

COUNSEL TO COUNSEL SUPERFORUM:

Counsel Focus on Relationships

Common themes were evident in all four sessions at the second Counsel to Counsel SuperForum held in Chicago in March. More than 60 in-house counsel acknowledged that their budgets continue to shrink while pressure to deliver more value keeps increasing. Expectation management—of business clients, company executives and even outside counsel—provides daily challenges.

In the morning, attendees divided into two groups to share best practices and concerns in **Managing Internal Investigations and Compliance Audits**. In the afternoon, participants selected between **Sheer Madness: Trends in Litigation Management** and **Dispute Resolution and Managing With Care: Labor and Employment Issues**.

Midday found everyone enjoying lunch and a lively discussion: **The Great Debate: What Makes a Winning Relationship**. Two in-house counsel, Elizabeth Lindberg, counsel, Internal Operations, The Boeing Company, and James Marvin, associate general counsel and assistant secretary, FMC Technologies, Inc., teamed up with—and at times squared off against—Gordon Kaiser, chairman of the Corporate Practice with Squire, Sanders & Dempsey L.L.P., and Thomas F. O’Neil III, a partner with DLA Piper Rudnick Gray Cary US LLP. LexisNexis Martindale-Hubbell’s Timothy Corcoran, vice president, market planning, served as facilitator and referee.

Turning Over Every Stone

The inside/outside counsel relationship was compared to both a marriage and a joint venture. Whatever the model, all panelists agreed that open communication is the key to forming a great partnership. In-house counsel seek advisers who will help them assess and share risk. “I want somebody who can take the legal issue and give me the practical advice with the risk assessment,” said Marvin. Added Lindberg, “Sometimes we want every single stone overturned, but there are times when we just want an opinion. [Outside counsel] don’t always have to turn over every stone—we’ll let them know when that’s necessary.”

“In-house counsel don’t have time to read tea leaves,” observed O’Neil. “They don’t need myopic legal advice but instead require holistic counsel.” Yet in-house counsel need to make clear to their advisers what sorts of risk they are willing to bear. “All clients want quick answers but I have found very few that want to sacrifice the quality of the answer for speed,” said Kaiser. “The best approach is to give clients the choice between an immediate answer, if that’s what the client really needs, and taking the extra time required to provide a more considered answer.”

At the end of the day, panelists agreed that both inside and outside counsel need to commit to the long haul, overlooking short-term gains and concessions to build a solid working partnership.



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Planning, Communication Are the Keys to Success

The need for clear and constant communication was voiced by virtually every participant at the afternoon session, **Sheer Madness: Trends in Litigation Management and Dispute Resolution**. In-house counsel require not only an understanding of the potential cost of litigation, but also an outline of how the case will look and the scope of work.



Robert V. Schnitz, Vice President & Associate General Counsel, Hyatt Hotels Corporation



Howard Spierer (left), Chief Counsel, Consumer and Complex Litigation, AT&T Corporation; Rich Keffer, Vice President, General Counsel & Secretary, D & K Healthcare Resources, Inc.; Carolyn Nussbaum, Partner, Nixon Peabody LLP



Sharon Fabian, Senior Legal Counsel, Waste Management, Inc.

CHICAGO

Dawn Haghighi, vice president and Illinois counsel for Charter One Bank, said she would like to hear, “These are the type of documents you’re going to need; these are the witnesses; here’s an initial budget; here’s the risk and your risk exposure.”

Outside counsel concurred but added that they first need an understanding of business and financial goals for the litigation. Clients often don’t identify their goals early enough. “We need to do strategic planning early and regularly,” said Robert Kammer, regional litigation manager for Liberty Mutual Group. “There’s a tendency to go for the big win when instead we need to look at how to get rid of the litigation at hand.”

Bring the Business Onboard

Internal communications also play a critical role. Often, the client has unrealistic expectations of the litigation process and outcome. By inserting legal into daily business activities, in-house counsel have successfully managed expectations. “We often hear, ‘It’s not a legal issue,’” said one participant. “It may not be...yet. By tracking litigation and being more

involved in daily operations, we can approach our business people when we see a change and proactively understand what’s making this happen.”

Business clients also may be one of counsel’s best resources. “There’s no solution to business disputes without the business people,” said Christopher Paparella, a partner at co-host Nixon Peabody LLP. “They’re the most underused resource.”

Dissecting Discovery

Participants acknowledged the heightened anxiety created by e-discovery. Litigators recommended that corporate counsel not assume initial discovery requests are written in stone. Work with opposing counsel to narrow requests so the search terms make sense. Also, do not hesitate to present to the court a request to balance the cost of document retrieval versus the importance of the documents sought.

“We once received a request for a volume of documents that could fill the Astrodome,” said Howard Spierer, chief counsel, consumer and complex litigation for AT&T Corporation.

“We asked the judge, ‘If we produce the documents and the other side never looks at them or utilizes them, will we be in a position to recover sanctions from them?’ The plaintiffs backed down.”

Finally, don’t forget arbitration. While some counsel view arbitration with skepticism because it does not routinely bear out its promised cost savings and speed, with proper planning, it can provide the desired result.

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