DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Dr. Peter Herbel

Senior Vice President & General Counsel
Total S.A.

THE SPEAKERS

Dr. Peter Herbel
Senior Vice President & General Counsel Total S.A.

Noëlle Lenoir
Partner, Kramer Levin Naftalis & Frankel LLP

Françoise Labrousse
Partner, Jones Day

Jean-Claude Cotoni
Partner, Freshfields Bruckhaus Deringer LLP

Eric Cafritz
Partner, Fried, Frank, Harris, Shriver & Jacobson LLP

TO THE READER:

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in his career and his leadership in the profession, we are honoring Dr. Peter Herbel, Senior Vice President & General Counsel of Total S.A. with the leading global honor for General Counsel. Dr. Herbel will mainly focus on the corporate social responsibility challenges of a major international corporation as well as on matters for the Boards of Directors. The panelists' additional topics include issues facing international companies, including new competition law enforcement in Europe and other jurisdictions; changing environmental regulation, compliance, and litigation in France, the EU, and elsewhere; and cross-border dealmaking in financings and mergers & acquisitions.

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

Dr. Peter Herbel

Senior Vice President & General Counsel Total S.A.

Since 2004, Peter Herbel is Senior Vice President and General Counsel of Total S.A., Paris, France, the publicly held parent company (listed on the Paris and New York stock exchanges) of the 5th largest oil and gas group in the world. Total has business in more than 130 countries in the fields of oil and gas exploration and production, of refining and marketing, of renewable energies, as well as of chemicals. As chief legal officer of the group, Peter Herbel has worldwide responsibilities for Total's legal department functions. He is also responsible to continually improve and adapt the corporate governance and compliance policies. The chief compliance officer reports to him.

Prior to joining the Total group in 1996, Peter Herbel was Senior Vice President, General Counsel and Secretary General of Thomson, a consumer electronics company. In his early legal career, he was an associate attorney at the German firm Bruckhaus, now part of Freshfields Bruckhaus Deringer. He is admitted to the Bar of Düsseldorf, Germany, and is a member of the International Bar Association.

Peter Herbel received a Ph.D. in law in France and in Germany.

Total

With operations in more than 130 countries, Total engages in all aspects of the petroleum industry, including Upstream operations (oil and gas exploration, development and production, LNG) and Downstream operations (refining, marketing and the trading and shipping of crude oil and petroleum products).

Total also produces base chemicals (petrochemicals and fertilizers) and specialty chemicals for the industrial and consumer markets (rubber processing, adhesives, resins and electroplating). In addition, Total has interests in the coal mining and power generation sectors. Total is helping to secure the future of energy by progressively expanding its energy offerings and developing complementary next-generation energy activities (solar, biomass, nuclear).

JACK FRIEDMAN: Good morning and welcome. I am Jack Friedman, Chairman of the Directors Roundtable. We want to thank the audience for being here and our Guest of Honor and the Distinguished Panelists who you will be meeting this morning. I would like to make brief introductory remarks and then we will proceed with the presentations.

We are a civic group which has organized 750 events globally in the last 22 years. Our goal is to present the finest programming for Directors and their advisors at no cost to the audience. This program honoring general counsel was inspired by Directors saying to me that globally the media, politicians, and public do not have an understanding of the good things that companies do. The feeling that Directors have is that if your company is ever mentioned, it's just criticism. They suggested we create a neutral, non-public relations forum for business and general counsel leaders to speak about what they really do and what they are proud of.

While we are honoring Dr. Herbel directly, we are also honoring Total and the work that it does as a world leading corporation in the oil industry. Also we are honoring the French business community. I myself do not know French, but I love the French language and enjoy listening to people speak it, as it is a beautiful language. There will be a transcript of this event made available electronically to 150,000 people globally so we have asked our guests to speak mostly in English.

Just a small note to show that French fashion is still gloriously respected and admired throughout the world. A few years ago, we had a special occasion to honor important women in business, and wanted to know what we should get them. I went to the Hermès stores in Beverly Hills, New York, and Paris to get advice. Then I went to Tiffany's to see what they had. In the end it came down to presenting either a Hermès scarf or a Tiffany crystal in a box that was respectively "Hermès orange" or "Tiffany

blue." We decided on the "Hermès orange." This is an example of the fact that French fashion is the world leader.

Let us now start with a presentation by Dr. Herbel. He is renowned in his career with corporations and in his other activities.

PETER HERBEL: Thank you, Jack. Good morning, everybody, and thank you, Jack, for the introduction.

When I prepared for this event, I asked myself a question. The question is: Why did all these guys come here today? What are you doing here? What is the reason for you to come here? I tried to figure out some answers to these questions. I said to myself, maybe some came because they were induced by their hierarchy to come. That could be one reason. Others came because they are getting a free breakfast in a great place. That's another good reason, I guess. Some came because they want to catch some marketing opportunities, and maybe some because they like me. I don't dare think that. Maybe some came because they are curious to hear from the great speakers, those four over there, to hear what they think a general counsel's challenges are. But I am sorry to tell you that in the first place you will have to endure a lengthy speech about three topics: why Total is a great place to work; what its strategy focusing on CSR, corporate social responsibility, is about; and what the boards should look at in times of permanent crisis.

In 1996, a long time ago, it was my first day in this great company. The HR department brought me to my office. So I had an office; that was the first good news. I had no secretary; that was the first bad news. It was unclear whether I would have a team or not, maybe two lawyers. But then I said, what about the work? I was told, here is the file, and there was a paper on the top of the file saying: Please read this file — by the way it was one meter thick — and tell us what the commitments of the foreign government are on the face of a memorandum of understanding in this file.

Okay, so I started to read this huge file, it took me three days. My answer was, "None, no commitments, just nice words." Then my boss asked me to come over, and he told me, "Not a good answer. I signed this memorandum of understanding. So you now put in place a strategy to get the subsidy of $600 million mentioned in that memorandum of understanding. "

I said to myself, "What possessed me to come over from Thomson to this place?" I suddenly realized that I had to drop all my previous experience and start from scratch. This is a totally different industry.

1. So why is Total a great place to work? Everybody knows that Total is a major company in oil and gas, number five of the listed international oil companies in the world. It is present in more than 130 countries and it has approximately 100,000 employees in the world. These employees generate sales of $250 billion a year, and a net income of $16 billion in 2011.

Lots of figures, but what do they say? The figures seem to be big, but what few people realize is that the oil majors all together have access to only 20 percent of the resources of this world, which means that the national oil companies own the rest — 80 percent of the reserves. Few people know that, and especially politicians may want to look at this fact which has a lot of impacts on our future supply of energy.

The national oil companies and their countries are driving the markets and the international prices for crude oil, except that some financial institutions and traders also have a marginal influence on the prices. The national oil companies aspire to become international oil companies, and a number of them have already succeeded.

All this means that there is not only competition among the majors, but even more so between them and the national oil companies, to get access to new reserves. Just to give you an example, when you look at the bid rounds Iraq launched over the last two years, you will find out that almost no major oil company took a big field in Iraq. National oil companies from other countries — Angola, Brazil, Malaysia, Russia — took these fields. That's another interesting thing to remember when you speak about oil and gas. The national oil companies do not use the same investment profitability criteria that international listed oil companies do, which makes the competition extremely difficult.

So what are Total's strengths to continue to succeed in this world? Our technical expertise is a decisive advantage. It is internationally recognized, especially in the areas of seismic imaging, the deep offshore and what we call complex gas. I will not go into more details because I am mainly speaking to lawyers, so I do not assume that you all have the engineering knowledge to catch all that. I don't. We also think of ourselves as having a strong ability to manage large-scale projects in time and in budget involving capital expenditures of $20 billion in 2012.

Another key quality that sets us apart is our principled commitment to corporate social responsibility. This might be surprising. What is it about? It is about our ability to understand and to respond to the needs of the producing countries and of the people living around our plants. It is about our vision of shared economic development. Our integrated business model, meaning refining and chemicals, supply and marketing, plus renewable energies, enables us to offer solutions which go beyond the major oil and gas exploration and production activities of the company.

Total is more than just an oil company. Total is a world-class operator in refining, with 20 or so refineries in the world. In petrochemicals, we are among the 10 biggest producers of polyethylene, polypropylene and polystyrene. In response to rising energy demand, we are stepping up our growth in solar energy and biomass. These are the two new energies we believe in.

Very few people know that Total has been producing solar panels for 30 years. But recently we took a majority interest in SunPower, a U.S. listed company, which brought us among the global leaders in the photovoltaic solar market.

Together with our partners, we are building a huge concentrated solar power plant in Abu Dhabi. This project is almost finished, with a capacity of 110 megawatts, enabling the Emirates to supply more than 40,000 people with power. Another of our major solar projects is taking place in California right now, where our subsidiary SunPower is building an even bigger plant, the California Valley Solar Ranch, with a capacity of 250 megawatts, is going to supply 100,000 homes with energy.

Total also holds a strong interest in the U.S. startup Amyris, with which we develop biofuels. They will probably be on the market by the year end. We are heavily investing in other research projects related to biomass, such as Futurol and BioT fuel. Biomass already accounts for about eight percent of the global energy mix.

This quick snapshot on Total's activities tells you that Total is pretty well placed to take on the challenges of the future. Total's mission is to responsibly enable as many people as possible to access energy. Energy is life, together with food and water. I think we are, and I am, proud to contribute to progress in the world. Energy is the key to economic growth and the world needs all energies.

2. What is Total's strategy focusing on CSR, corporate social responsibility, concretely about? There are probably several answers, but I will just pick one. One thing which differentiates the oil industry from other economic sectors is that you have to find and produce oil where it is. This may seem self-evident and trivial at first glance. But, think twice. This simple truth generates several consequences. First, you can move a car factory from one country to another. If you do not like the economics or the political conditions of a given country, you may choose to move your factory to another place. You cannot do that with oil. You have to produce oil where you find it.

Now, when you look at the map, you will see that oil and gas reserves are not evenly distributed around the world. Most of the reserves are in countries which we call "challenging countries." As an oil company committed to respond to the rising energy demand, we have to go to such challenging places, except if we cannot uphold our own code of conduct.

This brings us to the second consequence generated by the fact that you have to produce oil where it is. In reality, this sentence is only true as long as, first, it is not

forbidden by applicable law to invest in a given country — and there are such laws, called sanction laws — and second, if there is no legal obstacle, as long as you can live up to the standards of your own code of conduct.

The code of conduct of Total is quite a document; it's similar to a constitution which describes what our values are, how we are supposed to act, what we expect from our employees, what kind of commitments and responsibilities (a word which lawyers don't like) we take with respect to the communities living around our plants.

Let me give you two examples. One is Yemen. It took us over 20 years to develop, in 2007, a gas field in the mountainous area of Yemen and an LNG plant, a liquid natural gas plant on the coast, to liquefy and ship the gas to Asia, Europe and the U.S. In 2007, at the very early stage of the construction work of the plant, I got a phone call from our general manager of the plant. He said, "Peter, I can't sleep anymore. Before we arrived in the coastal area of Balhaf — the name of the place — boat people from Eritrea, Somalia and Ethiopia arrived on Yemen's southern coast, on a stretch of roughly 300 kilometers. Since we started work, they almost all arrive at our place. These people are hungry, they need medical assistance, and they want to get accepted in this country. What should I do? Is it our responsibility to help these people? At the same time, I want to make sure that the soldiers guarding our plant do not misuse their power. But is it our responsibility to intervene?"

My human rights team and I thought the answer to the two questions was yes. We helped broker an agreement with the High Commissioner of Refugees of the United Nations to establish in the vicinity of our plant a facility allowing us to take in the refugees, feed them and give them medical treatment. We also negotiated a treaty with the defense ministry by which a framework was put in place to induce the soldiers to respect the UN principles called Voluntary Principles on Security and Human Rights. This treaty with the ministry provides for very concrete measures to make sure that the soldiers around our plant live up to that standard. For example, we have a weekly conference between our security manager and the officer in charge, to look at what happened during the week. Was there a drunken soldier hanging around? Get rid of him. Among other things — and it might be quite peculiar for you — from time to time, we provide training sessions in the Arabic language on human rights and the Voluntary Principles to the soldiers and the officers. So far it is working well.

Yes, I am speaking on the topic of corporate social responsibility. Indeed, CSR is our strategic basis to create shared value with the communities near our plants. I quote our CEO: "Companies cannot overcome the challenges of this world alone. It is only by listening to our stakeholders and maintaining constructive dialogue with them that we can hope to develop appropriate solutions together." (Total's CSR report 2012, p. 4)

Let us turn to another example which gave rise in the past — it might be changing now — to lots of criticism: Myanmar, called Burma by a lot of people. This is

a very challenging country. Over the past 15 years, Total's wide reaching social and economic program has focused on four key areas: Public health, education, economic development and infrastructure. At the same time, we do everything in our power to ensure that human rights, all the principles you know, labor laws, health, and safe environmental standards, are upheld in the area where we operate, which comprises approximately 35,000 people in more than 30 villages.

This is a wooded area with a lot of villages, a stretch of approximately 60 kilometers by 20 kilometers in the southern part of Myanmar, and we interact with all those neighbors. How do we do this concretely? We have 900 employees in Myanmar. Out of the 900 employees, 300 have a full-time CSR job — full-time. They are located, 90 percent of them, in the area where our business is, in the southern part of Myanmar; the other ten percent are in Rangoon, the former capital. They interact on a daily basis with all the communities, the 30 villages around our pipeline, and they discuss with the communities whether they have needs, or projects — e.g., bridges, roads. When they say that they need help, we may agree with them to contribute our part in building bridges and building roads. That means that we do not just give money and say, "Okay, here is the money to build your bridge." We say, "If you want a bridge, you have to participate. We will bring our share: our engines, money, and expertise, but we have to share that." That's part of what we call "shared value." It's not just giving money. They have to take the responsibility of these projects and we are going to help.

We are providing clinics, 20 or so, in that region. We are paying for teachers in the schools because the teachers in Rangoon want to stay in Rangoon. We participate in paying a kind of "premium" so that they accept to go to that part of the country. We have human rights training sessions for all of our employees in that country, together with the International Labor Organization of Geneva, and with the Danish Institute for Human Rights with which we have worked for many years.

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>
> *— Dr. Peter Herbel*

The legal department of Total is heavily involved in putting in place these concrete CSR actions, including when we go into new countries; for example, through human rights' assessments, always together with external partners like, for instance, the Danish Institute for Human Rights.

You can find out more on Total's CSR strategy in the 2011 annual report which just came out, and I would invite you to take a look, because it will show you that Total is not just about making money; it's about making money responsibly. We lawyers fear the worst when our CEO says, "I take the responsibility," because we know that we are getting litigation. But that's what the company is about, we are taking that responsibility and we assume it.

3. Now, let me address the third topic, what the board of directors should look at in times of permanent crisis. Jack, I think this is the first time that the Directors Roundtable honors a French company. I am glad that you chose Total as a starting point, because there are a lot of great lawyers in this country. If you look around here you can choose your next honoree. I am very glad to accept this honor in the name of my entire team, a team of 400 lawyers worldwide from more than 50 nationalities, and with a diversity rate of 50/50 male/female. When you look at this podium of speakers, you will find out it's the case today also.

I am lucky to work with this really great legal team, some of them are here today, with whom I have been able to put in place a number of innovative features. I will give you some examples, which are of interest to board directors.

Some 15 years ago, I thought it would be nice to have a quality management system in the legal department. I had done that before for another company where we put in place ISO 9001, a quality management system for the legal department of that company. But this time we said, "Okay, we've done that already, let's do something more," and we looked at what else there is around the world. We found out that in the U.K., the Law Society had put in place a quality management system called Lexcel, based on the ISO 9001 standards, but adapted to the legal profession of law firms and corporate in-house departments. We were the first company on the Continent to adopt that system, which worked well. More recently, we put in place a comprehensive worldwide knowledge management system, an integrated IP department, a group-wide compliance function of more than 300 compliance officers worldwide, and other great features.

My team and I also focus on your usual clients, Jack — board members. Total's governance rules and instruments have been established by the legal department, and I interact quite regularly with the Audit Committee of the Board, which oversees, among other things, the major risks, including in the legal area. Together with my team, we implemented a group-wide mapping of specific legal risks of our business and an interactive software-based management system for these risks.

Maybe the message here is that the general counsel is the person board members should ask to attend their meetings, preferably more often than less. Board members

might want to increase their use of one of the powerful tools to protect and inform them. It's not the only one, but it is one of the good governance tools in the company, the in-house legal function.

Everybody acknowledges that our various regulators generate thousands of new rules every year, each of them. The question a board member might want to ask is how to cope with the ever-increasing legal obligations for their company and for themselves. The answer is through establishing a balanced governance system, through a well-thought-through compliance process focusing on the major risk areas, through a legal risk management tool, but also through sophisticated litigation management, especially together with our outside counsels. We partner with them in other fields too, but litigation is a very important thing for us.

Let's wrap it up. What should you do with the information I gave you this morning? You thought you could get away with your breakfast, that's not the case. I have two requests.

First, please spread the message that the employees of Total like to work for their company and that Total is truly committed to sharing value with its stakeholders through continued and open discussions as well as responsible actions.

Second, please speak to board members you know. I think they should increasingly interact with the general counsel of their company; first, to get a neutral analysis of the business risks and second, to get strategic advice on good governance, through which the general counsel would be able to protect them and the company, which is his/her major task and mission.

Now I would like to thank the other four speakers around this podium: Noëlle Lenoir, Françoise Labrousse, Jean-Claude Cotoni and Eric Cafritz, for their contribution to this event. They, at last, will touch on the real legal issues. Thank you, dear audience, for attending this conference. I

see a lot of friendly faces around me, and I thank you all so much for your kindness. [Applause]

JACK FRIEDMAN: I think it's good to mention some things that are not so well known about French business practice, to let people from around the world read about it.

I want to ask you the following. In the United States, the larger companies have to basically have in attendance a corporate secretary who takes the minutes for the Board meetings. So one way that the general counsel ends up being at a meeting is that many general counsel have the position of corporate secretary as well. They are always in the board room. There was an incident in the United States I was told about, which is really incredible, that one board member said, "I will personally pay to have my personal attorney attend every board event. Not the board event for major acquisitions, M&A legal, or something that would have an incredible legal significance, to have him there or her there sitting next to me. But I'll pay him myself, just to have my lawyer there."

You've been in the corporate world as a counsel for many years. I assume they are getting more and more concerned about legal problems and governmental problems. What is the trend now for the time involvement that the general counsel has with the board?

PETER HERBEL: I can't give you a percentage of my time because it's varying over the year. We have a board meeting every two months, and they are normally preceded two or three days before by a meeting of the audit committee or other committees of the board. They always need information about things which went on in the past month.

I don't know exactly how much time it takes; maybe ten percent of my time over the year. There are periods where you have huge legal risks to manage and you spend more time than usual, especially with the audit committee. As I said, they are overseeing risk management in the company, and risk management is part of the legal department.

I would say, in France at least, I do not see a trend where board members would like to come with their own lawyer into the board room. I first think they would not be permitted to do that and that's great. Don't change this please. When you think about the role of the board, the

board members are supposed to supervise management in the interest of the company, not in their individual interest or in the individual interest of the shareholder which got them in this position.

I think that there might be a difference between the U.S. and Europe, at least in France. You have to remember that board members are supposed to work in the overall interest of the company. I think they don't need outside legal counsel every day when they meet at our company. They can get it from us, just ask.

JACK FRIEDMAN: Is it common to prepare a regular report to the board about certain major legal risk issues?

PETER HERBEL: Yes. We have a yearly meeting, a meeting with the board on the major litigation issues we had around the world. We explain what these cases are about and how much is at stake. We make a written report to the board on major litigations, which for us are cases with a stake of more than 15 million.

JACK FRIEDMAN: Euros?

PETER HERBEL: Yes, Euros. That's what we call major litigation. We have a number of court cases around the world, approximately 300 or so major litigations for our company. In this huge bulk, there are some which are of even greater interest for the company, and therefore we have special sessions with the audit committee on these cases.

JACK FRIEDMAN: You are welcome to elaborate that during the discussion period. Our first speaker from the panel is Françoise Labrousse. She is a partner at Jones Day. She will introduce her topic for us today.

FRANÇOISE LABROUSSE: First, I am very happy to be part of this event honoring Peter and his team, and also honoring Total, which is a great company.

Peter has said a few words about corporate social responsibility. As an environmental law specialist, I would like to say a few words about new trends in corporate environmental responsibility. Right now you can see a trend at the EU level, under which for companies — and in particular for multinational companies — mere compliance with environmental health and safety laws is no longer sufficient.

Of course, in many legal systems, including under the EU environmental liability directive, there is liability on a no-fault basis, therefore compliance with laws is no longer sufficient. But all major companies, including Total, have adopted internal voluntary, environmental health and safety policies or ethic codes, which are sometimes very detailed. They take the form of internal operational rules, technical standards and recommendations; and you see a lot of these policies, especially in the environmental field, where it is very technical. In most legal systems, environmental laws provide for very general principles, such as the obligation to remedy in case of pollution, but they don't tell you to what extent you need to remedy, and where the real stakes are.

Therefore, big international companies adopt internal rules and sometimes refer also to good industry practices. Usually such rules are considered non-binding and voluntary. But there is a new trend that you can see at the EU level. I am referring in particular to a communication of the EU commission dated October 25, 2011, under which you see a shift from the voluntary integration of social and environmental issues in companies to the principle of responsibility of companies in the field of environmental issues, for instance. This communication is defining environmental corporate responsibility as the "responsibility of companies regarding the social impact of their activities," and the word "voluntary" has completely disappeared.

In fact, the commission believes that the voluntary approach is no longer sufficient in the context of economic crisis to increase social and environmental responsibilities. It also believes that there is a need for a legal framework under which all those recommendations and ethics rules in the area of environment should be brought.

The idea is also to avoid "green washing." "Green washing" is using the environment as a marketing tool or argument without true consideration for the environment. Just adopting a nice environmental chart or policy is no longer sufficient. It has to be enforced at some point, and the EU Commission wishes to provide a vehicle that will give some sort of legal binding effect to such internal charters or policies.

The new legal framework on which the EU Commission is working will include increased transparency and reporting obligations. There are already various reporting obligations in France, where listed companies and companies with more than 500 employees have to disclose very precise information on the impact of their activities on the environment and similar rules should be extended throughout the EU. Also, the scope of information to be disclosed, and the companies which will be subject to this requirement will be made more explicit.

The idea is to create auto-regulation systems or co-regulation systems, without the intervention of the regulator. The companies will be left to themselves to regulate the application of codes of conduct, and of environmental or technical guideline rules.

What I would like to underline is that, as a result of this trend, all these rules will somehow become legally binding and the best persons for monitoring such rules and their implementation within the company will be the in-house lawyers, they will have to play a key role in this area where you can see fundamental new trends.

JACK FRIEDMAN: Let me thank you. A few years ago, there was a proposed U.S. regulation about the duty of lawyers in reporting to the SEC. At the time, we were hosting a senior SEC official here in Paris and in Brussels. We sat down with leaders of the European Bar and spent four hours trying to discuss the impact, and the different problems this had created for law firms and for the in-house counsel

in Europe. They wanted to submit a statement with the SEC, but they didn't know what to say because they didn't understand how to articulate their concerns. Our side couldn't figure out what the problem was. It was not clear on either side whether a lawyer reviewing a corporation filing is responsible only in his specialty or generally responsible beyond his or her specialty.

FRANÇOISE LABROUSSE: I will turn to my colleague Linda Hesse who is specialized in capital market issues. I am often involved in reviewing the environmental issues of the project, but it is done on a case-by-case basis. There is no binding rule in this respect.

JACK FRIEDMAN: The outcome of it was that after four hours we all realized there might be a difference between the U.S. and Europe. So when the Europeans filed their comments with the SEC, they asked the SEC to put in a provision clarifying whether lawyers outside the United States are only responsible for reviewing things in the area where they have expertise or more broadly. It's an example of the problem of communicating professional standards across the ocean because people in one area do not know precisely what the standards are in the other area.

FRANÇOISE LABROUSSE: That's part of what we are doing here. Companies listed at the same time in the U.S. and in France, like Total, will apply both the rules required by the French AMF and the rules required by the SEC. This is true for the environmental disclosure, at least. We are combining both.

JACK FRIEDMAN: Thank you. To continue our presentation, Eric Cafritz, a partner of Fried Frank, is going to be speaking.

ERIC CAFRITZ: I want to talk about something that took me about 30 years to notice, probably because I have a tendency to overlook the obvious. It's the mechanical side effects of large-scale industry. In the modern business environment of very large businesses, the general counsel stands in the middle of a constant stream of big risks, some of which are potentially huge, and he is expected to manage those risks and to interpret them to his constituency, which is usually the CEO and the board behind the CEO.

The complexity of these gigantic modern businesses is as vast as the businesses themselves. By virtue of being global, there is no uniform standard for weighing or understanding the risks, which may be completely different in different parts of the world. In fact, large-scale industry often deals at the sovereign level, as Peter explained, and the general counsel's office must be equipped to assist in those cases where the law may be drawn up or adopted ad hoc.

The scale of corporations in the Global Fortune 500 is astronomical, on a par with the risks involved. Total is sixth or seventh among the Global Fortune 50. I think you said it has about $215 billion in annual revenue, which is $600 million a day. So I will never negotiate another fee discount with you!

JACK FRIEDMAN: Peter is noted for being careful with his budget, so you have to watch yourself.

ERIC CAFRITZ: The businesses involve vast numbers of employees. I think Total has about 100,000, and your customer base is in the millions. I've been reading about Facebook, which has 800 million customers. France Telecom has 230 million customers. These businesses also involve correspondingly large numbers of suppliers and contractors.

In the starkest sense, these large businesses are a huge target for plaintiffs, and there are potentially hundreds of millions of potential plaintiffs. High-volume industrial or financial business also carries with it an inherent risk of commensurately large damages and losses, spills being the most publicized risk in the oil industry. BP damages from the Gulf incident are about $45 billion and counting. JP Morgan just lost $5 billion in related trades over a week; and Madoff's massive investment operations resulted in the largest fraud in history, about $50 billion.

Industry on a large scale has the characteristic of concentrating and amplifying risks. Take the example of chicken farming in the U.S., which is one of the world's most concentrated industries. A single virus has the capacity to wipe out the whole business, which wouldn't be the case if you had very small chicken farms such as my own, all running separately from each other, where my virus is my virus and doesn't necessarily affect your chickens. But at Facebook or Google, a single privacy issue, for example, may affect hundreds of millions of users at a time. Just think about a spill involving a T-class supertanker, which is one of the largest ships currently in service, so that any single incident can lead to a spill of gigantic proportions.

Or consider a crash of the latest Airbus with a passenger capacity of 900 passengers. Solely by virtue of being big and concentrated, the risk of accident becomes enormous. A single accident involving a smaller aircraft, although tragic, seems tolerable in comparison to a crash involving 900 passengers at a time.

In fact, any industrial process carries with it risks that exist solely as a result of the scale of the activity. The chairman of Sara Lee once said to me, "Look, I run a coffee business; there is nothing wrong with coffee, and coffee bean shells are neutral and non-toxic. But I have mountains of them." So he had mountains and mountains of coffee bean shells, and trying to figure out what to do with those was a big and very expensive problem for his company. I think they use them as gardening mulch now.

On such a scale, it's a difficult business environment, posing problems to a general counsel as difficult as matters of state. Unfortunately the general counsel can't console himself by saying, "Well, it's no big deal." All I can say is "*Chapeau bas*, Peter: hats off!"

JACK FRIEDMAN: Let me ask you a quick question for education of people who are outside of France. How easy is it to bring civil lawsuits against corporations in France? I don't mean the government bringing enforcement, I am talking about a customer group, or other people.

[AUDIENCE MEMBER]: General complaints can be filed by anybody.

JACK FRIEDMAN: In recent years, I asked people in London, "What remedy do individual investors have if they feel there is fraud? They said, "Basically none. An individual can't really sue a corporation."

[AUDIENCE MEMBER]: You don't have the vehicle for the suit.

JACK FRIEDMAN: The issue is the economics of bringing it. One key reason you can do class actions in the United States is that one lawyer can file on behalf of everybody in the United States. That gives you economies. Another thing which is key, is that you basically negotiate whatever fee you can. The law firm, if it wins, often gets a third of the award. I know one law firm that got a fee of $1 billion for a $3 billion lawsuit.

FRANÇOISE LABROUSSE: You don't have class actions in France.

JACK FRIEDMAN: That's what I'm saying. So in England, you could bring it and maybe you could do this. But in France, how economically can a million people sue a corporation, who would represent them, and how are they paid?

[AUDIENCE MEMBER]: Procedurally the mechanics are different, but you have

minority shareholders, associations who say: Bring together lots of individual interests and bring claims on behalf of individual plaintiffs. There are all sorts of ways that class action in reality can be reproduced in France. But I agree with you, procedurally it's going to be different and economically the stakes are different.

JACK FRIEDMAN: We had a program a few years ago in Paris, and the CEO and Chairman of Société Générale was the Keynote Speaker. He said that they had given a loan to an industrial company, clearly not military, in Iraq. No UN prohibition, no French, no EU, no U.S. There was nothing controversial. It was just an ordinary business loan to a manufacturer. He said that his general counsel said, "We've just been sued in the United States." And he replied, "What has this got to do with the United States?" The Chairman of SocGen said: "I learned the phrase 'deep pockets.' We happen to be the richest people involved, so that made us vulnerable in America."

It is easy to bring class action lawsuits in America. An individual may get a notice from the court saying, "You bought something during the period of 2006 to 2009, and you are included in the class of buyers. If you'd like to bring the lawsuit yourself or just don't want to be involved, sign this notice to 'opt-out' and send it back. If you don't send it back, you are part of the lawsuit."

It doesn't cost the person anything. He or she will think, "Maybe I'll get a check for something."

NOËLLE LENOIR: There is a text presently being discussed at the EU level, but in no way will the Europeans adopt the system of opting out, because it would be contrary to the charter of the fundamental rights of the EU and, by the way, to the French constitutional law and case law.

There is great pressure at the EU level to introduce this text. The French are not at all happy with this. I think that the companies, seeing the example of the U.S., are

not at all keen on and anxious to see the text adopted. But they did discuss it at the level of the DGCom consumers. So I think that one day or another it will be adopted, but in a softer way. The electoral campaign will be less costly, because the lawyers will be less rich than in the U.S.

JACK FRIEDMAN: Does that mean that the threat to reputation is important, but economically the worry about private lawsuits is lower? How do you view it?

PETER HERBEL: I would like to come back on one of the remarks by Elie Kleiman. One of the big differences between the U.S. and Europe is that most lawsuits here in Europe start on a criminal basis. Whenever you have damages, you first start a criminal action against the company.

JACK FRIEDMAN: What does the word "criminal" entail?

PETER HERBEL: "Criminal" means that you get the prosecutor involved, who then handles the case for you, free of charge, and investigates the case. It's a different system. One of the big problems here is that whenever an accident happens, you would think that the victim should get money. Yes, but first you want to get the somebody into prison. So it's a very different philosophy.

JACK FRIEDMAN: Criminal means that one of the possible penalties is time in prison?

ERIC CAFRITZ: To go to jail.

JACK FRIEDMAN: I would encourage any of the multinational law firms which are here to do a program in New York on these differences.

ERIC CAFRITZ: We can't really do that, because nobody would ever invest in France.

JACK FRIEDMAN: The dangers of doing business in Europe would have to be kept a secret.

PETER HERBEL: I may disagree a little bit, because when you look at the economic figures which are published by U.S. institutes, the legal business industry represents two to three percent of the national gross product in the States. It's approximately 0.5 percent over here. I think that a lot of American companies could come here, because it is easier, and from a legal point of view, cheaper to do business here. When I have a lawsuit of the same size in the U.K. compared to Paris, I pay three times more in the U.K. than I pay in Paris.

JACK FRIEDMAN: Let me thank you for that insight. Our next speaker is Jean-Claude Cotoni of Freshfields.

JEAN-CLAUDE COTONI: First of all, Peter was asking why we were here today. As far as I am concerned and Freshfields is concerned, we are here to celebrate Peter, of course, and the incredible company that is Total. Total gives us the opportunity to work on very challenging matters, intellectually complex. Just on this, we would like to thank Peter and his team, because, for a lawyer, it's really a great chance to have

the opportunity to work with a client like this one. That's really the first point I want to make.

Now the topic that I'm going to talk about was quite difficult to find, because today who do we have attending? We have on the one hand a bunch of Total's lawyers, very high-quality people used to working in the international environment. Other than that, we have competitors and friends who are doing in fact probably the same activities as we do at Freshfields. I thought it was important to find a topic which would be of interest to both, without disclosing confidential information.

We have been lucky enough, at the end of last year, to carry out an internal survey to try to find the trends in the private M&A markets all around the world during the last 12 months. In order to do that, we reviewed 90 shares sale and purchase agreements entered into with a lot of foreign parties, involving more than 30 countries, to find the trends, if any, and how the trends have been changing over the last 12 months.

So what I would like to do now is to share with you the results of that survey and probably benefit from your experience or comments, if you disagree with some of the findings that we have identified.

The reason for the survey was in fact the following. We wanted our lawyers to provide better advice, if possible, to the clients, and in order to be able to do that, we think that it is important to understand and to predict which can be tension points between sellers and buyers which are coming from different legal environments or systems. That's the first point.

The second point was how we anticipate what could be the future practices and what future market terms will be, and ultimately for the client, possibly help him to identify what will be the best jurisdiction for his deal.

Peter mentioned that the litigation costs in the U.K. were, fortunately or not, much higher than in France. Where the client is very concerned with legal fees, if he gets the same protection in legal terms in the U.K. or in France, you may recommend that he go to France, for example; it makes sense.

In fact, we have identified four main findings from the survey before going into greater detail. First of all, they are convergent terms. The main terms are similar in sophisticated markets, but certain markets are more advanced than others. The way, for example, Chinese companies will approach caps issues in the warranty agreements will be different than it is in the U.K., in France or in Germany.

We know that active markets are consistent by evolving terms. We know that there is a trend today away from other seller-friendly terms. The financing conditions of seller-friendly terms are less dominant.

The last point, financing approaches reflect market conditions. Vendor financing is quite rare and bankers' appetites remain low, and it has of course an immediate and direct effect in the terms you negotiate in the contract.

So we have reviewed in fact 45 terms in 90 deals through 14 regions. In order to make a comprehensive presentation, we've tried to summarize our findings under five different headings. We have concentrated on (i) due diligence issues, (ii) deal protection mechanics, (iii) pricing issues, (iv) financing issues and (v) risk allocation. What I am going to tell you now will not surprise everybody, because all of you either know or, in our respective firms, are familiar with those topics. But at least it will give you what the trends are today.

First of all there are due diligence terms. Due diligence can be vendor due diligence or purchaser due diligence. What we see in the market today is that legal vendor due diligence remains still fairly unusual, more usual in certain jurisdictions than others, more usual in certain types of deals, in particular when PE houses want to optimize a quick and easy disposal process. Certain countries are not really familiar with that kind of product.

Purchaser due diligence is quite common, all of us have been involved in that kind of process; very often offered to sub-parties like banks, subject of course to reliance or non-reliance mechanics. This is quite classical. In terms of reliance or non-reliance

for the lawyers, the big question is what am I exposed to when I am asked to provide the reliance.

What we see on the market, at least in France, is that possible reliance are capped fees very often, but discussions can be quite tough on that.

For part of the reports, I think clients tend to favor the red flag report more than detailed, comprehensive, exhaustive reports, which are costly and very often, in my view, useless. They are just paper, and I am not sure that clients are looking for that. Certain countries, however — the Netherlands, Spain and the U.K. — still continue to favor very detailed reports.

The second big topic: what I would call deal protection terms, in other words, what kind of financial protection could a buyer or seller obtain from its counter-parties if for any reason the deal doesn't fly and stops before closing. This is the usual question of the break-up fee, who is paying them, and in which circumstances. What we see is that pre-signing break fees are rather unusual, but they sometimes cover costs incurred by the parties – financial adviser costs, legal costs, and others.

Post-signing seller break fees are rather rare, but they are usually tied to the obtaining or not of shareholders' or third parties' consent. Post-signing purchaser break fees are rare, except for some in the U.S. I am not a U.S. lawyer, so maybe some U.S. lawyers may comment on that. But I am told that the U.S. has reverse break fees designed especially to deal with uncertainty in financing.

Deposits in order to secure the transactions are not common in almost all jurisdictions, although I am told that, in oil and gas deals, it's more common than in other sectors of industries. In some Chinese deals, due to foreign exchange restrictions, there are deposit mechanics. In some energy and real estate deals, deposits seem to be fairly common.

The last point is exclusivity agreements. Is it really a common standard to obtain exclusivity when starting negotiations in an M&A transaction? It depends of course on the strength of either the buyer or seller in the negotiations, in a rather strong position or in a weak position. It's really a matter of commercial negotiation.

Pricing terms are key, of course, for everybody. We know that we usually see on the market two big types of price clauses, either fixed-price mechanics with the so-called "lock box" or price-adjustment mechanics through debt and cash adjustments on closing, and this is certainly under the pressure of the private equity houses.

So in various practice of jurisdictions, fixed-price clauses are very common: China, Hong Kong, Germany. They are common in Italy and UK, where there is a PE seller. It is less common in the U.S., Belgium and Japan. Post-closing adjustments are very common, when having a PE, in particular on the buyer's side.

Deferred consideration is common through a lot of mechanics. It's not so common when used to incentivize management. They are not really seen right now in China, Hong Kong and Spain, I am told. There is a trend to see more of these considerations, but on the number of deals that we have seen, it only concerns 30 percent of the transactions reviewed.

Anti-embarrassment clauses, do we meet them very often? Quite often, when the assets of the company purchased is *"en retournement,"* is commonly structured, because the seller wants to get the benefit of the efforts he may have engaged before selling.

Financing terms, this is probably the topic where the things have evolved over the last two or three years. Vendor financing remains quite unusual, except in circumstances where selling is over part of the equity in the new vehicle.

High yield bonds are more or less common, depending on the jurisdictions. Certain fund undertakings on signing again really depend on the natural relationship between certain buyers and market conditions. But what is clear is what was

common market practice five years ago is no longer the market practice again.

Banking documentation at signing again depends on certain jurisdictions. Like in China or Germany, it would be usual to have the full banking documentation available for signing in all the jurisdictions. You will, depending on the relationships you have with your bank, obtain a very strong commitment. Again there is no defined rule or very specific rules on that.

In terms of risk allocation terms — and I think this is the last topic I would like to cover here — well, you are all of course familiar with reps and warranties mechanics. What we see in terms of reps and warranties mechanics, there is always the same story of discussion as to whether those reps are given on signing, repeated on closing, whether you have the right to bring them down in order to be protected against the changes between signing and closing.

Again, there are really mixed practices here. In certain countries, for example, in Hong Kong, Italy, Middle East, the Netherlands and Spain, the reps are repeated without bringing down disclosures; where in France, it's more common to bring down the disclosures under certain financial terms. Management reps and warranties are, of course, customary when management invests along with the Purchaser, but with certain financial caps and limitation to protect individuals. Warranty insurances are still not very common on the French market, unless for small-sized deals, and we do not think this is a real trend in the market for this product to develop in a very efficient manner.

A last point, which is the reason for a lot of discussions between lawyers, is to know whether or not data rooms are disclosed against warranties or not. We are all familiar with the kind of discussions which can last overnight. There are efforts to educate young lawyers, for them to understand exactly what it means to have that disclosed or not disclosed.

> "We say, 'If you want a bridge, you have to participate. We will bring our share: our engines, money, and expertise, but we have to share that.' That's part of what we call 'shared value.' It's not just giving money. They have to take the responsibility of these projects and we are going to help."
>
> *– Dr. Peter Herbel*

But I think that now there is a concept of fair disclosure which helps to speed up discussions on this topic. It's not common in certain countries. Like in the U.K., for example, I understand it's not common to have full disclosures on guarantees. It's not common in the U.S. and Italy, but otherwise it's a mixed practice.

Limiting liability to "purchaser's knowledge" is a discussion which is generally open to negotiation and tough discussions among parties. I would not say this is really a common trend, at least on the Paris market. But we sometimes see that kind of representation.

JACK FRIEDMAN: Thank you. You may recall that AT&T wanted to buy T-Mobile, the U.S. wireless telecom operations of Deutsche Telekom. They had a breakup fee of more than a billion dollars.

I am not exaggerating. They couldn't get the U.S. Government competition lawyers to prove the deal was killed and AT&T wrote an enormous check.

What is ironic about the whole thing is there is no implication of corruption, or anything wrong. The lawyer who was the main competition law lawyer for AT&T, and was therefore on the losing side, was a few months later nominated to be the head of the antitrust division of the U.S. Government.

Our next speaker is Noëlle Lenoir from Kramer Levin.

NOËLLE LENOIR: Thank you very much indeed. I would like to warmly thank Peter Herbel and also to mention that, as he has shown, he is not only a very learned and refined lawyer — a very inventive one too — but he has a global vision of the mission of Total. As we are French, you can guess that we are very proud to have Total in France, even though we have no oil — more ideas than oil. I would say that it's very important, and I thank also Mr. Friedman for organizing this in Paris.

You won't be surprised if I have chosen, as a competition law and European law lawyer, to talk about competition law, for two reasons. First of all, it is a bridge between the U.S. and Europe. Competition law was born in the U.S., imported into Europe 70 years later, in the Treaty of Rome in 1957, and in France much later. In fact, the competition authority was created in 1986. It was very, very recent.

I have chosen to talk about a new procedure which was set up recently, in 2008. I have advised the company who was asked to be part of this procedure, which is the settlement procedure. As you know, especially in France, and in Europe as well, we are not so keen on settlement. Of course, now it's much more frequent, but the settlement procedure at the EU level is quite new, and this creates not only questions of law, but also questions of strategy. In my view, a lawyer is not only a man or a woman who is supposed to give law advice, but also strategy advice, because the challenges are so high. As you know, it has also been imported from the U.S. that fines are considerable. There is the question of powerful competition authorities, as you can guess, but it has reached such

a level that it is very important to also give strategic advice.

So what is the settlement procedure at EU level? It's supposed to be a win-win situation. That is said in the U.S. documents; that is said also in the settlement notice of the Commission. It's of course a win for the Commission itself as a competition authority, because it allows it to handle more cases with the same resources, and also it is seen by the Commission as a means of limiting the number of appeals to the EU court in Luxembourg.

If I may say so, for the Commission, it has only one boss, one master — which is not the member state, but the court; because the Commission hates to be disavowed by the court. So it's a tool for the Commission, which is very advantageous. It may be less advantageous to companies, because it is nothing like the plea-bargaining procedure currently applied in the U.S., as I read in cartel cases 90 percent of them give place to settlement.

Of course, in France, it is yet zero, and in Europe, we have had only five cases, with only two decisions published in the official journal of the EU. I advised the companies in one of these two cases, the hybrid case. That is to say, that one of the participants of the cartel didn't want to go on to reach an agreement with the Commission, and that is my client. I won't say more because there is a pending case before the general court in Luxembourg.

Why? Because according to the mindset of the European Commission, there is no negotiation. The term "negotiation" is not well accepted in Europe. You know there is the law and there is infringement to the law, and negotiation is not a suitable expression with regard to application or implementation of the law.

JACK FRIEDMAN: Again, for the foreign readers of the transcript, are you saying that the government basically says: "You have to do this, otherwise there is

no resolution. We don't like to negotiate." The company may decide to not fight the government anymore and try to come up with something in the middle.

NOËLLE LENOIR: It's not really the mindset as such, but of course this is what is said. In our case, the government is the Commission, because the Commission represents the European institutions and is the competition authority. It is the DOJ plus the SEC, the EU Commission in that field.

JACK FRIEDMAN: Earlier this year, the EU told Google to change certain practices immediately or the penalty will be up to 10 percent of global — which is 38 billion dollars — a penalty of $3.8 billion dollars. What is the EU mindset about this? For Americans, it's incomprehensible. We just don't deal with the government that way.

NOËLLE LENOIR: In Europe, there are discussions with the Commission, but the Commission leads the procedures in competition law.

They are defending their thesis and their position, and they are saying: Don't abuse it. They don't agree. If they don't agree, they impose a fine, and then they sue the Commission before the general court in Luxembourg. Or if they agree, there may be a settlement, which was the case with Microsoft, in fact. Unfortunately I didn't advise Microsoft. I think that they should have had a lower fine even; I'm joking.

JACK FRIEDMAN: I know the joke. I'll mention it next time.

NOËLLE LENOIR: Yes, you should. There has been a settlement with Microsoft because of course the fine should have been much, much higher. But in fact it is not supposed to be a settlement, and there are discussions. But I don't think that it is so much different in the EU than in the U.S. But what I want to stress is that, with regard to competition, we imported what we can call the right to rescission — that is to say, if you admit your liability, then there is leniency or settlement; then you can have some advantages.

But what I wanted to stress with this short presentation is that this is called into question with regard to a very recent case law of the Commission. In the framework of leniency programs, if you accept to be engaged in a settlement procedure you can settle the case with the Commission. Then a third party which wants to bring an

action to claim damages before a civil or a commercial court in its own country, or in the country of the company concerned, can have access, based on the right of all citizens to access the administrative documents of the Commission, the leniency documents or the settlement documents.

JACK FRIEDMAN: An area that gets great attention of the American business community arises when they get antitrust approval in the United States for a deal, but they go to Europe and get turned down. Another area is privacy practices when they are okay in the United States, but are struck down by a court in Italy or a court elsewhere.

Few businessmen think about other types of European regulatory matters.

NOËLLE LENOIR: Do you know why?

JACK FRIEDMAN: Why is that?

NOËLLE LENOIR: Because, by definition, competition law is extra-territorial. You have the cartels, for instance, by object or by effect. If it is supposed or if it is alleged that the effect of a cartel impacted the internal market of the EU then the Commission views it as competition. Most of the time, because you have multinationals, competition authorities are very keen to sue these multinationals. For instance, the Brazilian advocates at present with the Brazilian authorities are very aggressive. The individuals allegedly concerned as having participated in a cartel can be fined between 10 and 50 percent of the fine imposed on the company itself, which is a lot of money, as you can imagine.

So you see it's by definition extra-territorial. Of course it is very illustrative of globalization. My view is that the problem of extra-territoriality, conflicts of law, and conflicts of treaties now resides with the deputy head of the foreign office. The deputy head of the French foreign legal department sits here and represents France in all the French case laws before the general court and the ECG. He knows that one of the biggest issues nowadays for companies is conflicts of law, conflicts of procedures and conflicts of treaties also, because many times you have treaties at the basis of international commerce.

Competition law is illustrative. Can I finish just a word with this? Thank you very much. He is the best lawyer; because lawyers like to speak. I just wanted to stress a fact. It's that of course law reflects culture and habits, and competition law is imported from the U.S. as a federal tool to ensure the good functioning of the inter-commerce exchanges. It was exactly the same in the EU, but it was adapted to our culture, and sometimes there is a clash of culture.

First, we imported all the procedures which were supposed to alleviate the administrative burden of the investigative powers of the Commission, because it's very, very difficult for the Commission, being a small agency, to have an overview of all the practices of the companies in Europe. With regard to, for instance, cartels, leniency procedures on the one hand, and now settlement procedures, are supposed to exonerate, if I may say so, the Commission from the obligation to prove that there were antitrust practices. But now it clashes with the very, very strong cultural principle which is imported from the north of Europe to the south and to the center, because France is part in the north and part in the south. That is transparency.

Two days ago, for the first time, the general court in Luxembourg said: Leniency procedure represents almost 100% of the cartel cases, and settlement procedure is bound to also be the common procedure to be used at EU level. But there is a counterpart which must be sought by companies, which is transparency, because the court decided, there is an appeal. The court decided, and the action was brought by Sweden before the general court in Luxembourg, that the whole leniency documents, and it will apply to the settlement documents too, are to be accessible directly to the public; not only to the third party concerned, but to the public. Of course the question is, that's what I wanted to stress, it's not only a legal issue, it's also a strategic issue.

We spoke about that. It's a German case, you may know it. So the legal issue is that competition authorities, because they want to gain power, are much more aggressive now, when, in France, damages are usually very low; fines imposed to companies by the Commission can be up to 1 billion or more Euros, which is considerable.

It is a very difficult question for a company to know how to manage with this European discovery, which is now the right to access all leniency documents and settlement documents.

What I wanted to say is to honor Peter, because he has to manage these questions, not only in competition law, but in all matters. But law has also to do with cultures, with strategy, and Europe is a very good laboratory for this dilemma. Thank you.

JACK FRIEDMAN: Peter, you were talking about the people side of Total in terms of personnel, customers, and the local community. How many employees do you have, by the way?

PETER HERBEL: 100,000.

JACK FRIEDMAN: Tell us about your thoughts on how you try to handle the people side of your business internally. I would guess it's heavily regulated in France, but comment about Total's philosophy and approach.

PETER HERBEL: There are a lot of regulations on labor here in France, but you also have cultures, cultures which differentiate companies from each other.

When I left that first company I worked with for 14 years to join Total, I felt a huge difference in the way the culture of the company considered employees. This might be a consequence of what Eric spoke about, that huge amount of money we are managing. When you look at the number of employees and then the sales they generate, you see that each employee is extremely important for the company, because when you look at the sales of other companies divided by the number of employees, there is a huge difference with such other, more labor-intensive companies.

So for Total, the employees are really important. Why? When you invest 5 to 10 billion in a challenging country, we didn't touch on this so far, you will get your first buck back after 10 years at the earliest.

> "Total's mission is to responsibly enable as many people as possible to access energy. Energy is life, together with food and water. I think we are, and I am, proud to contribute to progress in the world. Energy is the key to economic growth and the world needs all energies."
>
> *– Dr. Peter Herbel*

Just to give an example. We are about to develop a field in Angola called Pazflor. It took us 20 years to develop it, which means what? We spent $9 billion over 20 years to get the first oil. We call it the first oil, 20 years, $9 billion, which you have to disburse, and then you get your money back little by little over time when that field produces gas or oil. Either the country will pay you for that, which they rarely do, or they give you good oil or gas, and you sell that.

So you have to advance a huge amount of money, and then you have to wait for another 10 years to recoup the money which is spent in the first place, and then you need another 10 years to make money.

ERIC CAFRITZ: And you have depreciation amounts.

PETER HERBEL: That's true too, I agree. We also have huge taxes, from 40 to 90 percent, depending on the country, on average a worldwide rate of 60 percent. What I wanted to say is just that, when you have these challenges, you really have to count on your people in those challenging countries, to be sure that your investment is really paying off one day. So that's the difference.

JACK FRIEDMAN: Part of the problem, of course, is the change in governments over 20- or 30-year periods. How do you project which will be a safe environment?

PETER HERBEL: That's the beauty of having great lawyers who know how to architecture, I call this architecture, the contracts with the state, the partners and all the suppliers. When you have an investment like this, thousands of pages of contracts around one investment, our lawyers know how to structure these very long-term projects so that we survive those different governments which we have in front of us. There is no arrogance in saying this, it is just a matter of fact, because we live longer than them. You have to stay there over the next 20 years, at least. This means more than one generation.

JACK FRIEDMAN: Because of the size of what you do, you must work with several banks. What is it like, from the general counsel's point of view, to negotiate these complex packages with groups of banks? It must be absolutely incredible.

I don't even know what banks have as a security in the oil industry. What is it like working with them?

PETER HERBEL: It's difficult. But what we try to do, and in most cases we succeed, is to pay ourselves, we are our own bank.

JACK FRIEDMAN: Self-financing the project?

PETER HERBEL: We have our own treasury. Only when we are obliged to partner, especially with local companies which do not have enough treasury, then we have to put in place project finance, in which case 20 to 40 banks may be coming in on that project. So we always have a number of banks.

JACK FRIEDMAN: Do you have a lead bank representing the group?

PETER HERBEL: Yes, a lead bank per project, and then you have 20 or 40 banks which join. That's how things are structured. But we prefer to finance ourselves, because it is difficult to manage the relationship with so many banks.

[AUDIENCE MEMBER]: What we are seeing in Europe is third-party litigation funding.

JACK FRIEDMAN: That's legal?

[AUDIENCE MEMBER]: Yes, legal funding. Particularly they started off in the context of either high-cost English litigation, but also in investor-state arbitrations, where there is a whole industry now. In fact some law firms have business models based on finding impecunious plaintiffs, putting them in touch with the funds, or then fund the entire legal costs of the case. In France we will see, but it does seem to me to be suggestive of the trend. I am wondering whether Total has ever come across situations where plaintiffs have been funded by a third party.

PETER HERBEL: The answer is yes.

[AUDIENCE MEMBER]: There's going to be more and more of that.

PETER HERBEL: In Europe.

JACK FRIEDMAN: It's almost never done in the U.S.

PETER HERBEL: Jack, when I listen to the questions asked by various speakers here, they really touch on major differences between the United States and the Continent here.

Let me give you an example which I think helps to clarify what the basic differences are between the U.S. and Continental Europe. I don't speak about the UK because I don't know enough about the UK. I know a little bit more about the U.S. It all boils down to a very old-fashioned thing, which is philosophy of law and more specifically what it tells us about the respective place and role which the various nations give to the citizens versus to the state.

> "Please spread the message that the employees of Total like to work for their company and that Total is truly committed to sharing value with its stakeholders through continued and open discussions as well as responsible actions."
>
> *– Dr. Peter Herbel*

Here is an example. During my career, one of our U.S. lawyers from Houston, Texas, called me and said, "Oh, we have a lawsuit, a 'qui tam' lawsuit in Alabama." I said, "Tom, I don't know what that is; what is it?" He said, "There are teachers who claim that we didn't pay enough taxes to the state, and therefore there is a damage to their schools which suffered losses because the state couldn't give them enough books for the schools." I said, "Wait a minute, wait a minute, Tom." I had never heard of this kind of lawsuit, where a completely unrelated citizen steps in on behalf of the government, and claims damages for himself.

I asked philosophers, "Help me to understand this bizarre thing. What is it about?" They explained the origin of this concept in the following way: the American citizen is the state. That's not the case in Europe. The state and the citizens are separated. When you have a burglar in your house, you ask, "Where are the police?" In America, you take a gun and shoot him and you have the right to do so. So there is a huge difference, and Noëlle put it very well, there is a huge cultural and philosophical difference. When you import concepts like the competition law concept you spoke about, into Europe, you have clashes; not just culture clashes, but philosophical clashes, because the role of the state and the role of the citizen is not the same in the U.S. and Europe. You can explain a lot of the difference, including the class actions, when you take this into account.

In the States, the citizen is the prosecutor. In Europe, we think the prosecutor has a job, we wait for him to do his job. That's a completely different approach. I think a lot of the differences between the U.S. and the Continent can be explained through that philosophical difference, because the place of the individual here is not the same as in the States.

What I always regret is, when we, in France, or in Germany, or in Italy, or somewhere else, import U.S. legal concepts, we do not have a discussion about what that means to the other concepts we have had for hundreds of years, or even 2,000 years, because the Romans invented them before we grew up. We don't have that discussion; we just import the plea bargaining, the whistle-blowing, the leniency programs, whatever you have. And, in addition, we never even think of exporting to the U.S. our really good concepts. For example, that it is forbidden to give loans to people who you know cannot reimburse them, except if the economy suddenly and forever grows without ever suffering from a downturn anymore.

To simplify: In Europe, you have a concept which attributes to the law quite a different place, a divine place, whereas, in the U.S., it's just one tool out of a lot of tools to organize the society. That's different. Here it has a place high above the people. You cannot settle with a judge, you cannot have a deal on justice. That's not in our culture.

Nowadays we are getting closer to the U.S. philosophy; for example, as Noëlle explained, we are now making settlements with the EU Commission acting like a Department of Justice. I may negotiate settlements for my company in the United States on

criminal matters; with the DOJ, for instance. Nevertheless, you have to take into account that, from a philosophical approach, there is a huge difference, bearing in mind that the place of the citizens and the state, their respective place is not the same.

JACK FRIEDMAN: This program has focused on two or three key things. One is that we have gotten to know our Guest of Honor better, and if you see his name in the newspaper, you'll know something about him personally if you don't already know him. Secondly, the people side and the social responsibility of Total has been discussed. Obviously this is not something that the press or the politicians usually talk about, and it's good that we've spoken about it here.

> "When you import concepts like the competition law concept you spoke about, into Europe, you have clashes; not just culture clashes, but philosophical clashes, because the role of the state and the role of the citizen is not the same in the U.S. and Europe." – *Dr. Peter Herbel*

There is an old European saying and I don't know whether it's from Roman times or more recently. In essence it says that the finest education is one where no matter how much you learn, you feel that there is much more to learn. I'd like to learn so much more about French business, French government, and your traditions. From that point of view, you've made me and other people twice as curious about France as when we started.

Let me thank everybody here, especially our Guest of Honor, Dr. Peter Herbel.

Françoise S. Labrousse

Partner, Jones Day

Françoise Labrousse is a well-regarded environmental lawyer in France, and her practice focuses on environmental, energy, and health and safety-related issues under French, European, and international law. She has extensive experience on soil and groundwater contamination, air contamination, waste management, chemical substances, asbestos, industrial risks, climate change, and energy-related projects. Françoise's activity in industrial and energy projects includes the management of regulatory procedures in connection with the creation, operation, closure, and remediation of industrial and energy facilities.

Françoise represents multinational corporations, government-owned entities, and governments in environmental and health and safety disputes before civil, administrative, criminal, and arbitral courts. Her recent representations include an African state in connection with the discharge of toxic waste from EU countries, as well as French and international companies on compliance with applicable laws with respect to remediation and health and safety issues related to past and current operations of industrial sites. Françoise also handles environmental, health, and safety issues related to various M&A, restructuring, and assignment operations; and she is particularly focused on environmental audits and environmental representations and warranties.

Françoise is a lecturer in the master of environmental law program at University of Paris-XI (Sceaux), and she is frequently invited to speak on environmental law issues at professional conferences. She is the author of a number of environmental and energy publications. Françoise is a member of the Scientific Committee of INTERSOL (International Conference on Soils, Sediments and Water) and of the BDEI publication (Industrial Environmental Law Periodical).

Jones Day

All law firms seek to serve clients effectively. Some do it more consistently than others. Jones Day topped BTI Consulting Group's 2012 "Client Service A-Team" ranking, which identifies the top 30 law firms for client service through a national survey of corporate counsel. "BTI welcomes Jones Day to the number one spot for the 7th time – and into The BTI Client Service 30 for the 11th straight year," says the BTI report. "Jones Day secures its position in the top spot for the second year in a row by earning an exceptional 10 Best of the Best honors in the activities driving superior client relationships." And in the 2009 Corporate Board Member/FTI Consulting annual survey of almost 300 corporate board members asking who is the best law firm in America, Jones Day was ranked second. These are just two indications that our focus on serving our clients' needs, and not on the financial metrics that are so commonly used today to measure law firm performance, is recognized by our clients, who reward us with more opportunities to help them meet their interests.

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

Eric Cafritz

Partner, Fried, Frank, Harris, Shriver & Jacobson LLP

FRIED FRANK

Eric Cafritz is a corporate partner resident in Fried Frank's Paris office. The Paris office was established under his direction when he joined in 1993.

Mr. Cafritz concentrates his practice on corporate and securities matters, and on international transactions. He is also a member of the Firm's Aerospace & Defense practice. His wide scope of corporate experience ranges from cross-border mergers and acquisitions to the structuring and financing of pan-European industrial ventures.

He has represented some of the world's most important and largest European and US-based corporations and banks and also represents a number of major aerospace and defense companies on their M&A matters. His extensive international training and experience in corporate and finance law have allowed him to cultivate a cross-border practice with a global footprint.

Fried Frank

Since January 2006, Fried Frank has represented clients in more than 500 M&A deals worldwide, totaling over US$1.5 trillion.

During this period, we have also advised clients in more than 300 public and private debt and equity offerings totaling more than US$140 billion.

Our asset management practice provides a full range of legal services to a diverse group of clients, including US and international asset management and private equity firms, broker-dealers, hedge funds and their managers (exempt or registered), family offices, high-net-worth individuals and institutional investors.

Our commercial and corporate litigators represent domestic and international companies in a broad range of matters, including complex contract, bankruptcy, financial services, insurance, real estate and antitrust litigation. We also represent corporate clients in business tort litigation such as fraud, breach of fiduciary duty and unfair competition claims against companies and their directors and officers. We offer the most thorough, effective and efficient approach to every business need. The practice is closely integrated with our intellectual property and securities regulation and enforcement groups, as well as our appellate, environmental, government contracts, professional liability, RICO, qui tam, takeover and proxy fight and white-collar crime litigation practices.

We have one of the leading securities and shareholder litigation practices in the United States, serving as defense counsel in numerous class actions and other securities litigation, including derivative actions, across the full spectrum of fiduciary duty and corporate governance issues.

We have represented clients in many of the major internal investigations and securities enforcement matters in recent years. Our white-collar criminal defense and civil litigation practice has been involved in many of the highest-profile corporate representations over the last two decades.

We have represented all of the major investment banking firms and broker-dealers, each of the Big Four accounting firms and many of the largest insurance companies of the world in securities regulation, compliance and corporate governance matters.

We have an established antitrust and competition practice that advises and represents clients on the full range of issues arising out of global transactions and multijurisdictional investigations. We have a bankruptcy and restructuring practice built on broad-based experience, creativity, efficiency and the desire to advance client interests in the most complex and sophisticated transactions. We have represented clients in major patent and other intellectual property litigations. Our real estate practice handles some of the largest leasing, acquisition and sales transactions in major US financial markets, as well as internationally. Our tax practice advises clients globally in virtually all areas of tax law. Our executive compensation and employee benefits group offers counsel to corporations, boards of directors and compensation committees, as well as to commercial banks, investment banks, trust companies and other entities.

Jean-Claude Cotoni
Partner, Freshfields Bruckhaus Deringer LLP

Avocat à la Cour, Jean-Claude Cotoni has been a partner at Freshfields Bruckhaus Deringer since 1991, and was managing partner of the Paris office between 2004 and 2007. He specialises in merger and acquisition transactions (M&A) and joint ventures (JVs) for investment funds and industrial groups. Jean-Claude is a member of the "Energy" sector group and the "Corporate Finance" practice group.

Jean-Claude also teaches general corporate and contract law related to joint ventures and mergers and acquisitions in an international context, at the *EDHEC* and at the *Institut de Droit des Affaires of the Université d'Aix-Marseille*. Both the *Chambers Global* and PLC (Practical Law Company) guides list him amongst the best specialising in M&A, whilst the *International Finance Law Review* guide (IFLR 1000) considers him a "leading individual" within the field. He graduated from the *Université de Paris I and II*, with a *Maîtrise* in Law, and a DESS in Business Law and Tax.

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP

Freshfields Bruckhaus Deringer LLP ranks amongst the leading business law firms both nationally and internationally. We are committed to excellence in the legal advice and support we provide to our clients for their entrepreneurial decisions.

Our global footprint

With over 2,400 lawyers working from 27 offices in 15 countries, we have the resources to offer you unrivalled expertise in all fields of business law in your core markets globally.

In jurisdictions where we do not have an office, we have established close links with local lawyers who have demonstrated their ability to produce work of a consistently high quality, in keeping with our standards.

Areas of practice

Our firm is organised into nine international practice groups in line with our clients' business needs.

We are proud of the fact that all our practice groups are acknowledged to be among the market leaders in their respective areas of law.

Noëlle Lenoir

Partner, Kramer Levin Naftalis & Frankel LLP

KRAMER LEVIN
KRAMER LEVIN NAFTALIS & FRANKEL LLP

Ms. Lenoir focuses her practice on European competition law, public and constitutional law, regulations, and strategic alliances.

Ms. Lenoir has had a distinguished career as a government official and jurist in France. She served as the French Minister of European Affairs from 2002 to 2004, where she was involved in the development of EU law and institutions and the political and economic affairs of the member states. From 1992 to 2001, Ms. Lenoir served a nine-year term on the *Conseil Constitutionnel*, France's Constitutional Court. Ms. Lenoir was the first woman and the youngest person ever to have served on the *Conseil Constitutionnel*. Additionally, Ms. Lenoir served as Mayor of the Town of Valmondois from 1989 to 1995 and from 2008 to 2010.

Ms. Lenoir has been a member of the *Conseil d'Etat* (France's highest court in administrative and tax matters) since 1984, and was appointed as Chief of Staff of the Minister of Justice in 1988, where she served until 1990. In 1990, she was appointed by the French government to review French and international bioethics laws. Her report to the Prime Minister, Michel Rocard, titled "*Aux Frontières de la Vie: Pour une éthique biomedicale à la Française*" provided the foundation for the adoption of the French bioethics law. Prior to joining the *Conseil d'Etat*, Ms. Lenoir served from 1982 until 1984 as chief legal officer at the *Commission Nationale de l'Informatique et des Libertés* (Data Protection Governmental Committee) and an administrator of the Senate between 1972 and 1982.

Ms. Lenoir chaired the European Group of Ethics for Science & New Technology (EGE) between 1994 and 2001 and was chair of the International Committee on Bioethics of UNESCO between 1992 and 1998. This advisory committee drafted the Human Genome and Human Rights Declaration, which was endorsed by the United Nations in 1998.

Additionally, Ms. Lenoir is a member of both the American Law Institute and the French Academy of Technologies, and is a member of the board of directors of Generali France and Valeo. She is also an honorary chairwoman of the *Association des amis d'Honoré Daumier* and founding chairwoman of the *Cercle des Européens*.

Kramer Levin

Kramer Levin is a full-service law firm with extensive capabilities and substantial experience. From our offices in New York, Silicon Valley and Paris, we represent clients from Global 1000 companies to emerging growth entities across a wide range of industries. In addition to our well-known litigation and corporate capabilities, we have top-tier practices in many other areas, including corporate restructuring & bankruptcy, intellectual property, real estate, land use, mutual funds, tax, employment law, individual clients, employee benefits and business immigration.

Our clients regard us as a true business ally. We enjoy long-term relationships with many companies, institutions, and individuals, who trust us to provide practical counsel that looks beyond the immediate legal issues to larger business implications. Through periods of rapid change-through shifts in political, economic, and regulatory climates, these clients have valued our ability to understand their goals and bring the right resources to meet the challenges they face.

We prize efficiency, bringing a sensible cost-benefit approach to every project. In staffing matters, we favor quality over quantity, with small teams characterized by an unusually high level of senior involvement. Our approach is dynamic and flexible, and we often reach across practice areas to assemble the most effective interdisciplinary team for the matter at hand.

Creative thinking, pragmatic solutions, nimble efficiency, and the ability to adapt to shifting circumstances are qualities that characterize Kramer Levin. We value these qualities in our people, and our clients value them in us.