DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Thomas M. Moriarty

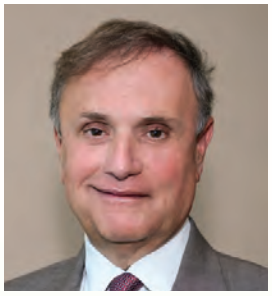
Executive Vice President, Chief Health Strategy Officer & General Counsel, CVS Health

THE SPEAKERS

Thomas M. Moriarty
Executive Vice President, Chief Health Strategy Officer & General Counsel, CVS Health

Mary Langowski
Partner, DLA Piper

Joe Lockhart
Founding Partner & Managing Director, Glover Park Group



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Creighton Condon
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Matthew Hurd
Partner, Sullivan & Cromwell LLP

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Partner, Williams & Connolly LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished guest of honor's personal accomplishments in his career and his leadership in the profession, we are honoring Thomas M. Moriarty, Chief Health Strategy Officer and General Counsel of CVS Health, with the leading global honor for General Counsel. CVS Health is the largest pharmacy health care provider in the United States, with integrated offerings across the entire spectrum of pharmacy care.

His address will focus on the challenges and opportunities that can be found at the intersection of law and public policy, particularly in light of the Affordable Care Act. The panelists' additional topics include managing enforcement and regulation with key agencies; the role of mergers and acquisitions in identifying new business solutions; and the role that public policy plays in shaping a company's business and, ultimately, its legal strategy.

The Directors Roundtable is a civic group that organizes the preeminent worldwide programming for directors and their advisors.

Jack Friedman
Directors Roundtable Chairman & Moderator

Thomas M. Moriarty

Executive Vice President, Chief Health Strategy Officer and General Counsel

Thomas Moriarty is Executive Vice President, Chief Health Strategy Officer and General Counsel for CVS Health. In this role since October 2012, Moriarty leads the company's legal and government affairs departments and the Office of the Secretary.

A seasoned executive with many years of legal, regulatory and health policy experience in the health care sector, Moriarty most recently served as General Counsel at the Celgene Corporation, a biopharmaceutical company, where he was responsible for global legal strategy and served on the company's Management Committee.

Prior to that, Moriarty spent twelve years at Medco Health Solutions, where he served as General Counsel and Corporate Secretary, and also as President of Global Pharmaceutical Strategies. He served on the company's Executive Committee and was a critical advisor to the team that developed and executed Medco's strategic merger with Express Scripts.

Previously, Moriarty worked at various positions in the Office of the General Counsel at Merck & Co., the global biopharmaceutical company. He began his career at the law firm of Mudge Rose Guthrie Alexander and Ferdon in New York.

Moriarty received his law degree from the University of Virginia School of Law and his undergraduate degree from Lafayette College.

CVS Health

CVS Health

CVS Health (NYSE: CVS), headquartered in Woonsocket, RI, is the largest pharmacy health care provider in the United States, with integrated offerings across the entire spectrum of pharmacy care. Through our unique suite of assets, we are reinventing pharmacy to offer innovative solutions that help people on their path to better health. We are focused on enhancing access to care, lowering overall health care costs for plan members and payors, and improving health outcomes.

We are uniquely positioned to deliver significant benefits to health plan sponsors through effective cost management solutions and innovative programs that engage plan members and promote healthier, cost-effective behaviors. Our integrated pharmacy services model enhances our ability to offer plan members and consumers expanded choice, greater access and more personalized services to help them on their path to better health.

CVS Health Pharmacy Services, the pharmacy benefit management (PBM), mail order and specialty pharmacy division of CVS Health, provides a full range of PBM services, including mail order and specialty pharmacy services, plan design and administration, formulary management, discounted drug purchase arrangements, Medicare Part D services, retail pharmacy network management services, prescription management systems, clinical services and disease management services. Our clients are primarily employers, insurance companies, unions, government employee groups, managed care organizations and other sponsors of health benefit plans, and individuals throughout the United States.

CVS/pharmacy, the retail division of CVS Health, is America's leading retail pharmacy with more than 7,600 CVS/pharmacy and Longs Drug stores. CVS/pharmacy is reinventing pharmacy to help people on their path to better health by providing the most accessible and personalized expertise, both in its stores and online at CVS.com.

MinuteClinic, the retail medical clinic division of CVS Health, is the leading retail medical clinic provider in the United States. MinuteClinic launched the first retail medical clinics in the United States in 2000 and now has more than 800 locations in 28 states and the District of Columbia. By creating a health care delivery model that responds to patient demand, MinuteClinic makes access to high-quality medical treatment easier for more Americans. Nationally, the company has provided care through 20 million patient visits, with a 95% customer satisfaction rating. MinuteClinic is the only retail health care provider to receive three consecutive accreditations from The Joint Commission, the national evaluation and certifying agency for nearly 15,000 health care organizations and programs in the United States.

JACK FRIEDMAN: Good morning. I am Jack Friedman, Chairman of the Directors Roundtable. We are a civic group that has done 800 events in 23 years around the world for boards of directors and their advisors. We have never charged anyone to attend the programs.

Boards of Directors tell us that companies rarely get favorable reviews about anything that they do. We are a neutral forum to tell people that businesses are socially conscious and that their leaders are proud of how their companies operate, as well as giving you a chance to meet some of these leaders personally. Today's program is of special interest, because the healthcare industry is going through important changes and developments. Healthcare is universally of interest to almost any company. Their employees are concerned about healthcare coverage and healthcare services. It is a very important issue at this time.

We will start with our Guest of Honor, then we will have the panelists speak to make opening remarks, followed by a roundtable discussion and questions from the audience.

I would like to introduce our Guest of Honor, Thomas Moriarty, who is the Executive Vice President, Chief Health Strategy Officer and General Counsel of CVS Caremark. We keep the introductions to a minimum, so we can discuss content instead of the great achievements of the people who are up here.

Tom has incredible credentials in terms of service with different companies, and I will mention some of them. Chronologically, after graduating from Lafayette College and University of Virginia School of Law he worked in a law firm, Merck, Medco, and Celgene serving as General Counsel and in the Executive Committee.

We'll be preparing a full-color transcript which will be made available to 150,000 leaders on a global basis. This takes the program beyond this important breakfast meeting and projects it out on a global basis, which makes it very special.

Without further ado, I would like Tom to make his opening remarks.

THOMAS M. MORIARTY: Good morning everyone, and thank you, Jack. I see a lot of old friends in the room. Before I begin, I want to thank Creighton Condon and everyone here at Shearman & Sterling for this venue and for all the support you have given for this program. I really appreciate it. I also want to thank our panelists. We have a great group here. What is important to me is we have a great group of not only legal minds, but also non-legal minds. With Mary and Joe, the whole purpose of my talk and, hopefully, this program, is to emphasize that legal decisions really are not made in isolation. Looking at the broader ecosystem in which a company operates is a focus for me in the role that I play every day.

I would like to start my remarks by sharing a quick story as a first-year associate fresh out of law school. Actually, one of my first-year classmates from that experience is in the audience so he may appreciate this story. I was given a research assignment and, as usual, in a very convoluted area of the law. I wrote what I thought was the perfect memo for the senior partner. I researched it, cite checked it — everything was in perfect order. I handed it in. The next day, I reviewed it with the most senior partner of the firm. His office overlooked the Brooklyn Bridge down on Wall Street — it was a real power center. He said, "This is a very good memo — it's very well-written, but there's something missing from it." I am sitting there as a first-year associate thinking, "What did I do?" What he said — and I've never forgotten it — is, "You tell me in this memo what the law says. But what is very important is to always tell clients what the law *means*." That is something that I've never forgotten, and it's really become a cornerstone of how I've practiced.

Many years later — as my family will note, with a lot less hair — the maxim still holds true. I would argue today — as we go forward — it is even more important, given the complex ecosystem in which heavily regulated companies, like CVS Caremark, operate.

Put simply, legal work cannot be done in isolation. Each analysis must take into account the broader environment in which a company operates, the industry it is in, and the number of what I call "non-regulators" who have a say in the products that you sell, the

reputation that you enjoy, and ultimately, the standing you have in the community that you serve.

This necessitates to me — and to others as well, who serve in these roles — an increasingly strategic role for the General Counsel, one that encompasses not only the traditional legal and corporate legal work, but also public policy, public affairs, government affairs and regulatory affairs. All of these must come together as you sit in this chair to advise and counsel a company as it goes forward. It requires an understanding of how they intersect and how they can impact the company's overall strategy and the products that it brings to market.

Nowhere is this trend and this factor more apparent than in healthcare. The Affordable Care Act, regardless of your politics on the issue, has accelerated a number of healthcare trends that all companies, whether in healthcare or not, have had to address. As everyone grapples with the need to do more with less, and to ensure value to healthcare dollars spent, this has prompted a surge of activity in the private sector. We see a slew of mergers and acquisitions — and I've been through one myself as a result of this — strategic alliances and innovative new business models that have touched every aspect of healthcare, from hospitals, physician practices, health insurers, pharmacy benefit managers, retail pharmacies and drug wholesalers. Each is being reshaped and reformed to address the new paradigm in the healthcare environment that we serve in today. That evolution will continue.

The post-Affordable Care Act environment has underscored the need for private sector leadership to advance efforts to improve the quality of patient care and outcomes, and reduce costs, because cost, ultimately, is a real focus as we look at healthcare dollars and how they're spent.

There is also a focus to develop new and more effective means of communication, coordination and integration among providers. It is an environment where consumers are playing an increasingly active role in healthcare decisions. This is a new trend and a new development. As consumer-directed health plans shift the balance of accountability and decision-making to consumers, you should expect that consumers will increasingly seek greater value for those healthcare dollars, which in turn will push greater transparency — not just on issues of cost, but also outcomes and quality. This is a very clear trend, and it's one that we refer to as the "retailization of healthcare" — that all companies involved in healthcare are focused on and developing products and services to address.

It is against this backdrop that I evaluate issues and provide advice and counsel every day. The core guiding principle that I use for all professionals that are part of the CVS Caremark legal team — whether it's the in-house counsel or the outside experts who we retain to help us with complex issues — is that we are part of, and a partner with, the business teams. We need to truly understand how the business operates and its goals to help develop strategy and to avoid pitfalls. Some examples from my CVS Caremark experiences will resonate with each of you as you address the challenges that your companies face today.

Undoubtedly, many of you have visited one of our pharmacies or MinuteClinics at some point in your life. We are a little hard to miss, since we are a part of almost every community across the country.

When I joined CVS Caremark, I was struck — and I continue to be struck — by the scale of the company's engagements. Over the last 50 years, the company has built a $120+ billion-a-year business enterprise that spans almost 8,000 locations, and is the largest integrated pharmacy company in the United States. Over 5 million people come through our pharmacies every day. Through our retail, mail order and specialty pharmacies, we dispense over 1 billion prescriptions every year. As healthcare continues to evolve, so does CVS Caremark and the services that we will provide to meet these demands.

Our MinuteClinics, which now number over 800 locations, are the nation's largest retail clinic providers. They deliver convenient, affordable primary care solutions to patients for common conditions, replacing the use of higher-cost sites, such as emergency rooms, and extending the reach of primary care to millions of Americans every day.

Through our Caremark Pharmacy Services Unit, we provide prescription drug benefit coverage to more than 60 million people, helping to ensure that they use their medications safely and effectively. Also as important, we ensure that the government health plans and employer-sponsored benefit programs have effective prescription drug benefits that keep patients compliant with their medications. Lack of adherence to medication therapy costs the United States healthcare system almost $300 billion every year.

These solutions address traditional conditions like diabetes, hypertension and cholesterol, but increasingly, as you've seen in the press and with many stories, we're focused on specialty conditions like multiple sclerosis, rheumatoid arthritis and cancer, and meeting these needs with infusion therapies, injections and other specialized delivery methods.

While it would be easy to think of us as only a domestic company, it's important to keep in mind that we are one of the largest, if not *the* largest, commercial purchaser of prescription pharmaceuticals anywhere in the world. As a result of that, we have a global supply chain that needs to be managed and addressed.

We have also extended our footprint into Brazil, making an acquisition a little while back of a regional chain there of about 40 pharmacies, all as part of our business extension strategy.

Each of these areas requires not only an understanding of the regulatory environment in which these companies operate, but also the broader global marketplace. Additionally, each healthcare marketplace in which we operate comes with its own unique set of challenges. To say that healthcare is a heavily regulated sector of our economy doesn't do it justice, and the implications of these regulations to our business, and how we evolve as a company, cannot be understated. As a result, it is critical that we engage with the government at multiple levels to help shape a constantly evolving regulatory landscape. As a large, publicly traded company, we must simultaneously ensure that the interests of our shareholders are addressed, and that their investment provides a competitive, fair-market return.

The next point I want to make is perhaps the most important. CVS Caremark's size and unique combination of businesses has positioned the company to lead and to accelerate positive change as the healthcare system continues to evolve. Our company is dedicated to meeting one of our nation's greatest challenges — the delivery of affordable, quality healthcare. Importantly, both market trends and the passage of the Affordable Care Act have given pharmacies and pharmacists a much broader role in that healthcare delivery system. When we look, as a leadership team — while there *are* many challenges — we also see so many opportunities to have a positive impact on our customers, our communities, our more than 200,000 employees, and the country.

> "The core guiding principle that I use for all professionals that are part of the CVS Caremark legal team — whether it's the in-house counsel or the outside experts who we retain to help us with complex issues — is that we are part of, and a partner with, the business teams." – *Thomas M. Moriarty*

Nowhere has the ability been better represented than in our recent decision to stop the sale of tobacco products in our pharmacies. In many ways, that decision is the ultimate example of how important it is to fully understand and appreciate the ecosystem in which companies like ours operate. When we looked broadly at our nation's public health needs and our own purposes at CVS Caremark — helping people on the path to better health — we recognized the fundamental inconsistency of selling tobacco in a healthcare setting. Aligning our businesses more fully with the goals of consumers and those entities that fund healthcare benefits, to us, is an important component for long-term success. Our work in this area isn't done. Later this year, we'll be launching a national smoking cessation program that will be designed to help millions of Americans meet their goal of stopping smoking.

In summary, it's clear to me — and hopefully to all of you, as you've listened here and will listen this morning — that the role that the General Counsel plays in corporate America today has evolved significantly. The skills required for this position have changed dramatically over the years, and have changed what once may have been viewed and perceived as a largely tactical role into one that is deeply strategic and presents a compelling career opportunity.

All of us in this room are fortunate — and I mean fortunate — to have the kinds of responsibilities we face. They challenge the mind and invigorate us each day with the opportunities that they present. All of us do understand what is at stake, and do our best to meet those obligations.

Jack, thank you again for this opportunity and for honoring me today. I do look forward to hearing from our panel. They are not a shy group. They are very good at telling me where I miss things and where I need to focus. I know the thoughts they'll offer will be compelling.

Thank you all very much. [Applause]

JACK FRIEDMAN: Thank you. I would like to start with a couple of questions for our Guest of Honor.

First, healthcare is intensely personal for individuals. Could you talk about how that plays a role in how healthcare is delivered?

THOMAS M. MORIARTY: It's a great question. If you look over the years, healthcare has always been very personal. Each of us in this room has different views in terms of what they seek to achieve, what they want to attain from a healthcare provider, and perhaps most importantly, how you access the healthcare system. There are many different ways today and going forward, to access health care. Some like the face-to-face interaction and want to sit across the table from their physician, from their pharmacist, or from their nurse practitioner. For others, mobility, market shortage or geography might be an issue, so the patient may wish to access health care by telephone, video or other telehealth options. What is very interesting to see in the marketplace today is how each of those points of access is evolving and solutions are being brought to bear.

What we are seeing is an evolution from a system where employers or the government made the decisions regarding what you should access and how you should access,

to an environment where the individual is in greater control. The growth of the high-deductible health plan and consumer-directed health plan is putting a lot more power and decision-making in each of our hands. That is both compelling and scary at the same time. Offering solutions at an individual and consumer level will be increasingly an important part of the healthcare delivery system.

JACK FRIEDMAN: Can you give us an example where the approach of combining legal issues with broader context was successful?

THOMAS M. MORIARTY: I will start where we did not have it fully in place at the start — because you often learn best from your mistakes — and then talk about a situation where we did have it in place and it made a huge difference.

I was part of a very large merger in the healthcare arena a few years ago. When the deal was announced, we knew there would be opposition and had a plan to address that opposition. We didn't realize though how vociferous and well-organized the opposition would be, and we were caught a little off guard. Over the course of six weeks to two months, we put additional pieces in place to address the opposition's tactics. Ultimately, the merger went back fully on track, but it was really a learning lesson for me: you need to have all of the pieces in place at the start and not wait for the crisis. If you're reacting to a crisis, that's not when the best thinking, necessarily, can be done.

It has been a fundamental part, for me, over the last several years, to ensure that we have resources aligned and all working in sync. The best example of this is our decision to stop the sale of tobacco products. We considered the numerous constituencies that the decision potentially touched, and we did the work in advance to think through the issues and have the scenarios prepared. It was a very powerful decision, and by having the work done ahead of time, it became an even more powerful decision once it was announced.

JACK FRIEDMAN: I remember a specific moment, when the questioning of tobacco became part of popular culture. I was watching the *Today* show on NBC, and Bryant Gumbel was one of the co-hosts and they were interviewing a very famous law professor, who was talking about legal liability and what should be done on public policy. Gumbel said, "Why do we call these people 'tobacco activists'? (as if there was something wrong with them, or that they were troublemakers) Why don't we call them 'healthcare experts' or something like that?" The female co-host turned to him, spontaneously, on television and looked shocked. She said, "Did you clear this with management?" He said, "No." She said, "We're going to be hearing from some sponsors." At that moment, I knew that the culture was in for some public debate and was going to start changing.

Could you tell us about how the decision was made and financially, the pros and cons, what's at stake, and the commentary you've gotten back?

THOMAS M. MORIARTY: In terms of the financials, it's roughly $2 billion a year in revenue for the company that we have chosen to forsake. In terms of the philosophy behind how the decision was made, if you look at the footprint of the company — where it is today and where it's going — it's increasingly playing a greater role in healthcare. Whether it's the role that our pharmacists play or the role of our nurse practitioners in MinuteClinics, CVS Caremark is now engaged in health care delivery, pharmacy care, infusion therapies and other services such as Pharmacy Advisor, health risk assessments or formulary management. Fundamentally, smoking simply exacerbates all the conditions that we are being retained to treat. That core contradiction was something that we felt we had to address in a deliberate, direct, and meaningful way.

JACK FRIEDMAN: I assume a lot of people are commending you for it. Can you tell us the feedback you have received for that decision?

THOMAS M. MORIARTY: The outpouring, frankly, has been tremendous and overwhelming on a lot of levels.

There has been an outpouring of support, not only on Capitol Hill, but elsewhere, from clients, customers and the public. We have been honored by a number of state legislatures with joint resolutions and commended by 32 State Attorneys General in a joint letter to recognize our decision.

JACK FRIEDMAN: Thank you very much. I will ask one more question before we move ahead with the panelists.

When Hurricane Sandy hit the East Coast, I was in Boston, and I was waiting three or four days until the planes could leave. I needed some medicine, and the hotel was checking around because the whole city was shut down. Where do you get medicine during a hurricane? How does the staff even get to the pharmacy, because you're not supposed to be driving. They checked around, and in downtown Boston, the only place that was open was CVS Caremark.

What is the role that the company plays in emergencies — fires, earthquakes, and other unusual situations — when people are desperate to get their medicine? How are you organized to handle these circumstances?

THOMAS M. MORIARTY: We are part of the first responder systems as our pharmacies are a critical aspect in emergency response. We have several mobile pharmacy units that we can deploy, and did, during Hurricane Sandy. Our area managers and our pharmacists in charge at each of the pharmacies have the discretion to meet the local needs.

One quick story I'll tell is about the ice storms that hit in Atlanta this past winter. The city was literally shut down. You couldn't move, because the streets were coated in ice. Several of our pharmacies essentially turned into overnight shelters and were kept open for folks to stay.

JACK FRIEDMAN: I can visualize the head of the pharmacy calling the local policemen and saying, "I have to get to the pharmacy or people won't get their medicine," and the police immediately reacting and saying, "We'll get you there!"

THOMAS M. MORIARTY: Exactly.

JACK FRIEDMAN: I will mention our different speakers and then they will each introduce their topics.

We have Mary Langowski with DLA Piper; Enu Mainigi of Williams & Connolly; both of them came up from Washington, D.C. Creighton Condon, who is the senior partner here at Shearman. I do want to thank your staff very much; they are very effective and efficient and pleasant to work with.

Matthew Hurd of Sullivan & Cromwell; Vincent Cino, who is the Chairman of Jackson Lewis; and Joe Lockhart, who is the Founding Partner and Managing Director of Glover Park Group, and also came from Washington. I remember Joe from when he worked at the White House and was on television. As a result, we can consider him to be a celebrity panelist.

Let us start with Mary Langowski.

MARY LANGOWSKI: Thank you, Jack. I'm happy to be on this distinguished panel. Tom — congratulations; this is a well-deserved honor. I think it is worth reinforcing what an important decision CVS just made with its decision to remove tobacco from its stores. I've spent many years in healthcare, and things start to get really exciting when the private sector takes a large leadership role to improve public health and population health. That's the kind of thing that will actually change the nation's healthcare. Congratulations to Tom and to CVS.

I am Mary Langowski, and I chair the Healthcare Group and the Food & Beverage Sector at DLA Piper. DLA is one of the largest law firms in the world. We have a host of traditional attorneys, but as Tom noted in his opening remarks, I serve as a "hybrid" — policy, strategy and legal. We have a group of "hybrid" types in D.C. who focus on policy, government affairs, advocacy, communications, corporate development, giving and business strategy. We basically take and use all those tools in the toolbox to work with C-suites to drive business strategy. My remarks — and I'll try to keep them brief — are going to build on what Tom was saying about the importance of incorporating policy into your overall business strategy.

I cannot state this enough; we see it in our day-to-day practice with companies; we see companies being very successful at it; we see companies being not too successful at it. The difference is huge, and it is worth a tremendous amount of time, energy and resources if you do not adequately plan for and take the policy environment into account.

I will mention three main areas where this is important. The first is risk management. If you look at companies that are effectively incorporating policy into their business strategy, they're managing risk much more effectively. There are sectors that are not doing this as effectively and are spending a lot of money they probably wouldn't have to spend. If you look at the spectrum, and you watch policy trends and regulatory trends, very often you can predict litigation trends that are coming. At times, you can actually prevent litigation trends from happening. It can be a very good investment to pay attention.

One example is the food industry. The food industry is being beat up for salt, sugar, fat, and genetically modified organisms. In some ways, the debate is driven by a very vocal minority that is effectively using social media, communications, lobbying and advocacy tactics. The food industry has been very effective over the years at speaking to its consumer, but largely ignored its policy audience. The move to communicate, not just to one stakeholder at the consumer level, but to a broader regulatory and policy audience, is extremely important, and to understand their connection to other sectors. The food sector thinks like a food sector would, but failed to use their connection to broader healthcare trends. As long as we have major deficits in this country, healthcare is going to be a big deal, and anything that drives up healthcare costs is going to be a big deal. Chronic disease is costing this country an enormous amount of money, much of which is preventable. So food is front and center. That's one example of an industry that is trying to handle this situation, and spending many

millions of dollars reactively on the policy space, the regulatory space, lobbying, and now on litigation.

The second area is really reputation and relationship management. Joe is going to speak to reputation management more, but it is important — and I just mentioned this with the food sector — to think of a policy audience very differently than your consumer audience. You may be effective as an organization in communicating with your day-to-day consumers, while simultaneously worrying policymakers. A recent example is 23andMe. This interesting little company sells direct-to-consumer genetic testing kits. They have been very focused on marketing and talking to consumers about their kits and how you, as a consumer, can figure out what you're at risk for from a genetic perspective. It's a really interesting and exciting organization. Meanwhile, the FDA and regulators were concerned and watched what was happening, and recently clamped down on the organization. They sent letters without any real engagement from the company. That's an example of a regulatory action that can be market-breaking instead of market-making. It is important to understand that you've got to develop a reputation and relationships early and often, so that you're not knocking just when you need something.

Third and finally, is the most important: the opportunity and competitive edge that can result from incorporating policy into your business strategy. You want to be in a position where you're driving policy. You want to watch policy and forecast trends that are going to affect your company so that you can pivot and adjust your business strategy accordingly.

In the healthcare space, you see a lot of organizations which were prepared before the Affordable Care Act even passed, which were changing their business models and looking at acquisitions very early on to take advantage when the bill actually passed. Those organizations are doing very well right now.

> "Over the last 50 years, the company has built a $120+ billion-a-year business enterprise that spans almost 8,000 locations, and is the largest integrated pharmacy company in the United States. Over 5 million people come through our pharmacies every day."
>
> – *Thomas M. Moriarty*

Opportunities can come in the form of clearing regulatory hurdles. If you're trying to enter global markets, they can come in the form of changing reimbursement structures to open a market. A lot of people see the policy environment as something to just stay away from and ignore, but that is a mistake. It is ripe with opportunity.

We can talk in more detail, but I'll pass the baton so we can do that. Thank you.

JACK FRIEDMAN: Thank you very much. The whole area of public policy linked to reputation through social media is something Joe and other people here will discuss. Those issues can come up even in M&A deals. It is a bit ubiquitous that in every area you have to put attention on the message that you're sending and have an intelligent, proactive policy. Instead of waiting for somebody to criticize you and then say, "We didn't think about that!" We will be taking that up later.

Enu Mainigi is our next speaker.

ENU MAINIGI: My name is Enu Mainigi. I am a partner at Williams & Connolly in Washington, and my focus is healthcare litigation. Primarily, I work on government investigations, False Claims Act cases and overseeing all of those types of cases.

The area that I am going to focus on is obviously litigation and the concept that it's very important for us as litigators not to just think about the case when you get it, and to consider, "What's the case law that relates to this and what can I do with this particular case?" but to step back and ask the broader question of, "Why am I getting this subpoena?"

For example, there are a number of subpoenas that have come out to several healthcare companies in the last two years or so, related to the Anti-Kickback Statute. I have been doing Anti-Kickback Statute work since 1997. There was a lot of it in the 1990s and the early 2000s, as it related to hospitals and physicians; and then there was nothing. If you go back and look, you can absolutely tie together why you are getting Anti-Kickback subpoenas now, across the board, at all healthcare companies. It is because, in 2009, when Congress passed the FERA legislation, it included certain amendments to the False Claims Act which resulted in the intent requirement of the Anti-Kickback Statute essentially being removed for the purpose of False Claims Act cases.

The specific intent requirement — which was *critical*, frankly, for the defense bar in defending those cases when all the hospitals were sued and the physicians were sued — Congress just plucked right out of there and said, "For False Claims Act cases, the government *doesn't* need to demonstrate specific intent." As a result, you have a lot of government agencies and investigators out there recognizing this and basically seeing what may exist. You are all familiar with the pharmaceutical industry and the fact that the off-label cases have wound their way from one pharma company to another, and everybody has come to the table and had a case and ultimately entered into what usually is a pretty enormous settlement.

The same is now happening with the Kick-Back cases. It all goes back to the fact that there was, at some point, an amendment that was accepted, passed, but probably did not get much attention at the time from those of us who will have to defend cases when they come down the pike.

I've known Tom for 10 or 11 years, and one of the things that he has always been excellent at doing — and others are coming to the table and doing it, finally, now — is focusing on the broader picture. How will what we say to DOJ affect how HHS or CMS is going to look at us? If we go out and say this, what will our competitors say? He learned well from his first year law student experience to step back and ask those bigger picture questions. It is critical for all of us who are litigators to ask that.

A couple of other examples — and there is a PowerPoint that is available for you to pick up — in addition to the Anti-Kickback Statute, is the Affordable Care Act basically codified overpayments as merely a *per se* violation of the False Claims Act. That's going to be critical for healthcare companies moving forward, because there are a lot of unanswered questions about how it is going to be applied. What does "knowledge" mean? What intent do you have to have? Who at the company is sufficiently high enough to know that there has been an overpayment vs. not an overpayment? When you look at an overpayment, how far back do you have to go? These are all questions created by this legislation that was passed; that don't necessarily have answers now, but they will. As whistleblower cases flow through the system, one court may answer this question this way, and another court may answer the question another way.

There was a court in Wisconsin last year that found that even though defendants had identified and corrected specific overpayment during an audit, *because* they made no effort to go back and look for other errors, that that was enough to say that they had acted with reckless disregard under the statute. Understandably, courts, without much direction from Congress on these issues, are going to be all over the map.

Another example is public disclosure. A great defense to False Claims Act cases has always been: these allegations have been out there for a while; cases have been filed about this already. This is not new news; this is not something that needed to be filed under seal by a whistleblower; but this is something that everybody has known about. Congress has tightened that now, as a result of the Affordable Care Act, and has basically given the government power to stop dismissal of those lawsuits if they want. They said, "It only counts if we look at these issues at the federal level." Anything that gets filed in state proceedings — even a case that is virtually the same as a whistleblower case that was filed at the federal level — doesn't count.

The net result of that action, now, is that you have an increase, not just in the number of False Claims Act cases coming through, but you have an increase in the *type* of whistleblowers that exist. Your typical whistleblower in 2004, for example, was a former disgruntled employee of the company. Whistleblowers today can be that, but they can also be the company's auditor. They can be a contractor. They can be a vendor. They can be a competitor who overheard something from somebody.

The net result of several of these amendments that were affected as part of the Affordable Care Act, and then the FERA legislation the year before, is that you have widened the pool greatly of the type of people who can serve as whistleblowers. The level of knowledge that they need to bring to the case is significantly less than had been traditionally understood.

There was a case in 2012 out of the Fifth Circuit, where the court found that even auditors who work for the United States Government could file a *qui tam* action against a private company. The interesting thing was, in that case, the federal government actually filed a brief saying, "We already support this." Because of the wording of the statutes, and because no one had really thought about this unintended consequence at the time the legislation was drafted, the Fifth Circuit said, "Nothing we can do about it. These people are clearly persons under the False Claims Act; so they therefore have standing to file a whistleblower action."

What are the implications? Obviously, the top implication of some of this recent legislation is a significant increase in False Claims Act cases in recent years. In 2009, there were 433 cases; in 2013, there were 752 cases filed. The government has found that their return on investment only increases; for every dollar that they put in, they get $20 back, usually in the form of a settlement. There's really no downside in pursuing these cases.

The government has a fairly significant backlog of cases, over a thousand at this point, and is still continuing to intervene in a large number of cases, about 20 to 25%. One of the things they are doing as a result of this backlog is saying, "We don't have time to investigate this case right now before this judge makes us intervene or not intervene in the case, so we're going to file something that says, 'We're not intervening now, but we reserve the right to intervene later for good cause.'" That leaves everybody in limbo for a while, because the private litigant takes over the case, litigates the case, and gets well into discovery. You always have the possibility that the government may choose to jump in at

any point. That completely changes the landscape, because the 20 to 25% of intervened cases have led to 97% of the recoveries. It makes a big difference whether the government is involved in the case or not.

Another trend emanating from the backlog is the number of different U.S. Attorneys' offices that are now looking at these cases. Whistleblower suits had traditionally come from the Boston office, from the Philly office; they have now expanded to a *significantly* larger number of jurisdictions. You have — which is good and bad — a lot of prosecutors out there, in a lot of jurisdictions, taking a fresh look at the False Claims Act Statute. They don't have as much background in the healthcare world as some of their colleagues in other jurisdictions who have done more healthcare cases. It can certainly lead to more complicated cases ultimately.

Another significant development and one of the takeaways from this panel is the involvement of the state AGs. The state AGs have realized that False Claims Act cases and whistleblower cases are critical. They are critical to fighting Medicaid fraud and helping the budgets of various states. State AGs who are smart about this have not only passed their own False Claims Act litigation, but they have come to the table in litigation that the federal government has filed as well. They have now evolved from being tangential players in all of this to being critical players. There are cases I am aware of where the federal government has said, "We are not going to go forward," and the states have said, "We are going to go forward with these cases." They are critical stakeholders now, in addition to DOJ, in addition to CMS; they are yet another stakeholder at the table. One of the things that Tom recognized early on *is* the critical role that the state AGs and the state organizations *can* play in all of these things, whether it is the legislation or the litigation. It is significant for all companies to be aware of that, and make sure that they are building the relationships with those state organizations and AGs offices, so that if an issue arises, they can go in and explain their side of the story.

JACK FRIEDMAN: Thank you. Before we continue, I want to ask the panel as a whole, "What are examples of the federal, state and local agencies that you may deal with in this area?"

THOMAS M. MORIARTY: One thing I want to follow up on is the role that the AGs can play in your business. The more they know about you, what you are engaged in, and what your business does, the better. The more that your interaction with them is an informed dialogue, the better. That ongoing communication can, at a minimum, help balance the dialogue if you have to address an issue.

MARY LANGOWSKI: Healthcare is a great example of all of these levels of government coming together right now and creating much uncertainty and issues to watch for organizations. At the federal level, you not only have the health reform law that passed, you also have a lot of follow-up activity in Congress. Some of it is simply noise, and some of it will result in small changes to the Affordable Care Act. Organizations should view the healthcare law as a living thing that is going to change continuously. Multiple agencies have jurisdiction over healthcare reform implementation. There is a tremendous amount of policymaking going on at the regulatory level, because there was so much authority given to federal agencies and to the states. The various federal agencies with jurisdiction do not always agree on what the outcome should be. There is a lot of interagency tension that is creating confusion for folks on the outside.

One major example is some reimbursement changes that are driving consolidation in the healthcare space. They have encouraged more integrated care. Yet on the enforcement side, there is fear that consolidation will give too much market power to a few. There are some real contradictions in the law that could create enforcement issues.

More than ever before, states have a tremendous amount of power. They are the incubators of innovation in many ways with

this law, from the state exchanges that are being implemented, to Medicaid expansion. The power vested in the states right now is immense. That means, in many respects, fifty different ways of doing things, which is obviously very overwhelming for organizations to handle.

Of course, you also have local activity in the cities and localities on the public health side. It can be never-ending for organizations. You also have to watch the court system, because there are changes playing out on that side, too.

JACK FRIEDMAN: I have another question on litigation involving cases with individuals. It can be just one person or a class of individuals, versus a large company. One aspect of being a large company is that you get sued because you have deep pockets. What is the current attitude of jurors?

ENU MAINIGI: It is usually pro-the little people. It is not usually pro-the company. It is a tough world out there with juries. I just tried a case for six weeks in the Southern District of New York before Judge Rakoff for a financial institution. It was as good a set of facts as you could ever hope to get, which is, frankly — for the company — what led to

us trying the case. Ultimately, the jury found against us. It was concern that it doesn't matter whether this financial institution necessarily did something wrong in *this* case; we know, somewhere, they have done something wrong, because otherwise, we wouldn't have the financial crisis that we have.

JACK FRIEDMAN: The mime Marcel Marceau used to do a performance about litigation between an individual and a big company where he shows the corporate lawyer walking in with a fine suit and the plaintiff's lawyer walking in helping the mother and all her little children gathered around her. Many people do not care as much about the law as about the fate of the little people, especially when the company has deep pockets. They may think, "It is not going to hurt the company particularly. Let's just make sure that these people are covered for their medical expenses without punishing the company with punitives." Is that the stereotype image of what goes on?

ENU MAINIGI: That can certainly be true; as a healthcare company, it is a high risk to take something to trial, because you have the risk of exclusion, ultimately. That is why it *does* become critically important for companies to step back, look and make sure that they put their voice out there when legislation is being passed. Make sure that they have good relationships with the state AGs and with CMS — if CMS is their regulator. Ultimately, make sure that they have — even when they are under investigation — a strong path of communication with DOJ.

One of the things emanating from the backlog I was referring to is that DOJ does not necessarily want to intervene in every single case, and they certainly recognize that there are a lot of cases out there that don't have much merit. If you keep the lines of communication open and have a good dialogue with them, it's fairly easy to get in there and explain your position. When they have knowledge, they're apt to go investigate in a direction that they may not necessarily consider. It's a different model than you

might have in the criminal context, where you don't necessarily want to share a lot of information with the government. I think the healthcare industry has gotten much better, and *needs* to get much better, about making sure that they are transparent and are disclosing as much about the business operation as appropriate.

JACK FRIEDMAN: Vincent, your firm has huge experience and expertise in employment, sometimes with individual workers against the corporations. How do the juries look at those cases?

VINCENT A. CINO: Enu was absolutely right; a company is handicapped going into a trial. To further validate the point that you and Enu made, five or six years ago there was a survey of jurors in New Jersey. As you know, you try a case and it could go on for five weeks or sometimes several months. At the end of the case, the judge gives a deadly boring jury charge to the jury, six people sitting in the jury box. The lawyers have trouble understanding the jury charge, never mind the lay people who are sitting there and couldn't get out of jury duty. The judge says, "You have to apply the law to the facts of this case." Seventy-five percent of the jurors surveyed said they dispensed with that, ignored the law, and just decided the case based on what they believed to be a fair and just resolution. That's it!

THOMAS M. MORIARTY: The one thing I would add is the role of reputation in all of this — both corporate and individual reputation. The more your story is told and you're seen as adding to the system, the more your reputation can help make a difference in how some of these things play out.

JACK FRIEDMAN: Let's ask Joe about this. Let us say you have a company that has all kinds of legal expertise advising them, and they can fight tooth and nail to try to win the case or to force a reasonable settlement. If you are in the healthcare field, you have to worry about your reputation related to litigation. Joe, could you talk about the issues you discuss when a General Counsel calls you in and says, "How far can we take this conflict in the healthcare field?" What are the trade-offs of fighting versus potential loss of corporate reputation?

JOE LOCKHART: A lot of that depends on how much work you've done before that conversation. In the healthcare field, if you're talking about juries, and just combine some things that have been said, I guarantee that a juror who sees that CVS no longer sells tobacco, will look at CVS in a more expansive, positive way. They will look at it as a healthcare, as a company committed to healthcare, as opposed to a company trying to maximize profits at all points. That's why reputation is important. It's probably the hardest thing to measure, or the hardest thing to put a precise value on, but it is important.

I'll give you a different example from another field. Wal-Mart is one of the world's largest retailers. They are also, perhaps, the most sued company in the world. They have problems with employees, problems across the board. They decided, about ten years ago, that they could no longer just sell their brand as "everyday low cost." One of the particular areas they went into was the environment. They had tremendous market power, with the purchasing they did, to go out and do it in a more environmentally friendly way. That was good for the world; it was also good for Wal-Mart. If anyone was watching Washington

closely, a couple of weeks ago, when the President went to California, he went to a Wal-Mart to talk about environmental and renewable energy. That wouldn't have happened without the ten years of work that's gone in, the reputation they built, and the reputation they repaired. There was a lot of *Sturm und Drang* among progressive groups about "How could you go to Wal-Mart?" The President's people said, "We don't agree with everything they did, but they're doing a lot," and that's an area where reputation had a very positive, tangible payoff.

JACK FRIEDMAN: I appreciate that, thank you. I have another question regarding attorneys who could be whistleblowers within the corporation. A number of years ago, we did a program with the former General Counsel of the SEC. I asked him, the panel, and the audience, "Is there a situation where a corporate attorney can rightfully report wrongdoing to a government agency, regardless of the attorney-client privilege?" One person said, "I'm an IP lawyer. When you do a patent application, the rule is that you have to have enough expertise to sign off that this is a meritorious application, in terms of content of the patent. You are obliged to withdraw your signature if you do not think it is meritorious."

The former General Counsel for the SEC said, "I will give another extreme example, but this is said even under the old rules. If you are the in-house counsel for an airplane company, and you know that there is a high probability that a particular plane will crash, it does not matter what the privilege rules are, you should report it. You are immediately saving a few hundred lives." That's a rather high standard for a whistleblower or reporting.

I want to ask when some General Counsel would see that reporting up the line, going to the board directly, or external reporting is ever warranted.

THOMAS M. MORIARTY: From an internal perspective, it's critical that you have the mechanisms in place that allow people to raise their hand and point things

out. It is not good when bad information is shielded from the management team or from the corporation. We do not wake up every day to do wrong; we wake up every day to do good. That's really what the business is about for all of us here in the room. There is no question that things can sometimes go wrong — and must be addressed. There are different mechanisms to handle this such as ethics lines or compliance lines. The employee must have the ability to provide information without retaliation. Ultimately, it comes down to company culture where the tone is set from the top. The leadership team must encourage a culture that addresses and resolves tough issues early. One of the top priorities for CVS Caremark and our in-house lawyers is to get that message out. You cannot walk the halls of any of our buildings without seeing a poster that encourages employees — when they "See something, say something," because we want folks to identify potential problems so that they can be corrected.

JACK FRIEDMAN: Jim Comey, who at the time was the General Counsel of Lockheed Martin and is now the head of the FBI, made this comment — he had small children, and he said that they watch what parents actually do, in terms of integrity — not just what they are *told* is the proper thing to do. He said, "When you're a boss, your staff do the same thing. Their antenna are out to see what the boss *really* does, as opposed to just what he or she says.

I would like to turn now to some of the board issues and business aspects of healthcare companies. We want to thank Creighton Condon; I've known him for 20 years. It has been a great joy to watch him rise to the global head of his firm.

CREIGHTON CONDON: Thank you. First, I want to congratulate Tom for a well-deserved recognition today. Jack has been promoting this forum now for a very long time, and very successfully. He always manages to refresh it and come up with new ideas, so that it is quite substantive. It is a pleasure to participate in this program.

JACK FRIEDMAN: Thank you.

CREIGHTON CONDON: I'm Creighton Condon, and I am the senior partner of Shearman & Sterling.

You have been hearing some of the things that CVS has been doing, some terrific things on the business side, and mentioning your relationships with regulators. It is proxy season, so I would like to shift gears a little bit and talk about another important, increasingly vocal constituency, which are shareholders. In particular, there is shareholder activism and the need to dynamically engage with the institutional shareholders.

Over the past few years, the corporate governance landscape has changed dramatically, with the emergence of activist hedge funds. The most successful funds have become expert in identifying particular opportunities that they think will resonate with institutional investors. They get in and cause a lot of issues for companies that are trying to pursue what they otherwise think is the right strategy for the company. They use the media very effectively, and they use the proxy process, as well.

There is a very heated debate in the community, among academics, economists and the legal community, as to whether shareholder

activism enhances shareholder value or not. The debate tends to center around short-term vs. long-term value, and what the relative merits are and whether companies are being forced to be more short-term due to the presence of hedge funds either actively in their stock, or due to the overall atmosphere. No matter how you come out on the present debate, it is clear that this kind of activism is here to stay, and people really need to understand it and deal with it.

There have been a couple of significant recent developments. Over the last eighteen months, it has become increasingly clear that the size of a company is not a deterrent to shareholder activism. Mainstream investors have really embraced activist hedge funds as a legitimate asset class, and they've flooded them with capital. Every day, there are new activists in the market. The activist funds are getting larger and are in a position to take significant stakes in large companies.

Institutional investors have also been more open to supporting activists who come armed with a well-articulated plan.

Campaigns at Apple, Hess, and Procter & Gamble, support that view. At Apple, the controversy was around Apple's considerable cash resources and what should be done with those. David Einhorn pushed Apple to put in place a high dividend preferred stock, which led to litigation. Carl Icahn entered the fray, introducing a precatory resolution that Apple do a buyback of not less than $50 billion. Einhorn and Icahn both ultimately backed off, but Apple clearly responded affirmatively in terms of positive statements about their intent to return capital to shareholders.

At Hess, Elliott Management was pursuing an agenda of splitting the U.S. shale oil business from the international exploration business. When Hess refused to comply, Elliott nominated five directors and Relational Investors came into the stock in support of that. ISS and Glass, Lewis proxy advisory services who are significant players in this space (they often control up to 20% of the stock in these companies, in terms of how they're going to vote) — supported that. Ultimately, the proxy fight was settled when Hess agreed to put three of Elliott's nominees on the Board and split the CEO and Chairman positions.

Finally, at Procter & Gamble, Ackman's Pershing Square took a $1.8 billion stake, representing less than 1% of the stock. While they didn't get on the board or on the face of it pursue a successful strategy, the CEO stepped down within a year of Ackman joining the fray.

The agendas can be varied. It can be changing management, requests for board seats, and campaigns for specific strategic, operational or capitalization changes. It can also be to challenge compensation. Compensation is often just a tool for pushing for other agendas, but it's certainly one that resonates with institutional investors.

Board representation is often a key objective, and just a month ago, Carl Icahn dropped his campaign for a board seat at eBay. Through an agreement with eBay to add an independent director, which in the public statements was said to have been agreed upon between eBay and Icahn, the person added was none other than David Dorman, who is the chairman of CVS Caremark.

The other phenomenon is that activist shareholders — and this is slightly afield but gives you a sense of the environment generally — are becoming much more active on the M&A side. The Allergan/Valeant situation, where Valeant has put a bid on the table for Allergan, is maybe the most notable of those. Again, Pershing Square, Ackman's firm, has financed a large portion of the cash that's being used in that transaction. It's a $49 billion transaction. That has made a material difference in the ability of Valeant to go after Allergan.

One more environmental issue I would just note is even private equity firms, which have historically been viewed as only

friendly to management, and only willing to get involved in situations if management was inviting them in, have become more aggressive. One very significant player in the space right now is pursuing a hostile bid in Australia for a company. In another situation here in the U.S., in another hostile bid, a private equity firm is providing over a billion dollars of the equity capital in order to pursue the bid.

That gives you an overall feeling for the change in the environment that we're seeing, and how even institutional shareholders and private equity firms, who traditionally have been less active, are becoming more active.

It is important to be prepared. There are a number of things which boards typically do. In my experience, boards and management are actually quite proactive in pursuing the right thing in terms of developing strategies carefully, being able to articulate those strategies and what the long-term benefits are, and employing strong decision-making processes. Boards are engaging today in exercises of looking at the company from the perspective of what the activists might pursue, and going through an exercise — often on a yearly basis, with their advisors — of looking at all aspects

of the company's operations, and their strategy, the board composition, succession issues, compensation, etc., from the perspective of that shareholder view, and then pursuing changes that they think are appropriate. In any event, they are being better educated and prepared to defend their strategy on those things if they are approached.

Also, Boards are really giving a hard look at their shareholder base, and they're engaging — and I'll be spending a little more time about that in a second — much more actively with their shareholder base, and analyzing, understanding, and tracking the shareholder base. You will also find they are continuing to look at defensive measures and being prepared to respond if they are approached.

If you start with the belief — which is certainly my experience — that in most cases, boards and managements are being very careful, trying to do the right thing for the companies and pursue the right strategy for long-term shareholder value, why are shareholder activists succeeding? They are succeeding by, one: identifying some circumstances where that's not necessarily the case. There are some circumstances where you can look at it and say, "There seems to be some real merit here." But two: they are taking advantage of what I view as a failure by companies to adequately communicate what their strategy is on a regular basis with their key constituencies. That is something that is worth real attention.

We have moved, over the last 15 to 20 years, from a system which was radically different from the U.K. system to one which is much more closely aligned with the U.K. The U.K. has always had a system where liberal shareholder engagement is the norm. There are no takeover defenses. Some of the recent regulatory changes can be used strategically to develop defenses, as we've seen in the most recent deal in the healthcare space. However, generally speaking, it's very much putting matters to shareholders, convince the shareholders by way of a campaign on both sides of the relative merits, and let the shareholders decide.

> "What we are seeing is an evolution from a system where employers or the government made the decisions regarding what you should access and how you should access to an environment where the individual is in greater control."
>
> *– Thomas M. Moriarty*

That was not the U.S. model 15 or 20 years ago, where with the poison pills and staggered boards and all the other defenses, companies could often effectively insulate themselves from shareholder action.

With the dismantling of staggered boards, with the circumscription of the ability to use pills quite as effectively as historically, with some of the requirements of shareholder approval, it is becoming much more of a shareholder democracy system. With that, companies need to change. A lot of companies have changed and a lot of companies have not yet taken that step adequately to really articulate their vision. As Mary pointed out earlier, the first time you approach your constituency — in this case, your shareholders — in the context of an approach by an activist with a specific agenda and a well-articulated view of what the strategy should be, and you haven't done the spadework to do that, then you are going to have an uphill battle in trying to win in that circumstance.

Understanding your shareholder base, creating a comprehensive plan to engage with investors at least annually on substance to deal with all the issues that they are concerned about — the strategy, succession, compensation, and so on, will put you in good stead when you have to actually defend a very detailed discussion with activists.

The last thing I would say is in some respects — and this is especially true where companies are trying to make long-term investments, the viability of which may not be clear in the short-term — it's almost like global warming. How do you get people engaged on global warming? I was at a graduation for my daughter a couple of weeks ago, and John Kerry came and spoke. He gave a very engaging speech to the graduating class. About three-quarters of the way through, he started to talk about global warming. You could see the audience — whether it was people who were 100% in agreement or people who were 100% opposed — the whole audience sat back and said, "Here we go — global warming."

In some respects, articulating long-term strategy can be a similar exercise. Unless you do it continuously and get the evidence behind it and keep it out in the marketplace, you're going to have a hard time convincing your constituency when they're confronted very short-term and very tangibly in an activist campaign, that they should stick with you in the long-term.

Having said that, and having participated in a session at Harvard a couple of weeks ago, involving activists, institutional shareholders, outside counsel for firms, ISS, and others talking about these issues — activism issues in particular — it's clear that the institutional shareholders are evolving in their thinking. They are not all of the mind to go with the activists; they have seen a lot of these campaigns. They will look at an issue on the merits. Their clear message was, "Come talk to us. Very often, we will respond if we understand and you can articulate your long-term strategy. We will take the short-term hit if we believe in the long-term benefit, but you need to have that outreach."

The other very particular message that came out of that discussion was that they like to see board members, particularly the chairman of the board, and the chairman of the compensation committee. Companies

need to look at those positions, assuming that the people who are holding those positions will need to and should engage with their institutional shareholders on a regular basis. That reinforces that the company has a strategy; that the board understands it and can articulate it; and that executive compensation aligns with the strategy. That independence and confirmation that you have got an active, engaged board is very useful when you are then confronted with something short-term.

JACK FRIEDMAN: We have hosted Chief Justices of Delaware in several programs. How have the duties, responsibilities, and pressures on boards changed in recent years?

CREIGHTON CONDON: From my perspective, the time commitment has multiplied for board members. It used to be typical for board members to be sent a package of materials shortly before a board meeting. They would show up; they would hear the presentations, and they would ask some questions. Board members are now much more engaged.

Structurally, management sets the agenda and the strategy, needs to execute on the strategy, but boards are much more engaged in drilling down, acting as the independent buffer, asking the right type of questions and understanding the business. It is a very positive change.

JACK FRIEDMAN: What is the role of the General Counsel with the board?

THOMAS M. MORIARTY: It is a very interesting role. On the one hand you are part of the executive management team. On the other hand, the General Counsel must ultimately represent the interests of the shareholder. Translating the guidance grounded in that dual role to the board, individually and collectively, is very important.

JACK FRIEDMAN: You're the attorney for the corporation — not for the board.

THOMAS M. MORIARTY: That is my position and that is the role that we play. We spend a lot of time with our board. One of the very positive developments, which Creighton is referring to, is leveraging the expertise of our board. The board members are very experienced and highly technical folks in their areas of specialization. We have developed a great interaction and dialogue to be able to leverage that expertise across our business.

The board's time commitment is tangible. It has almost tripled, particularly for folks who sit on the audit committees of public companies. The role and the scrutiny that audit committees are under these days is very high, and as a result, the engagement level of folks who sit on the audit committees is even higher than you might see otherwise.

JACK FRIEDMAN: A General Counsel commented once that his corporation had a capital budget of $23 billion a year. There was a committee of the board which studied it very carefully, but that the board, as a whole, was lucky if it could spend five or six minutes a year on the budget, because they had so many other things to consider. They relied on the special committee to handle that situation.

I would now like to introduce Matt Hurd.

MATTHEW HURD: Thank you, Jack. Congratulations, Tom, on this well-deserved recognition. I am Matthew Hurd, partner in Sullivan & Cromwell. I have worked on healthcare mergers and acquisitions for most of my career. Most of us in the room have worked on both successful and unsuccessful mergers and acquisitions. While the definition of a successful transaction will always involve items like making sure that the valuation and the strategy is absolutely right — and the integration is carried out flawlessly — we can all agree that the definition of a successful transaction has changed significantly over the past few years. It now involves measuring success against a broader range of criteria — criteria beyond just commercial factors. It also involves having that success judged and — in some degree impacted by — a broader range of stakeholders, such as regulators, industry groups, legislators, the media, the various types of activists that Creighton was referring to, and a whole range of industry and public policy pundits who influence, or at least try to influence, the views and actions of the other stakeholders.

This evolving conception of transactional success results from at least a couple of factors that we are all familiar with from other contexts. First and foremost, governments around the world are exerting much greater influence and involvement both in businesses and in transactions. This involvement has been particularly overt in the banking, insurance, and automotive industries — especially since 2008 — but the business leaders in energy, technology, and — as Mary referred to — the food and beverage industry would all say the same thing. In healthcare — an

area that the United States federal government has regulated for over a century — this involvement has taken the form of more muscular antitrust enforcement; greater investigative activity by the United States Department of Justice and the Office of the Inspector General; higher priority being given to the enforcement of anti-corruption statutes, chiefly the Foreign Corrupt Practices Act; more whistleblower actions, *qui tam* suits, and False Claims Act proceedings, like the matters Enu was discussing; and most importantly, the evolving commercial and conceptual structure of the United States healthcare delivery system being wrought by the Affordable Care Act.

At the same time, there is much more of a curtain between the public sphere of regulators, legislators, investigators, commentators — the private sphere of commercial operations, where most of us tend to spend our professional lives. This dichotomy or division is more stark than it has been in the recent past, and what I mean by that is there are only a limited number of professionals who can easily pass back and forth through that curtain and communicate and advise with sophistication in both spheres.

So, success in deal-making today involves taking a much broader view of what constitutes success, and taking a much more holistic and integrated approach to the advisory process and the planning process.

Companies that are successful in M&A today are literally never offline or out of contact with their regulatory advisors, especially in the areas of antitrust and tax. In these areas particularly, the strategic vision that a company has can largely be a function of how much work it has consistently expended in considering the accretion of somewhat settled developments in highly sensitive areas.

If you look at the merger of Medco into Express Scripts two years ago, that is an example of a transaction that was highly successful across this broader set of criteria that

I have been mentioning. This is a transaction that many pundits thought could never get done from an antitrust perspective, but ultimately it sailed through, really, without any divestiture, small or large. I was involved in the deal, but was not involved in the antitrust work — another firm was — it was really a complete success on the part of that team. It got through with at least a couple of Congressional hearings, some vexatious litigation by an industry group, various types of antitrust investigations by state attorneys general. Obviously, those risks needed to be navigated through, but the real principle for which that transaction serves as an example is that careful transaction planning can really only be fully achieved over a longer term in the manner seamless with the daily evaluation of risks affecting businesses. In healthcare, success is just the flip side of risk management, at least in my view.

You fast-forward now to the most recent large acquisition project in healthcare, Pfizer's failed bid for AstraZeneca — or as Joe would say, AstraZeneca's successful defense of the Pfizer initiative. On the one hand, Pfizer felt able, confidently, to propose an inversion transaction in the midst of a political hue and cry concerning the propriety of these transactions. Pfizer's ability to proceed reflects what is a very sophisticated view concerning the prospect of regulatory change in this country, and was probably conceived over a longish period of analysis. I do not think it was episodic, but I was not involved.

On the other hand, Pfizer itself stated that it found the U.K. takeover regime overly complicated and bureaucratic, and by implication, this view that it had or experienced of that process affected its overall ability to execute on its initiative.

All of these factors require coordination. And, what is the focus of that coordination in most successful organizations? In most cases, in my experience, that place is the General Counsel's office. That is the place where the public policy, regulatory affairs, and governmental relations functions are all coming together to create success in M&A transactions. Companies have largely built out their business development functions and their commercial operations, but the really successful deal-making companies have built out and reconceived the General Counsel's office as the place where all of these factors are coordinated and managed, and whereby success in today's deal-making environment can most effectively be achieved.

JACK FRIEDMAN: Thank you. I'm going to ask questions of two of our panelists, Vincent and Joe. What are the public considerations that the board should take into account in doing M&A deals?

VINCENT A. CINO: There are so many levels of complexity with that; there are union contracts; and there are predecessor policies that may have to be integrated. It is a combination of the policies of the different unions and different countries.

JACK FRIEDMAN: How much information does a company get about the people side of the business before they buy it?

VINCENT A. CINO: My experience is that, there is not a lot of due diligence on the people side of the business. There

probably should be more in order to understand cultures and how the cultures of the two different companies will work together to make sure there will be a seamless integration. You may have to rely on consultants who know both parties and people who used to work for the company who may have anecdotal information.

JACK FRIEDMAN: What about the issue of integrating the employees in the two companies? How do you avoid the idea that "our side is being shortchanged?"

VINCENT A. CINO: That's a challenge. Typically, in many scenarios, what will happen is there will be a reduction of force. There will be redundancies in various positions. From *our* end, being the labor employment perspective, we want to make sure that any decisions that are being made are based on objective, evaluated data such as past reviews and who is better suited for the job. The decisions should not be based on subjective data or who knows who. There is a whole reduction of force analysis that you would go through to make sure that the company is protected in its decision-making process when some people are being laid off because of the redundancies.

JACK FRIEDMAN: Joe, I'd like to ask you some questions. In the M&A process, when should people like yourself be brought into the process? Is this initiated by the board, a General Counsel, or the investment banker?

JOE LOCKHART: The obvious answer, from my perspective, is early. Each individual group should have someone help them think through the broader policy, political and communication aspects. Sometimes that means the company has an advisor and the board has an advisor, because they have different situations. In the interests of disclosure, let me talk a little bit about Pfizer/AstraZeneca. I represented AstraZeneca, and still do on an ongoing basis. Without getting into great detail on AstraZeneca's strategy, I looked at Pfizer's as a complete failure of imagination, and a very narrowly focused effort. They saw their shareholders and the markets as the only audience there. They made a case that was based on why it was good for both sets of shareholders, and why it would provide more money and more shareholder value.

They walked into a political buzz saw that was relatively easy to ignite, with the whole virtue of tax inversions. They basically were saying, "We're going to make a lot of money for all of us, at the expense of U.S. taxpayers and it is Congress' fault." Guess what? Congress had something to say, as well as a lot of other people. What would have made it much harder to fight was if they had made a much broader case about how healthcare, patients, and doctors would be helped. If they had talked to their constituents and built support in advance, they would have had a stronger case. When it came out they had no broad public policy leg to stand on, and people will draw their own conclusions on why the deal failed. I would imagine that if they had the chance to do it over again, they would have thought it through and at least expanded the virtues of a combined company, to speak to each of their stakeholders in a way they didn't do.

THOMAS M. MORIARTY: While clearly not being involved in the deal, it highlights what Joe has emphasized — the need to take a much broader approach by looking at the total context of the deal rather than the pure financials. As I talked about earlier in my comments, you can't pursue a deal in isolation and to the exclusion of other key attributes of your company and what it means to the broader community, because support for the deal can then be much harder to come by. There are a lot of different ways to address that situation and put a very strong story together as to why that combination could have made sense. But, ultimately, the merger proved not to be successful.

JACK FRIEDMAN: There was a talk that Haley Barbour, former Republican governor of Mississippi, gave that's directly related to this. He said that if you want to get broad litigation reform through, you have to know which constituencies can influence the political process in that particular situation or in that area. You approach the press, get opinion leaders and social media, and people talk one-to-one with politicians. The key issue is to be proactive at the beginning and to be sure that your strategy and the message you're communicating is very well designed to be effective.

JOE LOCKHART: Yes, I am picking up on what Mary said at the beginning. It is very difficult to develop a relationship when you are in a crisis, or have a deal that's falling apart or running into some trouble. These things all need to be prepared in advance. Stakeholders need to be briefed. They need to understand why you are doing something, so that they can support you, or at least understand it and mute their criticism. You cannot rebuild the plane while you are flying it. A very strong case, in a major acquisition, includes all the elements of the company, as Tom said, and considers the reputation part

of it from the beginning to be as important as the financing. The communications and policy are part of it. I could imagine Pfizer going forward, knowing that this would damage their reputation, but it made so much business sense. They never made a broader argument, so they were hurt both ways.

MATTHEW HURD: I should say, and not knowing of Joe's involvement, I actually brought, as part of the written materials, some of the AstraZeneca and Pfizer's documents, which are on the table outside. Speaking only for myself, I actually do not think that Pfizer's effort in this whole thing was poorly conceived. I thought it was a well-executed effort. It just happens to be the fact that AstraZeneca's response and its defense were better, and that is the way that project worked out. Some examples of the press materials from that project are out on the table.

JACK FRIEDMAN: Thank you very much. In terms of reputation, I remember a General Counsel making a comment that you cannot keep people in your own organization from saying whatever they want, no matter what your policies are, even if you try to trace it down. All you can do is react after it is out there. I would like to talk about dealing with social media, whether it is people outside or inside the company.

VINCENT A. CINO: It is becoming a big part of our practice. There are all types of issues that you face when somebody goes on Facebook or Twitter and posts a comment about their employer. The NLRB has stepped in at times and said that is protected speech, or a concerted activity, and you shouldn't be involved in that. Normally, when we get a call from an employer, an employee has made slanderous comments about the company. What do we do? How can we stop it and can we fire them? That is very tricky, very complex, in terms of what you can do. A lot of times, it is better to let it lie and step away until the temperature goes down — and it's a one-day issue. Sometimes it's somebody who has a huge vendetta and he continues. There might

be situations where you could actually go in and try to get an injunction, only with respect to slanderous, libelous or outright false comments. It is hard.

JACK FRIEDMAN: Does an employee have a legal right to tell the world what he thinks of the employer?

VINCENT A. CINO: I suspect they do. Some comments are subject to varying interpretations.

JACK FRIEDMAN: What about the situation, where it is not the company, it is two particular employees who are fighting?

VINCENT A. CINO: I am a firm believer in getting two people in a room and hashing it out to come to some resolution. This is your supervisor; this is your employee; let's try and treat each other with some respect and dignity, and move on.

JACK FRIEDMAN: Thank you. I have one more question, and then we will open it up to the audience.

I want to ask Tom about the MinuteClinics. What is the concept behind that, and what need is it fulfilling for your customers?

THOMAS M. MORIARTY: The need in the marketplace for MinuteClinic services stems from a growing shortage of primary care physicians across the country. The ability of folks to have access to primary care is shrinking. MinuteClinic is a solution to leverage our footprint across the country in a way that can maximize access to these services.

MinuteClinic started by looking at acute conditions, such as earaches, sore throats, and eye infections. It is now extending into more chronic disease management such as diabetes, cardiovascular-related issues, weight loss and other conditions. We are there in communities and readily accessible. We also now provide sports physicals for kids and athletes, as well as work physicals. Here is a story to highlight this point.

We hosted a forum for our senior leaders about six months ago and invited in the head of a major hospital system. We did not know he was going to do this, but he brought in an ad from a Sunday paper focused on MinuteClinic's sports physicals services for the Pop Warner football leagues. The cost is approximately $59. He challenged his staff the next day at a Monday morning staff meeting with two questions: "First, can you tell me how much it would cost for somebody to come to our system to have one of these physicals done?" and "How long would it take for that physical to be scheduled and completed?"

Putting aside the fact that it took six weeks for his staff to get back to him, what he learned is that it would cost several hundred dollars to have a sports physical within the hospital system, and it would take seven to eight weeks to be able to schedule it.

When you look at the pressure that is on the existing infrastructure of healthcare across this country, the MinuteClinics are an access point that can relieve some of that pressure. Perhaps most importantly, MinuteClinics can do it at a lower cost for the individual, as well as for the payor.

It has gone from roughly 18% of health plans reimbursing for visits at the MinuteClinics to over 90%. One statistic my boss likes to refer to, just to see the value that they can deliver, is after every major holiday — whether it be July 4th, Christmas, New Year's — he asks how many folks visited our MinuteClinics on those days. Invariably, it's in the thousands. His point is, they were sick enough on a major holiday to leave their house. If they did need to seek care, and if they didn't have access to the MinuteClinics, they would have ended up in the emergency room. If you consider the cost savings for the system, that is primarily the philosophy behind it.

JACK FRIEDMAN: There was some discussion yesterday on TV about VA hospitals by Jack Jacobs, who won the Medal of Honor when he was in the Army. Jacobs said that it does not make any difference how many billions of dollars Congress puts in. The problem is there are not enough primary care doctors to have appointments. There needs to be a massive scholarship program at medical schools, because students cannot go into primary care with all of the debt load that they have once they get out of medical school.

THOMAS M. MORIARTY: One of the key things that we do prior to opening a MinuteClinic is to talk directly with primary care physicians in that community. We inform them of our plans and ask if the doctor accepts new patients. This is important to know because anywhere from 40 to 60% of folks who come in to a MinuteClinic do not have a primary care physician. We become a referral point and resource point for the primary care physicians in that community. Ultimately, you do want folks being seen by a primary care physician. When a doctor is not available, this is an access point to get the care that they need.

JACK FRIEDMAN: Is there any resistance to this idea?

THOMAS M. MORIARTY: It varies by state. There are a number of states that have corporate practice of medicine restrictions that preclude corporations from owning healthcare establishments. There is the concern that the patients will not receive the appropriate care, or that they will not see their physicians. We work to educate policy makers that MinuteClinic is fully certified by all the accrediting organizations. We operate by clinical standards. We also now have the capability to upload the record of the visit directly into the patient's record with that physician, through the electronic medical records systems. We want to have a collaborative and coordinated relationship with primary care physicians.

JACK FRIEDMAN: You have to work carefully with them, getting back to the influence of doctors on the healthcare system?

THOMAS M. MORIARTY: Yes.

JACK FRIEDMAN: I have a lighthearted question to ask Tom. In the five minutes a month that you have free from your work, what do you like to do?

THOMAS M. MORIARTY: Since my kids are in the audience, I have to say, spend it with them! There are a lot of different things I enjoy such as reading, playing golf, and spending time with family.

JACK FRIEDMAN: Does anyone in the audience have a question?

[AUDIENCE MEMBER]: I am senior counsel of American Express. First of all, congratulations, Tom. Secondly, you mentioned the need for in-house counsel to be much more strategic and that we should be business enablers. You also talked about the fact that the General Counsel represents the corporation rather than any particular executive of the company. What is your perspective on the effectiveness of General Counsel structures where divisional GCs report to the president of the business unit, and only have a dotted line to the General Counsel?

THOMAS M. MORIARTY: First, to get to your question in terms of having lawyers intimately involved in the business; it

is critical. One of my guiding principles is that our lawyers need to be integrated as a partner with the business units in order to truly understand how the business operates, to help shape strategy, and to avoid pitfalls. We assign a lawyer specifically for the various business units across the company, and the most senior lawyer for that group sits in on the staff meetings of the business units. By doing that, they essentially become business partners with it.

In terms of who reports to whom, it is primarily a question of who ultimately is making the determination as to whether the work is being done appropriately or not. I am comfortable with divisional GCs not reporting directly to the corporate GC.

Where it becomes an issue is when the ultimate decision as to what should be done from the legal perspective somehow gets blurred because of that reporting. That's when it needs to be very clear that legal decisions and other areas that the office of General Counsel has responsibility over should stay within the scope of that office.

[AUDIENCE MEMBER]: I wanted to thank Mr. Friedman for bringing up the issue of the doctors being stakeholders.

I wanted to ask Mr. Moriarty and Ms. Langowski this question, if they can respond. To what degree are doctors a stakeholder in the decision-making, and how much do you reach out to them when it comes to public policy? For example, when we look at the expansion of Medicaid and before that came to place, we were already 60,000 doctors short of what we needed to treat those patients. Yet there wasn't a plan to expand the number of doctors. In fact, what happened with reimbursement rates for Medicaid and Medicare is that we are seeing doctors leaving that practice or refusing to take those patients. There is also no plan to grow the number of medical schools or grow the number of doctors that we need. It is a nice first step, what you are planning with this clinic, but we still need doctors to do that. What we are seeing, instead, is that doctors' practices are dissolving and they are being taken over by hospital corporations to manage for them. For example, it costs almost $30,000 to start up an electronic medical records program for a practice, which practically puts them out of business. Most of what they are taking in is going towards overhead. They barely pay themselves. To what degree are these individual doctors' practices being considered as real stakeholders in the decision-making? How is this going to be impacted when you're looking at the implementation of the APA and how it may be revised?

THOMAS M. MORIARTY: I will start, Mary, and then I will turn the broader policy questions over to you.

If you look at how we are structured, our Chief Medical Officer sits on the Executive Committee of the company. It is primarily to drive the message of the importance of physicians across our company and in the business that we do. In the example of MinuteClinics, we have approximately 40 arrangements and alliances with major hospital systems across the country, because the pressure of the physician shortage is also felt in the hospital areas. The collaboration that exists with the hospital healthcare systems, physician groups and MinuteClinics are structured to drive alignment across an integrated model.

> "When you look at the pressure that is on the existing infrastructure of healthcare across this country, the MinuteClinics are an access point that can relieve some of that pressure. Perhaps most importantly, MinuteClinics can do it at a lower cost for the individual, as well as for the payor."
>
> – *Thomas M. Moriarty*

Ultimately, as primary care becomes harder to access, and there are fewer doctors, we really need physicians to be focused on the most critical conditions involved, where the value can truly be added and the most impact on people's lives can be made. By freeing up that time and working within an integrated model, you can achieve a lot of the cost savings, but also take some of the pressure off the physician practice groups and the hospitals.

JACK FRIEDMAN: In a program we did in Los Angeles, a woman said she was a physician and the president of the Harvard Medical School Association of Southern California. She said, "I'm going to give you a topic which will be popular: career opportunities outside of medicine for doctors. We have many colleagues in our chapter who want to be security analysts in healthcare on Wall Street." Yesterday, there was news of a study that said that the largest graduate degree in the United States now is MBAs, which is about 25%.

MARY LANGOWSKI: There are, no doubt, a lot of unintended consequences from the law, and I hear a lot of frustration from physicians. Sometimes there is a lack of knowledge in terms of how policy translates into the day-to-day practice of healthcare. There has to be an end at some point to the downward reimbursement pressure that we are placing on providers. Providers are going to have to be really creative in this new environment to squeeze more money out of new arrangements with ACAs, bundled payments and other things. It is important to note that now there is excess capacity in the system. There are companies that are innovative, like ZocDoc, that go in and help manage that capacity so that you can eliminate that excess capacity. It is good for everybody in the system — patients get their appointments and doctors get their cancellations filled.

With the new population coming in, as Tom said, scale is going to be everything. Getting scale right, making sure that you can, that you are using the right provider, at the right time, at the right level, is going to be critical for the system. That has been, since the beginning, the source of some real frustrating consequences for physicians. Remember what I said earlier: this is a living law, and they will have to be very active in adjusting it to live with it in the future.

JACK FRIEDMAN: I want to thank our Distinguished Panelists and especially, our Guest of Honor. It is clear that CVC Caremark is filled with people who feel good about how they are helping people and are happy to be with a successful company.

Thank you very much.

Mary Langowski

Partner, DLA Piper

Mary Langowski has extensive experience helping companies navigate and strategically respond to global and domestic policy and marketplace trends through effective government relations strategies, pursuing business development opportunities and through effective communications and public affairs campaigns.

Mary has worked with for-profit and nonprofit organizations, as well as both federal and state governments. Mary has worked extensively with health care and life science companies to help them navigate complex health care reform policies, rules and regulations. She advises several organizations on their longer term strategic approach to health care reform and marketplace changes. Mary also works with organizations on their response to food policy trends, on emerging market strategies, and on corporate development and philanthropy strategies.

Mary built the firm's Health Care Policy and Regulatory group and serves as former Senator Tom Daschle's chief advisor on health care and food policy issues.

Prior Experience

Mary served as a managing director at a global AmLaw 100 firm, where she chaired the advocacy team. In that position, she counseled clients, including national associations, technology vendors, hospitals and health systems, pharmaceutical companies, provider groups, corporate entities, universities and large nonprofits.

Mary has also had her own successful consulting business, where she provided business development, government affairs and communications strategies for clients in the health care, biotechnology and innovation sectors.

In addition to her consulting experience, Mary has served as a senior policy advisor to Senator Tom Harkin, where she managed the senator's health care policy initiatives and priorities, including public health and prevention, Medicare and pharmaceutical policy. She was also a member of the U.S. Senate Agriculture Committee staff and worked on rural economic development issues.

Prior to joining Senator Harkin's office, Mary served as the chief policy advisor at the Iowa Department of Public Health under Governor Tom Vilsack, where she advised the director and the governor on health policy and was responsible for growing and managing federally funded policy projects. She has also worked in the private sector on health care quality and cost containment issues with large self-insured businesses in Iowa.

Mary also previously served as the president and chief operating officer for a nonprofit community development organization. Over the course of her career, she has advised numerous congressional, senatorial, gubernatorial and presidential political candidates.

DLA Piper

DLA Piper is a global law firm with 4,200 lawyers in the Americas, Asia Pacific, Europe and the Middle East, positioning us to help companies with their legal needs around the world.

We strive to be the leading global business law firm by delivering quality and value to our clients.

We achieve this through practical and innovative legal solutions that help our clients succeed. We deliver consistent services across our platform of practices and sectors in all matters we undertake.

Our clients range from multinational, *Global 1000*, and *Fortune 500* enterprises to emerging companies developing industry-leading technologies. They include more than half of the *Fortune 250* and nearly half of the *FTSE 350* or their subsidiaries. We also advise governments and public sector bodies.

In 2005 DLA Piper became one of the largest business law firms in the world through a merger of unprecedented scope. The strategy was simple – to create a truly global firm capable of handling the most important legal needs of clients wherever they do business.

Building strong client relationships is the compass for our business strategy and future development. We are grateful for the support of our clients, our people and our communities, all of which have made it possible for us to celebrate the milestones and achievements that make up our evolving history.

Joe Lockhart

Founding Partner & Managing Director, Glover Park Group

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Joe Lockhart is a Founding Partner and Managing Director of The Glover Park Group and provides clients valuable insight in media relations and political strategy. He is the former chief spokesman and senior adviser to President Bill Clinton from 1998–2000, and more recently, he served as Vice President of global communications for Facebook from 2011–2013, where he managed corporate, policy & international communications.

Joe, a veteran of political campaigns, served as Senior Advisor to Senator John Kerry's 2004 presidential bid. He has also served as National Press Secretary for the 1996 Clinton–Gore campaign, Deputy Press Secretary for the 1988 Dukakis–Bentsen campaign, and Assistant Press Secretary for the 1984 Mondale–Ferraro campaign. In 1980, he was Regional Press Coordinator for President Carter's re-election bid.

In addition, Joe has a wealth of experience in strategic communications for a variety of clients. As Executive Vice President at Bozell Sawyer Miller, he advised a range of high-profile corporations and institutions.

An award-winning journalist, Joe has worked for both network and cable news outlets. He previously held posts as Assignment Editor at ABC News and Deputy Assignment Manager for CNN in Washington. Joe also served as foreign producer for SKY Television News, Europe's first 24-hour television broadcast news service. Joe received a Bachelor of Arts from Georgetown University.

Glover Park Group

When we formed The Glover Park Group in 2001, we wanted to make our mark by redefining upwards what a strategic communications firm could be. We made a simple vow: We would be different. For us, different means a few simple but important ideas:

We hire the brightest people we know from the widest range of backgrounds — advertising agencies, PR firms, corporations, non-profits, think tanks, government and political campaigns, news organizations — and galvanize them with the opportunity to think big and to think better. Our consultants have taught at leading universities, volunteered in the developing world and served in the military. They have been at the White House podium, on the trading floor and at the news desk. They have counseled CEOs, heads of state and even a few rock stars. Not only do they understand the most complex and demanding issues of our times, they have lived them. Their passion fuels creative thinking that leads to richer solutions for our clients. And it makes it fun to come to work each day.

We avoid the structural silos that limit most firms and use multi-discipline teams to deliver fully integrated solutions to meet our clients' challenges. Old lines between public and private sector, journalist and civilian, outside agitator and inside power broker are blurring. GPG was built to help organizations navigate this shifting landscape. We combine substantive understanding of complex issues with disciplined execution of crisp influence campaigns that shape the way critical audiences view our clients and their goals. In a fast-changing world where the stakes have never been higher, nothing less will do.

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Substantive expertise and research form the core of all of our work, and our senior talent is involved in all of our accounts.

Today, we are proud to work with a wide range of clients on some of the most important and fascinating issues of our time. In the process, we have become one of the fastest-growing and most respected communications firms in the country.

Vincent A. Cino

Chairman, Jackson Lewis P.C.

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Vincent A. Cino is the Chairman of Jackson Lewis P.C. and is responsible for the entire firm's day-to-day administration and management. Prior to assuming the role of Chairman, he served as the firm's National Director of Litigation. He also served on the firm's Executive Committee and was Counsel to the firm.

Mr. Cino has vast trial experience, having litigated every conceivable type of employment action in many jurisdictions throughout the United States. From 1987 to 1990, Mr. Cino was Chief of Litigation in the Office of the Essex County Counsel. As Chief of Litigation for Essex County, Mr. Cino supervised a staff of attorneys as well as outside counsel. Prior to that, he was an Assistant Prosecutor for Union County. From 1981–1987, Mr. Cino was engaged in private practice in Hackensack, New Jersey, concentrating on civil litigation. He has personally tried over 100 cases.

Mr. Cino received his juris doctor degree from Rutgers University School of Law in 1979 and conducted his undergraduate studies at Rutgers University, from which he received a B.A. degree. He also holds a Master's degree in American Government from Rutgers University.

Mr. Cino is a member of the New York and New Jersey Bars, the United States Supreme Court, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Fifth Circuit (1995), the United States Court of Appeals for the Tenth Circuit (1995), the United States District Court for the District of New Jersey, the United States District Court for the District of Connecticut, and the United States District Court for the Southern and Eastern Districts of New York. He is a member of the American and New Jersey Bar Associations and their litigation sections.

His publications include "Boost for Bosses: Court Compels Arbitration," Vincent A. Cino and Deborah Martin-Norcross, 130 N.J.L.J. 1354 (1992); "One-Sided Fee Shifting in LAD, CEPA Harms the Legal System," Vincent A. Cino and David M. Walsh, 185 N.J.L.J. 755 (2006).

Mr. Cino served as a Master of the Arthur T. Vanderbilt Inn of Court.

In one of his more well-known trials, Mr. Cino represented WNEW-TV, Golden West Television productions, Peter Falk and Arnold Shapiro, the Oscar-winning producer of the movie "Scared Straight." This was a libel and invasion of privacy case brought by several high school students. The trial lasted four weeks and resulted in a no-cause.

Mr. Cino has lectured extensively on trial advocacy. He has been awarded the highest accolade in Martindale-Hubbell, an AV rating, a testament to the fact that his peers rank him at the highest level of professional excellence.

Jackson Lewis

Founded in 1958, Jackson Lewis is dedicated to representing management exclusively in workplace law. With over 770 attorneys practicing in 55 locations throughout the U.S. and Puerto Rico, Jackson Lewis is included in the AmLaw 100 and Global 100 rankings of law firms. *U.S. News – Best Lawyers* "Best Law Firms" named Jackson Lewis the 2014 "Law Firm of the Year" in the Litigation-Labor and Employment category. The firm was also named a Tier 1 National "Best Law Firm" in Employment Law – Management; Labor Law – Management; and Litigation – Labor & Employment, and earned a spot on the BTI Power Elite for being recognized by corporate counsel as one of the top law firms in building and maintaining client relationships. The firm's wide range of specialized areas of practice provides the resources to address every aspect of the employer/employee relationship. Jackson Lewis has one of the most active employment litigation practices in the United States, with a current caseload of over 6,500 litigations and approximately 550 class actions.

Jackson Lewis is a founding member of L&E Global Employers' Counsel Worldwide, an alliance of premier employment law boutique firms and practices in Europe, North America, and the Asia Pacific Region.

Creighton Condon

Senior Partner,
Shearman & Sterling LLP

SHEARMAN & STERLING LLP

Creighton Condon is the firm's Senior Partner. Formerly European Managing Partner and co-head of the firm's Global Mergers & Acquisitions Group, he represents multinational corporations in acquisitions and sales of public and private companies and in joint ventures and regularly provides advice regarding issues of corporate governance and control. Mr. Condon also represents the mergers and acquisitions groups of a number of investment banks. Mr. Condon joined the firm in 1982 and became a partner in 1991. He also practiced for several years in the firm's San Francisco office.

Selected Experience

- Synthes in connection with its acquisition by Johnson & Johnson and in its acquisitions of N Spine and Spine Solutions
- Cadbury plc in connection with its acquisition by Kraft, its demerger of its beverage business, in the acquisition of the Adams candy business from Pfizer Inc. and in the sale of Cadbury's international beverage business to the Coca-Cola Company
- Citigroup in connection with various mergers and acquisitions transactions, including its sale of EMI Music Publishing to Sony and EMI Recorded Music to Universal Music Corp, its acquisition of Metalmark, its acquisition of Old Lane Partners, its sale of Citicorp Electronic Financial Services, Inc. to JPMorgan Chase Bank and numerous credit card-related transactions
- B/E Aerospace in connection with its acquisition of the Consumables Solutions business of Honeywell International Inc.
- Charter International plc in connection with its acquisition by Colfax Corporation
- The Special Committee of the Board of Directors of ARAMARK in connection with ARAMARK's going private transaction
- The Special Committee of the Board of Directors of HCA Inc. in connection with HCA Inc.'s going private transaction

Awards & Accolades

- Ranked in the first tier for U.S. corporate/M&A in *Chambers Global*, as a leading corporate and M&A lawyer in *Chambers USA* and *Chambers UK*, as a Leading Lawyer for U.S. M&A in IFLR, and as a Leading Individual in *Legal 500 UK* and *Legal 500* (US Special Edition)
- Featured as Dealmaker of the Year in *The American Lawyer* (April 2003) in connection with his representation of John W. Henry and New England Sports Venture's acquisition of the Boston Red Sox and New England Sports Network

Shearman & Sterling LLP

Shearman & Sterling LLP distinguishes itself by harnessing the intellectual strength and deep experience of its lawyers across its extensive global footprint. As one of the first law firms to establish a presence in key international markets, we have led the way in serving clients wherever they do business. This innovative spirit and the experience we have developed over our 140-year history make us the "go-to" law firm for seamless service. From major financial centers to emerging markets, we have the reach, depth and global perspective necessary to advise our clients on their most complex worldwide business needs.

The firm is organized as a single, integrated partnership that collaborates to deliver its best to clients. With approximately 850 lawyers in many of the commercial centers around the world, we operate seamlessly across practice groups and offices and provide consistently superior results. Our lawyers come from some 80 countries, speak more than 60 languages and practice U.S., English, EU, French, German, Italian and Hong Kong law. In addition, nearly one-half of our lawyers practice outside the United States. From complex cross-border transactions to exclusively local deals, clients rely on our vast international network to help accomplish their business goals.

We represent many of the world's leading corporations, financial institutions, emerging growth companies, governments and state-owned enterprises. Those clients, in turn, continue to choose us for the market-defining expertise of our accomplished cross-border legal teams. We have a dedicated focus on building partnerships with our clients for their success, and they appreciate our direct partner involvement on day-to-day matter management. With a deep understanding of our clients' needs, we develop creative ways to address their problems and are ideally situated to counsel them in this challenging 21st century global economy.

Matthew Hurd

Partner, Sullivan & Cromwell LLP

SULLIVAN & CROMWELL LLP

Matthew G. Hurd advises companies and their directors on domestic and cross-border mergers, acquisitions and similar strategic transactions. For over two decades, Mr. Hurd has been actively involved in the development of the Firm's Healthcare and Life Sciences Group, of which he is Co-Head. He also has significant expertise with financial institutions and technology companies.

Recent Activity

- Bayer's pending $14.2 billion acquisition of the consumer care business of Merck — the second-largest acquisition in Bayer's long corporate history — and its $2.9 billion acquisition of Algeta ASA
- CVS Caremark's $2.1 billion acquisition of Coram from Apria Healthcare
- Amgen's completed $10.5 billion cash tender offer for Onyx Pharmaceuticals
- Bayer's completed $1.1 billion cash tender offer for Conceptus, the second-largest North American acquisition in Bayer's corporate history
- CVS Caremark's 50/50 joint venture with Cardinal Health, to form the largest generic sourcing entity in the U.S.
- Perrigo Company's $8.6 billion acquisition of Elan Pharmaceuticals
- *Medco*, North America's leading pharmacy benefits management provider, in its $34.3 billion acquisition by Express Scripts
- *Pharmasset*, an 80-employee clinical stage pharmaceutical company, in its $11 billion acquisition by Gilead — a transaction for which Mr. Hurd was named *The American Lawyer*'s "Dealmaker of the Week."
- Amgen's acquisition of deCODE Genetics, an Icelandic company with unrivaled capabilities and resources for analyzing and understanding the human genome
- Bayer's proposed $1.2 billion takeover of Schiff Nutrition, one of the leading branded vitamin and nutritional supplement companies in the United States.

Recognitions

Featured in *Law360*'s Healthcare and Life Sciences Q&A (July 2012)

Profiled in *Practical Law The Journal*'s "Expert's View" column (February 2012) on trends and developments in public M&A deals

Named "Dealmaker of the Week" (November 23, 2011) by *The American Lawyer* for his role as counsel to Pharmasset in its acquisition by Gilead Sciences

Recognized as one of the *Lawdragon 500 Leading Lawyers in America* (2011-2013)

Recognized by *The Best Lawyers in America* as a leading lawyer in mergers and acquisitions (2007, 2008, 2009, 2010, 2011, 2012, 2013)

New York Super Lawyers (2012, 2013)

Sullivan & Cromwell LLP

Sullivan & Cromwell LLP provides the highest quality legal advice and representation to clients around the world. The results the Firm achieves have set it apart for more than 130 years and have become a model for the modern practice of law. Today, S&C is a leader in each of its core practice areas and in each of its geographic markets.

S&C's success is the result of the quality of its lawyers, the most broadly and deeply trained collection of attorneys in the world. The Firm's lawyers work as a single partnership without geographic division. S&C hires the very best law school graduates and trains them to be generalists within broad practice areas. The Firm promotes lawyers to partner almost entirely from among its own associates. The result is a partnership with a unique diversity of experience, exceptional professional judgment and a demonstrated history of innovation.

Clients of the Firm are nearly evenly divided between U.S. and non-U.S. entities. They include industrial and commercial companies; financial institutions; private funds; governments; educational, charitable and cultural institutions; and individuals, estates and trusts. S&C's client base is exceptionally diverse, a result of the Firm's extraordinary capacity to tailor work to specific client needs.

S&C comprises approximately 800 lawyers who serve clients around the world through a network of 12 offices, located in leading financial centers in Asia, Australia, Europe and the United States. The Firm is headquartered in New York.

Enu Mainigi

Partner, Williams & Connolly LLP

WILLIAMS & CONNOLLY LLP®

Enu Mainigi has extensive experience in complex civil and criminal litigation in state and federal courts throughout the country and has tried multiple cases.

A significant part of Ms. Mainigi's practice includes leading the representation of corporations and individuals under investigation by the government either criminally or in the context of the civil False Claims Act. Ms. Mainigi has defended a significant number of health care companies, PBMs, pharmaceutical companies, hospitals, nursing homes, accounting firms and other companies contracting with the government as well as major executives at all stages of criminal or False Claims Act investigation and litigation. Ms. Mainigi has spoken frequently on topics related to government investigations and the False Claims Act.

Ms. Mainigi also routinely defends corporations in commercial disputes involving civil fraud, breach of contract, ERISA and breach of fiduciary duty, including in the multi-jurisdictional or class action setting. She also advises corporations on internal investigations and compliance issues. In recent years, Ms. Mainigi has also devoted a portion of her practice to both products liability defense and legal malpractice defense.

Ms. Mainigi is a current member of the Firm's Executive Committee and a past member of the Firm's Hiring Committee. In the winter of 2010–2011, Ms. Mainigi spent several months as Chair of the Transition of Governor Richard L. Scott of Florida, a long-time client of the Firm. Ms. Mainigi joined Williams & Connolly LLP in January 1997 and was elected to the partnership in December 2002.

Immediately prior to joining Williams & Connolly LLP, Ms. Mainigi served as Director of Policy and Research for Senator Robert Dole's 1996 Presidential campaign.

Williams & Connolly LLP

In an era of global megafirms, Williams & Connolly LLP is a unique institution. Although the firm handles cases all over the world, the firm's approximately 275 lawyers are all based in a single office in Washington, D.C. With one exception, all of the firm's partners over the last 25 years have been trained at the firm and promoted from within. As a result, Williams & Connolly has a collaborative and collegial culture unlike that of any other law firm.

Williams & Connolly has long been regarded as one of the nation's premier law firms for litigation, and litigation is the firm's primary focus. Founded in 1967 by legendary litigator Edward Bennett Williams, the firm was initially best known for defending individuals in criminal and civil matters. The firm represented Oliver North before Congress and at trial over his involvement in the Iran-Contra scandal. The firm also successfully represented President Bill Clinton in the first impeachment trial of a sitting president in over a century. More recently, the firm represented the late Senator Ted Stevens at trial on charges of making false statements; the indictment was dismissed after it was revealed that the government had engaged in prosecutorial misconduct.

Williams & Connolly is now equally well-known for handling "bet-the-company" civil litigation at the trial and appellate levels. The firm serves as national coordinating and trial counsel for Merck in litigation concerning the anti-inflammation drug Vioxx. The firm has a thriving intellectual property practice, which has successfully defended patents protecting products with hundreds of millions of dollars in annual sales. The firm has also presented oral argument to the Supreme Court four times in the last three years. The firm's corporate clients include major global companies from virtually every industry, including ADM, General Electric, Pfizer, Sony, Sprint Nextel, and UBS. In addition, the firm has represented numerous law firms and accounting firms in professional responsibility and other litigation; the Washington Post recognized Williams & Connolly as the firm that other law firms "turn to when they're in trouble."