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“We Hire the Lawyer, Not the Law Firm” – Really?

By Daniel J. DiLucchio

After hearing yet another general counsel tell me that “We hire the lawyer, not the law firm,” it seemed an appropriate time to step back and dissect this apparently simple statement to determine what it really suggests. Clearly this statement is not as simple as it appears — as a matter of fact it is complicated, multi-faceted and multi-purposed.

This statement has been used for years, and will probably continue to be used — but why? When general counsel say they hire the lawyer, not the law firm, what are they really saying? Is it nothing more than posturing? We can safely say that no in-house counsel is going to hire a lawyer, no matter how competent and successful he or she is, if the lawyer does not have the capacity, resources and backing of a law firm that can properly represent a multi-billion dollar business.

There are deeper implications to this statement — implications for the lawyers facing the client, lawyers working on a client team and ultimately the law firms who employ these lawyers and serve these clients. As my colleague Bruce MacEwen, aka Adam Smith, Esq., observes, “I think it’s one of those ‘too cute by half’ remarks that obfuscates much more than it reveals.”

So what are the implications? How can we all better understand what appears to be so precise and clear — and is used so often?

To better understand this issue, I solicited input from general counsel and my consulting colleagues.

To dissect the statement, let’s break it into its two obvious parts — we hire the lawyer — we don’t hire the law firm.

“We hire the lawyer”

This is it. This is what the general counsel want you to believe — and much of it is absolutely true. To a great extent, in a personal service business, it is chemistry and relationships that matter. William B. Lytton, who now serves as senior counsel at Dechert LLP, and was previously executive vice president and chief legal officer of Tyco International Ltd. and other prestigious corporations, told me, “What you want to know when you hire a firm is who will be on the other end of the phone when you call with a question, and whose professional judgment will be guiding the work done

continued on page 10

Inside This Issue

Search for Innovation Continues	2
The 7 Habits of Highly Effective Partners	3
Challenging Economy — What To Do	8
MergerLine	9

We Hire the Lawyer ... *continued from cover*

and the decisions made?"

In an informal survey I conducted for this article, on a scale of 1 (lowest importance) to 10 (perfect chemistry) the importance of personal chemistry and relationship is ranked an 8 to 10 by most general counsel. We are not talking about chemistry in the sense of friendship, but professional chemistry defined by an ability to effectively communicate, as well as a common sense of judgment and fundamental values. Of course, most people want to work with people they like, trust and feel comfortable with, and general counsel are no different in this respect.

We have also found that personal relationships are a major factor in determining how sympathetically an RFP response will be read by a prospective client, as well as the openness of engagement discussions, and how the ultimate agreements are negotiated. Chemistry also rates a "10," if "the lawyer" actually is the client relationship lawyer and others will be doing the work and funneling the work product upward through the relationship lawyer.

As my Altman Weil colleague, Ken Bunge, former Managing Attorney of United Technologies Corporation (UTC), pointed out, "The relationship with the individual partner is the key and is based on a proven track record over time. For example, a successful outcome on an important company matter will not only build confidence within the legal department but also with senior management." Ken goes on to point out that success means, "The CEO, CFO, etc. will identify that partner by name for future matters" — it becomes very personal at that point.

Many of today's law firms are huge organizations with far flung offices and many faceless lawyers working on complicated and expensive matters. Making the client relation-

ship personal is critical. A single lawyer must be in a position of ultimate accountability. The general counsel must have someone that he or she holds responsible for the success or failure of a matter, the quality of the services, the way a matter is handled and the cost. This is why they hire the lawyer.

"...We Don't Hire The Law Firm"

Well, frankly, yes you do hire the law firm. There is more to the client relationship than trust in the legal competence of an individual lawyer. Of course the lawyers must have a sterling reputation in the field for which they are selected. Very often, they have already proven themselves to the company or are referred by a trusted colleague. The lawyer's legal talent and skills are essential, but the lawyer must also have a bench strength behind him or her that can get the job done, and be able to bring these resources to bear on client matters in an effective and efficient manner. For most corporate clients today, matters are large enough to require a team of lawyers to address their needs.

This point is exemplified by the comments of James Gass, Vice President, General Counsel and Corporate Secretary of Osram-Sylvania. Jim says, "For me the perfect world would be that we hire each lawyer who works on our matters. But the reality is that we cannot get away from the impact that the firm has on our relationship. Even though we hire the lawyer, that lawyer depends on the law firm staff. And the billing rate of all the lawyers is dictated to some extent by the law firm's rates. The same is true for other details of the retention, such as staffing, expenses, etc. So even in cases where I like a particular lawyer, I struggle to hire that person if he or she is associated with a firm whose costs are too high or whose back-up talent pool is not good enough."

Dennis Schoff, the General Counsel of the Lincoln Financial Group, framed hiring the law firm issue succinctly and precisely, "We hire specific legal talent, but a firm can cause us to terminate our relationship with even those lawyers we know and trust — billing practices, for example, could be a cause for termination."

Both Gass and Schoff clearly identify the lawyer/law firm relationship and the impact the connection can have on selection and retention

According to the Altman Weil client survey database, which compiles feedback from hundreds of law firm clients, "hiring the lawyer" is still the most important reason for selection. However, over the years, "Hiring the law firm" has gone from number three in importance to number two and is only one point behind number one. There are probably several reasons for this:

- clients want to make sure that they are working with a well-informed, experienced team, not a lone wolf;
- the whole team must know the client's business, not just the lead lawyer; and,
- firm branding and differentiation efforts may be having an impact on the general counsel's choice.

This raises interesting issues relative to the concept of branding. Along with the tangible, fact-based question of adequate resources, there are the more fluid, intangible issues of image and reputation. Many people — and especially lawyers — feel that they are too smart to be influenced by marketing. Most people, however, including general counsel, are more influenced by brand than they think they are. This is especially true when the board of directors of the company recognizes the

brand of top-tier firms. If we conclude that general counsel hire lawyers and the law firm, each firm must concern itself with multiple brands — the firm’s overall brand, as well as that of its practice groups and individual lawyers.

This tiered approach to branding — and influencing purchasing decisions — is no different than that exemplified by major global corporations. For example, PepsiCo markets its overall brand Pepsi, but also sells many Pepsi varieties (Diet, Caffeine-Free, Caffeine-Free Diet, etc.) that have been launched from the parent brand and take strength from it. Whether recognized or acknowledged, branding is an underlying influencer when buying a soft drink... or hiring a lawyer.

Branding, however, is separate from marketing. Dennis Schoff made this point clearly when he told me, “I don’t really get a great deal out of dealing with a marketing department of a law firm. If I am going to be “marketed to,” it is best coming from someone I know — the attorney with whom I have a trust relationship.” Smart marketers will recognize the importance of relationships in the hiring equation and find ways to help individual lawyers build personal rapport as well as confidence in the firm.

In some cases, the company’s goal is to affiliate itself with a specific law firm. Here, it is the law firm that is hired, and not the lawyer. The lawyer is secondary, albeit important, in the retention decision. If influence and power are the company’s objectives, a well positioned mega firm might be the company’s choice. A general counsel may select only one or two of these law firm relationships reserved for this special status. In these cases, the general counsel wants the law firm thinking about the company and identifying ways to help advance its business. The loyalty factor in these relationships

continued on page 12

We Hire the Lawyer ... continued from page 11

is high and reciprocal. While holding a special status as a legal service provider, these power-broker law firms may not be selected to handle all of the company's legal work.

Conclusion

So, do general counsel hire lawyers and not law firms? And, if not or not entirely, then why might this be such a popular mantra for them?

First, this statement puts pressure on the individual lawyer to perform and to ensure that the rest of the members of the firm perform as well. Second, it keeps the message in front of the law firm that who — which lawyer(s) — work on the company's matters is important. Third, it makes it all personal — it makes the business

of law personal — it puts a face on an impersonal organization. By having an identified lawyer responsible and accountable for the delivery of high-quality, cost-effective services, general counsel can feel a level of comfort that someone, and someone good, is paying attention to their needs. ♦

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