ACC DOCKET
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The Biggest Risk is Not Being in the Room

Skills and Professional Development

As lawyers, mitigating and managing risk is as much a part of our daily routines as getting a cup of tea or coffee in the morning — that is to say, it's automatic. It's what the lawyer in the room is expected to do. And of course we take it a step further, not only using our analysis to let our executives and board members know when a business move may give rise to material risks — but also applying our "solutions-focus" lens to help them figure out how to advance business objectives in a way that matches the organization's risk appetite.

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According to ACC's 2019 Chief Legal Officer's Survey, risk — whether identifying, analyzing, assessing, mitigating, or managing it — is the top concern for board directors. Not surprisingly, the survey also found that CEOs mostly worry about areas of growth (over half of respondents indicated that growing revenue, customers, and new markets were where CEOs focused). Growth in any area is not possible without some risks. As in-house counsel, our unique skillset allows us to advise in ways that support both the needs of the board and our CEOs — and ACC has many resources (like the CLO survey and this issue of the Docket) to help you navigate these areas and be a trusted advisor to your business. In fact, this issue includes hands-on advice in a number of key emerging areas specifically perceived as high risk, such as pay equity, document requests, consumer privacy, social media, and even those associated with hemp products.

That said, how effectively we can advise on risk-related issues and steer business towards practical commercial risk mitigation solutions depends on our access. In-house counsel, specifically chief legal officers, need a seat at the table — access to the C-suite and the board of directors. Most importantly, they need to report directly to the CEO. Studies show, including those done by our association, that many CLOs do have this access and reporting structure. According to the 2019 Chief Legal Officers Survey, 78 percent of CLOs surveyed report to the CEO, and 70 percent are called upon by the CEO for input into business decisions. Further, the vast majority of Fortune 500 companies — 93 percent — have the CLO report directly to the CEO, as stated by the ACC Age of the CLO Annual Data Project 2018.

While at first glance these numbers may appear encouraging, a direct reporting line and a seat at the executive table are not “nice to haves” — they are essential, universal best practices. It’s discouraging that the CLO survey found that outside of the Fortune 500, about one in four companies still reject this best practice. It was also clear from the survey that significant regional differences exist — in Canada, for example, only 63 percent of CLOs report to the CEO, and only 67 percent in Asia. ACC is committed to getting to 100 percent across the board. When a CLO reports to anyone other than the CEO, their ability to influence high-level decision-making and to advise effectively on risk is greatly diminished. The CLO needs the opportunity to communicate freely with the CEO and the board. This is a key plank of good corporate governance, and we’ve all seen enough examples in the news to know what anything less brings about.

While there is still much to do, I believe ACC, through its flagship Seat at the Table global advocacy initiative, has been instrumental in raising the visibility and prominence of inhouse counsel, officially ushering in the “Age of the CLO.” I encourage you to learn more about ACC’s work to secure your seat, and while you’re there, share your Seat at the Table story.

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