

CORPORATE LEGAL TIMES

VOLUME 14, NUMBER 151

THE MANAGEMENT MONTHLY FOR CORPORATE LEGAL EXECUTIVES

JUNE 2004 \$15

GCs Offer Guidance On How To Earn A CEO's Trust

Establishing Good Communication Is The First Step, Experts Say

BY AMALIA DELIGIANNIS

NESTLÉ S.A.'s acquisition of Ralston Purina Co. in December 2001 made the company one of the world's largest pet-food makers. But before Nestlé's management could uncork the champagne bottles, it first had to contend with at least a half dozen antitrust filings in the United States and overseas.

Because so many lawyers throughout the organization were involved in the deal, Nestlé's legal department had to find a way to communicate developments to the

COUNSEL to COUNSEL COVERAGE

CEO. So they created a monthly report for management compiled and circulated by a senior lawyer in Switzerland, Nestlé's headquarters. All lawyers involved in the transaction submitted information for the report, which outlined issues such as timeframe for completion, divestitures and risks.

To ensure the CEO had a full understanding of the U.S. portion of the deal, the head of Nestlé USA's pet-care division coordinated face-to-face meetings with Kristin Adrian, the general counsel of Nestlé USA. During those meetings, Adrian reviewed the U.S. antitrust process and the regulatory hurdles the company might face.

A lot of times management isn't aware of the value we [the legal department] add.

—Kristin Adrian
General Counsel
Nestlé USA

Because of these meetings and reports, the lawyers were confident the CEO understood the legal issues associated with the transaction. It also gave legal a clear understanding of the CEO's expectations and ensured he wouldn't be caught off guard when working to obtain clearance for the deal in the United States and abroad. Although it took a lot of hard work, the process was well worth it, Adrian said.

"A lot of times management isn't aware of the value we add," she said. "So [the Ralston Purina acquisition] was an opportunity to showcase the work of the legal team and how important it was to the success of the

overall transaction."

Adrian made these comments during a recent Martindale-Hubbell Counsel to Counsel Forum in Los Angeles titled "What's On Your CEO's Mind—And What You Should Do About It." At the forum, in-house counsel and law firm lawyers discussed the importance of gaining the trust of the CEO and learning how to communicate with the executive team.

Communication Matters

Most of the panelists agreed that gaining the trust of the CEO provides the legal department the best opportunity to become an integral part of the corporate structure. And it's the only way to ensure the department remains involved in business deals and strategy meetings.

"We have a better opportunity to influence client conduct and educate our business colleagues if we're in that inner circle," said Dan Fisk, vice president, general counsel and secretary of Computer Sciences Corp., a California-based IT consulting and outsourcing firm.

Being in that inner circle allowed Sean Higgins, general counsel of Las Vegas-based Herbst Gaming Inc., to help his client grow from a small, family-owned business in the early 1990s to a large company with publicly traded debt. During his tenure with the company, Higgins has helped his client open its first hotel-casino and acquire two other gaming companies—ultimately increasing its size from approximately 600

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—Dan Fisk
General Counsel
Computer Sciences Corp.

At A Glance: Martindale-Hubbell's Counsel to Counsel Forum

"What's On Your CEO's Mind— And What You Should Do About It"

CO-CHAIRS:

- > **John di Bene**
Vice President, General Counsel
and Secretary
SBC Long Distance
- > **Donald de Brier**
Executive Vice President,
General Counsel and Secretary
Occidental Petroleum Corp.

LAW FIRM CO-HOSTS:

- > **Blake, Cassels & Graydon**
- > **Sheppard, Mullin, Richter & Hampton**
- > **Reed Smith**

FACILITATOR:

- > **Deborah McMurray**
Deborah McMurray Associates

employees in 1999 to 2,300 today. The size of his department, however, has remained constant.

To compensate for the lack of human resources, Higgins has made sure he is involved in all business deals from the beginning so he can deflect any potential problems. He also has crafted checklists for departments that explain the regulations related to their work. In addition, he holds weekly meetings with the CEO,

Knowing Your CEO

Randy Walti, the general counsel of General Atomics in San Diego, believes CEOs can be categorized into three distinct personality types. And once you understand which type of CEO you are dealing with, Walti believes you can be a much more effective GC.

> THE BUSINESS/FINANCE CEO

These people are attuned to financial performance metrics, so you must approach them with a solid business case analysis when explaining legal issues. This means presenting deal risks and advantages in terms of impact on financial parameters, such as expenses, cash flow and ROI.

> THE ENGINEER/TECHNICAL CEO

These people are very detail oriented and won't take your word for it the first time around. As a result, you must present issues and solutions in a logical, "flow-chart" manner. Since this type of CEO doesn't believe that "reasonable minds can differ," you often have to rework arguments in an iterative fashion.

> THE SALES/MARKETING CEO

These people always see the glass as "half full" and are eternally enthusiastic. Because of this, you must emphasize the downsides to counterbalance the executive's natural optimism. An approach that sometimes works is to note that there are better alternatives available.

The law is not an area of expertise for most executives, and they don't want it to be.

—Donald de Brier
General Counsel
Occidental Petroleum Corp.

CFO, COO, HR director and other key executives in which they discuss the company's long- and short-term business

goals and the legal challenges. This keeps Higgins abreast of the business objectives and gives him a hand in shaping the direction of the company.

"Before we had those meetings, we'd want to make deals that we didn't fully think through," Higgins said. "Now we don't because everyone's involved in the process. As a result, the communication between people in this company has grown tenfold and everyone understands the business and is aware of possible legal ramifications of our actions."

Higgins wasn't the only general counsel at the forum who is working to improve



(Clockwise from top left): **Kristin Adrian**, senior vice president and general counsel, Nestlé USA; **Dan Fisk**, general counsel, vice president and secretary, Computer Sciences Corp.; **Randy Walti**, vice president, general counsel and secretary, General Atomics; **Donald de Brier**, executive vice president, general counsel and secretary, Occidental Petroleum Corp.; **John di Bene**, vice president, general counsel and secretary, SBC Long Distance; **Sean Higgins**, general counsel, Herbst Gaming Inc.

communications with his client. Insufficient communication between the business units and his department prompted Randy Walti, vice president, general counsel and secretary of General Atomics, to devise a system to ensure the in-house lawyers approve all transactions before the CEO reviews them. When Walti first arrived at the San Diego-based R&D company two years ago, nobody was explaining all the potential risks involved in the transactions to the CEO. As a result, the CEO was approving transactions based on incomplete information.

To address the problem, Walti assembled a team composed of the main players from key businesses units to identify risks involved in all transactions. He also developed a process for early legal and staff review of all deals.

Walti believes this process will reduce the company's exposure to potential liabilities and will help the company meet its business objectives. He adds that the long-term success for the process depends on whether the team can train business people to identify workable deals before bringing them to the table.

"Experience shows that if sales or operations people understand the rules and the rationale for the rules they will better structure deals up front and will bring forward deals that are appropriate for the company to consider, as opposed to merely chasing revenue," Walti said.

Stepping Up

Although each panelist at the forum had created different processes to make sure their legal departments were more involved in executive decisions, all agreed that establishing a rapport with the chief executive officer is essential. And there is no one way to do that.

"It all comes down to that personal relationship between you and your CEO," said John di Bene, vice president, general counsel and secretary of SBC Long Distance in Pleasanton, Calif. "What works with one CEO in one circumstance and one set of issues isn't necessarily going to work with another. That's what makes being a GC so challenging and enjoyable."

The key for a general counsel is to learn quickly the CEO's management style (see "Knowing Your CEO") and how best to approach him or her when legal issues and problems surface.

According to Donald de Brier, general counsel of Los Angeles-based Occidental

Petroleum Corp., there are certain steps in-house counsel should take before discussing legal issues with any senior executive. For instance, he believes in-house counsel should never enter the senior executive's office with a problem without first thinking about how best to explain it and what the solutions are.

"You have to remember that the person you're talking to is an executive, and is trained to make decisions," de Brier said. "So, if you present a problem to an executive, the executive may make a decision right then and there. Once they do that, they'll be committed to it."

In addition, a general counsel always should present important information personally to the executive to ensure that nothing is misunderstood.

"The law is not an area of expertise for most executives, and they don't want it to be," de Brier said. "So counsel must remember there is a language gap, and be careful to ensure that the executive understands the fundamentals of what counsel is telling them."

GCs who know how to approach the CEO can help change management's perception that in-house counsel are just corporate policemen, regulators and gatekeepers. And the best way to do that is to begin thinking like a businessperson and learning to help the chief executive officer achieve his or her objectives.

"At the end of the day it's a matter of education and internal negotiations with your client to get them to the place where they can understand and feel comfortable with a solution that makes sense," said Jonathan Robertson, senior vice president of legal affairs at California-based Aramark Uniform and Career Apparel. ♦



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