



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Joseph Wayland

Executive Vice President and General Counsel
Chubb Limited / Chubb Group

THE SPEAKERS



Joseph Wayland

*Executive Vice President and General Counsel
Chubb Limited / Chubb Group*



Donald Hawthorne

*Partner, Axinn, Veltrop
& Harkrider LLP*



Edward Best

Partner, Mayer Brown LLP



Elizabeth Sacksteder

*Partner, Paul, Weiss, Rifkind,
Wharton & Garrison 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 Joseph Wayland, General Counsel of Chubb Limited* with the leading global honor for General Counsel. Chubb Limited is one of the world's largest multiline property and casualty insurers. His address focuses on key issues facing the General Counsel of an international insurance corporation. The panelists' additional topics include insurance, mergers & acquisitions, governance, business litigation, cyber security, and the Rule of Law.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman
Directors Roundtable Chairman & Moderator

* ACE acquired Chubb on January 15, 2016



Joseph Wayland
*Executive Vice President and
General Counsel
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CHUBB®

Joseph Wayland is Executive Vice President and General Counsel of Chubb Limited. He is responsible for the company's global legal affairs and serves as principal counsel to the CEO, senior management team, and board of directors. Mr. Wayland also leads the legal organization that supports Chubb's business operations globally and is responsible for all legal functions, including corporate affairs and securities, litigation, compliance, and regulatory and government affairs. He also serves as secretary to the Chubb Limited Board of Directors.

Prior to ACE's acquisition of Chubb in January 2016, Mr. Wayland was the General Counsel of ACE Limited, a position he held since joining the company in 2013. He was appointed Executive Vice President, ACE Group, in March 2014.

Before joining ACE, Mr. Wayland was with Simpson Thacher & Bartlett, where he worked from 1988 and became a partner in 1994. From 2010 to 2012, he served in the United States Department of Justice, first as Deputy Assistant Attorney General responsible for litigation for the Antitrust Division, and was later appointed as the Acting Assistant Attorney General in charge of the division. Earlier in his career, Mr. Wayland served as a Captain in the United States Air Force.

Mr. Wayland holds a Juris Doctor degree from Columbia University Law School and a Bachelor of Arts degree from Washington University. He also holds a Master of Laws degree in International and Comparative Law from Georgetown University Law School. Mr. Wayland is a Fellow of the American College of Trial Lawyers.

About the New Chubb

Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients.

The company is distinguished by its extensive product and service offerings, broad distribution capabilities, exceptional financial strength, underwriting excellence, superior claims handling expertise, and local operations globally.

The insurance companies of Chubb serve multinational corporations, mid-size and small businesses with property and casualty insurance and services; affluent and high-net-worth individuals with substantial assets to protect; individuals purchasing life, personal accident, supplemental health, homeowners, automobile, and other specialty insurance coverage; companies and affinity groups providing or offering accident and health insurance programs and life insurance to their employees or members; and insurers managing exposures with reinsurance coverage.

With \$150 billion in assets and \$37 billion of gross written premiums in 2014* on a pro

forma basis, Chubb's core operating insurance companies maintain financial strength ratings of AA from Standard & Poor's and A++ from A.M. Best.

Chubb Limited, the parent company of Chubb, is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index.

Chubb maintains executive offices in Zurich, New York, London, and other locations, and employs approximately 30,000 people worldwide.

**Pro forma December 31, 2014 ACE and Chubb*

JACK FRIEDMAN: Good morning, everyone. I'm Jack Friedman, Chairman of the Directors Roundtable.

The Directors Roundtable is a civic group. We have never charged, in 800 events, for anyone to attend. Our goal is to provide the finest programming for boards of directors and their advisors including General Counsel. This world honor series for General Counsel began when directors told us that companies do not receive credit for the good things they do. This series gives top executives and General Counsel an opportunity to speak on these areas. Additionally, there will be a transcript that goes out globally to about 150,000 people, to share the wisdom of the speakers present today. I want to thank the Mayer Brown staff for the hospitality and helping make this a successful event.

Joseph Wayland, as well as being General Counsel of ACE Limited, has had a distinguished career in government with the DOJ in the antitrust area. He has also had a career in the military and private practice, as a captain in the Air Force and as a lawyer. Educationally, he has a Juris Doctor from Columbia University Law School, a Bachelor of Arts from Washington University, a Master of Law in International and Comparative Law from Georgetown, and he's a Fellow of the American College of Trial Lawyers.

Without further ado, we are honored to have as our special guest today, and honoree, Joseph Wayland, Executive Vice President and General Counsel of ACE Limited.

JOSEPH WAYLAND: Thanks, Jack, for that introduction. I am truly honored to be chosen as the recipient of the Distinguished General Counsel Recognition by the Directors Roundtable. I certainly haven't been a General Counsel very long, so I hope I'm worthy of this! In any event, I appreciate all of my friends and colleagues that are here today. I see a number of people from ACE. I see a number of my former



partners from Simpson Thacher, where I spent much of my career and have very fond memories of learning to become a lawyer. There are also a number of friends and colleagues who represent us at ACE – I'm delighted that all of you came today – and a number of good personal friends are here, as well. So I thank all of you for coming and joining us this morning.

I've had the pleasure of serving as the General Counsel of ACE for about two and a half years now. ACE, for those of you that don't know it, is a global company. We operate in about 54 countries. And as all of you may know, our acquisition of Chubb is imminent. We will be changing our name and I expect to be the General Counsel of Chubb instead of ACE.

This is the largest combination in the property & casualty market ever, and it brings together two of the very best insurers in the world in a merger that we think will create a global leader with enhanced growth and earnings power, and an exceptional balance of products with greater product and geographic diversification around the world.

Obviously it's a busy time for us as we work to get the closing done as early as possible in 2016 – as I said, hopefully this month – and we're very excited about the future of the new Chubb and what it can do for our customers, our shareholders and our employees.

One of the unique and pleasurable aspects of this honor is the invitation to bring some reflection and thought about a compelling issue through the preparation of this talk. We don't normally get a chance to do that; in our world, it's a rare treat. Like most of you, I spend most of my time dealing in very short communications, brief emails, very short memos, short discussions with people – rarely anything that exceeds a few pages. So on a daily basis, I think all of us strive to find enough time to be both reactive and proactive, managing various immediate problems versus addressing larger strategic issues and planning for the future. We don't usually have the luxury to develop a topic over any length of time, and certainly not over the course of an essay, and I very much enjoyed the opportunity presented by this honor. I want to thank our international counsel, Nicola Port, who's sitting right here, for her invaluable assistance on this project.

My topic this morning is the Rule of Law. It's important to me for several reasons. First, as the General Counsel of a multinational company engaged in international commerce, I'm concerned about creating the political stability and legal fairness necessary to encourage economic activity throughout the world.

Second, with respect to our specific business of insurance, we have regulators in every state of the U.S. and every country in which we operate. In order for our business to operate predictably, we need the actions of these regulators to be transparent, rational, and consistent. And we need court systems that effectively and efficiently resolve disputes involving both the scope of our policies and liability disputes giving rise to coverage claims.

Finally, as a lawyer steeped in the Anglo-American legal heritage, my hope is that people everywhere have access to legal systems that respect and protect human rights and provide for the peaceful and fair resolution of disputes of all kinds.

As I will discuss today, at ACE, we recognize how these various interests intersect, and I am very proud of ACE's unique Rule of Law Fund that supports projects around the globe to further the ideals of the Rule of Law.

Let's start with a definition. The "Rule of Law" is an ideal that traces its roots back in Anglo jurisprudence at least 800 years to the Magna Carta. Article 39 of the Magna Carta, written in 1215, remains compelling today. Here's what it says: "No free man shall be taken or imprisoned or deceased or exiled or in any way destroyed, nor will we go upon him or send upon him, except by the lawful judgment of his peers by the law of the land."

It's worth taking a moment to reflect on the extraordinary universal appeal of that ideal. Think about all of the fundamental threats to the Rule of Law over the centuries since



the Magna Carta, and how few societies over those centuries have come close to the ideal. Think of the "ism" threats just in the last century: fascism, Nazism, communism, fundamentalism, all of various shades. The "isms" have had powerful appeal, but even as they wax and wane across nations and societies, the "isms" have never extinguished the yearning for the Rule of Law. Article 39 of the Magna Carta rings more true to us today than any of the dogmas of the "isms."

The Oxford definition of the "Rule of Law" is, "the restriction or the arbitrary exercise of power by subordinating it to well-defined and established laws." I think this is a good beginning, focusing on precluding arbitrary action, and it is certainly at the heart of what corporations seek as they do business around the world.

But at least in the Anglo-American perspective, the ideal of the Rule of Law is more commonly understood to include concepts of justice and equality. Indeed, in the U.S., when we think of the Rule of Law, we think of the protections provided by the Bill of Rights, and efforts to protect human rights

on a global basis. Many societies, of course, are and have been governed by laws that may be consistently applied, but are inimical to our conceptions of freedom and justice.

The American Bar Association's World Justice Project offers the following working definition that comprises four principles:

1. A system of self-government in which all persons, including the government, are accountable under the law.
2. A system based on fair, publicized, broadly understood, and stable laws.
3. A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced.
4. Diverse, competent, and independent lawyers and judges.

While this definition does not directly address substantive concepts of justice, it certainly provides a framework for considering the Rules of Law issues facing global businesses. Indeed, if these principles were uniformly followed around the world, many of the international business community's concerns would be addressed, and economic activity would certainly be enhanced. Of course, it's much easier to find common ground across the globe on the ABA's four principles than attempting to reach agreement on the meaning of freedom or justice.

There is nothing original for me in identifying the basic concerns of the international business community with respect to the Rule of Law in general, or insurance companies in particular. It may be more interesting, therefore, and perhaps more helpful to this audience, to focus on some of the specific issues that businesses, including insurers, face in conducting business in a world in which the ideal of the Rule of Law remains elusive in practice.

Our business – contractually assuming the risk of individuals and enterprises so that they may face the future with greater peace of mind – is very much affected by whether

the Rule of Law principles I have identified are followed in the jurisdictions in which we operate.

When we enter an insurance contract with an individual or corporate client, we expect and rely on the consistent application of fair legal rules governing the formation of those contracts, and the resolution of the inevitable disputes that arise about the coverage provided. We also expect and rely on the consistent application of fair legal rules governing disputes giving rise to liability that may be covered by our insurance contract. For example, a system that fixes liability in a tort action based on expectations of insurance coverage, rather than the merits of the dispute between the parties, is obviously problematic for an insurer.

As a regulated business, much of what we do is affected by regulatory oversight. The terms of our contract; our rates; the type of insurance we can provide; the amount of profit we can make on particular products; our interactions with customers; the amount of capital we need to hold, and where we need to hold it; what counts as capital; our relationships with third parties, including brokers and agents — all of these activities, and many other aspects of our business, are subject to regulatory investigation, review, or approval. So it is obviously critically important that the regulatory rules of the road be rational, clearly articulated, and consistently applied in every jurisdiction.

Even in jurisdictions with a long tradition of adherence to the ideals of the Rule of Law, we worry about regulators exercising the broad discretion they are afforded within many regulatory regimes. In recent years, we have seen regulators move far beyond the role that has served the industry so well for so long, which is to ensure that policyholders will be paid when they submit claims.

Whether prompted by concerns about some conception of consumer welfare, financial system stability, local market protectionism, or other matters, we have seen regulators act

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in ways that seem — from our perspective, at least — to be arbitrary and inconsistent with the efficient operation of insurance markets, which is not in the interest of policyholders.

Local regulators seem to forget, sometimes, that their citizens’ insurance needs are best served by the free flow of capital across borders and the global distribution of risk. Indeed, when disaster strikes, much of the insurance to pay mega-claims, like those arising from the 9/11 attacks, Hurricane Katrina, or tsunamis, comes from global insurers.

An insurance company such as ours can withstand the impact of adverse legal rulings, and we can generally accept that rules will be promulgated by regulators that will sometimes go against our interests. We become quite concerned and hesitant, however, about investing capital, employing a workforce, and providing the economic security that comes with adequate insurance protection, where we fear that an arbitrary thumb is on the scales of justice, where we worry about arbitrary regulatory action.

In addition, the Rule of Law is seriously weakened when the procedures for promulgating the laws and regulations that govern individuals or groups are perceived as arbitrary or even nonexistent.

In some jurisdictions, we have observed important laws and rules being issued with minimal notice and comment periods, or even no notice at all. This means that we often find ourselves explaining, after the fact, how that new law or regulation may be entirely unworkable for a globally active company; how it may conflict with various other countries’ competing laws; and how, in the end, it hurts domestic policyholders.

Let me give you a few examples, including an example from our experience at ACE, to show you why we are so concerned about adherence to the Rule of Law. Let’s start with a basic consumer product — auto insurance. In the U.S., when you have a serious accident, the police come. They generally can be expected to write an objective report about what seems to have happened, and if there is any dispute about liability, the issue can be resolved in a court of law, where the litigants generally can expect a fair hearing from judge or jury. Insurers providing insurance thus can price their product with the assumption that the legal system is rational and based on a fair application of the law.

In some countries, however, when the police arrive at the scene of an accident, they may determine fault on the basis of who pays the first or best bribe, and if liability ever reaches a court, resolution may be problematic because of long delays and the arbitrary nature of judicial decision-making.

In response, many insurers incur substantial expense to build their own adjuster teams, who race to the scene of the accident ahead of the police in an effort to make a more rational assessment and allocation of liability. This obviously distorts markets and increases costs for consumers.

Here’s a more complicated and potentially more serious issue for businesses of all types. Suppose that you uncover financial fraud or other serious misconduct committed by an employee that may even involve collusion with criminal elements or the corruption of government officials. In many countries, apart from any statutory or regulatory obligation to report the misconduct,



a business can expect that local, regional or national law enforcement officials will respond with an impartial investigation, and if appropriate, prosecute the wrongdoers. There may be consequences for the reporting company, as well, but the range of possible penalties is governed by regulation and subject to judicial review.

In some jurisdictions, however, local counsel may advise a foreign business not to involve a government law enforcement agency for reasons that generally have something to do with the failure of the Rule of Law; including, first: the investigators may be susceptible to, or expect, improper payments to undertake or steer the course of the investigation; two, there is no transparency in the investigatory process or in subsequent adjudication; three, there is no rational basis to assess the potential outcomes; and four – and sometimes most importantly – seeking law enforcement or even civil remedies may expose your business and its employees to potential physical harm. Thus, businesses committed to ethical conduct may face difficult choices where the Rule of Law is weak.

Let me give you a final example. This one involves ACE, and is a matter of public record in court filings and the national press. Don Hawthorne, outside legal counsel on this matter, is here with us and will

provide more details – but the basic outline is this: An insurance company that ACE purchased some years ago issued a policy to a business in Liberia. The business was ultimately damaged by civil war in Liberia, and the owners sought coverage. But the policy had a clear, unambiguous war exclusion, as determined eventually by U.S. federal court. Backed by third-party litigation funders, however, the business owners obtained what was clearly a tainted judgment from a Liberian court, finding coverage, which they then tried to enforce in the Cayman Islands, even seeking an injunction to prevent ACE from re-domesticating from the Caymans to Switzerland.

We prevailed, eventually, and we're now in the midst of contempt proceedings against the plaintiffs and the litigation funders in federal court, but this is an example of the cost and risk of operating in jurisdictions where the Rule of Law has failed.

The risks are magnified when the practice of law is reduced to a form of financial speculation. Bad things are bound to happen, including a weakening – even among the lawyers themselves – of the norms that enforce obedience to the judgments of duly constituted courts.

These are just a few of the difficulties that businesses face when the Rule of Law has failed, and they make it clear why companies like ACE are so committed to promoting the Rule of Law across the globe. At ACE, we are working actively to do so.

Under the leadership of my predecessor, Bob Cusumano, and the support of our CEO, Evan Greenberg, ACE decided several years ago to establish the ACE Rule of Law Fund, dedicated to enhancing the Rule of Law in its most important manifestations – infrastructure, clarity, independence, and access. The fund is supported through voluntary donations from ACE lawyers around the world, matched by the company and by ACE's leading law firm partners, some of whom are here today.

ACE lawyers around the world find projects in their jurisdictions and submit grant requests to support organizations engaged in Rule of Law projects. To date, the fund has provided more than half a million dollars to projects in Asia, Latin America, Africa, Europe, and the U.S., including support for the following projects:

- The development of civil legal codes in emerging economies and the creation of an Africa-wide guidebook for evaluating the fairness of judicial processes, setting forth basic guidelines for the conduct of fair trials;
- Improving the administration of criminal justice in Mexico through projects to support and encourage law enforcement officials to combat violence;
- The development of *pro bono* legal standards in South America;
- The training of American judges on the proper handling of human trafficking cases.

Most recently, the fund has supported the International Bar Association's Judicial Integrity Initiative, a global project aimed at combatting judicial corruption.

I'm proud to say that our fund enjoys wide support among ACE lawyers, who view the fund both as a means of fulfilling the notion of the practice of laws of vocation with society-wide responsibilities, as well as an integral part of the ACE global legal culture.

I'm particularly pleased that the United Nations, through its Business for the Rule of Law Initiative, has highlighted the ACE Rule of Law Fund as a unique example of how a corporation might become involved in Rule of Law efforts. Of 85 companies the U.N. identified as having publicly committed to engaging in Rule of Law activities, ACE was the only one with its own fund dedicated to supporting Rule of Law projects all over the world.

In turn, ACE has signed on to the U.N. Global Compact, a strategic policy initiative of the U.N. Secretary General, which unites leading corporations in making public commitments

to human rights, corruption-free governance, fair labor standards, and environmental sustainability. We have also joined the U.N.'s Business for the Rule of Law Project, which provides guidance to businesses on how they can take voluntary actions to support the Rule of Law in their operations and relationships, serving as a complement to government action. We're very excited about all of those projects.

In conclusion, let me say that serious commitment to the Rule of Law requires patience and faith. Progress is often incremental, at best, and there are frequent reversals. But we are confident at ACE that the Rule of Law will spread and ultimately prevail, and we know that the international business community will have a critical role to play in that process. The Rule of Law is good for business, and not just because it creates the conditions for economic stability and growth; it also creates the conditions for a fair and robust civil society, to the benefit of our employees and customers everywhere.

I'm proud of ACE's commitment to strengthening the Rule of Law around the world, and I am proud of our Global Legal Department's commitment to that effort, as well.

Thanks very much.

JACK FRIEDMAN: Next, I'm going to introduce our other speakers leading up to a roundtable discussion, where everybody on the dais will have a chance to interact with each other. Toward the end, we'll take some questions from the audience.

Our three Distinguished Panelists are Donald Hawthorne, partner at Axinn, Veltrop & Harkrider in New York; Edward Best at Mayer Brown, who splits his time between Chicago and everywhere deals are going on; and Elizabeth Sacksteder of Paul, Weiss, Rifkind, Wharton & Garrison, who is also in New York. Each one of them will present their own topic. Before we proceed with their presentations, I wanted to ask a few questions of Joe.

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– Joseph Wayland

Could you tell us a little bit more about ACE, in terms of its products, geography, or your Legal Department?

JOSEPH WAYLAND: Sure. What distinguishes ACE in the insurance world is our diversity of products and our geographic distribution. We have a large commercial P&C business which was the beginning of our business in the 1980s, but we have diversified into personal lines and added life insurance, principally in Asia. It is this diversity that makes us really unique. We're a growth company operating in 54 countries. In terms of how our Legal Department operates, we're a matrix company, which means we have both product line and geographic reporting lines. Our attorneys and compliance professionals therefore serve many masters, including both business people and our own management structure. We have about 500 lawyers and compliance people who report to me, which includes professionals in our Government Affairs Group and a Corporate Affairs Group.

With the Chubb acquisition, we will be the largest P&C publicly owned company in the world, and you can expect continued growth as we go forward.

JACK FRIEDMAN: Will your headquarters continue to be in New York?

JOSEPH WAYLAND: We are a Swiss company, so our headquarters are in Switzerland, but we have substantial operations in New York City, where I maintain one of my offices; I also have offices in Bermuda and Switzerland.

JACK FRIEDMAN: Thank you very much on that. Last night, we had the privilege of having dinner with the panelists, and one of the areas of discussion was technology. Could you comment on some of the big developments that are affecting the industry?

JOSEPH WAYLAND: From a General Counsel's perspective, there are a couple of major industry developments. One is the increasingly intense scrutiny we get from regulators across the globe, involving everything from how much capital we keep, and how much we have to keep; to how we treat customers, how we operate on a day-to-day basis; who we can merge with and who we can't merge with; and whether we are systemically important financial institution. We spend much more time than we did five years ago dealing with regulators and regulatory issues. That is a big part of what I do and what our team does, and it's very important to us.

Looking more broadly at our industry, there are a number of developments that we are following closely: First, there is increasing amount of capital coming from investors outside the industry. These new players have brought hundreds of millions of dollars in new capital, particularly on the reinsurance side, which puts pressure on rates. The new players often don't have a long-term perspective on insurance and this can create distortions in the markets.

Second, data and data analytics are a huge part of what we do – trying to use the data that's now available to us through the data revolution, and what it means for our businesses and how to use it to compete in the markets.

JACK FRIEDMAN: Thank you. Our next speaker is Donald Hawthorne, who will introduce his topic.

DONALD HAWTHORNE: Thanks, Jack. I'm very honored to be here today to talk about the Rule of Law on behalf of a company and a man, Joe Wayland, who have embodied a commitment to that ideal in a way from which every corporation in America can learn and benefit.

During a very successful career at Simpson Thacher, Joe demonstrated that commitment through a remarkable record of *pro bono* work and providing legal representation to those in need. Among other things, Joe served on the board of trustees for the Lawyers Committee on Civil Rights under the Law. He led a truly momentous litigation against New York State, succeeding, after many years, in obtaining a ruling that the State's school financing system underfunded New York City public schools and denied students their constitutional rights. That ruling led to an injection of billions of dollars into the public school system.

After Simpson, Joe went on to serve as Deputy Assistant Attorney General for Litigation in the Antitrust Division, and later as Acting Assistant Attorney General in charge of that division. Those of us who pay attention to the antitrust world have seen a newly capable and committed reliance on litigation from the Federal antitrust agencies as a means of vindicating the public interest in the enforcement of antitrust law. It is no coincidence that that reinvigorated approach dates from the period when Joe was in charge of antitrust litigation at the Department of Justice.

I'm also honored to be at this podium along with my distinguished fellow panelists. I hadn't met Eddie Best before yesterday evening, but I certainly was familiar with his name for years. While I have worked for ACE, I have heard people say, time and again, "Let's see what Eddie thinks about that." I'm also very pleased to be on the

panel with Elizabeth Sacksteder, who has had a very distinguished career as a leader of numerous legal departments, and also is now a partner at Paul, Weiss, where I began my career — where many friends and mentors continue to practice today.

I'd like to talk about two subjects today. First, I'd like to talk a bit more about the Rule of Law Fund, which really is something remarkable in practice. I've worked with many very fine companies during my legal career. There is only one I can recall that has expressed a direct commitment to, and requested our support for, the Rule of Law, and that is ACE.

The Rule of Law Fund is active in some of the most significant international efforts of recent years to establish the Rule of Law. In addition to the projects that Joe mentioned, the fund has supported conferences supporting efforts to develop new legal institutions in Iraq and in Afghanistan. It has supported an international effort to develop the concept of *pro bono* legal representation throughout South America.

The fund's efforts have also taken place in the United States. Most of us are probably aware of the "Kids for Cash" scandal, in which judges were accepting kickbacks to sentence juveniles to detention centers for the most minor of offenses. The Rule of Law Fund supported the work of the Juvenile Law Center to pursue the wrongdoers and enact reforms through the Interbranch Commission of Juvenile Justice to prevent any recurrence of that conduct. In another example, at the University of Pennsylvania, ACE has supported the ACE Rule of Law Fellowship, which supports UPenn Law graduates to spend a year working for Human Rights First.

It's really an extraordinary record of corporate citizenship. I'm proud to be part of a firm that has supported this cause, and I am proud to have a client that has made so many contributions to the Rule of Law possible, both here in the U.S. and abroad.



JACK FRIEDMAN: Since you are a litigator, could you give us an example of the complexity of litigation that a company like ACE or other companies may face and your own experience and commentary on it?

DONALD HAWTHORNE: Sure, I'd be happy to do that. I have been privileged to see ACE's commitment to the Rule of Law through my own representation of ACE. Joe has mentioned the case involving Liberian insurance claims. I've been litigating that case for ACE for seven years. A little more color may help explain what ACE and other companies have to deal with when they find themselves entangled in circumstances where the Rule of Law applies shakily, if at all. The case also provides another illustration of ACE's commitment to the Rule of Law in practice, in a way that I'll describe.

First, I will give a few more background facts. Way back in 1990, Liberia experienced a horrendous civil war. Property was damaged. A policyholder who had been insured for P&C liability under a Cigna policy brought an action in the Eastern District of Pennsylvania to recover under that policy. In 1995, the judge in the Eastern District said

the war risk exclusion in the policy barred recovery. The Third Circuit affirmed; the Supreme Court denied cert.

The Liberian policyholders then immediately went back to Liberia and obtained a judgment against Cigna on exactly the same claim, which, with interest, was worth well over a hundred million dollars. Cigna went back to the Eastern District of Pennsylvania and obtained an anti-suit injunction against the enforcement of that Liberian judgment.

Now, you might think that that would be the end of the matter. It was an end of the matter for many years, but then something peculiar happened. Two lawyers – one Irish-Canadian citizen, a resident of the British Virgin Islands, and a U.S. lawyer, resident in Switzerland – thought they saw an opportunity to profit from that enjoined Liberian claim. Now, in the years since the Liberian policyholder lost in the Eastern District, ACE had acquired many of the assets of Cigna’s property and casualty business, and in connection with that asset purchase, ACE had agreed to indemnify Cigna for losses arising from Cigna’s former businesses, including the Liberian business.

The two lawyers out of the British Virgin Islands and Switzerland came up with a plan in which the Insurance Commissioner of Liberia would appoint himself receiver for Cigna’s former operations in Liberia. As receiver, he would recognize the Liberian judgments as a legitimate debt of Cigna, and then, as receiver, he would seek to enforce the Liberian judgments against ACE, wherever ACE assets could be located, claiming that they were owed under ACE’s indemnification obligation.

That’s the factual background. Now, in order to proceed with this plan, obviously the lawyers needed the cooperation of the Liberian Commissioner of Insurance. It is not unheard of for receivers to cooperate with litigants – that happens – but the evidence in this record showed that even before he was appointed, even before he had recognized



any obligations of the “estate,” the receiver had entered into agreements with the lawyers about how he would conduct the litigation and under what circumstances he would settle. His costs were paid by the lawyers and the funder; he was indemnified by them. Now, Liberia is a nation that is still struggling to find its footing under the Rule of Law, and the kind of manipulation that the lawyers and funder engaged in here hardly helped it to pursue that course.

The lawyers, of course, needed money to proceed with this scheme. They got that through a litigation funding investment of nearly \$3 million from a litigation funder whose identity the lawyers successfully concealed throughout nearly the entire course of this litigation.

Now, this scheme they had put together ultimately failed. They brought a case against ACE in the Cayman Islands for what they claimed was then north of \$200 million. We got that case dismissed; it is over and done with. But the point that I want to emphasize here is what ACE did about this.

By seeking to enforce those Liberian judgments, the lawyers and the litigation funder had violated the anti-suit injunction issued

by the Eastern District of Pennsylvania. This was not an inadvertent mistake; the lawyers and the funder knew very well that they could be held in contempt – they even budgeted for the U.S. lawyer to pay contempt sanctions when they were working up their cost estimate for the case. But they simply felt that because they did not live in the U.S., they could ignore the U.S. court’s orders with impunity.

The litigation funder and the lawyers also skipped out on their obligation to pay costs in the Cayman Islands, which is a British-style loser-pays jurisdiction. As the loser in that litigation, the receiver owed ACE hundreds of thousands of dollars for ACE’s legal costs. The lawyer and the funder refused to assume any responsibility for those costs.

Now, some litigants may have given up at this point. The lawyers were situated outside the U.S., and they had succeeded in concealing the identity of the litigation funder entirely. But ACE did not give up. It believed that a U.S. court order meant what it said, and should be respected, regardless of where the parties that had knowingly violated it were located.

ACE believed that lawyers and funders who caused a judgment-proof plaintiff, like the receiver, to bring suit in a costs jurisdiction, should be liable for costs when their case failed.

ACE also believed that a litigation funder should not be able to remain anonymous and thereby violate U.S. court orders with impunity and avoid responsibility for litigation costs when it abandoned a case that it had funded. So, with the underlying case won, we proceeded to pursue the lawyers and the funder for contempt in the Eastern District of Pennsylvania and for costs in the Cayman Islands.

This has been a long battle. The contempt action has been ongoing for seven years. The biggest challenge was to find out who the litigation funder was; his identity was hidden behind a Maltese shell corporation;

anyone who knew his identity refused to say his name, even under oath, even when it was quite clear that they knew who he was. Only after years of discovery, tracing through a dozen companies and individuals, were we able, in the fall of 2014, to learn who he was. He turned out to be a man named Garrett Kelleher, an Irish real estate developer who, only a few years before, had been developing the Chicago Spire, a building that was meant to be the tallest in North America – whose fortunes declined precipitously with the financial crisis. Even though we knew who he was, it was no easy matter to serve him. We eventually found him outside his home in Dublin, which spared us the next step of staking out the Irish soccer club that he owned.

The two lawyers were equally evasive. We knew who they were, but that did not make them much easier to bring to justice. The U.S. lawyer refused to participate in discovery, and even refused to appear for a deposition when ordered by the court – a deposition over which the judge would have presided.

The story is, I hope, drawing to a close. Shortly, I will argue a motion in the Eastern District of Pennsylvania seeking to hold the two lawyers and the litigation funder in contempt of the court's anti-suit injunction.

Now, I tell this story not just because it is a good story – I do find it a fun story to tell – but also because it shows another aspect of ACE's commitment to the Rule of Law. No lawyer or litigation funder in the U.S. or abroad should assume that it can aid a party to violate a U.S. court order and be immune from the consequences merely because it is located outside the U.S. or because it has hidden itself behind layers of offshore corporate vehicles. Whatever one believes about litigation funding, I think that most of us will agree that a litigation funder that instigates a claim, and makes it possible for a judgment-proof party to pursue it, should be responsible for its adversary's costs in a loser-pays jurisdiction when the funded party loses.

“...the Rule of Law is seriously weakened when the procedures for promulgating the laws and regulations that govern individuals or groups are perceived as arbitrary or even nonexistent.”
– Joseph Wayland

If that is to happen, litigation funders cannot be permitted to hide behind layers of offshore special-purpose vehicles, and their attorneys cannot be permitted to conceal the identities of litigation funders behind claims of privilege.

ACE has pursued these principles consistently and responsibly. I believe that ACE's litigation efforts here will shape debates about litigation funding, the duties of funders, and the obligations of parties around the world to respect the orders of U.S. courts. ACE's willingness to commit substantial resources to these matters over many years is, in my view, another very significant demonstration of ACE's deep commitment to the Rule of Law.

JACK FRIEDMAN: Thank you very much. I want to follow up with a question for the whole panel. One of the big issues is how you make the determination of the strategy in a country where political personalities or financial interests may be interfering with objective judicial processes. How do you decide whose judgment on these matters is good?

In one of our programs, a General Counsel spoke about the problem of intellectual property piracy in Southeast Asia. His people went to the local head of police and said, “We'd like you to investigate.” The head of police replied, “We would love to do it, but we're a poor country, and we will need extra people to work on the case. If you could give us enough money to hire them, we would be glad to pursue this matter.”

After the audience and the General Counsel stopped laughing regarding this conversation, we had a serious discussion about it. The key issue is that you get reports back

from the field, and then you have to decide, “Who do I believe?” What are the different ways you would go about deciding which way to go in a foreign country?

JOSEPH WAYLAND: Obviously you need local advisors, both legal and non-legal, who understand local customs and culture, who have access to the decision-makers and who understand how decisions actually get made, as opposed to how they should get made. We also expect our regional and local business leaders to develop relationships with government officials and regulatory authorities to facilitate communications about issues of mutual interest.

I think that it is sometimes hard for U.S. regulators to understand that while it's easy to write rules about how one should operate in these circumstances, it's much more difficult to actually apply those rules in the real world. The example that you posed about supporting local enforcement could lead to the violation of a number of U.S. rules.

At ACE, we are fundamentally committed to the Rule of Law, and that means following the laws and regulations that apply to the conduct of our business everywhere that we operate. But this commitment gives rise to difficult circumstances. Companies operating in some markets can be faced with situations involving the safety of our employees and their families as they seek to adhere to a specific law or regulation. For example, if you find out about wrongdoing, merely telling the authorities may expose people to physical harm. That's a very tough dilemma for any business person to have to deal with. You can have guidelines; you can have rules; you can have instructions; you can have people in the U.S. who think it's easy to apply Rule of Law principles in



practice, when it's not. People's lives are at stake precisely because the Rule of Law is ineffective in some countries.

JACK FRIEDMAN: How does the General Counsel approach the board or the CEO on the decisions that are not strictly legal?

DONALD HAWTHORNE: The lawyer's role is to assess risk. We don't make decisions; we provide the business decision-maker with the information, knowledge and research or investigation necessary to make a decision. I can lay out to the business leader, "Here's what will happen if you take this action. Here are the risks involved." Ultimately, it's the business leader's decision as to where on the risk scheme he or she wants to make a decision. On a decision like the kinds we were talking about, obviously, the business leader, at the end of the day, is involved in the decision process. If it is a serious enough issue, the board may be involved, as well.

JACK FRIEDMAN: In terms of litigation, how do you deal with the problem of juries that may be biased against corporations? Are there situations where it would be better to settle out of court rather than risk the company's reputation?

ELIZABETH SACKSTEDER: The court of public opinion is critically important, because you have lots of wars to fight beyond any one given case — even a big ticket case is just one case — and as Joe said

earlier, big, well-capitalized, well-financed companies can withstand an adverse outcome in a case, but they need to position themselves for their long-term success. One factor that goes into decision-making about which cases you pursue, which arguments you pursue in a case, what positions you take, is certainly, "How's that going to play? How's it going to play in the press? How is it going to play in the court of public opinion?" As well as, of course, "How is it going to play with the judge and jury?"

There are many situations where the complainant has a compelling story to tell, and the smart thing to do is just to settle the claim, even if you believe you have no legal liability, in order to avoid damage to your reputation that may be much more costly in the long run.

If you're going to pursue a claim in court, you have to take positions that are defensible, rational, and intuitive. When it is an insurance company versus an injured person who thinks they should be paid on a claim, it can be very challenging, because the injured person is inherently sympathetic. You need to think long and hard before you go to verdict on claims like that. But if the injured person is really seeking something to which they're not entitled, and you can explain why not in a way that will be clear to a jury or a judge, then your challenge is to humanize the company and make it less of a David vs. Goliath situation — although there is a limit to what you can do in that

regard, obviously. You can make it look like that person is trying to take advantage in an unfair way, that's unfair to all the good and honest policyholders or customers of the company who play by the rules.

A lot of it is about who you can depict as acting with integrity and who not. When the company has really made a mistake — even if it has a legal defense — I'd certainly think very long and hard before I'd put those cases to a jury, even if I think I've got a shot; even if I think I'm legally right.

JACK FRIEDMAN: What would be an example of how you humanize a company before a jury, particularly if you're a national institution, which supposedly has an infinite amount of money?

ELIZABETH SACKSTEDER: A company is just people. It's people showing up at work every day and doing a job. One of the things you consider, in deciding whether you can try a case, is, "Who are my fact witnesses? Who can I put forward as the face of the company?" There's serendipity to that. Sometimes you don't have any particularly appealing witnesses, and sometimes you do. I can think of one case, for example, that we tried when I was at Citi — Paul, Weiss happened to be our outside counsel — where it was basically our banker's word against a borrower's word. The borrower was a private equity guy. You could make it really one person versus another person — who's lying, who's telling the truth? That

perspective did a lot in that circumstance to make it a human story as opposed to the big bank against the guy who was trying to characterize himself as this self-made man, entrepreneur, customer of the bank. Depending on the facts, that sort of opportunity to convey the human character and human motivations of the actions of the company may be easier or more difficult. Institution versus institution cases are inherently much easier to try, for that reason — because even if it's a giant company against a somewhat less giant company, it's a more level playing field. Although we saw in the financial crisis, for example, in the RMBS [residential mortgage-backed securities] cases: insurance companies, hedge funds, pension plans suing the banks, and it would still end up somehow being David vs. Goliath. I was at a bank at the time and wondered, "When did AIG get to be David? How did that happen?"

DONALD HAWTHORNE: I would like to add one or two thoughts to those very excellent observations. One of our functions as outside counsel is to help our clients assess the risks of trying cases in a very clear way. Certainly everything that Elizabeth's talking about goes into that calculation. Are we talking about a case between institutions, or are we talking about a case which is clearly going to look like the little guy versus the company? Are we trying the case in Vermont, where I might not be too concerned about the downside, or are we trying the case in West Virginia? How well will our witnesses be able to represent and personalize the company? You may have to tell some pretty tough messages to your client, "I know that you love and respect and work with your executives on a daily basis, but they're not going to come off very well." You should consider all of these things before you take the case to trial; that's part of the tough decision-making that you have to do.

Beyond that, if you're in a situation where you're litigating against the little guy and you're in trial, the case is going to turn

“ACE lawyers around the world find projects in their jurisdictions and submit grant requests to support organizations engaged in Rule of Law projects. To date, the fund has provided more than half a million dollars to projects in Asia, Latin America, Africa, Europe, and the U.S.”

— Joseph Wayland

on credibility. That depends, again, on how good is the record, and how able is your counsel to stand up and go after the little guy without alienating the jury, but being able to undermine their confidence in his or her credibility. Those are the things that really drive this going forward.

Personally, I may have been on the other side of some of the cases that Elizabeth is referring to that have been among institutions in the financial crisis, so I'm not sure that the insurers got the benefit of the David vs. Goliath. That's another discussion.

JACK FRIEDMAN: Is there a tendency on the part of policyholders with limits on litigation to take the attitude of running up the bill to their limits? Can the insurance company influence them to prudent legal conduct, or maybe accepting a settlement? Are there some guidelines or laws in that matter?

ELIZABETH SACKSTEDER: Policies are written to put controls in place with respect to precisely that issue. This is a long topic, actually, because different coverages deal with the issue in different ways. One example would be, is the cost of defense of the claim within limits, or in addition to limits? For many policies, it's within limits. If you're eating away at your coverage through the cost of defense, then there is less available to protect you with respect to your liability.

JACK FRIEDMAN: Do litigation costs get subtracted from what you can pay in the settlement?

ELIZABETH SACKSTEDER: That's exactly right. Let's say you have a \$20 million layer, and defense is within limits; if you spend \$19 million in defense costs, you don't have much left to resolve the claim.

JACK FRIEDMAN: So the client wouldn't know until it's over with, how much they're going to have to pay, if at all, for the claim?

ELIZABETH SACKSTEDER: Remember, these are defendants, so they don't really have an incentive, particularly, to run up legal bills. Their incentive is to resolve the claim for the lowest possible amount and preserve their coverage.

JACK FRIEDMAN: Thank you very much for clarifying that. I'd like to move ahead to our next speaker, Edward — he goes by "Eddie" — Best at Mayer Brown.

EDWARD BEST: Thank you. First, let me welcome everybody to our offices. We are thrilled to host today. These are, as you can see, relatively new offices. We're glad to get some use out of it. If you have problems with the air conditioning or the food, it's somebody else's responsibility!

In terms of ACE, people have said nice things about you already; I'll try not to heap on that; but it's been professionally rewarding for me, personally, to have worked with ACE for so long. My relationship with ACE goes back to when I was a relatively junior associate. I got a phone call one day saying, "Pack your bags — you're going to Bermuda; you're taking an insurance company public." I said, "I don't know anything about insurance." The partner said, "That's okay; they



don't know anything about going public!" It's now been about 25 years since ACE went public. They've learned an awful lot about being a public company and corporate governance, and I've learned, hopefully, a little bit about insurance. It's been personally rewarding to work with four General Counsels. As Joe mentioned, he's relatively new on the scene. Each of them has been a litigator. It's been interesting for a corporate lawyer to see a litigator come in to a public company and learn about corporate governance and doing deals. Joe's done a great job in a very short time, learning about some of those things that he wouldn't have had any exposure to. Of course, having only been around for a couple of years and now all of a sudden doing the Chubb acquisition, that's really getting thrown into the fire. It's been a great relationship, and we look forward to a long one. As Joe said, ACE is still a growth company, so I would advise everybody to keep reading the newspaper for things about ACE.

There are three litigators on the panel; I'm a corporate guy. One question would be, "What am I doing here?" I would say, when I first got the phone call, "This is called 'The Directors Roundtable,' so I guess my first question is, 'Why are all these litigators up here?'" I normally think of directors

involved with corporate governance. So I guess I'm here to bring us back a little bit towards the "director" part of this.

We've all been talking about the Rule of Law so far. Where does the Rule of Law come into corporate governance? I'd say, listening to Joe talk about how ACE and multinational companies expect third parties, especially countries and the political components of them, to operate by the Rule of Law, the other side of the coin is that it is expected of public companies and other companies that they follow the Rule of Law, as well. The way we think about that, we don't really call it the "Rule of Law"; I think we probably would call that "corporate governance." Corporate governance, I would say, is like the Rule of Law for corporations.

That's my, hopefully successful, way of getting the Rule of Law topic into corporate governance today.

You'll see there's a PowerPoint up there; I won't go through the PowerPoint; I guess corporate guys do PowerPoints a lot more than litigators do briefs. But I'm not going to go through that. Let me just start with a couple of introductory remarks about the board's risk oversight function.

We've been talking about ACE and the insurance industry. If you think about it, the quintessential company dealing with risk is the insurance company, right? That's their business. Banks also deal with risk, of people who are paying their loans and other debts. But insurance companies are in the business of taking on risk, so therefore, you would think that an insurance company, and the board of an insurance company, would be best positioned to evaluate risk.

Unfortunately, over time — and I won't necessarily mention a very large insurance company that's been mentioned here a couple of times — they took on an awful lot more risk than they actually knew. Somebody very large came in and bailed them out. Really, one of the major topics

over the last couple of years in corporate governance has been the board's duty of oversight and of risks specifically.

The first question is, where does this come from? We all know that directors have fiduciary duties; we've heard the word "fiduciary," before. One of those fiduciary duties is the duty of care, and in a case back in 1996, *Caremark*, the Delaware courts dealt with the idea of when do directors violate their duty of care in relation to oversight? In the *Caremark* case, the company had been paying physicians for referrals. They paid out about \$250 million to settle the charges that were brought against them by the government, and then shareholders brought a derivative claim against the directors. It said, "The company just paid out \$250 million, which is really due to us; you guys were asleep at the switch. Therefore, it should really come out of your pockets." They sued in a derivative action in Delaware, and the court there said, "Directors can only be liable for failure of oversight where there is sustained or systemic failure of the board to exercise oversight, such as an utter failure or attempt to assure a reasonable information and reporting system exists."

As we all know, in Delaware, directors have, under Business Judgment Rule, that directors are not held personally liable if they have acted with care. The court there said, "You really have to have a systemic failure. You'd really have to have been not just asleep at the switch, but you'd have to have been not even in the same room as the switch."

Another case came up that also helped clarify this. We had the financial crisis. Elizabeth mentioned a couple of times, *Citi*. One of the other major cases in this area was a case brought against Citigroup, where Citigroup had taken on a lot of risk; they had written mortgages. Citigroup wound up writing off billions of dollars of mortgages; and there was a derivative action, and again, the directors of Citigroup were sued, and there, they were held not to be liable,

because there wasn't this utter failure to have in place systems. There were systems in place. They just didn't work.

That's the legal framework of what we're talking about in terms of fiduciary duties. A director has a personal financial stake in making sure he does a good job. There are other sources of the duty of oversight. The New York Stock Exchange actually requires the audit committee of a public company that's on the Exchange to look at risk. Interestingly, we've been talking about insurance companies; the National Association of Insurance Commissioners, in their Model Disclosure Act, now requires that insurance companies disclose to the regulators the processes by which the board, its committees, and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurance business. You've got it now in regulations; you've got it in fiduciary duty aspects; so this has really become a very important topic for directors.

What type of risks are we talking about? We mentioned insurance companies; they take on underwriting risks. You don't really expect the directors to be getting involved in underwriting decisions; that just doesn't make sense. The types of risks that we think about at the board level are financial reporting risk and fraud — are your financial statements correct? Credit risk; liquidity risk; operational risk; investment risk, especially with an insurance company whose main assets are investments — do you have an investment policy?

A couple of the other ones that are now fairly new and very important: privacy and cyber security risks. These are two new risks that probably didn't even exist in anybody's minds five years ago. Privacy risk regards information on people's personal information, sometimes on laptops, and Social Security numbers. Health records can be lost — and sometimes that is just a matter of somebody leaving a laptop somewhere, or accidentally sending an email to the wrong place. That's a privacy risk. You think about HIPAA and things like that.



Cyber security is a very different risk. Cyber security is that somebody comes in and actually hacks your business; they break into your systems. They can steal personal information, which then turns into a privacy risk; or they can actually take over the operation of your business. They could theoretically wipe out all your records. So they didn't steal the records; they just wiped out your records. We saw what happened to Sony recently, when the North Korean dictator decided he wasn't happy with something. They just caused trouble for Sony.

Environmental risk is important for a company. Legal and compliance risk, as Joe was talking about — ACE has 500 lawyers and compliance people around the world. I thought I read somewhere recently, J.P. Morgan has something like 25,000 compliance people. That's a small city that is just doing compliance. There is also tax risk. Very importantly — and people don't really think about this — is reputational risk. Even if what you're doing is absolutely legal, should you be doing it? And "should you be doing it" — is it the right thing to do for your stockholders or whatever constituents, but also what is that going to do to the company's reputation? The easiest one is, for a law firm, for example, when we take on a client, is the client going to pay? Does the client have other issues that we wouldn't want to take on? Let's say that the client asks us to sue an orphanage; to

defend them against claims that they were looting Holocaust accounts; things like that. Should you take that on, because that's going to expose you to reputational risks?

So for some things you would say, really, how important are these risks? Let me just give you a couple of examples: financial reporting risk and fraud. Everybody's heard of the FCPA [Foreign Corrupt Practices Act]. Siemens, a large German company, paid out \$800 million in fines in 2008 — the single largest fine ever paid for an FCPA violation. By the way, FCPA violations don't necessarily have anything to do with whether or not you've actually bribed somebody. We can all agree that bribing is bad, but most FCPA settlements aren't about actually bribing somebody; the FCPA has recordkeeping requirements in it, and most settlements actually go to the recordkeeping aspect of it. So, recordkeeping is also important.

We all know how bad cyber security can be. The easy one, unfortunately the poster boy, is Target. In 2013, they got hacked; it ultimately cost them \$162 million out of pocket, but their revenue also went way down for a period of time, where people didn't want to use their credit cards at Target.

There are also environmental risks. We all know about the spill in the Gulf. About three months ago, British Petroleum agreed to pay \$21 billion in settlement. I don't know, Joe,

if this happened when you were at the Justice Department; there was a cartel case brought against auto parts suppliers for violation of antitrust rules. Twenty-two companies pled guilty and agreed to pay over \$2 billion, and about 25 people actually went to jail.

Finally, in 2006, GlaxoSmithKline paid \$3.4 billion to the IRS over a transfer pricing issue. If the board isn't looking at tax risk, the board really ought to look at tax risk. Taxes are a significant issue, as well, for boards to think about.

We've talked about how boards should be looking at risk. Who should be doing it? Boards are very busy; they only meet on an occasional basis. Most companies now have risk committees; or it may be handled by the audit committee. The New York Stock Exchange requires the audit committee to be involved in it. Some have the full board doing it, but somebody should be doing it. If you go on the public web pages, investor relations pages of large Fortune 500 companies, you will see many that have adopted charters for risk committees and have risk committees, or that function is within another committee.

Finally, let me mention very quickly — what's the board supposed to do? You're supposed to be in charge of risk. What does that actually mean? It's oversight. It's very clear; directors don't actually show up every day at the company's office and sit in an office and say, "Bring me the records so I can figure out what to do." The actions that we expect of directors are, number one, identify the risks. What are your risks? When we spoke last night, one of the things that people didn't understand was enterprise risk management. Even for insurance companies, people understand, "Okay, I wrote a property policy. If the building blows up, I have to pay for the building." If the building blows up and there was somebody inside, then that's a life policy; I might have to pay on the life. If it turns out that that was an office building, well, there were a whole bunch of businesses that were inside that building, and I might have to then pay for business interruption.

“ACE has signed on to the U.N. Global Compact, a strategic policy initiative of the U.N. Secretary General, which unites leading corporations in making public commitments to human rights, corruption-free governance, fair labor standards, and environmental sustainability.”
— Joseph Wayland

If it was an airplane that hit the building that caused it to blow up, I might have insured the airline and I might have insured the government that allowed the terrorists to get on the airplane. The quintessential enterprise risk management example was 9/11, where there were massive losses that people never understood were correlated, because somebody looked at the property side and somebody looked at the casualty side and somebody looked at the life side, but nobody ever looked at *everything*.

My suggestion: identify your risks, find out where they are, and find out where they overlap. Also, importantly, make sure you have a system in place to identify new risks. Would anybody have identified cyber security as a risk ten years ago? When did somebody start figuring out that that's actually a risk? Once we figure out what our risks are; we have to figure out how to measure it. Insurance companies are great at that. Insurance companies look at things like frequency, how likely is it going to happen, how often might it happen, and severity — what's it going to cost me? It's only going to cost me a dollar — I don't know that I'm so worried about it. But if it's going to cost me \$100 million, I'm more worried about it. How often is it going to happen? Then, again, look at how to measure changes over time.

Now that you've measured it, you've got to decide, well, what's my risk tolerance? You have to have limits. Insurance companies take risks; they don't avoid risk. In fact, their business is taking risks. How much risk am I taking, and am I being adequately compensated for it? You have to understand what your risk tolerance is, and what happens if you exceed those tolerances.

Even for a non-insurance company, if I have risk limits, what happens when that goes bad? How can I mitigate those risks, or deal with those risks? Going back to Target — cyber security — one of the things that all law firms now are very busy on is helping clients have in place emergency plans so that if you get hacked, you know what to do. You may have to report it to a government agency; insurance companies may have to report it to the regulators. How quickly do you get it out to people? Another fun one is, ACE operates in 54 jurisdictions outside the U.S. and 50 states within the U.S.; some require that you report the hack within two days of it happening. Sometimes you don't even know that it's happened. You have to have plans in place; you can't wait until it happens. If there's an environmental spill, you can't call somebody up and ask, "Now what do I do?"

Responsibility is an area where ACE actually is fabulous, including the tone at the top. We're a company that understands risk; we take risk; but we take it responsibly, and we look at what we're doing. It's got to be the tone at the top, and risk management has to go through the entire company; you can't have people just closing their eyes to it.

Do you have an enterprise risk officer? Ten years ago, I'd be surprised if any company had a chief risk officer. Now I'd be surprised if companies don't, certainly in the financial institution area.

Communication is very important. As a board member, you want to make sure that you understand what's going on; you receive regular reports; you have access to information. That's one of the most important things, as a board member, is that you know what's going on and that you have the access

to information. If something goes wrong, how is it being reported? How quickly can it get up to the decision-makers? How quickly can the board understand it if it's important?

Finally, one thing that came out of the financial crisis is compensation policies. Directors need to look at the company's compensation policies to decide whether they are increasing risk or not increasing risk. The easiest way to explain that would be, for example, are you paying people a bonus based on revenue? The more revenue we have, the more your bonus is. It should be profitability. Are you incentivizing people to go out and create revenue that might not be profitable? Are you giving people the wrong incentives for compensation? That's one of the items that companies are required to actually look at and disclose. Look at your compensation policies; it's not just your operational policies — it's also compensation.

Hopefully I've given people a lot to think about. I think we're going to hear a little bit more about risk and risk management later, but that's it from a corporate side.

JOSEPH WAYLAND: Let me make one comment to be more explicit about the connection between the Rule of Law and corporate governance, and adherence to corporate governance standards.

When we expect regulators and others to give us due process and not be arbitrary in their decisions, it is a two-way street. We must be credible, we must show our own commitment to the Rule of Law through our own actions. Regulators know us. They know what kind of company we are, and as I mentioned earlier, under most regulatory regimes, regulators have extraordinarily broad discretion on how they treat a company. In applying that discretion, regulators know our reputation for adhering to corporate government standards they take into account any reports about compliance issues, or misconduct by employees around the world. Thus, it is very important for us to pay attention to the issues that Eddie identified; it is directly connected to the

application of the Rule of Law in our particular case. We spend a lot of time thinking about how we can conform with all the guidelines we set up ourselves. So when we advocate on behalf of the application of the Rule of Law, we seek to advocate from a position of strength and integrity.

To give a concrete example related to our merger, we've had to get approvals from a half dozen countries and a number of states, and a number of the questions that we have received have been about matters which we think are completely unrelated to the assessment of whether the two companies should merge. Like, "We understand you have a problem with compliance in 'X' country. Tell us why we should let you merge, because we think maybe your corporate governance isn't fully up to snuff." These things matter.

JACK FRIEDMAN: Liz, I want to give you a chance to comment on these topics and make your opening remarks.

ELIZABETH SACKSTEDER: Thank you, Jack. What I'd like to reflect on is not circumstances reflecting the complete absence of Rule of Law that we see in parts of the developing world, as Joe and Don have been talking about, but imperfections — as I would characterize them — in the Rule of Law in developed markets, and specifically in the current regulatory environment for financial services.

In the wake of the financial crisis, we are operating in a regulatory environment that is as politicized as it ever has been. That's because real people suffered in the recession; they lost their jobs; they lost their homes; they lost their retirement savings; and they got mad. That angry body politic has very loudly and continuously demanded action from legislatures and regulators to punish what they perceive as the source of their hardship, the mythical place that we call "Wall Street." On a human level, that anger is absolutely understandable. But the result has been laws, rules, and enforcement that



are calculated to appease that public outrage rather than necessarily to strengthen the safety and soundness of our financial system and financial institutions.

Not only the regulated entities, but the regulators themselves, it's fair to point out, are in some sense the victims of this politicization, because part of the outrage that the public has voiced has been, "Where were the regulators? The wheels were coming off the bus; where were they? Why were they asleep at the switch?" as Eddie said.

So no regulator now can afford to be perceived as missing a trick or as being less tough than a sister regulator, because at the top of the house, regulators are appointed by elected officials. They cannot help but be responsive to the political mood of the times.

One consequence of this political pressure that I view as unhealthy has been a diversion of regulatory attention from prudential regulation to enforcement. Regulators are not rewarded in the public sphere for the unglamorous day-to-day work of onsite exams, nor for dialogue with regulated entities about rulemaking and policy issues, which only subjects the regulators to claims about regulatory capture.

What brings regulators media attention, public praise, and opportunities for career advancement, are big fines and other punitive actions. Best of all is criminal prosecution of financial institutions.

Among the ill effects of this heightened emphasis on dramatic enforcement is the erosion of trust, openness, and candor between the regulator and the regulated. That, in turn, degrades the quality of rulemaking and inhibits the regulatory front line, which is the onsite exam.

Another consequence is regulatory pile-on. In an environment where no regulator can afford to look soft, *all* have to be at the table demanding their piece of the action. For companies like ACE, with operations both throughout the U.S. and throughout the world, that pile-on often means that any sense of proportion between the offense and the punishment is lost. It's not only 50 sovereign states and multiple federal agencies, but sister regulators all over the world, may all want to get in on the act with respect to a single offense.

This pile-on phenomenon highlights what will be a key challenge ahead for both regulators and globally regulated companies – the lack of any formal mechanisms for coordination among regulators. The fact is that our global political infrastructure is far less developed in this regard, far less interconnected, than our global economy. That said, traditional prudential regulators have taken constructive steps to act in concert. A good example, domestically, is the National Association of Insurance Commissioners. Not perfect, perhaps, but a heck of a lot better than no coordination mechanism at all. An international example might be the Basel Committee on Banking Supervision.

But there's fundamentally no analog on the enforcement side. While the U.S. and the U.K. have recently attempted some greater coordination, there is little evidence of such efforts elsewhere, and profound differences among legal systems would make any such efforts challenging, even if there were a will to undertake them.



The result is prolonged, duplicative, inconsistent and disproportionate enforcement in some cases. The emphasis on enforcement at the expense of prudential regulation also leads to *de facto* rulemaking through undertakings and settlements rather than through the ordinary rulemaking process which is supposed to entail an open comment period and opportunity for judicial review.

In effect, one entity's compromise, which may have been motivated by idiosyncratic concerns, becomes the baseline for expected industry behavior, without any input from other industry players or the other protections of administrative law. Entities are punished based on hindsight for failure to comply with rules that they didn't know existed, and those *ex post* rules are crafted based on one company's facts rather than a holistic industry view.

One might respond, consistent with Eddie's emphasis on corporate governance, that a responsibility for this heightened enforcement should rest ultimately with industry players themselves. Surely there should be accountability for the dishonesty and irresponsibility that some of these investigations have unearthed. Accountability for

misconduct is a core component of the Rule of Law. Cheaters need to be caught and punished; no responsible head of an ethical company would contend that we should do away with robust enforcement. But the enforcers need to be held accountable, too. Their charge is to uphold the Rule of Law, not to be a law unto themselves.

When enforcement conversations cease to be about the merits and become purely demands for headline-grabbing penalties, the consequence is not better compliance but more cynicism about the arbitrary application of unspoken rules. Enforcement that feels arbitrary and unmoored from clear rules also diverts the time and attention of senior management and boards from making their institutions stronger, to running it defensively. Instead of focusing on innovation or customer service or efficiency or managing the kinds of risks Eddie talked about, including critical emerging risks like cyber security, the focus becomes trying to guess what routine business practices will become the next regulatory *cause célèbre*.

Moreover, from a political perspective, this unbridled enforcement is ultimately doomed to failure. From the perspective of the proverbial man on the street, punishment means you go to jail. From that point of view, enforcement that does not destroy the offending entity is a mere slap on the wrist, no matter how eye-popping the fine, no matter whether the company pleads guilty to a crime. If the company can turn the lights on the next day, the public's thirst for punishment will not be slaked. But if enforcement really were to result in the disorderly failure of the systemically important financial institution, the consequences for innocent parties would be far, far worse than any harm inflicted by the underlying offense. So the game for regulators becomes to appear willing to kill off too-big-to-fail institutions without actually doing so.

Where does this leave us? We have a lot of regulation, and a lot of regulatory enforcement, but we don't really operate under the



Rule of Law to the extent we pretend we do. As Joe observed, even more than in most industries, in the financial services sector, we cannot operate without rules. To function fairly and efficiently, markets require rules, and they require legal mechanisms to enforce the rules. Contrary to their popular image, banks, asset managers, insurers and other financial services companies are not opposed to regulation. To the contrary, we desperately need regulation – sensible regulation – to create a level playing field governed by common rules.

But regulation driven by political pressure is inherently backward-looking, unstable and unpredictable. It serves the emotional needs of the *vox populi* but not the complexity of an ever more interconnected global financial system.

JACK FRIEDMAN: Thank you very much. I would like to ask Eddie one question, and then I will open it up to the audience for questions that you may have. Eddie, since you work in a transactional area, do you have any comments about 2016 and the current M&A environment for investors?

EDWARD BEST: Well, I'd say the best way to be wealthy in 2016 is to start that way! [LAUGHTER]

The markets are very different regionally, but the M&A market has been booming. Huge M&A deals were going – obviously ACE

and Chubb – but we've seen massive deals. We've seen a lot of inversions or companies in the U.S. being taken over by non-U.S. companies, partially for tax reasons. Unfortunately, the Treasury Department is trying to stop it by rule rather than changing the legislation that is leading everybody to leave. It seems to me – again, going back to what Liz said – if you think about it a little bit more intelligently and fix the problem, rather than try to fix what people are doing to solve it, M&A activity is going to be very busy, certainly in a number of sectors. Energy is – obviously the price of oil is very low – some people say it's a great opportunity for M&A because you could pick up assets cheap; other people say, "I don't have the money to spend," or "When is that asset going to become more valuable?" I don't know, so I'm not sure what's going to happen with energy.

I feel markets are wonderful; they go up and they go down; nobody ever knows. They open for a little while; they close. But with the M&A boom busy and the IPO market being choppy, a lot of private equity firms that have historically fed companies into the IPO market have been selling them rather than IPOing them, so we'll see what 2016 starts. I've got a couple at the very beginning, and hopefully the markets will be okay.

I, personally and as a firm, we do a lot more in the debt market than the equity markets. Wonderfully, the interest rates have been very low for a very long time. They're beginning to creep up, but people have been funding. We've seen a record – every time we hit a monthly record in issuances, the next month seems to be another big one. I remember when I first started out, we did a \$100 million deal, and I said, "Wow, that's a lot of money!" Somebody looked at me and said, "Oh, please, a hundred million dollars? That's nothing." I think my first billion-dollar deal was 15 years later, and now anything under a billion dollars seems to be, "Oh, that's not even worth looking at." The debt market has become huge.

JACK FRIEDMAN: Your firm will take on an occasional client for less than a billion dollars?

EDWARD BEST: A billion-dollar deal or a billion-dollar fee? [LAUGHTER] We always tell people, there's no such thing as a small deal; the question is what the fee is! [LAUGHTER]

JACK FRIEDMAN: We had a Goldman Sachs speaker talk about M&A in a prior event. I told the audience that instead of asking the speaker to cut out a few zeroes in the case example, I wanted her to be spontaneous and use the numbers and the real world that she operates with. The audience can cut out whatever zeroes apply to your situation. We invite the audience to make that adjustment here as well.

EDWARD BEST: I have one example. It was just reported – it was the first time in history – by a competitor of ours, but a law firm represented companies in over a trillion dollars of acquisitions in a year. That is massive.

JACK FRIEDMAN: I'd like to invite any questions from the audience.

[AUDIENCE MEMBER:] I'd like to get your perspective on board oversight risk. Where I personally have experience is as a public company director, private company director, and mutual fund director, in asset management, insurance, and reinsurance. I've seen quite a variation in which board committees share the oversight of risk. On one, we have an underwriter committee, for example, in addition to an audit committee; another one, we have a client's regulatory committee. Basically your comment about risk committees I completely appreciate, but as directors, we spend more and more time on cyber, compliance, and regulatory matters. It's keeps increasing. I suppose an observation I would make is that the advisors to the boards often overwhelm us with litigation reports, compliance, and regulatory reports that aren't, perhaps, the most user-friendly in providing the directors what



they need to know. This is an open-ended question, but as advisors to boards, how do you approach to help us, as directors, give the proper oversight?

JOSEPH WAYLAND: I'll start and talk about the way we deal with risk at ACE at the board level. We have a Risk & Finance Committee which oversees our risk enterprise oversight. We also have an Audit Committee, which also deals with risk, certainly in the sense that any of the financial matters that the Audit Committee oversees obviously involve risk to the corporation. The committees actually meet together jointly on at least a yearly and sometimes more frequent basis, to review common issues of risk.

Looking at it from the inside, one of the most important functions of the board is to ensure that the people in the corporation who are doing risk management, from the CEO to the Chief Risk Officer and subordinates, know what they're doing, have a plan, and provide a comprehensive review of what they're doing, and make it clear to the board that they are taking their job seriously and that they have properly identified the risks.

At ACE, we have a risk map that actually identifies, in a pretty graphic and clear way, the risks that have been identified, how we're dealing with them, and how we expect them to play out in the corporation's financial results over the year.

JACK FRIEDMAN: Do you have certain members of the board who are especially oriented toward risk analysis? In the same

way, the audit committee is supposed to have at least one financial or audit expert on the committee.

JOSEPH WAYLAND: We have a very sophisticated board of very knowledgeable and experienced financial people, including CFOs, people who run financially sophisticated businesses, people who are very conscious of risk management issues; they're very active in their oversight of the risk management function at ACE.

JACK FRIEDMAN: Thank you very much.

EDWARD BEST: Let me just add a couple of things to that. You raised a couple of great questions in terms of how boards deal with things, and Joe said something I'd like to highlight, which is the duty of the board is oversight; the duty of the board is not to manage risk. From that standpoint, I was surprised — you mentioned there was an underwriting committee of a board, and I'm not quite sure what the underwriting committee did, because if it's an insurance company, the underwriting gets done by underwriters and actuaries and people who know that. Maybe it's the underwriting committee that sets guidelines for the amount of risk to take on, but again, the board's duty is clearly oversight, not day-to-day management. From that standpoint, remember the duty is oversight.

If you're getting too much information, then you're probably not overseeing; you're probably getting too deep into the weeds. As Joe said, since it's oversight, it's really:

does the company have the people in place to be doing what they're supposed to be doing? Are you comfortable with who they are, and do they know what they're doing? Do you know what they're doing? The reports you get back shouldn't be on every piece of litigation, for example, if you're dealing with litigation risk; it should be who is in charge and what are the things I need to know — let *them* tell you that.

In terms of expertise, it's a tough one, because as we develop new risks — cyber security and privacy risks — it's hard to say that anybody has a lot of experience in that. Interestingly, the controller of the currency for banks requires banks now or bank holding companies to have risk committees, and one of the requirements is that at least one member of the committee have experience dealing with risk management. If you're in the risk management business, you're going to have an awful lot of opportunities to sit on boards, because there aren't a lot of people that know risk management, and certainly not cyber security risk and privacy risk. It's a little tough to necessarily have somebody that knows that. I would suggest that you go to places — I'll put in a plug for this and other similar organizations — if you've got people on committees, make sure they're doing continuing education in those areas, so that even if they didn't grow up having those qualifications, they can develop those qualifications. Have people come in and talk to the board about these things, whether it's general or specific, and continue to educate yourselves. Don't be afraid, also, to identify people, even. We delegate down to the committee



level; don't be afraid to delegate down to the individual level, where you can say that on a specific committee one person is in charge of a certain area. We'll all read it, but he will be a little bit more knowledgeable; or she will be our expert on that. Find the people with the time and the expertise, and don't worry about delegating. Make sure they report back, but don't worry about delegation.

ELIZABETH SACKSTEDER: If I could just add one further thought. Boards feeling overwhelmed by the volume of information that they get, and not always feeling that they receive it in the most accessible form, is very common. One thing that's surprised me in dealing with boards is how reluctant they seem to be to provide that feedback to management. I'm sure it happens very effectively in some companies, but in others, it doesn't seem to happen, really, at all, so that the problem persists. I'm not aware of any reason – Eddie will correct me if I'm wrong – why a board can't tell management, "Look, every month we meet, and you give me these big, fat decks. Honestly, they're not useful. Here's what we think we need. Make it so." Part of the board's oversight responsibility is to make sure it's getting the information it needs. If it's getting a lot of irrelevant information or not useful information, that's impeding the process and it's completely legitimate oversight to say, "Don't do it this way; do it differently."

EDWARD BEST: It's definitely very clear that boards need to be fully informed, but I agree with Liz that "fully informed" doesn't mean that I have three feet of papers in front of me. There may be times, for example,

when you're doing a large merger, that you will get more paper than you normally do. That's appropriate when you're taking steps or when you're approving something. But on a general basis, it's having the important information, not having *all* the information, because if it's really important on page 999 and you never got there, then you haven't really done your job.

ELIZABETH SACKSTEDER: Exactly.

JACK FRIEDMAN: In the 25 years that we've had the Directors Roundtable, every year starts out with more interesting possible director-oriented programming ideas than you could ever imagine. Other questions, anyone else? Yes, sir.

[AUDIENCE MEMBER:] I'd like to take it down below the board level and ask about corporate staffing structure. The question is for Joe, and if he answers the question, then we'll see if anybody dares to disagree with him. **[LAUGHTER]**

In the 20 years that I was a General Counsel, I always kept the compliance officer as a separate function from me as the General Counsel. I kept myself from serving as a board member of my company, just to keep the business function and the legal function separate.

Do you agree with that? Maybe that's because I was a litigator before I became a General Counsel? I always thought of myself as the enterprise risk manager. How do you feel about your function as the General Counsel vis-à-vis an enterprise risk

manager, a privacy manager, a cyber security manager? How do these functions relate to what traditionally has been the General Counsel's office of a legal department?

JOSEPH WAYLAND: On the risk management function, it would be malpractice for me to be anywhere near it in terms of sole-responsibility. I participate in an enterprise risk management committee of the firm, but I don't have an insurance background. And one of the most interesting things to me, in joining the insurance company, was the complexity of understanding our financial accounting. Let me contrast ACE with an industrial business like GE. You might not have any understanding of how to make a jet engine, but it isn't that hard to grasp the basics of figuring out whether GE can make any money on jet engines. You add up the costs: labor, materials, facilities, capital; and you compare that to how much someone pays you for the engine. But insurance is a different animal. We take in premium payments today, invest it, and then pay out claims over a potentially very long time period. So how do you know whether you are making any money? You have to make complex actuarial calculations about expected claims and you have to set reserves for those claims and then make adjustments based on real world experience. Getting this right is a very important part of risk management at an insurance company.

We have an Enterprise Risk Management Committee; we have an Officer of Risk Management, who is an actuarial, actually. We have a very substantial staff – hundreds of people – that are actually involved in risk

management. I'm part of that process, but I don't and I would never pretend to be leading that process.

On compliance, we have a Global Compliance Officer who reports to me. We have a separate Compliance function and a separate Legal function. They do function together to the extent that there are lawyers who help the Compliance people understand what the legal risks are, and the Compliance people design programs to make sure that we don't run afoul of those risks. When there are matters that require a serious investigation, the lawyers usually take the lead, often with the assistance of compliance professionals, auditors and our fraud investigators.

We recently created a Chief Privacy Officer position — which is separate from our IT experts, who make sure that our cyber walls aren't breached or figure out what to do when they are breached. The Chief Privacy Officer is really trying to understand what the legal obligations are of the company with respect to protecting data, and is responsible for leading our response to breaches to minimize legal and reputational risk. That CPO reports to our Global Compliance Officer, who then reports to me.

Globally, we have Compliance Officers in each region. I've always had them report to the General Counsels. There's a good debate in the industry, and actually in the government enforcement agencies, about whether Compliance should report to Legal. I think legal should have oversight over the compliance function at least in dealing with

significant investigations or other matters that present significant legal or reputational risk, because lawyers have the substantive legal knowledge and analytical skills necessary to handle these circumstances.

ELIZABETH SACKSTEDER: Just as an observation to follow up on that: when I moved from the insurance industry to the banking industry, I was surprised to find that the norm in banking is that Compliance does not report into Legal, whereas in insurance, it tends to be the opposite. "Why is that?" is the question. The answer, as best I can tell, is that bank regulators, in general, and particularly outside the United States, don't view Legal as a control function, whereas they view Compliance as a true control function, just like Risk, for example. They view the lawyers as advocates for the business, and they're part of the so-called first line of defense. They're not part of the second line of defense, whereas Compliance is, and the regulators like to see that differentiation.

It does have the disadvantage that Joe identified, to have that structure, which is Legal and Compliance really are very closely aligned. Legal, if it's doing its job, is providing very important insight, strategic judgment, and support to the Compliance function; and likewise, Compliance is the front line for seeing where breakage happens that needs to feed back to Legal for action and correction. There's probably not one right answer; there are pros and cons for either structure.

JACK FRIEDMAN: We will take one more question from the audience.

[AUDIENCE MEMBER:] This is a business question. We've mentioned cyber security and privacy. Is ACE, or Chubb, maturing in cyber security, and what is the situation there? Prices have been very high, coverage very low. It's a new area, we understand that, but I think there's a lot of relevance to boards of directors.

JOSEPH WAYLAND: Yes, we do sell cyber-insurance. We've been a leader in it. It turns out to be a relatively robust market in the U.S. and less so outside the U.S., which may have to do with liability assessment and the fact that the kinds of liability you might face in the U.S. because of statutorily imposed fines or class action liability. One of the problems in the market is assessing risk without a substantial claims history. That is a big part of our underwriting function — how we measure and price that risk.

JACK FRIEDMAN: I have one last question for Joe. In the five minutes a month that you have free for your personal life, what do you like to do?

JOSEPH WAYLAND: I have three sons who are still college and high school age. Between what I do at work and the demands of family time, there isn't much other free time. I very much enjoy my family time.

JACK FRIEDMAN: I want to thank the audience for coming. I want to thank our Distinguished Panelists for sharing their expertise, and our Guest of Honor for spending time with us today and honoring us with his presence. Thank you very much.



Donald Hawthorne
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Don Hawthorne’s practice focuses on litigation involving complex financial instruments, credit crisis litigation, antitrust litigation and counseling, and international disputes. He frequently represents insurers, hedge funds, and private equity firms, and represents both plaintiffs and defendants.

Don was previously with Debevoise & Plimpton. Prior to that, Don was Director of the e-Commerce Strategy Group at KPMG Consulting, Inc. From 1992 until 2000, Don was an associate and then Counsel with Paul, Weiss, Rifkind, Wharton & Garrison. Don has served as an Adjunct Associate

Professor of Law at the Benjamin N. Cardozo School of Law, where for many years he taught courses on the regulation of electronic media covering legal issues concerning broadcast and cable media, the Internet and telephony. From 1991 until 1992 he was a law clerk to the Honorable H. Lee Sarokin of the District of New Jersey. And from 1986 until 1988, he was an associate with Booz, Allen & Hamilton in New York.

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Edward Best
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Edward Best joined Mayer Brown in 1986 and steadily built a successful capital markets and corporate law practice. Today, he is co-leader of the firm's Capital Markets and Financial Institutions groups and serves on Mayer Brown's Partnership Board. He is widely recognized as one of the nation's leading capital markets attorneys. Eddie's experience includes:

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**Elizabeth Sacksteder**

Partner, Paul, Weiss, Rifkind,
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A partner in the Litigation Department, Elizabeth M. Sacksteder focuses her practice on complex litigation and regulatory matters.

Experience

Ms. Sacksteder is the former Deputy General Counsel and Global Head of Litigation and Regulatory Investigations at Citigroup Inc., where she managed a 250-person worldwide litigation and investigative team and advised Citigroup and its Board on every aspect of their litigation and regulatory exposures. During her tenure at Citigroup, Ms. Sacksteder supervised multibillion-dollar litigations and high-stakes regulatory and criminal investigations, many involving multiple jurisdictions. Prior to joining Citigroup, Ms. Sacksteder was the Deputy General Counsel and Director of Litigation at The Hartford Financial Services Group, Inc., where she was second in command in a 400-person Law Department.

She was responsible for a 60-lawyer litigation group, all litigation and pre-litigation counseling involving the holding company and the group's property-casualty, life, and asset accumulation businesses, and supervision of the Reinsurance Law and Investment Law groups. Before joining The Hartford, Ms. Sacksteder was a litigation partner in private practice representing clients in financial services, telecommunications, manufacturing, entertainment, and other industries.

Ms. Sacksteder is a recipient of the Arthur Liman Public Interest Award from the Legal Action Center (2012) and the Human Relations Award from the New York Lawyers Division of the Anti-Defamation League (2013). Ms. Sacksteder serves as a Member of the Board of the Legal Action Center (2013–present). She was the Coordinating Articles Editor of the *Yale Law Journal*.

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