

## Corporate Citizenship

# Corporate Social Responsibility: The Emergence Of A New Legal Discipline

The Editor interviews Philip M. Berkowitz and Kevin M. Fitzgerald, Nixon Peabody LLP.

**Editor:** Would each of you gentlemen tell our readers something about your professional experience?

**Fitzgerald:** I am a business litigator with a particular focus on complex commercial disputes. Much of my time is devoted to advising boards of directors and general counsel on business issues, shareholder issues and a variety of transactional issues.

**Berkowitz:** I have been practicing employment litigation for more than 25 years. I spent most of my career with a labor boutique firm, but over time I came to the conclusion that, with a client base increasingly composed of foreign and multinational corporations, I could better serve my clients with a full-service firm committed to labor and employment and backed by other national practice groups in complementary areas of law.

**Editor:** How did each of you come to Nixon Peabody? What were the things that attracted you to the firm?

**Berkowitz:** Nixon Peabody has a considerable practice in international work, and many of my clients fall into the multinational category. The firm also has a substantial commitment to labor and employment work, which enables me to provide better service to my clients.

**Fitzgerald:** I joined the predecessor firm of Peabody & Brown, which was a Boston-based firm with a local business clientele for the most part. Over time that client group, and the firm, has developed a much greater reach. The Nixon Peabody platform has been particularly attractive to me because few of the clients I deal with today are exclusively local. In order to serve them you must be able to go where they are going and perceive their needs. Nixon Peabody permits me to do this.

**Editor:** One of the byproducts of the recent corporate scandals has been an increased focus on corporate culture and corporate social responsibility. Indeed, what is meant by the term Corporate Social Responsibility?

**Fitzgerald:** The term reflects a way in which to approach the wide range of social issues affecting the way that businesses operate. Corporate Social Responsibility has evolved from the recognition that businesses must pay attention to what is in the interests of management, shareholders, employees and the community. It is a concept that is focused on doing well financially and doing good in the process, because success is very often the result of the two being aligned. Today this concept has taken on a global significance, and the idea of corporate citizenship is promulgated throughout the world.

**Berkowitz:** Corporate Social Responsibility can include ensuring that the employer is using best practices in dealing with its employees and that the value of diversity is reflected in the company's personnel policies and in their implementation. There is an internal side to this that is crucial if the company is going to avoid loss of share value and a negative image in the marketplace. There is an external aspect as well, and that



Philip M. Berkowitz



Kevin M. Fitzgerald

is reflected in things such as an active and focused charitable giving program or pro bono commitments. The companies that have donated food or medical supplies in response to Hurricane Katrina are acting out a Corporate Social Responsibility imperative that is at once likely consistent with their internal ethos and also certain to serve their public image very well.

**Editor:** Then this is not window dressing.

**Fitzgerald:** I do not think so. The consequences of *not* recognizing a company's responsibilities – say, by relying on child labor in overseas operations or failing to respond to complaints of discrimination and harassment – are very severe in terms of brand and reputation damage.

**Berkowitz:** Many of the companies that have the best reputation in this area have been engaged in Corporate Social Responsibility for a long time, whatever it might have been called. These companies tend to have paid attention to doing the right thing for their employees and then extending what has worked well in the workplace to the larger community. In the business of law or legal industry, of course, firms with a strong culture of pro bono and community involvement tend to be those with the best reputation, both among the profession and with the general public.

**Editor:** Nixon Peabody has a strong interest in this emerging field. What is the origin of this interest?

**Fitzgerald:** In recent years there has been a growth in public sensitivity – and particularly among the sophisticated investor community – toward Corporate Social Responsibility as a strategic initiative. It is a way in which the company attracts key executives and a strong workforce, builds relationships with business partners, encourages customer loyalty and, in general, builds a brand awareness that is associated with positive things.

Andrew Tarsy, who was a regional counsel with the Anti-Defamation League in Boston and went on to join our firm, was a key individual in some of our regional CSR initiatives. His involvement, particularly with the New Hampshire Businesses for Social Responsibility – a model for this kind of effort all across the country – triggered the firm's early interest in this area. Andy has left the firm to become regional executive director for the ADL in New England, but in the meantime the firm has been able to develop a targeted approach to servicing businesses within the CSR framework.

**Berkowitz:** At the same time, I would add, our clients have drawn us into this particular arena. Compliance with a variety of discrimination and employment laws is a key aspect of Corporate Social Responsibility, and everyone recognizes that one misstep can destroy years of effort in building the com-

pany's brand. And that misstep can take place anywhere in the world. To this end, Nixon Peabody has formed an international labor and employment practice team focused on Corporate Social Responsibility, both domestically and internationally.

**What are the factors you consider in developing strategic plans on Corporate Social Responsibility for clients?**

**Fitzgerald:** Developing a strategic plan is a complex undertaking because it must cover a wide range of business and legal issues, including employment and labor, environmental impact, corporate governance, customer relations, relations with suppliers and vendors, and host country relations, to name just a few. These are distinct practice areas for a law firm, but they must be integrated if the plan is going to be of any use to the client. Depending on where the client is conducting operations, there may be local variations, both legal and social, that have to be considered in drafting a strategic plan. There is also an emerging area having to do with CSR disclosure reports and, inevitably, the management of communications in a crisis situation. There are audiences which must be addressed in meeting a crisis – potential plaintiffs, shareholders, governmental agencies, NGOs, and so on – and getting an accurate, consistent and truthful story across to all of them is crucial.

At the moment this is an interdisciplinary practice initiative that is evolving in response to client needs. Eventually, it may become a distinct practice group.

**Berkowitz:** To develop a strategic plan it is necessary to understand the company's core values, how they define themselves. It is equally important to understand the company's business and the areas that present particular challenges – whether because of internal or external pressures. Having established such a basis, we draw upon a wide range practice areas in developing an integrated strategic plan that identifies realistic goals and presents practical ways in which to achieve them.

**Editor:** Kevin, you mentioned New Hampshire Businesses for Social Responsibility. What is it?

**Fitzgerald:** NHBSR is an organization that began as a grassroots initiative with a group of corporations that happened to be located in New Hampshire. They began to organize themselves around a set of corporate values that included accepting responsibility for the company's place in the community. The early founders included Timberland, Cigna, Millipore, and Anthem, and Nixon Peabody has joined as a sustaining member. The organization has developed a national program which introduces corporations to the concept of Corporate Social Responsibility and the benefits to be derived from its implementation.

The organization is also a model for Nixon Peabody. For us, membership is an educational experience. We have access to some marvelous organizations which are leading the way in this area, and to their leadership. The latter includes Jeff Swartz, President and CEO of Timberland Company, and Gary Hirshberg, President and CEO of Stonyfield Farm, both of whom have made great contributions to NHBSR's programming.

**Editor:** How do you go about advising

clients on their responsibilities in this area?

**Berkowitz:** Very often we are brought into a situation when the client is on a crisis footing: a lawsuit may have been threatened or, perhaps, it has already been filed. There may be a public relations problem or the threat of one. There are different voices to be heard: that of the governing board, that of the CEO and senior management, the human resources professionals, the public relations people, and so on. And an international dimension may be present. It is important to protect the company from a legal standpoint, to understand the concerns of each constituency, and also to help the client to address the crisis in a way that is consistent with its core values.

**Fitzgerald:** Traditionally, law firms have approached these issues by dispatching a group of lawyers to review the facts, analyze the applicable law and advise whether the client is compliant. CSR goes beyond such an approach. It is meant to focus on what is legal, what is good business sense, and what is right – from both a moral and a market-oriented viewpoint. CSR points the client to the social implications of what it proposes to do, and as a legal exercise it represents the highest of value-added legal services.

**Editor:** Would each of you share with us your thoughts as to why recognition, followed by implementation, of Corporate Social Responsibility is such an important undertaking today?

**Berkowitz:** Labor and employment laws, and multinational employment practices, impose extraordinary challenges on our clients. Complying with these laws in the post-Enron world is even more complicated. Corporate whistleblowers enjoy more protection than ever. On top of all this, our clients' employees and customers expect them to incorporate best practices. None of these can be considered in a vacuum. Corporate Social Responsibility is essentially a recognition that all of these issues have to work together.

**Fitzgerald:** Corporate Social Responsibility is the right thing to do, *and* it connects to the bottom line, as more and more corporations are discovering. These organizations are turning to CSR to develop a responsibility agenda with an eye on their business objectives.

**Editor:** Where would you like this initiative to be in, say, five years?

**Berkowitz:** I would like to see this area integrate more of our practice areas. A great many are involved today, but I cannot think of any practice area that cannot make a contribution to the success of this initiative. As it comes to draw upon an ever increasing volume of the firm's resources, I would hope that our Corporate Social Responsibility initiative would come to be an authoritative voice, recognized throughout the profession and in the corporate arena, on the subject.

**Fitzgerald:** This initiative goes to the core values of the firm. In order for it to be successful, we know that we must practice what we preach. That is, the principles we seek to convey to our clients must be reflected in the ways in which we practice law. In this regard, Nixon Peabody is an excellent platform from which to launch such an undertaking.

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