



General Counsel

An Orange County Business Journal Special Report and Custom Content

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2019 General Counsel of the Year Award Winners



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Presented By:

Stradling

GCs Advise What to Do During COVID

New Contracts, Buys, Jobs for '19 Winners

Industries served by last year's winners of the Business Journal's annual General Counsel Awards ranged from a home builder to a health real estate investor to a cooling systems company to a pair of restaurant chains. Here's a look at what they've been doing since last November, and how they've helped their firms and customers navigate the pandemic.

—Peter J. Brennan

COOLSYS STAYS HOT

Burton Hong is the general counsel of Brea-based **Coolsys Inc.**, which aims to double its annual revenue to more than \$1 billion by installing and maintaining cooling and heating systems for some of the country's biggest retailers.

That means a lot of acquisitions, which include seven completed in the past year and three more under letters of intent that the company wants to close by December.

"These seven deals have significantly expanded our geographic reach and solidified our presence in the Northeast, Tidewater region and the Carolinas," Hong said.

The company is in the process of rebranding several of its acquired businesses, which has required its legal department to work hand-in-hand with its marketing team to ensure there are no issues with the rebrand kickoff set for January 2021.

Also, adapting to COVID-19 and its consequences has been something the company has had to deal with daily because of the ever-changing nature of the virus.

"Fortunately, many of our customers are essential businesses (e.g., leading grocery retail chains, drug stores, c-stores, blood banks, etc.) so while we definitely experienced some challenges, we expect to finish 2020 ahead of 2019 from a revenue perspective," he said.

He said.

The service side, which makes up approximately 60% of its revenue, is back to normal. Hong pointed out that since commercial refrigeration and HVAC systems are critical to the company's essential business customers, their demand for services has actually increased in 2020.



Burton Hong
Coolsys

Installations of refrigeration and HVAC systems, which make up about 30% of its business, has been the most meaningfully impacted by the pandemic. While its project pipeline is at an all-time high, the actual awarding of projects slowed down significantly in the second and third quarters.

"We started to see a recovery starting in mid-summer and are optimistic that we will see a return to 'normalcy' in early 2021—although no one has a crystal ball when it comes to this pandemic and its impact on the economy and our customers," Hong said.

Plans for the coming year are relatively simple.

"Acquisitions, acquisitions, and more acquisitions!" Hong said. "We plan on completing an additional six to 12 deals in 2021 to continue to expand our geographic coverage allowing us to provide our full suite of solutions to our national clients, while we also build density in key markets."

GOING DUTCH

It wasn't only the Business Journal judges who thought **Louis "Dutch" Schotemeyer** was a rising star.

He won the award last year as the associate general counsel for **William Lyon Homes Inc.**, which was bought earlier this year by **Taylor Morrison** (NYSE: TMHC) in a deal valued at \$2.4 billion when factoring in debt.

Schotemeyer transitioned to Taylor until his old firm, **Newmeyer Dillion**, offered him a partnership, which he began in September.

"We are thrilled to be welcoming Dutch back to Newmeyer Dillion," the firm's Managing Partner, **Paul Tetzeloff**, said in a statement. "He brings a wealth of litigation experience and has served as a trusted advisor to companies facing myriad complex legal disputes."

"His experience as in-house counsel will greatly complement Newmeyer Dillion's business-first mindset when it comes to providing legal counsel to our clients. He is an invaluable asset to the team."

As the son of an immigrant—his nickname is a nod to his paternal Dutch heritage—Schotemeyer witnessed the

opportunities his family found in America, which is why he spent 23 years in the Marines. He graduated from the University of Washington in 2004, and spent the next decade serving in a different way, acting as a prosecutor and defense attorney for service members.

He then joined Newmeyer Dillion—well-known for its real estate legal work—before moving to William Lyon Homes. When Newmeyer came calling with an offer as a managing partner, "I just jumped at it," Schotemeyer told the Business Journal.

Nowadays, he works construction, labor employment and real estate, similar to his prior jobs.

"I'm leveraging the things I learned at William Lyon and Taylor to smaller companies that don't have in-house general counsels."

Since the coronavirus struck, he's been working more from home, utilizing his guest bedroom and dining room tables. Schotemeyer said previously he would often print out documents to edit them and now he does more editing by computer.

"My plan for the new year is to build a client base for small- to medium-based companies that don't have in-house general counsels."



Dutch Schotemeyer
Newmeyer Dillion

MILLER'S FULL PLATE

Kendra Miller, the general counsel at **BJ's Restaurants Inc.** (Nasdaq: BJRI), had her plate full this year, so to speak.

The coronavirus caused the Huntington Beach-based restaurant chain to suspend its dividend, stop all capital spending and significantly reduce operating expenses. It drew down its \$250 million line of credit and sold \$70 million of common stock to a private investor. Its second quarter revenue fell 58%

to \$128 million.

Its stock plummet 87% from February to almost \$6 in March. Since then, it's recuperated to \$31.93 and a \$711 million market cap.

It initially kept open all its restaurants for take-out and delivery and then had to shutter a few.

"While we had to make the in-



Kendra Miller
BJ's Restaurants

credibly difficult decision to furlough and temporarily lay off team members, we provided paid vacation and sick time or emergency paid time off throughout the country, and we helped our team members identify interim job opportunities," Miller said.

"We wanted to send a clear message—that we wanted our team

members to come back to BJ's when our dining rooms re-opened and business levels returned."

To reopen, it implemented safety standards that often exceed CDC guidelines such as dividers, touchless pay systems and expanded outdoor eating sites.

"Operating in a pandemic has taught all of us that we must remain resilient, innovative and flexible to make quick adjustments."

BELLS RINGING

Taco Bell Corp., which last year won the GC award for the in-house legal team, has more than 350 franchise organizations operating over 7,000 restaurants that serve more than 40 million customers each week in the U.S. Internationally, the brand is growing with nearly 500 restaurants across almost 30 countries across the globe.

Its legal team was front and center during the coronavirus.

At the start of the pandemic, the Irvine-based team "quickly and efficiently" came together with the **Taco Bell Foundation** to partner with **No Kid Hungry** for the 'Round Up in the drive-thru' initiative; these efforts resulted in nearly \$5.5 million raised to end childhood hunger.

In collaboration with its franchisees, the legal team navigated the challenges including rolling out team member health check protocols and restaurant reopening plans.

It's also working with partners within the company to support initiatives that enhance equity, inclusion and belonging, namely rolling out the company's first-ever Employee Resource Groups.



Julie Davis
Taco Bell

As customers look to delivery services for convenient and safe meal options, it entered into contracts with **Postmates**, **DoorDash** and **Uber Eats** while reshaping its relationship with **Grubhub**.

"We've balanced these new changes while still delivering key litigation wins for Taco Bell and the industry overall, such as securing early dismissals on false advertising claims," said **Julie Davis**, global chief legal officer at Taco Bell.

"Taco Bell has always been innovative, and this past year has proven that we can adapt to sudden changes in the industry at a moment's notice while still being authentic to the brand."

PEAK'S TIME

The health care industry literally is in the middle of the coronavirus pandemic.

And the Irvine-based **Healthpeak Properties Inc.** (NYSE: PEAK) is right in the middle of the health care industry by developing and owning real estate in the Life Science, Senior Housing and Medical Offices. Its shares dropped in half from February to March at the onset of the pandemic, but have since recovered some; it's valued at about \$15 billion, making it one of OC's most valuable public companies.

The health crisis didn't mean business stopped for 2019 GC winner **Tracy Porter**, the transactions counsel for the company, which in July said it had \$2.85 billion of liquidity available for deal making and other expenses.

In June, it closed on a sale of the three Frost Street medical office buildings in San

Diego, generating proceeds of approximately \$106 million.

In April, it closed on the previously announced \$320 million life science acquisition of The Post, a 426,000 square foot life science property located within the Route 128 submarket of Boston.

It delivered a 52,000 square foot, three-story Class A medical office building, located on HCA's campus of Lee's Summit Medical Center, in Lee's Summit, Missouri.

In June, it signed a 17-year lease with a full-building user totaling 74,000 square feet at its Boardwalk development project in San Diego.

The 190,000-square-foot Boardwalk will be Healthpeak's flagship campus in the core life science market of San Diego.

It's scheduled to report third quarter results on Nov. 3.



Tracy Porter
Healthpeak Properties



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Kate Duchene: The GC Who Became the Decision Maker

CONSULTING: 2010
GC winner now CEO

■ By PETER J. BRENNAN

A lot has changed for **Kate Duchene** since she was honored by the Business Journal in our inaugural General Counsel Awards event in 2010.

In 2016, she became chief executive of **Resources Connection Inc.** (Nasdaq: RGP), an Irvine-based global consulting firm whose clients include 89 of the Fortune 100 members.

The company, which also operates under the Resources Global Professionals (RGP) name, employs 3,600 and generated \$703.4 million in revenue for fiscal 2020. It counts a market value approaching \$400 million.

What are the biggest differences between the roles of a CEO and a general counsel?

"The responsibility for enterprise decision making and the fact that the buck stops with you," Duchene told the Business Journal.

"You're not advising a decision maker. You have to do it. You are also responsible for the culture of an organization. You have to change your mentality from a doer into an influencer, strategist and learner. I spend a lot of time reading what's around the corner," she said.

After taking over the top role, Duchene implemented a strategy to modernize the company, shifting from a project-based model to offering more ongoing advisory services, particularly in

data integration and mergers and acquisitions. In 2019, she announced a new area of modernization to "become a more digital business."

The Beginning

RGP, which was founded in 1996, grew out of Deloitte with a decentralized, branch office-based model to help finance executives with operational needs and special projects created by workforce gaps.

Duchene, a graduate of Stanford University and New York University School of Law, spent almost a decade in the 1990s as a trial lawyer negotiating labor and employment disputes at **O'Melveny & Myers LLP** in Los Angeles.

Then in 1999, she joined RGP where initially she managed the human resources department and then added the titles of chief legal officer and corporate secretary. After helping to take RGP public in 2000, Duchene oversaw the expansion of the company's human resources department, including developing and managing compensation and benefits, and designing client professional services agreements for the company. She also became involved in acquisitions and advising the board of directors.

She became the company's fourth chief executive in 2016 following the retirement of **Anthony Cherbak** due to health reasons.

"After thorough consideration and discussion, and recognizing Ms. Duchene's strong performance during her term as Interim CEO, the Board unanimously agreed Ms. Duchene brings the leadership, integrity and innovative thinking necessary for the Company's continued success and growth," **A. Robert Pisano**, the lead independent director on the board, said in a statement at the time.

She's won multiple honors from the Business Journal.

In 2017, she was one of five honorees at the Business Journal's 23rd Annual Women in Business Awards ceremony.

It was not only business success for her in the past decade, noting that her two children went to college and now have successful careers.

"I'm proud of my children's accomplishments," she said. Success "is not always on the business side."

Similarities

After being CEO for almost four years, she sees the similarities between her job and that of general counsel.

"General counsels have to be persuaders too," Duchene said. "There are many things about my



Kate Duchene went from general counsel to CEO of 3,600 employees

legal training that have been very helpful."

She also sees the differences, such as lawyers being able to concentrate on one issue and problem solving.

"In the CEO role, you're going to have a lot of plates spinning at one time and you have to prioritize, reprioritize and adapt to change," she said. "Lawyers have to get better at having a mindset to address change. The pace of change is increasing every single day."

For example, during a conference call earlier this month with analysts and investors, she had to explain that revenue for fiscal first quarter ended Aug. 29 declined 14% year over year to \$147.3 million because of the pandemic.

She also touched on a variety of subjects like restructuring in Europe, exiting the Nordic markets, pricing discipline on gross margin and launching a new digital platform.

GC Advice

If an attorney wants to become a CEO, she advises they get exposure to operational roles and if not, attend business meetings or work on task forces or initiatives. They must learn the tools of business and how to talk the same language as an executive. She said a general counsel who wants to move into strategic advisory role should invest in relationships that create trust.

"Help a CEO understand risks, the shades of gray," Duchene said. "There is so much gray in the world."

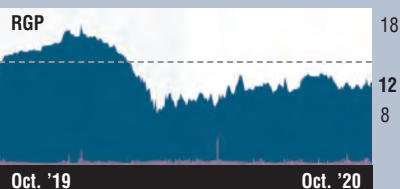
Duchene herself hired a new general counsel—**Lauren Elkerson**, who was an associate general at RGP and who replaced Alice Washington, who retired.

"I promoted her because of her passion for the business and the relationships she had in the company," Duchene said. ■



Irvine HQ runs some 57K-SF; company-owned

RESOURCES CONNECTION INC.



- **HEADQUARTERS:** Irvine
- **CEO:** Kate Duchene
- **TICKER:** RGP (Nasdaq)
- **MARKET CAP:** \$382M
- **FYQ1 REVENUE:** \$147.3M (down 14% YoY)
- **FYQ1 NET INCOME:** \$2.28M (down 54% YoY)
- **NOTABLE:** Duchene is on the boards of the UCI Foundation, Collectors Universe, and the Orange County Community Foundation.

O'Melveny to Tilly's to Alteryx: Lal's Legal Journey

TECHNOLOGY: 2014 winner
now at data analytics firm

■ By KEVIN COSTELLOE

Chris Lal's cross-town move from **Tilly's Inc.** to **Alteryx Inc.** was brief, but while the professional role is similar the business terrain for the top company legal specialist at each firm is quite a bit different.

Lal was general counsel at Irvine-based retailer and e-commerce company Tilly's from 2012 to 2016. The publicly listed company (NYSE: TLYS) is valued at about \$200 million, and sells clothes, shoes and other apparel. While he was there, Lal won a Business Journal General Counsel award in 2014.

He joined **Alteryx Inc.** (NYSE: AYYX), also in Irvine, as chief legal officer in August 2016, the year before the data analytics software maker went public. It's now valued at nearly \$10 billion.

"When I joined Alteryx in 2016, I stepped into



Alteryx Chief Legal Officer Chris Lal helps guide data analytics company

a fast-paced company, focused on managing growth across its entire business—from people, to locations, to customers, to sales—and preparing for an IPO," Lal told the Business Journal last week. "Although I was at a new company, my role was very much the same—legal advisor, business strategist, protector of the corporation's assets and reputation."

Alteryx says Lal is "responsible for all legal affairs, including intellectual property, licensing, contract negotiations, compliance, and corporate governance." Lal is also the corporate secretary.

Alteryx, one of the hottest Orange County tech companies in years, has about 1,500 employees and offices around the world. Earlier this month, Silicon Valley veteran **Mark Anderson** took over as chief executive from co-founder **Dean Stoecker** (see story, page 10).

Lal's team has built out a global legal organization capable of managing a rapidly scaling business, including developing customer contracting standards and playbooks and managing risk, compliance, regulatory and governance as a global, public company.

"In private practice, the diversity and sophistication of the work and the ability to collaborate with and draw on the expertise of law firm colleagues are tremendous," Lal said. "As a lawyer within a company, however, you have the luxury of focusing on just one client, and you're able to become fully immersed in the

business and its long-term goals in a way that private practice doesn't allow."

Previously, while serving as vice president, general counsel and secretary of Tilly's, Lal oversaw legal affairs related to Securities and Exchange Commission and New York Stock Exchange compliance, Federal Trade Commission matters, e-commerce, intellectual property, and labor and employment.

Before Tilly's, Lal served as general counsel at **Thompson National Properties**, **Sunstone Hotel Investors** (NYSE: SHO), and **RemedyTemp**, helping these companies through various stages of growth and corporate change.

He began his career at **O'Melveny & Myers LLP** in 1998, as a member of the corporate and securities practice, where he advised clients on matters including public securities offerings and private placements, corporate finance transactions, mergers and acquisitions, and corporate governance.

Lal holds a B.A. from the University of California, Santa Barbara, and received a J.D. from the University of Southern California in 1998. ■

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Is Your Company Transitioning from Brick-and-Mortar Retail to Online Sales? If the Answer is Yes, Pay Close Attention to These Laws.

According to recent financial data, American shoppers are on course to surpass total online spending in 2019 by early October, as a result of the explosive growth in ecommerce inspired by the COVID-19 pandemic. Financial analysts expect continued growth in online spending due to the extension of COVID-19 lockdowns and restrictions across the country, so companies are naturally shifting more of their focus to online sales.

If your company is in the midst of a transition from brick and mortar retail to online sales or looking to expand your existing online operations as result of the COVID-19 pandemic, you will want to make sure that you are in compliance with the myriad of federal and state laws that govern the manner in which business is conducted online. In particular, your company will want to make sure that it has policies and procedures in place that ensure compliance with two of the preferred tools for regulating commerce conducted over the internet – the Restore Online Shoppers' Confidence Act ("ROSCA") and the Children's Online Privacy Protection Rule ("COPPA").

What is ROSCA and how does it affect your company?

ROSCA is a law that was enacted by Congress in 2010 to combat aggressive online sales tactics that were being utilized by certain companies. The law has two major provisions that are focused on two types of online transactions: (1) Sales by a third party to a consumer immediately following a transaction between that consumer and an initial merchant; and (2) Sales using a negative option feature.

Post-Transaction Third-Party Sales

Post-transaction third-party sellers were a major concern when ROSCA was first enacted because at the time, it was a common practice for initial merchants to transmit a consumer's payment information to a third-party, enabling the third-party to sell the consumer an additional product or service, without the express consent of the consumer. These transfers of consumer data from an initial merchant to a third-party became known as a "data pass," and it was the secrecy in which these data pass transfers were occurring (typically without the knowledge of the consumer) that caught the attention of regulators. Accordingly, ROSCA imposed the following requirements upon initial merchants and third-party sellers conducting business over the internet:

- Initial merchants cannot disclose a payment card, bank account, or other financial account number to a post-transaction third-party seller for use in any sale by a third-party seller.
- Third-party seller must make clear and conspicuous disclosures about itself and the goods or services it is offering prior to collecting the consumer's payment information; and
- Third-party seller must get the consumer's express, informed consent prior to charging him or her.

Negative Option Features

The use of negative option features in online sales was a major concern when ROSCA was first enacted because many online consumers were enticed by the "free trial" that typically accompanied the offer and unaware that cancellation of the service after the "free trial" ended required affirmative action on their part. The definition of "negative option feature" under ROSCA is taken from the FTC's Telemarketing Sales Rule (16 C.F.R. 310), which states, "in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer."

Common examples of negative option features are automatic-renewal subscriptions (i.e. subscriptions that involve recurring monthly payments) and continuity plans where the consumer receives a new shipment of goods on a recurring basis until they cancel the agreement (i.e. clothes, wine, food, etc.). ROSCA imposes the following requirements upon companies that utilize a negative option feature in their online sales:

- Clear and conspicuous disclosure of all material terms of the sale before collecting billing information from the consumer;
- Obtain the consumer's express informed consent before charging him or her; and
- Provide a simple mechanism for the consumer to cancel the service.

Importantly, ROSCA empowers both the FTC and state Attorneys General to enforce the law, and amidst the flood of e-commerce that is taking place during

the COVID-19 pandemic, you can be certain that federal and state regulators are paying close attention to whether companies are complying with this law.

What is COPPA and how does it affect your company?

Congress enacted COPPA in 1998 to limit the collection of personally identifiable information from children under 13 without their parents' consent. When the law went into effect on April 21, 2000, the internet was not as ubiquitous as it is today, so companies that were not targeting a 13 and under audience were less concerned with whether or not they were complying with this law. However, now that children as young as five are walking around with smartphones in their pockets, playing internet-connected gaming systems, and communicating with virtual assistants like Alexa, all companies conducting business online should ensure they are in compliance with the law.

COPPA requires, among other things, that operators of commercial websites and online services directed to children under the age of 13, or general audience websites and online services that knowingly collect personal information from children under 13, must comply with the following general requirements:

- Post comprehensive privacy policies on their websites;
- Notify parents directly about their information collection practices; and
- Obtain verifiable parental consent before collecting, using, or disclosing any personal information from children under the age of 13.

It is important to note that the term "online services" broadly covers any service available over the internet, or that connects to the internet or a wide-area network. Examples of online services covered by COPPA include, but are not limited to, the following services:

- Network-connected games
- Social networking platforms or applications
- Services that allow users to purchase goods or services online
- Services that allow users to receive online advertisements
- Services that allow users to interact with other online content or services
- Mobile applications that connect to the internet
- Internet-enabled gaming platforms
- Connected toys
- Smart speakers
- Voice assistants
- Voice-over-internet protocol services
- Internet-enabled location-based services

Like ROSCA, COPPA empowers both the FTC and state Attorneys General to enforce the law, and amidst the flood of e-commerce that is taking place during the COVID-19 pandemic, you can be certain that federal and state regulators are also paying close attention to whether companies are complying with this law.

Shawn Collins is a shareholder in Stradling Yocca Carlson & Rauth's Enforcement Defense & Investigations and Compliance & Corporate Governance practice group. Shawn's practice focuses on government and regulatory enforcement defense, internal investigations and compliance counseling, with a particular focus on enforcement actions and investigations brought by the FTC and state Attorneys General related to consumer protection. He has represented clients before the Federal Trade Commission, Consumer Financial Protection Bureau, Department of Justice, and in single or multistate regulatory enforcement actions by State Attorney's General. These enforcement actions and investigations have involved federal and/or state regulators alleging violations of federal and state consumer protection laws. In an effort to preempt government enforcement actions or investigations, Shawn regularly conducts compliance assessments, writes company policies, and provides compliance counseling and training for companies, with the goal of protecting companies from the negative publicity and financial costs associated with government scrutiny.



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has completed an initial
public offering of common stock

\$3,864,000,000

CO-MANAGER

MEDELITA

has been acquired by



a portfolio company of



SELL-SIDE ADVISOR



has completed an initial
public offering of common stock

\$96,000,000

CO-MANAGER



has completed a follow-on
offering of common stock

\$89,700,000

CO-MANAGER



has been acquired by



SELL-SIDE ADVISOR



has acquired

OpusBank.

BUY-SIDE ADVISOR



has been acquired by



a subsidiary of



SELL-SIDE ADVISOR



has been acquired by



SELL-SIDE ADVISOR



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SPAC FAQs

What is a SPAC?

A special purpose acquisition company (or blank check company), which is formed for the purpose of acquiring or merging with an operating business by a specific date, typically 24 to 30 months after the SPAC's IPO. SPACs have been in the news lately. From the beginning of 2020 to July 22, 2020, there have been 48 SPAC IPOs, raising almost \$18 billion. By contrast, in 2016, less than \$3 billion in total SPAC IPO proceeds were raised. Notable companies that have merged with or been acquired by SPACs (and hence are now publicly traded) include DraftKings and Virgin Galactic, to name a few.

How are SPACs structured?

A SPAC will raise money in the public markets via an IPO from institutional and retail investors. Typically, all of the cash raised in the IPO will be placed in a trust account. This cash will be released only upon a closing of the business combination or if no business combination is consummated by a specified date.

As an incentive to investors, SPACs typically offer units in their IPO, with each unit comprising one share of common stock and one warrant to purchase a share of common stock (though sometimes the warrants are exercisable for only one-half of a share or less). Some SPACs do not even offer warrants. Units are typically priced at \$10.00 per unit and the warrant is usually priced "out of the money" with an exercise price greater than the per unit price offered in the IPO.

Some SPACs include a "crescent term" which is an antidilution adjustment to the warrant exercise price. This adjusts the warrant strike price if additional securities are issued below a certain threshold. The strike price is typically adjusted to 115% of the higher of (i) the market value or (ii) the price of the newly issued securities. The units become separable after the IPO and if a business combination is consummated, the warrants become exercisable.

Each shareholder has the option to redeem its shares at the closing of the business combination for a pro rata portion of the cash held in the trust account. This provides some downside protection for investors in SPACs.

What is a Sponsor?

A sponsor will form the SPAC and lead the IPO process. A sponsor will typically purchase founder shares in the SPAC for nominal consideration, which will comprise about 20% of a SPAC's outstanding shares of its common stock following its IPO (this is the sponsor's "promote"). In order to fund the SPAC so that it can pay expenses, a sponsor will also acquire warrants at fair market value in a private placement that closes concurrently with the SPAC's IPO. These private warrants are virtually identical to the public warrants, which form a portion of the units. A SPAC may also be funded with PIPE investments.

What is the IPO process?

A SPAC will use Form S-1 in connection with its IPO, and the process will be similar as with any other company. A SPAC will typically qualify as an emerging growth company.

Because a SPAC will have no operations, the registration statement will extensively discuss the SPAC's structure, business strategy (and a discussion of the proposed industry focus, if any), and its management team. Note that the experience and network of the management team will likely be the SPAC's most valuable asset, so discussion of management should be thorough.

Of course, a SPAC cannot have a target at the time of the IPO. Otherwise, the name of the target would need to be disclosed. As a result, SPACs typically state in their registration statements that they do not have any identified targets.

A SPAC is unable to use a free writing prospectus in its IPO or in subsequent offerings within three years of completing a business transaction. A SPAC cannot use Form S-8 to register an equity incentive plan until 60 days after the consummation of the business combination.

In addition, most SPACs choose to list on the Nasdaq Capital Market, and these SPACs must also meet Nasdaq's listing requirements. These include requirements that (i) the initial business combination must be with one or more businesses having an aggregate fair market value of at least 80% of the value of the SPAC's trust account, (ii) a business combination must be completed within 36 months from the effective date of the SPAC's or an earlier deadline as specified in its registration statement, and (iii) if a shareholder vote on the business combination is not held for which the SPAC must file and furnish a proxy or information statement, the SPAC must provide all shareholders with the opportunity to redeem all their shares for

cash equal to their pro rata share of the aggregate amount in the trust account. Solicitation of shareholder votes is done in compliance with Regulation 14A. The SEC will also comment on proxy statements. Financial information about the target must also comply with SEC rules, including Regulations 14A, S-K, and S-X. Because of the aforementioned 80% rule, a relatively small company would likely not be an attractive SPAC target. SPACs typically seek target companies with a value of 2 – 4 times the amount of the SPAC's IPO proceeds in order to limit the dilutive impact to the founder shares and warrants. In addition, the SEC has issued informal guidance that the proxy statement and tender offer materials should contain financial statements audited under PCAOB rules, which further makes smaller companies unattractive SPAC targets.

What is the timeline to complete a business combination?

Commencing with the closing of the IPO, a SPAC can hold substantive discussions with a target. If a SPAC needs more time than is set forth in its organizational documents, it can seek a shareholder vote to amend its organizational documents to extend the deadline. With each vote to extend the deadline, the SPAC's organizational documents typically also provide that the SPAC must offer shareholders the right to redeem their shares for a pro rata portion of the cash held in the trust account. Typically, it takes around 4 – 5 months from the signing of the definitive documents to closing. From the closing of the SPAC's IPO to the closing of the business combination, the average time frame is approximately 16 months.

What are the benefits of SPACs?

From the sponsor's perspective, raising money in the public markets may be easier than the private markets. The sponsor will also enjoy an outright ownership interest in the post-combination company via its founder shares and warrants.

From a target's perspective, the prestige of being a public company (without going through a traditional IPO process, which includes pricing and market risks) can often be attractive. In addition, the target's owners may also have an opportunity to retain a significant (sometimes controlling) stake in the post-combination company and the target's management team may also continue in their roles in the post-combination company. Given the current popularity of SPACs, there is also potential for valuations to grow for strong SPAC targets.

From a public investor's perspective, there is an opportunity to invest in a company which is led by experienced investment professionals. In addition to any potential increases in the SPAC's stock price, there is also further upside potential with the warrants. Investors also have downside protection because shareholders have the option to have their shares redeemed for a pro rata portion of the trust.

Are SPACs here to stay?

As with everything, time will tell. SPACs are certainly hot right now. Notable non-M&A figures such as former Speaker of the House Paul Ryan and baseball executive Billy Beane are getting in on the action, which may be a sign that SPACs are too popular. SPACs will certainly continue to grow in the next few years. But if you start seeing Instagram ads on how to form your own SPAC, that may be a sign that the boom is on its way out.

Mohammed Elayan works with individuals and companies on a variety of transactions, across multiple industries, including software, healthcare, manufacturing, technology, and retail. He advises on mergers & acquisitions, financings, commercial and licensing agreements, corporate governance, and entity structuring. Mohammed also has experience representing both lenders and borrowers in debt financing transactions. Contact Mohammed Elayan at (714) 338-1865 or melayan@rutan.com





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What In-House Counsel Need to Know About SaaS Agreements

Traditional software licenses have presented challenges with proper installation, compatibility, bugs, and updating, and oftentimes cost-prohibitive economic terms. SaaS ("Software as a Service") is replacing traditional software licenses with access to a cloud that hosts software. This simplified cloud-based service offers inviting subscription pricing. The SaaS vendors, however, can be resistant to negotiating changes to their standard SaaS agreements. Thus, it is important that counsel be able to identify what terms need to be negotiated. Following are some tips for knowing when to push for a term modification:

1. Pricing: Understand the pricing. Pricing is usually based on a simple metric, such as number of users, transactions or projects. Don't be afraid to request a discount. SaaS vendors will often agree to a discount to get the deal done.

2. Extra charges: Be wary of extra charges (e.g., extra-users, training and custom features). They can add up to significant charges and are often not critical.

3. Data Privacy. What sensitive data (such as customer data) will be stored in the cloud, and how will that data be handled? Beware of terms that allow transfer or other access to any sensitive data. Preferably, do not transfer sensitive data--but if it must be transferred, specify that (i) your company/your customer owns the data, (ii) the provider can't use it except to perform under the agreement, (iii) the provider must keep it safe from unauthorized access, and (iv) the data must be returned to you upon termination of the agreement or if the provider goes out of business. Make sure the SaaS conforms to state data privacy laws, which are increasing in number.

4. Suspension of Service: Remove or review carefully any provisions that allow the provider to suspend or terminate service. Lack of access to the system could

be highly detrimental to your company, and monetary damages may be insufficient if there is a dispute.

5. Changes to Agreement. Prohibit changes to the SaaS via a user click-through, which can lead to a user accepting terms contrary to the negotiated SaaS. Any amendments to the SaaS should be made in writing and signed by the same level of signers that signed by SaaS.

This article highlights just some of the more important issues to consider when negotiating a SaaS agreement. SaaS provides software at a significant savings over the traditional license agreement, but you must read the tricky terms very carefully. If you are not comfortable that you have caught all of the issues, do not hesitate to contact licensing counsel for further advice.

Diane Reed is a trademark, copyright and licensing partner at Knobbe Martens with over 27 years counseling clients in the food and beverage, apparel, and medical device industries.



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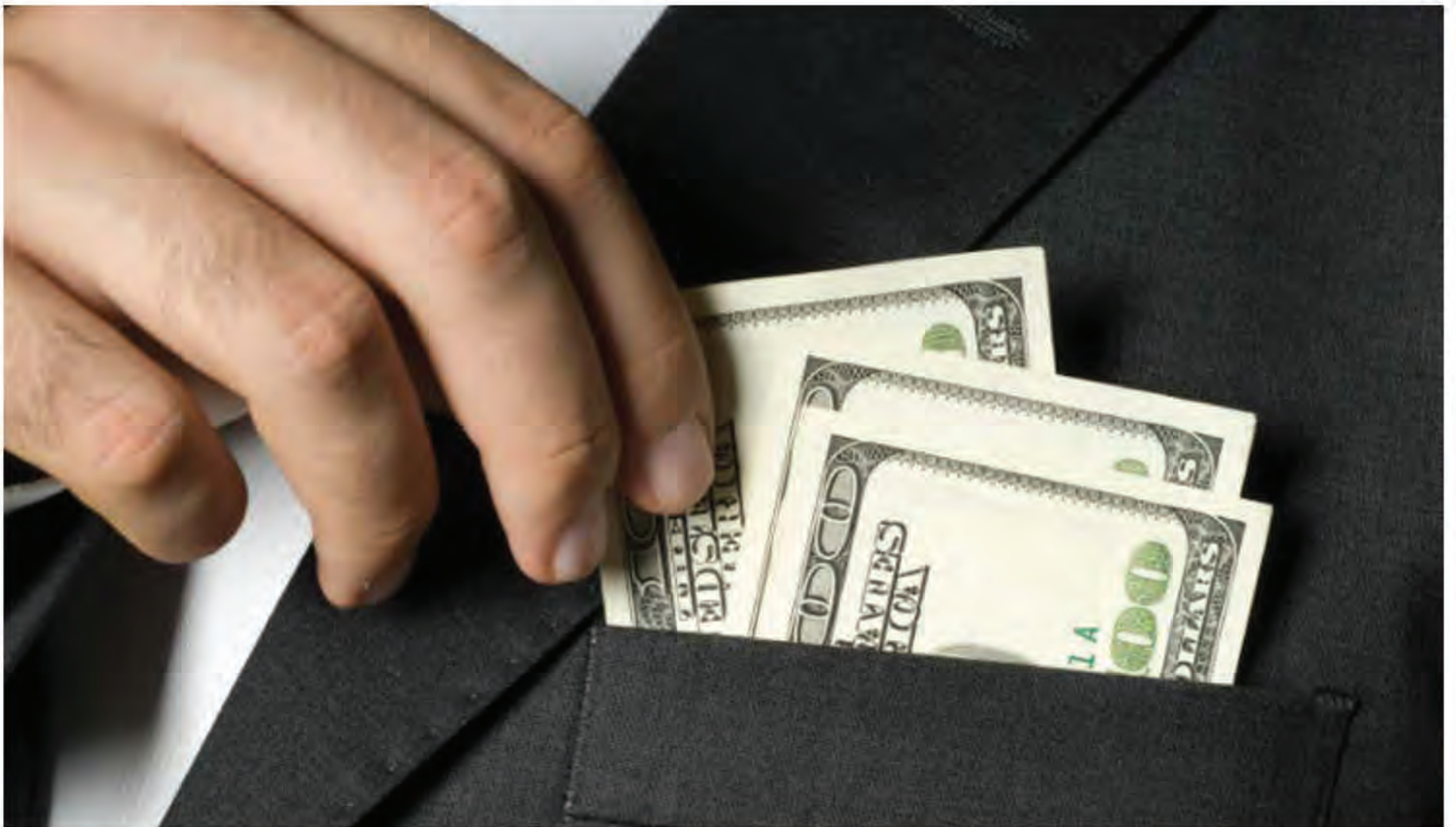
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Businesses Need Asset Protection, Too

By Jeffrey M. Verdon, Managing Partner, Jeffrey M. Verdon Law Group, LLP

Here are several ways for family-owned and privately owned companies to place assets out of reach.

Affluent families and high-net-worth individuals have been using asset protection planning since the mid-1980s. Well, guess what? Businesses get sued, too. Yet, when you ask those in the C suite what they are doing to protect their company's assets from lawsuits, you mostly get a blank stare.

Small privately held businesses are often most at risk because litigation costs and expenses come out of the owner/executive pockets, not those of many multiples of shareholders.

Sometimes lawyers look to pile on a community of individual plaintiffs to scare the company into a settlement or face years of costly litigation and a drag on company morale.

The latest twist: so-called "Wage and Hour" disputes. A group of employees bands together, typically through the instigation of a plaintiff lawyer, who then sues the company about some issue surrounding the hours they worked and the wages they were paid.

These cases often start out small. But the plaintiff attorneys then contact many more employees, even past employees, to see if they want to join the "class." Worse, many insurers are now excluding

coverage for these sorts of claims.

What Can YOU Do to Protect Your Business?

If your company has substantial retained earnings and liquid assets, you might be able to create a foreign asset protection trust (FAPT) where the company is both the settlor and discretionary beneficiary of the trust. Absent a fraudulent transfer, once titled in the FAPT and subject to the more protective laws of the FAPT jurisdiction, a subsequent creditor won't be able to enforce a judgment against the FAPT. This will discourage most lawsuits and encourage the parties to reach a settlement, generally far more favorable for the company than would have been the case had the FAPT not been created.

Private Retirement Plan

In California, business owners can also create a Private Retirement Plan (PRP), a type of retirement savings plan that, by statutory law, is exempt from lawsuits, even if you have to file for bankruptcy. Qualified plans are generally exempt but require the business owner to comply with complex ERISA and tax laws.

The PRP may be set up as a non-ERISA qualified plan taking it outside of the regulatory scheme and thus, not subject to the more complex rules.

There are few limitations on the amount that may be contributed to non-ERISA

qualified plans, because contributions are not income-tax-deductible, yet the statutory exemptions from creditor claims applies. This makes the PRP a useful tool to insure there will be supplemental retirement income for the employer.

More Options Companies Can Consider to Protect Their Assets

1. Leasing equipment, rather than owning it, reduces a company's assets on its balance sheet.
2. Some corporations create separate companies for each brand that they own to reduce exposure.
3. Creating separate entities for the company's intellectual property (IP) and then licensing them to the operating company so the IP is not owned by the

target of a future lawsuit.

4. Distributing retained earnings to shareholders and stakeholders so the funds aren't exposed to business liability. There's also the option of having the company owned by a foreign asset protection trust so the distributions are not subject to personal liability.

One of the best ways to level the litigation playing field is to place the assets out of reach of future potential plaintiffs or convert non-exempt assets to exempt assets ahead of any future claim. Once this is done, your company won't be so attractive to litigious plaintiff attorneys who only get paid if they recover assets from the judgments they obtain. Asset protection planning neutralizes this.



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Jeffrey M. Verdon, Esq. is the Managing Partner of the Jeffrey M. Verdon Law Group, LLP, a Trusts & Estates boutique law firm located in Newport Beach, Calif. With more than 30 years of experience in designing and implementing comprehensive estate planning and asset protection structures, the law firm serves affluent families and successful business owners in solving their most complex and vexing estate tax, income tax, and asset protection goals and objectives. Please call us for a complimentary consultation.

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United Way Bench & Bar Affinity Group

Two OC Attorneys Share Why They Give Back Locally, Thoughts on the Future of Corporate Social Responsibility



As established legal leaders with impressive careers, **Chahira Solh** and **Jim Scheinkman** are experienced at directing their efforts where they'll have maximum impact. That's why they champion Orange County United Way's local efforts to help our disadvantaged students succeed, our struggling families gain self-sufficiency, and our homeless neighbors find a place to call home.

A Comprehensive Way to Get Involved and Give



Jim Scheinkman
Partner, Snell & Wilmer

Jim Scheinkman, practice group leader of Snell & Wilmer's Corporate and Securities Group in Costa Mesa, joined United Way's Alexis de Tocqueville Society over 15 years ago. A fellow partner who was already involved pointed out that the organization offers the opportunity to help the local community, consolidate charitable giving for greater impact, plus meet very talented and like-minded philanthropists.

Throughout the years, Scheinkman expanded his participation to numerous United Way initiatives. Currently, he serves on the Board of Directors, the Corporate Cabinet and the Alexis de Tocqueville Society Cabinet. He's also a member of the prestigious President's Circle.

Not only that, Scheinkman is a long-time member of the Bench & Bar affinity group. This networking group brings together attorneys from top OC law firms across a variety of disciplines—corporate, health care, real estate, labor litigation and more—as well as in-house counsel from leading corporations in technology, sciences and international business.

He says, "Every event—whether it's for networking or content-driven, a board or committee meeting, a class or community engagement—provides new information, expanded relationships and a renewed sense of purpose. It's a pleasure to work with these folks and consider them not only as colleagues, but also friends."

Relevancy Matters, Especially Now



Chahira Solh
Partner, Crowell & Moring LLP

As a partner and the head of Crowell & Moring's Orange County office, Chahira Solh also values connecting with people who share her interest in philanthropy. She's a member of the Alexis de Tocqueville Society President's Circle and Bench & Bar, and has been involved since 2014.

With United Way, Solh knows her involvement and contributions focus on our community's greatest needs. That was especially relevant this year. A member of the Community Impact Cabinet, Solh spearheaded tremendous fundraising and support for Orange County United Way's Pandemic Relief

Fund, providing energy and visionary leadership at its beginning. In early 2020, as United Way rapidly pivoted to help local residents and families in Orange County who were facing unimaginable hardships, Solh says she directly witnessed the impact of taking action in a crisis.

"It's really important to help those whose lives were upended. There are many ways to give back, and giving in a way that benefits the most people

is really important. Orange County United Way directs funds to the right people and right programs, making it easy to make a big impact."

Technology Likely Critical to Corporate Social Responsibility in the Future

At Snell & Wilmer, corporate social responsibility (CSR) is an integral part of the culture. Scheinkman cites a longstanding relationship between United Way and the firm's foundation along with individual giving and volunteer support of programs such as the Early Grade Literacy initiative.

Looking ahead, he sees trends that may significantly affect CSR—some of which have been accelerated by the pandemic: an increased focus on environmental, social and governance (ESG) factors; shifts to digital delivery of products and services; less reliance on brick and mortar; telecommuting and remote location working; increased use of "big data" and the emergence of social media.

Therefore, he thinks technology will be more than essential; it's likely to play the paramount role for CSR. Employees and donors want information, and they expect to interact with each other, their businesses and their causes instantaneously and seamlessly. That can generally only be accomplished with the innovation provided by technology.



Philanthropy Cloud is a digital platform that revolutionizes the way businesses and employees maximize their philanthropic efforts by inspiring, connecting and empowering local change.

Snell & Wilmer recently adopted United Way's Philanthropy Cloud, which is powered by Salesforce. The platform provides an easy, "one-stop shop" to support the community financially and by volunteering.

"We are interested in how Philanthropy Cloud can assist us in our United Way campaign at several offices across the country, since many of us are working remotely," says Scheinkman. "We're also very excited about its features that connect our lawyers and staff to charitable giving and involvement, and its ability to provide metrics as to the firm's contributions. This measurement may be helpful for internal communication and potentially recruitment, public relations and business development efforts."

Coming Together—Neighbor Helping Neighbor

Jim Scheinkman and Chahira Solh are two of the many Orange County attorneys and business professionals who share United Way's passion and collective sense of responsibility for improving lives and making our community better for everyone.

Scheinkman sums it up, "It is even more important now that we connect as people to overcome challenges and remember that we are all neighbors."

This year, our community is confronting unfathomable crises. The pandemic has overwhelmed families. Job losses weigh on parents who are straining to keep their children healthy and help them learn. Some of our most vulnerable neighbors have lost their homes; others are at risk of homelessness.

Join dedicated attorneys like Scheinkman and Solh to improve lives right here in our community.

For more information on becoming a member of the Alexis de Tocqueville Society Bench & Bar affinity group, contact Kalina Covello at KalinaC@UnitedWayOC.org or call 949.263.6154.

PANDEMIC RELIEF FUND

Help our struggling OC neighbors through the COVID-19 crisis.



Orange County United Way has worked to raise much-needed dollars for its Pandemic Relief Fund to assist low-income individuals and families at imminent risk of homelessness, the current Orange County population experiencing homelessness, and vital social and human services. To date, more than 5,400 households have been given \$500 emergency debit cards to help pay for rent, utilities, groceries and other essential basic needs, 10,000+ books have been distributed to children in need, 30,000+ face masks have been donated to frontline workers and so much more.



Tocqueville

ALEXIS DE TOCQUEVILLE SOCIETY

ORANGE COUNTY UNITED WAY

Orange County United Way envisions an Orange County where every person receives a quality education, is financially stable, is healthy and thriving, and has a place to call home. We are leading the fight for equity by doing everything we can to remove barriers, close gaps, and level the playing field for everyone who lives here.

We are grateful to our Alexis de Tocqueville Society Bench & Bar members for their generosity, volunteerism, and advocacy. This influential group of leading local attorneys is taking a stand for our next generation.

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OPINION: EXCESS MONEY WORKS SMARTER WITH INSURED CASH SWEEPS

You've certainly heard some variation of the cliché "make your money work for you." It permeates marketing efforts across industries, makes a catchy headline and speaks to our desires to be not just successful, but also thriving.

For business owners, advisors, managers or even stewards of public funds, that's especially true. These large depositors often have funds sitting in business accounts that earn zero interest or exceed the protection of the FDIC. Put simply, these large deposits could be doing much more. They could be working smarter...staying protected and earning money.

For the longest time—and still for many people—finding the solution to this common dilemma hasn't been easy. The idea of creating and maintaining several bank relationships, choosing interest-earning accounts and handling dozens of statements isn't motivating.

Enter ICS, the Insured Cash Sweep service.

One attractive cash management option is the Insured Cash Sweep service offered by many banks. ICS provides protection for funds beyond the \$250,000 FDIC maximum. With a bank in the ICS network monitoring your funds, cash in the transaction account over \$250,000 is "swept" into one or more FDIC insured deposit accounts at other ICS network financial institutions.

Those deposit accounts remain at or under the \$250,000 FDIC threshold. That means all your funds in an ICS-connected account are eligible for FDIC insurance. Also, because sweep accounts maintain liquidity, cash can be swept back into the primary account if needed.

This makes ICS a simple solution, not just for earning (more) interest on your deposits, but for protecting them as well. Plus, as a cash management tool, it doesn't get much simpler than a sweep account. Note: additional terms and conditions may apply.

Keeping it smart and simple.

Regular monthly statements from your primary bank—where you established your ICS service—help to keep advanced money management simple. There's no need to track collateral on an ongoing basis, footnote uninsured deposits, manage multiple banking relationships or manually consolidate bank statements. This can make it a fantastic time-saver.

Here's more good news: ICS isn't only for business. Public funds for local governments, schools, police departments, hospitals utilities, court supervised funds, personal accounts and more can use the ICS service with the right bank.

Finding a relationship with an ICS member institution can be quick and easy—simply visit InsuredCashSweep.com and search by state. The American Bankers Association also endorses ICS, citing how it helps banks attract large-dollar deposits that can be used for lending in their local communities.

So, why let your excess money sit idle in a single account that may not be backed by the full faith of the U.S. government, earning little or no interest! With the Insured Cash Sweep service, you make your money work smarter for you.



SCOTT KUNITZ is the Senior Director and Market Executive of the Legal, Fiduciary and Government Banking Groups at Banc of California (an ICS Network bank). These views belong exclusively to Scott Kunitz and are not necessarily the views of Banc of California.

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Keeping Your Trade Secrets Secret

By Erynn L. Embree

Virtually all companies possess trade secrets critical to the success of the business; however, without undertaking proper care, business owners may find that some of their most precious assets may not be adequately protected, or are at risk of ending up in the wrong hands. Affirmative steps must be taken for a business to protect its trade secrets, including from disclosure and use by current employees, or former employees seeking to compete by starting their own business or working for a competitor.

Trade secrets encompass a wide range of information – whether it is financial, business, scientific, or technical – and regardless of how the information is stored. Trade secrets can include designs or blueprints, pricing information, or computer technology, for example. Customer information, business plans, and even marketing materials may qualify as trade secrets.

Trade secrets receive protection under both the federal Defend Trade Secrets Act and state statutes. To qualify for trade secret protection, a trade secret owner must engage in “reasonable efforts” to maintain secrecy. What is “reasonable,” however, is not explicitly defined. Courts apply a standard of reasonableness based on a number of factors that vary by circumstance, including the degree of sophistication of the company seeking protection, the overall size of the company, and the nature of the trade secret. Your local mom and pop shop will likely not be held to the same standard that would be applied to a Fortune 500 company.

Notwithstanding that no one size fits all, there are certain reasonable steps that every company should consider implementing, depending on individual circumstances and the type of trade secrets at issue:

a. Restricting access: Limit access to trade secret information on a “need-to-know basis,” including by limiting access to servers or documents and password-protecting files. Hard-copy information should be locked or have restricted access, with proper disposal.

b. Non-disclosure and confidentiality agreements: Require employees, independent contractors, and any prospective or actual business partners or vendors to sign non-disclosure or confidentiality agreements prior to any information transfer. These agreements should have specific provisions that describe or expressly refer to the trade secret materials and identify the terms on which they can be used, disclosed, and retained.

c. Company policies: Advise employees of the existence of your trade secrets; prepare a protocol for how trade secret materials should be handled, including procedures for marking documents, specifying to whom a trade secret is restricted, and under what circumstances, if any, a trade secret may be disclosed to others (e.g., certain individuals and only after an NDA has been signed).

d. Employee handbook: Include instructions on the treatment of trade secrets.

e. Institute reminders: Remind employees

and contractors regularly of their obligations to protect your company’s trade secrets.

f. Secure employee workspaces: Confirm that employees implement company safeguards in both home and office workspaces, including password protection and automatic log-out functions after inactivity; multi-factor authentication; up-to-date anti-virus protection; and limited or disabled USB or other external ports to prevent unauthorized removal of documents.

g. Secure business networks & devices: Protect digital information with a firewall or VPN and implement two-factor authentication.

A company should consider consulting an attorney to ensure its non-disclosure agreements are compliant with the law, which is constantly changing. For example, an NDA that prevents an employee from acting as a whistleblower may be rendered unenforceable under certain circumstances. In addition to protecting your trade secrets from others, businesses should also be mindful of protecting themselves from inadvertently obtaining others’ trade secrets. A new hire can unwittingly infect your company’s system with stolen information, particularly if they are a former employee of a competitor, putting your business at risk. The following are only a few of the steps a company should consider to prevent unwanted disclosures:

a. Non-disclosure obligations: Verify whether your new hire is under any non-disclosure or non-compete obligations and help them to understand and comply with their lawful obligations.

b. Confirm return of prior company information: Ask your new hire to confirm in writing their return and non-retention of their prior employer’s confidential information and documents.

c. Separate industry knowledge from competitor information: Make clear to a new hire that they are not to bring with them or use information obtained from a competitor and that they are being asked only to use their general skills or knowledge of your industry. Have the employee sign an acknowledgment of this policy.

d. Secure employee workspaces: Limit or disable USB and other external ports to prevent unwanted information from being introduced into your systems.

Working with legal counsel to identify your company’s trade secrets and to assess what reasonable measures should be undertaken is one way to ensure that your company’s assets are protected, whether on a day-to-day basis or in the courtroom.



Erynn Embree is an associate in the Orange County office of Maschoff Brennan. She focuses on a variety of intellectual property and complex litigation matters, including patent and trademark infringement and breach of contract actions.

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Five Key Employment Issues to Keep Top of Mind as the Workplace Reopens

By: Adam J. Karr and Allan W. Gustin

As new COVID-19 cases repeatedly rise and fall throughout the country, many employers struggle with issues related to reopening. Welcoming employees back in the era of COVID-19 comes with unique issues. The following list is not exhaustive, but the following five key employment issues should be kept top of mind by every employer:

- 1. Workplace Safety:** California employers have a duty to provide a healthy and safe workplace. Employers should therefore establish protocols and procedures specially designed to address COVID-19 and to comply with the latest safety guidelines issued by the CDC, OSHA, and Cal/OSHA. Employers should also review their Injury and Illness Prevention Programs to ensure they comply with Cal/OSHA's latest regulations related to COVID-19.
- 2. Discrimination:** Employers may not unilaterally prohibit individuals in higher risk categories from returning to work if other similarly situated employees are returning. Thus, when deciding which employees should be allowed to return to the workplace, employers should ensure the criteria they have selected does not treat differently those employees who fall within a protected class, such as those with disabilities and those over the age of 40.
- 3. Wage and Hour:** Some employers may choose to conduct health screenings before allowing employees to enter the workplace. In certain circumstances, employers may need to compensate employees for the time they wait for and participate in these screenings. Additionally, employers should consider whether to provide or reimburse employees for personal protective equipment, such as face coverings.
- 4. Accommodations:** Certain employees may seek work accommodations once requested to return to the workplace. For disabled employees, employers should engage in an interactive process to determine if a reasonable accommodation is needed. Employers should also consider reasonable accommodations for vulnerable employees, such as those who have pre-existing health conditions or who are in an at-risk age group.
- 5. Privacy:** Employers who conduct health screenings should ensure that employees' health information obtained during those screenings remains confidential. Additionally, employers who learn that an employee contracted COVID-19 after reopening should take steps to notify those employees who may have been exposed to the sick employee without revealing the employee's identity.

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Considerations for a Business Combination with a SPAC

Special purpose acquisition companies, or SPACs, have seen a significant uptick in 2020 both in volume of initial public offerings (IPOs) and in capital raised. This increase, the involvement of well-known investment professionals in SPAC formations in a broader array of sectors, and the increased flexibility in SPAC business combination terms coupled with increased market volatility has given more private companies reasons to consider a SPAC transaction as a path to go public.

What is a SPAC? A SPAC is an entity formed solely to raise capital through an IPO without any commercial operations for the purpose of acquiring an existing company. SPACs are generally formed by investors, or sponsors, with expertise in a particular business sector, with the intention of pursuing business combinations. Upon completion of an IPO, a SPAC typically has two years to complete a business combination with an existing company, or face liquidation. Companies aiming to go public through a SPAC transaction are typically one to five times larger in value than the SPAC partner.

Why a SPAC transaction? A primary advantage for a private company of a SPAC transaction over other paths to the public market is the relative speed. A company can typically transition from identification of a SPAC partner to completion of a transaction in around four to six months. In addition, a SPAC transaction allows the company to negotiate valuation with a single party, providing greater pricing certainty than an IPO. A SPAC transaction can also allow for more creative terms and deal structuring than an IPO. For example, SPAC transactions offer the option to raise significantly more capital than the 10 – 15% stake typically available in an IPO and can allow for immediate liquidity for company stockholders. A SPAC transaction also allows the company to disclose financial projections which it would not have the ability to do in a traditional IPO.

With certain advantages SPAC transactions can offer, there are other factors to be

considered. There is significant dilution associated with economics granted to management of the SPAC along with governance rights to be negotiated with the sponsor. The redemption rights of SPAC investors can also add uncertainty to the amount of cash that will be available to the company at closing, though this can be partially backstopped through mechanisms such as a concurrent public investment in private equity, or PIPE.

If you are considering going public through a business combination with a SPAC, attributes that can increase the success of the transaction include working with a sponsor with a track record and brand name recognition, understanding the investor base of the SPAC and early public readiness. Latham has represented both private companies and SPACs in some of the most significant SPAC IPO and business combination transactions globally. We offer a full-service team to advise on the process and life as a public company.

Daniel Rees

Daniel Rees is a partner in the Corporate Department in Orange County. He advises private and public companies on mergers and acquisitions, capital markets, corporate governance, and securities law matters. He can be reached at Daniel.Rees@lw.com



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We are all working together to navigate these new and challenging times. Thank you to all of the general counsel who are providing daily leadership and guidance to their companies and teams.

Here's to those who inspire.

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Fraud Investigations and Litigation Support

by Deborah Dickson, CPA, CFF, MAFF, Managing Partner, Smith Dickson, Certified Public Accountants, LLP

General counsel, whether in-house or outside counsel, often find themselves dealing with fraud in their businesses. In these situations, it is crucial to work with a CPA firm that is highly experienced in fraud investigations and litigation support.

Confidentiality is Key

Our work is typically confidential, both inside and outside the company in order to not alert suspected fraudulent employees. Often, we work directly with only the CEO and general counsel, involving others as necessary. It is crucial for us to maintain secrecy so that we can identify if and how fraud occurred, determine its pervasiveness, act quickly to stop it, and provide evidence should the company and District Attorney choose to file charges. Furthermore, many companies that have been victims of fraud wish to maintain secrecy due to damaging publicity.

Recent Examples

A company's CEO suspected that something was wrong because the business was continually underperforming in profitability. He suspected that someone in the accounting department was committing financial crimes, so he needed evidence to not only prove wrongdoing but also to stop the behavior. The company's general counsel asked Smith Dickson CPAs to perform an initial, limited analysis to quickly determine whether fraud had occurred. In two days, our team found over \$350,000 in suspicious transactions. Knowing there was likely more fraud, we recommended an expanded investigation, which resulted in us uncovering over \$2,000,000 additionally stolen.

Another engagement involved a local subsidiary of a foreign company. The parent

company had suspected financial wrongdoing and sent internal auditors from overseas to investigate. Smith Dickson was hired due to our forensic investigation expertise. Our work confirmed that the CFO had syphoned over \$200,000 for a car purchase, mortgage payments, and other personal activities. He was a trusted officer of the company and, as it turned out, was a "serial embezzler" who had victimized his previous companies. After serving probation and minimal jail time for his previous crimes, he somehow found employment at our client where he continued to defraud and embezzle. However, his streak ended as our client had him arrested during a board meeting of his next employer! Smith Dickson worked with the DA's office to provide evidence and testimony resulting in partial funds recovery and jail time.

Deborah Dickson

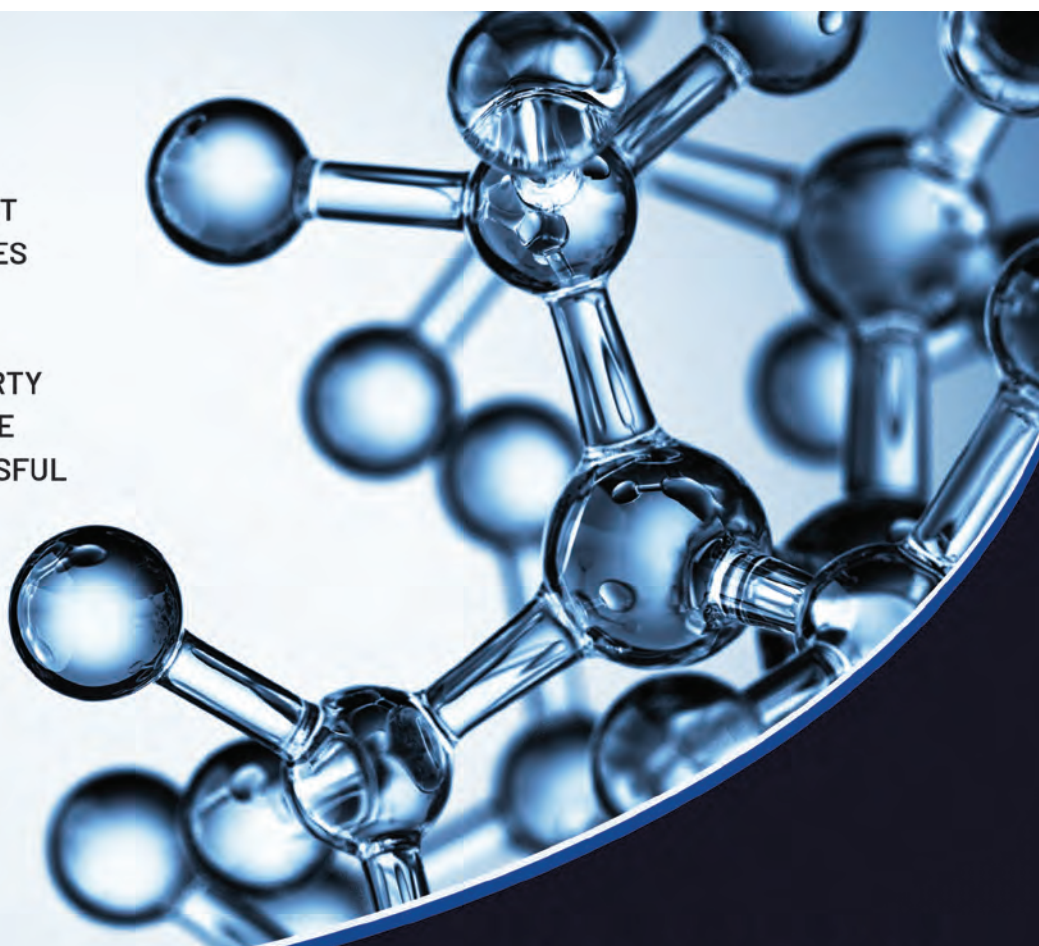
Deborah Dickson, CPA, CFF, MAFF is Managing Partner of Smith Dickson, Certified Public Accountants, LLP (www.smithdickson.com) based in Irvine. The firm's Litigation Support Services include forensic accounting, expert testimony, intellectual property, fraud and embezzlement, real estate, and trust and estate beneficiary disputes. Ph. (949) 553-1020.



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Versatile Dining Options & Culinary Adventures Abound at Andrei's

Andrei's is proud to have kept its doors open over the past several months thanks in part to its ability to accommodate patrons in line with CDC guidelines for restaurants. In addition to its outdoor Citrus & Herb Terrace, Andrei's spacious Dining Room is once again functioning (at the currently-approved 25% capacity) and Chef Porfirio Gomez's new Fall/Winter Menu roll-out is on the horizon. Andrei's is



gearing up for holiday season and has a host of thoughtfully-planned holiday event options, from take-out catering to full-scale events, all while keeping you and your guests' safety as their highest priority.

To shake things up a bit, Andrei's has also introduced Culinary Adventures as a means to infuse the spirit of travel into delicious, weekly specials while holidays abroad are on hold. Destinations so far have included Vietnam, Spain, Italy and Jamaica with more being announced soon via social media and Andrei's weekly newsletter. For those wishing to dine at home, Andrei's Lunch & Dinner Menu, its Culinary Adventure specials and gourmet take-out packages are also available to-go.

Andrei's is located at 2607 Main Street in Irvine at the corner of Jamboree and



Main, with convenient access to the 405 and 5 Freeways. The restaurant is open to the public Tuesday through Friday 11:00 a.m. to 9 p.m. and Saturdays from 3 p.m. to 9 p.m. and can be reached at (949) 387-8887 and www.andreisrestaurant.com.



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