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# Litigation & Governance Trends for Asset Management Firms

*An Examination of the Top Issues  
for Legal and Compliance Executives*



Special Guest

**George W.  
Bush**

*43rd President of the  
United States of America  
(2001-2009)*

# An Examination of the Legal and Fiduciary Issues Most Impacting Asset Managers Today

Since its inception 10 years ago, this meeting has evolved as the thinking around corporate governance, shareholder engagement, and active litigation has developed and matured. It began as a forum for public pension plans focused primarily on corporate governance and then became the meeting known as the Evolving Fiduciary Obligations of Pension Plans, taking on a more shareholder engagement perspective.

A few years ago, again as the openness to and use of these tools became more developed, the meeting was renamed to the Evolving Obligations of Institutional Investors so as to reflect the growing acceptance and usage of active engagement and shareholder litigation abilities by asset management firms globally.

Now the meeting has achieved its maturity as the forum assessing and evaluating **Litigation & Governance Trends for Asset Management Firms**. With its subtitle of *An Examination of the Top Issues for Legal and Compliance Executives*, we believe the conference's sole focus on examining the needs of legal and compliance teams at global asset management firms through the lens of active engagement, shareholder actions, and affirmative litigation accurately reflects the state of thinking and evolution in the market today and provides much-needed information that these executives require to fully fulfill their full range of responsibilities at their firms.

## Advisory Board

Jennifer Nichols, *Head of Legal-Americas, Aberdeen Standard Investments*

David Muckley, *Deputy General Counsel, Head of Risk, Compliance and Governance, Legal & General Investment Management America*

David C. Flattum, *Managing Director & Global General Counsel, PIMCO*

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Gerald Lins, *General Counsel, Voya Investment Management*

## Special Guest

**George W. Bush**

**43<sup>rd</sup> President of the United States of America  
(2001-2009)**

George W. Bush served as 43rd President of the United States of America from 2001-2009. As Commander in Chief, President Bush worked to expand freedom, opportunity, and security at home and abroad. He entered office with a robust domestic agenda. His first initiative as President was the No Child Left Behind Act, a bipartisan measure that raised standards in schools, insisted on accountability in return for federal dollars, and led to measurable gains in achievement – especially among minority students. Faced with a recession when he took office, President Bush cut taxes for every federal income taxpayer, which helped lead to an unprecedented 52 straight months of job creation. New free trade agreements enacted by the Bush Administration opened up American goods and services to new markets of more than 130 million consumers. Additionally, President Bush worked with Congress to modernize Medicare with a prescription drug benefit and introduced market forces to the healthcare system by establishing Health Savings Accounts. The Bush Administration also focused on a variety of environmental issues, including efforts to reduce emissions and create the world's largest marine protected area.

Following the terrorist attacks on September 11, 2001, President Bush responded with a comprehensive strategy to protect the American people and wage a global war on terror. His administration built global coalitions to remove violent regimes in Afghanistan

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and Iraq that threatened America, liberating more than 50 million people from tyranny. Recognizing that liberty and hope are the best alternative to the extremist ideology of the terrorists, he provided unprecedented American support for young democracies and dissidents in the Middle East, Eastern Europe, Latin America, and elsewhere. President Bush also launched global HIV/AIDS and malaria initiatives that have saved millions of lives, particularly in sub-Saharan Africa.

President Bush grew up in Midland, Texas, as the eldest son of Barbara and George H.W. Bush – later the 41st President of the United States. He received a bachelor’s degree in history from Yale University and a master’s degree in business administration from Harvard Business School. President Bush also served as a pilot in the Texas Air National Guard. Following business school, he returned to Midland and met Laura Welch. They were married in 1977. After working in the energy business in West Texas for several years, President Bush moved to Dallas and joined a group of partners that purchased the Texas Rangers baseball franchise. In 1995, he was sworn in as the 46th Governor of Texas.

After the Presidency, President and Mrs. Bush founded the George W. Bush Presidential Center in Dallas, Texas. The Bush Center is home to the George W. Bush Presidential Library and Museum and the George W. Bush Institute, a nonpartisan public policy and leadership development center that engages communities across the United States and around the world by developing leaders, advancing policy, and taking action to solve today’s most pressing challenges.

President Bush is the author of three bestselling books: *Decision Points* (2010), *41: A Portrait of My Father* (2014), and *Portraits of Courage: A Commander in Chief’s Tribute to America’s Warriors* (2017), a collection of oil paintings and stories by President Bush honoring America’s military heroes. He and Laura are the parents of twin daughters, Barbara and Jenna, and son-in-law Henry Hager, and proud grandparents of Margaret Laura “Mila” and Poppy Louise Hager. The Bush family also includes two cats, Bob and Bernadette, as well as Freddy the dog.

Tuesday, April 30, 2019

8:00 am

**Registration and Breakfast**

Hemingway

8:50 am

**App Tutorial**

Sinclair Ballroom

Kip Miller, *Director, Institutional Investor Forums*

**Forum Moderator:**

Harvey Shapiro, *Senior Advisor, Institutional Investor*

**Welcome Remarks**

Sinclair Ballroom

Darren J. Check, Esq., *Partner, Kessler Topaz Meltzer & Check LLP*

9:00 am

**Presentation and Panel Discussion**

**Remaining Compliant and Avoiding the Tripwires: Being a Global Manager Amid Trade Wars, Sanctions and Tweets**

Sinclair Ballroom

9:00 am

**Presentation**

**Presented by:**

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Afshin Molavi, *Senior Fellow, Foreign Policy Institute, Johns Hopkins University School of Advanced International Studies*

9:25 am

## **Panel Discussion**

### **Moderator:**

David C. Flattum, *Managing Director & Global General Counsel, PIMCO*

### **Panelists:**

Afshin Molavi, *Senior Fellow, Foreign Policy Institute, Johns Hopkins University School of Advanced International Studies*

David Muckley, *Deputy General Counsel, Head of Risk, Compliance and Governance, Legal & General Investment Management America*

Phillip Gillespie, *Former Executive Vice President & General Counsel, State Street Global Advisors*

Robert Toner, *Chief Legal Counsel, Investment Management, William Blair & Co.*

Not only are most firms far more global now than they were even 10 years ago, but the complexity of the issues and risks facing them in their various markets has grown exponentially. How can a global firm prioritize its efforts and not run afoul of the greatest-risk tripwires? (The specific sub-topics for this panel discussion will be determined in consultation with the panelists.)

10:00 am

## **Panel Discussion**

### **How are Institutional Investors Coping with the Growing Global Litigation Challenge?**

Sinclair Ballroom

### **Moderator:**

Keith R. Dutill, *Partner, Stradley Ronon Stevens & Young LLP*

### **Panelists:**

Jennifer Nichols, *Head of Legal-Americas, Aberdeen Standard Investments*

Affirmative litigation is simply a reality for institutional investors these days. Recent years have provided ample evidence that investors are facing a growing number – and more diverse range – of litigation opportunities. These opportunities to recover investment losses – whether via an opt-out action in the United States, by joining a KapMuG in Germany, or when registering for a group action in Australia, can produce significant results, but also pose significant challenges. This session will examine how different investors are addressing these challenges, including:

- ❖ Best practices in dealing with litigation
- ❖ Identifying, hiring, and monitoring outside counsel
- ❖ Developing litigation policies
- ❖ Using third parties for tracking and monitoring shareholder litigation

10:45 am

## **Coffee Break**

Sinclair Foyer

11.15 am

## **Workshop Series I**

### **Workshop A**

#### **An Examination of the Investment and Governance Consequences of the Unintended and Increasing Concentration of Institutional Ownership**

Hemingway 1

### **Workshop Leaders:**

Fred C. Reish, *Partner, Drinker Biddle* (Pending confirmation)

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Gillian Davis, *Head of Legal, First State Investments* (Invited)

For many reasons including the rise of index managers, a slowing in the number and variety of firms going public every year, and the sheer rise of the absolute number of assets held by the largest asset managers, the increasing concentration of institutional ownership is becoming a risk. At least in some people's opinion. From a legal and purely corporate governance perspective, is it really as risk? Or a blessing?

## Workshop B

### **In Practice: Putting Policies, Procedures and Systems in Place for Global Litigation**

Hemingway 2

#### **Workshop Leader:**

Andy Cottrell, *Client Development Manager, Kessler Topaz Meltzer & Check*

Rather than offering further discourse about the utility of affirmative litigation, this workshop will provide an assessment of the tools firms and their legal teams need to have in place to effectively and efficiently pursue litigatory actions. Specific discussion points include:

- ❖ Balancing in-sourced versus out-sourced responsibilities
- ❖ Identifying direct action opportunities – the legal and operational perspective
- ❖ Analyzing and properly evaluating next step

12.00 pm

### **Time to Choose Your Next Workshop**

12:15 pm

### **Workshop Series II**

## Workshop C

### **More Asset Managers Are Entering the Non-Institutional Market: What Legal and Compliance Teams Need to Be Aware of**

Hemingway 1

#### **Workshop Leaders:**

Fred C. Reish, *Partner, Drinker Biddle*

Stuart Cohen, *Managing Director & Head of Legal, Nuveen Asset Management*

Elliot Cohen, *Associate General Counsel, Russell Investments* (Invited)

Some firms have grown from their roots in the “retail” (HNW, retail, wealth management) market, but many more traditionally institutional-focused firms are eyeing those investors who represent a pool of assets which is growing faster and already represents more opportunity than the institutional market. And while there is legal and regulatory change in governance for institutional management, the legal and compliance issues in the retail are a horse of an entirely different color, arguably more complex and more subject to abrupt, wide-reaching change. This workshop will pair an executive from a traditionally institutional-focused firm, one interested in entering the retail market, with her/his counterpart from an asset manager which has grown up in the non-institutional market.

## Workshop D

### **Crisis Management in an Era of Unprecedented Crises: Is Your Team Prepared?**

Hemingway 2

#### **Workshop Leaders:**

David Barnett, *Managing Director, Managing Attorney & Chief Compliance Officer, Epoch Investment Partners* (Invited)

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Setting priorities, appropriate structures and resources, and lines of communication and decision-making will likely be centerpieces of this discussion. But the workshop's scope will really depend upon the attendees and what they hope to get out of it. Are there near-universal best practices which can be shared among firms of all stripes and sizes?

1:00 pm

**Lunch**

Margeaux

2:30 pm

**Panel Discussion**

**SCOTUS: Where is the Court Headed, How Will this Affect Shareholders, and What Role Will Politics Play in this New World?**

Sinclair Ballroom

**Moderator:**

Jennifer L. Joost, *Partner*, **Kessler Topaz Meltzer & Check, LLP**

**Panelists:**

Sarah Harrington, *Partner*, **Goldstein & Russell, P.C.**

Jonathan S. Massey, *Partner*, **Massey & Gail**

George T. Conway, III, *Of Counsel, Litigation*, **Wachtell, Lipton, Rosen & Katz**

This panel will explore the impact of the United States Supreme Court, including its two newest Justices, and other influential U.S. judicial bodies, as well as the political realities of a divided government, underpowered regulators, and an at-times controversial Commander-in-Chief, on the vehicles and fora available to shareholders who are motivated to seek redress for corporate malfeasance in U.S. courts. The conversation will be focused on an exploration of these impacts through the lens of recent SCOTUS decisions and arguments and opinions from the 2018-2019 term concerning the viability of class actions, forum selection and mandatory arbitration clauses in corporate by-laws, and the scope of private rights of action under the Securities Exchange Act of 1934.

3:30 pm

**Case Study**

**General Electric: Fall of an American Icon**

Sinclair Ballroom

**Presented by**

Sharan Nirmul, *Partner*, **Kessler Topaz Meltzer & Check, LLP**

On June 12, 2017, GE, the multi-national conglomerate, announced that effective August 1 of that year John Flannery would succeed Jeffrey Immelt, GE's CEO for sixteen years and successor to legendary Jack Welch. What followed Flannery's succession and a disclosed "deep dive" into GE's businesses was the dismantling of a multi-year scheme of fraud that Immelt, former CFO Jeff Bornstein, and others in senior management had used to falsify GE's reported financial results and health for more than a decade. The fallout included Bornstein's surprise ouster in the weeks after Flannery's succession, Immelt's removal from the Board, the elimination of over \$100 billion in GE market capitalization over the next several months, elimination of GE's hallmark dividend, the launch of a criminal investigation, and GE's removal from the Dow Jones Industrial Average index, a position it had occupied for over a century. The public disclosures that followed Flannery's deep dive revealed an ailing company whose financial statements had been dressed up through accounting manipulations, massive hidden liabilities and misleading financial reporting. This case study examines GE's downfall, analyzes the securities fraud claims brought on behalf of GE's investors, and discusses the corporate governance failures that contributed to GE's dramatic decline.

4:20 pm

**Coffee Break**

Sinclair Foyer

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4:45 pm

### **Panel Discussion**

## **Managing Social Media Risk: The Current Landscape from Leaders of Legal and Compliance**

Sinclair Ballroom

#### **Moderator:**

Harvey Shapiro, *Senior Advisor, Institutional Investor*

#### **Panelists:**

Rick Sharma, *Chief Legal Advisor, Bridgewater*

Gerald Lins, *General Counsel, Voya Investment Management*

This panel of legal executives will the tricks, traps, and trade-offs of formulating corporate policy governing social media concerns, one of the most high-risk, rapidly changing issues facing many companies. The conversation will be built around what they themselves are seeing take place within their own firms and possibly some focus on what they also think should be happening over time.

5:30 pm

### **Photo Line and Drinks Reception**

Faulkner and Hemingway

6:00 pm

### **Dinner**

Hemingway

7:00 to 8:00 pm

### **Keynote Interview**

Sinclair Ballroom

#### **Interviewer:**

Darren J. Check, Esq., *Partner, Kessler Topaz Meltzer & Check LLP*

#### **Interviewee:**

George W. Bush, *43<sup>rd</sup> President of the United States (2001-2009)*

Wednesday, May 1, 2019

8:30 am

### **Breakfast and Discussion Tables**

Hemingway

At peer-moderated tables of 8-10 participants, delegates will share their opinions and compare notes on a number of important issues identified as worthy of discussion, the kind of topics which add value to and complement the overall agenda. Delegates will be asked to contribute to their table's discussion with the intention of sharing information and learning from others' experiences.

## **Table 1: Why Does It Keep Happening? Controls, Processes and Systems to Prevent Data Leakage**

#### **Discussion Leader:**

Natalie Maniaci Roberts, *Senior Counsel, Los Angeles Capital Management*

## **Table 2: The Fiduciary Rule May Be No More, but the Consequences Live On**

#### **Discussion Leader:**

Ryan Frampton, *Senior Investment Counsel, PNC Bank*

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### **Table 3: Are GPs and LPs on a Collision Course Over Terms?**

**Discussion Leader:**

Christopher Hayes, *Senior Policy Counsel, Institutional Limited Partners Association (ILPA)*

### **Table 4: The Legal Team for Today: Sourcing and Retaining Talent**

**Discussion Leader:**

Mary Capasso, *Senior Vice President & General Counsel, PPM America*

9:30 am

#### **Reporting Back on Table Discussions**

Sinclair Ballroom

The leaders of each of the breakfast roundtable will have four minutes to recap one or two key points from that discussion so that all Forum attendees are able to share in what was discussed.

9:50

#### **Case Study**

##### **Facebook, Zuckerberg and Perpetual Control**

Sinclair Ballroom

**Presented by:**

Lee Rudy, *Partner, Kessler Topaz Meltzer & Check, LLP*

In 2016, Facebook's board approved an issuance of non-voting stock to all stockholders in order to enable its founder Mark Zuckerberg's personal philanthropic goals while perpetuating his voting control. Litigation led by KTMC and its client AP-7 forced Facebook to abandon the plan just days before trial. The litigation illustrates several notable themes, such as:

- ❖ Rights of minority investors in controlled companies with multi-class stock structures
- ❖ Role of independent directors in assessing personal interests of controlling stockholders
- ❖ Corporate governance impacts of non-voting stock

10:30 am

#### **Coffee Break**

Sinclair Foyer

11:00 am

#### **Panel Discussion**

##### **People Who Live in Glass Houses: What Happens When Your Institution Becomes the Focus of a Legal Action?**

Sinclair Ballroom

**Moderator:**

Harvey Shapiro, *Senior Advisor, Institutional Investor*

**Panelists:**

Carter D. Morse, *Vice President & Associate General Counsel, Fidelity Investments* (Invited)

Rana Wright, *Vice President, General Counsel and Secretary, Harris Associates LP* (invited)

David Doherty, *General Counsel, LaSalle Investment Management* (Invited)

Pamela Conover, *Vice President and Managing Counsel, T. Rowe Price*

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Michael White, *Senior Counsel, Head of Litigation, Vanguard*

Do as I say and not as I do is increasingly likely to get your firm in a heap of trouble these days. Instead, firms should be walking the walk. So enough with idioms. Let's discuss what asset management firms are doing to ensure that they themselves are adhering to the goals and principles they espouse for the firms they invest in.

11:45 am

### **Panel Discussion**

## **Diversity Is Not Just Gender Diversity: Building and Maintaining a Truly Diverse Legal & Compliance Department**

Sinclair Ballroom

#### **Moderator:**

Bonnie Saynay, *Global Head of Responsible Investment, Invesco*

#### **Panelists:**

Dr. Henning Stein, *Head of Thought Leadership, Invesco*

Michael Sefton, *Senior Vice President & Associate General Counsel, Mesirow Financial* (Invited)

Connie L. Lindsey, *Executive Vice President | Head of Corporate Social Responsibility and Global Diversity & Inclusion, Northern Trust*

Meredith Jackson, *General Counsel, TCW* (pending confirmation)

Ensuring diversity is top of mind for many executives at US firms, and it's no different for asset management and financial services firms. In fact, given the industry's reputation as a historic bastion of white male privilege, the need might be even greater. But the whole issue of diversity has been fairly well-discussed and it's time to put words into practice, and that's what this panel intends to accomplish. Some specific points of discussion will be:

- ❖ What do effective policies and procedures for diversity really look like?
- ❖ What are the likely effects of some very large pension plans making a concerted push to allocate significant sums of assets to emerging managers, specifically minority-owned and women-owned firms?

12:30 pm

### **Lunch**

Hemingway

2:00 pm

### **Conference Concludes**