EDITION 9

LEVICK IVIONITATION OF A CONTRACT OF A CONTR

Activist Investors: The Ten Most Momentous Recent Events

Contents



The 'Beast' That's Driving Product Recalls

18

LITIGATION Data Breaches Transforming the GC's Role in the Company

Activist Investors: The Ten Most Momentous Recent Events

Richard Levick Originally Published on forbes.com





ooks like we ain't seen nothin' yet!

For all the headline-grabbing events of the last few years, the numbers now show that we may be entering an even more decisive era of activist investing. We say "decisive" because a new report provides compelling details on how activists no longer just roil C-Suites and boards – they're also pushing takeover prices higher than ever.

According to the report from Simpson Thacher, in 2013 hedge funds pushed for higher prices in 14 takeover attempts and were successful in 10. In 2012, there were only four campaigns to increase the price and only one was successful. That's an increase in the success rate from 25% to 70% in the mere space of one year.

M&A transactions have become a high priority for activist funds that, with \$80+ billion in assets under management, are bigger and bolder than ever before. "Over two-thirds of activist attacks on announced deals last year were successful in raising the deal price or terminating the transaction," says Simpson Thacher partner Mario Ponce. "It remains to be seen whether this will have a chilling effect on M&A transactions."



The cumulative impact on how management responds likewise seems to be something of a question mark. "We are seeing some unnatural behavior among companies responding to activist positions," says Leigh Ann Schultz, managing director of Riveron Consulting. "Boards are preempting what activists could do by taking the same action themselves. M&A activity is picking up among those who are perceived as having too much cash on the balance sheet."

Given this possibility that some sort of next watershed is upon us, the moment seems propitious to look back at the ten most memorable activist-related happenings of the past year, successful or not. Our list is based, not just on notoriety, but on the extent to which these events underscore the activists' increased power to compel change and alter the destiny of mighty corporations.

DELL: Carl Icahn's bid to derail Michael Dell's bid to take the company private was called one of the nastiest tech buyouts ever. Icahn used tweets, media interviews, and open letters to shareholders. Dell eventually went private, albeit at a higher price after a very costly battle.

APPLE: When Icahn tweeted that he had taken a position in Apple, the stock naturally went up. Seeking to pressure Apple to return cash to shareholders, he claimed the shares were undervalued and the company should repurchase shares quickly. Apple announced that it had repurchased \$14 billion of its own shares in the aftermath of disappointing performance results. Then on February

10th, Icahn ended his six-month effort, claiming victory because of those repurchases.

FANNIE MAE AND FREDDIE MAC: Pershing Square CEO Bill Ackman purchased nearly 10% of the common shares in Fannie and Freddie not owned by the government. He did not support Fairholme Capital's plan to spin off the mortgage insurance business. The Fairholme and Pershing Square investments nonetheless highlight how, in the space of two years, Freddie and Fannie went from taxpayer sinkholes to moneymakers that investment managers are fighting to privatize.

MICROSOFT: Change knocked at the software giant's door with the announcement that ValueAct Capital Management had gained a seat on the board with its small 0.8% stake. CEO Steve Balmer soon announced he'd be quitting within a year, which speaks for itself as a reflection on the growing power of activist investors.

SONY: Even George Clooney got involved in Daniel Loeb's effort to get Sony to spin off its entertainment assets. Sony rejected the investor's stock sale proposal.

PROCTOR & GAMBLE: Bill Ackman used his investment i[/entity]n P&G to force the company to cut costs and replace top management. In May 2013, CEO Bob McDonald abruptly retired as Ackman pocketed an estimated \$485 million on his investment. a major setback for Ackman, his two-year campaign to transform J.C. Penney came to an end when he resigned from the board. His departure followed on the failure of his hand-picked CEO, Ron Johnson, to transform the company. Johnson was fired by the board.

HERBALIFE: A war of titans pitted Ackman against Carl Icahn, joined by other activists including Dan Loeb and George Soros. With Ackman claiming Herbalife is a pyramid scheme, the stock fluctuated wildly as investors sought short-term gains.

ORACLE: Pension plan advisory company CtW Investment Group led the campaign against Oracle's say-on-pay measure after shareholders once again voted down CEO Larry Ellison's pay package. (He was already the highest paid CEO in the world.) CtW issued a statement that Oracle directors have failed investors by refusing to address pay concerns.

TRANSOCEAN LTD: Yielding to demands from Icahn, Transocean boosted its dividend and cut costs. The company had lost as much as half its value after the Deepwater Horizon rig explosion. Icahn announced that the company was positioned to realize its potential.

Note that, of the 10 big events on our list, seven directly involve Icahn and/or Ackman. And you thought activism meant populism! COVER STORY



Speaking Intelligently On Business Intelligence

Eric Lebson and Ian Christopher McCaleb *Published on The Holmes Report*

major software company is getting set to expand its marketing strategy to an African nation while also setting up a manufacturing facility there. The company understands that in some respects, it is blind in this new area, has a great need for varied forms of information. To support the sales strategy, they need to know about market saturation, sales channels, price points and trends in consumer interest and usage. That is business intelligence.

The company also has many essential questions to ask about prospective partners and vendors – such as, are they corrupt or do they have links to government officials? The firm will also have to size up its local competition. That is also business intelligence. But how can a client make informed decisions about what they need if the business intelligence sector itself is less than clear about what it offers? And how can a public relations firm play the role of strategic advisor in this circumstance?

The Holmes Report's assessments of how the public relations industry must adjust

and align itself to address the challenges and opportunities imposed by the rapidly evolving 21st century communications realm lean quite decidedly toward processes, capabilities and services designed to enhance the PR-industry-specific concept of "insight." Insight, of course, can mean many things to a practitioner of the arts of opinion and influence, but at its most basic, "insight," is the combination of soughtafter essential knowledge and educated analysis, all specifically crafted in service of a client's greatest aims.

In the much wider world, set apart from the demands and nuances of the PR field, the discipline of acquiring sought-after information, and of analyzing that information to transform it into 'knowledge,' is recognized as "intelligence."

The two concepts are not wholly equal, however, most especially in regard to the demands of the PR field.

Insight, for instance, may be applied to enhance an agency's creative processes. Intelligence, on the other hand, when applied to the demands of our industry, must be regarded as much more of a decisive



commodity. So decisive, in fact, that its quality must be so thorough and unimpeachable that it aids clients in making their most difficult or monumental decisions.

An agency desirous of lending its clients the "decision advantage" of proprietary intelligence has a few choices of its own to make. The model 21st Century PR agency may strive to add its own internal capabilities or to outsource such work to established organizations, but there are certain understandings to be attained before doing so. One of these is a grasp on the concept of the term "business intelligence" as understood by the proponents of the "big data" concept -- versus the definition preferred by former practitioners in government intelligence programs, investigations firms and investigative journalism.

In essence, the differences between the two understandings of "business intelligence" could not be more stark. To make it a bit less academic, it helps to view the distinctions in the context of governmenton-government intelligence gathering.

With news of government data collection so prevalent in international headlines these last few years, most specifically starting with the Wikileaks saga of 2010-2011, and the more recent National Security Agency (NSA) revelations, one might understandably have come to the conclusion that most of what the US Government does is collect telephone 'meta-data' and listen to the private calls of foreign leaders.

But one can learn only so much from

telephone meta-data or even from a photo taken from a spy satellite.

The real value of intelligence, both inside and outside of government, comes from the ultimate understanding of human intention, and from a nuanced perception of the context in which decisions are made. For governments, that critical element tends to come from human intelligence – or "HUMINT," in insider parlance. The same holds true for the investigative journalist, though you'd be hard-pressed to find one who would readily admit his source work and techniques are so closely aligned with the practices of the intelligence community.

But in both instances, the news story or intelligence gained are the direct endproducts of human interactions -- the intelligence officer handling an asset overseas, or the reporter meeting a nervous whistleblower in a dark parking garage.

Business, without question, has the same need for specified intelligence for its own purposes, but the vast majority of companies do not have access to expensive satellites or multi-lateral intelligence sharing relationships.

Instead, depending on their requirements and goals, companies rely on vendors of the varied degrees of business intelligence described above.

One distinct camp, the "big data" camp, focuses on the analysis of large quantities of data to develop analytical products. Huge reams of data are swept up by "bots" and crunched by any variety of software applications to provide products such as benchmarking, targeted reporting, data and text mining, performance measures, prescriptive or predictive analysis, statistical modeling, operational assessments and the like. Think, for instance, of a major beverage company researching the advertising purchasing patterns of a competitor to try to divine where that rival is focusing its growth strategy.

Public opinion polling too factors into this camp's work as a means of making sense of the attitudes of large or specifically identified demographics.

When polls and data analytics are crossreferenced, a company or client may gain a greater context for understanding and operating within their market. When the term 'intelligence' is applied to this approach, it is often in terms of 'market intelligence' and the 'intelligence' in question is akin to what the NSA does when they look for patterns and linkages amongst huge volumes of communications meta-data.

The other camp in the BI space tends to be less academic and more tactical in its focus. These are the "HUMINT" practitioners – those who apply techniques of investigative journalism and gumshoe, onthe-ground intelligence gathering, married up to the appropriate use of electronically gathered data. These practitioners are searching for the kind of unique and otherwise unattainable insight that only human-on-human interaction can offer.

For example, a company that is entering a new, overseas market might discover

quite quickly that it is in need of due diligence on prospective partners, an understanding of which government officials might be corrupt, or insight into which competitors have an inside track based on their professional, familial, or social relationships with political leaders. For this kind of knowledge, a company must turn to a vendor that has experience in the collection of this kind of rarified information first, and just as importantly, the analytical skills to make sense of disparate pieces of newly attained information that will have to be woven into a single, reliably accurate mosaic.

A client who is seeking this type of insight will not be impressed or served by any volume of electronic information that has been crunched on their behalf. They are instead looking for that one nugget of information to help them decide whether they have chosen the right partner, if they are facing down some kind of liability under strictly enforced US anti-bribery laws, or if their organization or product has come under attack by a third-party that is working very hard to shield its identity.

Business Intelligence practitioners of this variety not only have networks that enable them trusted access to information in a variety of geographic regions and across various industries, but they also are knowledgeable, experienced and specialized enough to put an individual client challenge into proper context.

Imagine, just by way of example, that you were the first person to receive an email from a purported Nigerian bureaucrat offering to share \$5M if only you can front him some cash to help expedite the bank transfer. These "419 scams" are all-toofamiliar to those who routinely look at international fraud issues, but the scammers are often savvy enough to target individuals who have no experience with such matters, and therefore may be easy marks. A properly positioned and experienced business intelligence practitioner has seen all manner of corporate, government, and individual malfeasance, and will be able to not only unmask the scam, but also share options that have worked for others and dissuade a client from making mistakes.

A business intelligence project, whether proactive or in response to an existing conflict, starts by gaining an understanding of a client's problem. What is the issue they need to decide most imminently, and what is the context for this decision?

By understanding that, a business intelligence firm is able to peel back the layers of the proverbial onion, starting with Internet and media searches that do not incur cost and can help to establish a baseline of what is known before a collection plan is devised. Efforts can then become more and more focused, often incurring costs to access proprietary databases, paid information services, and other resources that are not broadly known or accessible to people who do not do such work on a regular basis.

Depending on the circumstances, projects can then get to a point where exploitation of a human source (or several) is required. This is where the real art of intelligence comes to the fore, and where the difference between the aforementioned 'big



data' approach and the HUMINT approach becomes stark.

Each approach has its intrinsic value.

An established company with a broad market that is looking for trend analysis, public opinion sentiments, or other forms of long-lead data crunching is well-served by big data. A company that is involved in a developing competitive situation with short deadlines and tactical choices is much more in need of the HUMINTfocused form of business intelligence. Understanding the difference in the midst of marketing spin, flashy resumes and talk about concepts and paradigms is how a client is best served in this space.

LinkedIn's Exclusive Influencer Program is Opening Up to All Members

Peter LaMotte Originally Published on LevickDaily

hat do you have in common with Bill Gates, Richard Branson and Arianna Huffington? Now with LinkedIn's plan to expand its LinkedIn influencer program to all of its users, you too can become a LinkedIn Influencer. The Influencer program is an invite-only blogging platform that allows top businessmen and women to share their expertise, experiences and advice to LinkedIn members. Starting on February 19th, an additional 250,000 members became part of the club. LinkedIn will continue to roll out the program until all users are sharing their insights on the network. Improved access to the program benefits both LinkedIn and the average user, but becoming a thought leader on the site will not be easy.

LinkedIn Influencers are a select group of leaders who the company has selected to provide insight into their business strategies and personal lives. Founders of non-profits, renowned doctors and CEOs of Fortune 500 companies are a part of the program, which hosts blogs that have, on average, 31,000 views, 250 likes and 80 comments. For a user that does not have a social media presence quite like LinkedIn Influencer and President of the United States Barack Obama, the platform provides an opportunity to share content and influence users on a professional network. If users share the posts you write, the opportunity to reach more users increases. This year, with the increased focus on content marketing and providing consumers with valuable information via numerous platforms, participating in the program could mean greater visibility for you and your business.

LinkedIn Director of Product Management Ryan Roslansky called the Influencer program's results "a remarkably high level of engagement for digital content," and he expects that engagement to increase with the expansion of it. While there are definitely benefits to this program, there is one major problem.

Opening up the platform to all LinkedIn users may also prove to be a negative decision by the company, since part of the draw of the Influencers program was its exclusivity. There were about 500 users that comprised the expert Influencers group before the roll out. Some of the most engaging pieces received hundreds of thousands of views and hundreds of likes. Slowly, the site's 277 million members will be able to share their expertise and also have a share of those likes and views,



dispersing the concentration of high engagement the previous Influencers had among thousands of Influencer articles about the same issues.

To make the most out of the opportunity, follow the ways of the original Influencers.

Make it Personal: LinkedIn chose these 500 Influencers, not only to share their business savvy, but because of their professional brands. The public looks to those who seem to have a great work-life balance, as well as a balanced financial portfolio. Some of the most accomplished and admired businessmen and women give advice on topics including how to start a business from the ground up and even how to find a fulfilling career. In fact, articles about the Influencers' journeys to success are some of the posts users most engage with. This is definitely the case for top Influencer Richard Branson.

Keep "Shameless Plugs" to a Minimum: There are 263 CEOs, chairmen or founders in the original Influencer program who undoubtedly represent many of the most successful organizations in the world. They could discuss the work of their organizations, but instead choose to share valuable experiences that help their subscribers shape their personal and professional paths. Those posts reach more users. Remember that your subscribers elected to follow the individual, not the company.

Be Original: It is easy to recycle and repackage old ideas to generate content, but the most successful Influencers are truly original. Posts including personal anecdotes and provocative titles receive the most views. Influencer Nancy Lublin, CEO of youth-focused non-profit DoSomething. org, authored a post titled "Why I'll Never Attend Another Women's Conference," which received nearly 20,000 more views than the second most viewed article on her Influencer blog. The content in the article is not profound, but challenges the purpose of "[talking] about 'women's issues' in a room full of women." Not being afraid to be original pays off.

The Influencer program has driven many people to the LinkedIn site, and giving additional content sharing capabilities to average users will continue to increase traffic. LinkedIn has made becoming an influencer more attainable, but may have indirectly made the influencer title less desirable and special for users. Users should still share their insights with other LinkedIn members, but expecting to reach Richard Branson status on the network would be a stretch.

The 'Beast' That's Driving Product Recalls

Richard Levick Originally Published on Forbes.com

ere's some important news for manufacturers... You don't need to worry quite so much about the overall number of product recalls from year to year. However, a study released in February by Stericycle ExpertRECALL™ suggests something bigger and more formidable to worry about. It's called "recall sprawl," a designation for the increased severity and complexity of the recalls that do occur.

First, the "sprawl" is geographic as recalls are now more commonly multinational in scope. That's hardly surprising in light of the increasingly global business focus of manufacturers in just about every market tier.



Second, there are now significantly more affected product units or pounds per recall than in the recent past, in large part because of the standardization of products sold globally. If the toys are dangerous in Duluth, they're the exact same toys and therefore just as dangerous in Dusseldorf. Affected units now equal the sum of Duluth plus Dusseldorf, and the recall is no longer the isolated episode it might once have been.

"While recall frequency fluctuates every quarter depending on extraneous factors, it's the everwidening recall sprawl that is the real trend, and that now defines the management challenge for business," says Kevin Pollack, Stericycle's Vice President of Recalls. Since 2011, this recall management firm has published a quarterly Index aggregating and tracking cumulative recall data from the U.S. Consumer Product Safety Commission (CPSC), the FDA, and the USDA.

A few quick examples from their fourth quarter Index tell the tale. In terms of global liability, pharmaceutical recalls, for one, increased last year by 14% just from Q3 to Q4. In turns

of quantity, Q4 saw the secondlowest number (69) of CPSCinitiated recalls tracked over a seven-quarter period. Yet the number of recalled units surged by 292%. Similarly, there were only 19 USDA food recalls in Q4, but the amount in pounds (860,000) nearly doubled over earlier 2013 data.

The management challenge is two-

fold. First, greater geographic spread requires manufacturers to navigate different regulatory regimes in different countries. Second, the surge in quantity of recalled products imposes a burden on manufacturers to proportionately expand their "surge capacity;" that is, they must have significantly more resources to handle incoming call volume, provide requisite notifications, and repair or destroy the offending products.

While products sold in multiple countries may have always presented the potential for more or less simultaneous multinational recalls, these days another beast on the scene is driving the global recall sprawl. As Pollack points out, the social media have permanently altered the regulatory climate. A CPSC recall, say, is immediately monitored by that regulator's UK counterpart. Since the product at issue is standardized, the UK regulators get an unprecedented head start in their own investigations simply by being alerted to the CPSC's action.

The time and effort, and research, needed to start the recall ball rolling can thus be dramatically curtailed with a single Tweet. The regulators simply have quicker access to exponentially more information about which products are

> problematic, and why. The cumulative impact is that manufacturers can expect every recall of their products to spread to every country where they do business, all in one digital heartbeat.

The bad news is that manufacturers, even larger ones, are just not set up to manage the logistics of recall sprawl – certainly not the multijurisdictional compliance requirements that

variously govern recalls in multiple countries. Meanwhile, the massive ramp-ups, necessary to achieve required levels of surge capacity,

"While recall frequency fluctuates every quarter depending on extraneous factors, it's the ever-widening recall sprawl that is the real trend, and that now defines the management challenge for business" constitute potentially devastating business interruptions.

Yet another consequence of recall sprawl suggests what's at stake. More than would likely be the case with simple increases in the overall number of recalls, higher affected unit numbers per recall can mean greater widespread impact because greater percentages of the consumer public are often affected. It is not surprising that the ExpertRecall Index shows, for example, that 81% of Q4 pharmaceutical recalls affected consumers throughout the U.S., the largest such metric obtained during the seven-quarter period.

So what does preparedness mean when just about the whole world is watching and the odds are inevitably so daunting? If nothing else, it means there's exigent need for practicable outsourcing strategies as well as actual recall teams in place ahead of need. The point is almost too obvious to argue.

Yet the good news is that the whole world is indeed watching. Most manufacturers already understand that a responsibly handled recall sends a powerful message to the marketplace; that brands can emerge stronger after such a crisis than before.

Presumably, the recall sprawl so powerfully documented by the recent numbers only means that – if the risk is now broader, the crises more multifaceted, the stakeholders more populous – the rewards for those that rise to the challenge are commensurately greater.



Data breaches transforming the GC's role in the company

Front-page breaches have transformed the corporate landscape and, with it, the role of general counsel.

Richard Levick Originally Published on Inside Counsel

ront-page breaches have transformed the corporate landscape and, with it, the role of general counsel. First, the table stakes — the day-to-day lawyering that defines the work of the office of the general counsel (OGC) under any circumstances — are higher. Not merely job description details, these changes are significant indices of the sheer magnitude of the crisis at hand.

For example: The regulatory burden is

broader and deeper, a complex web potentially entangling HIPAA, Gramm-Leach-Bliley and state regulations. It's a new labyrinth demanding higher-level in-house practice.

The OGC must be a fixture of enterprisewide training programs. It is now the GC's responsibility to ensure that employees at every level understand applicable policies.

The OGC must exercise greater due diligence in evaluating potential vendors and



maintain persistent oversight of existing vendor security practices. Some states compel companies to take reasonable steps to ensure third-party compliance.

OGC TRANSFORMED

If nothing else, the disasters at Target and Neiman Marcus offer portentous reminders to boards and C-suites that the OGC must play a ground-floor role in forging a data breach response plan. This plan serves as "a living, functional document" in lieu of oft-used boilerplate typically inapplicable to the company's structure and operations, according to Gerald Ferguson, a partner at BakerHostetler and co-chair of its Privacy and Data Protection Practice.

The plan should be tested in tabletop exercises as team members prepare for worst-case scenarios. The element of surprise must be included in the rehearsals; if the document is to be truly "living and functional," responders must be able to turn on a dime as unanticipated twists and turns occur. Separate approaches should be crafted for consumers, reporters, regulators, etc.

"At a minimum, this plan must [also] identify an incident response team, define the roles of the team, and establish procedures for identifying, escalating, and managing data security incidents," adds Ferguson. Critically, the OGC itself must be an integral part of this incident response team. "Decisions made early on involving preserving evidence, directing forensics and giving mandatory notices can significantly influence the ultimate cost and impact of an event." GCs thus become decisive strategic architects in their interactions with marketing, compliance, social media, IT, and HR—and the company's staunchest advocate for data security prophylaxis.

EAR OF MANAGEMENT

As Ferguson says, "Senior management and the board should require that the company implement an approach to information security that is 'adaptive,' constantly identifying new threats and evolving to respond to these threats."

This "adaptive" approach (a main feature of the National Institute of Standards and Technology cybersecurity framework) underscores the GC's most impactful leadership function, that of prophet. One cannot prepare for unanticipated contingencies, and help train others to do so, by relying on past example. One must anticipate the unanticipated.

It may be startling revelations about the misuse of hacked data by anyone from credit card thieves to global terrorists. Or, the "what's next" may be all about marketplace positioning after a breach. How might free credit monitoring (Target's strategy) allay marketplace anxieties? How will competitors seek to exploit the breach?

In the last analysis, the data crisis mirrors diverse other crises in terms of its impact on the leadership role of the OGC. But data security ups the ante, exponentially. It's a do-or-die game that won't be won without the GC on the team.

BLOGS worth following



THOUGHT LEADERS

Amber Naslund

brasstackthinking.com

Amber Naslund is a coauthor of The Now Revolution. The book discusses the impact of the social web and how businesses need to "adapt to the new era of instantaneous business."

Brian Halligan

hubspot.com/company/management/brianhalligan

HubSpot CEO and Founder.

Chris Brogan

chrisbrogan.com

Chris Brogan is an American author, journalist, marketing consultant, and frequent speaker about social media marketing.

David Meerman Scott

davidmeermanscott.com

David Meerman Scott is an American online marketing strategist, and author of several books on marketing, most notably The New Rules of Marketing and PR with over 250,000 copies in print in more than 25 languages.

Guy Kawasaki

guykawasaki.com

Guy Kawasaki is a Silicon Valley venture capitalist, bestselling author, and Apple Fellow. He was one of the Apple employees originally responsible for marketing the Macintosh in 1984.

Jay Baer

jaybaer.com

Jay Baer is coauthor of, "The Now Revolution: 7 Shifts to Make Your Business Faster, Smarter and More Social."

Rachel Botsman

rachelbotsman.com

Rachel Botsman is a social innovator who writes, consults and speaks on the power of collaboration and sharing through network technologies.

Seth Godin sethgodin.typepad.com

Seth Godin is an American entrepreneur, author and public speaker. Godin popularized the topic of permission marketing.

INDUSTRY BLOGS

Holmes Report holmesreport.com

A source of news, knowledge, and career information for public relations professionals.

PR Week

prweekus.com

PRWeek is a vital part of the PR and communications industries in the US, providing timely news, reviews, profiles, techniques, and ground-breaking research.

PR Daily News

prdaily.com

PR Daily provides public relations professionals, social media specialists and marketing communicators with a daily news feed.

BUSINESS RELATED

FastCompany fastcompany.com

Fast Company is the world's leading progressive business media

brand, with a unique editorial focus on business, design, and technology.

Forbes

forbes.com

Forbes is a leading source for reliable business news and financial information for the Worlds vvbusiness leaders.

Mashable

mashable.com

Social Media news blog covering cool new websites and social networks.

COMMUNICATING TRUST