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For and about General Coun

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Photo by Nanette Kardaszeski

A Lone In-House Attorney, and Loving It

Jim Allison Relishes His Involvment in All Aspects of Business, Legal and Beyond

BY LYNN ROSEN

Ask Jim Allison of Murray Devine, a valuation advisory firm in Philadelphia, about the firm's legal department, and he responds with obvious pleasure: "I'm it!"

As the sole J.D. in offices filled with, as Allison describes it, "scary smart" MBAs and CFAs, Murray Devine's general counsel relishes being a legal department of one.

Allison jokes about the differences between his work and that of his partners: "What they do is relatively sophisticated financial analysis, none of which do they let me get involved in. I'm an English major. I have a calculator with big buttons — they call it my Fisher-Price calculator."

TO GERMANY AND BACK

Allison is thrilled with a career path that has taken him from being an English major at Bucknell University (class of 1980) to Harvard Law School ('83) and on to work in several law firms before settling into his current position. Allison credits much of the direction his career took with a year-long post-law school stay in Munich, Germany. Allison explains that he had a long involvement with Germany and that, at age 15, he had been an exchange student in the country and had remained close with his host family. After law school, he decided to take a "year off the track," and went to live in Munich and work at a German law firm, Norr Stiefenhofer & Lutz.

"It was a good intro for what I do with Murray Devine," Allison explains. "I effectively served as counsel for a German law firm that had litigation in the U.S. I helped them manage their U.S. counsel. I was able to be the liaison. It was very good experience."

Allison also appreciated the long-distance nature of the work.

"It was nice to do [the work] by phone so they couldn't tell how young I was. The U.S. folks had no idea I was fresh out of law school!"

After his experience in Germany, Allison returned to the United States and moved to Washington, D.C., where he worked for several years at Morrison & Foerster doing administrative and corporate law. He left D.C. in 1988 to return to Philadelphia with his wife and growing young family. Both Philadelphia natives (Allison grew up in the Philadelphia suburb of Haverford), Allison and his wife Judy "wanted to raise our children in Philly." Allison joined Duane Morris & Heckscher, where he remained until 2000.

At the time Allison worked at Morrison & Foerster, the firm had about 30 attorneys; Duane Morris had 190. Allison "went right into corporate law there, and then I was transferred after six months and sent to the restructuring (bankruptcy) group because of changes in the economy." It was through his bankruptcy work for Duane Morris that Allison met his current colleagues, Dennis Murray and Francis Devine.

"Dennis and Frank were among the first calls given me to handle when I moved to Philly. They had just started their firm."

After 12 years with Duane Morris, he

Allison *continues on* **3**


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business & law department cooperation

Allison

continued from COVER

left in 2000 to join Murray and Devine and help them run an affiliated firm that acted that as a financial adviser for a half-billion-dollar distressed debt fund. This experience lasted for two years.

"When it was over, I guess I just decided to stay with them and I moved over (in 2003) from that affiliated firm to Murray Devine. That transition was very easy."

UNDERSTANDING THE FIELD

Allison explains the work that is the mainstay of Murray Devine: "We provide financial opinions — solvency or fairness opinions. These are financial opinions that you give as part of a transaction when a board of directors is going to vote on a stock or a merger. They need to see if the value is there or if the company will be solvent after they make a distribution to shareholders."

Murray Devine is a large firm, "especially for a Philadelphia firm," (most of their competitors are in New York City) that also does valuations of businesses and portfolios.

Recent market conditions have had a good deal of impact on their work. According to Allison, there have been "a lot of regulatory changes in what we do."

He explains further: "Private equity deals were going down because of the credit crunch making it hard to borrow to do acquisitions. The type of transaction we worked on had stopped. But we diversified to hedge fund and financial reporting types of work. And we're starting to see more private equity funds deals now."

As the firm's general counsel, Allison says, "my responsibilities break down into managing the litigation. If the firm is involved, I either do it myself or manage the outside firm." Allison emphasizes again the complexity of the work, and his need to step outside the bounds of his legal expertise and into the world of valuation financing.

"Once you get into that kind of arena, I have to understand everything we did and why we did it, which is retrospective and always educational for me. I'm in charge of all documentations — engagement letters and reports — and I'm always being taught aspects of what we do and why things have to be a certain way. I also get involved at the front end of projects if they involve complex transactions, so I can help advise analysts or the quantitative people about the corporate legal aspects of the transactions."

Allison loves the informality of the firm and the way he is able to get involved in all aspects of the work. He interfaces with all the firm members, and business is often done in one-on-one meetings.

"We walk down the hall and talk to each other. If we are asked to pitch a deal or become involved in a transaction, I get involved and talk to everybody. I help them structure how they're going to approach the engagement."

Photo by Nanette Kardaszeski

THE BENEFITS OF SOLITUDE

Because of the great amount of positive interaction between firm members, Allison doesn't mind at all that he alone comprises the legal department. One big bonus: "I don't have to manage anybody!" Another is that it reinforces the need to interact with others in the company who do other kinds of work, which keeps him learning and keeps the work fresh. And if he needs to consult with legal colleagues, either to get advice or just to bounce ideas off of someone, "I use people from my old law firm and lawyers I know well. This is positive because it keeps me involved with the legal community and helps me maintain old contacts."

"Because we're so small and I'm the only lawyer, it doesn't feel very 'GC-y.' I'm a person in the office with a different set of skills. I feel very much like I'm involved in the business, as opposed to having been a lawyer in a large firm.

"Most of what I do is directly informed by business interests. My job is very much to protect the firm without getting in its way. Because I can walk down the hall and have a close relationship with everyone there, I can take into account what they're trying to accomplish when I provide legal advice."

Allison explains how this situation contributes to the diversity of his workload.

"I get more involved in non-legal matters because the level of legal work that we have rises and falls, so I also get involved in other kinds of projects." One example: "Last year I helped to pick new database system and get it implemented," and he wrote and implemented the employee manual.

He's also on the firm's marketing committee, helping to develop ideas to market their services.

Allison enjoys the direction this work takes him. "It's an outlet for being creative and deciding what a good way to present our firm to the outside world — to decide on new markets, question how should we develop new products, and raise our profiles."

OUTSIDE THE OFFICE

Allison is active on several boards outside of the office as well. One that is very meaningful and enjoyable to him is the Silver Springs-Martin Luther School, a social services agency serving children with serious emotional and behavior-related problems.

"I represented them and they asked me to be on their board. I get to see a whole other side of life. Many of these students have had debilitating experiences."

Allison sees first-hand how the institution adapts to changes in funding as well as to changes in the problems children have and finds it to be "a great learning experience."

Allison lives in Haverford and rides his bicycle to work. He and his wife go to the orchestra frequently and enjoy Philadelphia restaurants. They have a vacation home in the Adirondack Mountains and enjoy both city and mountain life. Allison also enjoys travelling to New York, which he does two or three times a month. "[The proximity to other cities is] one of the nice things about Philadelphia," he quips.

All in all, Allison enjoys his work a great deal and finds Murray Devine "a very easy place to work." He thinks larger companies can learn from his experience as the solo GC, and he suggests they embed the lawyers into the business units.

"My suggestion would be very much to integrate the in-house counsel with business units. The fact that I know what everyone is doing makes me more of the business group than the legal group." Allison does admit he still finds this a surprising place for an English major to wind up.

"Math was never anything I could do," Allison exclaims. "I tell my kids not to give up on math or business and they don't listen. But I wouldn't have listened to me either!" •

LYNN ROSEN *is a Philadelphia-based writer and author of the book Elements of the Table.*

comings & goings

MOVES

Gina Merritt-Epps has been named corporate counsel and secretary for **South Jersey Industries**. In this position, she provides general corporate counsel to the company and its subsidiaries, and is responsible for corporate governance and the overall corporate secretary function. She previously served as associate general counsel and assistant secretary for the company. She is a member of the Society of Corporate Secretaries and Governance Professionals, the National Association of Corporate Directors, the Energy Bar Association, and the American Association of Blacks in Energy. She is also a member of the Board of Directors for the Delaware Valley Chapter of the Association of Corporate Counsel. She earned her undergraduate degree in political science at the Pennsylvania State University, and holds a J.D. from Howard University School of Law.

Alcoa has announced the appointment of **Nicholas DeRoma** as executive vice president, chief legal & compliance officer, effective August 3. In addition to leading Alcoa's legal and compliance operations worldwide, DeRoma will also serve on the company's executive council. He succeeds Michael Schell, who continues as executive vice president, business development, and a member of the executive council.

DeRoma's extensive international experience includes assignments in Asia, Europe, Canada and the United States. Based in Canada, he was chief legal officer of Nortel Networks Corp. where he headed a global staff of 475 professionals. Prior to joining Nortel, he had a highly successful 25-year career at IBM, where he served in posts in Europe, Asia and North America.

DeRoma is a graduate of the College of William & Mary Law School and received a B.S. from the University of Connecticut. He serves on the national board of the American Liver Foundation and is active in a number of other philanthropic organizations.

Wilmington Trust has announced that **Richard W. Nenno**, managing director and trust counsel for Wilmington Trust's Wealth Advisory Services (WAS) business, has been named to a one-year term on the American Bar Association's (ABA) Commission on Mental and Physical Disability Law.

Nenno, who has been blind his entire life due to a rare congenital retinal condition, will be one of 15 members on the commission, which carries out an array of projects and activities addressing disability-related public policy, disability law and the professional needs of lawyers and law students with mental, physical and sensory disabilities. Commission members are appointed by the ABA president-elect on an annual basis.

Nenno has advised high-net-worth individuals and families throughout the United States and abroad since joining Wilmington Trust in 1982. He is a nationally recognized expert and frequent public speaker on estate planning topics and Delaware personal trust laws. He is the author of several books, including Delaware Trusts 2009 (Thomson Reuters/West, 2009). Nenno is a graduate of Princeton University with an A.B. degree from the Woodrow Wilson School of Public and International Affairs, and he earned his J.D. degree from Harvard Law School. Before joining the company, Nenno was an associate in the estates department of the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll.

EVENTS

Meet your in-house counsel counterparts and members of the **Delaware Valley chapter of the Association of Corporate Counsel (DELVACCA)** at **Chaddsford Winery** for a wine tasting event on Thursday, Sept. 17, from 6 to 8:30 p.m.

Enjoy an evening of networking and fun with delicious hors d'oeuvres and wine tasting while engaging in lively discussions with your in-house peers and colleagues!

As a special treat for the group, Chaddsford Winery will offer a 20 percent discount on wine purchased at the event. There will also be a guided tour of the winery, which is located at 632 Baltimore Pike, Chadds Ford, PA 19317. Attendance for the event, which includes a complimentary logo wine glass, costs $20 for DELVACCA members and $40 for non-member in-house counsel.

The DELVACCA Employment & Labor Committee will present "Highlights of Changes to the Family and Medical Leave Act" from 8:30 to 10:00 a.m. on Thursday, Sept. 24 at the offices of **Schnader Harrison Segal & Lewis**, 1600 Market Street, 36th floor, Philadelphia.

Earlier this year, Congress made the first significant changes to the Family Medical Leave Act (FMLA) since it was enacted in 1993. As of Jan. 16, 2009, the FMLA now covers employees caring for members of the military who become ill or are injured in the line of duty.

This CLE program is designed to provide in-house counsel with up-to-date information about the FMLA and offer practical tips for compliance. Breakfast is included in the cost of attendance, which is free for DELVACCA members; $25 for non-member in-house counsel; and $75 non-member outside counsel.

On Tuesday, Sept. 29, from 8 to 9:30 a.m., **DELVACCA** will offer an event specifically for women in-house lawyers only, titled "The Secrets of My Success: A Women Lawyer Roundtable/Networking Event." The event will be held at the offices of **ING Direct**, 1 South Market Street (B&O Building), in Wilmington.

Women in-house counsel will offer tips, advice and other useful information about what it takes to succeed both personally and professionally. We hope you will join us for breakfast and a lively discussion. The event is free for DELVACCA women members and $25 for non-member in-house women lawyers.

The 2009 **DELVACCA** "Paralegal/Legal Assistant Forum" will be held Thursday, Oct. 8, from 8:30 a.m. to 3 p.m. at The Union League of Philadelphia, 140 S. Broad Street. The program will offer cutting-edge presentations on topics of interest to paralegals and legal assistants. Each of the five diverse courses offered this year has been developed with a "best practice" and practical approach, useful to a paralegal's and legal assistant's role.

You will also have the opportunity to network with your counterparts for a lively exchange of information about the topics discussed and the paralegal/legal assistant profession. Please note: The Union League requires proper business attire. The cost to attend for DELVACCA member companies is $50, and for non-members is $75.

For more information and to register for any of the above events, visit http://delvacca.acc.com or contact Chris Stewart, DELVACCA Administrator, at 215-295-0729 or delvacca@acc.com

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The Practicing Law Institute's 26th annual "Section 1983 Civil Rights Litigation" program will take place from 9 a.m. to 5 p.m. on Thursday, Oct. 29, 2009, at the PLI Conference Center, 810 Seventh Ave., 21s floor, New York, NY 10019.

The program, featuring a highly experienced and accomplished faculty of federal court judges, legal scholars, and practitioners, will analyze recent Section 1983 litigation strategies and important new trends, cases and developments, including: in-depth review of the U.S. Supreme Court's October 2008 term comprehensive analysis of qualified immunity; excessive force claims, including analysis of video evidence in taser cases; free speech developments; and discovery-privilege issues, including judicial perspectives.

Full and partial scholarships to attend PLI programs are available to pro bono attorneys, judges, judicial law clerks, law professors, attorneys 65 or older, law students, librarians and paralegals who work for nonprofit organizations, legal services organizations or government agencies, unemployed attorneys and others with financial hardships. Please visit http://probono.pli.edu for more information.

National Association of Women Lawyers will hold its fifth annual "General Counsel Institute" November 5 and 6 at the Westin New York at Times Square. Learn important skills and critical information that will help you survive and thrive in these changing and challenging times. The event also offers a collegial setting fostering information sharing and new friendships.

Sponsorship opportunities are still available. Our 2008 event hosted over 200 attendees from all regions of the country and beyond. Sponsorship fees have been held at 2008 rates, and the benefits enhanced. For more information, contact NAWL at 312-988-6729 or nawl@nawl.org

Registration is available to all in-house counsel and a limited number of sponsors. For information on remaining sponsorship opportunities, please contact Annette Knitter at 312.988.6729, knittera@nawl.org. •

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From JD to GC to COO: *The Legal Department Through the Business Lens*

BY GINA PASSARELLA

Joe Macchione has always been a deal guy. From his time at Morgan Lewis & Bockius to his role as general counsel at public company GMH Communities Trust, he had a mind for business and an entrepreneurial spirit to match.

But he was still a lawyer, after all.

The battle between his legal mind and business acumen was truly put to the test when in 2008 GMH Communities was sold and private company GMH Associates was created in its place. Chief Executive Officer Gary M. Holloway needed a new chief operating officer for the much smaller, 50-plus-employee company. And longtime general counsel Macchione was his man.

It's hard enough to make the transition from lawyer to general counsel, Macchione said.

Attorneys are used to focusing in on one aspect of a matter for their clients and as GCs they have to focus on the broader picture. He said it becomes almost a "paralysis by analysis" effect, in which the general counsel is afraid to make any decisions.

Transitioning into a purely business role requires an even broader mind and is a tougher leap to make, Macchione said.

As a COO, he is really tasked with the functionality of the business, its operations, and the management of people. Those aren't things lawyers are accustomed to doing, he said.

"I try to balance it," Macchione said. "I try to keep 50 percent of my thought process on studying and analyzing the risks and the other 50 percent emphatically focused on trying to get the deal done."

And now that he has had a taste of the other side, he says it has become even clearer the stigma business folks attach to the legal perspective. Macchione was at a recent board meeting in Austin Texas for American Campus Communities (ACC) — the company that bought the student housing portion of GMH Communities Trust. As part of the sale, Macchione joined ACC's board. He said one of the other board members was talking about

MACCHIONE

a deal she was working on where, she said, "unfortunately on the other side it was being run by a lawyer."

"What I take from that when I hear that is that most lawyers are not trained to accomplish a deal," Macchione said. "They are there to study risk and you can't blame them for that."

So does that mean Macchione is always understanding of GMH Associates' new general counsel Jim Kennedy? Well as much as he'd like to think so, not all the time.

While he said he thinks he tends to respect and remember his roots, Macchione admits it's sometimes frustrating as a COO to work with the person who is now the lawyer. That's when he knows he's a true business guy.

Macchione and some of the other business folks have even come up with an affectionate nickname for Kennedy — director of deal prevention. That definitely wasn't a moniker attached to Macchione when he was GC, he joked. But Macchione is quick to point out how good Kennedy is at his job.

"I do remember where I came from, but sometimes you get frustrated by the legal mentality," he said.

But if he does, he must hide it well.

Kennedy said it has been a real bonus to have someone in the COO position that has been in the general counsel seat and knows there are certain issues that need to be discussed with counsel.

"He's more understanding with my perspective on things and the issues I raise," Kennedy said.

And Macchione is also a good sounding board. Now that the company is private and roles are less tightly defined, Kennedy is much more involved in business-related meetings and decisions.

Kennedy said he has a pure legal background and isn't always as business-minded as Macchione. He said Macchione helps him focus on both the legal and the business side so that he doesn't fall into the "director of deal prevention" category — a name he joked he hasn't been called in at least a year.

And Macchione gets his own lessons too.

He said Holloway has been in business a lot longer than he and has been instrumental in transitioning Macchione from GC to COO.

"I find that I pigeonhole my thoughts sometimes and it takes Gary to step in and look at what I'm doing and say 'hey, Joe, think about the bigger picture here,'" Macchione said.

If Macchione had to give advice to anyone transitioning from legal to business, he said, it would be to embrace, respect and learn about all aspects of the business. There needs to be an understanding of how they function and how each department relates to the overall strategy.

In a sense, that makes the switch even more difficult because Macchione has to do his own job and learn that of everyone else too, he said.

TESTING OUT THE NEW ROLE

Though much smaller than its public-company predecessor, GMH Associates handles the ownership and management of several multi-family and conventional housing units and has a number of subsidiary businesses as well.

Holloway sold the public company in 2008 for $1.75 billion just before the real collapse of the economy. And even though they soon after saw the decimation of the residential mortgage business, newly minted GMH Associates also saw a huge opportunity, Macchione said.

While many companies were getting out of the mortgage business, GMH started a mortgage division from scratch with GMH Mortgage Services.

The goal is to continue to own and operate other companies related to the residential real estate market. GMH Associates currently has a large equity position in a residential alarm monitoring company, Security Networks.

Macchione said GMH is out there looking to expand those interests through the purchase of new companies. The current market has sometimes made that goal difficult, he said.

The reason GMH Communities Trust went public in the first place, Macchione said, was to take advantage of additional financing opportunities. But there are also difficulties in running a real estate venture as a public company. The industry isn't meant to be studied on fiscal quarters, he said, so there is a lot more time invested on non-revenue generating aspects of the business, he said.

"Not being public enables us to get back to being the entrepreneurs that we were before going public," Macchione said.

In terms of financing, the company doesn't see being either public or private as being more advantageous in this market. Macchione said private equity companies are still sitting on the sidelines waiting for distressed opportunities. But for the entrepreneurs at GMH Associates, going private was definitely the right move.

Not to mention all of the rules and regulations that are now governing many public companies, he said. At GMH Communities, 12 to 15 percent of the company's annual expenses were related to it being public, he said.

"[Being private] allows you to paint the brush outside of the lines," he said.

That's what he did as an attorney. That's what he does as the deal guy. •

GINA PASSARELLA *is a senior reporter for The Legal Intelligencer, a publication affiliated with GC Mid-Atlantic. She can be reached at Gina.Passarella@incisivemedia.com.*

general counsel compensation

Executive Compensation: Under Fire and What's to Come

BY KATAYUN I. JAFFARI AND JOHN H. CHUNG

The current worldwide financial crisis and economic downturn have fueled an unprecedented level of outcry and activism on many fronts — most notably with respect to executive compensation. Within the last six months, there has been a myriad of proposed legislation and regulations by the U.S. Department of Treasury, the Securities and Exchange Commission and both houses of Congress that will certainly reshape the current landscape of executive compensation.

Despite the varied genesis of each piece of legislation, which are summarized in this article, they all have one common theme: an attempt to legislate executive pay practices of boards of directors and compensation committees. The first regulations were directed at financial institutions receiving governmental aid as a result of the economic crisis. These regulations, however, are becoming the landscape for best practices for executive pay and will have ramifications for all publicly traded companies.

> The Treasury interim rule imposes significant restrictions and burdens with respect to executive pay on those receiving TARP assistance. For example, it limits bonuses paid to senior executives to one-third of their total compensation.

The regulations include measures such as say-on-pay vote requirements, restrictions on tax gross-ups, golden parachute compensation and other severance payments, stricter standards for independence of compensation committees and their advisers, and clawbacks, or recovery, of compensation for unearned performance-based pay.

The summary below is a small glimpse of what may come over the next six to 12 months with respect to executive compensation legislation.

THE OBAMA ADMINISTRATION

While there has been a flurry of proposed legislation in the last few months from the Treasury, the SEC and both houses of Congress, mandating restrictions on executive compensation is not a new concept. The most recent wave of regulations began in October 2008 with the passage of the Emergency Economic Stability Act of 2008 (EESA), which authorized the Treasury to spend up to $700 billion to purchase distressed assets from financial institutions. A significant piece of the EESA included restrictions on executive compensation for institutions receiving the bailout funds under the Troubled Asset Relief Program (TARP).

Although President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA) in February 2009, which contained amendments to the executive compensation restrictions of the EESA, there was little guidance as to how to apply the regulations until this summer. In June, the Treasury issued an interim final rule clarifying and expanding the restrictions on the executive compensation for TARP participants.

TARP PARTICIPANTS

The Treasury interim rule imposes significant restrictions and burdens with respect to executive pay on those receiving TARP assistance. For example, it limits bonuses paid to senior executives and other highly paid employees of TARP participants to one-third of their total compensation. TARP participants are prohibited from making any golden parachute payment or other severance payments to senior executive officers or any of the next five most highly compensated employees.

In addition, TARP participants must create a clawback, or recovery, provision for any bonuses paid to senior executive officers and the next 20 most highly paid officers in the case of materially inaccurate financial statements or other materially inaccurate performance criteria. Furthermore, the Treasury interim rule prohibits the payment of any tax gross-ups, including those on severance payments and perquisites, to senior executive officers and the next 20 most highly compensated employees.

Under the Treasury interim rule, a special master has been appointed to review the compensation plans of participants receiving "exceptional assistance," that which is greater than what is being provided under the standard program to TARP participants. The special master is responsible for reviewing and approving any compensation proposed to be paid to certain executives.

The Treasury interim rule also requires compensation committees to review, assess and eliminate features of compensation plans that would incentivize executives to undertake unnecessary and excessive risk. It requires boards of directors to establish a luxury or excessive expenditure policy that has specific, rigorous requirements in order to be compliant. In addition, all TARP participants were required to institute shareholder votes on non-binding resolutions to approve executive compensation packages in proxy statements filed on or after Feb. 17, 2009. In July, the SEC proposed rules implementing the say-on-pay vote requirement and enhancing disclosure requirements in proxy statements for TARP participants.

PUBLICLY TRADED COMPANIES

The Treasury did not stop with the regulations for TARP participants. In June, the Obama administration began outlining a set of principles and legislative proposals regarding executive pay, while not placing a cap on compensation or prescribing how companies should set their compensation. The administration released a white paper, "A New Foundation: Rebuilding Financial Supervision and Regulation," proposing to allow federal regulators to issue standards and guidelines to align executive compensation practices with long-term shareholder value and to prevent undue risk-taking. The white paper gave the Treasury the impetus to draft executive compensation legislation only a few weeks later.

In July 2009, the Treasury submitted legislation to Congress as part of the "Investor Protection Act of 2009" that would affect all publicly traded companies. The Treasury bill mandates a non-binding annual shareholder vote on executive compensation, including golden parachutes, for all publicly traded companies.

Under the proposed legislation, public companies would be required to include in their proxy statements a shareholder vote on executive compensation for annual meetings held on or after Dec. 15, 2009. In addition, in any proxy solicitation for a meeting held on or after Dec. 15, 2009, that concerns an acquisition, merger, consolidation or the proposed sale or other disposition of all or substantially all of the assets of a company, the person making such solicitation must disclose any agreements that such person has with the executive officers of the acquiring or target company regarding any type of compensation (present, deferred or contingent) that is related to the transaction and provide for a separate, non-binding shareholder vote to approve such agreement.

The Treasury bill also mandates that compensation committee members meet new standards for independence, similar to those promulgated by the Sarbanes-Oxley Act of 2002 for audit committees members. Compensation consultants, legal counsel and other advisers to compensation committees must also meet certain independence standards to be promulgated by the SEC. Compensation committees would have the authority to retain both independent consultants and legal counsel and would be directly responsible for their appointment, their compensation and oversight of their work. Companies will be required to provide appropriate funding, as

Compensation continues on GC9

general counsel compensation

2008 No Banner Year for Compensation, But Not a Total Loss

BY GINA PASSARELLA

Here's to hoping general counsel are happy with their base salary.

Many saw their total cash draw drop in 2008 because of slashes to bonuses and non-equity incentive plan compensation.

While the list of the 50 top paid general counsel at public companies in Pennsylvania didn't change much — given pretty much everyone felt the same belt-tightening last year — a few fell far down the ranks because of those cuts.

But on the whole, general counsel didn't see their compensation fall dramatically in 2008 like some of their law firm counterparts. And all of those who made the list both last year and this year saw some sort of increase in their base pay.

There were also several new names to the list this year. That may be because more general counsel ended up being one of the top five highest-paid executives at their company — those five people are the only ones at a company who have to report their salaries to the U.S. Securities and Exchange Commission.

There were 27 people who were on the list both this year and last year. Of that group, 12 saw their total cash compensation go down, 11 saw increases, and four remained the same given when their fiscal years end and the reporting times for this publication.

Some general counsel made up for their losses in total cash compensation under the overall total compensation category, which includes stock awards, option awards, changes in pension value and any other compensation they may have received. In looking at the 23 people who made the list both years and saw a change in their compensation, 11 fell in total compensation and 12 increased their draw.

Nationally, the trends show much of the same, according to reports from *GC Mid-Atlantic*'s sister publication, *Corporate Counsel* magazine. The magazine's August report on Fortune 500 general counsel compensation shows a break from rises in compensation for the first time in about a decade.

The list of the 50 highest-paid Fortune 500 GCs, which originally appeared in *Corporate Counsel*'s August report, appears on page 16.

Typically, GCs are unaffected by recessions with continued upward trends in pay, the magazine said. But 2008 numbers were pretty flat, with some seeing smaller paychecks. Just like in Pennsylvania, GCs nationally are still handsomely paid regardless of any drops in salary, according to the report.

UP AND DOWN

Generally the biggest movers on the Pennsylvania list were those who fell far down the list, with most of the other general counsel landing close to their ranking from last year.

Typically, GCs are unaffected by recessions with continued upward trends in pay, the magazine said. But 2008 numbers were pretty flat, with some seeing smaller paychecks. Just like in Pennsylvania, GCs nationally are still handsomely paid regardless of any drops in salary, according to the report.

Burton H. Snyder of Hershey Co. was the exception to the rule in 2008. He moved from 24th to seventh on the list thanks to a nearly $328,000 bonus. He hadn't received a bonus the prior year. Snyder's base salary grew by $50,000 to $485,000. His total cash was $812,713.

Snyder's overall total when including things like stock and options awards and change in pension value grew by about $700,000 to $1.99 million. He saw the biggest increase in stock awards, moving from $121,555 in stock awards in 2007 to $423,268 in 2008.

Holding steady at the top of the list was Allegheny Technologies Inc. General Counsel Jon D. Walton, who managed to hold onto the number one spot despite a $5.5 million drop in his total cash. Walton brought in slightly more in base salary with $427,000 in 2008 compared to $413,733 in 2007. He didn't receive a bonus in 2008, though 2007's bonus was just $12,582.

Where Walton makes his money is in non-equity incentive plan compensation — and that's where they took it away. In 2007, Walton made more than $7.7 million in that category, compared to $2.16 million in 2008.

Walton did up his stock awards by nearly $275,000 to $1.1 million. His total compensation totaled a little more than $4 million. That was down from $9.2 million in 2007.

Number three on our list, CIGNA Corp. General Counsel Carol Ann Petren, found herself in a similar situation. Her salary rose a bit to $558,269, but her non-equity incentive plan compensation fell from $2.18 million to $1.075 million. She saw her total cash drop from $2.7 million in 2007 to $1.6 million in 2008. Petren made up for some of that in option awards, jumping from $184,362 to $411,924 in that category. Her total compensation fell from $3.1 million in 2007 to just under $2.2 million in 2008.

J. Michael Schell, executive vice president of business development and law at Alcoa, is notable not only for coming in second on this year's list, but for the hefty bonus that got him there. Aside from his $388,636 base salary, which was lower than his predecessor Lawrence R. Purtell, Schell earned a $1.6 million bonus in 2008. It remains to be seen whether there will be a repeat performance of that payout in 2009, given Schell joined the company in May 2008 and the bonus could have been some sort of signing incentive.

His total cash compensation came out to nearly $2 million, and his total compensation was more than $3.5 million after $555,557 in stock options and $1.03 million in other compensation.

Jordan B. Savitch, general counsel for Penn National Gaming Inc., was one of those affected by a lack of bonus or non-equity incentive plan compensation. He fell down the list from eighth place for his 2007 total cash compensation of $708,750 to 27th place this year with total cash of $421,200. While his base salary went up a little more than $15,000 to $421,200, Savitch didn't receive any non-equity incentive plan compensation in 2008. He had more than $300,000 in that category in 2007.

Though it didn't affect his ranking on the chart, Savitch saw his total compensation fall from $3.1 million in 2007 to $321,443 in 2008 after his company exercised a claw back option that fell under the "all other compensation" category. He owed $1.25 million back to the company. Savitch did receive an increase in his option awards, however, to $1.02 million.

Falling 27 and 21 spots, respectively, on the list were N. Jeffrey Klauder of SEI Investments Co. and Joseph R. Seiders of CDI Corp.

Klauder fell from seventh on last

PAGCs continues on GC11

general counsel compensation

Compensation

continued from GC7

determined by their compensation committees, for retaining independent consultants, legal counsel and other advisers. The Treasury bill gives authority to exempt from these requirements categories of public companies, such as smaller companies.

On July 10, 2009, the SEC released proposed rules to improve compensation disclosures in light of the flurry of proposed legislation (Proxy Disclosure and Solicitation Enhancements, Release No. 33-9052). Most notably, the SEC proposed rules require enhanced disclosure regarding overall compensation policies set by compensation committees of publicly traded companies and the impact of such policies on risk-taking by executives. The proposed rules also broaden disclosure of compensation consultants' fees and services and potential conflicts of interest of such consultants.

CONGRESS JOINS IN

In addition to the scrutiny and oversight initiatives of the administration through the Treasury and the SEC, both the House of Representatives and the Senate have been busy on executive compensation since May, with the House introducing two bills and the Senate introducing one bill.

The House bill, known as the Corporate and Financial Institution Compensation Fairness Act of 2009 (H.R. 3269), passed in the House and will be voted on in the Senate after its summer recess. To date, the Senate bill, the Shareholder Bill of Rights Act of 2009 (S.1074), and other House bill, the Shareholder Empowerment Act of 2009 (H.R. 2861), have only been referred to committee.

H.R. 3269

On July 31, the U.S. House of Representatives approved H.R. 3269, which incorporates the administration's recommendations that all publicly traded companies provide shareholders with an advisory vote on executive compensation, including golden parachutes, and establish independent compensation committees. H.R. 3269 also includes additional provisions applicable to large financial institutions aimed at preventing "perverse incentives in the compensation practices of financial institutions."

Similar to the Treasury bill, H.R. 3269 is applicable to all publicly traded companies and requires an annual shareholder advisory vote on executive pay and golden parachutes. H.R. 3269 contains virtually identical language to that of the Treasury bill, but provides additional time for the SEC to establish final rules.

While it is not certain whether companies will be required to implement the say-on-pay requirements for annual meetings in Spring 2010, if H.R. 3269 is passed by the Senate in the fall, companies should brace themselves for potential compliance. Under H.R. 3269, the advisory vote on golden parachutes applies only to named executive officers, and not to all executive officers, as is the case under the Treasury bill.

Unlike the Treasury bill, the SEC may exempt categories of public companies, such as smaller companies, from these requirements. As with the Treasury bill, H.R. 3269 imposes stricter independence standards on compensation committees. Again, H.R. 3269 authorizes the SEC to exempt certain categories of public companies from this requirement.

H.R. 3269 further regulates incentive-based pay packages of large financial institutions in an attempt to reduce perverse incentives by requiring federal regulators to proscribe inappropriate or imprudently risky compensation practices that could have a "serious adverse effect on economic conditions or financial stability." This provision applies only to those financial institutions with $1 billion or more in assets.

In light of the tumultuous times in the world of executive compensation, legislation will have the effect of restructuring executive compensation in the near future. Legislation will likely apply to all publicly traded companies and include some variation of say-on-pay, and stricter standards for independence of compensation committees and their advisers.

These large financial institutions must also disclose their incentive-based pay plans for executives and employees. Regulators would then be able to determine if pay packages are aligned with sound risk management, are structured to account for the time horizon of risks, and meet other criteria appropriate to reduce unreasonable incentives for officers and employees to take undue risks.

H.R. 2861

In June 2009, Rep. Gary Peters, D-MI, introduced H.R. 2861. Although no further action has been taken since referred to committee, H.R. 2861 would require the SEC to establish rules that give shareholders a say-on-pay vote and require the independence of compensation advisors, similar to H.R. 3269.

However, H.R. 2861 is distinct from H.R. 3269 in the following ways:

- It does not require a shareholder vote on golden parachute compensation for any executive officer in connection with a merger or other transaction;
- It requires companies to develop and disclose a recovery or clawback policy for bonus payments, incentive payments and equity payments that were awarded to executive officers to the extent fraud is discovered or financial results must be restated or for other reasons, to the extent practical to do so;
- It prohibits severance payments to senior executives who are terminated because of poor performance as determined by the board; and
- It mandates additional disclosure of specific performance targets used for compensation purposes.

S. 1074

In May 2009, Sen. Charles Schumer, D-NY, and Sen. Maria Cantwell, D-WA, introduced S. 1074. According to Schumer and Cantwell, S. 1074 is intended to "increase accountability and oversight at publicly traded corporations." Although no further action has been taken since referred to committee, S. 1074 requires any proxy solicitation to include a say on pay vote and requires companies to make disclosure about, and have advisory votes on, golden parachute arrangements, similar to H.R. 3269.

Notably, S. 1074 does not contain any provision with respect to the independence of compensation committees, consultants, legal counsel or other advisers.

CONCLUSION

While no one can say what the exact rules regarding future executive compensation will be, we know for sure there will be sweeping changes to requirements and the oversight of management and compensation committees. The public's patience with excessive, imprudent and expanding executive compensation packages has worn thin.

In light of the tumultuous times in the world of executive compensation, legislation will have the effect of restructuring executive compensation in the near future. Legislation will likely apply to all publicly traded companies and include some variation of say-on-pay, including golden parachutes, requirements for proxy statements to include enhanced analysis and disclosure concerning risk assessment and management, and stricter standards for independence of compensation committees and their advisers.

In light of such future legislation, compensation committees should strive for the following:

- Compensation committees, consultants and boards should be educated on federal initiatives regarding executive compensation requirements and restrictions;
- Compensation committees should consider the potential impact of say on pay requirements as well as the view of investors regarding golden parachutes, severance payments and tax gross-ups for compensation in general;
- They should be in communication with risk officers; and
- They should consider the independence of their members and revisit independence standards with consultants, legal counsel and other advisors. •

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General Counsel Compensation Ranked by 2008 Total Cash

Rank	GC/Company	Salary +	Bonus +	Non-Equity Incentive Plan Comp. =	Total Cash 2008	Stock Awards	Option Awards	Change in Pension Value	All Other Compensation	Total
1	Jon D. Walton Allegheny Technologies Inc.	$427,000	$0	$2,160,733	$2,587,733	$1,190,760	$0	$62,803	$172,474	$4,013,770
2	J. Michael Schell Alcoa Inc.	$388,636	$1,600,000	$0	$1,988,636	$555,557	$0	$0	$1,034,977	$3,579,170
3	Carol Ann Petren CIGNA Corp.	$558,269	$0	$1,075,000	$1,633,269	$20,434	$411,924	$98,973	$20,074	$2,184,674
4	Arthur R. Block Comcast Corp.	$771,769	$40,025	$686,875	$1,498,669	$583,836	$550,024	$482,578	$13,800	$3,128,907
5	James D. Garraux United States Steel Corp.	$458,340	$0	$840,000	$1,298,340	$632,197	$319,483	$1,352,899	$86,204	$3,689,123
6	James C. Diggs PPG Industries Inc.	$467,500	$0	$405,000	$872,500	$466,185	$292,958	$291,127	$100,817	$2,023,587
7	Burton H. Snyder Hershey Co.	$485,000	$0	$327,713	$812,713	$423,268	$364,476	$353,883	$32,818	$1,987,158
8	Stephen W. Johnson CNX Gas Corp.	$312,885	$0	$419,859	$732,744	$1,387,957	$207,937	$535	$41,847	$2,371,020
9	P. Jerome Richey Consol Energy Inc.	$376,885	$0	$350,000	$726,885	$248,653	$160,159	$148,738	$39,442	$1,323,877
10	Laurence G. Miller Teleflex Inc.	$372,500	$44,700	$309,127	$726,327	$49,593	$234,243	$62,697	$37,849	$1,110,790
11	Caroline B. Manogue Endo Pharmaceuticals	$387,500	$0	$297,570	$685,070	$30,226	$920,264	$0	$64,619	$1,700,179
12	David Greenfield Kennametal Inc.	$327,667	$0	$323,275	$650,942	$163,630	$80,712	$64,421	$33,873	$993,578
13	Lewis B. Gardner EQT Corporation	$245,578	$0	$380,000	$625,578	$55,717	$54,787	$0	$40,858	$776,940
14	Brad A. Molotsky Brandywine Realty Trust	$331,433	$240,000	$0	$571,433	$212,517	$16,539	$0	$50,814	$851,303
15	James J. Bowes Liberty Property Trust	$325,000	$500	$232,934	$558,434	$219,194	$52,078	$0	$34,014	$863,720
16	Brian M. Addison Dentsply International Inc.	$341,000	$0	$188,800	$529,800	$88,358	$247,670	$0	$63,926	$956,754
17	Steven R. Lacy Koppers Holding Inc.	$322,119	$188,000	$0	$510,119	$212,918	$51,044	$14,846	$50,180	$839,107
18	Nancy M. Snyder Penn Virginia Corp.	$265,000	$235,000	$0	$500,000	$249,635	$198,360	$0	$36,269	$984,264
19	Nancy S. Sundheim Unisys Corp.	$499,030	$0	$0	$499,030	$146,419	$0	$31,152	$78,079	$754,680
20	Robert Knauss Amerigas Partners	$314,619	$0	$177,698	$492,317	$82,493	$439,746	$262,102	$10,521	$1,287,179
21	John G. Chou Amerisourcebergen	$294,866	$0	$189,867	$484,733	$65,199	$144,696	$0	$30,964	$725,592
22	Roy Hibberd Dollar Financial Corp.	$250,000	$0	$217,786	$467,786	$61,018	$83,165	$0	$18,566	$630,535
23	Brian J. Sisko Safeguard Scientifics Inc.	$340,000	$50,000	$75,000	$465,000	$0	$260,295	$0	$48,109	$773,404
24	John R. Gailey III West Pharmaceutical Services Inc.	$320,485	$0	$127,870	$448,355	$68,057	$104,796	$56,961	$66,068	$744,237
25	John B. Wright II Triumph Group	$222,600	$215,000	$0	$437,600	$81,698	$19,000	$0	$7,644	$543,942
26	John Donlevie Entercom Communications Corp.	$330,597	$97,500	$0	$428,097	$269,202	$933	$0	$39,488	$737,720
27	Jordan B. Savitch Penn National Gaming Inc.	$421,200	$0	$0	$421,200	$132,730	$1,022,987	$0	($1,255,474)	$321,443
28	William G. Kiesling CSS Industries Inc.	$279,510	$131,235	$0	$410,745	$0	$96,889	$0	$36,528	$544,162
29	Mark E. Kimmel Harsco Corp.	$370,000	$0	$36,556	$406,556	$302,461	$0	$13,875	$18,280	$741,172
30	Colin D. Stern Charming Shoppes Inc.	$401,633	$0	$0	$401,633	$230,814	$0	$21,324	$356,063	$1,009,835
31	James D. Dee C&D Technologies	$260,000	$139,000	$0	$399,000	$23,418	$24,260	$0	$11,281	$457,959
32	Roy H. Stahl Aqua America Inc.	$275,158	$0	$121,888	$397,046	$122,642	$101,951	$166,592	$67,036	$855,267
33	Joshua Gindin NCO Group Inc.	$383,883	$0	$0	$383,883	$0	$85,363	$0	$83,545	$552,791
34	N. Jeffrey Klauder SEI Investments Co.	$250,000	$132,500	$0	$382,500	$0	$466,256	$0	$8,804	$857,560
35	H. James McKnight Michael Baker Corp.	$270,942	$0	$82,512	$353,454	$0	$0	$0	$16,018	$369,472

General Counsel Compensation Ranked by 2008 Total Cash

Rank	GC/Company	Salary +	Bonus +	Non-Equity Incentive Plan Comp. =	Total Cash 2008	Stock Awards	Option Awards	Change in Pension Value	All Other Compensation	Total
36	Dennis M. Sheedy Calgon Carbon Corp.	$215,296	$0	$125,000	$340,296	$115,474	$32,070	$0	$18,998	$506,838
37	Glen A. Bodzy Urban Outfitters	$289,692	$6,314	$35,000	$331,006	$0	$40,180	$0	$4,451	$375,637
38	Joseph R. Seiders CDI Corp.	$294,000	$0	$25,000	$319,000	$67,103	$46,419	$0	$1,000	$433,522
39	Ali Alawai Horsehead Holding Corp.	$160,000	$102,327	$45,415	$307,742	$6,380	$0	$0	$26,019	$340,141
40	D. Jeffrey Benoliel Quaker Chemical Corp.	$258,300	$0	$37,275	$295,575	$54,948	$26,371	$55,000	$26,888	$458,782
41	Stephen L. Kibblehouse PMA Capital Corp.	$168,494	$35,000	$87,500	$290,994	$30,198	$0	$0	$217,087	$538,279
42	Jack E. Jerrett OraSure Technologies Inc.	$259,804	$0	$28,200	$288,004	$142,171	$46,928	$0	$4,000	$481,103
43	Sheila DiNardo Ansys Inc.	$165,000	$121,675	$0	$286,675	$0	$325,503	$0	$9,050	$621,228
44	Paul A. McGrath Universal Stainless & Alloy Products Inc.	$178,385	$90,000	$0	$268,385	$0	$50,891	$1,325	$5,849	$326,450
45	Robert F. Schultz Ampco-Pittsburgh Corp.	$201,000	$55,000	$0	$256,000	$0	$97,637	$140,221	$29,230	$523,088
46	J.N. Rigas * Armstrong World Industries	$229,833	$0	$0	$229,833	$87,423	($202,983)	$0	$2,537,359	$2,651,632
47	Randall J. Gort WorldGate Communications Inc.	$224,847	$0	$0	$224,847	$0	$74,275	$0	$0	$299,122
48	Laurence Welheimer Tasty Baking Co.	$204,938	$0	$0	$204,938	$29,306	$0	$0	$9,950	$244,194
49	Harry R. Swift Codorus Valley Bancorp Inc.	$190,000	$0	$0	$190,000	$131	$598	$56,898	$9,253	$256,880
50	Martha E. Manning Adolor Corp.	$182,390	$0	$0	$182,390	$63,412	$149,272	$0	$12,792	$407,866

* Retired August 1, 2008.

PAGCs

continued from **GC8**

year's list to 34th after his $500,000 bonus in 2007 was brought down to $132,500 in 2008. He was the only one on the list in both 2007 and 2008 to not see an increase in his base salary. That figure remained at $250,000, bringing his total cash compensation to $382,500. Thanks to a drop in option awards, Klauder's total compensation fell from $1.4 million to $857,560.

It was a dip in non-equity incentive plan compensation that caused Seiders to fall from 17th place to 38th this year. That category fell from $165,476 to $25,000. His base salary rose by less than $10,000 to $294,000 for a total cash draw of $319,000.

OTHER NOTABLES

J.N. Rigas of Armstrong World Industries was new to the list this year, despite retiring from his position in August 2008. Rigas had modest total cash compensation, coming in at 46th place with $229,833 in base salary. He didn't receive a bonus or non-equity incentive plan compensation. His total compensation, however, was $2.65 million, thanks to $2.54 million in other compensation. Rigas lost more than $200,000 in option awards in 2008.

Mark E. Kimmel of Harsco Corp. and Paul A. McGrath of Universal Stainless & Alloy Products Inc. fell down the charts by 14 and 16 spots, to 29th and 44th, respectively.

Although Kimmel's base salary rose by almost $100,000 to $370,000, his non-equity incentive plan pay was cut from $365,858 to $36,556. That brought his total cash compensation down from $541,359 to $406,556.

McGrath's base salary grew by about $6,000 to $178,385, but his bonus was cut from $226,000 to $90,000. His total cash compensation fell from $398,307 to $268,385.

The breakdown of which companies gave either bonuses, non-equity incentive plans, both or neither remained virtually unchanged from year-to-year. •


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Comparing Three Years of GC Salary and Bonus

Rank	GC	Salary 2008	Bonus 2008	Salary 2007	Bonus 2007	Salary 2006	Bonus 2006
1	Jon D. Walton	$427,000	$0	$413,733	$12,582	$400,000	$130,912
2	J. Michael Schell	$388,636	$1,600,000	—	—	—	—
3	Carol Ann Petren	$558,269	$0	$535,962	$0	—	—
4	Arthur R. Block	$771,769	$40,025	—	—	—	—
5	James D. Garraux	$458,340	$0	—	—	—	—
6	James C. Diggs	$467,500	$0	$452,500	$0	$440,000	$0
7	Burton H. Snyder	$485,000	$0	—	—	—	—
8	Stephen W. Johnson	$312,885	$0	—	—	—	—
9	P. Jerome Richey	$376,885	$0	$326,462	$0	—	—
10	Laurence G. Miller	$372,500	$44,700	$346,080	$426,864	—	—
11	Caroline B. Manogue	$387,500	$0	$375,000	$0	—	—
12	David Greenfield	$327,667	$0	—	—	—	—
13	Lewis B. Gardner	$245,578	$0	—	—	—	—
14	Brad A. Molotsky	$331,433	$240,000	$320,583	$252,868	$281,092	$334,853
15	James J. Bowes	$325,000	$500	$325,000	$500	$305,000	$500
16	Brian M. Addison	$341,000	$0	$319,595	$132,500	$318,000	$0
17	Steven R. Lacy	$322,119	$188,000	—	—	—	—
18	Nancy M. Snyder	$265,000	$235,000	$230,000	$215,000	$220,000	$255,040
19	Nancy S. Sundheim	$499,030	$0	—	—	—	—
20	Robert Knauss	$314,619	$0	—	—	—	—
21	John G. Chou	$294,866	$0	—	—	—	—
22	Roy Hibberd	$250,000	$0	—	—	—	—
23	Brian J. Sisko	$340,000	$50,000	—	—	—	—
24	John R. Gailey III	$320,485	$0	$305,691	$0	$273,578	$200
25	John B. Wright II	$222,600	$215,000	$222,600	$215,000	$212,000	$150,000
26	John Donlevie	$330,597	$97,500	—	—	—	—
27	Jordan B. Savitch	$421,200	$0	$405,000	$0	$390,000	$260,000
28	William G. Kiesling	$279,510	$131,235	$279,510	$131,235	$258,133	$122,432
29	Mark E. Kimmel	$370,000	$0	$275,501	$0	$245,501	$0
30	Colin D. Stern	$401,633	$0	$401,633	$0	$389,936	$0
31	James D. Dee	$260,000	$139,000	$250,000	$36,461	$250,000	$36,461
32	Roy H. Stahl	$275,158	$0	$259,068	$0	$247,167	$0
33	Joshua Gindin	$383,883	$0	—	—	—	—
34	N. Jeffrey Klauder	$250,000	$132,500	$250,000	$500,000	$250,000	$500,000
35	H. James McKnight	$270,942	$0	$263,203	$46,414	$259,697	$0
36	Dennis M. Sheedy	$215,296	$0	$203,334	$0		
37	Glen A. Bodzy	$289,692	$6,314	$289,692	$6,314	$281,085	$5,000
38	Joseph R. Seiders	$294,000	$0	$287,333	$0	$284,000	$0
39	Ali Alawai	$160,000	$102,327	—	—	—	—
40	D. Jeffrey Benoliel	$258,300	$0	—	—	—	—
41	Stephen L. Kibblehouse	$168,494	$35,000	—	—	—	—
42	Jack E. Jerrett	$259,804	$0	—	—	—	—
43	Sheila DiNardo	$165,000	$121,675	—	—	—	—
44	Paul A. McGrath	$178,385	$90,000	$172,307	$226,000	$165,077	$170,000
45	Robert F. Schultz	$201,000	$55,000	$191,000	$55,000	$182,500	$40,000
46	J.N. Rigas *	$229,833	$0	—	—	—	—
47	Randall J. Gort	$224,847	$0	—	—	—	—
48	Laurence Welheimer	$204,938	$0	—	—	—	—
49	Harry R. Swift	$190,000	$0	$184,000	$0	$178,000	$25,014
50	Martha E. Manning	$182,390	$0	—	—	—	—

— Indicates the compensation for this individual was not reported in this year.

* Retired August 1, 2009.

The 50 Top-Paid Fortune 500 GCs Ranked by Total Cash

Rank FY '08	Rank FY '07	GC/Company	State	Salary	Bonus Plus Nonequity Incentive Compensation	Total Cash	Stock Value Realized	Total Cash Plus Stock Value Realized	Stock Awards	Option Awards
1	84	Gregory Doody [1] Calpine Corporation	TX	$313,462	$9,430,159	$9,743,621	$0	$9,743,621	$1,654,870	$440,367
2	-	Donald Rosenberg Qualcomm Incorporated	CA	576,940	9,100,000	9,676,940	0	9,676,940	0	1,499,572
3	-	Brackett Denniston III General Electric Company	CT	1,200,000	5,850,200	7,050,200	120,784	7,170,984	2,284,110	1,239,568
4	12	Charles Wall Philip Morris International Inc. [2]	NY	1,094,538	3,100,000	4,194,538	4,201,698	8,396,236	2,279,708	0
5	3	Alan Braverman The Walt Disney Company	CA	1,032,885	3,000,000	4,032,885	0	4,032,885	1,603,625	720,599
6	2	Gary Lynch Morgan Stanley [3]	NY	300,000	3,169,000	3,469,000	0	3,469,000	531,000	0
7	7	Paul Cappuccio Time Warner Inc.	NY	1,000,000	2,050,000	3,050,000	0	3,050,000	2,102,914	521,257
8	8	Russell Deyo Johnson & Johnson	NJ	804,096	2,184,800	2,988,896	736,800	3,725,696	618,749	1,084,866
9	11	Carrie Dwyer The Charles Schwab Corporation	CA	500,000	2,474,399	2,974,399	680,007	3,654,406	512,349	570,751
10	9	Louis Briskman CBS Corporation	NY	1,305,000	1,600,000	2,905,000	0	2,905,000	1,223,120	755,298
11	-	Thomas Strickland [4] UnitedHealth Group	MN	692,115	2,000,000	2,692,115	0	2,692,115	1,397,926	898,915
12	1	Jon Walton Allegheny Technologies Incorporated	PA	427,000	2,160,733	2,587,733	0	2,587,733	1,190,760	0
13	-	Peter Beshar Marsh & McLennan Companies Inc.	NY	875,000	1,688,750	2,563,750	0	2,563,750	578,863	714,501
14	14	Michael Fricklas Viacom Inc.	NY	1,050,000	1,390,300	2,440,300	0	2,440,300	1,990,954	1,463,301
15	23	Albert Cornelison Jr. Halliburton Company	TX	550,000	1,870,000	2,420,000	1,031,313	3,451,313	775,106	366,663
16	13	Alan Schnitzer The Travelers Companies, Inc.	NY	650,000	1,700,000	2,350,000	0	2,350,000	3,038,052	700,485
17	-	Charles Matthews Jr. Exxon Mobil Corporation	TX	855,000	1,477,305	2,332,305	5,417,538	7,749,843	5,490,643	0
18	-	Thomas Sabatino Jr. Schering-Plough Corporation	NJ	$789,959	$1,391,384	$2,181,343	$0	$2,181,343	$1,272,197	$1,344,009
19	29	David Horn AK Steel Holding Corporation	OH	575,000	1,458,372	2,033,372	3,046,382	5,079,754	548,197	105,852
20	-	Alan Crain, Jr. Baker Hughes Incorporated	TX	473,000	1,503,595	1,976,595	0	1,976,595	861,894	1,028,978
21	33	Sheldon Cammaker Emcor Group Inc.	CT	475,000	1,493,750	1,968,750	429,200	2,397,950	395,202	0
22	42	Marc Manly Duke Energy Corporation	NC	600,000	1,265,342	1,865,342	0	1,865,342	1,004,617	0
23	-	David Drummond Google Inc.	CA	450,000	1,376,251	1,826,251	8,883,415	10,709,666	1,761,357	1,531,276
24	26	William Barr [5] Verizon Communications Inc.	NY	863,077	924,469	1,787,546	0	1,787,546	3,265,948	0
25	-	Laura Schumacher Abbott Laboratories	IL	774,808	986,700	1,761,508	588,076	2,349,584	1,980,529	1,485,775
26	27	Robert Armitage Eli Lilly and Company	IN	778,767	959,441	1,738,208	0	1,738,208	1,852,500	375,000
27	-	David Smith Archer Daniels Midland Company	IL	901,600	826,800	1,728,400	660,098	2,388,498	1,778,829	345,923
28	-	Julia Lambeth Reynolds American Inc.	NC	548,050	1,177,800	1,725,850	0	1,725,850	148,672	0
29	-	Raymond Bukaty Western Digital Corporation	CA	400,000	1,275,000	1,675,000	1,646,184	3,321,184	339,921	227,256
30	-	Leila Vespoli FirstEnergy Corp.	OH	524,231	1,110,794	1,635,025	0	1,635,025	987,590	3,277
31	-	Marc Firestone Kraft Foods Inc.	IL	659,904	975,000	1,634,904	0	1,634,904	941,210	79,134
32	16	Carol Ann Petren Cigna Corporation	PA	558,269	1,075,000	1,633,269	0	1,633,269	20,434	411,924
33	19	Douglas Sgarro CVS Caremark Corporation [6]	RI	570,000	1,023,318	1,593,318	1,645,208	3,238,526	817,490	1,235,787

1. Terminated in August 2008. Began at Charter Communications, Inc., in February 2009.
2. Spun off from Altria Group, Inc., in March 2008.
3. Became a Commercial Bank Holding Co. in September 2008. Spun off Discovery Financial Services in June 2007.
4. Resigned in January 2009.
5. Resigned as GC in November 2008.
6. Acquired Longs Drug Stores, Inc., in October 2008.

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34	22	Richard Baer Qwest Communications	CO	654,885	911,324	1,566,209	0	1,566,209	927,203	983,250
35	36	Charles Tanabe Liberty Media Corporation	CO	875,500	659,252	1,534,752	0	1,534,752	474,952	1,259,057
36	32	J. Barclay Collins II Hess Corporation	NY	800,000	725,000	1,525,000	8,195,499	9,720,499	2,383,440	1,499,125
37	50	David Savner General Dynamics Corporation	VA	526,250	975,000	1,501,250	1,429,411	2,930,661	542,093	1,145,245
38	-	Arthur Block Comcast Corporation	PA	$771,769	$726,900	$1,498,669	$2,490,816	$3,989,485	$583,836	$550,024
39	-	Brian Miller The AES Corporation	VA	456,300	1,038,638	1,494,938	0	1,494,938	223,993	166,488
40	-	Denise Keane Altria Group, Inc. 7	VA	662,500	825,000	1,487,500	453,665	1,941,165	790,852	0
41	-	C. Michael Carter Dole Food Company Inc.	CA	611,538	873,556	1,485,094	0	1,485,094	0	0
42	-	John Halvey NYSE Euronext Inc.	NY	605,769	875,000	1,480,769	0	1,480,769	1,643,405	0
43	35	Jay Stephens Raytheon Company	MA	689,146	780,000	1,469,146	1,085,242	2,554,388	3,115,886	0
44	56	David Sudbury Commercial Metals Company	TX	350,000	1,035,810	1,385,810	804,126	2,189,936	20,154	653,716
45	24	Robert Sharpe Jr. 8 ConAgra Foods, Inc.	NE	662,019	725,000	1,387,019	0	1,387,019	1,783,352	896,062
46	44	J. Michael Hemmer Union Pacific Railroad Company	NE	453,000	900,000	1,353,000	0	1,353,000	846,359	768,559
47	-	W. Burks Terry Northrop Grumman Corporation	CA	653,270	688,050	1,341,320	1,339,244	2,680,564	1,040,613	958,165
48	64	Grier Raclin Charter Communications, Inc. 9	MO	484,013	855,314	1,339,327	0	1,339,327	974,485	88,237
49	28	Hyun Park PG&E Corporation	CA	498,091	822,713	1,320,804	0	1,320,804	1,006,437	0
50	-	Robert Osborne General Motors Corporation	MI	837,500	480,000	1,317,500	0	1,317,500	0	530,018

7. Spun off Phillip Morris International Inc. in March 2008.
8. Resigned as GC in January 2009.
9. Filed for Chapter 11 bankruptcy in March 2009.

Labor & Employment

Panelists, Left to Right, Sitting: James A. Matthews, Kimberly J. Gost, Jennifer Platzkere Snyder, Thomas S. Bloom. Standing: John E. Quinn, Sidney L. Gold, Wayne E. Pinkstone.

MR. QUINN: Good morning, everyone. It's my pleasure to serve today as moderator of our labor and employment roundtable discussion, sponsored by *The Legal Intelligencer*. Today we will discuss some of the major issues that labor and employment practitioners encounter on a day-to-day basis. Our panel consists of defense, plaintiffs and corporate attorneys who will provide their observations and insights regarding this challenging practice area.

REDUCTIONS IN FORCE

MR. QUINN: Given the current economic climate, I would like to begin by discussing reductions in force. Certainly more and more companies are looking for ways to cut costs, which often leads to workforce reductions. My question is, how does a company decide who will be laid off? Jennifer?

MS. SNYDER: The first consideration has to be the makeup of the workforce. Are there non-exempt as well as exempt employees? Usually, most organizations have both, and the differences in the classifications will affect how reductions may be made. Non-exempt employees are those who are not exempt from the wage and hour overtime laws, so they have to be paid for all time worked beyond 40 hours per week at an overtime rate. Employers can cut the pay of non-exempt employees by, for example, instituting reduced work weeks or mandating one or two days off per month — a practice commonly referred to as a furlough. Non-exempt employees can be paid just for the hours that they work. The danger is when you look at how to cut costs associated with an exempt workforce. Exempt employees are those who are classified as administrative, professional, executive, outside sales or computer professionals under the wage-and-hour laws and regulations and, therefore, are exempt from overtime pay. In exchange for not being paid for any time worked over 40 hours in a work-week, exempt employees must be paid for an entire workweek if they do any work during that week. Thus, exempt employees cannot be furloughed by cutting workdays the way non-exempt employees can be.

MR. QUINN: So, we can't do what they do in California, where exempt employees are being asked to take Mondays and Fridays off?

MS. SNYDER: No. But there are other possibilities. For example, there is no law stating that employees have the right to choose when to take vacation — if it is offered — so employers can mandate use of accrued vacation days on a one-day-a-week basis for a certain period of time. Employers can also institute permanently reduced work schedules, with the caveat that the reduced schedule can't fluctuate from week to week based on workload demands.

MR. QUINN: Rather than reducing a workforce, may employers ask employees to agree to a salary freeze or bonus limitations? Wayne, have you ever done that?

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When you decide to cut your workforce, how do you decide where to do so and do you document that decision?

— JOHN E. QUINN

MR. PINKSTONE: It can legally be done, as long as the exempt employee stays at $455 per week, but I think reducing pay may create a morale change in the workforce. A company-wide furlough may be a better option, but, as Jennifer said, the wage-and-hour issue should be an important consideration.

MR. QUINN: When you decide to cut your workforce, how do you decide where to do so and do you document that decision? Jim?

MR. MATTHEWS: In my experience, one of the ways employers get themselves into trouble is by failing to separate the positions to be eliminated from the people who occupy those positions. For example, is there excess capacity? What can the business do without? Which functions could be outsourced? In other words, do not select the position to be eliminated in order to get rid of the incumbent employee. Employers who do this will find that when it comes time to provide a legitimate nondiscriminatory reason for the decision, they are unable to do so because it didn't make any business sense. Or the employer will run into trouble — and this is the kind of thing that makes Sid's eyes get real big when the client walks in — because they laid off the incumbent and then discovered three weeks later that they shouldn't have eliminated that position and need to hire someone to fill it. There's your dispute of fact on pretext. So make the business decision about the position first. Then make the business decision about which people you can live without.

MR. QUINN: As we're considering whom we are going to let go, do we write down what the criteria will be? Kym, do you believe in that?

MS. GOST: Yes, and I agree completely with Jim. You need to examine various job functions and make a business decision, whether that is elimination, suspension, transfer or consolidation. For each position you eliminate or otherwise change, you need to be able to point to objective business criteria designed to reduce your costs. The decision needs to be objective, so you're not necessarily looking at Joe Smith's performance or other personal factors.

MR. QUINN: What if you want to eliminate sales representatives and they are all equally qualified?

MS. GOST: You could approach that as a consolidation. Maybe there are redundancies in that group. And then if you hit a plateau and still need to make cuts, you start looking at performance. That said, the performance evaluation procedure would also have to withstand objective analysis.

MR. QUINN: Who should make that decision? Is this a human resources or in-house counsel decision?

MS. SNYDER: In my view, it should be a team of people, though you want to keep the team small to avoid having news of an upcoming reduction in force leak out before the company is ready to announce it. The team should include HR representatives and in-house counsel, assuming the company has in-house counsel. The team should also include business leaders who can provide insight on the selection criteria. You need all of these people to work together to create a process and criteria that will be able to withstand scrutiny.

MR. QUINN: Sid, what do you look at when a client comes to see you after being laid off as a result of a reduction in force?

MR. GOLD: We're finding that most companies are not really prepared for a reduction in force. They don't have a reduction-in-force policy or any established selection criteria. When a company conducts a RIF on an ad hoc basis, the natural tendency is to let the least desirable people go. These might be older, long-term employees who are pulling in high salaries, or individuals who suffer from disabilities or have taken time off under the Family and Medical Leave Act. Further, selection decisions often lack consistency and employers fail to understand the risk of eliminating employees who have excellent performance records. So, essentially, I look for inconsistencies and contradictions. I also look for any prior complaints against the decisionmaker that might suggest discriminatory animus or retaliatory motivation against the employee. With respect to older employees affected by a RIF, I also look to see if the employer provided the employee with a matrix demonstrating the ages of all individuals in that employee's job category to see if older employees were disparately impacted by the RIF.

MR. QUINN: Tom, what is your perspective as in-house counsel?

MR. BLOOM: We haven't had a reduction in force in the time I've been at Amtrak. But I'm generally of the view that the more people who are involved in terms of HR, counsel and business people, the better. Overall the process looks better when you have more people weighing in on the decision, including people who have very little personal stake in relation to the affected employees. If you wind up in litigation, that detachment can be helpful. I would also be interested to hear Sid's view regarding what Jim said earlier, which is that even with small and midsize employers, if you're making initial judgments on the basis of job functions and responsibilities detached from the employees themselves, does that create a higher hurdle in a litigation context?

MR. GOLD: I don't think there is any way to completely insulate yourself as an employer, but you make a very good point in the sense that the more people who are involved in the decision, the greater the buffer against having a decisionmaker in the hot seat as to why he selected a given employee for termination. The key, though, is to have a policy in place before the RIF. Without that, whatever the methodology, it will be vulnerable to attack. In addition, employers should be mindful of performance evaluations. As an employer, you don't want to be in the position of having to justify terminating a stellar performer. There is a major contradiction there.

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— THOMAS S. BLOOM

MR. QUINN: Once individuals are selected for a RIF, should the employer go through the personnel files to look for the issues that Sid just raised?

MR. MATTHEWS: Absolutely. While I'm less in favor of a large group of people being involved in this process versus the right group of people being involved in the process, if we go back to the narrow issue of personnel files, I recommend that someone who is not directly involved in the decision take the first cut at the personnel files, just in case there is something in there that you wouldn't want to be part of the decision making process. Examples would be a discriminatory statement in a performance evaluation or an intemperate note from a supervisor. These kinds of items should be removed from the documentation that the decisionmakers are going to evaluate.

MR. PINKSTONE: Provided an employer is not facing an immediate need to reduce resources, it is important to take the time to develop an organizational plan for the future. In other words, decide what you want your organization to look like six months or a year from now, and make employment decisions accordingly. That means making eliminations by job function and similar considerations. I think we have all had cases where there's a decision that's made and the plaintiff argues it was done because of age, sex, race or religion, and the employer produces a document indicating that the company was planning on making workforce changes several months before the employee was terminated, and that helped to create a defensible position.

MR. QUINN: What is your perspective, Jim?

MR. MATTHEWS: It's somewhat unusual for me to quote President Obama, but I like his comment, "Let's not make the perfect the enemy of the possible." Employers have to operate their businesses. They have to do what they have to do, and this isn't just an abstract law school exercise where you get to dot every "I" and cross every "T" to make the lawyers happy. The reality may be that you have to do a round of performance evaluations or a force ranking, but the worst thing you can do, and I think Sid and I would agree, is pretend that you're doing something different from what you're really doing. Trying to create a false impression will ultimately create a dispute of fact on pretext and get you to a jury. So if you make a performance-related decision, don't pretend it was merely an economically motivated reduction in force.

MR. QUINN: Do you take a snapshot of the workforce both before and after the reduction in force to see if there are any particular trends? Kym, have you ever done that?

MS. GOST: I have done that, absolutely. With planned reductions, you can also conduct a statistical evaluation. Of course there are pros and cons to these evaluations. It is unlikely that they would be considered privileged, so you do have to be very careful in performing that kind of analysis. I also agree with Jim in terms of the decision is what it is, and was derived the way it was derived. The best you can do is be deliberate and organized and take your time. Don't make employment decisions on a haphazard basis. Sid's point regarding performance evaluations is also well taken.

"I completely agree that the communication process can be overlooked, because many plaintiffs whose claims I see do not really understand why they were selected for termination, which leads them to litigation."

— JENNIFER PLATZKERE SNYDER

MR. QUINN: Sid, from your perspective, how important is it for the employer to communicate clearly to the affected employee as to why he or she was selected for a reduction in force?

MR. GOLD: It's very important. The employer owes the employee an explanation as to why he was selected for termination, particularly when the employee has been with the company for a long time. Yet, explanations are rarely given. This also goes back to having an established process prior to a RIF. Businesses have an obligation to look forward and if you think that you're moving in a certain direction, your employees should know that. That way, when employees are being selected, there is nothing wrong with bringing an employee into the room and saying, "OK, we did this analysis and, unfortunately, you were selected." At least the employee knows the reason. If there is no explanation, the person is going to be angry. The family is going to be angry. Being terminated is going to make a dramatic change in the family's lifestyle. It could mean not sending a child to college that year or having to default on a car payment, so that person is owed an explanation as to why he or she was selected and, sometimes, just knowing that allows them to move on. Most of these individuals that consult with my office are simply seeking some sort of explanation as to why they were selected for termination. If more employers provided employees with the reason, there would likely be less litigation stemming from reductions in force.

I should also point out that most people who come into my office are not aware of the concept of at-will employment. They really believe they have some right to a job after putting in their equity for 10 or 20 years. It could very well be that a lot of jurors feel that way too. There is a lot of anger today in terms of what is going on with the economy and most employees are not feeling they were responsible for this economic train wreck we are in right now. In fact, many of them never benefitted from it. In their minds, they did everything right. They put money in a 401(k), they sent their children to college, so now what? That is the mindset that we are seeing.

MR. QUINN: What about severance agreements? Jennifer, what should be included in these contracts?

MS. SNYDER: That depends on whether you are dealing with an individual, performance-based termination or a group economic decision across the board. But before I get to terms, I would like to follow up on one of the things that Sid said. I completely agree that the communication process can be overlooked, because many plaintiffs whose claims I see do not really understand why they were selected for termination, which leads them to litigation. Further, in this economic climate, employees understand that hard decisions have to be made; however, if a reduction is truly motivated by economics, then you don't want to see company executives receiving higher bonuses than they did previously while middle management suffers. There's a disconnect in that situation that has to be considered before announcing a reduction.

With respect to the elements of a severance agreement, I think it should be pretty neutral in that you don't want to set out too much detail about why the person was selected. You do want to give them an appropriate amount of time to consider the agreement, and the Older Workers' Benefit Protection Act requires that companies provide individuals over 40 years of age with at least 21 days to consider a release if it is given as part of an individual termination decision and at least 45 days if the decision is part of a group termination. Releases related to group terminations involving individuals over 40 must also include a disclosure statement, listing the positions of everyone in the department or division where the terminations took place and the ages of the people who were and were not selected for termination. Other terms to think about include confidentiality, non-disparagement, limitations on applying for re-hire and the selection of governing law or forum for disputes.

MR. QUINN: Wayne, do you think that if the employer negotiates certain terms with employee A, it will throw off the whole severance agreement offered to other employees?

MR. PINKSTONE: If it's a single employee and the changes are not material, I don't see a problem with it. If it's a group, it's a much bigger issue. It affects, potentially, hundreds of employees. I think we're kidding ourselves if we think a confidentiality provision is going to prevent an employee from completing negotiations and turning around and telling a co-worker what is in the agreement. Also, as Sid said, how the termination is conveyed is really important to the employee. Putting a document in front of an employee at 3:30 p.m. on a Friday without explanation is not the way to do it.

MR. QUINN: How should notice be given?

MR. PINKSTONE: I would suggest that it be done in private with two company representatives present. Typically at least one of the representatives will be from human resources, and the second will be either a manager or another HR professional. Notice should not be given at the employee's cubicle or on the assembly line. A conference room or similar location is preferable. Properly letting someone go sounds simple. It's common sense. But it's frequently done the wrong way, which frankly leads the employee to Sid.

MR. BLOOM: I would like to add that one of the intangibles that employees and factfinders take into account is fairness. This is particularly true when you're dealing with an imperfect factual situation, such as an inadequate performance evaluation. Even though fairness cannot be the basis of a legal claim, it can determine the outcome of a dispute. I recommend taking a step back to ask how an employment decision or action would look to a layperson. How did the process look? What about how the employee was treated? This should not only benefit the employer, but also lead to an employee who feels he or she was treated with respect. Many problems can be avoided by keeping an eye to fairness.

MR. MATTHEWS: Following up on what I said earlier, another thing that our clients need to remember is that there must be a balance in terms of treating the employee fairly and protecting the company. The truth is, this is an area in which no good deed goes unpunished and protecting an employee's feelings or avoiding a confrontation by saying, "Look, it's just a question of numbers and your number came up. You're great and it didn't have anything to do with you," can make it difficult to point to performance as the legitimate, nondiscriminatory reason for which the employee was terminated. That's going to put you in front of a jury. You don't have to be brutal, but you're going to get into trouble with inconsistent explanations. You don't have to tell the rest of the world the unvarnished truth, but you need to be up front with the employee and have supporting documentation.

CLASSIFYING EMPLOYEES

MR. QUINN: If we turn to something that Jennifer brought up earlier in the discussion, she was referring to exempt and non-exempt employees, and I have seen numerous problems arise under the Fair Labor Standards Act and various state laws due to misclassification of employees. Jennifer, what do you tell your clients when they ask you whether an employee is exempt or non-exempt?

MS. SNYDER: I begin by asking for a job description, which may or may not exist, depending on how sophisticated the employer is. Then I ask whether the description accurately reflects the reality of the job. Many times the description does not reflect the actual job duties. Once we have an accurate picture of the job duties, we analyze them against a number of tests that the U.S. Department of Labor has laid out to determine whether an employee is properly classified as exempt.

In my experience, employers have the most trouble with the administrative exemption. All too often employers try to designate a position as exempt under this classification because it applies to white-collar employees who exercise independent judgment and discretion about matters of significance to the company. Some employers think that description could fit almost anyone but the DOL often disagrees. As a result, in the last couple of years, we have seen a substantial increase in class action lawsuits filed on behalf of misclassified employees seeking unpaid overtime compensation, back wages and attorney fees, most of which revolve around the administrative exemption. It's a land mine for employers.

MR. QUINN: Kym, have you found that some companies are now saying that individuals are really independent contractors or consultants rather than employees? Is this occurring more frequently now than it did in the '90s, when times were good?

MS. GOST: I certainly have found that, and I've talked to a lot of clients who would like to go that route. The tests are difficult, though, and the DOL and the courts tend to lean toward employee as opposed to independent contractor. So as much as many companies would like to treat people as independent contractors, it's becoming increasingly difficult to do so.

MR. PINKSTONE: I have to agree. I have had clients want to deem an employee or group of employees independent to avoid providing benefits. My response has typically been, "What is this person's function going to be? Will the person be supervised by the same supervisor, work the same shift and perform the same tasks as an employee?" If the answer to any of

"For each position you eliminate or otherwise change, you need to be able to point to objective business criteria designed to reduce your costs."

— KIMBERLY J. GOST

these questions is yes, and usually there is at least one "yes," the DOL will view the individual as an employee.

MR. MATTHEWS: I think what we all see in terms of employee classifications, is employers trying to wrap a 1930s statute — the FLSA — around a 21st century workforce. One of the first things we have to say to our clients is that they are absolutely right, the law in this area doesn't make sense. The statute was designed for the 1930s industrial workplace where there were blue-collar workers and white-collar managers and professionals, and everybody knew where the line was. We also have to keep in mind that the statute was not meant to generate more income for employees. It was intended to discourage employers from having fewer employees work more hours and encourage them to hire more employees to address the widespread unemployment of the time. At the time, employers didn't incur any additional cost by having two people do the same job. Wages were wages. But now, if Joe presses a button on an assembly line for eight hours and then Mary steps in and presses that same button for eight hours, the employer has to pay twice the benefits, which can be much more expensive than simply paying Joe time-and-one-half for the second eight hours.

MR. QUINN: We know that many complaints come from employees going to the DOL and saying they are not being treated fairly. Kym, what if a non-exempt employee contacts the DOL seeking overtime because he or she is required to be available via a company cell phone or Blackberry?

MS. GOST: That comes up quite bit. There are also a number of class actions involving pagers and whether carrying them is compensable work time. The question is, are they working for the benefit of the employer while they have the device? In my view these need to be dealt with on a case-by-case basis. Simply having the device in and of itself has not routinely been found to create compensable work for the entire time the employee is carrying it, but certainly utilizing it and responding to it does constitute working, at least according to the DOL. I think the Blackberry is a little more difficult. The pager goes off and you respond. A phone rings and you respond. With a Blackberry there are e-mails coming in all the time, and the grey area is determining whether you must record when you opened and responded to each e-mail and how much time that took.

OUTSIDE COUNSEL, AUDITS AND INVESTIGATIONS

MR. QUINN: What role, if any, does outside counsel play in the event of a DOL audit?

MS. GOST: That often depends on what the client wants. Certainly you want to have counsel involved, whether it's in-house counsel or outside counsel. But I have found with investigations that the DOL does sometimes get its back up if the lawyers make their presence known, so I recommend a sophisticated HR person as the initial liaison with the lawyers in the background providing advice.

MR. QUINN: Tom, what is your perspective as in-house counsel?

MR. BLOOM: For the most part, we do not involve outside counsel. There is, however, a continuum of contentiousness and in some instances we have brought in the HR department, our own internal dispute resolution office or in-house counsel if things are looking dicey. In our experience, the DOL can get their hair up a little bit, but less so with in-house counsel. We're a part of the company and it doesn't necessarily turn up the heat in the same way as bringing in outside counsel.

MR. QUINN: Jim, do you review the statements and the documents that your clients give to the DOL? Do you indicate how far you want your clients to go in trying to advocate their positions?

MR. MATTHEWS: Every case is different, because it depends on the circumstances, it depends on the auditor, it depends on the personalities and it depends on what you're worried about, if anything. Certainly I want to talk to my client so I know what's being turned over and if there are potential land mines. To the extent there's going to be a position statement of some kind, I don't find that the auditors get too up in arms if you write them a letter setting forth the company's position. What annoys them is an attorney looking over their shoulders while they review files. I would say that if a company is going to take a position in writing, outside counsel can lend a useful perspective in terms of having seen other companies and audits and the outcomes of those. While you might think an audit is an audit and it is what it is, the facts are never completely clear and there are different ways to package the same set of facts, whether you are doing that in a document or you are preparing the HR person or assisting in-house counsel.

MR. QUINN: I'd like to direct our attention to the role outside counsel plays when an employer internally investigates employment matters. Wayne?

MR. PINKSTONE: I believe the role should be advisory in nature. I typically do not get involved in the investigations themselves because if that employee turns around and files a harassment suit and part of the defense is that the employer took proper legal action, investigated the complaint and remedied it, I become a fact witness in that litigation. So as outside counsel, my role is more often counseling the HR representative and helping in-house counsel shape his or her involvement in the investigation.

MR. QUINN: Just before we get to Tom, would you ever, as outside counsel, revise the report that was submitted by in-house counsel?

MR. PINKSTONE: Good question. I don't think I would revise. I would review and advise, but ultimately the facts that are derived from the investigation are what they are. I certainly wouldn't provide any advice on changing the facts. I regularly conduct training in these matters, and my recommendation is that whoever is conducting the investigation should keep their opinions out of it. Take the facts and arrive at a conclusion based on those facts.

MR. BLOOM: At Amtrak we have two pretty significant in-house investigatory arms. Our dispute resolution office, which is part of the human resources department, investigates internal complaints of discrimination, harassment and the like. The DRO is staffed with investigators who are experienced in conducting interviews and collecting relevant documents and they generally attempt to resolve complaints based on a well-developed factual record. Generally, neither in-house nor outside counsel participates in DRO investigations. We also have an equal employment opportunity compliance group, which operates under the umbrella of the law department. The EEO group investigates and responds to complaints filed with the U.S. Equal Employment Opportunity Commission or similar agencies. The EEO group conducts its own investigations and writes position statements under in-house counsel's supervision. It also investigates internal complaints where the employee has retained counsel (the DRO generally transfers its investigations to EEO once an employee retains counsel).

"I would recommend that companies inform the complainant of the results of the investigation, including whether the accused individual was ultimately disciplined."

— SIDNEY L. GOLD

We don't typically involve outside counsel at the EEO investigation stage unless it's related to — and maybe not even then — an employee who is in the midst of an ongoing litigation. We might also consult outside counsel if the investigation is particularly complex.

MS. SNYDER: Many of my clients do not have sophisticated internal investigators like Amtrak, and I find that even highly developed organizations often lack experience when it comes to investigations. I do always prefer to be an outside advisor so that I can maintain privilege but, if it's a particularly thorny issue or if I am dealing with a particularly green business manager or HR representative, I may go in and conduct the investigation myself, so long as the client fully understands that I will be gathering facts which will all likely be discoverable if the person who complained files suit. The client would have to be fully aware of that before I would get involved in that capacity, but I would still rather get involved and conduct a good investigation as opposed to having the company do one that is less thorough.

MR. QUINN: Sid, I'm sure you have seen more of these investigations than anyone else, and I know you have some very strong views on this subject. Would you give us your perspective?

MR. GOLD: I think Jennifer makes an excellent point. What I look for is the quality of the investigation. Was the person who conducted the investigation trained and qualified to do so? Who was interviewed and why? Was the finding in the report substantiated by the facts? I frequently see poor investigations that would have benefitted from the advice of counsel, whether in-house or outside. Often, the people conducting these investigations do so in a reactionary manner, not realizing that the investigation may become the focal point of litigation.

Additionally, plaintiffs lawyers hear all the time that a company performed an investigation, but failed to interview the complainant. Companies need to let their employees know that complaints will be taken seriously and investigated. Although not legally obligated to do so, I would recommend that companies inform the complainant of the results of the investigation, including whether the accused individual was ultimately disciplined. Frequently, employees come in to see me because they never received any follow-up from their employer after registering a complaint of harassment or discrimination.

MR. MATTHEWS: Something that we're doing with increasing frequency, particularly in the case of a high-profile issue or a high-profile manager, is retaining or helping our clients retain separate outside counsel to conduct investigations. It would be extremely rare for one of our attorneys to perform an investigation, both because of privilege and because we would disqualify ourselves from trying the case. This is becoming a common practice, as we are finding that more and more well-trained employment lawyers are marketing themselves for this purpose, and there is a tremendous cadre of big firm labor and employment alumni — many of them women — who may not be in active practice but who are available to do this work part time at reasonable rates. These individuals offer an effective, efficient and affordable option, and know how to write reports and testify.

MR. QUINN: Wayne, when you said you do a great deal of education and training, do you spend time training managers?

MR. PINKSTONE: Yes. I do a fair amount of what we call supervisory training. We talk about issues that aren't necessarily law-related, but are important to supervising, such as communication and how to react to and handle various complaints. Of course it is also important to ensure that supervisors are aware of the relevant laws, aware of their roles in responding to employment matters and aware of the need to follow the procedures outlined in the employer's handbook. If a manager appropriately responds to an employment situation, that might be all it takes to avoid litigation.

THE EMPLOYEE FREE CHOICE ACT

MR. QUINN: I would now like to address the Employee Free Choice Act. This act has not yet become law, but Jim, with your background in labor, would you review some of the act's key aspects?

MR. MATTHEWS: Well, we may have a bill by the time this is published so we'll see how we do with predicting the future. There are three primary components of the act that are receiving attention. One is the card check recognition that everyone has heard about, and the third is enhanced penalties for unfair labor practices committed during representation campaigns and initial bargaining. In my view it is the second component that is far and away the most important. It represents the single most radical change in federal labor law since the Wagner Act of 1935. This portion of the EFCA provides that if the parties do not reach a first collective bargaining agreement within a specified period of time, let's assume 90 to 120 days, the Federal Mediation and Conciliation Service will appoint an arbitrator to handle the unresolved issues and ultimately determine the terms of the parties' two-year contract. In that regard, it is not unlike the process we have in Pennsylvania under Act 111, which applies to police officers, firefighters and prison guards. The big difference, though, is that under Act 111, the police officers, firefighters and prison guards have surrendered their right to strike in exchange for mandatory arbitration. Clearly there are significant public policy concerns behind that. The situation we have here, as I say, would radically change the way collective bargaining takes place.

My principal concern is that heading into the interest arbitration, management will typically have much more to lose than will the union. So you're really skewing the situation. My own view: Will some form of enhanced penalties pass? Probably. Will some form of expedited recognition process or election process pass? Probably. In exactly what form, I'm not sure. Is it going to be 50 percent plus one card check recognition, I certainly hope not and don't think so. What I think is the provision that employers need to be most concerned about is the one that the press and the public don't talk about nearly as much, and that is the mandatory interest arbitration.

MR. QUINN: Would the individual from the FMCS determine the management rights clause in the collective bargaining agreement?

MR. MATTHEWS: Presumably, though we don't know at this point. As it's presently drafted the statute basically says that FMCS will conduct arbitrations under regulations it shall issue. We have no idea what will be on the table, what will be off the table, or whether the FMCS arbitrator will have the statutory power to waive the employees' right to strike. The right to strike is fundamental and needs to be clearly and unmistakably waived. Is the mediator going to be able to do that or are we going to have a contract that binds management but allows the union to strike at will? We just don't know and that's one of the reasons why, in my view, it's so terribly dangerous.

MR. QUINN: Jennifer, what do we do now while we're waiting for the statute to become law? What options are there for an employer facing a potential organization drive?

MS. SNYDER: Like Wayne, I do a lot of supervisory and management training. We try to talk through the issues that lead to people signing authorization cards and wanting to form unions. We look at practices that can be employed to maintain a company's independence. The first step is to explain to the management team the importance of communication. Is this a company where managers listen to the employees? Is there regular constructive two-way communication between managers and employees? Do the employees trust management? The second step is to evaluate management. Are they credible? Do they provide progress reviews to employees to let them know where they stand in the organization? Are performance evaluations conducted fairly and according to objective standards? Third, we examine whether there are company policies and whether they are followed. A company that has policies but does not live by them can lead employees to distrust management. Fourth, we look at hiring and firing practices and talk about how to make hard disciplinary decisions. Finally, the most important question I ask supervisors is whether the workforce knows what it would mean to have a union in the workplace. Do they understand the legal significance of signing an authorization card? Will employees be able to withstand pressure from co-workers who want them to sign cards and thereby sign away some significant rights? These are all important considerations.

"I think what we all see in terms of employee classifications, is employers trying to wrap a 1930s statute — the FLSA — around a 21st century workforce.

— *JAMES A. MATTHEWS*"

MR. MATTHEWS: Let's take a step back and look at the EFCA and the system that we're talking about. Some people might characterize me as an anti-union lawyer, which I most certainly am not. I'm a management lawyer. I'm the son of a management lawyer. But if I'm being intellectually honest, I can't be opposed to labor organizations in concept unless I'm also opposed to corporations in concept. Corporations are a legal fiction created by the legislature to permit individual inventors to aggregate their capital so as to increase their power in the marketplace. What the Wagner Act did in 1935 was to simply permit individual workers to do the same thing with their labor, aggregate it just like investors aggregate their capital in order to increase their power in the marketplace. That's not good, it's not bad, it's just a way in which our economy is regulated. But then the question becomes, what is the labor union as an organization distinct from a given group of employees? While there was a time when organized labor could be fairly characterized as a social movement, I think today's labor organizations sell a service just like we sell a service. The service they sell is collective representation in dealing with your employer and they charge a fee for that, which is dues and fees. When you then come back to the points Jennifer was making, our advice to the employer is, don't create customers for a union. If you treat your employees in many of the ways that Jennifer suggested, there's simply not a ready market for labor organizing.

COMPENSATION

MR. QUINN: Gender bias as it relates to compensation seems to be hot topic right now. Sid, what kinds of problems does an employer face when, for example, a female company vice president receives a salary of $X and the company, finding itself in need of someone to fill a comparable position and lacking anyone in-house, hires a male, but to get that male, must pay $X plus $25,000?

MR. GOLD: Provided there is a legitimate business reason for that decision, I think the company is fairly insulated, at least at the time of hiring. The greater problem arises if it becomes clear that the female is being underpaid after training the new male hire or for performing what is essentially the same work. How do you justify that going forward? If the pay is not equalized, the company would likely face either a lawsuit or the loss of a valuable employee. Whenever you let someone valuable leave, you lose not only a key person, but the time that person has spent learning about your organization and the time it will take to find and train a replacement who will probably get paid at least as much as you would have paid the employee who left.

MR. QUINN: Do you agree Kym?

MS. GOST: I agree on the initial hiring. I think at the vice president level, frankly, there would be arguments that it's not a similar job. You might be OK in there not being parity. But now let's assume the female can reasonably assert that the job is exactly the same. In that case, there would be an obligation under the Equal Pay Act of 1963 to equalize the pay and create parity in the position, and it would not be a substantial or bona fide justification that the male who was hired either came from a higher-paying job or negotiated a better deal. Under Title VII of the Civil Rights Act of 1964, if you document the disparities between people, you may have a better chance, but certainly under the Equal Pay Act, which is getting a lot more play and will continue to do so, under the current administration, those kinds of justifications are not going to support a difference in salary if the individuals' jobs are exactly the same.

MR. QUINN: I agree. It has become clear that the employer cannot rely on the argument that the male was a better negotiator. The question is, what can the company do to try to solve the problem before it really becomes a problem?

MS. GOST: I've worked with a number of companies on compensation analyses. At the end of the day, compensation often becomes the catalyst for raising claims. Sometimes there are simply historical reasons for pay disparities. For instance, you may have an employee who has been with the company longer and whose raises are limited to 2 or 3 percent, versus new hires whose employment agreements do not include such limits. This discrepancy may go unnoticed for some time. However, regardless of whether a disparity is unintentional, the bottom line is if you can't justify it, you need to make changes.

MR. BLOOM: I would like to add that even when you have circumstances where the market absolutely dictated higher compensation to recruit an employee, the justification fades over time.

MS. SNYDER: That is true, under the Equal Pay Act. To allow a system to perpetuate itself and potentially create a greater disparity over time would, in fact, be a violation.

MR. QUINN: Is it any defense if the employer institutes a range of pay for various grades or job titles?

MS. SNYDER: Not if women are always at the bottom of the range. Of course, that's the simple answer. The Equal Pay Act requires equal pay for equal work — literally. If the employer has a pay range, has enough people in each classification, and can show a statistical evenhandedness based on gender within the pay range, that might be permissible. But where you're talking about two vice presidents and there's a pay range and the woman happens to be at the bottom of the range, that isn't going to fly.

MR. GOLD: I think what we're going to see in this area is the passage of the Fair Pay Act, which means that even if a decision was made 20 years ago, the person can challenge that decision this week. More importantly, the Paycheck Fairness Act is presently pending before Congress. This act is on the verge of passing and essentially would give an employee the right to recover the difference in pay as well as compensatory and punitive damages. So, obviously, Congress has focused on this issue.

MR. MATTHEWS: As with the EFCA, I don't think these enhanced penalties are really the primary focus of concern with these bills. To further the discussion we were just having, historically there were four affirmative defenses in an Equal Pay Act case, one of which was "any factor other than sex," and much to the chagrin of Sid's side of the table, the courts construed that fairly broadly. The reason for that was, if the disparity was justified by a factor other than gender, it wasn't gender-based and therefore didn't violate the Equal Pay Act. Under the Paycheck Fairness Act, on the other hand, the non-gender-based factor would have to be directly related to the job, and the employer would have to meet the business necessity defense as it exists under Title VII. In that sense, Sid is absolutely right, these claims will become much more difficult to defend.

MS. SNYDER: Employers will also need to focus on their documentation and possibly reexamine their document retention policies to ensure they can explain how they made compensation decisions over time.

MR. PINKSTONE: As crucial as documentation is, employers must also remember to document only factual, objective and well-reasoned considerations. Documentation should not contain any subjective factors or opinions. From a defense perspective, documentation that isn't well-reasoned will hurt more than it will help.

"As crucial as documentation is, employers must also remember to document only factual, objective and well-reasoned considerations."

— WAYNE E. PINKSTONE

DISABILITY DISCRIMINATION

MR. QUINN: Let's turn our attention to the Americans with Disabilities Act and the ADA Amendments Act of 2008, signed into law on Sept. 25, 2008. Sid, how have the amendments changed the causes of action for someone who alleges disability discrimination?

MR. GOLD: Litigation has increased dramatically in this area. The amendments have expanded the definition of major life activities and provide that disabilities may be episodic or in remission. In the past, the focus has always been on whether the individual is disabled, or whether there is a major life activity that has been substantially impaired, or whether there are mitigating circumstances that would negate the existence of a disability. As a result of the ADA Amendments Act of 2008, those issues are now off the table. Going forward, the focus will likely be on the interactive process, whether an employee's accommodation request was reasonable and what the employer has done with accommodations and keeping the employee on the job. In the past, it was very difficult to prove that one had a disability. Now, we are looking at educating the employer in terms of how accommodations should be made. In addition, the focus is turning to cases where a disabled employee is terminated as a result of an employer's maximum leave policy. Employers need to remember that although an employee exhausts his sick or FMLA leave, the company may still be required to afford that employee an additional medical leave of absence as a reasonable accommodation for the disability.

MR. QUINN: So, if someone comes to an employer now and says, "I'm taking medication for an ailment," does the person have a disability?

MR. GOLD: Yes, because no longer can mitigating measures be taken into consideration when determining whether a disability exists. We also have a very active legislature that, in the act's preamble, indicated the broadest possible interpretation.

MS. SNYDER: Perceived fairness was mentioned earlier in our discussion. It applies here as well. Engaging in a good-faith, detailed discussion about the need for accommodation, the extent of the desired accommodation and whether it is feasible will go a long way in defending against disability claims. I also tell my clients that, even in the absence of an employee request, if an employer knows an employee may have a disability, the employer has an obligation to initiate a conversation about accommodations.

MR. PINKSTONE: The amendments haven't really changed things for those of us who do a lot of work in New Jersey. In New Jersey, whether someone is disabled was essentially already off the table, which means the analysis jumps to whether the employer engaged in an interactive process and could reasonably accommodate the employee. And I think Sid's right: as has been the case in New Jersey, determining whether someone is disabled is no longer going to be the focus of defending an ADA claim.

MR. MATTHEWS: Obviously there's a salutary purpose to this statute, as too many disabled individuals were previously excluded from the workforce or limited in terms of their ability to compete for positions. On the other hand, a broad interpretation of the amended statute leaves a great deal of room for abuse by employees who don't like various aspects of their jobs. In a worst-case analysis, someone who doesn't really want to be on the job and just wants to be on the payroll might look to the ADA to make that happen. I think the only way management is going to be able to fight back, as it were, is to do as Jennifer suggested and have thorough, defensible job descriptions.

MR. QUINN: Wayne, how do the ADA and the FMLA now interact?

MR. PINKSTONE: This is topic that comes up often among labor and employment attorneys and employers. The FMLA provides 12 weeks of unpaid leave to an employee suffering from a serious health condition, and generally an employee with an ADA-qualifying disability is going to be deemed to have a "serious health condition" for FMLA purposes. Where the two statutes really come together, however, is at the end of the 12 weeks, when the employee has used up the FMLA time but says to the employer, "I am still impaired because I am still suffering from this disability, and I need more leave." The employer is now in a difficult position. I believe that a reasonable extension of the FMLA leave is considered a reasonable accommodation. But how long is a reasonable extension? That is where it can get complicated.

MS. SNYDER: Another complication is the newer employee who becomes disabled early on in his or her employment. That individual will not be eligible for FMLA leave because he or she will not have been with the employer for one year and will not have completed 1,250 hours of service. What should the employer do? Again, it goes back to the interactive process. What are the essential functions of the job? What kind of accommodation might be requested? What kind of accommodation is needed? And what kind of accommodation can be given?

MR. QUINN: Following up on these points, what does an employer do when an employee decides that he or she is ready to return to work?

MR. PINKSTONE: If the employee is ready to return and provides documentation stating that he or she is able to perform the essential functions of the job, the law requires the employer to place the employee back into the same or an equivalent position. That is what the employer should do. However, employers are often concerned about an employee's ability to do the job. And I think that, particularly if there's a safety concern, such as in an industrial setting, this kind of situation can become extremely complicated.

MR. GOLD: I think at that point, you go through the interactive process again. If the employee's treating physician clears the employee to return to work with no restrictions, the employer would be taking a real risk in challenging that recommendation. On the other hand, if the employee is returning to work with restrictions, the question becomes, what is a reasonable accommodation? Does the accommodation mean the person is no longer qualified to perform the essential functions of the job? Which then brings us back to the written job description and into a very gray area. My office has recently seen an increase in cases in which an employee has been terminated because of a policy of the employer that requires employees to be 100% healed prior to returning to work. Policies of this nature constitute a per se violation of the ADA in that they fail to provide for an interactive process to determine whether an employee can perform the essential functions of the job with or without a reasonable accommodation.

MR. MATTHEWS: Adding to Sid's point, you have to make the right business decision. I tell my clients to make only the decision they have to make, only when they have to make it. In our example, the 12 weeks is up and the employee wants additional leave. The safe thing would be to give the employee the additional leave. But then the employer has to decide how much is enough. That's going to depend upon the job and the reasonable ability of the employer to continue to function with that position open. When it is no longer practical to keep a temp or otherwise accommodate the leave, the employer is going to have to make and document the corresponding business decision. Once that decision is made, the employer needs to start the process of filling the job and tell the employee, "Look, this is at the point now where, because FMLA has expired, you don't have a right to come back to the same job. We left the job open as long as we could, but we are beginning the search process. When you are ready to come back, by all means tell us and if the job is still open, that's one thing, but if we have filled the job, we'll have to see what might be available at the time." On the other hand, though, there's no necessity to that point of formally "terminating" the employee, which is what's most likely to get you sued.

MS. GOST: From a practical standpoint the availability of benefits also comes into play in these situations, particularly in the case of a long-term disability benefit. If an employee invokes long-term disability benefits, that may determine or inform a determination as to whether the employee can return to work and whether the interactive process continues once an employee goes out on long-term disability. What becomes difficult is ascertaining the employer's obligation with respect to providing a reasonable accommodation to an employee who is out on long-term disability leave. If an employee is in the first year or two of long-term disability and can't perform the essential functions of his or her job with or without a reasonable accommodation, must the employer find another job the employee can do?

MR. QUINN: Tom, what are your thoughts on this process?

MR. BLOOM: This is one area where the interactive process can serve as an excellent prophylactic measure. Engaging in the interactive process in good faith and with an open mind, will make it very difficult to undermine the resulting employment decision, regardless of whether that decision looks good or bad in hindsight.

MS. SNYDER: And again, it's not really the specific accommodation that the employer ultimately provides — it's whether the employer engaged in a fair process. The courts are looking to see a fair and reasonable decision under the circumstances.

MR. BLOOM: I would add that unlike some other areas, such as harassment, this is one area in which it is very easy to engage in a process that makes the employee feel like he or she is being treated fairly.

MR. QUINN: Which of course helps avoid further difficulties. I see that our time is up this morning. Thank you all for making this a lively and informative discussion.

Panelist Bios

Thomas S. Bloom is associate general counsel, litigation and employment, for the National Railroad Passenger Corp. (Amtrak). As associate general counsel, Mr. Bloom manages commercial and employment litigation matters, and advises internal clients regarding a full range of labor and employment issues. Upon entering private practice in 1999, Mr. Bloom was a commercial litigation associate with Schnader Harrison Segal & Lewis before joining Morgan Lewis & Bockius in 2003 as an employment litigation associate. Mr. Bloom has served as associate general counsel at Amtrak since 2007.

Mr. Bloom earned his juris doctor from the University of Pennsylvania Law School in 1997.

The principal shareholder of Sidney L. Gold & Associates P.C., **Sidney L. Gold** concentrates his practice in representing employees and employers in all aspects of employment litigation, including claims under federal and state anti-discrimination laws and federal civil rights laws. Martindale-Hubbell has recognized Mr. Gold's firm as a preeminent law firm in the field of employment law and civil rights litigation.

Mr. Gold has written extensively on issues of employment discrimination, including numerous articles for The Legal Intelligencer and the Pennsylvania Law Weekly, and is a frequent lecturer for the Philadelphia Bar Association and the Pennsylvania Bar Institute. Currently co-chairman of the Philadelphia Bar Association's Labor & Employment Law Committee, Mr. Gold also serves as an arbitrator and mediator for the U.S. District Court for the Eastern District of Pennsylvania. Mr. Gold earned his law degree from Temple University School of Law in 1975.

Kimberly J. Gost is a shareholder in the Philadelphia office of employment and labor law firm Littler Mendelson P.C. Ms. Gost concentrates her litigation practice in the representation of employers in employment and employee benefit matters before state and federal courts and agencies. Her experience in class action and single plaintiff matters covers the full spectrum of employment law and employee benefits litigation, ranging from harassment, discrimination and retaliation claims to wage and hour, fiduciary breach and wrongful termination matters.

Ms. Gost also counsels employers regarding such issues as hiring and termination, reductions in force, wage and hour compliance, family and medical leave and disability accommodations, among others. In addition, Ms. Gost conducts management training sessions on matters such as harassment prevention, litigation avoidance and affirmative action.

Ms. Gost is a 1998 graduate of Rutgers School of Law – Camden, where she serves as an adjunct professor.

A partner in the Philadelphia office of Fox Rothschild LLP, **James A. Matthews** co-chairs the firm's labor and employment department. Mr. Matthews has been representing management in all aspects of the employment relationship for more than 25 years. His practice includes union organizing campaigns, collective bargaining, strikes, labor arbitration, employment discrimination, wrongful discharge, employment and related agreements, multi-employer benefit plan issues and a variety of other matters.

An author and podcast contributor, Mr. Matthews was previously a partner at Drinker Biddle. He earned his juris doctor, cum laude, from Villanova University School of Law in 1981.

Wayne E. Pinkstone is a partner in the Philadelphia office of Fisher & Phillips LLP. Mr. Pinkstone concentrates his practice in representing management in traditional labor and employment law matters. His broad litigation experience includes handling discrimination, sexual harassment, wrongful discharge, breach of contract, employment tort and whistleblower claims in federal, state and administrative courts. Mr. Pinkstone also counsels employers on compliance matters, including those pertaining to the Americans with Disabilities Act, the Occupational Safety and Health Act and the Family and Medical Leave Act, as well as state and federal anti-discrimination laws and state wage and hour laws. Clients call on Mr. Pinkstone to conduct training seminars on topics such as effective training and hiring techniques, supervisory skills and practices, the legal ramifications of harassment in the workplace and employee discipline and discharge. His practice spans a wide range of industries, including the manufacturing, service, retail, technology and financial industries.

Mr. Pinkstone is a 1994 graduate of Widener University School of Law.

A member of Eckert Seamans, **John E. Quinn** represents both organized and unorganized employers in all aspects of employee relations. He has defended employers in state and federal courts and agencies in matters such as discrimination, wrongful discharge, unfair labor practices and union organizational campaigns, among others. Mr. Quinn has also participated in numerous contract negotiations with unions and represents the management trustees of several Taft-Hartley Act funds.

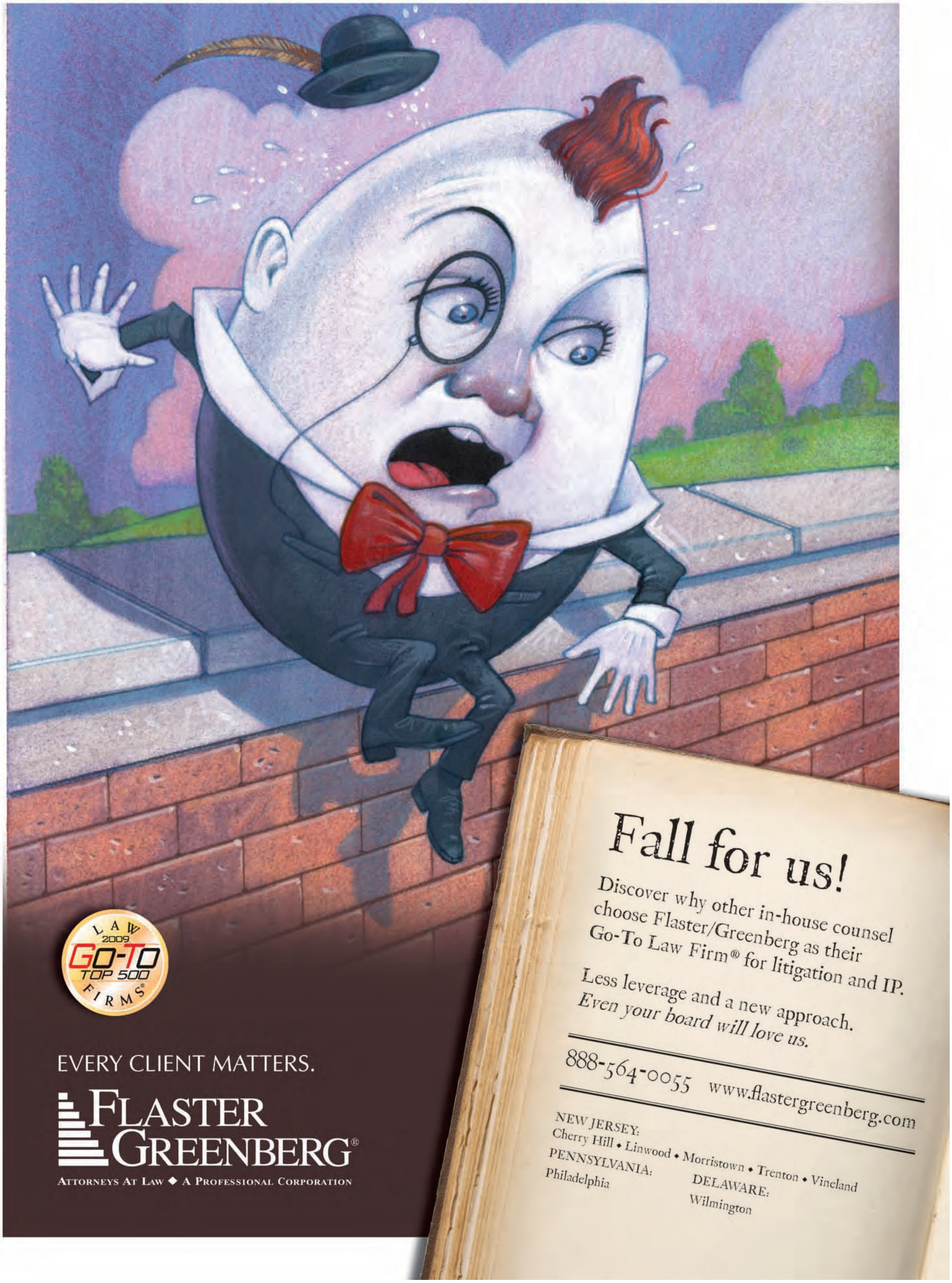
A past chairman of the Hearing Committee of the Disciplinary Board of the Pennsylvania Supreme Court, Mr. Quinn is a master member of the Temple American Inns of Court. He has been a member of the board of directors of Carson Valley School, a nonprofit institution providing educational and social services to abused and neglected children, for more than 20 years.

Mr. Quinn earned his law degree from University of Virginia School of Law in 1974.

Jennifer Platzkere Snyder is a partner in the labor and employment practice group of Dilworth Paxson LLP. Ms. Snyder represents employers in all aspects of labor and employment law, including traditional union-management relations, employee discrimination, non-compete and trade secret disputes, executive employment agreements, wage and hour audits and a variety of other issues. In addition to representing clients throughout the litigation process, Ms. Snyder counsels employers on minimizing litigation risks and negotiates dispute resolutions.

Ms. Snyder is a lecturer for the American Bar Association and serves on the executive committee of the Temple American Inn of Court. She was recently elected a fellow to the American Bar Foundation.

Ms. Snyder is a 1995 graduate of Villanova University School of Law.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