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## BUSINESS

### Marc Kasowitz of Kasowitz Benson: 'To Succeed Means Checking Egos and Personal Agendas At The Door.'

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**A**s litigators go, Marc Kasowitz has one of the highest profiles in the world. Aside from representing the likes of Apollo Management, Fortress Investment Group, TPG Capital, the Port Authority of New York and New Jersey, AMC Networks, and Liggett Group (and this is just a sampling), as long-time legal counsel and advisor to Donald Trump, Marc Kasowitz has found himself front and center in arguably the most heated and contentious global sociopolitical climate in modern times. Recently retained by the President to serve as his private attorney in light of Robert Mueller's recent appointment as special counsel, it is rare to read about Trump's legal challenges without reference to his legal team.

I hadn't met Marc before our interview. And as I arrived at his office for our chat, it occurred to me that between the articles I'd read and the research I'd done, I wasn't sure what to expect. CNBC describes him as "the toughest lawyer on Wall Street," after all. What I found was a surprising levity to his demeanor; a man that moves with a youthful easiness, is full of energy, and despite a dual ivy league education, speaks in a vernacular that is more "street" than "ivory tower." The son of a second-generation scrap metal business owner, he comes from a lineage that wasn't afraid to get its hands dirty, teaching him respect for hard work, a drive to earn his keep, and above all

else, pay respect and offer loyalty to those that are close to him — all values that have served as the foundation for his career.

And while his success as a litigator often finds its way into the media's spotlight, a matter less celebrated is his success as an entrepreneur. In 1993, he left Mayer Brown with 18 other lawyers to start his own firm, today known as Kasowitz Benson Torres LLP. And between juggling business development, lawyering, and managing the firm — all difficult tasks in and of themselves — he's managed to grow it to 260+ attorneys and \$234M in revenue in 24 short years. Today we hear from Kasowitz about the business aspects of growing and running his firm, including the criteria of a durable brand, leadership succession, firm compensation, team cohesion, and more. Please see a revised and edited version (for readability) of our exchange below:

#### On Building a Durable Brand

Parnell: One of the major challenges in law firms is that it's very difficult to convince clients that they are going to get the same grade of work product out of each of their attorneys — something necessary if a firm is building a solid brand. A firm's infrastructure — things like effective governance, policies and procedures, processes, proprietary technology, etc. — can help with this by being something that a name partner, for instance, can embed their reputational capital, knowledge, and skills

into, and thus, pass along to the rest of the firm. That said, in your experience, what are some of the things necessary for a firm to build a durable brand?

Kasowitz: If the question is, what makes a successful law firm, and then how do you assure that there's an effective transition or succession to the next generation of that law firm, I think there are a couple of necessary elements to bring that about.

First, it goes without saying that the firm and its lawyers need to be excellent at what they do. I think that our lawyers are *thoughtful* and *strategic* litigators and great *trial* lawyers. So, to begin with, you have to have the highest quality service and product. And I think we have developed a track record, through different representations, of achieving consistently terrific results borne from creative thinking, laser focus, and tireless advocacy.

It started for us twenty years ago, when we first started representing Liggett & Myers in tobacco cases brought by the State Attorneys General. The historic settlement that we conceived and achieved resulted in changing the way that tobacco companies market and sell cigarettes in this country, and ended up hugely benefiting Liggett's shareholders. To achieve this unprecedented result, our clients demanded, and we demanded of ourselves, out-of-the-box thinking and round-the-clock focus and effort. It is this sort of dedication, exercised by the

most senior attorneys of the firm down to our most recent law school graduates, that enables a brand to be born and to flourish.

I think equally important to clients is the culture of your firm. I'm someone who grew up in a close family. I always had really close friends. My relationships with the people who I am working with are of the utmost importance to me. My relationships with people with whom I work have always been marked by friendship and respect. Going back to when we started our own firm in 1993, what was critically important to us was that we attract people who were not just really smart, people who didn't just have tremendous qualities as lawyers, as litigators, and trial lawyers, but also that the character of our colleagues, the values that they had, were as great as their ability.

I know lots of firms talk about culture and cohesiveness as being important to them, but the reality is that the softer criteria like character and values are not as important to most firms as are measurables like law school prestige, class ranking, and grades; or, if it's a lateral, how much business they have, how many hours did they

bill, those kinds of metrics. To us, being a good person, with good values and ideals, is what we prize in the first instance, and I really mean that.

### **On Developing a Firm Culture**

Parnell: While most people think of succession as moving one leader out while bringing another one in, at a higher level, it certainly hinges on building an effective cultural foundation within the firm, from the bottom up...

Kasowitz: Our firm's culture is what motivates our lawyers and staff to excel, what has caused them to stay here for decades, and it is what clients and laterals find to be so attractive.

The people here really care about each other, and I can think of countless examples of how that manifests itself. People here know that everyone is going to carry their own weight. Our youngest associates are not going to be working hard while our senior partners are playing golf. They're not. For example, on a night in the middle of the trial we just completed, I was in the office until 4:30 in the morning, and back in the office at 8 [AM]. And we had a whole team of people, junior and senior, who were here with me until 4:30[AM], and we were all back in at 8[AM]. Everyone had an important role, and we ground it out. We love it. And everyone knows that afterward, when there is a chance to breathe, we'll go out and relax and talk about case strategy and we'll all do it together.

Every lawyer who was there, from the youngest one to the most senior one to the paralegals, they were all in it together. Why? Because it's important. It is important to our clients and it is important to our culture. And the way that that impacts on brand and succession, I think, is that that type of dedication and focus is something that people internally know about the firm and it is something our clients know.

### **On Clients Sensing Teamwork, Cohesion, and Compensation Issues**

Parnell: Clients know the difference between groups that work well together and those that don't. They can sniff that out if there's internal incongruity...

Kasowitz: First, clients are part of our team. We are not in a business where a client calls and orders a cake and all they see is the end product: the cake. In order

for us to succeed in a case, we have to get into a client's kitchen and a client has to get into ours. We need to understand their business, their sensitivities, their relationships. And, the client needs to understand how we work, how we need their input in order to achieve their goals, and for them to have an understanding of the process involved in taking a case from beginning to end. In this connection, of course, the client is going to see whether a firm or group of attorneys work well together.

To succeed, it involves checking egos and personal agendas at the door. For example, here we do not have a situation where there are attorneys who have client relationships and are looking to hide or somehow wall off those client relationships either from their partners or from associates. I know that happens in firms where partners who have business are looking to protect their control over the business. They're afraid that someone else is going to develop a close relationship with a client such that they may not have as much influence with that client in the future. And that approach comes from the structure of their compensation systems, and then human psychology causes an attorney to guard his business. That is detrimental to the work and ultimately to the client relationship.

We don't have those kinds of situations, and those aren't the kinds of people that we attract. Our business is not keeping relationships close to the vest, but extending them out.

I have a really big practice. But I could not have that practice if we didn't have really talented, effective lawyers who were working with me and with other partners who bring in a lot of work. And so, the way to keep younger partners motivated and happy is to A, give them significant responsibility — let them run; let them develop — and B, give them good exposure to the client where they're acting autonomously with those clients — which they do here — and C, not worry about it. That is how you ensure cohesion and everyone rowing in the same direction.

### **On His Motivation for Leaving Mayer Brown and Going Out on His Own in the First Place**

Parnell: If you could, talk to me a little bit about the motivation behind moving from



Kasowitz Benson Torres LLP

**Marc Kasowitz: "Some competitors have said about me for a long time, 'he's going to go into politics; he's going to do this; he's going to do that.' I'm keeping my day job."**

Mayer Brown and going out on your own. I haven't been able to find much information on it. What is the story behind that?

Kasowitz: There was an *American Lawyer* article and other articles after we had been in business for a while, but none really addressed our motivation for leaving Mayer Brown.

I think that anytime people make moves during their career, I think there are always two basic reasons: one is that they're not as satisfied as they can be where they are, and the other is they think they might be happier someplace else. So, it's kind of a push-pull. My career was going really well. In 1988, I had gone to Mayer, Brown & Platt from Rosenman, where I had learned a lot about practicing law. I went to Mayer Brown to build a practice and started with very little business. I had some clients, but not a lot of business. But by 1992, I had the largest practice in the firm. And, I became the highest paid partner in the firm, and it was a big firm.

I had a team of people working on several big product liability cases, principally. We worked really hard. I liked Mayer Brown and I really liked the people. And we worked really hard there to integrate our practice into the firm. We had a multilocational practice, and a few things came to the surface that were frustrations. I thought that the firm didn't move as quickly on matters of importance as we would have liked it to. Conflicts also became a significant issue for us. And, there were issues about their compensation structure: that it really wasn't as fair and as incentivizing as it should have been.

The other thing is, I just thought we could do better. The guys I worked with and I believed we could build a better mousetrap, a strong culture, and platform. And we did. We certainly incorporated elements that we liked from Mayer Brown, from Rosenman, but then developed our own culture that focused on a real unity among lawyers and our non-legal staff.

### **On Kasowitz Benson Torres's Succession Plans**

Parnell: So, we talked about succession a bit. Obviously, you're thinking about it at least to a degree, but is it at a point here where you're considering instituting some form of formal succession? Or is it just in its infancy?

Kasowitz: I am not planning on going anywhere. I expect that my health will continue to be good. I keep myself in good shape and I don't have any retirement plans. Some competitors have said about me for a long time, "he's going to go into politics; he's going to do this; he's going to do that." I'm keeping my day job.

But notwithstanding that, do we have a formal succession plan here? We do not. Do we think about and talk about how the firm will go forward into its next generation? Sure. But more importantly, in connection with the terrific growth we have experienced over the past twenty years, we have cultivated leaders. This has given me great confidence that when I stop practicing — a concept foreign to me and my partners — lawyers who have been part of the firm for a long time would step up to carry the firm into the future.

### **On KBT's Governance Structure**

Parnell: Can you talk to me about the governance of your firm? How are decisions being made? Who is involved in the process?

Kasowitz: Sure. Our management has always been what some people have called a "benevolent dictatorship." Our whole idea here has always been that we want our lawyers to be in a position where they are taking care of clients and practicing law and trying to bring in work. That has always been the focus. We never wanted lawyers spending time on library committees. We didn't want their focus being diverted internally to non-income producing, or non-client focused activities.

Parnell: So, is there a formal governance structure?

Kasowitz: So, the governance had always been my decision-making. That said, I have always sought to get consensus around major decisions that the firm has to make. I'm always going to a number of different partners to get their input when we've had big decisions to make. And I still do. And now we have that kind of iterative process that's been reflected in a management committee that meets with me once a month.

About a year and a half ago, we formed a management committee, composed of people who I've appointed. And its function is to advise me on different matters we have. There are also a number of dif-

ferent subcommittees with partners who are engaged in watching different aspects of the firm's practice and different aspects of how the firm operates, internally. And they advise me on matters concerning those areas of practice. It meets once a month — the first Wednesday of every month. And recommendations are made and implemented.

### **On KBT's Compensation Model**

Parnell: Compensation. How is that determined? What criteria are focused on? If you could talk to me about the model that you use.

Kasowitz: Compensation for partners is determined by me. As with other decision-making, before I finalize compensation decisions, which I do by the end of the year, I consult with the heads of different groups — bankruptcy work, employment work, real estate — and I look at a lot of data before comp is finished. I talk to a lot of people.

Because my practice is pretty large and diverse, I work with so many litigators during the course of a year, not just in New York, but in every office that we have. And, each partner now also submits a piece describing what they have done during the course of the year, which fills in information on what has occupied partners during the year.

This is not an eat-what-you-kill place. We base compensation on the quality of the work, how hard someone works, and what kind of cases they are doing. How much business they have brought in is also one factor, but not necessarily the most important of the criteria. What kind of results have they gotten? How successful have they been in expanding relationships with our clients?

So, we are incentive-based in the sense that we are not lockstep, except for our first few years of partnership. After that, there are many important factors in play.

### **On the Spread of KBT's Compensation**

Parnell: What is the spread of your compensation?

Kasowitz: As to associates, we compete at the highest level for attracting associates, and therefore, we are a New York market rate firm.

Newly promoted partners are compensated above that level, and then we want

to give our young partners something to shoot for. And they know that if they are productive, if they work hard, if they do well, the sky is the limit in terms of the level of compensation that they can achieve.

Regarding the spread in compensation among partners, I have a fairly sizable practice, and as a result, I can skew the spread a bit. With that said, compensation among partners is otherwise fairly attributed to those who are productive and add value, and again value is added here in a variety of ways. Origination is just one piece of it. We have partners here who have never really introduced clients to the firm themselves, but have done a brilliant job of cultivating relationships, expanding relationships, having responsibility for important clients, producing outstanding work, and those partners do extraordinarily well.

### **On Contingency Cases for KBT**

Parnell: Quinn Emanuel and Boies Schiller: contingency cases are a large part of what these guys do. Do you do a lot of them? Do you allot a particular percentage of the cases you take on to contingency?

Kasowitz: We certainly, over the years, have done some very high-profile contingency cases. For example, fifteen years ago, on behalf of people in a small town in Alabama, we were the principal law firm that had prosecuted the largest-ever environmental case against a big chemical company for having discharged PCBs into the river water, air, and ground around a big plant and for having concealed it. After trying individual cases before a jury for a year, we ended up getting a very large settlement for our clients, and we had been retained on a contingency basis. We have since taken on a number of cases, on behalf of companies and sometimes for individuals, that include a contingency component. Often, we will agree with a client on some kind of blended arrangement, where there's both a fee-based component, with a substantial discount on hourly rates, and a contingency piece as well. And some cases, we do take on a pure contingency, but they have to be well-vetted and very significant.

### **On KBT's Process for Risk Management**

Parnell: Now, what is your process for

risk management? Do you have a formal process in place?

Kasowitz: Sure. We have a group of partners who vet contingency cases. And they have a number of different factors and criteria that they look at before they'll make a recommendation about a case to me and to Dan Benson. As to risk management, generally, we have a couple of different mechanisms for it. One is that several of the most experienced partners in the firm, including me, have to approve every new client and case that comes in. And then, during the course of representations, we are, of course, highly mindful of producing quality work and fostering strong client relationships.

### **On Merger Offers**

Parnell: Mergers. I have to believe that you get merger calls often enough. What are your thoughts on that? Have you taken any? Is it a potential for you?

Kasowitz: We used to get lots of calls about the possibility of merging with larger firms. Now, I think most people believe because we've been around for a while and they know what our profile is, there aren't very many firms who believe that we would ever merge. Now, to the extent that we get calls, most of the calls are people who would like us to acquire them.

And so, we look at acquiring or taking over some firms, but it would have to be a very attractive situation. I never rule anything out. But, the sense of the partnership here is that we like our culture and we like who we are and how we are doing things. So, there's not this sense that we really want to merge. For a period of time, there was a trend for firms of seemingly equal metrics to merge. And it looked to me like 500 lawyers and 500 lawyers coming together to be 1000 lawyers. The thing that's scary to me about that is how do you guarantee that the quality of the practice, and more importantly, that the culture and the people are going to mesh well? That, to me, that's the most important thing.

### **On Lateral Hiring as a Part of KBT's Strategy**

Parnell: How much lateral activity do you have? Is it a material part of your expansion and evolution, or is it just kind of a smaller opportunistic portion at this

point in your history?

Kasowitz: It's been material to us because we started out with 18 lawyers. So, lateral hiring has been material to us. But most of our growth has been driven organically by the needs of our clients. To satisfy those needs, you need to expand. We are very interested in growth. And so, to the extent that we are introduced to lawyers who are good people, and practice in areas that are complementary to our practice, we would be interested in exploring such opportunities for growth.

### **On What Separates the Best from the Rest**

Parnell: This may be a difficult question to answer, but what's the difference between you — as an attorney — and, well, everybody else? In your opinion, what are one or two of the attributes that you possess that have brought you to this position in the industry?

Kasowitz: I think there's a handful of people who have that kind of practice. And you've named some of them during our conversation. Brad [Karp] is one. John [Quinn] is one. Certainly, David [Boies] is one — maybe *the* one. [Andrew] Levander is another one. But, I think the way you answer that question is to look at a group of people who are particularly prolific and say, "Okay, so what are the common traits or characteristics of these people?" And I think that's a way to answer it or to get a view into it.

Look, at the risk of sounding immodest, I think among that group of people there is a quality of being able to persuade someone — whether it's a fact finder, whether it's a client, whether it's a partner, whether it's a prospective lateral hire — it's an ability to persuade someone that you have their best interests at heart, and are telling the truth; and why, for example, is it that you're going to be able to help that client in a way that other people can't. What are you going to bring to the table for that client that you can do for them that is going to advance their interests or protect their interests if they're being sued? Because at the end of the day, that's what clients really want to know.

I received a call this morning from a client that has a very serious problem with a regulator. They've been represented by another firm for a couple of years, and

when they saw how serious the problem was getting, they called me. The reason they did was that they think that I am going to be able to find a solution for this problem, whether it's trying the case or finding a creative settlement, that other people could not do.

Apparently, I have that ability to be able to persuade people of that, to bring them that level of confidence, and then to follow it up with determination and eventually results. I think that's probably the most important thing. There are other factors as well. I never thought I was the smartest guy in the room, but I do have an ability to focus on the key issue, quickly. My partner Dan Benson is the most brilliant person I know. He's a billion times smarter than me. He really is. But I have a unique ability to focus on something, solve it, and see it to its end. That is what I bring to the table.

#### **On Advice He'd Give to Younger Attorneys**

Parnell: Looking at some of the younger partners out there, what would be some advice that you would give to them? Where would you advise them to focus on the development of their skill set?

Kasowitz: Ever since I started practicing, my focus has always been on, how can

I win for my client? How can I solve the client's problem? And how can I develop in the best way that I can as a lawyer?

So, for me, most important starting out was how well did I write and how well did I speak. And I think that for people who best understand how to communicate effectively, and persuasively, they are the people in our profession who do the best. I know lawyers who write *well* but they don't always write *smart*. It looks or sounds good, but when you break it down, they do not capture the most effective arguments and present them in the clearest possible terms. So, I have always strived to communicate in the simplest, clearest, most effective way. And to me, that always meant using *specific* examples of how I was trying to accomplish something. Have a theme and then support it. How can you show the person you're trying to persuade, in a real-life way, what you're talking about? Well, talk about something that is relatable, that may be specific to them, and use it to illustrate why you think you're right. And I think that that comes across with me.

When I see great writing that's really clear and right to the point from a young lawyer, that gets my attention. It really does. And I think the basics, honestly, with all the developments in technology,

with all the changes in our culture and how we communicate, with everything that's happened over the last almost 40 years that I've been practicing, I think the best lawyers are the ones who can write and communicate in a persuasive and influential way.

#### **David J. Parnell**

*Contributor*

*I am the legal market's equivalent of a sports agent: I help BigLaw partners switch to the right law firm. In my spare time, I am an author (ABA Publishing), speaker, and Forbes and American Lawyer Media contributor. I've previously worked in-house with the likes of Intel, Xircom, and DreamWorks SKG. Along with my Forbes and ALM columns, I can be found in Inc., The American Lawyer, Huffington Post, Venture Capital Post, Fox News Magazine, National Law Journal, Lawyerist, Australasian Lawyer, NBC News, The Global Legal Post, Business Insider, NZ Lawyer, and Monster.com, among others. You can contact me directly at [dparnell@truenorth.com](mailto:dparnell@truenorth.com). Legal Disclaimer: Unless stated otherwise, interviews do not imply endorsement of interviewees' opinions, methods, strategies, or their institutions.*