all employees, including non-supervisory employees. Specifically, one hour of classroom or other effective interactive training and education regarding sexual harassment must be provided to all non-supervisory employees, and two hours of the same to supervisory employees.

Training required within six months of job commencement: Employees are currently required to undergo training within six months of starting their jobs. Seasonal or temporary employees (or any employees that will be employed less than six months) need to undergo training within 30 days or 100 hours, whichever comes first.

The new bill will force many employers to overhaul their current training protocols in light of the new requirements. The bill also directs the DFEH to create online training modules that employees could take to fulfill the new requirements.

These new requirements come into place on January 1, 2020. Employers should use this window to determine how it will implement these training requirements in a way that it is meaningful to their employees. Simply clicking through government-supplied online training may not deliver the right message regarding the employer's commitment to prevent and remedy workplace harassment.

“Hostile Work Environment” Is Redefined; Release/Non Disparagement Agreements as a Condition of Employment or Promotion Are Banned

Another noteworthy change is the rejection of the standard of what constitutes a

hostile work environment, a standard that has been in place for almost two decades. Senate Bill 1300 decrees that a single incident of harassing conduct is sufficient to create a triable issue of hostile work environment if the conduct interfered with a plaintiff's work performance or otherwise created an intimidating, hostile, or offensive work environment. The law explicitly rejects the prior standard for hostile work environment set by the 9th Circuit in *Brooks v. City of San Mateo*, 229 F.3d 917 (9th Cir. 2000), an opinion written by former Judge Alex Kozinski who ironically retired from the court in 2017 amidst allegations of improper sexual conduct while on the bench.

SB 1300 also makes it unlawful for an employer to require an individual to sign a release or non-disparagement agreement that purports to deny the employee the right to disclose information about unlawful acts in the workplace in exchange for a raise, bonus, or continued employment (however, it does not apply to settlements where the employee is represented by counsel).

Corporate Boards Are Required To Include Women

By the end of 2019, Senate Bill 826 requires that all California publicly held companies have a minimum of one female on their board of directors; and by the end of 2021 a minimum of two female directors if five total directors, or three female directors if six or more total directors. Failure to comply will result in significant fines.

Talent Agencies Take Note

Aimed at preventing directors and producers from taking advantage of young talent looking for a break, Senate Bill 224 creates a new cause of action for sexual harassment related to these types of businesses and professional relationships where unwelcome sexual advances, solicitations, sexual requests, demands for sexual compliance, or other verbal, visual, or physical conduct of a sexual or hostile nature cause the client injury.

Assembly Bill 2338 requires that a talent agency, as a condition of the requirement that it be licensed with the Labor Commissioner, provide educational materials on sex harassment prevention, retaliation, and reporting resources to its talent (the artists). Failure to comply will result in \$100 fines for each violation.

Human Trafficking Awareness Training Required of Certain Employees

Senate Bill 970 requires that employees who are likely to interact or come into contact with victims of human trafficking (e.g., those who have recurring interactions with the public such as receptionists, housekeepers, and drivers) go through 20 minutes of classroom or other interactive training regarding human trafficking awareness.

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Diversity and Inclusion: It's Much More Than Just Legal Compliance

By Denisha P. McKenzie and Todd R. Wulffson

Diversity and Inclusion Matters. Simply put, it is the right thing to do. There are also tangible benefits associated with a business' ability to attract and retain a diverse pool of employees. Since California and federal law specifically prohibit an employer from discriminating against an applicant or employee on the basis of any protected category (race, national origin, religion, gender, age, sexual orientation, disability, etc.), a homogeneous workplace of any kind should be an immediate red flag to business leaders. In addition, from a business perspective, the additional benefits associated with diversity in the workplace most often leads to another desirable result - increasing the business' bottom line.

Practical Business Advantages of Diversity in the Workplace

"Racial and gender diversity increases the creativity, innovation and profitability of organizations," says L. Song Richardson, Dean of UCI's Law School (currently the only woman of color to lead a top 21 U.S. law school). Having a wide range of employees with different backgrounds, experiences, and beliefs spurs collaboration and creativity in ways that lead to improved business ideas, products, services and opportunities. The stagnation that results from "group think" is avoided where employees are able to offer and be exposed to diverse perspectives, opinions and ideas. The lack of representation within companies also increases the likelihood that businesses will not be able to connect with unique customer bases that could generate additional opportunities. Moreover, companies with employees who are from different backgrounds are better able to develop products and services to meet the needs of a diverse customer base, which in turn, increases revenue. In an increasingly multicultural, and global, business world, customers want to feel comfortable, respected, and understood. A company who cannot meet this level of customer service today is at a distinct disadvantage.

Mitigation of Legal Risks and Liabilities Resulting from Diversity in the Workplace

The chances of avoiding and mitigating legal risks and liabilities can significantly improve with greater workforce diversity. California is known for its employee-friendly laws, where hundreds of employment discrimination and harassment lawsuits are filed on a daily-basis. All things being equal, businesses with diverse workforces are far less likely to be sued for these claims as compared to workplaces that lack diversity. Even when these companies are sued, the chances of an employee prevailing at trial can be greatly diminished if the employer can demonstrate that it implements and maintains both a policy and a practice of diversity and inclusion.

In a disparate treatment lawsuit (employee must show they were discriminated against because of a protected factor), an employee has a significantly diminished chance of prevailing on the merits when the manager and the plaintiff share the same background. A critical factor in defending these cases is also to show that the company has policies in effect to minimize illegal discrimination and harassment. When the company can show that it has a legitimate commitment (with an established track record) of hiring and retaining employees from all racial backgrounds, it is more likely that the jury will believe the company's position.

Similarly, a discrimination claim based on a disparate impact theory can be virtually eliminated in a diverse workplace, because the plaintiff cannot demonstrate that an employer policy or practice results in a disproportionate number of minority employees being negatively impacted. In such a case, statistics become important, and it is far better for the company to have audited itself and corrected perceived issues before a future plaintiff calls attention to them at trial.

Recommended Steps to Advance Diversity and Inclusion in the Workplace

Hiring outside legal professionals that understand the principles of diversity and inclusion is an important part of creating an overall inclusive culture. While the legal profession is one of the least diverse industries in the United States, Carothers, DiSante, & Freudenberg, LLP ("CDF") has been ranked this year by Law360 as one of the "Best Law Firms for Minority and Female Attorneys" in the nation (with only offices in California). CDF is one of the few law firms who

"practice what they preach" when it comes to labor and employment law; and the majority of its attorneys are women and members of recognized minorities. To achieve similar results, law firms and businesses should implement the following steps to improve diversity and inclusion:

Hiring. Develop a strategy for hiring the best candidates from a wide applicant pool. There is no such thing as a lack of qualified, diverse candidates. Employers, however, sometimes do not cast their recruiting nets wide enough to find available job applicants (e.g. sending the same people to recruit at the same few schools year after year – or ignoring effective social media sites like LinkedIn). Employers should constantly self-audit, and adjust their recruitment practices to ensure the applicant pool, and those selected for interviews, are appropriately diverse.

Recognizing and Tackling Bias. Bias can appear at all stages of the employment process, from hiring, to discipline, promotion, and termination. Business leaders must take a top-down approach to make sure that issues of implicit bias (and even explicit bias) are dealt with in ways that promote positive interactions between employees without ignoring issues as they arise. From a hiring perspective, companies must be sure not to exclude or selectively favor some applicants over others. Once employed, business leaders must be sure that no negative trends develop regarding employment decisions.

Cultivating a Diverse and Inclusive Culture. Diversity can exist and flourish only where the leaders of an organization make it a priority, and encourage a culture of inclusion. Hiring a diverse array of employees is pointless where those employees do not feel like valued members of the organization. Companies must encourage collaboration between employees from all backgrounds, and find ways to incorporate diverse perspective into the ultimate business goals.

¹ Jill Backer, *What Is Diversity In The Legal Market Or Is Everyone A Special Snowflake?* (August 25, 2018), New York Law Journal.

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CALIFORNIA COMPANIES FACE INCREASING DATA PRIVACY COMPLIANCE OBLIGATIONS: GDPR AND THE CALIFORNIA CONSUMER PRIVACY ACT

Several years ago, the European Union enacted a sweeping privacy law called the General Data Protection Regulation (GDPR), which created a new set of privacy rights for individuals and imposed significant data protection requirements on companies. GDPR, which took effect on May 25, 2018, not only applies to companies in the EU, but also to companies outside the EU that collect the personal data of EU residents. Recently, the California legislature passed the California Consumer Privacy Act (CCPA). Taking effect in July 2020, the CCPA imposes similar, though not quite as extensive, privacy obligations on companies doing business in California.

GDPR REQUIREMENTS

GDPR applies to any company established in the EU, including EU subsidiaries of non-EU companies. GDPR also applies to companies outside the EU if they process or handle the personal data of EU residents when offering EU residents a good or service, regardless if a payment is involved, or monitor the behavior of EU residents to the extent such monitoring takes place within the EU. Mere accessibility of a website from the EU is likely not enough to trigger GDPR.

What personal data is protected?

GDPR broadly defines personal data as any information relating to an identifiable natural person. Information such as a name, address, phone and identification numbers are considered personal data. Other types of information such as location data, IP addresses, economic information, and physical identifiers are also considered personal data. Certain kinds of sensitive data, such as health, race, or data related to ethnicity, are subject to heightened protections and may only be processed with the explicit consent of the data subject.

What activities are covered?

GDPR covers "data processing," which is broadly defined to cover any operation on a set of data, irrespective of format or use of automation in the operation. Virtually any use of personal data is covered by GDPR, including the collection, recording, organization, storage, adaptation or alteration, retrieval, destruction, consultation, use, disclosure, or dissemination of personal data. For example, the sending of an email or the saving of contact information in a customer relationship database is a form of data processing.

What legal basis for processing do I need and what notice do I need to provide to consumers?

GDPR requires companies to have a valid basis to process each category of personal data they collect or store. The most commonly invoked valid bases include consent, necessity to perform an agreement, and the legitimate interest of the controller. Companies need to be very careful when relying on consent; as GDPR requires that consent be provided by a clear statement or action that is specific, given freely, informed, and unambiguous. Therefore, companies should not use pre-checked boxes or bury consent in terms of use or other agreements.

GDPR also requires data controllers to provide notice to data subjects of their privacy practices and procedures. These notice requirements differ from U.S. law and so data use policies should be updated to meet GDPR regulations.

What rights are granted to data subjects?

Under GDPR, EU residents may request a portable copy of their personal data from any company recording such information. EU residents are also permitted to request that companies erase their personal data in certain circumstances, including when a resident retracts their consent to data processing or collection. Additionally, GDPR grants EU residents the right to require data processors to correct inaccurate data without undue delay.

What obligations do you have?

GDPR is an extensive, complex regulation with many other requirements. In particular, data controllers are required to keep records of their data collection activities, enact and maintain data protection agreements with third parties, conduct data protection assessments, appoint a data protection officer, and report data breaches. Data processors have similar, though slightly less onerous, obligations.

Failure to comply

EU regulators have the power to impose significant financial penalties for GDPR violations, with fines up to €20 million or 4% of a company's annual worldwide revenue, whichever is greater.

CALIFORNIA CONSUMER PRIVACY ACT

The CCPA applies to any company "doing business" (broadly defined) in California that either: (a) handles the personal information of 50,000 or more California residents; (b) has annual revenue over \$25 million; or (c) derives more than 50% of its annual revenue from the sale of consumers' personal information. Under the CCPA's definition of control, companies will need to consider their entire organization, including parent and subsidiary entities, in analyzing whether the CCPA is triggered.

Some regulated industries and kinds of information are exempt from the CCPA, such as health care providers and protected health information under HIPAA, as well as information processed by financial institutions under Gramm-Leach-Bliley.

What data is protected?

CCPA defines personal information to include any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Familiar information such as a name, address, and identification numbers are clearly protected data under the CCPA. However, new data categories such as biometric information, browsing history, search history, geolocation data, thermal imaging, audio recordings, and information regarding a consumer's interaction with a website are also covered by the CCPA.

What rights are granted to data subjects?

Once the CCPA takes effect, California residents will be able to assert certain specific rights, including:

- The right to know what personal information is being collected.
- The right to know whether their personal information has been sold or disclosed, and to whom.
- The right to prevent the sale of their personal information. Companies subject to CCPA must include a prominent "Do Not Sell My Information" link on their home Web page to enable people to opt out of their information being sold.
- The right to access their personal information.
- The right to equal service and price, even if they exercise their privacy rights.

What happens if I don't comply?

Failure to comply or cure such compliance within 30 days of notice may result in the California Attorney General bringing an action for an injunction and a civil penalty of not more than \$2,500 for each violation or \$7,500 for each intentional violation of the CCPA.

Additionally, the CCPA provides a private right of action in the case of a security breach, if the consumer can demonstrate the breach was the result of a company's violation of its duty to implement and maintain reasonable security protocols. In such instances, a consumer may seek damages in an amount not less than \$100 and not greater than \$750 per consumer per incident, or actual damages, whichever is greater.

WHAT STEPS SHOULD I BE TAKING?

All California companies should assess how these new data protection laws might apply to them. If they apply, the next step is to conduct a data inventory to determine what data is processed so that you can evaluate your compliance requirements under both GDPR and CCPA. If necessary, you should develop an implementation plan for compliance, which will include developing or updating policies, procedures, agreements, and forms. Comprehensive reviews of your data infrastructure should also be part of your GDPR and CCPA assessments.

A special counsel at O'Melveny and a former general counsel for a major media company, Scott Pink brings an insider's perspective to his broad-based practice. Scott advises technology, media, entertainment, and a variety of consumer product and franchise companies on issues of intellectual property counseling; social media law; cybersecurity and privacy; and advertising, marketing, and promotions law. He serves as lead outside advertising and marketing counsel to several well-known brands, and is a sought-after resource on intellectual property, privacy, and cybersecurity issues.



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It's No Secret: California's New Consumer Privacy Law Goes Live in 2020 (Maybe)

Privacy activists cheered when, on June 28, 2018, Governor Brown signed into law the strictest consumer privacy law in the United States; the California Consumer Privacy Act of 2018 ("CCPA"). Effective January 1, 2020, the CCPA imposes a range of new requirements on businesses to ensure that consumers enjoy choice and transparency in the treatment of their personal information.

Who is Protected?

The CCPA protects the personal information of "consumers" – who are individuals defined as Californian "residents" in California's personal income tax regulations.

Who is Regulated?

The CCPA applies to for-profit businesses that (1) do business in California, (2) collect consumers' personal information (directly or through a third party), and (3) determine the purpose and means of processing that personal information (directly or jointly). And meet one of the following three thresholds: (1) have annual gross revenues in excess of \$25 million; (2) annually buys, sells, receives for commercial purposes, or shares for commercial purposes the personal information of 50,000 or more consumers, households, or devices; or (3) derives 50 percent or more of its annual revenues from selling consumers' personal information. Entities that control or are controlled by a business that meets the criteria can also be subject to the CCPA if their commercial conduct takes place in California.

What Information is Regulated?

The CCPA has a significantly more expansive definition of "personal information" than prior privacy laws, and is not limited to personal information collected online. The expanded definition includes any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked with a particular consumer or household. This would include names, addresses, social security numbers, IP addresses, educational information, inferences drawn to create a profile about the consumer, consumer preferences, etc.

Excluded from the CCPA's definition of "personal information" is data which (1) is publicly available; (2) cannot reasonably identify, relate to, or describe a particular consumer (provided safeguards are taken to protect against re-identification); and (3) relates to a group or category of consumers from which individual identities have been removed (provided it is not linked or reasonably linkable to a particular consumer or household). Information is not considered to be publicly available if it is used for a purpose other than the purpose for which it is maintained and made available in government records, or for which it is publicly maintained.

Given the expansive scope of the CCPA, businesses may find that they are inadvertently collecting "personal information" under the CCPA. For example, an Internet blogger with more than 50,000 subscribers, who shares its subscribers' information with advertisers, likely falls within the CCPA.

What is Required?

The CCPA empowers California residents to: (1) know what personal information is being collected; (2) know whether their personal information is sold or otherwise disclosed, and to whom; (3) reject the sale of their personal information; (4) access their personal information and request deletion; and (5) receive equal service and price from the business, even if the resident exercises its privacy rights under the CCPA.

In addition, the CCPA requires businesses to provide certain notices and disclosures to its consumers. In particular, businesses must inform its consumers about: (1) the categories of personal information the business collects and the purposes for which the information will be used; (2) the consumers' right to request that the business delete their personal information; and (3) the consumers' right to opt out from the sale of personal information. Consumers also have a right to request and receive the following information, including: (1) the categories and specific personal information collected by the business; (2) the categories of sources from which the personal information is collected; (3) the purpose for which the personal information is collected; (4) the categories of third parties with whom the personal information is shared; and (5) the categories of personal information that the business sold or disclosed for a business purpose.

The Consequences for Violations

The CCPA has two substantial enforcement mechanisms. First, the Attorney General may penalize violators with civil penalties if violations are not cured within 30 days, ranging \$2,500 to \$7,500 *per violation*.

In addition, the CCPA creates a private right of action which allows California residents to recover between \$100 to \$750 *per incident* (or actual damages, whichever is greater) if their personal information is compromised as a result of the business' failure to implement and maintain reasonable security procedures.

The amount of statutory damages will be determined by a court, which will evaluate various factors such as the nature, seriousness, volume, and persistence of the violations.

The CCPA requires consumers to provide 30 days' notice to the business of the alleged violations before filing suit. If the violation is cured and the business provides the consumer a written statement that the violations have been cured and that no further violations shall occur, the consumer cannot proceed with the lawsuit. However, if the business continues with its alleged violations, the consumer can sue for the original and any new CCPA violations, including a breach of the written statement. This 30-day notice is not required if the consumer suffered actual pecuniary damages as a result of the business' failure to implement and maintain reasonable security procedures.

What the Future Holds

Businesses should understand that the CCPA was passed as part of a deal brokered between Sacramento and proponents of a competing ballot initiative which would have imposed even stricter data privacy rules on companies doing business in California. These privacy advocates imposed a deadline by which Governor Brown had to sign the CCPA, but agreed to remove their ballot initiative once it was signed into law. While the compromise averted a costly fight over the proposed ballot initiative, it also produced a hastily-drafted law that leaves a multitude of unanswered questions for businesses. For example, it is unclear if the \$25 million annual gross revenues threshold is limited to those revenues generated in California, or if it encompasses annual gross revenues worldwide. Given the definition of "consumers" in the CCPA, another open question is whether the law applies to covered entities that process even a single California resident's personal information, no matter where that entity is located. It is also unclear how personal information should be deleted in response to a consumer's request or how such deletion should be tested.

The confusion is not limited to businesses. In fact, the California Attorney General has questioned its own ability to meet the operational obligations of the new law. And privacy advocates have criticized the exclusion of state and local governments from the requirements of the CCPA. Finally, there is a growing movement in Washington to craft federal privacy laws that would preempt the CCPA, and empower the Federal Trade Commission with nationwide enforcement.

With so many open questions and competing interests, California's Legislature is certain to consider additional changes when it reconvenes for the 2019 session. Businesses should monitor future amendments to the law and the adoption of corresponding regulations by the Attorney General, which will likely affect the CCPA's impact on day-to-day business.

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Top 5 Trends Taking Off in Aerospace & Defense

“I Want My MRO”. OEM and A&D companies are jockeying for position to capture attractive, above-market expected maintenance, repair and operation (MRO) growth. Simply, more planes in service equals more maintenance spend. According to fleet forecasts, the worldwide 2018-2028 commercial fleet will grow by 44%. The corresponding MRO spend is expected to rise from \$77.4 billion to \$114.7 billion for the same period. Traditional MRO service providers are seeing fundamental changes in their industry as OEMs seek to increase aftermarket penetration to capture greater “life cycle” revenue-generating opportunities.

“A&D Commercial Supply Chain Blues”. Major negative pressures are compounding, mostly unseen, in the complex A&D supply chain. The good ole boy atmosphere is gone, the good ole boys are retiring. The industry is gradually trying to move to an automotive supply chain model. The global supply chain struggles to balance demands for price down concessions with the requirement to replace very capital-intensive equipment and upgrade to new technologies. Poor On-Time-Delivery (“OTD”) statistics by the supply chain plague the OEMs as they try to hike production to lofty levels not seen ever before.

“I Want to Fly Like an Eagle”. The business jet market slammed into a wall during the economic downturn. Since the downturn, the major question at the NBAA conference was: Is bizjet back? The annual answer has been a soft: not yet. Industry optimists point to 2019 as the potential turnaround year for Business Aviation. Sales of large-cabin aircraft models are expected to do well in 2019. Just like cars, newer used airplane models (<10yrs old) are in demand. Several new business models will be introduced in the coming months, which is expected to stimulate additional buying activity. Interestingly, several revolutionary companies are trying to become the Tesla-of-the-sky.

“Open for Business for Friends”. Foreign Military Sales (“FMS”) are a key element for USA balance of trade exports. Additionally, FMS is useful in foreign policy and provides economic advantages to the US military industrial infrastructure. Not without controversy. For the first half of 2018, USA has sold \$46.9 billion in FMS. The half year 2018 figure is \$5 billion more in FMS than was sold in all of

2017. For further comparison, 2016 FMS totaled \$33.6 billion. The current administration’s “Buy American” campaign to facilitate weapons sales to allies is in high gear and open for business.

“Defense Wins”. The cessation of sequestration and restoration of the US defense budget are game changers. 2019’s budget totaled \$717 billion and was approved August 1st, the swiftest pace in 20 years. Per the DoD: “The mission of the Department of Defense is to provide lethal Joint Force to defend the security of our country and sustain American influence Abroad.”

Any opinions expressed are those of the author, based on interpretation of data available at the time of original publication of this article. These opinions are subject to change at any time without notice.

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How Lawyers Can Plan for Financial Independence

By Kevin DuPree, Mike Jacob and Matt Farrell

If you listen to some financial experts, planning for financial independence is a one-size-fits-all process. You put a portion of your income aside and invest it in diversified assets that you gradually reallocate to make more conservative as you age.

But financial planning isn't one-size-fits-all. In fact, it's one of the most individualized experiences in life, and that means strategies for it should be tailored to your particular goals and dreams. But despite the highly individualized planning required to help you meet your financial goals, there are certain fundamental elements that lawyers can utilize to ultimately achieve sustainable financial independence.

It can often help to break down this process into three major categories. In chronological order, they are: the contribution phase, accumulation phase, and distribution phase. Within each category, attention to details such as tax implications, plan limits and time horizons can have a significant impact on the successful completion of your financial goals.

When completing each phase of the planning process, keep in mind these key components for building sustainable financial independence:

Leverage Qualified Plan Contributions

The first place to start when considering retirement planning is what are commonly known as "qualified plans." Most are probably familiar with the term, if not also a corresponding IRS tax code, 401(k). 401(k) is the provision that governs employee salary deferrals in qualified employer-sponsored retirement plans. Contribution limits and participation requirements, as set forth in ERISA, determine who can and must be eligible to participate, as well as how much each participant can defer into the plan. Broadly speaking, a 401(k) and most other employer-sponsored retirement plans, are considered defined contribution plans. This simply means that employee and employer contributions are determined annually, and no benefit amount is promised in retirement.

Defined benefit plans, or pensions, are designed with a fixed retirement benefit in mind. Contributions are made in the same pre-tax fashion as most defined contributions are, but these plans cater to a more select group of individuals. Where 401(k) and other defined contribution plans limit their participants to contribution maximums of \$18,500 for 2018 (\$24,500 if over 50 years old), defined benefit contributions can offer significantly higher deferral amounts, which are generally provided by employers. And similar to defined contribution plans, contributions to defined benefit plans are tax-deductible, thereby reducing what would otherwise be a large tax liability. Defined benefit plans are age and income based so the participants' income has to warrant higher contributions, but in the right scenario, these plans offer an incredible benefit, both from a tax perspective today and when the benefit is received in retirement.

...And Nonqualified Plan Options

An often-overlooked component to a professional's financial plan is the use of nonqualified benefit plan options. A nonqualified benefit plan allows for the ability to build additional funds for future distribution in a way that can be individually tailored for both the employing firm and the individual. Once an executive has exhausted qualified plan limitations, a firm can implement any combination of nonqualified plan designs including Supplemental Executive Retirement Plans (SERP) and Elective Deferred Compensation Plans. Both allow for executives to accumulate funds in a tax-deferred manner that can be utilized at a pre-determined later date. In addition, unlike the qualified plan options, there are generally fewer restrictions imposed on both the employing firm and executive in regard to deferral amounts, benefit payments and participant eligibility.

Protecting your biggest asset

Financial planning isn't just about deferring as much money away as you can, it's also about making sure you guard against bad things that could happen and push you off course. As a lawyer, your greatest asset is your ability to earn income – not your home. Yet, many professionals who don't think twice about getting homeowners insurance, balk at ensuring they have proper disability income insurance. If something were to compromise your income your family could struggle to make

ends meet or you could have a severely diminished retirement. According to the Social Security Administration, one in four people today will become disabled at some point in their career. That's why it's so important to protect as much of your income as possible with disability insurance.

Implementing a well rounded defensive strategy is critical to achieving sustainable financial independence and should address key issues such as estate planning, long term care needs and legacy planning.

The Bottom Line

Consider working with professional advisors that have the knowledge and resources to answer more than just the investment management aspect of your wealth. Retirement income distribution planning, estate planning, family gifting, charitable planning, and long-term care planning are all areas that should be integrated into your overall strategy. Together, they may pay major dividends in terms of financial security for you and your family for years to come.



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Speech Rights vs. Trademark Rights: How a Honey Badger Could Change your Branding Strategy

By Aaron Renfro and Samuel Brooks, Call & Jensen

Trademarks benefit both consumers and businesses. For consumers, trademarks reliably identify the source of a particular good or service. For businesses, trademarks help distinguish the trademark owner from competitors. In other words, trademarks are handy shortcuts, giving consumers quick and accurate information about what they are buying, and rewarding suppliers who consistently market quality products.

Federal law has long protected against the unauthorized use of trademarks. However, over-protection can harm consumers and hamper fair competition. This is why trademark rights are limited. Unlike patent and copyright laws—which restrict competition to promote creativity—trademark law aims to promote fair competition. For example, no one can claim a trademark for a product's generic name (e.g., "Apple" can be a mark for a computer company, but not an apple company). Marks that describe a product or service (e.g., "Dollar Shave Club") are only protected if consumers actually recognize them as trademarks.

Trademarks and Free Speech

Limitations on trademark protection are also necessary to ensure free speech. Since trademark protection allows one person to prevent another from using certain words or symbols, it is in tension with the other person's right to speak freely. As such, courts have adopted rules balancing trademark protection with free speech. The generally accepted rules for this balancing act are captured in the *Rogers* test.

The test gets its name from *Rogers v. Grimaldi*. The case involved a movie entitled *Ginger and Fred*, which told the story of two fictional performers who imitated the famous dancing duo, Ginger Rogers and Fred Astaire. Rogers sued, claiming that the title falsely implied the film was either about her, or sponsored by her. Rogers' claim failed. According to the court, the use of a trademark in the title of an expressive work (such as a film) could not constitute trademark infringement unless it had no artistic relevance to the underlying work, or unless the title was explicitly misleading.

Since *Rogers* (1989), courts across the country have adopted this test in a variety of circumstances. For example, under *Rogers*, Mattel could not prevent a music group from using its Barbie trademark in the song, "Barbie Girl;" the title was artistically relevant because the song was about Barbie. Likewise, Mattel could not prevent an artist from titling his series of Barbie doll photographs "Food Chain Barbie." More recently, the *Rogers* test applied to foreclose trademark claims involving video games, and to foil a record label's attempt to stop Twentieth Century Fox Television from using the title, "Empire" for its hit TV series. As the court explained in the "Empire" case, Fox had artistically relevant reasons to use the word, "empire," including the show's setting in New York (the Empire State), and the subject matter of the show (an entertainment empire). Thus, even if consumers might mistakenly assume the record label (Empire Distribution) was connected with the show, there could be no infringement. In each of these cases, free speech trumped trademark rights.

Rogers Test? Honey Badger Don't Care

A new ruling by the Ninth Circuit in *Gordon v. Drape Creative* (decided July 30, 2018), may alter the balance between speech and trademark protection. The case involves Christopher Gordon's 2011 YouTube video, *The Crazy Nastyass Honey Badger*. In the video, Gordon facetiously narrates National Geographic footage of the honey badger as it trots through the desert terrorizing cobras, bees, and other menacing creatures. The video went viral, and popularized memes featuring two catchphrases from Gordon's narration: "Honey Badger Don't Care," and "Honey Badger Don't Give a Sh—."

Shortly after the video went viral, Gordon capitalized on its popularity by selling goods with his honey-badger catch phrases, and by applying for copyright and trademark registrations. In 2012, Gordon hired a licensing agent to solicit license agreements with other businesses interested in using the phrases. Gordon's licensing agent negotiated agreements with two companies for the use of the phrases "Honey Badger Don't Care" and "Honey Badger Don't Give a Sh—" on greeting cards. One company—American Greetings—met with Gordon's agent, but declined to purchase a license. Nevertheless, two of its subsidiaries developed honey badger-themed greeting cards using similar catchphrases.

Gordon sued, alleging trademark infringement. The defendants asserted a constitutional right to use these phrases expressively, and the California District Court agreed, granting judgment against Gordon. Gordon appealed, and in July 2018 a three-judge panel of the Ninth Circuit reversed the judgment. According to the panel, the First Amendment might protect the card companies' conduct, but Gordon had offered enough evidence to avoid outright dismissal.

In reversing the judgment, the panel agreed that greeting cards are expressive works, and that "[t]he honey-badger catchphrase is certainly relevant to defendants' cards" as "the punchline on which the cards' humor turns." However, it believed a jury could find the catchphrase was not used "for artistic reasons" if the defendants used it "merely to appropriate the goodwill inhering in the mark or for no reason at all." According to the panel, in order for *Rogers* to apply, "the mark must both relate to the defendant's work and the defendant must add his own artistic expression beyond that represented by the mark." The record contained evidence that the defendants "simply used Gordon's mark in the same way that Gordon was using it—to make humorous greeting cards in which the bottom line is 'honey badger don't care.'" As such, a jury could reasonably conclude that the defendants' use was not artistically relevant, and therefore not constitutionally protected.

The panel's opinion surprised many trademark experts. A group of 37 law professors have urged the full appeals court to rehear the case. The professors argue that the panel's ruling protects *creativity*, rather than guarding against *source confusion*. They argue that by extending copyright-like protection to a trademark, the panel's opinion creates a serious conflict between trademark and copyright law. The court's opinion is not yet final—it could still be further reviewed by the full appeals court or by the Supreme Court—but assuming it stands, this opinion will significantly move the fine line between constitutionally protected expression and infringing conduct.

How the Honey Badger Case Could Affect Your Brand Strategy

For businesses that use creative content in their goods, services, and/or advertising, this case could have a real impact. It could spark a rush to lock up trademark rights for popular catchphrases and viral memes. For example, imagine if one company could require license payments to use popular hashtags such as #squad, #goals, or #blessed on t-shirts, coffee mugs, and key chains—regardless of whether they are being used to identify source. Given the recentness of the decision, *Gordon's* consequences remain to be seen. However, assuming the decision becomes final, businesses with creative content should reassess their advertising, and seek legal counsel to weigh the risks and potential rewards of branding strategies referencing pop culture.



Aaron Renfro and Samuel Brooks are shareholders at Call & Jensen and members of the firm's Intellectual Property Group. For more information, Mr. Renfro and Mr. Brooks can be reached at (949) 717-3000 or by email at arenfro@calljensen.com or sbrooks@calljensen.com.



What In-House Counsel Need to Know about California's New Legal Ethics Rules

If you are a California lawyer, you have probably heard by now that, on November 1, 2018, a new set of Rules of Professional Conduct will take effect. While it is clear that California's new Rules of Professional Conduct apply to in-house counsel just as they do to outside counsel, their application to in-house counsel is not always straightforward. Below are a few of the new rules that are of particular note to in-house practitioners, along with a brief explanation of how those rules are likely to apply in a corporate environment.

Mandatory "Up-the-Chain" Reporting [Rule 1.13]

One of rules particularly applicable to in-house lawyers is Rule 1.13, which governs situations where the client is an organization. As compared to the previous version of this rule (Rule 3-600), this revised rule imposes much broader reporting requirements on lawyers representing organizations. Where the former rule provided for discretionary reporting, the new rule makes it *mandatory* for a lawyer to report to a "higher authority in the organization" any conduct that the lawyer knows or reasonably should know is (1) a violation of a legal obligation to the organization or a violation law; and (2) is likely to result in substantial injury to the organization. Serious violations and persistent misconduct may warrant reporting to the "highest authority" in the organization which, in many instances, will be the Board of Directors.

Duty to Supervise (Rules 5.1, 5.2, and 5.3)

The new rules also impose much more robust obligations on lawyers with respect to supervising lawyers, paralegals, and other legal staff. In-house lawyers in managerial or supervisory roles must make "reasonable efforts" to ensure all company lawyers and legal staff are compliant with the new rules, including putting policies and procedures in place to ensure compliance. These measures may include designating an in-house "ethics counsel" whom lawyers can go to with legal ethics questions and offering CLE courses on legal ethics to in-house legal staff.

Sex with "Clients" [Rule 1.8.10]

Not surprisingly, one of the most talked-about changes to California's ethics rules relates to rules governing sexual relations with clients. Unlike the former rule which permitted a lawyer to have sex with a client provided it was not a *quid pro quo* situation or the result of coercion, intimidation, or undue influence, the new rule expressly *prohibits* sex with clients with very limited exceptions. Those exceptions include a consensual sexual relationship which pre-dated the representation. This rule, which expressly applies to "inside counsel" as well as outside counsel, provides that the "client" for in-house lawyers is any person in the organization who "supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters."

All California lawyers, including in-house and outside counsel alike, are encouraged to review the full set of new Rules of Professional Conduct, which are available on the State Bar's website: <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/New-Rules-of-Professional-Conduct>

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Todd Smith is a partner at Umberg Zipser who practices complex business litigation in state and federal courts, including defending lawyers and law firms in legal malpractice actions. Smith is experienced in all phases of litigation, including trials, arbitrations, mediations, and appeals, as well as regulatory proceedings and internal investigations.

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Thanks to the hard work of students and faculty, the Dale E. Fowler School of Law placed seventh in the ABA Competitions Championship. Photo courtesy of Chapman University



Students receive a nationally recognized 'practice-ready' education at Chapman University's Dale E. Fowler School of Law. Photo courtesy of Chapman University

Fowler School of Law Students Prove They Are 'Practice-Ready'

By Aaron Singh

Chapman University's Dale E. Fowler School of Law is a dynamic place. It's the kind of place that knows what skills lawyers need to launch successful careers in the competitive legal market. The kind of place concerned just as much with practical training as it is with theory. That's why Fowler's Practice-Ready Initiative strategically provides a nationally recognized curriculum to better help students gain practical experience.

And just last spring, as the Fowler School of Law marked the commencement of its 20th graduating class, the law school received three new honors, including news that its student competition teams placed in the top tier of the first national American Bar Association (ABA) Competitions Championship.

Providing law students with a practice-ready education has long been one of the most distinguishing features of Fowler Law, but it takes an intense amount of work and dedication. Thanks to hardworking students and faculty, the school placed seventh in the ABA Competitions Championship, which included more than 1,300 students from over 150 law schools. The achievement is based on law schools' cumulative scores earned by student teams competing in the ABA's four practical-skills competitions, including negotiation, client counseling, arbitration and an appellate advocacy competition.

Such recognition is a testament to the swift growth of the school and the quality of its students, alumni and faculty, says Dean Matt Parlow. The competition successes arrived alongside news of Fowler Law's high rankings issued by PreLaw Magazine, which recently awarded the school an A grade and a 23rd

place ranking nationally for practical training.

"As we celebrate the 20th anniversary of our first graduating class, it's impressive to see how far this great law school has come in such a short period of time. The success of our alumni and the most recent recognition by the ABA and PreLaw Magazine demonstrate our exciting upward trajectory at the Fowler School of Law," Parlow says.

Contributing to the rankings were the school's externship programs, which had record numbers of students participating in 2017–18. The students used their practice to benefit actual active cases in off-site field placements. Some benefited by receiving guidance from faculty members at Fowler's seven law school clinics — other students were lucky enough to take part in both externships and clinics.

"These accomplishments are just a few examples that show the high caliber of our students and the hands-on training they receive at the Fowler School of Law," says Assistant Dean for Career Services Susie Park. "Many employers who participated in our fall recruiting program stated that they were impressed with the practical experience Fowler students gained as part of the curriculum, and as a result, a record number of second year students secured positions with mid-sized and large firms."

"We are proud of all these accomplishments," adds Parlow. "And while there are so many others we could point to—hopefully these provide some insight into the great momentum that we have at the Fowler School of Law."

Business Law Emphasis Gives Fowler Law Students a Competitive Edge

By Brittany Hanson

It doesn't matter who you are — if you enroll in Chapman's Business Law Emphasis program, you're going to end up in front of the dean.

Well, the former dean.

Fowler School of Law former Dean Tom Campbell has gladly stuck around to continue educating in the program he designed and directed. Previously the dean of UC Berkeley's Haas School of Business, Campbell saw a need for a law emphasis that could thrive in this region's large commercial business economic base.

Created in 2011, it was among the very first in the trend of focusing on business law certification and has grown into Fowler Law's most popular of eight emphases and certificate programs, including tax law; criminal law; advocacy and dispute resolution; international law; environmental, land use and real estate law; and entertainment law.

"I think we were unique when we began, and I'm proud we were at the very start of this," says Campbell.

Campbell notes that law students who pursue this emphasis anticipate that they will be involved in advising or suing companies, however it's not enough to act on behalf of business interests — they need to know the way a company is run.

Regional general counsels helped Campbell determine what would be included on the required versus optional coursework. They also agreed to take on Chapman interns, serve on panels and act as a resource for when Fowler law students visit corporation legal offices, meet general counsels and find out what the practice of



Tom Campbell, the former dean of the Fowler School of Law, designed and directs the Business Law certificate program, Chapman's most popular law emphasis. Photo courtesy of Chapman University

law actually looks like.

The resulting program was designed to enable students to practice law in matters involving companies and trade associations. The business law emphasis focuses on understanding the language of international business mergers and acquisitions; business start-ups; bankruptcy; taxation; and accounting.

What's unique about this certification is how it caters to the immediate regional job market. The candidate students, due to their previous career experience, have a high degree of interest working specifically in Orange County, Los Angeles and San Diego.

Despite its agricultural roots, Orange County's modern business reputation is based on commercial business, real estate or the surrounding development and technology based in government or military presence. However, each of these sectors plays a role in a diverse job market.

"Our program is practice-oriented and real world centered," says Campbell. "Our students usually come from a number of years of actual business activity."

These students are generally not a fresh-faced recent undergrad — they frequently come to Fowler with seasoned experience in the world of business. Campbell said they are the kind who know what they want to do and know why they want to do it. They're not looking at a law degree as the next thing to do, but rather as the most important next step.

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Using a Centuries Old Trial Attorney Technique to Create Extraordinary Efficiencies in the Discovery Process for Business Disputes

By Jesse Gessin

You are general counsel for a mid-size technology company. Your company has litigated with a competitor for about six months. You just received another legal bill where two associates have racked up seventy-five hours drafting discovery, responding to discovery, moving to compel answers or responding to a motion to compel. Your attorneys are locked in battle over deposition subpoenas for tangential witnesses. This bill follows the previous month's where another eighty hours was spent fighting over the same things. The case is important to the company and you don't want to settle on unfavorable terms, but the costs of discovery are eating up the litigation budget. If this sounds familiar, there is a solution.

Litigation attorneys spend too much time and resources discovering the case to death in order to "play it safe." No stone, no matter how unimportant, is left unturned. Evidence is developed without knowing the purpose *for* the evidence. This overreaching results in inefficiencies that erode litigation budgets better used for case development or dispute resolution. It leads to unnecessary discovery disputes that end up in court, and acrimony between the parties that makes settlement more difficult. The solution is a well-founded narrative theory of the case, developed at the outset.

For centuries, trial attorneys have anchored their case to a narrative theory. To understand what this is, it is necessary to define "narrative" and "theory of the case." While narratives are not unique to law, a theory of the case is. Narrative and story are often used interchangeably, but they are different. A story is an account of something that has occurred, while a narrative comprises broader themes and substance. Stories are but one of the building blocks used to construct a narrative.

In business disputes, a theory bonds the case to the company's view of the world. The history, culture, and leadership of your company help form the theory of the case. Your attorney must become steeped in your company's world-view in order to develop a compelling theory. That theory serves as a prism for defining reality, explaining the facts, relationships, and circumstances of the company and other parties. It combines the company and trial attorney's perspectives with an eye toward the ultimate audience – a jury or judge.

When these components - narrative and case theory - are combined, they become a roadmap for winning business disputes: an amalgam of law and fact that tells the judge or jury why your company should prevail.

The narrative theory gives direction and focus to the entire case, especially discovery. Here's an example. Your production company, Good Guy Media, was founded five years ago and now has over a hundred employees. The company creates and markets content for platforms such as YouTube and Facebook. The company's culture is imbued with trust and openness. These qualities have helped breed collaboration and teamwork, which have enabled the company to form vital relationships with media "influencers" who in turn trust Good Guy with their brand and private information. Unfortunately, these traits have also led to security vulnerabilities, including company-wide access to "The List," private contact information for all of Good Guy's influencers.

An early employee, Mark Mackerberg, took the list on his way out the door to work for a competitor, Bad Guy Media. You and your outside counsel learned from an internal investigation that another Good Guy employee was offered a thirty percent salary increase to come to Bad Guy. As part of the oral offer, a Bad Guy executive added, "It sure would be nice to have The List."

You learn from another employee that Mark has two DUI convictions from eight and 14 years ago. Should Good Guy Media's outside counsel develop discovery about the DUI convictions? This would include written questions regarding the DUIs, external investigation with a private investigator, subpoenas for police

records, depositions of police and witnesses involved in the DUIs, etc. The estimated litigation costs for this avenue of discovery could be close to \$50,000. While in all probability the evidence of Mark's DUIs would be inadmissible in the trade secrets theft case, it's possible the discovery about them could lead to something else.

Should your lawyers pursue this line of inquiry? While tempting, the DUIs do not advance Good Guy's narrative case theory, which is: Bad Guy could not compete with Good Guy playing fair, so they tempted a trusted employee to steal a trade secret that Good Guy spent years creating. They found someone, Mark, who was already having financial problems, and lured him away. Mark agreed to steal the trade secret not because he is a drunk but because he is greedy.

If costs were no concern, looking under every rock, such as the DUIs, would be the safe approach. But focusing on developing the narrative is far more efficient and cost effective. An experienced trial attorney will have the confidence to skip discovery about the DUIs.

How do you develop a narrative case theory? First, your outside counsel must do a careful internal investigation. He or she must also get to know your company. The narrative case theory stems from the stories of the people, who are often employees, at the center of the dispute. Data should be collected and reviewed to understand the corroborating or discrediting evidence. The data collection should be focused on the most important information about the dispute. Far too frequently, litigators fail to investigate their case thoroughly before launching into discovery, which as a result becomes aimless and expensive.

Once the internal investigation is complete, the evidence from the internal investigation can be distilled into good and bad facts, and a narrative case theory can be developed. Using both good and bad evidence to construct the narrative is difficult but essential; a narrative that contains only good facts and ignores the bad will eventually crumble.

Like any other trial skill, developing a narrative case theory is learned in courtrooms, not classrooms or conference rooms. Only real trial attorneys with experience persuading triers of fact - juries, judges, and arbitrators – will have the confidence and judgment to develop a narrative case theory that can streamline discovery, and *not* turn over every stone.

The next time you receive a costly bill for discovery ask your outside counsel, what's your narrative theory? If he or she doesn't have one, it might be time to switch lawyers.

Jesse Gessin, partner, is a highly accomplished trial attorney. He has tried over twenty-five jury trials to verdict as lead counsel. His areas of practice include complex commercial litigation, appellate litigation and white collar criminal defense. Recently, after a five week trial, Gessin achieved a rare multi-million dollar legal malpractice and breach of fiduciary duty jury verdict for his client. Gessin also teaches trial advocacy at the University of California, Irvine School of Law, and has lectured on trial strategy and techniques throughout the United States. Contact him at (949) 476-8700 or jgessin@kelleranderle.com.





Recent Trends in Private M&A Deal Terms

By John Bradley, Bardia Moayed and Dean Longfield

Since its latest trough in 2009, the private-target mergers and acquisitions market has experienced robust growth. Market forces have bolstered seller-friendly deal terms, including the prevalence of deductible baskets and survival period limitations for fundamental representations and warranties.

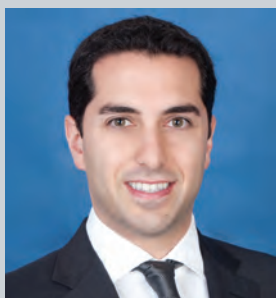
Deductible Baskets. Baskets limit indemnification obligations through two fundamental types: a deductible basket and a first-dollar basket. A deductible basket protects a seller from indemnifying the buyer until losses exceed a negotiated dollar threshold, after which the seller is liable only for the excess. Under a first-dollar basket, once losses exceed the dollar threshold, the seller is liable for the total amount of all losses, including losses below the threshold. Sellers are typically able to negotiate higher dollar thresholds for first-dollar baskets than for deductible baskets given the balance of risks a buyer faces under the two structures. Of the deals surveyed, deductible baskets appeared in 52 percent of deals in 2017 compared with 42 percent in 2016 and 31 percent in 2015. The increasing frequency of deductible baskets corresponds with a decline in first-dollar baskets. Of the deals surveyed, first-dollar baskets appeared in 43 percent of deals in 2017 compared with 49 percent in 2016 and 63 percent in 2015.

Survival of Fundamental Representations and Warranties. "Fundamental" representations and warranties typically cover at least due organization, capitalization and share ownership, title to assets, power and authority, and third-party broker fees. These representations and warranties customarily have longer or even indefinite survival periods compared to the typical twelve- to eighteen-month post-closing survival period during which a buyer must pursue a claim for breach or be time-barred. Of the deals surveyed, indefinite survival of fundamental representations and warranties appeared in only 12 percent of deals in 2017 compared with 19 percent in 2016, 18 percent in 2015 and 29 percent in 2012-2014. This trend also aligns with the Delaware Court of Chancery's decision in *Cigna Health and Life Insurance Company v. Audax Health Solutions, Inc.*, 107 A.3d 1082 (2014), which suggests that an indefinite survival period violates Delaware law when indemnification provisions enable full purchase price recovery from stockholders.

Portions of this article were excerpted from *M&A Perspectives*, a publication of Troutman Sanders LLP featuring analysis of U.S. mergers & acquisitions market and legal developments. *M&A Perspectives* can be found here: <https://www.troutman.com/ma-perspectives-newsletter-fall-2018-09-14-2018/>.



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Streamlining and Managing Litigation – Is Technology Friend or Foe?

“In The Land of Poetry and Fighting, Efficiency rules the throne. I try to live here, so I shave my head because hair is dead and dead is inefficient.”
— Cameron Conaway, Caged: Memoirs of a Cage-Fighting Poet

Litigators also live in the “Land of Poetry and Fighting.” Good litigators constantly search for ways to shed inefficiencies and adopt what streamlines. Few go so far as to shave their heads, but most of us do often wonder: In our quest for optimal efficiency, is technology friend or foe?

Litigation technology provides an important tool for efficiency. Yet one of the most important factors in streamlining business litigation has remained constant since well before the first microchip was soldered onto a circuit board: open lines of honest and candid communication. These days, however, rapidly evolving technology for communicating and other litigation tasks has become more important than ever.

Entering the Octagon of Litigation Technology—Not for the Faint of Heart.

Some of us recall when the BlackBerry revolutionized how we communicate and manage our days. It untethered us from our desks. While the BlackBerry has gone the way of the Betamax, it paved the way for smartphones, the tool litigators cannot live without.

Other litigation technology has proven less user-friendly or efficient than the smartphone, however. Such technology now includes eDiscovery, document databases, trial display software, deposition real-time display, and much more. Legions of vendors inundate us with new “tech” they want us to purchase. But just vetting all the possibilities could be a full-time job.

Worse, inefficient or overly expensive technology can thwart efficiency, creating a sharp disadvantage. Woe to the litigant who puts 500,000 pages of documents into an electronic document repository that cannot be searched quickly, easily, and inexpensively for discovery and trial preparation.

Top GCs Foster Communication and Find the Best Technology Solutions.

Joni Lee Gaudes, vice president and general counsel at ASICS America Corporation, provides some timeless words of advice. “Forge relationships with the businesspeople.” She has found that early settlement (and avoiding litigation in the first place) can depend on listening and asking a lot of questions— not just of the executives, but also the sales force and others within the company. Since ASICS America is a subsidiary of a Japanese parent company, ASICS Corporation, Gaudes fosters open communication with businesspeople in Japan through monthly videoconferences. They use Google Hangout, although other such platforms abound.

David Harshman, vice president of Legal and Administration, general counsel, and secretary at Toshiba America Information Systems, Inc., also weighs in. He notes how the proliferation of electronic communications (aided and abetted by the smartphone) has companies and counsel searching for the best document-management and eDiscovery platforms. In fact, Toshiba actually built a custom database for managing patent discovery information.

Harshman echoes Gaudes’ sage advice about open lines of communication between the legal team and business people. “I have an open-door policy for the business people,” Harshman notes. “I have seen other companies where the sales executives and others hide from the legal department. But not here.” Despite utilizing the latest (and even custom-built) technology to optimize litigation efficiency, Harshman strongly prefers in-person meetings to foster relationships.

Litigation Technology Options Must be Weighed in Context.

Whether to utilize certain litigation technology often depends on the circumstances. For example, vendors can provide excellent videoconferencing platforms, including hardware, software and service, if needed. In one case, when we recently handled a highly technical, multinational business-litigation case, client executives in Argentina wanted to attend the depositions, but avoid travel time and disruption. Veritext provided videoconferencing for them to attend “virtually.” As a result, they contributed invaluable, real-time input during breaks. For relatively little cost, having the client virtually present provided an enormous advantage.

Video also facilitates depositions of out-of-state witnesses. Recently, in a real estate dispute involving development and leasing of retail space, attorneys in San Francisco and Walnut Creek, as well as our attorneys in Newport Beach, simultaneously deposed a witness in Idaho through video-deposition technology. Everyone greatly appreciated the enormous reduction in attorneys’ fees and travel costs, not to mention carbon footprint.

Yet in some circumstances, the value of face-to-face cross-examination of a witness cannot be overstated. In those cases, we carefully consider whether the video-deposition is friend or foe. Does the efficiency outweigh the efficacy?

Similarly, telephonic attendance at court appearances can save hours of attorney travel time, conserving those fees for more-important tasks; but it has strong drawbacks. Notably, some judges strongly disfavor CourtCall (the exclusive provider in California). It can be difficult to hear, on both sides of the line (often due to background noise or a poor connection). Also, sometimes attorneys ramble while on the speakerphone, not hearing the ever-more-frustrated judge on the other end of the line trying to cut them off. And some judges just need to look an attorney in the eye. Likewise, appearing telephonically can hamper the attorney’s ability to “read the room.” We prefer using CourtCall for a routine case management conference (after appearing in person at the first one), rather than for arguing a motion.

Notably, CourtCall is, by statute, a recoverable cost for a prevailing party. Specifically, California Code of Civil Procedure section 367.6(c) provides that telephone appearance fees are recoverable costs under section 1033.5.

“Have Fun!”

In short, maintaining open communication within the company and with outside counsel remains an all-time key principle for streamlining litigation. And technology has become an indispensable tool for facilitating such exchange. Also, with 269 billion emails sent and received each day (according to Statista) and counting, we need strong document management technology. Thus, savvy litigators and in-house counsel stay on the leading edge of rapidly evolving litigation technology, maximizing and managing communications, documents, and other litigation-related tasks.

Successful in-house lawyers agree that open communication, whether virtual or in-person, is the way to build synergy that not only streamlines litigation, but helps avoid it from the start. How to foster such cooperation? According to Harshman: “Create a sense of teamwork. And have fun!”

Donald Hamman

Mr. Hamman is a founding partner of Stuart Kane LLP. He has served clients as a trial and appellate attorney for more than 35 years with experience in mediation, binding and non-binding arbitrations, settling cases, and handling writ, jury and bench trials and appeals in complex business litigation, real estate litigation, employment litigation and environmental disputes. His clients are corporations and individual business owners in a variety of industries such as real estate, venture capital, banking, design professional firms and other professional service providers. Mr. Hamman can be reached at (949) 791-5130 or dhamman@stuartkane.com.



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Ms. Brackmann is a partner at Stuart Kane LLP. Ms. Brackmann has focused her trial practice on business and real estate matters for almost 15 years, in both state and federal court. She has particular expertise in shopping center litigation, construction disputes, commercial landlord-tenant cases, and a variety of other real estate related matters, as well as regular and complex business litigation. Ms. Brackmann can be reached at (949) 791-5198 or ebrackmann@stuartkane.com.





University of California, Irvine Students Ignite Innovation in Orange County

UCI students Ning Ma and Patrick Dumas are the recipients of Maschoff Brennan's inaugural Student Innovator of the Year Award for outstanding innovation by a student in Orange County. The recognition and a \$2500 prize was publicly bestowed on each of them at the Orange County Business Journal's Innovator of the Year Award ceremony on September 21, 2018, at Hotel Irvine.

Ning Ma is two months short of graduating with a Ph.D. in biomedical engineering at UCI's School of Engineering. She received the award for her ground-breaking research resulting in a quality assessment imaging device that can determine the viability of embryos. Her device promises to improve the efficacy, cost, and safety of In Vitro Fertilization. Ning is also the recipient of a \$100,000 proof-of-product grant to help with market validation and prototype design and manufacture. Her company, Emlumination, is currently building the prototype to take to market. Upon accepting the award, Ning gave sage advice to other aspiring innovators, suggesting that they focus on innovating in an area that genuinely interests them and at the same time will contribute to improving some aspect of the world.

The other award recipient, Patrick Dumas, is a UCI undergraduate with a double major in computer science and business. His love of surfing and skateboarding culminated in his creation of the Surf Skate Adapter, a device that works with any skateboard to enable the user to make surfer-like turns. His innovation started as a friendly wager: could he create a device that would



cost less than \$20. Fifteen prototypes later, and \$20 richer, Patrick's adapter was ready for market. Patrick has funded the production of the Surf Skate Adapter with a combination of investor funding as well as a Kickstarter campaign that raised more than five times the stated goal. In addition to selling the Surf Skate Adapter, Patrick's company, WaterBorne Skateboards is about to launch a line of skateboards for the 2019 holiday season.

Maschoff Brennan will begin accepting nominations for next year's Student Innovator of the Year Award beginning on March 1, 2019. In addition to receiving a scholarship and public recognition, the award winners will become permanent alumni of the award program, with

perks including assistance from Maschoff Brennan in protecting their intellectual property.

Michael Katz is a shareholder in the Irvine office of Maschoff Brennan. He has twenty-five years of experience litigating complex business disputes, including intellectual property, software-related disputes, unfair competition, and business disputes of all kinds.



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United Way's Bench & Bar Affinity Group

Where Members Network—And Do More for Our Community



In Orange County's close-knit legal community, maintaining strong relationships is the foundation for long-term success. Connecting with like-minded professionals can build business, trusted referrals and a solid reputation. Most attorneys dedicate time to networking—the key is choosing an association that will provide an optimal return on your investment and help you achieve your goals.

Serving Our Unique Community

Orange County is one of the most beautiful places in the world to live and work. It's a place of privilege. At the same time, there are glaring needs. Families lack adequate income for housing. Without stable homes, children struggle in school or drop out. People are hungry and need help to live healthier lives.

As professional advocates, attorneys may have a unique perspective on these challenges. You may see that they are very real and all around us.

Orange County United Way tackles these interconnected issues of education, health, housing and financial stability. We're fighting to transform local lives through innovative, community-wide initiatives that drive measurable results to make a difference for all of us.

Connecting Professional and Personal Passions

Many of the strongest champions in this fight are United Way's Tocqueville Society members. Globally, nearly 27,000 of these philanthropic visionaries and volunteers have made more than \$556 million in contributions to United Way. Locally, 250 Orange County members represent all sectors of business and community leadership.

While their scope of influence is broad, members of the Tocqueville Society share a focused enthusiasm for United Way's mission and local programs. They have access to special groups such as the President's Circle and the Women's Philanthropy Fund. And in the Real Estate Community Builders and Bench & Bar affinity groups, they connect their personal passion for making a difference with their professions.

Bench & Bar – A Badge of Leadership

Attorneys from top law firms across a variety of disciplines—corporate, health care, real estate, labor litigation and more—as well as in-house counsel from top corporations in technology, sciences and international business come together in Bench & Bar.

Events range from educational speaker sessions to panels on current topics or future trends to receptions and fundraisers where members get acquainted beyond the office and legal environment, setting the stage for business relationships based on mutual values.

William C. Rooklidge is a partner at Gibson Dunn in Irvine who serves on the Tocqueville Society Cabinet and as co-chair of the group. Bill says, "Membership is a badge of leadership. To be recognized as a leader in philanthropy and as an active and valued member of our legal community through Bench & Bar enhances your reputation."

Co-chair Jay P. Wertheim, Vice President, Associate General Counsel for Edwards Lifesciences, adds, "Bench & Bar membership aligns my personal commitment to positively impact our local community with my professional interests. That makes it meaningful and different from organizations that lawyers typically join."

Volunteering with a Difference

Beyond the valuable networking events and the bond of a shared mission, Rooklidge explains another compelling reason for attorneys to align with United Way: its comprehensive approach.

"We need an understanding of the challenges faced by people who are less fortunate than we are. Many pro bono opportunities allow you to see a tiny slice. But it's more effective through an organization like United Way that's addressing the broad swath of problems. Only when you understand how interrelated the challenges are, can you truly understand the comprehensive approach we need to solve them. Not just from a privileged position, but from working directly with people on the problems."

Orange County United Way connects Bench & Bar members who wish to contribute their time and legal talent to our mission with opportunities to help.

You're Invited to Do More with Bench & Bar

Wertheim says, "As legal professionals, we make a commitment to ensure our judicial system operates fairly and effectively. What could be more consistent with that than to be part of an organization striving to improve our local community—in all its dimensions—so its citizens can fully participate in, contribute to, and share in the benefits of a vibrant community?"

Whether you're an in-house counsel or practicing in an Orange County firm, consider joining an alliance of legal professionals with a higher purpose to do more. Orange County United Way Tocqueville Society's Bench & Bar affinity group welcomes you.

For more information on becoming a member of the Bench & Bar networking group and the Orange County United Way Tocqueville Society, contact Kalina Covello at KalinaC@UnitedWayOC.org or call 949.263.6154.

DOING MORE™ WITH THE TOCQUEVILLE SOCIETY BENCH & BAR

Orange County United Way is dedicated to providing local responses to the most pressing, interconnected challenges we face.

We are grateful to our Tocqueville Society Bench & Bar members.
With their generosity, volunteerism and advocacy, we are Doing More to fulfill our mission. This affinity group is comprised of leading local attorneys who are taking a stand for our next generation.

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A New Tax Program for a New Tax Law

By Omri Marian, Victor Fleischer and Joshua Blank

The Graduate Tax Program at the University of California, Irvine School of Law is the culmination of almost three years of extensive preparatory work by UCI Law faculty and staff, with substantial support from the central administration at UCI. The program was announced a few months after the 2017 tax overhaul – the most significant tax reform in 30 years. The program aims to position itself as one that is specifically tailored to educate the next generation of tax lawyers to practice in this new environment.

The Vision: A Program Like No Other

There are already about 25 graduate tax programs in the country. Simply starting another one made little sense. But the faculty at UCI believed there is a real need for a different kind of tax program that is not bound by decades of tradition. After much deliberation, and consultation with tax practitioners, government administrators, tax policy advocates and other industry experts, the faculty decided to establish the new tax program on three pillars: a “practical tax skills” requirement, mandatory core doctrinal courses, and a small student to full-time faculty ratio.

The curriculum is designed so the bulk of the first semester is comprised of mandatory requirements, focusing on transactional tax courses. This structure ensures that all students will gain the in-depth doctrinal knowledge needed to be a successful tax practitioner and approach the rest of the program on an even playing field. In the second semester, students will gain a unique opportunity to apply their doctrinal knowledge to practical use in clinics, externships and other practical opportunities. No other graduate tax law program at a top-ranked law school offers a similar curriculum.

The Faculty

It was clear from the get go that in order to bring the program’s vision to fruition, a dedicated core full-time faculty would be required. Professor Omri Marian, the Program’s academic director, arrived at UCI from the faculty of the Graduate Tax Program at the University of Florida. Before joining academia, he was a tax associate at the New York office of Sullivan & Cromwell. Professor Joshua Blank joined UCI after spending more than eight years as the faculty director of the Graduate Tax Program at NYU. Before launching his academic career, Blank practiced at the tax department of Wachtell, Lipton Rosen & Katz. Professor Victor Fleischer headed the University of San-Diego Graduate Tax Program before joining UCI. Fleischer also served as the co-chief tax counsel of the Senate Finance Committee, and practiced as a tax associate at Davis, Polk & Wardell New York office.

Practical Skills

UCI Law’s founding vision was to train lawyers for the practice of law at the highest levels of the profession. The Graduate Tax Program shares that vision and is proud to be the only program of its kind to require students to complete practical tax training. Students can earn practical tax skills credits by completing a tax externship, a tax clinic, or certain other experiential courses.

The program already has established relationships with governmental entities (for example, the I.R.S. Office of Chief Counsel; California Office of Tax Appeals), tax think tanks (such as the International Bureau of Fiscal Documentation, the Tax Foundation, and the Tax Justice Network), and for-profit entities (both law firms and in house corporate tax departments), aiming to provide varied externship opportunities to graduate tax students.

Students may also attend one of two tax clinics – the Low Income Tax Payer Clinic and the Tax Appellate Clinic – both will start operating in the spring semester of 2020.

Practical tax skills courses contain a significant practical training component, such as transactional simulations, mock negotiations, and legal drafting.

Commitment to Students’ Success

The founding tax faculty received broad leeway to design their “dream tax program.” This meant designing a program focused on student success. The full-time faculty members are committed to helping our students thrive in the

classroom and are dedicated to empowering them to reach their educational and professional goals. This commitment is one of the program’s key strengths.

Throughout the academic year, the program will conduct panel discussions, brownbag lunches, and workshops covering a broad range of topics including job search tips and techniques, substantive practice overviews, and self-assessments.

During the spring semester, UCI Law hosts multiple employers for on-campus interview days. Students in the graduate tax program will be invited to participate and interview for current job openings in tax law.

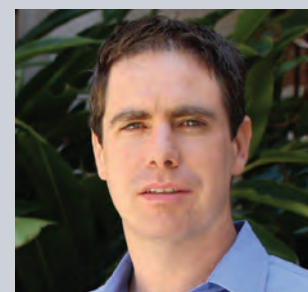
The Graduate Tax Program will also coordinate the Tax Practice Mentorship Program, which will provide students with a framework of support and guidance from practicing tax attorneys. During the first few weeks of the fall semester, we will match each student in the program with a practicing tax attorney, based on the student’s interests and career goals. The student and the mentor will meet informally throughout the academic year and discuss issues related to tax career-development.

Individually and collectively, the faculty, staff, students, alums and friends of the law school have made UCI Law a place of excellence and innovation in teaching, scholarship and public service. UCI Law had the highest ever debut ranking in U.S. News & World Report, and now is ranked No. 21 overall. The student-faculty ratio is among the best in the country and UCI Law combines the best of a small, collegial and supportive environment with a large and lauded research institution. This is the environment in which the graduate tax program was developed. This is the model the new tax program seeks to follow. It is a tax program like no other.

If you want to get involved in the externship program, as a mentor for students, as an employer recruiting graduates or interns, as a teacher, supporter, or in any other capacity, please do let us know at GradTax@law.uci.edu.

Omri Marian

Prof. Marian is a professor of Law and the academic director of the UCI Law Graduate Tax Program. His areas of expertise are international taxation, comparative taxation and taxation of financial instruments. He can be reached at omarian@law.uci.edu or Twitter @omri_marian.



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Congratulations to all the OCBJ General Counsel Award nominees!

We are proud to partner with the YPO and other businesses through the UCI Law CEO Fellowship Program.



UCI Law has surpassed the goals set for our first decade. Now, we embark on our journey as a larger, stronger, more dynamic institution than our founders could have ever imagined. We wouldn't be successful without our Orange County community partners. Orange County grown. Orange County's own.

UCI Law Accolades

- ▶ **No. 21** in the U.S. News and World Report ranking of Best Law Schools, **No. 5** for best student/ faculty ratio among top 25 schools, **Top 13** for Student Diversity, **No. 13** for Clinical Training, **No. 21** for Intellectual Property Law
- ▶ **No. 4** in the nation for practical training, with an A+ grade, one of only 10 law schools nationally to receive top honors
- ▶ **No. 8** in the nation for federal clerkships, **No. 2** in the state of California
- ▶ **No. 12** in the nation for faculty scholarly impact
- ▶ **No. 21** top go-to law school for percentage of recent graduates placed in largest 100 law firms

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Protect Your Company's Assets

By Jeffrey M. Verdon
Managing Partner,
Jeffrey M. Verdon Law Group, LLP

Asset protection planning for affluent individuals has been around since the mid-1980s. But businesses get sued, too. Yet, when you ask C suite executives what they're doing to protect their company's assets from lawsuits, you mostly get a blank stare and the common response of "nothing."

Businesses are continuously plagued by class action lawsuits in which plaintiff's lawyers look to pile on a community of individual plaintiffs to scare the company into a settlement or face years of costly litigation and a drag on company morale.

We spoke with Bob Gonda, a career finance professional having served as CFO with three large restaurant chain companies including Baja Fresh, and two privately owned significant franchisees of Denny's, Burger King and Carl's Jr. He is currently an independent finance consultant and board advisor.

Bob told us that he is well aware of the risks of these types of lawsuits. In fact, he said that as CFO of these corporations he was involved in class action claims. He suggests proactive due diligence can stave off these claims.

"Companies need to review and update their Directors & Officers liability insurance, Errors and Omissions insurance, EPLI, and Cyber Security insurance policies to ensure they are up to date and offering the best protection possible for the company and its owners, executives and employees. But once a lawsuit is filed there is not much a company

can do to shore up its assets. It is essential to be proactive where asset protection is involved."

More Options Companies Can Consider to Protect Their Assets

1. Lease equipment, versus owning it, as this reduces a company's assets on their balance sheet.
2. Some corporations create separate companies for each brand that they own to reduce exposure.
3. Create separate entities for the company's IP and then license it to the operating company so the IP is not owned by the target of a future lawsuit.
4. Consider distributing retained earnings to shareholders and stakeholders so the funds are not exposed to business liability. Have the company owned by a foreign asset protection trust so the distributions are not subject to personal liability.

The bottom line is that a company's owners and executives need to aware of their options and employ these in advance of a future lawsuit or other type of legal or regulatory claim that may arise. One of the best ways to level the litigation playing field is to place the assets out of reach of future potential plaintiffs or convert non-exempt assets to exempt assets ahead of any future claim. Once this is done, your company will be very unattractive to any overly litigious plaintiff attorneys who only get paid if they recover assets from the judgements they obtain. Asset protection planning neutralizes this.



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New Ruling on Independent Contractors Impacts Many Employers

By Richard Warner, CPA, Smith Dickson, An Accountancy Corporation

Determining whether a California worker is an independent contractor or an employee has always been difficult. However, for many years the laws have been interpreted to mean that the key to distinguishing between employees and independent contractors was whether the company had the right to control the manner and means by which the worker accomplished the desired result. Recently, a ruling by the California Supreme Court changed that understanding.

Earlier this year, the Court revised the guidelines that are used to identify individuals who work with a business as independent contractors. The Court ruled in *Dynamex Operations West, Inc. v. Superior Court* that employers bear the burden of proving classification of an individual as an independent contractor. These three "ABC test" factors must all be met to qualify:

- The employer does not control/direct how the individual performs the work;
- The individual provides a service that is outside the employer's usual business; and
- The individual is customarily engaged in an established business, trade, or profession that is independent of the employer's business.

On a related note, California's SB 459 law signifies the government's intent to closely monitor worker misclassification. Here are a few key aspects of the law:

- Employers may face fines of \$5,000 to \$10,000 for first violations and up to \$25,000 for repeat violations for "voluntarily and knowingly" misclassifying workers as independent contractors.
- Extensive IRS and state agencies audits of a business may be conducted in order to determine whether workers are properly classified. If it has been officially determined that independent contractors should have been classified as employees, then the businesses could face back taxes, interest, penalties, and CPA/legal fees for representation.
- An employer who violates the new law must post a notice to employees detailing the misclassification on its website, or, if it does not have a website, another prominent area.

As a result of Dynamex and SB 459, employers will need to reevaluate the nature of the relationship with many of their workers; it has been estimated that millions of workers in the state who were considered independent contractors will now be deemed employees. Some businesses may have to revise their operational model on a major level, since the costs of providing benefits, workers' compensation and potential legal liability may be substantial.

Under this new ruling, businesses have minimal leniency and should evaluate classification of their workforce. The potential penalties and fines for misclassification are severe. This new law is very serious — it is advisable to seek guidance from your CPA or attorney to help evaluate your current classification, examine your business structure, and avoid complications that can seriously damage your ongoing operational status. Please contact Smith Dickson CPAs if you need further assistance with employee classifications, 1099s and related tax issues.

Richard Warner

Richard Warner, CPA, is a senior tax manager at Smith Dickson, An Accountancy Corporation (www.smithdickson.com) based in Irvine. The firm's services include accounting, taxation, litigation support and business consulting. Ph. 949.553.1020.



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Compliance Is Top of Mind for Health Care GCs

By Erika Mayshar, McDermott Will & Emery LLP

In a recent discussion McDermott Will & Emery hosted for health care leadership, the moderator asked general counsel in the room what kept them up at night. A few themes emerged, including continuing uncertainty surrounding the Affordable Care Act and ever-looming cyber-security concerns. But "compliance" was a word spoken again and again, as many GCs described their struggles to keep up with a rapidly changing regulatory and competitive environment.

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Erika Mayshar

Creating a robust compliance program sometimes clashes with historic corporate culture, and effective internal controls can only be established with the vocal support of senior management. Many GCs report that they brief their boards of directors on compliance issues on a regular basis, both to keep the board up to date and allow directors to set the right top-down tone. Health system leadership must demonstrate and demand a culture of transparency and accountability. This includes paying careful attention to conflicts of interest (real and perceived), incorporating compliance into employee compensation and promotion metrics, and providing appropriate resources to compliance committees and staff.

GCs are increasingly expected to be more than technical advisors. Open, frequent communication with leadership about not only legal issues but broader business and strategy allows the GC to provide nuanced and holistic legal counsel. The GC should have a standing invitation to all governing board and committee meetings, to encourage legal advice as decisions are made rather than only after problems arise that are costly in dollars or reputation.

Hospitals and health systems regularly engage McDermott to evaluate the effectiveness of their compliance policies and procedures – on paper and in actual implementation. Because every organization's culture and risk profile are different, conversations with outside counsel and peers can provide GCs with valuable insight.

Erika Mayshar is a partner at McDermott Will & Emery LLP. She advises business entities and tax-exempt organizations on governance and tax issues, both inside and outside the health care industry. She can be reached at emayshar@mwe.com or (310) 551-9356.

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Building on more than 30 years of culinary excellence on the Orange County dining landscape, Prego Mediterranean has settled into its new home at The District at Tustin Legacy. Long-time supporters and new guests have been enjoying the lively bar area and grand dining room at the new location, where Chef Ugo Allesina continues to lead the culinary team. With two decades of experience at Prego, Chef Ugo has brought back



Prego owners Ruth and Tony Bedi

signature items and has added new Mediterranean-focused dishes to the menu. The kitchen continues to focus on utilizing seasonal ingredients, the best meat and seafood, and freshly made pastas.

New Mediterranean-focused dishes include Seasonal Hummus of mushroom and truffle, sundried tomato and roasted garlic basil, served with house-made rustic flatbread; Golden Beet Salad with mixed baby greens, yellow beets, goat cheese and caramelized onions tossed in a balsamic reduction; and Lobster and Shrimp Stuffed Sole in a white wine, garlic, lemon and caper sauce.

Adding a splash of Mediterranean color to California, Prego Mediterranean features a lively exhibition kitchen, allowing diners to view the artful chefs creating their delicious dishes. With a capacity to seat more than 250 guests, Prego features al fresco dining, full bar, private dining and catering services.

For more information, visit www.pregoOC.com.

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2018 Nominees

Boyega Adelekan, Vice President & General Counsel Sabal Capital Partners, LLC., Irvine

As vice president and general counsel for Sabal Capital Partners, Boyega Adelekan has been a primary leader, alongside the founder and CEO, in numerous corporate, finance and investment milestones and achievements. Founded in 2009, Sabal is widely recognized for disrupting its industry with key innovations and for achieving significant financial success and growth within a short timeline. Throughout Adelekan's legal career, and specifically during his tenure with Sabal, he has been instrumental in creating practical and creative legal solutions to help the company meet its business goals. In his role at Sabal, he has solidified his reputation as a problem solver and astute legal counsel. An invaluable part of the leadership team, he collaborates directly with the CEO and senior executives on corporate and legal issues surrounding real estate transactions, including acquisitions, management and disposition of assets, and work-out alternatives for distressed loans. His attention to detail allows him to negotiate and structure complex real estate transactions, joint ventures, credit facilities, bond offerings and other financing instruments on behalf of the firm and its numerous business divisions.



Yemi Adeyanju, Vice President & Associate General Counsel Providence St. Joseph Health, Irvine

In under 14 years of practice, Yemi Adeyanju has successfully propelled herself to become the vice president and associate general counsel for the country's third largest health system. She has earned a national reputation as an outstanding health care attorney and someone who can combine a keen understanding of the law, sound business judgment and an acute knowledge of health care to achieve exceptional results in the constant shifting sands of the industry. Her responsibilities include providing legal oversight and guidance on hospital operations, physician practices, mergers and acquisitions, regulatory compliance (including Federal and State fraud and abuse laws, such as the Stark Law, Anti-kickback Statute, False Claims Act, Civil Monetary Penalties Law, HIPAA etc.), and corporate compliance as well as providing advice concerning hospital and health system policies and procedures on all health care matters except labor & employment for her region.



Salman Alam, Senior Director & Assistant General Counsel Western Digital Corporation, Irvine

Salman Alam is an experienced in-house counsel with a record of promoting innovative legal solutions that foster sound and profitable business practices. As lead product development and marketing counsel for leading data technology company, he possess substantial experience managing a broad spectrum of legal affairs on behalf of high tech companies. He leads a team of experienced attorneys to support critical go-to-market functions of product development, marketing, privacy (CIPP/US & EU), sales support, and product regulatory compliance. Alam is experienced in drafting, negotiating, and structuring complex transactions with a focus on software and hardware technology and managing risk for emerging regulatory regimes. His proven record of success in providing strategic and actionable legal advice to C-level executives and staff for both emerging companies and industry leaders. In Alam's current role, he leads the company's legal department product development, regulatory and marketing functions which enables the company to ship 200 product lines in more than 170 countries generating over \$20 billion in annual revenue.



Paul Bokota, General Counsel Spectrum Brands Inc., Foothill Ranch

Paul Bokota serves as general counsel of Spectrum Brand's Hardware & Home Improvement ("HHI") Division located in Lake Forest. Spectrum Brands is a global consumer products company with around \$5 billion in annual revenues and sales all over the world. Bokota has demonstrated outstanding legal and business accomplishments in a variety of fields. He supervises all aspects of HHI's legal department, including litigation, transactions, advising, including antitrust, marketing, warranty, product liability, trade compliance, securities, insurance, intellectual property and employment. Bokota manages Spectrum's Canadian and Asia/Pacific legal operations and heads Spectrum's data privacy initiative for all of its U.S. businesses to ensure compliance with the wide-ranging recent European GDPR law. He also leads Spectrum's global anticorruption compliance program, involving significant revision of company policies, training, and deployment of new management software to facilitate risk analysis. Bokota is a problem solver, an excellent negotiator, and highly valued executive. His reputation is well-known and admired both at Spectrum and in the Orange County legal community. Bokota previously served as in-house counsel at other prominent companies in the county, including Toshiba America and James Hardie Building Products.



Jason Burnett, Executive Vice President & General Counsel Lineage Logistics, LLC, Irvine

During Jason Burnett's tenure as general counsel, Lineage has grown to over 100 facilities in four countries, with over 700 million cubic feet of storage. Over the last six years, Burnett has grown the in-house legal team from one to a team of five legal professionals and one paralegal. Lineage is now widely recognized as the second largest temperature-controlled and logistics company in the world and with an enterprise value in excess of \$5 billion. Lineage's growth was achieved by organic growth through development activities and through M&A, which included Burnett successfully coordinating the acquisition and integration of over 23 separate businesses (including an acquisition valued at over \$1 billion in the U.S. and multiple acquisitions throughout Europe). Further, he has been directly responsible for establishing company-wide contracting policies, forms and related documentation, the establishment of unified compliance (EHS/PSM/Food Safety) programs and reporting, of the company's code of conduct, conflicts of interest and ethics reporting. Under Burnett's leadership, Lineage has become a market leader in successfully partnering with all company functional groups, facilitating achievement of functional group goals through problem solving, appropriate risk mitigation, and rapid document review.



Bernadette Chala, Chief Legal Officer & General Counsel Arbonne International, LLC, Irvine

Since joining Arbonne International in 2012, Bernadette Chala has seen the company double in size and now it is positioned to grow even further with the recent merger and acquisition by Groupe Rocher. Group Rocher is a private family-run business with nine additional and complimentary beauty and well-being products to Arbonne's botanically based beauty, personal care and nutrition products. Arbonne is a global business with sales revenue in excess of 600 million dollars a year. The acquisition of Arbonne strengthens Groupe Rocher's positioning with regard to direct selling channels and given Arbonne's network of over 250,000 active independent consultants. Both organizations are committed to sustainability and Chala has led the legal department to the cloud and away from paper. As general counsel, Chala oversees 25 people on three teams with a great diversity of issues from product compliance, regulatory issues, business ethics and standards, contracting and employment issues. She is a sought after speaker and has presented on issues emerging issues including data privacy, security and brand protection.



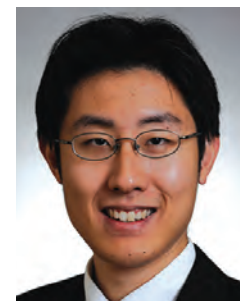
Alex Coffin, Deputy General Counsel Össur Americas, Foothill Ranch

In his role as deputy general counsel, Alex Coffin manages a wide range of legal matters at Össur Americas. Over the past year, Coffin led Össur through a number of restructurings and employment disputes, including successful dispute resolution processes. Coffin's litigation work has included managing product liability cases, shareholder disputes and the recent successful settlement of trademark litigation. Coffin oversees the legal aspects of an active corporate development strategy in Össur Americas and has led Össur through a number of acquisition processes ranging from small asset acquisitions to material cross-border M&A. Coffin has also advised on and managed the company's interactions with a number of federal and state agencies and has proven his strong capabilities in multiple legal aspects.



James Dee, Assistant General Counsel Pathway Capital Management, LP, Irvine

James Dee has made major contributions to Pathway Capital Management including the expansion of the legal department, nearly doubling its size and work capacity; spearheading the creation of a platform for the legal department to conduct business deals in-house; and directing the formation of a dozen fund products for various investors, representing close to two billion dollars in new capital in the last two years. In addition, Dee has helped the number of lawyers grow from four to seven, and as a result Pathway's capacity to handle everything from private equity transactions to investment adviser regulatory compliance to international marketing efforts has greatly expanded. Dee has also served as the primary architect of nearly a dozen new funds representing major pension plan investments from all over the world. In other words, he designed the investment vehicles holding approximately five percent of the company's nearly \$50 billion of assets under management. Some of these designs involved novel approaches to structure around foreign tax related issues while balancing a portfolio of investments in different currencies.



Stephanie Franco, General Counsel Sports 1 Marketing, Irvine

Sports 1 Marketing's (\$1M) legal coverage is largely attributed to the hard work of general counsel Stephanie Franco Esq. At just 27 years of age, the graduate from California Western School of Law has developed the qualities of a leader within the company, which has made the INC. 5000 list the past three years and was named Advertising & Entertainment Advisory Firm of the Year. She has been the driving force behind all contractual agreements and proposals that the company has signed since she joined the firm in October 2016, including multi-million-dollar deals. Franco lives the company's mission, which is not only to make a lot of money, help a lot of people, and have a lot of fun, but also to empower employees through the principles of gratitude, empathy, accountability and effective communication. Despite her young age, Franco has excelled as Sports 1 Marketing's general counsel, ensuring that their agreements operate within legal guidelines while also empowering the next generation of lawyers with speeches at bar associations and universities.



Andres Gallardo, Senior Vice President & General Counsel Opus Bank, Irvine

Andres Gallardo has legal management oversight over Opus Bank's corporate litigation, corporate development, special credits & troubled debt restructures, escrow & exchange, marketing, global insurance, bank regulatory risk, and its lending divisions. Gallardo joined Opus Bank when it was an institution of approximately \$2.4 billion in total assets. As of June 30, 2018, Opus Bank is \$7.2 billion of total assets, \$5.1 billion of total loans, and \$5.9 billion in total deposits. Opus Bank has grown both organically through loan and deposit growth, as well inorganically, through its corporate development activities. Gallardo was a contributing partner on the due diligence teams that led to the successful close of an acquisition of ten banking offices and approximately \$125.1 million of related deposits from Pacific Western Bank. Additionally, Gallardo served in a similar role in an acquisition of four banking offices and approximately \$117 million of related deposits from California Bank and Trust, a wholly owned subsidiary of Zions Bancorporation.



Joni Gaudes, Vice President & General Counsel ASICS America Corporation, Irvine

Joni Gaudes joined performance footwear and apparel manufacturer and retailer, ASICS America Corporation in January 2017 as their associate general counsel. She was promoted to vice president, general counsel in February 2018 where she leads the legal and compliance functions for the company's Americas Group which consists of the United States, Mexico and Latin America. She is commended for being a true business partner and collaborator, making sure she



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immerses herself in all facets of the business which includes but is not limited to e-commerce, sales, direct to consumer/retail, human resources and corporate strategy. She also oversees all litigation filed by or against the company. Business partners appreciate Gaudes' business minded approach and ability to get business done while ensuring risk is appropriately managed. Prior to joining ASICS, Gaudes had an eight year career as a trial attorney, and then spent six years as the vice president, general counsel and corporate secretary for dental referral company 1-800-DENTIST. After those six years she then held a variety of senior level or consulting positions for companies in various industries, such as consumer electronics, automotive (Toyota), media and entertainment (NBCUniversal/Fandango), and financial services (FCTI).

Thomas Haldorsen, Associate General Counsel Lennar, Irvine

Thomas Haldorsen represents several of Lennar's western region divisions, including Orange County, San Diego, Los Angeles, Central Valley, Las Vegas, Reno, Phoenix, Tucson, Portland, and Seattle, in various matters, including pre-litigation disputes, litigation (e.g., construction defect, insurance coverage, OSHA, and general commercial), and transactional matters. Haldorsen started his legal career at Latham & Watkins LLP in Costa Mesa in 2009. After transitioning to Jones Day, Tommy joined the in-house legal department of Lennar, a Jones Day client, in 2014 as counsel. When he joined Lennar, Haldorsen was working primarily on litigation matters for a handful of homebuilding divisions in the western region. Over the past several years at Lennar, his responsibilities have increased dramatically such that he is now considered the point person in the Lennar legal department for numerous regional homebuilding divisions as well as a number of national issues, including safety issues and claims-related issues for Lennar's Multifamily Communities, which operates numerous communities across 19 states.

Erin Heller, Vice President Legal Western Digital Corporation, Irvine

Since 2008, Erin Heller's job role and responsibilities have increased dramatically. In her current role as vice president, Legal, Heller oversees all labor and employment issues, including all pre-litigation and employment litigation matters, on a global basis. Heller's duties include global human resources consulting and management, international labor and employment relations, employment litigation management, mergers and acquisitions employment counseling, legal operations, and managing the Global Citizenship Program. Some of her most notable recent accomplishments include: advising the board of directors on issues involving Diversity and Inclusion and partnering with human resources to



design and implement a Diversity and Inclusion program; overseeing the integration activities and advising on employment related matters following Western Digital's acquisition of San Disk, at \$16 billion deal and Western Digital's purchase of Hitachi Global Storage Technologies, a cash and stock transaction valued at approximately \$4.3 billion; developing and executing the Legal Department's operations plan, including managing the global budget for the legal department and developing and implementing cost control initiatives; and creating and updating policies regarding Global Citizenship issues and responding to NGO and government inquiries regarding global citizenship policies and practices.

Burton Hong, EVP & General Counsel CoolSys, Brea

Since joining CoolSys in October 2017, Burton Hong has had a tremendous impact on the company. In less than one year, he settled major class action litigation for a very reasonable sum, played a critical role in the closing of four acquisitions, and is deeply involved in the diligence process of three more acquisitions which CoolSys is on target to close by the end of 2018. From a business process standpoint, Hong led a major overhaul of the contract review process to ensure compliance and mitigate risk for the entire company. Additionally, he developed and executed a comprehensive national licensing strategy that encompasses all CoolSys companies, and developed corporate governance for all of our subcontractors. Hong's prior and vast experience dealing with large construction projects, human resources, labor relations, and wage & hour compliance, allow him to actively insert himself into strategic discussions and expand his value beyond legal counsel to that of a trusted member of the executive team. Further, Hong handles all of the real estate portfolio and all of the property/casualty insurance as well.



Jennifer Ishiguro, Executive Vice President, General Counsel & Secretary AutoGravity Corporation, Irvine

Jennifer Ishiguro joined AutoGravity in May 2018 as its first general counsel and is leading legal strategy to promote the growth and success of the mid-stage fintech startup. Before joining AutoGravity, Ishiguro was executive vice president, chief legal officer and secretary with Gateway One Lending & Finance, LLC, the auto finance company subsidiary of TCF Financial Corporation (NYSE: TCF), a publicly-held bank holding company with approximately \$23 billion in assets. As the first legal executive with the company — and first woman on Gateway's executive team — she oversaw the 12-member legal and compliance departments, while driving initiatives that promoted diversity and inclusion, employee engagement and performance management. Prior to Gateway, Ishiguro spent eight years with Toyota Motor Credit Corporation, leading a team that managed cross-border securities reporting and transactions, corporate finance, broker-dealer compliance, corporate governance and commercial contracts. She also directed strategic and departmental management initiatives.



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Creative Bus Sales

Representation of Creative Bus Sales, Inc. in its acquisition of the assets of National Bus Sales Inc. and its senior secured credit facility.



Represented NextGen Healthcare in its acquisition of Infort Technologies.



Representation of Proof Positive ABA Therapies in its acquisition by Autism Learning Partners.



Representation of Foundation Building Materials in 17 strategic acquisitions for aggregate consideration in excess of \$250,000,000.



Representation of California shareholders of Critchfield Pacific in its acquisition by an undisclosed buyer.



Representation of Performance Team in connection with its senior secured credit facility.



M S International, Inc.
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Representation of MSI in its senior secure financing transaction.



Representation of Pro-Dex, Inc. in connection with at-the-market offering of up to \$20,000,000.



Representation of Hardin Holdings and Ancon Marine in a joint venture with Budway Enterprises to combine their trucking and logistics business under the MHX brand, and representation of MHX in its refinance with Comerica Bank.



Representation of Stacy and Witbeck, Inc., in its acquisition of Rail Services Corp.



Represented BenjiLock, LLC and its founder, Robbie Cabral, in connection with a Shark Tank equity investment by Shark Kevin O'Leary and a License Agreement with Hampton International.



Representation of Digital Networks Group in its acquisition by Avidex Industries.



Representation of Pacific Medical in its acquisition by Jordan Health Products.



Representation of Quality Systems, Inc. in its \$26,000,000 acquisition of EagleDream Healthcare Inc.



Representation of TriPAQ in its acquisition by New-Indy Containerboard.



Representation of KCA Electronics in its acquisition by HCI Equity Partners.



Representation of QSC, LLC in its acquisition of Ultra-Stereo Labs, Inc.



Representation of Academy Medical Equipment, Inc. by United Seating and Mobility, L.L.C. dba Numotion.

Rutan & Tucker, LLP has the knowledge and expertise to structure, negotiate and close all aspects of domestic and international mergers and acquisitions, financings and securities transactions. These are just a few of our recent notable transactions. We have experience covering a broad spectrum of industries and sectors, such as healthcare, education, software, construction, food and consumer products, aerospace, and oil and gas, among others. Whether you are a private business owner contemplating an exit or growth transaction, a private equity fund expanding or realizing on your portfolio, or a public company making strategic moves, we look forward to being your partner and trusted advisor in achieving your business objectives.

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2018 Nominees

Monica Johnson, Assistant General Counsel & Assistant Corporate Secretary **Ventura Foods, LLC, Brea**

Monica Johnson joined Ventura Foods in 2012 as assistant general counsel and assistant corporate secretary with a proven track record as a hands-on business lawyer with a passion for the law and providing solution oriented advice to internal business teams. The opportunity to help build a legal department within the company that would provide world class service and strategic business advice was exciting and over the past five plus years, that is exactly what the legal department team has accomplished. As the company has continued to grow, through international expansion of operations into Singapore, the Philippines and Canada, the Legal department continues to be an integral part of these key company initiatives. The company has nearly 3,000 employees in facilities across the nation and continues to expand through mergers and acquisitions and international growth. Some of her contributions include managing legal matters to support company objective of doubling net income in less than five years; launching a global compliance strategy and program including development, training and launching related training for all company employee; and reducing company purchasing expenditures at Ventura Foods for three consecutive years.



Stacey Jue, Assistant General Counsel **ABM Industries Inc., Irvine**

Stacey Jue is assistant general counsel at ABM Industries Inc., a leading provider of facility solutions with revenues of approximately \$5.1 billion and more than 130,000 employees in 350-plus offices throughout the United States and various international locations. Jue joined ABM Industries over seven years ago and now manages and evaluates a significant volume of litigation, currently handling more than 180 active matters, ranging from single plaintiff to class actions, state and federal agency charges and compliance audits. Jue handles hearing, arbitrations, mediations, demand letters, employment and severance agreements, investigations and settlement negotiations. Jue is also responsible for providing labor and employment advice and training for approximately 39,856 employees in three industry lines for ABM in the US and Canada. She partners with senior business leaders regarding business practices, company policies and risk mitigation. Prior to joining ABM, Jue was a senior attorney at FedEx Express, the world's largest express transportation company. At FedEx, she served as lead trial counsel and obtained verdicts on behalf of FedEx in state and federal courts.



Beth Kearney, Vice President & Associate General Counsel **loanDepot.com, LLC, Foothill Ranch**

As vice president and associate general counsel of loanDepot.com, Beth Kearney manages the company's nationwide docket of litigation and directs and oversees outside counsel. What is most impressive about Kearney is the scope of work she has undertaken since joining loanDepot in 2016 and the expansive list of subject areas in which she has quickly become an expert. In the past 24 months, Kearney has successfully resolved over 80 legal matters, coming in below budget on over 50 percent of them. At any given time, she is managing approximately 80 active litigation matters nationwide and interfacing with more than 40 external legal counsel partners. In addition to leading the charge on a legal billing management process, Kearney has saved the company over two million by proactively getting ahead of legal spend and resolving matters economically and efficiently. Kearney's responsibilities range from managing all complex employment matters, drafting and implementing personnel policies, executive compensation plans and other employee agreements for all channels and subsidiaries, advising the board of directors, protecting the company's intellectual property, managing TCPA litigation, and managing regulatory investigations and inquiries.



Anbar Khal, Assistant General Counsel, Patents **Oakley, Inc., Foothill Ranch**

As the only in-house patent counsel for the company, Anbar Khal advises the R&D and business teams of Oakley, its parent Luxottica Group SpA and its affiliates on all patent-related matters. This includes management of the company's global patent portfolio, as well as supporting patent litigation and enforcement activities. Khal attended Georgia Institute of Technology and University of Georgia, School of Law. Established in 1975 and acquired in 2007, Oakley is one of the leading product design and sport performance brands in the world, chosen by world-class athletes to compete at the highest level possible. The holder of more than 850 patents, Oakley is also known for its innovative lens technologies, including PRIZMTM. Oakley extended its position as a sports eyewear brand into apparel and accessories, offering men's and women's product lines that appeal to sport performance, active and lifestyle consumers.



Bruce Larson, Vice President & Assistant General Counsel **Advantage Solutions, Irvine**

Five years after assuming his first in-house counsel role, Bruce Larson has quickly risen to become the vice president and assistant general counsel for the global operations of Advantage Solutions. Headquartered in Irvine, California, Advantage Solutions has over 95,000 employees in all 50 states and throughout Europe and Asia. As the head employment lawyer for the company and reporting directly to the general counsel, Larson leads a four person team responsible for all employment law issues, legal compliance and litigation. He has worked to train workforce compliance personnel to help with performing investigations into administrative charges, and initial drafting of responses to the administrative charges. As a direct result of his efforts, over the last three years, this work has been brought entirely in house, reducing use of outside counsel by 40 percent as compared to previous years.



Richard LeBrun Jr., Managing Director, Deputy General Counsel **PIMCO, Newport Beach**

Richard LeBrun Jr. is a managing director and deputy general counsel in the Newport Beach office of PIMCO, primarily responsible for the firm's alternative funds and transactions. Prior to joining PIMCO in 2005, he was an associate with Ropes & Gray, focusing on investment management and private-equity-related matters. He has 17 years of legal experience and holds a JD from the University of Michigan Law School where he was admitted to the Order of the Coif. He received an undergraduate degree from Northwood University. He was admitted to the bar in Massachusetts and New York. PIMCO is a global investment management firm with a singular focus on preserving and enhancing investors' assets. The firm manages investments for institutions, financial advisors and individuals. The institutions PIMCO serves include corporations, central banks, universities, endowments and foundations, and public and private pension and retirement plans.



Keith McGahan, Senior Vice President, Chief Legal Officer & Corporate Secretary **Spectrum Pharmaceuticals, Inc., Irvine**

Keith McGahan joined Spectrum Pharmaceuticals as the vice president, chief compliance officer and assistant general counsel in 2016. During his tenure, he has led the development of a best-in-class compliance department of spectrum pharmaceuticals by: implementing comprehensive enhancements to the company's compliance and ethics program, including improving the code of business conduct, involving more than 25 policies and procedures; created a corporate material review committee, publication steering committee, pricing committee, and grants, donations & sponsorships committee; and grew the compliance department from one to four full-time employees; Additionally, he created a corporate training department and strengthened the Legal Department by expanding the Legal Team and placing a substantial emphasis on IP and Patents. McGahan successfully negotiated and finalized terms of one of the company's most significant licensing agreements with premier cancer research institute MD Anderson, securing advantageous intellectual property rights related to one of Spectrum's most significant and promising drug candidates. McGahan also manages the company's compliance department, human resources, media, facilities and training departments and over 20 employees, and is deeply involved with the media and commercial teams in the management of the company's clinical assets.



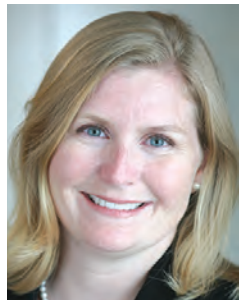
Troy McHenry, Executive Vice President & General Counsel **HCP, Inc., Irvine**

Troy E. McHenry is the executive vice president and general counsel of HCP, Inc., a real estate investment trust (REIT) investing primarily in real estate serving the healthcare industry. HCP is publicly traded on the New York Stock Exchange, with over \$20 billion in assets under management. In his role with the company, Troy McHenry's accomplishments, initiatives and leadership reach far beyond the Legal Department, and have made a positive impact company-wide. His most significant business accomplishments include, but are not limited to, leading all legal aspects in connection with the spin-off of approximately 25 percent (\$5 billion) of the company's entire portfolio into an independent, publicly traded REIT; leading the pricing and closing of a \$500 million tender offer of senior notes; and engaging in acquisitions and dispositions of over \$1 billion in 2017 to date. McHenry is charged with much more than the advisement of executives and the board of directors on complex legal matters. He manages all legal facets of asset acquisitions and dispositions, capital market offerings, financial reporting and disclosure, risk oversight, litigation and corporate governance.



Kendra Miller, Senior Vice President & General Counsel **BJ's Restaurants Inc., Huntington Beach**

Kendra Miller joined BJ's Restaurants seven and a half years ago. As senior vice president & general counsel, she oversees the Legal, Licensing, Team Member Relations, and Benefits departments. She assumed responsibility for the Loss Prevention Department last year. During her tenure, BJ's has grown from approximately 13,000 team members at 103 restaurants in 13 states to approximately 23,000 team members at 194 restaurants in 24 states. She is a director of one of BJ's non-profit organizations, Give A Slice, which provides grants to team members in their time of need. In 2011, she founded BJ's Women's Career Advancement Network (WeCAN), an organization focused on empowering and developing women leaders with the knowledge, skills, and network they need to expand their leadership potential and advance their careers at BJ's. Miller is especially proud of the work she did in evolving BJ's Promise Card and creating a Respectful Workplace training - helping to ensure that BJ's culture continues to be strong as the company grows.



Michael Moad, Chief Legal Officer **SeneGence International Inc., Foothill Ranch**

Michael Moad joined SeneGence in 2001 after 22 years in a private law practice in Orange County. Moad initially helped to consolidate the structure of the company and its independent distributor sales force, writing the company's policies and procedures and establishing a department to administer those policies fairly and consistently. Currently, Moad and his team oversee the all of the company's legal matters, including its patent rights, trademarks and copyrights. As former president, he worked alongside Founder Joni Rogers-Kante, to lead SeneGence to expand its product line and support its independent distributors in successfully managing and growing their independent businesses. SeneGence® is a privately owned, network marketing company that is in the business of developing and selling personal care products through an independent sales





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network. In April 1999, SeneGence started with LipSense® Long-Lasting Liquid Lip Color as its premier product. Initially, only six lip colors, a moisturizing lip gloss and a lip color remover were offered. SeneGence now has a complete line of long-lasting cosmetic colors and anti-aging skincare products as well as accessories and boutique items.

Stephen Moran, Esq., Senior Vice President, General Counsel & Secretary CalAmp Corp., Irvine

Steve Moran has 22 years of distinguished service as a general counsel for seven global technology companies, including three Nasdaq. He joined CalAmp in 2013 as its first general counsel and has since been indispensable, he reports directly to the president, CEO and director, Michael Burdick. In one of his first actions as the CalAmp GC, he instituted a Patent Renaissance, to reinvigorate the production of invention disclosures and patent filings. CalAmp now has 67 U.S. patents and 225 foreign patents, with 44 patent applications in process. In addition, Moran has acquired three private companies with no outside counsel. Moran also serves as CalAmp's chief compliance officer, data privacy officer, corporate social responsibility officer, oversees CalAmp's global real estate portfolio, and serves on the Intellectual Property and Risk/Insurance Committees. CalAmp is a publicly-traded \$400 million annual revenue (including LoJack Corporation) telematics pioneer leading transformation in a global connected economy, reinventing businesses and improving lives around the globe with technology solutions that streamline complex IoT deployments and bring intelligence to the edge.



Shawheen Moridi, General Counsel MedXM, Santa Ana

As general counsel, Shawheen Moridi has successfully managed the company's legal risk during his tenure and has dealt with high profile lawsuits, including a significant whistleblower lawsuit that involved many of the nation's top healthcare insurance companies. Moridi's diligence, has contributed to the company's legal and compliance exposure which are at an all-time low. In addition, under Moridi's guidance he successfully steered the company through a successful acquisition by Quest Diagnostics. Moridi led all legal negotiations, contact documentation and due diligence relating to the acquisition. This transaction was one of Quest's largest acquisitions in the last decade and has significantly expanded Quest's scale and reach in the mobile/home test segment. In addition to legal, Moridi oversees the Finance department, Data, and Compliance for the MedXM Unit and has a direct team of over 50 employees. During his tenure at MedXM, he has been instrumental in the overall strategy of the company. In his role, he has been a key part of the significant company growth. For example, during Moridi's tenure, MedXM has hired over 2,000 employees and Independent Contractor providers (Doctors and Nurses).



Albert Nicholson, Senior Corporate Counsel Lineage Logistics, LLC, Irvine

One of Albert Nicholson's most significant business accomplishments at Lineage has been the development, and implementation of a company-wide Records Management Program to include an email retention policy, a records retention policy and records retention schedule. Prior to his arrival at Lineage, it did not have any policies in place to address how the company was to manage, store and destroy business related documents. Also, from the human resources perspective, one of Nicholson's most significant business accomplishments was to develop a standard procedure on how to investigate and report workplace complaints received through the company's ethics hotline. Lineage Logistics is a warehousing and logistics company built to deliver sophisticated, customized, and dependable cold chain solutions. Lineage Logistics has one of the largest facility networks in the U.S. and an ever expanding reach.



Mohsen Parsa, General Counsel Orange County Soccer Club, Irvine

Mohsen Parsa has served as the exclusive general counsel for the Orange County Soccer Club (OCSC) since 2013. OCSC is a professional sports organization that has brought both significant revenue to the area's businesses as well as excitement and entertainment to the growing population of soccer players and fans in the region. In addition to ensuring compliance with a series of complex federal, state, and local rules and guidelines applicable to OCSC's business, Parsa's other significant work on behalf of the organization includes, representation in the negotiation and execution of a comprehensive affiliation agreement between OCSC and LAFC, which is the new Major League Soccer expansion team in Los Angeles. Representation of OCSC's owner in a multi-year lease agreement with the City of Irvine regarding Championship Soccer Stadium at Orange County Great Park. As well as, representation of OCSC in sponsorship agreements with Adidas and Dr. Pepper.



Natasha Pfeiffer, Vice President & Assistant General Counsel United Capital Financial Advisers, LLC, Newport Beach

In November 2017, Natasha Pfeiffer joined United Capital, one of the country's largest independent Registered Investment Advisers (RIA), with over \$21 billion assets under management. As vice president and assistant general counsel, Pfeiffer serves as the company's second in-house counsel and handles a wide variety of legal matters from commercial contracts to IP, corporate governance and data privacy. As only the second in-house attorney (the chief legal officer was hired in 2015), the wealth management firm had operated for 10 years without in-house counsel and was therefore not used to the partnership and role that the Legal department can provide. Pfeiffer has successfully brought life to the function and created processes and procedures to help run this national firm. She has done so by creating deep relationships of trust with business stakeholders and exercising creative solution making instead of simple risk management tactics.



Tracy Porter, Vice President, Legal HCP, Inc., Irvine

Tracy Porter has been at HCP for five years, prior joining HCP she served as an attorney for companies such as O'Melveny & Myers, Allen Matkins and Latham & Watkins. HCP, an S&P 500 company, is a REIT that invests in real estate serving the healthcare industry in the United States. HCP's portfolio is primarily diversified across the following segments: life science, medical office and senior housing. Porter is responsible for working collaboratively with business leaders and executive management to provide legal guidance on approximately \$1 billion of real estate and other strategic transactions per year. Likewise she guides the development of a healthcare regulatory compliance program for senior housing operating portfolio. In addition Porter selects and actively participates in the company's leadership committees and develops valued relationships with internal business leaders and external legal counterparts. She is effective at leading the team and providing communication, and is committed to supporting the values and culture of the organization.



Ken Richard, EVP & General Counsel Ytel, Foothill Ranch

Ken Richard brings vast software and technology licensing and consulting knowledge and skill to the Ytel team. Richard has represented several public and private Tier 1 software companies in his 30-year legal career, providing a customer-service approach to both practical and legal challenges for all stakeholders with whom he works. Richard is also published nationally and recognized as a subject-matter expert on software licensing. Further, Richard is one of the architects in the evolving industry SMS compliance initiatives, and frequently works closely with government attorneys and private sector attorneys on matters related to governmental and carrier compliance. He regularly speaks on that subject at national industry events. Prior to his legal career and engagement at Ytel, Richard worked for Hewlett Packard, SmithKline Diagnostics, and a subsidiary of Merck.



Jack Robbins, Vice President & General Counsel Rainbow Sandals, Inc., San Clemente

Jack Robbins serves as vice president and general counsel of Rainbow Sandals, Inc. and its related entities. Robbins heads the law department, where he handles a wide range of legal issues, such as corporate governance, government compliance, taxation, privacy/data security, employment/labor, contracts, intellectual property and real estate. Rainbow Sandals, Inc. designs, manufactures and sells a wide range of sandals and shoes and other apparel throughout the United States and around the world. Rainbow Sandals, Inc. has been in business for almost 45 years, and has a large network of retail stores and shops that carry a wide array of products. It also offers its products for sale at the Company owned retail store in San Clemente, California and at the Company website. In addition to making over two million sandals per year, Rainbow Sandals also is involved with many nonprofits in Orange County and runs two nonprofits of their own with the help of Robbins.



Virginia Sanzone, Vice President & General Counsel ICU Medical Inc., San Clemente

Virginia Sanzone has presided over the legal affairs of ICU Medical, one of the largest public companies in Orange County, during a period of explosive growth. She recently directed all of the legal work relating to the nearly \$1 billion acquisition and integration of the pump and disposable business of Hospira from its owner Pfizer. ICU Medical connects patients and caregivers through safe, lifesaving, life enhancing IV therapy products, systems, and services. Previously, Sanzone worked as vice president and general counsel of CareFusion and Cardinal Health as well as an attorney at Morrison & Foerster.



Jim Schindler, SVP & Assistant General Counsel Masimo Corporation, Irvine

Jim Schindler, a senior leader of Masimo Corp., has been with the company for seven years and his role consists of much more than providing legal advice. Schindler helps lead the company, collaborating on setting business strategies and delivering on objectives. His goal is to enable the business to do what it wants to do, but with the least amount of legal and business risk. This often requires him to lead non-legal projects, to think creatively and suggest alternate means of accomplishing a business objective if doing so would reduce legal risk, and to lend his leadership skills to complete legal and business initiatives. Schindler is responsible for leading the company's privacy and data protection initiatives, including Privacy Shield certification, compliance with the GDPR data protection requirements and other privacy regulations worldwide, and compliance with the California Privacy Act. Schindler is an integral part of the team that orchestrated one of the most significant partnerships in company history.



Jennifer Simonson, SVP & General Counsel Roth Staffing Companies, Orange

As one of the largest staffing firms in the country, with over 100 branches spanning 20 states and the District of Columbia, Roth Staffing Companies is particularly affected by changes in employment laws. Jennifer Simonson, filling a dual role as both sr. vice president of human resources and general counsel, is the person heading the development, implementation, and revision of the policies and practices that ensure compliance with the different state and federal laws. Her expertise in employment law and her stellar track record in workplace litigation have been crucial to Roth's long-term success. Roth Staffing was ranked first in Fortune's 2017 Great Places to Work for Consulting & Professional Services. The ranked list was obtained from surveys that asked employees to assess their companies in regard to leadership, benefits, and work-life balance, among others.



Protecting Your Company's Assets

Part III: Understanding the Debtor/Creditor Landscape

by Garrick A. Hollander

This article provides an overview of the rights and remedies available to debtors and creditors, which are critical in leveraging power over creditors, improving profitability, and restructuring debt.

Creditors' Rights and Remedies. These vary significantly depending on the nature of the creditors' claims. Secured creditors, for example, have the greatest power as they have rights over collateral; whereas general unsecured creditors do not have any rights over collateral. Both creditors, however, may commence an involuntary bankruptcy against a debtor.

Debtors' Rights and Remedies. If your company is facing financial challenges, you should be familiar with some basic rights debtors have against creditors.

Chapter 11 Reorganization. Chapter 11 is one of the most powerful tools available to debtors. While this option imposes significant administrative burdens and is not inexpensive, under many circumstances, the benefits significantly outweigh the costs. The following are some of the many benefits of filing Chapter 11.

Stay Against Creditors. Upon the filing of bankruptcy, all creditors and other entities are automatically and immediately enjoined from taking any and all action against the company and its assets.

Pick and Choose Contracts. Companies can select which contracts to keep and reject, allowing companies to eliminate unprofitable contracts.

Reduce Lease Payments to Financing Lessors. To the extent that a lease is a secured financing lease, debtors may reduce their monthly obligations to these creditors.

Bank Payments May Be Avoided. A company may avoid the obligation to make monthly payments that may otherwise be mandated by a bank.

Sell Unprofitable Assets/Business Segments. Chapter 11 debtors can sell substantially all or a portion of their assets, free and clear of liens, claims and interests asserted against such property. This court-ordered "warranty" makes bankruptcy sales attractive for buyers, particularly since financially distressed companies may

encounter difficulties in selling their businesses.

Restructure the Balance Sheet. Companies can alter their contractual obligations to their creditors. Companies, for example, can extend the due date, interest rate, and amount owing, and can exchange equity for debt. Contractual obligations are modified through a plan of reorganization, which becomes the new binding document that governs all rights and obligations of the company and its creditors.

Assignment for Benefit of Creditors. Another way to resolve issues of a financially distressed company is to assign all of its assets to an assignee, which, in turn, sells all assigned assets to one or more parties. This alternative can often serve as a great way to sell a going concern free of debt. The laws governing assignments vary from state to state, and not all states offer this remedy. Generally speaking, states follow one of two approaches to the assignment process: one approach requiring court supervision of the assignment and the assignee, and the other permits assignments without court supervision but requiring that the assignee follow state laws that govern the liquidation of a business and its assets.

The aforementioned options provide great leverage over creditors, either through their use or threatened use. While the concepts discussed appear simple, each paragraph could be and have been turned into books. Based on the complexities of debtor/creditor relationships, it is crucial that you retain seasoned qualified professional(s) to guide you through the topics discussed.

Garrick A. Hollander, Esq., a founding partner of Winthrop Couchot Golubow Hollander, LLP, is an attorney who devotes his practice to representing primarily corporate debtors in out-of-court workouts and Chapter 11 reorganizations. Mr. Hollander, also a CPA, has owned, operated and advised companies on corporate turnarounds, from operational, financial and legal perspectives. Contact Mr. Hollander at (949) 720-4100 or ghollander@wcghlaw.com. Visit www.wcghlaw.com for more information.



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Additionally, Fortune placed Roth Staffing among its 2017 Great Places to Work lists for Diversity, Millennials, Women, Parents, and Giving Back. All of this is largely in thanks to Simonson and her willingness to head initiatives that improve work life for all Roth Staffing coworkers.

Bryan Smith, General Counsel **Urovant Sciences, Irvine**

Prior to joining Urovant Sciences in April 2018, Bryan Smith spent almost seven years with Allergan, where he played a significant leadership role in the success of the \$3 billion aesthetics division as chief counsel. In addition, Smith was the lead lawyer responsible for the urology, neurology, and dermatology divisions. He also led Allergan's anti-counterfeiting and anti-diversion efforts and worked closely with federal and state law enforcement and federal prosecutors in protecting Allergan's brands. Smith advised executive management during all stages of the prescription drug and medical device life cycle – from clinical trials and pre-approval label negotiations with the FDA to post-approval marketing efforts and product safety obligations. Urovant Sciences, a urology startup company based in Irvine, as general counsel. Smith is leading a team comprised of Urovant employees, company counsel, and underwriters counsel in taking the company public. The company filed its S-1 registration statement with the SEC in June 2018 and expects to launch its IPO later this year and list on the NASDAQ stock exchange.



Michelle Smith, General Counsel **Ambry Genetics Corporation, Aliso Viejo**

Michelle Smith serves as general counsel of Ambry Genetics, where she oversees all legal matters for the company and its subsidiary software company (Progeny Genetics). She also provides wide array of legal advice to board of directors and executive management, including guidance on healthcare compliance, corporate governance, employment matters, commercial transactions, and intellectual property. Some of her accomplishments include being a key player in the sale to Konica Minolta in 2017 and post-acquisition integration. Additionally she helped lead the nomination, alongside CFO, of Ambry as the winner of the Association of Corporate Group Orange County's Spotlight M&A Award. Ambry Genetics is a leader in clinical diagnostic and software solutions, combining both to offer the most comprehensive genetic testing menu in the industry. Prior to joining the company, Smith practiced intellectual property law at the international law firm of Jones Day in Irvine, California, and general corporate law at The Patrón Spirits Company in Las Vegas, Nevada.



Gabriel Steffens, Managing Director & General Counsel **TH Real Estate, a Nuveen company, Newport Beach**

Gabriel Steffens's most significant recent accomplishment is the establishment of TH Real Estate as a real estate investment management business of Nuveen. TH Real Estate, the \$100 billion "startup," is the result of TIAA's acquisition of the real estate division of Henderson Global Investors and the subsequent unification of TIAA Global Real Estate (with a largely U.S. staff and U.S. focus) with Henderson's team (largely Europe based and focused). In the last 18 months, TH Real Estate has established an arms-length relationship with the company's ultimate parent, TIAA, regarding the management of its \$60-billion real estate portfolio. In his role with the company, Steffens has managed significant growth and turnover in company staff at all levels; coordinated the development of business governance, both as a combined real estate franchise, but also as an affiliate within the larger TIAA/Nuveen complex; and serviced the existing portfolio of responsibilities, which includes an annual RE investment platform in excess of \$10 billion.



Matthew Syken, General Counsel **Guy Yocom Construction, Inc./Amigos Professional, Irvine**

Matthew Syken is general counsel of Guy Yocom Construction, Inc. and Amigos Professional Services, Inc. One of the largest construction and servicing companies in California, Syken is responsible for overseeing all legal matters for the companies. With several thousand workers, his responsibilities include corporate matters, employment, litigation, regulatory compliance, insurance and risk management. With almost 15 years of general corporate experience advising companies on a broad range of legal matters, he was also nominated for the 2017 general counsel of the year. Syken previously served as general counsel to Parex USA, Inc., a chemical manufacturer specializing in products for the construction and building industry; a subsidiary of ParexGroup SA, a transnational chemical supplier and manufacturer.



Franco Tenerelli, Chief Legal Officer **Landsea Homes, Irvine**

Franco Tenerelli is the chief legal officer for Landsea Homes. He is responsible for all of the company's legal matters, and oversees Landsea's transactional, litigation, corporate, and risk management initiatives. In 2017 alone, Tenerelli personally managed and oversaw nearly a billion dollars in real estate transactions. As a result, Landsea's balance sheet now rivals those of most mid-cap national homebuilders. For example, in less than 12 months, Landsea went from \$150 million in assets to over \$800 million. Landsea Homes is a wholly owned U.S. subsidiary of Landsea Group Company Ltd., an international company listed with residential real estate operations in China, Germany and the United States. Prior to joining Landsea Homes, Tenerelli served as Regional Counsel for Toll Brothers, managing the company's legal affairs for the entire Western United States. During his tenure, Toll Brothers experienced unparalleled growth in the West, and closed the largest transaction in the company's history: the successful \$1.6 billion acquisition of competing California homebuilder, Shapell.



Eli Ticatch, General Counsel **Volcom Inc., Costa Mesa**

Eli Ticatch has been at Volcom since 2015 and has since built the legal department after the

company has been without a dedicated in house attorney for more than three years. In addition he has reduced Volcom's risk profile with training programs for business managers regarding intellectual property, contract law, privacy law and other core legal issues with a focus on practical advice and best practices. Ticatch's other undertakings include, revamping Volcom's retail partner agreements and onboarding process, manufacturer agreements and onboarding process, and Human Resources' complaint investigation process. Ticatch has also resolved a wide variety of offensive and defensive disputes at the pre-litigation stage, without need for outside counsel. Prior to Volcom, Ticatch worked for Kering, Dell and Latham & Watkins.



Richard Tilley, Vice President, Secretary & General Counsel **Foundation Building Materials, Tustin**

Foundation Building Materials (FBM) is a specialty distributor of wallboard, suspended ceiling systems, and mechanical insulation throughout North America. Based in Tustin, the company employs more than 3,500 people and operates more than 220 branches across the U.S. and Canada. As vice president, secretary and general counsel, Richard Tilley most recently helped refinance the company's debt in August 2018 in addition to guiding the organization through its initial public offering in February 2017. Significant deals that Tilley helped orchestrate include, closing a \$325-million acquisition of Winroc Corp. in August 2016, closing a \$575-million bond deal in August 2016, and 12 other transactions ranging in size from \$1 million to \$50 million in 16 months.



Cherrie Tsai, Vice President, Deputy General Counsel & Corporate Secretary **Kaiser Aluminum Corp., Foothill Ranch**

Cherrie Tsai has always been involved in financing transactions, mergers and acquisitions, governance matters and ongoing securities law compliance at Kaiser Aluminum Corp. In 2016, her accomplishments include, the private placement of \$375 million of 5.875 percent senior notes due 2024; redemption of 8.250 percent senior notes due 2020 of approximately \$215 million; and the adoption and shareholder approval of a shareholder rights plan designed to protect \$500-plus million of tax assets. Since joining Kaiser, Tsai has been working on projects to implement new compliance procedures to comply with new rules and regulations and to enhance existing compliance programs. Kaiser's compliance programs include in-person training, online courses and regular communication. Tsai engages Kaiser's employees through education, humor and cautionary, as well as inspirational tales, and empowers them to be leaders in the company. Kaiser Aluminum is a leading producer of fabricated aluminum products for aerospace/high strength, general engineering, automotive and custom industrial applications.



Jason Weintraub, Vice President, General Counsel & Corporate Secretary **BSH Home Appliances Corporation- North America, Irvine**

Within the first three months at BSH Home Appliances, Jason Weintraub implemented lean administration initiatives that reduced outside counsel by over 30 percent, cut cycle times on contract review and litigation matters, and resolved outstanding litigation at just five percent of the amount of previous settlements. He also created strategic partnership agreements enabling accelerated growth in connected home business, including partnerships with Amazon, Google and Tesla. Within the first six months, Weintraub implemented the Affirmative Recovery Program, generating over \$3 million in revenue. In addition, he has designed innovative advertising support program, yielding measureable increase in brand awareness and enabling creation of new business models. Prior to joining BSH Home Appliances last year, Weintraub was director of Strategic Partnerships and Business Affairs at Taco Bell in Irvine.



Ako Williams, Vice President, General Counsel & Corporate Secretary **Ushio America Inc., Cypress**

Ushio America is a leading provider of light sources and solutions, including general and special lighting, lasers, light sources for scientific and medical applications, semiconductor systems, and other related products and solutions. In her role, Ako Williams oversees all of the company's legal, compliance and corporate governance matters. Since taking on the general counsel position in April 2017, Williams has become an integral part of the company's executive team. As the company has grown in size and its business has become more complex, Ushio America required a GC who is not only a top-notch legal advisor, but also a keen strategist who contributes to achieving business objectives and helps drive the business forward. Williams regularly participates in business review and committee meetings as a trusted advisor to the executive team. She has successfully reduced outside legal costs and other expenses by bringing more legal work in-house, strategically selecting outside counsel, and by consolidating and automating corporate governance and IP portfolio maintenance. She has also boosted the company's compliance program by introducing online training and a compliance hotline system.



Lisa Wright, Vice President & General Counsel **LIBERTY Dental Plan, Irvine**

Lisa Wright founded the Legal Department of LIBERTY Dental Plan, a high-growth and fast-paced national dental insurance company, and has served as general counsel to the company since 2009. She supports LIBERTY's various business units and its senior executive management team in all areas of law, including contract drafting and negotiation, corporate governance, regulatory, labor and employment, litigation management, intellectual property and confidentiality, and overall risk mitigation. She has spearheaded a number of critical initiatives within the company such as implementing a contract



2018 Nominees

management system and contracting framework, overseeing several critical acquisitions, and negotiating numerous complex and high stakes deals for the company. Under her legal guidance that has produced consistently excellent outcomes for LIBERTY, the company has grown from a small, local dental insurance company to a national organization with more than three million members nationwide (and counting) and 2016 annual revenue of approximately \$300 million. Wright is a critical asset to LIBERTY, not only as a trusted legal advisor, but as an indispensable member of its executive management team.

Mark Yang, VP & Associate General Counsel Propel Media, Irvine

At Propel Media, Mark Yang manages and maintains all general day-to-day legal matters and processes, including every commercial contract, internal templates and signing procedures, consumer-facing online terms and privacy policies for the company's various products, HR-related internal documents and employee agreements, company trademarks, financial agreements and corporate matters. Yang was heavily involved in a recent stock purchase acquisition of a third-party programmatic ad-buying company, including reviewing all of its commercial and corporate agreements and documents as part of due diligence, learning how the company operates and its supporting technology functionalities, reviewing and negotiating every closing agreement, drafting new post-acquisition documents, creating new contract templates and helping guide the company during the post-acquisition period. In addition he continuously strives to become a business-minded attorney by taking the extra time and effort to speak and work closely with finance and product and software development teams in order to obtain a deep understanding of the company's evolving technology products, including different ad-serving methods and revenue streams and backend technical aspects such as data collection and usage.



Alteryx Inc., Irvine

Chris Lal, SVP and General Counsel

Christina Whittaker, Senior Corporate Counsel

Paul Buccheri, Senior Corporate Counsel

Raphael Bailly, Senior Corporate Counsel, International

Flora Rostami-Bryan, Senior Counsel

The Alteryx legal team has been involved in many critically important initiatives over the past year. The team is building out a legal organization capable of managing a rapidly scaling business including customer contracting standards and playbooks and managing risk, compliance, regulatory and governance for a newly public company. More specifically, over the past year or so, they successfully completed their IPO, a secondary share issuance, \$230 million convertible notes offering, and three acquisitions. The Alteryx business has grown over 50 percent per year since 2015 (on track to continue this pace this year) and their stock has appreciated nearly 150 percent in the past 12 months. Chris Lal is a key member of the executive team driving the Alteryx strategy through his legal organization.



CoreLogic, Irvine

Arnie Pinkston, Chief Legal Officer & Secretary

Angela Grinstead Ahmad, Vice President, Deputy General Counsel & Assistant Secretary

Rouz Tabaddor, Vice President & Deputy General Counsel

Scott Akamine, Senior Principal, Associate General Counsel

Ursula Guzman, Associate General Counsel, Employment

Angela McGuire, Vice President, Associate General Counsel

Yianni Pantis, Vice President, Government & Public Records Counsel

Charles Philipsek, Vice President, Associate General Counsel

Jeanette White, Vice President, Associate General Counsel Litigation

Arya Sadeghi, Corporate Counsel

Merit Albaady, Senior Corporate Counsel

Matthew Rabe, Senior Corporate Counsel

David Vences, Senior Associate Corporate Counsel

Sarah Gillies, General Counsel International

Agrita Cliff, Associate General Counsel: International

Kirsty Edward, Corporate Counsel (AUS)

Hannah Nimot, Corporate Counsel (NZ)

CoreLogic's legal department routinely manages key initiatives, transactions, and other matters that are essential to the business objectives of the Company. The attorneys in the department have successfully defended CoreLogic against legal claims and potential adverse judgments, while at the same time securing legal recoveries on behalf of the Company in excess of \$30 million. Additionally, the legal team has overseen a number of transformative acquisitions, divestitures, and outsourcing transactions since CoreLogic's spin-off from First American in 2010, all of which have contributed to the expansion of CoreLogic's product offerings and improving its overall market position. Deputy General Counsel and Vice President Rouz Tabaddor won the Orange County Business Journal's Rising Star Award in 2014 and Ursula Guzman, associate general counsel, Employment, won the Orange County Business Journal's Specialty Counsel Award in 2017. In addition, other current and former members of the CoreLogic legal team have been nominated (and won) for other accolades for their contribution to CoreLogic's legal department and to the wider Orange County business and legal communities.



Cylance Inc., Irvine

Brady Berg, General Counsel

Keith Palumbo, Deputy General Counsel & VP- Legal Affairs

Accomplishments of the Cylance legal team include closing a \$120 million round of private financing in June 2018. In addition they have negotiated partnerships with multiple blue-chip companies such as KPMG, VMware and Toshiba. Cylance is the first company to apply artificial intelligence, algorithmic science and machine learning to cyber security and improve the way companies, governments and end users proactively solve the world's most difficult security

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2018 Nominees

problems. Using a breakthrough mathematical process, Cylance quickly and accurately identifies what is safe and what is a threat, not just what's in a blacklist or whitelist. By coupling sophisticated math and machine learning with a unique understanding of a hacker's mentality, Cylance provides the technology and services to be truly predictive and preventive against advanced threats. Brady Berg has been General Counsel at Cylance since the company's inception, first as outside counsel, and now as in-house General Counsel. His specialties include corporate and securities, public offerings, mergers/acquisitions and venture capital.



Edwards LifeSciences, Irvine

Aimee Weisner, Corporate Vice President & General Counsel
Keith Newbury, Vice President, Chief Intellectual Property Counsel
Jay Wertheim, Vice President and Associate General Counsel
Heather Haworth, Vice President and Associate General Counsel
Linda Park, Vice President, Associate General Counsel and Secretary
Janet Richardson, Senior Director, Lead Regulatory & Privacy Counsel
Kelly Mennes, Senior Manager, Legal Operations

The legal team at Edwards has executed a number of important, strategic corporate transactions that have contributed to the overall growth of the company. From financings, to securities offerings and strategic acquisitions, the collective nature of these transactions have been critical as Edwards seeks to help patients around the world. In 2018, Edwards completed a \$750 million, multi-currency refinancing of its existing credit facilities with a syndicate of multinational financial institutions. Earlier this year, Edwards completed its second registered public debt offering. Valued at \$600 million, the proceeds from the senior notes offering were used by the Company to repay existing debt obligations and finance general corporate operations. Capping off an active year for the legal team, Edwards announced a \$400 million share repurchase program in May 2018. Under the terms of the repurchase agreement, the Company would acquire approximately 2.5 million shares of its common stock. In addition legal team at Edwards has completed numerous successful acquisitions that have added to the platform of products and services the company offers. These transactions involved numerous legal challenges, including multi-jurisdictional governmental approvals for the acquisitions, the transfer of vital patents and other intellectual property assets, and the integration of corporate operations.



Lineage Logistics, Irvine

Jason Burnett, Executive VP, General Counsel
Natalie Matsler, SVP, Associate General Counsel

Over the last six years, the in-house legal team has grown from one to a team of five legal professionals and one paralegal. During this time, Lineage has grown to over 100 facilities, in four countries with over 700 million cubic feet of storage. Lineage is widely recognized as the second largest temperature-controlled and logistics company in the world and with an enterprise value in excess of \$5 billion. This growth was achieved by organic growth through development activities and through M&A, which included successfully coordinating the acquisition and integration of over 23 separate businesses (including an acquisition valued at over \$1 billion in the U.S. and multiple acquisitions throughout Europe). In addition to the acquisition and integration of multiple businesses, the team has established company-wide contracting policies, forms and related documentation, the establishment of unified compliance (EHS/PSM/Food Safety) programs and reporting. They have led creation and establishment of Code of Conduct, Conflicts of Interest and Ethics reporting. Successfully partnered with all company functional groups facilitating achievement of functional group goals through problem solving, appropriate risk mitigation and rapid document review.



NextGen Healthcare, Irvine

Jeff Linton, Executive VP, General Counsel & Secretary
Jim Systma, Vice President, Assoc General Counsel and Asst Secretary
Shadi Bank, Vice President, Assoc General Counsel
Bob Ellis, Senior VP, Assoc General Counsel (Remote: East Coast)
Michael Schoen, VP, Assoc General Counsel (Remote: East Coast)

The NextGen Healthcare legal team recently coordinated all activities to formally change the name of the company to NextGen Healthcare, Inc. to reflect the focus and strategic direction of the company. The team has also completed the acquisition of three companies adding additional products and services to the company's portfolio: Entrada, Inc. - a leading provider of cloud-based mobile solutions that drive clinical efficiencies and physician satisfaction, Eagle Dream Health, Inc. - a cloud-based analytics company that drives meaningful insight across clinical, financial and administrative data to optimize practice performance, Inforth Technologies - a leading provider of clinical content and specialty-specific workflows for orthopedic and physical therapy practices.



ONE & DONE.

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Fund Formation & Services
Government Enforcement & Defense
Intellectual Property Litigation
Internal Investigations
Labor & Employment
Licensing
Mergers & Acquisitions
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2018 Nominees

Palace Entertainment, Newport Beach

Michael Baroni, General Counsel & Secretary
James Boyajian, Sr. Counsel
Diana Tran, Exec. Paralegal
Holly Roberts, Manager, Risk & Litigation
Tony Difrancesco, Sr. Claims Examiner



Palace Entertainment owns and operates 22 parks in 11 states, with 600 rides and attractions that provide employment for 10,000 people and draw seven million visitors each year. When Michael Baroni joined the company in 2010, he worked to turn the legal department around and hire a corporate safety expert to focus on park safety matters and reduce the amount of lawsuits and incidents. The legal team at Palace Entertainment now continues to hold litigation costs at less than what the company paid in 2002 when it was half the size. They have continued to decrease workers comp costs and number of claims to an all-time company low. In addition, the team worked on numerous matters including employment/labor matters including ADA, discrimination and sexual harassment claims; security matters: media crisis management; animal law issues; real estate issues such as easements, permits, construction, environmental, hurricane and flood claims, etc.; safety of guests and employees; a huge array of copyright and trademark issues (ride names, etc.); and liquor license issues.

Smile Brands, Irvine

Victoria Harvey, Esq., SVP & Chief Legal Officer
Nick Chang, Senior Corporate Counsel
Joseph Hernandez, Director of Compliance
Melanie Gomez, Senior Risk Manager



The Smile Brands Inc. legal team takes pride in making sure that it's responsive, and expedient, with internal clients' requests. In providing service, the team members always take the organization's G3 (greeting, guiding and gratitude) service platform to heart, as they deliver smiles to their colleagues, and strive to reflect the department's motto – Culture Drives Compliance. In 2018, the team assisted the enterprise in expanding with the addition of 14 affiliated practices, either through acquisition or opening de novo locations (a total of eight figures in transactions). The team contributes to the organization's bottom line by handling most matters internally, such as smaller acquisitions, contracts and lease review, corporate governance and maintenance of nearly 50 legal entities, investigations, and pre-litigation matters. The in-house legal team also effectively manages risk management, workers' compensation and litigation costs, including successfully dismissing several frivolous class actions prior to filing responsive pleadings.

Taco Bell, Irvine

Julie Davis, VP & Acting General Counsel
Jo Moyer, Executive Asst.
Kerry Endert, Director & Contracts, Sourcing, and IP Counsel
Eric Hayden, Director & Global Franchising Counsel
Jason Oviatt, Director & Litigation, Employment, Real Estate Counsel
Yolanda Karlen, Admin Asst. (Endert, Hayden, Oviatt)
Anna Aberman, Legal Counsel, Contracts & Marketing
Kristi De La Rosa, Legal Counsel, Franchising
Neha Jaiswal, Legal Counsel, International Contracts & Patents
Aparna Mathur, Legal Counsel, Employment & Regulatory
Karen Aucutt, Litigation & HR
Dawn Beatty, Sourcing, Contracts, IP & Real Estate
Carolyn Betpera, Franchise Domestic
Cathy Carroll, Franchise International
Susan Dallam, HR
Dianne (Di) Errington, Real Estate
Linda Folks, Sourcing
Jeannine Ford, Contracts
Jessika Guerrero, Franchise Domestic & International
Bernadette Jones, IP
Michelle Jones, HR
Brandon Karkut, Sourcing
Cindi Nichols, Litigation
Angela Radovich, Franchise International
Mary Seiffert, Property Mgmt. & ADA Compliance
Jill Smith, IP

In an ever-competitive quick-serve food market, Taco Bell is a standout both in the domestic restaurant industry and on the rapidly expanding international markets. Started in 1962 by Glen Bell, Taco Bell is a subsidiary of Yum! Brands Inc. Taco Bell serves more than approximately 2 billion customers each year at approximately 7,000 restaurants, more than 80 percent of which are owned and operated by independent franchisees and licensees. The hallmark of Taco Bell's in-house Legal Team is to deliver efficient, cost-effective services that meet the goals and objectives of the entire organization. Towards that end, the team's achievements include efficient litigation management, risk avoidance and outstanding early claim resolution; contract and sourcing expertise resulting in significant cost benefit; and a top notch franchise team responsible for refranchising, transfers and expanding international business development.



CONGRATULATIONS

Michael Moad on your
 2018 General Counsel Award
 Nomination

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CONGRATULATIONS NEXTGEN!

Rick Sherburne from CBRE would like to congratulate the entire legal team at NextGen Healthcare for being nominated for the 2018 General Counsel Awards. Rick is proud to be a trusted real estate advisor to NextGen.

Rick Sherburne
 Executive Vice President
 Advisory & Transaction Services
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 rick.sherburne@cbre.com

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