



We at Murtha Cullina value all people and recognize that diversity within Murtha Cullina strengthens our firm and enhances the services we provide to our clients. We appreciate that meeting our diversity goals better enables us to participate in the communities where we practice law, work and live, as well as enhancing our overall experience as a member of the larger legal community. To that end, we welcome all people, without regard to race, national origin, color, ethnicity, religion or religious practices, gender, citizenship, marital status, age, mental or physical ability or disability, veteran status, sexual orientation or gender identity or expression.

WELCOME TO THE ELEVENTH ISSUE OF *QUAE VIDE*,  
MURTHA CULLINA'S DIVERSITY NEWSLETTER

JULY 2013

As we go to press, the U.S. Supreme Court's term recently came to a close with a quartet of decisions that impacted important legal issues on affirmative action, voting rights and same-sex marriage equality. In each of these cases, the impact of historical discrimination is measured against what the litigants and a majority of the court believe to be contemporary realities, with the factor of what has come before us appearing less and less legally material over time. It is important, however, never to forget the past.

On a personal note, this fact was highlighted earlier in June when attending my college reunion. Like many liberal arts colleges in the Northeastern U.S., my alma mater had many years been an all male school (144 years at that time), until women were admitted as freshman in 1969, during a time of significant political turmoil over the last few years of the Sixties. At the reunion, we looked back over the forty years that had passed since graduation, and out of the group of 100 women classmates that started as freshmen, barely over 60% survived through graduation. Those women who did endure and graduated had outstanding careers in business, politics, government, medicine and law (one was a Connecticut Supreme Court Justice, another is the current dean of Temple Law School).

As we convened with some of the more recent alumni from classes populated with a much higher percentage of women students, it became more than self-evident that those 100 women who set foot on our campus in late August 1969 had pioneered the way for future generations of women who were now able to experience a small New England college liberal arts education without harassment or intimidation.

In the practice of law over the past 50 years, we also have pioneers: the first woman attorney who rose to partnership, the first attorney of color who also rose to partnership, the first woman to serve on the U.S. or a state Supreme Court, the first woman

attorney or attorney of color who served on their firm's management committee, and many other "firsts." The practice of law, like my alma mater, has pioneers who have paved the way for others whose paths will hopefully be smoother. It remains important to remember what has come before us, Supreme Court decisions notwithstanding.

Burt Cohen

*Burt Cohen*

Diversity Committee Chairperson

LAWYERS COLLABORATIVE FOR  
DIVERSITY HOSTS 3RD ANNUAL  
BUILDING CAREERS SYMPOSIUM



LAWYERS COLLABORATIVE  
FOR DIVERSITY

On June 12, 2013, Lawyers Collaborative for Diversity (LCD) held its 3rd Annual Building Careers Symposium at the Omni Hotel in New Haven, CT. The

Building Careers event featured Attorney General George Jepsen as the Keynote Speaker, and panelists included general counsel and senior leaders from Aetna, City of Hartford, Eco Services, LLC, Legrand, MassMutual International, Northeast Utilities, Otis, State of Connecticut, and United Technologies Corporation. The event consisted of three panel discussions, entitled *Another Legal Update? Of Course! How to Keep Up with the Ever-Evolving Legal Landscape*, *Creating Value-Based Legal Partnerships: Targeting Ideal Opportunities and Enhancing the Legal Relationship*, and *The "Practice" of Law: Efficiency in Managing People and Maintaining Quality*

In Boston: 617.457.4000  
In Hartford: 860.240.6000  
In Madison: 203.245.9991  
In New Haven: 203.772.7700  
In Stamford: 203.653.5400  
In Woburn: 781.933.5505

www.murthlaw.com



**Administrative Practices.** Murtha Cullina is proud to sponsor the Lawyers Collaborative for Diversity Building Careers Symposium as one of the firm's signature diversity events. In addition to the efforts of Cherie Phoenix, Chair of the Associates Advisory Committee, the

Murtha Cullina marketing department assisted in organizing the event, along with LCD. Murtha Cullina was an original firm member of the Lawyers Collaborative for Diversity, which was formed in 2003 by concerned lawyers to answer the call for the progression of diversity in the legal profession in Connecticut. LCD is currently focused on increasing the



Pictured (left to right) are Carolyn Golden Hebsgaard, Attorney General George Jepsen, Cherie Gabrielle Phoenix and John Rose, Jr.

recruitment, retention and advancement of lawyers of color, not only as good social policy, but also as an exemplary business practice. Presently, Diversity Committee Chair Burt Cohen serves as the firm's representative on LCD's Board.

## MURTHA CULLINA HOSTS WEB EVENTS IN NEW HAVEN & BOSTON



Murtha Cullina's women's initiative, 'Women Expanding Business' (WEB), is committed to promoting the professional growth of women at Murtha Cullina and within the community.

As part of this initiative, WEB hosts, and recently hosted, two networking events, one in New Haven, CT and another in Boston, MA. The mission of these events is to provide a venue for networking and to also foster conversations and actions that support women in the business world.

On Monday, April 1st, WEB hosted an event that brought together nearly 100 of Connecticut's professional women for an evening of networking and fun. The event, held at the Union League Café in New Haven, featured an evening of networking, wine tasting, laughter and guest speaker Gina Barreca, a renowned women's humorist, writer, speaker and professor of Feminist Theory at the University of Connecticut. She writes monthly for publications such as the Hartford Courant, Huffington Post, and Psychology Today, and is author of *It's Not That I'm Bitter: How I Learned to Stop Worrying About Visible Panty Lines and Conquered the World*. During the WEB event,

Ms. Barreca shared insights and humorous stories about her personal and professional life. She commented on many of the social issues and perceptions women cope with and offered her thoughts on dealing with those issues in today's world.



Gina Barreca (center) stands with a group of women from Murtha Cullina.

On Wednesday, June 12th WEB hosted its first Boston event at Blue, Inc., one of Boston's trendy dining experiences. This event brought together over 40 women for an evening of networking and fun as everyone gathered around Executive Chef Jason Santos of FOX's Hell's kitchen for a unique culinary experience. Chef Santos prepared a signature dish and then four guests were chosen for the cook-off challenge. To close the evening, everyone enjoyed watching the creation of liquid nitrogen ice cream that was then served at the ice cream bar.

Deirdre Robinson and Sara Bryant, two partners from the Boston office who attended the event, noted, "the WEB initiative has been a great opportunity to bring together Murtha attorneys and professional women from the community to embark upon new relationships and expand business opportunities. We are looking forward to our next Boston WEB event!"

## GENDER DIVERSITY OF BOARDS OF U.S. PUBLIC COMPANIES

By Edward B. Whittlemore

### What is the issue?

How important is gender diversity at the Board of Directors level at U.S. public companies? While a diverse board of directors is increasingly recognized as an important goal for any organization, commentators have been debating during the last decade whether or not board diversity is a "critical attribute" for the boards of U.S. public companies, or even a fact that is "material" to U.S. investors.

The Securities and Exchange Commission (SEC) has made its views clear, however. In a [May 2013 speech](#), SEC Commissioner Luis A. Aguilar – who has spoken out regularly during his tenure on the issue of diversity in corporate America – urged the markets and investors to embrace greater diversity, while also citing the "dismal lack of progress in increasing gender diversity on corporate boards." He also noted that "merely cracking the glass ceiling is not enough" and that the time is now

for companies to redouble their efforts to become more diverse. Commissioner Aguilar also explained the benefits that diversity can bring to our public companies and to the U.S. economy generally.

In the United States, the issue of gender diversity in the corporate governance context has often been framed as one of fundamental fairness and equality (boards should reflect the diversity of society). Supporters of greater gender diversity at one of America's highest levels – the board of directors of a public corporation – have long asserted that gender diversity gives businesses a distinct advantage. They have done so by arguing that: (a) shareholders, customers and other stakeholders increasingly value diversity in our interconnected world; (b) companies with diverse board enjoy better economic performance and stock market returns and deal more effectively with risks; and (c) diverse boards can help reduce workplace discrimination and improve recruiting, retention and productivity of diverse employees.

### What are other parts of the world doing, and what does SEC require of public companies?

In recent years, global interest in board diversity has grown. In 1999, Israel adopted board gender legislation requiring at least one woman on the board of each Israeli public company. Norway, France and a number of other countries followed suit. In Europe, proponents for board diversity in 2012 called for the imposition of quota on all European-listed companies. Similarly, Australian-listed companies are now subject to a "comply or explain" disclosure regime, setting benchmarks for progress and reporting on gender diversity by listed companies. In the U.K., the 2011 Davies Report urged voluntary action by FTSE 350 companies to increase their percentage of female directors to a goal of 25% by 2015. In the United States, however, there are no general rules imposed by the SEC or by state corporation laws that relate to the composition of boards of directors of U.S. public companies. Many corporate governance watchdogs and institutional investors have placed an increased focus on board diversity over the past ten years.

Since 2010, U.S. public companies have been required to make certain disclosures regarding board diversity. SEC rules require that a public company disclose in its annual proxy statement related to the election of directors by shareholders "whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy." The SEC was asked in public comments on these rules – but declined – to provide a definition of the term "diversity."

The SEC's new rule thus permitted individual companies to develop and disclose their own standards of diversity and address matters ranging from gender, race and ethnicity to diverse business experience, education and skill sets. Now, three years later, this SEC disclosure requirement has added

to the awareness in corporate America to the importance of diversity at leading U.S. companies and was designed, in an indirect way, to encourage companies to avail themselves of more diversified boards.



### What are some of the statistics in the U.S.?

- As cited by SEC Commissioner Aguilar, according to a review of the Fortune 500® companies by the Alliance for Board Diversity ("ABD"), in 2010, white men held 74.5% of the board seats and white women held 12.7% of the seats; in contrast, minority men represented only 9.9% of the directors; and minority women just 3.0%. In 2010, ABD counted 32 Fortune 500® companies without a single woman or person of color on the board.

- According to the GovernanceMetrics International (GMI) Ratings' 2012 Women on Boards Survey, the U.S. ranked 11th out of 45 countries on gender diversity, with an average of 12.6% women on S&P 1500 boards. However, because there are fewer women on the board of smaller public companies, only 11.6% of Russell 3000 directors are women. GMI's analysis also found that the percentage of women on U.S. boards has increased by only .5% in the period 2009 to 2011.

- For its 2013 research report, GMI reported that progress continues to be slow. Since 2009, the percentage of female directors in the U.S. universe tracked in their studies has risen only 1.9 percentage points (and only 5% in total since 2001). GMI also noted that female board chair remain rare among U.S. companies. GMI's 2012 and 2013 survey results are online here: [www.gmiratings.com](http://www.gmiratings.com).

- According to the Conference Board/NASDAQ OMX 2013 survey, 48.4% of public companies with annual revenues over \$20 billion have a board diversity policy. The Conference Board indicated that boards of nonfinancial companies appear to be more diverse, especially when it comes to the average number of women and Asians who serve as directors.

### How do proponents urge progress?

Many institutional investors, as well as non-profit organizations, business leaders, and government officials, continue to advocate vigorously for greater diversity in senior management and corporate boards at U.S. public companies. These groups have found various ways to engage constructively with public companies. These efforts include voting against the election of any slate of directors nominated by management, if the slate would result in a board that has no women or minority members. Diversity advocates also write letters to management and ask direct questions regarding diversity policies at annual meetings of shareholders. Some proponents have established databases that act as clearinghouses for potential directors, with emphasis on a more diverse range of backgrounds, skills, perspectives and experience.



**Where do we go from here?**

The U.S. has not yet seen a strong movement towards quotas or other legal requirements in terms of gender diversity on public company boards. The SEC’s 2010 disclosure rules have – depending on who you ask – been beneficial or failed to inspire meaningful change (i.e., get beyond mere tokenism). While many believe that the pace of progress has been too slow, there has been modest improvement in gender diversity on U.S. boards over time. In the future – as public company nominating committees and director search firms identify and recruit qualified women candidates to serve on boards – we are likely to see an increasing number of companies embracing board diversity and adding more female directors. This trend should bring a number of benefits for U.S. corporations and their shareholders.

This newsletter is one of a series of publications by Murtha Cullina LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.

**MURTHA CULLINA ATTORNEYS GETTING INVOLVED**

On April 25, **Burt Cohen, Jennifer Morgan DelMonico, Cherie Gabrielle Phoenix, Elizabeth J. Stewart** and **Edward B. Whittemore** attended the George W. Crawford Black Bar Association Annual Dinner. The firm was a diamond sponsor of this event.

On May 9, **Burt Cohen** and **Cherie Gabrielle Phoenix** attended the Lawyers Collaborative for Diversity (LCD) Edwin Archer Randolph Diversity Awards presentation. The firm was a gold sponsor of this event.

On June 12, **Burt Cohen, Cherie Gabrielle Phoenix, Jackie Rowe** and **Ka Fei Wong** attended the Third Annual Lawyers Collaborative for Diversity (LCD) - Building Careers: Taking your Practice to the Next Level. The firm was the event sponsor.

On June 19, **Jamie Radke** attended the Boston Lawyers Group (BLG) Annual Meeting.

**BOSTON**

99 High Street  
Boston, MA 02110  
Tel: 617.457.4000  
Fax: 617.482.3868

**HARTFORD**

CityPlace I  
185 Asylum Street  
Hartford, CT 06103  
Tel: 860.240.6000  
Fax: 860.240.6150

**MADISON**

71 Wall Street  
Madison, CT 06443  
Tel: 203.245.9991  
Fax: 203.245.9997

**NEW HAVEN**

Whitney Grove Square  
Two Whitney Avenue  
New Haven, CT 06510  
Tel: 203.772.7700  
Fax: 203.772.7723

**STAMFORD**

177 Broad Street  
Stamford, CT 06901  
Tel: 203.653.5400  
Fax: 203.653.5444

**WOBURN**

600 Unicorn Park Drive  
Woburn, MA 01801  
Tel: 781.933.5505  
Fax: 781.933.1530

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**MEMBERS OF THE DIVERSITY COMMITTEE**

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