

“A GLOBAL PERSPECTIVE OF THE DIRECTOR’S ROLE”

Panel Moderators

HOLLY GREGORY
Weil, Gotshal & Manges, LLP
New York

DAVID C. GAVSIE
Ogilvy Renault
Toronto

Panelists

CAROL HANSELL
Davies Ward Phillips & Vineberg
Toronto
representing **CANADA**

GUY HARLES
Arendt & Medernach
Luxembourg
representing **FRANCE**

RICHARD KOPPES
Jones Day Reavis & Pogue
Sacramento
representing **U.S.A.**

ROSWELL B. PERKINS
Debevoise & Plimpton
New York
representing **RUSSIA**

PAUL M. STORM
NautaDutilh
Rotterdam
representing **HOLLAND**

Corporate Governance at ABC Inc.

A decorative graphic element consisting of a thin orange line that curves from the top left towards the center, and a larger, solid brown shape that tapers from the center towards the bottom right.

*ABA Subcommittee on International Corporate Governance
Developments; adapted from the Sunshine Steel Case
developed for the Yale University School of Management*

Business Description

- ABC Inc. is a publicly traded corporation.
- It began as a leading producer of steel and then diversified into petroleum products, energy distribution, and more recently insurance.
- Core Businesses: *Sunshine Steel, Sunshine Energy, ABC Power Distribution Co., and ABC Insurance*
- Core Products:
 - *Steel Mill Products*
 - *Mineral Resource Management*
 - *Crude Oil, Natural Gas, Petroleum Products and Consulting Services*
 - *Power Distribution Services*
 - *Property and Casualty Insurance*

Ownership Structure

- Sunshine Steel was founded by Jeremiah Howell in the late 1800's in Shaker's Point. It was a small family-owned company for much of the last century.
- CEO Johnson considers himself a self-made man. With hard work, ingenuity, vision and determination, he moved from part-time line work (while obtaining his degree) to CEO, in the span of 20 years. Along the way, he married the granddaughter and sole heir of Jeremiah Howell.
- Because of capital needs for plant improvement and an acquisition strategy, Johnson brought the company public shortly after becoming CEO, and changed its name to ABC Inc. In the ensuing twenty years, he has made a series of acquisitions in the energy, power distribution and insurance fields.
- The Howell Family Trust of which Johnson, his wife and two sons are the sole beneficiaries, now owns just 10% of the company. He and his wife own another 5% of company stock directly and each son owns 2.5%.

ABC Inc. Senior Management

- A.A. Johnson, CEO
- B.D. Richter, CFO
- C.G. Cline, Managing Director of Sunshine Steel
- T.S. Sheridan, Managing Director of Sunshine Energy
- M. E. First, Managing Director of Power Distribution Co.
- E. N. Sure, Managing Director of ABC Insurance

Board of Directors

Executive Directors – Years on Board in ()

- A.A. Johnson (CEO) – (20 yrs.)
- B.D. Richter (CFO) – (18 yrs.)
- C.G. Cline – (16 yrs.)
- T.S. Sheridan – (16 yrs.)

Non-Executive Directors – Years on Board in ()

- D.R. Schaff, Trustee of Howell Family Trust (10 yrs.)
- P.T. Smith, CEO, Precision Instruments (12 yrs.)
- I. S. Rich, Vice Chairman, Cash Bank & Trust Co. (8 yrs.)
- J.L. Reeling, CEO, Reeling Department Stores (8 yrs.)
- F.B. Lavitz, CEO, Northern Drilling (4 yrs.)
- S.R. Wirth, Retired CEO, Oak Brooke Industries (8 yrs.)
- I. M. Popular, former Minister of Finance, Nation of Dominica (4 yrs.)
- S.D. Dunham, President, Moon & Shine (investment banking firm) (4 yrs.)

I. Expanding the Family Influence

Atlas Bungee Cord, Inc.

- Jeremiah (“Bounce”) Johnson is the oldest of A.A.’s sons. He obtained a graduate degree in business administration seven years ago and, with financing from his father, began a small business -- Atlas Bungee Cord, Inc. -- which manufactures the rubber and elastic-based components of sports equipment (trampolines, bungee cords).
- By all accounts Bounce is a hard worker and his business has grown to \$10 million in sales annually.
- Bounce now wants to sell the company and devote his time to rock climbing.
- His younger brother, A.A. Jr., has worked as sales manager at Atlas Bungee Cord, Inc. since graduating from college four years ago (with a degree in communications).
- A.A. Johnson proposes to the ABC, Inc. Board that the company purchase Atlas Bungee Cord, Inc.; he also proposes that A.A. Jr. head it as a division of ABC, Inc.

II. Where to Manufacture?/ Where to Invest?

- Shaker's Point, the Company's first plant and its core domestic steel making facility, has lost money since the early 1980's due to:
 - highly restrictive work rules, and lifetime employment guarantees, negotiated with employees in more prosperous times;
 - an antiquated plant.
- The plant is the largest employer in the region; two other factories have closed doors recently.
- Management is considering either closing the plant or borrowing \$240 million to upgrade the plant.
- Reeling, who is a non-executive director, CEO of a chain of department stores and President of the local Chamber of Commerce, believes the company should sell its low-cost Dominica plant (in a developing country) to finance the upgrade. Selling the Dominica plant is estimated to yield \$250 million.
- The national steel worker's union has offered a low-interest loan to finance a portion of the upgrade. It has commissioned a study that shows capacity will be inadequate should demand increase without the upgrade. As partial consideration, the union seeks a seat on the board.

III. To Pay or Not to Pay?

- The ABC Board decides to close the Shakers Point plant and construct a second plant in Dominica, where labor and raw materials are far less expensive.
- The Company has hired a consultant, Bob Roberts, to oversee the project (including obtaining necessary permits), on the advice of ABC board member I.M. Popular, the former Minister of Finance of the Nation of Dominica.
- The Dominica Government has recently changed and the new Minister of Development is not only the nephew of the new President, but also the brother-in-law of I.M. Popular.
- After meeting with the Minister of Development, Bob Roberts calls CFO Richter and explains that the process of obtaining permits will be slightly more expensive than projected but will also take far less time than usual if the Company pays a facilitation fee of approximately \$25 million, or about 5% of the total cost of the project.
- CFO Richter concludes, based on his conversation with Roberts, that the proposed payment could be considered as one made for services rendered on a complex project -- not extortion or solicitation of a bribe.

III. To Pay or Not to Pay?

- Director I.S. Rich learns that fellow director I.M. Popular has political ambitions in Dominica and may be asked to serve again as Finance Minister if he can curry sufficient favor with the ruling party. Rich suggests that Cash Bank & Trust could set up a charity with other corporations having interests in Dominica -- such as ABC -- to pay for the education abroad of deserving Dominica students, and I.M. Popular could be named sole trustee. I.S. Rich suggests such charitable action because he firmly believes it pays to have friends in high places and expansion into Dominica is a key part of Cash Bank's strategy.