

Argyle Conversations

by ARGYLE EXECUTIVE FORUMSM

featuring

Arnold Pinkston

Senior Vice President,
General Counsel & Secretary
Beckman Coulter Inc.

&

Sharon Barner

Deputy Under Secretary of Commerce
for Intellectual Property
and Deputy Director
United States Patent and Trademark
Office (2009-2011);
currently, Partner
Foley & Lardner

On May 5, Arnold Pinkston, Beckman Coulter's senior vice president, general counsel and secretary, and Hon. Sharon R. Barner, partner at Foley & Lardner LLP, met at Argyle Executive Forum's 2011 Chief Legal Officer Leadership Forum to discuss emerging legal questions in the life sciences industry.

Arnold Pinkston

Since 2005, Arnold A. Pinkston has been Beckman Coulter's senior vice president, general counsel and secretary. In this role, Arnold is responsible for all aspects of legal affairs related to Beckman Coulter and its products on a worldwide basis. He also serves as the corporate secretary and is responsible for the Corporate Compliance Program, Corporate Social Responsibility Program, Internal Audit Department and Knowledge Resources.

Prior to joining Beckman Coulter, Pinkston served as deputy general counsel for Eli Lilly and Company, where he was responsible for the legal affairs of Lilly USA, Lilly's global pharmaceutical products component and its global marketing and sales organization. Arnold also held the position of general counsel at PCS Health Systems and as senior counsel for McKesson Corporation. Before these roles, he spent six years as an attorney with Orrick, Herrington & Sutcliffe. He received a Bachelor of Arts degree in geophysics from Yale College and a Juris Doctor degree from Yale Law School.

Sharon Barner

The Hon. Sharon R. Barner is a partner at Foley & Lardner LLP. A leading attorney in the field of intellectual property law, she represents clients in a broad range of technologies, from genetically engineered corn seed to satellites. From 2009 to 2011, she served as Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, United States Patent and Trademark Office, where she helped develop and articulate the Obama Administration positions on patent, trademark and copyright issues. She helped promote strategies to thwart the theft of U.S. intellectual property around the world and implemented policies to enhance the agency's delivery of timely and high-quality patent and trademark examinations.

Sharon has been featured in The National Law Journal, where she was named one of "The 50 Most Influential Minority Lawyers in America." She was recently selected by her peers for inclusion in The Best Lawyers in America® 2010, in the field of intellectual property. She received her law degree from the University of Michigan and graduated with a Bachelor of Science degree from Syracuse University. She is a member of the Illinois State Bar Association, the National Bar Association, and the Federal and American Bar Associations.

SHARON BARNER: Can you tell us about Beckman Coulter and your products?

ARNOLD PINKSTON: Beckman Coulter makes diagnostic tests and life science diagnostic instruments. Say, for example, you have blood drawn in a hospital. That blood is sent to a central lab. Our instruments and test kits are used to automatically analyze blood for biochemical information. The result is then sent back to your doctor to help him or her decide on a treatment.

In the age of more and more personalized medicine, how do you see these products being utilized by hospitals and doctors?

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The ability to take and analyze biochemical information from human beings could be one of the most critical factors in advancing healthcare for the future. The biggest issue we have in healthcare today is the variability of care.

Anyone who runs a business knows when you've got variability in a system, you've got waste and inefficiency. In the healthcare system, when you see a doctor, the kind of care you receive depends entirely on the specific doctor you visit. That variability is responsible for driving up costs. Now, for the first time in human history, we have database computing capabilities that offer us an unparalleled opportunity to identify the best way to treat patients.

If we were to take all of the biochemical information that Beckman gathers and marry it with patients' healthcare records, we would be armed with a great computing power that could inform medical professionals of the best treatments for anything.

As senior vice president and general counsel, your role is to run the law department. What's the law department's role in making Beckman Coulter products successful?

We take on the objectives of our clients. I tell our lawyers, when they work for Beckman Coulter, they make diagnostic tests. That's what they do. Although they aren't scientists, they help tackle the legal issues associated with making the tests. I want all our lawyers to feel like part of the Beckman Coulter team and to be proud of the work we do here.

How do you partner with your clients to drive innovation for Beckman Coulter?

Innovation in the Beckman world is really about scientific discovery. We use cutting edge lasers, biomechanics, robots, chemistry and genetic testing in our machines. As lawyers, we're not going to create the innovation. However, we protect the innovation with our Intellectual Property (IP) department. We make sure that the scientists are well-versed in the appropriate regulations, so that what they create is tested in the right way and put up for FDA approval in the right way. We facilitate moving innovation to the marketplace in compliance.

We are also responsible for managing risk and ethics. While the law may tell us what we have to do, when you're dealing with patients, the issues are very complex and take a lot of thought. We function as the keeper of ethics. We sound off for patients. If the company has a tough decision and is not sure which way to go, we start by thinking about how the decision would affect patients and users of our products. Patients are our ultimate clients. At the end of the day, those tests affect a cure of a human being. That patient could be you, it could be me. We in the law department at Beckman Coulter are part of the ethics glue that keeps the company guided towards patient care.

There is currently a lot of uncertainty and variability in the intellectual property laws that impact life sciences and technology. How have you modeled your law department to be on top of those laws and able to proactively serve your business clients on the innovation side?

We have tried to identify all of the legal areas where Beckman Coulter lawyers need to have some basic knowledge. We call it the minimum knowledge requirement. We have outlines of all the areas we think it's important for a lawyer to know enough

“These are important issues for our business and get right to the heart of what we have to do”

to spot potential issues. Even all the general lawyers are familiar with some of the most recent Supreme Court cases in the IP area. While they're not going to be responsible for vetting all the issues, they're going to be able to spot problems when they're out with the clients, and bring in our IP experts when needed. Right now there are a lot of very essential unanswered questions, especially in diagnostics. Can we own a test that says this aniline equals this disease? That is an essential question to answer because it goes to the very foundation of diagnostics. We have to monitor these unanswered questions, and we look at our investment portfolio with those uncertainties in mind. We also have to look at the opportunities. For example, if another company has a patent on something, and we think there may be untapped opportunities, we need to decide whether we are going to go after it. It depends on how much we want it and what potential it holds. Are we going to invest a lot of capital in licensing something? These are important issues for our business and get right to the heart of what we have to do.

What is your view on the role of Beckman Coulter as it relates to healthcare reform?

We are a wellness company. Our products help identify healthcare issues before they happen. As a corporation, this is where we have special knowledge and is the one area where we can contribute to society. At Beckman Coulter, we are using this knowledge to improve the health of our own population—our employees. We want our employees as healthy as possible. As part of our corporate social responsibility program, we're developing a wellness program. We have a wonderful full gym where they can exercise. We have a cafeteria with fresh, healthy choices, stocked by a local farmer's market.

We also encourage our employees to use our products. Not only does it teach them to learn about the products that our company sells, but the information produced from our tests is highly valuable for living a healthful life. You can keep a database of all your records, which can give you a baseline for what's normal and healthy. Or if employees have health issues, like heart disease or diabetes, we can get them coaches.

It's important to note, we're not trying to figure which employees are not healthy. We're trying to help them by giving them the resources and tools to manage their diseases. We want to foster a healthy population. But we also see wider potential. If we can actually bottle this, if we can prove that this type of program saves on our healthcare costs as a company, that's something we can sell to other companies.

What area of the healthcare reform do you think should be examined most closely?

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When we're talking healthcare reform, we're really talking about payment reform. For me, I think we should be focusing on eating right and exercise. There are lots of people thinking about the issues of the healthcare delivery

reform. How do we deliver the care? How do we keep people healthy? But I think it really does come down to eating right and exercise. How do we get people to eat right and exercise? This is where, as a corporation, I can do things that in society I can't. I can give our employees tools to eat right and exercise. I can give them the information. I can even give them incentives and penalties to help keep them on the right track.

People make a lot of money selling healthcare products. It's a huge marketplace. People want to sell you stuff to make you well. You'll see all kinds of advertisements about a pill that deals with heart disease, for example. Again, preventing heart disease is about eating right and exercising. When you look at the costs and how we're spending money, it's on all these high-priced innovative products to solve something that's probably better prevented. But the business model is to sell these products. It's a part of the system. I don't think anyone is evil out there. They're just trying to sell you a good product. But you're probably better avoiding it with a better diet and exercise.

As general counsel, how have you participated in the conversation on healthcare reform?

I've tried to focus on our own wellness program. If we can prove that it works, that we're getting ahead of healthcare issues by helping our employees eat right and exercise, get tested and keep a good longitudinal database of their own healthcare records, it will be extremely valuable. You can avoid diabetes by reducing your sugar and eating the right vegetables. You can avoid heart disease by maintaining the right lifestyle. We as a company can help prove that. We can partner with the others in our industry and help make the proof statements for these alternatives, as well as our own products. ■