GC Mid-Atlantic

For and about General Counsel

An ALM Publication

SEPTEMBER 2010

IN THIS ISSUE

GC COMPENSATION


"NOW WE CAN SPEND LESS TIME RESEARCHING AND MORE TIME LAWYERING."
BEN SKJOLD
PARTNER, SKJOLD-BARTHEL
MINNEAPOLIS

editor's note

Exploring the Past to Prepare for What's Ahead

To me, autumn has always seemed to be a season of looking ahead. One need only look in the nearest store window to see that Halloween decorations and fall fashions are taking over the shelves where swimsuits and picnic gear once resided.

Indeed, the lazy summer days are behind us, and as the kids go back to school, there's a general sense of regrouping and re-energizing as we take a look at where we are, nine months into the year.

We at *GC Mid-Atlantic*, however, always take a moment in September to look back. Our staff spent most of the summer poring through Securities and Exchange Commission filings, looking up annual reports from Pennsylvania-based companies to track down how much their chief legal officers made in 2009. The finished result of that research is this, our annual "GC Compensation" issue.

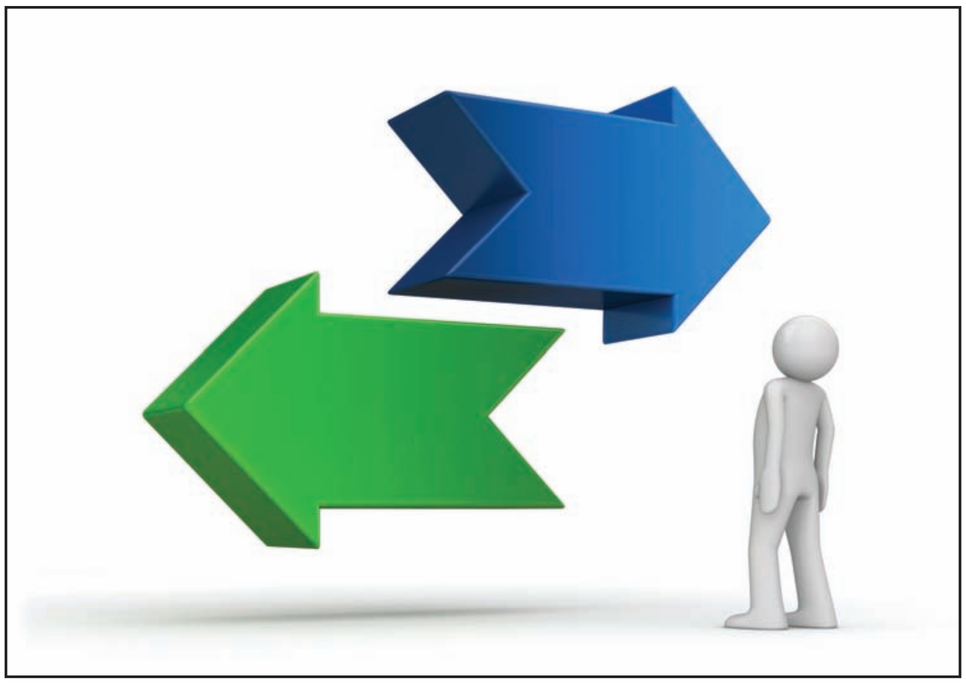
Most of this issue is concerned with looking backwards. We have our large chart on page 6 detailing the results of our research, ranking the 47 general counsel that were listed in their companies' SEC filings according to their total cash earnings. Accompanying that chart, we have reporter Gina Passarella's article, in which she painstakingly breaks down our findings and compares them to last year's results.

To offer a comparison for how Pennsylvania GCs rank among the 50 top-earning Fortune 500 GCs, on page 15 we have included the listings published by our sister publication, *Corporate Counsel*.

Notably, there are two familiar faces on the national chart: Carol Ann Petran of Philadelphia-based Cigna Corp., who tops our chart, sits in the number 11 slot on the Fortune 500 list, up from 32nd place in 2008. Comcast Corporation's Arthur Block, our number three, is now in Petran's vacated 32nd place position, up from 38th.

The other major chart in the publication peers even farther into the past. It examines the 2009 salaries and bonuses earned by this year's listed GCs in comparison to what those same people earned in 2008 and 2007. Except in the case of newly listed GCs, one glance at the chart shows that those numbers have remained fairly flat — it's the stocks and other compensation that are making news.

But even in the midst of all this attention on what has happened and what people did earn, we make sure to turn around and look to the future. So once again, we are privileged to have renowned securities and corporate governance attorney Katayun Jaffari of Saul Ewing back this year to give us a glimpse of what lies ahead for GC compensation. Her article, co-authored by John Chung, is on page 11, and their breakdown of the new Dodd-Frank Act and its expected impact is not to be missed.



We at *GC Mid-Atlantic* are looking ahead, as well. We're always looking for your feedback to tell us what you'd like to see in the future, not just in the Compensation issue, but in all of our coverage. So consider the suggestion box open! If you have any input or ideas for future articles, profiles or topics we should address, send me an e-mail or give me a call. •

- Jaime Bochet
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comings & goings

GC MOVES

Cooper Health System announced in August that **Joel B. Rosen**, former U.S. Magistrate Judge, will become a member of its board of trustees in September and that **Gary J. Lesneski** has been appointed senior executive vice president/general counsel to The Cooper Health System. Lesneski will assume his new role effective Oct. 1, 2010.

Rosen, who has served as general counsel to Cooper, will return to the private practice of law at Montgomery McCracken Walker & Rhoads as a partner in the Cherry Hill, N.J., office. There he will concentrate his practice in public and private mediation, commercial litigation and internal investigations.

Lesneski will become the chief legal officer and a senior executive of Cooper and will be responsible for all aspects of the organization's legal affairs. He is currently a partner and president of the law firm of Archer & Greiner, concentrating his practice in health and hospital law, labor and litigation.

Major Lindsey & Africa, the world's largest legal search firm, announced in July the placement of **David Crenshaw** as general counsel at **Fragomen Del Rey Bernsen &Loewy**. As a senior member of management, Crenshaw will provide overall leadership of internal legal matters and legal and business counsel to the executive officers including advice on commercial transactions with a global scope, prospective new business partners or offices, regulatory compliance, and other U.S., international and jurisdictional concerns.

Prior to joining Fragomen, Crenshaw was with Schering-Plough Corp. (now known as Merck & Co. Inc.), where he was lead counsel and a member of senior leadership for legacy Schering's top business unit and largest commercial attorney group supporting Europe, Canada, the Middle East and Africa. Before joining Merck, Crenshaw was a corporate attorney at Richards & O'Neil in New York and Braun Moriya Hoashi & Kubota in Tokyo. He holds a J.D. from Syracuse University College of Law and a B.A. from Colgate University.

Morgan Lewis & Bockius has announced the hiring of **Bart J. Colli**, the former general counsel of **Aramark Corp.**, one of Philadelphia's largest employers, as a partner in its business and finance practice. Colli plans to focus on mergers and acquisitions, corporate governance, internal investigations, compliance and other matters.

Colli, 62, had been general counsel and executive vice president at Aramark, a $13 billion food, facilities-management and service company, where he headed a corporate legal department with 45 lawyers in the United States and abroad. He retired last year from that job but has been consulting with Aramark since then.

ELECTED AND APPOINTED

Nancy Peterson, vice president and deputy general counsel at **AlliedBarton Security Services** in Conshohocken, Pa., was recently named to the board of trustees of **Clarke Schools for Hearing and Speech**. Clarke provides children who are deaf and hard of hearing with the listening, learning and spoken language skills they need to succeed. Annually, more than 800 children and their families benefit from programs and services at five campus locations: Boston, Jacksonville, New York City, Northampton and Philadelphia.

Peterson has experienced firsthand what Clarke can do for children who are deaf and hard of hearing — her son Elliott and daughter Sarah were both diagnosed with hearing loss shortly after birth and have both received services from Clarke.

AWARDS

Brandon Fitzgerald, vice president, general counsel and secretary for the **Minority Corporate Counsel Association Inc. (MCCA),** has been named to the **National LGBT Bar Association's** inaugural list of the Best Lesbian, Gay, Bisexual and Transgender (LGBT) Lawyers under the Age of 40. The LGBT Bar established this award to recognize young LGBT legal professionals who have distinguished themselves in their field and demonstrated a profound commitment to LGBT equality.

Forty recipients were recognized at the Lavender Law Conference held in Miami Beach, Fla., on Aug. 26. Awardees included partners and associates from large and small firms, attorneys working at nonprofit organizations and in-house counsel in large corporations, legal scholars, government attorneys and a state senator. The complete list can be viewed at http://www.lgbtbar.org/Under40.html.

Fitzgerald handles all of the MCCA's legal matters. He is co-chair of the Washington Metropolitan Area Corporate Counsel Association's Diversity Forum and is a founder of its Corporate Scholars Program, which provides paid internships for diverse students attending law school. He holds a B.A. from the University of Pennsylvania and a J.D. from the University of Virginia.

EVENTS

The Delaware Valley chapter of the Association of Corporate Counsel (DELVACCA) will hold its **Fall GC/CLO Lunch Club** on Thursday, Sept. 23, from 12:30 to 2 p.m. at Aronimink Golf Club, 3600 Saint David's Road, Newtown Square, PA. This event is designed specifically for GCs and CLOs only. Lunch will be served at 12:30, followed by the discussion from 1 to 2 p.m. The discussion topic will be "Providing Legal Suport to an International Business," led by **George Van Kula**, senior vice president, GC and secretary of **VWR International Inc**.

The cost to attend is $30 for GC/CLO members, and $40 for non-member GC/CLOs. To register, visit http://delvacca.acc.com and click on the red "Register Now" button. Cancellation Policy: 48 hours notice required to delvacca@acc.com for refund. No-shows will be billed. Contact Chris Stewart at 215-295-0729 or e-mail: delvacca@acc.com (for questions and cancellations only).

Make your plans now to attend **ACC's 2010 Annual Meeting**, taking place Oct. 24- 27 in San Antonio, Texas. With over 100 CLE/CPD sessions across 14 tracks of programming, there is truly something for every corporate practitioner from those new to the in-house profession to practice area specialists and GCs. Plus, hours of networking opportunities make it the educational and networking event of the year for in-house counsel, so don't miss out!

ACC's Annual Meeting is the largest gathering of in-house counsel from around the world. Since it began in 1983, it has grown to become the premier annual event for corporate attorneys to gain education credits, meet with legal service providers and network with their peers.

Save $100 by registering before Wednesday, September 15th. Reserve your spot today at http://am.acc.com. Then, visit the Hotel/Travel page to book your hotel rooms before they sell out. •

GC Mid-Atlantic

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An ALM Publication

GC Compensation

For First Time in Four Years, A New GC in PA's Top Spot

BY GINA PASSARELLA
Of the Legal Staff

Stocks are where it's at. The state's 47 highest paid general counsel for which public data was available saw a boon in the value of their stock awards in 2009 thanks to a rise in the market.

Of the 36 general counsel who were on the list both this year and last year, 23 saw their stock awards rise, while another eight maintained the same stock levels.

According to the U.S. Securities and Exchange Commission, public companies only have to report the earnings of their top five highest paid executives, so if the general counsel isn't among those top spots, his or her compensation is not available for us to report. The 47 general counsel on this year's list are those who are among the top five highest earners at their respective companies.

Comcast General Counsel Arthur Block by far saw the biggest increase in stock awards of any of the GCs that made the list this year. His stock awards grew from $583,836 in 2008 to $2,452,295 in 2009. His options awards also grew, from $550,024 to $1,388,789. That was enough to give Block the top spot when it comes to total compensation at $6.15 million.

But that isn't the figure used to rank GCs on our chart. Rather, GCs are ranked by total cash compensation, which includes salary, bonus and non-equity incentive plan compensation. To move up or down on the list in 2009, it was the latter category that had to change, as most GCs saw little to no movement in their base salary and even fewer had bonuses.

It was an $805,000 increase in Carol Ann Petren's non-equity incentive plan compensation that put the CIGNA Corp. general counsel at the top of this year's list. Petren saw a modest increase in base salary to $565,000, didn't have a bonus and earned $1.88 million in non-equity compensation for a cash total of $2,445,000.

Non-equity incentive plan compensation is made up of bonuses that are paid to executives, including GCs, as part of a performance incentive plan tied not to the individual performance of the executive, but to the company's overall performance. These bonuses are distinct from regular annual bonuses, which are typically guaranteed bonuses or discretionary bonuses, as well as signing or stay bonuses.

Ever since the U.S. Securities and Exchange Commission changed in 2007 how it calculated total compensation by adding in non-equity incentive plan compensation, Allegheny Technologies Inc. General Counsel Jon D. Walton has led the list for his 2006, 2007 and 2008 total cash compensation. This year, he comes in second with total cash of $2.06 million. That includes a base salary of $428,000 and about $1.64 million in non-equity incentive plan compensation.

Petren came in second behind Block for total compensation of all kinds, which includes total cash compensation and stock awards, options awards,

GC Compensation continues on **GC7**

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.*

General Counsel Compensation Ranked by 2009 Total Cash

Rank	GC Company	Salary +	Bonus +	Non-Equity Incentive Plan Comp. =	Total Cash 2009	Stock Awards	Option Awards	Change in Pension Value	All Other Compensation	Total
1	Carol Ann Petren CIGNA Corp.	$565,000	$0	$1,880,000	$2,445,000	$1,500,009	$263,261	$59,360	$7,482	$4,275,112
2	Jon D. Walton Allegheny Technologies Inc.	$428,000	$0	$1,636,267	$2,064,267	$1,530,152	$0	$203,648	$152,658	$3,950,725
3	Arthur R. Block Comcast Corp.	$846,036	$0	$799,696	$1,645,732	$2,452,295	$1,388,789	$650,077	$14,700	$6,151,593
4	Burton H. Snyder Hershey Co.	$485,000	$0	$486,484	$971,484	$330,692	$357,469	$454,397	$38,142	$2,152,184
5	Gerald J. Pappert Cephalon Inc.	$551,300	$0	$402,400	$953,700	$841,050	$896,017	$0	$41,849	$2,732,616
6	Nancy M. Snyder (1) Penn Virginia Corp.	$458,450	$415,200	$0	$873,650	$1,168,757	$276,250	$0	$68,768	$2,387,424
7	P. Jerome Richey Consol Energy Inc.	$414,258	$0	$420,000	$834,258	$322,031	$143,840	$206,778	$38,739	$1,545,646
8	David M. Feinberg Allegheny Energy Inc.	$400,000	$90,000	$265,500	$755,500	$680,649	$257,122	$95,769	$10,071	$1,799,111
9	Laurence G. Miller Teleflex Inc.	$372,500	$58,110	$317,370	$747,980	$176,588	$314,603	$7,091	$77,091	$1,323,353
10	Robert H. Knauss Amerigas Partners	$340,146	$0	$329,841	$669,987	$858,451	$203,000	$455,185	$13,594	$2,200,217
11	Caroline B. Manogue Endo Pharmaceuticals	$423,404	$0	$235,950	$659,354	$215,204	$648,965	$0	$80,560	$1,604,083
12	Brian J. Sisko Safeguard Scientifics Inc.	$340,000	$50,000	$245,840	$635,840	$71,231	$60,483	$4,691	$42,763	$815,008
13	John G. Chou Amerisourcebergen	$310,160	$0	$298,615	$608,775	$85,868	$174,200	$3,318	$34,759	$906,920
14	Brad A. Molotsky Brandywine Realty Trust	$335,636	$54,400	$217,600	$607,636	$156,893	$4,546	$0	$25,004	$794,079
15	N. Jeffrey Klauder SEI Investments Co.	$259,615	$325,000	$0	$584,615	$0	$434,400	$0	$9,558	$1,028,573
16	J.D. Nickel Armstrong World Industries	$321,625	$0	$234,800	$556,425	$110,332	$147,092	$14,999	$24,089	$852,937
17	Jordan B. Savitch Penn National Gaming Inc.	$433,447	$0	$121,474	$554,921	$95,450	$640,199	$0	$26,796	$1,317,336
17	Joshua Gindin NCO Group Inc.	$396,768	$0	$148,939	$545,707	$0	$0	$0	$32,695	$578,402
19	James J. Bowes Liberty Property	$325,000	$500	$219,245	$544,745	$326,631	$198,032	$0	$54,060	$1,123,468
20	Gerald R. Schrader Atlas Pipeline Partners	$224,616	$300,000	$0	$524,616	$96,000	$0	$0	$0	$620,616
21	Jennifer Evans Stacey Auxilium Pharmaceuticals Inc.	$330,897	$0	$185,000	$515,897	$312,000	$444,972	$0	$4,558	$1,277,427
22	James D. Garraux United States Steel Corp.	$451,260	$0	$60,000	$511,260	$80,067	$440,003	$736,632	$47,432	$2,615,395
23	Glen A. Bodzy Urban Outfitters	$300,000	$40,000	$150,000	$490,000	$0	$0	$0	$8,905	$498,905
24	Steven R. Lacy Koppers Holding Inc.	$326,160	$109,044	$40,956	$476,160	$228,320	$98,000	$27,120	$44,513	$847,113
25	John B. Wright II Triumph Group	$234,000	$240,000	$0	$474,000	$102,180	$1,583	$0	$8,196	$585,959
26	D. Jeffrey Benoliel Quaker Chemical Corp.	$280,000	$0	$183,362	$463,362	$29,286	$30,019	$182,000	$22,841	$727,508
27	John R. Gailey III West Pharmaceutical Services Inc.	$316,706	$0	$145,274	$461,980	$128,360	$90,350	$140,947	$35,113	$856,777
28	John Donlevie Entercom Communications Corp.	$337,355	$97,500	$0	$434,855	$110,122	$18,123	$0	$34,400	$597,500
29	Stephen L. Kibblehouse PMA Capital Corp.	$350,000	$10,000	$50,000	$410,000	$73,902	$0	$0	$26,747	$510,649
30	John Limongelli Adolor Corp.	$347,138	$0	$55,234	$402,372	$80,400	$163,600	$0	$7,350	$653,722

(1) *Snyder is listed as chief legal counsel under three separate SEC filings: Penn Virginia Corp., Penn Virginia GP Holdings and Penn Virginia Resource. Amounts reported reflect her combined compensation from all three companies.*

General Counsel Compensation Ranked by 2009 Total Cash

Rank	GC Company	Salary +	Bonus +	Non-Equity Incentive Plan Comp. =	Total Cash 2009	Stock Awards	Option Awards	Change in Pension Value	All Other Compensation	Total
31	James D. Dee C&D Technologies	$270,000	$104,250	$13,500	$387,750	$129,140	$103,074	$0	$10,778	$630,742
32	Mark E. Kimmel Harsco Corp.	$383,000	$0	$0	$383,000	$251,500	$0	$5,713	$22,437	$662,650
33	H. James McKnight Michael Baker Corp.	$294,185	$0	$86,200	$380,385	$0	$0	$0	$21,951	$402,336
34	Roy H. Stahl Aqua America Inc.	$280,000	$0	$99,098	$379,098	$187,425 (1)	$0	$237,700	$70,809	$875,033
35	Jack E. Jerrett OraSure Technologies Inc.	$260,000	$0	$107,000	$367,000	$40,112	$28,234	$0	$4,000	$439,346
36	William G. Kiesling CSS Industries Inc.	$300,500	$0	$0	$300,500	$65,438	$53,900	$0	$15,267	$435,105
37	Robert F. Schultz Ampco-Pittsburgh Corp.	$211,333	$75,000	$0	$286,333	$0	$63,400	$195,616	$26,743	$572,092
38	Laurence Welheimer Tasty Baking Co.	$215,000	$0	$49,088	$264,088	$40,800	$0	$0	$13,750	$318,638
39	Michael S. Yecies Resource America Inc.	$210,000	$50,000	$0	$260,000	$24,990	$9,803	$0	$45,053	$339,849
40	Brian D. Short (2) CDI Corp.	$236,844	$0	$17,584	$254,428	$12,354	$11,289	$0	$0	$278,071
41	Chad Whalen RTI International Metals Inc.	$232,000	$0	$0	$232,000	$91,863	$48,030	$1,484	$8,250	$381,627
42	Richard DePiano Jr. Escalon Medical Corp.	$191,407	$0	$0	$191,407	$0	$16,592	$0	$9,600	$217,599
43	Harry R. Swift Codorus Valley Bancorp Inc.	$190,000	$0	$0	$190,000	$2,525	$9,287	$318,036	$7,408	$527,256
44	Paul A. McGrath Universal Stainless & Alloy Products Inc.	$189,208	$0	$0	$189,208	$0	$51,250	$1,661	$6,880	$248,999
45	Ali Alavi Horsehead Holding Corp.	$160,000	$0	$9,600	$169,600	$94,017	$0	$0	$27,083	$290,700
46	Sara M. Antol (3) Tollgrade Communications	$163,420	$0	$0	$163,420	$0	$88,641	$0	$206,302	$458,363
47	Dennis M. Sheedy (4) Calgon Carbon Corp	$145,187	$0	$0	$145,187	$115,877	$37,294	$0	$487,000	$785,358

(1) *Reflects stock and options combined.*
(2) *Hired March 2009.*
(3) *Left the company Nov. 5, 2009.*
(4) *Left the company Sept. 2, 2009.*

GC Compensation

continued from **GC5**

change in pension value and any other form of compensation. She earned a total of $4.27 million. Walton was third in that category with total compensation of $3.95 million.

Cephalon General Counsel Gerald J. Pappert was new to the list this year, ranking fourth in total compensation at $2.73 million thanks to more than $800,000 each in stock and option awards. He ranked fifth on the overall list with total cash compensation of $953,700.

Despite falling from fifth place in total cash compensation last year to 22nd this year, United States Steel Corp.'s James D. Garraux was still fifth this year when it came to total compensation with $2.61 million. His fall down the overall ranking was due to a $780,000 decrease in his non-equity incentive plan compensation to $60,000 and a slight dip in base salary, bringing his total cash draw to just over $511,000. That is compared to the nearly $1.3 million he earned in total cash in 2008.

PA FARES BETTER THAN U.S.

There were few dramatic increases in pay in 2009, as would probably be expected. But the bulk of Pennsylvania general counsel did see a bump in their total cash draw. In fact, only 12 saw a decrease, one stayed the same and the rest took home more than they did in 2009.

Legal affiliate *Corporate Counsel* magazine recently published its compensation survey of the Fortune 500 general counsel and came to somewhat of a more sobering conclusion, finding that the pause in compensation hikes that began in 2008 continued in 2009. The magazine found the basic trend in 2009 compensation was that the numbers were flat, with sometimes "dramatic declines" in bonuses and equity.

> *There are fewer GCs that have crossed the million-dollar mark. But on the whole, the numbers have edged up higher in 2009 for the bulk of the GCs listed.*

"Discretionary bonuses fell under the ax, as companies strove to tie GC compensation to definable metrics," the magazine reported. "And new laws mandating more transparency in the compensation process foreshadow more introspection and greater accountability. It's all relative, of course — chief legal officers continue to be handsomely paid, and this will continue. But for now, the days of gravity-defying raises are over."

Gravity-defying days are perhaps on hold in Pennsylvania too, but the state didn't see many dramatic drops in some of the key compensation metrics. Petren's first-ranked earnings of $2.4 million are lower than Walton's top earnings of last year, which were nearly $2.6 million. There are also fewer GCs that have crossed the million-dollar mark. But on the whole, the numbers have edged up higher in 2009 for the bulk of the GCs listed.

NOTABLE CHANGES

While base salary didn't change much, 25 of those 36 repeats to the list did see an increase in base salary, often a nominal amount. The exception was PMA Capital Corp.'s general counsel, Stephen L. Kibblehouse, who saw a rise in salary from about $168,000 in 2008 to $350,000 in 2009. Though his bonus

GC Compensation *continues on* **GC17**

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Philadelphia's Employment Lawyers

FOR MORE THAN 30 YEARS, Sidney L. Gold & Associates, P.C. has dedicated its practice to the field of employment law and civil rights litigation. The firm's attorneys take great pride in serving as both aggressive and compassionate advocates for victims of unlawful discrimination and harrassment. As a result, Martindale-Hubbell®'s *Bar Register* has certified Sidney L. Gold & Associates as a pre-eminent law firm in the field of labor and employment law. More than 4,500 lawyers throughout Pennsylvania and New Jersey look to Sidney L. Gold & Associates to refer their clients.

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Comparing Three Years of GC Salary and Bonus

Rank	GC	Salary 2009	Bonus 2009	Salary 2008	Bonus 2008	Salary 2007	Bonus 2007
1	Arthur R. Block	$846,036.00	$0.00	$771,769.00	$40,025.00	—	—
2	Carol Ann Petren	$565,000.00	$0.00	$558,269.00	$0.00	$535,962.00	$0.00
3	Gerald J. Pappert	$551,300.00	$0.00	—	—	—	—
4	Burton H. Snyder	$485,000.00	$0.00	$485,000.00	$0.00	—	—
5	Nancy M. Snyder (1)	$458,450.00	$415,200.00	—	—	—	—
6	James D. Garraux	$451,260.00	$0.00	$458,340.00	$0.00	—	—
7	Jordan B. Savitch	$433,447.00	$0.00	$421,200.00	$0.00	$405,000.00	$0.00
8	Jon D. Walton	$428,000.00	$0.00	$427,000.00	$0.00	$413,733.00	$12,582.00
9	Caroline B. Manogue	$423,404.00	$0.00	$387,500.00	$0.00	$375,000.00	$0.00
10	P. Jerome Richey	$414,258.00	$0.00	$376,885.00	$0.00	$326,462.00	$0.00
11	David M. Feinberg	$400,000.00	$90,000.00	—	—	—	—
12	Joshua Gindin	$396,768.00	$0.00	$383,883.00	$0.00	—	—
13	Mark E. Kimmel	$383,000.00	$0.00	$370,000.00	$0.00	$275,501.00	$0.00
14	Laurence G. Miller	$372,500.00	$58,110.00	$372,500.00	$44,700.00	$346,080.00	$426,864.00
15	Stephen L. Kibblehouse	$350,000.00	$10,000.00	$168,494.00	$35,000.00	—	—
16	John Limongelli	$347,138.00	$0.00	—	—	—	—
17	Robert H. Knauss	$340,146.00	$0.00	—	—	—	—
18	Brian J. Sisko	$340,000.00	$50,000.00	$340,000.00	$50,000.00	—	—
19	John Donlevie	$337,355.00	$97,500.00	$330,597.00	$97,500.00	—	—
20	Brad A. Molotsky	$335,636.00	$54,400.00	$331,433.00	$240,000.00	$320,583.00	$252,868.00
21	Jennifer Evans Stacey	$330,897.00	$0.00	—	—	—	—
22	Steven R. Lacy	$326,160.00	$109,044.00	$322,119.00	$188,000.00	—	—
23	James J. Bowes	$325,000.00	$500.00	$325,000.00	$500.00	$325,000.00	$500.00
24	J.D. Nickel	$321,625.00	$0.00	—	—	—	—
25	John R. Gailey III	$316,706.00	$0.00	$320,485.00	$0.00	$305,691.00	$0.00
26	John G. Chou	$310,160.00	$0.00	$294,866.00	$0.00	—	—
27	William G. Kiesling	$300,500.00	$0.00	$279,510.00	$131,235.00	$279,510.00	$131,235.00
28	Glen A. Bodzy	$300,000.00	$40,000.00	$289,692.00	$6,314.00	$289,692.00	$6,314.00
29	H. James McKnight	$294,185.00	$0.00	$270,942.00	$0.00	$263,203.00	$46,414.00
30	D. Jeffrey Benoliel	$280,000.00	$0.00	$258,300.00	$0.00	—	—
31	Roy H. Stahl	$280,000.00	$0.00	$275,158.00	$0.00	$259,068.00	$0.00
32	James D. Dee	$270,000.00	$104,250.00	$260,000.00	$139,000.00	$250,000.00	$36,461.00
33	Jack E. Jerrett	$260,000.00	$0.00	$259,804.00	$0.00	—	—
34	N. Jeffrey Klauder	$259,615.00	$325,000.00	$250,000.00	$132,500.00	$250,000.00	$500,000.00
35	Brian D. Short (2)	$236,844.00	$0.00	—	—	—	—
36	John B. Wright II	$234,000.00	$240,000.00	$222,600.00	$215,000.00	$222,600.00	$215,000.00
37	Chad Whalen	$232,000.00	$0.00	—	—	—	—
38	Gerald R. Schrader	$224,616.00	$300,000.00	—	—	—	—
39	Laurence Welheimer	$215,000.00	$0.00	$204,938.00	$0.00	—	—
40	Robert F. Schultz	$211,333.00	$75,000.00	$201,000.00	$55,000.00	$191,000.00	$55,000.00
41	Michael S. Yecies	$210,000.00	$50,000.00	—	—	$210,000.00	$150,000.00
42	Richard DePiano Jr.	$191,407.00	$0.00	$180,000.00	$0.00	$127,200.00	$80,000.00
43	Harry R. Swift	$190,000.00	$0.00	$190,000.00	$0.00	$184,000.00	$0.00
44	Paul A. McGrath	$189,208.00	$0.00	$178,385.00	$90,000.00	$172,307.00	$226,000.00
45	Sara M. Antol (3)	$163,420.00	$0.00	—	—	—	—
46	Ali Alavi	$160,000.00	$0.00	$160,000.00	$102,327.00	—	—
47	Dennis M. Sheedy (4)	$145,187.00	$0.00	$215,296.00	$0.00	$203,334.00	$0.00

— Indicates the compensation for this individual was not reported in this year.

(1) *Snyder is listed as chief legal counsel under three separate SEC filings: Penn Virginia Corp., Penn Virginia GP Holdings and Penn Virginia Resource. Amounts reported reflect her combined compensation from all three companies.*

(2) *Hired March 2009.*

(3) *Left the company Nov. 5, 2009.*

(4) *Left the company Sept. 2, 2009.*

The Impact of Dodd-Frank: *Will Executive Compensation Change as a Result of 'Say on Pay' and 'Proxy Access'?*

BY KATAYUN I. JAFFARI
AND JOHN H. CHUNG
Special to the Legal

A year ago, we published an article in this publication entitled "Executive Compensation: Under Fire and What's to Come," which summarized the then-current landscape of executive compensation legislation and regulation. Since then, in almost every Congressional session, legislation has been proposed and debated to restrict executive compensation or regulate corporate governance in one form or another.

The culmination of all such legislation led to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law by President Obama on July 21, 2010. Although the majority of the act focuses on the regulation of financial institutions, there are provisions in the act that regulate executive compensation and corporate governance that apply to most publicly traded companies (as smaller companies are exempt from some provisions). Certain of these provisions may have a significant effect on executive compensation in the future.

First, with the passage of the Dodd-Frank Act, we now have a required vote on "say on pay." Namely, the act compels companies to provide for an advisory shareholder vote on the compensation of executives, details of which we expect to see soon from rules promulgated by the Securities and Exchange Commission. Say on pay will likely have a significant impact on how management and compensation committees design executive compensation programs.

In addition, the act provides the SEC the authority to issue — and it quickly did issue — rules permitting shareholders to nominate directors within the company's proxy solicitation materials, giving investors a greater voice in board composition and ultimately the composition of board committees, like the compensation committee.

SAY ON PAY IS HERE TO STAY

The Dodd-Frank Act requires companies to give shareholders a non-binding say on pay vote to approve the compensation of a company's named executive officers at least once every three years.

Further, in a separate non-binding vote held at least once every six years, shareholders must be provided with a separate, non-binding vote on whether the say on pay vote should occur every one, two or three years. Finally, institutional shareholders subject to Section 13(f) of the Exchange Act will be required to report annually how they voted in any say on pay vote.

Say on pay will be effective for the first annual or other meeting of shareholders that occurs after Jan. 21, 2011. At this first annual meeting, companies must include the two say on pay votes described above. Though these votes will be non-binding on a company and its board of directors, and do not create any additional fiduciary duties, they are significant opportunities for shareholders to voice their opinions. Failure to receive shareholder approval could mean difficulty in re-electing com-


JAFFARI


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pensation committee directors the following year.

In the 2010 proxy season, studies have shown that of the 125 management proposals by federally supported financial firms, or the Troubled Asset Relief Program (TARP) recipients, and other companies that implemented a say on pay advisory vote, 122 received majority support, with approval averaging more than 74 percent of the votes cast.

There may be reason to believe, however, that the new legislation could shake up compensation practices, since three companies — KeyCorp, Motorola Inc. and Occidental Petroleum Corporation — had shareholders reject executive pay packages in say on pay votes, whereas in the 2009 proxy season, studies have shown that there were no rejections for the roughly 400 companies that conducted a say on pay vote. This was a particularly interesting development given that the three companies are not Wall Street banks at which the public has been outraged over exorbitant compensation or bonuses. Moreover, there were no indications of shareholder dissatisfaction at these companies, such as organized campaigns against executive pay packages, making the results of the vote particularly surprising. On the contrary, shareholders of each of the TARP recipients approved the compensation of their executive officers.

In addition, the Dodd-Frank Act requires public companies to provide a non-binding shareholder vote to approve any named executive officer compensation relating to a change in control transaction, such as an acquisition, merger, consolidation or sale of all or substantially all of a company's assets (known as "golden parachute" compensation) when the shareholders are asked to approve the change in control transaction itself. The "say on golden parachute" vote must be a separate vote from the shareholder vote approving the transaction.

The act requires the company to disclose all of the agreements or understandings that it has with such named executive officers, as well as a description of the compensation in "clear and simple form" and the aggregate dollar value of each named executive officer's compensation in connection with the vote. The shareholders must vote on such agreements or understandings unless they have already voted on those agreements or understandings in a separate say on pay resolution.

WHAT TO DO NOW TO PREPARE FOR SAY ON PAY

General counsel at publicly traded companies should consider the following recommendations to prepare for the shareholder vote on say on pay and better understand shareholder interests and views on compensation programs:

- Communicate with major shareholders about the company's compensation programs without going awry of the requirements under Regulation FD (Fair Disclosure).
- Anticipate shareholder concerns (including in particular those of institutional investors and activist shareholders) and be prepared to defend the company's practices or to explain the steps being taken to address concerns.
- Prepare to articulate the company's compensation program, alignment of executives' long-term interests with those of shareholders, and justification for using specific performance metrics and goals, along with how the program relates to the overall business strategy in the Compensation Discussion & Analysis section of the proxy statement.
- Educate senior management and the board regarding the new requirements and heightened scrutiny on compensation.
- Consider whether there are any compensation elements that may lead to inappropriate risk-taking.
- Mobilize extra efforts to encourage retail shareholders to vote.

In the 2010 proxy season, studies have shown that of the 125 management proposals by federally supported financial firms ... and other companies that implemented a say on pay advisory vote, 122 received majority support.

PROXY ACCESS HAS FINALLY ARRIVED

The Dodd-Frank Act authorized the SEC to adopt proxy access rules that would require a company to include in its proxy materials shareholder nominees for election to the company's board of directors, providing the SEC broad discretion to issue proxy access rules under such terms and conditions as it deems appropriate to ensure investor protection and the safeguard of shareholder interests.

The SEC did just that on Aug. 25, when it adopted amendments to its proxy rules that require all public companies to include in its proxy materials candidates to the board who have been nominated by shareholders who meet certain conditions. The new rules also require companies to include in their proxy materials, in certain circumstances, shareholder proposals that seek to establish a procedure in a company's governing documents for the inclusion of shareholder director nominees in the company's proxy materials.

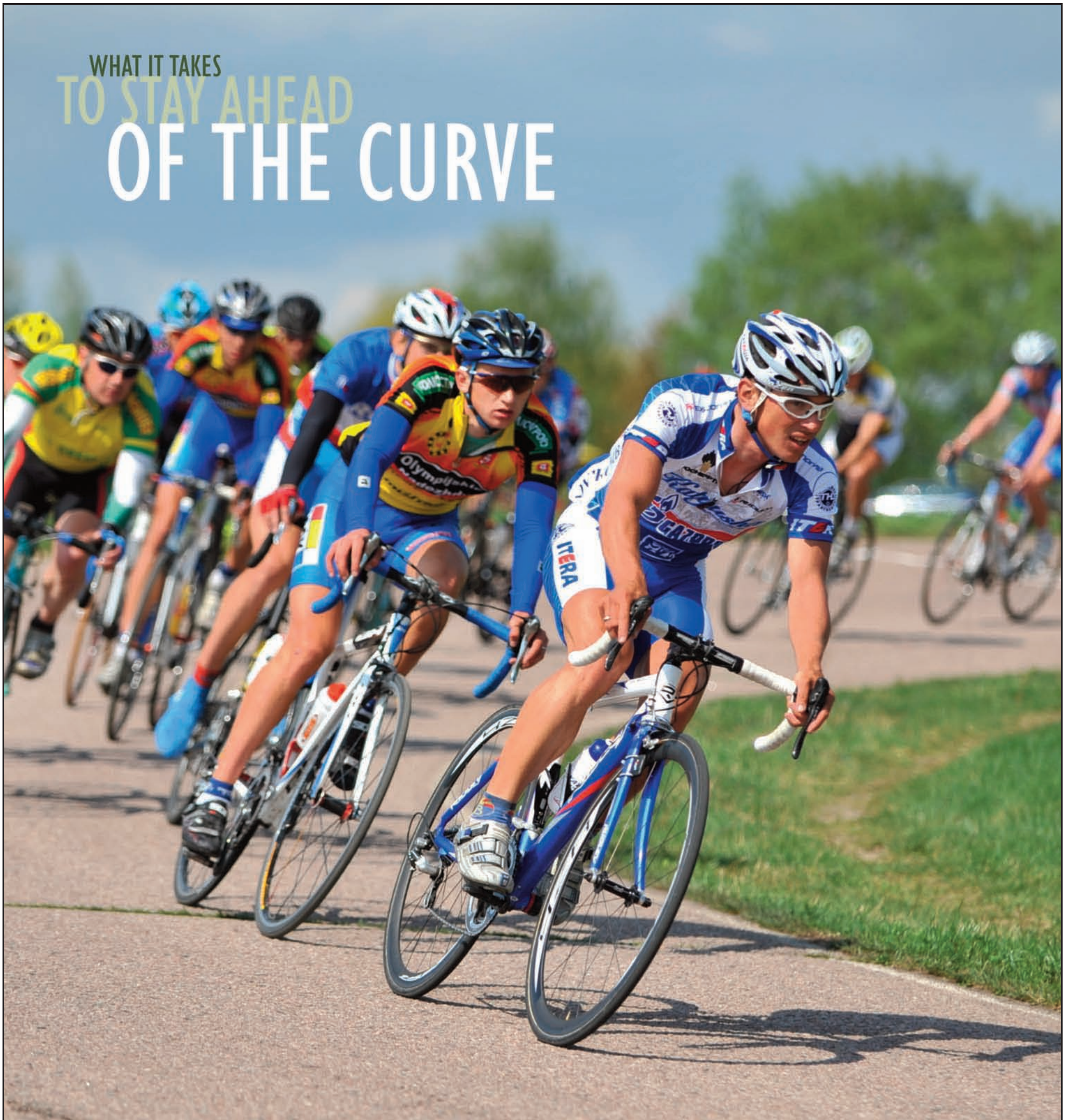
The new rules are effective 60 days after publication in the Federal Register; however, the deadline for submitting a nominee is 120 days before the anniversary of the company's prior year's proxy mailing. All public companies that are subject to the proxy rules must comply with the new proxy access rule. However, the rule will not apply to smaller reporting companies (i.e., companies with a market float of less than $75 million) for three years.

Proxy access is only available to shareholders, or a group of shareholders, that meet certain requirements, including the following:

- Shareholders wanting to submit a nominee must hold at least 3 percent of the voting power of the company's shares, and groups may aggregate shares to achieve the threshold.
- The shares must have been held by the nominating shareholder or group for at least three years prior to the nomination, and the nominating shareholder or group must represent that they intend to hold the shares until the date of the annual meeting.
- The nominating shareholder or group must certify that it is not seeking to change control of the company or to gain a number of seats representing more than one director or 25 percent of the company's directors, whichever is greater.
- The nominating shareholder or group must communicate their intent to name a nominee(s) in a company's proxy statement by filing a new Schedule 14N no earlier than 150 days, and no later than 120 days, prior to the anniversary of the mailing date of the company's prior year's proxy materials.
- The nominating shareholder or group must disclose whether, to their knowledge, their nominees meet the company's director qualifications as set forth in the company's governing documents.
- Nominees must satisfy any federal and state law eligibility requirements in order to be considered as directors and must satisfy the objective independence standards of applicable exchange rules. However, there is no restriction on the relationship between the nominating shareholder and the nominee.

Companies seeking to exclude shareholder nominees may use the no-action

Dodd-Frank continues on **GC18**


WHAT IT TAKES
TO STAY AHEAD
OF THE CURVE

The Great Hangover: *The Worst Recession in Decades Hits GCs' Wallets. But for How Long?*

BY ALAN COHEN
Corporate Counsel

In a year when discretionary bonuses dropped nearly 40 percent, it might seem hard to find a silver lining — or even an aluminum one.

As the recession battered markets — and jobs — over the past couple of years, and publicly traded companies saw their profitability hammered, it was reasonable to think compensation would tank, too, even for the top lawyers at major corporations. And as *Corporate Counsel*'s 2010 GC Compensation Survey shows, big chunks of take-home pay — particularly those bonuses — did take a beating. *(See chart on page 15.)*

But it could have been worse. If there is one theme to this year's survey, maybe it's in with the new — and in with some of the old, too. There is the new reality that is making an impact, and dent, in the chief legal officer's pocket: the economy. And the public and the Securities and Exchange Commission are giving executive compensation more scrutiny. They're demanding to know how, exactly, a company determines its executives' compensation, and making it clear that if you cough up a big number, you'd better have a good year — or a good explanation.

The new world of compensation has less love for discretionary bonuses, and stock options, too — two components of GC pay that, prerecession, knew nothing but good times. Options awards were lower this year and given to fewer GCs. And forget those days of the $9 million cash bonus.

This year's top award came in at $3.6 million — to Johnson & Johnson's Russell Deyo — while the bulk of the 100 lawyers on our list received in the mid-to-high six figures. OK, so those sums don't quite warrant a trip to Hallmark for a keep-your-chin-up-in-the-recession card. But they mark a 37.1 percent drop in traditional cash bonuses, and a 10 percent drop in its newer variant, nonequity incentive compensation (bonuses tied to specific financial metrics, like profits or revenue). Given the history of bonuses — for years, nothing but more, more, more — that's pretty stunning.

What saved the day for the chief legal officers of the nation's largest corporations — somewhat — is the re-emergence of some old compensation favorites. Like salary — up 3.8 percent. And stock awards — up 5.6 percent. These aren't huge increases, but in a world where flat is the new up, they helped hold the doom and gloom at bay, at least for now.

So what should we make of all this — bonuses hammered, but salaries and stock holding their own, and even getting an uptick? "The days of super excessive pay may be over," said one compensation expert. "But companies still need to incentivize and retain people. They'll come up with packages."

Still, that bonus drop: Ouch. The average total cash bonus — combining discretionary awards with nonequity incentive compensation — cratered, down 18 percent to $947,781. We expected to see some downward movement. Last year's number was up less than 1 percent over the 2008 survey, putting the writing on the wall. But to drop nearly a fifth?

How the damage broke down was even more eye-opening. While nonequity incentive awards dropped from an average of $987,420 to $888,726, traditional bonuses tailspinned from $957,000 to around $600,000.

Compensation experts, however, weren't surprised.

"Discretionary bonuses have been on the wane for a while now," said Timothy Sparks, president of Compensia Inc., a San Jose firm that advises compensation committees at public companies.

The reason? There are 700 billion of them. A recession, accounting scandals, widespread layoffs, and enough bailouts to keep checkbook printers summering in the Hamptons practically for eternity, have brought what may be the biggest — and farthest reaching — new trend in executive pay: increased visibility. Recent SEC rules, for example, require companies to go into detail on their proxy statements about how they calculate compensation for their top executives: What companies does it compare itself to? What information did it look at? A narrative of the process must be provided — a Story of the Pay. And discretionary bonuses are a story not all companies want to tell.

"One of the things that drives bonuses is, 'What will we have to say in [our] proxy and are we comfortable saying it?'" Sparks said. "Companies want to limit subjectivity."

Yet they also need to keep their top employees — a point that helps to explain the salary uptick: that 3.8 percent bump, to an average of just over $619,000. This came in a year when unemployment topped 10 percent for the first time in the new millennium. It came, compensation experts said, because companies are tinkering with the components that make up a GC's compensation — trying to find a mix that works better in this new world of visibility and scrutiny.

"You see a bit of shifting in some cases to a little more salary so there is a little less emphasis on incentive and risk," said Andrea Rattner, chair of the tax department at Proskauer Rose in New York and an expert in executive compensation law. Keep in mind, too, that the SEC now requires companies to disclose in their proxy statements any compensation programs that are reasonably likely to have a material adverse effect on the company. "I'm not aware of a single company that went out there and said 'we have programs that [do that],'" Rattner said. Instead, they're mixing their programs and reducing their risk.

At some companies, the shift has been more of the tectonic variety. John Finneran Jr., the top legal officer at credit giant Capital One Financial Corporation, came in at number 14 on our list solely on the basis of $2.3 million in salary. Six other GCs received base salaries of at least $1 million.

John Finneran Jr., the top legal officer at Capital One Financial Corporation, came in at number 14 on our list solely on the basis of $2.3 million in salary. Six other GCs received base salaries of at least $1 million. What makes this noteworthy is that salary, historically, was never the carrot that lured lawyers in-house.

What makes Finneran's standing all the more noteworthy is that salary, historically, was never the carrot that lured lawyers in-house. Instead, it was stock. Receiving shares outright and options — that was the real ticket to riches for the in-house bar. And year after year, equity awards boomed. But our 2009 survey put a big tear in that golden parachute, with the average stock award dropping nearly 18 percent and options down 7 percent — little surprise with a market that was as stable as Lindsay Lohan's acting career.

Of course, the market rebounded in the second half of 2009. Stock awards increased to an average of $1.2 million, up 5.6 percent from last year's survey. But that's still less than the $1.3 million on our 2008 survey.

Options, on the other hand, continued their decline — both in value and popularity. The average award of $647,507 on our 2010 survey represents a drop of just over 3 percent. And while the overwhelming majority — 70 percent — of the top 100 GCs received options, that group used to be bigger still, with 87 GCs getting options on our 2008 survey, and 78 according to last year's tally. Options — many of which sank

Recession continues on **GC18**

The 50 Top-Paid Fortune 500 GCs Ranked by Total Cash

Rank FY '09	Rank FY '08	GC Name	Company	State	Salary	Bonus Plus Nonequity Incentive Compensation	Total Cash	Stock Value Realized	Total Cash Plus Stock Value Realized	Stock Awards	Option Awards
1	8	Russell Deyo	Johnson & Johnson	NJ	$831,838	$3,608,760	$4,440,598	$1,800,577	$6,241,175	$611,372	$1,159,245
2	4	Charles Wall	Philip Morris International Inc.	NY	$1,116,500	$2,700,000	$3,816,500	$ 7,870,569	$11,687,069	$3,267,197	$0
3	7	Paul Cappuccio	Time Warner Inc. (1)	NY	$1,000,000	$2,800,000	$3,800,000	$2,027,510	$5,827,510	$784,860	$398,400
4	53	Larry Hunter	The DirecTV Group, Inc.	CA	$891,071	$2,700,000	$3,591,071	$2,553,045	$6,144,116	$1,220,725	$0
5	5	Alan Braverman	The Walt Disney Company	CA	$1,120,769	$2,035,000	$3,155,769	$4,320,615	$7,476,384	$1,908,471	$735,752
6	10	Louis Briskman	CBS Corporation	NY	$1,305,000	$1,800,000	$3,105,000	$181,074	$3,286,074	$899,995	$2,335,490
7	31	Marc Firestone	Kraft Foods Inc.	IL	$660,000	$2,435,388	$3,095,388	$606,155	$3,701,543	$1,325,709	$221,154
8	14	Michael Fricklas	Viacom Inc.	NY	$1,050,000	$2,000,000	$3,050,000	$530,932	$3,580,932	$1,799,997	$1,199,999
9	16	Alan Schnitzer	The Travelers Companies Inc.	NY	$650,000	$2,350,000	$3,000,000	$1,484,768	$4,484,768	$1,170,017	$779,995
10	-	Laureen Seeger	McKesson Corporation	CA	$605,000	$1,938,000	$2,543,000	$564,246	$3,107,246	$1,141,433	$869,078
11	32	Carol Ann Petren	Cigna Corporation	PA	$565,000	$1,880,000	$2,445,000	$36,738	$2,481,738	$1,500,009	$263,261
12	-	Judy Lambeth	Reynolds American Inc.	NC	$564,850	$1,813,809	$2,378,659	$299,318	$2,677,977	$1,165,219	$0
13	13	Peter Beshar	Marsh & McLennan Companies	NY	$875,000	$1,500,000	$2,375,000	$0	$2,375,000	$437,502	$1,318,220
14	-	John Finneran, Jr.	Capital One Financial Corporation	VA	$2,300,000	$0	$2,300,000	$1,872,396	$4,172,396	$3,140,871	$891,667
15	-	James Comey	Lockheed Martin Corporation	MD	$730,289	$1,497,500	$2,227,789	$0	$2,227,789	$2,653,018	$972,784
16	-	Timothy Goodell	Hess Corporation	NY	$650,000	$1,530,000	$2,180,000	$0	$2,180,000	$1,241,460	$1,217,040
17	-	James Cicconi	AT&T Inc.	TX	$800,000	$1,350,000	$2,150,000	$2,304,908	$4,454,908	$6,249,999	$0
18	-	Charles Kalil	The Dow Chemical Company	MI	$767,014	$1,381,457	$2,148,471	$26,099	$2,174,570	$2,509,040	$803,218
19	-	Jeffrey Carp	State Street Corporation	MA	$550,000	$1,574,800	$2,124,800	$866,175	$2,990,975	$6,000,014	$0
20	-	James Evans	American Financial Group Inc.	OH	$1,066,150	$1,050,000	$2,116,150	$779,242	$2,895,392	$179,063	$182,813
21	-	Terrence Larkin	Lear Corporation	MI	$594,432	$1,494,202	$2,088,634	$0	$2,088,634	$215,390	$84,600
22	21	Sheldon Cammaker	Emcor Group, Inc.	CT	$475,000	$1,491,050	$1,966,050	$685,946	$2,651,996	$296,875	$0
23	-	Charles Tanabe	Liberty Media Corporation	CO	$875,500	$1,050,600	$1,926,100	$10,718,299	$12,644,399	$350,233	$2,292,387
24	26	Robert Armitage	Eli Lilly and Company	IN	$811,167	$1,109,676	$1,920,843	$1,161,008	$3,081,851	$3,000,000	$0
25	25	Laura Schumacher	Abbott Laboratories	IL	$799,350	$1,075,000	$1,874,350	$1,409,409	$3,283,759	$2,479,154	$602,272
26	-	William Lemmer	Cameron International Corporation	TX	$420,000	$1,446,000	$1,866,000	$227,003	$2,093,003	$345,312	$502,281
27	-	W. Thaddeus Miller	Calpine Corporation	TX	$723,366	$1,119,673	$1,843,039	$0	$1,843,039	$0	$567,000
28	34	Richard Baer	Qwest Communications International Inc.	CO	$716,538	$1,058,805	$1,775,343	$470,630	$2,245,973	$2,507,610	$0
29	15	Albert Cornelison, Jr.	Halliburton Company	TX	$543,813	$1,210,000	$1,753,813	$1,123,387	$2,877,200	$865,825	$463,628
30	-	Elizabeth Markowski	Liberty Global Inc.	CO	$764,000	$930,000	$1,694,000	$4,994,062	$6,688,062	$0	$0
31	42	John Halvey	NYSE Euronext	NY	$750,000	$925,000	$1,675,000	$159,505	$1,834,505	$2,124,997	$0

1. Spun off Time Warner Cable Inc. in March 2009.

The Bright Side of Recession: *Economic Downturn Did Result in Cutbacks, But Also Closer Relationships*

BY AMY MILLER
Corporate Counsel

When *Corporate Counsel* magazine conducted its annual outside counsel survey last year, there was talk of revolution in the air. The recession was forcing corporate law departments to cut their budgets wherever they could, and outside legal spending was the biggest target.

But some in-house lawyers said that they weren't just trying to get steeper discounts from their law firms — they wanted a fundamental change in the way they were charged. They were fed up with invoices based on the billable hour and were pushing firms to switch to alternative fee arrangements. Surprisingly, the outside lawyers said that they were okay with this, and they were doing what they could to meet the demand.

A year later, we decided to check: Has the Bastille of the billable hour been torn down?

Well, not yet. According to both inside and outside lawyers whom we interviewed for our latest survey of "Who Represents America's Biggest Companies," most invoices are still based on the hour. But, everyone agrees, alternative fee arrangements have become more common. And, they add, these agreements are leading to an unexpectedly positive side effect: better relationships between law departments and law firms.

The reason, it turns out, is simple. Both sides want to craft a deal that's mutually satisfactory — one that reduces expenses for the company, yet still yields a profit for the firm. But in order to figure out what the ideal fee for a particular matter should be, they have to share a lot of information, about everything from staffing decisions to overhead costs to client expectations. And it turns out that the more they know about each other, the better they get along.

Everyone, it seems, likes the relationship metaphor. Teri McClure, general counsel for United Parcel Service Inc., said, "We invest a lot of time and energy into the relationship, and very much view it as a partnership." She added, "There's a much more collaborative approach now, and it has required more communication, more dialogue, and much more openness."

Don Liu, general counsel of Xerox Corporation, noted, "I don't think that every relationship lasts forever, but I do think that you have to have long-term relationships in mind."

Outside lawyers are noticing the desire for something deeper and more intimate, too. Sounding like a couples therapist, Ralph Baxter, the chairman of Orrick Herrington & Sutcliffe, opined that "clients are more open to entering into more mutually committed relationships than they have been for some time."

And Evan Chesler, presiding partner at Cravath Swaine & Moore, sounded downright Victorian in his assessment. "I think we went through a phase of speed dating," said Chesler, an outspoken advocate of alternative billing models. "Now we're entering a phase where long-term relationships really do matter. The era of the relationship is back in vogue."

Are these just marriages of convenience, brought on by the worst downturn since the Great Depression? Perhaps.

"This latest recession is making law firms much more open to finding creative ways to help us reduce costs," said McClure. "They are sensitive to the fact that we are in a better bargaining position."

Will outside counsel still be receptive to their clients' demands when the economy picks up? Maybe. But for now, everyone wants to make beautiful music together.

BETTER, FASTER, STRONGER

Alternative fee arrangements aren't new — some vocal GCs have been arguing for them for years. But the recent recession has pushed change forward faster and more broadly than almost anyone could have anticipated. According to an Association of Corporate Counsel survey released in March, almost 80 percent of the responding GCs said they were planning to increase spending under alternative fee arrangements this year.

Atlanta-based UPS implemented a rate freeze for its law firms in 2009. But McClure is also using alt-fee arrangements to cut costs on repetitive legal matters, such as discovery. "We've tried a number of different arrangements, and we're being much more creative," she said.

One of the most successful efforts began in January 2009, when the shipping company selected King & Spalding, one of its primary outside firms, to handle all of its discovery matters. The firm charges a bundled per-document fee that takes into account the costs of manual document review, as well as all costs associated with document review software, data processing, data hosting, and document production. Plus, King & Spalding gave UPS the choice of either using the firm's own off-site document facility, or hiring alternative staffing agencies, depending on the needs of the case.

"What we wanted to do was create a cradle-to-grave solution [to provide UPS] with quality, efficiency, predictability, and cost savings," said Paul Murphy, a partner in King & Spalding's business litigation practice group. In the first six months of the arrangement, UPS says, it saw a 50 percent savings related to document review.

In 2009, Xerox sent a letter to its key law firms asking them to come up with their own ideas to cut legal costs by 20 percent. Firms responded by proposing staffing, vendor, and billing changes, as well as fixed-fee arrangements for patent preparation and prosecution. As a result, Xerox now pays firms under both fixed fees and hourly rates with a total fee cap to handle patent preparation and prosecution work. The company now spends about 10 percent less per event than it did four or five years ago.

"Some firms came up with brilliant ideas," said Liu. "And some didn't. Those that did wound up deepening their relationship with us, probably permanently."

Companies aren't just negotiating alternative fees for routine matters, however. Some general counsel have gone a step further by striking alternative fee arrangements for all of their legal work. The Body Shop International plc is one example. All of the U.K.-based cosmetics maker's legal matters are handled under alternative fees, including complex litigation. There are no exceptions, said general counsel Susan Flook.

"I never pay hourly rates," Flook said. "We desperately try to control spending because we have budgets to meet, and the law firms know it."

SUCCESS = SHARING

It's one thing to come up with different fee arrangements. To make them work, sharing has to be taken to a whole new level. Kenneth Grady, general counsel of Wolverine World Wide Inc., and Lisa Damon, a partner at Seyfarth Shaw, have written several blog posts on the ACC's Web site about how they've negotiated fee deals for the Michigan-based shoemaker's trademark portfolio.

"We're both spending a fair amount of time working through what makes sense for both of us," Grady said. "It's intended to be a relationship that benefits both sides." And key to those discussions has been their willingness to exchange data so they can negotiate a fee, measure the arrangement's success, and ultimately eliminate inefficiencies. Grady, for example, has been willing to disclose how much Wolverine has spent on trademark and anticounterfeiting actions. Meanwhile, Damon has proposed using metrics such as overall satisfaction, timeliness of communication, and cost-management effectiveness.

"It's critical that you share information," Grady said. "Part of what makes for an unhappy in-house/outside counsel relationship is the failure to share expectations up front at a sufficient level."

Bombardier Inc., which makes aircraft and railroad equipment, wants to ensure that its firms have compatible systems so they can share information. So it requires key firms to invest in whatever technology is necessary to provide the Montreal-based company with the data it wants — at no cost to Bombardier. "Firms have to show that they understand my business and my needs, and the types of issues that might affect me," said general counsel Daniel Desjardins. "That's the kind of investment you want."

Many in-house counsel are also taking a much more active role in assessing the performance of the law firms they hire. At Liberty Mutual Group Inc., the legal department has expanded the use of metrics to assess law firms and determine what types of matters are best suited to alternative billing arrangements. Staff lawyers at the Boston-based insurer take a close look at case volumes and outcomes, year-to-year costs, and staffing. They also conduct regular audits of their law firms.

And they don't keep the information to themselves.

"I can tell you we share a lot of the metrics with firms," said Helen Gillcrist, vice president and manager of enterprise legal services. "We want our firms to be successful. Driving law firms out of business doesn't accomplish anything."

UPS also conducts 360-degree evaluations to identify areas for improvement. McClure wants to know who is staffing matters, whether work is being hoarded, and how outside lawyers are compensated. She also encourages her law firms to communicate with each other, and she makes sure they meet routinely.

A few years ago, McClure says, law firms were less receptive to this sort of involvement. "I don't think firms liked talking about those kinds of things," she said. "But they are much more receptive now when the questions are asked."

The North American Commercial unit of Zurich Financial Services AG is soliciting alternative fee arrangements for all of its larger engagements now. And to make sure the insurance company hires the right firms, it's looking at hundreds of data points to determine whether a given firm really provides value.

"We're basically transforming the evaluation of outside counsel," said North America Commercial general counsel Dennis Kerrigan. "We're measuring them in a more systematic way than we ever have before. There are a lot of great firms out there, and this is a way to capture that and to use those better firms over and over again."

Adjusting to a new way of doing things hasn't been easy. It's not just up to firms to pitch alternative billing strategies—general counsel are struggling to adapt to new ways of valuing legal services, too.

"It's a two-way street," said Charles Wunsch, the top lawyer at Kansas-based Sprint Nextel Corporation. He said both he and his law firms still rely on the billable hour as a way to value legal services. But, Wunsch added, eventually he doesn't want to get any hourly bills.

"Relying on the billable hour defeats the whole purpose," Wunsch said. "If a firm gets the work done quickly and satisfactorily, I should be happy. What I should be paying for is a solution."

Both inside and outside counsel say that even after the economy rebounds and legal budgets start to rise, companies and their firms won't go back to the old way of doing business. And while the billable hour may never completely disappear, corporate counsel will continue to become savvier buyers of legal services, and law firms will have to respond to survive.

And building long-term relationships will be key to that success, many say. For all the economic problems it's caused, the recession has proven that to be true.

"People say that if you go to war with someone, you get to know them really well," said Xerox's Liu. "And we have gone through a stressful time together with our firms the last few years. But when you help each other out, you build mutual relationships in a much stronger way." •

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The 50 Top-Paid Fortune 500 GCs Ranked by Total Cash

Rank FY '09	Rank FY '08	GC Name	Company	State	Salary	Bonus Plus Nonequity Incentive Compensation	Total Cash	Stock Value Realized	Total Cash Plus Stock Value Realized	Stock Awards	Option Awards
32	38	Arthur Block	Comcast Corporation	PA	$846,036	$799,696	$1,645,732	$367,968	$2,013,700	$2,452,295	$1,388,789
33	62	Joshua Floum	Visa Inc.	CA	$555,022	$1,070,965	$1,625,987	$570,646	$2,196,633	$510,179	$931,271
34	-	Denise Keane	Altria Group Inc.	VA	$700,333	$900,000	$1,600,333	$662,383	$2,262,716	$3,000,228	$0
35	37	David Savner	General Dynamics Corporation	VA	$602,500	$975,000	$1,577,500	$380,122	$1,957,622	$720,016	$1,439,870
36	-	Margaret Foran	Sara Lee Corporation	IL	$483,192	$1,091,537	$1,574,729	$158,909	$1,733,638	$157,050	$17,748
37	-	Charles James	Chevron Corporation	CA	$794,875	$775,000	$1,569,875	$0	$1,569,875	$4,557,890	$1,996,800
38	-	Leon Roday	Genworth Financial Inc.	VA	$568,177	$1,000,000	$1,568,177	$0	$1,568,177	$0	$338,880
39	1	Gregory Doody	Charter Communications Inc.	MO	$526,154	$995,051	$1,521,205	$0	$1,521,205	$2,691,902	$0
40	55	Bruce Kuhlik	Merck & Co. Inc. (2)	NJ	$706,234	$805,873	$1,512,107	$289,084	$1,801,191	$650,423	$278,824
41	33	Douglas Sgarro	CVS Caremark Corporation	RI	$570,000	$934,407	$1,504,407	$6,354,833	$7,859,240	$900,022	$1,350,004
42	79	J. Michael Luttig	The Boeing Company	IL	$736,160	$752,800	$1,488,960	$0	$1,488,960	$1,175,019	$463,615
43	43	Jay Stephens	Raytheon Company	MA	$690,825	$780,000	$1,470,825	$3,175,711	$4,646,536	$2,181,456	$0
44	-	David Smith	Archer Daniels Midland Company	IL	$901,400	$554,567	$1,455,967	$2,204,827	$3,660,794	$1,709,729	$671,624
45	39	Brian Miller	The AES Corporation	VA	$463,000	$955,436	$1,418,436	$47,722	$1,466,158	$248,751	$338,868
46	-	Andrew Hendry	Colgate-Palmolive Company	NY	$677,000	$717,150	$1,394,150	$2,932,163	$4,326,313	$1,827,850	$723,756
47	60	Steven Cossé	Murphy Oil Corporation	AR	$585,542	$772,073	$1,357,615	$907,706	$2,265,321	$848,400	$757,500
48	-	Andrew Levin	CC Media Holdings Inc.	TX	$400,000	$906,917	$1,306,917	$3,575	$1,310,492	$0	$0
49	22	Marc Manly	Duke Energy Corporation	NC	$600,000	$691,620	$1,291,620	$785,639	$2,077,259	$1,251,825	$0
50	-	David Bialosky	The Goodyear Tire & Rubber Company	OH	$136,364	$1,150,000	$1,286,364	$0	$1,286,364	$1,339,982	$299,992

2. Acquired Schering-Plough Corporation in November 2009.

GC Compensation

continued from **GC7**

and non-equity incentive compensation both fell, the rise in base salary was enough to push Kibblehouse up the list from 41st place last year to 29th this year.

On the flip side, Calgon Carbon Corp. General Counsel Dennis M. Sheedy went from $340,296 total compensation in 2008 to $145,187 in 2009. That was thanks to a nearly $70,000 drop in base pay and the disappearance of 2008's $125,000 non-equity incentive plan compensation. The cause of these changes is most likely due to the fact that Sheedy retired from Calgon in September 2009.

Nancy M. Snyder of Penn Virginia Corp. rose from 18th last year to 6th this year with a bump in total cash compensation from $500,000 in 2008 to $873,650 in 2009. The 2009 total includes three companies, however, as Snyder is listed as the GC for not only Penn Virginia Corp., but also Penn Virginia GP Holdings and Penn Virginia Resource. She receives three different salaries, bonuses and non-equity incentive plan compensation figures for her work at these companies, though she makes significantly more for her work at Penn Virginia Corp. than at the other two companies.

For total compensation in all categories, Snyder brought in nearly $2.39 million in 2009. That figure includes nearly $1.17 million in stock awards.

Of those who made repeat appearances on the list the last two years, SEI Investments Co. General Counsel N. Jeffrey Klauder made the biggest jump up the list, from 34th to 15th place. He went from $382,000 in total cash in 2008 to $584,615, thanks to a nearly $200,000 increase in his bonus to $325,000.

Klauder had one of the biggest drops on the list last year, moving from seventh for his 2007 compensation to 34th for his 2008 draw.

There were three companies on last year's list that reappeared this year, but with different general counsel at the helms of their legal departments. In two cases, the new GCs are making significantly more than their predecessors.

J.D. Nickel took over as GC of Armstrong World Industries from J.N. Rigas, who retired in August 2008. Because Rigas retired before year's end, he may have seen a dip in compensation. His 2008 pay of $229,833 in total cash compensation put him at 46th on last year's list, whereas Nickel came in 16th on this year's ranking. Nickel earned $556,425 in total cash, made up of $321,625 in salary and $234,800 in non-equity incentive plan compensation.

John Limongelli took over as general counsel of Adolor Corp. from Martha E. Manning, who ranked 50th last year for a total cash draw of $182,390 in 2008. Limongelli ranked 30th on this year's chart with total cash compensation of $402,372 in 2009. Manning's base salary was $182,390, whereas Limongelli earned a base salary of more than $347,000.

Brian Short, who was hired as CDI Corp.'s GC in March 2009 to take over for Joseph R. Seiders, came in two spots lower than Seiders did last year. Short ranked 40th with total cash compensation of $254,428. •

Dodd-Frank

continued from **GC11**

process if they believe that a shareholder nominee, or a nominating shareholder or group, does not satisfy the new rule's eligibility requirements.

Although much controversy surrounds a "one-size-fits-all" approach to shareholder proxy access, companies and their general counsel must adapt to this new reality. From an investor perspective, shareholders are now empowered to enhance the value of their investments by managing the proxy access regime responsibly, especially in a context of election contests. For companies and their general counsel, implementation of the new rules involves navigating the administrative and interpretive complexities resident in the new regime. While tremendous uncertainty surrounds the landscape of the 2011 proxy season, one thing that is certain is that proxy access will require a greater emphasis on investor relations and reconsideration of corporate governance matters.

WHAT TO DO NOW TO PREPARE FOR PROXY ACCESS

In light of the SEC's new proxy access rules, general counsel should consider the following recommendations:

- Board and nominating and governance committees should revisit the nomination process and consider procedural changes for shareholder nominees that may be presented in proxy materials.
- General counsel should consider the new rules in the context of their company's particular circumstances, including state of incorporation, capital structure, board composition, shareholder base and company governing documents, in a manner that advances corporate interests and avoids or minimizes the adverse consequences.

CONCLUSION

The Dodd-Frank Act is the culmination of many pieces of legislation intended to address the aftermath of the financial crisis through enhanced scrutiny by regulators and investors.

The two significant changes from the legislative and regulatory processes — mandatory say on pay votes and proxy access — are both poised to increase board accountability for compensation decisions and intensify the voice of shareholders. The impact of these changes on compensation decisions will be particularly interesting in light of the recent trend of moving away from discretionary bonuses for general counsel as indicated in the compensation survey found in this publication.

Given the general application of these executive compensation and corporate governance provisions to all public companies, careful attention and implementation of new policies and practices over the coming months is strongly advised. •

Recession

continued from **GC13**

"underwater," or below their exercise price during the recession — are no longer the compensation sweetheart they were a decade ago, during the height of the tech bubble.

Compensation experts caution, however, not to read too much into these awards, as both the stock and option values are based on what they were worth on their grant date and those figures will ebb and flow with the market.

"The data that is reflected in proxies can be misleading," Sparks said. "The grant value has nothing to do with what someone [ultimately] pulls off the table."

But what did get pulled off the table this year wasn't too shabby in some cases. While just eight GCs earned $2 million or more in cash bonuses, 14 made as much — and some a whole lot more — by cashing out. Donald de Brier of Occidental Petroleum Corp. realized $13.4 million; Charles Tanabe, GC at Liberty Media Corporation, $10.7 million. In all, 79 of the 100 GCs supplemented their take-home via securities transactions. Of course, whether the market will continue to cooperate is an open question.

So, too, is the effect pending legislation may have on GC compensation. As *Corporate Counsel* went to press, Congress was close to final votes on two key bills that address executive pay: In the House, the Wall Street Reform and Consumer Protection Act of 2009 passed last December; and in the Senate, the Restoring American Financial Stability Act of 2010 passed in May. Both bills would require say on pay, a nonbinding shareholder vote on executive compensation for the top five highest-paid execs (modeled after similar practices in the United Kingdom, France, Spain, Sweden and other countries, it is currently required of TARP recipients). Already adopted, voluntarily, by companies including Apple Inc., Intel Corporation, and Motorola Inc., say on pay is widely expected to be part of any legislation ultimately signed into law.

"It looks like this is where we are heading," Rattner said.

While nonbinding, say on pay votes will be blunt (thumbs up or thumbs down) and visible — meaning they will be something compensation committees will want to consider carefully. Another key provision expected to pass will mandate clawbacks — a mechanism enabling companies to recoup incentive-based compensation that turns out to be based on faulty financial reporting.

In the end, the economy may return back to the good old days, but the process for determining top executive pay likely won't. There is going to be "a lot more rigor," Sparks said. "Compensation committees [will be] spending a lot more time on things like peer groups [and] looking to independent advice."

Yet general counsel remain enviable jobs. New world, new rules, and new eyeballs notwithstanding, at the end of the day, a company needs to keep its top lawyer from becoming someone else's top lawyer. And an executive dining room only gets you so far. Compensation will remain healthy — just maybe not preternaturally so.

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