

General Counsel

James L. Horton

There are two types of general counsel, he thought, those who see risk in every communication and those who don't. He wasn't sure what he would find in Miles Henderson, but his instinct was that it wouldn't be good.

The CEO of Moxley Corp. (NYSE: MUJ) had called him at 11pm the night before and said that its chairman, Jonathan Wahrheit, had recommended him for crisis consulting. He knew Wahrheit. Wahrheit was the former CEO of AXCY who had used him during a merger that went bad. He had asked the CEO of Moxley what the issue was, and the CEO said it was a personnel problem. He went on the internet to look up Moxley's management in preparation for the morning meeting.

The clock showed 7 am on the secretary's desk as he was ushered into the CEO's conference room. The CEO was there, Henderson and Martha Hamilton, the head of Human Relations. They looked grim. He introduced himself and sat down with his pencil and pad to take notes.

"I'd rather you not take anything down right now," said the CEO.

He pushed away his pad and pencil. "How can I help you?" he asked.

Hamilton began talking. "We have a problem with our CFO. He's been accused of rape. He denies it but he has resigned. We want to keep the issue out of the papers. We need a press release that announces his resignation but doesn't get into details."

"Have charges been filed?"

"Not yet. An investigation is still underway."

"Has the victim been examined?"

"She has. There is no evidence of force. The DNA is his, however. He claims they had too much to drink and went to her room for the night."

He looked puzzled. Hamilton explained that the victim was the Investor Relations Manager who had worked for the CFO for five years. The two of them were in Chicago for investor meetings in the Loop. They had met for dinner, and matters had developed from there. The IR Manager hadn't said anything until three days later when she reported the incident. The IR Manager had notified the company of her action through her lawyer late yesterday.

“When charges are filed, there is going to be no way to keep this out of the press. You understand that?”

The three of them looked pained.

“The CFO was stupid. The two of them were stupid. The CFO has offered a settlement if the issue can be kept out of the papers. He’s asking her to withdraw her complaint. She’s considering it,” said Henderson.

“That may not prevent leaks from the DA’s office. It’s a high-profile case. I would be surprised if there aren’t two beat reporters on the story.”

“We’re not dealing with Strauss-Kahn,” said Henderson. “The CFO has been with the company for 10 years. He’s not well known outside of Wall Street.”

“Yes, but what if she does take the settlement? Are you going to keep her on? She can always talk later.”

“It’s a condition of the settlement that the issue be kept confidential,” said Henderson. “She’ll leave the company soon enough.”

“I don’t like it,” said the CEO. “We ought to make an example of him. The rumor mill is working, and we’re going to live with this for months to come.”

“There are privacy issues,” said Hamilton.

“Privacy, hell. He gave up privacy when he unzipped his pants. She gave it up when she went to the police.”

“Yes, but we don’t know the truth. It’s her word against his, and she waited for three days.” Henderson wasn’t being sympathetic. “I’ve tried to talk to her. She won’t speak to me. No one wins if this news gets out. Simply say the CFO resigned and be done with it.”

They looked at him. “Let me see if I understand,” he said. He ticked off the facts:

- The CFO and IR manager were in Chicago doing investor meetings.
- They met that night for dinner.
- One or both of them were drinking.
- The two of them went to her room.
- The CFO either assaulted the IR Manager or they had consensual relations.
- The IR Manager delayed reporting the incident for three days, too late to test her blood alcohol level.

- The IR Manager is potentially open to a settlement with a confidentiality clause if she withdraws the charges.
- The CFO has resigned.

“That’s the nub of it,” said Henderson.

“What do their lawyers say?”

“Both are pressing for the settlement,” said Henderson.

“So we say the CFO resigned for personal reasons, but we’re left with the rumor mill and the possibility of a leak,” he said. “Are we sure she hasn’t talked to a boyfriend, girlfriend, her mother, somebody?”

“We’re not,” said Hamilton.

“What’s to prevent someone from talking to the press, Tweeting, blogging, e-mailing, making charges on Facebook?”

“Nothing,” said Henderson. But, if she isn’t talking they’re just rumors and not our problem.”

“I’m not so sure of that,” he said. “Moxley could be accused of cover-up, even though the company is not party to the settlement.”

“We can be accused of anything,” said Henderson. “If there are no formal charges, there is no case.”

“When do you want the press release out?”

“Today,” said the CEO.

“We have a timing issue, don’t we?” he said. “What if she rejects the settlement and the CFO is charged. How do we avoid the fall-out?”

“That’s what we hired you for,” said Henderson.

“Why can’t we wait until we know if she is going to accept the settlement?” He thought for a moment. “Let’s just say he has resigned and leave it to him to explain. It’s not optimum and the press will hunt for a reason. The story is likely to come out. Are you OK with that?”

“I’m OK with getting this behind us as soon as possible,” said the CEO. “But, I’d like to hang him by his balls from a flagpole.”

He borrowed a desk and computer and wrote a release:

Frederick Verlangen Resigns As Moxley CFO

New York, April X – Moxley Corp. (NYSE: MUY) today announced that Frederick Verlangen has resigned as CFO. Moxley's controller, Gerald Awash, is serving as interim CFO until a new CFO is appointed.

About Moxley...

He felt uncomfortable with such a bare-bones release on BusinessWire but he sent it out before the markets opened. The release barely caused a ripple. There were calls from Reuters, Bloomberg and Dow Jones seeking a reason for the departure. He parried their questions and suggested they speak to the former CFO. He knew the CFO was incommunicado with his lawyer.

The IR Manager took the settlement and left Moxley. Verlangen found another job as CFO of a smaller company. There were rumors but none appeared in print. He monitored the internet for two weeks after the resignation to see if anything significant surfaced. Keywords of "Moxley and Verlangen" brought up earnings reports, conference calls and one reference in a financial blog to the sudden departure.

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Questions for discussion.

1. Was the situation handled well?
2. Was the PR counsel's advice correct?
3. Was the CEO's desire to make an example out of Verlangen intemperate?
4. Is there a necessity for transparency in every situation that a company confronts?
5. What would you have done?