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GC Round Table
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GENERAL COUNSEL ROUND TABLE

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**Location: Venable, LLP 575 7th Street Northwest
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■ **HOST (LEGAL 500 SERIES):** Mr. David Burgess, Publishing Director, The Legal 500

■ **HOST (VENABLE LLP):** Mr. Jeffrey D. Knowles, Partner

■ **GENERAL COUNSEL ATTENDEES:**

■ Ms. Ann D. Davidson, Senior Vice President, Chief Legal Officer, and Corporate Secretary, EXELIS INC.

■ Mr. Jeffrey W. Ferguson, Managing Director and General Counsel, THE CARLYLE GROUP

■ Mr. Oliver M. Johnson, II, Executive Vice President and General Counsel, MEDSTAR HEALTH

■ Mr. Drew J. Pfirman, Senior Vice President and General Counsel, M&T BANK

■ Mr. Michael Roberts, Senior Vice President, General Counsel, and Corporate Secretary, CROWLEY MARITIME

■ Mr. Ed Ryan, Executive Vice President and General Counsel, MARRIOTT INTERNATIONAL

MR. BURGESS: We're going to be discussing three main areas which are: Managing the mix of in-house and outside counsel; then managing regulatory and litigation risk; and then delivering the bottom line, AFA and cost control strategies. Now, most of these cross over, so we may sort of skate around a bit, and obviously we'd prefer the discussion just to flow, and then occasionally I or Jeff will interject with a new sort of area or new discussion. Let's go around the room and introduce companies you work for just to get a general description of them so that we can compare and contrast

MR. ROBERTS: I am general counsel for Crowley Maritime. Crowley is one of the largest U.S.-based shipping companies. It does about \$2bn in revenue, 5,000 employees. It's a diversified company in terms of the maritime services that we offer: Container shipping, regional container shipping in the Caribbean and Central America markets, domestic tanker services. Petroleum products -- we do petroleum distribution in Alaska and in other places, and we have a technical services group that includes Titan marine salvage, which is part of a joint venture prime contractor on the Costa Concordia project in Italy. So it's a good American maritime company. We have a very small in-house group, five lawyers in total. We also have risk management, which is about 25 people in risk and insurance reporting through me, and then the government staff, also.

MR. FERGUSON: Can I ask just for my own edification for the future conversations, since I don't work at a shipping company, can you tell us what the major topics are in the legal group that you face and deal with

on a day-to-day basis? Just big topics: is it litigation? Is it issues such as polluting the oceans or is it some other kind of legal topic that you have to deal with at the highest level, the big picture?

MR. ROBERTS: Compliance is a big issue, whether it's FCPA or antitrust compliance. Safety and environmental concerns are huge, and we have a very large safety (HSSE) program that deals with that. It used to be that claims was the driver for safety improvements, but as we get more successful in driving down lost-time incidents and other accidents, the volume of claims work fortunately goes away. So we do a lot of different things. One-off regulatory issues pop up. So it's a real mix of things. We're privately held so, we don't have the Sarbanes-Oxley headaches that some of you may have.

MR. FERGUSON: Do you do the leasing and financing for the ships, all that on the transactional side?

MR. ROBERTS: We do a lot of the transactional work in-house. We do ship construction contracts, charters, a lot of contract work. That's the bulk of what we do in-house.

MR. FERGUSON: Well, I'm Jeff Ferguson. I'm general counsel of the Carlyle Group, which is a private equity firm. It should be private, but we are public. (LAUGHTER) I'll end up striking that out. We are global in span. We have 33 offices in 28 countries, I believe, where we have employees. In the aggregate, about 1300 employees. We have 99 or so funds. We cater to institutional investors who invest in our funds, and our investment professionals scour the world looking for different types of investment opportunities - corporate, take-privates, real



Jeffrey Ferguson, The Carlyle Group

► estate investments, growth and venture capital. We have funds in South Africa, Asia, Europe, the U.S. We also have, in New York, London, and Hong Kong, an active set of debt funds and hedge funds. So we're pretty active. And now we've most recently just acquired an interest in a firm that trades commodities. So it's a very diverse set of financial services that we are now providing. My background: I'm a tax lawyer, and now I seem to think I'm still a tax lawyer, but I'm not really a tax lawyer. In-house, we have, 16 lawyers and about 17 compliance people, many of whom are also lawyers in-house. We use, like several of you, lots of outside lawyers. I think at last count we used some 48 law firms around the world. In-house, we focus on a lot of private equity fund formation. We focus a lot on litigation. Compliance is always a big topic. FCPA is a huge issue for us. We handle all of the insurance, a lot of regulatory issues. Now, as a public company, the whole host of 34 Act reporting, Sarbanes-Oxley, and I'm getting up to speed on those things, which is new and exciting. We are a publicly-traded partnership, not a corporation. That adds an extra range of complications, if you've ever had

to deal with that type of compliance issue. So being a publicly-traded partnership is fun. I'd recommend it to everyone. (LAUGHTER) **MR. RYAN:** Interesting. In my former life, I was a real estate attorney. And, Jeff, if you ever have trouble with your lease, you can blame me. I did your lease many, many years ago. (LAUGHTER) Carlyle was a client. I see you're going to talk to me about that afterwards. My name is Ed Ryan. I'm general counsel at Marriott. I've been at Marriott for approximately 16 years. Hopefully you all know the company, the world's leading provider of hospitality services. We operate under many brands, I think 16 or 17. I have trouble keeping count, but anywhere from a Ritz-Carlton at the very, very high end, to a very comfortable product, Fairfield Inn Suites, and there's a range of hotels that sort of go in between those. One thing I'd like to -- what surprises a lot of people, we have 3700 hotels that carry our name around the world. We own very, very few of those, approximately five. So our business is really all about managing hotels and franchising hotels and, therefore, it's really contractual-based in the sense that, I often say those are our assets. Each of those

have management and franchise agreements. We do operate in, I think, 73 different countries around the world. That seems to be growing almost monthly as we open new hotels. It's been very aggressive growth in areas like China, India, a lot of places that raise all of your FCPA concerns. So, as both of you know, that's a major topic. A major part of my life is making sure our compliance program is what it needs to be. Our department is 70 lawyers in total. We're about 50 at headquarters in Bethesda and 20 overseas in offices in Hong Kong, Beijing, Delhi, Dubai, and Zurich, and soon-to-be Shanghai. So, interesting: China alone will have three separate offices. We have about 50 paralegals. Virtually all of the transactional work for the company is done in-house. The outside counsel are really litigation, regulatory, and some financing work when it kind of gets over our heads, as well as a lot of local counsel in the various jurisdictions where we need them for our operations. We actually -- I'm blessed in many ways. We don't deal with the claims. As you can imagine, as a hotel company, we get sued every day for slip-and-falls and all that sort of stuff. We have a great, great claims department at Marriott with negotiators who are unbelievable at putting away those claims and addressing them as they should be. So that part of the business is elsewhere in the company. And tax is also elsewhere in the company. Other than that, it's funny; we are a public company, right at 16 billion market cap, more or less. You know, I actually like that part of it. I think it's interesting. I think it's fun dealing with the board, dealing with our committees on the board. We have a terrific board of directors, and I won't excise that part. (LAUGHTER) No, they really are really good, and I've actually kind of enjoyed the public part. The finance part, Sarbanes-Oxley, yes, that is a burden, but on the other hand, I kind of understand why it's all there. So I'm not a great critic of any of that. **MR. PFIRMAN:** I'm Drew Pfirman. I'm general counsel for M&T. M&T is a bank holding company. We are a public company. We've got about \$80bn in assets at the moment. We've got a transaction in the works to acquire Hudson City National, which is \$45m in assets. So we'll be growing soon. We rank, I think, about 14th or 15th of the largest bank holding companies, but if you take out the ones that aren't really banks, such as Goldman and the banks that just do trust work, such as Mellon, we're about 10th or 9th. We're basically in the Northeast regionally. We're the only bank

that's maintained its dividend and profitability for every quarter for the last 30 years. So we're very conservative and it's kind of easy being the general counsel there, because there aren't a lot of problems. (LAUGHTER)

MR. JOHNSON: Good afternoon, I'm Oliver Johnson, general counsel of MedStar Health. MedStar is the largest healthcare provider in the mid-Atlantic region. We operate nine hospitals, and will close in December on the acquisition of our tenth. We also operate physician practices and home health and rehabilitation businesses, and relatively small Medicaid and Medicare insurance businesses. We are not-for-profit, with annual revenues of about \$4bn, and we employ about 27,000 people. Our Office of General Counsel is comprised of the legal and compliance departments and a small corporate secretary office. Our total headcount is about 40, with 12 lawyers. All members of our OGC are expected to help our clients execute on their business strategies, with understanding and thoughtful management of associated legal and regulatory obligations and risks. Our clients' objectives become our own, so we expect OGC team members to have strong technical skills as well as an understanding of the company's business and finances. Team members are urged to "speak the language" of our clients and to own the company's success by interacting closely with the executive leadership of their client entities.

MS. DAVIDSON: I'm general counsel for a company called Exelis. We were spun off from ITT at the end of October last year, so we are what was ITT's defense business. ITT spun two companies off at the same time, the defense business and the water technology business. So it was a little unusual doing two spinoffs at the same time, but this is the third spinoff I've been involved in, and it seems to be a career right now. We're a defense contractor largely but not exclusively. We also do a lot of contracting for other parts of the government, and we've got some interesting niche commercial businesses that have nice technologies and margins. I don't know how many countries we actually do business in but I know we have offices in 12 - 15. We've got about 20,000 employees, 2011 revenue of about \$5.8bn. Market cap is lower. Through the spin off we inherited the pension plan for all of the legacy ITT employees. So we spend a lot of time managing pension funds. That really is an interesting challenge when you think about all of the things that ITT has owned, you know, through the last 20, 30, 40



Ann Davidson, Exelis Inc

years. We've got the legacy pensions for all of them.

MR. FERGUSON: If you're underfunded, we can help you. (LAUGHTER)

MS. DAVIDSON: Exelis is a mix of about half services and half manufacturing. We make night vision goggles for the U.S. and other militaries. We make soldier radio systems. We make electronic warfare equipment for aircraft. We make composite structures, for both commercial and military products. Services tend to be in two buckets. The first is military base services and logistics. A good portion of our employees are actually in that part of the business, and they're in Kuwait, Afghanistan, Qatar, Bosnia and other countries as well as in the United States. The other category of services is provided by technical, scientific and engineering professionals who assist the government on projects for which they contract out, for example air traffic management systems. The law department is pretty small. There are 8 lawyers at headquarters and 5 in the field directly supporting divisions. We are publicly traded and we are heavily regulated. I think we do a pretty good job managing risk and executing

a compliance program. We principally turn to outside counsel for transactions work, litigation and public company expertise.

MR. BURGESS: I think that perhaps one of the things that has come out from most of the discussions is obviously compliance and risk, so I think we should probably just jump straight into that sort of area, and it's something we were discussing earlier before some people arrived. And we were talking about the role of the GC and the role of in-house -- the in-house function, how it's changed. Do you think there's a fuller understanding of the total pressures that GCs are under in terms of compliance and risk management from the businesses in general? Do you think that the view of GC as just advising on black letter law has completely changed? Do you think there's an understanding within businesses that the role of the GC is vastly different nowadays?

MR. PFIRMAN: I think that that's the main difference between outside counsel and inside counsel. I mean, outside counsel -- inside counsel is really part of the risk management -- legal risk management infrastructure, and they've got a different duty than outside counsel. Outside counsel, if you're dealing



Ed Ryan, Marriott International

▶ with a bank, and they're on a transaction, they're dealing with somebody who has a vice president title, and almost everybody in a bank has a vice president title. But, they've got the apparent authority to dictate the transaction, and if they're telling the lawyer to do something that he might feel is overly risky, he's probably going to do it anyway. But inside counsel has the duty to stand up and say, "We don't think this is -- we represent the organization, and we think that we shouldn't be doing this", and at least escalate it to the proper level in the organization. As far as the changing landscape, I think especially in banking, it's totally changed. The regulators used to be, the kind of credential regulators that helped you. You know, you confessed everything to your regulator as opposed to the securities regulators, which, why would you tell them; they're only going to fine you? But I think that it's totally changed now in banking and it's a situation where the risks are really out there, and it's putting a strain on the relationship between the banks and the regulators. If you look at what happened with the New York State -- the Department of

Financial Services and Standard Chartered. I mean, they just went ahead and put a fine on them for hundreds of millions of dollars without consulting with the other regulators. And you have to ask yourself, that fine went to New York State, you just have to ask yourself what the motivation is at some point.

MR. ROBERTS: One of the things that I really focused on when I went back in-house was the compliance issues and making sure that we have as robust a compliance program in all areas -- antitrust and FCPA and regulatory compliance -- as we possibly can. We really put a premium on being proactive and making sure that people understand and abide by the rules. There are lots of tools out there to use now. And the business units and the business leaders really do understand the importance of these programs. So compliance is a big part or a much larger part of what we have to do in-house vs. as outside counsel.

MR. JOHNSON: I'd be hard-pressed to think of an aspect of the healthcare business that is not regulated, and so I think of compliance when I think of providing legal support to the company. In healthcare, there are regulations

governing how we provide care, how we interact with healthcare providers, and how we bill and get paid for our services, amongst many others. So I see effective compliance as a positive differentiator, where companies that do it well actually have competitive advantage over those who don't.

MR. BURGESS: Obviously, with the rising in compliance costs and the rise of regulatory issues, if you look from recent studies, obviously most in-house departments have been cut in terms of budgets. How do you manage those issues with a smaller budget and smaller teams? You still have to deliver - how do you find those pressures?

MS. DAVIDSON: I think it's a little more diffuse than that. I mean, every company does their budgeting a little differently and every company pays for their costs a little differently. I find relentless budget pressure, but I'm not necessarily convinced that we're all being cut to the point where we can't do our job or do it well. Maybe you give up an association membership. Maybe you settle a case early. Maybe you ask somebody to dual-hat. Maybe you ask somebody to cover something extra,

and maybe you don't review contracts below a certain threshold. There are some actions like that that we need to undertake, but at the end of the day, I'm not convinced -- and I know there's lots of articles published out there on the subject - I'm not convinced that everybody's budgets are going down. Their costs may go up and down depending on what the litigation landscape is, what investigations are underway, what transactions you have. And I think if you just took the total dollars spent on legal every year, I don't think you'd see cuts. I think you'd see increases, because transactions have become more complicated and more regulated, and litigation costs continue to go up and there are more public reporting responsibilities. And it just goes on and on. So I feel the pressure intensely. You have to justify every dollar you spend. But through several iterations of companies, I have not seen the true costs of what you need to do to be legally responsible being cut. I have to justify everything, and the pressure is intense, but I don't really see cuts in the spend rate. I do see cuts in budgets, but a sizable amount of the legal spend is on costs for unplanned and unknown matters that arise during the budget year. I certainly see outside counsel budgets being cut where the cost is discretionary. I also see significant increases in the costs of transactions as well as costs for the complicated, sophisticated legal work that we outsource. I see that cost going up all the time, no matter how many arrangements one negotiates, such as fixed prices and all the alternative billing arrangements employed to contain outside counsel costs. You know, if you just did a year-over-year comparison of similar transactions, I don't think they're getting any less expensive.

MR. RYAN: Actually, I think that's very accurate. There's always pressure, and the pressure's fine. It kind of causes you to rethink how you're doing things. I mean, the one area where there's real cost-effectiveness now is using technology, and it's an area that I'm looking at very carefully. Two big cost drivers: One is eDiscovery. That's an amazingly big cost pull.

MS. DAVIDSON: It certainly is when it happens.

MR. RYAN: But I do see that as being an area where technology ought to be useful to help drive that down. It's just a matter of getting from here to there. And the other is areas like IP, where you're managing thousands of trademarks and things like that where you have big volumes of information. I think

technology is a good example of kind of how I respond to budget pressure. Yes, I've got a lot of budget pressure. And there's -- companies tend to -- just kind of arbitrary numbers, you know, budget's going to go -- is limited to this X percent this year or X -- against forecast or against prior budget. So you kind of have to go through that. You have to go through the exercise. You have to justify if you're above that number. But I've never been in a situation where it's been a situation where I've had to really cut something that I thought was necessary in order to meet a compliance function or to adequately protect the company. I don't think that happens in many companies, quite frankly.

MS. DAVIDSON: I don't either.

MR. FERGUSON: I agree with that, and there is a lot of pressure on the budget issues. In my organization, it's multifaceted in many ways because I have sort of the parent company, which is an investment advisor, and we are the general partner of all of our funds. As the parent company, which is a public company, we hire a lot of lawyers and we have a budget for that, but we also hire a lot of lawyers on behalf of the funds to do M&A work and a lot of other type of legal work. And we, as an investment advisor, have fiduciary duties to those investors and to those funds. And those funds acquire portfolio companies, often a controlling interest, and we have a lot of interaction with the legal issues down in those portfolio companies which adds an additional layer of complexity. When they get sued, we often get sued as well or our funds get sued. You have to balance risk. I mean, you can either spend -- the world is getting very complex in the legal world as we get global. Trying to overlay competing legal regimes that affect one transaction becomes increasingly difficult, and you need really good lawyers to handle that. Those lawyers tend to be pretty expensive, but it's worth it, and it's worth it because once you see the backside of not having good lawyers, the cost of that can be outrageously expensive. And when you point that out and kind of walk down the path of what the possibilities might be if you don't spend the money you need for compliance or even on the transactional side in

complex transactions, the firm would greatly regret it. I think my perspective is: while I have a budget, if something happens, I'm going to spend what I need to protect the organization. And I think everybody understands, and if you use good judgment, I think it's respected. I also agree that technology, I believe, is extremely important in firms. Law firms I see that are beginning to employ technology in unique, innovative ways have a leg up on everybody else. For example, in the fundraising process, we form a lot of funds, and those firms that employ technology to handle and sort different data, different contractual provisions and pull that together quickly instead of doing it manually have a great advantage in terms of cost and time and responsiveness, and we really look for those firms that are effectively employing that kind of technology. And we're trying to do it in-house, too, which is novel. One of the closest partners I have inside the firm is the head of our IT group, and we're trying to come up with really innovative ways to use our software engineers to help us write programs that really help in the compliance world and other places in the legal world.

MR. JOHNSON: So early in my career, an older lawyer told me that if a client balks at your fees, look him in the eyes earnestly and say with conviction, "This is going to be expensive, but people could go to jail." He assured me that this would end any discussion of what needed to be done or the associated expense. I'd say that those days are gone. More and more, legal departments are being called on to justify both their outcomes and the associated costs. In other words, we're expected to run our departments like businesses. I think that this is one reason that we see a growing number of companies where the GC reports to the CFO or COO rather than to the CEO. In the MedStar OGC we've taken the approach of creating structure and discipline for ourselves. Several years ago we evaluated and justified each line of our budget, and we cut unnecessary items. We then managed our new budget closely. This resulted in a 20% reduction to our in-house costs while at the same time allowing us to make a small headcount increase. We also reduced our outside counsel spend by

'While I have a budget, if something happens, I'm going to spend what I need to protect the organization.'



Oliver Johnson, MedStar Health

▶ about 15% in one year by consolidating significant work into fewer firms, setting high standards with those firms for responsiveness, quality and efficiency, and managing our outside counsel budget and relationships closely. Several years ago we had about 65 law firms in our mix. Generally we paid them undiscounted hourly rates, and there was little management of the relationships or the fees. Today, we have between 22 and 25 firms in our mix. We expect diverse world-class talent and excellent work from these firms. But we also expect responsiveness and efficiency and for law firms to participate in our budget planning and management processes.

MR. KNOWLES: Just to follow up just as a quick question just to play devil's advocate for a minute. Research in Motion, the BlackBerry company, has laid off almost, I think, 40 percent of their legal department at a time when they have a critical launch of BlackBerry 10 coming up at the end of January. For example in their advertising and marketing group, which had 11 attorneys, they've cut that back to 3 attorneys. They've also cut out a number of paralegals and all the legal secretaries that worked with those lawyers. Is that really an anomaly?

MS. DAVIDSON: Well, the RIM situation is typical whenever a company is forced to contract like that. In the defense industry, for example, we're at the front end of that. We're going to be doing that. All of the people that participate in this industry, as well as anybody who receives government funds for services and goods is going to feel that, whether it's defense or the other government agencies. We went

through this throughout the time period of the 1990s. It happened then. I think the effect on industry is going to be different this time. I participated in the spinoff of the company that was Honeywell's defense business in 1990. Within two years of the spinoff, we had to let go a significant percentage of employees over several years, including in the law department. The company probably reduced the workforce by 35 to 40 percent over that timeframe. It is very, very painful, but you don't have a viable option if you want to survive. We're going through the contraction now. There's not one defense contractor whose revenues aren't going to come down in the near term. So how much cost do you cut for that? Our situation is complicated by the fact that we are a new company and it has been hard to assess what we really need for legal and what is discretionary in the context of the spin off company since it is so much smaller and so much more focused on the defense sector than ITT was -- we worked hard to figure that before the spin and before anybody's done all the public company work. In addition we also needed to plan for the downturn in government spending. We have slowly reduced personnel. My secretary voluntarily resigned and I did not hire a replacement.

MR. KNOWLES: Yes.

MS. DAVIDSON: I don't know how much the decline will be or how fast. There are all kinds of forecasts out there. But, I think that kind of reduction, you have to do it if your company's going to survive. You can't go out and report a loss year after year because you want to retain staff. So we have been letting people

go. We've already let thousands of employees go in the past couple of years, in a mix of voluntary and involuntary actions and we're reducing footprint and taking other measures to maintain our status as a good investment. I don't think it's in an anomaly, but I think it depends on whether you're in a business or an industry that's growing or shrinking.

MR. ROBERTS: I would just say fortunately we're not in that position. We're in a position where we're under a lot of cost pressure, obviously, and we have to be good stewards of the dollars that we spend for the company. We're constantly looking at that. We're looking at what may be considered a "commodity" legal service that might be handled in more cost-effective ways, through non-lawyer staff, outsourcing, and so on. I see pressure to do that, and you have to be able to justify doing work with in-house counsel as being the most cost-effective way. So you have to go through the analysis for all of what you do on a regular basis. Fortunately we're in a position where we've grown as a company 20 percent in the last four years. Our legal staff has stayed the same. So we are not in a position where we have to lay off lawyers.

MS. DAVIDSON: Well, I think one of the things that you said that I think is one of the biggest changes I've seen is the level of budget, accounting, finance and economic knowledge and expertise that the lawyers have to have in order to both be an effective lawyer and an effective department leader. If I could go back and do one thing different in my own personal training, I would have not been a liberal arts major. I would have been a finance or a

business major. (LAUGHTER)

MR. JOHNSON: Hear, hear.

MS. DAVIDSON: I've gone to many Finance and Finance for Lawyers courses, and I've had some great CFOs teaching me. But, when you're put into that situation and you need to plan for those challenges, whether it's how you do your budgets or how you deal with outside counsel or how you manage to justify every cent you spend, you have to do spreadsheets, and you have to be able to lead and perform these activities because the finance department doesn't have staff to help you anymore. I think that, frankly for me, in all the years I've been practicing, that's one of the biggest changes I've seen, is the amount of individual contributor and non-legal functional work that general counsel must perform for which we used to be able to rely on other functions, because they've shrunk, too. Another example is that when I hire a legal or compliance person, I select and retain the recruiter, write the job description, and manage the recruiting and interviewing process because HR doesn't have as many people anymore either. So I don't know if that, is --

MR. RYAN: More do-it-yourself?

MS. DAVIDSON: Yes.

MR. RYAN: Actually, it's kind of funny. I don't really think you really know your job or your industry until you've been through a cycle.

MS. DAVIDSON: That's probably true. That's a good observation.

MR. RYAN: And lodging is kind of famous

for having cycles, because people love to build hotels when the economy is good, and then they overbuild, and then it all goes south. So I've been through three, and it's taught me a few things. In the last one, we had to reduce the size of the department, because you're not immune. You can't say, well, we're the law department and we're doing something extra special here. You're part of a company and everybody is cutting and you get that same knife. It really makes you think very, very hard about any growth. I think it tends to make you realize how painful that growth can be if things go south. So our department, I think we were at 90 lawyers at one point and we're down to 70 now, and I like 70. The old "Don't build the parking lot for Easter Sunday"? It's very true in law departments as well, because sometimes you get a lot of pressure. When things are great, business is rolling, hey, we need more lawyers; we need more -- we've got more contracts coming in. Hire. And you say "No, I'm not hiring." And actually that's -- it's a great place for outside counsel -- to use outside counsel as that leverage that you need to stabilize your high growth period so that you can avoid the massive layoffs. I do think RIM is kind of aberrational given the situation they're in. But any company is going to have those times where you are going to have, for some reason a 10 percent head count or something, but you want to be in a situation where you can accommodate, where you can manage that

and it's not going to be something that really destroys your department.

MR. FERGUSON: But our firm is perhaps a little different in that when times are tough, that's when we need more lawyers because lawsuits are on the rise. We're doing workouts and renegotiations, and instead of hiring outside lawyers, I can save a lot of money by hiring more lawyers internally and cutting down those costs. In the recession - the busiest four years I've ever had - while the deal people were focused on capital preservation, my whole group was busy with a variety of issues. And as those pressures come to bear, investors start to care more, regulators start to care more, legislators start to care more, and that was the busiest four or five-year period that I've ever had in my career. So in that way, the legal department had kind of an inverse experience compared to RIM, which I do think is a little aberrational.

MR. BURGESS: Since the financial crisis, most companies have had to be defensive rather than offensive in terms of their legal spend. Everything goes in cycles, but this cycle seems to be lasting quite a little bit longer than most cycles. So how do you think most in-house departments are going to cope with that - the fact that it's not going to come back, that this is probably going to be a more permanent shift?

MR. JOHNSON: While we have had some turnover, we have not had layoffs, and I don't anticipate any. I would also say that we



Drew Pfirman, M&T Bank

► use turnover not so much to manage our budget as to look strategically at what our company will need from us in the future, and to replace the competencies that once were needed with competencies that will be needed.

MS. DAVIDSON: In some businesses, it certainly did precipitate what you described, broadbrush, I think it's been hitting just about every industry over many years. I could probably go back to a time when I didn't get questioned about every single dollar that was spent, but I'm not sure it ever lasted very long. That pressure has always been there. What I think has changed a lot is that our in-house clients, the CEOs, CFOs and the boards that we work with have gotten a lot smarter about asking the lawyers questions. I don't think we get the deference that I think lawyers used to get. If the lawyer came in and said, "There is a big risk if you don't spend this money on this activity", the response was "Oh, okay. Spend what you need to." I don't get that anymore. There is much more informed scrutiny. (LAUGHTER)

MS. DAVIDSON: No, actually I'd get --

MR. RYAN: An executive jail or -- (LAUGHTER)

MS. DAVIDSON: Exactly, exactly. No, seriously, we laugh, but it really isn't a joke. You are respected more if you can respond to the questions with information and data as opposed to an answer like "Well, let me know when you're a lawyer, and then you can help me answer that question." There was a lot of arrogance amongst lawyers in in-house law departments in past years. You know, maybe it's the same as with doctors in past years. "I'll tell you about your condition, what I think you can handle but no more, and you have to just respect my choice." Now you really do have to be able to develop a compelling rationale, legal strategy and budget in a way that the business people can understand it. And sometimes they ask questions you can't answer and they make you think a different way, and I like that. It helps to challenge us. But I've not ever had an

in-house executive that I serve or a business leader that I support not agree to spend money that is wise. But I think in the past they didn't always question how you did it as much.

MR. ROBERTS: One of the things I think you have to certainly keep in mind as you think about in-house versus outside is that, all things being equal, it's a lot cheaper, a lot more cost effective to do work in-house than it is outside.

MS. DAVIDSON: If it's repeated work.

MR. ROBERTS: Transactional work --

MS. DAVIDSON: Yes.

MR. ROBERTS: -- and those sorts of things. And I think about 50-75 percent less expensive to have a good lawyer who can do the transactions, the shipyard contracts, whatever it is that we have coming down the pike. If I send that outside, there's a high probability that we're going to pay a lot more money than we would doing it in-house. So you do have to look at the sort of trajectory of your business.

MR. JOHNSON: You make an interesting point. We try not to use outside counsel as supplemental arms and legs when we feel busy. We try to use outside counsel where the nature of an issue requires outside representation, such as in litigation, or where we need a type or level of expertise that doesn't exist in our in-house department. There is, however, an important exception. There are some needs that I have today that I don't know that I'll have a year or so from now. In other instances I have a significant need that I know will last for a relatively short time...say six months to a year. Rather than make permanent hires, in these cases I have preferred over the years to use secondments from law firms with which my company has close relationships. I've got two, actually, with Venable right now. It's hard to go to a firm with which you don't have a close relationship and say, "Give me one of your talented lawyers for the next six months or a year." But when you have a partnership with a law firm, it can make sense for the firm and for the company.

MR. PFIRMAN: I was just going to say that I

think to a certain extent it's a case of the haves and the have-nots. Cravath early this week announced their bonuses. They had a record year and bonuses. In the bank regulatory world, where we're now swamped with a host of new regulations and so forth, lawyers who do that are a scarce commodity. They don't teach that in law school. So everybody's after those lawyers, and we need to pay up for that talent, regardless of the budget.

MR. RYAN: I also think secondments are really useful, and we have done that a number of times, actually, with Venable. And we've hired the secondment lawyers many times as well. (LAUGHTER)

MR. FERGUSON: Same here. But during the recession, the secondees were all over the place and cheap. So law firms were glad to lend some underemployed lawyers.

MR. RYAN: Yes, and it worked real well, I think, for everybody.

MR. BURGESS: Mentioning the advantage of having people in-house, how do you go about attracting good in-house people? Obviously the traditional view as a few of us were discussing earlier of going to in-house because it's a better work/life balance is not really true anymore. (LAUGHTER)

MS. DAVIDSON: No!

MR. BURGESS: I think it's fair to say we can smash that myth. Obviously, the vast majority of lawyers who are going to be working for a firm are going to get paid significantly more, which is quite an attractive proposition. If you're trying to build up a great in-house team to make it more cost-effective, how do you attract that talent?

MR. RYAN: It's a buyer's market.

MS. DAVIDSON: Yes. It really is.

MR. RYAN: It is no problem attracting talent right now.

MS. DAVIDSON: I've never had a problem.

MR. JOHNSON: At MedStar we reorganized our legal department, to answer that question specifically. The challenge is not just to attract talent, but to grow and retain that talent. It is also important for team members who are working quite hard in the face of significant challenges to understand how meeting challenges benefits them personally and professionally. So we structured our legal department based on four principles: that our structure would align with the company's, that it would be easy to understand, that it would drive effectiveness and efficiency, and that it would create growth opportunities for each team member. In terms of the fourth

'One of the biggest changes I've seen is the level of budget, accounting, finance and economic knowledge and expertise that the lawyers have to have in order to both be an effective lawyer and an effective department leader.'



principle, we began with the assumption that most in-house lawyers aspire to some level of legal department leadership. We also recognized that to become a general counsel, one must generally have experience with business and finance, executive teams, boards, and management. It became a priority, then, to provide our lawyers with a spectrum of opportunities within and outside the department, and to prepare them to succeed. So we assigned a “hospital counsel” to each of our hospitals and to certain of our other businesses, and we charged these lawyers with serving on the hospital executive teams, counselling the hospital presidents and boards, and managing the legal support to their hospitals. With nine hospitals, each with a president, executive team, board and complex needs, this has enabled us to serve our clients more fully and efficiently and to expose our lawyers throughout their careers to general counselling opportunities. We are focused now on creating comparable opportunities for our non-lawyer team members.

MR. PFIRMAN: In our situation, the money is fairly close, and a lot of the people who come to us don't want to have the burden of developing client contact and developing business. That's not present in an in-house situation.

MR. ROBERTS: You don't bill by the tenth of the hour either, I bet. (LAUGHTER). Which could be fairly attractive.

MS. DAVIDSON: I would say it's actually hard to attract lawyers out of law firms after a certain point in their career, because we will not meet income expectations, for example, what a standard sort of mid-level partner would be paid. I think in house is a very attractive income, but it may not be what you would make if you were that successful in a major firm. But on the other hand, people will come to work because it is a good living, and they are part of something that's bigger than, for lack of a better word, selling services. The lawyers that we attract, even the ones that came to us without any knowledge whatsoever of the industry that we're in, they're excited about the idea of doing what the company does. That's why I've stayed in-house. I've taken two forays outside and I always come back in, because you just get excited about what your company does for a living. It's important. You care about whether the products work. You care about whether the people that use them are safe. You care about a company that's trying to do the right thing. I mean, those are all really important things, and I think the culture of a business that is in business for something other than delivering professional services,

such as accounting or legal, is just a very different thing. I love the fact the people that are in those services businesses -- law firms, accounting firms -- love what they do. They love helping. That's great, but I think you're attracting two different kinds of people. Maybe it's the same person at different points in their career, but they have to really be excited about coming to work in the environment that you're in. I agree with you. It's a buyer's market, and we have never, ever had a problem attracting the talent that we need, whether it's an entry-level or a senior-level person.

MR. JOHNSON: So could we talk about this being a buyer's market? I don't find it to be a buyer's market. The lawyers we hire to support MedStar generally need specialized healthcare experience. I find the market for these lawyers very competitive.

MR. ROBERTS: We're a small law department so we haven't hired a whole lot of people, but my experience is perhaps instructive. When I came to Crowley in 2008, it was right at the depths of the financial panic. We had an open position to fill, and my predecessor had interviewed a number of very qualified people who had the specialized expertise that we were looking for. For various reasons we started over with the recruiting process and got some really good resumes, I think, partly because ►



Jeffrey Knowles, Venable

► of the layoffs that happened in the financial crisis. They didn't necessarily have that kind of specialized expertise, but we made a successful hire. It takes a very good lawyer to adapt and learn a new subject matter, but if you hire somebody who's got energy and intelligence and integrity, they can succeed.

MS. DAVIDSON: I agree with that. I'll pick some of our very specialized compliance areas. Export control is really important in my business. We need people who really know export control. They don't have to necessarily know government contracts. We can teach them that. I really needed a lawyer who is going to be great at supporting an entire division's diverse legal needs. I could take a commercial lawyer who's really good at contracts and teach them government contracts. I could take a really good government contracts lawyer and teach them commercial contracts. I can take a really good litigator and they can learn almost anything. So while I like to look for specialized expertise there are multiple ways to teach that expertise -- I could ask a law firm, for example, to shadow that person and provide the necessary expertise. As an example, we may hire a commercial lawyer to be the lead lawyer

for one of our defense divisions. He or she may not know the first thing about a bid protest but he or she can consult outside counsel for the specialized knowledge. I'm willing to invest in developing attorneys through a couple of projects with outside counsel as teachers. In fact, that's one of the things you want to hire from outside counsel. Teach us. If we have somebody who is capable of being a good legal leader, who's capable of understanding the in-house needs and brings something important in the basket of needed capabilities to the table, that is what I look for. Maybe a bigger company would have a greater need for more specialized expertise. Our M&A attorney did not have significant experience working with legal issues unique to a government contractor when we hired him. There are a lot of very unique things required in a transaction involving government contracts, such as the process for novations (but not assigning) contracts, and transferring security clearances and export licenses. We can readily partner him with a lawyer with government contracts expertise to make sure it's done right. On the other hand, the lawyer with government contract experience does not have the sophisticated

M&A experience. They partner well and learn from each other.

MR. ROBERTS: And you may not have the time to do it. But we did the same thing. We had an outside counsel shadowing a lawyer for the first six months or so, and that really, I think, was important to making it work.

MS. DAVIDSON: It is important. Then you've made that investment, and then you've got the benefit of a really, really good lawyer with all the other skill sets that you want for a long period of time. And the lawyer is appreciative of that investment as well.

MR. FERGUSON: I was the first lawyer my organization hired, and so I started from scratch, and it was more than enough to do. And I started off 13 years ago hiring several generalists, and only about five years ago did I start segmenting people off into specialization areas. We're a very entrepreneurial organization. We're not like a healthcare company at the crossroads, or an intersection of healthcare reform and so forth. So I can hire generalist lawyers all day long and keep them fully employed, and we really attract lawyers by virtue of the interesting projects we have in the legal department. You can come to work in my group and one day be working on an issue in Brazil with a public pension plan and dealing with some kind of Brazilian labor law issue. Even if you're not a specialist, the experience and judgment you bring to bear is very helpful. The next day you might be working on an anti-corruption issue in India, and the next day you might be working on an export control issue in sub-Saharan Africa. And I don't have the luxury, with a relatively small department, of having every expertise and specialization, but I can promise smart lawyers a wide variety of interesting things to do and, in fact, drink from a fire hydrant, if that's what you want to do. You can pick and choose all sorts of interesting projects. You can not fill out timesheets. You don't have to develop clients. They'll find you if you work hard and you're good.

MR. RYAN: Jeff, that's exactly what attracted me to Marriott, because I was not a hotel specialist, but it was the ability to drink from a firehose of transactions, to have transactions that are global and not have to fight for them and kind of just prove yourself on your merits. Our idea is we like to hire out of law firms; get the training, get the discipline, the regimen of working in a law firm, get the great training that you get in a law firm. But there are a lot of people who decide, the law firm just isn't the

career that they're looking for, and I offer them a great alternative in terms of work. You raised a great point: How do you keep those people occupied? By nature, we're not a growth part of the company, and law departments really aren't supposed to be growth-oriented, and you have to be somewhat conservative on that. I think what we've developed is a little bit of a reputation for having a lot of flexibility to transfer into the business side from the legal side. So we have had any number of attorneys who have transferred over to the business side within our company. In fact, the head of North American development, the head of European development are both ex-attorneys, which is pretty interesting. And there are others throughout the company. We've also produced, one of my proudest metrics, five general counsels of other public companies out of our department within the last 10 years.

MR. FERGUSON: I think actually at Carlyle one thing that attracts a lot of really good lawyers is the prospect of maybe becoming an investment professional. But, in reality, everyone wants to be a deal guy. They don't want to be a lawyer anymore; they don't want to be a dealmaker. (LAUGHTER)

MS. DAVIDSON: Everybody's a strategist; everybody's a deal guy.

MR. FERGUSON: A guy says if I could just go to Carlyle, I can be a deal guy. I can get in there and prove my mettle. Well, in reality, that's never going to happen, because the few who've tried it before haven't been quite successful at it, and the business guys really don't respect lawyers as dealmakers. They're too conservative, down in the weeds, and so forth. And you have to be much less risk-averse, I think, to be an entrepreneurial dealmaker. So there's very little real possibility that you could be an investment professional but, boy, those young M&A lawyers just really want to be a dealmaker.

MR. PFIRMAN: Brian Moynihan who's in charge of Bank of America right now was in the legal department with me. (LAUGHTER)

MR. RYAN: I think you might be shocked how quickly they throw away that risk hat. (LAUGHTER)

MS. DAVIDSON: I think you have, Oliver, a unique opportunity to give your lawyers that chance to feel like a general counsel with the different boards.

MR. JOHNSON: Sure.

MS. DAVIDSON: I really can't offer that to them. They can be division general counsels, but they don't have a board. Occasionally they may have a small subsidiary, maybe a foreign



subsidiary to manage, but that's about it. But, you know, in recent years, we've lost a few and we had great people coming up behind them. We did hire outside for one of them, but for two others, we were able to give the opportunity to an inside lawyer. The turnover creates a level of energy and opportunity for folks.

MR. JOHNSON: Absolutely.

MS. DAVIDSON: We have great relationships with the lawyers that left. I'm excited for them. They both did get better opportunities, and they are going to grow. They are in much bigger companies. So they took a lateral move, but they thought there might be more opportunity. Our pyramid gets tight pretty quickly.

MR. KNOWLES: You've talked about some of the factors when lawyers move from firms, but some of the other factors that cause it. One is to go to the business side, and you've spoken to that, the ability to go into a general counsel's office and then move to the business side.

In an entrepreneurial company like Carlyle, that may be particularly attractive if that opportunity is there. But also stock-options, stock appreciation rights may be very, very important. The ability to get a pension. Many law firms don't offer a traditional pension the

way a corporation does.

MS. DAVIDSON: Most companies don't anymore either.

MR. KNOWLES: But are you able to attract lawyers because of stock options which can be, such as in the case of Google or Facebook, enormously attractive?

MS. DAVIDSON: Not in our situation. I think what really honestly attracts them is the ability to participate in multi-functional roles and more varied activities. As lawyers, you're one of a small number of people in your company, right? And the lawyers tend to have a much higher grade-level and leadership position in a business like ours than they would in a firm, for example. We might bring out a lawyer who is mid-career and he or she will be a much more senior executive within that entity than they were within the law firm entity. I think that's been very attractive to the lawyers to have the opportunity to engage in business discussions on a daily basis. They are able to influence strategy. They get a seat at the table, and I think that is really interesting to a lot of midcareer lawyers who make the move.

MR. ROBERTS: I agree. I think if you're totally money motivated, you're probably



► not going to go in-house. But there is the culture of an organization that does something else, and it's fun to work for a company that does cool things. And we all, first time around the table, we wanted to talk for a long time about what our companies do.

MS. DAVIDSON: And the interesting things we do, yes.

MR. ROBERTS: And that really is fun.

MR. JOHNSON: I agree with the comments that are being made. I think you've really got to create the right environment to engage people through the experiences that you can offer and through the development that they can pursue. In my experience, it is critical to provide competitive compensation, but money is only a short-term motivator. Incenting professionals with money is like giving sugar to kids. After the initial high wears off, there's a crash. Complaints about comp are common, but I've never had somebody tell me that they thought made too much. So while fair comp is critical, it's everything else that really matters. This is particularly true at a time when we expect our teams to do more with less and to do things fundamentally differently from perhaps how they have.

MR. RYAN: I think that might be more of a function of, I'm thinking, maybe some of the

tech startups. And maybe that's why people go there, to get the lottery ticket of the tech startup that's going to be the next Google or Apple. Yes, they will become millionaires. But most companies -- if you're moving from a firm to company, you're taking a haircut no matter what you add into that.

MS. DAVIDSON: That's right.

MR. KNOWLES: There are only so many Facebooks -- and so many IPOs that will make a thousand millionaires.

MR. RYAN: Right.

MR. PFIRMAN: I think the equity warrants help, though, to bridge the gap a little bit. You know, I don't think that too many companies have real pension plans anymore.

MR. ROBERTS: If you look at total compensation, and it obviously varies company to company, but if you look at the base and the bonus and the benefits and if you have stock and options, then you can come fairly close to it.

MS. DAVIDSON: I think after several years you can come close, because most of the stock grants or the options or the RSUs or whatever equity is in your compensation package, do not start to vest until a future date according to each company's plan, whether it's three years, five years or afterwards another term. It is hard to do that first-year compare. The candidate,

if hired, will take a haircut. But the equity based compensation, over time it can be a great equalizer and key retention tool.

MR. PFIRMAN: Yes, but I think that there's an increased focus now on restricted stock. Especially at the entry level.

MS. DAVIDSON: Absolutely. I would agree with you.

MR. FERGUSON: So it's obvious we all love to talk about our own companies and our in-house legal departments, but I see from David's face that we've gone off topic, as we were going to address the relationship between our firms and outside counsel. (LAUGHTER)

MR. JOHNSON: I'm sorry. This isn't the General Counsel Support Group? (LAUGHTER)

MR. BURGESS: I would just like to say I think it's fantastic you're all discussing various issues that affect in-house counsel. Apologies to Venable sitting here, but we're all sort of laughing at the six-minute incremental charges, etcetera. I was reading a recent report where it said that 80 percent of firms are using alternative billing, and 56 percent say they want to use it more and more and more. But then when you look at most of the practical studies, 70 percent of most of your spend on outside counsel is just billable hours. It's just straightforward. So is that your experience,

that the vast majority is just those incremental hours, and you're just having to do and accept that? Is it based on reacting to issues rather than being able to sort of plan and budget? Is it those sort of special circumstances?

MR. FERGUSON: I'll take a shot. I'll start this because I'm a relative neophyte at it. But for the last six months, I've spent a lot of time trying to think about alternative billing arrangements, in part because of the response to increase budget pressure. And I have to say it is a very difficult proposition to manage, to get the incentives right for outside counsel, and to manage it. And I'm struggling, I'll be the first to admit, to come up with the right balance or the right blend. And in the interim, the standard billing rate is the easiest thing to deal with and really to negotiate ad hoc on particular projects based on the value as perceived at the end of the transaction or the end of the project. Having said that, over the years we have built into our billing structure a number of elements that I think would probably be considered alternative billing arrangements that are just incorporated as part of our business, and I suspect every firm has a little bit of this. The easiest example of that I can put on display here is: for our funds, we engage a lot of M&A counsel, and a lot of times you spend a lot of time working on a transaction that never gets consummated, the parties just don't agree. But we wanted to incentivize our investment professionals not to wait until the last moment to get lawyers involved, because that tends to be a mistake when you're rushing doing due diligence and trying to get the transaction completed. And you want to engage counsel early in the process and make it easy for them to reach out and deal with expert legal counsel, even though the deal might not go forward. So we have special billing arrangements with all of our firms. If a deal doesn't go forward, they cut their rate by a very significant percentage. And we try to get a 50 percent discount, but that's hard. Law firms are good negotiators too. But we very often get to a 25 or 30 percent discount if a deal doesn't go forward. We call it the dead deal discount. We have several different features like that that are essentially now intrinsic in our outside law firm engagement practices. I don't know whether you call that an alternative billing arrangement or not. I'd like to think it is. At one point in time when this practice started, for example, the law firms expected to recoup premiums on deals that did go forward. We don't do that anymore. We had to disabuse law firms of that quite a while ago really for

fiduciary duty reasons, because odds are you're going to be working on a dead deal on this fund with this group of investors, and the deal that goes forward might be in a different fund with a different group of investors. It's just not fair or right to charge the premium to that separate fund. So it's essentially a business development expense for the law firms to eat the dead deal costs. But we have several different examples of that. In litigation, I don't have routine, repetitive litigation. When I do have litigation, it is large-scale, complex litigation. I find those to be extremely difficult to have alternative billing arrangements. I do try to manage that by making sure we have the right lawyers assigned to the right tasks, especially discovery, working on technology, sub-delegating certain menial tasks to a lower cost set of attorneys in different circumstances or other discovery-based firms. There are a lot of discovery consulting firms that are much more efficient and less costly to use in those situations. But I've really been struggling trying to devise a true value billing system or alternative billing system that the business folks are pushing me to design. I'm open for ideas or suggestions and would even pay dear money to get that. (LAUGHTER)

MR. JOHNSON: At MedStar, we coordinate all outside counsel engagements through a Vice President and Deputy General Counsel who is responsible for all of our law firm relationships and for our outside counsel budget. This team member is focused on ensuring that each of our law firms provides excellence, responsiveness, reliability, fee and expense predictability and efficiency in each engagement. While I don't expect law firms to be at risk for the vagaries of our business, I do expect them to bear the risk of their performance in each of these areas. Thus, we require budgets, regular matter and budget reviews, and quarterly GC briefings in all significant matters. We base our fee structures on the relationships with our law firms and on the matters at hand, but generally we receive 15% discounts from firms' standard rates. We do not pursue alternative fee arrangements as an end in themselves; although we do use them when appropriate.

MR. PFIRMAN: So we use alternative fee arrangements on our largest matters, and we would like to push it down, but we haven't gotten there yet. We don't like to pay anything on busted deals, and we usually get away with that. We don't have funds or anything like that. It's usually our deal that was the busted deal. This is a little bit off-topic, but we've got

a new policy on arbitration. We think that's a money-waster. It used to be that we used to put arbitration clauses in commercial contracts, but we thought you couldn't really force them on consumers. But there was a case last year, last November with AT&T Mobility, that upheld in certain consumer cases. So we're pushing arbitration in consumer and we're taking it off the board basically in commercial matters. In commercial matters, if you go to AAA, and you have a three-arbitrator panel, they're billing you at \$200 or \$250 each per arbitrator for every hour that they spend. And there really doesn't seem to be any incentive for them to move cases anymore. I don't know if anybody else has found that, but we've just gotten mired in Vietnam-type situations in a lot of these cases where we can't get the arbitrators to move and it costs us a fortune.

MS. DAVIDSON: We do use alternative billing arrangements, and I've been happy with them when I've used them, but it's been very one-off because we don't have much work that is repetitive. We also don't have a whole lot of leverage, because we don't bring enough legal work to a firm from a business our size. We're often conflicted out of using law firms. So I might say these are the five firms I want to go to. Well, they're all conflicted out because our industry is narrow. And then everybody that's ever done work for ITT, I may now be conflicted out of because we could be adverse. And it just gets really tough, the conflicts, to manage, and I know firms really struggle with that, too. That actually is the tougher wicket I get through. Then once I can get to a firm that's got the expertise and has no conflict, we've been really successful at developing just really good economic arrangements, just discussing it with them. So I might get a fixed fee. For example, we got a fixed fee this year, to advise on our proxy. We said we know we're a new company. We know we've never done one by ourselves before, but you have worked with us and know us, so give me a price. It was great. Well, the firm that did it, however, ended up doing more work than expected. There was something that complicated it, not within our control, and they said "We can't do that for you again." Well, okay. I appreciate that. It's got to make sense for you, and it's got to make sense for me. But I guess we won't get an attractive fixed price on this work from that firm again. We're going to another firm for it next year. I like level billing, but that's for continuing work. I had one project that went on for four years. After the first year's experience, ►

GENERAL COUNSEL ROUND TABLE IN ASSOCIATION WITH VENABLE LLP



► we got level billing. We tried up at the end of the year, applied a discount, and it was great. The client loved it, the internal people loved it because it was fixed. But I don't have enough volume in anything to say, well, all my employment cases get this, or all my that cases get that. And I also don't have enough of them in the same locus. So if I have an employment case in Colorado Springs, I might have three there. I might have two in upstate New York, and the same firm's not in both places. So it's a little hard for me. We actually have a litigation matter of multiple years duration where we are the plaintiff and we did go with a contingency arrangement with the law firm on. So they get a percentage of our recovery, because that's expensive litigation, and we really didn't want to fund it for the multiple years we all knew it would take and that's worked out great. The firm's happy with the recovery, and we're very happy with the recovery as well as our level of investment. So we always contemplate just about all the options, but for me, everything's a one-off, so I can't get the efficiencies you would gain from bucketing like things.

MR. PFIRRMAN: There's a firm who does it for CBS and Bank of America for a fixed fee. We don't have enough volume to do it, but -- I know the firm but I don't want to advertise it. (LAUGHTER)

MS. DAVIDSON: My entire litigation portfolio is about 20-25 cases. So how do I go to a Venable, for example, and say, give me a discount because I'm going to give you another one of these in three years? On the other hand, it understands our business, and there's a

great efficiency to be gained when the firm understands the business that you're in and the way you do business, because you're not looking at the time and cost of the upfront education a new firm would need. Come in and be part of my team and understand the way I do business. And, frankly, if I've got to pay you a straight billable hour on that, maybe you could do the work in 100 hours whereas another firm might do 200 hours. So that is very economical, I find.

MR. JOHNSON: Agreed

MR. RYAN: I think you'll never choose a firm based upon the billing.

MS. DAVIDSON: No.

MR. RYAN: And if you do, you're making a big mistake.

MS. DAVIDSON: I agree.

MR. RYAN: I think the alternative fee, it just varies by area, I think. In M&A, we do the same thing, but that's kind of institutionalized.

I think the firms understand it. Everybody understands it, and it works really well. It doesn't take a long negotiation.

MS. DAVIDSON: But for volume?

MR. RYAN: Doesn't matter.

MS. DAVIDSON: You know, if I do one deal this year and it doesn't go and I don't do any more deals this year, why would a firm agree to give me the dead deal discount and not bill if they don't know they're ever going to get another deal?

MR. RYAN: You've got to ask for it.

MS. DAVIDSON: I'll use any leverage anyone can help me with.

MR. JOHNSON: I think you raise a very fair

point. I mean, you have to align the structure of your law firm engagement with the reality of the matters that you have. I can see how if you do a high volume of M&A work with a particular firm, the dead deal discount makes sense. But it's not something that I've seen in our environment where we do M&A deals only periodically.

MS. DAVIDSON: If the firm is willing to invest.

MR. PFIRRMAN: It doesn't make sense.

MR. FERGUSON: I've never had any employment litigation. I wouldn't know where to start. (LAUGHTER)

MS. DAVIDSON: But, Ed, I think you make a good point there. You have to ask. I can't just assume I'm not going to get it or assume I'm not going to have any leverage. You've got to ask for it and then you start having that discussion.

MR. RYAN: We're always looking for the next M&A deal.

MS. DAVIDSON: The next something.

MR. PFIRRMAN: Employment litigation, though, cost is important.

MS. DAVIDSON: Absolutely.

MR. PFIRRMAN: I mean, you're usually right? The company's usually right or they're not going to fight it, correct?

MR. ROBERTS: Well, they're usually right but they lose. (LAUGHTER)

MR. PFIRRMAN: We don't actually lose! And then the amount of risk is some small multiple of somebody's salary.

MR. JOHNSON: That's exactly correct.

MS. DAVIDSON: Yes.

MR. PFIRRMAN: So it's not a bet-the-ranch

type situation.

MS. DAVIDSON: No. I agree.

MR. PFIRMAN: So the expense of fighting it isn't --

MS. DAVIDSON: Unless it's a class action.

MR. PFIRMAN: Okay. Throw in different facts -- (LAUGHTER)

MS. DAVIDSON: No, but you're right.

MR. ROBERTS: You're right. I like alternative fee arrangements. I like to make sure that we're getting value. And it's possible to do that on an hourly basis, but you can do better if you can find creative ways to use alternative fee arrangements. We do very few transactions, but we've been able to negotiate dead deal discounts, and we have an alternative fee arrangement for other types of work. It's worked out reasonably well for both the firm and for us.

MS. DAVIDSON: I think one thing with the publications and the discourse about all these different ways of billing, I'm not sure anybody's adopted them wholesale the way maybe some of the headlines might look like, but I think that dialogue has caused all of us to be more creative in the questions that we ask. And we have a much more, I think than ever in the past - just even the last couple years - much more candid dialogue with our outside counsel about what's economically important to us. What's economically important to me? How can we make it work for both of us? And

that dialogue shows whether you're really working with the firm that can be that kind of partner with you. If they say, "Oh, no, we're not interested," well, then, I'm not either, you know. On the other hand, I'm not looking for the firm to write off half of their associate's costs if there's not something in it for them, either from a learning experience, or maybe it got a better something for them down the road. So it has to make sense for both of us. And it's a much more candid discussion than I think it's been just even the last couple years than it's been in the past.

MR. PFIRMAN: There are a lot of firms who won't pay for first or second-year associate time on litigation.

MS. DAVIDSON: That's right.

MR. PFIRMAN: Because it's a learning experience, and why should the company fund it?

MR. FERGUSON: So I have a question that I'd like to ask all of you which is: How do you change law firms? And it's a bit of a complicated question, but I suspect that most of us have kind of our favorite law firms for at least different practice areas. Competition is a good thing, yet it's so convenient to continue using the same law firm that knows your structure, that knows your policies, procedures, and practices. And at Carlyle, that's especially true. I mean, we have somewhere between 3,000 and 4,000 legal entities that we manage, and if

you're doing transactional work, it's really hard to bring in a new law firm and put them on one transaction and start talking to them about what's going to happen in this transaction and watch the fear spread across their face as they get bewildered at looking at your diagrams. The result is you can be locked into a law firm, and the perception is often they take advantage of you in billing and so forth. The associates at those law firms view you as an easy target for, if they spend all day, don't know where to charge their time, they just record it. And you can see that in the billing sometimes. Do you use law firms as competition against each other? And how do you manage effectively that entrenched law firm that's been your primary law firm for a long, long time?

MR. JOHNSON: So I think - I'll give a lawyerly answer - it depends. I find that engaging different litigation firms is relatively simple. If I am not satisfied with the one I have, I place my next matter with a different firm. But there are areas, and the ones that come to mind are bond and ERISA work, where the nature of the work is exactly as you've described. We're well represented in these areas, but the fact is that the challenge of making a change would be much tougher.

MS. DAVIDSON: ERISA work is really hard.

MR. JOHNSON: But you still have to set standards for those firms. You have to hold them accountable to those standards. And, ▶



Michael Roberts, Crowley Maritime



► certainly, if they fail to perform you will make a change eventually.

MS. DAVIDSON: I was going to say the only thing I can offer that would be comparable to that - and I'm not sure there is a good way to do it, I just think you go through the mess of doing it - and that's in SEC work. So if you've got one firm that for years has helped you write all your disclosures, write your roKs, do the comp sections of the proxy, etcetera, and they have a certain style, and your internal public accounting people and your internal comp people have gotten really comfortable with them. I don't know if you've ever tried to do this, but you try to change counsel and the reaction is, "You're taking a big risk." Well, wait a minute. I'm hiring and overseeing these firms, so it's okay if I make a change but it's very, very hard when they're embedded with the client. I don't have that situation now but I've done it, but I don't know how to do it cleanly. I really don't. What do you do?

MR. FERGUSON: It's not clean. Fund formation is a good example. We historically use Simpson Thacher almost exclusively. Simpson Thacher is an amazing law firm and the quality is top notch, but bandwidth

became a problem. Because we were raising so many funds in so many places around the world that Simpson Thacher did not have enough lawyers to satisfy the business needs. And so we were compelled to hire some other law firms. The first couple did not work out. And then we found Debevoise. Debevoise has been a fantastic firm. It also has a top-notch fund formation practice. Now we find that we are bigger and we have more funds, and fundraising is tougher in this environment. It takes a lot longer. Both of those firms don't have the bandwidth to handle all of our fund formation and we need more people.

MS. DAVIDSON: You're blessed with riches. (LAUGHTER)

MR. FERGUSON: Well, yeah!

MS. DAVIDSON: But it is a challenge, and how do you keep both of them doing the same standard of work?

MR. FERGUSON: So it's a process. I need those firms to understand that I have to bring in new firms, let them get accustomed to our practices and our structure. And gradually, the new firms will introduce me to different parts of their firm on the M&A side, on the regulatory side, and those are the difficult situations. It

happens by evolution, not revolution. You, at some point, meet a fantastic lawyer in a particular discipline, and the next time that topic comes up, instead of using firm X's guy on that topic, you'll say, wait a minute. I had lunch with this guy who was really impressive. And, you know, three months later, suddenly you've shifted a lot of work to a different firm. But it's not easy. Evolutionary creep is a better way to describe it. But in a world with budget pressures, I find increasing pressure to create instantaneous competition between firms, and I find that really hard because law firms are not fungible. Lawyers are not legible. There are great M&A lawyers. At Venable I've met several of them, but while I know that, if I've got a transaction, I know it's important, I know it's critical; to take the risk to try a new lawyer is difficult, and I find myself feeling a little too attached to the same lawyers over and over again, and that's a difficult issue for me to deal with. I wonder if I'm doing things most efficiently. Am I being too risk-averse in just knowing that these guys know the issues that will cover it? Could I do it better/cheaper/faster with a different lawyer and I'm just so stuck in my ways and risk-averse that I won't change? I don't know how to challenge myself to take that move. It's a scary proposition in a lot of situations.

MR. ROBERTS: I don't deal with anything on the scale of that, I can tell you that, but what I would say, what I've found, is that if you have a good relationship with the law firm and a trust that they're working in your best interest and providing you value for every dollar they're charging and consistently testing yourself and the firm in that regard, you're happy with the product you're getting. You can do RFPs and you can go through that process, and there's probably value in that, but at some point, you've got to know it is a relationship and trust-driven.

MR. ROBERTS: But I also think there's a real value in having a partnership with the firm that cares about what your success as a company is, and there is a real value in that.

MR. FERGUSON: That is true. There's huge value in that. When the chips are down, you need that trust, you need that knowledge base, you need someone who feels --

MS. DAVIDSON: -- invested in your success.

MR. FERGUSON: -- that loyalty and that investment in your firm. It's impossible to replace that.

MS. DAVIDSON: What I find difficult is sort of along that vein, although not quite, is

when you have two firms working together on something.

MR. RYAN: I've never seen that. (LAUGHTER)

MS. DAVIDSON: On the same project. Any tricks to that? That's a challenge.

MR. ROBERTS: That takes a very mature firm

MS. DAVIDSON: I've always had to manage that relationship. Now, they've worked at it, too, but you have to be the one that does the relationship building.

MR. RYAN: It's the relationship. I'd avoid duplicative work, because that's what I've seen as the real issue. Because I think they all play nice together in the sandbox because they know they have to and because there's no out-and-out fighting, but I think there's a territorial issue and there is an overlap. And I've just seen lack of efficiency in that overlap that I wish I could avoid.

MR. FERGUSON: Sometimes it's unavoidable. The obvious example is when you need local counsel, you have to hire someone as local counsel and that works or doesn't work. Sometimes there's friction between the two firms. In cross-border transactions, you have the same concept. If you're buying a company that has businesses all over the world, and the law firm that is in charge of the transaction doesn't have lawyers in France or Zimbabwe or wherever, you have to go hire local counsel. And that's manageable. It's harder where you really have two law firms with overlapping responsibility for the same topic in the same jurisdiction. That, to me, almost never works. The only time I've ever seen that work is where the lawyer at the second firm was formerly with the first firm, and so they have a personal relationship.

MS. DAVIDSON: It could work.

MR. FERGUSON: I've seen those situations work. I don't know what example of a situation you'd really come across in that, but it's really hard to get two firms to work.

MS. DAVIDSON: I've inherited it twice in last four or five years. One of them was on an M&A transaction where a firm was hired because they are great M&A lawyers, but they knew nothing about government contracts. And the deal was buying a defense business from another defense business. So we had to go hire a second firm that could do that part of it, and then we spend the time educating the other firm, on how to transfer government contracts and security clearances and all similar matters specific to a government contractor. Another example was an investigation where the firm was hired to conduct the investigation - it was a criminal investigation - in a particular



jurisdiction where that firm had a great reputation and experience in the local courts but no significant expertise in the area for which the company was being investigated, or at least was not nationally recognized expertise. And so another firm was brought in to provide that expertise. These arrangements might have been the right solutions, and it ended up being a good experience but it is often an awkward experience. But I find myself thinking about that in another potential situation, and I don't know -- How do firms feel about that?

MR. KNOWLES: Well, I can tell you it is a relatively easy thing us to do, because we frequently work in situations where another firm is involved. We do a lot of work with private equity firms, where it may be a Simpson Thacher or another firm on the corporate side, but they don't have the regulatory expertise --

MS. DAVIDSON: Right. That's good experience.

MR. KNOWLES: -- or there's a legislative problem and they don't have the expertise. So they need regulatory counsel. We may handle all the regulatory issues or antitrust or some other aspect of the matter. Big Wall Street

firms do have antitrust capability, but in a lot of the more specialized regulatory areas, such as government contracts, they do not. So we're often brought in on the government side and work wonderfully with other firms, and our experience working with other firms has been good.

MS. DAVIDSON: Is there a particular skill set that you would want to see in your lawyers who work on that? I mean, is it something that's natural, or is it something you need to kind of coach the lawyers.

MR. KNOWLES: We have to pick the right lawyers at Venable. It has to be lawyers who are confident in what they do, able to work well with others, good communicators, and who really understand the client's business objectives. If you understand the client's needs and have lawyers with good business sense and sound legal judgment, we find we can work effectively in teams with other law firms.

MR. FERGUSON: We see that routinely with subject matter experts, especially in a particular regulated industry. I find most firms handle that pretty well in this situation you described. I think that's fairly routine. I thought you were talking about a situation ▶

GENERAL COUNSEL ROUND TABLE IN ASSOCIATION WITH VENABLE LLP



► where you have two lawyers of overlapping expertise trying to work together.

MS. DAVIDSON: It wasn't so much overlapping expertise. It's a little bit like that, but it goes more toward the example you had where we actually had to have them drafting some of the agreements that were part of the main transaction, and it's hard to get -- to make sure the agreements are all -

MR. RYAN: Everything meshes?

MS. DAVIDSON: - meshed properly when you're not doing it in the same shop.

MR. FERGUSON: And is that a personality conflict or is it a talent conflict?

MS. DAVIDSON: No. It really isn't a personality conflict. It's just that they're not, for lack of a better work, day-to-day working on the same team. One of the things you get with a firm, whether they're in the same office or not, you're all connected, and most of the firms we work with, you've got basically 24-hour support no matter where you are. In the bigger firms, you've got them around the globe. For example, a multi-jurisdictional bankruptcy - Hong Kong, the U.S. and the U.K. - so you don't have to worry about what time of day it is. It's all working together. But if you're going to two different firms, you don't have the same in-house communication systems, the same in-house document management systems, the same in-house drafting capabilities. And so then you are the one who ends up paying both of them for the integration time and the coordination of time. I don't think I'd do that again. If it was a segregable subsidiary thing or you might hire a firm to do a particular due

diligence on a transaction, that works pretty well.

MR. KNOWLES: I know that at Venable, we will invest the time to get up to speed if we need to in order to undertake a particular project where another firm is already involved and we are brought in. We may eat all of those costs or some of those costs in order to get up to speed to play an effective role. But we are not looking for one-off work in those situations. Generally, we are looking to establish a relationship, build that relationship and turn it into a long-term relationship.

MR. BURGESS: I think that's probably a good point to draw this to an end. I'd just like to say thank you very much for coming along and being so candid and talking at great length. It's always wonderful that I don't have to say very much and I let you do the talking. It's been incredibly interesting, the last 20-25 minutes could be an entire discussion of its own, and I'm sure we'll do one again.

BIOGRAPHIES

ANN D. DAVIDSON

Senior Vice President, Chief Legal Officer and Corporate Secretary, Exelis Inc.

Ann D. Davidson is Senior Vice President, Chief Legal Officer and Corporate Secretary for Exelis Inc., a diversified, top-tier global aerospace, defense and information solutions company. She assumed that role upon the company's October 2011 spin off from ITT Corporation. She leads the legal, ethics and compliance, trade, security and environment, safety and health functions for the company.

Davidson joined Exelis, then ITT Defense & Information Solutions, in 2007 as Vice President and General Counsel. Shortly thereafter she was named ITT's Chief Ethics and Compliance Officer and, in November 2009 she was elected as corporate Vice President.

Prior to joining the corporation, Davidson held executive legal positions in several companies, including Thales North America, Inc., Parker Hannifin Corporation and Honeywell International. She was Senior Vice President, General Counsel and Corporate Secretary for Alliant Techsystems Inc. and was Vice President, General Counsel and Corporate Secretary for Power Control Technologies, Inc. Earlier in her career, Davidson was in private practice with a law firm and served as an attorney for the U.S. Department of the Navy.

Davidson graduated cum laude from the University of Dayton's School of Law and holds a bachelor's degree in political science from Ohio University. She is an active member of the bars of the Commonwealth of Virginia and the State of New York.

JEFFREY W. FERGUSON

Managing Director and General Counsel, The Carlyle Group

Mr. Ferguson joined Carlyle in 1999. In his capacity as the global General Counsel of Carlyle, he serves as the head of the firm's legal, compliance and tax functions. Mr. Ferguson is also a member of the firm's Operating Committee and Management Committee. Prior to joining Carlyle, Mr. Ferguson was an associate with Latham & Watkins and Vinson & Elkins.

Mr. Ferguson received his law degree from the University of Virginia School of Law in 1991. He also received an undergraduate degree in political science from University of Virginia. Mr. Ferguson is a Member of the bars of the District of Columbia and Virginia.

OLIVER M. JOHNSON, II

Executive Vice President and General Counsel, MedStar Health

Oliver M. Johnson, II is executive vice president and general counsel for MedStar Health. In this role, Johnson serves as chief legal officer to a healthcare network of 10 hospitals and 20 other health-related businesses across Maryland and the Washington, D.C., region. He provides legal advice to the MedStar Health Board of Directors and senior management on such issues as corporate transactions, regulatory matters, and physician affiliations, and oversees all legal, governance, privacy, and compliance matters for the system.

Johnson joined MedStar Health with 23 years of legal, regulatory and business experience including 18 years of U.S. and international experience in pharmaceutical, vaccine, biotechnology, and healthcare industries. Prior to his current role, he worked at Merck & Co., Inc. of Whitehouse Station, New Jersey as counsel for its global marketing services division. From 2004 to 2008, he served as chief counsel for the company's vaccine division preceding which he was Merck's first chief privacy officer.

Active in public and community service, Johnson served as board chair-elect for Abington Health, Inc., a multi-hospital integrated healthcare system in Abington, Pennsylvania. He has been a trustee of the Community Partnership School in Philadelphia, Pa., and of St. Benedict's Preparatory School and St. Vincent Academy in Newark, N.J. Johnson also served under gubernatorial appointments to the Pennsylvania State Real Estate Commission and the Pennsylvania State Board of Medicine, of which he was vice chair.

Johnson has a Bachelor of Arts degree from Williams College and a juris doctorate from the Georgetown University Law Center.

DREW J. PFIRRMAN

General Counsel, M&T Bank

Drew J. Pfirrmann joined M&T Bank Corp. in October 2009, after serving as deputy general counsel at PNC Bank. He previously was general counsel for Fleet Bank. Pfirrmann has a bachelor's degree from Boston College and a law degree from St John's University School of Law.

MICHAEL ROBERTS

General Counsel, Crowley Maritime

Mike Roberts has represented Crowley on legal, regulatory and legislative issues for more than 20 years. His career includes several years of

government service and private law practice, most recently as a partner with Venable, LLP, in Washington, DC. He returned to Crowley in September 2008 as senior vice president, general counsel, and corporate secretary. He has overall responsibility for the legal, government relations, and risk and insurance functions of the company.

Roberts received a Bachelor of Arts degree with high honors from Michigan State University, and a Juris Doctor degree cum laude from American University, Washington College of Law. He also taught business law as an adjunct professor at the Washington College of Law.

EDWARD RYAN

Executive Vice President and General Counsel, Marriott International

Edward A. "Ed" Ryan assumed the role of executive vice president and general counsel for Marriott International in 2006, and is a senior executive officer of the company.

Mr. Ryan joined Marriott in 1996 and has had responsibility for all new management agreements and real estate development worldwide for full service, select service and extended stay hotels. Most recently, Mr. Ryan assumed responsibility for all corporate transactions and corporate governance. Prior to joining Marriott, Mr. Ryan engaged in private practice in Washington, D.C., first with the firm of Crowell & Moring from 1978 to 1984, and then with Hogan & Hartson from 1984 to 1996, where he was made partner in 1989.

Mr. Ryan is a graduate of the University of Pennsylvania, receiving his A.B. summa cum laude in 1975 and his J.D. cum laude in 1978. While attending law school, he was associate editor of the Law Review. Mr. Ryan has been a key contributor to Marriott's global growth and is highly respected in the field for his industry leadership.