

OSBORN

Small In-House Legal Departments: Maximize Your Resources By Innovative Partnering With Outside Counsel

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John E. Osborn

Our firm is a boutique law firm concentrating in the areas of construction and environmental law and litigation. Five years ago when we were chosen to serve as general counsel to a major New York City hotel, we found ourselves in a position familiar to the small in house legal department. We suddenly needed to address issues in areas beyond our areas of concentration and needed to locate and retain appropriate outside counsel.

This article is the story of how we successfully reached out for legal expertise and achieved excellent results for our client - through partnering with outside counsel.

Partnering is nothing more than setting and achieving common goals. In this context, the partnering is between general counsel to a company and outside counsel.

The wide range of legal expertise required by the hospitality industry is impressive. The following are examples of some of the assignments which we tackled during our tenure as general counsel and how we addressed them.

Receivership In Connection with Mortgage Foreclosure

Our selection as general counsel came from a judicially appointed receiver. The receiver was appointed by the court under a clause in the hotel's mortgage which provided that if the borrower defaulted, the lender could have a receiver appointed, ex parte. The court appointed the receiver and simultaneously the lender commenced a mortgage foreclosure action.

The first assignment we were handed by the receiver was to help the receiver define his own role. The starting point was the court order which makes the appointment. Under the order, essentially, the receiver is charged with preserving the collateral by collecting revenues and managing the hotel. Under this order, the receiver, to qualify, must post a bond.

The receiver needed to determine the legal boundaries of his authority on the following issues:

1. whether the current staff could be replaced with a hotel management company;
2. whether a liquor license could be obtained under the receiver's name;

3. whether new restaurants could be opened;
4. whether a new health club could be sought and retained;
5. whether the receiver was allowed or required to address environmental issues;
6. whether the receiver was allowed or required to address building facade conditions which may threaten guest and pedestrian safety;
7. whether union contracts could be vitiated and new ones negotiated;
8. whether union grievances could be litigated by the receiver; and
9. whether pro-active steps could be taken to address fraud against the hotel.

We needed to respond to these issues immediately and we were able to do so by partnering with an attorney with whom we had co-counseled extensively over the prior ten year period. Our co-counsel is a lawyer who contributed to the writing of the leading New York treatise on mortgage foreclosure. We had handled mortgage foreclosure actions before and had basic background. The subtleties of this area of practice depended on the discretion of the court. Accordingly, the greatest value we gained from partnering with co-counsel was to obtain a sense of how the court would be likely to resolve an issue - even before we asked the question. This partnering arrangement was without a hitch; we had co-counseled with him for 10 years; we had a track record with him, we trusted him and we trusted his judgments; we could be very candid with him. Having his advice gave us a basis to move forward with confidence. This partnering strategic alliance, together with a copy of the mortgage foreclosure treatise, co-authored by our co-counsel, made us look good and allowed us to comfortably and confidently get the job done.

Labor Relations and Employment Law

Next came an array of issues dealing with the union representing the hotel's employees. There were issues relating to disciplining employees and relating to work practices, and, in the bigger picture, setting a strategy to negotiate arrangements with the union. In this area of practice, we reached out for a labor and employment law firm with whom we had almost a 10 year relationship, who briefed us on how to handle conferences and arbitrations with the union and provided us with background which assisted in our overall negotiations with the union. With the partnering advice, we, as general counsel, were able to handle each of the transactions ourselves. Again, now that we knew the background, we were able to promptly and strategically advise our client, look good and get the job done.

Again, the key to this partnering relationship was that we had done a significant level of business with the firms over a 10 year period. We had provided, over the ten years, the same level of support to them, before and since, and it confirmed to us that trust, responsiveness and quality were the threshold requirements to effective partnering.

Premises Liability

Issues relating to theft, assaults and violence plague hotels. So do liquor liability cases. Our experience as hotel general counsel alerted us to the vulnerability of hotels to false or exaggerated claims. Here we felt the need to reach out for resources which would guide us in sorting out dishonest or fraudulent claims.

Our first major test came one rainy night from an incident that took only a matter of minutes. That rainy night, a member of the public, not a guest, was encountered in the lobby smashing the hotel's stained glass windows. Hotel security guards encouraged the individual to stop his violent rampage and he fled to the street. Hotel security followed, and almost immediately, New York City Transit Police apprehended and arranged for the arrest of the individual. The hotel pressed charges.

At that point, the hotel did not appear to have a legal problem.

A few weeks later, a multi-million dollar lawsuit was served on the hotel, claiming damages for the hotel's role in the arrest. We already knew that the original incident was exceptionally violent, and, even for a hotel lobby frequented by thousands of people each day, the incident was unusual. The conduct, when coupled with a multimillion dollar lawsuit, did not add up, and we knew, and now needed to prove, that the suit was fraudulent.

This is where partnering, once again, came in. This time we reached out for attorneys with significant law enforcement experience and were able to track the record of the plaintiff – he had a long list of prior arrests and prior law suits – each of the incidents and law suits (in which he was the plaintiff) related to violence inflicted by the plaintiff on others *and* the attorney of record on each of the plaintiff's law suits was the same. We promptly served a deposition notice on the plaintiff and conducted his deposition. The deposition persuaded his attorney to drop the case.

Environmental Law

One of the receiver's first orders of business after taking over as new management was to retain an environmental consultant to confirm that asbestos, indoor air quality and underground tanks were in compliance with laws and regulations. Because this environmental assignment was at the core of our law practice, we were able to confirm, promptly and routinely, the status of environmental compliance. Later in the process, we encountered another more difficult environmental issue:

the hotel's chill water air conditioning system had ceased to function. Upon investigation, we discovered that this condition had been caused by a prohibition in the use of chromates in the air conditioning piping. The chromates had prevented a "build up" on the pipes; without it, the pipes became constricted and the air conditioning became inoperable. Due to our experience in construction and environmental issues and access to appropriate experts, we were able to effectively respond. Again, we partnered, this time with a number of engineering and environmental consultants to develop and carry out strategies and solutions.

Construction Law

Under New York City's Administrative Code, it was necessary to inspect the hotel's facade and make emergency repairs. Again, our detailed familiarity with these legal requirements, together with access to a

wide array of engineering experts, contractors and scaffolding expertise, enabled us to reach solutions quickly and cost-effectively on an issue which could be expected to be expensive and cumbersome.

Contract Law

Our client was solicited by a health club who wished to make significant capital improvements to the premises in exchange for a long term contract. Unknown to us, the health club entrepreneur ignored the obvious limits on the role of the interim management (the receiver) and made elaborate plans and put high hopes on the arrangement coming to fruition. When the health club sued the hotel for lost anticipated profits of over \$1 million, our familiarity with commercial litigation in New York Courts allowed us to obtain dismissal of the entire suit in short order.

Lien Law

Our expertise in lien law allowed us to dispose of mechanic's liens on the hotel for amounts owed by the pre-receivership owners. In this area, we were able to use our detailed knowledge of the lien law in conjunction with information from our partnering counsel expert in mortgage foreclosure and receivership.

Conclusion

Our experience as general counsel was rewarding and challenging in our core areas of law practice and in the areas in which we sought partnering through outside counsel and experts. The key is to select partners selectively and well and to find quality, responsiveness and value.