



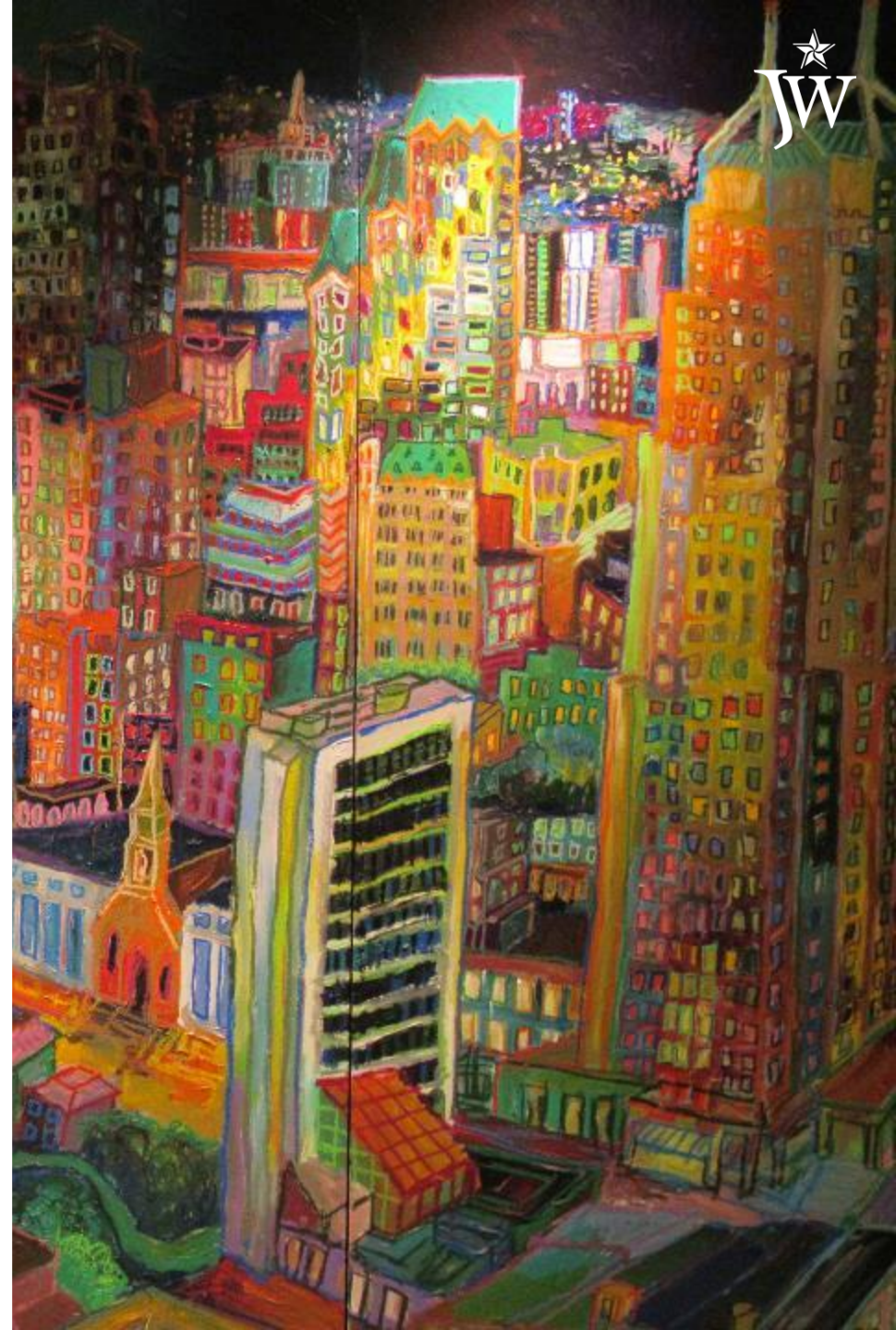
Association of Corporate Counsel South / Central Texas

Roundtable: Five New Roles the General Counsel is
Expected to Fill



Five Roles the General Counsel is Expected to Fill

1. Guardian Over Emerging Risks
 2. Chief Health and Safety Officer
 3. Manager of Alternative Investment Portfolio
 4. Steward of Inclusion and Diversity
 5. Manager of Revenue Collection / Distressed Business Partners
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Guardian Over Emerging Risks

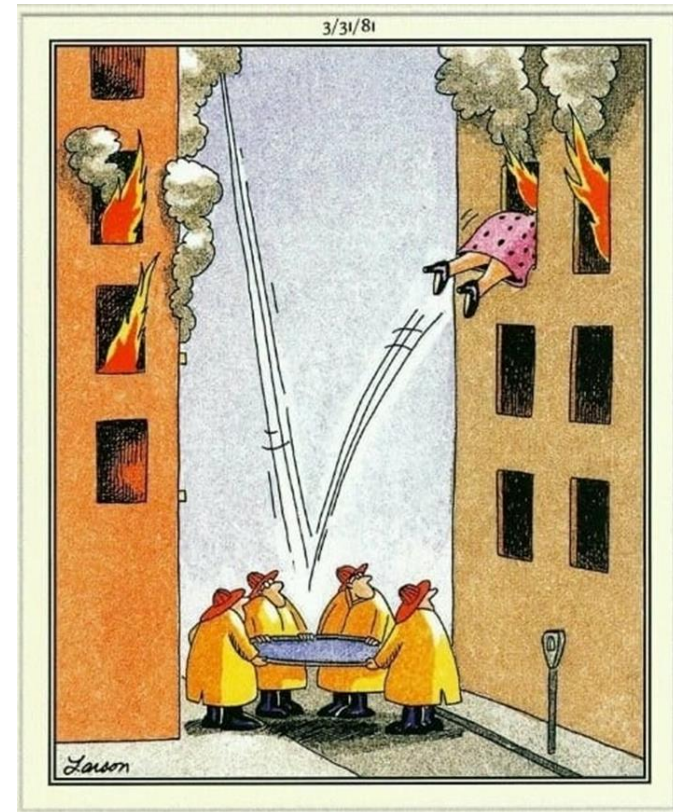
Erica Benites Giese, Partner

White Collar & Government Enforcement

Your Many Hats



- Cybersecurity Expert
 - Ransomware attack
 - Fraud
 - Corporate Espionage
 - Theft of Trade Secrets
- Immigration Expert
 - Visa Compliance
 - HR Training
- Compliance Expert
 - False Claims Act
 - Cybersecurity
 - Government contracts
 - Healthcare



A Hat Collection



- Compliance Expert (continued!)
 - Anti-Kickback Statute
 - Whistleblower
 - Retaliation Issues
- Internal Investigations Expert
 - Fraud
 - Misappropriation of assets
 - HR & employment law expert
 - Sexual assault and harassment
 - Death
- Prosecutor & Defense Counsel
 - Victim
 - Grand Jury Subpoenas or CIDs

- Team Jackson Walker
 - Erica Benites Giese (DOJ and State)
 - Laura Cordova (DOJ)
 - Jennifer Freel (DOJ)
 - Robert Soza (OFAC expert)
 - Stephanie Chandler (Cyber)
 - Arthur Gollwitzer (DOJ)
 - Edwin Buffmire (SEC)
 - Demi Williams (DOJ and State)
 - Bethany Pickett (DOJ)
 - Josue Galvan (FCA litigation)
 - JW Healthcare Group
 - JW Immigration Group





Guardian Over Emerging Risks

Erica Benites Giese, Partner

White Collar & Government Enforcement



Chief Health and Safety Officer

Rick Garza, Partner
Labor & Employment

Employer Obligations in the COVID-19 Era



- Protection of Workforce
 - OSHA Guidance
 - CDC Recommendations
 - Entities 100≤ employees (not yet published)
 - EEOC Guidance
 - Exceptions to mandatory vaccine requirement
 - Interactive process
 - Religious exception (Guidance updated 10/25/21)
 - Employees and applicants must inform their employers if they seek an exception due to a sincerely held religious belief, practice, or observance.
 - Title VII does not protect social, political, or economic views, or personal preferences of employees who seek exceptions to a COVID-19 vaccination requirement.
 - Employers that demonstrate “undue hardship” are not required to accommodate an employee’s request for a religious accommodation
 - Medical exception

Employer Obligations in the COVID-19 Era



- Undue Hardship
 - Religious Accommodation
 - More than a minimal cost or burden to employer
 - Medical Accommodation
 - Significant difficulty or expense to employer
 - Case by Case Determination

Employer Obligations in the COVID-19 Era



- Competing Executive Orders (EO)
 - President Biden's Vaccine EOs
 - Federal Employees
 - Federal Contractors
 - Federal Acquisition Regulations
 - Compliance with EOs and other federal regulations is made a part of agreement between the federal government and contractor
 - ~~• Rules to be published~~
 - Texas Governor Abbott's Vaccine EO
 - Prohibits any entity from imposing a vaccine requirement and adds exceptions for recovery from COVID-19 and objection based on personal conscience in addition to medical/religious exceptions.

Employer Obligations in the COVID-19 Era



- President Biden Instruction to DOL/OSHA
- ETS mandating employers ($100 \leq$ employees)
 - require employees to either become vaccinated or provide weekly negative test before entering the workplace and
 - provide PTO for workers to (1) receive the vaccination, or (2) recover from any side effects experienced after being vaccinated.

Employer Obligations in the COVID-19 Era



- Clarification will come from the courts (hopefully soon).
- EEOC COVID-19 Guidance:
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- OSHA COVID-19 Guidance:
<https://www.osha.gov/coronavirus>



Chief Health and Safety Officer

Rick Garza, Partner
Labor & Employment



Manager of Alternative Investment Portfolio

Stephanie Chandler, Partner
Corporate & Securities

Manager of Alternative Investment Portfolio



- Ancillary real estate
- Business partner investment
- Former employee investment
- Strategic investments
- Diversification investments/Investment portfolio
 - Funds
 - Direct investment
 - Real property investments



Trends in Investments



- Encourage a blend
 - Most start with one deal
 - Take away: Encourage a blend/allocation
 - How much money do they want to invest outside of the core business?
 - What portion of that is in the market? Is in private large funds? Is in real estate? Is it direct invest? Is it funds and if yes with what target industries/stage?
 - Take away: The one of friend from the club deal is typically not a good deal
- Develop a tracking mechanism
 - Develop tracking processes – compare is this deal better or worse than other deals, look for outliers
- Early stage investments shifting to SAFEs and Series Seed investments from convertible notes (which was a shift Series A, Series B, etc.):
 - These instruments tend to be consistent on economic terms
 - Take away: Research what's market

Risk Management in Investments



- ✓ Discourage Board Seats
- ✓ Encourage Networking to Get Deal Flow Leads
 - Know who in town is active and learn from them
 - Ask around.... There's a lot of salesmanship that goes on in this space. "Good" friends will know who to avoid
- ✓ Don't over allocate
 - Most start with one deal
- ✓ Your role is more likely putting on the brakes than in almost anything we do in a GC capacity



Manager of Alternative Investment Portfolio

Stephanie Chandler, Partner
Corporate & Securities



Steward of Diversity & Inclusion

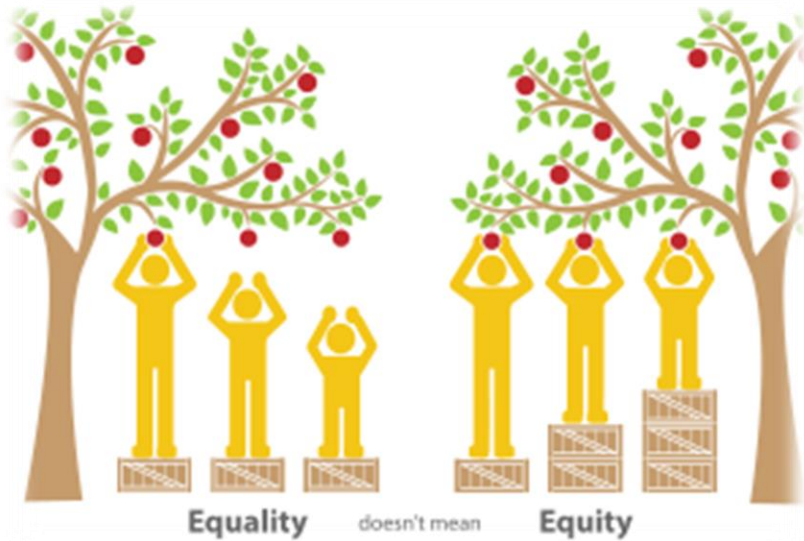
Robert Soza, Partner
Trial & Appellate Litigation

Diversity



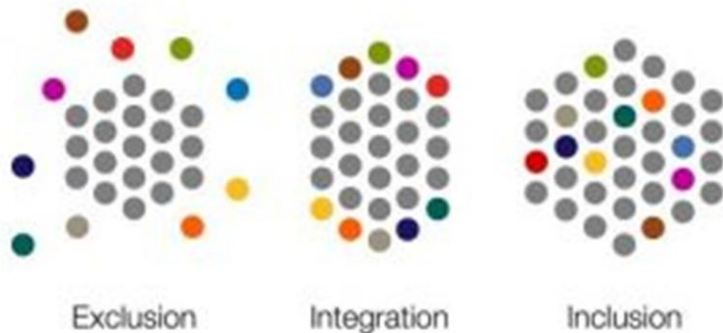
Diversity is the presence of differences that may include race, gender, religion, sexual orientation, ethnicity, nationality, socioeconomic status, language, (dis)ability, age, religious commitment, or political perspective. Populations that have been-and remain- underrepresented among practitioners in the field and marginalized in the broader society.

Equity



Equity is promoting justice, impartiality and fairness within the procedures, processes, and distribution of resources by institutions or systems. Tackling equity issues requires an understanding of the root causes of outcome disparities within our society.

Inclusion



Inclusion is an outcome to ensure those that are diverse actually feel and/or are welcomed. Inclusion outcomes are met when you, your institution, and your program are truly inviting to all. To the degree to which diverse individuals are able to participate fully in the decision-making processes and development opportunities within an organization or group.

Clients are Biggest Driver for Change



- Strive to create mutual commitment and cooperation
- Commitment by General Counsel and consistent messaging to law firms by legal department is critical
- Aspirational targets versus quotas
- Corporate law departments are now inquiring about how origination is shared and the path to advancement for associates and young partners

Strategic Engagement



- Request annual metrics from law firms
- Include DE&I as a metric in law firm selection process
- Inform law firms how DE&I is considered in the law firm selection process
- Ask for diverse team members on matters, and annually track minority involvement on matters
- Annual discussions with law firms on DE&I efforts—active engagement allows for coordinated efforts to improve

Legal Department Initiatives



- Unconscious bias training
- Lead from the top – senior managers should lead DE&I efforts
- Develop written policies on DE&I
- Mansfield Rule
- Community involvement – minority bar associations, pro bono efforts, department-wide efforts



Steward of Diversity & Inclusion

Robert Soza, Partner
Trial & Appellate Litigation



Manager of Revenue Collection / Distressed Business Partners

Scott Rose, Partner
Bankruptcy, Restructuring, & Recovery


- Clearly define the terms of your agreement, in writing, and stick to them as best you can. Practically, this will be a difficult business proposition, I know, but it will save you money in the long run.
- Every transaction is subject to the potential impact of the U.S. Bankruptcy Code. The bankruptcy provision most likely to hit your bottom line is the “preference” statute.
- The trustee may avoid a transfer, under section 547(b) of the Bankruptcy Code, of any interest of the debtor in property, including a transfer -
 - to or for the benefit of a creditor;
 - for, or on account of, an antecedent debt;
 - made within 90 days of the bankruptcy;
 - when the debtor was insolvent (there is a presumption of insolvency that a creditor may rebut); and
 - that permits the creditor to receive more than it would have otherwise received in a chapter 7 distribution of the debtor’s assets.

- Defenses: Ordinary Course of Business: Section 547(c)(2)
Subsequent New Value: Section 547(c)(4)
- The following information should be maintained, including the date when your relationship with the debtor began and a historical ledger (in Excel format, if possible) detailing:
 - (1) Invoice Number;
 - (2) Invoice Date;
 - (3) Payment Terms;
 - (4) Invoice Amount;
 - (5) Amount Paid;
 - (6) Check Number; and
 - (7) Date Check was Received.



Manager of Revenue Collection / Distressed Business Partners

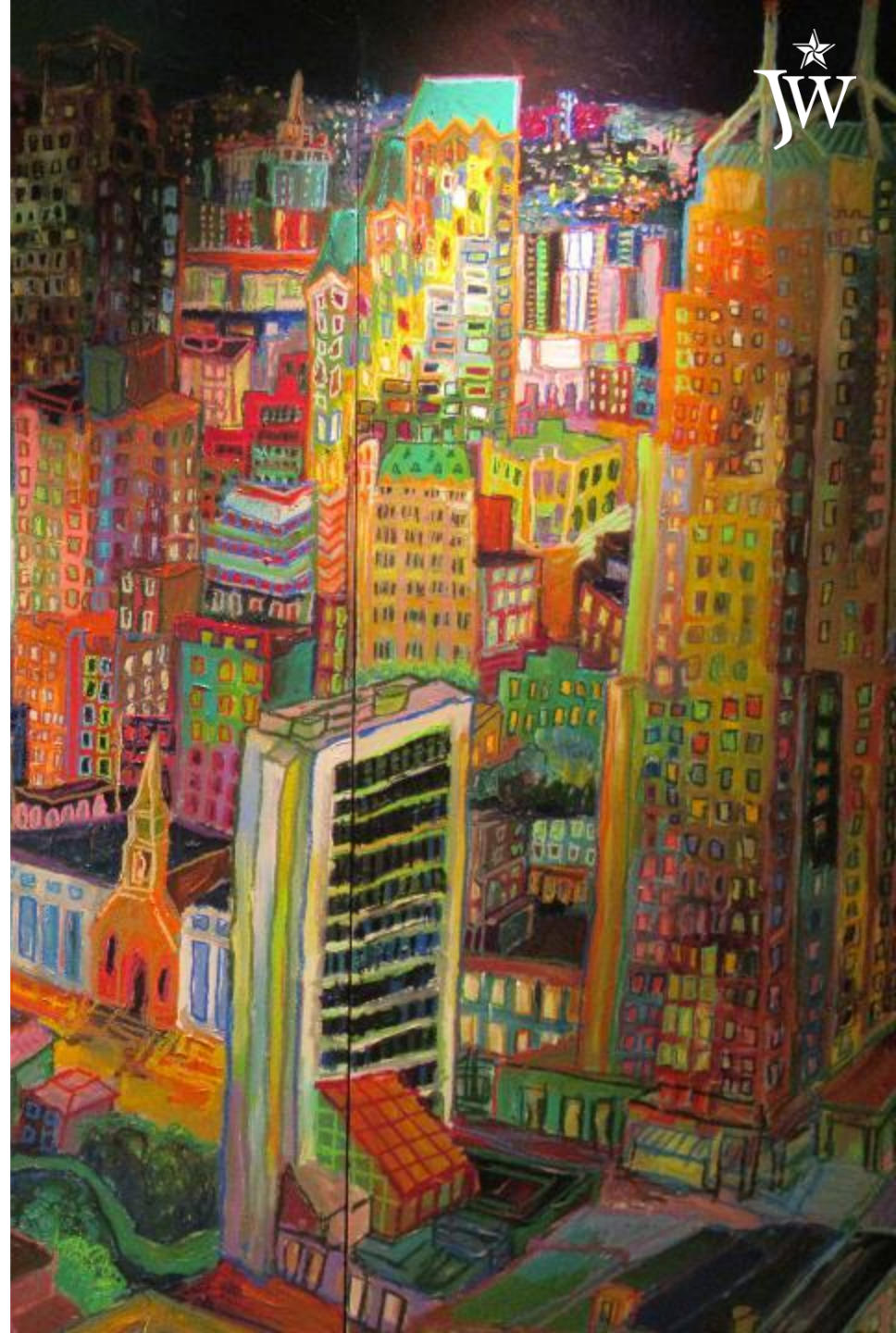
Scott Rose, Partner
Bankruptcy, Restructuring, & Recovery

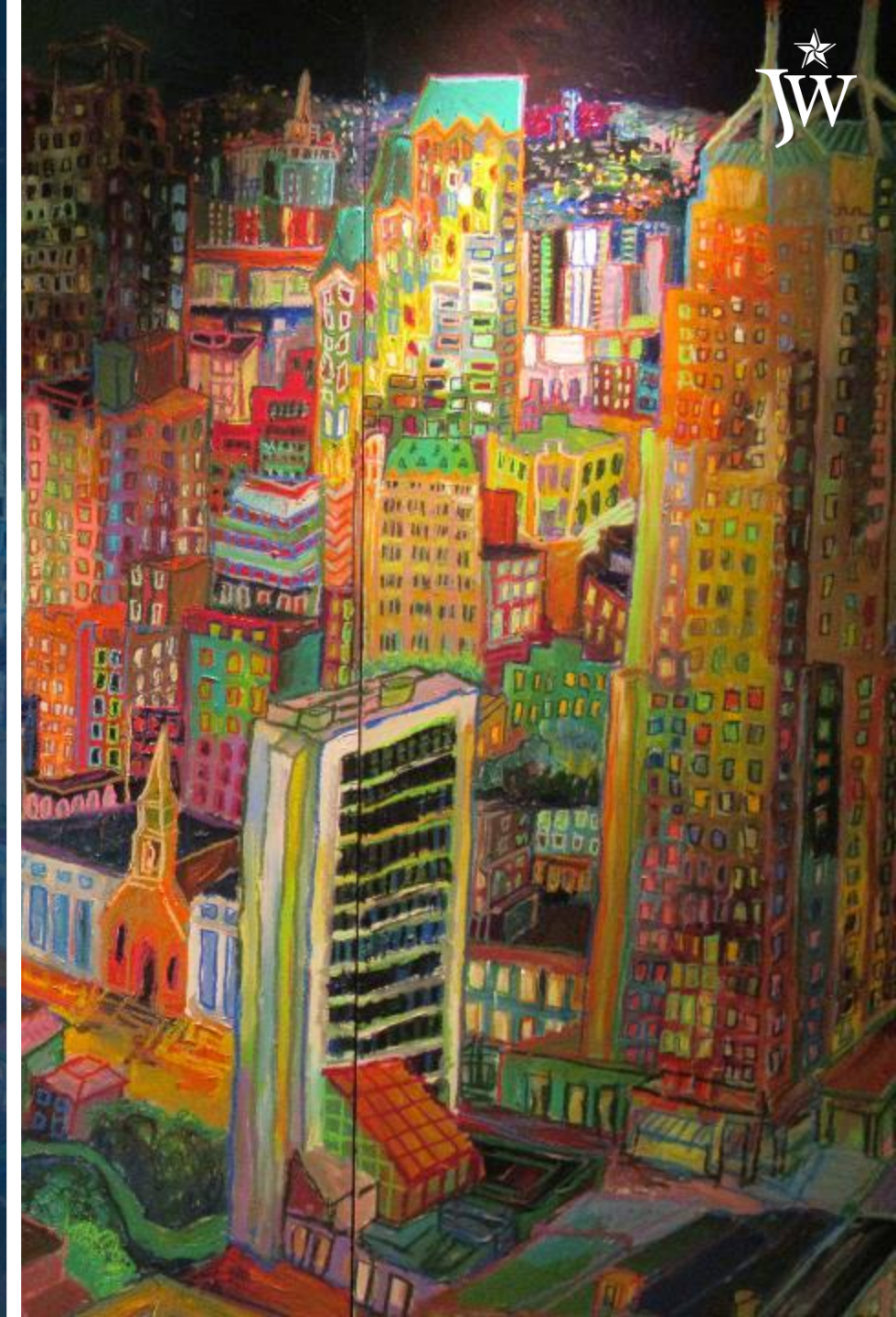


How have you seen your
role as a general counsel
change over the years?

Mike Gibbs

Executive VP and General Counsel,
Whataburger





Q&A



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