DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Janet Langford Kelly

Senior Vice President, General Counsel and Corporate Secretary, ConocoPhillips

THE SPEAKERS

Janet Langford Kelly
Senior Vice President, General Counsel and Corporate Secretary, ConocoPhillips

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Partner, Freshfields Bruckhaus Deringer

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Partner, Bracewell & Giuliani LLP

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

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in her career and her leadership in the profession, we are honoring Janet Langford Kelly, General Counsel of ConocoPhillips, with the leading global honor for General Counsel. Her address will focus on key issues facing the General Counsel of an international energy corporation. The panelists' additional topics include energy dealmaking and M&A, regulation, litigation and employment.

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

Janet Langford Kelly

Senior Vice President, General Counsel and Corporate Secretary, ConocoPhillips

Janet Langford Kelly is senior vice president, Legal, General Counsel and corporate secretary for ConocoPhillips. She has more than 30 years' experience in roles of increasing responsibility at private law firms and corporations.

Kelly's ConocoPhillips career started in August 2006 as deputy General Counsel and corporate secretary. Prior to joining ConocoPhillips, she was partner at Zelle, Hoffman, Voelbel, Mason and Gette and an adjunct professor at the Northwestern University School of Law. In 2003, Kelly joined Kmart Corporation as senior vice president, chief administrative officer and chief compliance officer. She also spent time at Kellogg Company, where she was executive vice president of corporate development and administration, General Counsel and secretary. Prior to Kellogg, she was senior vice president, secretary and General Counsel at Sara Lee Corporation.

Kelly began her career as a law clerk for the Honorable James Hunter III of the Third Circuit Court of Appeals. She was an associate in the corporate and securities group with Wachtell, Lipton, Rosen & Katz in New York and at Sidley & Austin in Chicago, where she became partner in 1991.

Kelly serves as a trustee for Columbia Funds and on the Board of Directors for the Houston Grand Opera. She previously served on the boards of United Airlines, Grinnell College, Joffrey Ballet, Chicago Shakespeare Theater, and served on the Legal Advisory Committee of the New York Stock Exchange.

Kelly was awarded a Bachelor of Arts degree in history, with honors, from Grinnell College in 1979. She earned a Juris Doctorate from Yale Law School in 1983.

ConocoPhillips

ConocoPhillips is one of the world's largest independent exploration and production companies based on proved reserves and production. We explore for, produce, transport and market crude oil, natural gas, natural gas liquids, liquefied natural gas and bitumen worldwide. Our operating segments consist of Alaska, Lower 48 and Latin America, Canada, Europe, Asia Pacific and Middle East, and Other International.

Our vision is to be the E&P company of choice for all stakeholders by pioneering a new standard of excellence. The ConocoPhillips global portfolio reflects our legacy as a major company in terms of its size and breadth, yet offers the compelling organic growth more common to independent companies. Our diverse asset base also reflects a resource-rich North American portfolio, a lower-risk international portfolio and an emerging conventional and unconventional global exploration prospect inventory.

We have the technical depth and capabilities to operate virtually anywhere and in any resource trend. And we place safety, health and environmental stewardship at the top of our priorities.

Headquartered in Houston, Texas, ConocoPhillips had operations and activities in 30 countries, $58 billion in annual revenue, $117 billion of total assets, and approximately 16,900 employees as of Dec. 31, 2012. Production from continuing operations averaged 1,527 MBOED in 2012 and proved reserves were 8.6 billion BOE as of Dec. 31, 2012. For more information, please visit www.conocophillips.com.

JACK FRIEDMAN: I'm Jack Friedman, Chairman of the Directors Roundtable. We are a civic group that has done 750 events globally over 23 years. We have never charged the audience to attend.

Our mission is to conduct the finest programming for Boards of Directors and their advisors including General Counsel. We have operated on every continent and in twenty U.S. cities. The way in which this series of programs started, is that Boards of Directors have said that companies in the world today are criticized for almost anything they do; there is a negative attitude about emphasizing problems and not accomplishments, on a global basis. We were encouraged, since we're not a PR firm or a chamber or trying to sell business, to be a neutral forum for giving business leaders a chance to talk about what they really do and the accomplishments of which they are proud. It also gives you a chance to get to know the Guest of Honor in particular.

Beyond what we do here at the breakfast, an important factor making this the leading world honor for General Counsel is that the transcript of the program will be distributed to 150,000 leaders on a global basis.

The format this morning is that our Guest of Honor, Janet Kelly, will make her remarks and then each of the Distinguished Panelists will speak briefly to introduce their individual topics. Then we'll have a lengthy Roundtable discussion which may include questions at the end from the audience. We will invite anybody who'd like to come up one-to-one to talk to the speakers after the discussion.

Janet has had an amazing career, both in private practice and in the corporate world, and she has also served on a number of Boards. She attended Grinnell College and Yale Law School and she was a law clerk for the Hon. James Hunter III of the Third Circuit Court of Appeals. She's been in private practice, and had senior positions at Kmart, Kellogg, and Sara Lee,

and is now Global Head of the legal area of ConocoPhillips. She has served as a trustee for both cultural and other types of organizations which include the Houston Grand Opera, the Joffrey Ballet, and the Chicago Shakespeare Theater. The following was received from the Dean of Yale Law School, where Janet received her law degree:

> Dear Janet:
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> I write on behalf of the entire Yale Law School Community to congratulate you on being honored with the leading global honor for General Counsel by the Directors Roundtable. Beginning your legal career as a law clerk for the Third Circuit and practicing law and becoming partner at Sidley & Austin in Chicago, you then began an entirely new chapter of your legal career by serving as officer and general counsel at some of the country's largest and best-known corporations — at Sara Lee, Kellogg, Kmart, and ConocoPhillips. You have also taught law as an adjunct professor at Northwestern, became partner at another law firm — Zelle, Hoffman, Voebel, Mason and Gette — and took time to serve on the Yale Law School Executive Committee as both a term member and vice president. We are so very proud of your many achievements and of this wonderful honor today of World Recognition of Distinguished General Counsel, celebrating your remarkable career and extraordinary roles in leadership.
>
> Warm regards
>
> Robert C. Post, Dean and
> Sol & Lillian Goldman, Professor of Law
> Yale Law School

Without spending the whole morning on her accomplishments, I'd like to turn the program over to our Guest of Honor, and to thank her for making her time available for us. Thank you.

JANET LANGFORD KELLY: Thank you, Jack, members of the Roundtable, ladies and gentlemen.

First, let me express my sincere appreciation for the honor accorded me today. I'm particularly humbled to receive it from the Directors Roundtable, whose work I so admire.

Good governance is the foundation of good companies, companies people want to invest their lives in, their retired savings in, companies that communities eagerly welcome. The foundation of good governance is a clear understanding of the issues to be faced: the pros and cons of a strategy, the

opportunities and issues to be managed. So I'm delighted to participate in the tradition of discussing those issues.

In turn, I wish to thank those who really made it possible: the 150 members of the ConocoPhillips legal staff. Some are here today, and I ask you to stand and be recognized. Thank you.

When considering what to talk about to kick off our discussion, I remembered a saying from years ago following an energy downturn: "Lord, just give us one more boom, and we promise we won't screw it up!"

Well, I think the Lord was listening. We've got another boom, and this one seems to have legs. It happened overnight, and it's nothing short of game-changing. Of course, I'm talking about the shale revolution, which is indeed changing the peak oil paradigm that prevailed when I entered the industry in 2006. As a result of this extraordinary opportunity, our country is transitioning from an era of resource scarcity into one of resource abundance. For example, we now believe North America has a 100-year supply of natural gas — maybe more — thanks to the shale revolution. That revolution has spread into liquids. U.S. oil and gas reserves, as well as production, are rising for the first time in decades. In fact, last year saw the highest annual increase in U.S. oil production in history.

U.S. oil imports are down, and LNG [liquefied natural gas] imports are minuscule. In Canada, the oil sands have Saudi-style potential and are being developed rapidly. North American energy independence for both oil and gas is fast approaching. A goal that has been, at best, a dream since the 1973 energy crisis, now seems attainable.

We don't hear much about peak oil any more. We also have greater energy affordability in the case of natural gas, meaning lower home heating and electricity bills for consumers. There is even a multiplier effect. Low-cost gas has created a renaissance in

the energy-intensive industries such as chemicals, petrochemicals, steel, aluminum, force products, transportation, and electric power generation.

There has been enormous job creation: 600,000 jobs from shale development alone, with more to come. And the oil and gas industry now supports 9.6 million U.S. jobs directly or indirectly.

There have even been climate protection benefits. Gas has displaced part of the coal load in power generation. Since it produces half the greenhouse gas emissions of coal, total U.S. emissions have fallen to 1992 levels. That's a rate of reduction greater than that achieved by any of the countries that signed the PEI Accord.

So what does all of that mean for us lawyers? For one, it means massive changes in corporate strategies. ConocoPhillips is an example. We're exiting some producing areas, and doubling down in others with more promise. I can't tell you how many long days, nights and weekends of legal work this has caused the people I just recognized, as well as many of you who help us on the outside.

Meanwhile, government — federal, state and local — is struggling to comprehend the scale of the energy renaissance, and to accept it. For those who believe that renewable energy is the only solution, and oppose fossil fuels, this has become a bitter pill. Governments at all levels across the nation are struggling to adapt regulations that were developed years ago under different assumptions compared to the new realities.

Then there's the public. Citizens in some of the shale plains are struggling to accept rising drilling activity in their area. They are facing hysteria created by opponents who are spending millions of dollars to stop development.

So we have a boom! But how do we, as a country, avoid screwing it up? In fact, how do we, as an industry, avoid screwing it up?

The people in this room, the lawyers in corporate offices and law firms, Board members and public servants, can play key roles in preventing that, and in so doing, we can all help ensure that our country fully yet responsibly reaps the benefits of this energy boom from Mother Nature.

For the next few minutes, I'll give you my views on some of the major threats faced by the energy industry advocates. We'll explore these and others at more length.

The first is the rise of renewed zeal on the part of government to regulate. Let me emphasize that ConocoPhillips supports prudent government regulation. We know well that it is in everyone's interest to protect the environment and the safety of employees, contractors and communities. Operating safely and responsibly is a core value at ConocoPhillips. Prudent regulations help ensure that our industry operates this way, too. But we also must convey that in many instances, state agencies, rather than federal, are best situated to do this. They have the local experience, deep knowledge of specific geologies, understanding of the goals of local communities and the character of the business to ensure effectiveness and efficiency.

It's also important that laws and regulations be based on science and experience, not unfounded fears, and government should avoid imposing duplicative and conflicting requirements. Unless they meet these standards, regulations do not really improve stewardship.

For example, the proposed BLM [Bureau of Land Management] rules on oil and gas stimulation would overlap, and in many areas conflict, with existing state rules and regulations. State agencies like the Texas Railroad Commission have high expertise and years of experience. Fracturing has been used for over 60 years on more than a million wells in the U.S. State regulations and safeguards are tailored to the unique geologic and aquifer conditions within their borders.

But we must go beyond criticism to cooperation. ConocoPhillips recently successfully engaged with regulatory officials and technical advisors at the EPA and the BLM. The springboard was the EPA's random selection of ConocoPhillips in August of 2011 to voluntarily cooperate in their data gathering. We provided meaningful information and invited feedback. The EPA appreciated the cooperation, and did seek clarification several times.

On BLM's fracturing rulemaking, we established dialogue and met with their technical advisors to explain our views of the draft rules. We focused on technical shortcomings. For example, we told them that surface casing cement bond log requirements are not an absolute answer to verifying the integrity of a surface casing string; they are one of many useful tools, and therefore should not be mandated.

We delivered those messages directly and in formal federal registered notice and comment process. We believe that we gained credibility with the regulators by cooperating. We took the opportunity to present data based on our broad experience, and we pointed out in a reasonable manner what we perceived as factual shortcomings in the proposed rules.

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In another case of cooperation, we committed more than 90,000 acres in the Permian Basin to the Cooperative Conservation Agreements with the U.S. Fish & Wildlife Service. They required funding to study the dune sand lizard, as well as various operational processes to safeguard the lizard's environment. These agreements support the conservation of this species, and avoid its listing as endangered, thus avoiding unnecessary operational costs in a highly productive area.

I could give many more examples, but the bottom line is this: In our view, constructive engagement and cooperation on the regulatory front are critical to our future success.

The second concern is the intense public relations battle over hydraulic fracturing. We faced activists engaged in a blanket condemnation of fossil fuels, like the Sierra Club's "Beyond Natural Gas" campaign. To them, natural gas is a threat to renewable energy.

But our industry also must realize that activists are advantaged because our industry has lost public trust. They claim only to want to ensure that we operate responsibly — a message that appeals to the broader public. There is also a deep belief that if we try hard enough, we can find an energy silver bullet that will be cheap, environmentally benign and quickly deployable. We know there is no such source — at least not yet. In fact, natural gas actually comes the closest.

Meanwhile, the media and Hollywood have jumped on the bandwagon in a big way. Who here has seen *Gasland*?

JACK FRIEDMAN: I don't think that the movie has shattered box office records here in Houston.

JANET LANGFORD KELLY: How about *Promised Land*, which came out just in time for the Academy Award nominations, funded by Abu Dhabi?

I'm glad to report there were no nominations, so maybe we'll avoid a second run! But let's look at the flaming faucet in *Gasland* that attracted so much attention.

The Colorado Oil & Gas Conservation Commission found that the methane in the water was naturally occurring. It was common in the region; it predated drilling; and there are no indications of oil and gas-related impacts on the water well.

Such incidents are thoroughly investigated by regulators, and if problems with well integrity are identified, they are corrected. There have been no confirmed instances of fracturing resulting in contamination of fresh water aquifers. Fracturing occurs far below those aquifers, and is done with multiple safeguards.

Sometimes, insufficient technical understanding leads to governmental action. Back in 2010, the EPA issued an emergency order to an independent company to shut down two gas wells in Parker, Texas. The landowner alleged that the wells had contaminated their water with dangerous levels of benzene and methane. The company was subject to civil penalties of up to $16,500 a day. But the EPA soon withdrew the order,

after a Railroad Commission science-based investigation found no link between the company's operations and water contamination. By the way, this was EPA Region 6 under Regional Administrator Al Armendariz, who threatened to crucify the industry. He resigned under public pressure a month later and took a job with the Sierra Club.

This whole issue is best summarized in the *Wall Street Journal*'s not-so-positive review of the anti-fracking movie, *Promised Land*. It said, "Fracking is proving to be the most carefully observed, policed and debated industrial revolution in the history of industrial revolutions."

Development opponents are also focusing on water consumption and disposal associated with fracturing wells. The volumes sound huge until we compare them to far larger uses, like agriculture, cities — even golf courses and swimming pools. Seismicity, which is man-made earthquakes, is also a hot-button issue. It's extremely rare for hydraulic fracturing to trigger a seismic event that can be felt on the Earth's surface, but there have been some instances linked to disposal levels. Let's face it — in local communities, we face classic boomtown challenges: sudden wealth creation vs. change and disruption. Our industry must work with local government to mitigate impact from noise, traffic, air emissions, infrastructure overuse, and the sudden influx of workers into a community. We must undertake greater stakeholder engagement to listen, build trust, and share our side of the story with greater transparency.

We also have to dot the Is and cross the Ts on our legal work. The industry has a flood of newly-trained land men, and identifying property and royalty owners and doing deals, disputes over ownership and allocation of payments, can cause a tidal wave of legal work in the future if we don't get it right.

Next, I'd like to discuss the threat posed by the uncertain energy permitting process, with its delays and complexity. For example, the typical exploration plan for offshore federal leases requires marine and archaeological reports, and site clearance letters. Waste discharge estimates for the drilling rig we anticipate using are required, along with a host of other information, plus a public notice and comment opportunity. An application for a permit to drill for a test well in the Gulf of Mexico deep water takes 11 to 14 months to complete.

Unfortunately, the primary end result of these processes and delays is greater cost, with questionable additional environmental benefit. It's easy to delay projects. Foes are well-organized, with power beyond their numbers. For example, NGOs funded in part by the government routinely challenge agency compliance with applicable regulations, such as administrative actions and lawsuits filed against the BLM and the Bureau of Ocean Energy Management, alleging violations of the National Environmental Policy Act, the Endangered Species Act, and other regulations. These claims can be extremely broad, and include measures such as petitions to list the lesser prairie chicken and sage grass as endangered. Doing so could potentially affect many thousands of acres of federal lands in the key Rocky Mountain producing basins. It could also create timing uncertainty, increased costs, and restrict operations.

More than a year ago, we spent $175 million on Gulf deep water leases. More than four years ago, we spent $500 million on leases in the Chukchi Sea. Both are now subject to lawsuits by environmentalists. They allege that the Interior Department and the Bureau of Ocean Energy Management issued them in violation of various federal regulations, and litigation is pending.

It's interesting to contemplate that our industry is investing more capital at home that at any time in recent history, and it's ready to invest more; but our highly regulated and litigious environment is a significant threat to the responsible investments that our industry stands ready to make. Industry investments that would help

our nation achieve energy independence, as well as creating jobs and tax revenue — both in the energy industry and through a broader industrial renaissance — energy independence that would have massive geopolitical implications.

Another threat that is getting more attention is taxation. Despite the so-called fiscal cliff deal, more battles lie ahead. The energy industry remains a prime tax revenue target for the Administration. Obviously, increased taxes would leave us less money to invest in drilling, infrastructure, jobs, facilities and technology. I believe that we can invest and spend the money we earn far more wisely than Washington can.

ConocoPhillips agrees that comprehensive federal tax overhaul is needed, but we must resist allowing our industry to be singled out for punitive measures. Some of the proposals we have seen would, by reducing the competitiveness of U.S.-based companies, actually benefit foreign companies. Some would incentivize our industry to invest outside the U.S. We can and will support sensible tax policy, but any policy must be industry-neutral.

We're particularly concerned about dual capacity. This would impose U.S. income taxes on foreign earnings, even though income taxes have already been paid overseas. It's ironic that this proposal comes at a time when more U.S. companies are ramping up their domestic activity. If dual capacity taxes are enacted, they would slow down development and cost jobs here at home. It's another case of unintended consequences.

We have to convey that our industry's tax rates already exceed those of other industries. For example, ConocoPhillips paid a 34% U.S. tax rate over the last five years, compared to the 25% paid by the average S&P industrial company. We also face revenue-hungry state governments. Some are stretching the limits of what they can impose and still expect investment within their borders. That's a conversation we have in Alaska all the time.

The final potential threat I'll mention is any lack of performance by our industry. We must always operate in full compliance, not only with laws and regulations, but also with the highest ethical, environmental and safety standards. I'm proud of the role that the lawyers at ConocoPhillips, and the role of our Board, have done to ensure that.

At the same time, we have an obligation to fulfill the role that society demands of us, and that is to be sustainable and socially responsible suppliers of the affordable energy that powers modern life.

For a variety of reasons, including our size and the importance of our product, our operations, our financial performance, our ethical performance — indeed, everything we do — are under extreme scrutiny. We operate in a business subjected to 24/7 global scrutiny and media coverage, and unfortunately, we are global in our ability to fire up opponents in response to any failure, real or perceived. This extends to failures by our contractors, and the rising domestic activity level has brought with it

an influx of lesser-experienced workers. So ability to manage contractors and ensure their performance to standards is increasingly important.

Even in recent years, we've learned that the failure to perform safely in an environmentally sound manner, by any of us, has a profound reputational effect on all of us. Guarding against this is part of our job of preserving the license to operate of the companies we represent. Our industry is threatened by any company that doesn't constantly raise the bar on operational standards.

In conclusion, these are just a few of the issues that the legal profession is helping to address and solve for our industry — namely, the rise of regulations; the PR battle of fracking; the uncertain permitting process; punitive taxation; and maintaining our license to operate. We can discuss all these further.

Again, thank you for this recognition, and for all the work that the Directors Roundtable does to encourage and recognize achievements in our profession.

JACK FRIEDMAN: Thank you, Janet. Before we go on with the other speakers, I want to discuss a few issues with Janet.

People have a vague idea of the enormity of the resources that the energy industry — and your company specifically — put in compliance and being a good citizen, not only here, but around the world. Your annual report even mentioned that there is an ethics hotline. Could you talk a bit about the resources that are involved?

JANET LANGFORD KELLY: We just recently re-engineered our Compliance Department and our Code of Conduct. What we find is that there are really two particular things that continue to happen that you need to combat. One is that if you have a code of conduct that stays the same for 15 or 20 years, it becomes wallpaper, and people don't really pay attention to it. So we find we need to really rewrite it every several years, just to continue to make it attention-grabbing.

The other thing is convincing people that we *really do* want compliance, and we really do want them to report anything they see that

they have questions about. There's a lot of legwork in getting out, meeting with local people, making sure we have local ethics offices in Indonesia — we're starting one in Norway, one in China — so having local people who can carry that message is very, very important.

JACK FRIEDMAN: Can you tell us a little bit more about your legal department?

JANET LANGFORD KELLY: We're about 80 lawyers at this point. We have, I would guess, 50 or 60 in Houston. I have a Deputy General Counsel International, who deals with our operations in all of our international locations. Another one handles our North American operations, so he's responsible for Alaska, Canada and the lower 48. We have a Deputy General Counsel of Litigation and Arbitration; one for our Commercial or our Trading Department; one for IP, which is a very important initiative in any energy company; and then one for our Chief Compliance Officer, and they each have a number of people under them. We have offices in London, Aberdeen, Singapore, Indonesia, Australia, China, and Norway.

JACK FRIEDMAN: We'd like to move ahead with Charles Shoneman, a partner in DC with Bracewell & Giuliani.

CHARLES SHONEMAN: Good morning! My name is Chuck Shoneman. As Jack said, I'm a partner with Bracewell & Giuliani, a resident in the Washington office. For 40 years, I've been a natural gas and LNG lawyer, and have headed, during part of that time, Bracewell's energy regulatory practice.

First, I'd like to congratulate Janet — a well-deserved honor — and it's great to be here to share this, and thank Jack for including me in this roundtable discussion.

As I like to tell the young lawyers that work with me — and they're all pretty much younger than me, now — we're entering the golden age of natural gas. I never thought I would say that, since I was practicing law

when we had curtailments and shortages, but just to echo Janet's remarks about the shale gas, it *is* a revolution.

When you think about it, the United States has long relied on imported oil and gas to fulfill its energy requirements, but we now find ourselves with an abundance of natural gas resources in this country. The gas produced from shale is going to provide energy for this country for decades to come. The Energy Information Administration at the DOE, in its 2013 Energy Outlook, says natural gas production is going to rise from 23 trillion cubic feet to 33 trillion cubic feet by 2040 — and that's an increase of just under 50% — and shale gas production is largely responsible for that increase.

So, with this increase in supplies, one thing that has occurred is lower gas prices here in the U.S. They have actually fallen sharply to their lowest level in a decade. And while lower prices may have advantaged consumers here in this country, they have put production at risk.

The abundance of the shale, together with the low prices, has caused a virtual halt in LNG imports, as Janet mentioned. LNG is now going to other markets around the world that value it more. This, in turn, has left many of the LNG regas terminals here in this country idle, and some are even working as hard as they can to figure out how to keep their cryogenic facilities cool enough.

Put these circumstances together, and one can easily see a rationale for LNG exports. But it appears that this idea has raised a lot of issues and has very quickly become controversial. So what I want to talk about a little bit today is who's going to decide what, and how, and on what timetable.

Section 3 of the Natural Gas Act is the governing statute for imports and exports of natural gas, including LNG. The Department of Energy will have a role in reviewing export applications and approving same, and FERC [Federal Energy Regulatory Commission] has jurisdiction over the siting construction and operation of LNG import, as well as export terminals, so it will have a say. One important element of their review process will involve environmental implications, and as Janet also mentioned, the Sierra Club and others have gotten extremely active and are

opposing LNG exports, principally on the ground that they believe that fracking associated with shale gas production is a large problem, and that if shale gas production is going to be the basis for a lot of exports, this is something they need to oppose.

The DOE has done a couple of studies in the last couple of years on LNG exports; one was an inward-looking study about the price impacts on U.S. markets if there were LNG exports, and they assumed various scenarios of production and levels of exports, and they did find that there would be a price increase resulting from such exports.

Then there was a broader study that was just published by NERA in December. It was a global study of LNG markets, and a macro look at all the plusses and minuses of exporting LNG. That study determined that at almost every level, there would be net economic benefits to the United States from LNG exports.

Against that backdrop, the DOE has asked for comments on these studies — initial and reply comments — and then said once they have the comments in hand, they will move forward to process export applications that are before them. They have designated a process and an order in which they will review these applications. It is possible that the comment process could change that, but I would expect that process of review to get started a short period after the close of the reply/comment period. But there are a lot of questions surrounding exactly how the DOE is going to act.

There are numerous applications for exports before them — maybe 10, 12, 15 applications for exports to non-free trade companies — of almost 25 BCF [billion cubic feet] a day. The DOE is going to have to decide how much and how fast to process these applications, and how much they're going to allow to be exported. It's unknown how long that process will take. Will they just look at one application, then take up another one in six months, and another one in two years? Or will they authorize a number of them? Remember, this is going to be a fight all the way. Congress is already weighing in through Senator Wyden, and the Sierra Club has weighed in and will continue to weigh in. The DOE has already approved one application — the Sabine Pass Liquefaction project — and that is under construction, and that's about 2.2 BCF a day. So the DOE is going to have its work cut out. They are not used to contested proceedings, but they're going to be getting them.

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> — *Janet Langford Kelly*

There are any number of issues that the DOE is going to have to look at. The broad standard that they act under is a public interest standard. That takes into account many, many issues. They're going to have to look at balance of trade; job creation; environmental impact; how broad should their scope of environmental review be; whether it's in the public interest to start creating a world marketplace in natural gas trade in which the United States can participate; will exports actually help increase production; will it raise prices; what will be the impacts on industry.

There are a number of large petrochemical, chemical and other manufacturing companies that have created a coalition that basically has said, "Go slow here; be cautious." They have not come right out against exports, but they're urging caution. As time goes on, and these applications get processed, we're going to see how they plead and what their real positions are. But the DOE will have a lot to decide, and each one of these decisions has to be built upon a legal record that can withstand rehearing and potentially court review, because the way we see it, the Sierra Club and their allies are extremely serious. They have already taken some of these environmental issues to the Courts of Appeals, and they very well may do so again. So it's going to be very important for all the applicants, project sponsors, supporters, as well as the Agency, to make a sustainable record.

The final subject that I wanted to mention this morning was Alaska. The DOE studies did not discuss the metrics or the ramifications or any of the impacts of natural gas production that awaits in Alaska. It appears at the moment that a pipeline down through Canada to U.S. markets is not going to be viable, and several large companies, including ConocoPhillips, are discussing other alternatives — and one of them is an LNG export alternative. It is a huge project, costing many tens of billions of dollars, and maybe eight, nine, ten, twelve years off. It involves a big pipeline; and potentially a liquefaction facility. There are many issues that need to be resolved between the State and the project sponsors before it can go forward, and there's always the question of timing. Timing is going to be absolutely critical to the viability of LNG exports, because the United States is not the only country in the world that exports LNG. We have competitors, and there are some very, very large and hungry markets who want LNG and who want the certainty soon that they can get LNG. Not only does that raise questions for the DOE's process and the FERC's process of reviewing LNG export and liquefaction facility proposals, but it also is very important for the timing of the potential success of an Alaska project.

So those are my opening remarks. I look forward to discussing them with the panelists and with you later today. Thank you.

JACK FRIEDMAN: Before we move on, I wanted to pose a quick question.

Some decades ago, I was involved with a study on the feasibility of a multibillion dollar LNG project in Saudi Arabia. Of course, the economics of liquefaction was a huge issue.

I'm curious, has there been, recently, a radical change in the economics, to make it more feasible to turn gas to liquid? Or is it mostly the increase in demand?

JANET LANGFORD KELLY: So our view is that costs have not radically changed, but demand has radically changed, and that's powering the LNG export industry.

CHARLES SHONEMAN: Now, the LNG liquefaction facilities are going to be extremely expensive to build. You're going to have some facilities that will be side by side with already-authorized and built LNG import terminals, and then there will be some absolute greenfield facilities. But they're going to be extremely expensive.

What makes the LNG export process viable is the spread between the low prices for natural gas in this country, today, and maybe in the coming years — and that's the big bet — and the higher prices around the world for imported LNG. There's very expensive liquefaction; there's expensive shipping; but there are still profits to be made, as long as the spreads remain apart. That's the critical question.

JACK FRIEDMAN: Let me ask you this as a layperson. You mentioned that there could be some greenfields. It's almost impossible to build greenfields, new refineries, why are new LNG facilities feasible? Is it because it's a "cleaner technology" or less polluting, and therefore more acceptable in communities?

CHARLES SHONEMAN: I'm not sure, from my perspective, that that's it. I mean, both are large industrial facilities. But there is a well-known and highly accepted process for permitting LNG facilities that has been working, now, for 40 years — since the early

1970s with the first terminal up in Everett, Massachusetts. There is a presumption in the law that LNG exports and terminals are in the public interest, but it's a rebuttable presumption. This transparent process that's been tried and true and upheld by the Court of Appeals is one of the factors that facilitate the construction of new LNG terminals.

JANET LANGFORD KELLY: There are also a number of terminals that were built over the last 15 years or so, to import LNG into the United States, that are standing idle. I think what you'll see first is a lot of reversing of those terminals to liquefy for export, as opposed to regas for import.

JACK FRIEDMAN: Thank you. Our next speaker is Tim Coleman of Freshfields, who will introduce his topic.

TIM COLEMAN: Good morning. It's a great honor for me to be here and be part of this event recognizing Janet. So, congratulations, Janet. Thank you to Jack and the Directors Roundtable for inviting me to be a part of this, and thank you all for being here!

Janet spoke very eloquently about many of the threats facing global business in this second decade of the 21st Century, and one of those threats that's part of my specialty — regulatory enforcement investigations — is the one I want to talk to you all about this morning.

Regulatory enforcement has been a fact of life for the petroleum industry and the energy industry, and for many industries, for years; but over the last decade or so, regulatory enforcement has become much more global. As enforcement investigations expand across borders, the stakes and the cost of those investigations become truly enormous.

So I wanted to start with a few observations about how the world of global enforcement has changed in the 21st Century, and how that's different from how it was in the 20th Century. The first observation is that there has been more and more of what I think of as legal imperialism. We see the United States, in particular, beginning in the '70s, '80s and '90s, expanding the extraterritorial reach of our laws to other countries and other companies, and imposing those standards — and the penalties that go along with those standards — on companies all over the world.

Interestingly, the *New York Times* ran an article in September about Foreign Corrupt Practices Act enforcement, and the feature was the fact that *most* of the largest cases that have been brought under the FCPA have been brought against foreign companies, and some of the quotes from that story were that the U.S. enforcers feel that they have a moral obligation to enforce American law all over the world, and secondarily, that they have an obligation to protect U.S. industry by enforcing U.S. law around the world. Interestingly, speaking of LNG, the largest case against a U.S. company to date has involved the Bonny Island project off the coast of Nigeria, and some LNG developments there.

Another development that's happened in the last decade or so is what I think of as the proliferation of enforcement. In the '70s and '80s, we used to hear a lot about nuclear proliferation. These days, there is more and more *regulatory* proliferation. So we not only have the United States engaging in legal imperialism — we now have the U.K., with its own version of the Foreign Corrupt Practices Act, known as the "U.K. Bribery Act"; the concept of "deferred prosecution agreements," which some of you have seen used here in the United States, has now been exported to the U.K. The U.K., the EU, many of the member states within the EU — like Germany — have become more and more active in the extraterritorial enforcement of their regulatory schemes.

A great example that's ripped from the headlines these days is the LIBOR market manipulation investigation, where you've got literally dozens of regulators all over the world conducting separate investigations, and to some extent, cooperating in those investigations, with enormous costs and consequences for the financial institutions involved.

So, with that world of legal imperialism and regulatory enforcement, you also have substantive differences, in that there are changing policy focuses. We've got a 21st century policy objective that the government focuses on in its regulatory enforcement, and in many cases, those objectives are different — at least in degree — than what they were in the 20th century. Some of the focus these days is on issues like human rights. We saw in the Dodd-Frank Act that was passed in 2010, a requirement for disclosure about companies involved in mining and use of conflict minerals in Africa. There is nothing about that regulation that has anything to do with economic regulation or other regulation here in the U.S.; it's based on concerns about human rights.

There is also the concern with providing for honest government — not just here in the United States, but all over the world — so we've got a global movement that started with the Foreign Corrupt Practices Act and now has expanded all over the world through the OECD Treaty on the bribery of foreign government officials, and more and more countries are getting involved in enforcement actions under those types of laws.

We're also seeing, in terms of policy objectives, the use of regulation as a tool of foreign policy. Every day, one hears more about economic sanctions by the U.S. against Iran, Syria, Myanmar, other countries; the EU and other countries have their own schemes of economic sanctions; so we're moving farther and farther away from the traditional policy objectives of regulation that we saw in the 20th century, like the basic protection of competition under the antitrust laws; the basic protection for investors and disclosure under the securities laws; worker safety and basic environmental regulation about clean air and water, as opposed to, perhaps, protecting obscure species.

The coming wave of regulation, in my prediction, is cybersecurity. We will see regulation in that area in the next few years. There was an attempt in the 112th Congress to pass legislation imposing cybersecurity guidelines on American industry, and my guess is there will be a renewed interest in that in the 113th Congress. As we become more and more concerned about disruption of service, against hacking, and theft of intellectual property through cyberattacks, there will be more and more of a concern and more and more of a use of regulation, not only to protect the economy and industry against this type of activity, but to use it as a tool in foreign policy.

The last observation is that there's been a shift in the way enforcement has been used in the 21st century, and by that, I mean that there has been a shift from punishing misconduct to incentivizing desired behavior. In the 20th Century, the focus was on preventing misconduct by punishing things like fraud, unfair competition, pollution, unsafe work conditions. In the 21st Century, it's

all about incentivizing desired behaviors, like voluntary cooperation, compliance, investing in creating corporate cultures that meet the ethical and compliance standards that the regulators expect.

So, with those observations in mind, just a couple of suggestions on best practices, and two in the context of compliance, and one in the context of investigations. Janet's remarks about ConocoPhillips have already given some great illustrations of what I consider the really state-of-the-art best practices in this area today.

The first is, make a record. Make a record of the desired behavior. If the fundamental goal of enforcement in the 21st Century is to incentivize desired behavior, there is nothing that companies could do that is more valuable than make a record of that very behavior. Now, years ago, I used to do training for clients on things like antitrust, and it was all about avoiding incriminating information in documents. So we would say, "Don't use words like 'dominate' and 'control' when you send documents, because that might be misunderstood!" Jack says, "Don't use phrases like 'destroy the opposition.'"

So, it's critical to not just invest in compliance and ethics, to engage in voluntary disclosure and cooperation, but to make a

record, so that when the company comes under scrutiny in the context of an enforcement investigation, I can take a three-ring binder — or a lever arch file, if you like — and go in to the government and say, "Look at all of the desired behavior this company has participated in." I thought Janet's example of the cooperation with the EPA and the BLM was a terrific illustration of how to engage in that kind of behavior, and document it so that it can be used later to show the company's commitment to that desired behavior.

So, make a record.

My second suggestion for best practices is, follow the recipe. Regulators have become more and more specific about exactly what they want, and it's very important to follow the recipe so that when the time comes, the company can get credit for that. Janet gave a lot of great examples of doing exactly that.

The standards are proliferating, and they're converging. In your materials today, there's an article that I published with one of my London colleagues a couple of years ago about how all the standards for compliance programs in the area of bribery and corruption are converging, and there's really now one international standard. It's very important to know what those standards are, and to follow them in designing compliance programs and ethics programs. We will see guidelines on cybersecurity — again, whether those are voluntary guidelines or mandatory guidelines, watch for those in the 113th Congress.

Following the recipe — it's not rocket science, but it's not easy, either. It requires a lot of investment, and it requires a sustained effort over time. As Janet said, if you don't update your compliance and ethics programs regularly, they become wallpaper and people don't pay attention to them. So it's important to make that investment and sustain it over time, just as ConocoPhillips has done.

My last suggestion goes to investigations. If a company finds itself in a regulatory investigation, particularly a global investigation, it's critical to know how to deal with that investigation. My overall suggestion is to use the leverage that's available. What do I mean by that? Well, there are a couple of kinds of leverage that I think of. One is the leverage of persuasion, and one is the leverage of alignment. When I say the "leverage of persuasion," it's understanding of where the regulators can be persuaded, and focusing on those things rather than the issues that it will be almost impossible, in many cases, to persuade them. Your legal defenses are important. Jurisdictional arguments are important, but often, it's the case that the regulators will simply not be persuaded by those issues, and if they're going to be raised, they're going to have to be raised in a court.

> "The bottom line is this: In our view, constructive engagement and cooperation on the regulatory front are critical to our future success." — *Janet Langford Kelly*

So it's important not to lose sight, and it's important to focus on, the issues on which the regulators *can* be persuaded. Those are things like collateral consequences — what will be the collateral consequences to the economy, to the workforce, to the community, if the enforcement action is taken. Is there a situation where the conduct that's being investigated happened because there was no effective compliance program, or in spite of the fact that the company had an effective compliance program? Going back to my suggestion of making a record, if one could document that the company has a strong, robust, effective compliance program, it's much easier to persuade the regulators — whether they're here in the U.S. or elsewhere — that the conduct they're investigating happened not because we didn't have a good program, but in spite of the fact that we did have a good program.

Of course, there is remediation. In any kind of an investigative situation, one of the things that the company can control is remediation, and the more remediation that you do — as long as it's effective remediation — the more credit you can get for doing that.

So those are all the things that can be focused on in terms of the leverage of persuasion. In terms of the leverage of alignment, that's just a fancy way of saying, "If you can't beat 'em, join 'em." The regulators, again — they're not motivated by economic factors, like business enterprises are. They're motivated by policy issues; they're motivated by the desire to show results in achieving those policy objectives. If you can convince the regulators that you want the same things that they do, and you're taking action to achieve those same things, you will go a long way toward using the leverage of alignment to show them that you're both on the same side. I thought Janet's example of addressing the ethics issues in places like Indonesia and China was a terrific illustration of using the possibility and the leverage of alignment with the regulators to show, "See — we are already out there, doing the things that you want us and expect us to do."

So, those are a few observations. Thank you all. Again, congratulations to Janet and your team, and I look forward to discussing these issues more in-depth.

JACK FRIEDMAN: I want to ask a quick question. About 20 years ago in Los Angeles, we had a program with the General Counsels of Lockheed, Occidental Petroleum, and a major bank. This was a remarkable General Counsel panel in one city at one time. The case they discussed was the following: "You are General Counsel in the U.S. Your representative in Southeast Asia contacts you, and says that the local police agree that they would be quite pleased to enforce your IP rights to manufacture

goods. But the problem was that they didn't have enough staff to do it. They said if your company would give them a grant, they could hire additional staff to go out and find people who are making the illegal knockoffs of your product. What should you do?" Now, my question is — you're laughing — the General Counsel gets reports back from all over the world: how do you interpret these stories? It's plausible, maybe, but of course it could just be a hilarious excuse that's on its face corrupt. The General Counsel is trying to be a good citizen when the feedback given may be baloney.

JANET LANGFORD KELLY: Well, the best defense against something like that is having a really strong team that you can send out into the field to figure out what's really going on, and who you know has your back.

My entire life, I feel like I'm living through *Heart of Darkness* — it's just arrows coming at me! The only way — I can't combat it is with my own intelligence or my own time. The only way I can figure out what's really going on is to have a team that I trust implicitly.

JACK FRIEDMAN: What you're saying is that the people doing the investigation have to go out in the field.

JANET LANGFORD KELLY: Right. It's going and talking to people, sending former prosecutors — and I find any interaction with a former prosecutor to be very uncomfortable, and most people do, because they're trained to make you uncomfortable. The truth tends to come out.

JACK FRIEDMAN: Any comment about how companies can handle a red flag internationally, and then get at the truth of the situation?

TIM COLEMAN: I agree completely with Janet's comments, and the only thing I would add is that one way to have a team that you're sure has your back is to empower that team to apply a healthy dose of skepticism to what

they are hearing, particularly from businesspeople in high-risk areas. It can be very, very difficult for a lawyer in the U.S. or the U.K. or another developed country to handle a frantic request from Southeast Asia saying, "I need a hundred thousand dollars to pay the local police to protect our intellectual property rights." It doesn't sound exactly right, and if you've got a senior business person pounding the table and saying, "I need this yesterday," it can be very difficult to say, "We really need to take a close look at this and consult with legal counsel."

So, empowering your team to be able to do that is one of the most powerful tools there is.

JACK FRIEDMAN: The *Wall Street Journal* reported that some mega-corporation has spent over $1 billion investigating corruption around the world — apart from penalties, which was another billion dollars. An example of a problem the company had was that the Board asked their subsidiary in India to bring some records to their international investigators who were coming in to go through the books. The Indian subsidiary said, "We're sorry, but under Indian law, we're not allowed to give it to anybody, even if it's our parent company." Then a similar thing is supposed to have happened in Brazil. "We can't report to our parent company because of Brazilian law." Which, of course, is another excuse, but that's the problem.

Let me thank you, Tim, for sharing your observations.

TIM COLEMAN: Thank you, Jack.

JACK FRIEDMAN: We're going to have a presentation on the employment side, and then we're going to have a presentation on Boards of Directors and M&A, so those are two topics that are coming up.

TERESA VALDERRAMA: Good morning. I am Teresa Valderrama, a labor and employment partner with Jackson Lewis LLP. I have been doing this type of work for nearly 25 years.

First, I want to congratulate Janet on this great honor. It is lovely to see a woman lawyer of such prominence being honored in our community, and particularly so in her leadership role with a hometown company. Thank you all for coming here, along with the rest of us on the panel, to honor this lady and General Counsel. Jack, thank you for inviting me; it is an honor to be here.

I have to say I've listened to the comments by Janet and by the prior panelists with much interest, and I find them thought-provoking. Yet, as an employment lawyer, I do consider employment law issues to be the most interesting issues there are, and I say this without apologies. I say this because I hear the excitement in Janet's voice as she talks about the changes that are going on within her company and within the industry. I hear the excitement when Janet talks about "the industry boom" and fracking technology opening up vast resources. All of the changes reflected upon by Janet and our other presenters — such as the realignment of companies within the business or to accommodate the boom — involve employees. Realignment of companies to respond to business changes cannot be

effected without internally aligning employees — who often come from very diverse cultures — to work together in a new direction. When business is moving, changing, as quickly as Janet describes is happening in the oil and gas industry, that is exciting. And such change demands an active, forward-looking plan for marshaling human resources, human capital. That is the context in which the role of the labor and employment lawyer, whether in-house or external, becomes, in my view, one of the most interesting that a lawyer can have.

I liken it, essentially, to a Monet. View the Monet, and it's a captivating, textured scene of great beauty. And yet, examined close up, the Monet is merely a bunch of itty-bitty, little spots of color, none of which makes any sense on its own. Only in context does any particular spot of color make sense. That's really what employment law is all about — those itty-bitty, little spots that, together, make up that Monet. Those spots are individuals. They staff the organization throughout the world. They are domestic and international. It's a real challenge for General Counsel to keep their eye on the masterpiece while shepherding their organizations deep down to the level of the individual points, the spots of color that form the Monet. Yet, this is what is required to make everything roll in the same direction during the corporate realignments, the retooling of business strategies, and the organizational restructuring that necessarily occur during a boom.

If any of you have tried to get two or three kids in the car in time for school on any kind of a morning, you know what I mean! Getting three kids to move in one direction at 7:30 a.m. is difficult. Think about what Janet and her company are doing, when we're talking about this boom and the realignment in connection with the development of shale. Even the changes in the LNG market that Chuck described reflect a need for redeployment of human capital — the diminution of LNG imports hails a potential for exports. The diminishment

of one aspect of the business is accompanied by potential growth in another. Both changes require a repositioning of people. That's where diving deep down into the business model, and into operations on day-to-day basis, assures that people all roll in the same direction — and, importantly, that the direction is the same direction that the business is headed.

So, stepping back and looking at this globally, the most persistent employment law challenge for many U.S.-based, multinational employers is managing those labor and employment law issues globally. Typically, these are not a day-to-day priority of the General Counsel because they don't drive the business: it is the other way around. The business objective is to take advantage of the boom, to change the rules for LNG exports, and so on. The individual itty-bitty spots are not the priority. And when the labor and employment lawyers within the company, and externally, are doing their jobs, those issues don't mar the masterpiece, but form it instead. Labor and employment law is an area of legal expertise that is, in many ways, defensive, and in many ways, preventive. Tim talked about that aspect of employment law earlier this morning when discussing compliance and best practices within a company. He spoke about the investment that needs to be made in an effective mechanism for internal investigations, and an effective mechanism to assure that a company is in compliance.

An aspect of global integration and management of employment law issues is that while we often speak about the United States as if it concerned a single, uniform, cohesive body of law, in reality, domestic employment issues require expertise in multiple bodies of law. There is compliance at the state level in each state, and compliance with local laws, in addition to the federal employment law. So, when we talk about globally reaching out, and a General Counsel's office having to be prepared for the challenges of foreign law, we have to remember that even before that step, within our own 50 states there are incredible demands on in-house counsel to understand and cohesively implement compliant policies and procedures. Juxtapose Texas and California employment laws, and you've put it in context right there the breadth of the challenge: Two states. Two very, very different ways of handling workforce issues. One masterpiece.

So, the breadth and diversity of employment laws, both global and domestic, puts a lot of pressure on in-house counsel to assure they are able to address the variances within the law.

For U.S.-based legal departments, there also is the added burden that Tim mentioned: a focus of the United States on trying to impose its law elsewhere. When we're talking about those little, itty-bitty points of color in the Monet, each can be attached to a foreign country — and in those instances, regardless of the desire to interpret or judge the foreign law or the objectives of foreign law by the standards that we apply here at home, the local law is what's going to be significant and is going to be governing the operations. It therefore needs to drive decision-making. Within my firm's

international practice group, we capture this concept with the phrase: "Think global, act local." One of the challenges for in-house counsel is that very few in-house counsel departments have the luxury of local counsel in each of the jurisdictions in which they operate. With restrictions on resources, it can be difficult to "act local."

Overlaying the difficulty of the task faced by in-house counsel when managing law compliance across jurisdictions with widely variant laws is another of the biggest challenges of the 21st Century: managing the speed of information. In Janet's remarks, she spoke of ConocoPhillips' commitment to being a good corporate citizen. Tim spoke of the penalties and the risks when compliance obligations of a good, corporate citizen are not achieved. In today's world, protecting one's corporate good name is complicated by the fact that information travels "at the speed of Twitter." Management must be cognizant of the impact of information on the perception of corporate culture, or else risk a mighty gap between what management may believe is a corporate culture of compliance and a reality that offers a much less pleasing picture of corporate compliance and citizenship.

The word about Twitter, as an example of information management in the 21st Century, is "Don't underestimate it": I learned in preparing for this presentation that about 87% of the world's population has a cell phone. I was surprised by that. I also was surprised that as of December 12, 2012, about a month ago, the Pope of the Catholic Church began using Twitter and now tweets doctrine in eight languages simultaneously. This is state-of-the-art communications in a context that is not ordinarily described as "nimble." As an organization that must deal with a workforce that communicates about employment and compliance at the speed of Twitter, is your organization sufficiently nimble? To be a good corporate citizen, employers must be ahead of the information curve.

> "Let's face it — in local communities, we face classic boomtown challenges: sudden wealth creation vs. change and disruption. Our industry must work with local government to mitigate impact from noise, traffic, air emissions, infrastructure overuse, and the sudden influx of workers into a community. We must undertake greater stakeholder engagement to listen, build trust, and share our side of the story with greater transparency."
>
> — *Janet Langford Kelly*

I want to comment on one of the issues raised by Tim, which I agree is very important. That issue concerns compliance and the changes in enforcement objectives and tactics we are seeing with the enforcement agencies. As with the SEC and the CFTC, the macro level of agency enforcement concerning how a business runs itself, significant and material changes in enforcement objectives are being implemented. The same is true with the Department of Labor, with the IRS, at the micro level of an employer's treatment of individual employees. The significance here is that, along with pressures on compliance that develop during a boom time as a changing industry adapts, employees are coming to know more about their rights, as they relate to compliance and protections against retaliation, for example, in part because of how fast information travels. Employers have to be ready to address that changing environment, and be able to act proactively.

So what does a General Counsel do when, in this theory of relativity, one is sitting in the train and the world is moving at the speed of Twitter? The General Counsel must have a careful, deliberative approach, while still making good, nimble decisions. How can such counsel provide effective legal support?

The answer is very similar to what Tim proposed. As I started out saying, employment law, at its best, is really preventive. Even in instances where laws may entice employees to report or "whistle-blow" outside the corporation, such as happens when bounties are offered under the Dodd-Frank Act, for example; forward-looking General Counsel already will have identified the interstices where human risk (personal or business output metrics) and compliance objectives (which often cut against maximizing business output) are in tension. Proactive General Counsel and management will have put in place compliance programs that capture and reward good conduct, including internal — rather than external — whistleblowing.

I heard Janet speak of revamping ConocoPhillips' code of conduct — and I also heard discussion of a culture that walks the walk and talks the talk. Good for Janet and ConocoPhillips.

To defuse the risk of information that travels at the speed of Twitter, an employer must nurture a culture that supports the code of conduct from the ground up. All of the itty-bitty individual points of color in that beautiful Monet therefore can support the single outcome that ConocoPhillips desires, and that I know that each of you desires, moving the workforce in a direction that's compliant and effective, irrespective of whether it's a boom time of a boom or a time of difficult economic pressures. When the tweet goes out, the response team already should be in place. Janet has her team, who can step out, do the investigation,

understand the culture, and assure that the workforce will not be penalized for bringing an issue forward internally.

In the end, employers can best manage the risks of external reporting by empowering the workforce to report internally. A workforce that trusts management sufficiently to bring all issues forward cannot be treated as a discordant or aberrational blot on a masterpiece. The workforce must know there will be no retaliation and that management is going to do more than talk the talk; management *is* going to walk the walk when compliance and corporate citizenship are in issue.

That is the essence of Monet.

JACK FRIEDMAN: Our final speaker will now introduce his important topic.

ANDREW BROWNSTEIN: Good morning. I'm Andy Brownstein. I'm a corporate partner at Wachtell, Lipton in New York, where I've been for more than 30 years, and co-head our corporate M&A group.

Thank you, Jack, for having me on this program, and I'm, of course, delighted to be here on a panel honoring my very good friend, Janet Kelly.

I've been asked to speak about the role of the General Counsel and the job of counseling Directors in an M&A context, which is really core to my practice. Again, I'm very pleased to do this because although Janet demonstrated this morning she is truly facile with a broad range of legal issues, I think of her in the context of her background and training — I'm proud to say, at Wachtell, Lipton — as a terrific deal lawyer and counselor to Boards.

Let me start by a couple of comments about the relevance of this topic. You spoke about a boom in the oil industry. Well, we're hoping for a little "boomlet," at least, in M&A. There are some signs of that occurring, including in the fourth quarter of 2012, which was really a record quarter for M&A. Some macroeconomic factors affecting this are reducing business uncertainty, available capital, and competition intensifying in many critical sectors of the economy, including the energy sector. All of these factors provide some cause for optimism that M&A will turn and increase.

As I mentioned, the fourth quarter of 2012 had the highest level of M&A activity in years, and it included in it a number of significant, large, transformative transactions, including, in the energy industry, Freeport-McMoRan's $9 billion acquisitions of Plains Exploration and McMoRan Exploration.

Moreover, this is a relevant topic for a forum devoted to counseling Directors, a Directors Roundtable for advisors of Boards and Board members themselves. This is because public company M&A in this country is an intensely legally driven exercise. "Who decides whether or when a company should be sold" really is the central corporate governance question. This question has spawned much of the academic literature and debate on the respective roles of Boards, shareholders and managers in operating a company. After all, a company is only sold once, and if you don't do it right, you don't get to do it again.

There are few clear rules that provide precise direction for structuring M&A transactions. It's not a check-the-box thing or a highly regulated practice. Rather, all of the interesting and hard questions in public company M&A involve the application of equitable principles relating to fiduciary duties, and these are subjects that can be easily disputed in complex situations — and when there's a lot of money at stake.

So, perhaps it's little wonder that according to a study recently done by the ABA, in 2011, there were shareholder lawsuits filed in response to 96% of public company M&A deals having a value over $500 million — an average of 6.2 suits per deal.

These suits rarely result in judgment, and only infrequently in monetary settlements, but they do influence conduct. Most state corporation laws, as you all probably know, contain provisions that exculpate Directors from personal liability, except in cases where a plaintiff can show a breach of a duty of loyalty or a failure on the part of a Director to act in good faith. But the courts have, nonetheless, articulated very high standards and expectations about the processes in which these transactions are conducted, and Directors have serious reputational concerns about overseeing a process that could be criticized as flawed by shareholders, the press or a court.

All of this puts the General Counsel very squarely in the center of navigating the development, structuring and negotiation of M&A transactions, so to guide Directors to protect their reputational interests, as well as their legal interests, to protect the interests of shareholders, and to help make sure that bargains that are made between business principals are not undone or restructured by third parties. The most sensitive issues arise when there is a conflict or an appearance of conflict, and where the record does not reflect an engaged, well-informed Board. An effective counseling of a Board focuses on these issues.

> "It's interesting to contemplate that our industry is investing more capital at home that at any time in recent history, and it's ready to invest more; but our highly-regulated and litigious environment is a significant threat to the responsible investments that our industry stands ready to make. Industry investments that would help our nation achieve energy independence, as well as creating jobs and tax revenue — both in the energy industry and through a broader industrial renaissance — energy independence that would have massive geopolitical implications."
>
> — *Janet Langford Kelly*

To illustrate how difficult this could be sometimes, I'd like to spend a few minutes talking about the most significant M&A case in the last year, and it's a transaction in the energy industry, right here in Texas: Kinder Morgan's $21 billion+ acquisition of El Paso. It might seem a little bit strange to think of that as a controversial transaction leading to a significant case, because it involved a more than 50% premium to the trading price of El Paso before the deal was announced; there was no competitive bidder that complained about the process of the transaction; and the shareholders were happy too. When there was a vote, 90% of the shares that voted approved the deal. That represented 75% of the total shares of the company. Despite all that, in settling the inevitable lawsuits that arose, this was a rare case where money changed hands: Kinder Morgan agreed to pay an additional $110 million — $26 million of it went to plaintiffs' lawyers — and Goldman Sachs (one of El Paso's investment bankers) agreed to waive its request for a $20 million merger fee.

Why did this happen? Given that record, why would these sophisticated people pay money in settlement? The answer lies in an opinion by Delaware Chancellor Leo Strine — who is one of the leading judges in this area, the leader of the leading court in this area — denying plaintiffs' request to preliminarily enjoin the transaction. Chancellor Strine wrote an opinion that was strongly critical of El Paso's process, asserting, and I'll quote, that "the plaintiffs have a probability of showing that more faithful, unconflicted parties could have secured a better price from Kinder Morgan." That's pretty harsh stuff. What led him to say that?

The El Paso case involved hard bargaining and some conflicts. It started in May, 2011, when El Paso announced its intention to spin off its E&P [exploration and production] business from its pipeline business, and retained Goldman Sachs to be its advisor for the spin-off. While this was going on Kinder Morgan showed up privately on the scene and made a proposal to buy El Paso. It said, "If you don't play ball with us and we can't reach an agreement, we're going to make a hostile bid," which might have had the effect of disrupting the spin. So El Paso started to negotiate. They actually reached a tentative deal. Kinder Morgan, doing its diligence, decided it didn't like the agreed price, and reduced it. El Paso ultimately agreed to the slightly reduced price, and they announced this deal — which was, as I mentioned, at a very high premium.

In addition — Kinder Morgan being very tough — El Paso developed an unexpected problem with its advisor. It turned out that Goldman Sachs, through its private equity arm, owned about 20% of Kinder Morgan, and controlled two Kinder Morgan Board seats. Wall Street is a very connected place and it is not unusual to have these conflicts. So what happens? As a result of the conflict, El Paso brings in another investment bank, Morgan Stanley, to advise on the deal. But its mandate is just the deal, not the spin, because Goldman had an exclusive arrangement, by contract, with respect to the spin.

This bothered Chancellor Strine. Morgan Stanley had a contingent arrangement, and the judge said, "Morgan Stanley had the choice of either approving the deal with Kinder Morgan and receiving a significant fee or counseling the Board to go ahead with the spin," which was the Goldman Sachs deal, "and receiving" in the Chancellor's colorful words — "zilch, nada, zero." Now, that's a fair observation! But contingent fees are standard features of M&A transactions, primarily because clients do not generally want to pay large fees for deals that don't happen. Reasonable people can disagree or have different opinions on the merits of almost any transaction. Nonetheless, market forces and concerns about professional reputations constrain advisors from recommending inadvisable deals. Again, it is worth noting that there was not much evidence in the record that the deal was mispriced or that the shareholders were upset.

The Chancellor was also displeased with El Paso's negotiating process. El Paso designated its CEO to be the lead negotiator — which, again, is not unusual — but what made it complicated here was that Kinder Morgan was going to sell El Paso's E&P business when it completed the deal, as part of its financing. The logical buyers were private equity firms, and it was logical to expect that those private equity firms would want that CEO to continue with the business going forward. Again, the Chancellor saw this as a potential conflict, and perhaps it was. But not every conflict necessarily breeds harm. As it turned out, when Kinder Morgan went ahead and sold the E&P business to private equity, the price received exceeded what was projected in the pre-deal analytics. So there was not evidence that the CEO received a

bargain purchasing the E&P business in exchange for being a soft negotiator on the whole company sale. Nonetheless, the existence of a conflict situation creates inferences that must be dealt with.

This underscores the point that the ruling in *El Paso* was on a preliminary motion. It should not be read as an absolute finding of inappropriate conduct; perhaps the parties or the questions raised by the Chancellor would have been satisfactorily addressed at trial. Nonetheless the El Paso opinion reflects the careful, many would say skeptical, review that a sophisticated court applies to a negotiated transaction where there's any hint of conflict – and very often, there is. I happen to believe that there's a robust and fairly efficient public company merger market. However, the courts clearly don't consider themselves to be bound or satisfied by market approval. They expect high standards of fiduciary conduct.

The best way to cope with this attitude and this highly litigious environment is really to create a record that demonstrates the direct engagement of the Board of Directors with all of these tough questions. In the El Paso context, this might have involved, among other things, how did the Board directly manage the Goldman Sachs conflict? How did the Board satisfy itself with Morgan Stanley's objectivity? What steps did the Board take to be fully apprised of the negotiations being conducted by the CEO? I'm sure that if the case went to trial, the defense would have focused on all of these things.

Now, to illustrate the favorable results that can be achieved when the record demonstrates an engaged Board and absence of conflicts, consider another energy case recently: Air Products' hostile bid for Airgas. In that case, the Directors and the shareholders were at odds. Airgas was the subject of a hostile, all-cash, all-shares bid by Air Products, and it was very clear that a majority of the shares would have been tendered into the bid. Interestingly, as part of the process, Air Products ran a proxy contest and was able to elect three Directors to the Airgas Board. However, rather than support the sale and convince the other Directors to similarly support the sale, which is clearly what Air Products intended by electing its nominees – the Air Products nominees ultimately were persuaded by the incumbent independent Directors that Air Products' bid was too cheap. There was an extensive record documenting the Board's active engagement and the Delaware courts didn't second-guess the Board's decision keeping a poison pill in place that thwarted the Air Product's offer, even knowing that the shareholders would have tendered into the offer.

Of course, this record was developed – and this is my point – with a General Counsel and legal team making sure that the Board was adequately informed of all the material issues, conflicts, and potential pitfalls; making sure that they were all adequately considered by the Board and addressed; and finally, making sure that a record was kept that documented all this work.

To conclude, I'd like to describe how our honoree, Janet Kelly, applied these principles in the context of a recent major transaction where we worked together, that does really reflect what I consider to be best practices.

ConocoPhillips' recent spin of its non-E&P assets into Phillips 66 was one of the largest and most complex transactions of this nature ever accomplished. The basic objective was pretty clear: maximize the value and efficiency of the enterprise by separating its component parts, which would be valued separately and function with their independent missions. But doing this involved the examination of nearly every asset and every liability in a company that had an almost $100 billion market cap at the time, and a study of the role and responsibility of nearly every person in a global company with tens of thousands of employees. In any situation like this there is potential for conflict, which has the capacity to frustrate the ultimate objective.

What Janet helped devise was a process to identify and sort out the material potential conflicts, track their resolution, and make sure that the Board of ConocoPhillips was regularly apprised of the progress that was being made and in position to make decisions that needed to be made on a timely basis, and we kept a record of all of that. It really was a model process for a transaction of this nature and complexity, and this process contributed significantly to the successful execution of the deal, and it was a good example of a General Counsel and

her legal team fulfilling their core responsibility, which is to position the Board to exercise its fiduciary duties.

JACK FRIEDMAN: Our last speaker raised issues about the relationship between the Board, operations, and the legal department. Could you give us a sense of what you, as General Counsel, do at the Board meetings? Are you the corporate secretary?

JANET LANGFORD KELLY: I'm the corporate secretary and also the secretary to our governance committee on the Board. So I work very closely with our lead Director, as well as with our CEO, and there is potential conflict, obviously, inherent in doing both of those roles; that is never far from my mind. But I've told both the CEO and the lead Director: my goal is that they be parallel planes landing at the same time, and if I see that one's going to run into the other, to try and get them back on a parallel path, because the worst thing that can happen to the company is for those to not be thinking similarly. They trust me to be the person who tries to make that happen.

JACK FRIEDMAN: Internally, what type of matters are you expected to bring to the Board? Even if it's on your initiative, apart from whatever they ask you to analyze, in today's world, what does the General Counsel have to bring up for the Board to consider?

JANET LANGFORD KELLY: Most things that the Board considers, obviously, come up through management, because even if they have legal vocations, they are ultimately a business initiative. I report at every Board meeting on our major litigation and major arbitration, and then the other thing I would do is if something comes up that looks like it could cramp the Board's role or embarrass the Board or something like that, I will talk with management and say, "This has to go to the Board. How do you want it to go?" We'll work out a path. So, really, it's just having a keen eye to anything that could surprise the Board.

JACK FRIEDMAN: The General Counsel of a mega-company said that the Board is so busy that it only has five or six minutes a year to consider their $23 billion capital expenditure budget. They obviously have Board committees and management committees, so it's not that it isn't reviewed carefully, but it struck me as an amazing fact that as a whole it only has five or six minutes a year for a $23 billion expenditure budget. How does a Board with all these incredible responsibilities have time to keep on top of anything?

ANDREW BROWNSTEIN: That is a key challenge to Boards nowadays. M&A transactions and corporate crises which are episodic, special events that you don't really expect and in my experience Boards take the necessary time which cannot be planned in advance. But in the normal operation of a complicated business, Boards are feeling increasing pressure on their time, frankly by "check-the-box" best governance practices, and what's needed is to step back and figure out what's important for the particular company, given its nature and its particular problems. Boards need to have a road map. The Board ought to have a discussion at some point during the year, mapping the agenda for the ordinary course of events, to make sure that there is time to deal with strategy, succession planning, evaluation and compensation. Addressing the core issues and not getting bogged down by various other issues on a generic good governance checklist.

JACK FRIEDMAN: Janet, from your experience with different Boards, what are some of the best ways that companies can learn how to manage the Board's time?

JANET LANGFORD KELLY: There's a difference between data and information, as I always tell people. I think Andy's right; you start at the beginning of the year with a layout of the major topics at each Board meeting throughout the entire year, so we know we want to have a major strategy presentation at this meeting; we know we want to have a major executive succession review at this meeting; we know the stuff that we believe has to get done to further the business of the company. Then there's the stuff that has to be attended to for governance purposes and things like that, and there, I think, it's the job of the General Counsel's office and the auditors, CFO's office, to package the data as information, and for the Board to trust the people who work with them enough that if I say, or an outside lawyer says, "I've reviewed the stuff; it's good; you're fine," they trust that. Otherwise, you get lost in the details and aren't enabled to play the much more important role that a Board should.

JACK FRIEDMAN: A speaker at a prior event said this actually happened. His client asked the other Board members if he could pay, personally, to have his lawyer come to every Board meeting. Not just for a vital

meeting like an M&A transaction but for every meeting. When I mention this to lawyers, they quickly start considering whether it is even ethical to permit it, to have only one person's lawyer.

As an added note, I remember years ago asking experts, "What company has incredibly good management processes, financial techniques, and keeps good track of this?" Many of them said, "The company that's the best is Enron."

[Laughter]

Before Enron, when executives said "we" and "they", they meant "everybody on the company side" — the company, the Board, the management — versus the outsiders. After Enron, "we" became the independent Directors. *Now*, "we" is increasingly becoming "me." In other words, every Board member knows that they work carefully together during normal times, but they could be a witness against each other about something that happened. If they could afford it and get it, they'd want their own individual D&O policy just covering them.

My question is, "How do you get a Board to work successfully together for the business advancements of the company, when in the back of their minds, they know that someday, when things are not so sweet, they may be set off against each other?"

ANDREW BROWNSTEIN: Well, the place to start is by persuading them that working together is the best way to get the best result for the ultimate beneficiaries, the shareholders of the company, and to minimize, ultimately, legal problems. I'll give you an example from M&A. If you're representing a hostile buyer in an M&A situation, what you want to do is try to find the one Director that you can get to, who you might be able to persuade to give you an inside track to the CEO and to the Board, who might be amenable to discussing a deal. On the other hand, if you're representing the seller, that's the last thing you want to have happen. You want to have all the debate inside the Boardroom, and you want to present a united force. Forget about staying independent; if you want to get the best price, what you do is you stay tight, and you represent a united force for the highest price, as opposed to opening up your weakest link to the other side. You want to get the best price quite simply, if you want to win the suit that's inevitably brought. There are lots of other examples. But at the end of the day, Board debate should be robust within the Boardroom. But once a strategy is set, it's most effective vis-à-vis the outside world if the company speaks with one voice. That also includes not only the relationship among Board members, but the relationship between the Board and the management.

> "Changing culture does not come overnight to our industry or to an institution as large as ours. But change comes if a company's leadership is fully and unequivocally committed to positive change, and is led by individuals who truly believe in legal compliance and a culture of honesty, transparency and accountability." — *Janet Langford Kelly*

Janet made the point earlier that in well-run companies, the Board should trust reports from financial and legal groups that are presented to them, as well as the rest of the management. If they don't trust it, they should change the management. But you're not going to have a well-run, efficient company vis-à-vis the outside world if you're spending your Board meeting with accountants or lawyers debating each other, as opposed to focusing on the strategies. So at the end of the day, to answer your question, they are worried about testifying, and they are worried about being sued, but ultimately, they need to be persuaded that the best defense is a well-run company, and the best way to run — the *only* way to run a complicated company — is in a tightly organized, controlled manner.

JACK FRIEDMAN: We had a program with the Chief Justice of Delaware and one of the SEC commissioners. In the discussion, the Delaware Justice said, "It could take ten years for us to move a doctrine, a new sort of approach to fiduciary duties because we have to wait years to get relevant cases." He commented that in contrast the SEC could enact change quickly, and if they throw it over to the criminal division of DOJ, it might be almost instantly. The doctrine of fiduciary duty is a lot different if the DOJ comes after you.

[QUESTION FROM AUDIENCE]: Have you experienced large shareholders asking to speak directly to the committee chairman on the Board?

JANET LANGFORD KELLY: Yes, we have. But largely, they're not monetary investors; they're social investors that want to do that. I've experimented with doing it. The problem is, sometimes it's very easy to just nip it in the bud by having them talk to a Director. On the other hand, Directors don't really have full-time jobs; the time that it takes to prep them to do that, and the time it takes them to do it, if it were to become a common practice, would completely destroy the role of the Director.

So, I see the pros and cons. I would say, I err on the side of saying, "We've got a group that deals with those issues; why don't we start there," to those shareholders, and if they're very, very insistent on speaking to an actual Director, I'll think about it.

JACK FRIEDMAN: Let me thank Janet and the Distinguished Panelists.

Andrew Brownstein

Partner, Wachtell, Lipton, Rosen & Katz

WACHTELL, LIPTON, ROSEN & KATZ

Andrew R. Brownstein has been a partner at Wachtell, Lipton, Rosen & Katz since 1985 and serves as co-chair of the firm's Corporate group. His practice concentrates on mergers and acquisitions and corporate governance matters, and he has been engaged in many high-profile matters that include crossborder transactions, leveraged buyouts, complex restructuring deals, proxy fights and takeovers. Mr. Brownstein is consistently listed in the top ranks in his areas of expertise by the *Chambers Guide, International Who's Who of Business Lawyers* and other similar publications.

Mr. Brownstein's significant representations include: Walgreen Co. in its acquisition of a 45% stake in Alliance Boots GmbH and option to acquire the remainder, with an aggregate value of $27 billion, and its previous acquisitions of Duane Reade and Option Care; ConocoPhillips in its $33 billion spin-off of its downstream businesses as Phillips 66 and in its $35.6 billion acquisition of Burlington Resources, as well as Phillips Petroleum in its $35 billion combination with Conoco and numerous other transactions; Forest Laboratories in successive proxy contests with Carl Icahn; Genzyme in its sale to Sanofi-Aventis; Novartis in its $49.7 billion multistep acquisition of Alcon, as well as in its $8.2 billion acquisition of Hexal AG and Eon Labs and its $5.1 billion acquisition of Chiron; Schering-Plough in its $41 billion combination with Merck and its $14 billion acquisition of Organon; and BEA Systems in responding to an activist campaign by Carl Icahn and in its merger with Oracle.

Mr. Brownstein is a 1979 honors graduate of Harvard Law School where he was an articles editor of the *Harvard Law Review*. He holds an M.B.A. degree (1976) from the Wharton School of the University of Pennsylvania and also has undergraduate degrees *summa cum laude* in English and economics (1975) from the University of Pennsylvania, where he was elected to Phi Beta Kappa. Following law school, Mr. Brownstein clerked for the Honorable Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit.

Mr. Brownstein is a frequent author and lecturer on corporate-related topics. He has been an adjunct professor of securities law at Rutgers University Law School, serves on the Executive Planning Committee and is past chairman of the Ray Garrett Jr. Corporate and Securities Law Institute at Northwestern University School of Law.

Wachtell, Lipton, Rosen & Katz

Wachtell Lipton was founded on a handshake in 1965 as a small group of lawyers dedicated to providing advice and expertise at the highest levels. We have achieved extraordinary results following the distinctive vision of our founders — a cohesive team of lawyers intensely focused on solving our clients' most important problems.

We have experience in the fields of mergers and acquisitions, strategic investments, takeovers and takeover defense, corporate and securities law and corporate governance. We handle some of the largest, most complex and demanding transactions in the United States and around the world. We counsel both public and private acquirors and targets. We also handle sensitive investigation and litigation matters and corporate restructurings, and counsel boards of directors and senior management in critical situations. We have a track record of original and groundbreaking solutions and innovations that have had a dramatic impact on business and law. We are thought leaders.

Our distinctive structure defines our approach. We maintain a ratio of associates to partners significantly below that of other firms. We focus on matters that require the attention, extensive experience and sophistication of our partners. We limit the number and type of matters we undertake. Our system of lock-step compensation promotes a careful selection of matters as well as the flexibility to bring the right expertise to bear without regard to factors extrinsic to providing the best service and advice. We work together on a task-force basis on all of our matters, bringing to bear the requisite mix of people and expertise across practice areas. Our structure and approach attract talented and entrepreneurial lawyers, who enable us to achieve excellent results for our clients in complex and critical matters.

Tim Coleman

Partner, Freshfields Bruckhaus Deringer

Freshfields

Tim Coleman leads Freshfields' Washington, D.C. litigation team. He devotes his practice to government investigations and related litigation, drawing on his prior experience as a federal prosecutor in the Southern District of New York, a senior Main Justice official, and a foreign exchange trader.

Recent highlights include the following:

- In 2012, Tim was tapped by BP plc and MTN Group (one of the largest telecoms in Africa) to handle high-stakes Alien Tort Statute cases brought in the U.S. District Court for the District of Columbia, both alleging violations of international human rights laws. He also represents MTN in economic sanctions matters before the U.S. Treasury Department (OFAC), the U.S. State Department and other agencies.
- In July 2012, Tim handled the successful settlement for Oxford University Press of parallel investigations, by the UK Serious Fraud Office and the World Bank Integrity Unit, of bribery and corruption in the East African textbook market, drawing on his specialist expertise in matters arising under the Foreign Corrupt Practices Act, the UK Bribery Act, and other international bribery and corruption laws.
- Also in 2012, Tim won the Burton Award for Legal Achievement (for the second time) in recognition of one of his published articles, continuing his role as a thought leader in the area of white-collar enforcement; his views on Alien Tort Statute litigation were recently featured in the *Wall Street Journal* editorial page.
- Tim continued to serve as court-appointed receiver in the matter of Wextrust Capital, a $250 million Ponzi scheme case pending in the U.S. District Court for the Southern District of New York, in which he was appointed by the court at the request of the U.S. Securities and Exchange Commission.

Clients appreciate Tim's insight into the thinking and strategy of regulators, prosecutors and adversaries. They trust him to guide them through the unfamiliar territory of investigations and litigation, in the U.S. and around the world. And they value his high level of credibility with U.S. courts and government agencies. Tim has particular specialist expertise in conducting investigations and litigation in Africa, where he has been active for several years.

Clients also value Tim's extensive international experience. Tim is well versed in international business, finance and politics, based on his legal practice and his previous work as a foreign exchange trader. He has studied at the European University Institute in Florence and the French National School for the Judiciary in Paris, and has done academic work on international monetary policy. His global investigations experience and professional training help him coordinate with Freshfields colleagues and local counsel around the world to deliver seamless service to clients. Above all, he strives to help clients develop practical commercial solutions to their most challenging legal problems.

Freshfields Bruckhaus Deringer

As a leading international law firm, Freshfields has over 2,500 lawyers, located across 28 offices, in 16 countries and 17 jurisdictions across the world. Freshfields has been active in the Americas for more than 100 years. We currently service the region from two offices in the United States – strategically located in New York and Washington, D.C. – which form a key component of the firm's international network. We have more than 150 lawyers based in the United States and more than 200 U.S.-qualified lawyers working in our offices around the world. We concentrate on antitrust, M&A, corporate and securities, finance, private equity, tax and dispute resolution – including litigation and arbitration.

Our clients tell us we have five main strengths above and beyond our top-notch legal skills: a winning track record on mandates that matter to them; business-relevant judgment and know-how to support their decision-making; unparalleled international delivery; an ability to work as part of their team; and an absolute commitment to their cause.

Charles Shoneman

Partner, Bracewell & Giuliani LLP

BRACEWELL &GIULIANI

Chuck Shoneman is a senior partner in Bracewell & Giuliani's energy regulatory group. He counsels major energy industry participants in federal and state energy regulatory matters and represents them before the Federal Energy Regulatory Commission (FERC), Department of Energy (DOE), various state public utility commissions, and in the appellate courts. His practice involves project authorization, ratemaking and tariff, compliance, regulatory litigation and enforcement matters.

Mr. Shoneman advises clients with respect to the energy regulatory aspects of: commercial contracting; structured transactions; mergers, acquisitions and sales of assets; financings; natural gas and liquefied natural gas (LNG) projects; and gas and LNG imports and exports. Mr. Shoneman also represents clients in connection with the regulatory aspects of complex civil litigation.

Mr. Shoneman's clients include domestic and international oil and gas producers, gas gatherers and processors, gas pipelines, local gas distributors, LNG import and export project developers and participants, importers and exporters of gas and LNG, industrial and commercial energy users, electric utilities and gas-fired generators, underground gas storage operators, gas and power marketers and traders, governmental entities, and commercial banks, investment banks and other lenders to the energy industry.

Education

J.D., *with honors,* The George Washington University Law School, 1972

B.A., Duke University, 1969

Bracewell & Giuliani LLP

Bracewell & Giuliani LLP is an international law firm with 470 lawyers in Texas, New York, Washington, D.C., Connecticut, Seattle, Dubai, and London. We serve Fortune 500 companies, major financial institutions, leading private investment funds, governmental entities and individuals concentrated in the energy, technology and financial services sectors worldwide.

History

Bracewell was founded on November 1, 1945, when attorneys J. S. Bracewell and his two sons, Searcy and Fentress, joined with Bert H. Tunks to create the Houston law firm of Bracewell & Tunks. These four lawyers quickly established a culture of integrity and professionalism that has continued unabated for more than 60 years. For example, with Searcy Bracewell's election to the Texas Senate in 1946, the firm began a long tradition of public service. Today, dozens of the firm's current partners have held elected office and have been appointed to senior government positions at local, state and federal levels.

Main Areas of Practice

Bracewell provides guidance on business law, finance, litigation, government relations and regulatory policy. As a full-service firm, Bracewell has considerable bench strength in all requisite practice areas including government relations, strategic communications, tax, trial, labor and employment law, intellectual property, real estate, government contracting and school and public law. In addition, the firm has developed highly regarded concentrations in specific industries and disciplines. These include:

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- Government
- Litigation
- Private Investment Funds
- Technology
- White Collar Defense

Teresa Valderrama

Partner, Jackson Lewis LLP

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all we do is work

Teresa Valderrama is a Partner of the Houston, Texas office of Jackson Lewis LLP. Ms. Valderrama, who joined Jackson Lewis as a lateral partner in 2008, counsels employers in all aspects of workplace law and a wide range of employment-related government agency matters, such as the Department of Labor, the National Labor Relations Board, and the Texas Workforce Commission. Additionally, Ms. Valderrama handles management-side employment lawsuits and appeals, including defense of discrimination, collective action, labor arbitration, workplace tort, whistleblower, breach of contract, non-competition and trade secret disputes.

Ms. Valderrama has tried employment cases in state and federal courts, in addition to handling labor arbitrations and agency hearings. She also has successfully represented clients in a wide range of appellate matters.

Ms. Valderrama is a member of the Firm's Wage and Hour Practice Group and Class Action Practice Group. She regularly defends clients in wage and hour lawsuits and collective actions, and represents employers in investigative and agency proceedings with the United States Department of Labor.

Ms. Valderrama received her law degree from the University of Houston Law Center in 1988 (J.D. *summa cum laude*). Her undergraduate degree is from Rice University (B.A., English and economics). While at the University of Houston Law School, Ms. Valderrama served for two terms as a law intern to the Honorable Carolyn Dineen King of the United States Court of Appeals for the Fifth Circuit. Ms. Valderrama also has served as an adjunct professor of employment law at the University of Houston Law Center.

She has been named by *Texas Monthly* and *Law & Politics* as a "Texas Super Lawyer" every year since 2003, and one of the "Top 50 Female Super Lawyers" in Texas, 2003, 2006 and 2009. She also has been listed in *The Best Lawyers in America* and the *Chambers USA Guide: America's Leading Business Lawyers* every year since 1999 and 2004, respectively. Ms. Valderrama is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization.

Ms. Valderrama is a frequent CLE lecturer on a wide range of employment law subjects, such as the defense of collective actions, evidentiary issues in trial, reductions in force, and ethics in employment law matters.

Jackson Lewis LLP

Founded in 1958, Jackson Lewis, dedicated to representing management exclusively in workplace law, is one of the fastest growing workplace law firms in the U.S., with 750 attorneys practicing in 53 locations nationwide. We have a wide range of specialized practice areas, including: Affirmative Action and OFCCP Planning and Counseling; Disability, Leave and Health Management; Employee Benefits Counseling and Litigation; Immigration; Labor and Preventive Practices; General Employment Litigation, including Class Actions, Complex Litigation and e-Discovery; Non-Competes and Protection Against Unfair Competition; Wage and Hour Compliance; Workplace Safety and Health and Corporate Diversity Counseling. In addition, Jackson Lewis provides advice nationally in other workplace law areas, including: Reductions in Force, WARN Act; Corporate Governance and Internal Investigations; Drug Testing and Substance Abuse Management; International Employment Issues; Management Education; Alternative Dispute Resolution; Public Sector Representation; Government Relations; Collegiate and Professional Sports; and Privacy, Social Media and Information Management.

For the 11th consecutive year, Jackson Lewis has been recognized for delivering client service excellence to the world's largest corporations, once again earning a spot on the BTI Client Service A-Team. Jackson Lewis has also been recognized by in-house counsel in a comprehensive survey by BTI Consulting Group as both a "Powerhouse" and "Standout" in employment litigation. In addition, Jackson Lewis is ranked in the First Tier nationally in the category of Labor and Employment Litigation, as well as in both Employment Law and Labor Law on behalf of Management in the *U.S. News – Best Lawyers*® "Best Law Firms," and is recognized by Chambers and Legal 500. As an "AmLaw 100" firm, Jackson Lewis has one of the most active employment litigation practices in the United States, with a current caseload of over 6,500 litigations and approximately 415 class actions. And finally, Jackson Lewis is a charter member of L & E Global Employers' Counsel Worldwide, an alliance currently of 15 workplace law firms in 15 countries.