



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Sabine Chalmers

Chief Legal & Corporate Affairs Officer
Anheuser-Busch InBev

THE SPEAKERS



Sabine Chalmers
*Chief Legal & Corporate Affairs
Officer, Anheuser-Busch InBev*



Craig Thorburn
*Partner, Blake, Cassels
& Graydon LLP*



Nancy Kestenbaum
*Partner, Covington &
Burling LLP*



Steven Sunshine
*Partner, Skadden, Arps, Slate,
Meagher & Flom LLP*



Frank Aquila
*Partner, Sullivan &
Cromwell LLP*

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

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished guest of honor's personal accomplishments and her leadership in the profession, we are honoring Sabine Chalmers, Chief Legal & Corporate Affairs Officer of Anheuser-Busch InBev with the leading global honor for general counsel. Her address will focus on key issues facing general counsel of leading international consumer products companies. The panelists' additional topics include challenges in cross-border M&A, multinational antitrust, and corporate dealmaking.

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



Sabine Chalmers

Chief Legal & Corporate Affairs
Officer, Anheuser-Busch InBev



Born in 1965, Sabine Chalmers is of German and Indian origin and holds an LL.B. from the London School of Economics. She is qualified as a solicitor in England and is a member of the New York State Bar.

Ms. Chalmers joined us in January 2005 after over 12 years with Diageo plc, where she held a number of senior legal positions in various geographies across Europe, the Americas and Asia, including as General Counsel of the Latin American and North American businesses.

Prior to Diageo, she was an associate at the law firm of Lovells in London, specializing in mergers and acquisitions.

Ms. Chalmers is a member of the Board of Directors of Grupo Modelo.

She also serves on several professional councils and not-for-profit boards, including the Association of Corporate Counsel and Legal Momentum, the United States' oldest legal defense and education fund dedicated to advancing the rights of women and girls.

Anheuser-Busch InBev

Anheuser-Busch InBev is a publicly traded company (Euronext: ABI) based in Leuven, Belgium, with American Depositary Receipts on the New York Stock Exchange (NYSE: BUD). It is the leading global brewer and one of the world's top five consumer products companies. Beer, the original social network, has been bringing people together for thousands of years and our portfolio of well over 200 beer brands continues to forge strong connections with consumers. This includes global brands Budweiser®, Corona®, and Stella Artois®; international brands Beck's®, Leffe®, and Hoegaarden®; and local champions Bud Light®, Skol®, Brahma®, Antarctica®, Quilmes®, Victoria®, Modelo Especial®, Michelob Ultra®, Harbin®,

Sedrin®, Klinskoye®, Sibirskaya Korona®, Chernigivske®, and Jupiler®. Anheuser-Busch InBev's dedication to heritage and quality originates from the Den Hoorn brewery in Leuven, Belgium, dating back to 1366 and the pioneering spirit of the Anheuser & Co. brewery, with origins in St. Louis, USA since 1852.

Geographically diversified with a balanced exposure to developed and developing markets, Anheuser-Busch InBev leverages the collective strengths of its more than 150,000 employees based in 24 countries worldwide. In 2013, AB InBev realized 43.2 billion USD revenue. The company strives to be the Best Beer Company in a Better World.

JACK FRIEDMAN: Good morning. I am Jack Friedman, Chairman of the Directors Roundtable. The Directors Roundtable is a civic group which has done 800 events in 23 years globally. We've never charged a penny to attend. Our mission is to provide the finest programming for Boards of Directors and their advisors.

The series with General Counsel has been presented throughout the world and we are very honored to have Sabine Chalmers as our Guest of Honor today. Her company goes back to the 1300s in Europe and has expanded all over the world. I'm from Los Angeles, and in Los Angeles, "old" is 1946.

Our Distinguished Panelists will each introduce their topics after Sabine makes her opening remarks. The transcript of the program will be sent out to about 150,000 leaders globally.

Sabine has an interesting background. Her parents are German and Indian. She has worked for law firms and corporations, geographically all over the world. She also studied at the London School of Economics. We are very privileged to have her speak today.

Without further ado, I'd like to have Sabine make her opening remarks. Thank you very much.

SABINE CHALMERS: Good morning, everyone, and thanks for the kind words, Jack. It was really due to Jack's perseverance that I agreed to do this, because I thought it would be quite a nice way to showcase a company and a team of which I'm very proud. I also want to talk about some topics, together with my panel members and friends. Topics that I believe are important and relevant to the business world and also specifically to the legal profession.

I *would* say that I was somewhat alarmed by the vocabulary of the invitation when it went out at the end of the day and from the emails that I received from members of



the profession and friends. I realized at that time that it's always good to have friends and family that keep your feet on the ground.

To begin with, my 14-year-old daughter's reaction to "world honor" was, "Oh, Mommy, is that from an airline? You know, in recognition of all the flights you take?" I said, "No, darling, it's not." Our CFO was convinced that it had to be from one of the law firms whose bill I'd eventually paid after long negotiation. I noticed that everyone here is thinking it's them. Then finally, Steve Sunshine, who's on the panel today, always gets the prize for the most sarcastic sense of humor of the law firms that we work with. He sent me an email saying, "Do you realize that it's actually a roast, and we're all going to say horrible things about you, but don't tell anyone — it's supposed to be a surprise." So, thanks, Steve.

But joking apart, it is flattering to have the opportunity to come in and talk about topics that are relevant to the business community and to the profession. With that, what I wanted to do today was to start by talking about a couple of things. One is to give you some background on a company and brands of which I am very proud. Also, to use our company as an example of a theme which I think remains very relevant to all of us who work within business, and that is, first of all, how do we actually

perform every day with discipline, and how do leaders, in particular, foster a culture of performance within their teams. Also, how do you measure the value of that performance and the contribution that it makes to the organization? Especially when you're in a function which many may often perceive to be a support function.

As part of my presentation, I will also touch on some of the specific legal challenges that we face on a day-to-day basis which form part of that performance culture, and which we have to try to value. I know that each of my co-panel members here will also talk about some of those topics in greater detail.

The first thing to begin with is an overview of Anheuser-Busch InBev at a glance. I'm using some of the same slides that our CEO, Carlos Brito, uses when he talks to external stakeholders, and also internally.

We are the world's leading brewer; a top-five consumer products company; and in 2012, generated approximately \$15.5 billion of EBITDA, and revenue of \$39.8 billion. We have our global headquarters in Leuven, Belgium, but we operate in 24 countries. We have sales in 100+ countries; approximately 150,000 employees worldwide; and we are listed in several countries, which I'll come onto in a moment.



This slide shows you a little bit of the history of the company from a growth and combination perspective, and as you will see, it's been an incredible journey.

Jack alluded to the fact that while our roots really go back to 1366, the main period of M&A history of the company, dates to 1987. The really formative transactions that defined and made the group what we are today were in 2004: the combination of Interbrew, a European brewer, and Ambev, a Brazilian brewer; in 2008, the combination with Anheuser-Busch, which gave us a U.S. footprint and really defined our presence as a global brewer; and then finally, earlier this year, our combination with Grupo Modelo in Mexico.

We are a truly global company. As you'll see from this slide, we have operations across six geographical zones. We have 17 \$1 billion brands on a global basis. You will see that a number of these brands are highlighted on the map here. Our four global brands are Budweiser, Stella Artois, Beck's, and now Corona. As you will see from this slide, we have a number of really significant local beer brands across the globe. Many of which, I hope, you have all enjoyed, and if you haven't, I can highly recommend them!

We are also proud to say that we are a top-five consumer products company, and you will see here that this is the peer group of consumer products within which we like to measure ourselves. We are a company in which our CEO leads by example. One of the things he's always keen to tell the management team is, "Never rest on your laurels; never be satisfied with your results; and always be humble with what you have achieved." Hence, on a day-to-day basis, we try — and I try to foster this within the team, as well — that we *don't* rest on our laurels, and we're always aiming to measure ourselves and benchmark ourselves outside the industry and with the best of the best.

We also strive to be a leader, and this slide highlights that. One of the really interesting things about this slide, which is a hallmark of the company and how hard we work to achieve great results, it's not just about being the biggest — as you'll see from the data — but it's also about working to be the most profitable, the most efficient and effective in the way that we do business. If you look at the rows of how revenue matches up with volume, this slide is a very powerful one for me, because it shows that we work every day to translate that volume into efficiency and into profitability.

Our overall dream as a company is expressed on this slide, and what we say is that we work hard every day, all 150,000 of us, to be the best beer company in a better world. As you'll see from this, it is a balanced statement. Clearly, "best" is very aspirational, and means different things to all parts of the group, including the legal and corporate affairs function, which I have the privilege of leading, together with my team. Yes, "best" means being most profitable, means being most efficient, means being the best or trying to be the best in as many disciplines as possible. But the "better world" piece, which we highlight here, is also a very important part of the dream. What we mean here is this: Yes, we want to be the best, but at the same time, we hope that as part of that journey, we are making the world a better place. The

three areas that we focus on in this regard within the group is our commitment to responsible drinking; we believe that as an alcohol beverage producer, we have a special role to play in society, in ensuring that people make the right choices when they choose to drink. Secondly, we hope that we can bring our commitment to efficiency, to what we do on the environmental front, in ensuring that the impact that we have on the environment is either positive or at least is minimized. The third pillar that we focus on is the community, so that everything that we do, we have a positive impact on the communities within which we operate. The key areas of focus for us in this regard are, across the globe we have a number of breweries, and those breweries are key employers and contributors within the communities and the societies in which they operate. We focus a lot on having a positive impact there.

This is a bit of a busy slide here, but one of the hallmarks of the company that our CEO talks about a lot, not only with investors but when we go out to recruit new employees or engage with various stakeholders, is the ten principles by which our company is governed. I've alluded to some of these which are a hallmark of our company; I will touch on some of this when I talk about the performance cultures. If you look at some of these here — for example, number three — we must select people who, with the right development challenges and encouragement, can be better than ourselves. We have a huge commitment within the company to promoting from within and growing our people from within. We give them challenges that they might not be ready for but we also support them with that. We also have a large global and geographical footprint. One of the things Brito always tells me and I have really learned over the last ten years, is that what makes your job much easier is always recruiting people that are better than you, because they help get great things done on a day-to-day basis.

Another piece here is that we manage our costs tightly to free up resources that will support top line growth, and I will comment

on that again when we talk about the performance of the Legal and Corporate Affairs team. It is definitely one of our key responsibilities to be as efficient as possible so that we can free up funds to put behind our brands, which are the lifeblood of our organization.

Next is an overview of our global Legal and Corporate Affairs team. We are relatively lean at global headquarters, and then we have six regional teams which are located, respectively, in St. Louis for North America; São Paulo for Latin America North; Mexico City for Mexico; Buenos Aires for Latin America South; Leuven, Belgium for Europe; and Shanghai for Asia-Pacific. The bulk of our resources are located within our geographical zones.

We have completely open-plan offices, to foster teamwork and communication. For example, I actually sit at a table with the rest of the management team, and within a couple of feet from me is our Chief Financial Officer; across the table is the CEO; Chief Marketing Officer, and Chief People Officer and so on. All of our teams across the globe are replicated in the same fashion. Our view there is that it promotes teamwork; it promotes open communication, informality, no bureaucracy, no hierarchy. I have to say that it's one of those things that once you get used to it, you're not sure you could ever go back to sitting in a room on your own, and certainly for a general counsel, wow! How many opportunities do you have to actually have that level of interface with the CEO and the management team on a day-to-day basis? Obviously, it has its shortcomings, in that there's nowhere to hide and if he ever needs anything, he knows where to find me!

Together with open-plan offices, shared resources — one of the great things about the Legal team and the Corporate Affairs team is that we have the privilege to sit at what I would call all the key decision-making tables across the globe. I'm Secretary to the Board of Directors; I report to the CEO; and on a regional basis, we have my reports on all the zone management teams,

“The really formative transactions that defined and made the group what we are today were in 2004, the combination of Interbrew, a European brewer, and Ambev, a Brazilian brewer; in 2008, the combination with Anheuser-Busch, which really gave us a U.S. footprint and really defined our presence as a global brewer; and then finally, earlier this year, our combination with Grupo Modelo in Mexico.”

— Sabine Chalmers

on all of the business unit management teams, so there is a voice, and there is a seat at the table.

Obviously, one of the things that the team is keenly aware of is you have to earn that seat every day, by actually contributing to the value of the organization.

We have about 400 colleagues on a global basis. It looks like a really huge number, but let me just add that the reason for that is that it is a combined function. Legal and Corporate Affairs includes communications; corporate social responsibility and government relations. A lot of folks wear a couple of hats. I think it's great, because it makes the team more efficient on a global basis, and also is great for professional development or growth. We have twenty-plus locations. I am very proud of the fact, particularly with my background of being a German-Indian who grew up in the Philippines, and now an American citizen as of last week — that we have 30+ nationalities and a real commitment to growing talent at a local basis. So virtually all of our general counsels are born and bred from their local jurisdictions and are now growing with international careers. We have valued relationships with our external law firms, a number of whom are represented today. We also have listings in Belgium, in the U.S., Brazil and Mexico.

What about performance, and what about fostering a culture of performance? Why is measurement of performance important?

I have a few quotes here which I'm sure that many of you who are or have worked with CEOs will recognize. First, what gets measured gets managed; what gets measured gets done; what gets measured gets results; and if you can't measure it, you can't manage it. It's very easy to say, when you're in a support function like Legal, “Well, you know what — we're different. You can't really measure a lot of the stuff that we do; it's qualitative; it's subjective; it needs to be done anyway. It's not like you can't do it because it's complying with the law.” Yes, all of that is true to a certain extent. But what I'd like to share with you today is that if you apply discipline to the process, you're not only more likely to actually get stuff done in a right and efficient way, but it's also a tremendous way to make your team proud, and also to communicate to the business the value that your team is contributing.

So why measure performance of a legal team? Probably the first point is the most important — it's what our business units do every day, not only within our company, but within any company. I love the analogy that our CEO uses from time to time, which is around sports teams. He'll say, “Hang on a minute — sport is something that we all love, right? Sports teams get measured on a daily or a weekly basis by both the teams and their CEOs or the managers. They win, they lose, their statistics are on the table; it's very public. If they lose, the public's calling for changes — this, that, and the other. They probably have the hardest jobs. At least we, within organizations, have a little more time to get things



right.” But all teams, to ensure that they are performing really well and can be proud of their results, should have some way of measuring that performance. I’ve listed again here a number of other reasons why measuring the performance of legal teams is also important; it enables quantitative rather than qualitative assessment. It enables you to benchmark, risk manage, demonstrate how you add value, show return on investment on overhead, especially in lean economic times; support budget requests, allocate work between in-house lawyers and external, and many others.

Very often, people will say, “Yes, but within a legal team, again we’re different — it’s qualitative, and in any event, where do you get the data like a business?” The businesspeople, they get volume data on a daily basis, or they roll up their results. How can a legal team do this? The proposal that I have here, and we use this pretty effectively internally, is there are actually many different ways that you can obtain data to judge performance, and I’ve listed them here: spend, legal provisions, etc. But also do not forget your people. Simple annual or biannual 360 feedback or engagement survey results are a form of data that help you with people management. Use matter management systems, eBilling, monthly reports, detailed budgets, and information

from your outside counsel, as well. I’ve often found that a number of us within the in-house profession don’t partner as efficiently as we can, to actually create a win-win when it comes to obtaining and analyzing data with our external counsel.

Okay, so you’ve got the data. What might be potential metrics within which you can measure your legal team? Again for me, the first point here is the most important — whatever metrics you choose must be relevant to, and measure, what matters most to the business. I’ll come on to this in a moment, but a very effective way of doing this, obviously, is having those key conversations with your business partners, with the CEO, with the management team, identifying what really matters. What can you deliver as a team that is going to change the course, the profitability, the legacy, the history of your organization, and then how do you measure it?

Having said that, I’ve also listed here some of the more traditional measures that fellow general counsel have shared with me. You can always work with consultants in this regard. They can help you identify what might be relevant to your organization, ranging from metrics that relate to controlling costs, to managing risks, to client service, such as client

satisfaction survey results; volume and velocity of legal work. Again, maybe I should have put this at the top — growing people. What is the engagement of the team that you’re working with? What is your annual engagement survey telling you? I’ve listed promotions at the bottom. We have a fairly disciplined annual organization and people review process, where we talk about all the individuals within our team, what are their aspirations, what do they want to do, what is their potential, what is the next step in their development. We are actually measured, then, as leaders, on how we delivered on promotions to which we have committed. What is our turnover rate? Have great people left, and if so, why? If they have, then the leaders should be held to account.

So, turning a little bit more specifically to Anheuser-Busch InBev, we use some, if not all, of the metrics that I’ve shown you on the previous page to measure performance within our organization, and I would say to measure the health of the team. But what we also like to say internally, and based on our ten principles, is that you’ve got to dream big and with discipline in order to achieve our dream of being the best beer company in a better world.

With that, I want to share with you some of the typical targets that I would agree with our Board and with my CEO, on an annual basis. Brito and I would sit down, and we’d say, “Okay, what’s really going to move the needle, Sabine? Your achievement, or not, of these targets,” in addition to all the other metrics which I’d shared with you, “will really determine the value that’s been contributed to the business and how we’re doing as a team.”

Typically my targets on an annual basis would include, for example, dealing with key regulations, either trying to ensure that in a particular jurisdiction, regulation that’s favorable to the business that we’re successful in crafting it or avoiding it.

We have a huge commitment to our global compliance program, and a very disciplined dashboard of compliance items which need



to be achieved on an annual basis. I might have a target that says “95% or more of these will be achieved, and if not, I will lose a percentage of my bonus on an annual basis.” Let me make this clear: these targets are directly linked to a significant part of my compensation, okay?

On disputes we will often make a list of what might be the top five or ten disputes within the organization, and I’ll have a straight target, win-loss. Many of you might think, “How do you have any influence or control over a piece of litigation? First of all, normally, it’s created by the business. How can you be held to account for a successful or not successful outcome on litigation?” Trust me, ten years ago when I first sat with the CEO, I had the same kind of reaction. But the response is, “The business people don’t have control over the weather, when it comes to volume. The folks in Procurement don’t know what commodities are going to do on an annual basis, but it’s their job to try to figure out how the company is going to come to the best place. So why shouldn’t it also be the Legal team’s job?”

You give people tough challenges, and they make great things happen.

These would typically be my targets, and these would be the types of targets that would be cascaded to every member of my team on a global basis. Then we share a common dream to achieve really amazing things. I will also share these targets with our external advisors, so that they will know what we are up against; as an organization, what’s important to us; and how they can work with us to achieve those dreams.

Again, on this slide, I’ve just given you some examples of some of the other typical Legal and Corporate Affairs KPIs that we might have or targets relating to cost, compliance, major litigation, and corporate social responsibility activity.

With my final slides here, I’m going to share with you the discipline which we apply to how we monitor this, and we have a very disciplined planning and performance management process which mirrors exactly what the business unit heads do. We do the same thing within Legal.

Here, I mentioned earlier that we have a huge commitment to promoting responsible drinking within the markets within which we operate. We will have targets with regard to what we want to deliver in relation to that. For example, we will, on a monthly basis, say,

“Okay. We have a certain target,” for example, here in this row, “to provide retailers with I.D. checking material.” We will know, for each of our zones, how are we tracking against that? We look at it on a monthly basis. If it’s red, then you say, “I need to do something about it.” You craft a plan to do so, and you don’t wait until the end of the year to figure out what’s gone wrong.

We also look at “spend” on a monthly basis, in a very disciplined fashion. This would be an example of a rollup that I would see in terms of “spend,” which of the zones are driving it. Also, a detailed breakdown of what’s driving the difference in “spend,” and therefore, what we need to do to address it.

Again, what I love about this is it’s exactly what the business does, on a monthly or weekly basis. It really ensures that we have skin in the game in the same way that our business folks do.

That’s a bit of a whistle-stop tour of how we do it at ABI, and I would just leave you with a slide with some closing thoughts which might be helpful to any of you who would consider or find it helpful to implement similar performance metrics within your teams. Plan for sufficient resources. In particular, it’s really great if you have

the opportunity to have someone from the finance team dedicated, either full- or part-time, to your team, who can help you speak the same language, track and monitor in the same way, identify the data elements that you need, construct the tools and processes, and relevant metrics. The most important thing here is to match the metrics with the business. It's great, because you do what's relevant to them, but also, they realize that your function is actually committed to being part of the business and helping them to drive value, implement your program, conduct periodic revision, communicate the results — not just with the team, to do the right thing, but also with the business. They see where you're adding value, and also they can help you to cost-correct. Finally, never rest on your laurels; don't get defensive; take those results and act on them, to make your team even more high-performing than it was before.

I hope that was helpful. It certainly helped us a lot to be a more efficient team, to be part of the business. I can tell you, it sure as hell makes all of us incredibly proud when we can sit there at the end of the year with a lot of greens and say to Brito, or say to the Board, "Wow, look at what we achieved; look at the big dreams that we achieved."

Thank you very much.

JACK FRIEDMAN: Thank you! In the 800 events that we've done, I don't recall a general counsel speaking so specifically about how their department operates, and how they work with outside counsel and management.

Let me ask a couple of questions. Starting at the top of the company, I assume you have an international board from different countries. Could you give us a sense of the global leadership of the company? Are you dictated by EU law on governance or American law?

SABINE CHALMERS: As I mentioned, we have a number of listings, but the parent company is listed on Euronext, and our headquarters are in Leuven, Belgium. So

“... we believe that as an alcohol beverage producer, we have a special role to play in society, in ensuring that people make the right choices when they choose to drink. Secondly, we hope that we can bring our commitment to efficiency, to what we do on the environmental front, in ensuring that the impact that we have on the environment is either positive or at least is minimized. The third pillar that we focus on is the community, so that everything that we do, we have a positive impact on the communities within which we operate.” — *Sabine Chalmers*

obviously, we have an especial obligation and commitment to compliance from a governance perspective under Belgian law and the EU law to the extent that it is relevant. We are a foreign private issuer in the U.S., as well, and AmBev is listed in Brazil and the U.S. Grupo Modelo is listed in Mexico. We have a number of different jurisdictions that we need to take into account.

JACK FRIEDMAN: Germany is famous for the two-tiered board system and the British are famous for the chair and the CEO having to be different. Is there something that we learned from Europe and Belgium? Is there a difference, in Belgian law vs. American law in corporate governance? How do members of the board personally qualify to be on the board?

SABINE CHALMERS: This is one of the places where it becomes very important and relevant to have, ideally, an international legal team and members of the team internally that have experience in different jurisdictions, but are also partnering with a variety of different law firms. There will be certain nuances. I will just give you one example, which could lead to a very long answer — but definitions of “independence,” when it comes to directors, for example, vary between countries, and ensuring that you are complying with those and not creating inherent conflicts, as well, is one of the key challenges for international general counsel when it comes to governance.

Sometimes there are rules as to how many terms you may have served, and then you lose your independence. Those specifics can vary from country to country. I've got a great team; in fact, I'm looking at one of our experts, here, who helps us ensure that we comply with all the laws under which we operate.

JACK FRIEDMAN: The counsel of one of the largest Hollywood studios gave the following example, and I'd like to get a sense of how you might deal with this issue. He said that a lot of people in business think that the lawyers are there just to create barriers. Their attitude is, “Why can't we just do our business without legal getting in the way?” He said, “I try very hard to help them but someone walks in from Marketing and says, ‘We've told the trade that we're going to open up a new website, and take orders for this product. I was told that I had to have the legal department sign off on it.’” The lawyer said, “I'd be glad to help. When is the launch that you've announced?” He said, “In an hour.” This is a true story. How have you worked to have legal viewed as a positive asset and not a hindrance to the business side?

SABINE CHALMERS: This probably links in very strongly to the opening remarks. What has helped enormously is the Board and management's commitment to ensuring that there are lawyers sitting at every relevant strategic decision-making table within the organization, from the board to

the management committee to what's replicated within the regions or the countries. We have to earn that seat every day; it's not a given right within the organization.

The minute that you're sharing targets with the business, and monitoring those and showing people how you are building plans to achieve things which are important to the growth of the business, and are fostering that sort of conversation, that really helps in understanding each other's issues, and also allows them to see that you are there to help the business grow. Every single lawyer within the organization has a dual reporting line, so it's solid — to me, so that we can maintain independence for compliance reasons — but there is always a dotted mentoring relationship with the head of a business — either a regional president or a business unit head or whatever — so that there is a joint relationship and commitment to a person's growth and development, and also what they're doing within the organization.

All of that really helps to make us more pro-business. Now, having said that, and the one thing that is really important, is also that those people have strength of character, so that it isn't always just saying "yes" to the business. When the moment comes that for various reasons, something can't be done in a particular way or should be done differently, that you have the strength of character to say "no," but you also have the relationship so that it would withstand your saying "no," and that when you do say "no," they know you mean "no."

JACK FRIEDMAN: Some of the topics this morning will be deal-making, such as M&A, antitrust, compliance, and investigations, both domestic, international. I'd like to start the panel with Steve Sunshine of Skadden, who will introduce his topic.

STEVEN SUNSHINE: Jack, first of all, I'm very flattered to be here, and to speak on this worthy occasion. I thought I would take on a bit of the topic of why Sabine is



deserving of world honors; how her company culture works; how she fits into it and makes it work, and at the same time do it in the context of one of the most difficult and challenging antitrust environments which we're now living through. Jack said for that topic, go ahead and take five to seven minutes.

[LAUGHTER]

I will try to do my best in that time period. If you have questions for later, please, Sabine would be happy to answer them.

[LAUGHTER]

Sabine mentioned that the organization is different. One of the things, as outside counsels, we get to work with a lot of different companies, and you can trust Sabine when she says, "Our organization is different." Starting with the GC, the CEO, the CFO, the CMO, do sit at a little table in the middle of a room that's wide open on the second floor. This was very graphically just shown to me when I was actually on a call with Sabine, where we were talking about a meeting with an opposing party in the morning, where the opposing party was being very difficult and Sabine and I were

trying to figure out where she was coming from, and I hear the voice of one of her senior executives, who will go nameless, who is speculating on personal reasons why the woman we were talking to might have been cranky that morning. That was just not my usual corporate America dose. But Sabine fits into that culture and works very well in that culture.

One of the things that is so important about the target and the goal-setting is that it does lead to a corporate management that is united and is intensely focused on achieving the goals. As problems come up, they are deemed to be problems that need to be solved by the management as a whole. If we have a difficult issue with DOJ, it's both rewarding but it's also scary to sit in a meeting with the CEO, the CFO, where everybody is sitting around the table saying, "Okay, we have this problem — how do we handle it?" It is very much a place where people understand the problem, they take all the viewpoints that they can get on that problem, they make the best decision, and they move forward. People don't go back and second-guess old judgments that have already been done. From a lawyer's perspective, it's tremendously liberating, because you just look at the succession of challenges and hurdles that you need to jump.

I think a great demonstration of this is the Modelo transaction. We could talk about this for a long time — and we won't — but I think it's fair to say it was an extremely complex transaction. It was a three-way deal, and it was a deal where there were existing essentially 50/50 relationships, both between ABI and Modelo, but also in the Constellation joint venture. So an extremely difficult set of relationships. We had simultaneous deals that were conditioned on one another. We take these deals to what is the most aggressive, active Department of Justice that's been in business in at least thirty years. I think you'd really have to go back to the 1970s to find a DOJ that was more active. I'll come back in a little bit on what that means for the airlines mergers. But this

was a deal that was done at a time when the DOJ was looking to bring difficult cases, and looking to get onto the front pages, and looking at marquee, high-profile deals.

Now, how did Sabine fit in? The answer to that was, she was right in the middle of it. Sabine went to every DOJ meeting; she was at meetings with the economists, helping to shape the analysis as it was put forward; she was with the business people. When we sat down in these discussions where the CEO and the CFO were present, about how do we handle a legal issue, there was one person in the room who was fully informed about all the legal issues. She knew the business cold; and in that fashion, there is some real management provided to the business, and the ability to make the right decisions, the ability to translate the tough issues to the CEOs, and to help chart the right course going forward.

Now in that deal, we had a set of deal structures that we had presented to DOJ. We had a long engagement with DOJ. If you read the Sunday *New York Times* article about the U.S. Air/American Airlines deal — there was something of a pattern that has developed. We were the first; the new head of the Antitrust Division, Bill Baer, actually unrecused himself and became available ten days before the end of our investigation. We were the first emerging parties that he interacted with. But we had a deal that was presented to him, and then we had a challenge to our deal on January 29th. In typical ABI fashion, all of the key stakeholders at ABI got together and said, “Okay, folks — we have a problem; we have an issue; how are we going to address that issue?” Two weeks later, on February 13th, there was a revised set of transactions that was announced. At that time, ABI and Constellation, and Modelo, for that matter, said, “These transactions solve DOJ’s problems. With these transactions, we are confident that the Department of Justice’s lawsuit will be settled or dropped.”

That happened in a two-week time period. I would submit to you that it takes an

organization like ABI, and a general counsel like Sabine, to be able to get that done in that two-week time period.

Now, DOJ did take our settlement; they kicked the tires on it quite a bit — maybe it was not the result they were looking for, but it was the result that they got. The deal was able to close, and was done in 2013.

Now, I also have spent some time talking to people, thinking about the U.S. Air/American Airlines deal. There actually are a lot of similarities in terms of the process, and for this, I’m really just relying on things that have been said publicly and — for instance, the article in the *New York Times* on Sunday about this deal. There was a similar playbook in terms of: it was a very high-profile deal; there was apparent high concentration; there was a lawsuit that was vigorously thumped by the Department of Justice, saying, “We have problems with this transaction; they are problems that probably can’t be solved.” That deal went on; it got to really the eve of the trial — I think trial was supposed to start next week, in fact, in that matter. Then, just last week, a settlement was reached that allowed the deal to go forward.

Part of what we do and what companies are living in now is when you’re doing something as important as a major transaction, what is the antitrust paradigm that you’re living in, and can you adjust to it? We’ve seen a shift in that paradigm, in that the Department of Justice seems much more willing to sue to stop a deal. In the old days — and by old days, I mean 2011 and before — in the old days when dealing with DOJ, you would work the process through a long investigation; you would explore in detail whether there was any settlement that was possible; and then if no settlement was possible, you would go to litigation. If the deal could withstand the litigation, the litigation would proceed and one of the two sides would win. More often than not, the DOJ lost, but that’s another matter. Or maybe it’s not, in terms of why they’re settling. The new



paradigm seems to be a much earlier lawsuit. That was true in AT&T/T-Mobile; that was true in ABI/Modelo; that was true in the U.S. Air and the American transaction. It takes a different set of reactions and a company with the courage of its convictions to get those transactions done after the DOJ’s brought a lawsuit.

So, I’ll stop there.

JACK FRIEDMAN: Let me ask you a quick question. Is the underlying theme of these cases you mentioned the government’s concern that the combined entity will have a larger market share which will then have too much control over prices?

STEVEN SUNSHINE: Yes, of course, that’s the basic concern. I think the best shorthand that we use is not market shares; anybody who’s ever heard about the Herfindahl Hirschman Index — forget it — nobody uses it, except for reporters.

The best way to really think about mergers is how many players are there in the market before the merger, and how many are in after the merger. So is it five going to four, four going to three, or three going to two? The old wisdom was essentially that if you were doing a two-to-one or a three-to-two, you had a good chance of getting challenged; four-to-three, you know, you might

have some troubles, but you probably could get those through. A five-to-four was no problem. What we've seen recently, besides the trend towards more aggressive litigation, which I already discussed, is now that those four-to-threes are much more likely to be challenged than they were in previous administrations. The U.S. Air/American Airlines transaction — depending on how you describe it — would be a four-to-three transaction; it would be a transaction that would get challenged.

Now, I don't want to make it seem like now you at home can do antitrust analysis — there is a little nuance to what's really a four-to-three!

[LAUGHTER]

JACK FRIEDMAN: There is a saying where a surgeon is asked, "Why do you lecture so much about healthy living?" He said that, "No matter how much I lecture, I know it won't make that much difference in demand for my services!" So you can safely be assured that your business will continue very well!

STEVEN SUNSHINE: Thank you!

JACK FRIEDMAN: Thank you! The next speaker is Frank Aquila of Sullivan & Cromwell.

FRANK AQUILA: Thanks, Jack. I am delighted to be here today to honor Sabine Chalmers. Sabine and I have worked together since 1997. I think, Sabine, you were still a trainee back then. This is truly a fitting honor for Sabine. Sabine is often written about and talked about as one of today's cutting-edge general counsels, chief legal officers.

The reality is, and I have been telling people this about Sabine for some time, even back in 1997, when Sabine was a very young in-house lawyer, many of the things that she is doing today, many of the things she is talking about today, were the things that she was — I don't want to say "experimenting"



with — focused on. Sabine was not following the latest trend, her approach is really part of her persona. I said a minute ago that we've been working with each other during this period of time, because it really has been a partnering process from *Day One*. Inside/outside counsel partnering is very much the hallmark of working with Sabine. The fact that she builds teams that are very integrated, it is more than a routine legal exercise, it also is very much a business-oriented, commercial exercise, whatever the project might be. We've worked together not only on acquisitions and divestitures, but we've worked together on joint ventures; we've worked together on commercial contracts. We've worked together even on litigations and arbitrations, so I have seen the full range of Sabine's legal experiences. As a consequence, it is extremely appropriate and timely that we are all here today to honor her.

The topic that I'm going to talk about is due diligence in cross-border transactions. I selected this topic for a variety of reasons. One of which is, as we all know, the two most important factors for the success of any M&A transaction is ultimately due diligence and post-closing integration. In most transactions, we, as lawyers, are going to be

most challenged and most responsible for the due diligence. In terms of the type of approach that Sabine takes today, and has always taken, due diligence really fits that very well. It's also important because for a long period of time — certainly when I was starting out in the early '80s and into the '90s, due diligence was thought of very much as a "securities transaction — check the box" type of due diligence. You read the minutes; you went through the process. It was essentially a disclosure oriented process. Today — and this is something that Sabine has always recognized — what you're looking for in due diligence is, what makes sense from a commercial, as well as legal, perspective. How do you structure the transaction? How do you validate the assumptions that you're doing — whether or not you should do the transaction? Does the deal have the value that the business team expects to achieve? Are there hidden costs or liabilities? These are the type of things that lawyers didn't always think about when they were doing due diligence, but that's certainly what the business people are going to expect. Also, what's important about due diligence is, it's important to have an integrated process, and I'll talk about that in a minute.

One of the things that lawyers tend not to do — and it's something that Sabine has always done — is really scoping out the project. It's not just "take the due diligence checklist from the last transaction"; it's really looking at what is unique and important about the transaction that we have in front of us. There are certain transactions; if you're doing a public company deal, you know that whatever due diligence that you're going to do has to be sufficient, because when you close, you're not going to have recourse against the public company shareholders. In a transaction where you're acquiring a division or a subsidiary from a public company, that might be a different set of facts, because you're probably going to get indemnified. Another situation is going to be if you acquire a company from the founder or an entrepreneur, you might be able to put aside a certain portion of the

purchase price in escrow to cover post-closing indemnity claims. So there are different transactions, and you have to think about the facts and circumstances of each.

Also, you want to think about, and probably talk about with the business people, what sort of work product are you going to have? Do you just want a list of issues? Do you want the documents summarized? How you approach it is going to be important not just for the due diligence process itself, but also, how is that going to be used post-closing? Are these summaries going to be something that you're going to utilize going forward? Is this going to be something that's going to go into the company's general contract system if you do the transaction? Is it going to be something that you're going to utilize in the post-closing integration process?

Also, there is always the important topic of materiality. Sometimes you may be doing a transaction that has a fairly high value, but the decision about going ahead or not going ahead might be very slim, because the value to the company — the value that's being created — might be small, so the materiality that you're looking for is going to be relatively small. So you're going to look at all these things.

Another really important lesson that I've learned in large part from Sabine, is putting together the right sort of team. It needs to be an internal and external team. One of the things that you find out as outside counsel is that even if you know how to craft an M&A transaction, you may not be an expert in all the different substantive topics. I know the brewing business pretty well, because I've done a lot of transactions in the sector, but as much as I may know about the sector, the truth is that I'm not in that business every day. So I need to work with, and my team needs to work with, people who are inside the business — both the in-house legal team, as well as the business people that are inside the business. In the same way, while Sullivan & Cromwell

might have a broad range of expertise, we're not a 3,000-person law firm; we need to work with local counsel; we need to work with firms that have particular expertise in particular areas.

So pulling that team together is extremely important. Then, once we've done that, we need to make sure that the team is coordinated and has the right level of integration.

What do I mean by that? We need to make sure that we're not all looking at the same things and ignoring something else. We need to make sure that once we've discovered a problem, that we're actually acting on that problem; that we're making sure that this liability that we identified, that we let the people within the business know about that liability so they can take it into account when they're deciding whether or not to go forward with the transaction; whether or not we need to have an escrow account; whether we want to structure it a different way in dealing with it.

One of the things I do want to say is it's really important to remember that when you're acquiring a potential competitor or a competitor, that you do call in somebody like Steve, your antitrust counsel, and make sure that you're not violating the antitrust laws (or the competition laws if you're outside the United States), because in this period of aggressive enforcement, one of the things that the antitrust regulators will often do is try to put you in a corner by taking the view that somehow, in the process, you either colluded with the target company or that between signing and closing, that somehow you've gun-jumped — that you've shared too much information with the potential competitor before they've cleared that transaction.

The last thing I'm going to mention — and this is something that Nancy will pick up on in a few minutes — particularly when you are working on transactions outside the United States — and even when you're acquiring a company inside the United



States that has activities outside the U.S. — and that is, you need to be very focused on how that business is conducted. FCPA is an area of extreme importance. It's one that if the company you're acquiring is not an SEC registrant and is not otherwise required to comply with the FCPA — by the way, all OECD countries have laws similar to the FCPA — that doesn't mean that the company you're acquiring is necessarily required to follow those anti-fraud laws. If you think about all these, and just broad principles, you're going to wind up with a good due diligence process.

JACK FRIEDMAN: Thank you. I'd like to introduce Nancy Kestenbaum of Covington & Burling. FCPA existed more than twenty years ago, although it wasn't as famous as it is now. We had a program then with three general counsel. The case example was this: the general counsel in the U.S. got a notice from Southeast Asia operations saying that the local police department would be delighted to investigate piracy of its intellectual property. They don't have the manpower to do it. If the police chief could be paid a certain amount of money, he could use the money to hire additional staff. What should we do?

[LAUGHTER]

NANCY KESTENBAUM: Good morning. It's a pleasure and an honor to be here today to honor Sabine. As Jack said, I'm Nancy Kestenbaum from Covington & Burling, and I'm a white collar defense lawyer, which means I represent companies, boards of companies and individuals in government investigations, whether criminal or SEC or other civil enforcement or internal investigations. So my clients typically have, almost to a person, the same thing to say to me towards the end of a matter. They say, "Nancy, please don't take this personally, but I hope that I never see you again!" What I say to companies and to boards is one way to try and ensure that you won't see me again, or that it won't be too painful if you do, is to have an effective compliance program. These days, that means that you'll hopefully have a program that will prevent misconduct. You can't prevent all misconduct — humans are humans, and regulators are aggressive — but if regulators do come and investigate you, you want to be able to have something that you can point to that was designed maximally not to be perfect and prevent all misconduct, but designed maximally to prevent misconduct to the best extent possible or to detect that misconduct if it occurs. They look at lots of different hallmarks; they look at things like the tone at the top; they look at your written policies and programs; they look at training; they look at controls; they look at whether you're revising your program. A lot of what Sabine had to say dovetails nicely with that.

First of all, they want to see a program that's based on the risk of that company. Well, how do the lawyers know what the risk of that company is? What better way for them to know than if they're sitting there, day in, day out, with the business. That's how they're going to really know the risks that *their* company faces, and how they design a compliance program to address those risks?

The same thing the regulators want to know, that you don't write a program and then put it on the shelf. If you ever have an investigation, you whip it out and say, "See, we had a program." They want to see



that it's not just a paper program, but that it's a living, breathing document with measurements. Measuring the program on an ongoing basis, not just when the regulators are there, but day in, day out, and be able to say, "Look, we refined our program; we've had an issue; we refined our program to address that issue." That sounds like a terrific thing to be able to show regulators if you ever get in their crosshairs.

Now, before I was at Covington, I was for many years a federal prosecutor here at the U.S. Attorney's office in the Southern District of New York. Back in those days, in the '90s or early 2000s — the good old days — most of what we did, even in that district, where we thought the world was our venue, most of the investigations that we handled were still domestic investigations. Most of the evidence was based domestically; most of the statutes that we were enforcing were domestic-oriented statutes. There were some notable exceptions, but especially in the white collar area, it was principally domestic investigations.

No longer. These days, investigations very, very frequently are international in their nature, and the companies are all over the world. The government has focused its resources in investigating and prosecuting

statutes which, by their very nature, are international. As Frank mentioned, the most obvious one that comes to mind is the vigorous enforcement of the Foreign Corrupt Practices Act — the FCPA — and unless you've been under a rock, you know that DOJ, the SEC, have been extremely vigorous in their enforcement of that statute in the past several years. What's interesting is, it obviously has led to multi-million-dollar, hundreds of million-dollar resolutions against companies, and charges, as well, against individuals. One thing that's interesting is, if you look at most of the big resolutions of the FCPA, they've principally been against foreign companies, not U.S.-based companies — and the most notable would be something like Siemens, or more recently, the settlement involving French company Total.

So, as Frank said, FCPA is here to stay; there's every reason to think it's going to be vigorously enforced going forward. Both DOJ and the SEC have units with prosecutors just dedicated to investigating it and prosecuting that statute.

But the FCPA, even though it's perhaps the most well-known, is not the only area in which U.S. regulators have been vigorously enforcing international laws. Another area is in the area of sanctions and trade control laws. You see the sanctions area, cases like the case against HSBC, in which they settled for \$1.9 billion and resolved that case through a deferred prosecution agreement in the past year. In the export control area, you see vigorous enforcement of regulations such as State Department regulations, such as International Trafficking, Arms Regulations (ITAR), or Commerce Department regulations.

For example, last year, United Technologies' subsidiary had to plead guilty to exporting certain of their products to China for use by the Chinese military.

Other areas in which you see vigorous enforcement of statutes with a principal external component is in the money laundering area.

As I mentioned, as to HSBC, cross-border tax evasion, and of course, cartel enforcement, that's something that has actually long been an area of international enforcement, both U.S. and abroad, and you certainly see that being vigorously enforced by U.S. and foreign prosecutors to this day. The U.S. has been focusing their sights on international issues, and foreign regulators have increasingly been getting involved in terms of passing and vigorously enforcing their own statutes. In the anti-corruption area, as Frank mentioned, many nations have anti-corruption statutes and are beginning to enforce them more vigorously than ever before. In scandals such as Libor, you see U.S., U.K., and Swiss regulators getting involved. The *New York Times* on Friday had an article on the front page about the Foreign Currency Exchange manipulation, or FOREX investigation, and they mentioned that the U.S., U.K., EU, Switzerland and Hong Kong were all investigating that.

In order to make sure that companies these days try to position themselves in the best way possible, they need to have an effective compliance program in an area of a company that's active in its acquisitions. And as Frank said, making sure that the due diligence that you can do pre-acquisition is as vigorous as possible. Even more importantly, post-acquisition, making sure that the integration of the new company into the old company's compliance regime — taking that as seriously as you would take, say, integrating accounting systems; which, of course, you would take seriously. Doing that with respect to compliance is essential.

JACK FRIEDMAN: Thank you. Nancy, I'd like to ask you a question. I read in *The Wall Street Journal* that Siemens, in doing its investigation, was told by its Indian subsidiary, "We're not wholly owned; we're not giving you information; we're not making our people available, because it's against Indian law." Then the people in Brazil more or less made the same point. Whether it's true or not, I don't know. My question is this: when a company is trying

to investigate and take corrective action, just because you own a subsidiary doesn't mean that it won't find excuses or be limited in what they share with their parent. Is that sometimes the real problem?

NANCY KESTENBAUM: Absolutely. Laws and rules that apply to handling an investigation in the U.S., are not the same outside. That applies to data, and it applies to employees.

With respect to data, countries outside of the United States have very different data privacy and protection laws. In the United States, you have a subpoena, you're doing an internal investigation — if material resides on a company's work computer, you go grab it and there's no issue with that; there's usually no expectation of privacy.

It is very different outside the United States. Outside the United States, for example, in the EU and many EU countries, even if an employee is using their work computer, you can't just go in and grab their information. If there is what they consider personal data on that — which is basically identifying who the individual is — sometimes, you have to tread very carefully about what you even collect. If you want to bring the information to the United States, you have to be extremely careful, because you could actually be arrested in certain countries for a company bringing its own data into the United States, even if it's in response to, say, a DOJ subpoena. So you have to work very carefully with either local counsel or counsel that knows the local data privacy and protection laws.

The same situation exists with handling employees. In the United States, for most companies, they have an expectation — it's often written in their code of conduct — that you must cooperate with a company investigation. If you don't, there are serious ramifications. Outside of the United States — EU, for example — you can't make employees sit down and be interviewed. In many countries, you either can't, or you



have to provide them with representation. If you find misconduct by the employees, you can't just say, "You're fired," like you might with an at-will employee in this country; it's very, very difficult. If you're dealing with evidence — that is, documents or witnesses — outside the United States, you really have to have people who are steeped in the local laws that affect those issues.

JACK FRIEDMAN: If I was the general counsel, pulling my advisors in who told me all the complications about this investigation in 180 countries, it would give me a headache.

Before we go to our roundtable discussion, we have one more important speaker, and that's Craig Thorburn of Blakes. He's come from Canada to join us for this occasion.

CRAIG THORBURN: Thank you, Jack. It is a real honor to be a part of this panel, here to acknowledge the great achievement of Sabine Chalmers in being granted world recognition as a Distinguished General Counsel. In reflecting on that achievement, and what I was going to say today, I harkened back to 1995. In that year, Interbrew — as Anheuser-Busch InBev was then called — completed its first large acquisition by

acquiring leading Canadian brewer Labatt for approximately Cdn.\$4 billion. The acquisition was a huge move for Interbrew, as it essentially doubled its size and provided a platform to grow by acquisition to become the global brewing giant it is today. At that time, it was a private, family-owned business controlled by four Belgian families that had been brewing beer for hundreds of years. Interbrew back then had a legal department of four. The lead internal counsel was a talented lawyer who was secretary of the board, but he did not have “general counsel” in his title. This was quite common even in large Belgian and other European companies of the time. He fought mightily to integrate the legal function into the company as a meaningful pillar of that business, with considerable success by the end of his tenure.

From those origins, and under the leadership of Sabine, not only has the legal team grown remarkably in size and depth of expertise at the head office and in operations around the globe, the legal function from my perspective has also gained an extremely high profile at the senior management table. It provides business-oriented legal solutions and demands the same from the external legal counsel it instructs. The Anheuser-Busch InBev legal team has shown the way, first to other big European companies and latterly to global giants, about how to integrate the legal function into the management stream in a way that makes a big difference in tangible business results. And for its size compared to sales and other large businesses, the A-B InBev team is lean and efficient. We have seen today and heard the reactions to her slides about her targets, her role at the management table. Yes, it’s hard-fought-for, but certainly it is well-deserved. What I see today – the evolution almost twenty years later of the legal department – is a legal team that has evolved into one of the most sophisticated and talented of any large company. As external counsel, it is a real delight to deal with and be challenged by highly sophisticated lawyers.



That leads me to the main topic about which I would like to speak today; namely, how outside counsel can help a high-performance legal team and chief legal officer be the very best and constantly enhance the image of the legal function in order to maximize their effectiveness at the senior management table.

I believe that, beyond a knowledge of local laws, the main thing external counsel can do is provide context to outside counsel in two distinct ways.

The first is historical legal context. In-house counsel, particularly in a global company like Anheuser-Busch InBev, deal in the morning with issues in Argentina, China and the Ukraine, and in the afternoon with the U.K., Korea and Canada. It is a veritable smorgasbord of different legal regimes. After all, alcohol – beer – is probably *the* most highly regulated consumer product in every country in which A-B InBev operates. The local legal regimes governing alcohol are typically highly arcane, with remarkable differences from jurisdiction to jurisdiction, even within countries from state to state or province to province. By providing information not only on the laws as they exist today, but also by outlining the historical underpinnings for why the laws are the way they are, external counsel can provide deeper perspective and understanding.

To take the Canadian example, the legal regime for the regulation of alcohol today stems all the way back to the puritanical suspicion of alcohol. So you can only buy alcohol in a government-owned store, except in Quebec, where you can buy it from the grocery store. That fact itself reflects very deep-seated differences in Canada between the more puritanical approach to the regulation of alcohol in English-speaking Canada and the more liberal approach to the regulation of alcohol in French-speaking Quebec, whose legal regime is still predicated on the Napoleonic Code.

In Ontario, Canada’s largest province, there is a minimum pricing policy; alcohol is something that is not to be over-consumed, so it should not be too cheap. The way in which these very complicated systems have evolved over time and how they are changing now, those are valuable contexts that external counsel can bring to a highly sophisticated legal team like the one at Anheuser-Busch InBev to provide it with the tools to give advice and input to business solutions at the senior management table.

The second kind of context external counsel can contribute is the somewhat more nebulous notion of social context. Canada sometimes has its special challenges, because a lot of people assume that because we speak English and we share a continent with the United States, we must be the same. However, we can be very different in very specific and meaningful ways. It is often said that Canada and the United States are two countries that are separated by a common language.

[LAUGHTER]

This example comes to mind. We were sitting in very tense negotiations in a Toronto boardroom with a team of Americans from a hedge fund in New York on one side of the table and the board of a large Canadian public company comprised of very senior businesspeople. I was the counsel sitting watching what was unfolding. The Americans were very

much on the attack; they were accusing the Canadian management team and the directors of doing terrible things. The Canadians were stoic; they essentially said not a word. This went on for about twenty minutes, at which point I said, “Okay, I just want to make sure that we really understand what is going on here. The Americans, you think that by making all these nasty accusations and hearing no protest from the Canadians, that the Canadians are basically acknowledging that you are right.” The Americans said, “Yes.” Then I said, “The stoic Canadians, you are sitting here thinking, ‘We did not stoop even to acknowledge the falsehoods, which means we are denying everything!’” The Canadians said, “Yes.” So here we had this incredible divergence of experience that, by bringing social context to bear, external counsel can help people understand differences in culture and practice and prevent misunderstandings.

A second example is enforcement policies. In Canada, there is often a very different approach by government officials to enforcement. In the United States, my understanding, from a lot of years of third-party observation, is that if there is a statute and it says something, and a company violates what it says, chances are pretty good, if the regulatory authorities find out about it, that there will be some kind of response or administrative action. In Canada, that is not quite so true; in many areas, practical experience is clear that a lot more administrative discretion gets exercised and enforcement alternatives falling short of fines or penalties are more common. This is very difficult for people from American law enforcement experiences to understand, even in the face of many examples in which regulatory authorities have acted in a certain way in case after case. So this is another example of how outside legal counsel can help bring social context to something that is in English and in similar words in a statute or regulation, but that has a different history of being dealt with.

In these ways, external legal counsel can help the highly sophisticated legal team, like the one that Sabine Chalmers has created at Anheuser-Busch InBev, maximize its

influence at the senior management table. Again, I want to give my congratulations to Sabine for her well-deserved achievement in being granted this honor.

JACK FRIEDMAN: Thank you. Sabine, you’ve been through some very major M&A transactions, important not only because of their size, but also because of their complexity and multinational aspects. When your board or your CEO says, “We want to do this transaction,” what do you have to do to put together the large team? Do you centralize it in corporate headquarters, or split it up? Could you talk about the initial challenges for the general counsel in a deal like that?

SABINE CHALMERS: I’ll try to make the answer as succinct as possible. Obviously, each transaction is different. But if I were to identify some of the similarities, I think the key piece that it begins with, and that I’m very committed to and we try to work quite well at the company, is that there is always a core team, a core cross-functional team that’s established. It would normally include the CFO who has mergers and acquisitions reporting in to him; the head of M&A is one of his reports; and myself, together with the CEO, that would represent the core business team that maps it out. One of the things that we’ve learned over time is that we ensure that the core team, including the general counsel – and that’s replicated at a regional level – is constituted at the start of the project. It isn’t that the lawyers are brought halfway in, halfway through, when it’s like, “There might be some antitrust issues here,” or whatever, but at the very start of the project. That core team communicates fully with each other. They are in all of the relevant meetings. That’s the first thing, and that helps you to know what all the issues are – business, as well as legal – that are important to the business; and also to figure out what is the best team to construct.

The second piece, then, is the choice of advisors. Obviously, you need the right quality of advisors. The best way to figure that out over time is by having longevity



of relationships, which we aim for with our different law firms. Also – and this is going to be an interesting one – you need the right chemistry of individuals as well. Let me put it bluntly – I’m always quite frank – there might be a particular foreign acquisition where a hard-charging U.S. or New York lawyer might not be the right fit. Therefore, are you better placed having a local lawyer in a jurisdiction, or a combination, or perhaps going for a European law firm? It’s those types of things that a general counsel has to think about.

We, in terms of the internal team, have quite a lean head office team, which we then supplement with folks in the regions. I try to involve every single member of my team at the head office in some capacity or another, (1) because you need all hands on deck, and (2) because it’s also great for development.

There’s one thing I just have to say. Earlier on, when Frank was talking and Steve, as well, about me being at the center of everything that was going on, and I was actually thinking back and thinking, “No.” Actually, all those late hours and stuff, it was *my team* that was there 24/7 and who were in the middle of it all, and would often say to me, “Okay, we’re going to stay here now and

finish this off, and you go home and sleep, because you're the one that's going to have to go up against it with the board or the CEO to explain the various issues." So, again, another thing I would say is, getting your team involved and communicating to them fully from the outset.

The final point that I would make is, for me, an M&A transaction — no matter how big or small — it's just like anything else you do; project management is critical. Treat it like a project, with all the right timelines, the right disciplines, and most importantly, checkpoints at every step of the way, where *all* the members of the team, be they internal, external, legal, business, finance, communications — because there's so many different aspects of it — are getting all the information real-time, are involved in figuring out what are their bits to do, and also what are their responsibilities. One of the things I would say that we try to do, and we set up from day one — notwithstanding the concerns around confidentiality — is that weekly or that daily call at the end of the day, where everyone gets together and you say, "Okay, this is what's happening real-time, and then what's the action log, who's doing what."

JACK FRIEDMAN: Who are some of the other types of other outside advisors such as investment bankers or accountants that would be drawn in early?

SABINE CHALMERS: I would say that the core disciplines that we normally work with and form that core team would be definitely the investment bankers, and we have longevity of relationships there. We also have communications experts. Knowing that from day one, you have to have a communication plan, either in the event of a leak or because you're trying to proactively manage your reputation around a particular project or something that you're doing. We definitely have the accountants and tax advisors. I've learned this the hard way — that tax structure can be such a key driver of the value of a transaction, and if you're suddenly saying halfway through, "We forgot

"We have completely open-plan offices, to foster teamwork and communication. For example, I actually sit at a table with the rest of the management team, and within a couple of feet from me is our Chief Financial Officer; across the table is the CEO; Chief Marketing Officer, and Chief People Officer and so on. All of our teams across the globe are replicated in the same fashion." — *Sabine Chalmers*

that," it can be very challenging. I would also say that in terms, particularly of foreign acquisitions, your external lawyers can help you enormously in trying to understand the local landscape. But we also might get public affairs or public relations folks involved, to help us understand what's going on politically or economically.

I'm a big believer in getting big teams to work together — of the right people, with the right expertise and the right chemistry — and keeping them up to speed on what's going on, because that's where the magic happens.

JACK FRIEDMAN: At one of our programs with Goldman Sachs, a partner commented, "This might sound self-serving, but I don't mean it that way. You can't imagine how often it is that you agree on things like the price and all the economic terms, and you have to, as an advisor, mediate between the CEOs of the two companies; whether it's which one is going to take over as the chairman or something else. Personalities play a larger role in M&A deals than people realize." Anybody on the panel is welcome to comment on that.

FRANK AQUILA: You're right, Jack. Just in relation to that, the so-called social issues obviously take up a good bit of time, particularly in public company deals.

Going back to your initial question about who plays what role, a lot of times in transactions outside of the U.S. or other major jurisdictions, the big question is going to be, "Who's going to play the leading role?" Particularly

if you have a lot of law firms involved. It's important, because let's be blunt about it: the major law firms in the magic circle firms, if we had our druthers, we would do the deal on our forum and under New York or U.K. law every single time. The reality is, that's not always the best thing for the client; that's not always the right way to do it.

One of the things that you have to look at when you are international counsel, if you will, is what jurisdiction are you in? How sophisticated is that jurisdiction? Is it a jurisdiction where they really enforce contracts? Things like that. You also have to look at the quality of the counsel that you have. Craig and I have worked together a lot. If I'm working with Craig and it makes sense for Craig and Blakes to take the leading role and the contract to be under Canadian law, then I'm totally comfortable. If it's a small country somewhere that corporate and contract law are not that well developed, then I might not have the same level of comfort. It's important that we, as New York lawyers, sometimes be willing to step back and play a more advisory role rather than the leading role.

JACK FRIEDMAN: I'll ask this of Steve, I'm sure you would like to be brought in as early as possible?

STEVEN SUNSHINE: Or earlier!

[LAUGHTER]

JACK FRIEDMAN: There was a commentator here in New York who heard that in Silicon Valley, they do deals really fast.

He said, “They think it’s fast; you should see New York time.”

STEVEN SUNSHINE: In the kind of work that we do, and in the transactions that we typically get involved with, we’re dealing with very sophisticated companies. When antitrust is a key issue, in the vast majority of cases, we are brought in up front, and in fact, there are many transactions where we are brought in before anybody else is, because a GC or a CEO will say, “I’m thinking about this deal, but I really want to get your impression.”

JACK FRIEDMAN: In other words, why bother doing it if it’s going to be killed.

STEVEN SUNSHINE: Yes, it’s the gating item. That happens quite frequently on a big transaction, and frankly, it’s very smart, because we sit down and figure it out. We see what’s possible; we see what structure it could take. The other thing that really helps — and I know that this is a privileged conversation here.

NANCY KESTENBAUM: A hundred fifty thousand people for this event’s transcript!

STEVEN SUNSHINE: Exactly! They’re all clients!

[LAUGHTER]

The evidentiary record that gets built from that first day on is consistent with the overall message or the overall theme.

I have two jobs. One is a counselor, which is to tell us what’s going to happen; and the other is an advocate. If somebody comes to me and says, “We just signed up this deal and there may be an antitrust issue,” my response is, “I’ll go fight for it.” But they’ve had no opportunity to have that counseling piece as part of the transaction. Not surprisingly, the clients are so sophisticated, they can understand that there are these issues, and that they are better served piecing it together. That goes back to Sabine’s comment about team-building. It’s very easy to build a big team, because there are a



lot of experts out there around the world. Look at all of us. You can put a big team of experts together. The question is, how do you manage them? How do you get them talking to one another, so you can balance a Mexican tax problem with a Canadian foreign investment issue with a U.S. antitrust issue, and achieve the optimal solution. It’s in the project management where everybody understands the key issues and how to balance them and work them on a day-to-day basis. That’s what really distinguishes a good transaction from a bad transaction. That has to be done by a core team, which is usually led by the GC.

JACK FRIEDMAN: Craig, when people who have not experienced investing in Canada come to you for their first deal, what are some of the things they ask you? For example, “What’s the difference between Toronto and Montreal?”

CRAIG THORBURN: Well, there are some key differences and many similarities. Toronto likes to think of itself as the Little Apple. Ontario is an English-speaking common law jurisdiction and shares many similarities with New York law and practice, with some important differences of course. Montreal is very much a European city at heart, with French as its main language, but with everyone in professional circles speaking perfect English as well. Quebec is a civil law jurisdiction with the Napoleonic Code at its root, upon which has been grafted a layer of English-speaking business practices.

Attitudes to government and regulation can be strikingly different between the two cities. Let me put it this way. If you are doing something in Montreal, it is important to deal with a law firm that has a strong Montreal presence. Doing things in Quebec from Toronto can lead to difficulties very quickly.

JACK FRIEDMAN: Nancy, I wanted to ask you one other quick question. Is the environment now that C-suites and Boards are getting more scared? Is it just an American phenomenon, or is it the same around the world?

NANCY KESTENBAUM: I don’t know if they’re getting scared. Before an investigation, I hope they’re not getting scared, but I hope they’re thinking about compliance. These days with big companies, certain big U.S.-based companies, for the most part, they are. The smaller, mid-sized companies are less so. Usually, they’re more focused on growth and less focused on compliance, unless and until they have a problem. Once companies have a problem, it really varies whether each person is out there saying, “Do I need my own counsel” or whether company counsel can sufficiently represent the interests of both the company, the board and the individuals.

I did want to hark to the point that others were talking about, whether it was Craig or Steve, about “involve me earlier than as soon as possible” in the deal context, because often, people think that the compliance due diligence is a separate afterthought. I



would say, “Involve me even earlier than as soon as possible.” It doesn’t have to be the separate aspect of due diligence; when the commercial teams are reviewing things like commercial contracts and relationships with third parties, if they’re part of an integrated team that Sabine described, they should have, as one of the things that they’re looking out for, compliance risks. Doing that integrated team approach means that all the different disciplines have the 360-degree picture, rather than just their silo view when they’re heading into that process.

JACK FRIEDMAN: I’d like to ask Sabine a few questions about the customer side of the business. In terms of customers, what does a company like yours do in order to figure out what customers want? You have a longstanding product in a country, but you notice tastes are changing, or the younger generation likes something more bitter or sweeter. Do you have customer panels?

SABINE CHALMERS: The main thing is that my team and I are out in the trade, ensuring that we are tasting our beers and interacting!

[LAUGHTER]

We’re consumers. Seriously, on that point as well as a consumer products company, consumers are at the heart of everything that we do. If they are not choosing our products, then we don’t have a reason to be here. There is incredible focus on continuing to understand, first of all, “How are the brands that we own doing? How are they resonating with consumers?” We have all sorts of ongoing testing to figure out if our brands are preferred brands.

Yes, absolutely, we spend a lot of time trying to understand and monitor trends, to ensure that what we do around innovation with our products is meeting what the ever-changing consumer wants and needs.

JACK FRIEDMAN: Two countries or even two cities in the same country might have different preferences. It’s amazing, the variety of choices available.

SABINE CHALMERS: Yes, and obviously, the world is globalizing; demographics are changing all the time. We like to think

that with over 200 brands and a wonderful innovation machine, we can bring people together everywhere.

JACK FRIEDMAN: What are some of the challenges the company has in trying to maintain the reputation of the company and the brands? Obviously, there are social media, and possibly piracy problems, where people try to use your name on their lower-quality beer. How do you deal with these IP and reputational issues?

SABINE CHALMERS: I, together with my team, we have the privilege, which is kind of exciting, but it’s also the responsibility of being some of the guardians of reputation of the company. You look at some of the legal issues you might face around compliance or intellectual property or otherwise, which have a significant impact on the reputation of the company if they’re not handled properly. Also the enormous work that the corporate affairs team does in terms of interactions with the media around communications, or what we do around corporate social responsibility or stakeholder engagement. It’s all there, that we’re the facilitators that have to help and support the company to get it right.

First and foremost, we probably face all the same challenges that every other company, particularly consumer products companies, face in this space, be it IP, concerns around ensuring the quality of your product, from product recalls to other things to all the challenges of social media. I always think the guiding principle is that it’s not the legal team that controls that; it helps to facilitate that. Where it starts and ends is the tone from the top. Our CEO is very, very consistent in making it clear that the job of fostering and protecting the reputation of the company is in the hands of all 150,000 employees. When it comes to quality, we can help on advising on what the laws are, but it’s just as much a partnership with the folks that actually make the product within the breweries, or who help to distribute the

product within the marketplace. We're just there to help support the folks to get it right, when things happen.

JACK FRIEDMAN: What are some of the social causes, charities, or *pro bono* work that the company has adopted?

SABINE CHALMERS: As I mentioned earlier, we believe that we have a very balanced dream and that it's not just about being the best and most profitable and efficient beer company, but actually within the context of a better world. The three pillars that we focus on are responsible drinking, the environment, and the community. We have a citizenship report that you can access online and that highlights all the good works of the company on a global basis, but let me give you one example, which is the responsible drinking pillar that we focus on. For me, the team is very heavily involved in all of this, and one of the absolute magics about working for a global company is that you can try to take what is good, and turn it into what is great, on a global basis. So the example that I have there is that, for you folks, hopefully, who live in the States, will know that Anheuser-Busch had a tremendous commitment dating back several decades to really promoting the theme of "designated driver" in the U.S. What's been so cool about that is that after the AB combination, we took this concept of "designated driver" and even some of the ads, like the Cedric ad that they ran in the States around Super Bowl and took it to our different markets. It's amazing what the markets have done with the concept.

If we take China as an example where we have an incredibly creative team, the concept of "designated driver" didn't exist in China until a few years ago. We partnered with Yao Ming, the basketball player, and created a mini-movie based on the whole "designated driver" theme.

As part of our commitment to big dreams, the local team wanted to make this the best program, that really increased awareness around "designated drivers" in China, and they aimed for 100 million hits on the

“...all teams, to ensure that they are performing really well and can be proud of their results should have some way of measuring that performance. I've listed again here a number of other reasons why measuring the performance of legal teams is also important; it enables quantitative rather than qualitative assessment.”

– Sabine Chalmers

equivalent of YouTube. Where is the statistic at the moment? They had a hundred and thirty million hits within just a few weeks. When we test, amongst Chinese people, the concept of the importance of not drinking and driving, and using a designated driver, it is hugely popular, and we're sure it will lead to really great and positive social change in China. That's just one example of how we try to take a concept, globalize it and have a positive impact.

JACK FRIEDMAN: It's a very important thing. In terms of your 150,000 employees, what would be an example of how diverse the labor laws could be in two different countries?

SABINE CHALMERS: The only thing that's worth mentioning, and Nancy, you talked about it earlier, is that a key challenge, not just for us but for most companies, is how the whole data privacy laws around employees vary from jurisdiction to jurisdiction. How you make that consistent, comply with the law in each jurisdiction in which you operate, but also drive a global culture at the same time.

JACK FRIEDMAN: We have time for a question or two from the audience.

QUESTION FROM AUDIENCE: Could you please explain your relationship with the board of directors; what they expect from you; are you in every meeting; or do you only report on certain things?

SABINE CHALMERS: I'm Secretary to the board of directors, but none of us – either the CEO, the CFO or myself – are members of the board. We are invitees at

each of the board meetings. None of our board directors are executives; it's a non-executive board, but the CEO, the CFO and myself attend board meetings. This is a privilege, but it's also great, because it means that you are there to understand decision-making and strategy at all levels of the organization.

The one point which I would emphasize is I do have a standing item to report on at least a quarterly basis, with both our audit committee – I also attend all our audit committee meetings – and then at the board, is compliance. There's a great recognition that your compliance program is only as good as the tone from the top, and that starts with the board. For example, we will do an annual compliance training and that is the piece that I will report on, together with any significant legal or corporate affairs issues facing the group, so that we can have a discussion about it.

QUESTION FROM AUDIENCE: [A question on how the corporate culture has changed over the years as a result of the mergers with other companies.]

SABINE CHALMERS: Generally, when I look at it, and I think the facts bring it to bear, at the end of the day, people are people. That's my view. We all want the same things. We want to work; we want to be respected; we want to be valued; we want to be part of something bigger. That's important, even if it's expressed in slightly different ways. When I look at the combination of InBev and AB, it has been remarkably successful from a financial and a performance basis. Then when I look at the merging of the cultures and the people, I also see that

as tremendously successful. For example, if you look at the legal team, the former general counsel of Anheuser-Busch, Gary Rutledge, is our general counsel of the North American zone. Gary and I have worked on a whole bunch of things since and there's been tremendous stability within his team. Also there are members of the team who have made their way into global roles. Our Head of Intellectual Property Innovation support, Frank Hellwig, who is now based with us here in New York, was from the St. Louis team. Frank, I could even ask you to say how you think it is going.

[LAUGHTER]

What I would add to that is if we look at the North American management team, I think more than 50% of the management team are members of the former AB organization. For me, at the end of the day, people are people, and I think those are the results that show that it has been a happy combination.

QUESTION FROM AUDIENCE: I have a question about the practical aspects of an open office. What do you do when you have a very confidential conversation that you have to have, or you just need some peace and quiet, how do you manage that aspect?

SABINE CHALMERS: There are a couple of solutions. One, we do have a number of breakout meeting rooms, so that everything is not all happening in an open space. We also have "telephone bubbles," so if you have to take confidential phone calls there is absolutely the ability to do that whenever you need to do that.

The other thing I would say is, I've found that it's amazing how much of what you do does not really need to be confidential.

[LAUGHTER]

Especially as lawyers, we wander around thinking, "Oh, well, that's going to be impossible for me, because I'm dealing with

"It is definitely one of our key responsibilities to be as efficient as possible so that we can free up funds to put behind our brands, which are the lifeblood of our organization."

– Sabine Chalmers

all this important, confidential stuff." So is everyone else in the business. It's not really – it's funny; I actually don't find myself using the bubbles or the meeting rooms that often during the day.

COMMENT FROM AUDIENCE: If I can call out one person, one of the key lawyers at ABI is John Blood. He was in our office in D.C. for a couple of days, working, and we gave him his own solo office. You've never seen a guy bouncing off the walls as much as John was – there were no people around! He was saying, "What do I do? I feel like I'm in prison! I'm in a cell!" You learn the new culture pretty quickly.

QUESTION FROM AUDIENCE: Have you ever done M&A with an emergent company? How do you deal with organized labor?

SABINE CHALMERS: The question was essentially if you're doing, for example, an M&A transaction in an emerging market, how do you deal with a labor force that is unionized? I would say the same would apply to unionized labor forces in more mature markets, like the U.S. or Europe, and particularly the Continent. They are a legitimate stakeholder that you need to listen to carefully. You also need to have the right people within your teams that are able to have a meaningful, two-way dialogue with them. For me, it's the same as dealing with the variety of different social issues that you have, ensure that you're anticipating, that you're mapping it out, and that you're listening and communicating.

JACK FRIEDMAN: To conclude the program today, I would like to ask one personal question. In the five minutes a month that you have to yourself, what do you like to do?

SABINE CHALMERS: Gosh!

[LAUGHTER]

When people ask me the question and they say, "Well, if you weren't doing this, what career would you have loved?" I always say, "I would love to have been a staff writer for *Rolling Stone*!"

[LAUGHTER]

I love – stop laughing, team!

[LAUGHTER]

I love music, all and any types of music, and I love concerts, and I love listening to music. One of the joys of having a 14-year-old is that it keeps you current with what's going on, but it's also kind of cool. It's very funny, when, sadly, the other day, I was devastated when Lou Reed died. My daughter was saying to me, "Mommy, why are you so sad?" I said, "Come here – let's take a walk on the wild side! I'm going to show you some good stuff!" So, I love music, and I love sharing it with my family.

JACK FRIEDMAN: Let me thank all of the speakers, particularly our Guest of Honor, Sabine, and I want to thank the audience for coming, because ultimately, the audience is what the Roundtable is about.

SABINE CHALMERS: Thank you.



Craig Thorburn
Partner, Blake, Cassels
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Craig specializes in mergers and acquisitions and restructurings. He is also the relationship partner for many major corporate clients. In addition to his role at Blakes, Craig served from 2001 to 2006 as the senior vice-president of mergers and acquisitions, and corporate secretary, of Geac Computer, a large Canadian public software company.

**Select Experience –
Mergers and Acquisitions**

- Labatt in its takeover bid for Lakeport Brewing Income Fund
- AkzoNobel in its takeover bid for Sico
- Geac Computer in its acquisition by Golden Gate through a plan of arrangement
- InBev in its acquisition of Companhia de Bebidas das Americas (AmBev) and AmBev's contemporaneous acquisition of Labatt Brewing
- Vivendi in its strategic combination with Seagram and Canal+ through a plan of arrangement
- Labatt in the sale of the Toronto Blue Jays Baseball Club to Rogers Communications

Select Experience – Restructurings

- Nortel Networks
- Olympia & York
- SkyDome
- Dome Petroleum
- Campeau

Awards & Recognition

Craig is recognized as a leading lawyer in the following publications: *The Best Lawyers in Canada 2014* (Corporate Law and Mergers & Acquisitions) and *Chambers Global: The World's Leading Lawyers for Business 2013* (Corporate/M&A).

Professional Activities

Craig has lectured as an adjunct professor in securities law at the Faculty of Law, Queen's University, and has spoken and written on a wide range of subjects, including mergers and acquisitions, corporate restructurings, shareholder agreements and directors' liabilities. Craig is the president of TechLaw Group, an international network of law firms focused on technology law and business. He is a Senior Fellow of Massey College.

Education

Admitted to the Ontario Bar – 1987; J.D., Faculty of Law, University of Toronto – 1985; B.A., Trinity College, University of Toronto – 1982; A.R.C.T., Royal Conservatory of Music – 1979.

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Nancy Kestenbaum
Partner, Covington & Burling LLP

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Nancy Kestenbaum is the co-chair of Covington's White Collar Defense and Investigations Practice Group. She represents companies and individuals in a variety of white collar criminal and regulatory enforcement matters and complex civil litigation. Ms. Kestenbaum has conducted corporate internal investigations and defended institutions and dozens of officers, directors, executives, accountants and attorneys in grand jury, SEC, anti-trust, and other regulatory investigations. Ms. Kestenbaum has extensive experience representing clients in the financial services, life sciences and technology industries and also represents clients in complex civil litigation.

Ms. Kestenbaum served for nine years as a federal prosecutor in the United States Attorney's Office for the Southern District of New York, where she investigated and prosecuted numerous cases, including securities fraud, tax offenses, bank fraud, money laundering, obstruction of justice, civil rights violations, bribery and perjury, and served as Chief of the General Crimes Unit and Deputy Chief of the Criminal Division, where she supervised and trained dozens of other prosecutors.

Representative Matters

- Representation of companies and individuals in connection with various parallel insider trading investigations by the United States Attorney's Office for the Southern District of New York and the SEC.
- Advise companies on compliance with Dodd-Frank's whistleblower provisions.
- Representation of various pharmaceutical companies in connection with investigations by the Department of Justice concerning drug safety and labeling, physician interaction practices and FCPA matters.
- Representation of a non-profit in connection with an investigation by the New York Attorney General's Office.
- Internal investigation for Fortune 50 company about revenue recognition practices.
- Internal investigation on behalf of a University's Audit Committee concerning allegations of misconduct and retaliation by the University's President.
- Defense of several life sciences companies in connection with litigation involving the U.N. Oil-for-Food Programme.
- Representation of an individual in a criminal tax case involving foreign bank accounts.
- Representation of investment managers in related to the Madoff securities matters.

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- And much more.



Steven Sunshine

Partner, Skadden, Arps, Slate,
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Skadden

Skadden, Arps, Slate, Meagher & Flom LLP
& Affiliates

Steven C. Sunshine leads Skadden's antitrust and competition practice. He represents clients in connection with antitrust aspects of litigation, mergers and acquisitions, counseling and grand jury investigations. Mr. Sunshine is recognized as one of the leading antitrust practitioners in the market. He was listed in *Best of the Best USA 2013* as one of the top competition lawyers in the U.S. and in *Lawdragon 500 Leading Lawyers in America*. Mr. Sunshine repeatedly is selected for inclusion in *Chambers Global*, *Chambers USA*, *Who's Who Legal* and *The Best Lawyers in America*. He recently was named one of *Law360's* MVPs in the competition category, "Litigator of the Week" by *The Am Law Litigation Daily* and a finalist in *Global Competition Review's* "Antitrust Lawyer of the Year." The 2012 *Financial Times* report on U.S. "Innovative Lawyers" recognized Mr. Sunshine's work on *Sprint v. AT&T* as one of the "Standout" litigation matters of the year.

Mr. Sunshine was formerly deputy assistant attorney general in charge of merger enforcement at the U.S. Department of Justice (DOJ), Antitrust Division. While there, he supervised interventions in more than 35 proposed transactions, including those in the telecommunications, computer, consumer products, mining and industrial sectors.

Mr. Sunshine has led antitrust representations in numerous M&A transactions, including Anheuser-Busch/Grupo Modelo; Nokia/Microsoft; Sprint/Clearwire; Southwest/Air-Tran; Gilead/Pharmasset; Cisco/Tandberg; Exelon/Constellation and NRG; Duke/Progress Energy; Corning/Becton Dickinson Labware; and Valeant/Medicis, among others. Mr. Sunshine's litigation experience includes successfully representing Sprint in its antitrust challenge to AT&T's acquisition of T-Mobile; defending Actavis Pharmaceuticals in suits brought by the FTC and private plaintiffs relating to "reverse payment" IP settlements for Androgel; defeating a challenge by private plaintiffs to Anheuser-Busch's acquisition of Modelo; and representing Medicis and Valeant in a multi-district litigation relating to patent settlements for Solodyn, among others.

Mr. Sunshine also represents clients in connection with grand jury investigations into allegations of price fixing or other cartel conduct. He has resolved key matters for companies such as De Beers, Hankyu Hanshin and SGL Carbon, and successfully represented many clients in several investigations that closed without indictment or plea. He also represented Globe Telecom in successfully quashing a grand jury subpoena, ending a DOJ criminal investigation.

Skadden, Arps, Slate, Meagher & Flom LLP

With approximately 1,800 attorneys in 22 offices on five continents, Skadden, Arps, Slate, Meagher & Flom LLP and affiliates ("Skadden") serves clients in every major financial center. Our strategically positioned U.S. and international locations allow us proximity to our clients and their operations and ensure a seamless and unified approach at all times.

For more than 60 years, Skadden has provided legal services to the corporate, industrial, financial and governmental communities around the world in a wide range of high-profile transactions, regulatory matters, and litigation and controversy issues. Our

clients range from a variety of small, entrepreneurial companies to a substantial number of the 500 largest U.S. corporations and many of the leading global companies. We have represented numerous governments, many of the largest banks and major insurance and financial services companies. The firm has more than 40 practice areas and advises clients in matters involving, among others, antitrust, mergers and acquisitions, litigation and arbitration, corporate finance, corporate restructuring, securities law, banking, project finance, energy, tax and intellectual property.

Skadden frequently is identified as one of the world's leading law firms. For example:

- Skadden ranked as the No. 1 firm in the country for innovation in the legal sector in the *Financial Times'* annual "U.S. Innovative Lawyers" report. We are the first firm to receive this honor twice and have ranked as one of the top two firms all four years the report has been published.
- *Chambers Global* selected Skadden as the "Law Firm of the Year: Dispute Resolution" for 2013. We also were one of five firms globally on the short lists for "Law Firm of the Year: Competition/Antitrust" and "Law Firm of the Year: Corporate/M&A." Additionally, 144 Skadden attorneys have been listed among the world's leading lawyers, and the firm and its lawyers received 71 top-tier rankings.
- Skadden was named among *Law360's* Competition Groups of 2013.



Frank Aquila

Partner, Sullivan & Cromwell LLP

SULLIVAN & CROMWELL LLP

Frank Aquila is a partner in the New York office of Sullivan & Cromwell. Mr. Aquila has a broad multidisciplinary practice that includes extensive experience in negotiated and unsolicited mergers and acquisitions; activist and takeover defense; complex cross-border transactions; global joint ventures; and private equity transactions. He also regularly counsels boards of directors and board committees on corporate governance matters and crisis management. Mr. Aquila serves as a regular adviser to global leaders such as Amgen, Anheuser-Busch InBev, Avon, Diageo, International Airline Group, Navistar International and United Rentals.

Mr. Aquila has been repeatedly cited as one of the world's leading mergers and acquisitions lawyers. He has been recognized as one of a small number of lawyers ranked by *Chambers Global* in Band 1 (their top tier), as an *American Lawyer* "Dealmaker of the Year" and as a recipient of the Atlas Award as "Global M&A Lawyer of the Year." For his work in corporate

governance, Mr. Aquila has been named by the National Association of Corporate Directors (NACD) to their "Directorship 100" – one of the 100 most influential people in corporate governance and inside the boardroom. He is also a two-time winner of the Burton Award for Legal Achievement (2005 and 2010). In 2009 Mr. Aquila was selected by the American Bar Association as a "Legal Rebel" – one of the profession's 50 leading innovators. *Law360* named him a Life Sciences MVP in 2013.

Mr. Aquila was the co-managing partner of Sullivan & Cromwell's General Practice Group and in that role he was responsible for almost 500 lawyers in 12 offices around the world. This group includes the Firm's corporate, financial institutions, securities, mergers & acquisitions, corporate governance, real estate, leveraged finance, private equity, project finance, restructuring and intellectual property transactional practices. Mr. Aquila is currently a member of the Firm's Management Committee.

Sullivan & Cromwell LLP

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

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

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

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