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The Boardroom Is Her Living Room

The Editor interviews Lizanne Thomas, Partner-in-Charge of Jones Day's Atlanta office.

Editor: Would you remind our readers of the area of law in which you practice?

Thomas: My practice involves advising boards – and those who advise boards – in corporate governance, both nationally and globally. The bulk of my time is spent advising boards based in the U.S.

Editor: And since you've been partner-in-charge of Jones Day's Atlanta office, what changes have occurred? Do you have new partners and new practice groups since you came on board?

Thomas: I came on board as the local managing partner about six years ago. Our partnership has continued to evolve, as is the case for many law firms. Around 40 percent of our partners are laterals, who joined us as partners from other firms. I think that expresses a trend. Seasoned lawyers are seeking stability and quality, as well as global capabilities, because that's what clients want. Of our 50 partners, 13 are women – about one-fourth of our partnership. In the last two years, five of the six new partners promoted from the associate ranks were women, and five of our partners are racial or ethnic minorities, of which we are very proud.

Editor: In keeping with Jones Day's one firm concept, how often do you import attorneys from other offices to assist with litigation and other matters?

Thomas: There is a constant flow of work in and out of our offices as a function of the particular needs of the client and of the talents that our lawyers have to offer. We really staff matters without regard to geography and try to place the right lawyers on a case based on their experience and

availability. One of the reasons our firm is able to do that so seamlessly is that we really do live by our motto of "one firm worldwide." The concept is that none of our lawyers fight over anything that would be defined as origination credit – we don't have that concept. All

of our lawyers are available and devoted to the service of our institutional clients. I think it's fair to say that our lateral partners, in particular, are our best advocates for the notion that this really works.

Editor: One of the areas you have previously mentioned as a key practice is that of product liability. Is this owing to the presence of certain attorneys in the Atlanta office or because you have a long history of practice with this area?

Thomas: We have some lawyers who are nationally recognized as experts in the field of product liability, and we have a long history of practice in this area. To do product liability defense work, the firm itself needs to be willing to take on causes that are not necessarily the most popular. For example, we have for decades represented one of the major tobacco companies with respect to cases around the country. That is thrilling work for our lawyers because it raises issues that are as important as any you'll ever find. About 20 of our litigators work on those cases. They are very high profile, as well as tension filled. One of the leading lawyers who handles those cases is my colleague Stephanie Parker, who is the lead trial counsel for Reynold's Tobacco. Late in 2013 she was named National Product Liability MVP for the second year in a row by *Law360*, and she has ranked among the top female litigators in the country. She is



**Lizanne
Thomas**

extraordinarily effective in the courtroom and passionate about her belief regarding issues of personal responsibility, which is the issue at the heart of these cases.

Editor: That's very impressive. Georgia is a right-to-work state. Do you believe this attracts businesses both foreign and domestic?

Thomas: We do hear that the right-to-work provisions are a big component of why we see business coming into Georgia. But those laws notwithstanding, there are other considerations that attract business to Georgia, such as the strength of our transportation systems, the health of our overall economy, the talent of our workforce, and the depth of our educational system. When you look at the U.S. cities that have the most global 500 companies, Atlanta is in the top three, after New York and Houston. It's easy to come and go to meetings throughout the world, thanks to our wonderful airport.

Business leaders in both the city of Atlanta and the state of Georgia have banded together in our common interest to promote our economic gain. This is true regarding developing the port at Savannah, further developing the highway infrastructure, and supporting the airport – transportation being such a key to all economic development. Of course, we also have the benefit of being in the Southeast, which is a wonderful place to live.

Editor: Jones Day has been noted for its outstanding women attorneys. Several are partners-in-charge of the firm's various offices. Has the number of women recruits for the overall firm been increased since we last interviewed you in 2012?

Thomas: Yes. The number of female partners for the firm overall has increased to 183 and is climbing. Women account for 45 percent of all our associates throughout

Please email the interviewee at lthomas@jonesday.com with questions about this interview.

our U.S. offices. The critically important position of partner-in-charge of an office is held by women in eight of our 16 domestic offices – Pittsburgh, Houston, Dallas, Chicago, Columbus, Boston, San Diego and Atlanta – and in six of our foreign offices – Paris, Madrid, Düsseldorf, Munich, Singapore and even Dubai!

Editor: I understand you participated in more than a hundred board meetings this year as counsel to public companies. What items are you seeing emerge as subjects highlighted in 2013 proxies?

Thomas: All public companies are now required on an annual basis to present to their shareholders an opportunity to express an opinion regarding executive compensation. This is referred to in shorthand as the “say on pay” vote. To our surprise, this provision has not been all that disruptive in practice. The votes are overwhelmingly supportive of compensation paid to senior executives of public companies. At the same time, support for that compensation has come about in part because companies have fundamentally improved not only the decisions that they make with respect to compensation but also how they present it. The disclosures and proxy statements have gone from being dry, compliance pieces to being thought pieces that explain how boards want to motivate their leaders and why that really makes a difference. I think that is one of the reasons we’ve seen endorsement of compensation on a continuing basis.

Editor: What particular matters are appearing at the request of outside shareholders?

Thomas: There are the usual favorites: board declassification; separation of chair and CEO; social welfare issues such as anti-discrimination policies; environmental policies; and so on. This is a continuance of efforts that were commenced several years ago. I continue to predict that the focus on some of the social issues will continue to grow. It hasn’t attracted a significant, favorable vote yet from the shareholder population, but we’re going to see those matters increase over the next several years.

Editor: Do the boards that you work with show less interest in following the formulas for voting provided by ISS and Glass-Lewis?

Thomas: What we see is an increase in the focus and influence of major institutional shareholders who have decided that they no longer wish to completely default to ISS or Glass-Lewis, but rather have established their own governance and voting policies. I find that companies prefer to deal directly with those important institutional holders, such as T. Rowe Price, Vanguard, Fidelity and BlackRock. Those organizations have established their own governance policies, which are very thoughtful and for the most part consistent. We find that companies are able to engage with their actual shareholders on those issues in a very constructive way. Does that mean that ISS and Glass-Lewis are seeing their interest waning? I would say a bit, but we still see the more moderate-to-modest institutional holders turn to ISS or Glass-Lewis, perhaps not for complete direction on voting but at least for advice. While I’m painting with a very broad brush, we tend to assume that about 20 percent of votes are directed or influenced by ISS and Glass-Lewis.

Editor: Do you continue to see the classified board under siege? What about the issue of separation of the chair and CEO?

Thomas: Both of these are conventional favorites of various issue activists, and so we do see both of these coming up routinely. If you look at statistics, boards are moving toward declassification step by step each year. Over the last couple of years, the Shareholder Rights Project, which is an effort funded and founded at Harvard Law School by Professor Lucian Bebchuk, has taken on declassification as its primary focus. They have had considerable success to their great credit, although we are also now beginning to see some very interesting academic pieces that are challenging the notions of whether declassification really yields an improvement in shareholder value. An interesting irony is that the Shareholder Rights Project is supported and funded by a series of union and pension funds, and I am told that most, if not all, of the organizations that support it have classified boards themselves.

As to the separation of leadership between the chair and the CEO, you see a lot of discussion about this coming partly out of the European model, where this is the more conventional approach. It’s very important to look closely at the statistics on the separation of chair and CEO. If you

do, you will find that there are statistics that indicate that close to half of public companies do have a separation of chair and CEO. If you dig a little deeper though, you’ll find that really only a fourth of public companies actually have an independent chair separate from the CEO. The other group would be companies that are evolving their board leadership – perhaps they have a brand new CEO, and the exiting CEO is going to serve for a period of time as chair – not as independent chair because having just been CEO, he can’t be independent. I think that the issue of leadership of a company and board is very situation specific, and a board should in each instance exercise its fiduciary duties to its precise circumstance and figure out what kind of leadership makes sense.

Editor: What new measures in corporate governance are emerging in terms of the request of institutional investors this year?

Thomas: There are two categories of requests: the first is a word that has gotten overused but is profoundly meaningful – the word “engagement.” There are a number of holders, whether it’s the big institutional funds like TIAA-CREF or the small activist funds that have chosen this theme. These organizations want contact with management. They want to be heard, and they want something other than the conventional analyst meetings. They want much more direct interaction, and they want influence, so engagement becomes the theme. In this area, I offer caution about engaging, and bring board members in rarely and with careful preparation and constraints.

The second issue that we hear about as a governance topic with respect to institutional investors is that they all want to see value returned to the shareholders in the form of cash. This is all eminently logical. I advise boards that these investors are quite rational, and the reason that they want cash returned is because they’re not getting significant yield in any other aspect of the market these days. What that means is they want share buy-backs, special dividends, sale transactions. They want something that’s going to deliver them some real, near-term value that might not always be in the best interest of the company, but it is the conversation that most companies will be having with their institutional holders in 2014.