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Letter From The Chair

I am very excited to serve as Chair of the Corporate Counsel Section in 2013. We not only have a terrific group of Executive Council members, but under Gary Lau's leadership in 2012, our section has retained a healthy membership base of 446 and reserve funds of \$15,216.

Section dues in 2013 will remain at \$20 for a full year of service. From those dues, about 25% goes to the State Bar as a Support Assessment, which covers services such as graphic design for this newsletter and hosting fees for our section website. The balance of our budget supports section sponsored CLE's and networking events which are offered to section members at free or reduced pricing.

One free CLE and networking event that is already scheduled will be held on June 11, 2013 at the Lake Oswego Country Club. We plan to hold a CLE event in the morning, followed by a free lunch at noon during which section members can meet and pressing issues of the day. Put that on your calendar now!

A second networking event is a dinner/auction sponsored by one of the three law schools in the state. See the next article for more information about dates and times, and how to reserve your space at the table. These dinner/auctions promise to be a fun time and each supports a worthwhile cause.

We plan to hold at least one Round Table and one other CLE event during the year. In December, Davis Wright Tremaine graciously hosted an evening networking event for section members. Delicious food, local wine, and premium brewed beer were shared with about 30 section members. We hope to be able to provide something similar in 2013. So, visit our section calendar each month for updates. www.osbcorporatcounsel.com.

Each of you is also invited to attend our Executive Committee meetings held on the second Tuesday of specific months at 8:30am at the OSB offices. Meetings in 2013 will be on January 10, February 12, March 12, April 9, May 14, June 11 (with the free CLE and lunch at the Lake Oswego Country Club), September 13, and October 8. We will have a holiday meeting and our annual meeting in November/December. Updates will be posted on the section calendar.

Finally, let me invite you to write an article for this newsletter. I know each of you can write and write well. Plan now to submit an article for next year's newsletters. The research and writing time you put into the article can be counted as CLE credits. Once your article is published, simply complete the Legal Research CLE Activity Accreditation Application form located at www.osbar.org/mcle/forms.html. This is wonderful way to earn CLE credits while serving your section.

Continues next page

If you have questions or would like to become involved in planning section events, please contact me or any member of the Executive Committee. Each of us looks forward to providing to each of you the best service possible. I thank you for joining and for spending your precious time in service to the section and the practice of our profession.

Warmly,
Ed Gerdes

Support Public Service: Attend Dinner as a Guest of the Section!

The Executive Board has approved supporting students working in public interest law while also providing a networking opportunity for section members. Each of Oregon's law schools annually holds a dinner/auction to raise funds for student stipends. The Board will sponsor a table at each event in 2013. Section members may attend as guests of the section. Seats at each table will go to the first members to send a request to the host.

The Board's desire is to provide another networking opportunity to our members and to support these three worthy causes at Oregon's law schools. Check your calendars against the dates below and send an email to the listed host. We expect these seats to fill quickly, so act now!

University of Oregon:
Auction on Feb. 8 at the Eugene Country Club in Eugene. 5:30pm-9:00pm. Host is 2013 Section Chair Ed Gerdes, V.P. & General Counsel at Beau Delicious! International, LLC dba Café Yumm!. ed.gerdes@cafeyum.com.

Northwestern School of Law at Lewis & Clark.
Auction on Feb. 8 at the Multnomah Athletic Club in Portland. 6:00pm-9:00pm. Hosts are 2012 Section Chair Gary Lau,

V.P. & General Counsel at Cambia Health Solutions, Inc., gary.lau@cambiahealth.com, and David Meisels, V.P. & General Counsel at D&M Holdings, Inc., david.meisels@dmh-global.com.

Willamette University. Auction on March 15 at the Mission Mill Museum in Salem. 6:00pm – 9:00pm. Host is Rene Gonzalez, former Associate General Counsel at Kindercare, rene@gonzalezlc.com.

Employers Should Update Policies on Social Networking

By Karen Davis, Senior Employment Attorney, Vigilant*

As an employer, if you haven't reviewed your social media policy since the National Labor Relations Board's general counsel issued his May 30, 2012 [memo on social media](#), it is important to do so. Seemingly innocuous policy language requiring employees to be respectful and maintain confidentiality may be illegal under the National Labor Relations Act. The Board's September 28, 2012, decision in *Karl Knauz Motors, Inc.* (358 NLRB No. 164) and December 16, 2012 decision in *Hispanics United of Buffalo* (359 NLRB No. 37) shed additional light on this developing issue. Other activities, such as snapping a photo of a safety violation in the workplace and uploading it to a social media site, may be protected under other laws. Also, federal [guidelines](#) from the Federal Trade Commission require that if employees post comments online about your organization's products or services, they should identify themselves as your employee.

The model policy that follows was written by Vigilant staff attorneys to address these issues. An older version was published in the Corporate Counselor, May 2012. Vigilant helps companies in Oregon, Washington, and California solve their employment challenges. Member companies can call as often as they want to consult with staff employment attorneys, HR professionals and safety experts, for a flat monthly fee. For more information, visit vigilantcounsel.org.

Social Networking Policy

This policy applies to electronic social networking of any kind. Examples include Twitter, Facebook, MySpace, LinkedIn, YouTube, blogs, wikis, or any other service that allows user-generated electronic content. It is important for you to understand that inappropriate use of such services can impact your employment, *even if you do so from home and on a personal social networking site.*

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[Company Name] supports the responsible use of on-line business networking through business-oriented sites such as LinkedIn. Participation on such sites is entirely voluntary, however, with the exception of selected job positions (e.g., certain jobs involving recruiting, sales or marketing) that will be specifically identified and communicated to individual employees who are expected to use approved networking sites as part of their jobs.

Federal Trade Commission guidelines require that if you comment about one of our products or services, you must identify yourself as our employee. Also, unless you have been specifically designated as an official spokesperson as part of your job duties, you must make it clear that your comment is your own opinion and you are not a company spokesperson. You cannot use company logos and trademarks without our express written consent, except to the extent protected by law, such as if you are a nonmanagement employee exercising your rights under the National Labor Relations Act (NLRA) to communicate regarding your wages, hours or working conditions.

Anything that you share online, whether information, opinions, photos, videos, or other electronic data, is subject to our normal policies. In particular, your posts (whether on personal or business sites) must comply with our policies on nonharassment and nondiscrimination, must not be knowingly false, and must not result in the disclosure of trade secrets, protected health information, attorney-client privileged material, or information that would violate financial disclosure laws. When posting online, you must be respectful to customers, partners, vendors, and competitors. We also ask that you be respectful to [Company Name] and our employees. If you are a nonmanagement employee, you have the right to communicate regarding your wages, hours or working conditions, but you cannot post anything that could reasonably be viewed as malicious, obscene, threatening, intimidating, harassing, or bullying. Do not discuss current or former clients, partners, or customers online without their express consent, as well as the approval of your manager.

Do not post recommendations on LinkedIn or similar networking sites for vendors or other business associates that you know as a result of your employment at [Company Name] [optional: unless you first obtain permission from [Title]], if your recommendation could give the impression that [Company Name] is officially endorsing them. Also, posting recommendations regarding current or former [Company Name] employees is prohibited unless you include a disclaimer such as "This is my own opinion and does not necessarily reflect the views of [Company Name]." [Optional: There is one exception: If you are a supervisor or manager, you may

post a recommendation for a former employee provided that you first obtain approval of your proposed text from [Title], to ensure that it is consistent with our personnel files].

Information from your personal social networking sites that is protected under federal, state or local employment law will not be used in making employment decisions.

We recognize that work relationships may develop into personal friendships. During your own personal time outside of work we understand you may choose to participate in online social networks that are primarily personal in nature (e.g., Facebook or MySpace). As a general rule, we discourage managers and supervisors from following or connecting with individuals they supervise on these personal online social networks. You should not feel obligated to respond or connect with employees of [Company Name] on personal online social networks.

Social media activities must not interfere with your work commitments or violate approved use of company electronic resources (such as excessive bandwidth use or illegal downloading of copyrighted movies, games, or music for entertainment or commercial purposes).

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Role of Corporate Social Responsibility in the Supply Chain Continues to Expand

*By Jacob A. Heth, Davis Wright Tremaine**

For many manufacturing and distribution companies, integrating corporate social responsibility (CSR) into the supply chain is evolving from an aspiration into a business imperative.¹ As technology and access to information continue to expand, consumers and interest groups are becoming increasingly informed and vocal with respect to supply chain issues. Aside from direct economic exposure, a company risks damage to its goodwill and reputation if its suppliers engage in harmful or immoral conduct, such as bribery, inhumane employment practices or causing environmental contamination.

Recent supply chain legislation indicates a trend toward requiring certain companies to comply with CSR-related laws. These laws focus on mandating public

disclosures to the public regarding a company's efforts to ensure socially responsible behavior in its supply chain. In turn, these disclosures provide consumers with information to take into account in making purchasing decisions.

Recent CSR-related supply chain legislation

California Transparency in Supply Chains Act of 2010 (Supply Chains Act)

A company is subject to the Supply Chains Act if it (1) is (a) a "retail seller" or "manufacturer" (b) doing business in California and (2) has \$100,000,000 or more in annual worldwide gross receipts. The sole remedy provided under the Supply Chains Act for non-compliance is an action by the California Attorney General for injunctive relief.²

Retail seller or manufacturer. A company is a "retail seller" or "manufacturer" if it identifies retail trade or manufacturing as its principal business activity on its California tax return.

Doing business in California. Whether a company is "doing business in California" is controlled by Section 23101 of the California Revenue and Taxation Code. Under this statute, a company is treated as doing business in California if any of the following are true:

- The company is organized or commercially domiciled in California.
- The company has California sales in excess of the lesser of \$500,000 or 25 percent of its total sales.
- The company owns real property and tangible personal property in California with a value in excess of the lesser of \$50,000 or 25 percent of the company's total real property and tangible personal property.
- The amount paid by the company in California for compensation exceeds the lesser of \$50,000 or 25 percent of total compensation paid.

Website Disclosure

Companies subject to the Supply Chains Act must place a "conspicuous" link to specified disclosures on their main website. If a Company does not maintain a website, it must provide a written copy of the disclosures to a consumer within 30 days of request. Disclosures consist of whether a company engages in the following activities:

- Conducts verifications of supply chains to evaluate and address risks of human trafficking and slavery. This disclosure must also discuss whether a third party conducted the verification.

- Performs supplier audits to evaluate compliance with company standards for prohibiting human trafficking and slavery in supply chains. This disclosure must also discuss whether the verification was an independent or unannounced audit.
- Requires a certification from "direct" product suppliers that materials incorporated into products comply with laws regarding slavery and human trafficking in each country in which they are doing business.
- Has developed and implemented internal accountability standards and protocols for employees or independent contractors that do not satisfy company requirements with respect to slavery and human trafficking.
- Provides training on human trafficking and slavery to company employees and management having direct responsibility for supply chain management.

Business Transparency on Trafficking and Slavery Act (H.R. 2759)

The Business Transparency on Trafficking and Slavery Act (Federal Transparency Act) closely tracks the Supply Chains Act. If the Federal Transparency Act becomes law, it would require companies subject to the reporting requirements of the Securities and Exchange of 1934 (1934 Act) to disclose their efforts to address human trafficking, slavery and other inhumane activity in the supply chain. The disclosures would be available on the company's website and in the company's annual report. Significantly, the Federal Transparency Act would apply to all reporting companies regardless of business or industry. Unlike the Supply Chains Act, it would not be limited to manufacturers and retail sellers.

The Federal Transparency Act would require multiple categories of disclosures, including disclosures similar to the Supply Chains Act regarding verifications, audits, certifications, internal accountability and training. Significant elements of the disclosures are geared toward whether a company engages in the following activities:

- Has developed and implemented a policy aimed at eliminating supply chain risks with respect to human trafficking and slavery.
- Assesses whether each of its suppliers has in place appropriate systems to identify human trafficking and slavery risks.
- Requires its suppliers to comply with its standards for eliminating exploitive labor practices.
- Prohibits the use of its assets or operations to obtain or maintain persons under exploitive conditions.

Conflict Minerals

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the SEC to adopt rules requiring companies subject to the reporting requirements of the 1934 Act to make certain disclosures with respect to “conflict minerals.” The sale of conflict minerals is believed to be financing conflict in the Democratic Republic of the Congo (DRC). Conflict minerals include such minerals as the Secretary of State may designate from time to time, such as gold and wolframite.

The SEC adopted a new form (Form SD) and rules on August 22, 2012. The rules become effective on January 1, 2013, and impact reporting companies that manufacture (directly or through a subcontractor) products that require conflict materials for functionality purposes. These companies must disclose in their annual report whether the conflict minerals originated in the DRC or adjoining countries. If a company’s conflict minerals originated in a covered country, or the origin is not known, the company must provide a conflict minerals report disclosing the following:

- The due diligence and related protocols with respect to source and chain of custody of the company’s conflict minerals.
- The products that contain conflict minerals and that either (1) benefited from, or are directly or indirectly financed by, a DRC country armed group identified as a perpetrator of serious human rights abuses in the U.S. State Department’s Annual Country Reports on Human Rights Practices; or (2) have an unknown source. The company must identify these products as not DRC conflict free. If applicable, the company may state that it is making this disclosure because the source of the minerals is unknown.
- The country of origin of the conflict minerals, the facility used to process the conflict minerals, and the efforts used to determine the location of origin of the conflict minerals.

**Jacob A. Heth is a partner in the business practice group in Davis Wright Trammie’s Portland office. His practice emphasizes business transactions and corporate matters. Prior to joining DWT, Mr. Heth was Associate General Counsel at Hollywood Entertainment Corp., a public company with over 2,000 retail stores. He has previously served on the Executive Committee of the Corporate Counsel Section.*

¹ The World Business Council for Sustainable Development defines CSR as “the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.” (World Business Council for Sustainable Development report entitled Corporate Social Responsibility: Meeting Changing Expectations (Page 3)).

² Calif. Civil Code §1714.43.

OPPORTUNITY TO TRAVEL TO RUSSIA

The OSB International Law Section is seeking interested corporate counsel to attend a three-day law conference in Khabarovsk, Russia in May 2013. Khabarovsk is a Sister City of Portland. The trip will likely coincide with the “Day of the City” Celebration which takes place the third week of May. Individual meeting itineraries will be arranged by the Portland-Khabarovsk Sister City Association and the City of Khabarovsk Office of International Protocol. The focus of the conference will be driven by those attending. If you are interested, contact Thomas Benke at trbenke@env-compliance.com.