DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Diane de Saint Victor

General Counsel, Company Secretary, and member of the Executive Committee, ABB Ltd.

THE SPEAKERS

Diane de Saint Victor
General Counsel, Company Secretary, and member of the Executive Committee, ABB Ltd.

Neil Whoriskey
Partner, Cleary Gottlieb Steen & Hamilton LLP

Robert "Bob" Profusek
Partner, Jones Day

Kathleen Cannon
Partner, Kelley Drye & Warren LLP

Audrey Harris
Partner, Mayer Brown LLP

Christopher Wall
Partner, Pillsbury Winthrop Shaw Pittman LLP

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

TO THE READER

General Counsel are more important than ever in history. Boards of directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in her career and her leadership in the profession, we are honoring Diane de Saint Victor, General Counsel of ABB Ltd., with the leading global honor for General Counsel. ABB is a global leader in power and automation technologies, based in Zurich, Switzerland. The ABB Group of companies operates in roughly 100 countries and employs about 145,000 people. Her address focuses on key issues facing the General Counsel of an international innovation technology corporation. The panelists' additional topics include mergers and acquisitions, international trade, FCPA and litigation.

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

Jack Friedman
Directors Roundtable Chairman & Moderator

Diane de Saint Victor

General Counsel, Company Secretary, and member of the Executive Committee, ABB Ltd.

After graduating from the Paris Law School and being admitted to the Paris Bar, Diane de Saint Victor exercised in private practice. She then turned to the corporate environment and worked in key legal positions at Thales, General Electric, Honeywell International, SCA, and the Airbus Group where she was General Counsel.

In January 2007, she joined ABB, a leader in power and automation technologies, where she is a Member of the Executive Committee, General Counsel & Company Secretary. The company operates in around 100 countries and employs about 140,000 people. Having worked in a number of countries in Europe and in the USA, she has widespread and global experience in Corporate Governance, Legal & Compliance, Risk Management, M&A, International Policy, and Government Relations.

Diane de Saint Victor is a member of the American Bar Association (International Associate), the Association of Corporate Counsel and the International Bar Association.

Since March 2013, Diane de Saint Victor is a non-executive Director of Barclays PLC and Barclays Bank PLC. She serves on the Audit Committee and the Board Conduct, Operational & Reputational Risk Committee.

She is an Advisory Board Member of the World Economic Forum's Open Forum Davos.

ABB

ABB is a global leader in power and automation technologies. Based in Zurich, Switzerland, the company employs about 140,000 people and operates in approximately 100 countries. The firm's shares are traded on the stock exchanges of Zurich, Stockholm, and New York. ABB's business is comprised of five divisions that are in turn organized in relation to the customers and industries they serve. The group is particularly proud of its record for innovation – widely recognized through countless awards and scientific accolades. Many of the technologies we take for granted today, from ultra-efficient high-voltage direct current power transmission, to a revolutionary approach to ship propulsion, were developed or commercialized by ABB. Today ABB is the largest supplier of industrial motors and drives, the largest provider of generators to the wind industry and the largest supplier of power grids in the world.

JACK FRIEDMAN: Good morning. I'm Jack Friedman, Chairman of the Directors Roundtable. We are a *pro bono* civic group that has organized 800 events globally over 24 years and at no cost for the audience to attend any event. Our goal is to offer the finest programming for Boards of Directors and their advisors.

The way this series of events honoring the General Counsel came about, is that directors have said their companies rarely get recognition for anything good they do. We created this series so executives and General Counsel can have a neutral forum to discuss their companies and the activities of which they are proud. This event will have a transcript which will be made available electronically to about 150,000 leaders on a national and global basis.

In today's program, we have the privilege of honoring Diane de Saint Victor of ABB, Ltd. Diane is originally from France, and has had positions and responsibilities in many countries. She graduated from the Paris Law School, and first worked in the law firm sector, and then with various tech companies. Since 2007, she is head of Legal & Integrity, General Counsel, and Company Secretary for ABB Ltd. She is not only active as Board Secretary, but she is also a member of the Group Executive Committee of ABB in Switzerland, a Swiss company.

I'm going to briefly mention our Distinguished Panelists, who will each discuss a particular topic for today's program. We have Christopher Wall from Winthrop Shaw Pittman; Kathleen Cannon from Kelley Drye; Audrey Harris from Mayer Brown; Bob Profusek from Jones Day; and Neil Whoriskey from Cleary Gottlieb Steen & Hamilton.

Without further ado, our Guest of Honor will make her presentation.

DIANE DE SAINT VICTOR: Thank you, Jack. Good morning, everyone, and all of you in the audience, as well. I'm grateful to my peers, to my predecessors, those who

taught me what I know about the law and the legal profession, the individuals more advanced than me in the profession, and those who have guided me along the years, shaping my thinking and my character. I am dedicating this morning's session to these people with gratitude.

First of all, I thought I would start with an introduction of ABB, and then my theme will essentially be, "What does it take to practice law internally?"

ABB — our mission is power and productivity for a better world. The company is a leader in power and automation technologies. These technologies enable utilities, industry, transport, and infrastructure customers to improve their performance while reducing their energy consumption. You can find ABB technologies essentially everywhere; you find our technologies up in the air, crossing the oceans, on the sea bed. You find ABB technologies in the fields that grow our crops, packing the food we eat; on the train — if you got on a train this morning; in the industrial environment; in your homes; and in the office environment.

We are tackling society's challenges on a path to a lower carbon emission footprint. In a nutshell, it is doing more, with less energy. Therefore — no surprise — innovation is key to the company's competitive advantage. Our CEO, Dr. U. Spiesshofer, has come up with a very nice way to put it: It's about running the world without consuming the Earth.

So, let me share with you one illustration of what the company is doing. I'd like to highlight the alliance of ABB with the Solar Impulse project. I don't know whether you are aware of this, but as we speak now, there is a plane flying around the world without a drop of fuel. ABB's contributions to this project include embedded engineers and expertise on power output and efficiency. The plane took off in Abu Dhabi on March 8th, and this is a 35,000 kilometer journey. As we speak, the plane is flying eastward, stopping in various cities in India. Then it will go to China; continuing to Hawaii; then Phoenix, Arizona. In a few weeks, it will arrive at Kennedy Airport, before crossing the Atlantic on its way back to Abu Dhabi, where the plane is expected to arrive in mid-2015.

There are many other examples where ABB is contributing as a company towards a better world. For example, we are supplying key equipment for the largest network of electric chargers in China. Another one has to do with ABB drives. The drive is a product which is combined with an electrical motor — for example, on the elevator that took you to this floor. In 2014, the drives installed

by ABB saved the equivalent of the annual consumption of about 100 million European households. This is absolutely enormous.

ABB is headquartered in Switzerland, but the company is incredibly global — we operate in more than 100 countries — and the company employs 140,000 people.

What does it mean as to practicing law? We are partnering with law firms around the world, and we have 400 lawyers on the ground in 40 countries or so.

Let me underscore the key asset of the corporation: its people. Therefore, let me talk about the legal team. That's what I intend to do this morning. I've come to the conclusion that a successful in-house counsel is someone who has the right mix of intellectual skills and personal strengths.

Let's talk about the intellectual skills first. To some extent, you might say it's a given to have education, experience, and training. What makes a legal mind distinct from others? It has the ability to understand factual circumstances; to analyze them; to make sense out of confusion, bits and pieces; and address an overall undefined situation by describing facts and naming them. Once a previously undefined situation is given a name, then others in the company will be able to handle it on a multifunctional basis. The legal mind is also anticipating: anticipating how the facts will evolve, and drawing the appropriate consequences upstream, ahead of the curve, as well as seeing how to prevent and/or mitigate in the future.

Against this background, one of the core missions of the General Counsel is to help the team cope with what I call the "inbox tyranny." Because when you think of it, if someone, through email, is asking one of the lawyers to do something, it means we know the issue. If we know the issue, we're going to find ways to address it and get it resolved, because we have the resources — be it internally, or with our external partners — to come up with a solution to handle it.

What keeps me awake at night, more than anything else, are those things of which we are not aware. What are we not seeing yet? And, therefore, we are not addressing it; we're sitting on it. It's going to bite us down the road.

As a legal team, we are adding more value by looking in the places where precisely nobody is looking. We need people with the intellectual skills to think in that way — two or three steps ahead.

Maybe another aspect that is becoming more and more important in today's world is the ability to compress, to summarize, to express in a very simple way, a *huge* amount of information that is only partly relevant to the resolution of any practical situation. De-complexification has become one of the key business requirements. It's a matter of business performance, value creation — not only for the corporate world, but also for the society at large.

The legal team is on the forefront of this battle. To that end, one of the main coaching advices I always try to give my team is to do better lawyering — not over-lawyering. What does that mean? It means do *not* over-engineer as you are practicing law. Yes, indeed, the devil is in the detail, but the ability to stay focused on the big picture is one of the requirements of contemporary lawyering.

When you think of it, it's an interesting phenomenon, because we work in an environment that continues to get more and more regulated, and the laws are more and more detailed.

In this context, there is an even bigger need for us to think in terms of the big picture. Big picture is really the following: What is the ambition, the objective, of the law or of this particular piece of regulation? The objective of legislators and regulators is to protect those who need protection in any human relationship. I'm completely aligned with this objective. However, we operate in an environment where sometimes both the amount of regulation that exists and

the subsequent over-lawyering arising from these pieces of legislation are simply counterproductive to the aims of the regulators or legislators. One of the key roles of the in-house team, in this context, is to explain what is driving the law; what is the objective that the law wants to achieve. These are prerequisites for swift implementation and sustainable adoption in the business. Unless you explain the "why," it becomes very difficult to prompt for action.

Now, let me turn to the personal strengths that are needed while practicing in-house. It's probably what's most important, even though no one told you directly or specifically about it in law school. What are these personal skills that I'm talking about? Here it's just about inviting you into my office, and sharing with you a few practical examples and situations.

Top of the list is the ability to face reality. Humans are uniquely responsive. They can convince themselves that problems do not exist. We have a duty; we have the ability to help others in the corporation face reality — even when they don't want to do so. When things are not going well, when we did not perform up to expectations, the first reaction — sometimes — is denial, finger-pointing, and blame. Our job is to step in and say that this is simply irrelevant. The role the legal team is playing is to assemble everyone and help our colleagues go straight to the issue at hand.

Let me repeat, assembling, assembling the internal client. All large organizations have their fair share of silo issues. The lawyer's mission is to break into those internal silos, because it's not about this division, this BU [business unit], this function, this country; it's about the corporation.

The lawyers are acting as internal peacekeepers and help focus on what is at stake externally versus internal differences as they may exist from time to time, because a large corporation is a human entity.

This has nothing to do with legal theory or a sophisticated legal analysis. But you'd better have it right in order to help move things forward in a constructive way. All lawyers have to develop their own recipe; what works for one may not work for the other guy, or with another colleague. Psychology is not part of the legal curriculum, to my knowledge; it is certainly of daily use, though, in the in-house environment.

In a nutshell, it's about learning by doing, making mistakes, correcting, and moving forward.

Then there is the art of bringing bad news. We thought this material litigation was well under control; we thought this transaction was going well; guess what? It's going south. We lost the case. Or we'll have to walk away from this transaction, or the conditions will not be as good as anticipated, and the deviation is material. No question; when it's not going well, be the first to bring the news. Be proactive; do not wait for *anyone else* to elaborate on it. We must teach our lawyers that it is *not* about trying to justify it, or making excuses. It is being truthful about what happened, taking responsibility immediately, and working on the next steps. This is a personal skill which is absolutely crucial — and again, it's got nothing to do with being intellectually sophisticated.

Then there is a piece that is not in the job description of legal players; I think it does not exist on the roster of any company, to my knowledge. I call it the role of Chief Transparency Officer. Transparency, of course, is a mix of defined and undefined elements. Some of that is regulated — it's a matter of law; some of that is not. It is, actually, above and beyond the law. It is about what is acceptable from a reputation standpoint, and this piece cuts across all boundaries within the organization. It is about pulling together information of a different nature, combining it, thinking it through — not only from a legal standpoint, but from a broader branding standpoint; from an overall company positioning standpoint. What is the kind of company we want to be?

> "You can find ABB technologies essentially everywhere; you find our technologies up in the air, crossing the oceans on the sea bed. You find ABB technologies in the fields that grow our crops, packing the food we eat; on the train — if you got on a train this morning; in the industrial environment; in your homes; and in the office environment. We are tackling society's challenges on a path to a lower carbon emission footprint."
>
> *– Diane de Saint Victor*

The lawyers have a critical role to play, and this is definitely something they have to learn on the job, learning by seeing how it's being handled, with success and failures; and, again, learn from that.

This piece has become increasingly relevant in an overall environment where media and public opinion will crucify your corporation — that should *still* be deemed innocent, by the way — but the truth of the matter of it is that it just doesn't work this way, by any means.

Again, it's about personal skills. Understanding our customers, our suppliers, the public authorities, our own employees, the media, public opinion and what their expectation is from a transparency standpoint. It is also about understanding what the outside world demands from us as a major corporate player.

No surprise — one aspect of transparency — I'd like to elaborate briefly on compliance and integrity.

Let's be clear. ABB has had its fair share of compliance and integrity issues. There have been several cartel cases, on the one hand, and various improper payment issues leading to a fine; a deferred prosecution agreement in 2010; and a self-monitoring regime until 2013. Now, just recently, we posted on our website a press release announcing that for the third year in a row, ABB made it to the list of most ethical companies in the world, and we are encouraged by what is essentially ABB making progress on this journey. [Applause]

Let me elaborate on the journey itself. Compliance and integrity are not the lawyer's business; they are the business of everyone in the corporation. Obviously, it is the lawyer's mission to drive and orchestrate preventing, training, controlling, resolving, as need be. Yes, we all know that it starts at the top. Then, as far as the lawyers are concerned, it's a mix of engagement and authority, finding ways to pull and push at the same time. The lawyers have to invent what works best in their company environment. This means understanding how we can create a robust program through a combination of training, controls, innovative communication, and strategic thinking. It takes a lot of personal strength, obviously, and this is a field where the internal fraternity of the legal community is of great importance to help the corporation move forward.

This particular field of the law is one of the many situations where the legal team has completely moved away from advising to actually acting as a full decision-maker. Helping a younger lawyer understand their duty, supporting them as they are turning to action and taking crystal-clear positions in integrity matters, is the number-one responsibility of the General Counsel, in my view. Personal authority combined with professional authority. No compromise on independence. This is absolutely key to in-house practice under the leadership of the most senior lawyers in the corporation.

Integrity is the bedrock of the company's culture, even though a global culture, with the in-house legal and compliance integrity team demonstrating relentless, persistent, and innovative skills so as to refresh the company's program, keeping it vibrant, and staying on our toes relentlessly.

This is probably one area of practice where more cross-fertilization between law schools, on the one hand, and the corporate world, on the other hand, would probably serve as a reality check. It would probably help the next generation of lawyers be better prepared for the ups and downs of in-house lawyering, because as committed as the company is to compliance and integrity, there is simply no end to the compliance journey. It takes humility, it takes simplicity, to admit that I know what I know today; I don't know about the next day; and all I can say is that we're going to continue working on it relentlessly.

Now, I want to round off what I have just said with regard to the right combination for the in-house senior lawyer, by adding the following: I've hired or been involved with hiring quite a few people for various legal positions internally. What I've learned, and sometimes the hard way, is that in the combination of the two pieces — the intellectual ability and the personal strength — and this is not necessarily a given — sometimes I'm disappointed. I have smart people, great education, great legal reasoning; somehow, in practice, they

can be disappointing, because it turns out they are strong in intellectual abilities, but weak in the personal skills. Recruiting is not a science; it's an art; and we all can attest to that. As we recruit, we pretty much know what we are getting on the intellectual side, but actually, we don't know very much in terms of the second piece — that is, the personality. What makes a successful hire is the right mix.

Growing in-house legal talent is about fostering the relationship between the intellectual side and the personal side. Creating conditions where this mix of skills can flourish and be turned into action is what keeps me busy every day. That takes me to one additional point, which I believe is of relevance to the external counsels who are present in the audience and on the panel: I firmly believe that the right people situated in-house have unbounded potential and value for the company, but the truth is that we cannot do the whole work alone. The relationship we have with our external counsels is obviously of utmost importance.

At some level, then, choosing the firm to help us out has very little to do with the particular firm. When we choose external counsel, we pick the team — the individuals at the firm, not just the firm. When we have to make choices — and it happens essentially every day — it is the people in your offices that make the difference.

I want to conclude now by saying the following: Our jobs are challenging. They are inspiring. Like any position of authority in society, lawyering is about serving first. It doesn't mean telling the client what he or she may want to hear; it's about telling the client what he or she may *need* to hear. For the future, then, our responsibility is to find the right people, to nurture them, and prepare them for what is a very gratifying mission.

Thank you very much. [Applause]

JACK FRIEDMAN: I would like to say that we appreciate you coming here to New York, and I love visiting Zurich. We have a mutual admiration for those cities as well as Paris.

I also have some questions to ask. Could you talk about what it is like being the chief legal advisor to the board, and also serving on the board?

DIANE DE SAINT VICTOR: Thank you. The directors have little time; they need to understand the big picture, as discussed before. Tell them in two minutes — bullet point type of communication — what they need to be aware of. Make sure they've got it, and tell them the truth. Again, it's not about pleasing anyone. Be engaged, and they will be grateful for it.

JACK FRIEDMAN: In a Swiss company, would you have an elaborate committee system?

DIANE DE SAINT VICTOR: Yes! We have the main Board, and we have three committees. We have the Compensation Committee; we have the Governance & Nomination Committee; and we have the Finance, Audit & Compliance Committee. On the agenda of the main Board, there is a slot for the General Counsel. On the agenda for the Finance, Audit & Compliance Committee, there is a slot for the General Counsel, as well; and the same for the Governance & Nomination Committee. Compensation, it depends; there may be topics that are relevant to me

or not. I attend all these meetings, and in addition, there is a slot for Committee Briefing on the Board agenda.

JACK FRIEDMAN: You had mentioned having 400 lawyers. In practice, how do you make sure that the information you need flows up to you within your legal department, and also flows up to the C-suite and the directors? Obviously, the *ideal* is to have good upward information, but it's not always easy to have it in practice.

DIANE DE SAINT VICTOR: Right. First of all, all lawyers on the ground have a direct reporting line to me as a matter of organizational structure. The main reporting is not a reporting to the local client, but it's a functional reporting to me. The job description of the regional colleagues is very simple: Tell me what you think I should be aware of. Pick up the phone any time; my cell phone is on around the clock. If it's something which is urgent, jump in and let me know. It is a matter of judgment for the people on the ground, and especially the regional counsel, to identify what needs to be elevated, and what needs to be elevated *now*.

JACK FRIEDMAN: You have 140,000 employees in different countries around the globe. Can you tell us how you deal with such a large number of operations with unique compliance and regulatory regimes, and employee rights in each country? It must be a challenge.

DIANE DE SAINT VICTOR: You're absolutely right. A global company is, indeed, a challenge. It is multilingual. For most people, English is not their mother tongue; therefore, it's international English. As you walk into the copy room or the kitchen, or the employees' corner on the ground floor in the factory, you're going to find cartoons talking about "health and safety" and "integrity" as the two pillars of the company's culture. Forget about the lawyer speech or the slide show; you've got to relate to people in a way they can understand. Then, you also engage, face-to-face, with a Chinese colleague, addressing their crowd, locally on the ground, in their language. The help line is multilingual, around the clock, never stops. Therefore, it's about being sufficiently flexible to assemble everyone and deploying a global bedrock of compliance culture — but in a way that people can understand, especially from a language standpoint.

JACK FRIEDMAN: Given the new media and the constant critique on a 24-hour global basis, how do you monitor what is being said about your company?

DIANE DE SAINT VICTOR: The company never stops. It's absolutely around the clock with teams, speech, and corporate communication, for all the functions and all the businesses. We're serving customers around the clock; therefore we are very engaged from a social media standpoint. We were talking earlier this morning about transparency. We're getting lots of questions from a transparency standpoint; and, therefore, responding and engaging with all stakeholders is absolutely crucial, from an overall branding standpoint.

JACK FRIEDMAN: One General Counsel made the comment that he had his phone on 24 hours a day. One night, he was visiting New York with his family and accidentally turned off the phone. The next morning, he had several messages from his CEO who had called all through the night. No matter how diligent you are, something can always come up and you just do the best you can.

Let's hear from our panelists. Our first one will be Chris Wall of Pillsbury Winthrop Shaw Pittman. Thank you.

CHRISTOPHER WALL: Thank you, Jack. And thank you, Diane, for those really insightful remarks. They were very, very helpful for all of us.

It's been my privilege to represent and advise ABB for over 30 years in my area, which deals with export controls, sanctions,

and foreign investment regulation. During these 30-plus years, I've seen the company through periods of great growth and periods of difficulty. One theme, at least in my area — which is a subset of a larger area of corporate integrity and global compliance — is this culture of compliance. There is history to this culture which goes back to the founding of the company, which may be useful for people to hear.

ABB, of course, is the combination of two major global companies in the 1980s — ASEA from Sweden, and Brown, Boveri & Cie from Switzerland. Being caught up in the geopolitical context then, as the company is today in a different context: ASEA was targeted by the U.S. government for export control violations, selling very simple computer equipment to Czechoslovakia during the Cold War. We worked through those issues; the case was settled. But the CEO at the time, Percy Barnevik, basically took the line, "This will never happen again." As a consequence, the company, from a very early point, developed a compliance system in this area, dealing with export controls and sanctions, which was truly market-leading, ahead of the curve. They put this into place far in advance of many major U.S. companies, and uniquely did so in a context that was truly global. This is before U.S. companies had

become as global as they are today. ASEA and Brown, Boveri & Cie, when they combined into ABB, became a global company with operations all around the world. ABB adopted English as its single company language, rather than German or Swedish, and it instituted at the time — which is still largely in place today in concept — a matrix management system which has overlapping geographic product/functional specialties with functional headquarters in different parts of the world, product headquarters in different parts of the world, and executives across the world. ABB had to deal with cross-border transfers of technology, global sanctions and so forth in a very, very complex environment. ABB put into place a system which relied on much of the input that I provided many years ago, which has now been thoroughly internalized so that it runs on its own, with its own staff, and reports indirectly through the lawyers and into the General Counsel's office.

But the essence of the program is one which speaks to the company's recent recognition as one of the most ethical companies in the world today by *Ethisphere Magazine*. This requires that the company must comply with all of the laws of the countries in which it does business. That's the basic element. Beyond that, there is also the requirement to do business within the spirit of those laws; to do business in a way that develops credibility with the authorities in the various countries; while recognizing that in some cases, these laws will conflict. U.S. requirements, for example, on doing business with Cuba, are different from those in Europe or Canada or elsewhere. The particular requirements for dealing with Russia or Iran are different. All of these have to be taken into account, and not just in terms of the compliance aspects, but also in terms of reputational risk — what will be seen as the right way for the company to be doing business. These are very sensitive issues, obviously, that can have major political ramifications for the company, but these are all elements of the compliance program that has been in place for these many years.

Today, how does it play out? What are the issues? They are many and varied. We all see, for example, the evolving scope of the Ukraine sanctions on Russia. Supplies of compressors and pumps for the Russian oil and gas industry to named parties on the Specially Designated Nationals List; how does one deal with that? There may be a legal requirement in one country that you must supply this equipment, but the laws of the United States say that you cannot supply this equipment. These are complex issues that have to be resolved within this culture of compliance.

Iran is another example. It is an enormously attractive market. At one point, ABB historically had business in Iran, which was completely legal within the context of the sanctions in force at the time but with the imposition of ever stronger sanctions since the 1990s, Iran has been off-limits. Now, however, the situation is evolving further, as the P5+1 countries negotiate the terms of a nuclear deal that may result in lifting at least some sanctions.

Navigating these issues is not just a matter of knowing what is legal and what is not as the sanctions change. There are collateral issues as well, such as SEC reporting, and state government procurement requirements that prohibit companies from doing business with Iran, in some cases down to the micro level of individual municipalities. It is a very complex and challenging environment.

M&A due diligence presents another important set of issues. ABB is a company that's historically grown through acquisitions: Combustion Engineering, Cincinnati Milicron, Vetco Gray, Lummus Global, and many others. Some of these transactions resulted in the acquisition of problems and I'm sure we'll be discussing later how one deals with those situations. The point here is only that the U.S. national security implications have to be addressed at the outset and due diligence must include an examination of the target company's export control and sanctions policies and practices, in addition to FCPA and other traditional due diligence areas.

Yet another set of issues arises when individuals who are U.S. citizens hold senior executive positions abroad, or individuals who are citizens of other countries manage companies in the United States. They are subject to sanctions laws and regulations as individuals, and the requirements applicable to them as individuals may conflict with the requirements that apply to the company. ABB has had to navigate those issues as well.

The point of all this, though, is to say that ABB is a company that has always been ahead of the curve in the area of export controls and sanctions compliance and, it's fair to say, compliance generally. Its matrix system, and its compliance culture, have been adopted by other major multinationals in the United States, such as General Electric, IBM, the major petrochemical and oil companies and so forth — all of these companies now have systems that are similarly based on the system that ABB developed back in the 1980s.

It's ahead of the curve; it's become a model for the rest of the world in the area of compliance; and it's been my privilege to advise the company for these many years. Thank you.

JACK FRIEDMAN: Thank you. I would like to move ahead to Kathleen Cannon of Kelley Drye & Warren.

KATHLEEN CANNON: Thank you, Jack. My area of expertise, and where I intersected with Diane's company, was in the area of trade remedy laws — anti-dumping and countervailing duty laws. Don't gasp and worry that I'm going to give you a dissertation on the technicalities of how dumping calculations are done, or else you'd all have to run for much more coffee. Instead, what I want to describe this morning is the importance of these laws as a *business* tool for a company, and how — whether you're a General Counsel, a director of a company, or an outside counsel working with a company — being familiar with the power of these laws is very important. The laws can be used offensively to address unfair imports. Defensively, if you end up the target of a case, it's very important to have a basic knowledge of these laws.

We began to work with ABB about five years ago. Dave Onuscheck, who is the U.S.-based General Counsel of ABB, came to us because he recognized that there was a problem with unfairly traded imports. Fortunately, Dave was aware of the trade remedy laws as a tool that could be used

commercially for ABB. The wisdom of Diane in supporting Dave and that effort allowed my firm and our team to move forward with the case on behalf of a coalition of U.S. companies, to address unfairly traded imports of large power transformers from Korea. We found that the Korean producers were openly advertising that they were selling products in the United States at very low prices. U.S. utility companies were boasting that they were buying these imports at extremely low prices. The consequence was that U.S. producers were having to close down facilities and lay off workers. They couldn't compete because the playing field wasn't levelled. That's what the unfair trade laws are designed to address. These laws make sure that when injurious dumping or subsidies occur, remedial duties are imposed so that U.S. companies *can* compete on a level playing field.

We worked with ABB and other U.S. producers of transformers, as a team effort, and a number of colleagues on that team are here today. They were part of that successful effort for ABB. We first gathered economic data on the companies, to determine whether they were injured.

If you're a company and you're wondering whether the trade remedy laws might be something you should look into, here are some factors to consider. If you are a U.S. manufacturer and you are seeing imports increase in volume, imports selling at low prices, there are lost sales to imports, employee layoffs that result, facilities are being idled, capacity is unutilized, there has been a financial hit — those are the kinds of things that should trigger alarm bells. Those types of events mean the trade laws are something that you should look at.

We gathered the data to determine whether the large power transformer industry, as a whole, was injured. This is not a company-specific exercise; it's an industry exercise. We brought the case on behalf of a coalition of producers.

The other component to pursuing a trade action is to examine whether an unfair trade practice is occurring. The case that we brought for ABB against large power transformers from Korea was a dumping case — that's international price discrimination. There are international agreements addressing this behavior, so it's not simply a U.S. law. The U.S. law codified an international agreement that recognizes this type of practice. As I said — without going into all the details — an analysis of dumping basically asks whether a U.S. price is lower than the price of the product in the home market — here, Korea — or is below the cost of production of the product.

A lot of people ask, "How can that be? Why would somebody be selling a product at a price below their cost? How could they even do that commercially? That doesn't make any sense." In the large power transformer case against Korea, we found that Korea was pretty much a protected home market. It didn't allow imports of *any* type of large power transformers into Korea. As a result, they were able to sell their products in Korea at high prices, and use the profits they were making in Korea to leverage sales into the United States at low prices.

That's what we were able to demonstrate in our trade case. We proved dumping at a level of 15 to 30 percent. Remedial duties were imposed. I emphasize that these are remedial cases; they are not punitive. The basic purpose of the law is simply to say, "We want a level playing field." ABB and the other U.S. transformer producers said, "We're not asking for favors; we're not asking for benefits; we just want to offset the unfairness." That's what the outcome of the case was designed to do.

Commercially, there were some sensitivities. Companies were concerned, "What will our customers think? Are our customers going to be upset about this?" You have to look at that issue, of course, because you have to consider how a customer will react. What we find is that often customers are not that adverse to these actions in the end. Initially, they want to know, "What does this mean for me?" They often don't want to see the distortions in the market. In fact, in some cases, we've had customers come to support us in bringing a case and provide testimony on behalf of their U.S. suppliers, because they recognize the need to have a fair playing field.

The other thing that was a bit unique about the large power transformer case that we worked on with ABB was that ABB has manufacturing facilities to produce transformers not only in the United States – ABB manufactures transformers in St. Louis, Missouri – but also in Varennes, Canada. ABB was wise enough to recognize that if you take action just in the United States and you don't look at Canada, there could be a spillover effect in the other market. ABB had counsel in Canada that we worked with right from the start, to assess how a U.S. trade action on transformers would affect Canadian operations. Often imports will shift more heavily to Canada after a U.S. case is filed. What happened in the transformer case was we filed a case here, and very shortly thereafter, a case was filed in Canada, both of which were successful. As a result, there was a much broader relief in both countries than had ABB not examined this situation on a global basis, and instead simply isolated the U.S. product.

> "What makes a legal mind distinct from others? It has the ability to understand factual circumstances; to analyze them; to make sense out of confusion, bits and pieces; and address an overall undefined situation by describing facts and naming them."
>
> *– Diane de Saint Victor*

The other thing I wanted to mention briefly is the importance of being prepared to defend these actions as well. If you are an importer, then you need to be very aware of the ramifications of the trade laws when a case is filed against a product you import. My partner, Alan Luberda, wrote a paper giving tips for importers on defending trade cases. Often, importers think, "I can figure out what the duties are, and I know that I'm not selling the product at a low price, so I'm fine." But be very careful there, because your instincts as to whether a product is dumped from a commercial vantage are often not true from a technical level. We will have companies come to us and say, "I'd like to bring a dumping case, but the Chinese product isn't being dumped." Their analysis is that because Chinese labor costs are so low, they are not selling below their cost of production." In fact, the Commerce Department, which implements these laws, doesn't look at costs of production in China. Commerce uses surrogate countries because China is viewed as a non-market economy. It's very important that anti-dumping experts assess dumping, especially where China is involved, to examine those factors.

Similarly, if you're an importer, you can't assume you're okay because you believe the product is fairly priced, or because a foreign producer assures you that it's okay. If you are the importer, you are the company on the hook for paying the duties. You have to be extremely cautious, do your homework, and make sure that you're working closely with the foreign producer. If the imported product is subject to duties, consider the tips in Mr. Luberda's paper. It is important to be aware of steps that need to be taken to protect your company from potential duty liability. Even if you are a purchaser of the product, anti-dumping duties may affect you downstream in higher prices.

In sum, whether you would like to use these types of laws *offensively* or need to use them *defensively*, they have powerful commercial effects. Use of these laws can help level the playing field for U.S. manufacturers; but their use can also cause importers to be subject to significant duty liability if you are not careful.

I will stop there and, again, I compliment Diane and her team at ABB for their wisdom in taking advantage of these trade laws in successful cases. I would also like to say how very much we enjoyed working with you all on this case!

JACK FRIEDMAN: Thank you. Chris and Kathleen, can you give some examples of the type of agencies or courts that make the decisions in these situations, whether it is national, regional, global, UN-related, etc.?

KATHLEEN CANNON: For the international trade laws that I was describing, the Commerce Department is the agency that looks at whether there is dumping or subsidies. The U.S. International Trade Commission, an independent government agency, is the entity that looks at whether injury is being caused by imports. We have to go before *both* agencies and you must *win* at both agencies, proving both dumping *and* injury, to be able to get the order in place. Once the order is in place, then U.S. Customs & Border Protection *enforces* the order. There can be *challenges* globally,

before the World Trade Organization's Dispute Settlement Body as well. Those cases would be handled by the U.S. Trade Representative's office. In ABB's case, we were fortunate – there was not a global challenge. Finally, there can be court appeals, and those would be before the U.S. Court of International Trade. That court is a specialized Article III federal court based here in New York. Those are the basic players that are involved in our world.

JACK FRIEDMAN: The appeal from the federal court is to what body?

KATHLEEN CANNON: That appeal is to the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. That's our appellate court. The next appeal would be to the U.S. Supreme Court. Those are the tiers of the trade court system.

JACK FRIEDMAN: Chris?

CHRISTOPHER WALL: In the world of export controls and sanctions, there are a lot of different players. The sanctions are largely administered by the Treasury Department's Office of Foreign Assets Control, with input from the State Department. The export control area is administered by the Commerce Department also – another agency within Commerce, the Bureau of Industry Security, where I was the Assistant Secretary for a period of time. There can also be cooperation with the State Department, and with the Defense Department, the Defense Technology Security Administration, and in some cases, the Department of Energy, as well.

These matters are very rarely brought before the courts. Whenever there's an enforcement matter, they are, in almost all cases, settled. But theoretically, they *can* be appealed to the D.C. Circuit.

In addition, what is very complicated about this area is that these rules are, for the most part – at least in the case of Iran, as the *primary* example – all covered by United Nations Security Council resolutions. U.N. policy and resolutions, of course, play a major role. The European Commission and the member states of the European Union all administrate these sanctions. For example, the Russia sanctions, the Ukraine sanctions that are currently evolving are being implemented *in tandem* – the U.S. sanctions were being implemented in tandem with the EU, and the European Commission regulations and the enforcement bodies within each member state, and all across the world. China, for example, regulates imports of encryption technology, as does Russia. Singapore regulates exports of encryption technology. For a global company like ABB with operations *everywhere*, all of these rules come into play. It's a very, very complex environment.

JACK FRIEDMAN: Thank you. I want to ask Diane a quick question. What is your strategy for litigation, regulatory, or multinational transactions so that your outside counsel can assist?

DIANE DE SAINT VICTOR: It very much depends. We closed a transaction right before Christmas in 30 countries. You cannot find a law firm with the resources in all these places, or at least it didn't feel like we'd have the quality we wanted to have in the 30 countries at stake. Assembling the list of firms and asking the firms to work together, which they do, is the name of the game. It's not difficult to have firms work together in a very professional way; I don't find that as a barrier, actually.

Now, there are situations where it's easier – say, a transaction in a few major countries – and law firms with the right resources in the three or four capital cities. Then it's fine; it goes to one law firm. If it doesn't go well,

first of all, we're going to talk to our partners and ask them to change as appropriate; or we're going to make changes ourselves, because in the context of a global transaction, we just cannot be in trouble because one or the other jurisdiction will be behind and not up to the quality level we need.

JACK FRIEDMAN: At one of our programs, a partner of one of the law firms said about the real world, "You can have peripheral countries who have a rule that requires you to file a document, even though there is no activity in that country, and they charge a fee for the filing to approve it. Sometimes there comes a point where you have to discuss with the client whether to take your chances and forget about it, because all they're trying to do is get some extra revenue."

CHRISTOPHER WALL: I would agree. For example, when a little Pacific island like Vanuatu enacts a regulation that requires you to do something, that's probably not going to be a major risk to your business. In an area such as export controls and sanctions, which often are subject to *huge* regulatory interpretation and discretion on the part of the authorities, one has to make judgments about how strictly — or how broadly — one should read the regulations and apply them in a particular situation.

Obviously, you have to get the basics right in every country where it's important. It is a matter of risk assessment and judgment.

JACK FRIEDMAN: Thank you. I'd like to introduce Audrey Harris of Mayer Brown.

[The following comments were accompanied by a PowerPoint Presentation (PPT) including slides of topic headings and recent quotes of DOJ and SEC officials. The comments often make reference to and discuss the materials on the slides.]

AUDREY HARRIS: In the FCPA realm, probably more than in any other area, we're always looking for what U.S. enforcement

has to say. What are the messages that they're sending, and how can we decode them, along with the resolutions that are the basis for essentially how the FCPA is prosecuted and enforced. We just don't have the case law and the settled history; it's all done in negotiated resolutions. Every time the DOJ and the SEC talk, we think, "What are they saying, and how does it apply to our clients, and what can General Counsels get out of it," as far as what they need to do to prepare themselves for anything that may come up in the FCPA realm.

Today, we are benefitted that the DOJ and the SEC enforcement has come out over the last two months with a number of different statements, and we're going to try to decode them and tell you what the messages are, and what we think they mean. The bottom line is that credibility is king. It's something that ABB already knows about in the FCPA realm.

Let's start off with what the messages are; what has the DOJ and the SEC been talking about regarding FCPA lately?

The basic entry point is that FCPA is still an enforcement priority. We like to say that it is "second only to terrorism." Is that still true today? We think so. Combatting global corruption even made it into the President's security plan that was published last month. When you ask the SEC FCPA Unit Chief, "Is this year going to be just as big as last?" she'll say it's going to be bigger. As a matter of fact, the cases brought this fiscal year alone total the entire amount brought last year.

The other message that they are continuing to send is that they are pursuing individuals. It's a trend that will continue.

Why does this keep so many General Counsels up at night? It spans across industries. It's not industry-specific. Anybody with government touch points outside the United States has an FCPA risk, period.

The Deputy Chief of the DOJ Fraud Section, who has exclusive jurisdiction for DOJ over prosecutions of the FCPA, says that their cases have shown that it's not industry-focused; it's country-focused; it's risk-focused. This is another message that we're hearing loud and clear.

International enforcement and international cooperation are on the rise. What does that mean? That means cases like Petrobras. That means Canadians are now coming to the table. The U.S. is still the big gorilla in the room. They are the enforcement authorities, the players at the table. But more countries, are pulling up a chair.

They're seeing more and more instances of parallel investigations and multiple resolutions against a company being brought by different countries. This is straight out of Deputy Chief Stokes' mouth. [Reference to quote on the PPT slide]

What does "international cooperation" mean? It means a new paradigm for companies in access to information that was once only available through company cooperation. They're setting up task forces; they have dedicated FBI agents to FCPA only. They are getting better and greater access to overseas information that once they could only get if a company cooperated.

The SEC showcased this issue by just listing the countries — and some here are cities — [referring to PPT slide] the countries that they thanked in their press releases on FCPA cases over the last year. It's getting broader and broader, and rarely is there a new resolution or press release by DOJ and the SEC that does not thank a foreign jurisdiction for their help in the prosecution or investigation.

The next message: The whistleblower — is changing the detection calculation. Both the DOJ and the SEC are coming out and saying, "Listen: two-thirds of our cases that are before us right now were *not* voluntarily disclosed by the company. We're not depending on you currently; we're getting the information from other sources." The head of SEC enforcement generally warned, earlier this month, that they have a very strong whistleblower program. It's something that every company and every General Counsel has to factor in when they're talking about FCPA compliance and detection. As Deputy Chief Stokes says, it's a calculated risk.

What are the DOJ and the SEC trying to do with this message? They're trying to tip that calculus in the favor of voluntary disclosure and cooperation by saying that voluntary disclosure and cooperation count, and trying to show it.

Recently, Deputy Chief Stokes came out and said that Alstom could have saved $565 million if they had voluntarily disclosed and cooperated. They even pointed to Avon and said, "Even if you don't voluntarily disclose, cooperation saved Avon an additional 20%, and voluntary disclosure *could* have saved it even more."

What do you buy with voluntary disclosure? You buy an ability to affect the scope and potentially the scale of the investigation. As DOJ said, "We'll give the company room to perform its own investigation, and we'll provide guidance, if you come in the door with a credible plan."

> "We have a duty; we have the ability to help others in the corporation face reality — even when they don't want to do so. ... No question; when it's not going well, be the first to bring the news. Be proactive; do not wait for anyone else to elaborate on it."
>
> *– Diane de Saint Victor*

The SEC echoed this by saying, "Most of the time, we say, 'Go out and do what you're going to do, and come back and periodically report to us.'" That's the usual resolution. But they also note you need remediation. I love this line: "We often see instances where companies have self-disclosed and cooperated, and it takes them far too long to have remediated. This is an important part of demonstrating to the government that you are taking it seriously."

What do these messages actually mean? What are the enforcement authorities *really* trying to determine? What ABB knows, and what companies that are smart in the compliance and integrity area know, is that they're trying to determine what kind of company this is. Does this company get it? Essentially, is the company credible? From compliance and investigation to remediation, are they credible on every level?

In front of the DOJ and the SEC, credibility is currency. As we all know, perfection is not the standard, nor can we ever achieve it in a compliance program. That's straight out of the DOJ and the SEC guidance on FCPA. Voluntary disclosure is still voluntary. It is a customized analysis that you have to go through with your client on the facts, and it is a calculated risk assessment.

But at whatever point a company is sitting across from the DOJ and the SEC — whether or not it's because they voluntarily disclosed; they received a knock on the door; or they received a subpoena — they have to answer the following questions: "How did this happen? Where did you look? How did you investigate? What did you *do* about it? And what are you *going* to do about it? How do you know this isn't going to happen again? And how do you know it's not happening elsewhere?" These answers have to be credible. They have to be based on criteria that the enforcement authorities understand. What's the process? You have to be able to demonstrate it.

How do you create credibility in these situations? You align compliance with enforcement criteria. What are we hearing? What are the DOJ and the SEC saying when we're sitting across from them with our clients? They're talking about things that are risk-based. Are your priorities and your compliance plan and internal audit plan based on risks and evaluated every year? Are your resources towards where your areas of highest touch points with government officials are, in highest risk countries? Do you have protocols and data analytics that show you where those risks are, and factor them in on a real-time basis into your program?

The other term we're hearing a lot is "backstops." "You need backstops." "What are the backstops in your system?" We've gone beyond the age of paper programs and policies and procedures that people can read on a flat piece of paper. It needs to be automated; it needs to be processes that can document every step of the way.

It also needs to be demonstrated that you've implemented it. It's great to have the paper, as they say, but without implementation, without these systems, you're nowhere, in front of the DOJ and the SEC today.

They're talking about testing and audit. They want to know that you not only have the systems, but you've tested them, and

you've tested them on a periodic basis based on risk. They want to know that you have follow-up protocols for investigation. When you have audit hits, what do you do with them — do they just sit there on a piece of paper or only follow up with the financial guys? Or is this something that's integrated into your FCPA compliance program? They want metrics. You're going to sit down, and they're going to ask you, "How many full-time employees do you have working on FCPA compliance? How many FCPA-related or corruption or GAAP-related calls have you had to your ethics hotline?" You need to know that information and be able to work it into your compliance plan in order to be credible.

I think it sums up pretty nicely when Deputy Chief Stokes says, "If you look at our largest resolutions, I think one very clear pattern that can be drawn from them is the big resolutions very closely correlate with very poor internal controls and weak compliance." That is what they're looking at. The SEC echoes. "Another thing we ask companies — how are you testing? Do you have internal audit integrated? Are you doing specific FCPA audits?"

These are questions that ABB asked long ago and has already mastered. But they're questions where they're leading the way in compliance and integrity, thanks to Diane and her in-house team. When you look at it, it's a difficult process. From the very top of an FCPA risk matrix to the very bottom of training and testing — not only the concept — do they *understand* what to obtain or retain businesses means, rather than testing just to that concept, or are you testing to the systems and training to the systems, as well?

ABB has found a way to be at the top of the FCPA compliance and integrity game, and is setting the bar for the rest of the companies. They already know what we talk about — that credibility is king, and ABB has shown that they have the credibility before *any* enforcement authority, United States or otherwise.

JACK FRIEDMAN: There are many constituencies of a global company: employees, suppliers, customers, government, media, investors, politicians, etc. What difference does it mean to a company and to those different groups to be known as an ethical company?

DIANE DE SAINT VICTOR: First of all, and very simply, all the stakeholders you've mentioned are part of these overall compliance and integrity exercises. Customers don't want to be in business with a company falling behind from any of these things. *Your* employees want to feel proud of the company they are associated with.

JACK FRIEDMAN: Also, I imagine, if somebody eventually leaves the company, they'd like to have on their résumé, "I've worked for honorable companies in the past."

DIANE DE SAINT VICTOR: Absolutely. One of the driving forces, actually, is that employees know they will have to leave if they breach the integrity requirements that are rolled out internally. They know, as well, that in today's world, they will probably have a hard time finding employment with another tier one company, because the world has changed to the point that we're not the only company driving the integrity exercise; most large corporations are aligned. Therefore, in today's world, a breach of integrity is, indeed, a career killer. From that standpoint, there is enormous pressure from the younger generation, and it's good, because they're driving the corporate world towards what's right from the society's standpoint. That is, a more ethical and more transparent environment. Integrity is not *just* a matter of law enforcement; it is, which kind of company do you want to create? It's a combination of forces; it is the customers, the suppliers, the shareholders. We had people who left our stock at some point and then return to our stock, and that is "market pressure," if you will, and that, as well, is good, because it's driving in the right direction.

JACK FRIEDMAN: If investors have the idea that there's a culture of corruption, fraud, or unethical behavior in a company, they are possibly being treated in an unethical manner and are afraid of being cheated.

DIANE DE SAINT VICTOR: Right. Actually, it even goes beyond that. When we mess it up from an integrity standpoint, it's a quality issue. It means we've been sloppy, and we underperformed. It does not speak well about *us* as an organization from an overall quality standpoint. What we are seeing — and we see that all the time — when we're having integrity issues, we are very often seeing some *other* issues — poor leadership; manufacturing issues. It's an overall requirement from a quality standpoint that goes above and beyond what is required by the law enforcement authorities.

JACK FRIEDMAN: Thank you. We're going to get back to compliance a little bit later, but I'd like to turn to our next speaker, who is Bob Profusek of Jones Day.

BOB PROFUSEK: Good morning. It's an honor to be here. I'm Bob Profusek, the head of M&A at Jones Day. I have had the privilege to work with ABB on many occasions in that setting.

This is a little bit off-topic because we're focusing on legal matters, but I'm going to start with an accounting due diligence issue.

There was an interesting settlement this week of the *HP v. Autonomy* litigation. It was the third time that the shareholder litigation had been brought to a court for settlement. In the two prior occasions, the judge had said, "Not good enough." The settlement involved the establishment of a risk committee at HP, and essentially the assignment of HP's claims against Autonomy, because, while I don't know if you may vaguely remember, but it was only a couple of years ago that HP announced a $9 billion write-off of a roughly $11 billion acquisition it had completed 10 months earlier, and discovered that there were, according to HP, rampant issues with the financial statements of the target company. That, of course, gave rise to the typical blizzard of litigation, but this particular path of litigation was derivative against the directors.

Now, what does that have to do with any of this stuff? Unless you're a bank and you need to do it because of the Dodd-Frank laws, you don't necessarily have to have a risk committee as a corporate governance matter for your board of directors. There's no one-size-fits-all formula in any part of corporate governance. It *does* mean, in the M&A environment — *especially* when it is in the way it is conducted today — that risk assessment of the type that ABB has internalized must be second nature — it's just like when Scottie Pippen and Michael Jordan played, they didn't think about which guy was cutting to the basket — it just happens. That's the way it happens at ABB — in my experience, anyway. That risk assessment process has to be internalized as part of the process, and communicated in an appropriate fashion to the board of directors.

One of the reasons that anti-corruption has been so prominent in this conversation is that there's no question the U.S. is the world's policeman on anti-corruption. There's also no question that the world is globalized. At the same time, there's equally no question that the standards for what's corrupt or not are very different, despite the fact that when you sit down to do a deal,

it feels like everybody is on the same page — they're all wearing suits (unless they're in Northern California); they all look the same; we generally speak English; the documents look the same — it feels like there's this global way that we do deals. Of course, the way people *do business* globally is very different, and the standards of what is corrupt are very different around different parts of the world.

This is all against a backdrop in which the deal business is designed to take advantage of big data, so that you don't get any *real* information about the company that you're buying. You put so much data in a virtual data room that it's difficult if not practically impossible to divine anything about it. The bankers structured a multi-tiered process that's designed always to be a little bit in front of you, and to keep you a little bit away from the actual target company and its management, and your ability to talk to its people who may know things the deal process people don't want you to know. Especially in an environment like we're in today, where M&A, for many companies, is almost *needed* because of the deleveraging of their balance sheet and the slowness of growth generally in their particular industries; there is a desire at far too many companies to get the deal done — not literally at all costs and in ignorance of all risks — but this legal stuff is not so important; we can deal with it later.

Certainly, ABB doesn't operate this way, and most big companies don't either. But plenty of companies do operate that way. It's surprising how often the directors will have the presentation as to the financial aspects of the transaction and the synergies and the timetable and the strategy, but the due diligence is not in the boardroom. That's a big mistake today.

We've just talked about these issues. I can't remember a deal recently that didn't involve an OFAC [Office of Foreign Assets Control] issue, sanctions issue, or at least the need to look at something and try to figure it out, or a corruption or competition law issue. You mentioned about closing over these minor things? We had a deal recently where we discovered that a subsidiary that was four levels down from the target company happened to be incorporated in New Zealand; they had a foreign investment law there which, believe it or not, applied. Even though we weren't acquiring the New Zealand company; it was four layers down. These are the kinds of issues that really need to be thought about. I'm not necessarily saying that your directors need to have a whole presentation of the due diligence. In fact, you want to be in a position — which I believe ABB and many other very large companies are generally — where there's a presumption that if there's an issue, it will be brought to the floor of the boardroom, but the board won't be buried in trivia.

On the other hand, the HP experience proves that there can be many dangers to directors. Now, none of the directors in the HP case is *personally* financially liable. But all of them were damaged to some degree. Of course they were damaged; just being named in a suit of that nature is a problem. In today's world, when we've got all these other things that are resulting from globalization and the connectivity of

the world, the risk associated with M&A gets increased particularly because the process is designed to make you *feel* like you're getting due diligence, but not really *actionable* due diligence.

I'll conclude with one thing: We have been giving this a lot of thought, and we recognize that due diligence is, in most significant projects, divided up between various specialists. The accountants do their quality of earnings analysis, the business people do what they do, then the lawyers do what they do, and we divide it up inside our firms — so-called "outside counsel." It *tends* to be ritualistic — again, not for big companies, but for *most* companies — it tends to be superficial, because the bankers want it to be that way. They don't really want you to find anything out. They want you to get into that virtual data room, write meaningless summaries of normal commercial contracts that aren't read by anybody and don't mean anything in the first place.

At least in our firm, we stepped back and said, "Look, we've got to restructure — we've got to take a new look at this." Due diligence should not be done by second-year associates who really don't know what they're doing. We really need to get industry experts who know something about this particular industry, to think about what the problems are, identify them, and figure out an *actionable* due diligence program — *with* the client — this is always with the client. I don't mean to imply that we do this ourselves — we do it with our clients like ABB, all designed to ferret out whether or not there's a problem that needs to be accounted for in pricing or deal terms. Then, a person in Diane's position can actually report to the board about what the issues are, because when there *are* issues — and, again, at HP, they were accounting-based, allegedly — they are not only career killers for the business development people who brought the deal to the board, but they can really be huge issues generally, such as hundred million dollar fines for FCPA violations.

Due diligence needs to grow up, from my point of view, in the M&A context. It isn't something that should be done just to say, "We did it and I can prove that because I have this memo that we looked at all these papers." It needs to be focused, and it needs to be done by the best, most experienced professionals, whether they're forensic accountants or senior litigators who assess litigation or environmental issues, and not be relegated to something that is done so that a box can be checked. Again, HP wasn't a legal problem, but there are plenty of situations like it.

JACK FRIEDMAN: Thank you. The next time I do a $50 billion deal, I'll be very careful with my due diligence! Obviously, the bigger you are, the more there is at stake, and the more money you have to do due diligence.

BOB PROFUSEK: Yes, but it's almost an inverse relationship on diligence, because the smaller companies have some strategic technology and usually don't have the systems. That's the issue. The GEs and the ABBs and the IBMs and all the rest of them, they have the systems — sometimes because they've been through it, and have had to have them — but the smaller ones don't, and those present the real issues, because a $50 million acquisition can give rise to a $100 million problem.

DIANE DE SAINT VICTOR: If I may, closing a transaction with a large entity on the other side of the table takes work, but it can be done. With a small transaction, the target has no experience about the deal process; it means that *you* have to do it all from your end, and help them navigate the entire process. A small transaction may be a big headache, it takes a lot of time, money and effort. So that you have to ask yourself, is it worth it?

JACK FRIEDMAN: Thank you. I'd like to have Neil Whoriskey of Cleary Gottlieb Steen & Hamilton speak now.

NEIL WHORISKEY: Thanks, Jack. Just to follow up on Bob's worries about diligence not being properly done, I'm going to follow up with some of my worries about contracts not being properly done. In particular, when you buy a public company in the United States, you have no recourse after you sign that agreement, other than if there's a material adverse effect on the business. Unless something goes horribly, horribly wrong, you're buying that business. You don't have indemnities after you close; you have covenants there, and sure you can breach them, but the covenants mainly say, "Please operate in the ordinary course of business," which generally isn't that hard to do. Your reps are brought down to a material adverse effect standard. Again, you're really stuck unless you have a material adverse effect on the business.

What is a material adverse effect? Well, nobody really knows, because the Delaware courts have never seen one. [Laughter]

They do exist, and people have conversations about them all the time. What the contracts say are that a Material Adverse Effect is a material adverse effect on the business or financial condition or assets or liabilities and sometimes even prospects

of the company — which is all fine though nobody knows what that means. That definition is followed by a litany of things that are *not* MACs [material adverse changes], and these are the carve-outs which include things like anything that happens to the industry generally is not a MAC; anything that happens to the economy generally is not a MAC; any change in law is not a MAC. The list goes on and on and has been getting longer, in my experience. People have not been very thoughtful about how those carve-outs have been growing.

The touchstone case for a MAC is the *Tyson, IBP Foods v. Tyson* case, decided by then-Vice Chancellor Strine in Delaware in 2001. Vice Chancellor Strine said, "Yes, there's a 40% drop in revenues, in projected revenues, but that's not a MAC." Everybody said, "My God, there will never be a MAC. No one will ever call a MAC, because that's huge. How can you have that terrible a change between signing and closing?"

In the first place, I think people overstated *Tyson* a little bit, because in fact, Chancellor Strine said, "You could say 40% if it had been sustained and unforeseeable, that would have been a MAC." He thought this decline was part of a cyclical problem in the business, so the buyer should have known. "You should have known this could happen; it did happen; don't tell me you're surprised now." In all of these fact-based cases, there's a lot of atmosphere, and the atmospherics were definitely not in Tyson's favor. It did not make me pull out my hair and think, "A MAC will never occur," because I think it can. We've seen it plenty of times, where you have your deal renegotiated on the basis of something very bad happening between signing and closing.

In any case, this is something that M&A lawyers fight about all the time. I'm sure Bob's done it thousands of times. I've done it thousands of times. You used to be able to have something of a conversation about some of these exceptions. About a year ago, I got tired of people throwing in my face that in 99% of the deals, we always get this. They pull out these ABA studies that say 95% of the time you get this, 95% of the time you get that. It's true — and you look at the latest studies and you can see these charts here — it's all in the 90s, all of these things. This is striking because if you go back about eight years, you see the numbers are much, much lower in a lot of these categories. People tend to think the market's doing this so it is okay, but you've got to think through some of these things.

You can take one example — the general industry carve-out. This is the one that says, "If it's happening to the whole industry, it's not a material adverse effect." Let's say in 2001, ABB decided to buy a pager factory. In 2002, that pager factory is out of business, but in 2001, somebody thought it was a good idea. Or they decided to buy Blockbuster Videos or Borders Bookstores. These are things that go to Diane's humility point — you don't know what's going to happen next, but sometimes things do happen, and they happen much more quickly than you could possibly imagine. In my mind, books are the least vulnerable to technological change. But that was an industry that really took a huge hit, and very, very quickly. A lot of very smart people lost money on that. In 2004, the average lawyer would have had a 25% chance of saying, "There has been a MAC. In the six months it took to clear the deal, it's clear that the business is really just going south; nobody's buying pagers anymore." You had some shot at making that argument. In 2010, in only 2% of the cases did people have that, were people able to live without that general industry carve-out.

When you're a deal lawyer, it makes it tough to sit and think about how it's going to play out. Importantly from a business organizational standpoint — and I think Diane is absolutely great at this — you actually have to think through the risks of these things, before you buy this company. If you haven't thought about industry risk, you should, because if you don't, if you take that carve-out, you're buying the company even if things go south.

Change in law is another one that's really risen dramatically. In 2004, about 43% of the time that change of law carve out was in your documents, so the buyer would have a 57% chance of being able to walk away from a deal if there was a change in law that adversely affected the deal. In 2012, they had a 7% chance of walking away. This is another one where people say, "We know what the legislative process is; we know what's coming down the pike." Tell that to the people who were trying to do inversions. Things happen quickly, even in Washington sometimes. More likely, when you're doing a cross-border deal, things can happen quickly. You might not be as experienced in that country, or know as much about the legislative process in that country, as your seller does. Again, you have to ask yourself, why is the buyer almost universally taking this risk now?

It goes back to what Bob was saying about the auction process as having been so tightly run now. There, you really get beat up. But that's, again, why you have to have a team that has the ability to say, "In thinking

through this issue I can tell you, board, this is not an issue or this is an issue, and I've thought about it." Not, "It's what the market does, so I said okay." That's not going to be good enough in some transactions.

Another one is change that happens as a result of the announcement of the deal. What people mainly think about it is, okay; something bad is going to happen because when Ogre Company decides to buy its competitor, Happy Valley, they're going to fire half the people there; they have a completely different supply chain, so all the suppliers are going to go away. You have to know what Ogre Company should expect, and take the risk that those changes will occur on the announcement of the deal.

That's okay; maybe that happened 69% of the time in 2004. But now, only 6% of the time does that *not* happen. The idea that in 94% of the cases, the buyer is going to know better than the seller what is happening to the seller's customers, the seller's employees, the seller's supply chain, as a result of the buyer coming in. It defies logic; this is not really something that you would anticipate if you just thought about it independently and didn't look at all these market statistics.

More anecdotally, there's also a bunch of these new carve-outs that are coming in, some of which I find hilarious. There's one — I'm sure you've seen it, Bob — it drives me crazy. They say, "Anything that results from the consummation of the deal can't be considered a MAC." If all of your IP licenses go away because they have a change of control clause in them, and that's not a MAC, and you're closing without the IP licenses, you're in trouble.

There's another one that says, "Anything that results from the performance of the merger agreement will not be a MAC." If you're signing an agreement, and you can't tell me when you're signing the agreement that performing the agreement will not have a MAC on your business, there's something more I need to know before I sign it off.

These are just some of the examples of how this can play out. I do find it astounding, when you look at the numbers, how much the market has accepted these trends. They tend to build on themselves so that the next time, it's going to be harder to tell somebody that if 90% did it last year, 95% are going to do it this year, and then 100% are going to do it the next year.

The takeaways here are (1) that it's really tough to fight the market, and (2) that you're not going to be able to fight the market unless you have a team that's willing to think about, and understand, each one of these risks and how it applies to the deal, and then be able to explain it to the board of directors or to their GC when their GC says, "What do you mean, we can't get out of this deal? This is crazy. This is a risk we should have thought about." And maybe it is.

Thank you.

JACK FRIEDMAN: Thank you very much. I'd like to invite the whole panel to discuss a topic with Diane, and have her take the lead on it. ABB is noted for having very well-developed, intelligently planned, cutting edge compliance systems in place. I think you have had something to do with it! What I'd like to do is examine the system you use, and some of its achievements.

DIANE DE SAINT VICTOR: Right. In a nutshell, it is a mix of processes and people, as usual. Processes are absolutely required. Be it the hotline, the training, the audit, or the investigation. But they are only as good as the people who are running them. Also the culture that has been created and that is being created is an ongoing process within the company.

Processes are not enough to help the company move forward. Processes are the prerequisite, but they will only lead to "tick the box," which is short of delivering on the expectation of the law enforcement authorities and also the other stakeholders that we discussed before.

JACK FRIEDMAN: If you have processes in place that collect a huge amount of data, how do you evaluate that data?

DIANE DE SAINT VICTOR: Exactly right. Again, it's a mix of automated resources, such as a huge amount of emails that are being produced as part of a search. You start working with keywords, and it helps you cut into this and concentrate on the key items. It's a mix of automation and then someone using their brains, looking into the whole thing and pulling it together in a meaningful way.

JACK FRIEDMAN: Any other comments?

BOB PROFUSEK: The United States government recognizes that even the best of systems can be subverted. Now, it doesn't seem to give you as much information when it's your problem. You don't seem to get that answer, but it comes back to culture. You have to have processes, mechanisms, and certifications. But fundamentally, it's culture that makes the difference, and that's one of the problems in the M&A context. It's very hard to get a handle on the culture because that's the way the typical deal process is conducted. Very few companies are sold anymore without an auction process. As I said, in terms of information, it is done on big databases, and really hard to figure out what it means. The management

presentations are done in rooms like this, in the M&A context, it is very hard to get the pulse of the culture, but fundamentally, it comes down to culture.

JACK FRIEDMAN: Do you interview specific people?

BOB PROFUSEK: It depends. There is due diligence, but again, the bankers have as their job, to get the deal done and get the most money. They try to keep the process moving along so you can't *ever* be quite caught up to that. Rarely do you ever get to sit down with anybody beneath the top people.

JACK FRIEDMAN: It would be helpful if you could walk in and talk to somebody who has been there 20 years and get the truth.

BOB PROFUSEK: Some companies *do* talk to other people, the larger companies particularly. The quality of earnings is a big issue in terms of understanding the financial side of the target. They buyer may hire private investigators; they talk to former employees. They try to go *around* the investment bank mechanism to get to that information.

NEIL WHORISKEY: One of the best sources of information, too, is that people at the business — particularly ABB — will know, if they've done business with people on the other side. They know a lot about these businesses they're buying before they buy them. If they don't know them directly, they know them indirectly, because they have mutual suppliers. You can't go around and ask everybody everything all the time. But a lot of times, that information is there within the organization, and you can dig it out.

DIANE DE SAINT VICTOR: Absolutely. You're going to want to know. You're going to want our HR person to talk to someone on the HR side at the target; you're going to want to have the environmental expert not only visit some of the sites — not necessarily all of them, but at least the most important sites — and then have a conversation with the head of Health & Safety at the target. You're going to do the same with pension, with insurance, with quality, and with manufacturing. You want get a sense of who these people are; will they fit well in our organization? Then, somehow, we sit down and talk, and come up with our own assessment of who they are *beyond* the report that has been prepared by the deal team.

AUDREY HARRIS: Both Bob and Diane have been talking about compliance in that it has to be substance over form. What the process is and what the systems do are help the people execute the controls. You can't lose sight of the fact that compliance has to be substance rather than check-the-box mentality. Any time that a process has become a check-the-box rather than helping to facilitate substance, then there is a problem, and we have to continuously, as Diane mentioned, regenerate and continuously try to address compliance from different ways. It's training, and then it's systems. You have to keep that fresh, and you have to keep that new, in order for it *not* to become form over substance.

JACK FRIEDMAN: Chris, did you have a comment?

CHRISTOPHER WALL: I have a small add-on just to supplement the process and people aspect of it, and also to supplement what Audrey was just commenting on, and that is the emphasis on training. One of the ways a culture is exemplified is the ability to get the information down to the people who are actually applying that information. That central element of a compliance program, of course, is to have teams of people who go around and make sure that the people who need it have the necessary information, which is something that ABB is doing very, very well.

Another aspect — and it goes to the culture point of going beyond the strict requirements of the law, but also the reputational and other risks involved — and that's, in the particular area where I'm involved — the notion of a sensitive country. That's not just a country where the law says you cannot sell a product or you can't do business with a person from that country; it's a country where it's legal and permissible, but it could involve some reputational risk or some other compliance risk. That has to get reported up the line, depending on the size of the transaction; in some cases, all the way up to very senior levels at the group headquarters. The analysis is more than just the strict compliance; it's the sensitivity and the broader reputational and other factors that have to go into these considerations.

JACK FRIEDMAN: We can conclude the program with a few short questions for Diane.

First of all, what are the philanthropies or public causes that ABB has adopted?

DIANE DE SAINT VICTOR: Absolutely, there are two aspects to that. First of all, lots of ABBers are engaged in a number of activities close to them in their communities, and the company is supporting these efforts, giving time, and resources as well. Then, the company is engaged in a broad range of programs in the communities where we live. We are bringing electricity to rural places in India. It means that the shops will be open late at night instead of having to close as the sun goes down. If they keep the shop open longer, they're going to make more money, because they're going to have more customers. It means they're going to be able to feed the kids, and hopefully pay for clean water in the house so that the kids will not get sick.

> "Now, just recently, we posted on our website a press release announcing that for the third year in a row, ABB made it to the list of most ethical companies in the world, and we are encouraged by what is essentially ABB making progress on this journey."
>
> *– Diane de Saint Victor*

It is part of the corporate agenda, and it's not just to look nice or a marketing piece; absolutely not. It's part of the culture; it's part of who do we want to be as a corporate; and, therefore, we're not necessarily making a big fuss out of it, but I can certainly confirm that the company is engaged in all types of different programs: homes for the needy, electricity for all, and health programs in places where it's not easily available. This topic is discussed in the boardroom at least twice a year. Again, we commit money, time and resources.

JACK FRIEDMAN: In the five minutes a month that you have free what do you personally enjoy doing?

DIANE DE SAINT VICTOR: Learning, learning, learning, and capturing what's out there that I'm not seeing yet. That is a missed opportunity in terms of personal and professional growth.

JACK FRIEDMAN: One of your colleagues from Zurich, when asked this question said, "We like to take vacations in the small towns near the coast in northern Italy. The problem is, Zurich is not that big a city and therefore, you see the same people on vacation as you do in business." [Laughter]

I would like to thank the audience for coming, because the Roundtable is for the audience. I want to thank the Distinguished Panelists, and particularly our Guest of Honor for sharing their wisdom and making themselves available for this program. Thank you very much.

Neil Whoriskey

Partner, Cleary Gottlieb Steen & Hamilton LLP

CLEARY GOTTLIEB

Neil Whoriskey is a partner at Cleary Gottlieb Steen & Hamilton LLP, currently based in the New York office. His practice focuses primarily on mergers and acquisitions. He is the Co-Chair of the Corporate Governance group.

Mr. Whoriskey's matters include representation of:

- OpenText Corporation in its pending acquisition of Actuate, Inc., a NASDAQ-listed company;
- Embratel, Embrapar, and Net Serviços de Comunicação in connection with a "going-private" cash tender offer to acquire Net Serviços, a NASDAQ-listed company;
- Scientific Games Corporation in its $1.5 billion acquisition of WMS Industries, Inc., a NYSE-listed company;
- The Raine Group in its investment in Important Media, LLC, a joint venture with Trey Parker and Matt Stone, the creators of the "South Park" television series and "The Book of Mormon" musical production;
- Western Digital Corporation in its disposition of certain assets to Toshiba Corporation;
- Goldman Sachs in its sale of Litton Loan Servicing;
- Evraz Group S.A. in its $4 billion acquisition of IPSCO, Inc. and simultaneous divestiture of certain of the purchased assets;
- Citibank N.A. in its $1.4 billion acquisition of The Bisys Group Inc., an NYSE-listed provider of back office solutions, and simultaneous sale to J.C. Flowers & Co. of the insurance and retirement business of Bisys;
- Evraz Group S.A. in its successful $2.3 billion public tender offer for Oregon Steel, Inc. and its successful public tender offer for Claymont Steel;
- McDonald's Corporation in the disposition of its Latin American assets;
- Electronic Arts in its investment in Neowiz, a Korean games publisher and distributor.

In Hong Kong, Mr. Whoriskey represented, among others, Daewoo Motors in its sale to General Motors; The Carlyle Group and JPMorgan Corsair in the sale of Koram Bank to Citibank; and AIG related funds and Newbridge Asia in their purchase of a controlling stake of Hanaro Telecom, a NASDAQ listed broadband company. Mr. Whoriskey also represented Newbridge Asia in its acquisition of a controlling stake in Shenzhen Development Bank, the first-ever sale of control of a Chinese bank to foreign investors.

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Robert "Bob" Profusek

Partner, Jones Day

Bob Profusek is an advisor to substantial businesses, focusing on M&A, including takeovers and buyouts; restructurings; and corporate governance matters, including executive compensation. He chairs the Firm's global M&A Practice.

Recent representative M&A transactions include Potash's successful defense against BHP's unsolicited tender offer ($43.1 billion), the Continental-United Airlines merger of equals ($8.5 billion), Total's tender offer for SunPower ($1.4 billion), Cliffs National Resources' acquisition of Thompson Mining ($4.9 billion), and Procter & Gamble's sales of its pet foods ($2.9 billion) and Pringles snacks ($2.7 billion) businesses and joint venture with Teva Pharmaceuticals for its global OTC medicine business. Prior transactions include Nextel's merger of equals with Sprint ($46.5 billion); Ernst & Young's divestiture of its consulting business through merger with Cap Gemini ($11.7 billion); and numerous transactions for WL Ross & Co., including the acquisition, IPO, and sale of International Coal Group ($3.4 billion); the merger of International Steel Group and Mittal Steel ($4.1 billion); and its build-ups in automotive components, textiles, mortgage servicing, and shipping.

Other companies with which Bob has worked on substantial matters include Abbott, Disney, Macy's, and Wasserstein & Co.

Bob is a member of the boards of directors of two NYSE-listed companies. He also is a frequent speaker regarding corporate takeovers and corporate governance, has authored numerous articles, has testified before Congress and the SEC about takeover and compensation-related matters, and is a regular guest commentator on CNBC, CNN, Fox, and Bloomberg TV.

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Kathleen Cannon

Partner, Kelley Drye & Warren LLP

KELLEY DRYE

Kathy Cannon is managing partner of the firm's Washington, D.C. office and former chair of the International Trade and Customs practice group. With more than 30 years of experience in international trade law, Ms. Cannon focuses her practice on assisting domestic industries that are experiencing injury due to unfairly traded imports, primarily through the use of anti-dumping and countervailing duty laws.

Ms. Cannon has been involved in a wide range of trade matters, including World Trade Organization (WTO) international disputes and negotiations, and she has participated in implementing trade legislation and regulation. She has been involved in rules and dispute settlement issues in the ongoing Doha Round of trade negotiations, and previously was involved in the Uruguay Round of trade negotiations, and the North American Free Trade Agreement (NAFTA). She has also represented U.S. exporters charged with dumping by third countries.

Ms. Cannon regularly appears before multiple U.S. trade agencies, including the Department of Commerce, the U.S. International Trade Commission, and the U.S. Trade Representative. She has participated in numerous oral arguments before the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit.

Education

University of North Carolina School of Law
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North Carolina Journal of International Law and Commercial Regulation, Editor-in-Chief

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Kelley Drye & Warren LLP is an international law firm founded in 1836 with more than 300 lawyers and other professionals practicing in New York, NY; Washington, DC; Los Angeles, CA; Chicago, IL; Stamford, CT; Parsippany, NJ; and Brussels, Belgium, additionally offering a full scope of legal service through our affiliate relationship with the Mumbai-based independent law firm, Fortitude Law Associates.

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Audrey Harris

Partner, Mayer Brown LLP

MAYER·BROWN

Audrey Harris is a partner in Washington, D.C. and a member of Mayer Brown's White Collar Defense & Compliance practice. She is a veteran Foreign Corrupt Practices Act (FCPA) attorney with over a decade of experience running multi-year, multinational investigations, with a comprehensive investigations, counseling and defense capability. Audrey regularly appears before enforcement authorities and has extensive experience in designing, executing and presenting internal investigations before multinational corporations, the U.S. Department of Justice (DOJ), Securities & Exchange Commission (SEC), Department of Treasury Office of Foreign Assets Control (OFAC), Department of Defense, and Multilateral Development Banks (MBDs). Her experience runs the gamut of white collar representations including false claims act, healthcare fraud, management of earnings, money laundering defense, and even anti-terrorism matters. Prior to joining Mayer Brown, Audrey was a Partner at Kirkland & Ellis LLP.

Her experience includes:

- Representing one of the largest engineering companies in the world, with an annual revenue of more than $27 billion and operations in more than 100 countries, in connection with an investigation and deferred prosecution agreement with DOJ and the SEC. This was one of the first cases to result in a self-monitoring provision, avoiding an expensive external monitor.
- Working with multinational clients to create and execute FCPA compliance programs, policies and procedures, compliance gap reviews, testing/controls analysis, internal audit and investigation capabilities and proactive anti-bribery reviews.
- Conducted internal investigation and advised large defense contractor with regard to civil and criminal enforcement liability arising from billing and payment practices.
- Representing the CFO of a major U.S. corporation in an SEC investigation and enforcement action, and bringing the matter to successful resolution.

Audrey is admitted to practice in:

- District of Columbia (2003)
- Virginia (2002)
- U.S. Court of Appeals for the Fourth Circuit (2002)
- U.S. District Court for the Eastern District of Virginia (2003)
- U.S. District Court for the District of Columbia (2003)

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Christopher Wall

Partner, Pillsbury Winthrop Shaw Pittman LLP

pillsbury

Christopher Wall is the senior international trade partner at Pillsbury Winthrop Shaw Pittman LLP, where his practice focuses on technology transfer regulation, foreign investment, international trade, and compliance.

Mr. Wall advises and represents clients on export controls (commercial and defense); economic sanctions and embargoes; national security reviews; anti-boycott issues; the Foreign Corrupt Practices Act (counseling and investigations); import relief proceedings; Court of International Trade appeals; complex Customs matters; bilateral investment treaties; NAFTA and WTO dispute resolution; and other trade policy and legislative matters. He has been ranked by Chambers and Chambers Global in the areas of Export Controls/Economic Sanctions and CFIUS.

Mr. Wall served as Assistant Secretary of Commerce for Export Administration during 2008–2009. He works with the Departments of Commerce, State, Defense, Treasury and Homeland Security, the Committee on Foreign Investment in the U.S., the U.S. International Trade Commission, and the Office of the U.S. Trade Representative.

Mr. Wall received undergraduate degrees from Yale University and Oxford University and his J.D. from the University of Virginia Law School. He is a member of the bars of the District of Columbia and New York, as well as the Court of International Trade and the Court of Appeals for the Federal Circuit. Mr. Wall currently serves on the Board of Directors of the U.S. Council for International Business and he is a member of the Council on Foreign Relations.

Pillsbury Winthrop Shaw Pittman LLP

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Pillsbury provides a full range of legal services to its clients related to international trade regulation. Our International Trade practice includes counseling, regulatory compliance and enforcement, transactions, litigation, and arbitration. We combine a sophisticated knowledge of domestic and extraterritorial trade measures with an understanding of the political, policy and diplomatic context in which these measures are implemented.

We assist clients with international trade matters, including: export controls and embargoes; regulation of foreign investment; customs compliance and enforcement; Foreign Corrupt Practices Act compliance; the interpretation of international trade agreements and litigation or settlement of trade disputes; trade remedy proceedings (such as antidumping investigations); and trade issues that arise in transactions.