

McGraw Hill GC: It's All About Relationships

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Last summer, when Lucy Fato stepped down from her role as Deputy General Counsel and Corporate Secretary at **Marsh & McLennan Companies** to take over as **Executive Vice President and General Counsel at McGraw Hill Financial**, she inherited the legal troubles of McGraw Hill Financial subsidiary, **Standard & Poor's**, including a batch of 2013 lawsuits filed by the Department of Justice and a number of states over fallout from the financial crisis.

Fato spent her first day at McGraw Hill Financial on the phone with lawyers from the DOJ and the Securities and Exchange Commission, and state attorneys general. Fato said she was just hoping to introduce herself and build some personal relationships.

Six months later, Fato and her legal team, which included lawyers from **Cahill Gordon** and **Davis Polk**, where Fato was once a partner, finalized a **\$1.5 billion settlement**.

Fato, a Pittsburgh native and daughter of Italian immigrants, is now eight months into her tenure at McGraw Hill Financial. Last week, she spoke to Big Law Business about the S&P settlement, runaway hourly rates, law firm diversity, and the Steelers' Super Bowl chances.

Excerpts:

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I get the sense that the model in many cases has been for outside counsel to take the lead in discussions But my view is that the role of in house counsel is, in many ways, to be the face of the company.

Another great way firms build relationships, something that's allowed me to fill gaps right away, is with secondments, where we get associates who come work for us for six months, and then go back to their firm.

When I first got here I would get stacks of invoices to sign. I hadn't seen a paper invoice in years.

Below is an edited transcript of the first installment of the interview.



Big Law Business: You haven't been on the job long, but what are the big differences so far between the legal departments at McGraw Hill Financial and Marsh & McLennan Companies?

Fato: To be honest, there aren't as many differences as one would think. The two companies are very similar in many ways. When I joined Marsh & McLennan Companies in 2005, it was shortly after the

whole Eliot Spitzer era, when he had gone after the insurance industry, and Marsh was one of the companies he went after.

Marsh & McLennan had historically been a holding company with a diversified portfolio of businesses, and had always performed very well. Its collection of brands were number 1 or number 2 in all of their markets, and then they had this huge regulatory shock to the system. Everything had to change after that.

That was not that different from what I found here. McGraw Hill had historically been a company with a very diverse portfolio of business, and then we too had the financial crisis, which resulted in a number of changes. So coming into it I could see the similarities, in terms of the histories of the companies and how they were structured organizationally, and the kinds of change that was going to have to take place.

When I got here the legal department wasn't that different from what I had found at Marsh & McLennan. The department had sort of followed the lead of the business and historically been very decentralized, with lawyers in the businesses, a small group at the parent, and not a lot of touch points between the two.

Also, in the post-Enron, post-Worldcom world, there was a change in philosophy around control groups like a legal department. There was a view that they should be more centralized, so we did that at Marsh & McLennan. And I'm starting to work on that here—identifying who all the lawyers are, what they do, how we support our businesses, and trying to pull the group together in a more centralized way.

Big Law Business: Media coverage of the S&P settlement highlighted your focus on personal relationships with the government lawyers. Is that really so unique?

Fato: When I was at Davis Polk, the firm had a unique culture. It was very collaborative, very solutions oriented. Even in difficult or contentious situations, there was always a feeling of mutual respect that permeated everything the firm did.

And when I got to Marsh & McLennan Companies our general counsel, **Peter Beshar**, had a very similar style. He was always telling us in the legal department that he wanted us to engage proactively with regulators, engage proactively with people in the business.

That was something that was ingrained in me as a young lawyer—that it's always good to build relationships with people, whether they're on the same side or the opposite side.

I thought, since it was my first day, I may as well introduce myself and open up a line of communication with the important stakeholders—the SEC, the DOJ, and some of the state AGs. I didn't appreciate at the time that it was an unusual thing to do.

Big Law Business: What is your relationship with outside counsel typically like during settlement negotiations?

Fato: I get the sense that the model in many cases has been for outside counsel to take the lead in discussions. The people in the company, whether it's the CEO or the GC or whoever, don't come in until later, when you're getting close to closing a deal. I think it was a bit jarring for some people that I was very much taking the lead on these matters.

But my view is that the role of in-house counsel is, in many ways, to be the face of the company in these situations. Outside counsel can never really have perfect information about what a board or a CEO is thinking. They can never really step into the shoes of in-house counsel.

That's how in-house lawyers really add value. They can connect all the dots. I think, historically, general counsel deferred more to outside counsel than what you see today. It's a process that has evolved.

Big Law Business: Generally, do law firms do a good job developing personal relationships?

Fato: It's changing. It's become more competitive. Firms are having to spend more time doing client and business development work, and I think they do see the value in building relationships. Some of the firms we're using now are the ones that reached out to me when I started and said, "We know you have a lot on your plate. We're here to help you in any way we can."

Another great way firms build relationships, something that's allowed me to fill gaps right away, is with secondments, where we get associates who come work for us for six months, and then go back to their firm.

In my prior role at Marsh & McLennan, we even had relationships with firms where we asked for secondees for free for a certain period of time. Of course you have to earn the right to ask for someone for free, so I haven't done that yet, but we do have a couple of secondees now, and we're looking to bring in a couple more.

Secondments are a great way for a firm to build a relationship. The associate is actually here, in our building, getting to know our people, getting to learn our business, and when they go back to the firm, they bring all of that knowledge with them. It's especially effective when a firm is new to the company.

Big Law Business: Besides being more competitive, how has the practice of law, and the relationship between in-house and outside counsel, changed over the years?

Fato: In-house departments have become much smarter about how we manage our departments and how we manage our legal expenses. In-house departments are becoming bigger, more global, and many companies, including ours, spend a lot of money on outside counsel. Getting a handle on that is extremely important.

I view running the legal department as managing a business. We have probably 200 people in our legal department globally, which is bigger than many law firms. Understanding the internal costs associated with these people, and understanding the external costs, is really critical.

I'm very big on data and having a lot of information to work with, but in the absence of a technology solution, it's really hard to get it. We actually didn't have an e-billing system when I got here, but we're implementing one now. When I first got here I would get stacks of invoices to sign. I hadn't seen a paper invoice in years.

E-billing gives you enormous visibility into how law firms make money. Every single lawyer gets input into the system—you know who they are, what their billing rate is, exactly how much time they're spending on matters.

You can ask questions like, "Why are four people going to a deposition? Couldn't two people have done it?" You can ask, "Why was I charged for a meeting where you were bringing someone up to speed because you were going on vacation?" E-billing gives you a different level of visibility.

We'll also eventually be establishing uniform billing guidelines, so we can basically set the rules. There can be a bit of negotiation, but why should we pay for things with one firm, and not pay for them with another?

It's a way to treat the firms fairly. Of course it also puts pressure on the firms to know we have that visibility.

Part II of the Lucy Fato series will include: how Fato approaches alternative fee arrangements, an overview of which law firms she uses and her feelings about her hometown team, the Pittsburgh Steelers.

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