

Business Better (Season 3, Episode 3): Fostering Attorney-Client Relationships, a Discussion with Lisa Stauffer from PNC Bank

Speakers: David Zive and Lisa Stauffer

Steve Burkhart:

Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host, Steve Burkhart. After a long career at global consumer products company BIC – where I served as Vice President of Administration, General Counsel, and Secretary – I'm now Of Counsel in the Litigation Department at Ballard Spahr, a law firm with clients across industries and throughout the country.

In today's episode, we're joined by special guest Lisa Stauffer, Managing Senior Counsel at PNC Bank. We discuss Lisa's career transition from practicing in a law firm to in-house counsel, and navigating notable challenges. We also discuss how she is preparing for the possibility of an economic downturn in 2023. Speaking with Ms. Stauffer is my Ballard Spahr colleague, David Zive, Of Counsel in our Philadelphia office and a member of our Real Estate Finance Group. So now let's join David, and his guest Lisa Stauffer.

David Zive:

Good morning and welcome to our Business Better podcast. It seems as if we have been discussing this podcast for a really long time, so thank you for joining me.

Lisa Stauffer:

Hi, it's good to be here. Thanks for the invitation.

David Zive:

So while I've known you for over a decade, some of our listeners may not. I'm excited to have this conversation with you today to discuss our respective career paths and some of the things that foster a really solid attorney-client relationship. But before we go there, let's start off with your elevator speech. What do you do, Lisa?

Lisa Stauffer:

Well, I've always described myself broadly as a bankruptcy lawyer, but as you and I have discussed many times, bankruptcy is only involved in a fraction of the matters I handle. So here it goes. I'm the lead attorney for the team of legal professionals that support the workout line of business for PNC Bank. And that line of business is known as CAT, or the commercial asset team. And of course, it's helpful to understand the bankruptcy process in my role. The reality is, oftentimes I'm consulting on broader workout strategy, litigation in connection with insolvency, debt restructuring, outside counsel engagement, internal processes that affect CAT and regulatory compliance.

David Zive:

Wow, that's a lot. So the lead CAT attorney role is new for you, so congratulations. What led you to PNC Legal initially?

Lisa Stauffer:

Well, I spent 13 years in private practice doing exclusively workout work. At the first firm where I practiced out of law school, I was able to participate in lender and creditor work, committee work and even some debtor work. And then when I moved to the second firm where I practiced, I focused exclusively on creditor side work, both doing transactional work as well as litigation, but always focusing in the workout/insolvency/bankruptcy space.

I wasn't looking for a new position or employer with any particular intentionality, but the workout council position opened up at PNC and I was really able to meet all of the requirements of the job so I threw my name in the hat. The position was attractive because it allowed me to continue to do sophisticated work in a dynamic industry. And at the time, coming out of the Great Recession, there was a tremendous focus on banks and bank regulation, so there was a lot to learn even while applying my existing skillset. I've also been in Pittsburgh since law school, and as you know, PNC is headquartered in Pittsburgh. I was really excited to find such a good fit and be able to be in the headquarters of a big bank.

David Zive:

Were there any notable challenges on that learning curve?

Lisa Stauffer:

Yes. I had so much to learn about banking. Like I said, I could meet the requirements of the job sort of from the legal perspective, but I had never worked in-house before and I had never worked for a bank, even though I had bank clients in private practice. Just building my network inside an organization of this size is a big challenge. On top of that, the bank and its people care a lot about things beyond just legal risk. I mean, just really understanding what they care about and where risk falls within that list. And by the way, it actually lands pretty high up on the list. But the technology, efficiency, regulation, reputation, operation, customer service, product development, et cetera, et cetera, et cetera, it's hugely challenging.

David Zive:

So I mean, I think I know the answer to this question, but what, if anything, do you miss about life at the law firm?

Lisa Stauffer:

Well, and you and I have talked about this and I think we agree that it comes down to the people. Like I said, I wasn't looking to leave the firm. And the thing that made me most happy about going to work there every day is that I worked with great people. If you have to be working long hours and navigating complex issues or confronting a difficult opposing counsel, it is so rewarding to do that with people who believe in you, who are supportive of you and who understand exactly what you're trying to accomplish.

David Zive:

Absolutely. How would you describe the differences between being a law firm lawyer and an in-house lawyer?

Lisa Stauffer:

Well, the biggest difference for me was going from being a profit center to a cost center when you move from any law firm to any in-house position, really. And that's a very lawyer-specific issue, but in the law firm setting, the entire organization is focused on practicing law. So billing hours, meeting client needs, being responsive and timely to legal issues and problems, keeping up to date on case law, that sort of thing. And it's not that we don't do that in-house, but in-house, while we have a team of lawyers that is very well integrated into the enterprise, we're a cost to the bank, even if we're a necessary cost. So there's much more to focus on in terms of controlling legal fees and keeping the department expenses in check. So now it's your turn, David. What led you to Ballard?

David Zive:

Wow. I spent 18 years in private practice, so a little bit more than you before leaving for my first in-house opportunity. I started my legal career as a commercial real estate lawyer at a large Philadelphia firm that was nationally known for its commercial real estate practice. So coming out of law school, all I wanted to do was to be a real estate lawyer, end of story. But then the real estate market crashed in the early nineties, and I found myself at a small bankruptcy boutique where I represented primarily commercial debtors and handled many single-asset real estate bankruptcy cases. After a few years, I recognized that I really, really wanted a more transactional practice than bankruptcy afforded to me. And eventually, I was representing commercial investors, developers, borrowers, and lenders, but was repeatedly pulled into commercial workouts as a result of my creditor's rights experience.

In the mid-2000s, I was asked to join a Philadelphia-based hedge fund to become its director of legal for a \$2 billion debt portfolio. Today we call that bridge financing. It was a great opportunity to better understand the business decisions that were behind the legal ones. Shortly after I arrived, though, the GFC hit, so it's all about the timing. Fortunately, the fund pivoted fairly quickly and developed a distressed debt fund to purchase loans secured by multifamily properties. That provided a great opportunity for me, as I quickly found myself working at the crossroads of legal and business all day, every day, and the focus on distressed debt really sent my career down a completely different path. After a few years, PNC was looking for someone to join its commercial workout team, now called CAT, who would primarily support the bank's commercial note sale platform, but in addition, cover commercial workout matters.

The synergies were obvious. It was a great opportunity to move from the buy side to the sell side in terms of distressed debt, and for a great organization like PNC. So I went. I think I started just two months before you and stayed for just shy of a decade. My time at PNC allowed me to tap into a lot of underdeveloped skills, skills that made me a better business partner as well as a better lawyer. But being an in-house attorney at a large bank is quite different from being in private practice, as you pointed out. But for me, I was already realizing that something was missing in the summer of 2019, and then the pandemic hit. But the pandemic afforded me time to do a lot of professional self-reflection, and I ultimately concluded that I missed rolling up my sleeves and getting deals done. It was my desire to work on interesting deals for great clients with the best and brightest in the business, that's really what led me to Ballard. So like you, I was and still am really excited to find such a good fit.

Lisa Stauffer:

And your role change is fairly recent as well, so congratulations on that. What, if anything, do you miss about life in-house?

David Zive:

Well, thanks for the congratulations, and of course I miss working with Lisa Stauffer on the daily the most. But seriously, I don't miss in-house life per se. I do miss my business partners and legal colleagues at PNC, I'm thrilled that many are still clients today, and some days it feels like I never left, which is nice. Some reacted with real skepticism about the prospect of my returning to big law after so many years in-house. It's not something that is often done, but it's not really rare either. But many more were very encouraging and supportive. I saw a meme on Facebook recently that really spoke to my feelings about my own transition, and it said, "Don't be afraid to start over again. This time you're not starting from scratch, you're starting from experience." And I think that that meme pretty much sums up where I am in my professional journey. So what have been your biggest challenges in your new role at PNC?

Lisa Stauffer:

I'm sure many of us could say this, but the past two years or so have been marked by great transition. First of all, the integration of BBVA. PNC announced the acquisition of BBVA at the end of 2020, and many of us spent much of 2021 working on what we called integration, during a pandemic. The official closing of the acquisition was in June, and then the actual convergence of the two banks occurred later in the year, in October. I was part of CAT's integration team, so I learned a ton about what a merger of that magnitude involves. I also worked closely with several senior leaders in CAT as well as several of my legal colleagues, identifying legal issues that were specific to CAT, getting my arms around what was coming to us from BBVA, making sure we had coverage of new workout matters, as well as several new portfolios of loans being managed by CAT.

We also added a former BBVA lawyer, Josh Lewis, to our team. So I spent much of the year working with him, both to understand the BBVA workout portfolio, and also getting him onboarded at PNC. The next, sort of, piece to this great transition theme is sort of case management to risk management. The other big transition that I'm engaged in more recently is that last fall, I took over management responsibility of the legal team that supports CAT. I have big shoes to fill, as our former manager, Mark Gittelman, has stepped down after 30 years as a workout lawyer for PNC. To his credit, he set me up really well to take on the management, administration, and as I think you called it, risk mitigation that comes from the new position.

I've spent much of the last six months connecting with more senior leadership in CAT specifically, as well as the bank overall, reaching out to many of our key outside counsel, understanding many of our procedures and compliance schemes, and getting better acquainted with the CAT client group as a whole, including visiting markets I didn't previously cover, and then PNC new markets coming on board from our acquisition of BBVA. I also continued to provide geographic coverage for my markets, provide backup support for syndicated workouts, regularly train on legal and regulatory matters that affect my clients, and manage our relationships with our outside counsel.

So that's two, and then three is this transition from the case management focus to governance. One of the things I'm experiencing more in this new role is legal department governance. I spent years, like I said, supporting the markets I was assigned, building relationships with asset managers, training, staying on top of legal trends affecting the banking industry, all of which I loved. But now, in addition to managing other lawyers and paralegals, I'm much more engaged in bigger decisions and initiatives involving the larger business and finance legal group as well as the legal department as a whole.

David Zive:

Wow. Do you have time to sleep? As you dive deeper into the business of PNC in your new role, have you learned anything in particular that might impact how you make legal engagement decisions?

Lisa Stauffer:

I think it's important for law firms to understand that there are a lot of folks working in banks, for more than a decade even, who have never experienced an economic downturn. We're going to be reliant on the experience of our workout lawyers, and I mean outside workout lawyers, not just to do the assignment, but to think about the implications of the task and act as a real advisor to the relationship manager or asset manager as the case may be. In that same vein, it'll be important for our lawyers to understand our business.

Who are the decision makers beyond the specific person who's handing you the file? How might the work be used or misused in other contexts? And what warnings or disclaimers might be appropriate, even if you would typically assume that they were known? When is it appropriate to push back? When is it appropriate to engage with in-house counsel? Be mindful that the bank, not the individual handing you the work, is the client. As hard as it might be to have to push back on the bank contact or even reach out to internal counsel, the goal is to protect the bank. Especially in a downturn and especially when dealing with clients who do not have much experience with those circumstances, it may be necessary, but uncomfortable, to question, push back or go above those clients.

David Zive:

Well said. I don't think you can overemphasize the importance of retaining lawyers who understand the clients' business. We talked about this issue so many times when I was at the bank. At some level, there are many experienced attorneys who can draft a note or a mortgage or an amendment, but the attorney you need is one who will do that drafting, but who will also appreciate the internal processes and procedures that impact how business gets done at PNC, or any client for that matter, or other business and regulatory issues outside the credit memo. You want an attorney who is quite literally on your team, not just an adjunct member. In my experience, finding that sort of legal representation is easier said than done. What criteria do you use to select and retain lawyers that will fill that team member role?

Lisa Stauffer:

Well, as you know, we have and have had quite a long list of firms that we use regularly for an extended period of time. What has changed is that we now, and this is really not that new, have to vet law firms through a rigorous process called enterprise third party management. The process includes collecting information about the nature of the proposed firm representation and the kind of data that will have to be provided to the firm to create a risk profile for the engagement. It then involves an assessment of the firm's security to understand whether we can accept that risk. I'm vastly oversimplifying the process, but trying to give you an idea of what is involved engaging a new firm. So we try to build relationships with our existing approved firms, like Ballard Spahr, and broaden the ways in which we work with those firms, rather than having to find a new firm to work with each time we have a new need or a new project.

It's great being able to pick up the phone and call you, David, and not even have to finish my sentence for you to know what I need or what the situation is. And that relationship has real value in the context of choosing outside counsel. Of course, if we need something for which a new firm is needed, we'll go through the selection and vetting process. But it's less than ideal and it's much more preferable to go to a known firm or lawyer and have them identify a colleague who can meet our needs. Substantively, we need lawyers who understand the law, the regulatory scheme, and, as I said before, our business. That may mean providing counsel as part of an interdisciplinary team. It also means that regardless of who in your firm is the primary point of contact, part of what we need is for you to know when you need to bring in that expertise.

What I'm saying is that the more collaborative you are at your firm with your colleagues, the more attractive of a service provider you are to us. It is very apparent to me when there is a lack of internal comity at a firm. It's something I don't want to have to think about or worry about, but more importantly, it bears out in the work product and the relationship. I want to make one more point here related to collaboration, which is about the bank's commitment to diversity and inclusion. I've had this discussion with you over the years, and I've had this discussion with colleagues of yours at Ballard, and as far as we're all concerned, we have a strong alignment on this point. But to reiterate, we do look to our firms to join us in the effort to make sure that we're being thoughtful about who is on the team supporting the bank.

I find that firms that have more of a collaborative culture do better at inclusion, and that means bringing in more junior folks when appropriate and folks with different experiences and perspectives. It's not always easily measurable or quantifiable, but we do engage in several best practices to evaluate that effort and assess whether we together are moving the needle. So sort of related, you've often described yourself as a cradle to grave lifecycle finance lawyer, which I think aptly describes your background. Looking back, I suspect you believe it has served you well. It has from where I sit.

David Zive:

It took me a while to recognize the value of being a nimble lawyer. I started as a real estate lawyer, then transitioned into bankruptcy due to market demand, then transitioned back to real estate when the market turned around again. This was all because I just wanted to be a real estate lawyer. Somehow the emphasis on real estate finance developed, and given my creditor's rights background, with a recurring emphasis on commercial workouts. Due to many factors really outside my control, I became an attorney that represents creditors and borrowers at all stages of the credit life cycle, while maintaining a primarily transactional practice. When I think about what qualities add value to the attorney-client relationship, I think the ability to anticipate and understand the issues from a practical and not just an academic or theoretical perspective, are abilities that cannot be undervalued. I like to think of my clients as partners. My job is to help them succeed. You have to be a partner to do that well. What else does PNC Legal do to foster its partnership with its law firms?

Lisa Stauffer:

As I mentioned earlier, we have a long history of collaboration, and one example that's been successful for us, and has also been well received externally is our LEG Up program. LEG is the litigation and enforcement group within legal, and it is where the idea originated, but it also makes for a nice acronym. The idea is that we bring diverse senior associates or junior partners from some of our key law firms, Ballard being one of them, into the legal department for what is best described as a secondment. The firm attorney is embedded within the department for six to 12 months and really learns the business and the bank's legal needs. At the end of that period, the firm attorney has the opportunity to pitch for work or become part of a team at the firm supporting PNC and get credit for that new work. As with anything, we've had our challenges and we've also

received accolades. But the idea is to be innovative in moving the needle on diversity and inclusion, and if we can do it in a way that enhances our partnership, it's a win for everyone involved.

David Zive:

How long has PNC been involved in that program? Any particular success stories you want to share?

Lisa Stauffer:

It's only been a few years now, although the pandemic, of course, warps all of our sense of time, and it's really belonged primarily within the litigation group. But I made mention of the program's concept at a recent Diversity Lab conference, it was in September, and one person commented that the program spoke to her soul. I took that as a compliment. I think there are other organizations that are very interested in importing the concept into some of their law firm relationships. On a broader scale, we have really integrated diversity and inclusion into all aspects of the legal department.

I'm currently spearheading Mansfield Certification, which in and of itself touches recruitment, retention, promotion and hiring of outside counsel. We have a robust summer intern program where we share interns with our law firms, including Ballard, as you know, and we invite our outside counsel to present on D&I related subjects for CLE credit. In my opinion, one of the great successes of the D&I initiative at PNC Legal has been our ability to partner with our law firms to jointly move that needle in the legal industry.

David Zive:

Let's shift gears from the attorney-client relationship to the current economic climate. What are you doing in your group in PNC Legal, internally or externally or both, to prepare for what many believe to be inevitable economic downturn in 2023?

Lisa Stauffer:

So I'm thinking that there are a lot of companies who artificially survived the pandemic through protections and infusions of capital. In other words, without that assistance, they would've failed. And in this environment, and absent that assistance, I expect we'll see less consensual workout. That perhaps could be done outside of bankruptcy, but we're also going to see more real failures with lots of acrimony and lots of loss. I try really hard generally and in my new role to avoid the tendency to be focused on doom and gloom so I really hope I'm wrong. I just think that there are many workouts that can be done and are done outside of bankruptcy and bankruptcy court because first of all, the bankruptcy code affords a degree of predictability, and second of all, there's something to reorganize or salvage that can be done without the cost of a bankruptcy. But where there's nothing to reorganize, and we know that there are going to be real losses, I expect that there will not only be filings, but more disputes around what I think will be a smaller pie. And what are you doing at Ballard?

David Zive:

Well, I mean, Ballard has a longstanding interdisciplinary team approach to guiding clients through turbulent times like recessions. I mean, candidly, it is a hallmark of the firm's historical success. The formation of the firm's Distressed Assets and Opportunities Initiative is just one example of how the firm is helping its clients prepare for and navigate through the inevitable economic downturn. This initiative brings together lawyers with a cross-section of legal experiences and talents and market knowledge from across the firm, from real estate, corporate lending, creditor's rights, municipal recovery, M&A, tax, loan servicing, project finance, corporate trust. I mean, the list really goes on and on. It's all designed to help clients minimize downside risk and maximize returns and opportunities in uncertain and challenging times. So are you seeing any signs of distress as we enter 2023 already, any particular industries popping up? What are you seeing?

Lisa Stauffer:

I wish I had a crystal ball for every time I've been asked that question. I'm not seeing anything that anyone else couldn't see. I mean, I read the news. I know, for example, occupancy in office space remains low, but then I also see articles about

repurposing that space. Who knows how that'll shake out? I've also read articles about the ongoing problem with inflation and whether or not we've tackled it quickly enough or effectively enough.

And then I see articles that say that we've turned the corner on inflation and now there are questions about whether we'll really see a recession. So like I said, I'm not seeing anything that anyone else couldn't see. Internally, we do see occasional spikes, by which I mean unusually busy days, and we watch for trends in the form of repeat problems, matters in the same or similar industries, needs for training on certain topics. But I have not yet seen any kind of wave, in the form of either sustained increases in workout work or in the form of a particular industry having trouble. I talk to lots of outside workout counsel and I hear mostly the same from them.

David Zive:

Well, but I suppose the office real estate sector might be the one carve out from that, because everyone's already seeing lower occupancy there and trouble is inevitable on the office side.

Lisa Stauffer:

I agree. I just think that there's a difference between what is inevitable or what we see that leads us to obvious conclusions, and I don't disagree with you, as contrasted with what's actually on my desk that I'm dealing with or the volume or the sort of enough of a volume to create a trend. That's what I'm trying to say, is we see it, and we have some of it, but we don't have enough of it to say, oh yeah, it's really bearing out in the work on my desk.

David Zive:

And I think internally we would say the same thing. And I've been at some conferences recently. I think the overwhelming theme is that pretty much everybody in our industry, regardless of what side you sit on, is just waiting for the shoe to drop. Well, this has been really great and I appreciate your taking the time to join me today. We covered a lot of interesting material and hopefully provided our listeners with insight into topics that many of our colleagues in workout, both in-house and in private practice, are thinking about. The attorney-client relationship is complex and there are many factors that contribute to making it work successfully. I think our discussion was helpful to highlight some of those factors so I appreciate you coming to talk to me today.

Lisa Stauffer:

And you know, and I talk all the time, and I'm so glad that we've been able to maintain our relationship, both personally and professionally, really. But I extra appreciate you inviting me to do this podcast. It was a great opportunity to collaborate and also to give some real thought to what we do, what we enjoy about it, and how we can move forward together in 2023. Thanks.

David Zive:

Thank you.

Steve Burkhart:

Thanks again to David Zive and Lisa Stauffer. Make sure to visit our website, www.ballardspahr.com where you can find the latest news and guidance from our attorneys. Subscribe to the show in Apple Podcasts, Google Play, Spotify, or your favorite podcast platform. If you have any questions or suggestions for the show, please email podcast@ballardspahr.com. Stay tuned for a new episode coming soon. Thank you for listening.