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[Home](#) › [Corporate Counsel](#) › [Articles](#)

In-House Spotlight: All Things In-House at the Auction House

By Zachary G. Newman – September 6, 2011

Jonathan Olsoff, a 1985 graduate of American University, clerked with the Tenth Circuit of the U.S. Court of Appeals before joining national law firms first in Washington, D.C., and then in New York.

He is now the North American general counsel and worldwide director of litigation of Sotheby's. Sotheby's is a leader in the auction world, with multiple locations in numerous countries and well over a hundred auctions each year in numerous categories.

In-House Litigator contributor Zachary Newman of New York-based Hahn & Hessen recently sat down with Jonathan to talk about his in-house practice.

Q: What is the size of Sotheby's legal department?

A: Right now we have 13 in-house lawyers in the legal department worldwide with six based in New York, six based in London, and one based in Paris. Our legal department also has about five paralegals. We also have a separate compliance department staffed with four very experienced attorneys.

Q: What would be the one piece of advice you would impart to outside firms looking to represent Sotheby's?

A: The one piece of advice I would impart probably would be that it is important to understand our business in order to represent Sotheby's. Our outside counsel are expected not just to provide sound legal advice, but also to understand how a particular legal issue may impact the company's business objectives and goals that transcend any individual matter.

Q: What is the most difficult aspect of your in-house job as compared to when you practiced with a law firm?

A: I would say that the pace of the business is the most difficult aspect of the job when compared to my law firm days. The rapidity with which you have to make decisions is very different than in a law firm, and you do not always have the luxury of time that outside lawyers typically have to think through issues. This is especially the case in our business, which by its nature is fast moving. As a result, you often need to learn to trust your instincts. Also, as many of our auctions carry press coverage, there is an extra layer of complexity when managing legal issues that was not as prevalent when I was working with private law firms.

Q: For lawyers that are contemplating a transition to in-house, what suggestions can you give to assist them in their preparation and job hunt?

A: I am often asked by young lawyers starting out how they can become "art lawyers." I always advise them that when we are hiring new lawyers, we never set out to hire "art lawyers" but instead look for lawyers who have had the best training available and who enjoy

the craft first of being a lawyer.

Q: What are the biggest challenges you face in your current position?

A: The cost of litigation is really becoming prohibitive and, as a result, we are turning more often to alternative dispute resolution possibilities. Nevertheless, we often need to make strategic decisions to litigate a particular matter, knowing it might be costly when we perceive the need to defend and validate the integrity of our business practices or our adversary is being unreasonable. Choosing when to go the distance is a challenging aspect of my job, but it is really at the core of the advice we provide management.

Q: Do you interact with law firms outside the United States, and, if so, what are the most notable differences, if any, with the U.S. firms?

A: I have had very productive relationships with both U.S. and foreign law firms. That said, interestingly, I have noticed some differences with the legal services rendered by domestic firms compared to foreign firms. One of the biggest differences I have noticed is that foreign firms approach legal issues with a greater formality than do domestic firms. By this I mean that domestic firms seem to be more comfortable in formulating, discussing, and implementing business solutions to legal problems whereas—and this is admittedly a generalization because there are indeed notable exceptions—their foreign counterparts tend to limit their advice to the legal implications (focusing largely on risk, probability, and procedure). This, frankly, may just be because I have had longer relationships with the domestic firms that we do business with, but the point is that I value those lawyers here and abroad who can be flexible enough to devise a variety of legal, business, or practical solutions to the legal issues we encounter in our business.

Q: More and more companies are requiring their in-house or outside lawyers to perform detailed early case evaluations of matters to assist in analyzing and managing risk and early settlement possibilities. What are your views on this and the role of early case evaluations in your litigation matters?

A: We have always employed early case evaluations in the matters that reach our attention. We evaluate cases at their inception largely because of the need to address issues on a timely basis given the nature of our auction business. Frankly, our business is driven by relationships, and we employ risk analyses as often and as early as possible. This is not to say that Sotheby's avoids litigating legitimate issues. Rather, we employ and rely upon early case evaluation models in order to manage risk, and we believe that early and periodic evaluations are beneficial in the management and supervision of pending litigation matters.

Q: What advice can you impart to in-house counsel as to how to communicate legal issues with senior management as opposed to middle or junior management?

A: The only advice I can think of passing along is to remember that senior management usually focuses on a broader, macro view. Senior management usually, and rightly, factor into their analysis broader business and franchise implications. Senior managers likely will rely on their in-house counsel to assist in balancing the costs, risks, and merits of any litigation with the overall impact the litigation may have on imminent business events and overall company initiatives. Thus, in-house counsel should be mindful of senior management's agenda and objectives prior to communicating about any particular legal matter.

Q: In-house counsel as part of their procurement and case management seem to rely more heavily on litigation estimates and budgets. How much stock do you put in litigation budgets and estimates, and what role do they play in your management of litigation matters?

A: They play a relatively small role in our business because our group of outside firms has represented Sotheby's for a number of years and they understand the expectations of the legal department as well as management. That said, the in-house staff needs to have a clear understanding with outside counsel as to the expected costs of litigation to avoid misunderstandings or failed expectations. But litigation is an unpredictable endeavor, and we are realistic about the difficulty in accurately budgeting litigation given the number of contingencies and the inherent uncertainty of the process.

Q: What is the best "value added" benefit outside counsel can offer in-house counsel?

A: We especially value outside counsel who can anticipate problems that our business might face in the future. I see a benefit in our outside counsel staying tuned to developing legal issues that could impact our business even though we do our best to stay very informed. If outside counsel keep us abreast of these developments, we are more prepared and we can try to be proactive instead of reactive. This relates back to what I mentioned earlier about how critical it is for our outside lawyers to understand our business and business needs.

Q: What do you miss most about private practice?

A: I actually miss writing briefs. I enjoyed the whole writing process. I do not want to say as an in-house lawyer that I do not have the opportunity to think through legal issues or formulate solutions, but I do miss having the direct responsibility for developing the legal arguments and composing the legal brief.

Q: What don't you miss from private practice?

A: Being on the front lines of litigation. I always enjoyed analyzing and formulating litigation strategies more than the endless discovery disputes and unproductive squabbling that occurs during, and too often dominates, the discovery process.

Q: I trust you interface with both litigators and non-litigators, so, here is the question. The litigators are the better lawyers, right?

A: Since I work with both, no comment!

Q: How much is too much when it comes to updating you on pending litigation cases?

A: It really depends on the matter. If, for example, the issue touches upon the core of our business, we may expect constant, real-time updates. On other matters, we do not need to hear about every development. Our outside lawyers know how we work, and, over time, we develop a trust as to what information needs to be imparted and when. Outside counsel should not be afraid to ask their in-house counterparts as to the frequency and nature of the updates that are expected for any particular matter.

Q: What would you say is the biggest blunder outside counsel make in their invoices (in other words, what should outside counsel strive to avoid in preparing their invoices)?

A: I think getting the invoices out in a timely manner is really one of the most important things concerning the billing process. If I receive a large invoice six months after the work was performed, it is really unhelpful and unwelcomed.

Q: Email or phone call from outside counsel—which do you prefer, and why?

A: I prefer email unless it is something very urgent. An email as opposed to a phone call allows me to review it based on my availability. The nature of our business makes it difficult for me to take unscheduled calls during the day, and with an email I can decide how much involvement is needed or if I require additional information.

Q: What is your favorite auction held by Sotheby's during the year and why?

A: My favorite auction was back in 1997 when we auctioned a *Tyrannosaurus rex* skeleton, known as "Sue," which sold for \$8.36 million. The Field Museum of Natural History in Chicago was the winning bidder of the skeleton, which was discovered in South Dakota and estimated to be more than 65 million years old. The auction room was filled to standing room only.

Interview by [Zachary G. Newman](#), a litigation and dispute resolution partner at New York-based Hahn & Hessen, LLP.

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