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Legal Advising on Corporate Structure in the New Era of Environmental Liability

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LEGAL ADVISING ON CORPORATE STRUCTURE IN THE NEW ERA OF ENVIRONMENTAL LIABILITY*

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Twenty years ago, it would have been inconceivable for a corporate lawyer to have foreseen that a corporate parent, officer, director, or lender of a carefully structured corporation might be responsible for the costs of cleaning up hazardous wastes and remediating damage to natural resources. Nor could it have been predicted that the generators and transporters of waste sent to state-licensed disposal facilities might be liable for the costs of clean-up and damages. Yet all of these unimaginables,1 as well as a host of others,2 have come to pass.

The past two decades have witnessed an unprecedented expansion of environmental liability. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"),3 commonly known as Superfund, has been the most notable wellspring of environmental liability.4 Changes in

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4 The other principal federal statutes creating civil and criminal liability

6 Many states have enacted hazardous waste clean-up and oil spill legislation in the past decade. Some of these statutes go beyond federal statutory requirements. See, e.g., Environmental Cleanup Responsibility Act (ECRA), N.J. STAT. ANN. § 13:1K-6 (West 1983).


8 See, e.g., Atlas, McDonald's Critics Take Aim at Trash, Chicago Tribune, Aug. 2, 1990, at C1 (describing campaign to boycott McDonald's because of its use of polystyrene packaging); Ramirez, "Epic Debate" Led to Heinz Tuna Plan, N.Y. Times, Apr. 16, 1990, at D1, col. 3 (describing consumer boycott of tuna caught by drag net fishing (which drowns dolphins)); Degradable Plastics Criticized, N.Y. Times, Dec. 14, 1989, at C7, col. 1 (reporting call by six environmental groups for a boycott of all plastic products labeled degradable); Flint, Valdez Spill Comes Home to Exxon, Boston Globe, May 1, 1989, at 17 (discussing one-day, six-state boycott of Exxon gasoline stations).


10 See Friss, General Electric Company: Health, Safety & Environmental Measurement System, in MINIMIZING LIABILITY FOR HAZARDOUS WASTE MANAGE-
and investor\textsuperscript{11} responses to environmental problems, has also increased the costs of business decisions that adversely affect the environment.

How have these changes affected the role and professional responsibilities of corporate lawyers? Judging from the advice on corporate structure offered by many corporate lawyers, relatively little has changed. There is, of course, more environmental legislation to be aware of, as well as many environmental regulations that must be complied with; due diligence work is more complex, often involving the hiring of hydrogeologists and engineers to inspect target properties and facilities. But the role of the corporate lawyer, as a specialist in structuring corporations to insulate clients from serious potential liabilities, has remained much the same.

This article suggests that the recent expansion of environmental liability requires corporate lawyers to broaden the range of factors that they consider in rendering legal advice on corporate structure. The expansion of environmental liability requires corporate lawyers to take an active role in devising strategies to prevent and reduce environmental risks. Furthermore, whereas corporate lawyers two decades ago could not have anticipated the sweeping, retroactive changes brought about by

\textsuperscript{11} Investors increasingly have used shareholder resolutions to bring pressure upon corporate management to consider environmental impacts in making business decisions. See, e.g., Fine, Stockholder Proposals "Greening" Companies, 13 ORANGE COUNTY BUS. J. (No. 6, § 1), Jul. 2, 1990, at 6; Sullivan & Solomon, Environmentalists Claim Gains at Exxon Meeting, Wall St. J., Apr. 26, 1990, at B1; Pelline, Chevron's Pollution-Free Proxy, San Fran. Chronicle, Mar. 17, 1990, at B1. Shareholders have also sued their corporations for failure to adequately reveal environmental costs. See, e.g., Feder, New Battles Over Disclosure, N.Y. Times, June 24, 1990, at F10. In addition, a growing number of investment funds will only invest in corporations with good environmental records. In the wake of the Exxon Valdez oil spill, the Center for Environmentally Responsible Economies ("CERES") has sought to exhort corporations to adopt a comprehensive code of environmental ethics. See Pink, The Valdez Principles: Is What's Good for America Good for General Motors?, 8 YALE L. & POL'Y REV. 180 (1990); Feder, Group Sets Corporate Code on Environmental Conduct, N.Y. Times, Sept. 8, 1989, at D1. More than 300 social investors with assets exceeding $150 billion have endorsed this code. Engle, Getting In on the Bottom Line, ENVTL. ACTION 20 (Mar/Apr. 1990).
CERCLA, state legislation, and developments in the common law, today's lawyers are capable of anticipating further retroactive expansions of environmental liability through both common law developments and statutory changes. Therefore, both professional and social responsibilities require corporate lawyers to look beyond traditional risk-shielding strategies in order to more effectively serve the interests of their clients and communities.

Part I of this article characterizes the major approaches to legal advising on corporate structure. Part II then analyzes how the new era of environmental liability has altered the way in which corporate lawyers should provide advice on corporate structure, advocating a shift in focus from counselling strategies that seek to insulate clients from risk to those that reduce environmental risk.

I. APPROACHES TO LEGAL ADVISING ON CORPORATE STRUCTURE: RISK INSULATION AND RISK PREVENTION

Within the libertarian model of legal ethics, the corporate lawyer's role is to zealously pursue the objectives of her or his client through lawful means. For much corporate advising, this places the lawyer in the position of seeking to maximize the corporation's stream of profits. An important element of maximizing profits is to minimize the costs of environmental risks. There are, in general, two ways of minimizing the impact of environmental risks on a corporation's bottom line: (1) insulating the corporation from the impact of adverse environmental problems through legal devices, such as limited liability, con-


13 This focus comports with the reality of much corporate practice today. Corporate lawyers face significant competitive pressures to approach their jobs in a libertarian manner. See Gordon, Corporate Law Practice as a Public Calling, 49 Md. L. REV. 255, 256-57, 275-88 (1990). Since the main claims of the article hold for even this narrow conception of legal ethics, the article will not explore the implications of a broader conception of the role of corporate lawyers. For the description and defense of alternative conceptions, see D. LUBAN, LAWYERS AND JUSTICE (1988) (arguing that legal ethics should not diverge from general notions of morality; Simon, supra note 12 (arguing for a richer, contextual approach to legal ethics).

14 See generally R. CLARK, CORPORATE LAW, ch. 16 (1986).
tractual allocations of risk, and insurance (risk insulation strategies); and (2) directly influencing the distribution of environmental risks created by the corporation (risk prevention strategies).

Given the wide array and effectiveness of devices that have traditionally been available for insulating the corporation from liabilities, corporate lawyers have been able to discharge their responsibilities by focusing principally upon insulating techniques for minimizing a corporation's exposure to environmental risks. For example, the corporate lawyer could significantly limit the impact of environmental risks merely by establishing a subsidiary corporation to conduct hazardous waste activities and advising the client to observe the requisite legal formalities. This approach has the advantage of requiring relatively little knowledge or effort to learn much about the client's business; general knowledge of corporation law will suffice.

Although risk-insulating devices increase the social riskiness of corporate activities by dulling incentives to reduce catastrophic environmental risks, much of the impact of environmental risks has been borne (within traditional corporate law doctrines) by the environment and persons outside of the corporation. Consequently, these approaches served the corporate client's narrow economic interest and therefore could be justified within the libertarian model of legal ethics.

By contrast, a lawyer seeking to directly influence the distribution of environmental risks — for example, by recommending an environmental audit or the establishment of structural mechanisms for oversight of environmental risks — can reduce both the private and social riskiness of the venture. This preventive approach, however, cannot be implemented without an understanding of the internal structure of the client's orga-

15 See id. at § 2.4.
18 See infra text accompanying notes 43-46.
nization, the nature of the client's business, and the range of alternative production methods available to the client. Moreover, lawyers must look beyond the purely legal implications of their advice to the broader financial effects of different courses of action, including the potential effects of risk reduction approaches upon consumer demand for products, availability of investment funds, and worker and community relations.¹⁹

II. IMPLICATIONS FOR LEGAL ADVISING ON CORPORATE STRUCTURE IN THE NEW ERA OF ENVIRONMENTAL LIABILITY

Advising a corporation on corporate structure provides an instructive illustration of the choice between traditional risk-insulating lawyering and preventive lawyering. To make the illustration concrete, it will be worthwhile to consider the case of a corporation considering how to expand its operations to include the production of a new product. For the purpose of illustration, we will assume that the conventional production process for this product uses hazardous materials and results in some hazardous by-products.

The principal risk-insulating strategy would be to set up the new production operation in a wholly-owned subsidiary corporation. By adequately capitalizing the subsidiary,²⁰ avoiding di-

¹⁹ See infra text accompanying notes 43-47. Cf. A.L.I. PRINCIPLES OF CORPorate GOVERNANCE § 2.01 (Tent. Draft 1982) ("A business corporation ... in the conduct of its business ... (b) may take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business."). If the corporate client is permitted a reasonable examination of such considerations in furtherance of its corporate goals, corporate counsel should be capable of advising the client on such issues.

²⁰ The definition of adequate capitalization is not rigid and depends on the circumstances of the subsidiary corporation. The subsidiary must be able to meet financial obligations expected to arise in the ordinary course of business. See H. HENN & J. ALEXANDER, LAWS OF CORPORATION AND OTHER BUSINESS ENTERPRISES § 148 (3d ed. 1983) (One of the factors in veil piercing is whether "each corporation is adequately financed as a separate unit in light of its normal obligations foreseeable in a business of its size and character."). Unless the business involves particularly risky activities, this would not include the ability to cover remote risks. Herein lies the potential for abuse of the corporate form. Many environmental risks are remote, though of great potential magnitude. Traditional veil piercing doctrine does not consider inability to cover such possibilities to be grounds for disregarding the corporate entity without some other factors coming into play, such as pervasive control by the corporate par-
rect oversight of operations (especially hazardous waste decisions), ensuring proper record-keeping, not siphoning excessive funds from the subsidiary, and observing the corporate formalities of the subsidiary. The parent corporation would have a strong claim to protection from creditors of the subsidiary corporation under traditional veil-piercing doctrine.

By contrast, the key to a preventive lawyering strategy is to establish procedures and hierarchical controls to oversee the production process in order to ensure that the new production process appropriately balances the costs of production and the creation of environmental risks. In this way, the lawyer can

21 See H. HENN & J. ALEXANDER, supra note 20, §148; see also In re Acushnet River, 675 F. Supp. at 33.

22 The internal structure of modern corporations is a complex hierarchy designed to process information and to allocate resources efficiently. See O. WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING (1985); O. WILLIAMSON, CORPORATE CONTROL AND BUSINESS BEHAVIOR (1970). There are a variety of ways in which the internal structure of a corporation can be designed to prevent environmental problems. See P. DRUCKER, CONCEPT OF A CORPORATION 206-09 (rev. ed. 1972) (discussing society's interest in corporate structure). For example, following the discovery of employee and environmental harm caused in the production of the pesticide Kepone, Allied Chemical Corporation established a Toxic Risk Assessment Committee composed of scientists, doctors, and lawyers to review all information on toxic risks and a new executive position reporting directly to top management so as to increase its monitoring of environmental risks. See Coffee, "No Soul to Damn; No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 MICH. L. REV. 386, 451 (1981). Allied also realigned its incentive structure so that approximately one-third of a plant manager's earnings are based on safety performance. See id. at 456.

General Electric Company ("GE") has sought to reduce environmental risks throughout its decentralized corporation through its PULSE Program. See Friss, supra note 10. The PULSE Program requires each site to conduct an elaborate, well-documented annual self-appraisal. This appraisal, as well as a corrective action plan, is reviewed by the business operating the site. The overall PULSE Program is monitored by various central committees within the corporate headquarters. GE has also developed a financial analysis workbook that ensures that its businesses internalize the external costs of waste production. See Strelow & Claussen, LIABILITY MANAGEMENT IN PRACTICE: WASTE GENERATORS, 25 HOUS. L. REV. 943, 948 (1988).

3M Company has dramatically altered its incentives for technical employees to develop preventive technologies for environmental problems. See Ling, Indus-
assist the corporate client to ensure that appropriate raw materials and production technologies are utilized, production operations are safe, and hazardous waste materials are minimized and safely recycled, or properly treated and disposed; that the designs of final products reflect environmental risks; and that employees have strong incentives to prevent accidents that would adversely affect the environment.²³

In comparing risk insulating and preventive approaches (as well as hybrids), the lawyer must assess not only the current legal status of the different corporate structures, but also the effect of possible changes in the law and the broad array of potential benefits from risk reduction policies. Many corporate lawyers today, basing their analyses on several recent decisions that applied relatively traditional veil-piercing doctrine in CERCLA cases,²⁴ continue to view the risk-insulating approach as a viable way of limiting a corporate parent's exposure to CERCLA and other environmental liabilities.²⁵

This type of analysis, however, fails to consider the expansive trend in environmental liability, the potential for retroactive change, and the potential benefits of risk reduction strategies. With respect to current trends that need to be considered,

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²⁵ See, e.g., Freeman, Two Recent Decisions Restrict Superfund Vicarious Liability, Nat. L.J., Apr. 16, 1990, at 24 (arguing that courts have been conservative in respecting the corporate veil in Superfund cases); Bernstein, Deal-Makers Beware: Superfund Liability of Parent Corporations and Asset Purchasers, 7-22 (presented at Columbia Business Law Review Symposium on Environmental Concerns in Business Transactions, Feb. 9, 1990) (arguing that traditional veil piercing doctrines apply in Superfund context); Frantz, Minimizing Environmental Liabilities Associated with the Purchase or Sale of Real Property and Businesses, 21-22 (3d Annual Advanced Institute in Environmental Law, Georgetown University Law Center, Oct. 13-14, 1988) (suggesting that setting up a subsidiary corporation as owner of acquired assets may succeed in limiting liability).
although there is now one federal appellate court case holding that common law principles of corporation law, including limited liability, apply in CERCLA cases unless expressly altered by Congress, it is too early to conclude that courts have reached consensus on this point. Despite early decisions to the contrary, the federal government continues to assert the view that the purposes behind CERCLA require a lower threshold for piercing the corporate veil. Without explicitly adopting the Government's position, several district courts have held parent corporations liable under CERCLA as "operators" because of their direct involvement with a disposal facility. In view of CERCLA's vague definition of "operator," courts have sub-

26 See Joslyn Mfg. Co., 893 F.2d at 83.
28 CERCLA § 107(a)(1)-(2) reads in relevant part:
Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section —
(1) the owner and operator of a vessel or a facility,
(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . .
30 CERCLA § 101(20) provides in relevant part:
20(A). The term "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such a facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest
stantial flexibility to ensnare parent corporations without actually piercing the veil.\textsuperscript{31}

The risk of retroactivity in the environmental field cannot be overlooked by corporate counsel. There is reason to believe that the Congress, the state legislatures, or the courts might circumscribe the limited liability of corporate shareholders in the foreseeable future. In view of the enormous retroactive expansions of environmental liability during the past two decades, most notably through CERCLA,\textsuperscript{32} it is not inconceivable that changes in the applicability of traditional corporation law doctrines in the environmental context could occur retroactively.

Corporate responsibility for environmental degradation will no doubt continue as a subject of debate in the area of environmental reform. In light of the growing academic consensus that limited liability is ill-conceived in the context of environmental harms,\textsuperscript{33} there is good reason to foresee pressure to bring about retroactive restrictions in the use of the doctrine of limited liability. It therefore becomes important for the corporate practitioner to become familiar with this debate over limited liability in order to decide on an appropriate representation strategy.

The doctrine of limited liability has been defended on three economic grounds:\textsuperscript{34} (1) it fosters economic growth by encouraging investors to take risks; (2) it facilitates the efficient spreading of risk among corporations and their voluntary creditors; and (3) it avoids the enormous litigation costs that would be required to resolve suits between a corporation's creditors and its many shareholders. None of these grounds, however,
justify limiting the liability of parent corporations for environmental harms.

First, there is little reason to fear that corporations will be dissuaded from undertaking risky projects with positive net present values without being able to obtain an additional layer of limited liability for its shareholders. Many shareholders in today's financial markets hold diversified portfolios. Corporate managers may be risk averse, but the market for corporate control provides some discipline for managers who place their own priorities above those of shareholders. Furthermore, the availability of business insurance can provide significant security to risk averse managers. It is now recognized that the doctrine of limited liability biases investment decisions in favor of projects that pose excessive environmental risks.

The second economic justification for limited liability, that it facilitates efficient spreading of risk among corporations and their voluntary creditors, simply does not apply to the context of involuntary creditors such as tort victims and the environment. Finally, the third economic justification for limited liability, that it avoids the enormous litigation costs that would be required to resolve suits between a corporation's creditors and its many shareholders, does not apply in the context of parent corporations, where there is only one or a few shareholders.

Moreover, the moral justifications for limited liability are also questionable in the context of environmental harms. As between shareholders of a corporation that has caused environmental harm and the involuntary victims of such harms, it is difficult to justify morally a legal rule favoring the shareholders. The sources of concern for shareholders stem from their partial share of ownership and their limited ability to affect

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35 See id. at 989-92.
36 See Hansmann & Kraakman, supra note 33. Cf. Note, Should Shareholders Be Personally Liable for the Torts of Their Corporations?, 76 YALE L.J. 1190, 1196 n.27 (1967) (questioning whether "legislatures would have adopted limited tort liability in the first place had insurance been as generally available in the early nineteenth century as it is today").
37 See Note, supra note 33, at 992-96.
38 See id. at 996-97. Hansmann & Kraakman, supra note 33, make the further argument that a rule of unlimited shareholder liability in the context of widely held public corporations would not be prohibitively costly so long as liability is limited to pro rata ownership and the insurance industry is free to offer portfolio insurance.
decisions made by their agents, the former managers of the defunct corporation. These sources, however, do not arise in the context of parent corporations, which, by definition, have a controlling interest.  

When subject to scrutiny, therefore, the doctrine of limited liability cannot easily be justified in the context of environmental harms. It is plausible, if not probable, that this shortcoming will find voice and gain support in legislative and judicial fora in the coming years.

In assessing the potential for judicial and, more importantly, legislative change, lawyers must consider as key indicators the social mood and the underlying purposes of public policy. Environmental issues are likely to remain salient in the political and judicial fora for many years to come. The clean-up of Superfund sites is expected to require many decades to complete. Toxic tort suits can be expected to rise in the coming years as scientific understanding of carcinogenic pathways improves and better information about the sources of groundwater and air pollution becomes available through improved regulatory monitoring. Furthermore, generally increasing population and affluence, and the likely effects on environmental quality, can be expected to intensify the electorate's interest in environmental policy.

In sum, the unsettled nature of the law with regard to the liability of parent corporations for the environmental harms of their subsidiaries, the potential for retroactive legislative change in the doctrine of limited liability, as well as the growing concern for increased environmental quality among the pub-

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39 See Note, supra note 36, at 1196. Even in the context of widely held public corporations, Stone, supra note 16, at 73-75, persuasively argues that a rule of pro rata liability is sufficient to overcome the moral problem raised by imposing liability upon shareholders. See also Hansmann & Kraakman, supra note 33 (arguing for a pro rata rule).

40 See Office of Technology Assessment, U.S. Congress, Superfund Strategy, at 3 (1985) (concluding that clean-up of remaining hazardous waste sites could take 50 years and cost several hundred billion dollars).

lic, suggests that risk-insulating approaches to minimizing environmental liabilities cannot provide the guarantees that they once offered. These considerations have led some lawyers to back away from the use of risk-insulating strategies and to emphasize the value of minimizing environmental liabilities. In the new era of environmental liability, risk prevention approaches may be the most effective, reliable and profitable means of minimizing corporate exposure to environmental risks.

Beyond the liability analysis, lawyers recommending the adoption of risk-insulating corporate structures may be ignoring, distracting attention from, or miscounting important benefits of organizational restructurings that internalize environmental risks. Changes in corporate structures and employee incentives that increase oversight of environmental risks will reduce the expected costs of accidents and regulatory compliance. In addition, risk reduction policies can lower production costs by, for example, decreasing the amount of hazardous materials that must be sent to increasingly expensive hazardous waste disposal facilities.

42 See, e.g., Bourdeau, Minimizing Hazardous Waste Liabilities in Real Estate Transactions, in THE IMPACT OF ENVIRONMENTAL REGULATIONS ON BUSINESS TRANSACTIONS: REAL PROPERTY TRANSFERS AND MERGERS AND ACQUISITIONS 477, 540 (Nucciaroni, Chairman, P.L.I., Real Estate Law and Practice, Course Handbook Series, Number 286 (1986)) (noting that the use of independent landholding companies to limit liability for hazardous waste problems "can be tricky, for even though the courts are generally willing to respect the corporate form in environmental cases, both the government and the courts have evidenced a distinct willingness in appropriate cases to pierce the corporate veil . . . .") (footnote omitted); Lawrence, Liability of Corporate Officers Under CERCLA: An Ounce of Prevention May Be the Cure, 20 Env't L. Rep. (Env'tl. L. Inst.) 10,377 (1990).

43 For example, in the four years following Allied Chemical Corporation's structural changes, see supra note 22, employee injuries fell seventy-five percent. See Coffee, supra note 22, at 456. 3M Company has also achieved substantial reduction in environmental degradation through its internal incentive programs. See 3M Announces Plan to Cut Hazardous Releases by 90 Percent, Emphasize Pollution Prevention, 20 Env't Rep. (BNA) at 441-42 (June 16, 1989); Ling, supra note 22, at 129.

44 For example, from 1976 through year-end 1981, 3M Company's 3P Program saved $97 million in pollution control equipment, operating costs, energy costs, and sales of products that would have had to be removed from the market because of environmental concerns. See Ling, supra note 22, at 128. See also CAMPBELL & GLENN, PROFIT FROM POLLUTION PREVENTION (1982) (providing
fits as well, such as improving labor relations and reducing labor costs by improving workplace safety, allaying public concern, avoiding adverse effects on product markets, and attracting socially responsible investment funds. Corporate lawyers should play an active role in convincing managers that implementing structural changes that improve oversight of risky activities and encourage the use of environmentally sensitive production methods can make good business sense.

Corporate lawyers must be particularly careful in how they present their advice on corporate structure. Legal advice on matters as important as corporate structure are not easily evaluated by lay clients, especially when large potential environmental risks are at stake. Such advice is often presented as the most "prudent" course of action. Lay decisionmakers may not be able to appreciate the implicit tradeoffs underlying such advice. Consequently, by not bringing the full range of alternatives and potential effects to the attention of the corporate decision-makers, the corporate lawyer fails to fulfill the spirit of providing candid and complete (or appropriately qualified) advice.

CONCLUDING REMARKS

The new era of environmental liability significantly alters the lawyer's role and responsibilities in advising on corporate structure. What may seem like good legal advice today might come back to haunt the myopic corporate lawyer (and his or her client) within the foreseeable future. A corporate lawyer can no longer rely principally upon traditional risk-insulating doctrines to find a safe harbor from environmental risks; such harbors no longer exist. Rather, the corporate lawyer must be sensitive to brief profiles of hundreds of companies that have saved money through product reformulation, process redesign, recycling, and better waste management practices).

46 See supra text accompanying notes 8-11; The Greening of Corporate America, BUS. WEEK, Apr. 23, 1990, at 96.


47 See MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.1 comment 4 (Proposed Final Draft 1981). To the extent that the lawyer's advice is limited to liability implications of the choice of corporate structure, she or he should alert the client to the need to consult engineering and business specialists in order to assess the relevant tradeoffs.
a much broader range of factors, including the potential for structural and technological means for reducing risks, the direction as well as the state of applicable legal doctrines, and the effects of different risk management approaches on the client's customer base, workers' demands, sources of capital, and community relations. The lawyer's advice must be presented in a form that enables the client to appreciate and systematically assess the multi-faceted benefits and costs of the range of structural and technological strategies.