

Profiles of In-House Counsel

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Company: AGCO Corp.

In-House Counsel: Debra Kuper

Law School: Marquette

COMPANY PROFILE

AGCO Corp. is an international manufacturer of agricultural equipment including tractors and combines, some featuring air conditioning, global positioning satellites and ergonomically designed seats, for farm conglomerates and large agribusiness companies. AGCO contains four core brands: Challenger, Fendt, Massey Ferguson and Valtra. Its distribution network of 2,600 independent dealers makes sales in more than 140 countries.

The company started out during the 19th century as a sawmill and flour-milling equipment manufacturer. It took its present form in 1990, when then-owner Kloeckner-Humboldt-Deutz A.G. sold its American farm-machinery business to its managers.

AGCO maintains headquarters in Duluth, Ga., near Atlanta. It had 14,300 employees as of Dec. 31, 3,300 of them in the United States and Canada. Last year the company reported net sales of \$7 billion and ranked No. 340 on the *Fortune* 500.

LEGAL TEAM AND OUTSIDE COUNSEL

AGCO's legal team totals 37 people, of whom 25 are attorneys (including 15 women); the rest are paralegals, legal assistants and clerks. All but three of General Counsel Debra Kuper's staff are located outside North America. She handles hiring for all outside law firms in North America and monitors her direct reports' hiring of overseas counsel. She turns to outside firms for labor and employment matters, products liability litigation, real estate, mergers and acquisitions, immigration and intellectual property work.

Working with a third-party vendor, Kuper whittled down AGCO's list of outside counsel, achieving annual savings of \$4 million through a blend of alternative and traditional billing. She favors firms that are flexible regarding rates. She pushed for a flat rate for bulk work, such as processing visa applications, which used to be done on an hourly basis. For mergers and acquisitions, she pays flat fees for due-diligence work, but hourly rates for drafting the agreements. She maintains a retainer relationship with Troutman Sanders Strategies to handle AGCO's lobbying needs. Kuper's outside counsel also accommodated her request for lower hourly fees to handle work for which hourly billing is the norm.

Among her outside firms are Baker & McKenzie (for immigration); Atlanta's Freeman Mathis & Gary (for North American labor issues); Hovey Williams of Overland Park, Kan. (intellectual property); Kansas City, Mo.'s Shook, Hardy & Bacon (for regulatory matters); and Atlanta-based Troutman Sanders (securities and mergers and acquisitions).

DAILY DUTIES

Kuper is responsible for all of AGCO's legal matters, including litigation strategy, regulatory and securities filings, executive compensation, mergers and acquisitions, joint ventures, corporate records and minutes, resolutions and obtaining consents of the board. As global chief ethics and compliance officer, she manages 18 compliance officers and controllers. Kuper is a member of the senior management team reporting to Chairman and Chief Executive Officer Martin Richenhagen. She also checks in with Chief Financial Officer Andy Beck.

Kuper keeps up with the laws and regulations in jurisdictions where AGCO does business; namely, North and South America, Europe, Africa, the Middle East and Asia. Her travel log reflects the scale of the company's interests — she has amassed 455,000 miles with Delta Air Lines, 134,000 of them thus far this year.

Regarding union activity, most of the manufacturing employees, both domestic and international, are covered by collective-bargaining agreements. Given AGCO's extensive foreign interests — it conducts around 70% of its business overseas — the legal department regularly handles immigration issues.

LOBBYING AND SECURITY

Kuper meets with lawmakers to discuss issues affecting the company and the agricultural industry. Genetically engineered crops and a project to transform corn cobs into ethanol are two hot topics at the moment. She represents AGCO in discussions with the U.S. Environmental Protection Agency regarding initiatives involving greenhouse gas reporting and emission certifications.

She chairs the company's data-privacy steering committee, which has been exploring options for handling international data transfers. The panel's goal is to overcome restrictions imposed by stringent European privacy laws and regulations. AGCO hopes to certify under the U.S. Safe Harbor Accord, an attempt to allow the free flow of data between the United States and Europe while upholding more stringent European personal privacy protections.

CAREER HIGHLIGHTS

Kuper handled negotiations that led to a 2009 settlement with the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the U.K. Serious Fraud Office and the Danish State Prosecutor for Serious Economic Crime. Those agencies had been looking into allegations that subsidiaries had kickbacks on sales of humanitarian goods to Iraq under the U.N. Oil for Food program. She created an anti-corruption compliance training program for 300 senior managers and updated the company's global code of conduct.

AGCO recently completed acquisitions in China and Russia, and is considering additional purchases in Africa. Kuper has been busy conducting due diligence in these regions, which she described as "high-risk, from a compliance standpoint."

ROUTE TO THE TOP

Kuper graduated from the University of Wisconsin in 1993 and was awarded her law degree in 1997 by Marquette University Law School. Her first job was at a private law firm, and she taught as an adjunct professor at Marquette. She moved in-house with construction equipment manufacturer Case Corp., which later became CNH Global N.V. Beginning in 2001, she served in high-level legal positions at Tenneco Inc., Wal-Mart Stores Inc. and Caterpillar Inc. Caterpillar sold its farm-equipment line to AGCO Corp., and when AGCO's general counsel retired Kuper was invited to come aboard. She did — on Jan. 1, 2008.

PERSONAL

Kuper hails from a farming family in Galesburg, Ill. She has two sons: Aaron, 23, and Luke, 22. Her husband, Alberto Fornaro, is the chief financial officer of an Italian mining company. Kuper's hobbies include running in 5,000- and 10,000-meter foot races, going to museums and immersing herself in the theater and opera. She is a former board member of the Peoria Symphony Orchestra in Illinois.

Her words of advice for an eventual successor: "Remember that you are a businessperson who just happens to be a lawyer. Always be thinking of ways to help the business grow or to resolve legal issues, rather than saying 'No' to everything."

LAST BOOK AND MOVIE

Kuper is in the middle of Novel No. 7 of *The Complete Tudors: Nine Historical Novels*, by Jean Plaidy; and *The King's Speech*.

Roger Adler
June 20, 2011

Company: Affymetrix

In-House Counsel: John Frederick (Rick) Runkel

Law School: UCLA

General Counsel Rick Runkel is helping biotech firm Affymetrix Inc. move its DNA analysis tools directly into the hands of patients.

With the perks of personalized genetic testing come ethical dilemmas: Do people have a right to information about their own genetic makeup? Should they be able to get it over-the-counter?

The general counsel of Santa Clara-based biotechnology company Affymetrix Inc., Rick Runkel, is wading into that fray as his company moves its research and business interests "downstream," from technologies that help researchers analyze DNA to those that deliver genetic information directly to patients.

Over the years, Runkel has become passionate about advances in medicine. He spent the first 17 years of his legal career as a commercial litigator, primarily at Sheppard Mullin Richter & Hampton in San Francisco. But in 2001, he answered the siren's call of the in-house gig, when he became general counsel for client VISX Inc., a maker of laser eye surgery machines now owned by Abbott Laboratories Inc.

The VISX position was a trial by fire. Runkel immediately dove into defending the company's management against a multiyear proxy challenge from the well-known activist investor Carl Icahn, who sought to take over the company's board in a coup. After VISX's sale in 2005, Runkel spent several years as general counsel of surgical robotics company Intuitive Surgical Inc.

In 2008, he joined Affymetrix as its lead lawyer. He recently sat down with Daily Journal staff writer Jill Redhage to talk about how he protects the biotech's core intellectual property while plunging into the inspiring, uncertain world of personalized medicine. Here's an edited transcript of what he had to say:

DJ: Are microarrays [which help researchers study human and animal genomes] the company's core technology? What are the company's other key intellectual property assets?

Runkel: Arrays are still a very important part of our business, and it's a great foundation to have because it's a consumable business, which means we have a great installed base that continues to use our products. But what we want to do really is to move downstream and spend more time now in the area of diagnosis and preventative medicine.

DJ: My understanding of the market for microarrays is that they've been the technology of choice among scientists for a while, but are slowly being replaced by DNA sequencing technologies as those improve and become less expensive. How do such market realities affect how the company protects its patent portfolio here and abroad?

Runkel: Your question has to do with the effect of [DNA] sequencing on the marketplace, and it's one that is debated, especially in the financial markets lately. Our position is that the advent and rush to the sequencing technology is not the death knell for microarrays. What's happening through sequencing is that more and more data regarding the genome is being discovered. As that data is discovered, the opportunity for putting it to use comes to the forefront. That's really what our arrays do; we take data that's been discovered and then we package them into a format that is usable for researchers. We really feel that the advent of all this sequencing technology - and some of our competitors have been doing a lot of work in that area - is going to result in a much richer database that will then be available for use through the array. I think there are going to be many uses for microarrays going forward, especially as entities continue to develop human diagnostic tests that are intended to take advantage of genetic information.

From the standpoint of how we protect our IP, we have a pretty broad-ranging intellectual property portfolio, and we've been very active in licensing. We have licensed much of our key IP to major entities in the pharmaceutical industry.

With the large number of scientists that we have here at Affymetrix, it is fertile ground for new IP development. We have a number of professionals in the legal department whose sole purpose is to work with the scientists to take their ideas and produce patents. Our department is smaller than it used to be, so we have to perform a lot of functions with fewer people, which is a situation that many companies find themselves in these days. It requires us to be thoughtful in how we allocate our resources.

DJ: How is Walgreens' decision to sell the Pathway Genomics' Insight Saliva Collection Kit being viewed in your industry? [Walgreens halted the sales pending potential FDA review of the tests]. What do you think the FDA will decide to do?

Runkel: I think that people are very interested in this move by Walgreens, and by companies like 23andMe and Navigenics, which are attempting to bring genetic testing to the general public. The Walgreens test analyzes saliva samples to assess a person's risk of getting certain diseases by looking at genetic markers. Walgreens' announcement caused a bit of an uproar, and the test has been withdrawn from their stores. The test had not been approved by the FDA, and the FDA issued a statement condemning the marketing of the test, arguing it had not been proven safe, effective or accurate in the eyes of the agency.

The FDA has made clear that it intends to increase its oversight of genetic tests used for human diagnostic purposes. This is an area that is developing right before our eyes, and I think it's a very safe bet that any mass-marketed tests using genetic information for human diagnostic purposes are going to be subject to careful FDA regulation.

DJ: Do you have your own personal opinion about how personal genetic testing should be handled? What is Affymetrix's stance?

Runkel: Ultimately, the promise of personalized medicine is huge. There is no doubt that a person's genetic makeup can affect how they react to certain medications and can help determine whether they have the propensity to develop certain types of diseases. There are several tests on the market now that are being used to address breast cancer, to analyze the origin of cancerous tumors, and to assist in the treatment of heart disease, with many, many more in the pipeline.

We are working in our own labs and with business partners on the development of a number of tests and are involved in ongoing discussions with the FDA regarding an appropriate regulatory path for such products. We believe that such tests, when administered and interpreted by health care providers, have the potential to revolutionize the diagnosis and treatment of disease. But it is critical that the information developed through the use of these kinds of tests be interpreted by health care professionals.

DJ: What acquisitions has the company made, and what are its M&A plans for the future?

Runkel: In 2008, the company did three smaller acquisitions, less than \$100 million [each], to develop some platforms that we felt were important to the future of the company. I would expect that we're going to continue to do acquisitions as we go forward and move downstream into the testing market. There are a number of small companies that are in the process of developing potential tests that might be used for human diagnostic testing, and I think that many of the big players in the industry are active in evaluating the potential of those companies. There's certainly the prospect that there's going to be some M&A in our industry and that we would participate.

DJ: What are some of the firms you use for outside counsel?

Runkel: We have a strong relationship with Davis Polk. They've historically represented the company in connection with corporate and commercial matters.

For litigation, I'm very interested in hiring the lawyer, so I have relationships with people that I've developed over time so I understand how they work their cases and I know what their expertise is. For the Illumina case [a patent infringement lawsuit filed by a competitor in federal court in Wisconsin], for instance, I hired lawyers at Wilson Sonsini - Ron Shulman and Roger Chin - who are people I've worked with in the past who I think are very capable. With regard to the E8 case [a patent infringement case filed by E8 Pharmaceuticals and the Massachusetts Institute of Technology in Massachusetts], we actually have some lawyers that used to work at Affymetrix who are now partners at Dewey & LeBoeuf, in particular a group headed by Mike Malecek and Pete Root. They are very capable lawyers who have a deep understanding of our

technology. That case in particular requires such an understanding. For IP litigation purposes, Wilson and Dewey are the two firms that I would rely on at this point.

From the standpoint of transactional intellectual property and related issues, Sandra Wells [a lawyer and vice president of intellectual property at Affymetrix] works closely with Cooley. There are also a number of smaller service providers that we use who have generally worked for large firms and have opened their own shops or gone to smaller shops, and we know their work and know that they provide good value.

Jill Redhage

June 14, 2010

Company: Allergan

In-House Counsel: Samuel Gesten

Law School: Boston University

As Allergan's top legal counsel, Samuel Gesten oversees in-house handling of critical FDA compliance issues for beauty-medical products like Botox, but also looks to a fleet of outside counsel to defend against product liability litigation.

Lawyer Samuel Gesten was living and working in Massachusetts when he had the epiphany a couple of years ago that he was fed up with cold winters, so it's fitting that his subsequent move to Southern California brought Gesten to the company that trademarked the phrase "science of rejuvenation."

Gesten serves as executive vice president, general counsel and assistant secretary for the health care company Allergan Inc. Gesten also sits on the company's executive committee.

Allergan is best known for its beautifying medical products such as Botox, Juvederm, Natrelle breast implants and the ubiquitous Lap-Band, a weight loss device currently promoted on billboard advertisements. The publicly traded, global Fortune 500 company has seen enormous growth in recent years, and plenty of high-profile litigation along with it. One of the most controversial and closely watched cases involving the company is an ongoing lawsuit filed last year by Allergan against the federal government, claiming that restrictions on promoting off-label uses of Botox violate the company's First Amendment rights and prevent it from freely sharing important information with doctors. Allergan has also been the target of numerous product liability cases.

Gesten graduated from Boston University Law School in 1987. He worked for the firm Thelan, Marrin, Johnson & Bridges (a predecessor to the now dissolved Thelan LLP) in Los Angeles and then in the California Department of Justice before returning to Massachusetts to work for Thermo Fisher Scientific, a provider of analytical instruments, laboratory equipment, software and other services to pharmaceutical, biotech, hospital and other customers. Gesten spent 11 years there before returning to L.A. County and joining Allergan in June 2009.

Gesten lives in Manhattan Beach with his wife, Charlotte, a graphic designer, and their two teenage children. He recently spoke with staff writer Anna Scott about his day-to-day duties managing Allergan's 60-person legal team and some recent legal challenges. Here is an edited version of what he had to say:

DJ: What is a typical day like for you?

Gesten: The great thing about my role is there are few typical days. Generally, what I find myself doing is supporting either requests from the board or matters that need to go before the board, requests or issues that any of our business leaders have, and a lot of issues that come up from people on the legal team and trying to help them do their roles.

DJ: What legal work do you spend the most time on?

Gesten: Let me start by laying out what the department looks like. I think it reflects the amount of work that comes in. We've got about half a dozen intellectual property lawyers - as an innovative company, intellectual property is the lifeblood of what we do, so we direct a lot of resources there - and in addition to those IP lawyers they have patent agents as well that support them. Life cycle management issues, patent issues, trademark issues all come up, and depending on what they are I might get involved in one of those, but we have a great leader in that group named Debra Condino who tends to manage those matters pretty well. Being in the industry we're in, we have plenty of litigation, so depending on whether there's a trial coming up or not, I will be talking to the head of our litigation department. We spend a fair amount of time on corporate governance issues, making sure that we're staying abreast of the latest changes and that we're compliant with them. Thirty-five percent of our revenue comes from outside the U.S., so we have three lawyers in Europe and three lawyers in Asia, and at any time something comes up from any of those regions that will get its fair share of my attention. We also have roughly \$2 billion on the books, so we're very active from a business development perspective, and we have a mergers and acquisitions team that keeps us busy so I'll be asked to get involved with that on occasion as well. As a health care, pharmaceutical and medical device company we are highly regulated and we've got a regulatory team and a lot of time is spent thinking about what our strategy is for various products around the world.

DJ: What kinds of work do you hire outside counsel for?

Gesten: What we ultimately send out breaks down into a couple of buckets. First, areas where we lack the expertise internally, we'll go outside. Second, as a leanly staffed legal organization, when we simply don't have the resources we'll go outside, and third, for issues where we just want general advice or a cutting-edge part of the law, we'll go to outside counsel and get advice there. Further, we don't do any litigation internally. We oversee it and manage it, but the actual handling of cases we out source. Patent prosecution work, some of that goes outside as well. We do plenty of it internally, but we're very active on the IP side so we also go out.

DJ: What are some of the firms you work with?

Gesten: Globally, we probably use several hundred firms. The frequent fliers with Allergan are Latham & Watkins for corporate and mergers and acquisitions work, Gibson, Dunn & Crutcher for litigation, K&L Gates for patent prosecution, Snell & Wilmer for product liability, Sheppard Mullin Richter & Hampton for a variety of commercial matters and real estate, and Paul Hastings for employment matters.

DJ: Last year Allergan filed its lawsuit against the FDA and the Justice Department, challenging restrictions on promoting off-label uses for Botox. What's that status of that case?

Gesten: The case is still pending. The hearing date has been continued and has not yet been rescheduled.

DJ: In the meantime, it's been estimated that as much as a third of Botox sales are from off-label uses. How do you handle advising doctors on safely administering Botox in those instances under current FDA guidelines?

Gesten: Like many other pharmaceutical companies, we've set up structurally an organization that handles off-label questions and then can provide information. Those are medical specialists who are separate from the sales force. These are folks who are committed to absolutely following all of the rules and requirements of their jobs and they know what they can and cannot say.

DJ: That lawsuit isn't the first time the company's been aggressive in initiating litigation. There is also the suit to recover \$460,000 in legal costs from a family that unsuccessfully sued Allergan over the death of a child with cerebral palsy who had received Botox treatments. Why? I would think for a company as big as Allergan, that's a drop in the bucket in exchange for a lot of bad PR.

Gesten: First, that's a tragic case and our hearts go out to Mrs. Spears for the loss of her daughter. The jury listened to roughly a month's worth of testimony and ruled that Botox had no role in her daughter's ultimate demise, which was

supported by the evidence and the testimony. Separate from that, it wasn't a separate suit but as part of that action, as is customary in California, we filed a civil code section 998 settlement offer, which they declined. Just by nature of that statute, the party that prevails is then entitled to recover costs after that 998 request had been sent out, and that is simply what we did through the course of litigation. Since then, we have dropped that request and since then Mrs. Spears has dropped her appeal.

DJ: There have been reports that Latisse, Allergan's prescription-only eyelash enhancer, has been easily available over the counter from online sellers or even in health clubs or salons. Has the company taken any legal measure to curb those sales?

Gesten: I'm glad you asked. Let me first clarify, it's not Latisse that's available over the counter. Rather, it's knockoffs and other unapproved drugs. To be clear, the active ingredient in Latisse is regulated by the FDA. We have spent a lot of time and much money obtaining approval from the FDA to sell Latisse. There are numerous products that do not have that approval and yet these products are being given to people who don't even realize that what they are using for aesthetic purposes could have an adverse medical effect on them if they're not fully informed. We have repeatedly gone to the appropriate authorities, including the FDA, and sought their assistance.

DJ: What have you asked them to do?

Gesten: For our industry there are regulations as to the appropriate manufacturing of drugs and then for the appropriate promotion of them. There are a whole host of people we compete against that have done none of those things, so we're asking the FDA to simply require these companies to follow the rules which are in place for patient safety and to make sure that they're not using a product that doesn't do what it's claimed to do. While there are the limited circumstances where a physician who is a customer of ours may sell Latisse in an inappropriate manner, we then immediately contact them and ask them to cease and desist.

DJ: The Lap-Band has only been recommended by the National Institutes of Health as a last resort for morbidly obese people, but it's been heavily marketed, often by medical providers, on billboards, on television and in radio ads as an easy weight loss option. Does that open up Allergan to any liability?

Gesten: No. We can't control everything our customers do. We obviously are a compliant company, and we expect and hope that our customers will do the same. But at the end of the day, they don't come to us either for our artistic input into what they say, nor the substance of it, to make sure that it complies with the FDA's requirements for what is considered appropriate promotion of medical devices.

DJ: Is there any concern on your part, even if your company is doing everything it needs to do, that you created this product, it might not be used properly and people could experience terrible side effects?

Gesten: Sure. We are an industry leader with a fantastic reputation and anything that any of our business partners does that could tarnish or diminish that concerns us. We also recognize that we can only go so far in the amount of advice we can give to our business partners because ultimately they can control their own destiny.

DJ: Do you have any hobbies ?

Gesten: No, I'm all law all the time. I'm kidding. I am golfing a fair amount now that I'm in warmer weather, and I do a fair amount of running and hiking. I have a 16-year-old daughter, and we're playing tennis a lot - I played a lot of tennis as a kid - and a 13-year-old son, so I'm learning how to play lacrosse with him.

August, 2010

Company: Autodesk

In House Counsel: Pascal Di Fronzo

Law School: UC Hastings

Founded in 1982 upon the release of its AutoCAD software, Autodesk Inc. has become a leader in providing 2D and 3D modeling software and design tools to architects, engineers and now the movie industry. The publicly traded company (Nasdaq: ADSK) is based in San Rafael. The company reported revenues of \$1.7 billion in fiscal year 2010, a 26 percent drop from 2009. But revenue for the three months ending April 30 were up 11 percent over the same period last year. The company has 7,000 employees.

LEGAL TEAM AND OUTSIDE COUNSEL

Autodesk General Counsel Pascal Di Fronzo, 46, oversees a department of 65 attorneys, contract managers and paralegals — about half of whom are based in North America. The rest are located in Europe and Asia. Di Fronzo also manages the company's government affairs and corporate development functions. The in-house team handles securities, corporate governance, intellectual property, public policy, corporate transactions and employment matters.

Di Fronzo turns to Morrison & Foerster for litigation and intellectual property matters, and to Wilson Sonsini Goodrich & Rosati and Skadden, Arps, Slate, Meagher & Flom for securities, mergers and acquisitions, and corporate governance. He employs Baker & McKenzie for tax issues, DLA Piper for employment and Fish & Richardson for patent prosecution.

"I like to use a variety of firms," Di Fronzo said. "It's difficult to find a firm with a strong caliber in every area. I also use firms in various regions as needed. It's hard to find a global firm that's everywhere we need them to be."

Like many general counsel, Di Fronzo expects his outside counsel to understand his company's goals and business objectives. If not, he said, "They might maximize billable hours and not necessarily be as efficient as you want them to be."

Di Fronzo has negotiated flat fee arrangements, with patent prosecution as an example of an area suited to those deals. He has experimented with various fee structures for litigation, as well. As a software company with a large patent portfolio, Autodesk has been sued over the years for patent infringement by "patent trolls."

"We are seeing more litigation in IP," Di Fronzo said. "They are as aggressive as ever."

Not surprisingly, the company has been involved in the debate over patent reform. "We believe some reform is needed," he said. "Some has been achieved in the courts, but still more is needed." Autodesk is a member of the Business Software Alliance — a trade group that has been vocal about reform. The company is particularly interested in damages and how they are calculated — one of the issues at the heart of reform efforts.

Di Fronzo is also concerned with venue shopping and the quality of patents that are issued by the Patent and Trademark Office. He is also closely watching the various reforms now being debated in Congress as a result of the financial crisis, as well as emerging issues in privacy and data security.

Autodesk has also entered the environmental business, as one of its newer tools helps architects design buildings that will meet LEED energy efficiency certification by the U.S. Green Building Council.

One of the company's products was also used to help create the film "Avatar."

Although the company cut employees last year as a result of the downturn, there has not been noticeable uptick in employment litigation. In January, the company did settle a major trademark infringement case it had brought against a competing software developer, SolidWorks Corp., for the use of the name DWG to identify design files. Autodesk, which was represented in San Francisco by Morrison & Foerster's Michael Jacobs, reached a confidential settlement with SolidWorks on the eve of trial.

The company has an aggressive acquisition strategy, typically focused on acquiring technologies and new product lines. Wilson Sonsini, which has worked with Autodesk since it was incorporated, handles domestic deals, while Di Fronzo uses a mixture of in-house counsel and local counsel for international transactions.

Di Fronzo prefers to hire attorneys who exhibit a passion for their work. "It gives me a level of confidence if they enjoy what they do," he said.

Di Fronzo reports to Carl Bass, Autodesk's chief executive officer.

ROUTE TO THE TOP

Di Fronzo joined Autodesk in 1998, and became GC in 2006, replacing longtime General Counsel Marcia Sterling. From 1989 to 1995 he worked at Wilson Sonsini, and from 1995 to 1998 at Ross, Dixon & Masback in Irvine. He earned his law degree at Hastings College of the Law in 1989 and has a degree in political science from UCLA.

DAILY DUTIES

Di Fronzo begins his day at 7 a.m. and typically finishes about 6 p.m. He resumes working in the evening after his children, ages 8 and 11, go to bed. He travels to Europe and Asia once a year, and recently returned from trips to Washington, D.C., and Korea.

PERSONAL

Di Fronzo lives in Kentfield with his wife and two children. His hobbies include travel, photography, hiking and biking.

LAST MOVIE

With Autodesk supplying some of the software for filming, Di Fronzo had the added motivation to see "Avatar" recently. He also saw "The Blind Side."

06-04-2010

Company: Cadence Design Systems

In-House Counsel: James Cowie

Law School: Stanford

Helping Turn Around Cadence

Cadence Design Systems Inc. is the largest player in the so-called electronic design automation (EDA) space. Founded in 1988, the San Jose-based company supplies the software used to design computer chips. Accounting fraud allegations rocked the company in 2008, resulting in the departure of several senior executives, including longtime General Counsel R.L. Smith McKeithen. Cadence has since revamped its top leadership with the appointment of Lip-Bu Tan as president and CEO. Tan, formerly CEO of VC firm Walden International and a fixture in Forbes magazine's Midas List, has been widely credited with helping turn the company around. Cadence has acquired five companies since 2003, and on May 13 announced the purchase of fellow EDA concern Denali Software Inc. of Sunnyvale for \$315 million in cash. Traded on the

Nasdaq (CDNS), Cadence employs approximately 5,000 people and reported 2009 revenues of \$853 million, down 18 percent from \$1.04 billion in 2008.

LEGAL TEAM AND OUTSIDE COUNSEL

James Cowie, 45, is senior vice president, general counsel and secretary, and heads Cadence's 27-person legal department. His team has 13 licensed attorneys and supports the company's worldwide commercial group, R&D group, human resources, government affairs and stock administration. In-house attorneys in the commercial group, several of whom are based in Boston, London, Shanghai and Yokohama, handle mostly contract work focusing on customer and vendor relationships and any other sales-related legal matters. The IP group supports the R&D department and manages the company's patent portfolio. One attorney is assigned to handle employment law issues and oversees all litigation.

As for outside counsel, Cowie is one of those GCs who says he hires individual lawyers as opposed to law firms. His list includes Stewart McDowell at Gibson, Dunn & Crutcher, Cadence's go-to person for corporate securities and M&A work; and Michael Murphy at Wilson Sonsini Goodrich & Rosati for patents and IP transactions. Cowie also maintains a sizable list of solo practitioners in and outside the state, many of whom have a longtime relationship with Cadence, either as part of the company's in-house group or as former attorneys at a large firm. For example, Heather Bell, a former associate at Gibson, Dunn now at Mitchell Williams in Little Rock, Ark., still does some of Cadence's corporate and M&A work. So does Glenn Newman, a former Cadence in-house commercial attorney in Japan who now runs a solo practice in Portland, Ore.

"You make such an investment with your outside legal team that once we have that relationship and they've become familiar with your business, it doesn't really matter so much which firm they work for or where they are," Cowie said. "What we value most in outside counsel is responsiveness, specialized expertise and the ability to apply that in a practical way."

Cadence is currently faced with a half-dozen shareholder and derivative class actions stemming from allegations the company misreported \$24 million in revenues in the first quarter of 2008. In addition to Gibson, Dunn, Cadence has hired attorneys at Skadden, Arps, Slate, Meagher & Flom for those matters.

DAILY DUTIES

Cowie doesn't have a typical day, although most start with a call in Europe and end with a call in Asia with his team members. "I don't really have a routine, my work schedule is all over the map," Cowie said. "Part of my job is to deal with crises and manage crises, whether they are big or small. Managing crises or challenges is probably one consistent theme of my job and that's what I enjoy doing."

Cowie's equanimity is probably what makes him well suited for his job. Being promoted to GC at a time when top management has been upended is not for the faint of heart. But Cowie said he was ready. "My predecessor trained me well for the job," he said, referring to McKeithen. "He was a tremendous mentor and did a wonderful job training his people."

Cowie reports to CEO Tan.

ROUTE TO THE TOP

Prior to being promoted to his current position, Cowie spent two years in a hybrid legal and business role at Cadence as corporate VP for business development, associate general counsel and assistant secretary. "I remained a corporate lawyer but I also handled the business negotiation, execution and integration of M&A transactions," Cowie explained. Before joining Cadence in 2000, Cowie was in-house counsel for several divisions of National Data Corp. in Atlanta. He also worked as an associate at Troutman Sanders in Atlanta after graduating from Stanford Law School in 1993. He did his undergraduate work at Duke University and served four years in the U.S. Navy.

PERSONAL

Cowie, who spent most of his childhood living in such exotic places as Somalia, Lebanon and Tunisia, ended up in Atlanta after his father's overseas business career was cut short by a Lebanese civil war. He now lives in Palo Alto with his wife of

21 years and their daughters, ages 14, 12 and 8. He enjoys playing basketball and golf and running with the family dog, Tyler.

LAST BOOKS/MOVIES

An avid reader, Cowie often reads books two at a time. Currently, he's rereading Antoine de Saint Exupery's "Wind, Sand and Stars" and the "Count of Monte Cristo" by Alexandre Dumas. Cowie is also a movie buff and has a family tradition of watching certain movies at certain times of the year. For spring, it's been an endless rerun of his favorite movie "The Princess Bride."

Xenia Kobylarz

06-02-2010

Company: Chevron

In-House Counsel: John Dotson

Law School: USC

John Dotson is helping steer Chevron in the direction of renewable energy generation.

As a 10-year-old, John Dotson wrote to President Richard Nixon soon after the creation of the Environmental Protection Agency and the first Earth Day celebration, urging that the event be commemorated every day. For his senior high school physics project, he built his own solar water heater, which was more a labor of love than a usable device.

Now Dotson gets to build on his passion by helping plaster rooftops with solar panels and improve renewable energy technology as the legal head of Chevron Energy Solutions. The company, a division of San Ramon-based Chevron Corp., has developed projects such as a rooftop solar and energy efficiency project for San Jose Unified School District, the largest of its kind at a K-12 school level nationwide. The company's other projects include installing a fuel cell for Santa Rita Jail in Alameda County and waste to energy projects for wastewater treatment plants.

While Chevron does not break out revenue figures for Chevron Energy Solutions, company officials say the 10-year-old company's size ranks it as one of the top five energy services companies nationwide. Dotson came to Chevron Energy Solutions three years ago from Chevron's major capital projects division. Before that, he worked in house at companies such as Premium Power, focused on energy storage, technology company I-Thrane PLC, and defense company Raytheon Corp.

Dotson started out in private practice doing corporate work at Baker Botts and Kirkland & Ellis. In his spare time, the Connecticut native enjoys reading fiction, playing poker and hiking. Daily Journal staff writer Fiona Smith sat down with Dotson recently to talk about Chevron's search for the next best form of energy, how Chevron Energy Solutions is advancing renewable power and the challenges of legal work at the company. The following is an edited transcript of their conversation:

DJ: What does Chevron Energy Solutions do and how does it fit into Chevron as a whole?

Dotson: We're the energy efficiency and utilization of renewable energy sector of Chevron. We've evolved from primarily an energy efficiency company into a large user of renewable power combined with our energy efficiency projects, so over the years we've averaged energy savings of about 40 percent per project, which is a tremendous pickup.

We see [energy efficiency] as the greenest form of energy - energy not used or energy saved. So most of our projects now combine the energy conservation measures with green or renewable generation. Within the larger Chevron portfolio,

we work with Energy Technology Company and Chevron Technology Ventures in what we view in a very synergistic way, because a lot of the enterprise expertise with respect to installation and operation as well as evaluation of renewable energy resides right here.

ETC among other things is always looking at the next best technology piece for the energy industry, whether it's in fossil fuels or renewables. We also have a venture investing arm so CES helps technology ventures and ETC evaluates different technologies that are brought forward for either use by Chevron or investment by Chevron in hopes that they'll become viable options.

Another key service that we provide, that Chevron as a whole provides, is actually getting a lot these leading edge technologies into the field and in operation under real life operating conditions. A lot of technologies work well in the lab or the desktop but as they're scaled up and put into mass production, they frequently fail and what these nascent technologies are screaming for are actual operating use and very few people are willing to stake their company's well-being on putting these actually on line.

DJ: Are most of the projects you do for Chevron itself or outside entities such as school districts and municipalities?

Dotson: Third parties, municipalities and school districts are our largest client base. I believe Chevron is our largest single client. We have a huge energy spend across the enterprise. It's north of \$5 billion, so if we can improve our own efficiency, it's a huge pickup, eliminating greenhouse gas emissions, plus operating efficiencies so we think we have a nice contribution and we'd like to make it bigger.

At Chevron, we want to be the preferred energy provider of the future so for everyone with whom we have contact, we want to be the preferred company and our division is part of the equation. We don't know what the form of energy is going to be in 50 or 100 years, but certainly we want to be a significant player.

DJ: There are a lot of solar companies out there, large companies as well as startups and a lot of them are helping people get over the high cost of financing solar. I'm wondering whether they are your direct competitors and how CES is different.

Dotson: In some respects. We don't do residential solar installations and I think a lot of that is geared toward individual residences to help them get the tax credits. We are very active in putting together financial solutions for our customers, many of which require, eventually when the package is put together, no money up front and in fact just net savings. We put together power purchase agreements so the client can have a steady, predictable energy cost, and sale lease backs with certain financial investors. But now given the cost of electricity in the United States, you really need the various incentives to make, on a pure dollar-for-dollar basis, solar competitive. We help with all that; we help clients identify different federal and state incentives.

DJ: A skeptic might look at CES and wonder whether its goals are in opposition to Chevron's main focus, extracting fossil fuels and selling as much fossil fuel as possible. How would you respond to that?

Dotson: We want to be the preferred energy company of the future. We're already the largest producer of geothermal energy in the world. Right now, we believe we're the biggest installer of solar energy in K-12 schools in the entire country. We'd love to grow this business as fast as we can. We do it on a prudent basis. For instance, the Casper Wind Farm by our global power group - it took an old Texaco or Unocal site and converted it into a wind farm in Wyoming. So I think the sheer size of our renewable investment dwarfs by far the other green funds. We are actively looking for the next best form of power and people have been looking for it since kerosene lamps and Thomas Edison's first light bulb.

DJ: Can you describe the legal work at CES?

Dotson: We are responsible for assisting and documenting every transaction into which we enter, from the initial structuring to negotiating and drafting all the contracts - including, depending on the form of the transaction, assisting with aspects of the financing.

DJ: How do you allocate your resources between in-house and outside counsel?

Dotson: We have a litigation management group that oversees litigation and helps us with litigation strategies. Depending on the workload and the complexity of a transaction then we'll go to outside counsel if we don't have the capacity to give the deal the attention it deserves or the expertise. In certain areas of financing or the more complex deals, we definitely need outside help. At CES, we use Pillsbury and Jones Day for transactional and for government contracting a firm called Smith Pachter McWhorter.

DJ: What's the biggest challenge about being general counsel of CES?

Dotson: Probably just having enough time to do what we want to do. We have so many opportunities and ideas to expand and potential deals that together we need to allocate our resources and decide which we're going to pursue.

Fiona Smith

6.21.2010

Company: DaVita Inc.

In- House Counsel: Kim Rivera

Law School: Harvard

U.S. Health Care Reform and an international expansion is keeping Kim Rivera, general counsel of kidney dialysis services company DaVita Inc., busy navigating new regulations.

In her second year as general counsel of DaVita Inc., Kim Rivera is leading its legal team at a critical time for the company with a unique niche in the health care industry. The Fortune 500 company provides health care services for more than a quarter of Americans who need kidney dialysis, a life-saving procedure for patients whose kidneys have failed.

Since 1972, Medicare has paid comprehensive coverage for the 400,000 Americans who require dialysis, but federal health care reform has already rewritten the rules, changing the way government programs pay for the procedure. And Rivera expects forthcoming reform provisions to transform the company, which pulls in \$6.5 billion in revenue from its more than 1,600 dialysis outpatient centers and 750 dialysis centers in hospitals. The company also recently announced plans to expand its dialysis operations abroad.

Rivera, previously of Clorox Co. and Rockwell Automation Inc., is not new to the issues confronting big companies, but she is new to the health care industry. Though DaVita moved its headquarters to Denver, Colo. two years ago, Rivera still spends much of her time at the company's former headquarters in El Segundo. She spoke with Daily Journal staff writer Emma Gallegos about international expansion plans and the impact of health care reform. Here's an edited transcript of what she had to say:

Daily Journal: What are the biggest regulatory issues that you deal with right now?

Rivera: Medicare has imposed a new payment system for patients like ours with end-stage renal disease (ESRD). Under a new payment system that began in January, we are now paid under a single bundled payment rate. There is no part of our business that isn't touched by that change.

One of the outstanding issues for us, like many other health care providers, will be what the impact of health care exchanges will be when they are implemented. There's a lot of open questions about that. In addition, the new rule on

accountable care organizations is another one that we're looking at very hard. All of this is new. We are doing business at a time when significant changes are being made to health care delivery systems, payment systems, and it's happening on a real-time basis. The single biggest challenge is quickly learning what they are, quickly adapting to them and trying to make sure that we can continue to deliver high-quality care to our patients.

DJ: Will this new emphasis on so-called accountable care organizations lead you to form relationships with other hospitals and doctors groups?

'One of the outstanding issues for us, like many other health care providers, will be what the impact of health care exchanges will be when they are implemented.'

Rivera: We don't know; it's taking shape right now. We are evaluating what is the best and most efficient model for us and for treatment of patients under those new regulations. We don't have a set model yet. It's evolving.

DJ: What else besides health care reform are you working on?

Rivera: Up until about a year ago, DaVita has largely been a domestic health care service provider. During the course of the last year, we decided we are going to expand into international health care services. We now have offices in Singapore and are looking at expanding DaVita [services] into Asia. We are also doing work in the Middle East, in Latin America and continuing to look at other parts of the world where we think there are great opportunities to bring our dialysis services model to those markets. In addition, we have issues like every other major corporation: labor and employment issues, litigation issues and corporate governance issues.

DJ: What kind of process goes into choosing outside counsel?

Rivera: It depends on the size and type of matter. We're looking for firms that understand our business, understand our culture and who are focused on delivering high-value and excellent results to us. We look for all of those things, in addition to looking for expertise in whatever area we might need.

We also look very hard at the composition of the lawyers who will service our account. And by that I mean, do they have diverse teams? Do they have women? Do they have ethnic minorities? Do they have folks that represent a diverse cross-section who are going to be doing significant work on our accounts?

DJ: Do there tend to be certain areas where you use outside counsel?

Rivera: We have lawyers internally dedicated to all the areas I've mentioned, but we hire outside counsel for international work, for mergers and acquisitions, for litigation, for labor and employment, for health care regulatory work, for health care compliance work, all of those areas. For real estate, we have 1,600-plus outpatient centers. We also have services in about 750 hospitals. Setting up all of that stuff requires a lot of support.

DJ: Which firms and attorneys do you regularly use that rise to that standard?

Rivera: We have very long-standing and strong relationships with McDermott, Will & Emery LLP; Morgan Lewis & Bockius LLP; Sidley Austin LLP; and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Those are all firms that have done work with us for many, many years and understand and know the DaVita culture. Those are the big firms, there's also a lot of small and medium firms that have done quality work for us.

DJ: What is the benefit of expanding abroad?

Rivera: We think we've developed a very successful model for the delivery of dialysis services in the United States. What we're looking for [are] countries and markets where there is an opportunity to bring an expertise that we've developed in providing dialysis services to the ESRD populations in those countries. So you look at what the current provision of dialysis services looks like, what current reimbursement schemes and services look like, and we evaluate whether there's real value that we can add by bringing our particular model of delivering dialysis services to those countries.

May, 2011

Company: Deckers Outdoor Corp.

In-House Counsel: Stephanie Cucurullo

Law School: Northeastern

Anyone who sports a pair of Teva sandals or knows a teenage girl who begged for UGG Boots for her birthday knows Deckers Outdoor Corp. The Goleta-based company has grown from a single brand in 1980 — Deckers sandals, the choice of surfers — to a \$813 million company in 2010 based on five key brands: UGG Australia, Simple Shoes, Teva Footwear, Ahnu Flip Flops and Tsubo. Deckers (Nasdaq: DECK) has facilities in China, Macau, Japan, the Netherlands and the United Kingdom.

THE QUICK BIO

Stephanie Cucurullo, 45, began her working life in theater and has brought a creative flair to every stage of an unconventional legal career. Cucurullo was named general counsel for Deckers in 2009 after joining the company in 2007 as vice president-legal and assistant secretary. Cucurullo was previously at Reebok International Ltd. from 1994 to 2005. Between 2005 to 2007 she worked as a consultant. The New York City native earned her law degree in 1994 from Northeastern University School of Law. She did her undergraduate work at Muhlenberg College in Pennsylvania and University of Massachusetts-Boston, where she graduated with a theater and opera degree in 1987.

Her first job took her to Inkadinkado, a longtime Boston manufacturer of art stamps and stencils. She did sales and marketing there for five years. "Everything valuable I learned about business I learned at that company," Cucurullo says.

But law had held interest from an early age. "I grew up across the hall from Arnold Jacobs [partner at Proskauer Rose] who is one of the best securities lawyers in the country, an amazingly kind and brilliant mentor. When I was a little kid, I would go visit his study, where he had 1,000 legal pads filled with his ideas and stuff he was working on," she explained. "Watching his passion and joy, that's what drew me."

Cucurullo wanted better-paying work to support her two children, so she enrolled at Northeastern while at Inkadinkado. Northeastern's attraction was its co-op program blending conventional classroom study with outside internships. One included a pro bono agency that handled "virtually any conflict." Another would be in Reebok's in-house legal department. Cucurullo wound up turning down an offer from a private firm to join Reebok at graduation. "Some people told me I was out of my mind to take that job at Reebok. But much to my joy, I've been able to forgo the usual opportunity to work in a law firm. ... Why take a job you don't really want? Out of fear?"

Joining Decker was a happy accident. She was consulting in Boston and had gotten in touch with Angel Martinez, formerly of Reebok but by then president and chief executive of Decker, to see about consulting work. "I wasn't looking for a job, but he said, 'We don't have a legal department here, would you be interested?'" Following a six-month period where Cucurullo interviewed with Decker's top officers, she agreed to move cross-country.

LEGAL TEAM AND OUTSIDE COUNSEL

Cucurullo has a legal staff of two — herself and Tom Garcia, who handles international work and litigation. The rest is non-attorney staff, including Leah Evert-Burks, a senior paralegal who serves as Deckers' director of brand protection. Asked why such an important role would be offered to someone without a law degree, Cucurullo quickly responds, "We are not casual at handing out titles here. The counterfeiting of UGG products is a very significant problem for us, and Leah has earned that role by setting up a very effective organization" including corporate managers reporting directly to her from posts in China and the United Kingdom.

She's built the rest of her department's expertise through close relationships with outside counsel. They include Stradling Yocca Carlson & Rauth for corporate and securities law — Cucurullo works with partner David Lafitte in the Santa Barbara office. Chicago-based Greer, Burns & Crain handles intellectual property and anti-counterfeiting issues, led by partners Paul Juettner and Tom Fitzsimons.

For outside counsel, rates matter as do flexibility on alternative billing. "But those issues far and away pale for me in favor of people who are not just competent but deeply creative and understand our business," she says. Cucurullo points to a software solution that a Greer junior associate — who came to the law with a computer engineering degree — created from scratch. It spots suspected counterfeiters who sell online, identifies their appropriate contacts, and automatically begins generating cease-and-desist and other specific correspondence. Then it continually updates the company's databases based on status of each action. "This solution literally takes thousands of hours out of the process, and we didn't ask them for it, they just did it," she explains.

Deckers does an annual review with outside counsel "just like we do with employees. I ask them what it's like to work with me, and their responses have made me chuckle because they don't hold back," she says. "Uniformly, I get, 'You're the hardest person I've ever worked with.' The truth is, we only work with people who want that, who want to be challenged. We pay fairly and on time, and I shower our outside counsel with appreciation. A lot of outside lawyers don't get the feedback we give them."

CULTURE

The company is entrepreneurial and embraces people who are different. "After all, they have a general counsel who sings arias in the hallway," says Cucurullo, a mezzo-soprano. Diversity is something she wants to work on — her department of nine is roughly 2-1 female now, and she wants to broaden the age range. "I'm pushing 50 and that's as old as we get. I'd like to add someone with even more life experience. We've added some very young staff members lately and their viewpoint is crucial because they understand social networking and other technology that affects us."

DAILY DUTIES

Cucurullo splits her day between intellectual property and corporate matters. "If I had more time in the day, I would be reading. I have great support, but I always feel I need to know more about the business climate throughout the world." She recently finished Ken Auletta's "Googled: The End of the World as We Know It" to better understand the global impact of the technology company and one particular impact it has on Deckers. "Search engines are a very important platform for our business, but we also see hundreds and hundreds of counterfeit sellers there, too."

EXTRACURRICULAR

Cucurullo has two grown children and a new grandchild out east. She loves the different pace and creative environment of California and uses her spare time to enjoy music and theater, and recently has gone back to her experience as a costume designer. "I love transforming existing garments into something new," she notes and adds, a little hesitantly, that she's creating a special coat for Burning Man in August. "Yes, I go to Burning Man," she laughs. "Some people have the wrong impression about how crazy it is. But I'm actually involved in building a theme camp there about heart-centered connections. It creates an opportunity to build self-expression through art, and that's what's so great about it."

Lisa Holton

07-21-2010

Company: Diamond Foods, Inc.

In-House Counsel: Stephen Kim

Law School: NYU

To many people, the Diamond name is something they grab for in the snack aisle when they need nuts for a recipe or a party. But like Land O'Lakes, Ocean Spray and Sunkist, Diamond Foods Inc. is a major national food brand that has roots as a historic farmers' cooperative. Organized in 1912 by California's walnut growers, Stockton-based Diamond is now a global food company with a product line that also includes Pop Secret popcorn, Emerald snack nuts and Kettle Chips. Its ambitious growth plan has recently been fueled by an unusual transaction — the move from co-op to public company (Nasdaq: DMND). Diamond reported revenues of \$571 million in fiscal 2009, up 7.5 percent from the previous year. Its \$615 million acquisition of the American and British operations of Kettle Foods, completed in March, is positioning the company for further growth abroad.

THE QUICK BIO

Vice President and General Counsel Stephen Kim, 40, was born into a family of doctors in Detroit, but he decided on a different direction from the start. He went to Johns Hopkins with the plan to become a philosophy professor, and tacked German onto that major so he could read the German philosophers in their original language. After spending his junior year abroad in Munich, Kim began to rethink. "That's when I began considering going into law, which seemed to require some of the same disciplines — close reading of texts, clear writing and the need to articulate arguments." After earning his bachelor's Kim moved on to NYU law school, graduating in 1994. He did general corporate work in the New York office of Weil Gotshal & Manges, then at Wilson Sonsini Goodrich & Rosati in Palo Alto between 1996 to 2000. He was recruited by software start-up Oblix, which was acquired by Oracle Corp. in 2005. Kim took a few months off to "decompress, spend time with family and get some stuff done around the house" until a call came from Gordon Davidson, Fenwick & West chairman and outside counsel to Diamond.

The company was looking for a GC to help drive its transition from co-op to public company. "It was a big switch, but I had had a steady diet of tech for so long, it was interesting seeing how things worked at a company with tangible products." The legal end of the co-op/IPO transition "was fascinating to me since transactions like that are rare. I was excited to be able to apply my transactional background to help the team complete the conversion." From the company's standpoint, it was part of a major transformation. "Diamond was trying to launch the Emerald brand nationally with a focus on attracting a younger demographic" — the traditional audience for chips and other salty snacks — to snack nuts as a healthier alternative. "It's been quite a ride," Kim says.

He considers this year's completion of the Kettle Foods deal one of the most exciting things he's done since joining Diamond. "I'm really proud of this deal because it was fast and intense, but it has changed the profile of the company — a lot of consumers are finally going to realize we're not just a nut company anymore."

LEGAL TEAM AND OUTSIDE COUNSEL

There really is an "I" in Diamond's in-house legal team — for now, Kim is a soloist working exclusively with outside counsel. He also runs the HR department.

Fenwick Chairman Davidson has stayed on to advise on Diamond's corporate business; Fenwick's Douglas Cogen and David Michaels handle transactional work and Horace Nash handles securities. Trademark work is split primarily between Michael MacDermott of Southern California's Christy Parker & Hale and Connie Ellerbach of Fenwick. Stuart Meyer of Fenwick handles patent issues. Jeffrey Bosley and Jeffrey Lederman of Winston & Strawn handle litigation as well as labor and employment issues. Miriam Guggenheim of Covington & Burling's Washington, D.C., office handles Diamond's work with the U.S. Food and Drug Administration and other labeling issues.

The No. 1 quality Kim demands in outside counsel? "Responsiveness. Every firm thinks they move fast, but I need people who are able to roll with the punches."

Kim thinks the company is nearing the size where it might make sense to bring more work in house. "Scale leads to a proliferation of new projects and issues to address," he says, "but the company has always been lean and nimble, and that has worked to our advantage, so I want to be careful before adding headcount."

One issue that makes the workload manageable is that the food industry is not as contract intensive as the tech industry. "At my last company, almost every dollar of revenue had to be negotiated through license arrangements," he noted.

If Diamond does add legal staff, he will recommend looking for attorneys with experience and backgrounds different than his own. "I'd like to bring in different specialties — litigation, labor or regulatory," he says.

AVERAGE WORKDAY

Kim laughs that employees in manufacturing industries tend to start their days earlier than in tech, so their lawyers have to as well. "It's a change from Silicon Valley, where people tended to get into the office at 9 to 9:30 a.m. At Diamond, the office is humming along nicely by 8 a.m." He estimates he spends roughly 60 percent of his time actually practicing law, with about 40 percent devoted to working with management. "This is the kind of place where a lot of work goes on in the hallway — the executive team is all here" in the company's S.F. headquarters. Kim reports directly to Chairman and CEO Michael Mendes.

Another draw of the job is the food — bags and bags of it. "No, it's not mandatory that we eat it, but there's baskets full of snacks everywhere."

EXTRACURRICULAR

Kim is married to Betty Ho, an assistant general counsel at SAP. They have two small children. "So between the job and the little ones, there's not a lot of time to do much else," except for an occasional dinner out with his wife "when we can snag a babysitter. So we spend a lot of time at home with Netflix." A recent pick was Showtime's "The Tudors" series, which has refocused Kim's pleasure reading a bit — he's recently picked up "Wolf Hall," Hilary Mantel's Booker Prize-winning novel based in Henry VIII's court. He's also enjoyed "Team of Rivals," Doris Kearns Goodwin's book focusing on Abraham Lincoln's leadership style.

Lisa Holton

07-16-2010

COMPANY: Digital Realty Trust

In-House Counsel: Joshua A. Mills

Law School: UC Hastings

Digital Realty Trust acquires, develops and redevelops, and manages digital data centers throughout the U.S. and Europe. Its tenants hail from the media, communications, financial and technology industries. A real estate investment trust, it boasted 86 properties including 118 buildings as of the first quarter of 2010. It manages 14.9 million square feet and has 1.8 million square feet in reserve for future redevelopment. Last month it closed a \$375 million bond offering, which added to a \$500 million bond offering in January. It expects to make a total of \$1 billion in acquisitions this year and plans on expanding into Asia. Digital Realty (NYSE: DLR) reported \$637 million in revenues in fiscal 2009, up 20 percent from 2008. Based in San Francisco, the company has approximately 400 employees.

LEGAL TEAM AND OUTSIDE COUNSEL

General Counsel Joshua Mills, 37, is one of only two lawyers in house. Along with a paralegal and an assistant, they work from the company's Mission Street headquarters. Given its small size, much of the department's work — which includes acquisitions, operational support and tax matters specific to REITs — is done in conjunction with outside counsel. The department also manages litigation and intellectual property, and supports the company's human resources department.

When he joined the company in 2005, Mills was its only lawyer. A second was added this year, and Mills hopes to add one more in the next several years. "The company has grown much faster than the legal department has," Mills said. "We would like to try to bring someone on in Europe or someone with international experience."

Mills has maintained continuous relationships with most of the company's outside counsel since 2005. Latham & Watkins, Mills' alma mater, handles the company's securities and capital markets work, while he turns to Holland & Knight and Mayer Brown for acquisitions. Mayer also does international work for the firm. Mills taps Sheppard, Mullin, Richter & Hampton for litigation and legal matters relating to design and construction projects. He outsources the company's extensive leasing work to Stutzman, Bromberg, Esserman & Plifka in Dallas.

"We're looking for people who take a real-world approach and don't get hung up on theoretical matters," Mills said.

Over the years, Mills said, he has successfully negotiated and renegotiated fees with outside counsel. "I hear a lot of talk about alternative fee arrangements," he said. "For us that hasn't really materialized."

Despite the downturn, the company has few employment matters, and most of the litigation it faces gets picked up by insurance carriers, Mills said. And the economy hasn't slowed down its pursuit of new properties. "The fact that we're public allows us to continue to raise capital and continue to grow," he said.

Digital Realty Trust went public in 2004, then underwent another significant change this year, when it applied to the Securities & Exchange Commission to take its partnership public. The partnership essentially owns and controls the company's assets, which pays dividends to investors. Handled by Latham, Mills said the registration took "a fair amount of work." It is now pending before the SEC. It also meant that this year, for the first time, the company made its note offerings publicly, rather than privately. In addition, if the SEC approves the registration, the two entities will be able to file combined financial statements. Given their arrangement as a tool for companies to invest in real estate, the tax rules facing all REITs are complex. But it's particularly true for Digital Realty Trust, Mills said, because its investments include not only real estate but also the data centers. The company had to seek a private letter ruling from the IRS to ensure that "these were good REIT assets." As an ongoing duty, the structures require a good amount of compliance and monitoring. Mills relies on tax attorney Michael Brody at Latham for advice on tax issues in REITs.

Other than the Sarbanes-Oxley Act regulations of 2002, Mills said, the company hasn't faced an onslaught of new regulations in recent years. That may change with the passage of the Dodd-Frank financial reform bill, which Mills has been watching closely. "This is a very big thing — not just for REITs," he said. "There are a lot of new compensation and corporate governance rules. It will be a significant factor for all public companies."

Mills is also keeping an eye on potential changes to the federal tax structure and environmental rules.

The company's data center clients are major consumers of power, so it's not surprising that Digital Realty has been on the green building bandwagon for several years now. Or that it was an early adopter of LEED, or Leadership in Energy and Environmental Design, certification efforts.

With such a specialized real estate business, Mills said, he particularly looks for attorneys who have done deals in the same areas in which the company is active. With longtime outside counsel, Mills also seeks attorneys with whom he "has a good personal relationship. It's nice to have a level of rapport."

ROUTE TO THE TOP

Mills joined Digital Realty Trust in 2005 after four years with Latham as a corporate and transactional attorney. Before that he was associate general counsel at McAfee Inc. from 2000 to 2001, and did a stint as an associate at Shearman & Sterling from 1998 to 2000. Mills earned his bachelor's degree from the University of Washington in 1994 and his law degree from Hastings College of the Law in 1998.

DAILY DUTIES

Mills typically arrives at the office at 8 a.m. and leaves between 6 and 6:30 p.m., but he can often be found working in the early mornings and late evenings on international issues. Typically, he travels once a quarter to the company's international and domestic markets.

PERSONAL

Mills lives in Atherton with his wife and two children, 6 and 3. The children, he said, "take up most of my time" outside of work. Still, he continues to play golf and is restoring a 1971 Norton Commando British motorcycle.

LAST MOVIE & BOOK

Mills recently took his two children to see "Toy Story 3," which he said, "was a big day for our family." He is also reading "Why Gender Matters: What Parents and Teachers Need to Know about the Emerging Science of Sex Difference," by Leonard Sax.

Erik Cummins

08-03-2010

Company: Dolby Laboratories

In-house Counsel: Mark Anderson

Law School: Golden Gate

Dolby Laboratories is well-known to anyone who's owned an audio system over the past half-century. The San Francisco-based company, founded in London by Ray Dolby in 1965, is the market leader in developing surround sound for cinema and home entertainment, plus noise reduction systems for use in professional and consumer audio and video equipment. Dolby mainly licenses its technology to other manufacturers, providing roughly 80 percent of its revenue. The company (NYSE: DLB) reported revenues of \$719.5 million in fiscal 2009, up from \$640.2 million in 2008.

THE QUICK BIO

Mark Anderson is executive vice president, general counsel and secretary for Dolby Laboratories. He joined the company in 2003 after 15 years at Farella Braun & Martel in San Francisco, first as an associate and later as a partner and head of the commercial law department and business transactions practice group. He handled corporate and securities transactions for public and private companies, including Dolby.

Anderson started his career as a CPA. He graduated from University of North Carolina at Chapel Hill in 1980 with a degree in business administration and began his career at Touche Ross & Co., now Deloitte Touche Tohmatsu. He decided to move into the law later in the decade — "It was a much better fit for my personality," Anderson said — and enrolled in 1985 in the evening program at Golden Gate University School of Law, where he graduated first in his class, going straight to Farella.

"I had heard through the grapevine that Dolby [which went public in 2005] was looking for their first real general counsel, and it sounded like a great job. A very successful, well-known company with cool technology and the very early stages of planning an IPO," he said. So Anderson, like many of his Bay Area brethren, built the legal department from scratch. "You're always behind the 8-ball, always trying to catch up. You have to build the public company infrastructure from scratch, a licensing structure and a department to handle intellectual property around the world. We've had tremendous growth and you have to build a governance function to handle that, to roll out equity plans to people, to develop a means of handling foreign compliance," he said. "You do it all." Asked if he feels caught up yet, he responds with a laugh, "No!"

LEGAL TEAM AND OUTSIDE COUNSEL

Anderson oversees a staff of 63, including 22 attorneys. The heaviest workload comes from intellectual property. "We're a global IP company," he said. "I have a patent and trademark group of 18 people, including six lawyers, who manage the trademark and patent portfolio around the world." The 15-member licensing group includes nine lawyers. The remainder handle various types of corporate work.

Anderson also has an 18-member, non-lawyer global compliance team stationed around the world that handles counterfeiting issues involving Dolby's technology in various kinds of consumer and professional products. "It's complex how we work with customs and retailers. We coordinate raids and other investigative actions," he said.

Anderson's key legal lieutenants are Phyllis Solomon, vice president of corporate/legal; Heath Hogle, vice president and chief patent counsel; Michael Okada, vice president of licensing; and Michael Biber, vice president of intellectual property legal strategy. The head of his enforcement team is Vivian Vassallo, senior director of global licensing compliance.

There's one significant area where Dolby has brought work in house, and that's patent prosecution. "It used to be our biggest expense, and when we outsource any of it now, it's based on a fixed-fee relationship," he says. Dolby outsources its mergers and acquisitions and corporate securities business to Wilson Sonsini Goodrich & Rosati, and its employment litigation business to Jackson Lewis.

The most important thing outside counsel needs to know is that Dolby operates "at the challenging intersection of intellectual property law and antitrust law due to our heavy involvement in standard-setting bodies. This creates additional complexity in our licensing and business models and how we engage with our customers."

Anderson describes his team as "collaborative and open — we see ourselves as a service organization within the company that enables the business. I want to be the guy who solves the big problems, so my attorneys work with executives directly." And while he says he tries to "respect the work/life balance, the reality is that we're a global company. We all have the night call from Asia, and our BlackBerrys travel with us."

DAILY DUTIES

Anderson says he usually arrives about 8 a.m. and leaves by 6 or 6:30. "I like to say that I get everything done, but it's just not true. You react to the challenges of the day," says Anderson, who reports President and CEO Kevin Yeaman. "I like that we have very cool stuff that can change people's lives. It's fun that our kids know what we make," Anderson says, pointing out that the company has a screening room for new films that allows employees and their families to watch movies. "It's so stimulating. We're moving into these new geographic areas and market segments. This is a very interesting place to work."

EXTRACURRICULAR

Anderson is married with two kids, one in college and the other in high school. When he has free time, he prefers to read or see movies — "The Blind Side" and "Avatar" (in Dolby 3-D) were recent choices.

Lisa Holton

06-16-2010

Company: Entravision Communications Corp.

In-House Counsel: Mark Boelke

Law School: University of Minnesota

Mark Boelke advises Spanish-language media company. as it works to capitalize on the growing Latino market in the U.S.

Before entering law school, Minnesota native Mark A. Boelke spent a formative year teaching math and science in Honduras and traveling in Latin America. After receiving his law degree in Minnesota, Boelke moved to Los Angeles to put his skills and experience to work in a city where the U.S. and Latin American business communities come together.

Boelke started out as an associate with O'Melveny & Myers LLP, where he advised on a range of business issues for several nonprofit organizations and startup companies. After four years, he moved in-house at Entravision Communications Corp., a Spanish-language media company that owns and operates 53 television stations and 48 radio stations in U.S. markets. He spent a year as deputy general counsel there before stepping into the general counsel post in 2006.

Today, Boelke oversees a wide range of issues for the highly regulated, cross-border company. Recently, he sat down with Daily Journal staff writer Erica E. Phillips to talk about some of the unique opportunities in the dynamic Spanish-language media industry. Here is an edited version of their conversation:

Daily Journal: Tell me about the business at Entravision.

Boelke: Entravision was founded in 1996 by Walter Ulloa and Philip Wilkinson. We became a public company in 2000. We are a diversified media company that focuses on reaching Hispanic consumers across the U.S. using a combination of television and radio stations and online mobile media platforms.

DJ: How has it grown over the years?

Boelke: The Latino community in the U.S. has grown considerably. The company itself was founded to serve that community and started out primarily here in California, and since then has expanded really across the United States. We focus primarily on markets that have a significant Latino community. The Latino market opportunity is an attractive one, so that does always draw competitors. On top of that, the media and entertainment industry is a competitive industry. We think that we are a leader in that industry and serve the community very well.

The Latino market opportunity is an attractive one, so that does always draw competitors.

DJ: Entravision has a relationship with Univision, correct?

Boelke: Our TV stations are the largest affiliate group of the Univision network and the Telefutera network, which Univision owns. Our TV stations started out as Univision affiliates, and as we grew and added stations and markets, we grew our Univision affiliation, as well.

DJ: Is there a continuing growth strategy or plan to expand in the next year or so?

Boelke: Right now, our approach is to just keep an open mind and just look for various opportunities as they arise. As we're seeing the census results come out, we're seeing more and more the growth of the Latino community in the United States. That is doing a couple things - it's showing importance of the community in the United States, as well as the market opportunity for advertisers and companies to serve that community.

The media and entertainment industry is constantly evolving, and there's a lot of opportunities in new media, online, interactive and mobile platforms. We're working more and more on that as we go on to expand and promote our brand, to develop local news and other local content and to look for opportunities to involve people in our local communities.

DJ: What are some of the biggest legal challenges that come your way day-to-day?

Boelke: We operate in a highly regulated industry that is also highly visible to the public, and it is very dynamic and constantly evolving. We're always working on new ideas, new opportunities and new projects. As an attorney, just like all employees at Entravision - business managers, engineers, sales people - [I'm] constantly having to adapt to a changing environment. That involves taking what you know and applying that to new situations with novel agreements or partnerships. You really have to stay on your toes to be able to adapt.

DJ: Is there a hefty workload in terms of contracts with advertisers?

Boelke: A lot of our time is spent working on and thinking through novel arrangements and novel partnerships. That is a combination of working on business agreements, but also thinking through strategically how to structure those partnerships and how those partnerships will evolve over time in a rapidly changing environment. You have to be very proactive and think through what issues might come up.

We operate in a lot of border markets between the United States and Mexico, so we have a lot of contacts with advertisers and other leaders in those communities.

DJ: That must require some extra knowledge on your part in terms of the way the legal system is structured in Mexico.

Boelke: It does, that is true. We handle all the company's legal matters in-house, although we do consult with outside counsel when we need a particular specialized expertise, such as Mexican regulatory law, or if we need a larger team to work on a matter like a large transaction or securities offering. Doing business across the border, you certainly need to seek out some specialized expertise to be sure you do that smoothly.

DJ: Do you always look for specific experts to advise on issues like that?

Boelke: Sometimes we rely on the expertise and experience of an entire firm, and in other cases we might use a firm because of the specific expertise of a particular attorney, or if a particular attorney or a law firm we know has worked on certain types of deals or certain types of issues before.

DJ: Outside of Mexican regulatory issues, what other types of expertise have you sought out in the past?

Boelke: We consult with outside counsel on specific matters, such as FCC regulatory matters. We also consult with outside attorneys for employment law expertise or on certain specialized transactions or acquisitions or securities offerings. It's important for me to work closely with any outside firm that handles certain situations for us so I can ensure the approach and structure meets our overall business goals.

DJ: The company recently sold its outdoor media division. Did you sell any other holdings recently?

Boelke: We did sell our outdoor advertising division in 2008, and we used that money to refocus on other areas of our business. We have not had any major dispositions since then. That was an opportunity we saw to sell that media platform and reinvest in other media platforms. For example, a few months ago we acquired 100 percent ownership of a sales representation firm that focuses on the Spanish-language advertising industry and Spanish-language media platforms.

DJ: Can you explain what exactly they do?

Boelke: The company is called Lotus Entravision Reps, and they are kind of a full-service, Spanish-language sales representation firm. They go out and make connections with advertisers and advertising agencies to generate sales for the stations that they represent. We had a joint venture with another company where we each owned half of that company. We saw the opportunity to purchase the other half and take it in as a wholly-owned subsidiary and grow the

business internally. That was an example of a transaction where we'd work in-house on the structure of the arrangement and ultimately closing it.

April 2011

Company: Gensler

In-House Counsel: Meghan Rhea

Law School: UC Hastings

As general counsel of Gensler, the world's largest architecture firm, Meghan Rhea draws up the contracts on which the future is built.

Growing up, Meghan Rhea remembers her mother constantly tweaking the decor in the house. "She was always redecorating or repainting or reupholstering," Rhea says.

Her mother planted a seed that helped Rhea grow toward a world of glistening skyscrapers, sprawling steel-and-glass airport terminals, airy shopping districts and residential meccas as general counsel of San Francisco-based Gensler, which bills itself as the world's largest architecture firm.

Rhea is heading the company's legal department at a time of unprecedented change in the building and design industry, with sustainability rewriting the rules by which projects are designed and built.

She's been in the thick of contractual, insurance and other legal issues for a host of high profile projects including the month-old Ritz-Carlton Hotel & Residences and JW Marriott, a 54-story centerpiece of LA Live - downtown Los Angeles' new residential, sports and entertainment district - and CityCenter, an 18 million-square-foot collection of hotels, condominiums, restaurants and casinos that opened this year in the heart of the Las Vegas strip.

At the same time, Rhea helped Gensler navigate through one of the worst real estate downturns in decades. Between late 2008 and early this year, the company, which has offices in 33 countries, trimmed its staff from about 3,000 workers to 2,200. Work is picking up, however, and staffing levels are building as the real estate market shows signs of recovery, Rhea says. The firm has scores of major projects underway in China and other parts of the globe with burgeoning economies.

A Dallas native and graduate of San Francisco's UC Hastings College of the Law, Rhea was an associate at McCutchen, Doyle, Brown & Enerson - now Bingham McCutchen - before joining Gensler as regional counsel for the northwest and north central regions in 2000. Five years later, she was promoted to the company's general counsel post.

When she's not unwinding legal knots, Rhea enjoys playing softball, gardening, hiking with her dog and building Lego creations with her 6-year-old daughter, Phoebe.

Rhea spoke recently with Staff Writer Jason W. Armstrong about the legal issues she's been fielding and Gensler's plans to expand globally. Here's an edited version of what she had to say:

DJ: Tell me about some of the legal work you handle on a day-to-day basis:

RHEA: It varies. In the last calendar year, we had about 5,300 projects. Each of those has a professional-services agreement attached to it. To the extent we have sub-consultants, they each have a contract. A lot of the work we do

pertains to our contracts. And, as with any firm, we have pending litigation, and we usually have between three and five lawsuits against us at a given time. Also, insurance coverage lines including professional liability and worker's compensation are an important part of our business. We have 20 lines of different coverage, and managing those takes a lot of my time. We're constantly thinking ahead about potential risks to our projects and our people. We try to be proactive. In addition, we've had a lot of growth in Asia and in the Middle East in the past two years. We've worked hand-in-hand with management and finance and accounting to develop our foreign-entity investment strategy, which has continued to be more complex.

DJ: What kinds of lawsuits are you facing?

RHEA: The garden variety construction design and defect claims. We're typically named along with the contractor, trades and sub-consulting engineering disciplines. If something goes wrong with the builder and it's significant enough to file a claim, everyone gets invited to the party. What's remarkable for a firm our size is that we have so few claims. I think it's a testament to the quality of our work. No one is perfect, but I think we have a wonderful relationship with our clients.

DJ: With sustainable design the buzz on new development projects these days, how has factoring green rating certifications, such as the U.S. Green Building Council's Leadership in Energy and Environmental Design, into your designs affected your work?

RHEA: A lot of outside lawyers have had concerns about what sustainable design would do for the liability of architects as well as contractors. I've heard about claims being filed for failure to achieve LEED or another ranking, or the inability to qualify for certain tax credits. But I think we really haven't seen that concern come to fruition.

Sustainable design is an important part of what we do. When LEED accreditation first came out, we needed to address that in our contracts. We had to clarify the rules and responsibilities for obtaining that certification, and whose fault it is if we don't get it. Our contracts are about managing expectations so the client knows what they are getting.

DJ: How much has the sour economy affected clients' willingness to incorporate green elements into their designs?

RHEA: If you had asked me at the beginning of the recession how it would impact our business with clients' modest budgets, I might have questioned whether people would be willing to make the same commitment to sustainable design because it can look like a higher price tag. But commitment to sustainable design has grown stronger in the recession. I think the world is changing and more people are believing it's the right thing to do and we are much more aware of our environment.

DJ: How much are people downsizing architectural details as a result of the market crash?

RHEA: The scale and use of some projects has changed. A lot of our clients have still been doing things, even though their budgets might have been more modest. A lot of the projects have gotten smaller, but we're happy to work on them. Clients have been trying to get smarter about their space utilizations and looking at reducing their footprints because of the economy. Some are doing strategic space planning to get ready for long-term growth when the market comes back around.

DJ: What were some of the legal issues you dealt with on the Ritz-Carlton/Marriott project at LA Live? Because it was such a big design, did more complications crop up?

RHEA: The legal department didn't really have to be involved in this project. The contractual documents were in place and we didn't have issues. It's good news when you don't have to get too involved in a project. I don't see a correlation between size and legal challenges on a project. AEG, our client in this instance, is sophisticated and its lawyers and advisers worked well with us. You can have a big project with a shared goal to realize the project, and you have a smaller project and the reverse can be true.

DJ: Gensler has been particularly busy in China in the past couple of years, and there's been a lot of press about your design of the world's second tallest building in Shanghai, which is under construction. Has working in China, or other countries, made for interesting legal issues?

RHEA: Any time you go into a new country, you have to figure out the rules of engagement to practice appropriately. It's a fun but steep learning curve, and for a lawyer, it's very interesting work. We want to be culturally appropriate. For example, in China, the parties in a case are called "Party A" and "Party B." Here, you call them by their names. Also, in Mandarin, there was no word for negligence. When I was regional counsel for Asia, we'd put in negligence and it kept getting changed. Now, with all the western business in China, it's becoming more common.

DJ: When do you bring in outside law firms to help with your work?

RHEA: For the little bit of litigation work we have. Also, we've had a lot of international growth, and firms help our regional counsel, working in tandem with them. We partner with firms that have a strong presence in the region where we're working and do a great job with that region.

DJ: What are some of the firms you often use?

RHEA: In Northern California, we have long-standing relationships with Long and Levit; Howard Rice Nemerovski Canady Falk & Rabkin; Seversen & Werson; and Bingham McCutchen. In Los Angeles, we've worked with Morris Polich & Purdy and Collins, Collins, Muir & Stewart. We've also worked with Morrison & Foerster internationally.

DJ: What are some of the most important elements you look for in a firm?

RHEA: They need to have substantive knowledge in what we do. A lot of professional-liability firms will have lawyers on staff who also have architectural degrees. These are attorneys who can look at a set of drawings or documentation related to a project and have a sense of the technical issues that might arise. It also helps to have lawyers who have strong bilingual capabilities to speak the local language of a region we are working in. Efficient billing is also important.

DJ: Tell me about your expansion plans globally.

RHEA: We've recently established a small legal presence in Singapore and we're moving into Korea. We're in the exploratory stages in Vietnam and in Brazil. Last year, we did projects in 59 countries, though that doesn't mean we have an office in each of those.

DJ: What are your predictions on challenges Gensler will face in the coming year?

RHEA: Anytime we enter into a growth cycle, we have to be mindful of staffing up intelligently to accommodate increased work flow. Helping to plant flags around the globe is an important part of what I do. We're seeing signs that the economy is starting to pick up, and we're anticipating continued international growth. The time it takes for us to enter a foreign country is six months, and when a project takes off, we'll need to have a legal presence established locally. In some countries, you can't deliver work unless you are locally established. We try to anticipate what our clients will be doing down the line. It's a little bit of educated guesswork and a little bit of crystal ball.

5.24.10

Company: Heritage Provider Network

In-House Counsel: Jonathan Gluck

Law School: USC

Jonathan Gluck left the world of big law for big medicine as the general counsel of the Heritage Provider Network.

Jonathon Gluck, who since February 2008 has led the legal department for one of the state's largest physician groups, woke up one day and realized he had become a health lawyer almost without noticing. Although it was no accident - he loves the work, it wasn't exactly planned either. In just a few years, he went from handling one case for Heritage Provider Network as a litigator at Bingham McCutchen to having a practice that was more than 50 percent comprised of Heritage's health care litigation.

Heritage, a managed care company based in Torrance, also has seen a boom in its business. The company contracts with thousands of physicians to provide the gamut of medical services for hundreds of thousands of HMO members. As a full-risk physician group, Heritage has the tricky task of not just providing whatever care the insurers will cover as well as managing patients and keeping them healthy.

Last year, Heritage more than doubled its reach by acquiring an ailing San Fernando Valley medical group. It now runs medical groups practicing in nine counties, from Tulare to San Diego, with a particularly large presence around Palm Springs, Bakersfield, Burbank and Glendale. With that increase in doctors - and the patients they treat - Heritage's contractual issues and litigation have grown, too.

Now, the company is preparing to ride a new wave of interest in their model of managed care set in motion by national health care reform.

A one-time big firm lawyer who worked several years at Rirodan McKenzie and then Altshuler Grossman, Gluck said he prefers running his three-person legal department. Not only that, he much prefers hiring small firm lawyers.

Gluck spoke recently with Staff Writer Evan George. Here's an edited version of what he had to say:

DJ: How would you describe Heritage's core business?

GLUCK: Heritage is responsible for providing all the medical care for a given HMO membership. When a person signs up for an HMO they choose a primary care doctor; those doctors are typically affiliated with large groups called Independent Physician Associations, or IPAs. The HMO will provide a set amount of money to the IPA to provide health care for that member. There are two types of IPAs: shared risk and full-risk. The full-risk entities are responsible for the institutional and professional care of the member. We are one of just a few full-risk IPAs in the state of California.

DJ: How has the company grown in recent years and has that increased regulatory work?

GLUCK: Approximately 5 years ago, Heritage and its affiliates provided care to around 300,000 individuals. Today, that number is around 600,000. We acquired a large competitor last year, which almost doubled the size of our L.A. operation. Heritage is the entity that holds the Knox-Keene license with the state of California, which allows it to take institutional risk for its members. It then contracts with its affiliated medical groups to provide the professional care to the members. It's simply a licensing issue. If you're taking hospital risk, which is where the big money is, the state requires that substantial reserves be set aside by the license holder.

DJ: What are the biggest legal challenges for Heritage?

GLUCK: We have the same kind of disputes any company our size would have: contract disputes, claims payment disputes, employment disputes. There's not a lot of mergers and acquisition legal work because we currently don't have that many acquisitions underway. Last year we had a major acquisition so there was a lot of time spent on it, but it just

depends on what's going on. We have a lot of contracting issues that come up because we contract with lots of physicians. We also have 83 contracted hospitals in Los Angeles.

DJ: How do you decide what cases to handle and which to refer to outside counsel?

GLUCK: It depends on the level of complication and whether we have the expertise. Health care law is not something a single individual can know everything about; it's just impossible. The more complicated the case, the more likely we are to send it out. The more detailed and obscure the issue is, the more likely we are looking at outside counsel. Stark issues [governing anti-kickback laws] are a prime example, because Stark is very, very complicated with all kinds of minutiae.

DJ: What firms do you tap for certain expertise and why?

GLUCK: I give a lot of work to Mike Amir at Doll, Amir & Ely, who does most of our litigation work. I use the Miller Health Law Group for regulatory matters. Jeremy Miller has been doing this for many years. We've used Ervin Cohen & Jessup for mergers and acquisition work - they have a lot of health care experience. And Bingham McCutchen, when there is high-stakes litigation. For the larger claims cases, we use Locke Lord & Bissel & Lidell. They have to have the expertise. The health care bar is not that big. Everybody pretty much knows who's an expert in what area. Especially on regulatory stuff, I don't want to hire someone who has to start from square one on figuring out what the answer is. Reputation and cost effectiveness, and how pleasant you are to work with go into the mix too.

DJ: How have firms' increased rates impacted the company's outside litigation?

GLUCK: It makes it far more likely I'm going to try to find someone with expertise who does not work at a big firm, and I say that coming from a big firm and understanding the model. A lot of the time it's cost prohibitive, especially using junior lawyers who are billing at extremely high rates for things I can have very seasoned lawyers do at a smaller firm for a much cheaper price. That's a no-brainer.

DJ: The so-called Accountable Care Organizations, or ACOs, that health care wonks are talking about, are they something Heritage will try? Does it create additional legal work?

GLUCK: Its something we're looking at seriously. Everyone is; it's the model that is being discussed in Washington. As far as legal work, I don't know that it's all that different from any other model of business. It's just a different type of compensation arrangement. But also, I don't think anyone knows truly what its going to look like so we're going to have to wait and see. The interesting thing is that ACOs are already what we do. When you get to the bottom of it what is an ACO? An ACO requires that patient care be managed for a set sum of money - that's what the delegated model is. The best way to provide cost-effective, quality health care is to keep the patient healthy. That's what we've done for years. If you worry about it only once they get sick, game's over.

DJ: Your recent acquisition of Lakeside must have been tricky because it was such a large physician group to absorb. There were also access issues raised by some. Did that result in legal issues?

GLUCK: There were legal overtones, but there's wasn't much [action] to be honest because the transition was very seamless. Everyone kept their doctor. Lakeside didn't go bankrupt. No contracts were terminated. So if the patients read about it in the newspaper they probably knew about it, but other than that most of them probably never realized what had happened.

DJ: What do you enjoy most about this position?

GLUCK: I get to see much more than I would have been able to see as a litigation partner at a law firm. I do probably 30 percent legal work and 70 percent business operations - whatever comes down the road that day. I'm involved with all aspects of the company. To go from constantly fighting about document production to this role is highly recommended.

Company: Kimpton Hotels

In-House counsel: Judith Miles

Law School: Harvard

As GC for Kimpton hotels, Judith Miles enjoys the work and the leopard-print robes.

When the legal industry began spiraling out of control in the fall of 2008, Judith Miles got caught up in the tornado. Her longtime firm, Heller Ehrman, suddenly went belly up, so she jumped to the hospitality group at Goodwin Procter in San Francisco with several of her colleagues. But the transition was short lived - within a few days, she received a call. On the other line was the hip, San Francisco-based Kimpton hotel chain asking if she'd like the position of general counsel. The timing wasn't great, but the opportunity was. So, 60 days after joining Goodwin, Miles became the new head of legal at the privately-held Kimpton Hotels & Restaurants, and Goodwin found itself with a new client.

Miles started her career as a corporate attorney at Pettit & Martin in 1984 and began focusing exclusively on the hospitality industry by the early 1990s. She enjoyed the work but also yearned to have more say in the business aspect of running a hotel chain, something she now has at Kimpton, where she reports to chief executive officer Mike Depatie. Miles recently sat down with the Daily Journal's Sara Randazzo to talk about what it means to be a Kimpton hotel, how she manages the legal budget and how they've kept patrons in the door during the downturn. Here is an edited transcript of what she had to say.

DJ: I know this predates your time at Kimpton, but in light of the re-branding campaign that took place a few years ago, I'm curious what the Kimpton brand stands for, and how legal gets involved to help protect it.

Miles: We're certainly involved to the extent there are elements like names and a look and a feel that we try to protect. The decision was made in 2004-2005 to really launch Kimpton itself as a brand. We'd been around since 1981, and Bill Kimpton himself wasn't eager to do that. His vision was a collection of individual boutique hotels. But we became aware that there was some value to the brand that we ought to be capitalizing on.

DJ: When people think of Kimpton hotels, what are they thinking of?

Miles: They're thinking, the hotels are fun, high-design, high-style. The fact that they use the word "love," not just "those are really cool hotels," reinforces my belief that what they're really resonating with is the way they're taken care of. Added to that is the fact that it's fun. It's not stuffy. Our hotels are comfortable physically, but also comfortable emotionally. You get to go in your room and have a leopard-printed robe. You can have a goldfish in your room. You can play Wii in the lobby. It's fun.

DJ: How is work in your department divided among the three lawyers?

Miles: I take the lead on major deals because that's what I did before. Litigation is divided between our other two lawyers. We have a lot of contracts at our individual properties that we assist with. The other two lawyers also handle intellectual property and trademark matters and employee relations matters.

DJ: Sounds like your group handles deals, litigation, some IP and employment work, contracts - what else?

Miles: Hotel operations issues, generally. Any business has licenses and permits we need to worry about. We are a hotel and restaurant company, so we have liquor licenses. There are a lot of day-to-day things that need to get handled. Other issues that come up are from this whole litany of laws evolving rapidly in privacy issues. We handle credit cards, all sorts of other sensitive, private information. We need to be up to speed and advising the properties on procedures to put in place to make sure we don't compromise guest information and don't run afoul of any of these laws.

DJ: How are the privacy laws evolving?

Miles: In the recent past there have been some rules on the books, but different states are adopting their own versions that may vary and be more onerous and challenging for us. Massachusetts just enacted their own privacy rules that apply not only if you're doing business in Massachusetts, but if you're dealing with data that belongs to citizens of Massachusetts. We have to be aware of what's the strictest thing we need to comply with.

DJ: Who do you turn to for outside counsel?

Miles: On the transaction side of things, Goodwin Procter, Kirkland & Ellis, and Sonnenschein [Nath & Rosenthal] are the principal ones. We've been doing a fair amount of work with Orrick [Herrington & Sutcliffe], where a number of my former colleagues went, for employment issues. The fifth one, Farella Braun + Martel, has done our corporate and tax work for years.

DJ: Are there also smaller firms, or is that basically everyone?

Miles: One thing I set as a key objective when I first started was to reduce the number of firms we were working with. When I got here I asked to see a list of the firms we were working with and it was literally three pages long. I said, okay let's really get this down. I've got it down to about 10 or 12 firms now. My belief is if you can establish relationships with a few firms who really know you, it's more fun and the job will get done better.

DJ: Has it been helpful for the bottom line to reduce the number of firms?

Miles: We've saved a lot of money in the legal department last year, in part because of reducing the number of firms. Because the people we're working with I know very well and I think we can work together more efficiently when we have that level of trust and communication going on.

DJ: What other tactics have you used to reduce the legal budget?

Miles: We've worked out a couple of retainer arrangements in areas like general employment counseling and general intellectual property counseling where I know we have ongoing consulting needs and I don't want people to be afraid to pick up the phone. We revisit it with the outside lawyers from time to time to make sure they don't feel taken advantage of if we're using it too much or we feel like we're using it enough. I think it's working out.

DJ: What types of intellectual property work does the department do?

Miles: It's not super complicated stuff, primarily licensing and trademarks. We're different than most hotel companies in that most of our hotels have their own individual name, but we do have two sub-brands within the company: the Monaco and Palomar brands. Those are trademarked names and we make sure we keep those marks protected and are aware of anything someone else might be doing that's inconsistent with our rights on those marks.

DJ: Have there been infringement issues?

Miles: We haven't really had too much, happily.

DJ: How has the Kimpton group fared during the recession?

Miles: The downturn hit the hotel industry very hard; 2009 was a rough year for every hotel company out there. We did as well as we could do, but it was a down year for us too. One of the ways we measure how we're doing competitively is: How's our market share compared to our competitors? We maintained or improved our market share across all markets. Happily, things are starting to turn positive this year.

DJ: The Bay Area in particular has a very saturated hotel market, and many hotels have had to default on loans. How has Kimpton fared in terms of its loans and obligations to lenders?

Miles: To give some background on how we do things - primarily we're a hotel management company, meaning we manage property other people own. Of the 50 hotels in our portfolio, we own a significant portion of, if not all of, 13 of them. For those, absolutely one of our focuses over the last year has been to keep an eye out on our loans. We have not

defaulted on any. We have worked very hard to identify any loans that we thought would come due for refinancing sooner than the market would come back and we've managed to work out acceptable arrangements for extensions of those loans in a number of cases. Things are looking pretty good for us.

DJ: When you travel, do you stay only at Kimpton Hotels?

Miles: Absolutely.

DJ: What are your favorite hotel perks?

Miles: I love the bathrobes. There are always bathrobes that have fun animal prints, a giraffe or leopard or zebra. From 5 to 7 every evening there's a hosted wine hour, which is a fun way to have some time to chat with people you're traveling with or meet other people. There was a period of time when we couldn't do it in one of our hotels in Virginia because of local liquor laws, but we managed eventually to make it happen. For me, it's really just about how comfortable it is to stay there. Physically, the beds are great, but it's more about the feeling I have being there. I can get my morning coffee in the lobby and go for a run and start my day off well.

Company: MacAfee, Inc.

Attorney: Mark Cochran

Law School: Santa Clara

McAfee Inc. of Santa Clara sells anti-virus, security and encryption software for home computers and businesses. McAfee has 6,150 employees and annual revenues of about \$2 billion. The company was founded in 1989 and went public in 1992 (NYSE: MFE). In 2006 the company agreed to pay \$50 million to settle a U.S. Securities and Exchange Commission investigation into its accounting practices.

LEGAL TEAM

McAfee's 15 in-house attorneys are part of a 36-person legal team that includes contract negotiators whose work is reviewed by in-house counsel. Most of the legal team works in Plano, Texas, where most of the company's operations are based. The only lawyers at corporate headquarters in Silicon Valley are General Counsel Mark Cochran and his mergers-and-acquisitions attorney, Daniel Vaughn. Cochran also oversees an in-house lawyer who works with McAfee's engineering and development team in Oregon.

Cochran created and manages a 20-person license compliance unit. Financed through field sales, the license compliance team generates revenues of about \$35 million annually. "It's nice being known as a lawyer who is a profit center rather than a cost center," he said.

Cochran described McAfee Chief Executive Officer David DeWalt as "fairly acquisitive" — buying a company roughly every quarter. Cochran hired Vaughn to handle these deals. Pulling that function in house has proven extremely cost-effective, Cochran said.

OUTSIDE COUNSEL

McAfee turns to Wilson Sonsini Goodrich & Rosati in Palo Alto for corporate and securities work, executive compensation matters and complex mergers and acquisitions. Orrick, Herrington & Sutcliffe's office in Menlo Park provides labor and employment counsel. Baker & McKenzie's San Francisco office helps maintain the international subsidiaries. Five specialty firms handle patent litigation; outside firms also handle patent filings.

Cochran has been pleased with the inexpensive and high-quality work performed by offshore vendors in India and other locations. They've taken on administrative tasks such as document review and due diligence in mergers and acquisitions.

Cochran allocates anywhere between 40 percent to 75 percent of his annual legal budget to outside counsel, depending on how much litigation McAfee faces. This year is shaping up to be a costly one. In the 12 months prior to March, the company was sued eight times over alleged patent infringement and threatened with additional lawsuits. As a result, Cochran's annual budget increased by at least 30 percent.

WATCHING THE BOTTOM LINE

Cochran spearheads an effort to aggressively reduce legal fees and generate more revenue than his department spends. He holds the line on expenses through reviews of costs and requests for proposals and insists upon spending caps, including limits on monthly fees for "notoriously expensive" patent litigation and lifetime caps on case costs.

McAfee has implemented outside counsel billing guidelines. For example, Cochran refuses to pay 25 cents per copy (he considers 5 cents per page reasonable.) Firms are expected to provide hourly rate discounts. The company demands itemized invoices and uses automated software to flag expenses in invoices that deviate from its billing guidelines.

Cochran doesn't take no for an answer when insurance companies deny claims involving employer liability, human resources disputes, corporate and securities matters or directors and officers policies. Typically, he said, insurance companies will initially reject those claims, but careful review and persistence have helped McAfee prevail in these arguments.

"We're now much more methodical about looking at all of our insurance policies and asserting claims where there may be a coverable claim," he said. "We've been able to recover a considerable amount of insurance proceeds in a variety of areas." Those recoveries serve as a credit against legal fees throughout the year.

BLAME THE 'TROLLS'

Cochran blames the surge in litigation on "patent trolls" attempting to wring money from companies through frivolous litigation. More often than not, he said, the plaintiffs are venture capitalists who purchase patents cheaply from inventors and then find contingent-fee law firms to sue corporations for infringement. The plaintiffs reap windfalls if the defendants settle to avoid costly protracted litigation.

"You either fight to the death or settle early," Cochran said. "[Venture capitalists] are banking on people settling out early, and they try to get what is effectively [the] cost of defense and use that as a measure of the buyout price to settle. That still can be in the millions of dollars to settle. They're thugs. They go and beat up some corporations and turn them upside down and shake money out of them and move on to the next victim."

ROUTE TO CURRENT JOB

Cochran, 51, has spent the past 20 years providing in-house legal services and leadership to Bay Area companies. He's been employed by medical device manufacturer Syntex Inc. (since acquired by Roche Holding Ltd.); Advanced Micro Devices Inc.; Avantgo Inc.; and Brocade Communications Systems Inc. He served as Hyperion Solutions Corp.'s general counsel from 2005 to 2007. McAfee recruited Cochran following Oracle Corp.'s \$3.3 billion acquisition of Hyperion. He began his career at the firm now known as Ropers Majeski Kohn & Bentley in Redwood City.

PERSONAL

A native of Connecticut, Cochran graduated from UC Davis in 1981 and earned his J.D. from Santa Clara University School of Law in 1987. A year later he received his Master of Business Administration degree from Santa Clara University. He and his wife, AnnaLisa, have two children: Kyle, 21; and Kelly, 19.

June D. Bell

07-28-2010

COMPANY: The Macerich Co.

In-House counsel: Stephen Spector

Law School: Duke

TITLE: Senior vice president and general counsel

AGE: 51

The Macerich Co. is a real estate investment trust focused on acquiring, leasing, managing and developing major shopping malls. With key markets in California, Arizona and New York, the Santa Monica-based company operates and manages 71 shopping centers and 75 million square feet of leasing space. In April, the company issued 31 million shares of common stock for approximately \$1.2 billion in proceeds. Last week it reopened Santa Monica Place to great fanfare; the company has signed 60 brand-name retailers and restaurants to lease commitments. The company reported total revenues of \$805 million for 2009, compared to \$881 million in 2008. It has 2,700 employees.

LEGAL TEAM AND OUTSIDE COUNSEL

General Counsel Stephen Spector, 51, has been at Macerich since 1988. The company has grown its legal department aggressively during his tenure, from three employees when it went public in 1992 to 31 lawyers and paralegals today, plus 19 administrative staff. Also contributing to the growth was a decision to bring the vast majority of its leasing functions in house in 1998 and 1999 to control costs. Leasing now consumes about half of the department's time, with the rest of the work coming from its operational and development divisions. For corporate and securities work, he relies on Madonna Shannon, a senior vice president who helped take the company public in 1994 while with O'Melveny & Myers.

Spector values long-term relationships with outside counsel. Perhaps the company's greatest relationship was with the late James Kinney of O'Melveny. After retiring from that firm in 2000, he worked 10 years at Macerich as chief real estate counsel. "He helped shape our legal department," Spector said. "He also taught us how to disagree without being disagreeable."

Kinney was a pioneer of REAs or reciprocal easement agreements in the 1970s. Those agreements are commonly used when shopping centers are owned by multiple parties, such as a developer and several major department stores. And they allow parties access to common areas and provide common restrictions and requirements.

Today, Spector maintains key relationships with real estate attorneys Thomas Leanse of Katten Muchin Rosenman in Los Angeles and Terry Rakow of The Cavanagh Law Firm in Phoenix. Spector also relies on real estate and finance attorney Michael Hamilton at DLA Piper in Los Angeles.

Spector sends litigation to outside counsel, particularly when enforcing leases and navigating redevelopment projects through environmental challenges. Outside counsel for those matters vary by jurisdiction.

The economy has changed the company's approach to lease enforcement somewhat. While before the department's "marching orders" were to enforce all leases, today the company is more willing to explore other options, including renegotiating leases as consumers change their buying habits and costs rise.

Macerich weathered the recent credit crunch well and is "always looking to acquire things, notwithstanding what happened in the last couple of years," Spector said. In fact, a group of executives at the company continuously monitors shopping centers throughout the country should acquisition opportunities arise.

Spector is excited about the reopening of Santa Monica Place, originally built as an enclosed mall about 30 years ago. After two years of renovation, the facility is now an open-air center featuring a Bloomingdales and a Nordstrom. It's "really totally new, though much of the infrastructure was kept" out of environmental sensitivity, he said.

Spector expects outside counsel to be familiar with the retail real estate industry. "The more they understand, the more likely we are to going to have long-term relationships," he said. Spector believes that by giving outside counsel "enough" business, they will be more responsive. "We want to be able to get attention very quickly," he said.

He adds this advice: "Do your homework and understand our industry before you tell us what to do."

ROUTE TO THE TOP

Although Spector has spent most of his career at Macerich, he worked for several years at Kindel & Anderson in Los Angeles (1983 to 1985) and Howard Kulik & Chizever (1985 to 1988). He earned his law degree at Duke University in 1983 and a bachelor's degree in electrical engineering from the University of Maryland in 1980.

DAILY DUTIES

Spector typically spends eight to 10 hours a day in the office, although his days often start long before he walks in the door.

PERSONAL

Spector lives in Agoura Hills with his wife, Sherry. They have a son in high school and a daughter in college. Originally from Baltimore, he took up golf in the 1980s and plays basketball when he can. Working in the heart of the entertainment industry, he said, "We talk about movies almost as much as we watch them."

Among his charitable activities, Spector is a founding board member of the Westside Neighborhood Council in West Los Angeles, and he's an officer and board member with The Wellness Community Valley/Ventura, which provides support to cancer patients.

LAST MOVIE AND BOOK

Spector has recently been reading management books and recommends "First Break All the Rules: What the World's Greatest Managers Do Differently," as a key text. Marcus Buckingham and Curt Coffman wrote the book in 1999. Although he rates "The Godfather" as his favorite book and movie, Spector recently saw Michael Douglas in "Solitary Man" which he interpreted as a commentary on how successful men can fear dying.

Erik Cummins

08-11-2010

Company: Onyx Pharmaceuticals

In-House counsel:Suzanne Shema

Law School: University of Washington

Founded in 1992, Emeryville-based Onyx Pharmaceuticals Inc. has 275 employees. It developed and sells Nexavar, a drug that treats liver and kidney cancer. Worldwide sales of the drug last year reached \$844 million; company revenue was \$251 million in 2009. Onyx has an agreement with Bayer Corp. to share development expenses and profits in nearly all countries.

Onyx last year acquired Proteolix Inc. and with it a late-stage clinical molecule called carfilzomib to treat blood cancer. Carfilzomib is in clinical trials and is expected to be available next year.

LEGAL TEAM AND OUTSIDE COUNSEL

Suzanne Shema is Onyx's first general counsel. She oversees the legal department, which has three attorneys and six support staffers, and a three-person compliance department. She meets weekly with the executive team and at least monthly with Chief Executive Officer Tony Coles. Shema joined Onyx last August after spending eight years at ZymoGenetics Inc. in Seattle, where she was general counsel.

"One of the things I love about my job," she said, "is that, in the pharmaceutical business, there's a never-ending supply of lessons, whether it's [Food and Drug Administration] or patent law or new corporate regulations. There's just always something new to learn."A

Shema has brought most of the corporate governance and securities work in-house, although she confers with outside counsel as needed. She recently added an attorney to handle agreements related to the carfilzomib launch.

"We have a lean legal budget we have to spread over both our inside lawyers and our outside counsel," she said. "As a result, our law department maintains what I call a startup mentality. We're all very good at multitasking and doing whatever comes in the door."

Routine legal matters and standard contracts are handled in house, as are corporate governance, securities issues and patent strategies. Shema relies on outside counsel for mergers and acquisitions, real estate issues, complex employment cases, patent prosecution, major transactions and litigation.

The company does not employ alternative billing structures for outside counsel, but Shema meets quarterly with an Onyx accountant for a big-picture look at the budget.

Onyx's acquisition of Proteolix was handled by New York-based Dewey & LeBoeuf's Palo Alto office. The company also has an established relationship with Cooley attorneys in San Francisco and Palo Alto. Goodwin Procter; Wilson Sonsini Goodrich & Rosati; Perkins Coie and Fish & Richardson are also vital outside counsel for patent work, corporate transactions and real estate.

DAILY DUTIES

Onyx is suing its Nexavar partner, Bayer. Onyx contends that a molecule Bayer is developing should be treated as a jointly owned collaboration compound. Bayer disagrees. Onyx filed suit last spring in U.S. District Court in San Francisco. The case, which is in discovery, puts Shema in a tricky position.

"My job includes the challenge of fully advocating Onyx's interests in the litigation against Bayer but at the same time fostering a productive collaboration with Bayer on Nexavar. It's quite interesting," she said.

During the past six months, Shema has helped the legal department streamline contract processes to encourage quicker but thorough reviews. Tapping her compliance experience, she has made Onyx's compliance department the go-to division for the board and executive team on FDA issues, California state employment regulations and the pharmaceutical code.

Onyx's acquisition of Proteolix brought more legal work for Shema's team. In preparation for carfilzomib's expected launch, the legal department must review drug-supply agreements, multinational clinical trial agreements and distribution agreements, and play a role in negotiations with the federal government on drug reimbursement and pricing.

ROUTE TO THE TOP

A Texas native, Shema earned her undergraduate degree in chemistry from the University of Texas in 1979 and a master's degree in chemistry from the University of Washington in 1981. Her law degree, which she received in 1985, is from the University of Washington.

She was an associate at Seed and Berry (now Seed Intellectual Property Law Group) in Seattle from 1985 to 1988. She went in house in 1989 when she joined NeoRx Corp. in Seattle as an associate general counsel, a position she held for two years.

"When you're in a law firm, you get to do very interesting, exciting work, but it's quite focused in both time and scope," Shema said. "It was not as rewarding to me as an in-house experience, where I get to perform as a lawyer but I also get to learn a lot more about business and rub elbows with a huge variety of people."

She was associate general counsel at Research Corp. Technologies Inc. in Tucson, Ariz., from 1991 to 1998 before joining ZymoGenetics.

Shema was looking for a fresh challenge when a recruiter contacted her in mid-2009 about an opportunity at Onyx. As general counsel at ZymoGenetics, she oversaw the law and compliance departments, quality assurance and quality control. Onyx appealed to her because the company has a successful product, Nexavar, but also was building a business for carfilzomib, offering her a variety of legal and compliance matters to handle.

Shema had worked at ZymoGenetics from 1998 to 2000 as corporate counsel. She spent a year as general counsel at aQuantive Inc. (formerly Avenue A Inc.; now Microsoft Advertising) in Seattle before returning to ZymoGenetics in 2001.

PERSONAL

Shema likes to bike, hike and read history books. She is married to Bruce Schwarze, a winemaker.

Recently she read "The Age of Gold: The California Gold Rush and the New American Dream," by H.W. Brands, and "Lost Prophet: The Life and Times of Bayard Rustin," by John D'Emilio. She saw "Avatar" on a flight returning from a business trip to Europe.

June Bell

06-23-2010

Company: Plantronics

In-house Counsel: Richard Pickard

Law School: William and Mary

If you've ever worn a headset, you've probably seen the name Plantronics. Once the province of annoying telemarketers and customer service reps under siege, the humble telephone headset is now ubiquitous in the wireless age, even mandatory in the increasing number of states that prohibit the use of handheld cell phones while driving. This is all great news for Santa Cruz-based Plantronics Inc. (NYSE: PLT), with a strong position for the next generation of unified communications audio devices and both corded and cordless headsets. The company had sales of \$614 million in the last year, down 9 percent from \$675 million in 2009. It has more than 3,000 employees worldwide.

THE QUICK BIO

Richard Pickard is vice president-legal, general counsel and secretary. Hired in 2001, he oversees legal matters relating to corporate, securities, mergers and acquisitions, litigation and intellectual property matters. Before joining Plantronics, Pickard, 57, spent 14 years at semiconductor maker Zilog Inc. in Campbell where he rose to senior vice president, general counsel and secretary. Before that he was corporate counsel at NEC Electronics and in private practice specializing in corporate law at Crosby, Heafey, Roach & May and Graham & James. He received his J.D. in 1979 from the College of William and Mary Law School and his undergraduate degree in American civilizations from Williams College.

By 2001, Zilog was in financial trouble that would lead to a Chapter 11 filing, and Pickard began looking for another opportunity. He answered an advertisement through the Silicon Valley Association of General Counsel. Former Plantronics GC John Knutson gave him a call and then put Pickard through his paces. "I had 20 interviews in all areas of the company, which was probably a bit much, but it showed that they were looking for someone who was the right fit," he said.

Pickard liked Plantronics for another reason. "The company was just getting into the consumer business in 2001, and New York was in the process of passing the country's first hands-free law [for cell phone use while driving]. I liked the fact that the company was very profitable and cash flow-positive." And, he said Plantronics had something his previous employer had lost: "The employees here were treated well, and they seemed to regard each other as extended family. I missed that."

LEGAL TEAM AND OUTSIDE COUNSEL

Plantronics has an in-house legal staff of 17, including six lawyers. Five of the attorneys are based at corporate headquarters and one multilingual attorney in Amsterdam handles business in Europe, the Middle East and Africa. Pickard's in-house associate counsel specialize in securities, contracts, litigation, employment law and intellectual property. The company's main outside counsel is Wilson Sonsini Goodrich & Rosati, led by partner Katharine Martin, who handles corporate and security matters. Irell & Manella is chief outside litigation counsel, recently working on a case where the company accuses two former employees of stealing trade secrets. The Los Angeles branch of Kirkland & Ellis is helping the company on a consumer class action against Plantronics and other large makers of Bluetooth headsets, in which a small group of objectors is contesting a settlement approved last year.

Pickard said he is looking at alternate fee arrangements with outside counsel to keep costs down. "We believe that our outside counsel be paid fairly and share in our [success] when we can," he said. "On the other hand, fees are getting so high that if they're not performing as well, we make adjustments."

Pickard says his team tries to do as much work in-house as possible, but "to make sure we do things on the cutting edge, we might draft papers and motions" and run it by outside counsel. "We find that is a very cost-effective way to use our resources."

Like many tech companies Plantronics' felt the downturn, and in late 2008 Pickard avoided extreme layoffs by suggesting a temporary cut of 10 percent in salary to his entire team, which it accepted. Two jobs had to be cut at that time, but one of the employees has since been hired back and old salary levels have been reinstated.

"I was proud of my department and our CFO [Barbara Scherer] for making that work. It was my idea and I ran it past the department first to see if there was buy-in, or I wouldn't have gone higher with it," Pickard said. "That they were willing to do that in the worst recession in over 70 years says a lot about that team, and other departments that didn't do something like that had to make steeper cuts."

DAILY DUTIES

Pickard considers himself one of the lucky top corporate lawyers who actually gets to spend significant time practicing law. "I love the variety, and I like to be a problem solver," he says, estimating he spends 75 percent of his time practicing. He credits former Zilog CEO Edward Sack with giving him a broad range of corporate legal experience as the company's sole counsel.

Pickard takes compliance issues seriously. He, his associate counsel and a team of facilitators go to departments to train workers and managers on legal issues. "They get so much more out of it when there's someone standing in front of them

instead of sending them a memo they might ignore," Pickard said. "They're forced to ask questions and that helps them understand."

Pickard reports to CFO Scherer.

DEPARTMENTAL CULTURE

Pickard offers his in-house team flex time when possible. "If people want to work from home, it's OK as long as we know about it." Plantronics embraces the unified communications (UC) concept of simplifying and integrating all forms of business communication. "UC systems are going to increase the ability to collaborate in business by making an individual more available by that person's preferred method of communication, by enhancing the ability to conference and share data," Picard says. "The concept of presence is going to change. We're living our technology."

Pickard offers that he never wore a headset until he got to Plantronics but does so today. "It's nice that I no longer have to crook the handset between my shoulder and ear, that my hands are free to type on a keyboard or take notes, and that I can walk up to 300 feet away from my desk without interrupting the call."

As for his own hours, he starts work at 8 a.m. and recently has been leaving the office at 5 because he carools with his son who's doing an internship in the company's industrial design department. "Then I'll finish up work at home."

EXTRACURRICULAR

In his private time, Pickard is president of his synagogue and has been president of the Williams College alumni society. He also raises funds for an organization based in Cape Town, South Africa, called mothers2mothers, which was started by his college friend Mitch Besser, a gynecologist who was working with pregnant women at risk of contracting HIV-AIDS and passing the disease to their children.

Pickard describes himself as a "huge San Jose Sharks fan" and a fan of the Oakland A's. He can't remember the last movie he saw, but he recently finished reading "Team of Rivals," the Lincoln biography by Doris Kearns Goodwin, and "Undaunted Courage," the story of Meriwether Lewis, Thomas Jefferson and the opening of the American West.

Pickard has three adult children, and his wife is retired San Jose attorney Carol Hill Pickard.

Lisa Holton

06-10-2010

Company: Sony Pictures Entertainment

In-House counsel: Leah Weil

Law School: UC Hastings

With 80 lawyers to supervise, Sony Pictures Entertainment's GC Leah Weil operates like the head of a multinational law firm.

CULVER CITY - As head of Sony Pictures Entertainment's legal department, Leah Weil's role is more like that of a chairwoman of a multinational law firm.

She supervises 80 lawyers working on a myriad of matters ranging from film and television production and distribution to labor and employment to intellectual property and antitrust issues. Fifteen years ago, she was just getting started with the company in a position "so junior it doesn't even exist anymore." The job was a reboot of sorts - the UC Hastings College of the Law graduate spent her first five years as a lawyer doing mergers and acquisitions for a small firm before taking maternity leave for a year and a half in 1990. At the urging of former clients, Weil hung out her own shingle for three years before joining Sony Pictures and working her way up the ranks.

Weil recently spoke with Daily Journal staff writer Jean-Luc Renault about her rise in the company and the legal challenges she faces every day. Here is an edited version of what she had to say:

DJ: What legal issues do you face most often?

Weil: We, like most studios, face the general issues that come up in connection with creating and distributing our motion pictures. In addition, we have a very robust international channels business, which is something I'm not sure people appreciate about Sony Pictures. We have channels outside of the United States and some inside, but mostly outside that are shown in about 140 countries. A lot of legal issues surrounding what broadcasters might be going through in the United States, we have that on a global issue. We have a very new and exciting technology here in our studios with both our own facilities like Imageworks - it does special effects - and Colorworks, which is a third-party provider. We obviously also have more of our general running-of-the-business type of legal issues, whether those are corporate issues, financing transactions, mergers and acquisitions, other forms of partnership, labor and employment, litigation, all of those kinds of legal issues, as well as music legal issues. We put music in our films and motion picture programs.

DJ: What's a day like for you in a given week?

Weil: Every day is different, which is kind of what I love about the job. I'll wake up early in the morning, 6:30-ish. Check the BlackBerry to see generally what's happening here, but also that's a good time to check in with Europe and the East Coast, given the time differences. Eventually make my way into the office, generally 8:30, 9-ish. And the day varies. But I think the day generally goes with dealing with things that are pre-set, so meetings and issues that we know, both on a commercial side or on a legal side are going to happen, and then with the inevitable things that come up during the course of the day - questions that people need. It may be reviewing a piece of material that someone has a question on or that has been bumped up to my attention. Then, sort of catching up with the rest of the world as their day comes in and out, and eventually crawling home.

'The legal issues that go around building a new business model, reviewing rights agreements, helping to understand how all the pieces fit together are very exciting. That's very exciting for lawyers who either have been doing production or distribution for a long time to now start thinking about this brave new world.'

DJ: Do you oversee lawyers in other countries?

Weil: We're responsible for all the worldwide activities. I have a staff that's based in the U.K. We have one lawyer in Japan, and we have some lawyers and some of our television entities, which are joint ventures, but we actually do most of the legal work - except for our European-based lawyers - right here in Culver City. We're up at weird hours and doing things kind of round-the-clock. It's a full-service, multinational law firm run out of a movie studio. The majority of those lawyers are focused on the creation and distribution of product. In addition to our very active studio labels and Screen Gems and Columbia, we also have a very active television group, both domestically and internationally.

DJ: In what kind of situations do you use outside counsel?

Weil: What we're doing here is doing a huge volume of work in-house, but also a huge level of sophistication in-house. What we tend to go outside for is litigation. We do pre-litigation advice and we have some dispute resolution. But if comes down to actually litigating, we will go to outside counsel. Also, typically, if there is an issue of an international focus on something that we haven't dealt with before, we will tend to go outside for that.

DJ: What firms do you work with most often?

Weil: When we do go outside, it's because we've made a very specific decision that this particular matter requires, or would be helpful, or we're just completely overloaded. Because of that, we tend to use a broader spectrum of law firms than perhaps some other folks who are more captive to a law firm. We use Freshfields Bruckhaus Deringer LLP and Baker & McKenzie for specific needs. We've used Sheppard Mullin Richter & Hampton LLP here, Mitchell Silberberg & Knupp LLP on employment and labor matters. We've used the folks at Debevoise & Plimpton LLP and Dewey & LeBoeuf LLP in New York on occasion. Then we've had smaller firms in the L.A. area that we use.

DJ: Was there conscious effort to bring a lot of the work in-house?

Weil: I think the issue of responsiveness and really understanding the business objectives are what drive me to keep the work in house. Was it a conscious decision? I think it's cost effective, and more importantly, you can achieve your desired business result. I think there are some times when it makes much more sense to go outside. I think in that instance, it is again because you need either the expertise or the number of bodies in attention - you're doing a big acquisition.

DJ: What legal issues do you see on the horizon for Sony Picture in the coming year?

Weil: The continuing theft of our product is the biggest issue for our industry, and I think for Sony Pictures in particular. I think that we really have to look at a whole host of ways that we're going to tackle that problem. Consumers have spoken loudly, and we're all consumers ourselves. You're making this fabulous content that people want to watch, but people are increasingly particular about having choice. Watching it how they want it, when they want it on the device that we want it. The legal issues that go around building a new business model, reviewing rights agreements, helping to understand how all the pieces fit together are very exciting. That's very exciting for lawyers who either have been doing production or distribution for a long time to now start thinking about this brave new world.

DJ: It sounds more like you're like you're focused on looking ahead and adapting legal work toward future developments than just focusing on punishing people.

Weil: I hope I'm forward looking. At the same time, we've got to be realists who say: It's wrong; it's theft. Here's the great reason why - we are a fabulous industry, we can continue to be one, but not if everyone is stealing everything we make.

April 2011

Company: Sungevity

In-House Counsel: Nicholas Mack

Law School: UC Hastings

At solar company Sungevity Inc., Nicholas R. Mack helps expand residential projects while navigating local rebates and existing utility systems.

Size of legal department: 2 attorneys

In the sunlit, orange-tinged offices of Sungevity Inc., the Web-based home solar power company, there's no sweeter

sound than the shake of maracas. "That means we closed a deal with a customer," general counsel Nicholas R. Mack said on a recent tour of the Oakland headquarters. "Some days, it sounds like we're having a fiesta here."

So far, the 4-year-old company has heard those maracas shake for customers in California, Arizona and Colorado. Earlier this month, it expanded into five East Coast states. The company leases the vast majority of its solar installations, allowing customers to save on electricity bills without the initial cost of \$5,000 to \$15,000 that Mack said it takes to purchase a rooftop solar system.

For Mack, working at Sungevity is the culmination of personal and professional goals that began during childhood visits to a Vermont summer camp that taught him to "take nothing but photographs, leave nothing but footprints."

Since graduating from UC Hastings College of the Law in 1993, he's practiced scuba diving law at maritime and construction firm Boughey, Garvie & Bushner LLP; litigated technology and intellectual property cases at the now-defunct firms of Coudert Brothers LLP and Heller Ehrman White & McAuliffe LLP; and taken in-house roles at Sun Microsystems Inc., Yodlee Inc., REC Solar Inc. and now Sungevity. Through it all, he's striven to combine his legal skills with a passion for saving the planet.

Mack spoke recently with Daily Journal staff writer Sara Randazzo about navigating the bureaucracy of power utilities, why Germany has the U.S. beat on embracing renewable energy and how Sungevity can help solve the nation's energy problems. Here is an edited version of what he had to say:

DJ: What brought you to Sungevity from your last general counsel position at REC Solar?

Mack: Being general counsel at REC was exactly what I wanted, which was a crash course into renewable energy as a senior executive contributing to the success of a company in [that] space. But at the same time, I was also seeing some of the challenges companies in the industry were facing. What I saw was, if you want to be in the residential space, it's really important to have a financing program because the cost of systems from a cash-outlay perspective limits the market. Also, I was seeing how the traditional model of carrying large amounts of inventory and in-house installation crews was challenging because solar has a cyclical nature to it. In early 2010, Sungevity reached out to me. I didn't know much about them, so I went and looked at their website. I saw that Sungevity was solving a lot of those problems through the outsourced installation model and use of technology and Web interaction to drive costs out of the sale and design cycle. When I joined Sungevity in February 2010, they were in the process of closing their first tax equity fund with U.S. Bank and pulling together the lease program, which went live three weeks after I joined. I literally parachuted into the middle of one of the most strategic deals the company had done as it was getting ready to go live with the most strategic new product offering they had done. Since then, it has just been a rocket ride. 'I would like to see solar systems on the rooftop of virtually every building in the United States.'

DJ: What's kept you busy since then?

Mack: Everything from the tax equity piece, which is key, to the regulatory aspects of doing residential solar as we expand geographically. Every time you move into a new district, you have to understand the rebate program, the local contractors' licensing requirements, what it takes to set up and do business in those states. I do a lot of work to negotiate supply and vendor agreements. There's the whole subcontractor network and creating standard subcontracting templates. There's the software and IT side of the business, licensing technology, using vendors to do technology development, protecting our IP. It is everything customer-facing - training our sales force, creating templates for our lease or cash-sale agreements, responding if customers have questions our sales force can't answer offhand. It's the constant interaction with other companies - nondisclosure agreements, licensing agreements, partnership agreements. As the corporate secretary, I'm dealing with board issues, investor issues, corporate equity, then your constant drumbeat of normal legal issues - HR, facilities, employment issues. You name it, it crosses my desk.

DJ: How much do you work with the utility companies?

Mack: Primarily, it's understanding how their rebate programs work and their process for interconnection of solar systems. Some of the utilities are more familiar with and supportive of renewable energy. Where it's unfamiliar to them, there's an education process. On the bigger policy side, one of our co-founders, Danny Kennedy, has a deep history in policy and activism. He was with Greenpeace. I'll be working with Danny more closely on ramping up our public policy involvement.

DJ: What key policies do you plan to push first?

Mack: We want to see continued support for the industry through appropriate rebate programs and federal tax incentives. Another huge push is standardization and simplification of the whole process. What we are striving for is what you can find, for example, in Germany. If you want to put a solar system in Germany, it's one piece of paper, no matter where you are in the country. In the United States, it's this patchwork. Literally, you cross the line from one utility district to another and your entire set of forms may change. I understand there's a lot of good that comes out of our federalist system, but there's also a lot of inefficiency. It would be wonderful to see the federal and state government more involved in trying to standardize things.

DJ: The rebates are money given from the utility to the consumer?

Mack: To the system owner. Generally, it's based on a number of dollars or cents per watts. Some utilities will give us a rebate just based on installed capacity. Others say what we're actually paying you for is those RECs, those renewable energy certificates.

DJ: What does a REC represent?

Mack: It's energy that otherwise would have had to come from a fossil fuel source. Renewable energy certificates are typically measured as kilowatt hours or megawatt hours produced by a system. A reasonably sized home system can produce a few RECs per year. Utility companies are trying to aggregate those RECs so they can meet Renewable Portfolio Standards, which are mandatory in some states and aspirational in others. They can either create utility-scale stuff that takes years and is very expensive - but if you want boots on the roof, you want stuff installed now, residential is a great way to do it. Instead of gambling all of it on a few very large projects that may be in an environmentally sensitive area, that may require you to build a ton of infrastructure, that may require power lines to be strung hundreds of miles to get to the right spot, the beauty of residential solar is you're putting relatively small systems on existing rooftops. And the power's being used where it's made. What could be better?

DJ: Is there often excess power generated by the home that goes back into the grid?

Mack: There can be. Unfortunately in America, we still have not fully embraced the concept of a feed-in tariff, which allows people to turn their homes into power stations for use by other people. In Germany, for example, a dairy farmer who has a field with really good sun exposure can put in a system far larger than their own home and dairy operation is going to use. They're putting that energy back into the local utility grid and getting paid as though it's a power station. Here in the United States, most utility districts don't encourage or facilitate that. What they'll do is net metering up to basically zeroing out your bill. There are relatively few utility districts that allow you to make money off of excess. I think that would be a good thing for the industry to do.

DJ: How much work do you send to outside counsel?

Mack: We use outside counsel at Chadbourne & Parke LLP for the tax-equity project finance funds because they are fairly complex deals. We have a long-standing relationship with SNR Denton, who have been our corporate counsel since the company was formed. We also get some construction law and licensing advice from a local East Bay firm. We have outside counsel for labor and employment and outside patent counsel.

DJ: What's your dream of where the renewable energy industry could go?

Mack: I would like to see solar systems on the rooftop of virtually every building in the United States. I would like to see the industry continue to grow so that power is being generated where it's used throughout the country. It's such a logical approach to the challenge of how do you generate and distribute electricity throughout [the] vast geography of the United States. I also strongly believe our current approach to generating electricity based on fossil fuels poses substantial risks to the environment, to the climate and to our national security.

I'm not a Luddite. I don't think we should go back to water wheels and windmills that don't create electricity. Modern technology allows us to do amazing things and supports a population level that is inconceivable. But it's not sustainable using our current energy source. Every single minute of every single day we are orbiting a galactic fusion reactor in the sky. The sun coats the earth with enormous amounts of electrical energy. We only have to harness a few basis points of that, not even a percent, and we meet the entire globe's energy requirements. And it doesn't cost us anything. What Sungevity is trying to do is make this as simple and cost-effective as possible for the customer. We make this painless, we make this easy, we make this low-impact. There's a certain momentum building in this industry we are really trying to drive and ride. This is part of the solution for the 21st Century.

April 2011

Company: TVG Network

In-House counsel: Melanie Sims Frank

Law School: Howard

TVG Network's Melanie Frank helps the online gaming provider and horse racing network navigate legal issues from start to finish.

In the sports newsroom at TVG Network, all eyes were glued to the race. Standing along a dark wall, Associate General Counsel Melanie Frank explained in a hushed tone that all of the on-air talent at TVG - the leading television channel and online gaming network devoted to horse racing - are expert analysts and true fans. A whoop went up from the back row of the newsroom signifying the race was over as two picture-perfect news commentators scrawled notes to ready themselves for the camera.

One of the many legal issues Frank deals with every day is protecting TVG's interests while allowing the on-air experts to comment unscripted on the races as they happen. And that's just the production side of her job. In addition to providing 24-hour horse race coverage, TVG runs a website where viewers in 17 states can place wagers on the races they watch. The responsibility of ensuring this all happens above board falls to the team comprised of Frank, General Counsel John Hindman and one paralegal.

TVG has changed hands several times since Frank joined its former parent company, Gemstar-TV Guide in January 2007. Macrovision Corp. purchased all of Gemstar-TV Guide's properties in 2008 and quickly sold TVG Network to London-based Betfair Group Ltd. in 2009. Betfair then went public on the London Stock Exchange in October 2010.

Daily Journal staff writer Erica E. Phillips recently sat down with Frank at TVG's West Los Angeles production headquarters to discuss these rapid-fire ownership changes and the legal issues involved in running a gaming and interactive entertainment company. The following is an edited version of their conversation.

Daily Journal: What were your responsibilities during Betfair's acquisition of TVG?

Frank: I went through the Macrovision sale, then the Betfair sale, so it was pretty much the same thing. You're compiling sales documents, working on disclosure statements, whatever the potential buyer was interested in seeing. We were very busy around that time. We have three other offices that don't have separate legal departments so if there were agreements that were entered into out of our Colorado or Oregon offices I was making sure we had all of the documents compiled.

In addition to providing 24-hour horse race coverage, TVG runs a website where viewers in 17 states can place wagers on the races they watch.

DJ: What sorts of things are you responsible for now, day to day or week to week?

Frank: I would say I'm a corporate generalist. The biggest part of my job is supporting and negotiating all the third-party agreements: contracts with our affiliates, our track partners, vendor agreements and content distribution deals. And I interface with production a lot on their issues. Someone walked into my office just now to talk about a show they want to put on the air.

DJ: What do the track partner agreements entail?

Frank: Track partner agreements are licensing and content distribution deals. We have track partner agreements with about 150 tracks in various jurisdictions. We have some track partner agreements where we have exclusive distribution rights and we have some track partners agreements where we are non-exclusive.

DJ: So when the big races happen, do things get hectic around here?

Frank: Certain big races - the Breeders Cup and the Derby - transcend the horse racing industry and people who are not necessarily interested in horse racing tune in. We try to gear up and run ad campaigns and sweepstakes, so, yes, it gets busy. We also show our commitment to the racing industry by sponsoring the pre-eminent races. I work hands-on with the production team on 'Okay, what are we going to do for this race? Are we going to have on-air talent? Are we going to promote them on the website? Are we going to offer certain rewards points to people who wager on them?' All of those things go into sponsoring a race.

DJ: It seems like TVG would work well in the current media environment because it's a television channel with an interactive online component.

Frank: Yes, TVG is one of the most widely distributed horseracing networks in the world, and we are the largest legal online gaming company in the U.S. Our marketing department is very tuned in to current media and offers contests that are on air, on the network and over the internet for our gaming customers. My department is involved in the legal aspects of those contest and sweepstakes. For example, every state has different laws, and we offer contests and sweepstakes in multiple jurisdictions and sometimes jurisdictions where we don't take wagers. My job is to help advise the business units on some of those restrictions.

DJ: There must be a lot of complexity when one of the main things you do - online gaming - is not allowed in many areas where the TV channel is carried.

Frank: Yes, that's what's challenging and that's what makes working at a network like this interesting. We are regulated by the California Horse Racing Board annually, which licenses advanced deposit wagering. We allow viewers to make wagers from their home online, from a land-line telephone, or mobile phone. Other jurisdictions have licensing bodies similar to California to do the same thing. If it's Washington, for example, I'll go up to the Washington Horse Racing Board to hear our license application annually. That's what I meant earlier when I said we only take wagers in those states where we're licensed to do so.

DJ: Can you talk a little bit about the company's relationship with the various cable providers? Is TVG available with some packages and not others?

Frank: We have contracts with certain cable providers, and we're offered in about 35 million or so homes in the U.S. I work with our sales team on our contracts with the cable operators. When they strike the business terms of a deal then the contract comes to me to finalize those terms, and all those deals are structured differently. On some of those cable operators we're offered as the basic package; on some of them we're part of the sports tier package.

DJ: Who have you turned to as outside counsel?

Frank: For intellectual property matters we typically use Ropes & Gray LLP. We outsource most of the litigation, and we've used Blank Rome LLP and Hogan & Hartson on matters. We've used Allen Matkins [Leck Gamble Mallory & Natsis LLP] on some labor matters. When we have issues that need to be farmed out, our biggest thing is to find counsel that have the business acumen, that are cost-effective, and who really understand our business needs. We are a very small legal department and we're very hands-on, so we don't typically farm something out and let it go. Most of the counsel we hire work closely with us, and I think indicating a willingness to do that is the best way to gain our or anyone else's business, I'm sure.

Company: UC San Diego

General Counsel: Daniel W. Park

Law School: Yale

In overseeing legal issues for UC San Diego, an entity the size of a small city, Daniel W. Park handles everything from IP to employment matters.

When UC San Diego chief campus counsel Daniel W. Park arrives at his office each morning on the research university's sprawling La Jolla campus, there's no telling what new legal matters he's going to handle that day and that suits him just fine.

The New Mexico native and Yale Law School alum said his diverse litigation practice at Sheppard Mullin Richter & Hampton LLP in Los Angeles prepared him to handle the wide range of legal issues he's encountered at UCSD. Park joined the firm after he earned his law degree in 1998. He defended clients in federal False Claims Act cases and litigated intellectual property, corporate governance, and other commercial disputes.

He left the firm and Los Angeles in 2005 to serve as UCSD's associate campus counsel. He was promoted to chief counsel in 2007.

"I was quite surprised by the diversity and range of legal issues that affect large research universities like UC San Diego," Park said. "It seemed like a terrific place to practice law."

With 29,899 students; 26,000 employees; \$2.6 billion in annual revenue; \$842 million in research during the 2009 fiscal year; and 1,300 acres of real estate, UCSD's legal issues are bound to be diverse.

Park recently spoke with Daily Journal staff writer Mandy Jackson about the myriad legal issues his office oversees. Here's an edited version of what he had to say:

Daily Journal: How is it determined which legal matters stay here and what goes to the University of California's Office of the General Counsel in Oakland?

'One recent thing that we've had to look at and try and provide advice on is the U.S. Department of Education fine issued to Virginia Tech based on its response to the shooting that occurred there in 2007.'

Park: My office does a lot of the triage for legal issues. The expectation is that most legal issues will have their first stop in this office and we will make a determination about where it's best handled. We have a number of options to do that. We could send it up to the Office of the General Counsel. We could send it out to outside counsel or we could push it back down to one of the many [UCSD] departments that specialize in these issues. For example, if there's an employment issue, it might just go back to Human Resources. Or there might be an issue that goes back to real estate or to tech transfer, for an intellectual property issue.

DJ: What do you handle in-house?

Park: We handle any kind of advice question that people have. So, if people have questions about employment law, like a disability accommodation, we might provide advice about that. If there are questions about significant lease terms in our [real estate] leases and there's a question about how that applies, we might interpret that. If there's an investigation by either a federal or state or local agency, we'll be the first people to respond to those kinds of investigations, gathering documents and preparing responses. We provide a lot of general strategic advice, so we serve on a lot of policy committees.

DJ: What legal matters do you outsource?

Park: We outsource litigation. The other things that go out would be issues that require a sustained amount of research. Recently, we've outsourced a complex question about First Amendment law. We know a lot about the First Amendment, but this was going to take 20 hours of research and we just didn't have 20 hours to do it. We've outsourced questions about a temporary airport on campus. We've had technical questions about real estate leases that we didn't know the answer to and didn't have the time to figure out ourselves. Our objective is to try and do as much as we can in-house and to turn to outside counsel when they have a high level of expertise in an area of law where we don't have it.

DJ: What firms do you use on a regular basis?

Park: For our employment cases we use Paul Plevin Sullivan & Connaughton LLP, Littler Mendelson PC and Andrews Lagasse Branch & Bell LLP. For the other cases, it really varies based on expertise. People we've used recently would be Crowell & Moring LLP and DLA Piper. We used Munger, Tolles & Olson LLP for a very large class action case. We have Fenwick & West LLP defending an intellectual property case right now.

DJ: What was the large class action?

Park: It had to do with a data breach, and the question was whether or not we were responsible for nominal damages for the data breach. The lawyers did a great job in arguing that we were not responsible for that when we had used standard security measures to protect the data. Hacking is a big problem for anybody. People are being hacked all the time or there are attempted hackings. That case settled for hardly any money. We won that case.

DJ: As a major research institution, how does your office participate in negotiations on behalf of researchers at the university when they partner with private companies?

Park: There are different components to the research. There are specific contracts that come either from the federal government or from industry. Those are all handled through our Contracts and Grants department. Our involvement would

come in if people wanted to materially change one of the clauses in a way that's not normal, that's not the discretion of the contracting officers. We would help be the negotiator or just talk about the implications of what the proposed language change might be. We would get involved if there's a dispute. Fortunately, only very rarely are there disputes. We might also be involved in questions about conflict of interest or researcher misconduct. It's a highly regulated field, both for conflicts and standards of research conduct, so we might be involved if those kinds of questions arise, which generally they don't.

DJ: The state budget is always in flux and higher education cuts loom large, so how does that impact your office and your workload?

Park: It increases the pressure on the legal office to deliver the legal services as efficiently as possible. That reflects in our trying to handle as much of the legal workload as possible in-house as opposed to going to outside counsel. It also reflects in our trying to negotiate with our outside counsel the best possible rates and with monitoring and supervising their work to make sure that the legal work that does go to outside counsel is delivered as efficiently as possible. We've taken our fair share of budget cuts and we expect to take more. That results in less travel, fewer supplies and equipment purchases, and deferred maintenance. We also have to support other units in collection of debts owed to the university, so we can capture that income. We also get involved in avoidance of liability, either through risk management or the adoption of best practices or with pre-litigation dispute resolution.

DJ: Did you lend a hand in the negotiations with California Western School of Law to add a law school to UCSD?

Park: I was part of the committee that considered the combination. Right now those discussions are on hold, because of financial issues. The state budget casts a shadow over everything the university is doing right now.

DJ: What legal or policy issues are you tracking that might impact UCSD?

Park: One recent thing that we've had to look at and try and provide advice on is the U.S. Department of Education fine issued to Virginia Tech based on its response to the shooting that occurred there in 2007. We've studied the letter [about the fine] very closely and made people aware of what the Department of Education's position was with respect to how Virginia Tech responded. Virginia Tech is appealing the fine, so the final word has not been written on the appropriateness of its actions, but we're following it very closely.

We're waiting to see what happens with [the U.S. Supreme Court's consideration of university research partnerships with private companies in] *Stanford v. Roche*. We'll know in a couple of months. When that comes down, we may or may not have to make adjustments.

Company: University of California

General Counsel: Charles Robinson

Law School: Yale

From admiralty to agriculture to the Occupy movement, the University of California's GC faces a broad range of legal issues.

The University of California's 10 campuses have an enrollment of more than 220,000 students and employ more than 180,000 faculty and staff. The university was founded in 1868 and today operates campuses in Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Cruz and Santa Barbara. It also

operates five medical centers and three U.S. Department of Energy national laboratories. Beyond that, the UC system serves more than a half-million people through UC Extension's continuing education coursework and its Cooperative Extension's agricultural programs around the state.

THE SHORT BIO

Charles Robinson, 54, became the university's vice president and general counsel in 2007. His staff of 80 is spread between Berkeley and each of the individual campuses.

Before joining UC, Robinson served between 2000 and 2006 as vice president, general counsel and corporate secretary for the California Independent System Operator Corp. (California ISO), California's wholesale electric transmission operator. He served as assistant general counsel for Packard Bell in Sacramento from 1999 to 2000, division counsel for Raychem Corp. in Menlo Park from 1995 to 1999, and as a litigator at Heller Ehrman White & McAuliffe in San Francisco for 12 years before that. Robinson clerked for U.S. District Judge William Orrick in San Francisco and graduated from Yale Law School in 1982. He has a bachelor's degree from Harvard.

Robinson's childhood in Philadelphia positioned him for a career in law. "My parents were part of a network of African-American professionals, so I grew up knowing lawyers and judges." One was federal appeals court Judge A. Leon Higginbotham Jr., who hired Robinson to work as a high school intern in his chambers. "I mostly did clerical work, but I got to read opinions and I got to spend a lot of time in the courtroom, which was a fabulous experience."

His decision to go to Heller was based on his interest in "very high-quality commercial litigation," including a landmark case in the 1980s against Bank of America for its handling of student loans. But he also was attracted by the firm's dedication to pro bono work. His cases included defending the immigration rights of Salvadoran refugees and a lawsuit against Caltrans after the 1989 Loma Prieta earthquake.

Robinson made partner at Heller in 1989, but eventually decided to transition to an in-house role. "There was a lot of pressure on young partners to make rain, and at some point I just got tired of it," he said. "I started talking to people I trusted about how easy it would be for a litigator to go in house, which wasn't done very often back then. But as it turned out, I really enjoyed becoming more of a generalist." At Raychem, he oversaw the division's litigation efforts, but he also got his first exposure to labor and employment law, intellectual property, business affiliations and M&A. "It allowed me to remake myself."

His job at California ISO provided a similar change when traditional corporate law began to lose its attraction for Robinson. "At Raychem, we had gone through about three or four consolidations and in the most recent one I wasn't a division lawyer anymore, which wasn't as much fun." ISO gave him the chance to "try something new" and get a taste of a legal job that straddled the public and private sectors at a critical time. Notably, he started the job just before California's electrical crisis in 2000, when Enron and other Texas energy suppliers were alleged to have illegally manipulated supplies that caused rolling blackouts throughout the state. "It was my first move into a regulatory environment and a very public legal situation," he said.

In 2006 he heard from a search consultant about the UC job but wasn't terribly excited about moving from Sacramento, where his family was settled. "But I liked public service, and it was an opportunity. The thing I love most about UC is that we've been successful, at least up until now, at combining excellence and educational access for people who don't have a lot of money," he says.

CURRENT CHALLENGES

Most university law departments are very busy, but they operate well below the radar inside their institutions. Thanks to the recent Occupy Wall Street protests on UC's Davis, Berkeley and Santa Cruz campuses and the national impact of the abuse scandal at Penn State, Robinson has been dealing with immediate events and reviewing best practices.

"A considerable portion of my time since the recent protest incidents has been devoted to assuring that the proper processes are being implemented to investigate the incidents and to determine what changes should be made to our policies and practices," said Robinson, who is working with Berkeley Law Dean Christopher Edley Jr. to review such policies on a systemwide basis.

LEGAL TEAM AND OUTSIDE COUNSEL

Robinson says the most interesting thing about being a college lawyer is the extensive number of public policy issues that play out at a major university. "We have very creative students who press the limits of the First Amendment, so constitutional law is a major part of what we do. The university is in the business of knowledge creation," so "there are always opportunities to make new law or apply existing law in new ways."

His department, for example, has prepared *amicus curiae* briefs on stem cell research for the D.C. Circuit U.S. Court of Appeals and has defended the use of copyrighted material in the virtual classroom. The diversity of the practice extends to less well-known areas of the law, such as aviation law (the Davis campus operates an airport) and admiralty (the San Diego campus, through the Scripps Institution of Oceanography, operates seagoing vessels). "Stuff like that always keeps a university legal job interesting," he says.

The department's 80 attorneys include eight who are essentially GCs at their respective campuses overseeing 20 other lawyers across those campuses. The remaining attorneys headquartered in UC's Oakland legal headquarters are organized along five practice areas: education affairs (led by Robinson's chief deputy, David Birnbaum); health law; litigation, including labor and employment; business transactions and land use; and governance and compliance. Robinson and his deputies in each of those areas confer before meetings with top UC administrators and board members. "We essentially prepare for an annual meeting every two months," he says.

UC's leading outside counsel include Paul, Plevin, Sullivan & Connaughton and Crowell & Moring on litigation; Hanson Bridgett for employment law; Orrick, Herrington & Sutcliffe on bond and tax work; and Pillsbury Winthrop Shaw Pittman on construction law.

Robinson points out that Birnbaum's role is evolving as more of a COO for the department, which will allow Robinson to focus on more strategic issues. "I'm in my fifth year in the department, and I want more time to rethink the business. We're trying to do more with technology. We've developed a website that pushes out a lot more legal information into the UC organization, and we're working to make sure that information is accurate and in simple English," he says. "Those are the kinds of things I have in mind."

EXTRACURRICULAR

Robinson is an active member of the National Association of College and University Attorneys, presenting at meetings every year. For the past three years he has been a board member of the Berkeley Community Fund, a local group that provides scholarship funding and support for at-risk youth. "We help kids who come from disadvantaged backgrounds become first-generation college students," said Robinson. "It's been very meaningful work." Robinson and his wife have one son who's a junior in high school. In his spare time, Robinson has been working on his photography. "I shoot street scenes and I try to do it whenever I can."

Lisa Holton, December 2011