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## ACC's CLO THINKTANK EXECUTIVE REPORT

### “MANAGING THE GLOBAL LAW DEPARTMENT”

This Executive Report provides an overview of discussion results from ACC's CLO ThinkTank session titled “Managing the Global Law Department” held in Atlanta on November 3, 2006. ACC's CLO ThinkTank sessions are designed to provide a forum for CLOs who wish to exert greater leadership in their companies, at the bar, in the courts, and in the halls of government on emerging issues of greatest concern. Following is summary information on key topics and takeaways and discussion point highlights identified by these CLO thought leaders.

ThinkTank participants included the following legal leaders:

- Sean Bowen, Vice President & General Counsel, Internet Security Systems
- Joaquin Carbonell, Executive Vice President & General Counsel, Cingular Wireless LLC
- Marc Gary, Executive Vice President & General Counsel, Bell South Corporation
- Al Gonzalez, Executive Vice President & General Counsel, Tyson Foods, Inc.
- Zygmunt Jablonski, Senior Vice President & General Counsel, Unisource Worldwide
- Ken Houry, Executive Vice President & General Counsel, Delta Air Lines, Inc.
- Kristen K. McGuffey, Senior Vice President & General Counsel, Simmons Bedding Company
- Allen Nelson, Senior Vice President, General Counsel & Corporate Secretary, Crawford & Company
- Paul Nix, Vice President, General Counsel & Secretary, Lanier Worldwide, Inc.

### KEY TOPICS

Below is a list of key topics for global law departments selected by the CLOs present as most interesting and discussed during this CLO ThinkTank session:

- **Corporate Mergers-Integrating the Law Department**
- **Legal Staffing-Outside Counsel Considerations**
- **Role of Non-lawyers**
- **Ethics, Compliance & Risk**

### KEY TAKEAWAYS

Thought leaders participating in this session described a number of ideas and practices. Listed below are some top themes and takeaways. Ideas on additional issues are described in the Discussion Highlights section below.

- **Corporate mergers and growth by acquisition present law department integration challenges for global law departments.** Integrating law departments and approaches to compliance and ethics, and establishing the value of

in-house lawyers are all challenges that must be addressed – particularly when the corporate combinations cross country borders.

- **Outside Counsel play defined roles in countries outside of the global company’s headquarters.** Criteria for selecting outside counsel can be a challenge (e.g., is all of the work outsourced to a local firm, or certain types of legal work, or should a U.S. company use a local branch of its company’s primary U.S. counsel?). Participants also note differences in perspective and status of in-house and outside counsel in the United States and in other countries.
- **Thresholds for involving lawyers vary based on country.** Depending upon the country and a company’s culture, different triggers may apply in deciding whether matters require input from in-house lawyers. Demonstrating the value of in-house lawyers by defining contributions and setting metrics may help integrate lawyers more fully into the strategic process and enhance perspectives on value.
- **Global compliance and ethics program models and guideposts (e.g., law-based vs corporate culture-based) vary, and differing local jurisdictional requirements present challenges for companies operating in a global business environment.** How much can be ‘universal,’ and whether global standards are ‘aspirational,’ are among the types of issues participants discussed.

## DISCUSSION HIGHLIGHTS

### MERGERS & INTEGRATION

Mergers & Integration/ Challenges: Participants described the challenges associated with integrating the law departments of merged entities. Depending upon whether the law department is of the acquiring company or the acquired company, the thought process and legal risk assessments may be different. The acquiror worries about a broad range of post-closing issues; however, the acquired company might be less focused on post-closing issues. Assessing risks and the skills that lawyers have is a key challenge. There is a need to find creative ways to get the information when the seller isn’t interested in sharing. Companies sold via the auction process may experience these challenges in particular.

Mergers & Integration/ Assess Risk & Fit: One participant described use of a ‘clean room’ for data analysis. The ‘clean room’ is an online virtual data room with controlled access that can be tracked, and is described as efficient. Features of the clean room include: limited access, third party provider, the ability to track access codes, ability to ‘wall off’ certain data, access limited to investment bankers—no representatives from either side who are active employees of either company are allowed access. Another practice for assessing risk and fit is to use retired employees with great experience, judgment and knowledge of the company and a good understanding of fit. ‘Information Conduits’ is another practice described for assessing risk and fit. Use of ‘information conduits’ involves designating a set number of individuals as contacts through which to funnel and compartmentalize information.

Mergers & Integration/Mapping Processes & Assessing Legal Work: An important first step described by one participant is to map existing processes within the companies and assess the associated legal work. As part of this assessment, evaluate what law firms are being used, processes for handling issues within the corporate legal departments and the level of involvement of in-house lawyers. One participant described using this approach of mapping processes and assessing legal work as an approach used to fundamentally change what the legal department looks like. That participant’s model is now moving towards a shared services model, with legal experts who provide services across the enterprise, plus each business unit will have a business unit lawyer.

Mergers & Integration/Culture and Perspective on Use of Lawyers: Participants described the challenge associated with corporate combinations where the acquiring company has a different view on the role of in-house lawyers (and perhaps outside counsel) and expectations or need for involvement and support. This can create a challenge where work that was traditionally performed by the legal department in the acquired company does not traditionally receive support from the legal department in the acquiring company. Transitioning to the right model and communicating value of the legal department is a challenge and opportunity.

Mergers & Integration/ Models: Participants discussed which types of models for merging companies and law departments work best: pick the best practices/people in both law departments and try to integrate; invasive approach where the acquiring company imposes its structure and the acquired group is replaced; or leave things alone and allow the existing people with expertise to perform their roles and transition towards integration and change. There is a need to be prepared for ‘Day 1,’ and then to evaluate best practices on a going forward basis. One example of a best practice for integrating law departments

includes having a merged, company-wide law department meeting of all lawyers at the headquarter office of the acquired company. This is described as sending a powerful signal; integration done well can have a powerful impact.

Mergers & Integration/ Compensation: Participants describe how, in a merger situation, legal staff within the acquired company may be much more likely to embrace change if the upside of integration includes enhanced compensation opportunities. Compensation opportunities will also impact morale and retention.

Mergers & Integration/Communications: Participants described the importance of communicating with lawyers within the acquired entity. If lawyers are negative and critical, integration of the law departments will be delayed.

Mergers & Integration/ Integration Executive: Participants described appointing an integration executive to help ease the transition and coordination among merged entities and law departments.

Mergers & Integration/ When no Law Department Exists in Acquired Entity: One participant described a situation involving an acquisition in which ownership was primarily focused on operations. This situation presented the opportunity to create a new law department. The CLO went to outside law firms for legal support until deciding on the legal staffing and expertise necessary to support the entity's operations. As part of this initiative to build an in-house law department, the CLO needed to create metrics and demonstrate value provided by in-house lawyers (e.g., show that it's cost-effective to have legal issues handled in-house).

Mergers & Integration/ Global Code of Conduct: What happens when the merged entities have different codes of conduct and how are these policies, practices and cultures best integrated? These are some of the challenges relating to global codes of conduct and ethics discussed by the group (see more on this below).

Mergers & Integration/ Perspective: Participants describe differences in perspective and view of companies as they become more global: are they American companies with international businesses that generate revenues OR are they Global Companies?

#### STAFFING

Staffing/Use of Outside Counsel: Participants described their approaches to legal staffing. One CLO discussed an approach that involves being as self sufficient as possible and hiring local outside counsel around the world to help as needed. Another participant described challenges when a company is an acquired subsidiary of a foreign-owned parent that has a different philosophy on use of in-house and outside counsel. In this latter situation, cultural views and perspectives on legal work impact the processes for performing work and may mean that some work that was traditionally performed by or through the legal department doesn't get handled.

Staffing/Consistency as a Consideration: Participants discussed the importance of consistency in providing legal support, and the need for quality control mechanisms when local outside counsel support is used around the world. Business units may have global operations and they need consistent legal guidance for their operations around the world. One approach for helping to support a global business unit involved creating standard terms and conditions for business contracts using a cross-functional team that included representatives from finance, contracts and lawyers.

Staffing/Outsourcing Work to Law Firms: Participants discuss challenges associated with outsourcing a 'book of business' to a law firm. Less consistency enterprise-wide and less standardization in talent are challenges, but the upside includes cost savings. One CLO described using an RFP process and soliciting bids for a chunk of legal work to outsource; regular updates to the in-house law department are part of the outsourced relationship.

Staffing/Selecting Outside Counsel in Countries Outside of Headquarters: For hiring outside counsel in countries outside of corporate headquarters, participants discussed practices ranging from selecting the best local firm and having them handle almost all of the legal work, to selecting a single firm for certain types of engagements and having that firm handle all similar engagements to using the local office of a U.S.-based firm to build on the comfort level with the firm generally and then expanding out. They also discussed the importance of getting out there as part of the selection process and meeting local counsel in person.

Staffing/Selecting Outside Counsel: Participants discussed fact that they prefer to select outside counsel based on the lawyers rather than simply hiring a firm. Even very good law firms may have local offices outside of their country headquarters where the expertise and quality of lawyers varies.

Staffing/Pricing: Participants discussed encouraging local in-house lawyers (or business personnel if they have the authority to hire outside counsel and there are no local in-house lawyers) to insist on local pricing for legal services when engaging outside lawyers.

Staffing/Practices for Enhancing Consistency When Using Outside Counsel: Among the practices discussed by the group were bringing outside counsel together to discuss approaches and enhance consistency, and using intranets and knowledge management systems and providing access to outside counsel to help improve communications and information access.

#### ROLE OF NON-LAWYERS

Role of Non-lawyers/Thresholds for Involving Lawyers: Participants discussed how, depending on where you are in the world, business personnel may apply a different threshold for what types of matters require legal input. One participant shared that, in certain countries such as Australia, New Zealand and Canada, individuals performing the corporate secretary role are not lawyers.

Role of Non-lawyers/ Status of In-House Lawyers: Participants discussed how in-house lawyers within the United States have a higher status, and how in certain countries in-house lawyers are viewed as lawyers who are otherwise unable to get jobs in outside law firms. They also discussed differences in how degrees are viewed and how the nature of an internship may be an important consideration—even more important than where the lawyer went to law school.

#### ETHICS, COMPLIANCE & RISK

Ethics, Compliance & Risk/ Models & Application: Participants discussed a range of models, including having one strict code of conduct with the ability to tweak it based on local jurisdictional requirements and having guidelines regarding business ethics and principles describing how to conduct affairs (rather than legal standards). They also discussed a view that codes may be considered ‘aspirational’ when applied internationally and the challenges associated with making standards ‘universal.’

Ethics, Compliance & Risk/Law or Culture-Based: Participants discussed challenges in defining global codes of conduct and ethics. To what standard do companies set to when they establish global codes? Participants note that codes can be law-based or culture-based (which some also describe as corporate imperialism). An example of a challenge is where a local custom and laws may allow for certain practices which the company as a whole may view as improper and inconsistent with company culture. Participants discussed the notion that some companies may make the decision not to do business in some countries because the requirements of doing business there are so fundamentally different from the company’s culture. They also discussed how there can be tension between senior corporate management and local business managers when senior corporate management desire corporate business ethics policies and local business managers are more focused on law-based standards and what local laws permit.

Ethics, Compliance & Risk/Guidelines for Disclosure: The ‘Wall Street Journal’ test was described as one guideline for ethics questions and deciding on disclosure (internal or external) criteria.

Ethics, Compliance & Risk/Tone at the Top: Participants discussed how it doesn’t matter what the code says without the proper tone at the top. Integrity (and commitment to it at the top levels) of a company’s leaders is fundamentally important.

Ethics, Compliance & Risk/Corporate Social Responsibility: Participants discussed the notion that global codes of conduct can help companies achieve these goals, and how insisting on certain fundamental principles regardless of local standards that may be more permissive can ultimately be good business (e.g., in areas of environmental health and safety, child labor, and minimum wage where companies set certain minimal standards even where there is no legal requirement to do so). They also discussed practices extending to their vendors and their conduct.