
The Color of Green:

Growing Environmental Business with Collaborative Efforts

It should come as no surprise that some very thoughtful environmental lawyers and consultants are entering into innovative marriages that, if not necessarily intuitive at the outset, do end up well for both spouses. Environmental groups are partnering with corporations (think Environmental Defense Fund and Google) and corporations are pairing with universities (think Starbucks and its tuition reimbursement arrangement with Arizona State University for employees seeking bachelor's degrees).

Before dismissing the notion that such collaborations are the progeny of a millennial-driven mindset where everyone gets patted on the head, bullies are banished, and being friendly is the only possible solution to any irksome problem (legal or not), consider how such an arrangement could possibly help you advance your career, learn more about your business, solidify your relationship with a client, and actually get the environment cleaned up faster.

Inside/Outside Partnership

About four years ago, lawyers at Cleveland's Thompson Hine recognized an opportunity when Goodyear Tire & Rubber Company lost a couple in-house attorneys for one reason or another at the same time. Rather than replace those lawyers, Goodyear and Thompson Hine collaborated so that the firm's lawyers would take on that in-house function. The result was a change in relationship benefitting both of them.

"Goodyear historically had managed environmental legal issues in-house, using outside

counsel for specific matters based on subject or geographic location," explains Steven Bordenkircher, Goodyear's senior legal counsel. "When Goodyear had an opening for an environmental attorney, hiring Thompson Hine as an outside firm to assist in managing day-to-day environmental legal issues departed from that model."

Thompson Hine's usual role is to serve as national environmental counsel for many companies, typically involving large, technically challenging client-intensive matters, explains Heidi Goldstein, a partner in the environmental and product liability groups. As outside counsel taking on that in-house role, the firm now addresses smaller sites and works very directly with Goodyear's business people.

As a result of this close relationship, the firm was able to give the client's business team a faster heads-up on potentially impactful regulatory developments. "We were told by the business people that they couldn't tell who was in-house and who wasn't anymore," Goldstein notes.

Goodyear confirms that the relationship has been beneficial for the company. "The arrangement has helped us continue to provide value to the business while giving Goodyear access to Thompson Hine's resources and experience assisting companies in other industries," Bordenkircher observes. Just as Thompson Hine gets an opportunity to learn its client's business up close and personal, so too does Goodyear gain the breadth of expertise from Thompson that it probably wouldn't have if the company had just hired more in-house lawyers.

“If an issue arises that we may not have seen before, there is a chance outside counsel has seen that issue working with a company in an unrelated sector. In a sense, Goodyear filled a position for one attorney through a team of attorneys, helping us achieve effective solutions,” Bordenkircher says.

One might wonder how this arrangement makes financial sense for either side. Goodyear began by crunching some data, “taking a comprehensive look at the environmental legal issues we manage and categorizing those issues by type, location, potential impact to the company, and current and anticipated levels of activity,” Bordenkircher recalls.

Items on the list were then allocated between in-house counsel and Thompson Hine. Workload balance was kept in mind. The divvying up of responsibilities has been tweaked a bit over time, especially during the first year of the arrangement. Keeping a close eye on who was doing what “helped us drive down costs in each subsequent year,” Bordenkircher says.

Meanwhile, Thompson Hine has been using some legal practice management mechanisms to ensure the client gets value-based pricing, flexible staffing, and predictability. “We sit down every year and talk about what the objectives of the business are, the law department deadlines, budget, stakeholders,” Goldstein explains.

In the last year, more detailed project management reporting has helped Goodyear better track the type of work the firm is doing, whether that work is compliance-related, remediation-related, a health and safety audit, and so on. Graphic depictions of where the fees are going and to what end can be enlightening.

The arrangement is renewable annually so the client isn’t locked into some long-term marriage. “We certainly hope there’s not an end to it,” Goldstein notes. As with any such pairing, the arrangement “needs fostering on

both sides... it can lead to an effective relationship between the company and outside counsel that creates both legal and business value.”

Expert Advantage

Having outside counsel serve as in-house lawyer is one way for both sides of the house to better learn the legal business. Other lawyers could gain an edge by taking the time to learn the art of the deal or, more accurately, the math of the deal by collaborating with the right experts in order to better understand the numbers.

For instance, as many an M&A lawyer has learned, when corporations are buying or selling off sites that may have some environmental problems, assessing how much cleanup costs actually will be is a bit of a crapshoot. Somehow, what starts at one number, or even a range of numbers, tends to start multiplying.

“Oftentimes, estimates are just wrong,” observes Terence Rodgers, managing director based in the Boston office of Berkeley Research Group, an expert services and consulting firm. Determining what an environmental cleanup is ultimately going to cost is like renovating an old house, he notes. Sure, everyone can make their best guesses, but until you start pulling down wallboard, you won’t know the extent of the problem.

Rodgers and colleague Neil Shifrin developed a process they call Environmental Portfolio Evaluation™ to assess prospective environmental costs more accurately. The idea came up during a business dispute in which liabilities were being assessed.

“There are a lot of environmental properties where there are normal curves, where we know what the average point or range is going to be,” Rodgers explains. “The real problem is that there’s a number of properties that are dynamic and skewed, not the normal curve. The only way you can identify what’s happening is if you sit back with the project and figure out where this will go to completion.”

Essentially, he and Shifrin came up with a decision tree in order to identify what might happen at different nodes, assessing the probabilities of going in different directions, and estimating the costs of each turn. This sort of issue can arise when the Environmental Protection Agency wants to take one kind of action at a site, but a liable business wants to do something else.

Using Environmental Portfolio Evaluation, the prices of each plan are assessed. Sometimes it even turns out that the EPA's plan will cost the same amount of money as the business's preferred option. Knowing the numbers can help in negotiating or making decisions.

For environmental lawyers, Environmental Portfolio Evaluation also can help lawyers work with clients to manage their portfolios. It's a tool that likewise can help clients that have not traditionally invested in environmentally iffy properties.

"In the investment world, a lot of private equity money is coming in to market," Rodgers says. Where utilities and their ilk recognize risks in environmental investments, private equity folks may not. Sure, they understand cash flow, but they might not understand the downside associable with certain environmentally problematic parcels. Here is where a law firm partnering with the right expert could be quite beneficial to a client.

Broad-Scale Collaboration

Like their counterparts at Thompson Hine, lawyers at Thompson & Knight recognized an environmental need and opportunity and took action to partner with a number of others to help.

Property assessed clean energy (PACE) is a financing mechanism that has been developing throughout the country on a state-by-state basis over the last six or seven years, explains Thompson & Knight Of Counsel Stephen Block. It provides a means for property owners

to finance retrofits to existing properties in order to make them more energy-efficient.

The lawyers heard about it through a client, the United States Business Council for Sustainable Development. Then Thompson & Knight partner James Morriss found out that PACE was not available in Texas and legislation was required to allow the state's property tax collectors to levy a tax assessment on the property. No one was actively pushing for such legislation, so Thompson & Knight formed a nonprofit, Keeping PACE in Texas.

"We reached out to clients we felt would be interested in it," Block says. "In a macro sense, we felt legislation would benefit our real estate clients, our lending clients would benefit from it, and inure to the greater good of the public at large." He describes the needed legislation as uncontroversial, not burdensome on taxpayers, something no one would really oppose. Some members of Keeping PACE in Texas happen to be clients of the firm, while others aren't.

After getting the legislation passed, "we thought our job was finished," Block says. But having learned about the PACE financing mechanism, "we realized ... there needed to be a uniform design for these financing programs." In other states, local governments have to create their own programs, meaning that each locality tends to be doing something slightly different.

So "we developed what we call PACE in a Box," in order to help allow for uniformity, adds Block. A coalition of some 120 people, along with the executive director of Keeping PACE in Texas, looked at what was going on elsewhere and designed a state-of-the-art toolkit for local PACE programs. The organization has received grants and support from big-name organizations like the Rockefeller Brothers Fund. Block reports that Travis County, where Austin is situated, established a PACE program based on the PACE in a Box.

Interestingly enough, this entire effort started out pro bono on behalf of a client.

The firm sees additional opportunities in the future, though. As Block sees it, the initiative is also the sort of action that law firms need to do to give back to their communities.

Current legal market realities should encourage these diverse collaborations. Downward pressure on fees probably isn't going away nor should the crush of competition (and the oversupply of lawyers). For law firms, it's all about new business opportunity *via* closer ties with clients. For companies, it means greater efficiency and more cost-effective solutions to environmental

challenges that won't be going away in today's compliance-focused atmosphere. ■

—Lori Tripoli

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