

Should Uber's Salle Yoo Have Taken Earlier Look At Critical Due Diligence Report?

By [Jennifer Williams-Alvarez \(/corpcounsel/author/profile/jennifer-williams-alvarez/\)](http://corpcounsel.com/author/profile/jennifer-williams-alvarez/) | October 27, 2017

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Salle Yoo, chief legal officer at Uber. Photo Credit: Jason Doiy/ALM

In Waymo's ongoing court battle with Uber Technologies Inc., the former recently made the case that Uber's **chief legal officer Salle Yoo should be made available** (<http://www.law.com/insidecounsel/2017/09/29/the-fight-to-keep-uber-clo-salle-yoo-out-of-court/>) to testify, noting that she was "**heavily involved**" (<http://www.law.com/corpcounsel/sites/corpcounsel/2017/09/28/the-fight-to-keep-uber-clo-salle-yoo-out-of-court-in-battle-with-waymo-2/>)" in the due diligence process conducted before Uber's acquisition of Otto. And yet, according to a **July 7 filing** (<https://assets.documentcloud.org/documents/4067680/Salle.pdf>) Yoo did not see the **due diligence report** (<https://assets.documentcloud.org/documents/4065769/DDreport.pdf>) from the deal until approximately May 5, 2017, **nearly a**

year after the acquisition**(<http://www.law.com/corpcounsel/almID/1202795934873/>)**

of Otto was announced and more than two months after

Waymo filed suit**(<http://pdfserver.amlaw.com/ca/Waymo1.pdf>).**

Given the circumstances around this deal—former Uber

CEO Travis Kalanick said **in a July 27 deposition**

(<http://www.law.com/corpcounsel/almID/1202794996270/>)

that M&A transactions were not common at Uber, this was the only one involving “a group of individuals who had previously worked at a competitor” and that it was expected there might be an “emotional response” from Google—is it surprising that Yoo didn’t see the due diligence report until May of this year? According to attorneys who are not involved in this lawsuit, it all depends.

Neither Uber nor Waymo responded to requests seeking comment for this story.

The Timeline

In what may have been part of the “emotional response” Kalanick anticipated, Google did react to the acquisition by filing suit on Feb. 23. It would be another couple of months before Yoo would see the due diligence report in early May, weeks before firing Otto co-founder Anthony Levandowski in a **letter dated May 26**

(<http://www.law.com/therecorder/almID/1202787843978/>).

Before Google filed suit, though, there were a number of relevant events that took place involving Yoo and the legal department. Yoo was on a call on April 10, 2016, during which an update was given on the status of the investigation of Otto employees by forensics firm Stroz Friedberg, which ultimately prepared the due diligence report, **according to court filings**

(<https://assets.documentcloud.org/documents/4063080/Waymo3.pdf>).

The next day, on April 11, the **agreement between Uber and Otto**

(<https://assets.documentcloud.org/documents/3934359/Agreement.pdf>)

was signed. Former Uber board member Bill Gurley said in a deposition that Kalanick told board members in a meeting that the due diligence report “came back clean,” a Waymo attorney recently noted in court. This board meeting, which Yoo attended, according to the Waymo attorney, occurred on the same day the deal was signed.

And in the run up to Uber’s **announcement of the acquisition**

(<https://www.uber.com/newsroom/rethinking->

[transportation-2/](#) of Otto on Aug. 18, 2016, several of Uber's in-house lawyers saw the due diligence report, according to the July 7 court filing. Associate general counsel Angela Padilla and legal director Justin Suhr got a look on approximately Aug. 6, while Christian Lymn, director of corporate legal affairs at Uber, who, [according to LinkedIn \(https://www.linkedin.com/in/christian-lymn-0b05b611/\)](#), is lead counsel for all domestic and international M&A transactions, received it two days later.

Nine Months from Acquisition to Eyes on the Report

Based on what's been revealed in this case, especially Waymo's claims that Yoo was a prominent figure in the due diligence process, the timeline is surprising, said David Gurnick, attorney at Los Angeles firm Lewitt Hackman. "In the normal course of events, one would expect that one of the recipients of that report would be the chief legal officer, who's involved in due diligence," he said. It raises questions about how "sincerely diligent" and "conscientious" the company was being, Gurnick added.

That Yoo is leading a large legal department—which according to her statements at a recent panel, [includes more than 230 attorneys \(http://www.law.com/corpcounsel/almID/1202796593080/\)](#)

—“softens the concern,” Gurnick said, because a chief legal officer overseeing a legal department that size can't be involved in everything. “However,” he said, “when you have a significant acquisition ... I would think in the ordinary course, this would find its way to her.”

It does mitigate concerns, according to Gurnick, that Padilla, Suhr and Lymn did see the report. “I could imagine a scenario where the chief legal officer has three legal personnel reviewing the report and then alerting the chief legal officer if there are issues they believe require her attention,” he said. But even then, he noted, unless there were zero issues found in the due diligence report, one would expect Yoo to end up with it.

Shannon Zollo, a member at Morse, Barnes-Brown & Pendleton and former general counsel at telecommunications company Celox Networks Inc., agreed the explanation may be that Yoo “relied extensively on the internal team,” and as a result of that reliance, she was able to get involved in due diligence discussions and meetings. “It may just be a question of semantics,” he added.

Though Zollo didn't want to speculate with respect to Yoo, he said there may be some strategy in not having an exec look at particular documents. "Independent of this situation, does it make strategic sense at times for people in positions of authority to not be exposed to potentially damaging information?" he questioned. "The short answer is yes."

Another explanation for why Yoo didn't see the due diligence report until May could be because it was determined that only a so-called clean team would have access to the report, said David Lawrence, a shareholder at firm Munsch Hardt Kopf & Harr. He said when deals involve "very sensitive information," such as trade secrets, clean teams can be created to restrict access to that information to a limited group.

Two Months After the Suit is Filed

For Scott Whittaker, a member at firm Stone Pigman Walther Wittmann, who is also chair of the American Bar Association's mergers and acquisitions committee, with three other people from the legal department looking at the due diligence report, "it would seem reasonable" that Yoo didn't.

What does seem unusual, he said, is that she didn't look at it soon after the lawsuit was filed. "Once the dispute came to light, it should've been material enough for the general counsel [**Yoo's title when the suit was filed** (<http://www.law.com/therecorder/almID/1202786737608/>)] to look at probably the most material piece of evidence there is," he said.

Whittaker added: "You would think as soon as the dispute became real, the crucial piece of the analysis would have found its way onto the general counsel's desk."

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