

## GC Cheat Sheet: The Hottest Corporate News Of The Week

By **Michele Gorman**

*Law360 (January 24, 2020, 2:48 PM EST)* -- AIG won an appeal in a \$108 million unpaid bonuses fight, Goldman Sachs said it will demand diverse board representation for IPOs and the ex-CEO of Wells Fargo was fined \$17.5 million for his alleged role in the bank's sales practices scandal.

These are some of the stories in corporate legal news you may have missed in the past week.

### **AIG Wins Appeal in \$108M Unpaid Bonuses Fight**

A London appeals court ruled on Friday that a subsidiary of AIG does not owe 23 former executives some \$108 million in deferred bonuses earned before the financial crisis because the company took a massive loss when it was bailed out by the U.S. government.

In a unanimous ruling, the Court of Appeal found that AIG Financial Products Corp. was entitled to write off the \$85 billion bailout by the U.S. government, which kept the financial giant afloat during the last recession.

The loss meant there were no profits, and no bonus pool to dole out, because the executives had agreed to share in the company's spoils — but also assume some of its risks, the appeals court ruled.

Writing for the panel of three judges, Judge Julian Flaux said the employees' contract "said nothing at all about other losses that could have been incurred by AIG FP, which as a matter of ordinary language could include losses arising because of interest liabilities to AIG under the bail-out facility and losses arising because any restoration obligations to participants and AIG under the scheme amounted to a fresh debt in each case."

### **What to Know as Alphabet Hits the 'Search' Button on a New CLO**

Google parent company Alphabet is on the hunt for a new top lawyer after its embattled chief legal officer said recently that he would step down at the end of the month. Legal industry experts say there are lessons other businesses can learn as the tech giant hits the search button.

The Jan. 10 announcement by David Drummond, who joined Google in 2002 before switching to Google's parent company in 2015, follows claims that he and other executives covered up sexual harassment. Drummond himself was accused of misconduct by a former subordinate with whom

he allegedly had an affair, in violation of Google's rules about employee dating.

Drummond's looming departure comes less than two months after Google's two co-founders, Larry Page and Sergey Brin, said they would be leaving their respective roles as CEO and president of Alphabet. They were succeeded by Google CEO Sundar Pichai.

Moving forward, experts say it would behoove the internet company — and any organization facing a similar situation — to identify how and why a culture developed that allegedly allowed sexual harassment and to ensure the issues are eradicated.

### **Goldman Sachs Requires Diverse Boards for IPOs**

Goldman Sachs' chief executive revealed Thursday the investment bank will no longer take a company public in the U.S. or Europe if its board is composed entirely of white men, noting that board diversity is tied to better returns.

Goldman Sachs CEO David Solomon told CNBC during an interview at the annual World Economic Forum in Davos that, starting July 1, the investment bank will require that any company it is helping to go public has at least one board member who is a woman, a person of color or a person from another underrepresented group. In July 2021, it plans to require boards to have two diverse candidates.

"I think from a governance perspective, diversity on boards is a very, very important issue, and we've been very, very focused on it. And so we're trying to find ways to encourage that," Solomon said during the interview.

He noted that an analysis of U.S. IPOs over the last four years shows that boards with at least one female director performed better than those with all male directors. Solomon added that his own experience with Goldman Sachs' board — which includes four female directors and a black director — also helped inform the decision.

### **Ex-Wells Fargo Boss to Pay \$17.5M For Role in Sales Scandal**

The Office of the Comptroller of the Currency said Thursday that it is bringing enforcement actions against five former Wells Fargo executives and has reached settlements with three others over their alleged roles in the bank's sales practices scandal, including a \$17.5 million fine for former CEO John Stumpf.

The OCC issued a notice of charges accusing Carrie Tolstedt, the former head of Wells Fargo's community banking division, and four others of misconduct that facilitated the scandal, which involved the creation of millions of unauthorized customer accounts. The agency is seeking a combined \$37.5 million in fines from the executives, along with other relief.

The OCC also announced that it has settled related claims against Stumpf, who stepped down as the bank's chairman and CEO shortly after the sales practices scandal made national headlines in 2016. Under the terms of the settlement, Stumpf must pay a \$17.5 million civil penalty and is effectively banned from the banking industry.

The bank's former Chief Administrative Officer Hope Hardison and former Chief Risk Officer Michael Loughlin have separately agreed to pay fines of \$2.25 million and \$1.25 million, respectively, in

settlements with the OCC.

### **IBM Faces Biometric Privacy Suit Over Image Use**

IBM Corp. is accused in an Illinois court lawsuit of violating the state's landmark biometrics law when it allegedly collected photographs to develop its facial recognition technology without getting consent to use biometric information from the subjects.

Chicago photographer Tim Janecyk says at least seven of his photographs — including one featuring his own face — appear in IBM's "diversity in faces" dataset, which it made available to researchers in 2019. He claims the resulting unique face template was used by the company to recognize his gender, age and race, and was disseminated to third parties, even though he never gave the company permission — written or otherwise — to use his biometric information.

In a proposed class action filed Wednesday in Cook County Circuit Court, Janecyk alleges IBM's actions violate his and many others' privacy and their rights under the Biometric Information Privacy Act, an Illinois state law requiring employers to get informed consent from workers before collecting, using and storing biometric information, such as fingerprints.

"Specifically, IBM has created, collected and stored millions of 'face templates' or 'face prints' — highly detailed geometric maps of the face — from about a million photographs that make up its DiF dataset," Janecyk said in his complaint. "IBM creates these templates using sophisticated facial recognition technology that extracts and analyzes data from the points and contours of faces that appear in its dataset. Each face template that IBM extracts is unique to a particular individual, in the same way that a fingerprint or voiceprint uniquely identifies one and only one person."

### **Execs on Notice Following Report of Saudi Bezos Cellphone Hack**

Revelations that Saudi Arabian leader Mohammed bin Salman may have personally duped Amazon.com Inc. CEO Jeff Bezos into clicking on a WhatsApp file loaded with malware, allowing Saudi spies to snoop on his cellphone, should make executives consider submitting their devices to security scans even if it means sacrificing their privacy.

Companies should already be aware of the constant security threats that any of their executives face anytime they communicate online. But the United Nations' statement Wednesday that forensic analysts have concluded with "medium to high confidence" that a WhatsApp account used by the Saudi crown prince lured Bezos into installing surveillance software on his cellphone is a grave reminder of the creative methods adversaries can use to gain an edge — and of the far-reaching power of spyware technology being marketed to governments.

According to the U.N. statement, an account linked to Crown Prince Mohammed sent Bezos a video through WhatsApp in May 2018. By watching the video, Bezos installed spyware on his cellphone allowing the Saudis to monitor his phone until February 2019, U.N. special rapporteurs Agnes Callamard and David Kaye said.

Saudi spies used the information they gleaned from that access — reportedly evidence of an extramarital affair Bezos was having — to "influence, if not silence," reporting from the Bezos-owned Washington Post on Saudi Arabia as the paper investigated claims of Crown Prince Mohammed's involvement in the 2018 murder of Saudi and Washington Post journalist Jamal Khashoggi, the U.N. said.

## **Women Held a Third of Fortune 500 GC Positions Last Year**

An increasing number of women held general counsel roles at Fortune 500 companies in 2019, according to an analysis released Wednesday that found women led 33% of those in-house legal departments last year.

The percentage of female GCs was up from 28% in 2018 and 2017, legal recruiting firm BarkerGilmore found in an evaluation of Fortune 500 general counsel appointments in 2019. That year, 25 women were appointed to the enterprise general counsel or chief legal officer post, and most of them were taking over for men, BarkerGilmore said.

"We were encouraged to learn that 84% of the 25 women appointees replaced male incumbents, increasing the overall percentage of women GCs in the Fortune 500," managing partner John Gilmore said in a blog post.

Fifteen of those women were promoted from within the company and 10 were outside hires, per the analysis. All told, more than half of the 56 total GCs and CLOs appointed last year were women or minorities, he said.

## **Majority of Law Firms Rank High in LGBTQ Inclusion Survey**

Nearly 80% of U.S. law firms surveyed by the Human Rights Campaign achieved perfect scores in the civil rights group's annual report on companies' commitment to LGBTQ workplace equality and inclusion, the organization announced.

Of the 164 firms surveyed for the 18th edition of the Human Rights Campaign's Corporate Equality Index, 130 firms got a perfect score of 100, with a record 686 companies earning recognition as the best places to work for LGBTQ equality, the group said Tuesday.

The Human Rights Campaign has been putting out the index since 2002, though law firms have only been rated since 2006.

"These companies know that protecting their LGBTQ employees and customers from discrimination is not just the right thing to do — it is also the best business decision," Human Rights Campaign President Alphonso David said in a statement. "In addition, many of these leaders are also advocating for the LGBTQ community and equality under the law in the public square."

## **In-House Attys Should Prepare For AI-Based Litigation Risks**

As in-house lawyers embrace artificial intelligence, they should get ahead of growing litigation risks by beefing up their compliance departments and preparing for breaches, according to a report released Wednesday by Crowell & Moring LLP.

The international law firm's eighth annual report, titled "Litigation Forecast 2020: What Corporate Counsel Need to Know for the Coming Year," looks at the litigation trends and challenges that legal departments are likely to face over the next 12 months, with a focus on how technology opens up companies to new litigation threats.

"While this new era ushers in tremendous opportunities for companies and consumers alike, it also presents new risk in an environment where both the products and the law are often without precedent," said Crowell & Moring Chair Philip Inglima.

AI and the internet of things are exposing companies to more litigation risks and liability from a variety of fronts including cybersecurity, privacy, tort law and consumer protection, Mark Klapow, co-chair of Crowell & Moring's litigation group and editor of the report, said in an interview.

### **Ex-Mithril Fund GC Pushes for Firm to End its 'Three-Front War'**

Former venture capital fund general counsel and ex-actress Crystal McKellar sought an injunction in California federal court on Jan. 17 barring Mithril Capital Management LP, its manager and an affiliate from suing her outside of the Golden State, saying that actions in Texas and Delaware are retaliatory and violate California employment law.

The move on Jan. 17 by McKellar — who once acted in the television series "The Wonder Years" — included a motion for a stay, dismissal or transfer of the Delaware and Texas cases and an award of attorney fees. It also marked the latest turn in a corporate drama featuring alleged whistleblower claims by McKellar against Mithril and manager Ajay Royan.

"McKellar will be subject to irreparable harm if she is personally required to litigate a three-front war with Mithril — a venture capital firm with over \$1 billion under management — in California, Texas, and Delaware," McKellar said in a motion in the U.S. District Court for the Northern District of California.

Mithril sued McKellar in Texas and Delaware last year, allegedly after McKellar shared concerns about Royan and the funds with the U.S. Securities and Exchange Commission and Federal Bureau of Investigation.

### **Microsoft, Twitter Throw in Support Against Trump 'Public Charge' Policy**

More than 100 businesses and trade associations, including tech giants LinkedIn, Twitter and Microsoft, have joined the fight behind a lawsuit challenging a policy that would penalize low-income green card applicants, arguing that the new restrictions will hurt U.S. employers.

In a friend-of-the-court brief filed Thursday, the organizations urged the Fourth Circuit to uphold a lower court order halting the U.S. Department of Homeland Security's so-called public charge rule, which would allow DHS to deny green cards to immigrants found likely to need public benefits in the future.

Under the policy, DHS could look at a variety of criteria when making its evaluation, including past usage of public assistance programs as well as age, health and education level.

If allowed to take effect, the public charge rule — which the Trump administration is currently barred from enforcing under a nationwide injunction — will mean that "eminently qualified" immigrants will be denied U.S. permanent residency under those "amorphous factors," the brief says.

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