

Foley's National Directors Institute Web Conference Series



NDI NATIONAL DIRECTORS INSTITUTE

## Moving Your Business Forward: Are You Taking the Right Steps?

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## The Evolving Role of the Chief Legal Officer

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## Today's Presenters

### Moderators

- **Patrick Daugherty**  
Partner  
Foley & Lardner LLP
- **Todd Pfister**  
Partner  
Foley & Lardner LLP
- **Bill Pollard**  
Partner  
Deloitte Financial Advisory  
Services LLP

### Panelists

- **Deborah Dorman-Rodriguez**  
Senior Vice President,  
Chief Legal Officer  
& Corporate Secretary  
Health Care Service Corporation
- **Todd Hartman**  
Vice President, Associate General  
Counsel & Chief Compliance  
Officer  
Best Buy Co., Inc.
- **Janet G. Kelley**  
Senior Vice President, General  
Counsel & Secretary  
Meijer Inc.

## Agenda

- Changing Role Of CLO, Especially As It Relates To Other Senior Managers And Directors
- Extra-legal Duties Of CLO
- Legal Cost And Expense Management
- Top Ten Takeaways

## Changing Role of CLO

- Where Are We on Continuum Today?
  - CLO as member of C-Suite involved in strategic initiatives?
  - Strictly legal position reporting to COO or CFO?
  - How and why has position changed?
  - Is this a positive trend?
  - What are the essential skills and attributes of the CLO?
    - Manager of people and processes
    - Skills beyond simple “lawyering”

## Changing Role of CLO

- Board and Management's View of CLO's Role
  - CLO as Board confidante?
    - Potential for conflicts with Management
    - Need for independent Board counsel
  - Need for seat at table and direct report to CEO
    - Can the CLO be effective as a trusted business advisor to the CEO and other Management yet still retain a separate perspective serving the shareholders and the Board?
  - CLO's Relationship to Shareholders
    - What is the CLO's role in helping to manage shareholders in this era of heightened activism and governance scrutiny?

## Changing Role of CLO

- Regulators' Views of CLO
  - CLO as “gatekeeper”
  - CLO's role in corporate governance
- What is Appropriate Legal Department Structure?
  - Depends on company size/industry/other factors?
  - What is the right reporting relationship between the CLO and legal counsel for subsidiaries/divisions?
- How Is the Globalization of Corporations Impacting the CLO's Role?
  - Consider appropriate relationship between the CLO and counsel operating outside the U.S.

## Extra-Legal Duties of the CLO

- What Are Appropriate Roles of CLO?
  - Corporate Secretary?
  - Risk Management?
  - Chief Privacy Officer?
  - Government Relations?
  - Chief Compliance Officer?
  - Investor/Public Relations?
  - Human Resources?
  - Internal Audit?
  - Loss Prevention?

## Extra-Legal Duties of the CLO

- Active Participant or Oversight Role?
- How Have Roles Changed?
  - What factors have caused changes?
  - Are these changes for the better?
- Proper Role of CLO in M&A and Restructurings

## Legal Cost and Expense Management

- What Are Corporate Objectives?
  - Lower costs
  - Reliable costs
  - Transparency of costs
  - Sharing of risks/rewards
  - Alignment of value and cost
    - ACC Value Challenge
- Alternative Billing Techniques: What Works and What Does Not?

## Legal Cost and Expense Management

- Appropriate Allocation of Internal vs. External Staffing and Costs
  - Impact of Recent Economic Turmoil
    - Budget Pressures
    - Opportunities for law firms?
  - Use of non-traditional sources for legal work
    - Expanded use of paralegals
    - Part-time consultants
    - Overseas Outsourcing
    - Boutiques
  - How many outside law firms is too many?
  - How best to shrink or expand the number?

## Legal Cost and Expense Management

- Proper Use of RFPs and Other Procurement Techniques
- The Impact of Technology in Legal Cost and Expense Management
  - Use of e-billing, case management and similar IT
  - E-discovery issues
- Use of Arbitration and Other Alternative Dispute Mechanisms
  - Early case management

## Top Ten Takeaways

- The CLO has an even more critical role than in the past given the greater scrutiny of business overall and the continuous increase in oversight regulation. It is key in the new environment to be proactive rather than reactive. Being reactive is almost always too late – the CLO may be able to fix whatever happened, but fixing a problem is generally much harder than preventing one.
- The CLO is a counselor and advisor and can no longer be solely a technician. Being in the C-suite or close to those in the C-suite is key to fully performing the CLO role. The CLO should be a strategic business partner on the senior executive team.
- The CLO plays a critical role in portraying the company's compliance and governance capabilities to key shareholder constituents. The CLO is uniquely positioned to ensure that the basic corporate structure, governance documents and compliance environment of the company meet the evolving standards of shareholder constituents and ratings agencies.

## Top Ten Takeaways

- Knowledge is king. It will be difficult, if not impossible, for the CLO to recognize and assess risks to the company and its business if he or she is not adequately informed about the company's business, strategies, etc.
- Business acumen is critical. To acquire credibility in his or her organization, the CLO must understand the business, know his or her industry/topic, and be able to provide strategic alternatives and ideas on both legal issues and business issues affected by legal considerations.
- The CLO must never lose sight of the fact that his or her client is the company. The Board of Directors is responsible for overseeing the conduct and management of the company and its affairs. Thus, it is imperative that the CLO strive to establish a good working relationship with the members of the Board of Directors. This takes time, so the CLO must be both patient and persistent.

## Top Ten Takeaways

- The CLO will succeed to the extent of the legal team with whom he or she works. The CLO must know how to manage people and recruit, grow and retain legal and business talent.
- Corporate legal budgets are generally shrinking, with corporate cost control being paramount for most companies. CLOs now expect creativity and flexibility from law firms on fees, legal strategies, etc., and will prefer those firms that best demonstrate those attributes.
- The CLO is often expected to wear many hats—Corporate Secretary, CCO, CPO, just to name a few. Thus, the CLO should make sure that he or she understands which roles he or she will serve directly, which he or she will oversee and which will be delegated elsewhere.

## Top Ten Takeaways

- The immediate and widespread availability of information (and misinformation) in today's "Internet Age" has increased the velocity with which a company can suffer material reputational harm. Thus, enterprise risk management is an increasingly crucial part of the CLO's role. The CLO must be aware of the potential risks facing the company and make sure appropriate procedures are in place to prevent these risks from arising and to address them in the event they do arise.

## Questions & Answers

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