DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Brian Cadwallader

Vice President, Secretary & General Counsel,
Johnson Controls (2014–2016)

THE SPEAKERS

Brian Cadwallader
Vice President, Secretary & General Counsel, Johnson Controls (2014–2016)

Patrick Quick

Beth Boland

Partners, Foley & Lardner LLP

Andrew Brownstein

David Lam

Partners, Wachtell, Lipton, Rosen & Katz

(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 the General Counsel for guidance relating to financial and business strategy, compliance, and integrity of corporate operations, among many other matters. In recognition of the achievements of our distinguished Guest of Honor and his colleagues, we are presenting Brian Cadwallader and the Law Department of Johnson Controls with the leading global honor for General Counsel and Law Departments. Johnson Controls is a global technology and industrial leader serving customers in more than 150 countries. Mr. Cadwallader's address focused on key issues arising from complex corporate transactions. The panelists' additional topics included mergers & acquisitions; activism; and shareholder 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

Brian Cadwallader

Vice President, Secretary & General Counsel, Johnson Controls (2014–2016)

Johnson Controls

Brian Cadwallader is an accomplished senior executive and legal professional, with more than 32 years of success serving as a General Counsel in the fields of technology, international business, manufacturing, wholesale/supply chain, service, distribution, and intellectual property. Brian leverages experience leading large teams, navigating compliance, overseeing risk management, and managing company security. Brian is skilled at working within existing budget constraints to restructure divisions and workflow designs to increase efficiency. He is able to communicate complex legal issues in a simple and actionable manner. His areas of expertise include mergers and acquisitions, strategy, intellectual property, litigation and arbitration, employment law, corporate governance, joint ventures, complex negotiations, and real estate.

Brian served as the Vice President, Secretary and General Counsel of Johnson Controls, leading more than 130 legal staff located in 16 offices worldwide. In addition, Brian's function was to manage corporate risk, as he is responsible for the legal, compliance, shareholder services, security, insurance, and flight services functions of the company. In this position, he played an instrumental role in a complete restructuring of a Fortune 50 company in less than 36 months. Notably, he also led one of the most complicated series of transactions ever attempted, that culminated with a $17 billion inversion/merger and $20 billion spin-off in less than 30 days. He also worked extensively with the Board of Directors and provided advice on governance, corporate transactions, and compensation issues.

Brian joined Johnson Controls in 2010 as the Building Efficiency group vice president and general counsel. Prior to assuming his role as General Counsel, he served as a vice president and assistant general counsel. In this position he designed and implemented a restructuring of the legal department focusing on how the department did its work. The redesign resulted in reducing the annual costs associated with providing legal services to Johnson Controls by $25 million.

Johnson Controls

The future is being built today, and Johnson Controls International Plc. is making that future more productive, more secure and more sustainable. We create intelligent buildings, efficient energy solutions, integrated infrastructure and next generation transportation systems that work seamlessly together to deliver on the promise of smart cities and communities. At its core, that promise is about delivering innovation that make people's lives — and the world — better.

Johnson Controls International Plc. is a global diversified technology and multi industrial leader serving a wide range of customers in more than 150 countries. Our commitment to sustainability dates back to our roots in 1885, with the invention of the first electric room thermostat. We are committed to helping our customers win and creating greater value for all of our stakeholders through strategic focus on our buildings and energy growth platforms.

In 1885, long before anyone talked about carbon footprints or climate change, Warren Johnson launched a company to explore new ways to harness and conserve precious energy resources. In doing so, he also launched a tradition of customer-focused innovation — a tradition that has inspired thousands of employees for more than 130 years and that continues to drive the success of Johnson Controls. Even before he founded the firm now known as Johnson Controls, Warren Johnson was the quintessential inventor. His pneumatic tower clocks, electric storage batteries, wireless telegraph business, and steam-powered luxury cars and postal service trucks anticipated — and shaped — the future.

Throughout our history, Johnson Controls has conducted business with integrity. Our dedication to "do the right thing" improves our long-term business performance, reputation, productivity, and employee retention.

JACK FRIEDMAN: Good morning. I'm Jack Friedman, Chairman of the Directors Roundtable. We are a civic group that has organized 800 programs globally. Our mission is to do the finest programming possible for Boards of Directors and their advisors, which include in-house counsel and outside law firms. We've never charged the audience to attend a program over 25 years.

This series of programs started when Boards of Directors told us of their concern that corporations rarely get acknowledged for the good they do. We decided to provide an opportunity for their top executives and General Counsel to speak about their corporate accomplishments in an elegant manner.

We're very pleased today to honor Brian Cadwallader of Johnson Controls and his whole legal department for their fine work. Johnson Controls and its legal department are well known, so congratulations.

I would like to briefly introduce Brian Cadwallader. He went to high school 90 miles away, so he has a lot of youthful experiences in the area. He went to St. Louis University School of Law. He was, for many years, counsel at International Paper, and he's been at Johnson Controls. I will leave it to him to tell us more about the legal department.

He will speak first, and then the Distinguished Panelists will introduce their topics. Our Panelists are Beth Boland and Pat Quick of Foley & Lardner; and David Lam and Andy Brownstein of Wachtell, Lipton.

Without further ado, I'd like to introduce our Guest of Honor.

BRIAN CADWALLADER: The panelists voted and they said they're going to sit, so I'm going to go ahead and sit. For the number of members of our legal department here, now that I have the microphone, you're in trouble! [LAUGHTER]

I have been known to get off on a subject and, I'm sure, destroy any agendas. I'm going to try not to do that. I do want to

thank Jack and the Directors Roundtable for organizing this event and I'd like to thank Foley & Lardner for allowing us to use their facility and hosting the event. I do appreciate our law firm partner, Foley, and their help with this event.

I want to point out that for some of the members of this panel, a number of us have worked together quite a bit — in fact, Andy, David and I are in some sort of strange three-way common law marriage now, because we've been working together for so long. [LAUGHTER]

Of course, Pat has been a counselor to Johnson Controls for decades, so there's a long relationship with the panelists and our company. It's fitting that they're here today to participate with us.

I look out in the room, and I didn't realize that we were holding a department meeting. [LAUGHTER] Last night, they gave me a list of the attendees. I want to say, first of all, that I was at a loss for words at the number of our attorneys that decided to come today. I really appreciate that. If you know what's going on at our company (because the local press likes to write about it, even if they never get it right), we're in the middle of finishing off a spin of about 50% of the company. There are a few busy people that have taken the time to join us today. It's very fitting, because this isn't recognition of what I've done; it's recognition of the participation and the teamwork of this department.

I'm going to bore the rest of you so I can add to the transcript the names of the people here today from Johnson Controls that have been a big part of what we've been able to pull off in just three years. I'm going to read them out, and if I miss one of you, I apologize. We'll get you on the transcript.

Chad Anthony, Carrie Barbee, Dragomir Culav, and Cathleen Ebacher — I wanted to mention about Cathy, for the spin that's going to happen in eight or nine days, Cathy is going to be the General Counsel for the spun-off company. Day 1, it's just short of a $20 billion company, and its headquarters are about a block away. Jackie Ertl, Ben Heilman, Amy Heinemann, Tom Kister, Alexis MacDowall, Tim Maciolek, Leanne Michels, Felipe Muzquiz, Jennifer Peterson, Karl Reichenberger, and Kristina Sung Kepner. Kristina, by the way, is the head of our corporate development operation, the legal team that is doing the transactions. I'm expecting that sometime in about ten days, she might actually collapse. Hopefully, everyone will help her get away from her desk and go home for a while. Francisco Vasquez, Cathi Walker, Cari Weber, Deborah Telman, John Pilarski, Barbara Heil, Steven Keane, and David Knaff. Those are the ones that I

know are present, and if I've missed you, I apologize. This team, and others in sixteen offices around the world have made this event possible, I'd like the room to join in a round of applause, because when you hear what this team has done, it's pretty amazing. [APPLAUSE]

I'm going to avoid trying to give a speech or go into anything in depth, because we've got some of the greatest M&A minds in the country at the table here, but I am going to try and set the stage. A lot of people talk about Johnson Controls, but really don't understand the company. Let me give you a bit of a reminder for those of you that don't know something about Johnson Controls. By the way, my mother is 93 years old, and she's pretty sure that I work for Johnson & Johnson. [LAUGHTER] On my mother's part, she's just happy I'm employed, so that's all that matters!

But three years ago, if you think about Johnson Controls, it was a $43 billion revenue company. You can argue about the number of business units; in fact, that's been some of the interesting parts of this process, as we spun off or sold off parts of the company. Part of the strategic work in the process was to understand the many different commercial marketspaces in which Johnson Controls plays. There were anywhere from four to five big segments three years ago. There were about 150 countries in which we operated with about 175,000 employees. Certainly one of the largest U.S. companies, and proudly based here in Milwaukee. It's also a company that's more than 130 years old. Why would you take a 130-year-old company and do 12 transactions in the last 36 months, seven of which had revenue values of greater than a billion? I throw that in because only one had a billion; most of the transactions, either buying or selling, affected business units with four or five billion dollars in revenue. Why would you decide to spin off a major business unit, one that had been historically roughly 40% of the margin, or 50% of the revenue of the company — why would you go through all of this? It really was about the Board and the management team doing the right thing for the shareholders by saying, "We have a 130-year history; what will the next 130 years look like? How do we make sure that this company is there 130 years from now?"

It was not just simply a "Let's go do some transactions." What is lost, looking from the outside in, is the teamwork between the Board of Directors, outside experts (including our attorneys, bankers, and consultants), the management team — and many of the people in this room — were asked to participate and help understand what made Johnson Controls tick.

It was an opportunity to face what I call the "forces of change." If you think about it, they're not totally dissimilar from the forces of change that a lot of companies face, slowing revenue growth — and it's happening to every major industrial country around the world. There are really only two growth markets right now in the world, or the ones you can bet on; one is North America and the other one is Asia — which means China.

The team had to consider a lot of different forces creating change. What about the growth of this thing that everyone calls "the Internet of Things," and what is it about? What's "big data" and how does it play into running a manufacturing company? What about social unrest around the world? What does that mean for our marketplaces, our countries that have traditionally been coming out of periods of one type of order moving into another type of order — are they going to continue to grow and make investments that are the types of investments that Johnson Controls is good at?

The auto industry, which has been very important to Johnson Controls, is going through a generational technology change. Can Johnson Controls fund an investment in an industry that needs to make such a huge change? At the same time, it's trying to find investments in the historical part of Johnson Controls that's related to buildings, which is now also going through a generational change as big data emerges. How much capital can one company have, and can they really spend it on essentially two companies in two different industries?

In the last 36 months, we've done 12 transactions to totally restructure Johnson Controls. We've also done a few other things, not the least of which were we've had to split a Board of Directors to prepare for a spin; we've had to combine a Board between two merger companies; we've had to go out and find new Board members; we've had to find a new lead director. I'm trying to think of some of the other things — I scribbled down some earlier; we've resolved a significant FCPA matter. In addition, we've gone through a re-alignment within our Legal and Compliance Departments, and taken $25 million of everyday running costs out of the department. All while running a $40 billion business.

This team has done an enormous amount to contribute to the company's change, because the company really did three major things: it went out and bought some companies that fit the new basket; it sold or spun off companies that didn't fit the core or couldn't really grow under the JCI umbrella; and it also took out hundreds of millions of dollars of costs, in the aim to become a low-cost producer with products and services — all in the same 36 months. It's an amazing story. I won't force the gentlemen from Wachtell to comment, but once we got halfway through this and we realized we were spinning automotive and buying Tyco, they did say, "Now, you realize this is the most complex transaction ever attempted. We don't know if we can do it." When you stop and think about the complexity of doing all that at the same time, it is an amazing story and worth at least having a conversation with our expert panel.

> "Why would you take a 130-year-old company and do 12 transactions in the last 36 months, seven of which had revenue values of greater than a billion? … Why would you decide to spin off a major business unit, one that had been historically roughly 40% of the margin, or 50% of the revenue of the company — why would you go through all of this? It really was about the Board and the management team doing the right thing for the shareholders…"
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> *– Brian Cadwallader*

Today, Johnson Controls — after the spin — will be just short of $30 billion in revenue. We'll be focused on buildings and controlling and managing the environment in which you work, and also on energy storage. Just to comment on the battery business, we are the largest maker of car batteries in the world. We also think that allows us to talk about how you store energy. All the green economy doesn't matter unless you know how to store energy. You can make all the energy you want, but if you can't store it, you can't use it.

After going through this very disciplined process of considering where Johnson Controls faces these forces of change, and also where it brings some unique abilities, these are the two areas that Johnson Controls is going to focus on, going forward: buildings and energy storage.

Where does this "big data" come in, and the Internet of Things, and why do we think we're uniquely focused or set up to succeed in this? The building you're sitting in is the largest building in Milwaukee. If you walk around the room, you'll notice that you have thermostats. Everyone says, "Okay, that's a thermostat, so what?" It's a data gathering point. If you also pay attention, you're going to have security systems in here; you're going to have fire detection systems; you're going to have fire alarm systems; and you're going to have security alarm systems. Those are really data points where you're gathering more and more data about what's going on in the building. The building, itself, becomes something of an Internet of Things; it's about data and how do you manage the data.

That's always been the core secret of Johnson Controls. When Dr. Johnson started the company 130 years ago with the first remote thermostat, the whole idea was to get data from a room and then tell something else far away to do something in order to affect the environment in that room. Adding Tyco to the basket just adds that many more data points and that many more opportunities to control a large building, a campus — one of our business customer bases are universities. If you think about managing the 100 buildings on a campus, we're ideally suited to manage everything that happens in those buildings, because we have the data that no one else has. More importantly, we have the systems and the software to give you answers about what it takes to run that building.

That's the new Johnson Controls, and it's based, really interestingly, in part on the original concept of 130 years ago.

Having said that, I can tell you that the spun-off automotive company will be about $20 billion at Day 1. How many companies go out of the chute Day 1 with $20 billion in revenue? Basically, if you're sitting in a car seat, it's at least a one-in-three — depending on where you are in the world — chance you're sitting in a Johnson Controls car seat. They also have part-ownership in joint ventures doing other things in the interiors of cars. If one of your investment goals is to participate in the auto industry, one of the best ways to do it, going forward, is with a company that the auto industry trusts as probably their best Tier 1 supplier. That's the new auto spin-off called "Adient," which is going to be headquartered here in Milwaukee.

What did we learn, and what have I learned? I told my team — and I don't know if they believe me yet — every time you do something, you have an opportunity to learn. Will I ever do another merger/spin within two months of each other? Probably not — I hope not! Maybe that's the right answer! [LAUGHTER]

The team probably says they hope not! But I will say that there were learnings, and this sets up the remainder of the discussion. No matter what you want to do as a company, you make these strategic plans and you say, "This is what we should do; these are the opportunities that are good for us." The reality is you can only act on those that are available. It's interesting that people like to write externally about what we should do without understanding the analysis that we did and the fact that we identified not only what was desirable, but what was actionable. That's underplayed way too often. That's where a mature and senior management team and Board, working together, can really bring value to the shareholders. They're not only saying, "Wouldn't it be cool if we did this," but they also say, "this is actionable; this is what we can do, and let's take charge of the future of our company."

That's what happened at Johnson Controls. They weren't easy decisions, but it was a well-thought-out decision process about balancing the desired with the doable.

Now, the other thing is, I like to think of myself as being a relatively organized person, and I like the discipline of organization, but it's amazing just how incredibly important it was to these two transactions. For Boards of Directors and senior management, I will tell you, if you intend to do a spin especially — it's also true in a merger — you have to have the management team organized. Yes, the lawyers will get the transaction done — we have people here that spend their entire day doing it. We have a pretty talented team of lawyers at JCI. We'll get the transaction done. Actually, in some ways — I won't say it's the easier side, Kristina — but we know how to do that! It's the splitting of the company that's the challenge. Only by putting an executive team member in charge and giving them the power to build what we call a PMO — Project Management Office — and putting that in place, and managing it like a major building project for Northwestern Mutual or something like that — will you get through this. Because the questions you get asked go down to the detail of the employee handbook or the color of the signage. You will be surprised how long you discuss what colors to put on a sign. They all need to be done, and they need to be done in an organized manner.

The spin is — yes, it's a legal transaction, but it's the most complex business project ever attempted in any company, and especially when you think about it — in our case, we're literally splitting the company into two halves. Imagine it. At one point, we had almost 1,000 full-time employees working on the spin, and

at least that many contractors. We told the street that we would spend between $400 and $600 million to do the spin and there was some gasping, although actually that's average for this size spin. We hit that target, and we hit it because we were organized and disciplined about the decision-making, and started at Day 1 — not halfway through and realizing, "We'd better get organized." Certainly organization is the key.

The other thing I will say is it is surprisingly emotional for your Board of Directors. I say that because if you're doing it the right way, you want to establish a Board with some continuity, and you want to split your Board and send some Board members to the spun-off company. People who are truly committed, such as our Board members, really believe in the parent company, in the sense that they joined Johnson Controls. What you're watching is a microcosm of what you're now going to deal with, with your employees. Don't think just because they're Board members and they're all captains of industry that they're immune from the tough decisions required of the split when they're being asked, "Could you go with the spun company?" As a GC, and as a corporate secretary, you really need to deal with that very early. We're a little unique in the sense that we did a merger at the same time, and we ended up with more Board members in the end than what we needed. We had to ask some Board members not to continue. But, in most cases, you're going to have holes to fill on both Boards. Finding Board members — especially for manufacturing companies — there are thousands upon thousands of people who want to sit on the Board, but if you're worried about diversity and capability, and what they bring, that list gets very short. What you find, as a manufacturing company, many people don't think you're very sexy, and they want to do the Apples and the Googles. You do have to work on that; that is actually something you will spend the entire year on, moving Board members around and trying to fill holes. Be thinking about that as a corporate secretary, as a GC, as early as possible.

I will say, there's been a lot written about the transactions. This deal was never tax-driven, but every deal is tax-affected. You cannot avoid thinking about taxes. Even if you say, "I'm not doing this for taxes," much has been written about the potential tax savings of $150 million that Johnson Controls might see. The reality is, you can't do this deal based on $150 million in savings, and it is not enough to justify doing this deal. It never was a tax deal, but it was tax-affected. You're going to hear the panelists talk about the complexity of how to do a transaction that's strategically right, under the burden of the U.S. tax code. It's the right thing for the company to do; it brings shareholder value. Then you run up against the tax code that forces you to make very difficult decisions in order to try and do the right deal. We've gone public and set our target for savings at over $1 billion, because you must gain some efficiency when you merge. There's $150 million in tax savings that helps get to the billion target, but without the other roughly $900 million in savings, the deal fails; it's not a good deal. It's not a tax deal.

I'm going to let the true tax lawyers talk about this. [LAUGHTER]

We ended up with a pretty unique structure here, and it may never be used again. It's never quite been used this way before, and this may be the only one in history — but it ended up basically doing a reverse merger with ring-fenced income, in order to set up a structure that allows us to do the transaction. I'm going to let them comment on it.

It wasn't just lawyers; it was a lot of financial people. The amount of creativity in order to do a good transaction but survive through the tax code — it's astounding how many hours were spent just trying to figure it out. We know this is a good deal and we know we should do it, but how can we get it done and not destroy the shareholder value? For critics of whether companies should do tax-driven deals or not, they should stop and say, "Should we have a tax code that's actually agnostic and shouldn't so dramatically affect how the deals are done; it should be something that gets out of the way or at least encourages companies to do the right thing for their shareholders."

With that, I'm going to go ahead and stop — as my team would know — I have a lot of things I could talk about! But I'm going to delay and know that we have plenty of opportunity to have an interplay amongst the panelists.

JACK FRIEDMAN: Thank you. One of the big challenges for modern General Counsel is to work hard to have a cooperative relationship between the business side of a company and the legal department. For you, how do legal and business learn to have a cooperative attitude towards each other?

BRIAN CADWALLADER: It's really building trust. I'll give an experience from early in my career reviewing contract after contract, which all of us do early in our careers. This is how long ago it was: it involved fax machines. I got a call from a sales manager in the southeast, and he says, "Look, I have a contract I've got to get signed; it's really important; it's a huge piece of business — would you mind? I know it's short notice; I've got to do it this morning. Could you take a look at it?" I said, "Sure, fax it over." It was a 30-page agreement. He faxed page 1 and page 30. I called him back and said, "Okay, where's the rest of the agreement?" He said, "I didn't think you needed that, because it was just a bunch of words." [LAUGHTER]

You don't win on that one! Obviously, it's like, "Whatever — go ahead and sign it, at this point, because it doesn't matter — you don't care what I have to say." You can't win on the day of battle. It's really about establishing a relationship that there is a level of trust between you and the business person. You don't win any one day; you win over time, where they realize you're actually trying to help them get to their ultimate goal.

You've got to go back, time and time again, and be the one that takes it on the chin in order to establish some trust that you are there, trying to help them get to their ultimate goal. In my opinion, there's no single magic bullet, but consistently showing up, showing that you're willing to be in the same room as they are, having the conversations and being creative. That's what we've been talking about here a little bit — being creative to come up with solutions that get the team or the company to the goal that they want to get to.

In the legal world, yes, there are criminal things you can't do. Certainly, you can't pull out a gun and shoot somebody; that's illegal. But in many areas, it's grey — there isn't a black and white. You have to be willing to say, "Look, you can't go to your goal on Path 'A,' but you can probably get to your goal if you do Path 'B,' which requires three more steps. I'll help you with them." That kind of conversation goes a long way to stopping the last-minute, drive-by, "I hate lawyers; just tell me it's okay."

That's been my experience, and I tried to stick with that over the years. It works, but there are many times I can still point to the world where you get the one-off, where they're really not interested in what you have to say.

JACK FRIEDMAN: If you didn't let lawyers deal with words, I don't know what the profession would be left with. It's an interesting idea.

Beth Boland of Foley & Lardner will introduce her topic.

BETH BOLAND: I love that — "It's just words." [LAUGHTER] Our stock in trade!

Hi, everybody. I'm Beth Boland. I am the Chair of our Securities Enforcement & Litigation group here at Foley & Lardner. What strikes me, as I was listening to Brian's words, is how, first of all, it has enveloped not only a company, but an entire region. The tentacles of what Johnson Controls and Tyco are doing, and the ramifications, not just in the business and the industry, but for all the families and all the employees. It is just mind-boggling. The complexity, as well as all the different pieces that need to fit to make a company — both a spin, as well as the combined entity — work in a way that will survive for centuries thereafter, is truly amazing.

It doesn't come in a vortex, either. There is the political reality, which is the whole push-back on tax inversions, and the environment that one needs to address for that. There's also the litigation environment, as well. I think about the lawsuits that have inevitably trailed in the wake of the announcement. By the way, the paucity of lawsuits for Johnson Controls is actually a testament both to the way the deal was structured, and also to real seismic changes that have been going on in this area in the Delaware courts for the last year. For those of you who haven't been following it closely, what I'll try to do now is give you a bit of an overview of truly tectonic changes that are happening in the M&A litigation sphere, and how that then is affecting companies going through these M&A transactions; what we expect in the future; and in particular, some of the litigation that JCI is undergoing right now.

For those of you who have been following in *The Wall Street Journal* or follow this area of law, you know that up until recently, the spate and the trends of M&A litigation have just been out of control. Literally, by the year 2014, virtually every single M&A transaction — not just the behemoths, but even the publicly traded companies that are $100 million or so — was always followed by a spate of shareholder lawsuits contesting those deals and saying that the Board of Directors of the selling company sold the shareholders down the river, breached their fiduciary duties — no matter how high or low the sale price was — and that they should be sued over that. The stats are pretty staggering. Until mid-2015, plaintiffs filed lawsuits challenging over 90% of deals valued at more than $100 million. Almost every single one of those had multiple lawsuits; the average was seven for each and every deal. Of those filed, the majority — and here's the kicker — are settled on what we call a "disclosure only" basis. The plaintiffs come forward; they file the suit; they go back to both the buyer and the seller and say, "You completely misled the shareholders; you didn't give us enough information in the proxy." You go back and, literally, in some of the deals that I have litigated — I'm only exaggerating a little when I say that we changed a semicolon to a period in those proxy statements. Then the plaintiffs'

counsel claims victory and says, "We need our fees." The average fee that is granted for those disclosure-only settlements is somewhere in the neighborhood of $300–$500,000. Then the plaintiffs go away and go on to their next deal. Very few of them are actually what I could call "real" lawsuits.

We have this raging problem within the courts, within that kind of industry. I call it the plaintiff shareholder litigation industry. The courts, after decrying that for years, finally figured out a solution to that problem. Companies are also finding solutions to that problem. It comes in two flavors. I want to talk about what's going on in terms of the judicial decisions, and also what companies are doing in terms of their bylaws to try to limit the scope and, at least, the forum at which those vexatious lawsuits are being adjudicated.

Let's talk about what the courts are doing. The first and foremost — and we saw two kinds of shots across the bow by the courts in 2014 and 2015. In 2014, there was a very seminal article that was written by one of the vice chancellors in Delaware, Vice Chancellor Laster, about the fact that you have these companies coming together, and notwithstanding the fact that in many, if not most, of these transactions, the vast majority of shareholders approved the transaction. Nonetheless, these self-appointed shareholder counsel are coming forward and bringing the suit. What Vice Chancellor Laster said is, "Given that we have the shareholders who are the ones who are actually affected by this, voting in favor of that, shouldn't that have a cleansing effect on the transaction and, in fact, be done with some of this litigation?" That was the first thing. He wrote that article in 2014, and I'll bring you back to where that bears fruit in 2015 and 2016.

The second thing that happened was in mid-2015, one of the vice chancellors in a lawsuit, again being confronted with a disclosure-only settlement — which requires judicial approval — he said, "You know what? I'm tired of this. I'm not going to impose this on this case. But in the future, plaintiffs' counsel understands that if you come to me with a disclosure-only settlement in which the disclosures that you forced in the proxy are not material to the shareholders, and in turn, you try to get a global release of all claims on behalf of the shareholder class, I ain't gonna approve it."

Let's talk about that, and what the ramifications are. In the wake of that decision, you had shortly thereafter, the vice chancellors following up and being true to that warning. In the Trulia case in late 2015, it was the first case when a vice chancellor who was confronted with one of these disclosure-only settlements said, "Just like my brother on the bench forewarned you, I'm not going to approve this settlement." What he did do was give a bit of a roadmap to the types of disclosure-only settlements that they would approve, and most of them really revolve around this idea of whether, in fact, the additional disclosures, the supplemental disclosure that were forced by the plaintiffs in the proxy statement, were material or not.

That was round one. In the wake of that Trulia decision, you see that a couple of courts now in the 7th Circuit and in other districts around the country, both state and federal, are now following that lead and saying, "We're not going to do that, either." Because what you saw in the wake of the Trulia decision and the shots across the bow was plaintiffs' counsel saying to themselves, "We're no dummies; we don't want to be in Delaware and have these judges kicking us around and shutting off our gravy train. We're going to go out to Oklahoma or to Iowa or to Texas and file our suits in the state court systems and see how we can do there."

One by one, you see many, but not all, of those state court judges beginning to shut those down. This ties into something that I'm going to talk about in just a moment at the end of these remarks, which is exclusive forum bylaw provisions. You've got Delaware cracking down on the plaintiffs' counsel; plaintiffs' counsel running to the hinterlands. Then the companies saying, "We're going to bring this back, if we are incorporated in Delaware. If plaintiffs' counsel wants to bring a shareholders suit, you've got to come to Delaware and meet us there."

In JCI's case, JCI is a Wisconsin incorporated and domiciled company, so the litigation is happening here. Luckily, you see many of those courts around the country following the lead of Delaware in saying, "We're not going to approve those disclosure-only settlements."

BRIAN CADWALLADER: The lawsuit that we're facing right now is here because we did a choice of law provision. We said, "If we're going to fight, then let's fight it in our home court, and we're incorporated here at that time; why not use Wisconsin courts."

What do you see the reaction to that? Is that something that is going to be supported by the courts, or are there other non-legal ramifications for doing that?

BETH BOLAND: It's interesting. We were talking about this some last night and at breakfast this morning. You see a difference in approaches or reactions by these, in particular, state court judges, in response to those forum selection clauses. There are some that are quite territorial. Just to give you an example, I am litigating one of these cases in state court in Oklahoma. Now, get this — understand that in Oklahoma state courts, the judges there are elected. The particular judge that is overseeing our case — she's a very intelligent woman — was a family law practitioner before she got elected to the bench. These are our judges who typically do not get these types of cases on a regular basis coming across their docket. You see one of two reactions coming from them. In Massachusetts (my home state), you see a great deal of deference to the Delaware decisions. We have a business court, and it takes itself seriously. It wants to have a great reputation; and so it will follow those Delaware decisions. I would say that that is not particularly true, especially in those states where you have, number one, elected judges, and they don't have a specialized business court. There's a little less reputational incentive to follow that lead.

> "Today, Johnson Controls — after the spin — will be just short of $30 billion in revenue. We'll be focused on buildings and controlling and managing the environment in which you work, and also on energy storage." – *Brian Cadwallader*

BRIAN CADWALLADER: To throw it out to the other panelists, that's the legal split, if they're trying to figure their way through that. There's also some reaction from activists and investors, too, which is interesting when you think about it. Here is a perfectly legal and actually a logical step for companies to take. There has been at least some written reaction, if not private reaction, to it.

PATRICK QUICK: There's been such a shift in corporate governance, both in terms of economic activists — the Carl Icahns and Dan Loebs of the world — but also in terms of the rise of governance activists, the Council of Institutional Investors and groups like that — that are just very leery of unilateral steps that companies take that impact shareholder rights. In theory, a bylaw, such as Beth is mentioning and you're alluding to, does impact the rights of some shareholders to sue in the court that they might prefer. The theory or the rationale for it is it saves expense for the 99.9% of the other shareholders that would approve the deal and rather not have seven separate proceedings on one case.

BRIAN CADWALLADER: In seven jurisdictions.

ANDREW BROWNSTEIN: It's very expensive. You might ask, why do companies settle these cases? The disclosure-only settlements only worked if the companies agreed to settle, but there's a tremendous pressure on these companies to resolve these strike suit litigations that Beth is referring to. You think of a deal like JCI–Tyco; this is a multi-billion-dollar deal that involves hundreds of thousands of people all over the world, in many jurisdictions, and it's got a timetable that's very important to the operation of a company. There is very little risk that any of these suits would actually stop a transaction permanently. There is a small risk that these litigations could upset the timetable of these transactions; which, although improbable, would be very traumatic if it happened. From the point of view of the company, there is a powerful argument to eliminating that injunction risk for the type of settlement costs that Beth is mentioning.

If, on top of that, you could get a global release — which may even be the secondary aspect of it — that's something that companies and the General Counsels and Boards of Directors have to think about very seriously.

BETH BOLAND: That's true, and it's absolutely right. The dynamic is that once these suits are filed, it really is easy pickings

for a plaintiffs' counsel, from their perspective. They say, "Listen; I put in maybe 100 hours' worth of work." In return, the company has a very high incentive to settle these cases and make them just go away for $300,000 or $500,000. That's just a rounding error in terms of the value of the deal. The plaintiffs' counsel has really benefitted from being the flea at the end of the tail of the dog, that we just want to swat away during the course of the context of the entire deal, of which this is one minor component.

As a result, this line of cases says "We're not going to approve these disclosure-only settlements unless you really force something material to be disclosed in the proxy statement." The second line of cases says, "If you have a fully informed shareholder vote where a majority of the shareholders, after getting due information in the proxy statement, approve this deal, we are not going to apply a heightened Revlon standard to the deal; we're just going to adjudicate it under the Business Judgment Rule," which basically means, for plaintiffs' counsel, "game over." No plaintiffs' counsel ever wins a case saying that a Board of Directors violated their fiduciary duty if it's judged by the Business Judgment Rule.

What you see as a result of both of these factors confluencing together is a huge focus on the complexity, accuracy, and completeness of the proxy disclosure. Where the next battleground is going to be — and the JCI case is a perfect example of that — the plaintiffs brought the suit and said, "You didn't tell us enough about your tax structure, and in particular, about potential conflicts between management and the shareholders which arise because of this particular tax structure." You're going to see, number one, a huge emphasis on the completeness of that disclosure. Second of all, especially in the realm of whether it's banker conflicts, lawyer conflicts, management–shareholder conflicts — because, quite frankly, that is the area that is most right and desirable from a plaintiff's point of view — that they can get the judge's attention: "You did not tell us about this conflict."

BRIAN CADWALLADER: Interestingly, they appear to be experimenting with the idea of the conflict between shareholder and shareholder and the need to consider all the shareholders. Even if 99% of the shareholders have benefitted, if 1% has a conflict with that or is conflicted with that, then you need to somehow consider them. It changes it from a "one share one vote," potentially, to "you've got to consider everybody in their unique circumstances," which is, of course, a very difficult, if not impossible, standard.

BETH BOLAND: The proxy statements, especially when you have dual shareholder vote — both the buyer and the seller — are very thick anyway. We are going to see even more emphasis on really expanding that book, going to the shareholders.

I don't want to spend too much more time just on what's going on with the court; I also want to spend a little bit of time talking about what companies can do proactively in order to try to shut these down.

As I think most people know, in Delaware, we now have a statute that not only authorizes but also incentivizes companies that are incorporated in Delaware to adopt exclusive forum clauses in their bylaws. I can't advocate for that enough. Whether you are a Wisconsin-based company and adopting an exclusive forum provision in your bylaws for Wisconsin — that's fine — wherever your preferred jurisdiction is. I would suggest that, obviously, it's based on not only where your principal place of business is, but also where you're incorporated. Are the judges elected? Do you have a business court? What is the vitality of the judicial system that you are asking for? Do they follow Delaware law? Do they have unique aspects of that state law that you can take advantage of? Lock that in.

One of the things that you are also seeing commensurate with the adoption of these forum jurisdictional bylaws outside of Delaware — where they are actually encouraged by statute — is shareholder pushback for the adoption of these types of bylaws. They are saying, "You didn't give us the chance to vote," even though they're really not given the legal authority to vote. In those instances, the Board can simply change the bylaws on their own, without shareholder vote. That's the other factor to think about, which is, "Do you want to get shareholder buy-in just to shut that down?"

The other thing that we're seeing proactively by some Boards — this is creative, we actually have some clients, and this has gone into litigation — is adopting what we call "minimum stake to sue" provisions in their bylaws. This would say, "If you want to bring a shareholder derivative or class action, you need to get the consent of at least 3% of the existing shareholders." It's almost like the same standard for proxy access, "Three percent of your shareholders to say, 'Yes, we want you to go ahead with this lawsuit,' whether it be derivative or direct." That is now being litigated. We have a case like that down in Florida; as a result of that litigation, not only did plaintiffs dismiss their suits against those bylaws, but in their public statement they apologized to the Board and said, "We never meant to say that you breached your fiduciary duty by adopting these."

We're having quite a bit of success in that, and you are seeing both judicial approval and even legislative approval for those efforts.

Those are important ways to take back control over this system that really has spun wildly out of control.

ANDREW BROWNSTEIN: I agree that it makes a lot of sense to have an exclusive forum bylaw; I have long recommended that companies do it. Just to point out, there is in this new environment a counterpoint that companies need to be aware of, particularly since we're in an era where you can't have these disclosure-only settlements with releases.

An exclusive forum bylaw also allows the Board to waive enforcement, but companies do that at their peril. If you are sued in Utah — I'm just picking Utah as an example, assuming hypothetically that Utah courts will approve a disclosure-only settlement — and you waive your Delaware exclusive forum bylaw to try to settle that suit, somebody else is going to bring a parallel suit in Delaware, and you'll be at peril in that suit, from what the Directors have done to waive the first, unless there is a very strong record and rationale for the waiver.

BETH BOLAND: Right, I agree with that.

JACK FRIEDMAN: Let me thank you very much. Our next speaker will be Pat Quick of Foley & Lardner.

PATRICK QUICK: Thanks, Jack, and thanks to Brian and the Directors Roundtable for including Foley & Lardner and me in this great event. I am Pat Quick, a partner of Foley & Lardner here in the Milwaukee office. I do corporate, securities and transactional work, and as Brian noted, I've had the privilege of working for Johnson Controls for over 30 years.

Congratulations to Brian and the JCI Law Department. They have accomplished a great deal and been through a lot in a short amount of time. As a bit of a disclaimer, my remarks, I won't be speaking directly to Johnson Controls experience or its transactions, but rather about what impacts public

companies generally. There is an outline available to you on shareholder activism; I encourage you to take a look at that.

In my brief comments, I will touch a bit on two things impacting public companies in the context of shareholder activism, the growth of shareholder power, and the ownership environment in which public companies operate and make decisions to do things — like the decisions JCI has made recently and has executed, as Brian discussed.

Those two things: one, companies need to be proactive in this new environment; and secondly, more specifically, companies need to think carefully about involving their Board in talking with shareholders.

First, on the point of companies being proactive, public companies simply need to accept the new reality, which is that they need to pay a lot of attention to their shareholders and others in the investment community, in how they operate and make strategic decisions. The old view of the world, when I was much younger, was that the Board and management will figure out what is good for shareholders. The new view that is taking hold is that many shareholders have minds of their own and would like to have a say in what is good for them.

What has led to the rise in shareholder power? Well, it's a long list of things. One is the growth in institutional investors over the years. Shareholders have figured out how to insert themselves more meaningfully in the process, including through institutions like ISS. There has been a dismantling — unfortunately, in my view — a dismantling of takeover defenses over the last ten years. Technology, and in particular, the ease of getting information and communicating, has contributed to the rise of shareholder power.

What does a public company do? The bottom line is, a company should anticipate what might happen. Anticipate issues that people will raise and ideas that will come up among shareholders and others in the investment community. Anticipate requests that they might make of a company, in terms of governance actions or business actions; and be prepared to respond appropriately when those things arise — in fact, in the right situations, beat them to the punch. JCI might be an example of that, having taken actions before some activist forced them to do one thing or another.

A public company can also consider addressing topics in advance through their public disclosures. For example, if there is an undercurrent in the investment community that a particular action would be appropriate for a company, that company can present its arguments over time in its public disclosures, and try to disclose why that particular action would not be a good idea, and hopefully convince people that it, in fact, is not a good idea, before they press it more forcefully.

It's also extremely important for a company to socialize subjects like this with the Board of Directors through strategy sessions and updates along the way, keeping Directors informed about what is being said about the company in the market.

Also, it is necessary, even more and more these days, to engage shareholders early and often. Reach out to shareholders, talk with them, listen to what's on their minds. It just simply doesn't work to reach out to shareholders only when you need them, when there's a tough issue — when you need their support for a compensation plan that you're presenting, for example. It just doesn't work to call them only when the need arises.

Not only that, shareholders and others know people on the other side. They know the activists; they talk with the activists several times a year about other companies. It is in your best interest that they know you, as well.

BETH BOLAND: On that score, I'm interested in Brian's perspective during the JCI–Tyco deal. What was your shareholder outreach plan, and how is it tailored to that situation?

BRIAN CADWALLADER: I didn't touch this issue because it wasn't the pure motivation of why we were doing the deal, but the reality is we live in this environment. We'd already had a pretty good shareholder outreach program, just to stay on top of running the company and what the shareholders were interested in. The shareholders, by the way, are 80% institutional, with 25 large institutions owning over 50% of the shares of Johnson Controls. You actually can find the people to talk to. In fact, I'm looking at David Knaff, our SEC lawyer at the time. None of them had the same opinion, so it wasn't like we could actually build a perfect consensus just by talking to him. We were open to having the conversation and talking about the future of the company. We had a disciplined plan every year; there were at least two conversations with our major shareholders. We're open to them, if they wanted to have a conversation.

One of the things that is happening now is they're asking for direct access to your Board, and wanting to talk directly to Board members. If you're doing takeover defenses, one of the things you spend a lot of time is telling the Board that there is only one person speaking for the company. You actually have a contact with your planning for takeover defenses. The way we handled it, we looked at who was going to be the spokesperson for the company. But one of the reasons we have a lead director that used to be a CEO is because he's used to talking to investors. It wasn't the only reason that we sought this particular person to be our lead director, but it certainly was an important consideration, because you've got to be open to having these conversations.

As we had already started off on looking at the strategic future of the company — and it is a matter of public record to some extent — we had somebody that would normally be considered an activist buying shares and wanting to have a conversation. We were open to having the conversation. What they didn't know is that we had already basically finished the planning for everything they said. Five weeks later, we announced the spin of the auto company. That defanged what they were interested in.

So, having the muscle memory of doing it on a regular basis really set us up well for this period, where we're really upsetting everyone's apple cart, when people wanted to talk to us. We knew how to do it, because that's how we approached our major investors, and we were prepared to have conversations. We have had, as you can imagine, several requests over the last 18 months, at least, to have conversations with investors that were concerned or interested in what we were doing, and wanted to understand how it implicated their investment in the company.

Because we knew how to do it, we did a fine job, but doing it before you get into the situation is the best way to be ready. I do think Pat's comments are correct.

ANDREW BROWNSTEIN: Another related point to remember in connection with the deal is that the proxy statement that Beth alluded to earlier really is a legal document. It doesn't get distributed until weeks or months after the deal is announced. It's really critical in a major deal, such as the ones we've done, to have what we call the "rollout" be very effective. That first week, when you meet investors, articulating very

clearly the rationale, the strategy, the value proposition, etc., and addressing these activist concerns. As David will get into a little later, planning the rollout was tricky in the Tyco deal, because under the Irish rules, there are limitations to the amount of time you can engage experts to help prepare for that.

BRIAN CADWALLADER: Yes, I don't want to steal David's thunder, because it's actually an interesting issue when you're dealing with the Irish Takeover Panel. To your point earlier, if there was one area of some conflict between what the business wanted to do, because they wanted to go out and sell this transaction or a series of transactions for what they were — very big and strategic — there were a lot of rules we had to comply with. I'm sure they're still annoyed by some of the things we had to do because that's what the rules were. David, I'm sure, will address some of that. There is tension in being able to say what you want to say, because there are a lot of rules as to what you can say, and when.

JACK FRIEDMAN: The more you get into these things, the more you get a sense of the enormous quantity of individuals and institutions that get involved with these deals.

Let's continue with Patrick Quick of Foley & Lardner.

PATRICK QUICK: Thank you. Picking up on a point that Brian touched on, more and more these days, in the context of strong shareholders, they are looking to talk with directors one-on-one or two-on-two. They would like the chance to speak directly with the Board. In the ordinary course, that may not happen for every company, even though people are asking for it. In a control activist setting, like a proxy fight, it will absolutely happen. On governance issues, particularly governance hot buttons that people are chasing the company on, or in the context of compensation, it is more likely to happen.

Companies try to avoid it, but they're growing a little more comfortable these days. One idea is to think ahead about this new reality. How will you put your Directors in the best position to talk with shareholders if the need arises? If you go very far ahead, it should be at the top of your mind when you are screening and recruiting Director candidates, wondering whether they are capable of this type of communication.

A little less far ahead, consider it in the context of committee assignments, as well as choosing your Chair or Lead Director, as Brian mentioned. Especially the key committees, like Compensation and Governance and, in particular, the Chair of the Committee — will that person be able to handle the limelight if the need arises?

Beyond that, prepare Directors for this type of activity. Keep them fully informed about what's on the minds of shareholders and what they might want to talk about, if the need arises. If you do that preparation, when a shareholder pushes for a meeting, you and the Directors will be ready for it. Thank you.

JACK FRIEDMAN: Thank you. Andy Brownstein and David Lam are coordinating their presentations. They're going to get into the deals, which everybody can comment on.

> "It wasn't just lawyers; it was a lot of financial people. The amount of creativity in order to do a good transaction but survive through the tax code — it's astounding how many hours were spent just trying to figure it out."
>
> *– Brian Cadwallader*

ANDREW BROWNSTEIN: Thanks, Jack. Again, thanks to you and the Directors Roundtable for including us here. Congratulations to Brian and to the JCI legal team; it's really been a privilege to work with you on these transactions.

The degree of difficulty for the JCI series of transactions was an eleven on a scale of ten, and through the collective work of everybody in this room and many others, and led by Brian, the score for execution is ten or pretty damned close to it. It really was a privilege to be a part of it. In my particular case, I've had the privilege of working with JCI on special projects like this for, about 30 years. This has been and continues to be a relationship that is very important to me and to our Firm.

My partner, David Lam, and I are going to talk at a high level about putting together complex transactions and the role of the legal team, internal and external, working with the Board, as part of that. At a fundamental level, what this work involves and the theme that we'd like to get to, using specific examples from the JCI experience, is that putting together these deals is really about problem-solving with our clients; discovering problems and solving them. What's fascinating to me about this work, having done it for a long time, is the variety and complexity and continuing novelty of the problems that we get to deal with. That's what gets you going in the morning and keeps Kristina coming to work all the sleepless nights she has endured. [LAUGHTER] The opportunity to do that is what's interesting.

Brian has covered the rationale for the JCI transactions in his remarks at the beginning, but to step back, what JCI was dealing with is a fundamental question of capital allocation. Brian referred to the dramatic technological shift in the auto industry, and also to big data and the whole technology revolution in buildings and on your walls and in ceilings, not just on your desktop.

That, in effect, imposes changing capital demands on the historic company. JCI was a 120-year-old company that had, in 2013 — when Alex Molinaroli became the CEO — three fundamental businesses: building efficiency, power solutions, and automotive. The problem that the Board and the management team had to face was in a changing business and economic environment, how do we assure ourselves that we have stable and sufficient capital that optimally satisfies the growth needs of each of the businesses?

That really led to the series of transactions that Brian described, and that we are familiar with, that reshaped the business for the future. It's an exercise, essentially, in problem-solving. What's the role of the legal team working through that? The first set of problems involves structuring opportunities for analysis and consensus-building. The essence, at the beginning, is setting up the process through which the governance mechanism of the company grapples with the strategic issues, as a Board process, with meetings, records, hiring the right advisors, consultation, etc.

What you have at JCI, and at other companies like it, is a very experienced, diverse Board where everybody comes with different backgrounds. As Brian mentioned, they signed up to a Board of a multi-industrial company based in Milwaukee that has

half the business in automotive. They survived a period of time where almost every single major automotive supplier went through bankruptcy restructuring, including Delphi and Visteon. The exceptions were Johnson Controls and Borg Warner. Johnson Controls was the survivor in the industry. Now management is beginning a process where it tells the Board, "Let's think about jettisoning the automotive part of the business." That's a big change for the boardroom.

The first lesson here is that when contemplating transformative transactions of the nature undertaken by JCI, you have to allow time for all the Directors to reflect, to express their views, and to get comfortable. This doesn't happen in one meeting; it doesn't happen in one month. It doesn't only happen in meetings; it happens by talking to Directors individually. Brian was very involved in counseling Alex and the management team through that process and making sure that all of the Board members' questions were answered and that any concerns were satisfied. That creates a consensus that gets the company to an effective rollout of a major dramatic strategic initiative, which was done a little bit more than a year ago.

What's the second problem that we had to deal with after that? Once the company decided to separate its automotive business, the next question is, "How do you do it?" The company agreed to do a spinoff, as opposed to selling the automotive business to some third party. Again, that involves a strategy. The determination was made and a roll-out was developed. Folks were comfortable that would be the best way to generate the best value for shareholders, and best for the organization.

I should say that as is always the case, when you announce a spinoff — which was announced more than a year ago — the actual dividend was only declared a month ago. During that period of time, there was flexibility, as there always is in spinoff transactions, to change course if somebody raised their hands. If Delphi raised its hand and said, "We'd like to pay JCI for Adient," there was that flexibility. I don't know how much interest, if any, that there would have been on the JCI Board in that kind of a transaction, but there was optionality built in that was important.

Once the strategic decision was made to separate, the next problem was what about the rest of the business? We took out one of the three legs of the stool. The other two were perfectly capable of functioning together as an ongoing business. But there's a question — would they be better being separated? And as Patrick mentioned, would there be pressure to separate them in an era of activism? Or might they be stronger if there was an opportunity to combine with some other company in a sensible transaction that would create additional synergies and an opportunity for growth?

The strategic answer to that last question was yes, JCI had an expertise in running a multi-industrial company, and there were potential opportunities that you could add to the two remaining JCI businesses that would make a lot of sense. The question is, "Do we really know whether any of them were actionable at the time?"

Ultimately, discussing that issue led to Tyco and JCI coming together, and the transaction gelled because it made sense at a business economic level for both companies. For JCI, it was synergistic; it was also strategic; and it took advantage of our multi-industrial capabilities, and did have the effect of reducing the pressure for a breakup of the remaining businesses. For Tyco, which had been a vast conglomerate that had shrunk all the way down through many, many transactions, merging with JCI provided a platform for revenue growth after more than a decade of cost-cutting and stripping down. It would also allow Tyco shareholders the opportunity for a modest premium, plus continuing as equity holders in their business through the stock they would get in the new company.

Now you get to the point where you've dealt with the problem of reorganizing the companies and creating a business. That begets a whole set of problems which David and I will be speaking about during the remainder of our remarks.

The first was structure. This transaction was set up as what we call a reverse merger, where technically, Tyco acquired JCI, even though JCI was the bigger company and the accounting acquirer. Why was that done? There are a number of reasons, but one of them was Tyco was an Irish company before the merger. Yes, it's true that JCI achieved certain tax advantages by becoming an Irish company. But it's also true that Tyco had those tax advantages embedded in its income statement and balance sheet before transaction discussions started. Tyco had no interest whatsoever in giving up Irish domicile. Even more than JCI, Tyco insisted on an Irish domicile for the combined company.

BRIAN CADWALLADER: As I said earlier, it's impossible to do one of these transactions without thinking about the tax code, because the tax code unfortunately gets into every part of our lives. As far as tax efficiency, if you looked at the effective tax

rates of Tyco and JCI, they were the same. JCI was already a very tax-efficient company; it wasn't saying, "Let's go to Ireland," which some people have inferred, because it's a way to escape anything. It was literally the only way we could do this transaction. If we had said to Tyco, "Come back to the United States," their shareholders would have lost billions of dollars of value, and why would they do the deal? Unfortunately, or fortunately, the only way to do it — and this is the problem-solving that Andy's been talking about — was to create this reverse transaction.

ANDREW BROWNSTEIN: In the transaction, JCI shareholders acquired 56% of the equity in the combined company, and a little less than $4 billion of cash. The Tyco shareholders acquired the remaining 44% of the equity of the combined company.

The overall value of the consideration for Tyco at the time reflected a 14% premium to Tyco's then-trading price. The average M&A premium, if you buy a company for cash, is 30%, and in some industries, well above 30%.

From Tyco's perspective, they are looking to the future in this transaction as much as the JCI shareholders were. That meant that we had to come up with a shared governance scheme for these two companies. There are complementary companies; there's not a lot of overlap; but it's shared governance. How do you work that through?

This is another area where Brian and the legal team had to exercise real leadership to put it together. People are on Boards; they know their Board. They know their management, they know their colleagues, and changing that is a difficult and scary thing.

Where we ended up was that the new Board has six legacy JCI Directors and five legacy Tyco Directors. Each company chose the Directors from itself that would go on the combined Board. That was really done in consultation between the leadership teams. The leadership teams had to gel to make this happen. It was a lot of work for the Lead Director, and a lot of work between the General Counsels and CEOs, to socialize all this to make it happen.

There is also a management coming together as part of this deal. The parties agreed that JCI's CEO, Alex Molinaroli, would remain the Chairman and CEO for 18 months, and baked in a succession plan that Tyco CEO, George Oliver, would then assume the role of CEO, and Alex Molinaroli will remain Chairman for another 12 months. Then at the end of the 30 months, Mr. Oliver would be the Chairman and the CEO.

This was probably the most difficult set of negotiations in the whole agreement, to pull that together. It's really a process, and managing the process, making sure the right people talk to the right people. At the very end of that, there's a legal problem. The Tyco people looked at us and said, rightfully, "We've now negotiated this governance, but you guys have six on the Board and we have five; what's to stop you from changing it the next day?" We said, "That's a good point; what's your proposal?" They said, "We want to have any change to this be subject to a veto of the legacy Tyco directors." We said, "No, we want the company to come together; we want to integrate. If that doesn't happen, this deal's not going to work. Your proposal could lead to a bifurcated Board and that's not acceptable." They said, "Okay, what's your idea?" The solution was that any change to that succession plan requires a supermajority of the full Board. It's not a class vote, with directors designated as "former JCI directors" and "former Tyco directors." Instead, there's just one Board, and a supermajority of its members would have to agree to any change. That's the solution that allowed us to move forward.

These are examples of how the legal team and the business team worked together to solve very real and fundamental problems essential to getting the deal done. Dealmaking involves tackling many problems in a manner that works for all parties. Now David will get into some other difficult problems we needed to address.

DAVID LAM: Hi. I'm David Lam. I worked with both Andy and Brian and the rest of Brian's team on the JCI–Tyco deal. What I was going to talk about are three critical issues that we faced in the transaction, where the legal team had to work with the business team to create a solution to those issues. To Jack's point at the very beginning: our job as lawyers is to try to find ways to address the commercial concerns of our clients within the constraints of the law. The following are a few examples of how we addressed some of the commercial concerns in the JCI–Tyco deal.

One of the key aspects that Andy mentioned was that, in the JCI–Tyco deal, an Irish company was combining with a U.S. company, and the desire was that the combined company be Irish. This was not only because if Tyco became a U.S. company, Tyco would lose a lot of value that was embedded in the company, but there was also an incremental benefit if the combined company were an Irish company as opposed to a U.S. company.

JCI and Tyco agreed on an exchange ratio based on the assumption that the combined company would be an Irish company. The key question was, "How do we ensure that between signing and closing, or even after closing, some law is not going to change that's going to take away that base assumption that the parties used to arrive at the exchange ratio?" Because if the law changes and says, "You, combined company, are now a U.S. company," that will change the relative economic benefits from the transaction that the parties used when they negotiated the exchange ratio.

Similarly, if the law changed so that the combined company could continue to be a foreign company, but reduced the benefits of being a foreign company from a tax perspective, that's another contingency that we had to think about.

The potential for a change in law or regulation on these matters was real. If you recall — you probably read a lot about this in the papers — that the Treasury Department and the administration had been thinking of ways to attack what they call "inversion transactions" and make it more difficult for U.S. companies to move offshore, and similarly reduce the benefits of being an offshore company. The Treasury Department

had already passed a couple of rules — or issued notices of proposed rules — that were going to make it more difficult for companies to move offshore.

We were very concerned during the negotiation of the JCI–Tyco transaction to give the parties some ability to relook at the deal if a law was changed that would be adverse in this way. However, there were competing interests in allowing a party to re-look at the deal once it was signed. After signing the deal, Tyco would be concerned about a tax law change, but it would also be concerned about deal certainty. Once the parties reach a deal, it did not want to allow the deal to break apart because of a change that doesn't affect Tyco as much as it may affect Johnson Controls.

There were a lot of different dimensions to the question. One of the dimensions that we had to grapple with was, "What is a tax law change? Is it something that's actually passed by Congress? Is it something similar to what the Treasury had done — which is a notice that they intend to pass a rule in the future, but subject to approval? Or is it something in between?" That was one dimension of the question that we had to address.

A second question was, "What does the effect of the tax law change have to be before it allows a party to relook at the deal — either terminate or get out of the deal? Would the tax law change actually have to be so severe that it would cause the combined company to be a U.S. corporation for tax purposes? Or could it be something less — such as just reduce some of the benefits of being a foreign company?"

Another dimension that we had to grapple with is, "If a party has a right to get out of the deal, what are the consequences? Does the terminating party have to pay the other side a fee? How much is that fee? Is the fee different in different circumstances?"

And finally, there is a question of timing. If a party would have a right to get out of a deal, how long would this right last? Would it last the entire time between signing and closing, or is there a concept that it would terminate once the shareholders approved the deal? In public company deals where shareholders must approve a merger, the Board makes a recommendation to its shareholders, and has the ability to change its recommendation up until the time that the shareholders approve the transaction. Once the shareholders approve it, the Board can't change its recommendation. There can be a long time, theoretically, between the time when the shareholders approve the deal and when the deal closes. You might have regulatory approval that you're still seeking that may take longer than the shareholder approval. Therefore, one of the questions was whether, if a party has a right to terminate the deal for a tax law change, should this termination right end when the shareholders approve the deal, or should it last until the closing of the transaction?

In the JCI–Tyco deal — and every deal is a little different and therefore may be structured slightly differently — it was important for Johnson Controls to have broad discretion to determine at what point a tax law or even a potential tax law change could affect the economics and make it rethink the deal because the transaction was no longer in the best interests of its shareholders.

The parties therefore agreed on a broad concept of tax law or a proposed tax law change that would permit the Board to terminate the deal, and the Board's right to terminate the deal lasted until the closing. However, if a company exercised this termination right, it would have to pay the other side a termination fee — $500 million, in this instance. The right was mutual, so both sides could exercise it.

What was interesting about the case is that after the deal was signed, the Department of Treasury did come out with a notice of proposed rulemaking attacking certain inversion deals. One of the rules reduced some of the benefits of being a foreign corporation for all corporations that moved abroad.

What the Board and management, working with tax advisors, had to do after that was assess the impact of the new rule. As you see, the JCI and Tyco teams ultimately decided that proceeding with the merger still was in the best interest of their respective shareholders.

The provisions in the merger agreement to address potential tax law changes is just one example of how we tried to address the business concerns to protect the deal economics in case there was some adverse change in the law.

Another issue that we tackled in the deal was the reverse merger of Johnson Controls and Tyco. There were a couple of reasons for structuring the transaction as a reverse merger, but the main one was because Tyco was an Irish company. As an Irish company, Tyco is regulated by the Irish Takeover Panel, and is subject to the Irish Takeover Rules. The Irish Takeover Rules are different than the U.S. rules in several key respects and, in some ways were at conflict with what the parties wanted to do from a commercial perspective. For example, a very common feature in a U.S.-style merger agreement is that if a company backs out of a deal to take a superior deal, it must compensate the other party with a break fee. In the U.S., that break fee typically is around 3% to 4% of the transaction value. Now, the Irish Takeover Rules don't allow a break fee that large; typically, they only allow reimbursement of expenses up to about 1% of the transaction value. That was one aspect of the Irish Takeover Rules that wasn't appealing to either side.

Another aspect of the Irish Takeover Rules that wasn't appealing to either side are its restrictions on closing conditions. You can't condition the closing on very many things, and there was a question as to whether we could condition the deal if some adverse tax law change. There was a question about that.

As we dug into it, we found that many of the Irish Takeover Rules that we were concerned about apply only if the Irish company is viewed as being the subject of a takeover. By structuring this deal as a reverse merger, where Tyco takes over JCI and changes its name to Johnson Controls, one second later, we got out of many of these rules, because Tyco was no longer subject to a takeover — under Irish law. Under the Irish Takeover Rules, Tyco was viewed as the acquirer, not the target — even though, in substance, we achieved the same thing as if Johnson Controls had acquired Tyco.

That was another example of how the lawyers were able to address some of the commercial concerns.

Now, we weren't able to get rid of all the Irish Takeover Rules from the transaction. One of the rules that continued to apply was confidentiality. The Irish Takeover Rules provide that, if there are market rumors about the deal, or if there is unusual stock price movement in the Irish company, then the Irish Takeover Panel can force the parties to publicly disclose those discussions. Whereas in the U.S., you can usually just issue a "no comment," in Ireland you could actually be forced to disclose discussions. We were therefore always ready with a statement in case market rumors came out. Interestingly enough, the press reported on market rumors right before we signed. Fortunately, the parties signed that evening.

BRIAN CADWALLADER: Sunday afternoon in Ireland, it was an interesting few hours, trying to figure out, "Can we do this? Can we not do this?" Of course, the business people are saying, "We've got to do it — we're done. We've got to go public." It was a very interesting 12-hour sweating-it-through before Ireland came back to work on Monday and was able to help us.

DAVID LAM: Yes, and one last issue I would like to touch on that was unique to this transaction was the intersection between the spin-off and the merger. Johnson Controls had already announced that they were pursuing a spinoff. Yet, the spin-off was many months away before it would be complete, and this merger negotiation came into place in the meantime. There are a lot of complex issues that you encounter when you're doing a spinoff — how do you allocate the assets and the liabilities between the two companies? What is the capital structure of the spin-off company, and what is the governance structure of the company? A lot of these issues weren't completely resolved at the time that we signed the Tyco–JCI merger agreement.

Now, Tyco has a vested interest in knowing the answer to these questions, because the way this deal was structured was that the spinoff would happen after the merger, so the Tyco shareholders would receive the stock in the spinoff company. Therefore, some of the value that they were receiving in the transaction ultimately would come from the spinoff company. Tyco therefore had an interest in knowing the resolution and answer to these questions.

At the same time, JCI is much more familiar with these businesses than Tyco is. JCI wanted flexibility to reach a resolution on these issues without having Tyco block it every single time. It's not to say that Tyco would do that, but there is a theoretical concern — at least from a lawyer's perspective — that if Tyco were to sour on the merger, they could be unreasonable, for example, on the spinoff, to make life difficult or try to get out of the overall deal.

Now, what we did to resolve this issue was agree on high-level principles in the merger agreement governing the spin-off. As long as JCI fit within these broad parameters, JCI could structure the spinoff how it wanted to, and would only have to go back to Tyco if it deviated materially from these principles. Otherwise, JCI would have the ability to structure the spin-off within those parameters. We tried to create broad parameters. For example, there was a range of the debt that could be raised and a range of cash that could be distributed from the spin-off company to JCI, so that there was some flexibility.

BRIAN CADWALLADER: Just a practice note, while that's true, there were very specific triggers, in order to engender the air of cooperation. We were about to be partners, we communicated almost every major decision and had conversations with Tyco, so nothing was a surprise. Even though we believed, in most cases, they had absolutely no authority to decide or to block. To just simply say, "We're going to sit there and not tell you anything," is not acceptable either, so there was a conversation going on all the time as we were closing out and completing the decision-making on the spin.

DAVID LAM: The last thing I would really say is that what the transaction illustrates and one of the roles of outside counsel and internal counsel is to try to realize that. People do understand that a decision on one matter can have follow-on effects. If you are doing a financing, it could affect the tax issues, which could affect the structure of the transaction, which could implicate securities law issues; and ultimately, all of these matters could have commercial implications. It's important to have someone in the middle coordinating across all the different groups and making sure that each group is communicating with each other, because decisions that are made by one group could affect another group's issues. That's one of the great things that the Johnson Controls organization did. They were always talking with each other so that all this could be put together. It's really a complex puzzle.

BRIAN CADWALLADER: I hit this as one of the lessons learned. One of the reasons I joined Johnson Controls originally is because it is a very cooperative and collaborative company. We took the extra step of putting the discipline in, so there were formal times when people were sitting across the table from H.R., Finance, Tax — everyone was in the room hearing what everyone else was doing. The conflicts could be raised to say, "That's a good employment decision, but now we have an impact on the spin, because now we have to talk to the Works Councils, and we can't sell the real estate." All these things were interrelated, and only by having a very formal program, despite the normal collaborative nature of Johnson Controls, that's the only way we were able to stay on track. There are literally thousands of decisions being made on everything, including the color of the building. Everything had to be decided, and it's just astounding.

JACK FRIEDMAN: Could you elaborate on the variety of issues that were involved in the spinoff, primarily, and the M&A deal?

BRIAN CADWALLADER: The financing side didn't happen to be a big issue for Johnson Controls — not diminishing all the hard work. I know there was a quite a bit of it — but because of the size of the company and how well-financed it was, it wasn't a difficult part. It was just one of a hundred different areas that had to be worked out. Intellectual property, in our case, wasn't huge, in the sense that the seating business, when we spun it off, had very specific technology related to it that really wasn't transferable or used in most other places in Johnson Controls.

Now, that's not saying there wasn't some, and the discussion on those few areas where there clearly was crossover that was heartfelt and strong. It's not necessarily one of the areas that caused the biggest issues.

To me, the biggest issue, thinking about the idea that we knew we wanted to do the spin was ongoing, and then we wanted to do a merger. All of the pieces that are affected by the spin — you've got to decide which employees are going with the spin and which compensation plans are going to be used, what computer systems are going to be used, what buildings are you going to get out of it — are now made more complex, because you're trying to bring in another company. You've got to answer all those questions, now, with this new merged company. What computer systems are they going to use? What compensation systems are you going to use? In doing a spin, typically you're allowed to do some service agreements where one of the parties services the other as far as maybe doing payroll or maybe a computer system that can't be split. But one of the things we didn't want to do, and one of the reasons we made this decision, is that we didn't want a lot of TSAs [transitional service agreements] on the spin, because we knew we wanted to go buy somebody. If you had all these agreements where you had to have these long tails where you were still servicing the auto company or they were servicing us in a particular area, it made this combination of the two companies coming together that much more complex.

It's almost hard to explain just how many areas are affected, but literally, if you think about a spin, you're starting a $20 billion company that has to operate, Day 1, and legally close its books within the first quarter. Stop and think about what that means; you've got to have financial systems, computer systems, employee policies, employee training. You've got to have a place for them to sit and what furniture they're going to use. If there are company cars involved, who gets the cars? Do you transfer the leases? Thousands upon thousands of items all have to be decided and taken care of.

> "In my opinion, there's no single magic bullet, but consistently showing up, showing that you're willing to be in the same room as they are, having the conversations and being creative. That's what we've been talking about here a little bit — being creative to come up with solutions that get the team or the company to the goal that they want to get to."
>
> *– Brian Cadwallader*

I will say I was actually on a panel in New York a couple of weeks ago, talking about spins, and there was a heartfelt debate on how long a spin should take. Many people were saying we should be able to do it very quickly, let's do it in nine months. I will tell you: fifteen. The reason is because at the end of eleven or twelve, the company that you're going to spin off should be operating separately. During that extra three months, you're going to find out the other thousand things you forgot, no matter how hard you worked at it. If you don't allow that spun company to run for a while under your corporate entity, you're going to find out we really screwed this thing up, because we didn't have the time to go find the things we forgot.

It's a 15-month journey of thinking about everything.

DAVID LAM: Yes, and the time depends on the particular business that's being spun out. Was the business part of the company for a long time, and if so, for how many years? If it was part of the business for a long time, then it's often very intermingled. Or was the spun business acquired five years ago and run separately? In that case, separating the businesses often isn't as difficult.

In the JCI case, the automotive business was very integrally entwined with all the other businesses of Johnson Controls, and so it was more difficult to separate it. The automotive business is also an international business, which makes it much more complex and takes more time to complete.

BRIAN CADWALLADER: Just to give a flavor of the enormity: because of the subsidiary structure of Johnson Controls, at the start of this, we had approaching, let's say, 850, just make it a round number. In order to do the spin, we had to change the structure of 260-some of the subsidiaries. On average, it took 12 to 15 legal things to complete that. That's 4,000 legal events that had to occur, just on the subsidiary structures. The enormity of a spin like this, if you think about everything else that's affected — because you have employees in a German subsidiary where some work for auto and some work for the building efficiency business. Now we have to split that subsidiary and consider all of the issues in moving people to new entities. You've got, potentially, a Works Council issues, because those employees are going to work for a different subsidiary. What rights do they have? In fact, in Germany, they can potentially say, "No, you can't do the deal." You have to work around how you're going to handle that. Depending on where they're domiciled, what facility they're in, that might affect your ability to transfer the stock of the company, or the ownership of the real estate in which the subsidiary operates — even though the company clearly owns it. Now somebody, a third party, gets to decide whether you really had the ability to transfer that real estate.

The matrix of decisions and impacts on the company are startling. There's no easy way to give anyone a visual on how complex it is.

JACK FRIEDMAN: The day when you could say, "If we just write a big enough check, we can buy a company," is old-fashioned. Now it's, "To buy a company we have to be able to solve 8,700 different things, plus have the money."

BRIAN CADWALLADER: As I said earlier, you do a strategy review, and you think about what you want to do as far as buying a company. We thought, "Wow, we actually had Tyco as one of the potential companies in our strategy — that potentially would be an interesting company to buy." There were other companies in that same box, if you look at a matrix — the upper right-hand box — it's a good investment opportunity. They weren't necessarily actionable, and they weren't actionable, in some cases, because of so-called social issues, sometimes because of financial issues. That's where the whole team — legal and management — have to come together and start creatively solving these problems, because it's no longer just about money; there are so many other ways that a deal could stop. Unless you're willing to be creative about problem-solving, you're not going to get there.

JACK FRIEDMAN: I would like to invite the audience to ask questions. Yes, thank you, sir.

[AUDIENCE MEMBER]: How do you get the Board comfortable with the variety of matters at issue, particularly with regard to the CEO in a short duration?

BRIAN CADWALLADER: As I understand the question, it is how do the Board, and potentially Boards, get comfortable with the idea that there was a predetermined transition plan with 18 months as the trigger, that they wouldn't just have a caretaker CEO? That there was something there in order to run the company going forward.

Obviously this was an area — and David gave a hint as to how many hours were spent talking about this — one of the proposals Tyco had was "why don't we split the Chair

and the CEO right up front?" Our Board — and in the end, Tyco's Board — really came to a conclusion that no, we're not going to split those two roles; they're a singular role. It's important that the CEO have the power of setting the agenda for the Board. Especially for the first 18 months, when so many decisions have to be made about integration. In some ways, the team in this room is exhausted from the transaction, but now the real hard work is starting. That's the integration. The truism is that deals are lost in the integration. The Board became more comfortable that if, in fact, we truly had a CEO/Chair combination that set the agenda for the Board going forward for the next 18 months, that that was going to be powerful enough.

Also, there was going to be an agreement as to the management team. Which side, if there was going to be a merger of the management team, would be in control, especially from the CEO/Chair, as to who was on the management team, so that there was a cohesive unit in that first 18 months, not just two camps waiting for the 18 months to expire.

Third of all, Alex will continue as the Chair, post the 18 months. There is a whole transition period where he becomes, if you will, the titular head vs. the actual head.

ANDREW BROWNSTEIN: If I can just add to that, there's also a lot of work involved, diligence. At every Board meeting, Alex would report on his conversations with George and what the planning was. The Board has to make a bet or be satisfied that the teams are going to work together, so they ask a lot of questions. There's interaction, also, between the two Lead Directors — a lot of discussion between the two Lead Directors — and much of that was on management issues.

Finally, the resolution that I described earlier on the whole governance, what locks this in, played into that. We were sensitive to the Tyco concern that we not undo it on Day 1 — which we could have, with a 6–5 Board — but we weren't satisfied with their proposal that would enshrine the governance and the CEO succession to give Tyco a veto. Ultimately, from a legal perspective, to answer your question, if this Board becomes dissatisfied with the arrangements, it can change — it has a legal right. There's no expectation whatsoever that that will happen. But it was important to at least achieve a legal ability to have flexibility on a reasonable basis.

JACK FRIEDMAN: Let me thank the audience for coming, because you are what the Directors Roundtable is all about. I want to thank our Distinguished Panelists for sharing their wisdom today. In addition to our Guest of Honor, Brian, I want to congratulate the Legal Department at Johnson Controls, for your achievements. Thank you. [APPLAUSE]

Patrick Quick
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Patrick G. Quick is a partner and business lawyer with Foley & Lardner LLP. Mr. Quick practices corporate law, with an emphasis in securities law compliance, acquisitions, and takeover defense. He regularly counsels several public companies concerning compliance requirements and governance matters and has participated in initial and other public offerings for Wisconsin corporations. Mr. Quick also has participated in many complex acquisition transactions, representing both buying and selling parties in a variety of industries. He has been actively involved in the representation of clients doing advance takeover preparedness planning and has counseled clients who have received unsolicited takeover proposals or similar overtures. He is a member of the firm's Transactional & Securities Practice and Sports, Manufacturing, and Automotive Industry teams.

Mr. Quick has earned many coveted recognitions, including the BTI Client Service All-Stars list for several years; peer-review ratings, *Chambers* listings, and multiple recent "Lawyer of the Year" awards.

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Beth Boland is chair of the firm's Securities Enforcement & Litigation Practice and vice chair of the Litigation Department. She represents clients in shareholder suits, SEC and Attorney General investigations, and consumer class actions. Ms. Boland regularly represents corporations and institutional investors in connection with insider trading issues, Ponzi schemes, accounting fraud, corporate control issues, and derivative actions. Ms. Boland sits on the Board of the New England Chapter of the National Association of Corporate Directors; she advises corporate Boards and leads internal investigations and the defense of government enforcement actions involving whistleblower claims, government contracts, corporate governance issues, and disputes involving executive compensation and strategic business transactions.

Ms. Boland also defends some of the nation's largest financial institutions and retailers in connection with class action litigation and multi-agency enforcement actions involving privacy, fraudulent sales practices, and other statutory violations. She has won numerous class actions, including a case with industry-wide ramifications in front of the Massachusetts Supreme Judicial Court. Her clients operate in a wide range of industries, including financial services, retail, high technology, and manufacturing.

She has been named a "leading" and "most influential" lawyer several years running by such publications as *Chambers USA* and *Massachusetts Lawyers Weekly*.

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Andrew Brownstein

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

Mr. Brownstein's significant representations have included numerous giants of industry in critical deals and defenses, often involving multiple billions of dollars.

Mr. Brownstein is a 1979 honors graduate of Harvard Law School, a frequent author lecturer on corporate-related topics, and is active in various civic and charitable organizations, including having served on serveral educational and cultural Boards.

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David K. Lam is a corporate partner at Wachtell, Lipton, Rosen & Katz. He focuses on mergers and acquisitions, securities transactions and corporate governance. His practice has included a wide range of matters, including public and private acquisitions and divestitures, domestic and international transactions, carve-out IPOs, spin-offs, split-offs, joint venture transactions and private equity transactions. He also advises numerous companies on takeover defenses, proxy contests and corporate governance matters.

David was selected by *The American Lawyer* as a Dealmaker of the Year for 2012 and also for 2015, and by *AmLaw Daily* as a Dealmaker of the Week in 2015. He is also listed as a Super Lawyer in the area of mergers and acquisitions by *Super Lawyers* magazine. David is a frequent speaker at professional conferences, serving as co-chair of the American Law Institute CLE's "Corporate Mergers and Acquisitions" program in New York.

He has represented clients in a variety of industries, including: Health Care/ Pharmaceuticals; Energy; Financial Services; Industrial; and Real Estate.

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