



**GENERAL COUNSEL AS RISK MANAGER
SURVEY RESULTS
2004**

Executive Summary

In an effort to further understand the impact of Sarbanes-Oxley, ACC and the National Association of Corporate Directors (NACD) collaborated to better understand implications for industry, the profession and board-management relations. The chief finding from the survey shows that General Counsel and Corporate Directors believe their liability for their organization's misconduct has increased now some two years after enactment of the Sarbanes-Oxley corporate governance legislation.

The survey also found that responsibility for ensuring ethical business conduct is shared between senior management, Corporate Directors and General Counsel who traditionally have not been the focus for fiduciary liability. Over eighty (80%) percent of Corporate Directors responding to the Risk Manager survey thought General Counsel have a great deal of responsibility in ensuring good corporate governance. This is an increase of almost thirty percent (30%) over last year's findings of the same topic.

Other key findings include:

- **Sarbanes-Oxley Benefits Corporate Culture.** General Counsel and Corporate Directors agree paying closer attention to all aspects of company activities has made favorable changes in organizational management. More than 80 percent (80%) report that stricter board management resulted in improved relations between senior management and Board of Directors.

- **Whistle Blowing Encourages Good Corporate Governance.** Sixty-two percent (62%) of those responding believe the whistleblower provision improved the climate of discussion between Corporate Counsel and Board of Directors. In keeping with the trend toward General Counsel as a more integral member of the business team, support for the General Counsel reporting up the ladder to the Board of Directors after repeated ignored attempts by senior management to ensure compliance remains consistent from last year's survey.

- **Improved Relations with the Organizational Stakeholders: Board of Directors, Senior Management and Regulators.** Findings further demonstrate support for General Counsel attending board meetings at all times to better manage company-wide risk with more than seventy percent (70%) of respondents casting an affirmative vote.

The results of the survey substantiate earlier anecdotal evidence of a new trend toward more engaged and proactive "decision making" practices that involve General Counsel during early stages to help navigate today's business complexities and escalating risks.

GENERAL COUNSEL AS RISK MANAGER SURVEY RESULTS

The Risk Manager survey is the second conducted by Association of Corporate Counsel, in conjunction with National Association of Corporate Directors, to develop its clearinghouse of information to inform best practices for its membership, which is comprised of publicly traded, privately held companies and non-profit organizations. The first survey conducted last year provided baseline information to begin trend analysis about the full term impact of Sarbanes-Oxley.

1. Is your client public, privately held, or non-profit? Total Responses: 753

	Corporate Directors	General Counsel
Public	55.08% (141)	44.47% (221)
Private	29.30% (75)	46.28% (230)
Non-Profit	15.63% (40)	9.26% (46)

2. In 2004, general counsel and directors are working in a new environment because of the past corporate scandals. The bankruptcies of Enron and WorldCom led to the Sarbanes-Oxley law re internal controls, and to new stock exchange rules re board composition and operations. Given the past scandals and the new reforms, how important a role do you think the following now play in ensuring good corporate governance? Total Responses: 767

	Corporate Directors			
	Great Deal	Some	Not Much	None
CEOs/Senior Management	97.03% (261)	2.60% (7)	0.37% (1)	0.00% (0)
Accounting Firms	65.06% (175)	30.11% (81)	4.46% (12)	0.37% (1)
Audit Committees	93.68% (252)	6.32% (17)	0.00% (0)	0.00% (0)
Board of Directors	93.68% (252)	6.32% (17)	0.00% (0)	0.00% (0)
General Counsel	81.41% (219)	17.47% (47)	0.37% (1)	0.74% (2)
Wall Street Analysts	16.73% (45)	30.86% (83)	40.15% (108)	12.27% (33)
Outside Counsel	42.75% (115)	42.75% (115)	13.38% (36)	1.12% (3)
Major Investors	27.51% (74)	43.87% (118)	23.05% (62)	5.58% (15)

	General Counsel			
	Great Deal	Some	Not Much	None
CEOs/Senior Management	96.18% (479)	3.41% (17)	0.20% (1)	0.20% (1)
Accounting Firms	2.85% (313)	30.72% (153)	6.02% (30)	0.40% (2)
Audit Committees	86.55% (431)	10.84% (54)	1.81% (9)	0.80% (4)
Board of Directors	88.96% (443)	9.64% (48)	1.00% (5)	0.40% (2)
General Counsel	93.37% (465)	6.43% (32)	0.20% (1)	0.00% (0)
Wall Street Analysts	0.24% (51)	25.30% (126)	47.39% (236)	17.07% (85)
Outside Counsel	27.91% (139)	52.21% (260)	16.67% (83)	3.21% (16)
Major Investors	20.28% (101)	42.57% (212)	28.11% (140)	9.04% (45)

3. How has the recent focus on stricter board governance affected the relationship between the senior management and the Board of Directors? Total responses: 750

	Corporate Directors	General Counsel
Improved	41.02% (105)	28.14% (139)
Strained	23.44% (60)	16.60% (81)
Not Changed	35.55% (91)	55.28% (274)

General Counsel As Risk Manager Survey Results

4. How often do you think the General Counsel should attend board meetings? Total Responses: 751

	Corporate Directors	General Counsel
All of the time	56.86% (145)	82.06% (407)
Most of the time	21.57% (55)	11.49% (57)
Some of the time	8.63% (22)	2.62% (13)
Only when requested	12.94% (33)	3.83% (19)
Never	0.00% (0)	0.00% (0)

5. Does the General Counsel make regular reports on legal or compliance activities to the board? Total Responses: 746

	Corporate Directors	General Counsel
Yes	80.24% (203)	76.88% (379)
No	19.76% (50)	23.12% (114)
If yes,	Corporate Director	General Counsel
Reports are made to the full board	69.17% (175)	56.80% (280)
To the audit or a similar committee of independent directors	53.75% (136)	49.09% (242)
In executive session	33.99% (86)	26.77% (132)
In writing, oral reports only, etc.	31.23% (79)	27.18% (134)

6. Do you think it is a good idea for the General Counsel to meet with the Board or a Board committee without the CEO or other senior management present? Total responses: 750

	Corporate Directors	General Counsel
Yes, on a regular schedule	32.16% (82)	29.09% (144)
Yes, as requested by the Board or General Counsel	59.22% (151)	52.32% (259)
No	5.88% (15)	9.70% (48)
Don't know or unsure	2.75% (7)	8.89% (44)

7. Does your company have an appointed compliance or ethics officer? Total responses: 750

	Corporate Directors	General Counsel
Yes	61.33% (157)	54.86 % (271)
No	38.67% (99)	45.14 % (223)

(Question 7 continued)

If yes,	Corporate Directors	General Counsel
While appointed to this function, our compliance officer doesn't carry a formal title such as CCO	26.17 % (67)	19.43% (96)
Our compliance officer is a member of the law department (and that person is the CLO or reports to the CLO)	23.05 % (59)	33.60% (166)
Our compliance officer reports to someone other than the CLO or CEO	10.55 % (27)	10.32% (51)
Our compliance officer has his/her own budget and/or dedicated staff to help accomplish his/her work	21.09 % (54)	15.59% (77)
Our compliance office relies on an interdisciplinary team of senior managers from across the company	25.78 % (66)	23.68% (117)

8. If the CEO and the General Counsel disagree regarding a significant issue, which of the following should the General Counsel bring to the Board of Directors without the concurrence of the CEO?

Total responses: 767

	Corporate Directors	General Counsel
When a senior executive is suspected of involvement in possible fraud or material violation of the securities law	66.91% (180)	63.05% (314)
When an allegation involves a material breach of securities law	57.62% (155)	53.82% (268)
When an allegation has not been addressed by senior management after repeated attempts to get them to act	73.23% (197)	71.29% (355)

(Question 8 continued)

When an allegation of fraud or material violation could result in harmful litigation	55.39% (149)	41.37% (206)
When the amount of money involved is significant or represents a predetermined percentage of net worth or other index	40.15% (108)	34.94% (174)
When an allegation of fraud or material violation could negatively impact stock price	42.38% (114)	31.93% (159)
When an allegation of fraud or material violation could result in negative media coverage	40.15% (108)	27.51% (137)
When a serious allegation of sexual harassment is made	39.03% (105)	20.48% (102)
When a serious allegation of racial discrimination is made	39.03% (105)	20.28% (101)
Only when the allegation is so important that the General Counsel would consider resigning over it	13.01% (35)	15.46% (77)

9. Has the General Counsel in your company been in a situation that required “up the ladder” reporting within the company to the Board of Directors on a significant issue without the consent of the CEO?

Total responses: 745

	Corporate Directors	General Counsel
Yes	7.14% (18)	8.52% (42)
No	92.86% (234)	91.48% (451)
If yes, did by passing the CEO result in the appropriate outcome?		
	Corporate Directors	General Counsel
Yes	77.78% (14)	78.57% (33)
No	5.56% (1)	16.67% (7)
Don't know/unsure	16.67% (3)	4.76% (2)
If no, have you ever encountered a situation in which it would have been appropriate for the General Counsel to bypass the CEO and go directly to the Board of Directors?		
	Corporate Directors	General Counsel
Yes	14.91% (34)	16.17% (71)
No	70.61% (161)	77.68% (341)
Don't know/unsure	14.47% (33)	6.15% (27)

General Counsel As Risk Manager Survey Results

10. Under the whistleblower provision of Sarbanes-Oxley, legal counsel may report questionable corporate activities directly to regulators under certain conditions. Has the whistleblower provision changed the climate of discussion between counsel and the board? Total responses: 636

	Corporate Directors	General Counsel
Yes	11.72% (30)	8.92% (44)
No	71.09% (182)	77.08% (380)
If yes, has the change, been positive for corporate governance:		
	Corporate Directors	General Counsel
Yes	63.33% (19)	62.79% (27)
No	20.00% (6)	20.93% (9)
Not Sure	16.67% (5)	16.28% (7)

11. Since Sarbanes-Oxley became law has the General Counsel become more or less integrated member of the client's business team? Total responses: 742

	Corporate Directors	General Counsel
More	41.90% (106)	29.04% (142)
Less	2.37% (6)	3.48% (17)
Same	55.73% (141)	67.48% (330)

12. As a result of Sarbanes Oxley, has your board or a committee retained outside counsel (as opposed to outside counsel hired by the GC) as counsel to the board or a committee? Total responses: 742

	Corporate Directors	General Counsel
Yes	30.28 % (76)	13.65 % (67)
No	62.95 % (158)	80.86 % (397)
Don't know/unsure	6.77 % (17)	5.50 % (27)

13. Do you believe your liability for your company's wrongdoing has increased since Sarbanes-Oxley became law? Total responses: 737

	Corporate Directors	General Counsel
Yes	66.40 % (166)	53.80% (262)
No	24.00 % (60)	34.29% (167)
Don't know/unsure	9.60 % (24)	11.91% (58)