

GC

Mid-Atlantic

For and about General Counsel

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Dynamic Business Challenges and Health Care Reform

For This Health Insurer GC, Work Is as Easy as Riding a Bike

BY DANIEL CASCIATO

Last year, Paul Tufano's 19-year-old son, an avid cyclist, turned his father on to cycling so much that he agreed to a five-day bike ride across Pennsylvania with his son, beginning in Pittsburgh and ending on Father's Day at Independence Hall, near their home in the suburbs of Philadelphia.

With his wife and 17-year-old daughter driving the "sag wagon" (a cycling term for a vehicle to assist riders who have to stop riding due to fatigue),

Tufano, 48, and his son, now a freshman at Harvard University, made their winding, grueling trek across the state.

"I'm glad we started in Pittsburgh because it's more mountainous out there, and I probably wouldn't have made it if it was at the end of the trip," joked Tufano. "To go from not being a cyclist to accepting the challenge of this five-day trip was an important experience for me, in terms of setting a goal and tackling it head on."

Tufano relishes challenges like this. As senior vice president, general counsel

and chief government business executive of Independence Blue Cross (IBC), Tufano has seen his fair share of obstacles in his career, including last year's rejected merger between IBC and Pittsburgh-based Highmark, as well as today's health care reform discussions.

"It's never a dull moment in the health insurance business," said Tufano, who still expresses disappointment that the merger did not happen.

To have employees from IBC and Highmark spend thousands of hours for more than two years working toward the

same goal, only to have the state Insurance Department refuse to endorse the deal, was a great blow to both companies, Tufano said.

"But it forced us to pick ourselves up, dust ourselves off, and work on a different strategic plan that didn't include the synergies resulting from a merger," he said. "We still scratch our heads and wonder why it didn't happen. We missed a great opportunity to reduce health care costs for our customers, communities, and associates."

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It wasn't for lack of trying. IBC did everything it was asked to do, Tufano said, from seeking regulatory approval from the 14 states the two companies operated in to developing a viable financial and business plan. It was also required to craft an integration plan, which turned out to be 10,000-plus pages, part of which ensured that providers would still be paid and customers' claims would be processed once the deal was approved.

With the failed merger behind it, IBC is implementing a new strategic plan that positions the company to manage through the transformational changes that are happening in the health insurance industry.

"We're trying to make sure that amidst the loud debate on reform that people not misunderstand the facts with regards to the real issues that drive the cost of health care and health insurance," said Tufano. "Many people talk about health insurance reform and the cost of health insurance and think it's simply a matter of limiting premiums. Only a small percentage of the health care premium dollar goes to insurers."

Like other health insurers nationwide, IBC has the problem of getting the general public to understand that the premium is the price of a unit of health care multiplied by utilization.

"As much as people want to attack health insurers or limit what we charge, we charge what the actuaries tell us to in order to support how often people plan to



use those services and what the providers charge," said Tufano.

People understand this concept as it relates to automobile or property insurance. If a reckless driver continues to have accidents, they understand why their auto insurance premiums increase.

"We have a system where people use health care services at constantly increas-

ing levels, so some people have a disconnect about why their premiums are going up," said Tufano. "We've been trying to explain to legislators and our customers what drives those costs and try to get the debate focused on the real drivers."

Tufano is up for this demanding task. Along with his devotion to public service, it is why he became a lawyer.

Upon graduating from Villanova University School of Law in 1986, Tufano joined Blank Rome in Philadelphia. He was there for nine years, eventually becoming a partner before ending up in the cabinet of former Pennsylvania Gov. Tom Ridge, serving as his general counsel.

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Comings & goings

GC MOVES

Morgan Lewis & Bockius announced Jan. 11 that **Karen D. Cyr**, one of the longest-serving general counsel in the history of the U.S. Nuclear Regulatory Commission, has joined the firm's energy practice as a senior counsel. An attorney at the NRC for three decades, Cyr was the top lawyer from 1994 until her retirement in 2009. In that role, she advised the commission on all matters of law and legal policy, and she represented the commission before other government agencies, Congress and foreign governments.

Prior to becoming general counsel, Cyr served as legal adviser to the NRC's chief operating officer, the commissioners and to the commission's chairman. Cyr also received the Presidential Distinguished and Meritorious Rank awards and the NRC Distinguished Service Award.

Stevens & Lee announced Jan. 11 that **Linda R. Evers** joined the firm's energy, regulatory and public utility practice as a shareholder.

Prior to joining the firm, Evers served as long-time counsel for FirstEnergy Service Company, a subsidiary of FirstEnergy Corporation, the fifth largest investor-owned utility company in the nation.

As FirstEnergy's Pennsylvania regulatory lawyer, Evers served as lead attorney on regulatory matters concerning Metropolitan Edison (Met-Ed), Pennsylvania Electric Company (Penelec) and Pennsylvania Power Company, one of the first electric distribution companies to comply with the commonwealth's alternative energy standards.

Sucampo Pharmaceuticals Inc. announced the appointment of **Thomas J. Knapp** as senior vice president, general counsel and corporate secretary, a newly created position, effective Feb. 19. Knapp is responsible for all in-house and outside legal activities for Sucampo, including governance and compliance activities, contract administration and records retention.

Knapp has over 20 years of corporate and large legal firm experience with regulated industries. Prior to joining Sucampo, Knapp was vice president, general counsel and corporate secretary at NorthWestern Corporation in Washington, D.C., a publicly owned utility, during that company's restructuring. Prior to joining NorthWestern, Knapp held senior in-house attorney positions at The Boeing Company and the Burlington Northern & Santa Fe Railway Company, and was of counsel at Paul Hastings Janofsky & Walker.

He earned a B.A. from the University of Illinois-Urbana Champaign and his J.D. from Loyola University School of Law in Chicago.

Sunoco Inc. announced Feb. 17 that its board of directors has elected **Stacy L. Fox** as senior vice president and general counsel, effective March 1. Michael S. Kuritzkes, who served as general counsel since 2000, has elected to pursue other interests.

A seasoned corporate lawyer with more than 25 years experience in business, Fox joins Sunoco most recently from the Roxbury Group, a Detroit-based real estate development and legal consulting firm, where she was founder and principal. From 2005 to 2008, Fox served as executive vice president, chief administrative officer and general counsel for Collins & Aikman Corporation, a leading supplier of automotive interior systems.

American Water Works Company Inc., the largest investor-owned U.S. water and wastewater utility company, has named **Kellye L. Walker** its senior vice president, general counsel and secretary. Effective Jan. 6, Walker replaced George Patrick, who retired after serving the company for more than a decade.

Walker most recently served as senior vice president and general counsel at Diageo North America Inc., which is part of the multinational Diageo Plc, a NYSE- and LSE-listed company with revenues of \$20 billion. Her responsibilities included cor-

porate and commercial legal matters such as mergers and acquisitions, human resources and labor relations, procurement and regulatory compliance.

Walker also served as senior vice president, general counsel and secretary at BJ's Wholesale Club Inc., where she designed an enterprise-wide compliance program shortly after the enactment of the Sarbanes-Oxley Act. Prior to joining BJ's, Walker was a partner with the law firm of Hill & Barlow in Boston, Mass.

PPG Industries announced March 2 that **James C. Diggs**, PPG senior vice president and general counsel, and a member of the company's executive committee, will retire effective July 1. He has served as PPG's chief legal officer for 13 years and has led the environmental, health and safety and government affairs functions. A native of Cleveland, Ohio, Diggs joined PPG in 1997 after having served as vice president and assistant general counsel of TRW Inc., and as an Assistant U.S. Attorney in Cleveland. Diggs earned his undergraduate and J.D. degrees from Case Western Reserve University.

PPG has not announced a successor.

NEWLY ELECTED

The Delaware Valley chapter of the Association of Corporate Counsel (DELVACCA) installed its new 2010 board of directors at a holiday luncheon at The Union League of Philadelphia on Dec. 17. They included:

President - N. Alexander Erlam
1st Vice President - Thomas M. Molchan
2nd Vice President - Grace P. Manno
Treasurer - Eric A. Tilles
Secretary - Michael A. Duff
Immediate Past President - Todd A. Borow

New members of the board of directors include: James D. Cashel, Environmental Tectonics Corp.; Neil D. Falis, Towers Perrin; Marilyn Heffley, Sunoco Inc.; Roy W. Hibberd, Dollar Financial Corp.; Jannie K. Lau, InterDigital Inc.; Todd L. Mayover, Pfizer Inc.; Alexander H. Plache, Saint-Gobain Corp.; Kevin D. Stepanuk, PECO.

EVENTS

DELVACCA will hold a *New to In-House Symposium* on March 24 from 7:45 a.m. to 1 p.m. at The Union League of Philadelphia, 140 S. Broad St., Philadelphia. The event begins with registration and breakfast from 7:45 to 8:30 a.m. Sessions will include:

- "The Legal Hurdles of Building Brand Awareness," featuring a panel of speakers reviewing the associated legal challenges of brand-building, including trademark clearance, registration, and enforcement issues. 8:30 to 9:30 a.m.

- "Current Ethics Issues for In-House Counsel," featuring a panel discussing current ethics issues presented by e-discovery, including obligations involving

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Compliance Officers Break Ties to Legal Departments

BY GINA PASSARELLA

In a world of regulations, recession and corporate scandal, the creation of compliance and ethics roles has been on the rise. But what is dropping is the number of those newly created positions that are in any way tied to the legal department.

"The lawyer serves the corporation as a client, and it could engender a conflict of interest for the lawyer to also wear the hat of compliance officer or ethics officer," Bentley University Center for Business Ethics Counsel John P. Hansen said.

Hansen, who also serves as chairman of the Association of Corporate Counsel's compliance and ethics committee, said the number of organizations and support services that have popped up in relation to compliance and ethics is further proof of the increasing importance of the role. The ACC's committee is just about a year old, he said, and already has 1,600 members.

"It was almost a secondary role 15 years ago, whereas it has evolved into a much more strategic and critically recognized function in an organization today," Hansen said. "That is largely because of regulatory and legal inducements, but I think also companies just

GINA PASSARELLA is a senior reporter for The Legal Intelligencer, a publication affiliated with GC Mid-Atlantic. She can be reached at GPassarella@alm.com.

as a matter of governance see it as a prudent business practice."

Historically, the ethics and compliance programs have been integrated into the legal department, with either the general counsel serving a dual role as chief compliance officer or the CCO reporting to the legal department, Hansen said.

In the past five years, there has been a shift in that trend, the committee's vice-chairman, Robert Roach said. The compliance and ethics roles, which are most often handled by the same person regardless of their title, are now reporting either directly to the chief executive officer of the company or to a committee of the board, most often the audit committee, said Roach, who is the Chief Compliance Officer of New York University.

This shift was brought on, in part, by a number of corporate scandals in which lawyers had to make interpretations of law in some gray areas. That backfired in some cases, he said, citing the Hewlett-Packard case in which the president was in a dispute with board members over leaking information to the press.

Corporations are starting to think it makes sense to have a check on the general counsel as well. Even if the CEO is doing something questionable, the CCO should put his job on the line and tell the board, Roach said.

Hansen said the U.S. Department of Health and Human Services recommends the compliance officer not be part of the legal department, which he said is "a recognition that law

and compliance serve different masters."

THE NEXT STEP FOR COMPLIANCE

Beyond just moving the compliance role out of the legal department, companies are beginning to focus on a new, more encompassing compliance program known as GRC, Roach said. GRC stands for governance and risk management compliance.

"Enron had one of the best corporate codes going," Roach said. "On paper they were fabulous, but they didn't have the internal ethical environment, and what [Sarbanes-Oxley] was about and what the newer movement is, is a recognition to try to give meaning [by setting the] tone at the top."

Risk management has been a particularly hot topic since the recession, which has demonstrated that short-term gain can motivate people to take greater risk, Roach said. Peoples' ideas of risk vary and the concept of enterprise risk management works to instill a vocabulary where people think about risk in the same way, on a regular basis, he said.

Employees should know a company's risk tolerance, and someone should be responsible for analyzing potential risks across all company sectors. Credit rating agencies are going to start taking enterprise risk management programs into account when determining bond ratings, which essentially means these programs are going to be required, Roach said.

Compliance officers are often ideally situated to advise on governance structures and

meeting the requirements of SOX and other laws. They also typically get the responsibility for creating risk management programs, he said.

In addition to GRC programs, Roach said companies are also beginning to incorporate social responsibility programs into their compliance functions.

Corporate social responsibility initiatives have typically been housed in public relations departments because it seemed like good publicity to do good things. But after scandals over sweat shops, tainted food and lead toys from overseas, companies are beginning to ensure their supply chains are meeting certain standards beyond just regulatory compliance, Roach said.

"[Companies are creating] contracts that require certain standards and people who check those standards, not because they are required by law, but because it is bad for the corporate reputation [not to]," he said. "So here there is a blending of corporate responsibility and compliance."

WHO'S RIGHT FOR THE JOB?

While certain industries are required to have programs, there isn't a company that couldn't decide on its own to have one.

"Every company warrants the adoption of a program and there is legal vulnerability for not having a program in place," Hansen said.

Compliance is more robust in places like

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GCs Speak Out on Hiring Trends

BY JULIE BONASSO
AND DEBORAH THOMPSON

Last year, in “Yes, Now IS the Right Time to Add Headcount” (*GC Mid-Atlantic*, March 2009), we explored the reasons many corporations were bucking current hiring trends and bringing on more legal staff. Not in extravagant numbers, mind you, but strategic hires they considered necessary for their continued success, both in their industry niche and the overall marketplace.

These companies recognized the wisdom, backed by several respected studies, in not “ducking and covering” while the economic tsunami did its damage, but staying on course and not allowing their competitors to gain an advantage. They were thus able to pick up some key talent, support those already on staff, rein in costs where they could, and ensure that their department would be ready when the fiscal clouds lifted.

With the past, very difficult year under our belts, we decided to revisit some of the same companies (as well as a few new ones) and see how their 2009 hiring decisions



BONASSO THOMPSON
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turned out, what they envision for 2010, and which practice areas continue to be in greatest demand.

DOING MORE WITH LESS

It may be a cliché, but the overwhelming trend that took place in 2009 — across industries and disciplines — was doing

more with less. Even companies that made strategic hires reported that the amount of work they were handling increased exponentially. So while many businesses and law firms unfortunately folded, most of those that remained were stretched thin to accommodate new and growing needs. In fact, a Conference Board study revealed that productivity in the United States (in per-hour terms) actually grew 2.5 percent in 2009. While there were fewer people on staff, they were producing more.

This was particularly true for in-house legal departments. As Bob Major, Major Lindsey & Africa's founding partner, wrote in October 2009 for *GC Mid-Atlantic's* California affiliate, “Plaintiffs’ lawyers still file lawsuits, patent trolls still send letters claiming infringement, Congress continues to pass new legislation governing corporate conduct, and legions of government lawyers hope to make names for themselves by nabbing corporate wrongdoers, just as newbie journalists try to become the latest incarnation of Woodward and Bernstein by lifting the veil on misbehavior or at least perceived misbehavior.”

So the typical responsibilities of most in-

house legal departments have moved in the opposite direction of the workforce. In fact, everyone we talked to for this article admitted their workload increased between 10 and 20 percent in 2009. While many handled this extra work with existing staff, several of our in-house contacts chose a different path — they filled vacated positions, converted part-timers into full-timers, refused to implement hiring freezes, and brought in new talent when certain practice areas became overwhelmed.

Some of the companies we talked to responded to the economic downturn by launching audits — i.e., asking every department head to analyze their employees’ tasks and their clients’ needs to help determine the services that were most essential. They were then tasked with re-engineering certain roles to ensure they were delivering the most-needed services in the most efficient manner.

The result was a re-prioritization of tasks on the most important and high-impact initiatives and assurance that the necessary resources were in place to deliver on those priorities. As Michael Kanazawa and Robert

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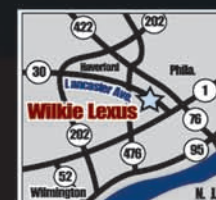
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Finding a Job During (and Despite) the Recession

BY URSULA FURI-PERRY

Job-hunting during a recession can be a discouraging and miserable experience, but every economic downturn has the potential to create career opportunities for those with the right skill-sets and a little bit of luck. In-house counsel are no exception.

GC Mid-Atlantic recently talked with some corporate counsel who found their current jobs during (and despite) the recent recession, along with other counsel in the know. We've pinpointed seven factors that may just help you land your next in-house job — along with the lessons you can learn from them and implement in your own job search.

GETTING IN BY HAVING AN 'IN'

For Nancy Smith, having an "in" meant serving her current employer as a consultant before she was hired full-time. Now senior counsel at Lincoln Financial Group, Smith began consulting for the company on a temporary basis after her last employer was sold and consolidated its workforce, leaving Smith without a job. Smith worked with a recruiter to help her find the consulting position, and then stayed on full-time.

"Coming in as a consultant gives you an opportunity to get a feel for the company," Smith explained, along with a chance to get your foot in the door and impress, which may ultimately lead to a full-time position.

For recent New York Law School graduate Allyson Cannistra, having an "in" materialized through an ongoing internship with her current employer. Cannistra had interned in the law department at T-Systems North America Inc.'s New York office during her summer and winter breaks as an upper-level law student. Now serving as counsel, Cannistra credits her internship with ultimately leading to her job.

The Lesson: Try to get your foot in the door at a company, whether it's through temp work, an internship or working closely with corporate counsel on outsourced projects.

Many companies are looking to bring in contract attorneys to fill the gaps rather than hire full-time corporate counsel, explained Roy Hibberd, corporate secretary and general counsel at Dollar Financial Group Inc. in Berwyn, Pa., and co-chair of the Career Management and In-Transition Committee at the Delaware Valley chapter of the Association of Corporate Counsel (DELVACCA).

Some of those opportunities are clearly going to remain contract-based, but some may potentially turn into full-time jobs for the right person, Hibberd noted.

"The opportunity to demonstrate not only your competencies, but also how you



fit into a team can be a tremendous opportunity on both sides," he said.

HAVING THE RIGHT TYPE OF EXPERIENCE

Cannistra also credits a former internship at the Federal Communications Commission — and more importantly, having worked specifically in the FCC's telecommunications and wireless division — with giving her the specific experience that caught the company's eye and ultimately led to her offer.

"I don't think there were a lot of people who had that background [or] demonstrated the same interests," she said.

Smith said she believes her experience of having worked for a public company was one of the things that ultimately landed her the job at Lincoln. The company "had some specific needs it was looking to fill," said Smith. "It helped [the company] realize that they needed more than just a temp attorney."

The Lesson: Develop a skill, niche or specific experience that will transfer well into a new position, and make use of it during your job search.

One caveat: "Specialties are great, but don't ignore flexibility," said Hibberd. "In-house, you're generally much more of a

generalist," so knowing one or two sub-specialties well enough but also knowing how to jump in when the GC needs litigation or contract help is best.

For example, Hibberd said his company is looking to hire a securities expert — but the successful candidate will have to be someone who can assist on other matters when the work goes through its peaks and valleys.

TAKING INITIATIVE

Once you're in the door, try to find ways to set yourself apart by volunteering to work on additional matters.

"I was more than willing to take new projects on," said Smith about her experience as a temporary attorney.

While she was originally brought in to work on the company's proxy tables, she came on when the company was delving into capital raising, Smith explained. By offering to work on related and new projects,

Smith showed a strong work ethic and understanding of where she could best serve the company in additional ways.

Taking on extra responsibilities can also

help you showcase your range and demonstrate additional value you could bring to the company in keeping or hiring you.

The Lesson: Show initiative and take on additional projects. Research the company — and talk to those in the know — to find out what the company's needs are and what projects it may need assistance with.

Once you begin working for the company, offer to assist on pertinent projects and show your range and diligence.

WAITING IT OUT

Smith said she was surprised to see how long it took her to find a full-time position, and added that she would have begun to look for a new job earlier, had she realized how long the process would take. Before getting her temporary position through a recruiter, the job search "took a lot longer because people simply were not hiring," Smith said.

For Tom Wilcox, the job search has gone on for 16 months, though he's had some great interviews and even turned down some opportunities that were not right for him.

"There is a good fit for everybody," said Wilcox, who has experience in legal, human resources and operations, and serves as co-chair, with Hibberd, of DELVACCA's Career Management and In-Transition Committee. Wilcox added that one of the most difficult — but necessary — parts of the job search is keeping a positive attitude and not falling into a state of hopelessness.

"You must get a good circle of people that can support you and you can meet

Finding a Job continues on GC 12

Many companies are looking to bring in contract attorneys to fill the gaps rather than hire full-time corporate counsel. Some may potentially turn into full-time jobs for the right person.

URSULA FURI-PERRY is a lawyer, author of seven books and director of academic support and adjunct professor at the Massachusetts School of Law.

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For Tufano, 33 at that time, the opportunity was too good to pass up.

He recalled the advice a former board trustee from Villanova gave him when he was elected student body president: "He told me about a situation in his life when he was offered a wonderful career opportunity at a young age, but he thought there were other people more experienced," said Tufano. "His boss told him that his bus only comes around once, and if you don't get on, it won't come around again. So he said, 'Paul, at some point in your life, the bus may come around for you, and you may wonder if you should get on it.' He looked at me and said, 'I would encourage you to get on the bus and to take the risk.'"

Tufano said he thought about that advice when Ridge asked him to become his general counsel.

"I got on the bus, and there have been other situations where that advice has helped me out," he said. "At 33, I had over 500 lawyers working with me, representing the entire executive branch. It was a thrill of a lifetime."

With his family remaining in suburban Philadelphia, Tufano made the commute to Harrisburg every week. After five years, it was time for him to seek new challenges, but it was not because he wanted to leave government. Although he had a wonderful time working for Ridge, as well as re-energizing and re-organizing the Office of General Counsel for the commonwealth of Pennsylvania, he says he wanted to become more involved in his children's lives. They were 4 and 2 years old when he went to work in Harrisburg, and 9 and 7 when he left.

While he gave some thought to returning to a law firm, deep down, Tufano said, he was looking for something that would come close to the excitement, the importance and the relevancy to people that he had working in government.

IBC happened to be doing a search for a new general counsel at the time, so Tufano got on another bus.

For 10 years, Tufano served in that capacity, and earlier this year he assumed an expanded role and added chief government business executive to his responsi-

DANIEL CASCIATO is a Pittsburgh-based writer who authors articles on business, finance and law.

bilities. In this role, Tufano is responsible for the strategic, financial, and tactical leadership of the company's government business, its products and programs, as well as its approximately 150 employees who work in this area. This includes Medicare and Medicaid products, as well as health plans for low-income members: the Children's Health Insurance Program (CHIP), adultBasic and Special Care.

"Federal health insurance plans, like Medicare and Medicaid, and other state programs which provide insurance to state residents are a critical growth area for our company," said Joseph A. Frick, IBC president and CEO.

"It's a complex and heavily regulated business and we needed an executive with the experience, drive, and passion to lead it. Fortunately, we didn't need to go far to find the right person for this job. Paul is a dynamic general counsel and creative thinker. His corporate and government experience and proven team-building skills will serve him and our company well in his new, expanded role."

Tufano also oversees the company's Medicaid business and serves as the liaison between Independence Blue Cross and the AmeriHealth Mercy Family of Companies, a Medicaid-managed care company headquartered in Philadelphia and providing services in 13 states. AmeriHealth Mercy is jointly owned as a partnership of Independence Blue Cross and Mercy Health System.

"What excites me about my expanded role is being able to ensure that we're constantly improving our products and making them as easy to use as possible," said Tufano. "The skill set is similar to my training as a lawyer, which is problem-solving and trying to help people achieve their goals."

Tufano will also continue in his role of general counsel, providing oversight for the legal, regulatory and corporate governance affairs of IBC.

"Today, being a general counsel is also being a risk manager," he said. "A good GC not only deals with today's issues, but is

also trying to anticipate issues before they become problems. As in-house lawyers, we have to counsel our clients to think about those unanticipated risks or issues and prepare for them, and to take that into account into developing our business plans. More than ever before in-house counsels are critical business partners with the marketing, finance and government relations people."

The legal department at IBC is comprised of five practice groups, which are organized and primarily based on the different skill sets of the lawyers that it employs:

- The litigation practice group manages litigation and deals with the company's outside law firms in connection with the lawsuits that it may be defending at any given time.
- The corporate practice group deals with transactional work, such as real estate leases, software license agreements, or any type of financial or transaction-related issues.

• The managed care practice group supports the medical management department of IBC, which negotiates with the provider clients: hospitals and physicians.

• The product/marketing practice group focuses on the products that IBC sells in the marketplace.

• The government business practice group supports the legal work of the area in which Tufano has taken responsibility for from a business perspective.

Each of these groups is headed by a deputy general counsel that oversees the 19 lawyers and 5 paralegals across the groups. The department also employs 10 contract analysts, who prepare the insurance policy documents and booklets that members receive annually.

IBC tends to use law firms when it needs more brain power or horsepower. In terms of more brain power, it seeks outside counsel when there's a specialty that the legal department may not have. For example, it may be in antitrust, intellectual property, or tax-related areas, in which most in-house legal departments can't necessarily afford to have a full-time position dedicated to that expertise. In terms of more

horsepower, whether it's a big transaction or a big piece of litigation, at times IBC needs lawyers who can come in and take on those cases.

"While we certainly work with outside counsel on a regular basis, the bulk of the legal work of the company is done by lawyers in house," said Tufano. "We make it our goal to do as much in-house as we possibly can, and only reach out to law firms when we don't have that type of substantive expertise, or the kind of staff to handle something like a class action lawsuit. We're not equipped as lawyers to handle it, but we'll quite closely and intimately manage that litigation with our outside counsel partners."

Looking ahead, Tufano said it's an exciting but uncertain time in his business.

"At a time of great dynamic change in this country in regards to health care reform, we need to ensure that we are providing access to the health care system in as affordable a manner as possible," he said. "We don't know what the future holds as Congress and the White House look at literally changing rules of the game and the whole economic model for health care. We just need to focus on making our business as simple to deal with, and ultimately work on our goal of trying to provide as much affordable access to the health care system for our customers as possible." •

Today, being a general counsel is also being a risk manager. A good GC not only deals with today's issues, but is also trying to anticipate issues before they become problems.'

— Paul Tufano

Company: Independence Blue Cross
Title: Senior Vice President, General Counsel, and Chief Government Business Executive
Education: J.D., Villanova University; B.S. in Accounting, Villanova University.
Professional: Blank Rome, 1986-1995; General Counsel to former Pennsylvania Gov. Tom Ridge, 1995-1999; Independence Blue Cross, 1999-present.
Memberships: Villanova University Board of Trustees; Trustee of Penn State University, Franklin & Marshall College, and Moore College of Art & Design; Alumni Association President, Villanova University; Board Member of the Kimmel Center for the Performing Arts, WHYY Inc., the Committee of 70, and Rosemont School of the Holy Child; Former Board Member for Avenue of the Arts Inc. and Green Tree School; Co-Chair of Search Committee for the next Dean of the Law School at Villanova; Philadelphia Bar Association; Pennsylvania Bar Association (PBA); Founder of the Government Lawyers Committee of the PBA.

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Law department management

Strategic Priorities for General Counsel in 2010

BY JONATHAN BELLIS

The year 2010 is shaping up to be a “best of times, worst of times” year for general counsel. On the one hand, GCs — and the senior lawyers and professionals who help them lead their law departments — are under extraordinary pressure to reduce costs. Of course, there is nothing new in the expectation that in-house lawyers should “do more with less.” It has been expressed repeatedly over the past two decades, especially in times of economic distress. What is new is the extent to which law departments have been forced to reduce total legal costs and to find new ways to operate more efficiently.

Still, the need for an effective in-house legal function has never been greater. Organizations face growing risk and increasing pressure from many different directions — shareholders, customers, employees, politicians, regulators, the media (in all of its forms) and the general public. Legal, compliance and risk management failures have been escalating, despite significant investment in these functions over the past decade. Most alarming, chief legal officers and other senior inside lawyers have been directly associated with these failings in an unprecedented and unfavorable manner. This threatens to undermine the long-standing reputation of in-house lawyers as “the conscience of the organization.”

In this environment, it may be time to take stock of your law department and how effectively it is performing its core mission and functions. This is especially important for those organizations that have undergone a severe reduction (more than 10 percent) in its internal legal resources and capabilities. What strategic priorities should law department leaders be considering? This article identifies four areas of focus that have broad applicability to law departments, regardless of industry, location or even size.

The first task for the chief legal officer is to define or update the mission, role, goals and initiatives of the legal function. The identity, role and responsibilities of the in-house legal function must be clearly defined and communicated both within the law department and to clients.

Second, the formal and informal law department structure and service delivery model should maximize lawyer alignment and partnering with clients throughout the organization. These clients include top management, business units, and other staff functions in the corporate office.

Third, the law department should develop and communicate strategic and business plans to accomplish its mission.

Finally, the law department should formalize its approach to legal risk management, and ensure that it is well integrated with enterprise-wide governance, risk and compliance functions.

Of course, there are other important priorities for law department managers, such as legal talent development, opera-



tional efficiency, and outside counsel management. But these are more tactical than strategic and will be addressed in subsequent articles.

ESTABLISH THE MISSION

Establishing a strong and clear identity for the in-house legal function has never been more important. The role and responsibilities of the law department should be clear not only to the lawyers and law department staff, but to the board, top management and all employees.

The legal function and in-house lawyers play an essential role in many companies. For example, a value added role for the law department is to “connect the dots” and serve as an “early warning system” for corporate management. As a top executive stated regarding one of our law department clients, “Legal is like the glue — our lawyers should know everything that’s going on.” In eras of downsizing and layoffs, the legal function is often a key repository of essential institutional knowledge. Almost uniquely within companies, in-house lawyers are in a position to adopt a global, company-wide perspective that goes beyond local jurisdictions and immediate business client interests.

Defining the identity of the legal function should be a serious-minded process, in which internal staff, top management and client views are solicited. Many law departments have established a mission statement or similar document under the rubric of total quality management. Often stated in broad if not platitudinous terms (“cost-effective, value-added legal services”), in some cases these statements are viewed with a degree of cynicism and carry little weight.

In other cases, law departments have developed meaningful identity statements, but they have been made less relevant by external or internal developments. It is not unusual to see legal functions experience change in their scope of responsibilities. This is often tied to broader company-wide reorganization or redefinition of approaches to governance, compliance, risk management and controls. Periodically updating the definition of the role and responsibilities of the legal function is important, especially in times of change and stress.

The methods by which law departments establish their identity vary. Most commonly, law departments publish a mission statement, using a carefully considered approach. These statements are more useful when they

include a more detailed expression of core values and statement of operating principles to guide the behavior of the legal staff. A clear statement of support for the legal function by the CEO is essential.

The chief legal officer and legal leadership team play an essential role in defining, communicating and reinforcing these fundamental operating principles, both internally with legal function staff and externally with top management, clients and outside counsel. They reinforce the identity and role of the legal function through a variety of means, including strategic, business and/or operating planning for the legal function; individual lawyer performance planning and evaluation; and various forms of communication such as regular meetings, conference calls, retreats and offsite meetings, and inclusion on the law department’s internal and client-facing intranet sites. Some GCs promote the use of sales and marketing concepts within the legal function. In today’s competitive environment, inside lawyers must understand that they are competing with law firms in terms of service delivery, quality and price of legal services. All inside lawyers should be sensitive to the need to

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Comings

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preservation, production, spoliation and sanctions. 9:40 to 10:40 a.m.

• “50-Minute Update: How In-House Counsel Must Prepare for Today’s Department of Labor,” an interactive overview discussion of wage and hour enforcement and independent contractor issues,

EEOC compliance issues, and leave laws. 10:50 to 11:50 a.m.

• “Allocation of Risk in Contracts: How to Get the Deal Done Without Putting the Company at Risk,” a discussion on the factors in-house counsel must consider inside and outside of the four corners of the document. 12 noon to 1 p.m.

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CCOs

continued from GC5

academic medical centers and pharmaceutical companies, Roach said. Those companies are much more specific in their want ads, seeking people with specialized knowledge of the regulations in those industries. A “plain vanilla” corporation, on the other hand, may accept a broader array of backgrounds. Often a former federal prosecutor fills the role, he said.

“Where the industries are heavily regulated, you tend to have more of a compliance focus by necessity ... whereas [with] a standard

corporation, that office will be much more code-of-conduct and general ethics-focused,” he said.

Within a compliance department, companies will often have people with specific knowledge of their risk areas. In an international oil company, for example, people who understand the Foreign Corrupt Practices Act should be on hand.

Oftentimes the CCO is a lawyer, but there are also Ph.D.s in philosophy who were brought on to handle the ethics component, Roach said. Knowledge of accounting principles is important on the fraud side, and half of the university-world CCOs are heads of

internal audit departments, he said.

“The truly best-qualified compliance officer will be multi-disciplinary,” Roach said.

Frank D’Amore of Attorney Career Catalysts has placed a few compliance officers in local corporations in the past few years. He said the trend is clearly for them not to be housed within the legal department.

That trend has created issues for career advancement and made recruits think harder about whether they wanted to take on a compliance role, even if it is the head of their department.

“If you’re not in the legal department, you’re in a weird position because what is the career advancement?” D’Amore asked.

CCOs can max out and become pigeonholed, he said. They do achieve broad exposure within the company, including among the board members who are often high-ups in other corporations. That could lead to a general counsel position at another company, but those positions often require experience in managing layers of staff and departments. A compliance officer usually only has a small contingent of staff reporting to her, so that could hurt future career prospects, he said.

CCOs, particularly at the larger companies, are paid a salary equivalent to a deputy general counsel or the number-three lawyer, D’Amore said. •

Hiring Trends

continued from GC6

Miles explain in their book, *Big Ideas to Big Results*, the best approach to dealing with economic downturns is to focus more resources and more staff on fewer initiatives.

WHICH AREAS ARE HOT?

Despite the variety of industries, the GCs we interviewed expressed great consistency when it came to the types of positions they most needed to fill in 2009. Not surprisingly, they are the same areas they envision needing to expand in 2010.

Regulatory and compliance work tops everyone’s list; IP, patents and licensing rank second; commercial work, focusing on contracts and acquisitions, is third; and real estate transactions is fourth, as companies look for devalued properties to pick up or decide to consolidate their own property holdings.

Hiring is also expected to be active among companies that are just reaching the point of needing their first in-house counsel.

PHARMA DEMANDS ARE MOUNTING

Our discussions revealed another major theme that is especially pertinent for the mid-Atlantic market: If you’re in the pharmaceutical industry, you’d better make sure your legal department is robust.

As the vice president of litigation of an international pharmaceutical/biotech company reported, “More and more pharmaceutical companies are facing the ‘patent cliff.’ New ideas and inventions and challenges must be aggressively protected, and that means having IP expertise on your team.”

While several blockbuster patents expired in 2009, the apex of the patent cliff is supposed to hit in 2011. With the R&D side of the business frantically and aggressively looking for new drugs to replace the sales lost to copyright competitors, lawyers will be fighting an increasing number of patent challenges to their older drugs and having to ensure that proper protections are in

place for their newer ones. Some companies are choosing to beef up their generics operations, either by taking over smaller companies or devoting more resources to their internal divisions; others are forming alliances with competitors to ensure they both benefit from the new generics and to expand their geographic reach.

Compliance is another “hot button” for pharmaceutical companies due to the increasing number of qui tam actions. The recent fines levied for “off label marketing” have put all pharmaceutical companies on notice.

As one pharmaceutical executive put it, “A well-run compliance department can help head off these types of issues. In light of some of these fines, companies will likely approve additional hires in this area.”

IN OR OUT?

How are GCs supposed to decide whether to bring the needed help onto their payrolls or look for it in outside law firms? The dual dilemma of tightening their budget while complying with an increasingly burdensome regulatory environment is leading more and more of them to turn inward.

In fact, according to the 2009 ACC/Serengeti “Managing Outside Counsel” survey, for the first time in three years, in-house counsel reported that controlling spending on outside counsel was their top priority. Sarbanes-Oxley and other legal compliance requirements ranked second, while concerns about reduced legal budgets/having too much work for fewer resources came in third.

Another interesting finding: During its first five years, the survey revealed that the amount of money spent on outside counsel was generally double that spent in-house. Over the past four years, however, that ratio has shifted. Specifically, the ratio of outside

counsel spend to in-house counsel spend declined from 2.0 in 2004 to 1.6 in 2008.

One GC told us he isn’t surprised by the shift. He said many in-house managers are frustrated by the unwillingness of some law firms to adjust their fees during tough times.

Another GC, this one with a telecommunications company, said he relies more on his in-house staff than outside counsel because

of his expectations regarding the quality of work and understanding of his business.

“The expertise of our in-house attorneys and their intimate knowledge of the company and its assets makes it impractical to use non-dedicated attorney resources.”

A similar opinion was expressed by Brian Zuckerman, general counsel of The Pep Boys:

“In-house staffing is often the most cost-effective approach to our core legal workload.”

HARDER TO FIND THE STARS

Once a company decides to fill a position in-house, it then has to decide how to handle the screening and hiring process. Though many view the current job market as “ripe for the picking,” the over-saturation has actually made it more difficult to find the superstars. It is, therefore, best to practice “active recruiting” — having a precise job description in hand and going out and finding the best candidates — rather than sit back and hope they find you.

Even after finding qualified candidates, many of the GCs we talked to expressed frustration at the increased due diligence required to vet them properly.

“We now have some of our in-house lawyers working closely with HR to help with the initial screening of candidates to make

Though many view the current job market as ‘ripe for the picking,’ the over-saturation has actually made it more difficult to find the superstars. It is best to practice ‘active recruiting’ rather than sit back and hope they find you.

us more efficient in the first cut. We are also doing more in-person interviews to ensure a better cultural fit in order to increase our retention,” explained Steven Sprecher, general counsel of Philadelphia-based InterDigital Communications.

Other GCs agree that you need someone with “legal eyes” to properly ascertain the nuances required in specific in-house positions and to know exactly what skills and experience a particular candidate brings to the table.

Others have implemented more exacting background checks and now ask their recruiters to conduct in-depth, in-person screenings, interviews and situational testing. This goes well beyond ascertaining a candidate’s professional skills and experience, but is often what makes the difference between a good hire that goes the distance or a misfit that must eventually be replaced.

DON’T UNDERESTIMATE YOUR NEEDS

While all of us look forward to riding the joyous waves of the “great recovery,” we still have work to do. And companies will continue to need lawyers to help them do it.

More than half of the GCs we polled plan to bring more legal work in-house in 2010, and just under half hope to hire additional staff to handle that work. In fact, one company plans to hire a half-dozen attorneys with expertise in patent prosecution and/or licensing by the end of the year.

So, to recap what we stated at the beginning of this article: If your in-house staff is getting overloaded, consider conducting a review of the services you provide and then formulate your immediate staffing needs. If you hire in this current market, you will probably be able to pick up some key talent that would not have been otherwise available, show your existing team that you value them and don’t want to overload them unnecessarily, demonstrating that you are concerned about costs, and ensuring that your department and company will be able to handle whatever comes its way.

After all, CEOs may rail against increased legal spending, but they will also be the first to scream if the train runs off the tracks. •



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Finding a Job

continued from GC7

with," Wilcox advised. "There is a lot of competition for very few positions and openings. There is a large flood of good talent out there."

And don't discount the value of pure luck: Cannistra, for example, acknowledged that she was lucky to find her position during these tough times.

The Lesson: Don't think that finding a job in a down market will happen overnight. Invest time and effort in your job search, and treat job hunting as you would treat a full-time job.

TURNING TO THEIR NETWORKS

Yes, it's quickly becoming a cliché: if we've read about the benefits of networking to finding a legal job once, we've read about it a thousand times. But there is a reason why networking gets touted as a beneficial tool: it works!

For new graduate Cannistra, that translated into reaching out to a law department whose attorneys graduated from New York

Law School, as Cannistra did. She knew the company also often reached out to the school's graduates.

Building and maintaining professional relationships can be an invaluable part of the job search in a down market.

However, networking should never be about asking for a job.

"I've found that the most productive [networking] meetings happen when I don't even tell them what I want," said Wilcox. "Ultimately, people like to help people. At the same time, we don't want to impose on people or appear needy. It's a dynamic tension that you have to deal with."

The Lesson: Tap your network for connections, career advice and valuable insights. And this goes without saying, but cultivate your professional relationships — remember, that is the true meaning of networking.

Hibberd also pointed out that attorneys should strive to network not only in the legal field, but also with non-lawyers in relevant fields, such as senior professionals who fill other positions at companies that hire in-house counsel.

ing, operational, creative and other disciplines.

Some of the methods by which law departments convey the value of their services include:

- Communicate tangible results as they occur;
- Report and communicate to management in terms and methods that they understand;
- Embrace enterprise-wide management

EXPANDING THEIR REACH AND THEIR THINKING

As Smith put it, "Try different alternatives." For example, she said, "you don't have to look for a full-time job only."

In addition, it may also help to keep an open mind about the type of work environment or company you are looking for, and even the type of positions that you apply to.

The Lesson: Don't pigeon-hole yourself into one particular work environment, type of company, position or employer. Keep an open mind and consider various sources of employment.

"One of the things that's really critical is that you get your name out there," Wilcox noted. "Many times, you could look at a company and say you're overqualified or underqualified, but [applying] could get you in front of a recruiter."

UNDERSTANDING IT'S AN EMPLOYER'S MARKET

According to the Association of Corporate Counsel's 10th annual Chief Legal Officers Survey, still only 29 percent of CLOs are planning to add to their departments. While

this is an increase from last year's 23 percent reported, it still means that jobs may be scarce and competition for positions strong.

In Smith's experience, "employers' expectations were different than I've seen them in the past," she said. Most of the employers who were advertising for positions, for example, were looking for three to five years of experience, Smith detailed, and seemingly wanting to pay less and get more from potential candidates.

Cannistra said the type of law department she applied to made a big difference in the department's ability to make new hires.

"The fact that my department is smaller may have helped, because there is a little bit more room for flexibility," said Cannistra, such as in hiring her with less experience and being willing to train her on the job.

The Lesson: Expect that employers may be more selective, simply because they can afford to be. Think hard about what your marketable skills are, and present those skills to potential employers. Also, do your research — some employers may have more leeway with new hires than others. •

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convey the value of their work, communicate tangible results and attempt to measure results in quantitative terms. Lawyers need to communicate in the language and methods employed by their clients, recognizing the substantive and stylistic differences that exist among financial, engineering, market-

ing, operational, creative and other disciplines.

Some of the methods by which law departments convey the value of their services include:

- Communicate tangible results as they occur;
- Report and communicate to management in terms and methods that they understand;
- Embrace enterprise-wide management

programs and methodologies and seek to adapt them to the unique characteristics of a legal function;

- Measure results in quantitative terms;
- Use the corporate intranet to extend information about the legal function and its services to clients; and
- Produce an annual report to top management and/or the board about the legal function, including comparative benchmarking data and results achieved.

In short, leading law departments understand that they not only need to provide top-quality, business-oriented legal services; they also need to inform and remind clients of this fact.

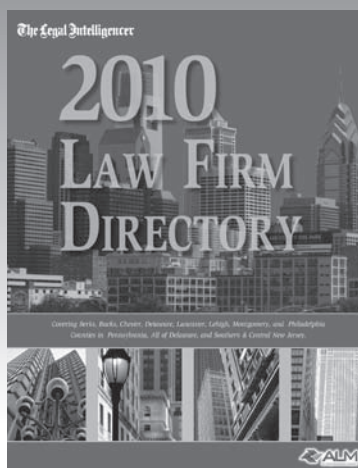
ESTABLISH RELATIONSHIPS

Recognizing their role as legal service providers inside the organization — and the existence of outside law firms who are

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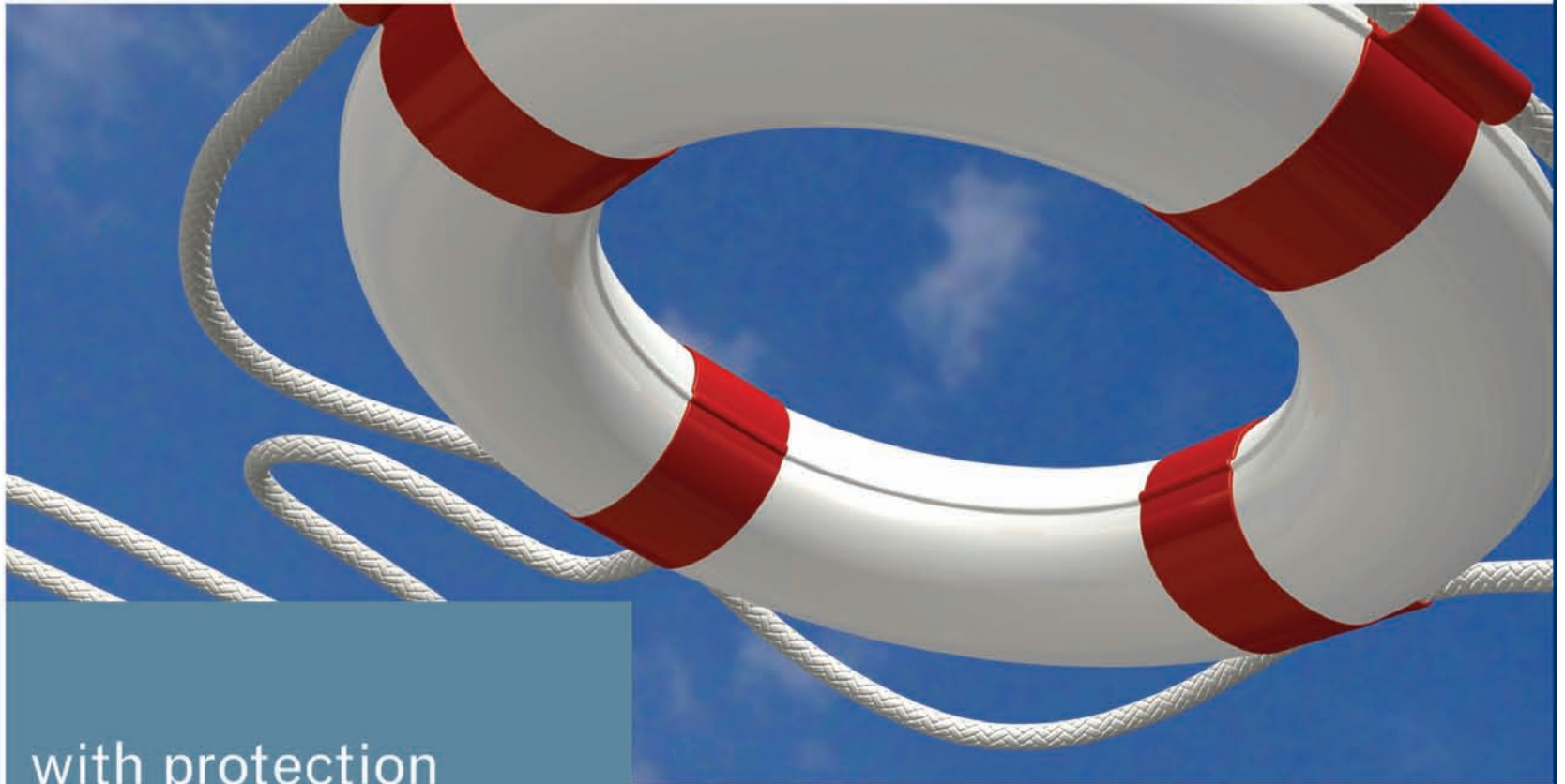
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Law Dept. Mgmt.

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ready to compete for that role — many law departments have increased their focus on defining and achieving high service standards with their clients.

Achieving strong lawyer-client integration or alignment — and thereby helping ensure early, proactive legal involvement throughout the business — has been recognized as the sine qua non of in-house legal practice for many years. Building on this core principle, many law departments have explored a wide range of mechanisms to develop strong client relationships, effective communication and high standards of service delivery, including the following:

- Assigning senior relationship lawyers to significant clients;
- Integrating lawyers with business leadership and management teams;
- Hiring and assigning lawyers with strong interest and aptitude for the business as well as legal dimensions;
- Providing business-oriented legal advice, in which the inside lawyer acts as facilitator for the business;
- Conducting joint planning, resource



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allocation and review sessions between the inside lawyer and client management team;

- Implementing client-facing technologies to extend the reach of the legal function.

Last year we worked with a general counsel who was concerned about the “service delivery model” that had evolved among the dozen attorneys in his law department. He described his lawyers as top-notch, in both their professional legal and service delivery skills. But he sensed that his group was not fully anticipating and meeting the needs of the organization.

With the active participation of the lawyers and input from key clients, a new model was defined and articulated that involved the designation of a senior lawyer as the “legal relationship manager” for each key client, responsible for creating a more proactive approach to providing legal advice and services.

DEVELOP PERFORMANCE METRICS

Law departments should conduct annual operational and multi-year strategic and business planning that is aligned with corporate and business unit planning. These plans should drive performance planning, measurement and reporting at all levels within the law department.

A growing number of law departments are developing strategic, business and/or operating plans. These plans take many different forms, not just in their title, but in overall orientation. Some adopt a truly strategic, longer-term view and seek to identify external and internal trends, issues and challenges that the legal function will need to be prepared to address. Others are tied closely to the budget process and focus on defining specific goals and programs

over the next one to three years. Still, others take the form of operational plans over a shorter time horizon with greater emphasis on tactical improvement projects.

These planning processes and documents can serve different purposes. First, they help force the legal function to periodically shift perspective to a proactive and anticipatory look into the future rather than allow workloads to restrict it to a reactive position. Second, they provide a reason and mechanism to involve and communicate with members of the legal function about major topics of importance within the organization or legal function. Third, they increase the opportunity for communication and collaboration across a scattered legal function. Finally, they provide a roadmap for legal function initiatives and activities.

FORMALIZE RISK MANAGEMENT

In-house lawyers perform legal risk analysis and mitigation as an integral part of their daily jobs. However, surprisingly few law departments have established formal methodology for conducting legal risk management, despite the fact that many organizations have developed enterprise-wide risk management programs, often led by the CFO.

As noted above, organization-wide strategy and objectives should drive the law department’s agenda, services, resources and activities. Similarly, legal strategy and risk management approaches should be aligned with organization-wide strategy and risk management. The relationship between enterprise and legal function priorities and programs should be clear — as a matter of process and procedure (planning, budgeting) as well as documentation.

Beyond legal risk management, the chief legal officer plays a special role in ensuring that the organization has established the proper structure, policies, procedures and environment for corporate governance, risk management, compliance and ethics — regardless of where these functions are placed within the organization. The CLO occupies a key role in promoting governance, risk protection, compliance and ethics with top management.

Numerous highly visible corporate scandals marked the beginning of the last decade and yielded the Sarbanes-Oxley Act and corresponding legislation outside the United States. They also stimulated a major corporate focus on governance, compliance and ethics. If anything, the current consensus among general counsel is to expect more of the same: an increasingly complex legal and regulatory environment, nationally and globally.

Many companies have struggled to find the right structure and arrangement of responsibilities. Over the past decade, we have observed many examples of organizations where the roles, responsibilities and relationships between the legal, risk, internal control, and compliance functions were not clear, leading inevitably to both duplication of effort and gaps in critical areas. At best, this produces confusion, frustration and inefficiency. At worst, it helps to explain some of the failings noted at the outset of this article.

Addressing each of these four priority areas during 2010 would be a valuable investment for chief legal officers and the larger organizations that they serve.

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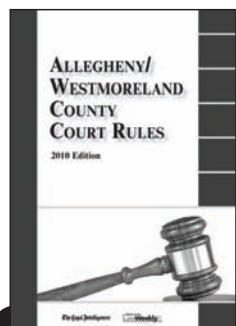
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