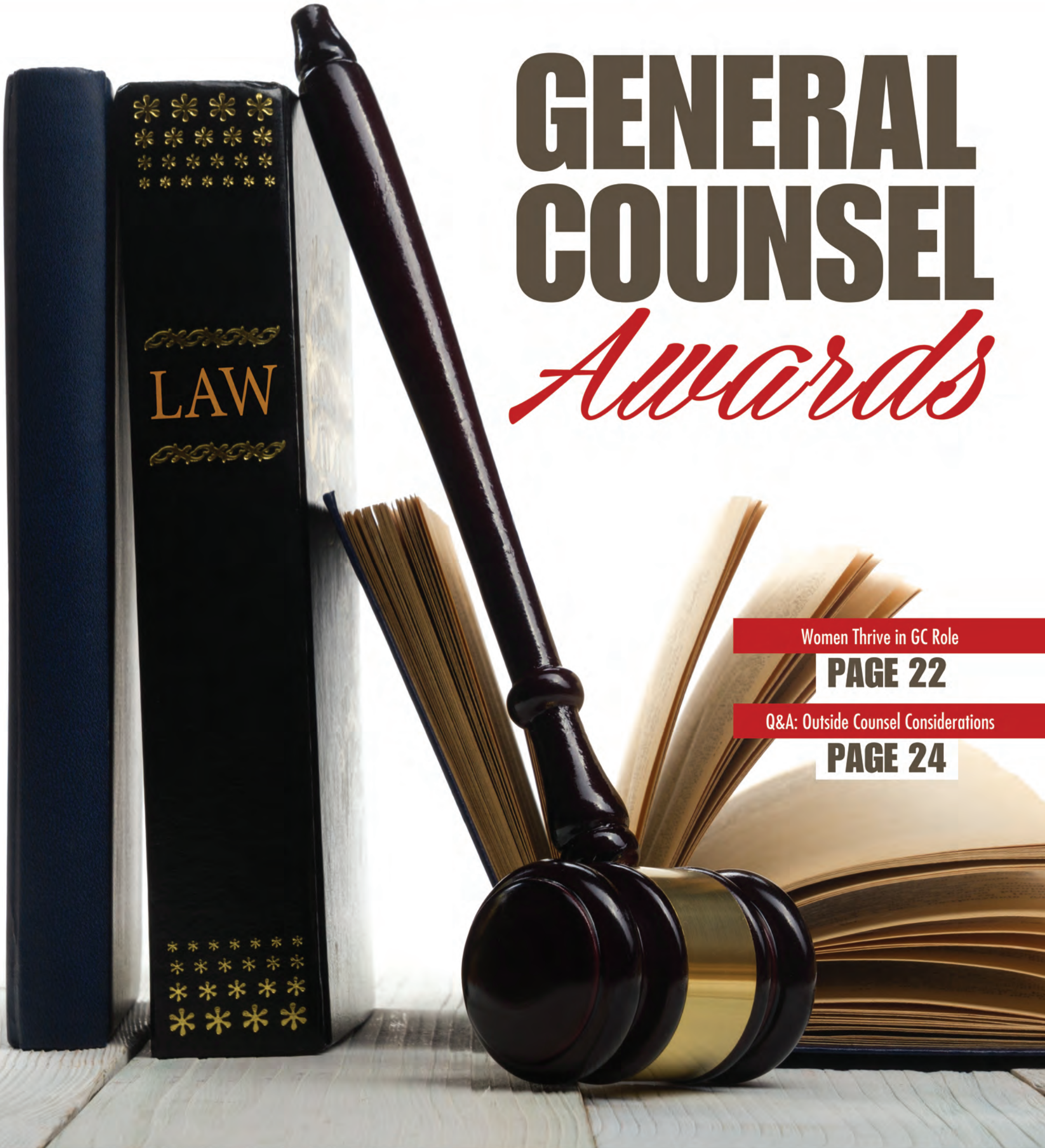


GENERAL COUNSEL Awards



Women Thrive in GC Role

PAGE 22

Q&A: Outside Counsel Considerations

PAGE 24

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General Counsel Awards Nominees Start on page 58

Women Value GC Work for Quality Focus, Flexibility

Management Prospects Part of In-House Appeal

By DEIRDRE NEWMAN

While there's no empirical data to chart a rise in female general counsels in Orange County, several local GCs say they've seen an increase over the past 15 years or so.

Being in-house can provide greater flexibility in terms of work hours, and it also provides value, with the opportunity to be a female leader in management, said **Wendy Peterson**, general counsel at Irvine-based law firm **Knobbe Martens Olson & Bear LLP**, where she handles internal legal matters. She describes general counsels as "someone whose advice is strategic and critical to the success of the enterprise."

"It's very satisfying to know that you have made a positive difference in your company's or law firm's business," said Peterson, who's held the position since 2002.

Any increase in female leaders at the executive level is "a net positive," said **Bernadette Chala**, general counsel at Irvine-based **Arbonne International LLC**, which makes personal care and wellness products sold by an international network of independent consultants.

"It signifies to me that women in leadership roles is something that is becoming a given rather than something noted as unusual," she said. "I am looking forward to the day when we don't have to talk about the rise of female GCs anywhere."

She noted that U.S. law schools have been graduating classes with an even male-female split for many years now and "we should see this reflected not just in private



Chala: female execs 'net positive'



King: corporate strategy intrigued

practice, but also (with) in-house lawyers and our leadership ranks in ... in-house practice."

Getting There

Female general counsels in Orange County entered their roles in a variety of ways, some by having a laser-like focus on the position straight out of law school, others by going with the flow.

Tania King, general counsel at Irvine-based call center operator **Alorica**, exemplifies the former. The company is the largest provider of "customer experience solutions" in the U.S. based on number of employees—it has more than 55,000—and the third-largest worldwide based on revenue, at \$2.4 billion, according to a company spokesperson.

King said she saw herself first as a businesswoman, which made it challenging for her when she graduated from law school.

"I really enjoyed reading and learning about corporate strategy," she said. "It intrigued me. I thrived on the ability to contribute to an organization's success and

growth, and as I learned about GC careers, I knew that is where I wanted to be, and I was willing to take a less-than-popular career track and start my career off in-house."

She accepted a position as in-house counsel at **QuickStart Intelligence**, a Microsoft partner, right after graduating from **Santa Clara University School of Law** during the technology boom in 1995, "when they were willing to take chances on those of us without considerable experience," she said. Within six months, she was promoted to general counsel.

She was recruited by Irvine-based **Advantage Solutions** and this year by Alorica, where she worked her way up to chief legal officer, chief compliance officer and secretary. She said being a GC presents a broad range of issues and challenges every day.

"One day, you may work on a union issue, and the next you must quickly switch gears and tackle a complex acquisition issue," she said. "This type of workload requires (that) you have a broad range of expertise, as opposed to specific areas of focus. And it is very important to recognize, reward and retain talent in areas you may not have a large amount of expertise in."

She also said GCs should be strategic in how they approach priorities and support their companies.

"Many like the fact that you don't have to track your hours in-house, but be aware—you must become a data and insights expert and track how your initiatives are contributing to the growth and protection of the company's bottom line. It might just be easier to track time."

Shelli Black, general counsel at Newport Beach-based **IHP Capital Partners**, an

equity capital provider for homebuilding and land development, took a more circuitous route. Her path to becoming general counsel started in 2003 as a partner at Irvine-based boutique real estate and litigation firm **Pinto & Dubia LLP**. The firm's managing partner left to become general counsel and a deal originator at IHP, which at the time was one of Pinto's largest clients.

Pinto soon disbanded, and Black and her real estate division joined **Garrett DeFrenza & Stiepel LLP** in Costa Mesa. At that point, she said her goal was to slow down so that she could spend more time with her husband and two young daughters. IHP was also a client of GDS, and she stayed with GDS part time to help with IHP matters. After about a year, she got a call from her previous managing partner that IHP wanted to form an in-house legal department and to bring over most of the GDS team.

"With an understanding that my hours would not be crazy and that I could work from home, I agreed," she said.

Aimee Weisner, general counsel at Irvine-based medical technology company **Edwards Lifesciences Corp.**, said she wanted to join a company where she could devote her efforts to just one client. Edwards' products include heart valves.

"It's a privilege to be general counsel and a member of the company's executive management team. ... At Edwards, it is particularly meaningful to me to be part of a company focused on helping patients around the world who suffer from structural heart disease or are critically ill," she said. "It gives an extra level of meaning to my

► GCS 24



The Business Journal's Deirdre Newman asked Orange County-based general counsels in industries ranging from manufacturing and technology to finance and legal, how they go about choosing outside attorneys to do legal work.

Following are edited excerpts of their responses:

Shelli Black

IHP Capital Partners
Irvine

When it is necessary to choose outside counsel, there are usually several factors that go into the decision.

First, in certain circumstances, we may be required by an investor to choose from a list of authorized counsel. In those situations, myself and others in our company have developed relationships with a number of authorized firms, and we will continue to use those firms, as long as they have the expertise and availability for the issue at hand. Other-



wise, I will work with the businessperson in charge of the matter to find counsel that is best suited to handle the transaction or issue—looking at factors such as expertise, availability, prior transactions, geographic location, potential conflicts, and hourly rates.

Peter Macdonald

LoanDepot LLC
Foothill Ranch

We rely on outside counsel primarily for litigation and corporate transactional work.

When looking for outside counsel, I like to hire lawyers rather than law firms. We look



for those who appreciate the end zone. By that, I mean they have to understand that outside counsel is there to help us resolve an issue, and they have to embrace the outcome desired rather than the process they want to follow. When I talk to a law firm on a matter, most will say, 'Yes, we can do that.' The best law firms say, 'You're better off going to someone else on this.' Those are the ones I trust the most. They know where they can absolutely shine.

No one law firm will get all of our business because we need experts in each area, and no one law firm has experts in every area. So I look for a firm whose principals know when to turn down an issue because they're not the best for us. I look for partners who understand the desired outcomes, can plan with me to get that outcome, rather than implement a preset process they have.

Finally, I look for a law firm that understands our business.

John Page

Golden State Foods
Irvine

Outside counsel is selected based on their expertise and value.

Value is demonstrated by application of their subject matter expertise, assessment/judgment, efficiency and knowledge, including knowledge of our business.

It is usual to gravitate toward a law firm based on reputation, but selection is often on the actual counsel who will handle the matter and their ability to provide great support and thought leadership.

Knowing the law, being pragmatic and ef-



ficient in approach, and cost are high on our list at GSF.

Wendy Peterson

Knobbe Martens Olson & Bear LLP
Irvine

I rely primarily on recommendations in choosing outside counsel. Someone with a proven track record is more likely to be effective. I start with my network of in-house counsel and ask around for recommendations.

After talking with new counsel, I also ask to talk with their client references, as that provides additional insight.

Michael Ray

Western Digital
Irvine

We always look for the best lawyers available for whatever project we are staffing, since we are fundamentally about results.

In determining which lawyers are best for a project, we look at the depth of experience that each lawyer has, with a particular focus on whether he or she has successfully handled projects like ours before and how often.

We look for lawyers with the ability to de-

► Q&A 24





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- Former co-chair, Appellate Practice Group at Manatt, Phelps & Phillips.
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GCs

► from page 22

work, each and every day.”

Benefits

Several female general counsels in OC said they appreciate the flexibility that being in-house provides. Black said the ability to work primarily at home has been “amazing.” It enables her to participate in some of her children’s extracurricular activities during the day. To compensate, she works at night.

“Another benefit is not having to generate new clients,” she said. “When I was a partner, this task often required after-hours attention, which took away time from my family.”

Peterson said that while there’s flexibility, working in-house doesn’t always mean predictable hours.

“More than flexible hours, working in-house permits you to devote as much time as needed to address a legal issue that arises,” she said. “You are not constrained by the clock and the budget set by your client.”

Chala agreed. “When you are in-house, you can really focus on the quality of your work and the overall big-picture impact of the advice you are giving to your client, rather than constantly running your work product against the billable time units it took you to create it.”

Weisner said a general counsel’s workload is similar to that at a law firm but that the pace is different.

“I find regular business hours to be quite fast-paced, while evenings and weekends

are less so,” she said.

Leadership, Mentoring

Several general counsels said they’ve gotten involved with women’s leadership initiatives at their companies. King and **Joyce Lee**, Alorica’s chief culture officer, are working together to develop a Global Women’s Leadership initiative at the company, King said. The initiative was designed to “ensure we have a mentor program in place to support (and) identify opportunities and develop our high-potential women leaders.” It’s global because the company is a global organization, “and we wanted to ensure we are inclusive of all women leaders, regardless of location.”



Weisner: calls her work a privilege

“I sincerely believe these initiatives have contributed to increased investment in the development and opportunities for women leaders,” she said. “Many of my female GC peers have shared that a mentor, either male or female, or a women’s leadership initiative, has had a direct impact on their career development and success.”

Peterson at Knobbe Martens said she advises those going in-house to continue to seek mentors in both the legal and business realms.

“Choose reliable, hardworking and bright counsel for your in-house team, and retain talented outside counsel,” she said. “Learn your company’s business, and always raise business issues that you identify in the course of providing legal services to the company. Consider what business issues arise based on your legal advice, and be prepared with suggestions on how to resolve those issues.” ■

[Q&A]

► from page 22

velop a credible strategy and react creatively when unexpected obstacles arise, because they will arise. We look for lawyers who will be available and responsive to every member of our team. Finally, we look for lawyers who are efficient in their deployment of resources, including their time and their colleagues’ time, and are willing to invest in a long-term relationship by getting us a great outcome on any project, even if prolonging the project would have resulted in higher invoices.

If we are satisfied with the results that lawyers deliver, we will look to build relationships with those lawyers so that we can succeed together over the long term.

Rob Tennant
Veros Credit
Santa Ana



For matters which are routine and have higher volume, I look for efficiency and cost-effectiveness. For matters which are unique, complex or could result in significant liability, cost is still a factor, but I also look for area-specific experience and the ability to be innovative.

Gary Singer
RSI Holdings
Newport Beach




While there are many factors that we weigh in selecting outside counsel, some of the more salient ones include the lawyer’s and his or her firm’s experience and expertise in handling a particular type of matter or answering a question in which inside counsel does not have sufficient mastery; the cost-effectiveness and risk-sharing by use of contingent-fee arrangements, and the responsiveness of counsel in working with inside counsel.

Jenny Wang
MerchSource
Irvine



I choose outside counsel for legal work based on a combination of referral, expertise, and the particular concerns of my internal business associates involved with the issue.

Cost is important but can be negotiated and is ultimately ancillary to finding a suitable outside counsel who is practical and business-savvy in application of legal expertise to the real-world situation at hand. ■



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The Step Transaction Doctrine – Sword or Shield

by Rubin B. Ranat, Rutan & Tucker LLP

Similar to the complicated storylines in *Game of Thrones*, business transactions can also be very complicated. Decisions made by a character in the show (or novels) may be perceived one way when viewed in a vacuum, but differently in the grand scheme of things. Just as Tyrion Lannister uses words as a sword or shield to navigate the Seven Kingdoms, so too can the step transaction doctrine be used to navigate U.S. tax laws.

What is the Step Transaction Doctrine?

The step transaction doctrine is a common law judicial doctrine that seeks to address potential taxpayer abuse by generally providing for various transaction steps to be recast as a single transaction for U.S. federal income tax purposes.

When is the Step Transaction Doctrine Applicable?

The application of this doctrine should be considered when a company engages in a series of transactions that generally involve distributions, redemptions, sales, or mergers and acquisitions. A series of related transaction steps may be subject to the step transaction doctrine if they meet one of three tests: (1) the binding commitment test, (2) the end result test, or (3) the interdependence test.¹

The binding commitment test inquires as to whether there was a legally binding commitment to undertake the later step in a series of transactions.² The end result test analyzes whether the series of separate steps were really part of a single scheme designed to achieve the ultimate result.³ Under this test, if a “series of closely related steps in a transaction are merely the means to reach a particular result” the steps will be treated as a single transaction.⁴ The end result test focuses on the subjective intent of the taxpayer to allow the court to determine whether a taxpayer “directed a series of transactions to an intended purpose.”⁵ The interdependence test inquires as to “whether under a reasonably objective view the steps were so interdependent that the legal relations created by one of the transactions seem fruitless without completion of the series.”⁶

There have been numerous cases and guidance issued by the Internal Revenue Service (the “Service”) where the step transaction doctrine has been applied as a sword or shield.

As a Sword

In *Uniroyal Inc. and Consolidated Subsidiaries v. Commissioner*, Uniroyal Inc. (“Uniroyal”) and ICI Americas, Inc. (“ICI”) each held 50 percent of the outstanding stock of Rubicon Chemicals, Inc. (“Rubicon”).⁷ As part of a broader restructuring to separate Rubicon’s businesses, Rubicon distributed a dividend to Uniroyal in the form of a promissory note prior to the sale of Rubicon to ICI. The Service argued that the step transaction doctrine should apply to integrate the dividend and sale together. The Tax Court concluded that the steps should be respected as two separate transactions even though the steps occurred only a few days apart because there was a business purpose for the structure and there was no binding agreement for the sale to take place before the dividend. The Tax Court distinguished the facts of two other cases, *Waterman Steamship*⁸ and *Litton Industries*⁹, based on certain facts and circumstances such as timing between the steps, the business purpose, costs, and the subsidiary’s ability to make a dividend distribution.

Under the facts of Rev. Rul. 2008-28, the selling corporation and purchasing corporation intended to effectuate a tax-free reorganization. The purchasing corporation formed a new transitory merger subsidiary for the purpose of merging it with and into the selling corporation’s subsidiary, the target corporation. In the merger, the purchasing corporation acquired all of the stock of the target corporation. Thereafter, pursuant to a plan, the target corporation completely liquidated into the purchasing corporation. The ruling concluded that even though each separate step qualified for tax-free treatment, the steps should be recast and treated as a taxable purchase of the target subsidiary’s stock followed by a tax-free liquidation of the target subsidiary. A serious consequence since the selling corporation was expecting a favorable tax result.

As a Shield

Even though there is quite a bit of uncertainty in the treatment of a series of steps that occur close in proximity, the step transaction doctrine does not always apply to destroy steps like Frey daggers at the Red Wedding. There are authorities that allow a taxpayer to use the step transaction doctrine as a taxpayer-friendly planning tool. For example, a corporation could use it to collapse certain steps (out of a series of steps) into a reorganization under Section 368(a)(1)(F) of the Internal Revenue Code (i.e., F reorganization). This transaction is often referred to as an “F in a Bubble” since it generally turns off the step transaction doctrine with respect to other steps that occur before or after the F reorganization.¹⁰

Although the step transaction doctrine and its various tests are commonly used in tax law,¹¹ courts have also applied similar principles to bankruptcy cases as “collapsing transactions.”¹²

Prepare for Winter

The application of the step transaction doctrine to recast a series of steps can significantly alter a company’s intended business, legal, and tax consequences. A company should keep this doctrine at the top of mind when planning a transaction involving a series of other transactions close in time. This is especially true if the transaction steps take place during the same tax year. By considering the step transaction doctrine early in the process, a company is better positioned to determine whether its business objectives outweigh the possible tax consequences.

The facts and circumstances surrounding the various transaction steps, such as the timing, business purpose, and non-tax motives, are important factors to consider. Having a binding commitment to do X within a few months of Y could result in significant, unexpected tax consequences.

If your business attorney is not also your tax attorney, then it is important to ensure that the two practitioners discuss the transaction steps early when contemplated rather than when Winter (i.e., the Service) Comes...

¹ *McDonald’s Restaurants of Illinois, Inc. v. Commissioner*, 688 F.2d 520 (7th Cir. 1982).

² See *Commissioner v. Clark v. Gordon*, 391 U.S. 83, 96 (1968); *Penrod v. Commissioner*, 88 T.C. 1415, 1429 (1987).

³ See *Packard v. Commissioner* 85 T.C. 397, 420 (1985).

⁴ *True v. U.S.*, 190 F.3d 1165, 1175 (10th Cir. 1999), citing *Kanawha Gas & Utils. Co. v. Commissioner*, 214 F.2d 685, 691 (5th Cir.1954).

⁵ See *True v. U.S.*, 190 F.3d 1165, 1175 (10th Cir. 1999), citing *Brown v. U.S.*, 783 F.2d 559, 563 (6th Cir. 1986).

⁶ See *Security Industrial Ins. Co. v. U.S.*, 702 F.2d 1234, 1247.

⁷ T.C. Memo. 1993-214.

⁸ 430 F.2d 1185 (5th Cir. 1970).

⁹ 89 T.C. 1086 (1987).

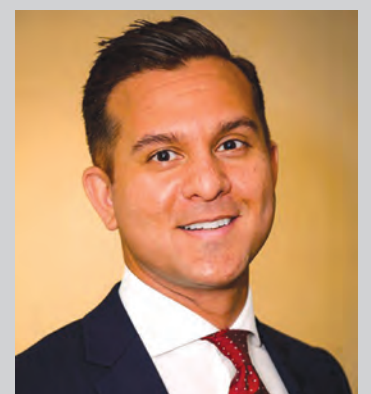
¹⁰ See generally Treas. Reg. § 1.368-2(m).

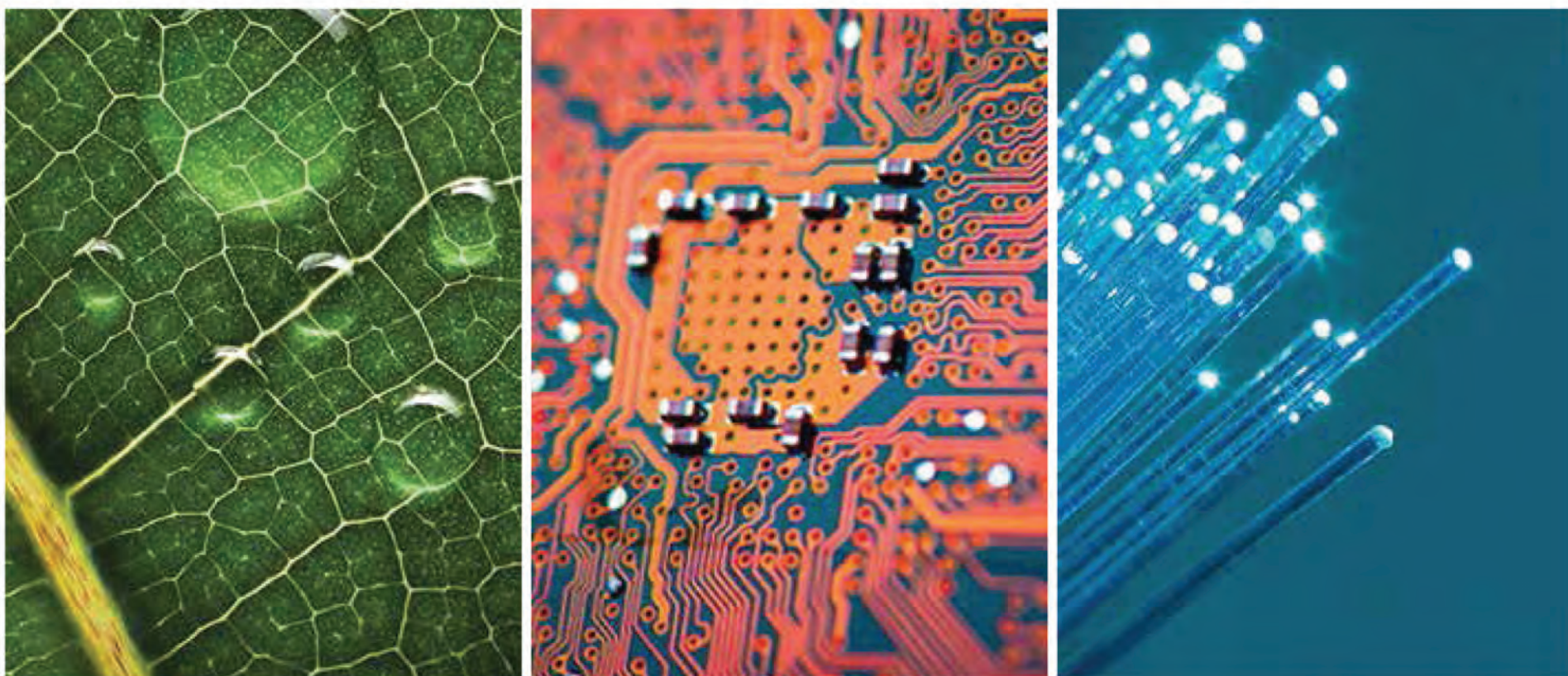
¹¹ See e.g., *Commissioner v. Clark*, 489 U.S. 726, 738 (1989).

¹² See e.g., *In re Old CarCo LLC*, 435 B.R. 169, 185 (Bankr. S.D.N.Y. 2010).

Rubin B. Ranat

Rubin B. Ranat is an attorney in the Corporate, Securities & Tax Section in Rutan & Tucker’s Costa Mesa office. He advises companies and key stakeholders on legal, business, and tax considerations relating to various stages of a company’s life cycle. His practice involves general business transactions, mergers and acquisitions, and tax planning. He also represents businesses and their owners with tax controversy matters. Contact him at 714.338.1873 or rranat@rutan.com.





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Olympic Fever in the OC

by Tony Wang, Partner, O'Melveny

With the 2028 Summer Olympic Games coming to Los Angeles, it seems like all of the Southland has Olympic fever. Orange County has long been a favorite training ground for many Olympic teams, including USA Water Polo. In this article, O'Melveny Newport Beach partner Tony Wang, who works with USA Water Polo, catches up with Christopher Ramsey, Chief Executive Officer of the federation, about the organization's ties to Orange County and what the Games will mean to the team and the community. O'Melveny has an extensive history working with the Olympics in a variety of roles, including serving as dispute arbitrators at the Games, negotiating broadcasting and licensing deals for the International Olympic Committee, and advising numerous national governing bodies on various legal matters.

Tony: What is the water polo federation's connection to Orange County?

Chris: USA Water Polo was the first national governing body of an Olympic sport to locate its national office, along with our teams and training programs, in Orange County (2006). Southern California has the largest concentration of water polo players in America today, including many Olympians, so by moving here we settled in what has become the heart of water polo in America.

Tony: Looking ahead to 2028, what will it mean for America to again host the Olympic Games in Southern California?

Chris: Water polo is one of the nation's fastest growing sports, yet our trajectory is an exception. In the last decade, mainstream high school sports such as football, soccer, and basketball have registered declines in varsity participation. This is part of a larger national crisis, with an estimated 81.6 million Americans inactive in 2015. Having the Games locally is an opportunity to remind everyone of the value of sport. We see too many young people who are discouraged by youth programs that emphasize trophies over effort and self-improvement. This represents a chance to press the restart button and commit to making youth sport fun again, while teaching our young people the value of a life balanced by athletics.

Tony: The women's team is a leader in water polo, winning back-to-back Olympic gold medals. What has this done for the sport?

Chris: Our women's team currently holds every major title in international water polo. They not only win; they inspire. Their unselfish style of play, detailed preparation, and tough-minded approach to the toughest of games sets them apart—Coach Krikorian is building one of the great dynasties in the history of sport. I remember watching a qualification game against Greece with a veteran European coach who, overwhelmed by the performance of our American women, said it was some of the most beautiful water polo he had ever witnessed. Having these women as role models for our youth is also an invaluable asset for our community.

Tony: What opportunities are there for the Orange County business community to become more involved with USA Water Polo?

Chris: A number of the OC's most prominent business people have connections to water polo, including former chair of the United States Olympic Committee Peter Ueberroth, who played at San Jose State and is in our Hall of Fame. The business community has been very helpful to us and is an important partner because, unlike virtually all of our competitors around the world, American teams compete in the Olympics without any government support.

One of the biggest competitive challenges faced by our Olympic program is retaining qualified athletes after they finish their collegiate careers. We have discussed creating a business council as a new initiative that would, among other things, connect our Olympic athletes to companies in their chosen fields. This would help athletes make a smoother transition when their playing days are completed, and companies would gain by sponsoring an Olympian within their organization, whom they could also spotlight at designated corporate events.

Our teams are eager to give back to the community, and we are mindful of our corporate social responsibility. Our coaches and athletes are looking for opportunities to collaborate with Orange County businesses to foster leadership, teamwork and healthy lifestyles.

Tony: How is O'Melveny involved with the water polo team?

Chris: O'Melveny provides us with generous pro bono assistance on certain legal matters, joining Morgan Lewis and Paul Hastings as important supporters of our work. Through their counsel, O'Melveny allows us to make informed decisions on issues our federation encounters in the international sports space.

Tony: Chris, you've had an interesting road to the OC. Can you tell me a bit about your background?

Chris: I worked for many years with Robert MacNeil of The MacNeil/Lehrer NewsHour on PBS. Robin used to describe me as a square peg in a round hole because he had trouble reconciling my literary and musical background with my interest in business management. I started my career lecturing in English literature at Cornell University, where I also cut my teeth as a young writer. My path then swerved toward journalism. I worked for nearly 15 years at MacNeil/Lehrer. I subsequently became one of the chief executives for The New York City Ballet, where I was fortunate to work with Peter Martins on a wide range of business and creative initiatives.

Tony: It seems like water polo is a far cry from the NY City Ballet. How is it different or similar?

Chris: It might seem far away, and there are days when I confess that it feels that way without the comfort of the Lincoln Center stages and rehearsal studios. Yet both organizations share key similarities. Both are resolute in their commitment to craft and to excellence. Both are international non-profit corporations with world class boards, which help them plan strategically to address complexities that accompany the global stage. Both endeavors are built around stewarding human potential developing the magic within each performer while also emphasizing teamwork. And both are populated with tough, talented individuals, who devote themselves to pursuing a standard of perfection few of us can imagine.

The opinions expressed in this article do not necessarily reflect the views of O'Melveny or its clients, and should not be relied upon as legal advice.



Tony Wang

Partner, O'Melveny

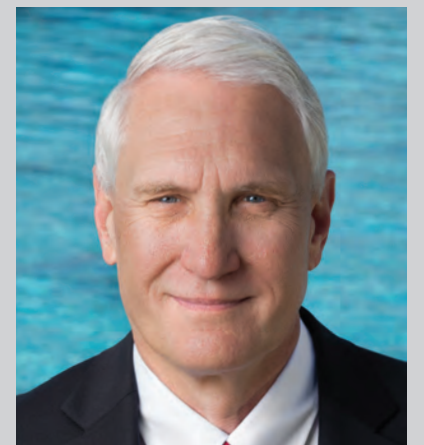
Tony Wang focuses his practice on corporate and securities law, with an emphasis on private equity, venture capital, merger and acquisition, and Asia-related media and entertainment transactions. His clients span numerous industries, including telecommunications, entertainment, sports, media, software/technology, manufacturing, energy, and real estate. He also has extensive experience in dealing with US securities compliance issues, corporate governance matters, and intellectual property topics, specifically with start-up companies and venture capital and private equity investors.



Christopher Ramsey

Chief Executive Officer, USA Water Polo

Christopher Ramsey is the chief executive officer and general secretary of USA Water Polo, the national governing body for water polo in America under the auspices of the US Olympic Committee. His work includes leadership of Olympic and national teams, as well as a variety of programs and events designed to spur growth of the sport nationwide.



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Diligence in Building or Buying a Brand

by Deborah Gubernick, Shareholder & Lisa Sandoval, Associate, Call & Jensen

On any given day, you will find Southern Californians donning their favorite local brands. Whether eating In-N-Out Burger®, sporting Vans® shoes, Stance® socks, and a favorite SoCal surf-brand, or even dressing up in a St. John Knits® ensemble while scheduling Botox® treatments before going home to watch a Vizio® television, SoCal brands are undeniably woven into our lifestyle. We are accustomed to witnessing countless brands grow in our own stomping grounds. We have also seen brands grow to the point where they are bought by large companies – resulting in our favorites becoming international sensations. Whether building or buying a brand, diligence in both cases is imperative to the brand's continued success.

Building a new brand can be exciting. Indeed, many have been inspired by the success of what we have seen locally. Consider 12-year-old San Clemente entrepreneur, Carson Kropfl, who recently developed the brand, Locker Board, for a small skateboard. Kropfl reportedly recently attracted investment interest from business legend, Richard Branson. Armed with the same can-do attitude and creativity of countless SoCal brand builders before him, he is already showing what brand building (and possibly brand buying/brand investing) is all about.

Having a small brand become global powerhouses is the epitome of the American dream. Being involved in a multi-million or even billion dollar deal and turning large profits sounds glamorous. But, taking the steps necessary to protect a brand, conduct brand audits and engage in appropriate due diligence is far less appealing. Some take shortcuts in this area, only to realize doing so is a costly mistake.

Consider the 1998 due diligence missteps of German carmaker Volkswagen, as it purchased the assets of Rolls Royce and Bentley automobile for around \$900 million. The heads of the heavyweights flew in on private jets, meeting at an exclusive Bavarian country club to carve out the deal. In an odd twist, however, the deal did not afford Volkswagen the right to use the Rolls Royce name. Rather, the Rolls Royce trademark would be BMW's property. Volkswagen was left owning the manufacturing facilities and rights to make the Rolls Royce cars without use of the Rolls Royce name. Volkswagen had to then secure a separate deal with BMW to have the right to use the Rolls Royce trademark.

Appropriate diligence and legal advice is imperative to avoid the snares of a potentially problematic IP portfolio and inadvertent oversights in a business deal.

Advice for Brand Builders

A startup aiming to eventually sell its brand must first take steps necessary to secure the brand. This means proper trademark searching, clearance and filing to protect the asset. The brand owner should also consider filing copyright and patent protections, where applicable. Secure key domain names and social media accounts to market the brand. Adopt a brand-policing system to monitor third party trademark filings and infringing use to prevent dilution of rights. Develop brand-usage guidelines to foster brand recognition among consumers. Frequently audit existing trademarks to determine if more filings are warranted.

Keep good records of trademark use, sales histories, advertising figures and advertising samples. This information is often critical to demonstrate not only ownership of the brand, but the brand's strength and associated goodwill. When taking the brand to international markets, manufacturing or distributing abroad, devise a strategic trademark filing plan that addresses both offensive and defensive considerations. Indeed, in some countries, the first to file a trademark/brand name automatically gets the rights – exposing brand owners to international vulnerabilities.

The brand will likely become the most valuable asset of the business. Failing to properly protect, maintain and enforce it will diminish its value—making it harder to demand top dollar when selling the brand (or when attempting to attract investment capital).

Advice for Brand Buyers

A potential brand buyer or investor should conduct thorough IP diligence before any transaction. Doing so will help the buyer assess the monetary value and risks associated with the transaction. The buyer should request, and the seller should provide, lists identifying U.S and international trademarks, copyrights, patents,

domain names, trade secrets, social media accounts and any other information proprietary to the business. As a potential acquirer of the IP (or investor), it is not enough to simply rely on the information the brand builder provides. Verify the information by cross-checking it against publicly available trademark, copyright and patent records. Double check the title-holder of each IP asset and look for any recorded security interests. Confirm the IP is not the subject of active litigation. If the IP was involved in prior litigation, what was the result? Have there been any cease and desist letters or threats of litigation regarding the IP? Have all deadlines been met to ensure the IP is still valid and enforceable?

Request copies of any agreements involving the IP. In the event the brand has been licensed, carefully evaluate the license agreements, paying attention to territories to which the license applies, the license term, payment obligations, assignability, and whether the agreement is exclusive or non-exclusive. What are the grounds/consequences for terminating? Does that impact your interest in the IP and/or the value of it?

In the case of copyrighted works, confirm appropriate assignment documents and work for hire agreements have been executed to avoid any surprising claims regarding ownership post-closing. Verify that all domain names and social media accounts are in fact controlled by the business. Obtain the contact details for the administrators of each and ensure the accounts can be easily transferred post-closing.

Conclusion

Whether brand building or brand buying, diligence in both cases is imperative. As a brand builder, start in the right direction by protecting the brand through trademark searches, clearance and filing. Maintain and protect IP assets by adopting appropriate maintenance and enforcement protocols. As a brand buyer, be thorough in verifying the ownership, enforceability and risks associated with the IP assets. In both cases, utilizing an experienced attorney can prevent costly missteps and can help to position the brand for not only local, but global success.

Deborah Gubernick

Deborah Gubernick is a shareholder at Call & Jensen, APC, where she assists clients in brand protection, maintenance and enforcement. She routinely assists clients in adopting global brand filing strategies and corporate brand usage guidelines. Debbie also conducts IP diligence and negotiates various brand-related agreements. Her enforcement work also includes litigating trademark, copyright and trade secret disputes. For additional information, please contact Debbie at dgubernick@calljensen.com or visit www.calljensen.com.



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Knobbe Martens

What's My Taco Bell Doing in Your Forever 21?

by Jeffrey L. Van Hoosear, Partner, Knobbe Martens &

Jason Weintraub, VP, General Counsel & Secretary at BSH Home Appliances Corp. & former Senior Director, Business & Legal Affairs, Taco Bell Corp.

Some of you will remember a series of television commercials in the 1980s run by Reese's Peanut Butter Cups that used the phrase "you got your chocolate in my peanut butter!" The commercials ended with the tagline "Two great tastes that taste great together." The title of this article refers to two great trademarks – Taco Bell and Forever 21 - that the parties hope will work great together. Taco Bell and Forever 21 recently announced that they have teamed up to offer a line of apparel both on-line and in stores, including Forever 21's stores in Southern California. The apparel will utilize various Taco Bell trademarks, trade dress and related Taco Bell branding. Several items will mimic the look of Taco Bell hot sauce packets. Why would a fast food brand team up with a fast fashion brand? Entering a new territory, in this case the fast fashion industry, elevates the Taco Bell brand by placing it at the center of millennial culture.

Companies are always looking for ways to promote their brand and increase revenue. The conventional route is to open more stores or offer more products in existing stores. But what if the brand owner could get entirely new customers interested in its brand through a completely different product set, while also allowing core customers additional ways to experience the brand? Welcome to the world of trademark licensing, where a company permits a third party to use its trademark, under controlled conditions, for the benefit of the trademark owner. Generally, the licensee will pay a royalty to the brand owner for such use. If Taco Bell wanted to start offering apparel on its own, it would need to conduct market research, engage in product development, undertake product design, source manufacturers, and create a distribution and sales network. Taco Bell is fantastic at doing these things for tacos, but that expertise doesn't necessarily translate to t-shirts. Now consider what happens when Taco Bell engages Forever 21 to do this work – work that Forever 21 is actually very good at!

Trademark licensing leverages the manufacturing, marketing, distribution and sales experience and expertise of third-party licensees to expand the goodwill of a brand. Licensing generates over US \$250 billion annually and has a storied history. For example, back in 1975 Bonne Bell and Dr. Pepper teamed up to produce a Dr. Pepper-flavored lip balm. Over 40 years later, this partnership continues. Other successful licensing relationships include: Ford and Eddie Bauer, Haagen-Daz and Bailey's Irish Cream, Cover Girl and Lucasfilm, and Band-Aid and Hello Kitty. The commonality of these success stories is that each individual brand had a strong brand identity and a loyal consumer base, and co-branding created a synergy that enhanced the goodwill of both players' brands. Let's take a closer look at each of these factors in the licensing context: strong brand identity, loyal customer base and brand synergy.

Strong Brand Identity

Taco Bell and Forever 21 each have well-known trademarks that translate to strong brand identity. The first Taco Bell restaurant opened in Downey, California in 1962, and now serves billions of customers each year at over 7,000 restaurants around the world. It even has a restaurant in Las Vegas that is open 24 hours, serves alcohol, has a DJ, and, in true Las Vegas fashion, hosts weddings. The company has a massive following on social media platforms and was the first major brand to use Snapchat. Taco Bell is not a stranger to the concept of licensing. It has entered into licensing arrangements with Kraft Foods to offer Taco Bell branded food items manufactured by Kraft and sold in grocery stores. Taco Bell has also licensed the DORITOS trademark from Frito-Lay for its Doritos Locos Tacos products.

Forever 21 began as a single retail location in Los Angeles, California in 1984. It has grown into one of the largest specialty retailers in the U.S., with over 600 stores worldwide. The retail chain is known for its trendy and inexpensive fashions. While the retailer originally focused on apparel for women, most of the stores now sell menswear as well, and its website also sells children's apparel and home products.

Loyal Customer Base

A big question in any licensing arrangement is whether the brands' existing customers are loyal enough to follow the brand in a new direction. Both the Taco Bell and Forever 21 trademarks are well-known to a broad array of consumers – some of which may overlap, some of which may not. In this instance, both Taco Bell and Forever 21 are very successful in their

respective fields and overlap in the millennial segment. The overlap in customers will provide each brand with a customer base already familiar with both trademarks. The customers of Forever 21 will benefit from having a new (exclusive) apparel option, and the fans of Taco Bell will be able to express their loyalty in a new medium. The licensing arrangement also helps expose new customers to the brands – those customers that had not thought of shopping at Forever 21 may now want to, and those customers of Forever 21 who may not have been consumers of Taco Bell products, may develop a lunchtime hankering for a Chalupa Supreme.

Brand Synergy

Of course, a licensed product must have also have effective marketing, a good distribution network, and a functioning sales force to be successful. Probably the most important component is that the licensing partners are a good fit for one another. By partnering with a reliable licensee, each party has already done the hard work. They have developed a good brand and created customer loyalty. The well-established retailer Forever 21 is a natural fit for Taco Bell, as Taco Bell enters the apparel market. Each brand is able to leverage the other's core competency, and what is new to one of the licensing parties has been an integral part of the other party's success.

Of course, some brands lack one of the essential elements discussed above - a strong identity, a loyal base, and an obvious synergy – which means they might not be ready for licensing.

In its press release announcing the Forever 21 collaboration, Taco Bell noted that "two like-minded brands, together at the intersection of culture and innovation, are joining forces to make fall wardrobes a whole lot saucier." Taco Bell, with its long history of innovation in fast food, is a natural partner with Forever 21, a leader in fast fashion. It is this synergy that is likely to take an unexpected partnership to great heights - Two great tastes that taste great together."

Jeffrey L. Van Hoosear

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.



Jason Weintraub

Jason Weintraub was recently named VP, General Counsel & Secretary of BSH Home Appliances Corporation, the North American division of Bosch Home Appliances. Before that, he spent over five years at Taco Bell Corp., where he was Senior Director, Business & Legal Affairs. In that role, Jason led the company's transactions legal practice, as well as domestic and international business development functions. Prior to that role, Jason spent over three years at Broadcom Corporation, where he led the business' regulatory compliance and international legal functions and worked on 18 completed M&A transactions. Jason is a graduate of UC Berkeley School of Law and Stanford University. He can be reached at 949.202.9815 or jason.weintraub@bshg.com.





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Stuart Kane LLP

The “Best Efforts” Standard in California: Still a Rolling Stone (and What to Do About It)

You just inked the \$40 million sale of your company’s mixed-use commercial building. The arduous negotiations involved tenant estoppels, entitlements, and complex environmental issues. Both parties have 1031 exchanges driving tight deadlines.

Murphy’s Law applies, so a title problem with a parking easement threatens to derail the deal. The cure: a side-letter agreement. The seller (your company) promises in writing to use “best efforts” to obtain a signed easement deed from the third party whose interest appears to be clouding title. Also, \$400,000 of the purchase price will be held back in escrow, to be released when both parties agree that the seller has satisfied its best-efforts obligation, or in nine months, whichever occurs first.

Anxious to get that \$400,000 released before the 1031 exchange deadline, you call the third party whose interest is arguably clouding title. They: (1) ask why you are calling instead of the current owner (i.e., the buyer); and (2) tell you to pay them \$250,000 or pound sand. You contact their attorney, and hear the same thing. You assert to the buyer that you have made your “best efforts,” and demand release of the \$400,000 escrow holdback.

But the buyer, still unable to obtain title insurance for the parking easement, won’t release the holdback funds (shocking), and demands that you sue the third party for declaratory relief and to quiet title. Your mind flashes with the vision of throwing giant piles of green cash into your Vitamix. And lawsuits are not decided in nine months anyways.

So, in California, what does “best efforts” require? Has the company satisfied its obligation to the buyer, or is more required? At the drafting stage, if adding detailed and precise language about the company’s duties was not feasible, then using the phrase “commercially reasonable efforts” instead of “best efforts” would have provided somewhat greater protection. But if stuck with trying to meet a “best efforts” requirement, the company should at least find ways to demonstrate that it has acted reasonably and in good faith.

The California Legislature Appears to Equate “Best Efforts” and “Good Faith”

Although the California legislature has never directly defined the phrase “best efforts,” some guidance can be found in statute. Notes by commentators on section 2306 of the California Commercial Code (dealing with certain types of contracts) apply a “good faith” standard to “best efforts.” (See Comment No. 1 to the California Code Comments, and 5 to the Universal Commercial Code Comment to section 2306.)

Case Law: No Set Definition of “Best Efforts”

No California case law provides a precise definition and the California Supreme Court has not weighed in. Thus, the standard may vary from district to district, although published cases from any district can apply throughout the state. The Court of Appeal governing Orange County courts has decided that it depends upon the circumstances and is a “factual issue.” (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 136.)

More-specific guidance comes from other California appellate districts, including the importance of considering what was said during negotiations and the parties’ pre-dispute conduct, and also equating “best efforts” and “good faith,” as well as “reasonableness.” As explained in *Baldwin v. Kubetz*: “In this, as in every contract, there is the implied covenant of good faith and fair dealing; that neither party will do anything that would result in injuring or destroying the right of the other to enjoy the fruits of the agreement. [Citations.] The law will therefore imply that under its agreement appellant was obligated in *good faith* and by its *reasonable and best efforts*....” (*Baldwin v. Kubetz* (1957) 148 Cal.App.2d 937, 943 [emphasis added], citing *Brawley v. Crosby Research Foundation* (1946) 73 Cal.App.2d 103, 112, quoted in *Security Mut. Cas. Co. v. Transport Indem. Co.* (1977) 66 Cal.App.3d 1009, 1018, and *Brogdex Co. v. Walcott* (1954) 123 Cal.App.2d 575, 581.)

The Third District Court of Appeal (Sacramento area) has provided the most in-depth treatment, having collected decisions from outside California to reach the conclusion that making “best efforts” requires a party to “use the diligence of a reasonable person under comparable circumstances” but not “every conceivable effort.” (*California Pines Property Owners Assn. v. Pedotti* (2012) 206 Cal.App.4th 384, 394–95 [Pedotti].)

Of course, “best efforts” excludes conduct thwarting or competing with the other party. But as explained in *Pedotti*, it does not mean “every conceivable effort,” nor

does it require the promising party to “ignore its own interests, spend itself into bankruptcy, or incur substantial losses to perform its contractual obligations.” It does require “the diligence of a reasonable person under comparable circumstances, within the bounds of reasonableness” that are “reasonable in light of that party’s ability and the means at its disposal and of the other party’s justifiable expectations” and “does not create an obligation equivalent to a fiduciary duty.” (*Pedotti* at pp. 394-95.)

Although it too has no settled or universally accepted definition, drafters usually prefer the alternative of “commercially reasonable efforts” to “best efforts.” At least it is well-settled in California that “commercially reasonable efforts” permits the performing party to consider its own economic business interests (see, e.g., *Citri-Lite Co. v. Cott Beverages, Inc.* (E.D. Cal. 2010) 721 F.Supp.2d 912, 926), whereas that is not the clear or universal standard for “best efforts.”

How to Respond to That Demanding Buyer

Here, with a drop-dead date of nine months for release of the \$400,000 escrow holdback, the parties clearly did not contemplate prolonged litigation with a third party. Thus, under any reasonable interpretation of “best efforts,” filing a lawsuit is not likely required. But communicating with the buyer about the efforts that have been made, requesting suggestions, and proposing joint efforts could demonstrate performance, or help avoid a dispute.

Attempting to negotiate the \$250,000 demand from the third party, and going back to the buyer to discuss who would pay the negotiated settlement, is a reasonable expectation. Requesting mediation would also help demonstrate both “good faith” and “reasonableness.”

When drafting the agreement in the first place, the best practice is to define the parties’ duties carefully, in detail. But sometimes, keeping the requirements vague and avoiding prolonged negotiations may be necessary—particularly when time or economic pressures weigh heavily against any chance of killing the deal. Nonetheless, using “commercially reasonable efforts,” rather than “best efforts,” is recommended if possible, to at least assure that the company can consider and protect its own economic business interests in the course of performing its obligations.

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California's Low Carbon Fuel Standard Drama Continues

by Joshua T. Bledsoe, Counsel & Kim Farbota, Associate, Latham & Watkins

The California Global Warming Solutions Act of 2006 ("Assembly Bill 32" or "AB 32") mandates a reduction in California statewide greenhouse gas ("GHG") emissions to 1990 levels by 2020. The California Air Resources Board ("ARB") promulgated the Low Carbon Fuel Standard ("LCFS") as one of its primary Emission Reduction Measures to achieve AB 32's 2020 target. In fact, the LCFS is expected to contribute approximately 20% of the required statewide GHG reductions under AB 32.

The LCFS focuses on the transportation sector, requiring a 10% reduction in the carbon intensity ("CI") of gasoline and diesel from 2010 levels by 2020, with CI targets designed to become more stringent each year. The CI of fuels, expressed as grams of carbon dioxide equivalent per megajoule, provides a metric for comparing the relative climate impacts associated with fuels of different types and from various sources. CI is calculated across the full lifecycle of transportation fuels (i.e., well-to-wheel) and includes all GHG emissions associated with producing, distributing, and using the fuel.

Who is regulated by the LCFS? Typically, a producer within California or the importer of a refined/final fuel product is considered the Regulated Party and is subject to LCFS compliance requirements. Suppliers of low-carbon fuels (e.g., electricity, biofuels, natural gas) can "opt-in" to Regulated Party status and generate LCFS credits that can be sold to another party that needs them for compliance.

How does one comply? Each Regulated Party must ensure that the overall CI score for its fuel pool meets or exceeds the annual target for the given year. Excess CI reductions from one type of fuel can be used to compensate for insufficient reductions in another fuel. A fuel that has a CI below the target for a given year will generate LCFS credits on a volumetric basis (i.e., the more low-CI fuel one sells, the more credits one generates). Conversely, a fuel with a CI above the target will generate deficits, also on a volumetric basis. Each LCFS credit represents one metric tonne of CO₂e (MTCO₂e) avoided and each deficit represents one MTCO₂e added — both as measured against the pertinent year's CI target.

In each annual compliance period, a Regulated Party must balance its deficits with credits. A Regulated Party may bank surplus LCFS credits, which never expire. If a Regulated Party accrues a negative balance for a calendar year, and then fails to achieve a positive balance by April of the next calendar year, the Regulated Party falls out of compliance. Regulated entities can comply by lowering the CI of their fuels (e.g., via efficiency improvements anywhere in the lifecycle, or by blending lower carbon fuels); and/or by purchasing LCFS credits from other Regulated Parties.

Potential delays in resolving the case commonly known as *POET I* could create uncertainty regarding the future of the LCFS. For the last eight years, challenges to the LCFS have wound their way through the California courts. In the latest development, the Supreme Court of California issued an order on August 23, 2017: (1) denying ARB's petition for review of the appellate decision in *POET I*; (2) denying ARB's request for an order directing depublication of the associated opinion; and (3) remitting the case to the Fresno County Superior Court.

The *POET I* case arises from petitioner POET, LLC's challenges to the original LCFS regulation adopted by ARB in 2009. On April 10, 2017, the Court of Appeal ruled that ARB had failed to faithfully execute a writ of peremptory mandate requiring it to remedy violations of the California Environmental Quality Act (CEQA) that had occurred during adoption of the original LCFS. In response to a petition for rehearing filed by ARB, the Court of Appeal reissued its opinion on May 30, 2017. The revised opinion narrows the holding to focus more squarely on the

facts of the case, but does not substantively alter the April 10, 2017 opinion.

On July 10, 2017, ARB filed a petition with the California Supreme Court seeking depublication of the May 30, 2017 opinion, or in the alternative, Supreme Court review. In the petition, ARB argued that the decision should be depublished because it creates unnecessary confusion about how agencies and courts should address uncertainty under CEQA. ARB also argued that Supreme Court review could provide clarification regarding the standards by which compliance with a CEQA-related writ should be measured. As is common practice, the Supreme Court's August 23, 2017 order did not provide the Court's reasons for denying ARB's petition and request.

ARB is now required to conduct a CEQA-compliant analysis of the LCFS program's impact on nitrogen oxide emissions (a smog precursor), as directed by the Court of Appeal. It remains unclear whether this analysis will be integrated into ARB's planned 2018 rulemaking to increase the LCFS's carbon intensity reductions and extend the program to 2030, or will be processed separately. With *POET I* presumably resolved, judicial review of the LCFS program is now focused squarely on *POET II*, where petitioner POET, LLC has challenged the LCFS and Alternative Diesel Standard (ADF) regulations adopted by ARB in 2015. As ARB has argued in prior filings, the Court of Appeal's May 30, 2017 opinion could potentially influence the outcome of *POET II*. With the case already fully briefed, a hearing on the merits in the *POET II* case has been scheduled in Fresno County Superior Court for December 21, 2017.

Further delay in the resolution of *POET I* and *POET II* could prolong uncertainty for LCFS market participants, particularly if future ARB administrative proceedings undertaken in response to the Writ, or future writs of mandate flowing from *POET II* (if any), intersect with ARB's planned 2018 rulemaking to increase the LCFS's CI reductions and extend the program to 2030. A lack of regulatory certainty vis-à-vis the LCFS program's implementation, stringency of CI reduction requirements (both pre- and post-2020), and the associated impact on LCFS credit prices collectively would impede the LCFS's primary policy objective: increased investment in low-CI fuel production and deployment.

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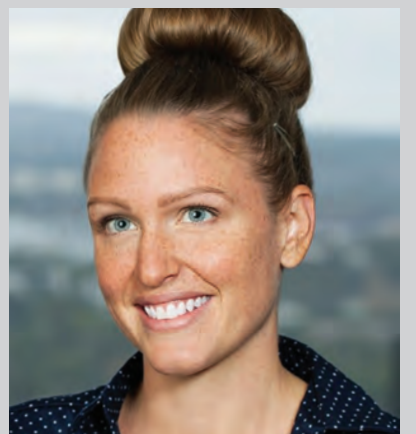
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California Employment Law Bills Sent to Governor's Desk

by Christopher W. Olmsted, Shareholder, Ogletree Deakins

Governor Brown will have until October 15, 2017 to sign or veto several California labor and employment law bills passed by the state legislature.

Ban the Box

AB-1008 prohibits employers from asking applicants about their criminal records. Only after a conditional job offer is made will an employer be able to consider such information.

If an employer intended to deny an applicant employment due to his or her conviction history, the employer would be required to conduct an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justifies denying the applicant the position, considering all of the following factors: (i) the nature and gravity of the offense or conduct; (ii) the time that has passed since the offense or conduct and completion of the sentence; and (iii) the nature of the job held or sought.

In the event that an employer were to decline to hire an applicant with a criminal history, the employer would be required to provide written notice to the employee, and the applicant would have five days to respond. The employer would be required to consider the applicant's submitted information. If an employer made a final decision to deny an application solely or in part because of the applicant's conviction history, the employer would be required to notify the applicant in writing of the final denial or disqualification.

Prohibition on Salary History Inquiries

AB-168 proposes to prohibit an employer from asking for a job applicant's salary history and from considering salary history as a factor in making a hiring decision. The bill would also require an employer, upon reasonable request, to provide a pay scale for a position to an applicant.

Publication of Gender Pay Differentials

AB-1209 proposes to require employers with 500 or more employees in California to collect data showing the difference between the mean and median salary of male exempt employees and female exempt employees, by each job classification or title. Covered companies would also be required to collect the same information regarding male and female members of the board of directors. The information would be submitted to the California Secretary of State beginning July 1, 2020.

The Secretary of State would publish the information on a website if and when the California legislature provides adequate funding for such an endeavor.

Small Business Parental Leave

SB-63 proposes to require small employers to provide unpaid parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. The law would apply to employers with 20–49 employees in a 75-mile radius. Employees would be eligible to take the leave provided that they have worked for the employer for at least 12 months and have worked at least 1,250 hours in the past 12 months for the employer. During the leave, the employer would be required to continue to pay its share of healthcare premiums.

Immigration Enforcement

AB-450 would prohibit employers from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor unless the agent were to provide a judicial warrant. Except as required by federal law, the

bill also would prohibit an employer from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order. This prohibition would not apply to I-9 Employment Eligibility Verification forms and other documents for which a notice of inspection has been provided to the employer.

If enacted, the law also would require employers to provide a notice to each current employee of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection.

Sexual Harassment Prevention Training

SB-396 would expand the requirement that employers provide sexual harassment training to supervisors to include training on harassment based on gender identity, gender expression, and sexual orientation.

Reproductive Health Discrimination

AB-569 would prohibit employers from discriminating against an employee based on his or her reproductive health decisions including the timing or use of any drug, device, or medical service, such as birth control or the decision to have an abortion.

Copies of Injury and Illness Prevention Programs

AB-978 will require an employer to provide a copy of its Injury and Illness Prevention Program to a current employee or his or her authorized representative, no later than 10 business days from the date the employer receives the request.

Construction Contractor Wage Liability for Subcontractors

AB-1701 would hold construction contractors liable for the wage and hour violations of their subcontractors. This bill provides that for contracts entered into on or after January 1, 2018, a direct contractor making or taking a contract in California for the erection, construction, alteration, or repair of a building, structure, or other private work is liable for any debt owed to a wage claimant incurred by a subcontractor at any tier acting under the contractor.

The contractor's liability would extend only to any unpaid wage and fringe or other benefit payments or contributions, including interest owed, but would not extend to penalties or liquidated damages.

Labor Commissioner Retaliation Investigations

SB-306 would authorize the state labor department to commence an investigation of an employer, with or without a complaint being filed, when retaliation or discrimination is suspected during the course of a wage claim or other specified investigation being conducted by the labor commissioner. Current law allows the agency to take action only upon receipt of an employee complaint.

The bill would also authorize the labor commissioner, upon finding reasonable cause to believe that any person has engaged in or is engaging in a violation, to petition a superior court for injunctive relief. The labor commissioner also would be vested with the authority to issue monetary and other relief, including an order to reinstate the employee and pay back wages.

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Chris Olmsted is a shareholder with Ogletree Deakins, an international labor and employment law firm representing management. Mr. Olmsted helps businesses avoid employment-related legal claims by providing California employment law compliance advice. He also defends employers in a variety of litigation matters. He can be reached at chris.olmsted@ogletree.com.



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Can You Fire an Employee for Off-Duty Conduct?

by Marie D. DiSante and Denisha P. McKenzie

Following the 2016 Presidential election, activism on both sides of the political spectrum has been widespread. Individuals are utilizing social media platforms, protests and marches, consumer pressure tactics, and a variety of other public campaigns as an advocacy tool to support their ideologies. Regardless of one's political beliefs, no one can deny that the First Amendment is in full force and effect. The First Amendment however, applies only to the government, not private employers.

California employers should be aware that an employee's off-duty conduct may have an effect on their company's public image. In some cases, the termination of an employee for their off-duty conduct may be warranted. Given today's political climate, employers across the nation have been thrust into the limelight because of the off-duty conduct of their employees. To say the least, a company's response in dealing with the conduct of employees, even while off duty, can affect the overall image of the company, increase or decrease its customer base, and result in legal claims by affected employees for wrongful termination, discrimination, and retaliation. It is hard to know exactly where to draw the line on an employee's off-duty political conduct. There is no doubt that whatever decision the employer makes, it can have long-term effects on its business operations.

There are several statutes under California law which specifically prohibit an employer from making an adverse employment decision based on an employee's exercise of lawful, off-duty conduct, including participation in political activities or political action. See *Labor Code* sections 96 (k), 98.6, and 1102. In fact, employees may be entitled to reinstatement and damages (plus attorneys' fees) for any lost wages incurred as a result of a termination based on lawful, off-duty conduct. *Id.* These laws have the effect of causing employers to second-guess instituting any action against an employee where the conduct at issue occurred off the company's premises during non-working time but harmed the company's reputation. However, taking no action may not be the best course of action in every situation.

To take real examples from recent headlines, what should an employer do when its employee is identified as an active supporter of the KKK and makes the news for violent participation in the Charlottesville march? Do employers have the authority to fire an employee who posts messages on social media which advocate for the murder of persons who voted to support President Donald Trump? Can an employee be fired for a Facebook post which equates Hurricane Harvey as "direct karma" for the people in a state where a majority of its citizens typically vote Republican? Can an employer terminate an employee for a Twitter post which characterizes all White people as "racists" or all Muslims "terrorists?"

What should an employer do with the more innocuous social media post that suggests everyone should #takeaknee or #stand? If an employee says they "stand" in a post, does that mean they support police brutality against African Americans, or that they support the Constitution, or does it mean they want respect shown for the American flag for the people who served in American troops? One could argue a social post of this nature is up to interpretation. The facts are not as clear.

The exercise of lawful off-duty political conduct does not give an employee the blanket right to participate in a racist and incendiary group such as the KKK on the weekends, then interact with members of the company's diverse workforce and serve the company's customer base during the week. Every employer has a substantial interest in ensuring that the employees who represent their companies do not, on their off time, support the murder and destruction of an entire race, political group, or religion. While it is true that various laws are intended to protect off-duty conduct and speech, employers must be able to draw the line somewhere. The continued employment of individuals who advocate for hatred, violence and bigotry (regardless of their political leanings) can be viewed by the public as an official sanction of the employee's off-duty conduct.

Even with the threat of legal claims brought by employees for alleged wrongful termination, *these are risks that employers must sometimes take to preserve the overall, long-term image and success of their company.* Most termination decisions are based on a cost-benefit analysis. Employers should assess what is the risk of firing the employee versus not firing the employee? In making a determination, employers must not gloss over the reality of the harm and detriment imposed by an employee's off-duty conduct. In situations like this, many employees (and plaintiff's lawyers) recognize that the chances are slim that a jury will actually find in favor of a litigant who claims he or she was wrongfully terminated based on their active affiliation with the KKK, promotion and incitement of violence, or expression of racists and bigoted beliefs on the weekends.

Nowadays, there are many debates going on about whether employers have the right to terminate employees for exercising their free speech, their political freedom, or some other pseudo-intellectual argument designed to protect an employee's job despite the fact that he or she did something offensive while off duty. Regardless of the circumstances, each situation should be handled carefully and methodically. Employers should hire competent legal counsel to address these issues when they arise. Part of the analysis must include an assessment of what is: (1) in best interest of the company, (2) the social and political implications of the conduct at-issue, and (3) legal liability risks associated with deciding to terminate or even to keep the employee who engaged in the conduct.

Marie D. DiSante

Marie DiSante co-founded Carothers DiSante & Freudenberger LLP, a labor, employment and immigration law firm representing employers in single-plaintiff and class action lawsuits and advising employers on related legal compliance and risk avoidance. Since 1994, she has served as the Firm Managing Partner and helped grow the firm to five offices throughout California – supported by more than 45 attorneys. In her almost three decades of experience defending and advising employers, she has successfully resolved complex litigation and disputes, ranging from individual claims of discrimination, harassment, retaliation, to wage and hour class actions. To contact Marie, email her at mdisante@cdflaborlaw.com.



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How Lawyers Can Plan for Sustainable Financial Independence

by Kevin DuPree & Mike Jacob, Wealth Management Advisors, Northwestern Mutual Irvine

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:

“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.”

Tax Diversification

While we can't predict the future, most would agree that the current income tax environment will ultimately change. Some investment strategies, such as 401(k) and IRA distributions, can only be taken as taxable distributions, subject to then applicable ordinary tax rates. A portion of an individual's retirement wealth should be protected from the risk of future tax rate increase. Personal planning strategies as well as executive non-qualified planning strategies exist to help allocate resources in the most tax efficient manner possible.

Tiered Asset Allocation

Often overlooked when implementing a financial plan are the numerous asset categories in addition to taxable investments. By spreading your money across many types of assets, you'll be setting yourself up to make the most of your pre- and post-retirement income. Diversifying the types of assets in your financial plan allow the opportunity to include investments in vehicles like defined benefit plans, deferred annuities, Roth accounts and other assets such as permanent life insurance that allows you to build cash value which you can later access; often in a tax efficient manner. Having money allocated to various asset categories can often help mitigate the need to take withdrawals from marketable investments during negative return years. This approach can have a significant impact on the future balance of invested assets.



Kevin DuPree



Mike Jacob

Protecting Your Biggest Asset

Financial planning isn't just about socking 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 your income 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.

Kevin DuPree and Mike Jacob are Wealth Management Advisors at Northwestern Mutual Irvine. They specialize in the professional market, providing strategic and comprehensive advice to help successful lawyers and their families meet their financial goals. All investments carry some level of risk including the potential loss of principal invested. No investment strategy can guarantee a profit or protect against loss.

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Keys to the Kingdom: How Confidentiality Agreements Are Key to Keeping Business Information Secret

by Benjamin A. Nix & Christopher J. Taylor, Payne & Fears LLP

In today's business environment, greater employee mobility and technological advances underscore the need to protect a company's confidential information and trade secrets. Stories of employees departing with confidential information or trade secrets and using that information when they join competitors are commonplace. The FBI recently estimated that trade secret theft costs American businesses over \$13 billion per year. Although companies cannot prevent all such losses, the use of a strong, enforceable confidentiality agreement can be very effective.

Purpose of Confidentiality Agreements

A well-crafted confidentiality agreement can help protect a company's proprietary information and trade secrets by documenting in writing that employees cannot use confidential information or trade secrets outside of work. Employees often do not understand what type of company information they cannot use outside of work. Confidentiality agreements solve this riddle by clarifying the scope of restrictions. Most importantly, confidentiality agreements clarify to departing employees the precise information they are prohibited from using after they leave their employment.

Necessary for Any Trade Secrets Claim

If a company ever intends to file a claim under the California Uniform Trade Secrets Act, implementing a confidentiality agreement is critical. Under the CUTSA (and similar statutes in other states), a company seeking to protect its trade secrets must engage in reasonable steps to maintain the secrecy of the information. Pointing to the existence of a confidentiality agreement helps show reasonable steps were taken. This is precisely what Move, Inc. alleged in its \$2 billion trade secrets lawsuit against Zillow, Inc. In that case, Move alleged its former executives absconded to Zillow with Move's trade secrets, which Zillow then used to inform its acquisition of Trulia, one of Move's competitors. Published reports indicate the matter settled for a staggering \$130 million in June 2016, which demonstrates the value of implementing a solid confidentiality agreement, and the cost of breaching one.

Companies Should Define the Types of Confidential Information Protected

Companies should define confidential information or trade secrets with specificity in their confidentiality agreements. A well-defined agreement helps employees understand precisely what information they are prohibited from using after departure from the company. It is helpful to list items that shall remain confidential that are specific to the business. For example, one should consider listing the categories of information that are protected, such as customer names, contact information, sales history and pricing. It should be clear that any use or disclosure of confidential information during employment for any purpose other than employment is prohibited. It should also be clear that employees are to return the information in whatever form, whether in hard copy or digital format.

Policies Should Address Information on Personal Electronic Devices

Today, it is common for employees to use their personal electronic devices for business purposes. Companies should consider having a separate policy that addresses such situations, often referred to as a "Bring Your Own Device" or "BYOD" policy. A well-crafted BYOD policy protects confidential information and trade secrets. Even if a company does not implement a separate BYOD policy, its confidentiality agreement should cover company-related information wherever it resides, including on an employee's personal electronic device. This is becoming even more critical as companies and their employees use social media to share company information. Thus, companies should craft confidentiality agreements to protect company information used on any social media platform.

Don't Include Unenforceable Provisions

Most companies know that post-departure non-compete provisions in agreements with employees are unenforceable in California except in limited circumstances. But fewer companies understand that blanket prohibitions against customer solicitation after departure are also unenforceable. However, California courts may enforce an agreement prohibiting an employee from utilizing trade secrets to solicit customers after departure. If companies want to prevent former employees from soliciting customers, they must carefully craft non-solicitation provisions to clearly only prohibit soliciting customers using trade secrets. Otherwise, the non-solicitation provision may be unenforceable.

Challenges to Overbroad Agreements Are on the Rise

A novel argument some litigants are raising is that an overbroad definition of confidential information effectively amounts to an unlawful non-compete

agreement, or unfairly restricts an employee's right to engage in protected activity. For example, in *John Doe v. Google, Inc.*, No. CGC-16-556034 (Cal. Super. Ct. Dec. 20, 2016), which is pending in San Francisco County Superior Court, a former Google employee filed a lawsuit under the California Private Attorneys General Act ("PAGA") alleging that Google's confidentiality policies prohibit employees from disclosing unlawful activity to regulators or law enforcement, and unlawfully restrain an employee's right to work after leaving Google, because they are prohibited from disclosing information regarding their wages or the work they performed at Google. While the case is still in the early stages, it appears to be part of a growing trend of legal challenges to potentially overbroad confidentiality agreements.

DTSA and Other Carve-Outs

The new federal Defend Trade Secrets Act requires particular language in employee confidentiality agreements that governs the use of a trade secret or other confidential information. In addition, government agencies have adopted rules restricting companies from the use of confidentiality agreements in a manner that prevents protected disclosure or activity. For example, the Securities and Exchange Commission has pursued enforcement actions against public companies for use of confidentiality agreements that it claims violate federal securities law by impeding an individual from communicating with the SEC about possible securities laws violations. Other agencies have adopted similar rules addressing overbroad confidentiality provisions, including the Occupational Safety and Health Administration, Equal Employment Opportunity Commission, and National Labor Relations Board. Companies should consider including a carve-out in their confidentiality agreements permitting disclosures that are required by these agencies' rules.

Make Sure You Are Protected

If companies want to protect their confidential information and trade secrets, they should implement and enforce confidentiality agreements. But companies must carefully review those agreements to ensure they are up to date, do not contain any illegal provisions, and contain the necessary carve-outs to ensure enforceability. Because so much is at stake, companies should consult experienced legal counsel to review existing policies or to craft new policies.

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The Waning Days of Sunshine in the Securities Class Action Plaintiffs' Paradise

by Jennifer Keller, Founding Partner & Jesse Gessin, Senior Counsel, Keller/Anderle

Every public company's general counsel should know that California courts, rather than their federal brethren, are paradise for securities class action plaintiffs. The number of securities class actions alleging violations of the Securities Act of 1933 ("the '33 Act") filed in California state courts has skyrocketed in the last four years – an astronomical increase of fourteen hundred percent.

Federal Legislation Aimed to Curb Abusive Securities Class Actions

For a time, abusive state court class action filings were stymied by two federal statutes: the Private Securities Litigation Reform Act of 1995 ("PSLRA") and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). While the PSLRA implemented substantive changes related to pleading, discovery, liability, class representation and fee awards, the goal of the SLUSA was to preclude '33 Act cases with fewer than fifty class members from being filed in state courts. These cases are called "covered" class actions. After the SLUSA, removal of covered class action securities cases to federal court became the norm. Yet once in federal court, parties continued to fight over remand to state court. The rub is that the federal courts have ruled unevenly on whether the state courts had subject matter jurisdiction in the first place.

After a Decade-Long Decline, California State '33 Act Class Actions Have Returned

Then came the California Court of Appeal decision in *Luther v. Countrywide Financial Corp.*, 195 Cal. App. 4th 789 (2011). *Luther* was a game-changing decision for securities-focused plaintiff attorneys. *Luther* held that state courts have concurrent jurisdiction over some covered class action claims filed under the '33 Act. The California Supreme Court and the United States Supreme Court declined to review *Luther*, which opened the floodgates. The numbers are telling. In the twelve years before *Luther*, class action claims alleging a violation of the '33 Act were filed in California state court an average of once every two years. After *Luther*, the average number of filings increased to more than seven cases annually, including eighteen filed in 2016 alone.

The United States Supreme Court May End '33 Act Class Actions in State Court

This fall the United States Supreme Court will hear *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Case No. 15-1439 (May 24, 2016). *Cyan* could be the state court "sunset" for the plaintiff securities bar. In *Cyan*, the Supreme Court will squarely address whether state courts lack subject matter jurisdiction over covered class actions. The case was brought after *Cyan*, a networking hardware company, issued an IPO in May 2013. After weaker-than-expected financial results, shareholders filed a class action in California state court alleging *Cyan* made misrepresentations in violation of the '33 Act. Instead of removing the case to federal court, *Cyan* defended on the basis the state court lacked subject matter jurisdiction - and lost every step of the way, including its interlocutory appeal to the California Supreme Court. Given the United States Supreme Court's denial of review in *Luther* a mere six years ago, it was a surprise when that court granted certiorari on the interlocutory appeal. Perhaps the Supreme Court was swayed by the nearly dozen amici curiae briefs filed in support of *Cyan*.

Why Cyan Should Matter to General Counsel

Every general counsel in a securities-issuing company should pay close attention to *Cyan*. The increased litigation of federal securities laws in state courts has raised serious problems for general counsel. First, companies are forced to defend class actions simultaneously in state and federal courts, exponentially increasing litigation costs far above what would be incurred in a consolidated federal case. General counsel have to retain state-by-state specialists who can defend actions in each jurisdiction, as opposed to hiring a seasoned federal practitioner to defend one action nationally. In *Cyan*, a group of law professors filed an amicus brief highlighting a series of California decisions that reached different conclusions than federal courts on the same allegedly misleading statements, which is a frightening scenario for any general counsel. The law professors also recognize how the piecemeal litigation and conflicting rulings among state and federal courts breed forum shopping. General counsel must continuously monitor case law developments across 50 jurisdictions, and hire outside counsel in states where courts are more permissive, as in California. Fractured securities litigation is not just a nightmare for general counsel; it also defies congressional intent to create a predictable, uniform securities class action landscape.

Second, this lack of uniformity in the law makes it difficult to accurately assess settlement value in these actions. An amicus brief filed in *Cyan* by the former Commissioners of the U.S. Securities and Exchange Commission spotlights this problem, arguing that a lack of certainty and predictability in the application of securities laws leads to speculative claims, protracted litigation, and resolutions of little predictive value. The plaintiffs' bar is well aware of this issue. According to the law professors, simultaneous actions have resulted in California state court settlements that are nearly twice as large as those in federal courts.

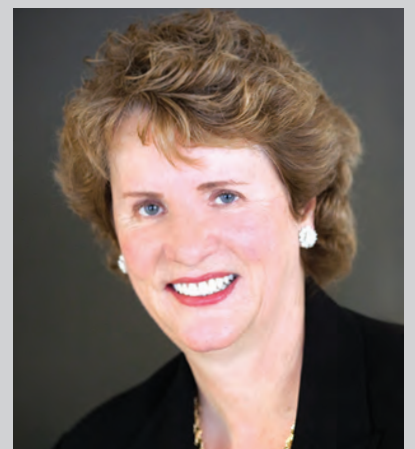
Third, if the class action abuse continues, general counsel may have to confront larger economic problems. The New York Stock Exchange, LLC filed an amicus brief contending that the serious litigation risks presented by the current situation will harm U.S. equity markets and the economy as a whole. General counsel for start-ups may face these looming issues as their companies hesitate to seek new financing through public offerings, for fear of later IPO class action litigation on multiple fronts.

Our Prediction Is a Sunset for '33 Act Class Actions

We foresee the Supreme Court's putting a stop to concurrent jurisdiction on significant '33 Act cases. The current make-up of the Supreme Court is friendlier to business than any court since the 1940s. The grant of certiorari on an interlocutory appeal, a rare event, foreshadows a pro-business result. But perhaps the strongest indicator of Supreme Court intent is the fact that *Luther* was denied certiorari only six years ago. While oral arguments are not yet scheduled, by next summer, general counsel should be welcoming good news in the Golden State and beyond.

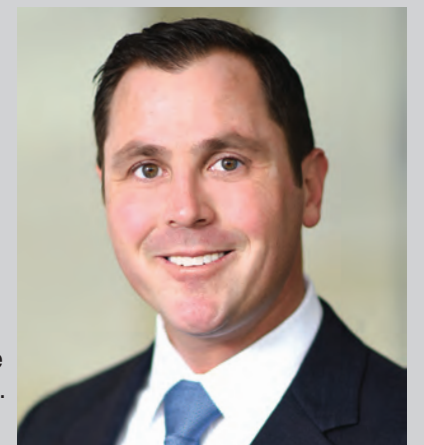
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Fraud Investigations and Litigation Support

by Deborah Dickson, CPA, CFF, MAFF, President,
Smith Dickson, CPAs

General counsel, whether in-house or outside counsel, often find themselves dealing with fraud in their businesses. In these situations, it is crucial to work with a CPA firm that is highly experienced in fraud investigations and litigation support.

Confidentiality is Key

Our work is typically confidential, both inside and outside the company in order to not alert suspected fraudulent employees. Often, we work directly with only the CEO and general counsel, involving others as necessary. It is crucial for us to maintain secrecy so that we can identify if and how fraud occurred, determine its pervasiveness, act quickly to stop it, and provide evidence should the company and District Attorney choose to file charges. Furthermore, many companies that have been victims of fraud wish to maintain secrecy due to damaging publicity.

Recent Examples

A company's CEO suspected that something was wrong because the business was continually underperforming in profitability. He suspected that someone in the accounting department was committing financial crimes, so he needed evidence to not only prove wrongdoing but also to stop the behavior. The company's general counsel asked Smith Dickson CPAs to perform an initial, limited analysis to quickly determine whether fraud had occurred. In two days, our team found over \$350,000 in suspicious transactions. Knowing there was likely more fraud, we recommended an expanded investigation, which resulted in us uncovering over \$2 million additionally stolen.

Another engagement involved a local subsidiary of a foreign company. The parent company had suspected financial wrongdoing and sent internal auditors from overseas to investigate. Smith Dickson was hired due to our forensic investigation expertise. Our work confirmed that the CFO had syphoned over \$200,000 for a car purchase, mortgage payments, and other personal activities. He was a trusted officer of the company and, as it turned out, was a "serial embezzler" who had victimized his previous companies. After serving probation and minimal jail time for his previous crimes, he somehow found employment at our client where he continued to defraud and embezzle. However, his streak ended as our client had him arrested during a board meeting of his next employer! Smith Dickson worked with the DA's office to provide evidence and testimony resulting in partial funds recovery and jail time.

Deborah Dickson

Deborah Dickson, CPA, CFF, MAFF is President of Smith Dickson, An Accountancy Corporation (www.smithdickson.com) based in Irvine. Since 1982, Smith Dickson has provided superior accounting, forensic services, and advice to thriving Southern California businesses. The firm's Litigation Support Services include forensic accounting, expert testimony, intellectual property, fraud and embezzlement, real estate, and trust and estate beneficiary disputes. Ph. 949.553.1020. Website: www.smithdickson.com.



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Protecting Your Assets

Part I: Planning for Disaster

by Garrick A. Hollander, Founding Partner, Winthrop Couchot Golubow Hollander LLP

This is the first of a three-part series of abridged articles, which provide businesses with strategies to protect their assets in case of financial difficulty. Lenders are often the most powerful nemesis of companies in financial distress. This article focuses on maximizing a company's position with lenders while a company is healthy.

Use Financing Vehicles that Fit Your Needs. Evaluate loan costs, use of funds, loan covenants, the likelihood of meeting covenants, and the consequences in the event of a default (monetary or nonmonetary). Negotiate the terms of a loan agreement that minimize the odds of a default, and provides you with the greatest position in the event of default.

When Negotiating Financing Options, Consider the Possibility of Future Financial Difficulty. Financial difficulty is likely to occur at some point. Negotiate (while strong) for protection in case of this very possible scenario. Don't wait until a default occurs - when your company is vulnerable and in no position to negotiate. Negotiate when your company is healthy, and lenders want your business. Here are some tips.

- 1. Be Wary of Loan Provisions that Restrict Your Ability to Manage Your Business.** There is a tendency for business owners to focus on interest rates. Companies should consider the consequences of all terms of a loan or other contract. Be wary of provisions that allow parties to subjectively determine the conclusive effect of a particular act. For example, lenders should not have the ability to unilaterally determine whether a certain act constitutes a default.
- 2. Narrow the Definition of Default.** Minimize the number of events that trigger a default. Make sure any event that triggers a default is defined precisely and narrowly.

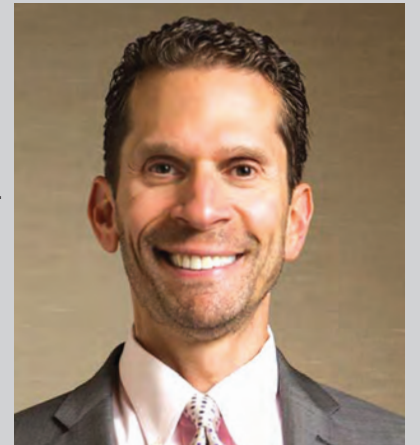
3. Provide Flexibility in Curing Defaults. Extend the time by which your company has to cure a default.

4. Eliminate/Limit Personal Guarantees. Be creative and negotiate the elimination or limitation of personal guarantees.

Conclusion. Never underestimate the need to plan for a rainy day. While financial difficulty is not anyone's goal, protecting against future difficulty should always be a top priority.

Garrick A. Hollander

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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Patent Venue After TC Heartland: Is Your Business Safe From the Long Arm of the Eastern District of Texas?

by **Steve Hanle**, Intellectual Property Litigator, **Stradling & Ryan Lindsey**, Senior Corporate Counsel for IP and Litigation, Edwards Lifesciences

In the era of “patent trolls,” most sophisticated businesses have been sued or at least know that they could be sued for patent infringement in the Eastern District of Texas. After a recent decision by the U.S. Supreme Court known as *TC Heartland*, you probably thought your company would never again be sued in Marshall, Texas, or in other districts where your company is not incorporated or headquartered.¹

Not so fast. While the Supreme Court has clarified that 28 U.S.C. § 1400(b) controls venue in patent cases, there is a relative lack of authority on what constitutes a “regular and established place of business,” and courts are grappling with what that means, particularly in the age of electronic business.

Section 1400(b), the patent venue statute, provides that an alleged patent infringer may be sued where it “resides” or where it “has committed acts of infringement and has a regular and established place of business.” Before *TC Heartland*, the Federal Circuit held that a general venue statute, 28 U.S.C. § 1391(c), modified the patent venue statute so that an alleged infringer could be sued in any district in which it was subject to the court’s personal jurisdiction, **including any district where it committed an alleged infringement.** That construction has profoundly influenced U.S. patent litigation for over twenty years, making the Eastern District of Texas the world’s most popular venue for patent infringement actions, drawing more than 40% of all patent infringement cases in 2015.

In *TC Heartland*, the Supreme Court reversed the Federal Circuit’s expansive interpretation of the patent venue statute and held that Section 1400(b) is **not** modified by Section 1391(c). Patent venue will now be limited to districts where a business “resides” – i.e., the state of its incorporation or headquarters – and those “where it has committed acts of infringement and has a regular and established place of business.” But because patent venue was so much easier to establish under the Federal Circuit’s previous formulation, there is a relative lack of authority regarding the meaning of “a regular and established place of business,” and much of that authority hails from a time before a vast amount of business was conducted electronically, including over the internet.

In June of 2017, the nation’s busiest patent judge, who in 2015 alone picked up more than 1,600 patent cases, waded into the fray. Not surprisingly, Judge Gilstrap’s decision in *Raytheon v. Cray* drew much attention from businesses, patent practitioners, commentators, and, of course, the Federal Circuit.² Judge Gilstrap found that Cray could be sued in the Eastern District, despite the lack of a physical office there, based primarily on the sales activities of a Cray employee within the district. Judge Gilstrap also noted the “jumbled” and “irreconcilable” case law in this area and suggested that the “protean” “forces and directions of the Internet” may further complicate the venue analysis.

Less than three months later, the Federal Circuit reversed Judge Gilstrap’s decision.³ The Federal Circuit first noted that litigants and lower courts are raising with increased frequency the question of where a defendant has a “regular and established place of business,” and recognized the need for greater uniformity on this issue. Emphasizing the statutory language and guided by the statutory history, the Federal Circuit required the following three elements: “(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.”

Significantly, the Federal Circuit’s *Cray* inquiry does not directly consider the *size* of the place of business, the amount of *revenue* generated by the business, or the *nature* of the business being conducted in the district. The court’s emphasis was on the **existence** of such a place of business. Specifically, while the place need not be a named or formal presence in the district, in the sense of a formal office or store, the court requires a *physical* location in the district from which the business of the defendant is carried out. Steady, uniform, and orderly business operation may establish venue, but sporadic, temporary, or singular activity does not. Importantly, the court required that that the *place* be that of the *defendant*, not solely a place of the *defendant’s employee*.

Thus, while *Cray* places limits on the meaning of a “regular and established place of business,” the analysis is highly fact intensive and uncertainty still remains, particularly for businesses operating in an electronic world. Indeed, the only certainty is that litigation on this issue will continue.

For these reasons, responsible businesses should take a break from basking in the glory of *TC Heartland*, and perform a careful assessment of whether they can still be sued for patent infringement in districts other than their home districts and should consider steps to limit that possibility. The obvious starting point is to understand the districts in which a business maintains physical locations, such as office space, a warehouse, a brick and mortar store, and other physical facilities. If maintaining such a physical place makes good business sense, most businesses will live with the risk of being sued in such districts. Businesses should note that

the existence of a regular and established place of business is determined at the time the alleged infringement occurred (provided an action is filed within a reasonable time).

More subtle, however, is the effect of sales employees or representatives in a district that are not officed at a physical location owned or rented by the business. The fact that a business *allows* its employees to work from their home in the district has been found insufficient to establish venue unless the employer owned, leased, or rented any portion of the employees’ home in that district, or controlled or *played a part in selecting the employee’s physical location.* Businesses may consider adding a layer of protection by explicitly stating in agreements with such employees that they are not required to

maintain a physical location in a particular district, but they may do so solely for their personal convenience. Businesses should be careful in deciding whether or not to subsidize or actively facilitate an employee’s location. Businesses should also consider where any physical inventory sold in the district is maintained.

Another example of a business unwittingly subjecting itself to venue occurred in *Snyders v. St. Jude*.⁴ In that case, the defendant argued that clinical trial activities within a district did not subject it to venue because such activities are not acts of infringement under the safe harbor of 35 U.S.C. 271(e)(1). But the court held that this safe harbor is an *affirmative defense*, and that a plaintiff would not be deprived of its chosen venue based on an affirmative defense.

In sum, *TC Heartland* certainly lessened the likelihood of being sued in the Eastern District of Texas and other “unintended” venues. However, patent venue remains far from certain, and businesses should affirmatively assess where they can be sued for patent infringement, and take steps to limit the possibility they will be sued somewhere they would rather not be.

¹ *TC Heartland LLC v. Kraft Foods Gr. Brands LLC*, 137 S. Ct. 1514 (2017).

² *Raytheon Co. v. Cray, Inc.*, Case No. 2-15-cv-01554-JRG (E.D. Tex., June 29, 2017).

³ *In re Cray Inc.*, 2017 U.S. App. LEXIS 18398, 2017 WL 4201535 (Fed. Cir. Sep. 21, 2017).

⁴ *Snyders Heart Valve LLC v. St. Jude Medical S.C., Inc.*, Case No. 4:16-cv-00812-ALM-KPJ (E.D. Tex. Aug. 29, 2017).

This article does not reflect the views of Stradling, its clients or Edwards Lifesciences Inc.

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Which Hat Is Your GC Wearing? How Companies Can Preserve the Attorney-Client Privilege In-House

From crafting business strategy to negotiating substantive deal points, in-house lawyers are becoming increasingly involved in the business aspects of their companies. Although their involvement often benefits companies by bringing a fresh perspective to the table, it can pose challenges in terms of the application of the attorney-client privilege.

Under California law, the attorney-client privilege protects confidential communications between a lawyer and client made in the course of an attorney-client relationship. Given the expanding roles of in-house lawyers, determining whether a given communication was made “in the course of an attorney-client relationship,” and, thus, is protected from disclosure by the attorney-client privilege, is not always straightforward. To answer that question, courts look at which “hat” the in-house lawyer was wearing at the time of the communication. If the in-house lawyer was acting in his or her business capacity, the communication likely will *not* be privileged. Conversely, if the lawyer was acting in his or her legal capacity, the communication likely *will* be privileged if it is confidential and not disclosed to any third parties.

Courts across the nation have fashioned a variety of tests to aid in this determination. They have names like the “clear showing” test (requiring a clear showing that the communication was made in the in-house lawyer’s professional legal capacity), the “primary purpose” test (examining whether the in-house lawyer’s participation was primarily for the purpose of rendering legal assistance), and the “but for” test (the communication would not have occurred but for the company’s need for legal advice).

Whichever test may apply, below are a few practical steps businesses can take to maximize the privilege protection of communications between its corporate personnel and its in-house lawyers:

- ▶ Keep legal advice (and requests for legal advice) separate from business advice

(and requests for business advice).

- ▶ Limit the distribution of legal advice (and requests for legal advice) to “need-to-know” recipients.
- ▶ Clearly label communications that request or transmit legal advice as “Attorney-Client Privileged.” (But be wary of over-designating, as courts have found such designations to be meaningless if they are overused.)
- ▶ Finally, educate business personnel on these issues so that they can take steps to ensure that privileged communications remain privileged.

Todd Smith

Todd Smith’s practice focuses on complex business litigation in state and federal courts, including representation of law firms and lawyers in legal malpractice actions. He also represents companies and individuals in consumer and securities class actions, shareholder and derivative litigation, breach of contract and fiduciary duty claims, financial services litigation, real estate disputes, protection of intellectual property rights, and unfair competition claims. Todd is experienced in all phases of litigation, including trials, arbitrations, mediations, and appeals, as well as regulatory proceedings and internal investigations. Contact Todd at 949.679.0052 or tsmith@umbergzipser.com.



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Company or Employee: Who Owns Intellectual Property?

by Soyeon Pak (Karen) Laub, McDermott Will & Emery LLP

Does your company own all work product (e.g., business plans, data, reports, know-how, software, inventions, and technology) created by the employees or contractors and the intellectual property (IP) rights in them (e.g., copyrights, patents, trade secrets, and trademarks)? Below are three common misconceptions and ways in which they can be addressed.

Misconception #1: “Since the company pays for it, the company owns it.” Even if the company pays employees’ salaries and contractors’ fees, without proper written agreements, the company’s ownership may be limited in the U.S. For employees, while the “copyrights” in a work prepared by an employee within the scope of his/her employment is automatically owned by the company, other IP rights such as inventions and patent rights are typically owned by the employees (*not* the company). For contractors, if there are no proper written agreements, contractors typically own the IP rights even if the company pays the contractors.

Misconception #2: “The agreement says, ‘work made for hire’; hence, the company owns it.” For employees, the result is similar to that of Misconception



Soyeon Pak (Karen) Laub

#1. For contractors, the company may own “certain” copyrights in the work, but the contractors typically own other IP rights.

Misconception #3: “It says, ‘All work shall be the company’s property’ or ‘I agree to assign it to the company’; hence, the company owns it.” This will be likely interpreted to mean that the company may claim ownership in the future, but the company does not own it now.

To address the issues, a company should have each employee/contractor sign an agreement, stating that to the extent not already vested in the company, each employee/contractor hereby assigns all work and IP rights to the company. The magic word is “**hereby assign**” so that the company *at the present time* owns the work and all IP in it.

Soyeon Pak (Karen) Laub is a partner at McDermott Will & Emery LLP. She advises companies on patent protection, IP ownership, licensing, mergers/acquisitions, and litigation. Karen is reachable at klaub@mwe.com or 949.757.7112.

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Common Leave of Absence Mistakes and How to Avoid Them

by Mike Hood, Principal & Office Litigation Manager, Jackson Lewis P.C.

Today in California there is a panoply of laws protecting the disabled, protecting those who file worker's compensation claims, and requiring employers to provide paid sick leave to their employees, and not retaliate against those who take it. These laws create a tangled thicket that employers need to navigate carefully to avoid creating liability. Below are some common problems and ways to avoid them.

First, do not assume that because an employee has exceeded the maximum leave of absence under your leave policy that you may terminate the employee. If that employee has a disability, you may need to extend his or her leave as a reasonable accommodation.

Second, be careful when applying attendance policies that you do not penalize an employee for absences that qualify for Family Medical Leave treatment. Similarly, be careful about excluding such employees from benefits under policies that reward good attendance. Family medical and sick leave laws may prohibit such treatment.

Third, do not assume that because an employee has received a "permanent and stationary" rating in a worker's compensation matter, or has received other restrictions on his or her activity, that the employee may be terminated due to



Mike Hood

such restrictions. Under the ADA and similar laws, you must always assess whether there is a reasonable accommodation that will allow the employee to do the work. The same is true of an employee who applies for and qualifies for disability benefits.

Fourth, remember that employees may not only be entitled to extended leaves, they also may be entitled to intermittent leave under Family Medical Leave laws.

“ Under the ADA and similar laws, you must always assess whether there is a reasonable accommodation that will allow the employee to do the work. The same is true of an employee who applies for and qualifies for disability benefits. ”

Requests for intermittent leave, especially requests in which an employee's hours must be limited, need to be carefully evaluated.

Beware of the employee who is about to be terminated and (perhaps for the first time) tries to excuse poor performance or bad behavior by claiming it was caused by a disability. Such claims must be assessed before imposing discipline.

An employer's human resources department should always be involved in any decisions about employees who have medical problems affecting their work.

Mike Hood is a Principal and the Office Litigation Manager for the Orange County office of Jackson Lewis P.C. He can be reached at Michael.Hood@jacksonlewis.com or 949.885.1360.




CONGRATULATIONS

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on your nomination for the Orange County Business Journal's General Counsel of the Year Award!



Far From 'Concrete'

How the Ninth Circuit May Be Making It Easier for Consumer Class Actions to Stay in Federal Courts

by Adrienne Marshack & Andrew H. Struve, Litigation Partners, Manatt, Phelps & Phillips LLP

Companies and class action defense attorneys jumped for joy in May 2016 when the Supreme Court issued its decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). That opinion discussed a threshold constitutional requirement for being able to bring a lawsuit in federal court: standing (i.e., a “concrete” injury that actually exists, traceable to the defendant, that could be redressed by a favorable judicial decision). The Supreme Court in *Spokeo* determined that the lower courts had not adequately considered whether the statutory violations at issue—incorrect personal facts included on a credit reporting website—satisfied the “concrete” injury requirement. More significantly, however, and to the delight of companies and defense attorneys, the Supreme Court held that a plaintiff could not satisfy the federal standing requirement by alleging “a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement” of the Constitution. *Id.* at 1549.



Andrew Struve

This was an important statement from the Supreme Court. There has been a cottage industry in recent years of class actions alleging technical violations of a federal statute and seeking millions of dollars in aggregated statutory damages. For example, a single text message could cost a company \$500 to \$1,500 under the Telephone Consumer Protection Act. Printing a credit card expiration date on a receipt could cost \$100 to \$1,000 under the Fair and Accurate Credit Transactions Act. Multiply these statutory damages by several thousand, a hundred thousand or even millions of technical violations and the potential exposure to a defendant could be devastating.

The Supreme Court’s decision in *Spokeo* was significant because it meant that a plaintiff could no longer merely allege that she received a text message to which she had not consented, or a receipt with her credit card expiration date printed on it, and then sue in federal court, without alleging some sort of **real** harm to her

beyond the fact that the defendant had violated a statute. Defense attorneys loved quoting the Supreme Court’s language in *Spokeo* to get class actions dismissed at the pleading stage, and met with relative success.

After *Spokeo*, rather than filing these types of class actions in **federal** courts, plaintiffs’ attorneys began filing them in **state** courts, where the same constitutional standing requirements did not exist. A state court defendant could hardly risk the ire of a federal judge by removing the case to federal court pursuant to the statute at issue or the Class Action Fairness Act, telling the district court it had jurisdiction, only to later file a motion to dismiss, essentially saying to the court, “Just kidding; no, you actually don’t.”



Adrienne Marshack

Despite the hopes that *Spokeo* engendered, the Ninth Circuit has slowly but surely been walking back *Spokeo*’s reach. As a result, the effects of recent decisions have once again made it possible for these types of class actions alleging merely technical or procedural violations of a statute to be filed—**and stay**—in federal court. In a series of decisions issued this year, including most recently on Aug. 15, 2017, in *Robins v. Spokeo, Inc.*, 867 F.3d 1108 (2017) (the very same Supreme Court case, now back on appeal following remand), the Ninth Circuit has determined that a statutory violation alone **can be** enough to satisfy the constitutional standing requirement if (1) the specific statutory provision at issue was intended by Congress to protect a concrete interest (rather than just a procedural right), and, if so, (2) the specific procedural violation(s) posed harm, or presented a real risk of harm, to that interest. *Id.* at 113.

This is a time-consuming **and therefore expensive** test. It requires inquiry into the legislative history of a statute to answer various questions. Why was the statute enacted? What rights was Congress trying to protect? Are these fundamental rights that we hold dear or that have long been protected by the law (e.g., reputational and privacy interests)? Does the statutory prohibition have “social value”? Does the statutory violation, in and of itself, pose a risk of harm that “has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit”?

These are not always easy questions to answer. And the Ninth Circuit has recognized, as did the Supreme Court, that purported violations of **different sections of the same statute** may result in different outcomes for standing. In other words, not all statutory requirements are created equal. For example, inaccurate reporting by a credit agency of a consumer’s ZIP code—a statutory violation of the Fair Credit Reporting Act (FCRA)—might not actually create any conceivable harm, whereas inaccurate reporting of education or marital status—also a violation of FCRA—**could**. Not every “trivial and meaningless” statutory violation creates a real risk of harm to a concrete right, the Ninth Circuit has observed, but some arguably “trivial and meaningless” violations do. *Robins*, 867 F.3d at 1116. And in some cases, one can well imagine, meaningfulness—like beauty—is in the eye of the beholder.

So where is the line? That has yet to be determined. The Ninth Circuit’s recent decision in *Robins* observed that it was unnecessary for the court to “conduct a searching review for where that line should be drawn” because the allegations before the court were—at least to the court—clearly on the side of threatening a concrete right sufficient to confer standing.

So what is the takeaway from these decisions? First, companies and defense attorneys have to dial back their excitement over *Spokeo* and the hope it provided of easily disposing of many types of consumer class actions at the pleading stage. Second, companies facing a putative class action in federal court alleging technical statutory violations need to think long and hard about whether they want to expend the time and money necessary to try to get rid of a case at the pleading stage. This would necessitate going down the rabbit hole of legislative history and historic case law to determine whether the provisions of the statute at issue were intended to protect an important and concrete right, and then whether the specific conduct at issue conceivably threatened that right. Third, if a case gets past the pleading phase, companies should consider how these standing requirements might affect class certification, particularly the commonality and typicality requirements. Finally, this may all be academic at the end of the day. If a company finds itself a defendant in a class action in a **state** court that does not have standing requirements similar to those of a federal court, look at the bright side—no one has to expend brain cells thinking about any of this.

Andrew Struve and Adrienne Marshack are litigation partners in the Orange County office of Manatt, Phelps & Phillips LLP. For more information, please contact them at astruve@manatt.com or amarshack@manatt.com.






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Brady Berg - Cylance Inc.
Bernadette Chala - Arbonne International LLC
Alex Coffin - Össur Americas Inc.
Jennifer Davies - Pacific Life Insurance Co.
Robert Davis - Glaukos Corp.
Shannon Dwyer - Providence St. Joseph Health
Amber Enriquez - Earth Friendly Products
Andres Gallardo - Opus Bank
Ursula Guzman - CoreLogic Inc.
Miek Harbur - The New Home Co.
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Sharon Wang - Arbonne International LLC
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Lisa Wright - LIBERTY Dental Plan

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2017 Nominees

Andre Aragon, Counsel Sprint Corp., Irvine

Andre Aragon's practice is focused on marketing and advertising law, providing support to Sprint's prepaid wireless brands in Irvine, where the majority of the client groups he supports are based. Since joining Sprint in 2009, he has seen the wireless industry evolve, both from a technological standpoint and to the role wireless devices play in people's everyday lives. Although this evolution has transformed the role of wireless devices, advertising best practices still prevail and Aragon helps his clients by educating, identifying and addressing potential issues. Rather than saying "no," he prides himself on his ability to collaborate and work with his client groups to find creative solutions and strategies that follow advertising best practices and principles. Based on the numerous recognitions and accolades Aragon has received at work, this collaborative approach is valued and highly appreciated by the clients he supports. Sprint is a communications services company. Sprint served 53.7 million connections as of June 30, 2017.



managing Arbonne's intellectual property estate, overseeing marketing compliance and supporting the Regulatory Team, and global product distribution and expansion. Her accomplishments at Arbonne include successfully steering the organization through a major restructuring of its international subsidiaries, with less than 60 days to manage the restructuring of six subsidiary companies; spearheading patent review and filing of both design and utility patent applications for a new product category for the company – electronic consumer goods; and overseeing the company's ongoing international expansion into strategic markets. Before joining Arbonne, Chala served as the general counsel of American Sporting Goods/AVIA, where she oversaw legal affairs and compliance efforts. Arbonne International LLC creates personal skincare and wellness products.



Shadi Bank, Vice President & Associate General Counsel Quality Systems Inc., Irvine

Shadi Bank joined Quality Systems Inc. (QSI) in 2014. In that time, she has managed all company litigation: securities; IP, including a significant IP victory before the Federal Circuit; and customer and employment related litigation matters. She also successfully resolved numerous complex and high-stakes commercial/contract disputes in-house (i.e., without legal spend), effectively protecting the company from liability and preserving key customer/partner relationships and ongoing revenue streams. In her role, Bank has implemented dispute resolution and service practices and processes to become more proactive and customer-focused, which has resulted in more comprehensive legal oversight into all potential disputes at a much earlier phase and has greatly improved the company's abilities to successfully resolve issues before they lead to litigation. Quality Systems Inc. and its NextGen Healthcare Information Systems subsidiary develop and market computer-based practice management and electronic health records solutions, as well as revenue cycle management applications and connectivity services for medical and dental group practices throughout the U.S.



Alex Coffin, Senior Corporate Counsel Össur Americas Inc., Foothill Ranch

Alex Coffin began his legal career at the Orange County office of Latham & Watkins in 2012. In 2016, Coffin became in-house counsel at Össur Americas Inc. During his short time with Össur, he has led the legal and management integration of two recent acquisitions of Össur's portfolio company investments. Coffin has also led legal corporate development activities at Össur, completing an asset deal in-house and managing several buy-side and sell-side transactions. In 2017, he has been the lead in-house supervising attorney for three material litigation matters, one of which recently ended in a favorable confidential settlement. Coffin takes an active role in supervising and assisting outside counsel in all aspects of litigation. He is highly respected by his outside counsel for his attention to detail and keen strategic decision making. A global leader in orthopaedics, Össur employs the smartest minds and the most advanced technologies to help keep people mobile.



Robert Bello, General Counsel Hughes Marino, Irvine

Robert Bello played an integral role in spearheading SB 1171, a law conceived by Hughes Marino Chairman and CEO Jason Hughes, that requires brokers to disclose whether they are acting as dual agents (representing both landlords and tenants), to prevent conflicts of interest and ensure transparency, which Governor Brown signed into law. Bello also took a leading role with Assembly Bill 1059, which is sponsored by Assemblywoman (former Speaker of the House), Lorena Gonzalez-Fletcher. AB 1059 outlaws dual agency by prohibiting brokers or their agents from representing both the landlord and the tenant in a commercial real estate transaction. Bello has also had a tremendous impact on Hughes Marino. Since joining the firm, he has been instrumental in helping to protect the company and its clients' interests. In addition to reviewing leases and purchase agreements to ensure clients fully understand their legal obligations, he has also overseen all legal issues associated with Hughes Marino's continued growth, including the opening of the newest office in Seattle, Washington. He also oversees the company's Legal Department, which has seen the number of attorneys double in the past year. Hughes Marino is an award-winning commercial real estate firm exclusively representing tenants and buyers.



Jennifer Davies, Assistant Vice President, Counsel Pacific Life Insurance Co., Newport Beach

Jennifer Davies has been practicing defense-side employment law since 1995, and joined Pacific Life in 2015 as an officer and its sole employment lawyer. In her time with the company, Davies partnered with HR in the successful implementation of Workday; created and delivered practical training for managers across the country on leaves of absence and accommodation of disabilities; worked with a small team that formalized procedures for handling, escalating and investigating potential violations of the company's Code of Conduct; and was selected to serve on a committee to review and redesign enterprise end-to-end vendor management. The accomplishment Davies is most proud of is building credibility with senior leadership and being a sought-after resource for employment law matters. To provide value to an organization as in-house counsel, it is essential to be seen as a valued business partner. In-house lawyers must be able to put themselves in the shoes of their internal clients and provide practical, business-centered advice. Davies strives every day to retain that credibility and build relationships with clients to better understand and offer the best solutions for the employment-related challenges they face.



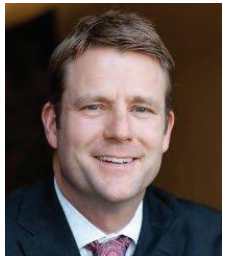
Brady Berg, General Counsel Cylance Inc., Irvine

Brady Berg has served as Cylance's general counsel since the company's inception, first as outside counsel while a partner and co-chair of the Venture Capital and Emerging Companies practice at Mintz Levin Cohn Ferris Glovsky & Popeo, P.C., and now as Cylance's in-house GC. Berg also practiced for nearly 10 years at Wilson Sonsini Goodrich & Rosati in Silicon Valley. In his role at Cylance, Berg has led the company through \$100 million Series D Preferred Stock financing at >\$1 billion valuation. He has also helped grow Cylance's legal team from two to 11 people and guided the company through global expansion and a period of nearly 400% headcount growth. Cylance is revolutionizing cybersecurity with products and services that proactively prevent, rather than reactively detect the execution of advanced persistent threats and malware. The company's technology is deployed on more than 10 million endpoints and protects hundreds of enterprise clients worldwide including Fortune 100 organizations and government institutions.



Robert Davis, SVP, General Counsel & Secretary Glaukos Corp., San Clemente

Robert Davis has served as Glaukos' SVP, general counsel and secretary since June 2015. Davis has directed all of the legal affairs for Glaukos during a period of dramatic growth and expansion. Glaukos is currently the fastest-growing profitable public med-tech company in the United States – with 16 consecutive quarters of at least 40% year-over-year growth in net sales. During his tenure, Davis has been instrumental in helping the company expand its global presence, establishing 14 international subsidiaries, which has helped contribute to the company's 87% year-over-year growth in international sales. This growth has driven Glaukos to expand its employee workforce, physical facilities and its commercial organization. Davis has played a key role in helping the company expand in each of those areas. He led the company's effort to increase its physical footprint in Orange County to 80,000+ square feet in connection with a re-location of its corporate headquarters and manufacturing operations to San Clemente. As the first general counsel for Glaukos, Davis has been tasked with establishing a Legal Department; overseeing its growth; integrating its application within the business organization; and supporting the board, the executive, sales, engineering, operations and regulatory teams.



Bernadette Chala, SVP & General Counsel Arbonne International LLC, Irvine

Bernadette Chala joined the Arbonne team in 2012, supporting the company's Legal and Compliance Teams, first as the corporate counsel and now as senior vice president, general counsel. Chala's responsibilities include overseeing Arbonne's day-to-day legal affairs and direct sales compliance,

Shannon Dwyer, Executive Vice President/General Counsel Providence St. Joseph Health, Irvine

Shannon Dwyer has always exhibited talent and professionalism in her role. This past year, these attributes were evident as she provided legal and strategic expertise as general counsel to St. Joseph Health when it underwent one of the largest non-profit transactions in state history. Dwyer was central to the coming together of St. Joseph Health and Providence Health & Services. The combination resulted in a new organization, Providence St. Joseph Health, which has 50 hospitals and 100,000 employees spanning the West





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Robinson Calcagnie, Inc. represents plaintiffs in cases involving catastrophic injury, wrongful death and consumer rights.

2017 Nominees

Coast from Alaska to Southern California, and including parts of Montana, Texas and New Mexico. Dwyer worked with her Providence counterparts for more than a year. Both focused on attaining the best outcome for the communities served by the organization, as well as their employees and physicians. And although the transaction was certainly the most significant the organization had ever experienced, everyone confidently predicted a successful outcome because Dwyer was helping lead the effort. A values-driven professional, Dwyer was also instrumental in the organization's coming together with Hoag two years earlier. Each step of the way, Dwyer provided legal and strategic advice to senior management, the board of trustees, and a board subcommittee dedicated to evaluating the transaction.

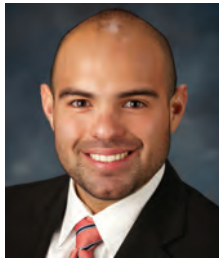
**Amber Enriquez, General Counsel
Earth Friendly Products, Cypress**

Amber Enriquez serves as general counsel and assistant corporate secretary for Earth Friendly Products, a privately held American manufacturer of environmentally friendly cleaning products. Since her graduation from Chapman University Fowler School of Law, she has quickly risen to direct legal strategy and manage legal operations for the company's four U.S. manufacturing facilities and global sales office in Greece. With nationwide operations and worldwide distribution, Enriquez is consistently learning and growing in her capacity as general counsel, and is one of the key executives tasked with taking the company to new heights. Enriquez reports directly to the company board of directors and CEO regarding high-level legal and business matters, providing senior management with advice on all legal issues, risks and threats facing the company while recommending best direction and courses of action. As GC for an established industry leader, she balances manufacturing needs with the company's mission to "provide the highest quality cleaning products that are safer for people, pets and the planet, made sustainably with exceptional performance, price and convenience."



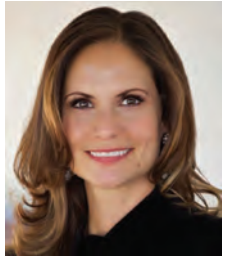
**Andres Gallardo, Vice President, Assistant General Counsel/GC, PENSICO Trust
Opus Bank, Irvine**

Andres Gallardo joined Opus Bank, a California commercial bank in 2012, and serves as the bank's first vice president and assistant general counsel, and as general counsel of Opus Financial Partners LLC, Opus Bank's wholly owned broker-dealer subsidiary; Opus Equity Partners LLC, Opus Bank's private equity arm; and PENSICO Trust Company LLC, Opus Bank's wholly owned non-depository trust and self-directed IRA alternative custodian subsidiary. Gallardo joined Opus Bank when it was an institution of approximately \$2.4 billion in total assets. As of June 30, 2017, Opus Bank is \$7.7 billion of total assets, \$5.2 billion of total loans and \$6.3 billion in total deposits. Gallardo has been an integral part in the growth of Opus Bank. The bank has grown both organically through loan and deposit growth, as well as 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 10 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.



**Ursula Guzman, Senior Principal, Associate General Counsel
CoreLogic Inc., Irvine**

Ursula Guzman is the chief employment counsel for CoreLogic. In her role with the company, she has helped resolve all major employment conflicts and employment issues for 6,000+ employees. Guzman manages CoreLogic's pro bono program and all of the in-house attorneys who are involved in the program. In the community, she is a member of the OC Bar Association and leads numerous events to help educate the legal community. CoreLogic is a leading provider of consumer, financial and property information, analytics and services to business and government.



**Miek Harbur, General Counsel
The New Home Co., Aliso Viejo**

The New Home Co. is a new generation homebuilder focused on the design, construction and sale of innovative and consumer-driven homes in major metropolitan areas within select growth markets in California and Arizona. New Home's focus on quality, its passion for the customer and its people-centered culture are the key differentiators for this company in the homebuilding industry. Miek Harbur became the general counsel of The New Home Co. in January 2016 after spending four and a half years as a corporate associate at Gibson, Dunn & Crutcher, making her one of the youngest general counsels of a public company in Orange County. She is also the company's corporate secretary. As the company's first general counsel, Harbur has built the Legal Department from the ground up. She has instituted policies and procedures on everything from SEC compliance, board governance, ethics training, instituting a risk management function, insurance placement, real estate acquisition risk guidelines, litigation management and outside counsel management. Due to her corporate background, she has transformed the company's SEC compliance, which was previously entirely outsourced, into a well-functioning relationship between Accounting and Legal.



**Erin Heller, Vice President Legal (Global Labor, Employment & Legal Operations)
Western Digital Corp., Irvine**

Erin Heller has successfully built out and managed two significant functions at Western Digital Corp. – the Global Employment Law and Legal Operations Functions. Heller is the lead employment attorney for worldwide activities for the publically traded, Fortune 200 company with annual revenue of \$19.1 billion, net income of \$397 million for fiscal year 2017, and 70,000+ employees worldwide. She oversees all labor and employment issues, including all pre-litigation and employment litigation matters, on a global basis. She manages a significant budget (the entire global legal organization) and works closely with the Finance Department on forecast and actual spend for the entire global legal team. Her other responsibilities include vendor management, contract management, systems and tools, playbook and people management issues for the Legal Department. Western Digital is an industry-leading provider of storage technologies and solutions that enable people to create, leverage, experience and preserve data.



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Amber Enriquez

General Counsel | Earth Friendly Products

for her legal leadership at Earth Friendly Products as they strive to make green cleaning an affordable option. Her nomination for the *Orange County Business Journal's* 2017 General Counsel Awards is well-deserved and we are proud of her many accomplishments.

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



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



Representation of Foundation Building Materials in twelve strategic acquisitions for aggregate consideration in excess of \$155,000,000.



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



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



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.



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



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2017 Nominees

Jennifer Ishiguro, EVP, Chief Legal Officer & Secretary Gateway One Lending & Finance, Anaheim

Jennifer Ishiguro is the first legal executive of Gateway One Lending & Finance LLC, an auto finance company that is a subsidiary of TCF Financial Corp., a publicly held bank holding company with approximately \$22 billion in assets. Her responsibilities include overseeing the Legal Department, managing company board meetings, advising executive management on strategic initiatives and best practices, and working closely with parent bank executives. Becoming the first general counsel for Gateway One, Ishiguro was the first woman and minority executive of the company. She leveraged her leadership experience at Toyota – where she managed six of the 17 attorneys in the Legal Department and led a cross-functional business team which performed a five-year market assessment and recommended strategic initiatives to executive management – and applied them at Gateway One, a smaller, growth-stage company. Given her deep understanding of the auto finance business, she represents Legal with a seat at the table with Gateway One's other executives, helping to formulate the company's goals and strategic objectives.



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

Monica Johnson joined Ventura Foods in 2012 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 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. Ventura Foods has nearly 3,000 employees in facilities across the nation and continues to expand through mergers and acquisitions and international growth. Highlights of her achievements 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 employees; and reducing company purchasing expenditures for three consecutive years. Ventura Foods is a privately held manufacturer and distributor of branded and private-label food products.



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+ offices throughout the United States and various international locations. She is the labor and employment attorney for several business lines with operations in the U.S. and Canada. She is responsible for a variety of legal issues including advice and counsel, developing key policies and procedures, conducting training, investigating high-risk issues, managing state/federal charges and audits, preparing agreements, negotiating resolution of matters, and handling a high volume of lawsuits ranging from single plaintiff to class actions. She also provides key strategy and risk assessments for ABM executives and serves as the lead representative at all stages of litigation. 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.



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

Bruce Larson joined Advantage Solutions in 2014. He was originally brought on to serve as in-house employment counsel, but soon thereafter, he was appointed as litigation counsel responsible for managing all the company's litigation matters. In light of his expanding role within the company as its lead litigator and experience leading such company initiatives as affirmative recovery, record retention and a wide variety of corporate matters, he was promoted to assistant general counsel in 2016 and then was quickly promoted again to vice president and assistant general counsel in 2017. Prior to Larson joining Advantage, the total amount paid out in legal settlements on employment cases was in the seven figures. By the end of 2015, Larson reduced that number by 64%. In 2016, he made additional gains, further reducing settlements and judgments by 43% year over year. During his time at Advantage, he has focused on making litigation a revenue generator, rather than strictly a cost center. Within the short period of three years that Larson has been with Advantage, he has achieved over \$5 million in affirmative recovery. Advantage Solutions is a leading sales and marketing agency.



Michael Lavin, EVP & Chief Legal Officer Consumer Portfolio Services Inc., Irvine

Consumer Portfolio Services (CPS) is a public finance company. Michael Lavin, its executive vice president and chief legal officer, is part of a small executive team that accomplished an incredible turnaround in an industry decimated by the recession. Lavin joined CPS in 2001 as the company was just emerging from a tough industry down-cycle. From 2001 through 2007, CPS acquired three competitors, increased monthly loan originations to over \$120 million, and pushed the total managed portfolio to over \$2 billion. In 2009, when Lavin was offered the position of senior vice president and general counsel, many viewed this as a dubious offer. In 2007, the company had originated over \$1.3 billion in auto loans, and had a stock price near \$10/share. By 2009, however, CPS had originated only \$9 million in auto loans, and its stock had dropped to 25 cents. Lavin was offered positions in the legal departments of several stable companies. However, he chose a different path. Lavin believed that when you are presented with difficult challenges, you should rise to meet them. CPS has emerged stronger and more dominant in its sector.



Richard LeBrun, 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.



Troy McHenry, EVP & General Counsel HCP Inc., Irvine

HCP Inc. is 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 more than \$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 truly 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% (\$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, SVP & General Counsel BJ's Restaurants Inc., Huntington Beach

Kendra Miller joined BJ's Restaurants six and a half years ago. 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 also a director of one of BJ's nonprofit 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.



Karen Morao, Counsel, Consumer Litigation Hyundai Motor America, Fountain Valley

Karen Morao is the counsel for Consumer Litigation at Hyundai Motor America (HMA). Before taking on this position, Morao was a partner in Dorsey & Whitney LLP's Commercial Litigation Group, representing clients throughout the U.S. and internationally in complex business litigation and arbitration. She also gained extensive trial experience as a Deputy District Attorney through the OCDA Trial Attorney Partnership program. Morao serves as head of Hyundai Motor America's Warranty Litigation Group, pursuing aggressive representation of HMA and cost-effective resolution of warranty litigation matters. She also created innovative cost-saving measures, including implementing new internal procedures to reduce defense cost and reduce overall case volume. Hyundai Motor America is a wholly owned subsidiary of Hyundai Motor Co. Hyundai vehicles are distributed throughout the United States by Hyundai Motor America and are sold and serviced through 835 dealerships nationwide.



Shawheen Moridi, General Counsel MedXM, Santa Ana

Shawheen Moridi's duties at MedXM go beyond the typical GC duties. In addition to his legal responsibilities, Moridi oversees the Finance and Human Resources departments and has a direct team of 40+ employees. During his tenure, he has been instrumental in the overall strategy of the company, and has seen the number of employees and contractors quadruple in size. He has also managed the company's legal risk and has successfully dealt with high-profile lawsuits, including a whistleblower lawsuit that involved many of the nation's top healthcare insurance companies. Under his leadership, the company's legal exposure is at an all-time low. In HR, Moridi oversaw the massive expansion of the company over the past few years including the hiring of 2,000+ employees and independent contractor providers. MedXM's revenues have grown exponentially, and Moridi is responsible for the growth and budgets. He's been behind the expansion of the office in sister locations. His conceived expansion in Oklahoma will create 400+ jobs over the next five years. MedXM is a national leader in the design and implementation of preventative care technology and in-home health risk assessments for the purpose of care management.



Aaron Mortensen, SVP & General Counsel International Education Corp., Irvine

Aaron Mortensen joined International Education Corporation (IEC) in March 2013 at a particularly difficult time for the company. In addition to a number of pending lawsuits against the company, including consumer and employee class actions, there were several personnel changes at the senior leadership level, and IEC had been operating without a general counsel for a number of months when Mortensen joined. At the time Mortensen joined IEC, the career education services industry as a whole was in a period of serious transition and under attack from a variety of sources. Despite having no prior in-house counsel experience, Mortensen handled the lawsuits and worked with senior leadership to get the company back on track. He also managed additional areas including insurance coverage, risk management and real estate, lowering costs and potential risk while improving efficiency. Mortensen helped to develop new policies and practices to strengthen the company's compliance footing. IEC owns and operates accredited, post-secondary colleges at 30 campuses throughout the United States, preparing students for careers across a wide range of vocational occupations.



Guthrie Paterson, EVP, Operations & General Counsel Trace3 LLC, Irvine

Trace3 is a leading technology solutions provider serving Fortune 1000 clients. At Trace3, Guthrie Paterson has broad responsibility for finance, legal, operations, sales operations and corporate development efforts. In these roles, he helps to drive revenue growth and scale a rapidly growing operational platform – while simultaneously reducing the company's overall risk profile. During his tenure, Trace3 has grown from \$100 million revenue and 100 employees to \$550 million revenue and 400 employees. Recent accomplishments include completing a strategic investment by H.I.G. Capital, working with strategic distribution partners to support the company's rapidly growing business, and partnering with sales and engineering leadership to drive increased revenue. Previously, Paterson served as GC for Comtex News Network, a leading provider of online real-time news and finance content solutions. Prior to Comtex, he was a senior M&A attorney in the New York and Los Angeles offices of Jones Day, an international law firm.





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- Securities Litigation
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- Patent Litigation
- Professional Liability Defense
- Employment Litigation
- Bankruptcy Litigation
- Trade Secrets

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2017 Nominees

Wade Pyun, Vice President & Senior Corporate Counsel

U.S. Bank, Irvine

In his capacity as consumer regulatory counsel for U.S. Bank, Wade Pyun has devised controls to ensure that the Home Mortgage division makes the necessary operational adjustments in response to applicable regulatory changes. This systematic approach, which was adopted in 2011, impacts 3,400 employees across the Home Mortgage division's 19 loan servicing sites/satellite offices, and affects the 2.27 million loans that comprise its \$56 billion residential mortgage portfolio. Over the past six years, Pyun has led a team that has provided coverage on more than 900 regulatory changes that implicated U.S. Bank's residential mortgage servicing and default management practices. Pyun also had a role in designing a regulatory change management framework, which has been subject to, and has withstood the highest levels of internal audit and external exam scrutiny. Minneapolis-based U.S. Bancorp, with \$464 billion in assets as of June 30, 2017, is the parent company of U.S. Bank National Association, the fifth largest commercial bank in the United States.



James Schindler, SVP & Assistant General Counsel

Masimo Corp., Irvine

As a senior leader of Masimo Corp., James Schindler's 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. Some of Schindler's most notable accomplishments include, but are not limited to, leading a project to get the Mexican government to lower Masimo's injury risk factor for its manufacturing operations in Mexico, saving the company millions of dollars per year; leading a project to change zoning of the property where the company's headquarters is located, helping Masimo continue its rapid expansion in Irvine; and spearheading the acquisition of a significant and highly regulated corporate asset, ensuring the investment results in expected benefits.



West Seegmiller, Attorney

West Alliance Injury Lawyers, Newport Beach

Former California State Pro-Tem Judge and Attorney West Seegmiller has earned a sterling reputation for seeking justice for all. His courtroom opponents during his 30+ year career have included such titans as Coca Cola, Southern California Edison and Rockwell International. Justice requires that an attorney invest his time, energy, experience and thoroughness so that no stone is left unturned. By adopting that philosophy, Seegmiller says clients enjoy the best outcome, whether that means the case is litigated in the courtroom or a settlement is reached pre-trial. West has even built an actual courtroom in his law offices, where he hires mock "juries" to hear his cases pre-trial, gaining their feedback and insight. He then shapes his arguments, so that when he tries the case in front of an actual jury, little is left to chance. In addition to running five offices in California and Nevada, Seegmiller travels the country teaching law students to mediate before litigating in the courtroom. Doing so will help unplug the backlog of cases besieging the court system.



Sheniece Smith, Associate General Counsel

Children's Hospital of Orange County, Orange

Sheniece Smith has been with Children's Hospital of Orange County (CHOC) for almost nine years, rising from the department assistant to her current role. Although Smith had her paralegal certificate, she joined the CHOC Legal Department as the administrative assistant to get her foot in the door. In that role, Smith established the department's filing and tracking system. With encouragement from CHOC management, Smith went to law school while continuing to work for CHOC. After law school, Smith immediately took on the position as associate counsel. As associate counsel, Smith successfully managed and hired other legal staff, developed the organization's contracting policy, and started the legal summer clerk program where she trains and mentors one to two clerks each summer. In 2014, Smith was promoted to associate general counsel. At the request of CHOC's CEO, Smith spearheaded the CHOC Human Resources Steering Committee to implement pertinent changes in the organization to create a better work environment for CHOC associates while complying with the stringent California laws. Most recently, Smith led a multidisciplinary team to launch the organization's telemedicine program, which will greatly expand CHOC's ability to positively impact medical care for children in other counties.



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 & Chief Legal Officer

Parex USA, Anaheim

In his role at Parex USA, Matthew Syken aided his department in utilizing new compliance procedures, including auditing of vendors and partners to ensure they also followed all safety measures and conformed with local and national laws. Further, he helped to overhaul the company's corporate governance and re-stated in totality all the bylaws and governing documents. Finally, he instituted a full eBilling (and eContract) tracking system, which led to better efficiency in monitoring outside counsel; not solely on costs, but to monitor the company's cooperation and attentiveness to outside counsels requests. These efforts have increased efficiency to a great extent; decreased litigation by nearly 50% in just the past year, while also starting and/or enhancing some of the most rigorous compliance procedures in the industry. ParexUSA Inc., a California corporation, is a subsidiary of ParexGroup, S.A., one of the



world's leading manufacturers of specialty solutions for the construction industry. ParexGroup spans 22 countries, employing 4,000 professionals across 66 manufacturing facilities and nine R&D centers.

Franco Tenerelli, General Counsel

Landsea Holdings Corp., Irvine

Within the past five months, Franco Tenerelli has spearheaded more than a quarter billion in transactions, including a \$63-million sale of a single planning area within a master planned development to a public homebuilder, to be developed into 136 townhome cluster units; a \$120-million purchase of land, entitled for single family homes, which involved land banking two of the four planning areas with a Southern California private equity partner; signing up several other purchase agreements for both the acquisition of prime real estate in Orange County and other primary California markets and the sale of certain planning areas within master planned communities currently owned by Landsea in Orange County; and multiple eight- and nine-figure financings. Landsea Holdings Corp. 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.



Robert Tennant, Vice President & General Counsel

Veros Credit, Santa Ana

Veros Credit is the benchmark in the world of automotive financing. The company acquires and services non-prime and sub-prime motor vehicle installment contracts, giving disadvantaged individuals an opportunity to build or reestablish credit. Robert Tennant has worked to elevate the role of counsel in the company by building and managing the Compliance and Legal departments – hiring attorneys and staff; implementing an internal framework for handling litigation in-house, which has saved the company millions of dollars; and bringing other departments, such as Bankruptcy and Compliance under his oversight. Tennant is a recognized attorney in the specialized field of consumer automobile finance, helping to navigate the complex regulatory minefield that includes fair debt collection, fair lending, fair credit reporting statutes and Lemon Laws.



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 helped guide the organization through its initial public offering in February 2017. Significant deals that Tilley helped to 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. Within the last 12 months, her accomplishments include, the private placement of \$375 million of 5.875% senior notes due 2024; redemption of 8.250% senior notes due 2020 of approximately \$215 million; and the adoption and shareholder approval of a shareholder rights plan designed to protect \$500+ million of tax assets. Ever 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.



Jenny Wang, General Counsel

MerchSource, Irvine

Jenny Wang has been a critical member of MerchSource's Acquisition Team for two marquee brand purchases within four months of joining the business. MerchSource acquired both FAO Schwarz and Sharper Image Brands in December 2016. Recently, MerchSource closed on another acquisition – Randa Novelty Gifts – with Wang serving as a primary player in the acquisition. Additionally, Wang manages a growing Legal Department and oversees all litigation, IP, corporate and employment matters. While managing the day-to-day operations, major acquisitions and building a high-performing team, Wang routinely works to build partnerships throughout the organization. MerchSource ideates, designs, sources and distributes consumer products to retailers in the United States.



Sharon Wang, Contracts Counsel

Arbonne International LLC, Irvine

Sharon Wang joined Arbonne just over 15 months ago and serves as contracts counsel for the in-house Legal Team. Wang is primarily responsible for the drafting, negotiation and review of commercial contracts for Arbonne, its sister subsidiary Levlad LLC and their parent company Natural Products Group Inc. She provides internal legal services to all departments within the growing company, including IT, Marketing, Product Development, Supply Chain, Events, Distribution and International. In addition, she supports the associate general counsel and chief legal officer in advising business partners on risk mitigation, managing outside counsel, and expansion into new foreign markets. In the past year, Wang implemented a company-wide trademark licensing program that will both protect Arbonne's brand and generate an additional source of revenue. She also counseled Levlad in securing key, strategic relationships with several large retailers in North America. Arbonne is a 37-year-old manufacturer and distributor of personal care and wellness products crafted with premium botanical ingredients and innovative scientific discovery.



Jason Weintraub, Director, Strategic Partnerships & Business Affairs

Taco Bell Corp., Irvine

Jason Weintraub is a senior legal and business executive for global quick-service restaurant company, Taco Bell Corp., with approximately \$10 billion in brand revenue and 7,000+ restaurants. Weintraub leads the Legal Department's transactions function and Taco Bell's Strategic Sourcing & Procurement

2017 Nominees

Department. He is responsible for identifying, structuring and negotiating complex commercial transactions; M&A deals; and key brand partnerships across all business units. Recently, Weintraub drafted and negotiated agreements with 10+ vendor partners to launch Taco Bell's ground-breaking mobile ordering and payment application and award-winning e-commerce platform. He structured and negotiated franchisee partnership deals to launch the Taco Bell brand in nine new international markets and grow annual unit development outside the U.S. by more than 600% in just two years. Weintraub also manages the Strategic Sourcing and Procurement Contracts Team, delivering \$200 million in cost savings over past three years.



**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 GC position in April, 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.



**Beverly Wittekind, Vice President & General Counsel
The Ensign Group Inc., Mission Viejo**

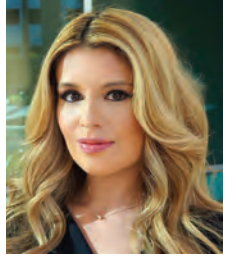
Beverly B. Wittekind has been vice president and general counsel at The Ensign Group Inc. since November 2, 2009 and has served in the same role for Ensign Services Inc., a Service Center subsidiary since 2002. The Ensign Group Inc. is the parent company of the Ensign™ group of skilled nursing, rehabilitative care services, home health, home care, hospice care and assisted living companies. Through its subsidiaries, Ensign operates approximately 222 facilities and 41 home health, hospice and home care agencies. Wittekind has provided legal counsel to the company almost since its inception, and in 2007 helped guide the company through a public offering. Already in 2017 under Wittekind's guidance and leadership, Ensign, through its operating facilities, has added four stand-alone skilled nursing operations, six stand-alone assisted living operations, one campus operation, one home health agency and one hospice agency. Wittekind has worked to make the acquisition of those facilities a smooth one, and to implement the high caregiving and ethical standards that are hallmarks of the Ensign Group.



**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 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 3+ 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.



In-House Legal Team Nominees



Alorica, Irvine

Tania King, Chief Legal Officer & Chief Compliance Officer
Mark Phariss, Deputy General Counsel: Corporate, Regulatory & General Litigation
R.J. Timmons, Associate General Counsel: Special Projects, Mergers & Acquisitions
Sara Komen, Associate General Counsel: Regulatory & Compliance Law
Brian McGrath, Associate General Counsel: Employment Law
Jason Malmberg, Associate General Counsel: Contract Law & Operational Efficiencies
Christian Brito, Associate General Counsel: Leads Legal Team in Latin America Region

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Manatt is pleased to support the Orange County Business Journal 2017 General Counsel Awards and congratulates all of this year's nominees, including

**Gabriel Steffens, Consumer Portfolio Services Inc.
and Banc of California.**

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2017 Nominees

Joy Shulruff, Assistant General Counsel: Domestic & Procurement Contracts
Scott Taylor, Assistant General Counsel: Domestic Client & Procurement Contracts
Jon Bello, Assistant General Counsel: Leads Legal Team in Asia Region
Jung Choi, In-House Counsel: Corporate Law
Luanne Zolczynski, Compliance Manager
Keila Spence, Legal Operations Manager
Katherine Moscato, Executive Assistant

As the largest provider of customer experience solutions to the U.S., and third largest in the world, Alorica is in the people-to-people business, solving problems for tens of millions of people a year. Inspired by Alorica's vision, the company's Legal Department crafted its own mission statement — "Service with a Pop!" They aspire to be "Proactive, Outstanding Partners" (POP) within the company, identifying opportunities for improvement and taking the initiative to create value for their internal stakeholders. With this mission in mind, the Legal Team restructured itself, knowing the better they partnered with other departments, the better Alorica could serve its clients. Restructuring an entire department is never easy, but in this case it was made more difficult by the company's recent acquisition of a competitor, Expert Global Solutions (EGS), in July 2016. That transaction more than doubled Alorica's size from 40,000 employees to 92,000 — and the newly acquired team members were based out of 70 locations across 11 countries. The scope of the company's legal and compliance responsibilities grew from eight to 19 countries. However, in less than five months, the team launched their new framework, elevating their service excellence across the globe.



Banc of California, Santa Ana

John Grosvenor, EVP, General Counsel
John Madden, EVP, Deputy General Counsel: Lending
Angelee Harris, EVP, Deputy General Counsel: Corporate
Manisha Merchant, EVP, Deputy General Counsel: Banking
Brian Farrell, SVP, Associate General Counsel
Suzanna Winslow, SVP, Associate General Counsel
Julia Sumida, SVP, Associate General Counsel
Joshua Que, SVP, Associate General Counsel
Irene Chung, Vice President, Assistant General Counsel
Five Paralegals, One Admin, Manager, Legal Operations and Vice President, Corporate Affairs
 John Grosvenor started the Legal Department for Banc of California, working with one paralegal in 2012. The department has now grown to a team of 17 as of August 2017. This expansion of the Legal Team is reflective of Banc of California's success and growth during the past five years. The Legal Department has been able to implement and ensure both efficiency and results. The bank has partnered with a number of key outside counsel in developing a list of preferred providers and worked aggressively on limiting legal spend and implementing guidelines for both internal and external legal work. In addition to building and growing its team, the Legal Department has continued to meet the bank's growth and business initiatives. For example, the Legal Department has been successful in handling a number of litigation matters in-house, with great efficiency and results. On business matters, the Legal Department is an integral partner. They play a significant role in the preparation of the organization's annual proxy statement, which was nominated in 2016 for the Best Proxy Statement for the 2016 Corporate Secretary Corporate Governance Awards. With over \$10 billion in assets, Banc of California is the only full-service, mid-size bank focused exclusively on California.



Consumer Portfolio Services Inc., Irvine

Michael Lavin, Chief Legal Officer & EVP
Mark Creatura, General Counsel & SVP
April Crisp, Corporate Counsel & Vice President
Lisette Reynoso, Corporate Counsel
Maribel Cabrera, Corporate Paralegal
Johanna Serrano, Licensing Analyst

Accomplishments of the Consumer Portfolio Services Inc. Legal Department include, successfully handling and mitigating a three-and-a-half-year federal government investigation, managing multiple legal disciplines without any specific attorney designations, closing 26 securitizations since 2011, and handling and closing 100+ state examinations into company business practices. In addition, the team developed and implemented a company-wide, comprehensive Compliance Management System. To

promote advancement, the team also mentored two young attorneys through law school into productive members of the in-house Legal Team. Consumer Portfolio Services Inc.'s Legal Department has mastered the art of doing more with less. Specifically, this small legal team has become an asset to the business by keeping almost all of the legal work in-house — no small task for a publicly traded company with approximately 1,000 employees that is operating nationwide in a heavily regulated industry. Consumer Portfolio Services is an independent specialty finance company that provides indirect automobile financing to individuals with past credit problems, low incomes or limited credit histories.



CoreLogic, Irvine

Terry Theologides, General Counsel & Secretary
Angela Grinstead Ahmad, Executive, Deputy General Counsel & Assistant Secretary
Rouz Tabaddor, Executive, Deputy General Counsel
Arya Sadeghi, Principal, Corporate Counsel
Merit Albaiady, Principal, Senior Corporate Counsel
Ursula Guzman, Senior Principal, Employment Counsel
Kyle Barnard, Senior Professional, Corporate Counsel
Angela McGuire, Senior Principal, Associate General Counsel
Jeanette White, Senior Principal, Associate General Counsel — Litigation
Matthew Rabe, Principal, Senior Corporate Counsel
Charles Philipsek, Senior Principal, Associate General Counsel
Irene Vences, Senior Professional, Corporate Counsel
Hanna Ramsay, Professional, Corporate Counsel
Yanni Pantis, Senior Principal, Associate General Counsel
Sarah Gillies, Executive, General Counsel International (NZ)
Agrita Cliff, Principal, Associate General Counsel — International (Australia)
Kirsty Edward, Senior Professional, Corporate Counsel (Australia)
Hannah Nimot, Senior Professional, Corporate Counsel (NZ)
Sheila Solaimani, Professional, Corporate Counsel

CoreLogic's Legal Department has handled more high-profile initiatives in the past few years than most companies see in two to three decades. Throughout this active period, CoreLogic's Legal Department has prevented or avoided significant judgments despite several challenging matters, and has generated legal recoveries in excess of \$35 million — all while employing innovative strategies to correctly level internal department staffing, enhance service levels and lower external legal expenses. The CoreLogic Legal Department is continuously recognized for its achievements and innovation, including by the *Orange County Business Journal*. In 2011, General Counsel Terry Theologides was awarded the Outstanding GC of a Public Company Award. Members of his team, including Rouz Tabaddor and Angela Grinstead, have been nominated for the Rising Star Award for their outstanding contribution to the CoreLogic Legal Department (with Rouz winning the award in 2014). Ursula Guzman is the current chair of the Orange County Bar Association's Corporate Counsel Section and Merit Albaiady is a lecturer at Chapman University's Fowler School of Law. CoreLogic is a leading global property information, analytics and data-enabled solutions provider.



Multi-Fineline Electronix Inc., Irvine

Suzy M. Lee, Vice President & General Counsel
Edward Wu, Legal Director, China
Yao Xu, Paralegal & Assistant, China

Multi-Fineline Electronix Inc. (MFLEX) manufactures flexible printed circuits and is the market leader in this industry in the United States. Suzy Lee has more than 25 years of experience as a corporate attorney and was recently appointed vice president and general counsel of MFLEX. She is responsible for overseeing all legal matters of the business, including continued success with respect to integration of the business with its new parent company in China, Suzhou Dongshan Precision Manufacturing Co. Ltd. (DSBJ). Transforming MFLEX's legal processes and compliance program are significant priorities for the Legal Team after DSBJ's acquisition of MFLEX. Growth is one of MFLEX's business priorities, and supporting new business opportunities is a key priority for Lee and her team. MFLEX has two large factories in Suzhou, China and is in the process of building a third one in Yancheng, China. Edward Wu, MFLEX China legal director, reports to Lee and is responsible for legal matters in China. Yao Xu, MFLEX paralegal, China, is responsible for supporting legal matters in China.

PIMCO LLC, Newport Beach

Karen A. Aspinall, SVP & Senior Counsel
Michael M. Cheng, EVP & Senior Counsel
David C. Flattum, Managing Director & Global General Counsel

2017 Nominees

Tracey Jordal, EVP & Senior Counsel
Richard R. LeBrun, Managing Director & Deputy General Counsel
Arthur Ong, EVP & Deputy General Counsel
Joshua Ratner, EVP & Senior Counsel
Thomas Rice, EVP & Chief Legal Officer for PIMCO Europe
Nadia Zakir, SVP & Senior Counsel



Pacific Investment Management Co. LLC's (PIMCO) in-house Legal Department consists of 29 attorneys and 56 paralegals and other support staff covering legal issues in 11 countries before 19 different regulators. Led by David Flattum, the department is characterized by more senior, highly experienced attorneys, with a philosophy that these attorneys should have practices with the depth and sophistication of partners at major law firms. PIMCO manages approximately \$1.6 trillion in client assets. PIMCO's in-house Legal Team handles all legal matters related to PIMCO's global trading platform, which averages approximately \$18 trillion in trading volume per year. The Legal Department places strong emphasis on community engagement and philanthropic activity. Over the last year, the team participated in numerous philanthropic events globally totaling 253+ hours across 28 nonprofit organizations. One of the team's most significant achievements was fighting on behalf of investors by pursuing representation and warranty and servicing claims against the nation's largest issuers of Residential Mortgage-Backed Securities (RMBS). Through PIMCO's leadership, the investor group ultimately achieved over \$16 billion in cash recoveries for RMBS investors, plus market-reforming servicing improvements. PIMCO is one of the world's largest global investment managers with more than 2,200 employees.

Providence St. Joseph Health, Irvine

Cindy Strauss, EVP & Chief Legal Officer
Sharon Toncray, SVP & Chief Labor Employment Counsel
Jim Watson, SVP & Deputy General Counsel
John Whipple, SVP & Deputy General Counsel
Yemi Adeyanju, Associate General Counsel
Heidi Alessi, Senior Employee Benefits Counsel
Terry Briscoe, Senior Labor/Employment Counsel
Tara Cowell, Associate General Counsel
Lisa Dobson Gould, Senior Corporate Counsel
Sarah Fallows, Associate Counsel
Mike Garrison, Senior Labor/Employment Counsel
Shawn Gilman, Corporate Counsel
Jamie Goodwin, Senior Corporate Counsel
Roger Jansson, Corporate Counsel
James Kelly, Associate General Counsel
Peter Kim, Corporate Counsel
Stephanie Laubacher, Senior Corporate Counsel
Alitha Leon Jenkins, Senior Corporate Counsel
Julia Michael, Associate Counsel
Kris Miller, Senior Executive Assistant
Brady Mitchell, Senior Labor/Employment Counsel
Dan Mueller, Senior Labor/Employment Counsel
Christina Park, Associate Counsel
Cynthia Shumate, Chief Legal Officer, ISB
Mindy Taylor, Corporate Counsel
Robin Turner, Senior Corporate Counsel
Betsy Vo, Corporate Counsel
Dennis Westlind, Senior Labor/Employment Counsel
Rachelle Wills, Senior Labor/Employment Counsel
Gregory Zamudio, Senior Corporate Counsel

Before this past year, the Providence St. Joseph Health (PSJH) Department of Legal Affairs had already made a name for itself by handling an extensive workload in a fast-paced environment. The hallmark of this team was serving as strong partners guided by the organization's values – dignity, excellence, service, respect, compassion, stewardship, and justice for the poor and vulnerable. The bar recently was raised when the team also took on the biggest non-profit hospital transaction in the state. St. Joseph Health and Providence Health & Services came together as a new combined organization, and the PSJH Legal Team went to work with their signature efficiency, expertise and focus on the health system's mission and values. Eleven months later, the new organization PSJH became operational, announcing on its first day a \$100-million investment in mental health and wellness services. PSJH is the third largest non-profit health care organization in the country and the Legal Team of 47 attorneys, paralegals and executive assistants support 50 hospitals in seven states, hundreds of clinics, partnerships, leaders and more. Throughout the year, the team consistently earns high marks from their colleagues on any number of legal activities.



Taco Bell, Irvine

Ray Weston, Chief Legal Officer
Jo Moyer, Executive Assistant
Julie Davis, Senior Director, Franchise, HR & International
John Makarewich, Senior Director, Litigation, IP & Real Estate
Jason Weintraub, Senior Director, Contracts & Corporate Compliance

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% 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.

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