

As published in the April 6-12, 2007 issue of:

# Long Island Business NEWS

## From Inside Out

By Claude Solnik

Jim Fabian and William Wissemann have the kind of collegial relationship lawyers working in the same firm often dream about.

In nearly 15 years of working together, the two health-care attorneys have grown very close. They have complementary skill sets. They even complete each other's sentences.

But they're not partners; they don't even work at the same firm. And while they do collaborate as lawyers, Wissemann is not only Fabian's colleague; he's also his client.

As vice president and general counsel for the 439-bed New York Hospital Medical Center of Queens, Wissemann works very closely with Fabian, a partner at the Jericho law firm Nixon Peabody and the medical center's outside counsel.

Lawyers partner with all sorts of experts, but law's least examined and most delicate partnership may be the one between in-house company lawyers and the outside law firms they must sometimes work with. In-house attorneys create a virtual law firm by supplementing their skills with those outside lawyers; Wissemann, for instance, taps the nearly 50 Nixon Peabody attorneys who handle health-care cases.

"I can't maintain proficiency in all the fields that the firm can," Wissemann said. "I rely on their being more knowledgeable on particular matters. I count on the firm to be on the cutting edge for issues."

### Style points

**Leslie Berkoff, partner at Moritt Hock Hamroff & Horowitz in Garden City, said in-house counsels usually turn to law firms for time-consuming problems. Simply put: In-house attorneys are too busy to handle everything.**

**"A lot of in-house counsel are jacks of all trades," Berkoff said. "But they're not going to step outside and handle litigation. It would take them away from the otherwise day-to-day responsibilities at the company itself."**

John P. McEntee, partner at Uniondale-based Farrell Fritz, said firms rely as much as possible on in-house attorneys, to save money, but there comes a time when needs outweigh abilities.

"The first question is whether the expertise or capability exists in-house," McEntee said.

If it doesn't, a company will seek help from

the outside - and hope it can find it at a firm that knows a thing or two about the industry in question. Alfred Paliani, general counsel for Quality King Distributors Inc. in Ronkonkoma, said outside attorneys need to be more than just law experts.

"If your outside counsel becomes an expert in your business, everything flows from that," Paliani said.

Like good marriages, successful in-house/outside counsel relationships come from various molds. There are relationships wherein the in-house counsel monitors the outside firm's work very closely; there are those wherein the in-house lawyers assign the work and step out of the picture. **Berkoff said some in-house counsels "want to approve every piece of paper you sign off on," and "some want to be there just for strategy calls."**

There is a major danger, in a corporate sense, to the usage of outside counsel: Your attorney may also work for a competitor.

"There can be conflicts of interest," Fabian said, "which we have to be very careful about."

### Familiarity breeds expertise

Although firms don't lock in outside counsels forever, outside firms and their clients often enjoy lucrative, long-term engagements. Sometimes, the outside lawyers become so integral to and well versed in a company and its specifics that they cannot be easily replaced.

"When I have an issue, Jim has a short learning curve," Wissemann said. "If you change outside counsel on a lot of these things, there's a time to get up to speed on the organization, who the players are."

Paliani said attorneys accustomed to working with a particular firm can focus on doing the job. "You don't want an outside counsel who's there to try to impress you," he said. "You want an outside counsel who truly has your business's best interests in mind."

Technology helps sharpen this focus. Wissemann has Fabian's office, cell, home and BlackBerry numbers; in short, he can reach Fabian in a hurry, and vice-versa.

"We are connected, whenever he needs to reach me and whenever I need to reach him," Fabian said.

The trust factor, developed over time, also

helps. After working together so long, Wissemann and Fabian can tell each other the absolute truth; Fabian knows that when Wissemann gives him a deadline, he means it. Attorneys also have to feel free to admit they don't have all the answers. When he doesn't know something, Wissemann knows Fabian is there as a resource, and "I'm not going to get a response that's belittling."

Michael Ettinger, senior vice president, general counsel and secretary for Henry Schein Inc. in Melville, said in-house and outside counsel need to reach this level of understanding to achieve success.

"The biggest key for a successful in-house and outside counsel relationship is successful communication," Ettinger said. "You have to have a good communication system in terms of reporting back and forth."

### Ups, downs, bills and time

Nobody wins all the time, so outside counsels have to manage their clients' expectations - and handle defeats as well as victories. If not, a lost case can lead to a lost engagement.

"There's no point in sugarcoating it," Berkoff said. "We take the most aggressive approach we can. But sometimes you have to know when to fold your cards and do a good deal."

For their hard work, outside counsels are typically paid for billable hours; sometimes projects are paid on fee basis. Clients don't want to be shocked by bigger-than-expected bills, so successful relationships almost always start with a clear understanding about money.

And while the most successful relationships often span more than a decade, no professional arrangement lasts forever. Retirement - on the inside or the outside - invariably leads to change. Case in point: Fabian, who leads Nixon Peabody's health care group, is 58 and will eventually retire. What happens then to the firm's relationship with the New York Hospital Medical Center?

Fabian introduced Wissemann to junior partners at the firm and hopes his successor at the helm of the health care practice will be able to serve the client.

"When I do retire," Fabian said, "there'll be somebody else in my shoes who can fulfill the same role."

