DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

James Savina

Senior Vice President, General Counsel & Corporate Secretary, The Kraft Heinz Company

THE SPEAKERS

James Savina
Senior Vice President, General Counsel & Corporate Secretary, The Kraft Heinz Company

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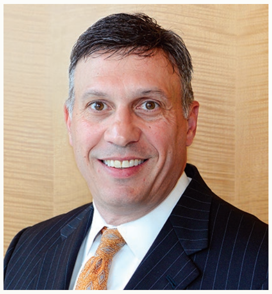
Partner, Cravath, Swaine & Moore LLP

Gary Kushner
Partner, Hogan Lovells LLP



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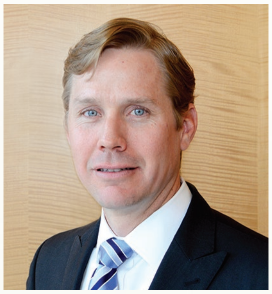

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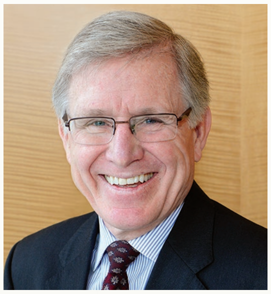

Jamie Cain
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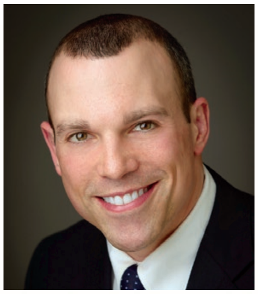
(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

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 James Savina, General Counsel of Kraft Heinz, with the leading global honor for General Counsel. His address focuses on key issues facing the General Counsel of an international food corporation. The panelists' additional topics include labor and employment; food industry regulation; M&A; managing risk with derivatives; and complex business litigation.

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



James Savina

Senior Vice President, General Counsel & Corporate Secretary, The Kraft Heinz Company

Jim Savina is General Counsel and Corporate Secretary for The Kraft Heinz Company. He leads the company's legal function globally, including corporate governance and securities, transactions, regulatory, compliance, intellectual property, litigation, and labor and employment. Jim played a key role in the merger of Kraft Foods Group, Inc. and H.J. Heinz Company while serving as SVP, Deputy General Counsel, and Chief Compliance Officer for Kraft, and was appointed to his current role when the merger closed. In his prior role, Jim led the legal teams covering Kraft's US Divisions, Sales, litigation, labor & employment, and employee benefits, as well as the legal operations team. As Chief Compliance Officer, Jim worked closely with the Board and C-level management to drive a risk-based, strategically tailored compliance program that was fully integrated into the business.

Before Kraft, Jim was with Avon Products, Inc. as its Executive Director, Global Legal Investigations and Operations, where he provided legal judgment to conducting investigations and developed investigation-related processes, strategies, guidelines, and training. Jim also worked closely with Avon's General Counsel on uniquely sensitive matters, and helped develop and deploy strategic and operational initiatives.

Before Avon, Jim was Senior Counsel and Director of Claims & Legal Administration for Energy Future Holdings Corp. (f/k/a TXU Corp.), a Fortune 250 energy firm in Dallas, Texas. Jim began his career as a labor and employment associate with a global law firm before opening his own law practice.

Jim earned his bachelor's degree with honors from the University of Texas at Austin and his juris doctor *cum laude* from Southern Methodist University School of Law.

Kraft Heinz

On July 2, 2015, Kraft Foods Group, Inc. and H.J. Heinz Company merged to form The Kraft Heinz Company. While Kraft Heinz was formed in 2015, both Kraft and Heinz have been pioneers in the food industry for over 100 years.

Kraft Heinz is now the fifth largest food and beverage company in the world, with over $27 billion in revenues from sales in more than 190 countries and territories. We have dedicated employees in over 40 countries, and manufacture and market food and beverage products, including cheese and dairy, condiments and sauces, meals, meats, refreshment beverages, coffee, and other grocery products throughout the world under a host of iconic brands, including *Kraft, Heinz, Oscar Mayer, Planters, Philadelphia, Velveeta, Cracker Barrel, Lunchables, Maxwell House, Capri Sun, Gevalia, Jell-O, Wattie's, Classico, Grey Poupon,* and *Ore-Ida.* A globally recognized producer of delicious foods, we provide products for all occasions, whether at home, in restaurants, or on the go.

Our common stock is listed on NASDAQ under the ticker symbol KHC.

JACK FRIEDMAN: The Directors Roundtable is a civic group whose goal is to put on the finest programming for Boards of Directors and their advisors globally. We've never charged the audience to attend our 800 events in 25 years, and we're very proud of the program today. The reason Jim Savina was selected to be a Guest of Honor for this program is that his career, his company, and its legal department have an excellent record, and they've been through many changes which are instructive.

This series began with Directors telling us that they wanted an elite global forum where companies would have a chance to speak about achievements they are proud of; their commitment to good citizenship; and lessons they can share with other companies, to assist them, too.

Jim and Kraft Heinz have been very generous to make themselves available today. Jim is a graduate of SMU Law School, and I would like to read for the record, including the transcript, a congratulatory communication from the Dean.

> Dear Jim:
>
> Congratulations on your award from the Directors Roundtable! You have had such an extraordinary and distinguished career, and SMU is delighted that you are receiving this well-deserved recognition. Thank you so much for exemplifying the ideals of leadership, professionalism, and integrity.
>
> We are also proud that you are a graduate of the SMU Dedman School of Law.
>
> My very best wishes,
>
> Jennifer M. Collins
> Judge James Noel Dean and
> Professor of Law

Congratulations!

The format of the program will be that Jim will begin with his comments, and then each Distinguished Panelist, whom I will introduce later, will present a special topic about which he will speak briefly and we will then have a roundtable discussion. After the program, we will make a full-color transcript available to about 150,000 leaders globally.

Without further ado, I'd like to have our distinguished Guest of Honor make his opening remarks.

JAMES SAVINA: Good morning. Thank you for being here. Thanks to Dean and to Jenner for hosting. Thanks to Jack and team for putting it all together. And thanks to all of you for being here.

Obviously, the designation, "World Recognition of Distinguished General Counsel," is a lot to live up to. I hope we deliver something that's at least somewhat interesting. I imagine most of it will come through the panel. So I will try to be as brief as I can.

I was thinking to myself, "What could that something somewhat interesting be?" I went through some transcripts from past Directors Roundtable events. Sabine Chalmers from ABI already spoke about some of the operating principles of a 3G-influenced company. Mark Firestone, the former General Counsel of Kraft, already talked about the Kraft legal department. So after reading those, I'm thinking, "I don't have a heck of a lot to say to begin with. And those two have stolen ninety percent of my material! So now I'm really down to not a whole lot." The best I could come up with was leading through major changes.

We have all probably heard that the pace of change will never be slower. And with so much change happening, it's more likely than ever that – whether at your own firms or your clients – you're probably going to be touched by a transformational change at some point. Since my career has been a little bit of an embarrassment of riches in that department, I thought I would try to find some useful nuggets for you, either for your own careers or as you advise your clients.

I promise I'm not going to bore you with my résumé. But I will use my background to frame the discussion about where I got my perspectives. Then I'll talk a little bit about Kraft Heinz. And I'll also try to tie some of the learnings for the lawyers in the room — how you can apply these thoughts in your practice, whether as inside counsel or outside.

I guess this is where — since my name's on the invite — I could be self-indulgent and talk for a long time about my favorite topic: me. But I will try to keep it somewhat brief and hit only germane to the topics.

Like most lawyers, I started out of private practice. I was at a big law firm for about four and a half years, then I hung up my own shingle. So I went from a big firm to a one-man shop, where I was my own admin, paralegal, IT guy — which takes a lot of time — as well as the lawyer and everything else. It was a very different way to look at the world. As I told my current boss — who is also a partner in 3G, which is known for zero-based budgeting and ownership mentality — running a one-man show, that's ownership mentality! Any penny I didn't spend on the business was used to pay my rent. In that situation, ownership is not a mentality, it's a *reality*.

After doing that for a couple of years, I had the opportunity to go in-house at a big energy company, which was called TXU at the time. It had its roots as a public utility, had $11 billion in revenue, was publicly traded and over a hundred years old. I thought, "Great, what a nice, stable company to join." Six months into that job, our GC calls us into the room and says, "Guess what? We're being taken private." It's still the largest leveraged buy-out in history. And that deal spun everything upside down — what you'd expect: senior management changed, the operating model changed, legal work went crazy. It was great for me. I started grabbing everything I could. I was kind of the "Life cereal Mikey" of the legal department. If there was no one to do it, "Hey, give it to Jim, he'll do it!" I filled vacuums. It was fun, and I learned a lot.

A few years later, I had the opportunity to go to Avon Products in New York when they were in the middle of a big FCPA

investigation. I was charged with building up the investigations team and helping the legal organization operate more efficiently during a very interesting and challenging time for the company. It wasn't just the FCPA — there were also some IT, business model, and performance challenges. And there was a management transition when I was there — the CEO, CFO, GC, just like it happened at TXU. Being there to see how a major company worked through significant challenges was a great development opportunity.

From there, I got the opportunity to come to what was Kraft Foods when it had just spun off from Mondelēz. It was an exciting time — it was a new company, but it also had billion-dollar brands and $18 billion in revenue. Our motto was "Spirit of a startup, soul of a powerhouse." I didn't say this when I was negotiating, but I thought, "Who could say 'no' to that? That's fantastic! Sign me up!" Off I went to Chicago.

Then a few years later — are you seeing a pattern here? — right on the heels of another management transition at Kraft involving both the CEO and CFO — the Heinz and 3G guys come calling. It's been off to the races ever since.

There was an *American Lawyer* article about the Kraft Heinz merger the other day. I think it was one of the Deals of the Year. The article talked about the complexity and speed of the deal. And Katz down there knows it first-hand how fast it was — we closed in 100 days. It was amazing. I learned a ton.

That set the stage for the pace we're going on now. We're integrating, and have integrated, at an amazing pace. We're introducing a new operating model, and changing the culture in a *way* that I've never seen, at a *pace* that I've never seen. It's been amazing to be part of.

I'll park a little bit here to talk about Kraft Heinz. For those of you who aren't familiar, we merged in July 2015. We're co-headquartered here and in Pittsburgh. We have about 42,000 employees in over 40 countries. We sell in about 200 countries and have over $27 billion in revenues. And as of yesterday's market price, our market cap is $95 billion. One of the most interesting things, though, is that, while we're fully public — absolutely fully public — 51% of our shares are owned by two major blockholders: Berkshire Hathaway and 3G. That ownership profile impacts how we operate, largely because of the perspective and mentality of *these* particular investors. Berkshire and 3G are long-term investors of their own money, who are not looking to flip their investments. As we all know, companies generally use long-term incentive programs to align management with shareholder interests. In addition to our incentive programs, we have this shareholder alignment built in because members of management and the Board are involved with Berkshire and 3G. And they're representing the interests of huge, long-term investments those firms have made. So we're built to look long-term, and it really finds its way into how we think and operate. Very long-term focused.

It's also fun, because I get to have Warren Buffett on my board! I was sitting around the table at my first Board dinner — I'm in between Warren Buffett and Marcel Telles, and with Jorge Paulo Lemann and others at the table — and I was thinking, "I'm sitting at a table with a hundred billion dollars of net worth." And since my net worth has parentheses around it, it was a pretty big deal! [LAUGHTER]

Anyway, that's my path – big law, small law, big clients, small clients – seeing a steady-state company at TXU for about five minutes until the LBO, and then seeing a lot of companies do a lot of different things. With that, I had some observations that I think will probably be less than what you paid for them.

I'll start out with a truth. And then I'll discuss a principle arising out of it.

The truth, which is probably no great surprise, is that when you are going through a major change, there are going to be people who don't want it and will react negatively. They just don't want it to happen because change creates uncertainty, and uncertainty creates unease. You will find this can create a bias towards the negative. They know they like what they had, but they don't know what's coming. So they view everything negatively, thinking "Well, that's new, so it must be a bad thing." In other words, during big changes, some people get grey-colored (sometimes black-colored) glasses instead of rose-colored glasses.

Your biggest countermeasure to get people through change is to communicate… *a lot.* Think of every which way to communicate you can: walk the halls; be present; send emails. And when you're communicating, it's crucial that you're *listening* – because a lot of people just want to be heard: "What's going on? Here are my concerns." Sometimes what you think is being said is not what's actually being heard. So you have to make sure there's a two-way street. And you have to be brutally honest. If there's someone who has a really strong view about something that is not going to be the way things are after the change, you can't bury the monkey and pretend it's not there. You have to say, "This is the way it's going to be, opt in or opt out." You can't do that without communicating.

> "One of the most interesting things, though, is that, while we're fully public – absolutely fully public – 51% of our shares are owned by two major blockholders: Berkshire Hathaway and 3G. That ownership profile impacts how we operate, largely because of the perspective and mentality of *these* particular investors."
>
> – *James Savina*

Obviously, if you're communicating, it presumes you have something to say. That goes to the principle arising from the truth I just mentioned. The principle is that, when dealing with changes, you have to understand what changes are happening and *why.* And you have to *truly* believe in them. This is huge, because unless you're *crystal* clear on what is changing and why, you can't possibly explain it or drive it. So if you're not clear or something doesn't make sense – ask! Figure out *why. Why* is this happening? What's the driver behind the change so you can be 100% clear. For employees, you need to be clear so you can answer, "Do I want to work here?" For leaders, you also need to be clear so you can be a driving force behind the change.

As I say to executives who have had the misfortune of hearing me do executive training, "Heavy is the head that wears the crown." People love being leaders because they make more money and have greater influence. Well, leaders *do* have greater influence and a bigger impact, which means they also have more responsibility. That responsibility is magnified ten-fold in times of change. Leaders have a *duty* to the company to be the change agent for the positive. You're not going to be able to single-handedly drive the change. But you can really screw it up if you don't believe in it and do it right.

Once you're clear on the changes and why, then you have to really *believe* in them. It may be that you just inherently think, "Oh, of course, that's absolutely what I would do and how I would do it." Other times, it's harder to believe. What I generally do goes back to needing to understand the "what" and the "why," and then seeing if there's a principle behind it. Oftentimes you find what you don't like is just a tactic. You don't like how some tactic feels. But if you zoom out and look at the *principle* behind the tactic, it often leads you to thinking, "Oh, yeah, of course! I get it. That makes total sense." And that helps you believe in the change.

An example – it's a silly one, but I think it drives the point home – when we got taken private at TXU, one of the first things that happened is that free Cokes and snacks were eliminated. People were kind of pissed off. Because when you do the math, which everyone did, you realize those drinks and snacks weren't costing much money. So people thought, "This is dumb. 'They' just don't care about us. See, this is how they're going to treat us." That was one way to look at it. But you could also zoom out and say, "Okay, well, if a company generating billions of dollars in revenue is going to look at the peanuts they pay for peanuts" – [LAUGHTER] I was proud that I came up with that one myself –

JACK FRIEDMAN: Is that a professional turn of phrase?

JAMES SAVINA: Yes, exactly! I don't have the sense of humor of some people, so I get really proud when I come up with a joke!

Anyway, if this huge company is going to look at what they're paying for snacks, then we should all look at that example and ask, "Well, what am *I* spending money on?" And if we're *all* looking at our spend that closely, those numbers add up. And when those numbers add up, we win. We all want to

win, so *of course* it makes sense to take away the free snacks. So you can sit and grouse about, "Oh, I don't get free Cokes." Or you can realize, "Well, there is a great reason why we don't, so let's all get behind it." Like I said, it's a silly example. But it's how I try to always look at it when something feels off during a change. I step back and try to see if there a principle behind what feels off that can lead me to believe and say to myself, "Well, of course we all agree with that."

That being said, if you can't get to a place where you believe in the change, then you owe it to yourself, your company, and your team to get out. I mean, at some point if you realize that you're just truly not in. So get out.

The worst thing you can do is try to fake it, because — especially as a leader — you've still got a job to do (and you probably have *more* work to do during a change), and driving change as a leader is *hard* — very hard. You're not going to be able to fake it. You are going to be tired. And if you don't have passion and intensity behind it, you're going to fail. Period. So just get out.

So the big points on change: be clear on the "what" and "why," and believe in them. If you get there, you're in good shape. Those are my not-very-provocative comments on change. I think what might be more useful for the mostly lawyers here — and from what I understand most of this audience is lawyers — is to talk about what all this means for lawyers.

For *inside* lawyers, it's starting out with the premise that you can't do your job if you don't know your business. You've *got* to know your business. And if your business changed dramatically, you've got to then *re*-know your business. Who are the stakeholders? What are their risk tolerances? What's their perspective?

If you don't know those things, you can't live up to the seven principles, which I call "Savina's Seven" only because "Savina" starts with "S" and I'm not very creative. There could have been eight or nine. But, anyway, so I came up with seven principles that I think highlight what inside lawyers have to live by to be effective.

One, we're not a think tank — execute. You have to get behind the eyes of who you're working with, find out what they need from you, and get it done.

Two, be practical, not philosophical. We're not here to pontificate; we're here to solve problems.

Three, be business problem-solvers, not legal question answerers. You have to think about where is the business trying to go and how you can help solve the problem with that destination in mind.

Four, think ahead of the business so you can skate to where the puck is going. Never give your advice in a vacuum. It can be frustrating for your stakeholders, but when they ask you a question, ask them a million questions back: "What does this mean? What project or work stream is it related to? Where's it going? How does it fit in the strategy?" This helps you understand the context around the question. Not only are you going to give better advice but, oftentimes, you catch things that the stakeholder didn't. And your stakeholders will love you all the more when you help with something they weren't even aware of.

Five, "finished" beats "perfect."

Six, don't get complacent — never stop working to earn trust and respect.

Seven, debate, decide, do — act with speed and clarity.

Basically, you can't live up to those principles, at least the first four, if you don't know your business. So, as an inside lawyer, you must get to know it.

Most importantly — and this is one that's a huge point that's often missed — is that knowing your business allows you to risk-calibrate your advice. And calibrating is *huge*, because if you're out of sync with your business, you will not be ineffective, you could actually *harm* your business. If you're from an environment that had been very aggressive and wanted lawyers to find loopholes and shades of gray, and then you find yourself in a very conservative environment that doesn't want to get anywhere near the gray, you've got to adjust how you give advice. If you start giving advice based on the old aggressive risk tolerance, and that conflicts with the new conservative risk tolerance, you're going to be out of sync. And being out of sync means you're not as likely to be invited in to solve problems going forward — including when you really *need* to be. It's harmful to your company when you're not invited in when there are key risk decisions being made. That's the holy grail: when really big stuff is going down, are you there to help from the very beginning? If you're not, how are you possibly doing your job of protecting your stakeholders and your company?! Too often we over-index on avoiding every risk, and we get all proud that we stopped this risk or that risk on a given day. We think, "Aren't we great?" Well, if we just eroded the confidence of our stakeholders, and they're not going to avoid going back to us when it matters, we're not so great. You can feel you won the battle, but you lost the war. Big time.

Shifting to outside counsel, it's helpful if you guys do the same thing. It's the same lessons. Number one, you've *got* to know your client's business. Now, I get that it's impossible to get behind the eyes of every single client and be the nuanced business expert on that client. I get it. And I'm kind of glad, because that's what I sell for my in-house team — we are the ones who know our business better than those outside guys. But for your key clients or clients going through change, spend the time to understand what's changing, what's driving them, and once again, shifts in risk tolerance.

Another thing you guys can do during a change is think of how you can help with more than just the legal work. Obviously, there's plenty of legal work to be done. But there are also things you're better positioned to do. You all are touching a lot more companies than we are. For example, if you've dealt with a lot of private equity-owned companies, and one of your clients is about to be owned by private equity, you can ask, "Can I come in and talk to your team about what it looks like, what it's going to mean, what it's not going to mean?" You can't stereotype or divulge confidences. But it would be great to have you guys come in and say what you can; "I've seen this a million times. Here's the kind of things you can expect, and here's why it's okay." And coming from you as a third party, that would be huge. Because when I say it, it can be dismissed, "You know that's just Jim talking for Management." But if you guys come and say, "No, I've seen this, and here's how it works," that's huge.

Those are the kinds of things that I would be thinking of as outside counsel. That's a big value add for an outside counsel. If you have some perspective, something you can do just to make that time of turmoil less tumultuous, it would be hugely appreciated.

After a big change, you have to recalibrate your advice, too. You also have to understand when you're giving advice that the risk tolerance may have changed. And you'd better know that before you give some advice that's way out of sync and going to make management wonder, "Who's that crackpot lawyer?"

> "Your biggest countermeasure to get people through change is to communicate… *a lot*. Think of every which way to communicate you can: walk the halls; be present; send emails. And when you're communicating, it's crucial that you're *listening* — because a lot of people just want to be heard: 'What's going on? Here are my concerns.'" — *James Savina*

Once again, learn the company you're working with — make sure *you* start asking, "How are things different? What do I need to know?" so *you* can calibrate. Getting to know the company will also help you understand if you get different marching orders after a big change. It can be frustrating; you've been marching along on a matter, and then, "Okay, now we want you to do it this way." Well, if you know *why* the course changed, it'll make a lot more sense. And you won't think we're just capricious jerks who are trying to make your life hard.

Then if you could bake your knowledge of the company into your proposals, that would be fantastic. That's part of it, too. If your proposal shows you know my business, that warms my heart, because (a) it's easier to pick through, and (b) that shows, okay, you invested and you get it. So you're more likely to get it through the life of the matter. If you come in with a proposal that has nothing to do with how we operate, then it just shows maybe you don't quite get my company. And that's not good for either of us.

It's worth it for the clients that you want to focus on to invest that effort.

In any event, I've been rambling for quite a while. I appreciate that most of you at least *looked* somewhat interested, although I'm sure what was going on in your mind is not listening to me. [LAUGHTER]

The big takeaways are:

- big changes are happening, so expect them;
- know that there are going to be people in your organization who resist the change;
- communicate with them, and all of your employees, *a lot*;
- make sure you know what's going on, and that you *believe* in it, so you can push it;
- in-house lawyers need to buy in or not as employees, and then if you have, start learning your stakeholders — get to know what they want and what they don't want, so you can calibrate; and
- outside lawyers, invest the time to study the business and translate it into your proposals, how you can help the company — I think would be time very well spent.

That's all I've got. I will turn it back over to Jack so you can hear from people who actually have something useful to say. [LAUGHTER]

JACK FRIEDMAN: Thank you. I wanted to begin with a few questions for Jim. Could you tell us a bit about your legal department, and are they all in the States? Are they specialized? The number one question that law firms like, of course, is how do you work with outside firms — they're fascinated by that information!

JAMES SAVINA: Yes, especially given that a lot of them are here, I can say that my team's amazing! [LAUGHTER] We really do have a great team! As I'm sure most of your clients are — we're structured around the business. Our company has a global headquarters and geographic zones. Our legal team is set up the same way. We have areas covered at the global-level — corporate secretary, ethics and compliance, M&A. And we have teams who cover the Zones, led by Zone General Counsels. The U.S.

Zone is, by far, our largest, and it's broken down into business units. So our legal team for the U.S. Zone is also broken down to support the units. We have what we call "business unit counsel," which are commercial lawyers that are assigned to each business unit. These are the day-to-day lawyers for the units to go to as *their* primary legal contact. We also have function and specialty counsel that handle things such as food law, labor and employment, litigation, IP, etc. So our business and general commercial lawyers can get deeper expertise in specific areas.

I won't tell you any exact numbers of lawyers I have, but I'll just tell you it is remarkably lower than any benchmark. And we're doing as great a job as we ever have. We recently had a person join from another major food company, and I get almost daily praise from him on the uptick in quality of the legal department we have. I like to think that's proof that our team is a well-structured, well-oiled machine — I'll take credit only for being part of it, but they're great.

JACK FRIEDMAN: Besides the actual legal product or service that the outside firms do, what are some of the policy communications you want to have back from them?

JAMES SAVINA: From me to them, or them to me?

JACK FRIEDMAN: As you prefer. Do you like to have them explain the who, what, and where of what they're doing for you?

JAMES SAVINA: Interesting question. It's table stakes to come in and say, "We have smart lawyers. We're helping you here, or we can help in such-and-such ways. We're staffed to do this or that type of work." But when you start going through the list of differentiators, it's like Strategy 101: are you going to tell me you're cheaper and a better value, or are you going to tell me you're differentiated and just better? If you're going to tell me you're better, that's where I ask, "How are you better?" And given the caliber of firms we work with, the place to play there is pretty small. A lot of it is how you can get closer to doing what my team does — not just give advice, but give advice tailored to Kraft Heinz. That's huge. It takes a big investment. But to me, that's the number one thing I look for. So I would say the best things for firms to message back to me goes back to my rambling comments before — show me that you understand my business. That is, to me, the biggest differentiator by far.

JACK FRIEDMAN: Is Kraft Heinz entirely in the food business with the incredible number of "brands people love"?

JAMES SAVINA: It's a food and beverage company. We do food, and we do drinks — Kool-Aid, Country Time, Gevalia coffee. It started out with J.L. Kraft selling cheese, and cheese is still our biggest segment. But we do more than cheese and are a broader food and beverage company.

JACK FRIEDMAN: I want to recommend a marketing opportunity to your company! [LAUGHTER] It has to do with Jell-O. When I've gone to movie theatres, restaurants and delis, I notice that every dessert or sweet is high-calorie. I know from medical speeches that one of the few things diabetics or others on diets can have for dessert is ten-calorie Jell-O. There are almost zero other choices. Maybe the Jell-O people should make an all-out promotion to restaurants and movie theatres, and tell them, "This ten-calorie Jell-O appeals to a large percent of the population and has almost no competition." [LAUGHTER]

Now we're going to move on to the Distinguished Speakers, who I'm going to introduce.

They are Gary Kushner of Hogan Lovells; Dean Panos of Jenner & Block, Brian Jorgensen of Jones Day; Jonathan Katz of Cravath, Swaine & Moore; and Jamie Cain of Sutherland.

Without further ado, I'd like to invite Gary to make his opening remarks.

GARY KUSHNER: Thank you. I have to say, for the record, as a food lawyer, there is no such thing as a bad food; there are bad diets. I'm fascinated by Jack's apparent obsession with the snacks that are sold in movie theaters; I really didn't know that you

were such a foodie, Jack! [LAUGHTER] But I also heard that Jack takes his fitness a bit seriously. In fact, recently, I heard that he went into a health club in Los Angeles — a very fancy one — because he wanted to get in better shape in the hopes of being more appealing to some of the younger women, and there was a very attractive female trainer standing behind the desk. He said, "Let me ask you; which machine should I use that would impress you the most?" She looked at him and thought for a minute, and she said, "ATM."

Well, other than Anne Beckman, my good friend sitting here at the Kraft Heinz table, who has heard of the Food Safety Modernization Act? All right, I've got several new victims.

I'm going to talk about that today, but first I want to say how honored I am to be here on this panel. I've worked with several of these folks over the years, and it's great to be in their company, but it's especially great to be able to help honor Jim for his extraordinary accomplishments and his leadership of the Kraft Heinz Law Department. I will also say that he was a bit modest about the law department at Kraft Heinz. I've had the privilege of working with the company for several decades. I think that the Kraft Heinz Law Department is unique, and it's really a law firm — a multifaceted, multidisciplinary law firm within a company. To your credit, Jim, and to Kim's credit, and predecessors, and to the folks in that department, I want to commend you, and I'm glad to be here to help honor Jim.

As I said, I'm going to talk about probably the largest and the most significant development in the regulation of food, certainly since 1938, when the Federal Food, Drug, and Cosmetic Act was first passed, which is the law that gives the FDA, the Food & Drug Administration, its statutory authority to regulate food. Food has always been regulated quite strictly, but things are about to become even more pervasive with a new law that was passed just in January, 2011, called the Food Safety Modernization Act, known now as FSMA, because in Washington, you have to have acronyms; it's illegal not to.

The food industry has always been committed to food safety — some companies more so than others, some companies more sophisticated than others — especially since the 1960s, when a concept called the "Hazard Analysis Critical Control Points" food safety system (also known as HACCP — acronyms again) was developed voluntarily by the food industry to keep food safe and essentially sterile for astronauts going into these little space capsules in these big old spacesuits; the last thing you wanted was for them to suffer food-borne illness. The food industry developed a system where a food manufacturer identifies all potential hazards that can occur in the production, processing, and distribution of the product, and then conducts hazard analysis to determine which of those hazards is reasonably likely to occur in the absence of special controls; and then adopts critical controls, that are monitored, measured, and validated to make sure they're working, and that are verified to make sure that the company is following its plan.

That's been voluntarily employed for many, many years, but it has not been mandatory with the exception of a couple of product lines that FDA regulates, and all meat and poultry, which is under the jurisdiction of the USDA Food Safety Inspection Service, for which HACCP became a mandatory program in 1994.

With FSMA, the law is changing so that what we have always called "HACCP" has now been turned into a new kind of regulatory program; the HACCP principles are the basis for the Food Safety Modernization Act, but of course, once you let legislators and regulators get ahold of a scientific program, it's necessarily going to change, and more is going to be prescriptive than it historically has been.

Now, instead of having written HACCP plans, or in addition to HACCP plans that companies have had for years, companies will have to have written food safety plans that are going to be quite elaborate, and they're going to be accessible to FDA inspectors. The FDA has historically had very, very limited records access, but very soon, FDA is going to be able to look at just about all kinds of records. This will certainly be a culture change, not just for the regulated industry, and especially for some companies that have not historically employed the kind of food safety programs that they are now going to be required to have, but it's going to be a culture change for FDA and for its inspectors, who historically have come into plants once every several years, maybe, and looked around to see if they're clean, and raised some questions and then walked down, maybe identified some observations, sanitation-related particularly. Now, the inspector is going to be looking more at records and looking at things that they really don't necessarily understand, or understand in varying degrees. We're in for a real train ride.

I mentioned that the Food Safety Modernization Act was passed in 1991; it became law in 1991; and that was after several years of haggling in Congress, but it was actually after several sessions of Congress that it was enacted. There was bipartisan support for the legislation; the major food companies wanted to make sure that their suppliers were being responsible and effective, wanted to make sure that smaller companies were doing what they need to do to make sure food is as safe as can be. After all, there had been some very notable food safety-related illness outbreaks; you just read the paper, listen to radio, or watch TV, and you'll see a number of them reported. That's not good for anybody — it's not good for the consumer, and it's not good for the companies that manufacture food that have a reputation that is important, and they want to make sure that food is safe for their customers.

Passing this bipartisan legislation is one of the few things Congress actually accomplished in the last several years, and it directed FDA to promulgate regulations — many, many regulations — and issue guidance documents to implement the new law. For the past five years, FDA has been involved in rulemaking, hosted public meetings and solicited input from all stakeholders, as a result of which the agency has adopted several regulations I'll mention in a minute. Under the new law, every food company has new responsibilities; actually, anyone who has a facility registered with FDA is now subject to the food safety requirements.

There are new controls over imported foods as well. There have been some recalls of foods that have been directly attributable to ingredients that have come in from other countries. In fact, there was a real scandal about food safety requirements in China in products shipped here that led to major recalls and subsequent recalls of products containing the harmful ingredients.

The FDA also now has broader enforcement powers and inspection powers, and there are some new fees that will be imposed upon food manufacturers, particularly if a re-inspection is required of a plant that FDA considered to be subpar in terms of its sanitation controls. And if a product has reasonable probability of causing serious adverse health consequences or death, and the company refuses to recall it, FDA can initiate a recall and then will charge the manufacturer back for the costs of that recall.

"The principle is that, when dealing with changes, you have to understand what changes are happening and *why*. And you have to *truly* believe in them. This is huge, because unless you're *crystal* clear on what is changing and why, you can't possibly explain it or drive it."

– James Savina

FDA is now mandated to inspect more frequently based upon the risks that are presented by a particular facility. The new regulations address those risks and how facilities are going to be targeted for increased inspections. All food companies now have to register with FDA on a biannual basis, and FDA will have the authority, in some circumstances, to suspend registration if it believes a company is producing and shipping adulterated foods.

That's important, because suspending inspection effectively shuts the company down. USDA has always had that authority for plants under its jurisdiction. As I mentioned, USDA regulates meat and poultry products under continuous inspection, and this goes back almost to 1906, when Upton Sinclair wrote a book about your fine city and the conditions in those slaughterhouses that led to the first Meat Inspection Act. It's been amended over the years, but there is continuous inspection; inspectors are *in* the facilities if you're making meat and poultry. So it's always been a very pervasive regulatory scheme, and if FSIS [USDA's Food Safety and Inspection Service] decides to pull inspectors from the plant, the plant may not produce or ship products; essentially, the company is put out of business. It's very, very serious; and now, FDA is going to have similar authority — not quite the same, but similar authority — for all FDA-regulated food plants. I mentioned mandatory recall authority, and some limited authority to prevent the shipment or the sale of product once it's in commerce. Under certain circumstances, FDA will be able to detain that product, prohibiting its distribution and sale. Again, USDA's had that responsibility for years.

So far, FDA has issued five final rules to implement the law. Preventive controls are what I consider to be the heart of FSMA, because those are the requirements that are most modeled after HACCP, where you have to identify potential hazards; sift through them; find out which ones need to be further controlled by controls that are measured and monitored. The preventive controls rule is very, very significant. It's the heart of the statute. There are also regulations governing preventive controls for animal food, produce safety, foreign supplier verification programs to make sure that the supplier of ingredients from both domestic and foreign suppliers, are following food safety requirements that are applicable to facilities here in the U.S. There are accreditations of third-party auditors for that purpose.

There are two more regulations that are soon going to be published, one probably within the next several weeks. It's a food defense requirement to control or to prevent intentional adulteration of foods; and one on sanitary transportation of food, which will affect everyone, including anyone in the food distribution chain.

Businesses, large companies — like Kraft Heinz — will have to come into compliance with the preventive control rules by this coming September. There's an extra year of compliance for smaller companies with fewer than 500 full-time employees.

The bottom line is that there is no exemption from these regulations for smaller companies; in fact, to some extent, smaller companies were a bit of the target of the legislation. They are just given extra time to come into compliance. Any company that's not already preparing to be in compliance by September is late. Even if a plant is operating under HACCP, that may or may not be adequate to satisfy the new food safety requirements.

We are looking at some major changes in food law. There will be disputes with companies, between companies and inspectors, who will challenge the hazard analyses in companies and how have you decided what is a hazard and what isn't a hazard, and whether you validated your controls to make sure that, in fact, they *are* going to prevent a hazard from getting into food. There will be these kinds of disputes; they'll go on for years. But especially in the early days, when this culture change is first taking place, the food industry is going to be under the microscope — and I have to say, with social media, it doesn't take long for a company's reputation to become tarnished. So there's a lot at stake.

I will stop right now. I'll be glad to answer any questions. Thank you for your attention. I appreciate being here today.

JACK FRIEDMAN: I want to ask Gary what are immediate steps that top management of companies that are affected should be doing now?

GARY KUSHNER: Well, basically, companies have to do hazard analyses that identify, for *all* the products they're producing, what hazards — microbiological, physical, chemical, radiological hazards — could occur in the production of those foods. They need to identify those; they need to do analyses of which of those hazards need special controls; and then they need to implement those controls. All of this needs to be recorded, because as I mentioned at the beginning of my comments, FDA will now have

very broad records access. The first thing the inspector is going to do is to look at the ceiling and then they'll look at the walls, they're going to look at the floor, and then they're going to look at records. You need to keep records of your hazard analyses; of your compliance with your controls; of any deviation from your plan. You have to have validation documents to make sure that, in fact, your program's going to work. All this has to be in the records. You also have to have corrective actions outlined in the event that you have a deficiency under your plan. It is very important that the records are clear and succinct; if you take corrective action on a deviation, and you don't write it down, as far as FDA's concerned, you didn't do it; it didn't happen. Those records are going to become critically important; FDA's going to be looking at them.

So the first thing is, get your house in order.

What should be done also depends upon what resources the company *already* has. Many companies have the right resources; they just have to make sure that people who are going to be held responsible know they're going to be held responsible. In the case of preventive controls, for example, under the regulations, a person who is qualified as a Preventive Controls-Qualified Individual must oversee the development of those food safety plans. If you don't have somebody in the company who is trained and certified as the Preventive Controls-Qualified Individual, you need to get somebody trained, or you need to hire someone.

JACK FRIEDMAN: Who would they report to?

GARY KUSHNER: That depends. It could be the person who is Director of Quality, or Quality and Food Safety, or perhaps through the Legal Department. It depends a lot on the company's own structure and how it feels it most effectively can control those things.

Ultimately, the CEO can be held accountable — there is a strict liability statute. If a company violates the law by shipping adulterated food, FDA can go after the company, the Quality Control Director, plant managers, and even the CEO of the company — and they will.

JACK FRIEDMAN: It sounds serious if you don't get it right. Would most companies hire someone to give an objective outside opinion?

GARY KUSHNER: The question is do you hire an outside auditor or firm to come in and take a look at your programs to tell you whether, in fact, you're in compliance. Some companies don't have to do that because they feel competent in their own auditors; but it's always a good idea to consider bringing in a qualified individual to do that. Frankly, FDA does not technically have full records access yet, so now would be a good time to do that, and do it under privilege.

JACK FRIEDMAN: Thank you very much. Next is Dean Panos of Jenner & Block.

DEAN PANOS: Good morning, everyone. Thank you all for being here. I know we've got outside lawyers and in-house lawyers, and all the outside lawyers are *dying* to talk about zero-base budgeting with you, Jim [LAUGHTER] — one of our favorite subjects! But I'd like to tailor more of my remarks to many of the folks in this room who are in-house, and what has increasingly become a duty of legal departments and those who run legal departments — in-house lawyers — to investigate potential problems, wrongdoing, and hopefully get ahead of them before they become a problem, because it's now part of the world. You see in a lot of public crises where oftentimes, the law department was in the center of it, at least in terms of perhaps knowing about it or missing signs and red flags along the way. So I want to talk about that. Jim, to be clear, I'm not suggesting, although you might get this from my remarks — I see Sylvia and Anne and Kat here, and other people — I'm not suggesting that they turn around and go to the Data Center this afternoon and start downloading and copying hard drives and launching investigations, but there are certain things that, over the course of having done investigations, having responded to investigators coming in, that we've observed, and are probably good things for legal departments to keep in mind.

I'm going to discuss briefly some of the problems I've seen as a result of either failing to conduct investigations or responding to government investigations. The unique role that you, as in-house lawyers, play, both in the eyes of your colleagues and in the eyes of regulators or prosecutors; the responsibilities of in-house lawyers to appropriately identify and then respond to problems before they become major; and a few lessons learned along the way.

This is more art than science. Gary Kushner deals in a world of very strict regulations, but even then, there are judgment calls within those regulations, but the decision of an in-house law department or an individual lawyer to — and Bob, you've dealt with this over the years many times — whether to launch an investigation or to look into something, and there's a little bit more art to this, for sure. As lawyers, we use our judgment in identifying and addressing issues of concern.

Now, the first issue for outside, or certainly for in-house lawyers, is, who is my client? Who do I represent? Those of us who are outside lawyers, that's a lot easier for us to answer usually; we have engagement agreements. We know who, really, our clients are and for those of us who sometimes represent a board or an audit committee, we get and understand who our duties of loyalty are to, but all of us — particularly those sitting up here — we all have firm counsel that can help us navigate if it becomes a little dicey as to who specifically is our client.

But in-house lawyers, oftentimes, you might be a business unit lawyer, as Jim addressed here, and you might spend all your day and every day advising a particular business unit or a president of a business unit or a brand of some sort. It's easy to get caught up in the idea that that particular unit is your client, or that president is who you report to, to give legal advice — where, in fact, as we all know, the client of the in-house lawyer is still the corporation, and you have to keep that in mind. Even though you may be doing daily work and providing daily legal advice, your duty of loyalty is to the corporation, and your advice has to be the best advice to the corporation, even if it's against the business unit's better interests, which often can be problematic. We all know that compensation or bonuses and things of that sort are sometimes tied into performance at business unit level, so it gets a little dicey as to who, as the in-house lawyer, you truly represent, and who's your client.

I want to talk about when does the duty to investigate arise, or what should you do? Obviously, everything's on a case-by-case example. In most corporations, there is not intentional suppression of information; it is much, much more subtle than that. It's usually the result of some sort of indifference to an issue; a lack of ownership; or people just didn't take responsibility to look at something. There's a failure to prioritize;

maybe it's not your HAACP plans may be important, but they're not more important in the minds of some people as some other things. Silos of information — we all know in big organizations that's a big issue. Then there are the decision and action by committees — all of you operate in meetings. I know all of you guys have your calendars with people, places and meetings that you need to go to, and you sit in conference rooms and decisions are made. Oftentimes, those can actually, at times, stifle the work that you need to do or to look at, because you're waiting for a committee or a decision to be made, as opposed to taking it on your own.

The in-house lawyer does sit in this unique position; you *are* viewed by your colleagues as those who are responsible for identifying the legal problems and the risks, and addressing those. As I said, your representation is not limited to engagement agreements; it's not limited to a particular area that you practice in. You cannot bury your head in the sand if you're the labor lawyer or an employment lawyer of the company and you get some information, and perhaps there's a securities fraud issue or something of that sort and you can't sit back and say, "Well, I do labor; that's not really my thing." You are in the best position, oftentimes, as to whether, to identify the problem and conduct an investigation, if it's warranted.

Now, why lawyers? Why are lawyers involved in this? Well, number one is, we are trained to ask probing questions; that's what we all went to school to learn. We're trained to be skeptical. As my wife will tell you, that's a trait that I share, and that I'm pretty good at! We are trained to assess credibility. We're trained to analyze and decipher complicated facts. Perhaps more importantly to your colleagues in the business units who *aren't* lawyers, we have a pretty good understanding, based on our experience and legal precedents that we know, to get a sense of how regulators or, worse, prosecutors, might react to certain facts or certain circumstances within your organization, if they were to learn about them. That's the value that you all bring to your companies, where you can use that judgment and experience, and explain to them that, well, this is an issue, and this is how regulators are going to look at it, or this is how a federal prosecutor might look at it.

You are, to be sure, viewed by federal regulators and prosecutors as the gatekeepers of your corporation. Regulators, many of them, are lawyers; prosecutors, of course, are lawyers. They look at you as people with special expertise and knowledge. In my experience, whenever there's been a serious problem, and issues that dealt with that I've worked with Gary Kushner on a couple of major recalls for other food companies than Kraft Heinz — they routinely ask, "What did the lawyers at the company know?" All the way up to the General Counsel. "What did they do to investigate these issues? What did they do, or not do, to address the problems?" Then, more importantly, "Who did they advise of the problem? Did it stay in a silo, or did it go all the way up to the General Counsel, and did the General Counsel take it to somebody else?" They do particularly look at the in-house lawyers, because they understand the unique position you sit in.

> "The worst thing you can do is try to fake it, because — especially as a leader — you've still got a job to do (and you probably have *more* work to do during a change), and driving change as a leader is *hard* — very hard. You're not going to be able to fake it. You are going to be tired."
> – *James Savina*

They also understand that you are problem solvers, and you can identify risks, and it's expected of you that you will take some action to prevent a problem.

In fact, the Rules of Professional Conduct 1.13(b) provides that an attorney who learns an employee or corporate client is acting and intends to act in violation of a duty to the corporation, or engage in some illegal conduct which may be imputed to the corporation, must proceed in the best interests of the corporation. Now, what does "Must proceed in the best interests" mean? Well, it *probably* means, in the eyes of the prosecutors, that you would at least start inquiring and investigating, and raising issues if it needs to be done.

Lawyers often — and this is hard when you're within a corporation, particularly — may need to take a step back and see the big picture, and not focus on individual legal issues. You might be the lawyer handling a piece of litigation, and over the years, you might see, here's a one-off; here's another similar litigation; and from time to time, you get a similar type claim that is resolved, and you might view your role there as to try and get the best result for each one of those particular cases and try to settle them or litigate them to the best conclusion possible on a one-off basis, *but* you might be missing the bigger picture of taking a step back and seeing, "Why is this problem occurring every few months, or is there something else going on here that could lead to a bigger problem?" They expect that you are going to look for patterns and look for things that may signal a bigger problem down the road.

There is an unhappy tension here, though, as all of the folks who do this for a living know, which is you're telling your business unit, "We need to look into this — you can't do this," and of course any time you do that, you're risking a relationship issue with the business unit, and you may be risking financial performance of that business unit. But you do have to understand that your job, at times, requires that.

I want to talk a little bit about the culture and issues that go on in legal departments that you have to be aware of. What do we refer to people who raise problems? Whistleblowers! It's a pejorative term, right? They are whistleblowers! That's not a great way to be referred to, but sometimes the whistleblowers are actually providing information that is important and should be listened to.

What is communicated to the chief legal officer and/or top business units? We talked about this earlier — Jim tells us that he never advises people, "Don't write anything down." He wants to be clear that he's not advising anybody to suppress information. But here's where your judgment comes into play; what do you communicate, how do you communicate it? You need to use your best judgment in how you do that. You don't want to send the CFO an email that repeats an allegation of some major problem without having fully thought it through, investigated it, and actually discussed with other people as to what the implications are of putting that in writing in what you said. But you've got to strike the balance between raising issues that should be raised versus causing complete disruption of the organization by investigating matters that aren't a serious concern; that's a judgment issue. You've got to understand what the proper forum is to raise issues so as to not create disruption, and you've got to figure out how we best protect the attorney-client privilege so that what you do raise, and when you start doing investigation, you can cloak as much as you can in privilege, as well.

Here are just a couple points of things that I've noticed are my Saving Seven — I think it might be eight, I don't know — of things that we've seen over the years when conducting investigations in finding what happens, where the problems occurred within the organization or within the legal department, that could have gotten addressed earlier. There's a cultural issue in every organization, so what's your culture? It's leadership — do they foster an environment that people feel comfortable raising issues; encourage people to take responsibility for resolving those issues? Does the legal department have any guidelines on how issues get raised and where they get raised? Are you set up in a way to avoid silos? Information silos and structural silos prevent all sorts of important information from being shared and bigger issues being handled appropriately. Do you have cross-disciplinary teams? I know Kraft does, in many respects — particularly when you guys deal in your crisis management or food safety issues, you do have a wonderful group of people who have all sorts of expertise in different issues. You've got to have cross-disciplinary teams.

Do you have a clear chain of command, in terms of solving problems? Once you've identified it, has somebody been designated, or a group of people designated, to solve it? The motto "everyone is responsible" is not all that helpful to you. Because if everyone's responsible, that often means no one is responsible. You need to have a clear chain of command. There are problems with delegating to committees; there's problems with decisions by consensus, particularly unanimous consensus — waiting for root cause investigations as a means of delay; you've got to navigate through that so that you're not waiting for a committee to get together to do everything.

You need attention and decisiveness. That's one of the things that Jim had mentioned in dealing with risk management. Lawyers need to be intimately involved in the risk assessment. We often bring in scientists, particularly in our units, our businesses, who are the expert on the food issues, let's say. We all know — and all of us outside lawyers have worked with experts and in-house lawyers — what do scientists want to do when you raise a problem with them? They want to conduct tests! More tests! They want to keep conducting tests, and they want to prove themselves wrong and prove the corporation right. So you've got to be real careful that you don't get bogged down in all of that, in doing what you need to do.

In-house departments need some incentive to evaluate people, in-house counsel, to emphasize that they reward for identifying risk and monitoring them and then taking charge of them, and then train and encourage the lawyers to see the big picture throughout.

The Lehman Brothers example — the lawyers all did their job in many, many respects, in their own individual silos. But you can take a step back and say they kept missing the big picture along the way.

You need to identify, lastly, the biggest risks to the company — which, obviously, for a company like Kraft Heinz, are food safety issues and product liability issues, because that's their reputation; that's what they do; and you need to create an environment where information that pertains to those risks are communicated and reviewed throughout the legal department.

Those are just a couple of thoughts for those of you who are working in these environments. You need to have an environment in the legal department that would foster getting ahead of issues before they become major problems.

JACK FRIEDMAN: One of the greatest challenges for General Counsel is communicating legal considerations and what a law means with executives, who may be well-intended but have a different way of thinking about things. Could you discuss what you recommend counsel learn about to communicate with top management?

JAMES SAVINA: The way I think about it — and my team is probably rolling their eyes; they've heard this a million times times — but you have to remember, when the business is trying to make a decision, you're looking at a whole spectrum of considerations, risks, drivers, opportunities, costs. Legal is one of them. You're dealing with — and oftentimes, those are all very quantifiable, and they know they can put a number around everything. When you're being asked for your piece, you have to remember, it goes back to get behind their eyes; how are you helping them answer the question as well as you can — and that often derives to trying to give them, as concrete as possible, what are the consequences, and how likely are they; what does it really mean to them and to the business, whether it means we need to operate differently, the likelihood things will happen, the magnitude. Quite frankly, what I find is you end up taking a little of your own risk, which is something lawyers don't do, and that's part of one of my many rants, is that — we take risks all the time — big risks. You invest a ton of money in R&D; you invest a ton of money in marketing; you do a lot

of stuff; and it fails. And a lot of times there's a brand manager or a business person behind that, and it failed. Things don't always go right. When it comes to lawyers, a lot of times you give advice of, "Well, I want to make sure there's no way my advice is ever going to be wrong and I could be questioned. I just think that's a wrong way to do it. Everyone else is taking a risk every day; the business is taking a risk every day." Yes, you might be 95% sure you can give an answer, but, "I'm not giving it, because if I'm 5% wrong, they'll say I wasn't right." Get over it! So to me, "Give me an answer." That's when the business wants an answer. How well can you give the answer? Remember the way I look at it is if you're doing a financial model, what would that input be? If you can quantify it, great; if you can't, at least explain some of the impacts. But then also, a little bit of the art behind the science is you have to be very clear that they heard what you said. Something that I learned from a former colleague — so let's say we do this all the time, you risk rate, and it happens more often than I'd like to say. So you say, "Okay, there's a million-dollar issue. Ten percent chance it's going to happen." So, for your model, you're going to save a hundred thousand bucks. But just to be clear, that means nine times out of ten, nothing happens. One time out of ten, it's a million bucks. A lot of times I hear "a hundred thousand," and then when it blows up the financials, it blows bonuses, things went wrongly, "Well, I thought it was a hundred-thousand-dollar issue!" No. This was a million-dollar issue. It happened: you went to Vegas, and you lost, you crapped out. You have to be very clear — did they hear what you said, but that doesn't absolve you from the duty to give an answer, because that's part of what you have to do.

You quantify it — like, how big is this risk? Then you get down to, so there is some risk, but this is a billion-dollar risk; given this one percent chance, that we can do something, mitigate it down to nine hundred million, that's still something you're not going to do. Yes, you have to walk through. Just be prepared, and it's almost elementary — if you just get behind what the person is asking, and why, and walk through, "How would you want to understand that," and ninety-nine times out of a hundred, if you actually get them to understand where your answer is coming from, it's great. The problem, when I find my lawyers don't break through, it's because we're so worried about *not* being wrong or *not* committing to anything close to an answer, that they hear, "Well, there's a probability of a risk of a something that might happen somewhere, somehow; don't do it."

That's not an answer! If you can back down, remember they're have a problem to solve — that's why you're involved — and do your job of using your expertise, your ability to analyze and break it down as best you can. Then oftentimes, when you have to take a risk that you'll be wrong, and this is something I learned a long time ago, and if you're right most of the time, you're great! It's okay to be wrong sometimes. It had damned sure better be wrong sometimes than to never give answers and always give a bunch of lawyer B.S.

JACK FRIEDMAN: How does your law department determine its budget?

JAMES SAVINA: Different companies do it different ways, and it all comes down to justifying and being able to have data behind why you need the money. The biggest thing is once again ROI. If I can say, "Here is what I can deliver for this type of spend vs. that type of spend, and why," with data behind it. I know that's not good news for outside counsel — for work you're going to do, or know you're going to do, and that you have enough volume to support, outside counsel are just cheaper; there's a higher ROI, hands down. Usually it's the CFO and the numbers guys are running it, but it just comes down to, can you demonstrate the value for the dollars you're spending, and why you're choosing to spend them, knowing that the problem with legal is that we're a massive contingency, because I can't tell you how many lawsuits I'm going to get.

I can give you a trend analysis, I can give you the best guess, but ultimately, if something happens, something happens, and you never know when that something happens. It's a matter of how do you articulate that and, more importantly, making sure the business is aware of that. What you don't want to do is come back every December and say, "Here's five million bucks I didn't use." Because there's no reward for that; it's like, "Wait a minute, I could have used that for marketing; I could have used it for this." You want to say, "How do I make sure I can spend just what I need, but have a contingency," in the back of your head, at least plant some seeds that there may be more and how are we going to deal with it if it comes, and then try your best. Don't do stupid stuff, because if there's a big contingency and you need more money, if they can point to the five things you've done with their money that are really dumb, then you're not going to get anymore. Whereas, if you show, "Look, I cut this; we're really lean here; and that guy never sleeps, because we're not using outside counsel; I really need it," then, okay, you'll have a better argument. I always say it's kind of crazy that we're bred for advocacy, and just so we're clear there's nothing mathematical about budgeting; it's just advocacy.

JACK FRIEDMAN: Thank you. I can only imagine what law firms have to go through to justify their budget. They're not even inside the system — they're outside the system, trying to justify to the client.

Our next speaker will be Brian Jorgensen of Jones Day.

BRIAN JORGENSEN: Thank you. I, too, am honored to be here. It's very inspirational to hear Jim's path from where he began to where he is now. There is one gap in his path that he failed to mention, that I think is a very important thing to know about Jim. Sometime shortly after he stopped working at his first firm, he became very interested in Brazilian jiu-jitsu, and he was a wrestler in high school, and so he was always telling me how awesome he was at Brazilian jiu-jitsu, and how I should go wrestle him. I was thinking, "There is *no way* I'm going to do that!" [LAUGHTER] But I've heard people refer to him as a bulldog, and he certainly is, and that's some insight into how Jim thinks. If he doesn't like it, he's going to go after you and wrestle you and make you submit! [LAUGHTER]

I would like to talk today about the Department of Labor and the National Labor Relations Board. These are two agencies that have been very active over the course of the last several years, very aggressive in attempting to expand workers' rights. They're not doing it in a moderate way; they're not tinkering with language and regulations; they are — make no mistake about it — making wholesale changes, dramatic changes, to regulations, to precedents, to guidance, that have been in place for decades. It has a fairly significant impact on employers, and it's going to have an impact on employers certainly for the remainder of this year — in the last year of the Obama Administration — and into the future.

One particular area that I'd like to focus on today is the joint employer area. Both agencies — the NLRB and the Department of Labor — have issued guidance in the last several months on that issue, that has significantly broadened the definition of a joint employer, what "joint employment" is. This is important because many employers have some form of independent contractor relationship, or they're using temp agencies or they're using staffing agencies, or perhaps their corporate structure is such that they have a series of affiliated companies or affiliated entities and subsidiaries, all operating under one enterprise — a franchise model, for example. All of these arrangements are subject right now to very intense scrutiny by these two agencies. That's important because the guidance that they've issued — it's not just the government that is going to be looking at these arrangements; it's also the plaintiffs' lawyers and the unions that are riding the coattails of the guidance that these agencies are issuing.

To some degree, this isn't really an unexpected development, this expansive look at joint employment; this is particularly true at the Department of Labor, where two years ago, David Weil was sworn in as the Administrator of the Wage & Hour Division. He is a former economics professor at Boston University, and prior to assuming office, he wrote a book called *The Fissured Workplace / Why Work Became So Bad for So Many, and What Can Be Done to Improve It*. I'm so happy that our Wage & Hour Administrator is really looking out for employers, right?

We knew what we were getting into, whenever he took office a couple of years ago. In the book, he argues that large companies, large corporations, have over time, done away with direct responsibility or hiring direct people responsible for their products and services, and instead outsourced that work to smaller companies. I'm not talking about outsourcing to India or other foreign countries — outsourced it to companies within the United States — smaller companies, fierce competition between those companies, and that has led to depressed wages. It's led to (according to Dr. Weil) less benefits, fewer benefits for workers; in some cases, unsafe working conditions; and so he's, frankly, on a mission to really focus on that issue.

In January of this year, he issued an interpretation of, it's called an "Administrator's Interpretation," regarding joint employment. It's expressly stated in that Administrator's Interpretation that the DOL's view of joint employment is broader than the common law. So these concepts in the common law that have been in place for many years, and in cases that really focus on control and the amount of control that an employer exercises over the day-to-day activities of a particular worker — while important — and if an employer is actually exercising that control, it likely would lead to a finding of a joint employment relationship.

That's not the only factor. In fact, if there *are* situations where an employer may not be necessarily exercising control over the terms and conditions, or at least, a *lot* of control over the terms and conditions of a particular worker, other factors come into play. In fact, the test, according to the Department of Labor, is called the "Economic Realities Test." What that means is, and what the

Department of Labor looks at: is the worker economically dependent on the alleged joint employer? What factors are considered in that analysis include things like, is the work that the worker is doing rote in nature, or is it low-skilled? Is the work long in duration? Obviously, if it's longer in duration, the more economically dependent the worker is going to be on the alleged joint employer. Is the work performed on the employer's premises? That's another factor that would indicate economic dependence.

All these factors are very important for employers to be considering and to be looking at with respect to staffing agencies, with respect to even companies like janitorial services, which were specifically mentioned and identified in a footnote in the Administrator's Interpretation, to make that risk assessment, to determine whether or not any change needs to be made in that relationship.

A few months prior, in August of 2015, the National Labor Relations Board did something similar — in fact, probably more dramatic than the Department of Labor — in the *Browning-Ferris* decision. In that case, the National Labor Relations Board basically reversed 30 years of precedent on the joint employer issue, and again, focusing on control, in that control aspect. For the last 30 years, the test has been — before the National Labor Relations Board — has required, in essence, the employer to actually exercise direct control over the terms and conditions of the worker. This decision moves away from that, and says the employer doesn't have to actually exercise the control. What's important is whether or not the employer has the right to control, and reserves the right to control. You can imagine all the arguments that unions and plaintiffs are making, and in fact, companies literally are under attack, many companies are under attack in a variety of industries, based on this very theory, where their business model, in and of itself, the company is defending the right to continue to do business in the way that it's structured.

Why is all of this important for an employer? It cuts across many different industries. It's important because, number one, if you're found to be a joint employer, it would confer joint and several liability on you for violations of the National Labor Relations Act, the Fair Labor Standards Act, and perhaps other statutes, as well, where plaintiffs' lawyers are getting creative and taking bits and pieces from the guidance that these two agencies have issued.

It's important because, number two, it may require an employer, now, to negotiate, collectively bargain with a group of employees, or now-deemed employees, who aren't even on the employer's payroll. They never would have had to do that, or at least they wouldn't have had to do that for the last 30 years, because of the new guidance that the NLRB has issued.

Then, number three — along the same lines — these employers may be required to allow union activity on their premises, where they otherwise, or previously, would not have had to do that — activities such as picketing and boycotting and the like.

These are very important developments, and this is just one example of the activism of these two agencies. There's a lot more examples, and we can expect more of this activity for at least this election year, and we'll see what happens in November.

Thank you.

JACK FRIEDMAN: Thank you very much. By the way, the speakers today are from Chicago, Dallas, New York, and Washington. We have quite a national panel here. Jim had the shortest commute, but since he had to go through Chicago traffic in the morning, it was the longest trip. It could have taken three or four hours to get here this morning! [LAUGHTER]

Our next speaker is Jonathan Katz of Cravath.

JONATHAN KATZ: Good morning, everyone. It's great to be here, like the other panelists have said, and I just want to reiterate: congratulations to Jim and, really, to the whole Kraft Heinz Legal Department, on a great and well-deserved honor.

Like Jim said, I was very involved in the transaction to put Kraft and Heinz together and it was a hundred-day sprint, where I got to know a lot of the management team, and then following the closing, got to meet a lot of the legal team. It's been a real pleasure to work with all of you.

Today, I'm going to talk a little bit about one of the most important responsibilities of both the internal and external legal advisors, which is protecting stakeholders. When you go all the way to the top of the food chain at a company, one of the most important things is to protect the board of directors and their reputations.

One of the areas where companies sometimes generate reputational issues is in the area of executive compensation.

At this part of the year, the spring season, companies are filing their proxy statements and people are getting a glimpse of what the executives have been paid during the year. The press loves to write about this kind of stuff.

In fact, just yesterday, when I got into Chicago, I thought, a day out of the office, it's going to be a relaxing day; I have three little kids — I was going to maybe take a nap! [LAUGHTER] I turned on the TV, CNBC, and there was breaking news that an energy company that's not a client of ours, had their stock price drop 90% during the year because of energy prices, but the CEO's compensation went up 75%.

Every time that happens, when the numbers come out and there's not really any explanation or context, the directors may suffer a reputational hit. As you all know, a lot of companies have preeminent directors on their boards; you can take Kraft Heinz as an example.

It's very important and incumbent upon internal *and* external lawyers to do their utmost to protect their reputations.

A lot of the current rules about executive compensation and why it gets so much press, comes out of the Dodd-Frank Act. The Dodd-Frank Act came after the financial crisis, and while the crisis was really spurred by lax mortgage lending, a lot of the rules that we got related to executive compensation.

There are really two times where shareholders and others get a real good look at the compensation process. The first is that every year, most companies submit a resolution to their shareholders to vote on the appropriateness of the compensation that the management team was paid during the last year. It's a non-binding, advisory vote; it has no binding authority on the company; but it's a bad thing when the company loses that vote, because it makes the directors look bad.

That's one area where we work very hard, when the disclosure documents go out every year, to really use them, like Jim said, as persuasive and explanatory documents. These documents are not just "This person made 'X' dollars"; it's "This person made 'X' dollars and this is *why*, and these are how our programs work and why he or she got paid that amount."

The next area that gets a lot of press is that any M&A transaction where the shareholders get a right to vote on the deal, they also get a similar non-binding vote on the compensation that could be received by the executives in the deal. This is where you tend to see very, very large numbers. It's not that everyone will receive those amounts, but they could, if certain events, such as termination after the transaction occurs.

This is, again, an area where there's a lot of public interest; there's a lot of press; and if you lose this vote, the directors get very upset that there was some harm done to their reputation.

This again all comes out of the Dodd-Frank Act. Like I said, as well, these votes are not binding in any way; it's just the sense of the shareholders on these amounts and these payments. In an M&A transaction, there is always a separate vote on the deal itself, and the vote on the compensation generally has no impact on the deal vote.

Now when you put these two things together, most people ask, "Why do we need to care about this?" and when I call up my M&A colleagues and I say, "There's this deal; you should be aware that this company, because of the programs that they have, is at risk of losing their vote," there will often be silence, or they'll just hang up the phone and say, "It doesn't matter."

The reason that it matters is that no one is going to be happy if a director feels that way — management's not going to be happy; the board certainly will not be happy; and anyone down the chain is not going to be happy. It's not going to play out well for anyone.

Here's a chart that shows that the proxy advisory firms — I don't know if everyone in the room is familiar with Institutional

Shareholder Services — so that's a company that gives recommendations to institutional shareholders, like the big mutual fund companies, on how they should vote in these votes. I noticed that in the fourth quarter, especially, of last year, they got a bit more aggressive in recommending against these votes. That put a lot of boards of directors on the defensive.

You could see from this slide that their recommendations do carry a good deal of weight, but they're not always dispositive. You can get a negative recommendation from a proxy advisory firm, but still win the vote. We've been involved in some of those situations, where you manage to overcome a negative recommendation, and the board is often very happy about that.

Not to get into too much detail on why sometimes there are negative recommendations, but some things that are viewed as negative pay practices are, for example, when the company pays taxes for the executive; that's something that people generally don't view favorably. Another thing is when there's large amounts of what are called "single trigger payments" that get paid just because there is a transaction, and don't depend on future service or anything else — it's just, a deal happens, someone got $25 *million* — the advisory services don't look favorably on that.

The other thing is that you just sometimes see numbers that are so large that people just have an extremely negative reaction. If you see a CEO that's going to walk away from the deal with $100 million, sometimes shareholders aren't happy; they don't think that's appropriate. In many cases, the numbers are not that large.

What do you do when you get a negative recommendation, or shareholders are upset about payments that might be made in connection with a transaction? As I noted earlier, the prevailing wisdom over the years has been that none of this matters; the disclosure documents should just have a list of names and amounts that people could receive, and you check the box that you complied with the SEC rule, and who cares? The outcome does not matter. But I do not think that is the right way to look at the issue. People take this very personally, especially boards. They want the community and the business press and people they interact with in the business community to trust that they are good fiduciaries. What I do in my practice — and I think it is becoming a little more common, although not all firms do this — is to treat the disclosure documents more as persuasive documents, and tell the shareholders why they should vote "yes," or why this was appropriate.

There are situations where you don't do that, and then you get caught on the wrong foot, and you get a negative vote, or your vote looks very bad. What you can do then is go on a full-out outreach blitz with shareholders; file additional materials or mail out additional materials, lobbying for the vote. What we also found is that some of the major institutions — the big mutual fund companies that hold very large blocks of stock in all the S&P 500 companies — are willing to get on the phone with the company and hear them out on why they should not follow an "against" recommendation from a proxy service.

The bottom line in all of this is that the historical prevailing wisdom that none of

these issues matter is not correct. It really does matter to important constituents. If you're involved in deals, make sure that you're putting your best foot forward, being persuasive, and protecting your constituents.

Thank you.

JACK FRIEDMAN: We welcome our final speaker, Jamie Cain of Sutherland.

JAMIE CAIN: Basically, I also wanted to congratulate Jim on his award, and it's very well-suited that I'm able to talk today, because Jim has not only had to deal with the issues that I'm going to talk about in his current job, but also at other jobs, which has prepared him in a lot of ways for these things better than most General Counsels that we've had the opportunity to work with.

There are going to be takeaways from this. One is that derivatives are in the news. They've been in the news before; they're in the news today; and you can anticipate that they're going to be in the news in the future.

The second thing is that derivatives are everywhere. We'll talk a little bit about that.

Third, derivatives do manage risk — try to limit and control certain risks — but they also involve taking on other types of risk.

Fourth, derivatives are highly regulated, particularly in the wake of the Dodd-Frank Act.

Finally, if you're in management, if you're on a board of directors or upper management, you have an obligation to make sure that you have appropriate policies in place to manage your risk, and that you, as the board or management, are managing those periodically and making sure that the policies are working.

Talking about what is in the news. What's interesting about this slide — I know you guys looked at it for a *long* time [LAUGHTER] — but if you look in the upper right-hand corner, you'll see that this is from 1994. It's funny, because I think people saw this and thought, "Oh, it's because of what happened in the financial crisis in 2008." This came out at the time when a number of companies were suffering some pretty major deriv losses. Derivs were relatively new, at least in their current form. Procter & Gamble, you might recall, lost $186 million on a transaction that it had with Bankers Trust, which was later acquired by Deutsche Bank, in connection with an interest rate hedging transaction. Procter & Gamble's position was that they were misled, and in fact, they were successful when they litigated the case in Cincinnati, Ohio, before a jury, which happened to be in their home town.

A derivative is basically a financial transaction that derives its value from an underlying asset, a liability, a commodity, a rate or index. Things that people normally think are derivatives are futures, which are traded on exchanges; contractual forwards; swaps, where cash flows are exchanged, and options which could be exchanged, traded or not. But derivatives can be found in a lot of other things. They could be in your supply contracts; they could be in your loan documents, for example.

This gets me to why do they exist, and why derivatives are everywhere. Well, anywhere you've got interest rates, you could have a derivative. This could include people in this room. If you've got a mortgage, and you had a right — let's say you got a floating rate initially, and then you have the right to switch to a fixed-rate mortgage, that involves a derivative. If you have a right to prepay your mortgage, that involves a derivative. You've got a lease, and you basically have the right to buy your car at a specified price in the future, that involves a derivative. These are all derivatives, and they are embedded in those contracts.

Companies use derivatives. If you're borrowing money or lending money, you are likely thinking about, or are using, derivatives to hedge your interest rate risk. If you're a company like Kraft, who is operating around the world, and you've got the company's products that are being bought in local currencies in Brazil, Europe, Africa, Asia, and you're financing that with U.S. dollars or euros, you're going to be using derivatives to hedge your foreign currency risk. If you're using commodities in your business — and that doesn't just mean, let's say, using wheat to make cookies or milk to make cheese — it could also involve how the packaging gets made. What are the products used to make the resins? If you're making paper towels, how do you hedge your paper pulp costs?

One of the things we talked about last night was a major soft drink beverage company; of course, it hedges corn prices, because it uses corn syrup in making its products; but it also is one of the largest users of diesel fuel, because it has trucks that drive all over the country and drop off its products.

A major amusement park in Florida, on an annual basis, uses $50 to $100 million worth of natural gas to fund all the rides in its parks. They're hedging their risk, because they're selling tickets at a fixed price using derivatives.

Southwest Airlines, as we all know, was very successful at using derivatives so that it could sell its tickets at lower prices, because it limited the big bump that took place when energy prices were going through the roof back in 2008.

There's the good and the bad and the ugly. Yes, you're managing these risks in some ways, and if you're lucky, like Southwest Airlines, and you bet the right way, you're going to look like a hero. Of course, Warren Buffett is famous for saying that these are financial instruments of mass destruction. Just as a quick aside, during the time of the Dodd-Frank Act's being negotiated, Warren Buffett's company was fighting pretty hard about having certain transactions not included within the scope of any regulation of swaps. At the time, he had about $8 billion worth of equity puts on the S&P 500, meaning he was selling people the right to come back to him if the S&P 500 dropped, and he was willing to bet up to $8 billion on that point. Notwithstanding Warren Buffett's statements, he and all of his companies use derivatives every day.

What's the problem with derivatives? A lot of people say when you're basically controlling one risk, you're taking on another; it's like the risk is just getting moved around. When you enter into a derivatives transaction, these are the risks that you're taking on. You're taking on the risk that the market could go up or down in a way that you didn't anticipate. The person that is giving you the protection may not pay you back; that's the credit risk. There's legal risk. Is it going to be enforceable? Now, you've got compliance risk; with the Dodd-Frank Act and all the regulations that are involved, you could end up being in violation of the law. There's tax risk. A lot of people say, "You always anticipated that you were going to make money on the transaction, but you didn't anticipate that you were going to have to leave a tip." You've got to think about tax. Back office, in addition to the compliance issues I mentioned, this is where problems happen when the rogue trader gets out there, like happened with Société Générale, and you lose $6 billion. Then there is liquidity risk. A lot of people say that's what caused Lehman to go down, because they had to post margin to their counterparties, and they didn't have enough of it. At one point, people that were

paying them stopped making payments to them because they were in default, and yet they were required to make payments on the other side, in part just to meet their margin calls. That caused them to go down.

You need to be thinking about all of these risks that you're taking on when you're controlling another risk.

Major losses...you've probably read about a lot of these in the paper — Enron, Long-Term Capital, AIG, Lehman Brothers, of course. All these are things that a board and management needs to be thinking about when taking on a hedging or risk management program.

The bottom line is, there's no such thing as a perfect hedge, except in a Japanese garden! What that really is saying is, if you're limiting your downside risk, or let's say the fact that you're using input — as I said, you use a grain or something in producing your finished bread or your biscuits or whatever, and you basically want to lock in the price, so when you go to the grocery store, your customers know that the price is going to be a fixed price. They're not expecting it to go up or down. When you do that, you may be getting up the chance that the price

could go down. That's like with Southwest Airlines; they were lucky — prices were going up. But if prices were going down, and they had paid premiums for that protection, and American Airlines and United started selling their plane tickets for a lot cheaper because they hadn't locked in the price of their fuel costs, you could look pretty stupid. You need to be thinking about that, as well.

Lots of laws are involved here. Of all these laws, the one that is often forgotten is the "other" category. It's not just the United States that has laws, but Europe has laws; Asia has laws, South American countries have laws. You need to be thinking about how your business is working in other countries, and how the transactions you're doing might also involve compliance with foreign laws, as well as U.S. laws.

Dodd-Frank, of course, increased the amount of laws. It really imposed on people who use derivatives certain things that they didn't have to worry about before, like recordkeeping. It also imposed on the people that they transact with, your counterparties that are taking on the risk for you, obligations that then push back risks on to you, even though you're not directly required to comply with certain of these things. You may have your transactions report in the market; you may not want people to know how you're hedging your risks.

There may be position limits on certain of the transactions you're running into. Right now, there are agricultural position limits that have been in effect for a long time, but they are expanding those position limits — this hasn't been finalized — to cover things like energy products and metal products. If you're a soft drink manufacturer and you're using aluminum or some metal in your products, these position limits could impact you. Plus, the existing limits already impact how much you can hold in a certain commodity. It may be you're hedging your risk, but your movements in the market could have very, very dramatic effects. There's new authority in the commodities laws that's akin to what's in the securities laws regarding anti-fraud liability, and it includes reckless behavior, and not just fraudulent behavior.

There's one case that's being litigated, that's near and dear — there are other people in this room involved in this very issue! You need to be thinking about, when you do these transactions, not only how it's addressing the risks that I mentioned on the prior slide, but also how you make sure that what you're doing is in compliance with the laws, and you're not in some way adversely impacting the market.

The law also has special provisions in there for commercial companies, which are called "end users," and it actually mandates board review of transactions on an annual basis to make sure that the transactions that are being done shouldn't have to be cleared. That's consistent with what companies should be doing, anyway.

I mentioned the CFTC [Commodity Futures Trading Commission] anti-fraud authority already, but there are penalties for violating the laws under the commodities laws. There are also securities laws that could get involved to the extent that you're disclosing what you're doing in an improper fashion in your securities disclosure documents. In fact, back in 1994, companies were hit pretty hard by the fact that they weren't disclosing the derivatives risks that they were taking on appropriately. Being the big girl in the markets is what I was talking about in terms of how your actions could be perceived to have been doing something that was untoward and inappropriate.

I'll just close with what's near and dear to Jack's heart, what boards of directors are doing. This is true with a lot of things — even what Gary was talking about before — you need to have policies in place that are intended to set guard rails on how you are going to be managing your risk using derivatives. Those policies have to be reviewed periodically. They have to allocate responsibility. What I've provided in the slides was derived from something the G30 put together back in the mid-'90s along with some of the bank regulators, in terms of how people should use derivatives. Major money center banks, a lot of financial companies, developed guidelines for policies that are in place now. If you're a public company, something like CalPERS as one of your investors, they require you to have a derivatives use policy. If you go on their website, they'll show you exactly what the policy should have in it, and so you need to be taking this very seriously.

With that, I'll conclude, and there are materials there, and you hopefully had a good chance to look at the slides earlier, so I don't have to spend too much time on them! [LAUGHTER]

JACK FRIEDMAN: Thank you! I want to ask about risk management. In the investigation area, what can be a risk management issue?

DEAN PANOS: Well, again, it depends on what the potential issue might be. The risk to the company of not doing an investigation is that they, number one, don't learn the true facts until a problem is much larger. Then the investigation, you lose control

of the investigation because the problem became larger and now you've brought in regulators or prosecutors or something like that. So that's one of the risks.

The other risk is if it's something that you know is going to come out — let's say it's for a food company, a major recall. There are injuries or serious illnesses and deaths that are a result, the federal regulators and the prosecution are going to look into that, and the risk of not having conducted your own investigation to get ahead of that, or why didn't you take action sooner — I mean, in every food recall or issue that I've ever been involved in, there's always a question of when did you know it, when did you take action, and how did you draw the fence around what food was good versus what food was bad. In my experience, the in-house lawyers get interviewed by the government.

JAMIE CAIN: The other thing, too, is the Department of Justice came out with another memo, the Yates memo, basically indicating that when a company does something wrong — and I think we're focusing largely on the financial sector — the Yates Memo says, basically, we've got to look at the individuals involved. Any investigation before there is a settlement on any of these matters going forward, there has to be a look at what individuals were involved and how they were responsible. There will not be a settlement unless individual liability is fully assessed to make sure whether or not somebody should be tagged with a fine or a violation. That's being taken very seriously.

The other thing, too, is something that happened to J.P. Morgan or London Whale; it wasn't, at the end of the day, whether or not they shouldn't have taken on that level of liability; $6 billion is a lot of money — but, as it turns out, it wasn't *that* much money for J.P. Morgan. The reputation risk or damage that happened to J.P. Morgan was that it wasn't clear that people knew that this guy was doing those sorts of transactions. When they went in and investigated, upper management was unaware exactly of what was going on. Notwithstanding that at the end of the day, they said it was appropriate, given the nature of their business and how the transactions were conducted. "We made a bad move and we lost," was what really hurt their reputation, because people thought J.P. Morgan was the best-run bank and they were on top of it.

JACK FRIEDMAN: It goes to show that no matter how competent your people are, it doesn't mean you have control or knowledge of everything that's going on at your institution. Brian, you can answer the same question about risk management issues in both the employment and executive compensation areas.

BRIAN JORGENSEN: Generally speaking, there are some areas where the company just has to fight, where the entire business model is being attacked by a government agency or by a plaintiffs' firm in a large class action. Either they stay in business and they fight and they win, or they go out of business, or they completely restructure their workforce. There are those sorts of issues for a company that there is only so much you can do to manage risk. But there are other areas, such as using an independent contractor/joint employment, where the Department of Labor's goal is to raise the wages of all employees. So if you're using staffing agencies or temp agencies in certain areas of your workforce, maybe there's some strategies that you can employ to keep labor costs at the same level while not using those — it's strategic — or exposing the company to liability and government investigation.

JONATHAN KATZ: In the comp area, we have SEC rules and stock exchange rules that require the compensation committee of every public company to periodically go through a risk assessment, to look at their compensation program and to make sure that they're not heavily weighted towards any one particular performance metric that might lead management to, for example, borrow too much money or to engage in activity that would expose the company to excessive risk. Our clients typically do that in the first quarter of each year and involve their independent compensation consultant. They look at exactly how their program is structured and make sure that it doesn't incentivize management to go after one particular strategy or another in a way that would expose the company to excessive risk.

"You've *got* to know your business. And if your business changed dramatically, you've got to then *re*-know your business. Who are the stakeholders? What are their risk tolerances? What's their perspective?" *– James Savina*

JACK FRIEDMAN: Thank you. I have one last question for Jim, which is a question I ask at each program. In the five minutes a month that you have free what do you like to do with your time?

JAMES SAVINA: If I had time, I would probably sleep! [LAUGHTER] That's the exciting life. You wonder why my wife calls me the "fun sponge." I really don't have a lot of fun. [LAUGHTER] I would love to sleep!

JACK FRIEDMAN: We wish to thank Jim and the Distinguished Panelists for making this a wonderfully educational program. Thank you very much.

Jonathan Katz
Partner

CRAVATH, SWAINE & MOORE LLP

Jonathan Katz is a partner in Cravath's Executive Compensation and Benefits Department. His practice focuses primarily on advising clients on the executive compensation and employee benefit aspects of complex mergers and acquisitions, spinoffs, corporate joint ventures, and private equity transactions. Mr. Katz also regularly advises clients on the design, negotiation and implementation of employment agreements and incentive compensation programs.

Mr. Katz's clients have included 3G Capital, The Kraft Heinz Company, Mylan, Starwood Hotels, Cameron International, Johnson & Johnson, Time Warner, IBM, NCR, BDT Capital Partners, Ashland, Cincinnati Bell, and Alere.

Mr. Katz's recent transactions include representing:

- H.J. Heinz Company in its $60 billion merger with Kraft Foods Group to create The Kraft Heinz Company;
- Mylan in its pending $9.9 billion offer for Meda, its proposal to acquire Perrigo in a transaction valued at approximately $35 billion and its $5.6 billion inversion acquisition of Abbott Laboratories' non-U.S. developed markets specialty and branded generics business;
- Alere in its pending $8 billion sale to Abbott Laboratories;
- Starwood Hotels in its pending $12 billion sale to Marriott International;
- Cameron International in its pending $15 billion sale to Schlumberger and in the creation of the OneSubsea joint venture with Schlumberger;
- Johnson & Johnson in its acquisition of Novira Therapeutics;
- Time Warner in the spinoffs of Time Inc. and Time Warner Cable;
- UTi Worldwide in its $1.35 billion sale to DSV;
- NCR in its strategic partnership with Blackstone, including an $820 million equity investment in NCR by Blackstone;
- IBM in numerous transactions, including the acquisitions of Kenexa, Tealeaf, Worklight and Cúram; and
- Universal Health Services in its $500 million acquisition of Ascend Health.

Mr. Katz was born in Philadelphia, Pennsylvania. He received a B.S. from Cornell University in 2003, a J.D. *summa cum laude* from Cardozo School of Law in 2007, where he was Notes Editor of the *Cardozo Law Review*, and an LL.M. from New York University School of Law in 2013. He joined Cravath in 2007 and became a partner in 2016.

Cravath, Swaine & Moore LLP

Cravath is widely recognized as one of the preeminent law firms in the world. Throughout its history, Cravath has been the firm of choice for corporations, including financial institutions, their senior management and boards of directors, with respect to their most challenging legal issues, most significant business transactions and most critical disputes. Every client, whether large or small, new to the firm or long-standing, receives the full attention of an experienced, multidisciplinary team dedicated to helping devise and implement practical and creative solutions to complicated problems. Cravath's broad-based corporate practice encompasses securities, M&A, commercial banking, SEC compliance and disclosure, governance and board advisory, tax and executive compensation, environment and real estate matters. Cravath's litigators handle antitrust, bankruptcy, intellectual property, M&A, securities, and general commercial matters, as well as government and internal investigations. As trial lawyers, they have broad courtroom experience in high-stakes, complex litigation and arbitrations, from initial proceedings through appeals.

Gary Kushner

Partner

Gary Jay Kushner has been a food industry lawyer for more than 35 years. He represents trade associations and corporations before government agencies, Congressional committees, and the courts in a variety of matters. Gary has particular experience with the development, interpretation, and enforcement of laws and regulations governing food production, processing, and distribution throughout the United States and internationally. He also serves as General Counsel to a number of national associations.

As counsel to trade associations and companies involved in the public policy arena, Gary analyzes legislation introduced in Congress and state legislatures, as well as regulations proposed by the U.S. Department of Agriculture, the Food and Drug Administration, and other federal and state government agencies. He routinely evaluates their impact on the food industry from farm to table, and prepares amendments, testimony, and comments on such initiatives. He anticipates how laws and regulations might be changed to facilitate the marketing of food products.

Gary also represents food companies, including manufacturers, distributors, and retailers in matters involving regulatory compliance. He advises them on labeling and advertising regulation; counsels them in product recalls, seizures, detention, government inspections, and related actions; and represents them in enforcement actions before government agencies and law enforcement bodies.

Before joining Hogan & Hartson, Gary served as Vice President and General Counsel for the American Meat Institute, where he directed the organization's legal, regulatory, and legislative activities. Before first entering the private practice of law, he served as Staff Counsel for Scientific Affairs at the Grocery Manufacturers of America. He began his legal career as a law clerk to The Honorable John R. Hess in the Superior Court for the District of Columbia.

Gary is a frequent lecturer and regularly contributes to numerous trade publications.

Hogan Lovells LLP

Change is happening faster than ever, and to stay ahead, you need to anticipate what's next. Legal challenges come from all directions. We understand and work together with you to solve the toughest legal issues in major industries and commercial centers around the world. Whether you're expanding into new markets, considering capital from new sources, or dealing with increasingly complex regulation or disputes, we can help. Whether change brings opportunity, risk, or disruption, be ready by working with Hogan Lovells.

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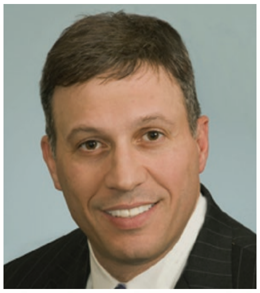
A fast-changing and inter-connected world requires fresh thinking combined with proven experience. That's what we provide. Progress starts with ideas. And while imagination helps at every level, our legal solutions are aligned with your business strategy. Our experience in cross-border and emerging economies gives us the market perspective to be your global partner. We believe that when knowledge travels, opportunities arise.

Our team has a wide range of backgrounds. Diversity of backgrounds and experience delivers a broader perspective. Perspectives which ultimately make for more rounded thinking and better answers for you.

Giving back to communities and society is fundamental to good business. And, it's part of our core. We are advocates of justice, equality, and opportunity. Everyone at Hogan Lovells is asked to volunteer at least 25 hours a year as part of their normal work duties. Around the world, our people are making a difference through pro bono activities, community investment, and social justice.



Dean Panos
Partner

JENNER & BLOCK

Dean N. Panos is a litigator. Fortune 500 companies and other public and private companies seek his representation in a wide variety of complex commercial litigation in state and federal courts across the United States. He has served as lead trial counsel on numerous jury and bench trials, and argued several cases before the United States Court of Appeals for the Seventh Circuit. Mr. Panos is nationally recognized in representing several of the largest food and beverage and consumer product manufacturers in class action and complex commercial litigation. He has also served as lead on several consumer and food product recalls. Mr. Panos has also served as trial counsel to a major airline in connection with two commercial aviation accidents.

Mr. Panos has represented numerous large manufacturers and private equity firms in claims for breach of fiduciary duty, breach of contract, fraud, and misrepresentation in connection with corporate mergers and acquisitions. Corporate Boards of Directors and Audit Committees have also sought his counsel on a variety of internal investigations involving financial and accounting fraud, mismanagement and employee wrongdoing. Mr. Panos frequently represents clients in criminal grand jury investigations, as well as corporations and executives in SEC investigations or claims. He has served as Acting Inspector General for governmental and other public agencies conducting investigations into vendor and employee fraud.

Mr. Panos is AV Peer Review Rated, Martindale-Hubbell's highest peer recognition for ethical standards and legal ability. He is the Chair of the Products Liability and Mass Tort Defense Practice and a member of the Complex Commercial Litigation, Class Action, and Real Estate and Construction Litigation Practices. He is also a member of the firm's Policy Committee and the Real Estate Finance Litigation and Workout Task Force. Mr. Panos has tried to verdict several felony cases for pro bono clients.

Jenner & Block LLP

Jenner & Block is defined by the exceptional results we produce, the values we share, the clients we serve and most importantly, our lawyers. Jenner & Block lawyers consistently deliver excellence in the most complex and demanding legal matters, both litigation and transactions. They do not consider the practice of law a job, but rather a calling to serve clients, the profession and the community. No matter what legal challenge is presented, our powerful combination of experience, professionalism and teamwork helps clients achieve their goals.

Founded in 1914, Jenner & Block is a law firm of international reach, with more than 500 lawyers. Our firm has been widely recognized for producing outstanding results in corporate transactions and securing significant litigation victories from the trial level through the United States Supreme Court. Companies and individuals around the world trust Jenner & Block with their most sensitive and consequential matters. Our clients range from the top ranks of the Fortune 500, large privately held corporations and financial services institutions to emerging companies, family-run businesses and individuals.

A commitment to public service is part of the DNA of our firm. We are known for our long tradition of pro bono advocacy, as well as service to the bar and to our communities. *The American Lawyer* magazine has ranked Jenner & Block as the Number One pro bono firm in the United States seven times, most recently in 2015.

Brian Jorgensen

Partner

Brian Jorgensen represents corporate clients in complex labor and employment litigation, including class action and multiplaintiff employment discrimination lawsuits, wage and hour class and collective actions, and trade secrets and restrictive covenant matters. His experience includes defending employers in arbitrations, government agency proceedings, and state and federal courts throughout the United States in cases involving federal and state antidiscrimination laws, the Fair Labor Standards Act, state wage and hour laws, and a variety of state law wrongful discharge, statutory, contract, and tort claims. Brian also represents clients who are undergoing Office of Federal Contract Compliance Programs (OFCCP) audits and regularly provides advice regarding compliance with affirmative action laws.

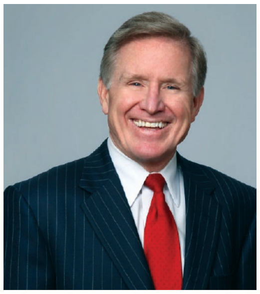
In addition, Brian spends considerable time working with clients on preventative measures, including reviewing employment policies, advising on compliance with wage and hour laws, counseling on disciplinary actions and investigations, and conducting employment practices reviews.

Brian leads the Labor & Employment Practice in the Dallas office. He is a frequent speaker and author on labor and employment topics. He also serves on the board of Healing Hands Ministries and is a member of the Labor & Employment sections of the Texas State Bar Association and the Dallas Bar Association.

Jones Day

All law firms seek to serve clients effectively. Some do it more consistently than others. Jones Day ranked highly in the BTI Consulting Group's 2014 "Client Service A-Team" ranking, which identifies the top 30 law firms for client service through a national survey of corporate counsel. "Blazing the trail for superior client service delivery, Jones Day earns Best of the Best status in nine key activities, including Understanding the Client's Business and Helping to Advise on Business Issues — where Jones Day has earned top honors for an impressive nine consecutive years." Jones Day has also ranked in the Top 10 every year since 2000 in the Corporate Board Member/FTI Consulting annual survey of the best corporate law firms. These are just two indications that our focus on serving our clients' needs, and not on the financial metrics that are so commonly used today to measure law firm performance, is recognized by our clients, who reward us with more opportunities to help them meet their interests.

Jones Day is organized as a true partnership, and it operates as such; we are not an LLP or LLC or some other quasi-corporate entity. We see ourselves as a global legal institution based on a set of principles to which a large number of men and women can commit — principles that have a social purpose and permanence, that transcend individual interests. While this may well be a more sociological description than you would see on most law firm websites, and no doubt is subject to a skeptical reaction from many when they first read or hear it, we believe it accurately describes one important aspect of what makes Jones Day the client service organization that it is.



Jamie Cain

Partner

With more than three decades of experience, Jamie Cain has guided insurers, banks, securities and commodities firms, and funds through significant transactions that transform their businesses, including public and private securities offerings and mergers and acquisitions. He regularly works with U.S. and foreign companies to interpret and comply with the myriad of securities, commodities, insurance, and banking laws that apply to these transactions.

A frequent speaker at industry conferences, Jamie is recognized for his knowledge of the Dodd-Frank Act and the regulation and use of derivatives, including those instruments used for interest rate, foreign exchange, equity and commodity, credit default, and equity transactions and related collateral arrangements. He represents a wide range of global clients, typically on the buy side, including major public companies, financial institutions, public and private funds, government sponsored enterprises, and foreign governments, in documenting those transactions and advising on internal and regulatory compliance.

Jamie also advises insurers, banks and broker-dealers in connection with cross-industry acquisitions and in the distribution of their respective products, both domestically and internationally.

Sutherland Asbill & Brennan LLP

Sutherland Asbill & Brennan LLP is an international law firm known for solving challenging business problems and resolving sophisticated legal issues for many of the world's largest companies.

We help the Fortune 100, industry leaders, sector innovators and business entrepreneurs solve their biggest challenges and reach their business goals. Dedicated to unfaltering excellence in client service, we are known for our business savvy and industry intelligence, providing creative and custom solutions for each of our clients. Industry and business experience makes the difference for our clients.

For more than 80 years, Sutherland has built on the high standards of its founders with a commitment to integrity and to the highest quality of services for its clients. Founded in 1924, the firm handles matters throughout the United States and worldwide. Seven major practice areas — corporate, energy and environmental, financial services, intellectual property, litigation, real estate, and tax — provide the framework for an extensive range of focus areas, allowing Sutherland attorneys to serve a diverse client base that ranges from small and medium-sized start-up businesses to a significant number of Fortune 100 companies.

Our legal practice is built on delivering partner-level attention and unfaltering dedication to client service. Our clients can rely on our lawyers to be approachable, responsive, and efficient. This approach attracts clients faced with issues and opportunities that demand a deep understanding of business, specific industry knowledge, and the ability to manage complex matters across state and national borders.