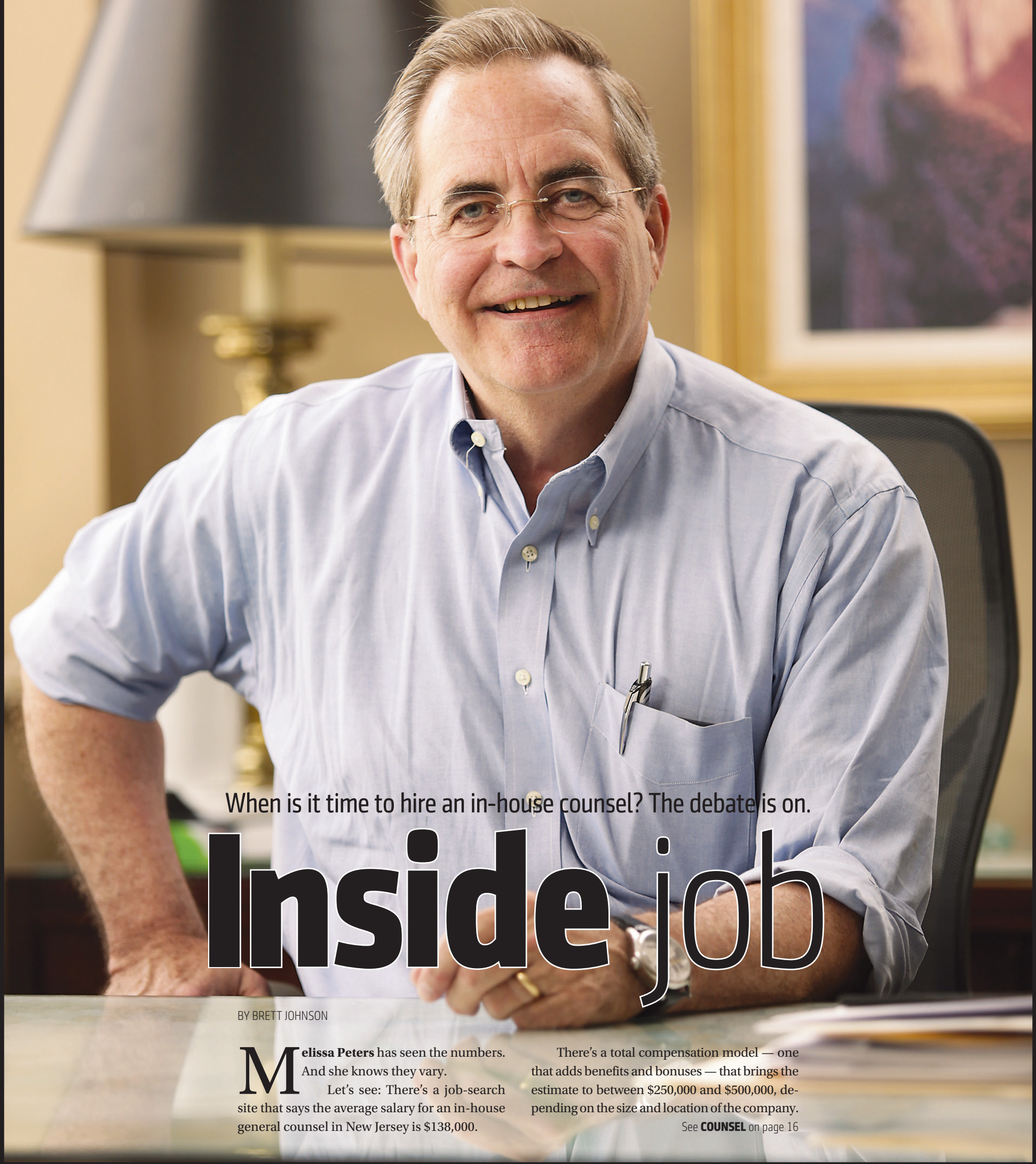


SPOTLIGHT General Counsel

"A lawyer can apply his or her expertise in the beginning, middle and end of every significant business decision that's made."
— William Farran, vice president, general counsel and corporate secretary, Innophos Inc.



When is it time to hire an in-house counsel? The debate is on.

Inside job

BY BRETT JOHNSON

Melissa Peters has seen the numbers. And she knows they vary. Let's see: There's a job-search site that says the average salary for an in-house general counsel in New Jersey is \$138,000.

There's a total compensation model — one that adds benefits and bonuses — that brings the estimate to between \$250,000 and \$500,000, depending on the size and location of the company. See **COUNSEL** on page 16

William Farran is the vice president, general counsel and corporate secretary at Innophos, Inc. —AARON HOUSTON

COUNSEL

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Then there's the reverse payment rule of thumb used by the company she works for — **Princeton Legal Search Group**: If you're spending \$350,000 or more for outside legal services, you may be better off hiring your own legal counsel.

So what's the best figure to go by? Would you believe none of the above?

Peters, the director at Princeton Legal Search, said looking at financial metrics exclusively isn't the best gauge for a company thinking of hiring in-house counsel.

"That's the easy calculus, to look at the numbers," she said. "A big component is assessing when you need that day-to-day, off-the-cuff advice that doesn't require you calling outside counsel and having them charge for your time."

Rather than being determined by something quantifiable, Peters views the hiring of an in-house general counsel as an almost intuitive feeling that "having someone who can do things like sit in meetings with you to calibrate risks" has become a necessity.

Once business decisions with legal implications are made, seeking advice from outside counsel is more of a reactive approach, she explained, whereas having in-house advice at the ready is more proactive.

William Farran, vice president, general counsel and corporate secretary at **Innophos Inc.**, couldn't agree more.

He lists these day-to-day responsibilities for a general counsel: baking legal protection into whatever strategic plan a company pursues, mixing in business acumen to advise management teams and generally acting as something equivalent to "a brother or sister to the CEO."

"Honestly, a lawyer can apply his or her expertise in the beginning, middle and end of every significant business decision that's made," Farran said.

■ ■ ■

This isn't a news flash to anyone who runs a business — anyone who knows how important one conversation with a lawyer can be to a big deal. But for a company without someone who fills that role, when is it worthwhile to make the obligatory investment that it takes?



Tres Arnett III, a partner at McCarter & English, has served as a general counsel twice. —AARON HOUSTON

Tres Arnett, a partner with the Newark-based law firm **McCarter & English**, said it's a function of the kind of work a company expects an in-house counsel to do.

In a business that regularly navigates regulations, for example, internalizing legal help will be rendered crucial early on.

"For the three modern industries in New Jersey right now — telecommunications, pharmaceuticals and financial services — at a certain tipping point, companies in these industries will find it useful to have an in-house general counsel," Arnett said.

Having served as general counsel for two different companies in the financial services sector throughout his career, Arnett knows how often a company can be in need of legal advice — and how beneficial a dedicated legal person on the inside can be.

Here's the good news in all of this: While there are possible indicators that bringing legal counsel in-house is a good idea, there's no set deadline.

In fact, Peters said, the only truly dangerous course for a company is no legal counsel at all.

"It's something you have to be smart

about," she said.

And that goes for hiring an entire legal team, too.

"You can't go from not having any in-house counsel today to hiring 10 lawyers tomorrow," she said. "It's best to bring one on and see how it fits into the company dynamic."

Mark Goldberg, the sole general counsel at **Bluestar Silicones USA Corp.** in East Brunswick, agrees. He says the answer to the expansion question lies in an examination of the company's grander needs for legal protection, not in the more-seemingly obvious measures.

"If (Bluestar) doubled in size, it doesn't mean we need another attorney per se, but let's say we (theoretically) bought a business involved with heavy (Food and Drug Administration) regulations, we would probably look at bringing an FDA-specialized attorney on board," he said.

"Because it varies so much depending on the company's interests, there's no strict formula. I've seen multibillion-dollar companies with only four or five attorneys in-house, and I've seen smaller companies with more than 20 attorneys in-house."

Goldberg's own experience was unique in that he was coming into a company during a time of transition; he entered his first-ever general counsel position when Bluestar became a standalone company in 2007.

Establishing foundations from that blank slate took more than two years, which Goldberg said seems like a normal amount of time for legal functions to be built from the ground up at a company that's either a startup or one that previously relied entirely on outside help.

Another time to add more in-house counsel is when your in-house counsel is able to do what they were brought on to do.

David Berger, vice president of legal affairs for **West-Ward Pharmaceuticals**, said it's just something you know.

"As a general counsel, it's my job to provide the highest level of value in services to our executive committee," he said. "When the low-value work takes away from that, it's usually a good sign that it's time to add some staff."

"For example, instead of being able to focus entirely on strategic transactions, if



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you're having to find time to do routine, daily work — that's usually a sign that it's time to increase the head count."

■ ■ ■

Even with the in-house legal support each of these companies has — West-Ward Pharmaceuticals, as well as Bluestar and Innophos — all of them occasionally employ specialized outside legal counsel.

So then when does it become safe for a company to forego the use of any extra-neous help?

Almost never — so says Peters. General counsels are not capable of being wholly sufficient all-in-one legal experts, nor are they even allowed, depending on licensing, to perform certain tasks, like courtroom litigation.

"Outside counsel is always going to have a job for that reason," Peters said. "Despite that, you'd be hard-pressed to find a company in this area that couldn't benefit greatly from bringing an in-house counsel on board as well."

Whether or not outside help is always there, the marriage of a general counsel's ready legal advice with a company's aspirations is reason enough for Peters to believe there's inherent value in the creation of an in-house position.

"Having someone internal, someone who really becomes aligned with your company, is certain to pay off in the long run," she said.

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Finding the right fit

So you need an in-house counsel, but you don't know where to start. How about within your own industry? So says David Berger, the vice president of legal affairs for West-Ward Pharmaceuticals.

Berger, who has been in the life science legal arena for a majority of his career, says that experience is immeasurable.

While skills such as counseling executives on



David Berger

return on investment and general liabilities tend to be translatable, some industries require more technical prowess and cultivated knowledge than others.

"The pharmaceutical industry is one of the most highly regulated industries in the world," Berger said. "It takes an understanding of the industry's regulatory framework in order to look at business transactions through the proper filter."

He also implores anyone involved in the sometimes-arduous hiring process to stay committed to finding someone who lives the company's core values through the practice of law — a bit of advice he holds most important of all.

Four reasons to hire in-house counsel

Mary Clare Garber, vice president of the Princeton Legal Search Group, explains why it works to go inside:

GENERAL REDUCTION OF COSTS

"Significant cost savings can be realized," when the spending on outside legal help exceeds a certain amount of a company's annual budget.



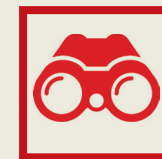
CREATING SYNERGIES WITH THE CORE BUSINESS

"When an attorney is employed directly by a company, daily ongoing consultative resources are available to management and other levels of the organization."



PROACTIVE BUSINESS SOLUTIONS

"Understand their role as trusted advisors and they develop solutions that implement and realize business objectives while minimizing risk to the organization."



BENCH STRENGTH IN THE LEGAL DEPARTMENT

"Once an in-house legal department is established, the organization can engage in effective succession planning for its lawyers in the same way that other departments plan for succession."



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