

# Morgan Lewis

**EXCITING AND UNIQUE CAREER OPPORTUNITY FOR A MID-LEVEL TO SENIOR CORPORATE ASSOCIATE TO JOIN MORGAN LEWIS'S MARKET-LEADING, RAPIDLY GROWING, FAST-PACED, AND NATIONALLY-KNOWN SHAREHOLDER ACTIVISM DEFENSE PRACTICE**

**Keith E. Gottfried**

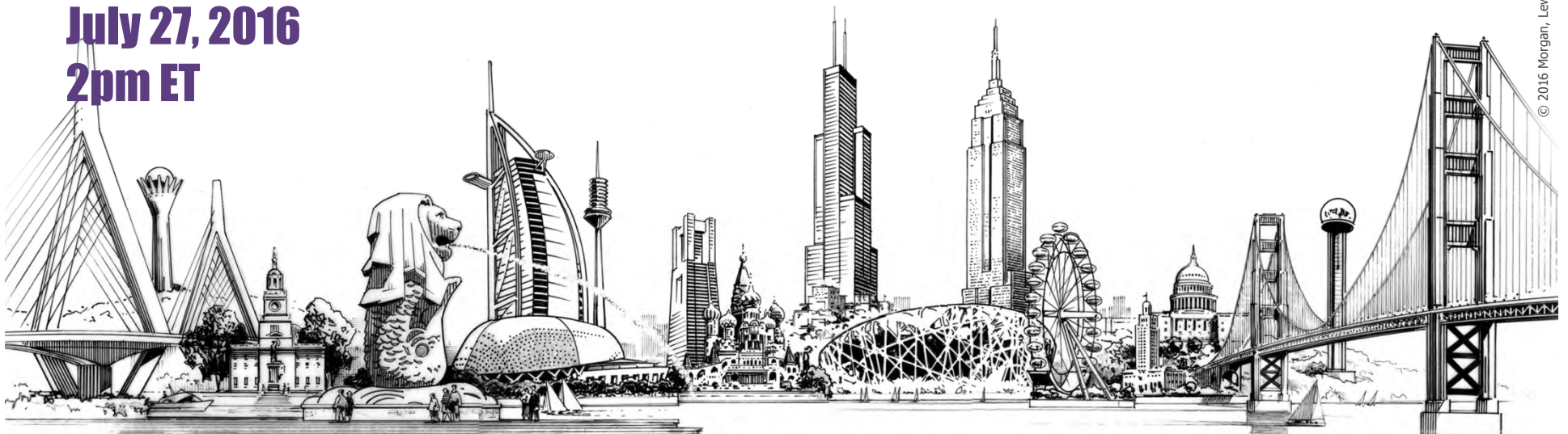
**Partner - Shareholder Activism Defense Practice Leader**

**Sean M. Donahue**

**Senior Associate - Shareholder Activism Defense Practice**

**July 27, 2016**

**2pm ET**



# Speakers



## **Keith E. Gottfried**

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 @KeithGottfried

Keith E. Gottfried is a partner in the Palo Alto, CA and Washington, DC offices of Morgan, Lewis & Bockius LLP where he leads the firm's market-leading and rapidly growing shareholder activism defense practice.

Keith counsels public companies, based in the United States and abroad, in a wide array of industries, including, among others, apparel, automotive, banking, casual dining, consumer goods, energy, life sciences, manufacturing, pharmaceuticals, real estate, retail, shipping, software, technology and waste management, with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, withhold campaigns, shareholder proposals and other activist shareholder campaigns as well as contests for corporate control and contested M&A situations. Keith also advises public companies and their boards of directors on the latest techniques for making a company less vulnerable to activist shareholders, best practices for engaging with shareholders, corporate governance issues and board advisory matters.

Frequently quoted by the national business media on issues relating to shareholder activism, Keith publishes and presents regularly on the strategies companies and boards of directors can apply to prepare for and respond to proxy contests and other activist shareholder campaigns. Keith is listed in Chambers USA: America's Leading Lawyers for Business, which ranks him as a leading corporate / M&A lawyer.

# Speakers



## **Sean M. Donahue**

Washington, D.C.

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 @Sean\_M\_Donahue

Sean M. Donahue is a senior associate in the Washington, DC offices of Morgan, Lewis & Bockius LLP and a member of the firm's market-leading and rapidly growing shareholder activism defense practice.

Sean counsels public companies, based in the United States and abroad, in a wide array of industries, including, among others, apparel, automotive, banking, casual dining, consumer goods, energy, life sciences, manufacturing, pharmaceuticals, real estate, retail, shipping, software, technology and waste management, with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, withhold campaigns, shareholder proposals and other activist shareholder campaigns as well as contests for corporate control and contested M&A situations. Sean also advises public companies and their boards of directors on the latest techniques for making a company less vulnerable to activist shareholders, best practices for engaging with shareholders, corporate governance issues and board advisory matters. Additionally, Sean counsels public companies on corporate governance, securities regulation, capital market transactions, and NYSE and NASDAQ compliance issues.

Prior to joining Morgan Lewis, Sean served for more than three years as an attorney-adviser with the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance.

**Morgan Lewis**

**MORGAN, LEWIS & BOCKIUS LLP**

**RANKED NO. 1 \***

**IN FACTSET SHARKREPELLENT'S**

**2016 YEAR-TO-DATE LEAGUE TABLES FOR**

**SHAREHOLDER ACTIVISM DEFENSE**

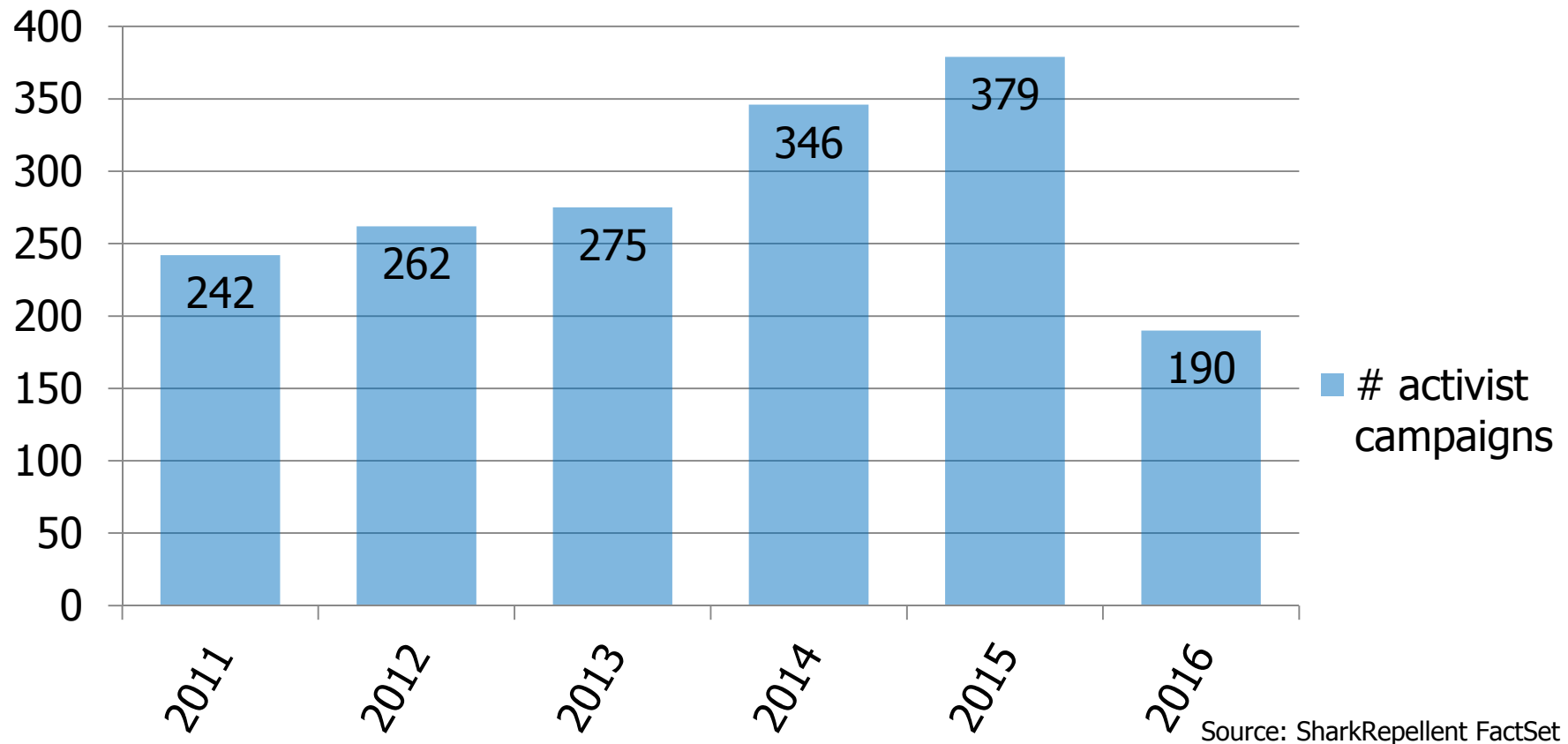
**<http://graphics.wsj.com/activism-scorecard>**

\*as of July 21, 2016 based on number of public companies that Morgan Lewis has advised on shareholder activism defense in connection  
with publicly-disclosed activism situations

# WHAT IS SHAREHOLDER ACTIVISM?

# Shareholder Activism Landscape – Activist Campaigns

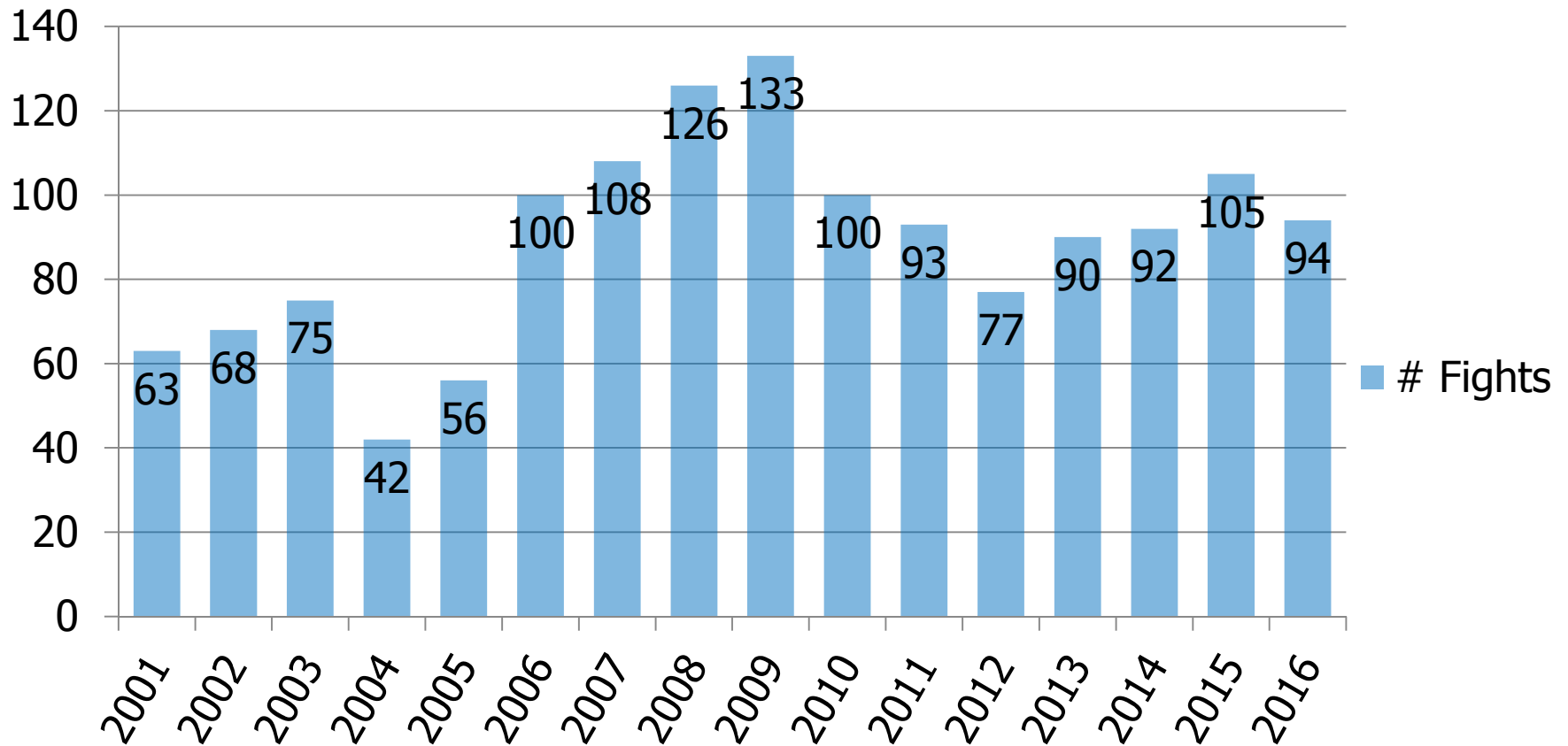
## Activism Campaigns (2011–2016)



\*As of July 21, 2016. At this time in 2015, YTD, there were 200 activist campaigns. At the same time in 2014, 2013, 2012, and 2011, there were 180, 139, 141, and 126 campaigns, respectively.

# Shareholder Activism Landscape – Proxy Fights Trends

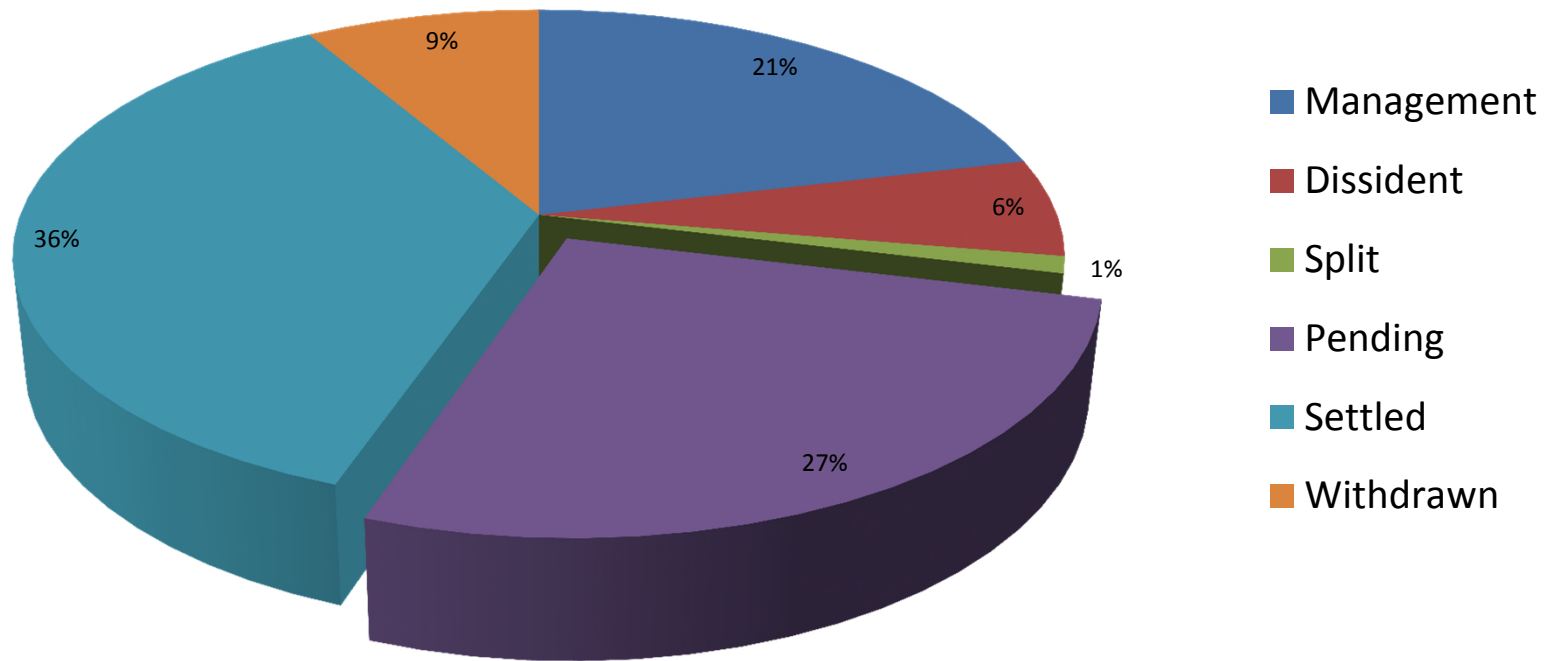
## Proxy Fights Trend Analysis (2001–Present)



Source: SharkRepellent FactSet

# Shareholder Activism Landscape – Proxy Fights Results Analysis

## # Proxy Fights (Out of 94 Proxy Fights YTD in 2016)



Source: SharkRepellent FactSet

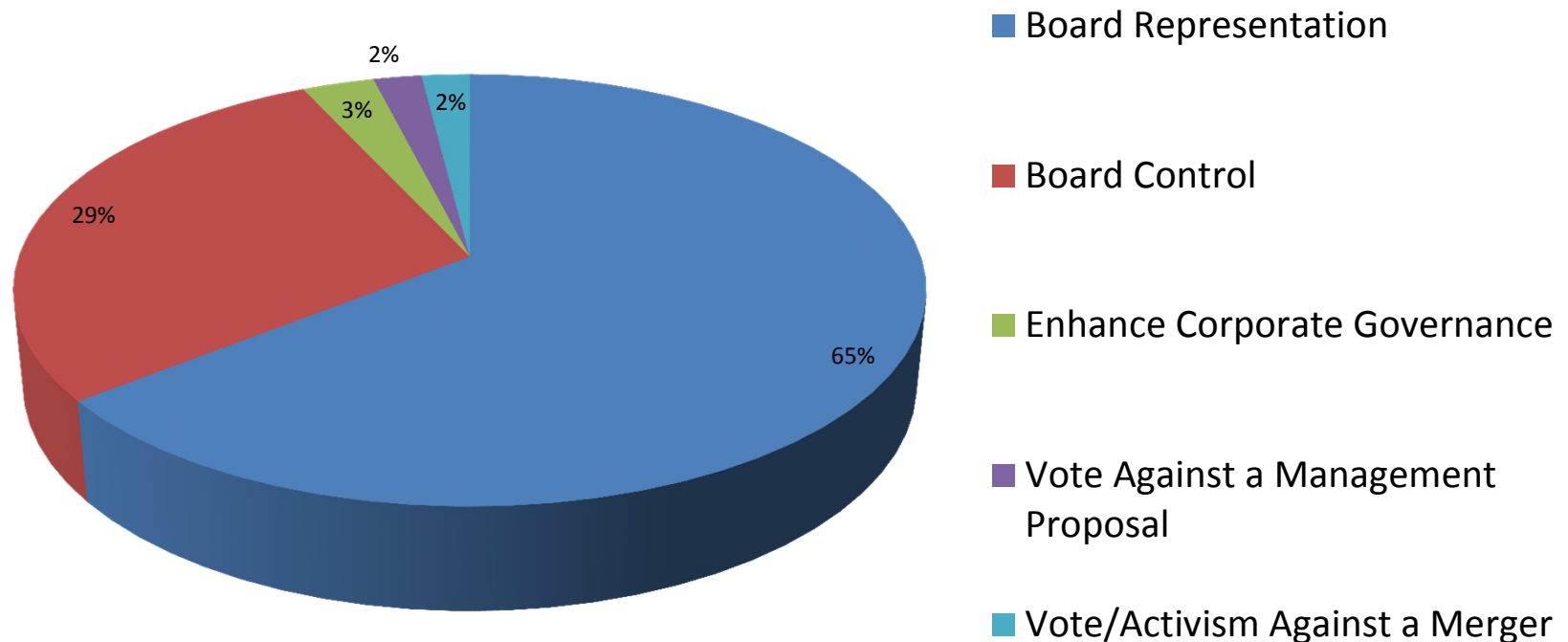


# Majority of Proxy Contests Don't Go the Distance

- Fewer proxy contests “go the distance” all the way to a contested meeting
- The majority of proxy contests don't go the distance; they either get “settled” or are withdrawn (a continuing trend of last half decade)
- Not all proxy contests settle:
  - 27 went to a vote in 2016 (YTD): M20, D6, S1
  - 31 went to a vote in 2015: M16, D14, S1
  - 32 went to a vote in 2014: M12, D18, S2
  - 30 went to a vote in 2013: M12, D17, S1
  - 28 went to a vote in 2012: M15, D9, S4
- Significantly fewer proxy contests have “gone the distance” in last five years (compare with 37 in 2010 and 51 in 2009)
- Proxy contests that “go the distance” are often at small-caps

# Primary Activist Campaign Goals

## Primary Campaign Type, 2015 Proxy Fights

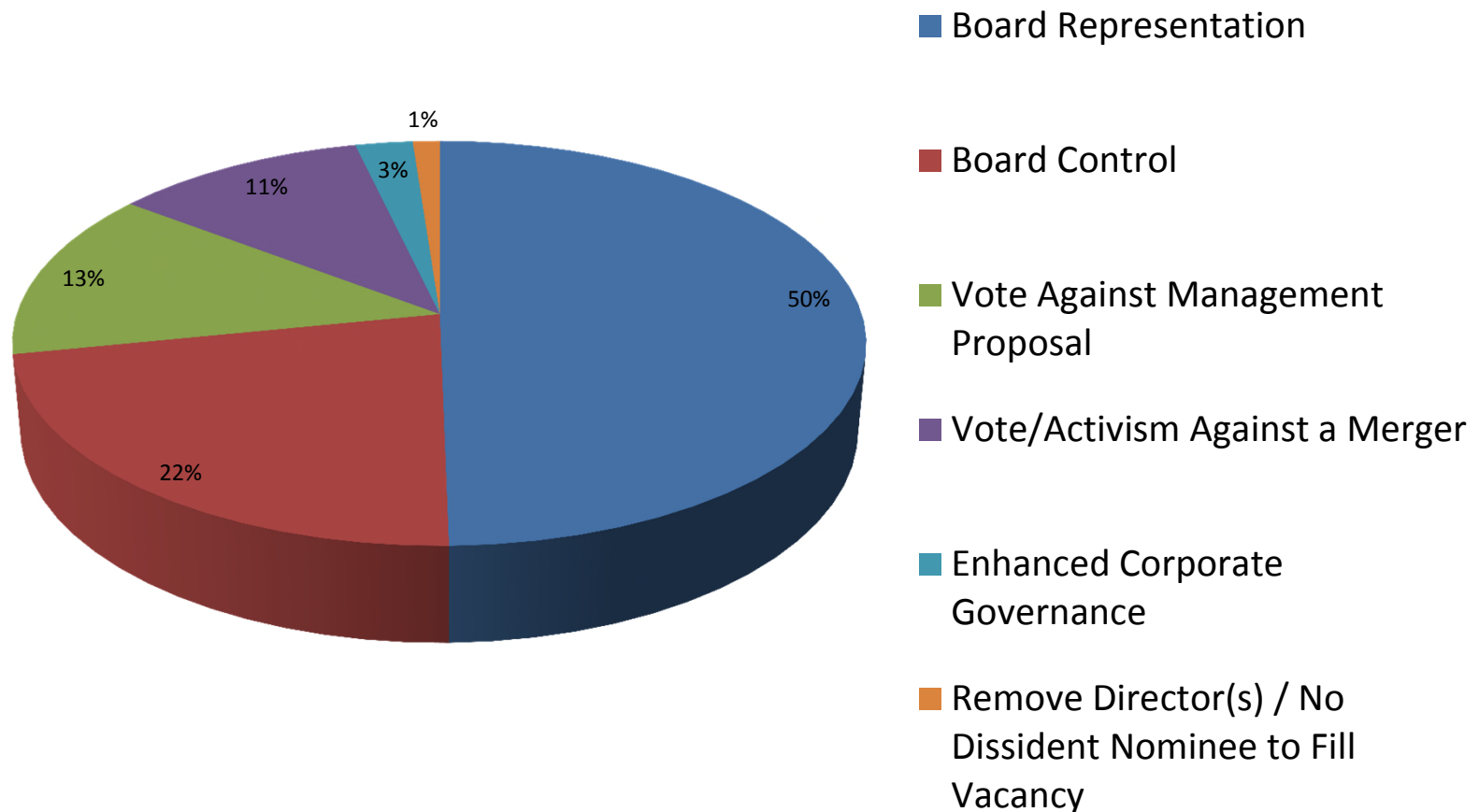


Source: Factset SharkRepellent

**Morgan Lewis**

# Primary Activist Campaign Goals

## Primary Campaign Type, 2011–2015 Proxy Fights



Source: FactSet SharkRepellent

# Goals of the Activist Investor

- Opportunity to generate an outsized return
- Board composition change is most common campaign type but it is only a means to an end
- Influence board to “unlock” shareholder value
  - Better operational execution (e.g., change in business strategy, change in management)
  - Better deployment of capital (e.g., dividend distributions (regular or special), stock repurchases, changes in M&A strategy)
  - Sales of assets (e.g., spin-offs, sales of non-core assets, separation of real estate and operating assets, sale-leasebacks)
  - Sale of the company

# Goals of the Activist Investor

- NOT corporate governance reform - generally not the goal of most “economic” activists
  - Governance issues get lots of “air time” and provide the activist with useful messaging and campaign talking points but not the ultimate goal
  - Critiquing the company’s governance may be used to justify change and win support of proxy advisory firms and institutional shareholders
- NOT control of the company - Most activists don’t want control of the company but want to be in a position to exert significant influence over the company and cause the board/management to pursue their strategy for unlocking shareholder value

# Who Are the Activists?

- Barington Companies Investors LLC
- Basswood Capital Management LLC
- Becker Drapkin Management LP
- Biglari Capital Corp.
- Broadwood Partners LP
- Bulldog Investors, LLC
- Cannell Capital, LLC
- Carl C. Icahn
- Central Square Management, LLC
- Clinton Group, Inc.
- Clover Partners, LP
- Coppersmith Capital Management LP
- Corvex Management LP
- Cove Street Capital, LLC
- Crescendo Partners
- Discovery Group I LLC
- Elliott Associates, LP
- Engaged Capital, LLC
- Engine Capital Management LLC
- Foundation Asset Management LP
- FrontFour Capital Group LLC
- GAMCO Asset Management
- Groveland Capital LLC
- Greenlight Capital, Inc.
- H Partners Management
- Hudson Executive Capital LP
- Ides Capital Management LP
- Iroquois Capital Management
- JANA Partners LLC
- JCP Investment Partnership, LP
- Lakewood Capital Management, LP
- Land & Buildings Investment Management LLC
- Lawndale Capital Management
- Legion Partners Asset Management, LLC
- Lone Star Value Management, LLC
- Luxor Capital Group LP
- Macellum Capital Management, LLC
- Maguire Asset Management, LLC
- Marcato Capital Management LLC
- Mill Road Capital Management LLC
- Mustang Capital Partners LLC
- Neuberger Berman LLC
- Oliver Press Investors, LLC
- Orange Capital LLC
- Osmium Partners LLC
- Pershing Square Capital Management LP
- PL Capital, LLC
- Privet Fund Management LLC
- Raging Capital Management, LLC
- Red Alder LLC
- Red Mountain Capital Partners LLC
- Red Oak Capital Partners LLC
- Sagard Capital Partners Management Corp.
- Sandell Asset Management Corp.
- Seidman and Associates, LLC
- SilverArrow Capital Advisors LLP
- SpringOwl Asset Management LLC
- Starboard Value LP
- Stilwell Value LLC
- Third Point LLC
- Trian Fund Management, LP
- ValueAct Capital Management
- Viex Capital Advisors, LLC
- Voce Capital Management LLC
- Western Investment LLC
- Wolverine Asset Management LLC
- Wynnefield Capital Management, LLC

# Types of Activist Campaigns

- Annual meeting proxy contest for board representation
  - Minority slates
  - Control slates
- Special meeting proxy contest for board representation
  - May not be permitted by governing documents or may require shareholder(s) to meet an ownership threshold
  - Requires two solicitations – one to call the meeting and one for the proposals to be voted on at the meeting
- Consent solicitations for board representation
  - May not be permitted by governing documents
- Withhold / vote-no campaigns
- Rule 14a-8 shareholder proposals

# How the Activist Selects Its Targets

- Opportunity to generate an outsized return
- Company is undervalued by the markets relative to its intrinsic value
  - Perception that there is a “lever” that the activist can access, whether through constructive engagement with the company’s management / board or through a contested solicitation, which will unlock shareholder value
- Opportunities to “unlock” shareholder value through better deployment of capital, dividend distributions, stock buybacks, asset sales, spin-offs, and/or a sale of the company
- Issues with the current board’s composition, governance, leadership, and/or compensation
- Perception that other shareholders will support the activist



# Tools of the Activist Investor

- Engagement with Board / management
- White papers
- Schedule 13D and amendments thereto
- Nomination of directors
- Bylaw amendment proposals
- Other shareholder proposals
- Demands for corporate records
- Press releases
- Media campaigns
- Letters to board
- Letters to shareholders (“fight letters”)
- Shareholder outreach

# The Company's Activist Defense Team

- Company's senior management (e.g., Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel) and director of investor relations
- Board representatives (typically independent directors)
- Outside corporate counsel
- Special proxy contest counsel experienced in responding to activists and defending against proxy contests
- Proxy solicitor
- Communications/public relations firm experienced in proxy contests and other activist campaigns
- Investment bank

# What Will Continue to Drive Shareholder Activism?

- Substantial inflows of capital to activists
  - Activist hedge fund assets under management are currently estimated to be in excess of \$130 billion, compared with under \$50 billion in 2010 and only \$23 billion in 2002, according to analytics service Hedge Fund Research
  - Some industry observers estimate that if you include partially focused activist funds, the aggregate amount allocated to funds that are primarily activist focused or partially activist focused is more than \$300 billion
- Change in institutional investor sentiment
  - Growing acceptance by institutional investors of activism as an investment strategy
  - Companies are less able to depend on support from institutional investors
  - Increased willingness of institutional investors to join forces with activists
  - Institutional investors more willing to openly side with activists

# What Will Continue to Drive Shareholder Activism?

- M&A environment that encourages activists to push companies into “play”
- Increased willingness by companies and boards to engage with activists
- Continued willingness of companies to settle with activists and avoid proxy contests
- Pessimism among boards that they can prevail against activists in proxy contests
- Fear among boards as to what a proxy contest entails
- More companies are being pressured to settle by other shareholders
- More activist hedge funds are being formed
- The success of many activists in obtaining board representation
- The success of many activists in unlocking shareholder value
- Easy access to inexpensive debt to fund share buybacks, special dividends, and other shareholder value-enhancing measures
- Companies are increasingly less defended as poison pills, classified boards, plurality voting, supermajority shareholder approval requirements, and other structural defenses are much less common, especially among the S&P 500
- Companies continue to be “sitting ducks”
- Reluctance by companies to adopt defensive measures
- Ability of activists to receive support from proxy advisory firms
- Conducive regulatory environment and lack of enthusiasm by regulators to stem the tide of shareholder activism
- Increase in number of companies adopting proxy access bylaw provisions

# **MORGAN LEWIS SHAREHOLDER ACTIVISM DEFENSE PRACTICE**

# Morgan Lewis Shareholder Activism Defense Practice

- Market-leading, rapidly growing, and nationally known
- One of Morgan Lewis's fastest growing corporate practice areas
- **Ranked #1 among all law firms for legal defense of public companies against activist shareholders in the 2016 year-to-date activism defense league tables compiled by FactSet SharkRepellent and included in the *Wall Street Journal-FactSet Activism Scorecard*. The ranking is as of July 21, 2016 and is based on the number of publicly disclosed activism defense matters that Morgan Lewis has advised on.**
- Ranked #5 among all law firms for legal defense of public companies against activist shareholders in the year-end league tables for both 2015 and 2014 based on the number of publicly disclosed activism defense matters that Morgan Lewis advised on in each of those years.
- Over the last two years, Morgan Lewis's market-leading Shareholder Activism Defense Practice has advised more than two dozen public companies, based in the United States and abroad, in a wide array of industries, including, among others, apparel, automotive, banking, casual dining, consumer goods, home-building, energy, life sciences, manufacturing, pharmaceuticals, real estate, retail, shipping, software, technology, water resources, and waste management, with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, withhold campaigns, shareholder proposals, and other activist shareholder campaigns as well as contests for corporate control and contested M&A situations.
- Morgan Lewis's Shareholder Activism Defense Practice also advises public companies and their boards of directors on the latest techniques for making a company less vulnerable to activist shareholders, best practices for engaging with shareholders, corporate governance issues, and board advisory matters.

# Why Do Clients Continually Choose Morgan Lewis's Market-Leading Shareholder Activism Defense Practice?

- National reputation of Morgan Lewis, its corporate practice and its market-leading shareholder activism defense practice, which is currently ranked #1 in the Factset SharkRepellent 2016 league tables for activism defense based on the number of activism defense matters Morgan Lewis has advised on.
- Experience advising public companies across a wide array of industries, including, among others, apparel, automotive, banking, casual dining, consumer goods, home-building, energy, life sciences, manufacturing, pharmaceuticals, real estate, retail, shipping, software, technology, water resources and waste management, with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, withhold campaigns, shareholder proposals, and other activist shareholder campaigns as well as contests for corporate control and contested M&A situations.
- Strong and visible commitment to focusing on shareholder activism defense rather than trying to represent both the activist side and the public company side.
- Ability to apply to each representation strong functional competencies across a broad array of disciplines including, but not limited to, securities regulation, corporate governance, board advisory, mergers and acquisitions, strategic communications and securities litigation.
- Ability to apply to each representation the experience, knowledge, and strategic insight that comes from having a team of lawyers who spend almost 100% of their time on shareholder activism defense.
- Reputation for serving as strong, committed, and dedicated advocates for our shareholder activism defense clients.
- Unwavering commitment to client service.
- Strong working relationships with the proxy solicitation firms, public relations firms, and investment banking firms that are well known in the shareholder activism defense area.
- Extensive familiarity with the activist investor community and the attorneys who represent activist investors.
- Publicly known track record of driving successful outcomes for Morgan Lewis's shareholder activism defense clients (though past results do not guarantee future outcomes).

# Recent Shareholder Activism Defense Engagements

- Counsel to a publicly held savings bank in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held SAAS software company in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held IT company focused on the IT needs of the automobile industry in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held holding company for a home builder and water resource company in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held apparel manufacturer, wholesaler, and retailer in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held auto parts retailer in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held auto parts retailer in its defense against an unsolicited offer by an activist investor.
- Counsel to a publicly held auto parts manufacturer in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held waste management company in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held life sciences company in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held staffing firm in its defense against a proxy contest by an activist investor.
- Counsel to a publicly held software company in its defense against a withhold vote campaign by an activist investor.
- Counsel to a publicly held petroleum transport company in its defense against an activist campaign seeking increased return of cash to shareholders.



**CORPORATE ASSOCIATE  
OPPORTUNITY IN MORGAN  
LEWIS'S SHAREHOLDER  
ACTIVISM DEFENSE PRACTICE**

## Job Description – Mid-level to Senior Corporate Associate

- Shareholder activism defense is one of Morgan Lewis's fastest growing corporate practice areas and we are looking to continue that growth by adding a mid- to senior-level corporate associate.
- The associate would be resident in our Washington, DC office (centrally located at 12<sup>th</sup> Street and Pennsylvania Avenue just a few blocks from the White House and Metro Center), the firm's largest office with more than 330 attorneys and, in addition to being a member of the firm's shareholder activism defense practice, the associate would be a member of Morgan Lewis's securities sub-practice group and Morgan Lewis's corporate and business transactions practice group, Morgan Lewis's second largest practice group with more than 375 attorneys spread across 28 offices around the world.
- Great opportunity for an associate to develop valuable and highly sought-after expertise in shareholder activism defense, one of the most-talked-about areas in corporate transactional practice.
- Candidates should have a strong background in securities regulation (including extensive familiarity with the Securities Exchange Act of 1934, the SEC's proxy rules, and Schedule 14A; Current Reports on Form 8-K, Periodic Reports on Forms 10-K and 10-Q and Schedule 13D), corporate governance, board advisory matters, and NYSE and NASDAQ compliance.
- Prior experience in proxy contests and other shareholder activism matters is preferred **but not required**.
- Prior experience serving at the SEC's Office of Mergers & Acquisitions is helpful but not required.
- Prior experience in public company M&A and/or capital market transactions is also preferred but not required.
- Candidates must possess excellent academic credentials as well as strong organization, writing, and analytical skills.
- Candidates must also possess a strong work ethic, an unwavering commitment to teamwork, and the highest standards of client service.
- Candidates should enjoy strategic and analytical thinking, extensive client interactions, and a fast-paced, dynamic, and exciting practice with moderate domestic travel.

# Illustrative Day-to-Day Responsibilities

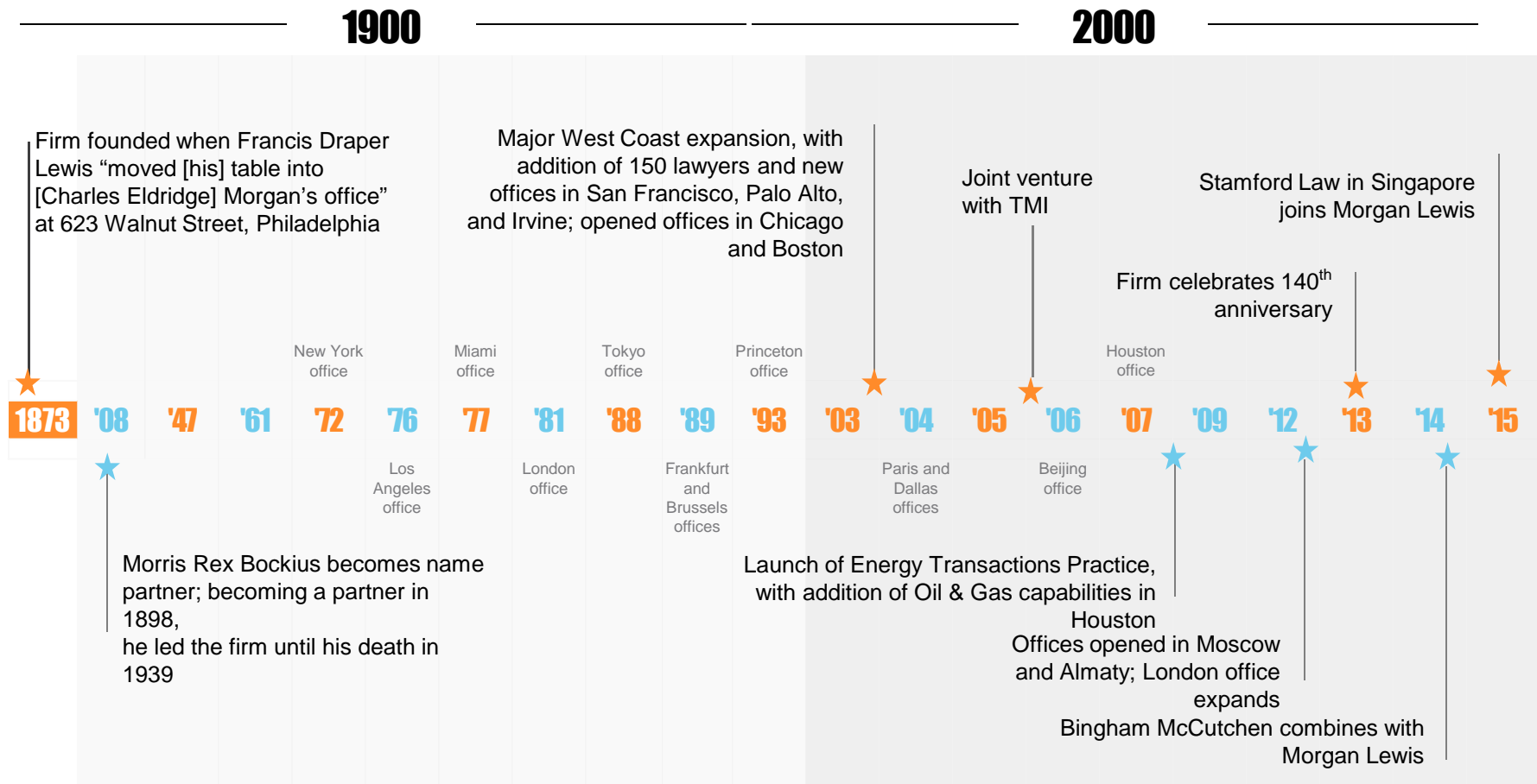
- Prepare vulnerability assessments for clients to assess how vulnerable they are to activist investors
- Advise clients on shareholder engagement strategies and how to respond to communications from activist investors
- Advise clients on strategies for interacting with the leading proxy advisory firms
- Advise clients on how best to win the “hearts and minds” of their shareholders
- Advise clients on board governance and fiduciary duty issues
- Review and revise corporate charter documents (certificates of incorporation, bylaws, etc.)
- Review and revise corporate governance policies
- Advise clients on responding to notices of nomination and shareholder proposals from activist investors
- Advise clients on responding to shareholder demands to inspect books and records
- Advise clients on the adoption and implementation of structural defenses (e.g., shareholder rights plans)
- Prepare Schedule 14A contested form of proxy statements
- Prepare “poison pen” letters to the SEC commenting on the activist investor’s proxy solicitation materials and Schedule 13D filings
- Respond to SEC comment letters on proxy solicitation materials
- Prepare Rule 14a-12 proxy solicitation filings
- Prepare investor communications
- Prepare proxy fight communication materials (press releases, fight letters, etc.)
- Negotiate settlement agreements with activist investors

# FAQs on the Shareholder Activism Defense Associate Position

- Is this an opportunity to join one of the world's largest and most preeminent law firms? **YES**
- Is this an opportunity to join one of the world's largest corporate practices? **YES**
- Is this an opportunity to join a high-profile, market-leading, fast-paced and dynamic practice? **YES**
- Is this a client-facing opportunity? **YES**
- Is this an opportunity where the associate gets to have a role more expansive than just playing "lawyer"? **YES**
- Is this an opportunity where the associate will get to interact with the client's board of directors and senior management team? **YES**
- Is this a position where the associate gets to participate in developing strategy? **YES**
- Does the associate get to participate as a member of a cohesive team? **YES**
- Is this an opportunity where future growth in the practice is anticipated? **YES**
- Is this an opportunity where the associate will learn new, valuable and sought-after skills? **YES**
- Is this an opportunity where the associate will get to participate in business development? **YES**
- Is this an opportunity where the associate will get to travel and participate in client pitches? **YES**
- Is this an opportunity where the associate will receive significant mentoring on a regular basis from the partner who leads the practice? **YES**

# ABOUT MORGAN LEWIS

# 140+ Years of Teamwork



# Our Global Talent

28

OFFICES

17

PRACTICE GROUPS

25

LANGUAGES SPOKEN FLUENTLY

17

TIME ZONES CROSSED

US

1,605

88%

BO, CH, DA, HT,  
HO, LA, MI, NY,  
OC, PH, PI, PR, SF,  
SM, SV, WA, WM

Europe

123

7%

BR, FR, LO,  
MO, PS

Middle East

11

0.6%

DU

Asia

85

5%

AL, AS, BE,  
SI, TO

717

PARTNERS

1,824

LAWYERS

Morgan Lewis

# Firm Leadership

## Chair

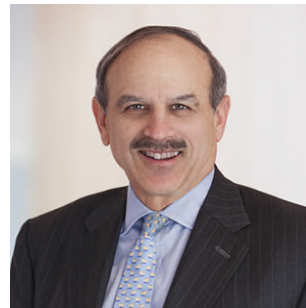


**Jami Wintz  
McKeon**

## Managing Partners



**Steven R. Wall**



**David W. Pollak**



**Steven C. Browne**

**Morgan Lewis**



# Practice Groups



# Lawyers by Office

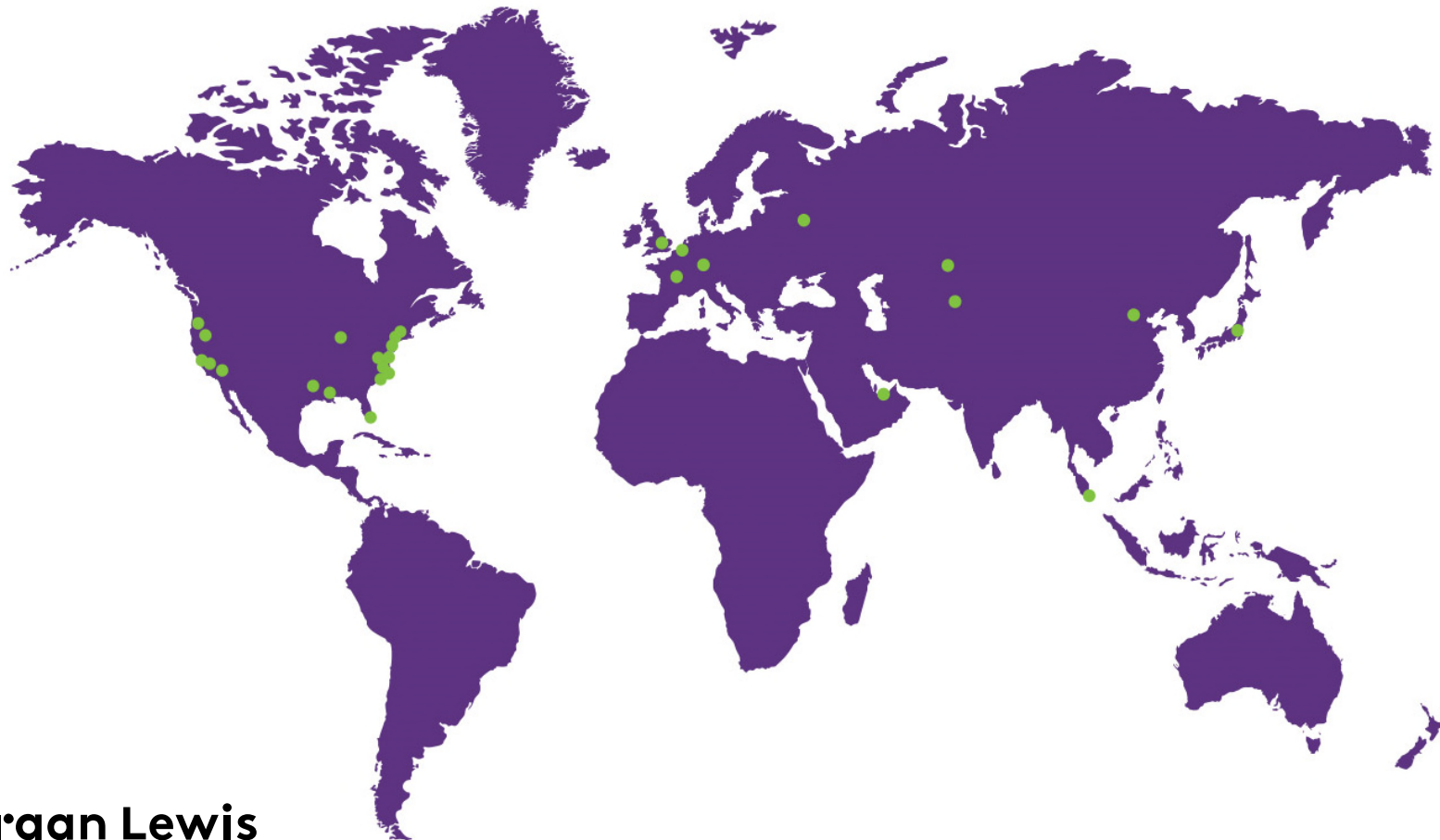
Office		Office	
Washington	337	Orange County	28
Philadelphia	276	Dallas	27
New York	250	Pittsburgh	27
Boston	174	Frankfurt	16
San Francisco	129	Hartford	19
Los Angeles	82	Santa Monica	14
London	68	Dubai	11
Silicon Valley	65	Tokyo	9
Singapore	63	Almaty	6
Chicago	55	Paris	5
Houston	55	Beijing	4
Princeton	36	Wilmington	3
Moscow	31	Brussels	3
Miami	28	Astana	3
<b>TOTAL</b>		<b>1,824</b>	

## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

Almaty  
Astana  
Beijing  
Boston  
Brussels  
Chicago  
Dallas  
Dubai  
Frankfurt  
Hartford  
Houston  
London  
Los Angeles  
Miami  
Moscow  
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Wilmington



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# THANK YOU

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