



Tuesday, October 2, 2012

4:30 PM - 6:00 PM

1207 – May the Force Be With You: Best Practices in Risk Management for Energy Companies

Rachel Giesber Clingman

Partner

Sutherland Asbill & Brennan LLP

Meredith M. Lackey

General Counsel

Colonial Pipeline Company

Chad Mills

Partner

Sutherland Asbill & Brennan LLP

Robert Viola

Director Legal and Compliance

Vitol, Inc.

Faculty Biographies

Rachel Giesber Clingman

Rachel Clingman, partner-in-charge of Sutherland's Houston office, chairs the firm's crisis management and complex litigation team. She defends companies facing litigation in multiple forms, internal and government investigations, media, criminal claims parallel to civil litigation, regulatory fines, and related legal issues. Regular clients include those in the energy, transportation, and retail consumer industries.

Ms. Clingman served as a co-general counsel for several months for a client following a major disaster. She has prepared and presented corporate executives for testimony in litigation and before Congressional committees and has testified before the House Judiciary Committee. Rachel defends clients in multi-district litigation, putative class actions, regulatory and internal investigations, and shareholder claims.

Cases include the defense of Transocean in litigation arising from the Gulf oil spill; defense of an international oil company against claims arising from alleged terrorist acts in the Middle East; and defeating an injunction to block the stock sale of an international chemical company.

She has been honored regionally and nationally for legal excellence and contributions to business and civic organizations. She is a member of the American Board of Trial Advocates (ABOTA) and was recently selected for the Benchmark Litigation inaugural list of "Top 250 U.S. Women's Litigators" in the U.S. (2012).

Ms. Clingman graduated from Rice University and The University of Texas School of Law, with honors. In law school, she served as an associate editor of the Texas Law Review and a director with the Board of Advocates.

Meredith M. Lackey

Meredith M. Lackey is vice president and general counsel for Colonial Pipeline Company, based in Alpharetta, GA. In addition to acting as the company's senior legal advisor and leading the legal team, Ms. Lackey serves as a member of the company's senior leadership team. Ms. Lackey is also responsible for Colonial's compliance program and records management program, and also serves as Colonial's chief compliance officer.

Prior to joining Colonial, Ms. Lackey served first as in-house litigation counsel and later as director of human resources for an international minerals company based in Roswell, GA. Prior to moving in-house, she was a commercial litigator at two prominent global firms.

She is an active member of the Georgia Bar Association, the Atlanta Compliance and Ethics Roundtable, and the Society for Human Resource Management. She is also a member of the Mississippi Bar Association.

Ms. Lackey received a BS from Louisiana State University and is a graduate of the University of Mississippi School of Law.

Chad Mills

Chad Mills is a partner at Sutherland Asbill & Brennan LLP. He is deputy practice group leader for the Energy & Environmental Group and focuses his practice on structured finance, project development, mergers and acquisitions, and other corporate transactions. His client base includes energy providers, developers, investors and underwriters involved in power plant and interstate gas pipeline projects. In the oil and gas areas, Mr. Mills handles acquisition and divestiture of oil and gas properties, project finance work, joint operating agreements and transportation agreements, among other transactions. In the liquefied natural gas (LNG) area, he has successfully negotiated long-term LNG purchase agreements, as well as the purchase of LNG assets and development of onshore and offshore LNG receiving facilities.

Mr. Mills was named to *The Best Lawyers in America* in the area of derivatives and futures law (2008-2012). He co-authored "Asset-Backed Credit Support," *Energy Risk* (December 2011), "Achieving True Market Value," *Fundamentals of LNG* (April 2007) and "Regulation of LNG Terminal Development and Access in the United States," *The International Comparative Legal Guide to Gas Regulation* (2006).

Mr. Mills received a BS from the University of Texas at Austin and received his JD, summa cum laude, from the University of Houston Law Center.

Robert Viola

Director Legal and Compliance
Vitol, Inc.



Incident Response Management and Complex Litigation

When an incident occurs, companies and their in-house counsel rely on the experienced Sutherland Incident Response Management and Complex Litigation Team. Our team enables in-house counsel to focus on business objectives and corporate response, confident that we will provide broad support and experience.

Sutherland's strengths include:

- **Team Approach** – Our multi-disciplinary approach brings together attorneys with the relevant industry experience and legal skills required to address specific situations. We have teams focused, for example, on pipeline incidents, offshore energy development, insurance and indemnity disputes, and onshore facility incidents.
- **Business Insight** – We are adept at balancing mid- and long-term client goals (e.g., minimizing litigation exposure) with the immediate steps required of counsel following an incident (e.g., public statements or reports).
- **Seasoned Litigators** – Our team has significant jury and bench trial experience and is known for successfully and efficiently defending disputes, managing risk, and reducing corporate financial and reputational damage.
- **Preparation** – Part of our team focuses on advance planning and develops incident response legal plans specifically designed for a client's industry and anticipated risks. This team also performs drills for clients to evaluate plan effectiveness and team responsiveness.
- **Disclosure and Communications** – Sutherland's team has worked with in-house counsel to develop and execute strategies for responding to demands for information while minimizing legal risk, promoting a coordinated message, and ensuring consistency and compliance with regulatory disclosure requirements.
- **Data Collection, Review and E-Discovery** – We have created a highly trained and experienced data review and e-discovery team that has been recognized for efficient and effective data identification, analysis and production.

Sutherland's representative experience includes:

- Representing an international drilling contractor against claims stemming from the 2010 Gulf of Mexico Oil Spill. In addition to the defense of multi-state, multi-district and class action litigation, the Sutherland team has supported corporate response to inquiries from the media, Congress, state attorneys general and regulatory agencies.
- Representing a national pipeline company in its internal investigation of a natural gas liquids leak and metal loss in multiple pipelines.

SUTHERLAND



SUTHERLAND

- Represented interested parties in a dispute and litigation arising from a volcanic eruption and subsequent flooding of an oil terminal owned and operated by a pipeline company near Cook Inlet, Alaska.
- Defended an international oil exploration and production company in litigation following an alleged terrorist attack on a drilling site in Yemen in the lead-up to the second Iraq war.
- Representing a regional pipeline company in a dispute arising from a ruptured pipeline; a third-party barge struck the pipeline while dredging, resulting in a release and litigation over damage to surrounding wetlands.
- Representing an international chemical company in response to a release of hydrofluoric acid during transport by rail.
- Represented London underwriters in litigation over the extent of offshore production insurance following Hurricanes Katrina and Rita including disputes over the period of restoration and the relation of onshore and offshore coverage.
- Representing a national pipeline company and terminal operator in litigation stemming from a propane explosion that caused property damage and injuries including the death of a minor child.
- Representing a major international importer of liquefied natural gas (LNG) in Federal Energy Regulatory Commission and federal appellate proceedings related to gas quality and interchangeability issues, including defense against allegations of pipeline infrastructure harm and gas leaks caused by imported LNG.
- Representing a multi-national publicly-held industrial company after the company's auditors alleged multiple instances of revenue recognition irregularities affecting subsidiary and parent company financials, crossing company operations in Europe, North America and South America.
- Representing a \$5 billion NYSE-listed investment company against allegations of portfolio overvaluation after a multi-year short-selling campaign led by an activist hedge fund.

To learn more about incident response, crisis management and complex business litigation visit www.sutherlandcrisismanagement.com.

For more information, contact:

Rachel Giesber Clingman 713.470.6189

Daniel Johnson 713.470.6193

Steven L. Roberts 713.470.6192

Kent C. Sullivan 512.721.2664

Jack Massey 713.470.6141

Carter L. Williams 713.470.6126

Amber B. Shushan 713.470.6153

ABOUT SUTHERLAND. Sutherland Asbill & Brennan LLP is a law firm with global reach known for solving challenging business problems and resolving sophisticated legal issues for many of the world's largest companies. Founded in 1924, the firm handles matters throughout the United States and worldwide. Seven major practice areas—corporate, energy and environmental, financial services, intellectual property, litigation, real estate, and tax—provide the framework for an extensive range of focus areas, allowing Sutherland attorneys to serve a diverse client base that ranges from small and medium-sized start-up businesses to a significant number of Fortune 100 companies.



Preparing Your Legal Department for Incident and Crisis Response

A corporate disaster recovery and business continuity plan should include defined roles for in-house and outside counsel. Additionally, in-house counsel should have a response plan to identify legal priorities following an incident. While the specific legal activities will vary based on the event and the level of public impact, well-prepared in-house counsel has considered the scope of potential event-related issues before an event has and developed a program to evaluate those and distribute responsibility. Legal plans, for example, should address:

- Creating a checklist for attorneys to prepare them to represent and coordinate with critical internal groups and react promptly.
- Assigning responsibility for determining immediate, quick-hit legal actions, such as preparing a press release or statement of material event, notifying regulatory agencies, suspending trading, etc.
- Designating an attorney to respond to subpoenas, letter requests or inquiries from government.
- Establishing procedures to protect the company's confidential and proprietary information, assert legal privileges, and protect against waiver and adverse admissions of liability.
- Preserving documents and evidence, including coordinating with IT, suspending document destruction programs and considering computer back-ups.
- Overseeing corporate statements such as the creation of relevant FAQs or the issuance of policy statements to employees, media, regulators, analysts and/or shareholders.
- Centralizing and coordinating all external corporate communications.
- Evaluating director, officer or executive indemnification issues and the need to retain a separate board or individual counsel.
- Completing necessary and appropriate disclosures and reports to governmental agencies and law enforcement agencies at the federal, state and local levels including SEC, EPA, OSHA, FINRA, etc.
- Making appropriate notification to insurers and assessing indemnity rights or obligations.
- Knowing which executives or operational persons have media training or experience with public statements following an incident.

In the aftermath of an event or incident, it is imperative that in-house counsel be prepared to quickly identify issues to be addressed and persons responsible for executing tasks and coordinating them within and outside of the company.

For more information about incident response, crisis management and complex litigation visit www.sutherlandcrisismanagement.com.

SUTHERLAND



SUTHERLAND

For more information, contact:

Rachel Giesber Clingman at 713.470.6189 or rachel.clingman@sutherland.com

Jack Massey at 713.470.6141 or jack.massey@sutherland.com

ABOUT SUTHERLAND. Sutherland Asbill & Brennan LLP is a law firm with global reach known for solving challenging business problems and resolving sophisticated legal issues for many of the world's largest companies. Founded in 1924, the firm handles matters throughout the United States and worldwide. Seven major practice areas—corporate, energy and environmental, financial services, intellectual property, litigation, real estate, and tax—provide the framework for an extensive range of focus areas, allowing Sutherland attorneys to serve a diverse client base that ranges from small and medium-sized start-up businesses to a significant number of Fortune 100 companies.

The logo for Sutherland, featuring the word "SUTHERLAND" in white, uppercase, sans-serif font centered within a blue rectangular box. Below the blue box is a thin, light-colored horizontal line.

Incident Response and Litigation CLE Courses Offered to Client In-House Counsel

The Inside Job: How to Handle Internal Investigations and Avoid Common Pitfalls

An internal investigation is intrusive, uncomfortable and often disruptive, but there are many reasons for launching an internal investigation. How does in-house counsel successfully manage an internal investigation? This program presents best practices on issues, including:

- Why should an organization conduct an internal investigation?
- Who is going to use the findings?
- Who should direct the investigation?
- How can a company establish credibility for an internal investigation in the eyes of regulators?
- How do you evaluate the evidence?
- What are the pitfalls?
- What are the expressed SEC concerns regarding internal investigations?
- What are the objectives that an internal investigation *cannot* accomplish?

Crisis Management in the Public Eye

Is your legal department prepared to manage company response to an incident or crisis? Before an event, in-house counsel should understand how communications, media, politics and legislation impact corporate exposure in the age of 24-hour media. Given the fast pace of public, regulatory and media response to an event, general counsel and in-house counsel should prepare in advance and maintain a legal department plan for incident response. This program will address the demands and timetable perpetuated by today's media and provide insight on event response and crisis management, including how corporate communications and legal departments best partner in response; how in-house counsel can protect company value and mitigate financial exposure and reputational risk; and best practices for responding to government agencies and political inquiries.

"...But I Sent It To Our Attorney...": Common Confusion Over Attorney-Client Privilege

Is everything an in-house counsel discusses with an internal client considered privileged? Can all documents an in-house counsel produces be protected work product? This program will demonstrate how attorneys and employees run into trouble because of confusion about the nuances of attorney-client privilege and the work product doctrine. Using fact-based scenarios and role-playing, including the judicial perspective, this program will examine the rules of attorney-client privilege and illustrate what in-house counsel should know to protect themselves, their clients and their employers. The program will explore what – and who – is covered under privilege and the work product doctrine, and the impact of governmental investigations and pending litigation on practical application of privileges.

Indemnification Perils: Will Your Client Be Protected When The Time Comes?

Contractual indemnity language and corresponding insurance policy language is often taken for granted and recycled year after year and in contract after contract. Many assume or hope that the language never has to be tested; if and when it does, it could have enormous consequences. Major losses and catastrophic incidents even in other industries often impact the manner in which contracts might be construed. As a result, it is critical for in-house counsel to have a strategy for assessing contractual language and ensuring that insurance coverage continues to compliment and not contradict contractual agreements. This program will address the best practices for auditing contractual indemnity language and insuring agreements in accordance with developments in the industry and in the law.



SUTHERLAND

Criminal Law in the Civil Context: What Non-Criminal Lawyers Need to Know About Criminal Law

Corporations can be held criminally liable for the acts of employees, even if those acts are contrary to company policy. In-house counsel should be familiar with criminal law issues when a client receives a grand jury subpoena or informal inquiry from the Department of Justice and/or when non-criminal matter implicates conduct for which there is a criminal penalty, such as alleged securities fraud, FCPA violations, money laundering, antitrust or tax fraud. This program explores some of the challenges presented when employees and/or agents face criminal investigations or charges. How can in-house counsel protect the corporate attorney-client privilege? What about Fifth Amendment privileges? Is cooperation desired? What type of conduct might be viewed as uncooperative? What happens to an organization that is deemed uncooperative? What are trends in federal criminal prosecution?

Managing Through Change: The New Normal – The Intersection of Social Networking and Litigation

Many employees routinely use social networks and might intentionally, or inadvertently, share sensitive information about their work, employers and clients, including trade secrets, competitive business information or insider information. On the other side, employers using social networks to gather information about potential applicants or current employees might find themselves accused of discrimination in hiring or violation of privacy. In addition, courts continue to work out how information shared via social networking should be treated in the context of e-discovery. This program will examine common scenarios faced by companies and will discuss best practices, policies and procedures to reduce the risks posed by social networking.

The Perils of Email: What Will the Jury Think?

Although electronic messaging makes communication easier, faster and less expensive, it also creates an extraordinary set of issues for both in-house and outside counsel. While most in-house counsel are very familiar with the perils of electronic messaging, and some email revelations have become legendary, the routine production and retention of data often has unintended consequences. With business professionals receiving an average of 40,000 emails per year, the burden of controlling information flow has never been more difficult. What threats should in-house counsel identify? How can a corporate legal department manage the madness? This presentation explores the risks that electronic messaging presents to in-house counsel and their retained, outside colleagues, and offers proactive solutions to prevent surprises.

Other CLE

Sutherland attorneys also provide CLE and guidance in their areas of experience. The more than 75 programs offered include energy derivative markets, international trade, response to congressional or Department of Justice inquiries, compliance with Dodd-Frank, ethics and other specific topics. For example:

Managing Expert Witnesses – Avoiding Pitfalls and Reducing Costs

Amendments to Federal Rule of Civil Procedure 26 resulted in significant changes to the legal landscape for dealing with expert witnesses. The new rules are intended to streamline the management of testifying expert witnesses and reduce the costs of expert witness discovery in federal litigation. Using examples and audience involvement, this entertaining program will demonstrate how these new rules are applied and what to do, and what not to do, when managing experts. The program will include an expert witness consultant as well as outside counsel who frequently interact with experts on various types of litigation matters.



SUTHERLAND

Ethics in E-Discovery

This program will explore the ethical issues that arise in the expanding frontiers of e-discovery. Using hypothetical scenarios, a Sutherland partner will guide participants through topics including:

- How can counsel best fulfill their ethical duty to preserve confidentiality of metadata when producing e-discovery?
- To what extent, if any, must counsel cooperate during e-discovery to fulfill their ethical obligations?
- Are counsel ethically required to be technologically competent? If they are not technologically competent, what alternatives exist?
- What are the best ethical practices to employ in e-discovery, including social media?

What In-House Counsel Need to Know About Rule 202 and Pre-Suit Depositions in Texas

Texas Rule of Civil Procedure 202 allows parties to petition for, and courts to grant, pre-suit depositions. Texas has arguably the most relaxed rule in the nation regarding pre-suit depositions, and in recent years this discovery tool has been employed with increasing frequency, generating substantial litigation. Pre-suit depositions can be dangerous because they often involve corporate witnesses providing sworn testimony before they, or their employers, are told what the issues are. This program will provide guidance to in-house counsel on how to handle Rule 202 petitions and address certain recurring issues and questions related to Rule 202 petitions.

International Trade: Current Challenges for In-House Counsel

International trade is integral to the daily activities of many corporate counsel. This program presents the basic “rules of the road” that impact all aspects of international business – the importation of parts and supplies, the export of goods and services, and the guidelines for acceptable conduct to win business. This program provides an opportunity to discuss the ways in which these changing requirements impact your company’s activity and what in-house counsel should worry about. The program will address a range of current issues and best practices, such as anti-corruption laws, antidumping and countervailing duties, economic sanctions, and export/import regulations.

Derivatives 101 / Dodd-Frank Act

Are derivatives really financial “weapons of mass destruction”? How should in-house counsel advise clients in relation to swaps, futures or other derivative transactions? Derivatives 101 is a primer on swaps, futures and other derivative transactions and the new Dodd-Frank Act regulatory regime for these transactions.

For more information, contact:

Rachel Giesber Clingman at 713.470.6189 or rachel.clingman@sutherland.com

Jack Massey at 713.470.6141 or jack.massey@sutherland.com