

# ***A Look Behind the Curtain***

## ***Impressions of a new inside counsel about outside counsel***

***Carin Brock***  
***Builders FirstSource, Dallas, Texas***

***Charles Reynolds***  
***Butler Weihmuller Katz Craig, Tampa, Florida***

Leaving behind the billable hour and finding an in house position with a successful company is the ambition of more than a few lawyers across America. But whether one has been a seasoned trial lawyer or making the transition relatively early in a career, the “role reversal” can not only take some time, but be an eye opening experience. Now allowed behind the scenes, some of the mysteries and questions that often swirl in the heads of outside counsel can be answered. The logic of a given company or why it does what it does is revealed to the lawyer that now also wears the title “employee”. More than that, however, the perspective of the in house attorney now looking out is a unique way to understand how and why some outside counsel command respect and partnership with the company while others fall away or are never hired in the first place.

What follows are some thoughts on this transition and the lessons learned by former outside counsel, now inside counsel, Carin Brock. For twelve years Carin worked in civil litigation and ultimately became a partner at a national defense firm working in their Mobile, Alabama office. After working extensively on files for one of America’s largest building material suppliers, Builders FirstSource, she was offered an in house attorney position at the company’s home office in Dallas. She currently oversees litigation management for matters all over the United States.

Also contributing to this paper is Charles Reynolds, who has been a practicing lawyer for nearly thirty years, beginning as a Judge’s Advocate in the United States Air Force. As a result of his military experience he became the Chief Legal Officer for Geonex, a weapons contractor with significant government contracts. Since 1994, he has worked for the Butler law firm in Tampa and now focuses his practice on construction defect litigation.

### ***Now It’s Personal***

Perhaps the most immediate and stark change from being outside to coming inside is the transition from servicing several clients to just one. Most companies want, even demand, total buy in to the company brand, product, or philosophy. It would serve outside counsel well to remember this. While we realize that you have other clients to service, we still want to feel you are a “true believer” in what we do and trust that you

have the company's best interest at heart, not just your law firm. Most inside counsel like it when their outside attorneys refer to the company as "we" when deciding strategy as opposed to "here is what **you** need to do". It's not only ok, but welcomed, when outside counsel is genuinely enthusiastic about what we do and maybe take it just a little personally when the company is alleged to have done something wrong or is unfairly criticized. Being a zealous defense counsel and an advocate for the Company is often as important as being well regarded or cunning. We want you on the team so act that way.

## ***Know Our Business***

Generally speaking, it's hard to defend a company if you don't know what it does or how it does it. This is particularly true in construction litigation. Counsel in a truss failure accident had better know what a truss looks like, how we made it, and why we made it the way we did. Nobody expects outside counsel to be an expert in every aspect of the company but it can be frustrating when they have not taken the time to learn the basics. This might include peculiar company or product vocabulary, methods of doing business or how our corporate structure works. It is a much more comfortable and efficient relationship when counsel can speak with some authority about the company itself and how it conducts its business. Seasoned in house lawyers or executives do not want to start from scratch each time they speak to their outside litigators and explain the fundamentals of what it is we do. You should make every effort to meet with the local company representatives, visit the professionals in the field and learn as much as you can about how the company operates. Ask questions and be inquisitive. We take pride in the company and we appreciate it if it feels like you want to know more about us and learn about our culture.

Conversely, it can be extremely helpful to new in house lawyers for their outside counsel to have at least an elementary understanding of how the company works and its history. Remember that even long-standing in house counsel often sit in a corporate office that may be far removed from the everyday operations in the field. This is especially true for large companies operating in a large geographic area. As our outside counsel, through depositions, site inspections, and claim investigation over many years of handling our business, you have a unique view into the Company operations that in house counsel does not always have. Don't forget that we are trying to learn as much as possible as soon as possible and we may look to you to *educate us*, and the lawyer who can do so becomes a trusted counselor quickly when they do. Moreover, it shows genuine interest in the company when our lawyers are up to date on what is happening in our industry as a whole. Particularly if there are things affecting us in your practice area or geographic location. Never miss a chance to update us with your local knowledge if it could affect our business.

## ***We Wear Many Hats Too***

Just as we try to remember that you service more than one client, keep in mind we oversee many types of litigation and have multiple responsibilities outside of managing litigation. We are often called upon as problem solvers for issues that have nothing to do with traditional lawyering. In house counsel may be responsible for mediating internal disputes, negotiating insurance policies, contract negotiation, real estate matters, acquisitions, or giving opinions on safety issues – just to name a few. It can be frustrating if you call or email us about a particular file in litigation, then launch into some issue without giving us some context or background. While you live with the facts of our cases in litigation day-in and day-out, your lawsuit may be one of hundreds, (or possibly thousands), nationwide that we oversee along with our other in-house counsel duties. We can't always recall exactly where we left off in your case. Feel free to reset the status of the case or remind us this is "the one where the guy fell off our roof onto the other guy in Georgia", or whatever allows us to jump back into your facts. Some cases won't need that because of their size or importance but even those require an update of status from the last time we spoke so we can again recall where we are in the case. Your in-house counsel may need a claim number, file number, date of loss, or geographic area to quickly find the particular suit in the computer system. Have that handy when you call. If time permits, it is typically a best practice to set a telephone conference for a date and time specific. That way, in house counsel may secure a time that is available and in house counsel has the opportunity to review the facts of the case before the call. It is always helpful if you ask when we have time to talk about the file. Like you, we have meetings, training, and other mandatory demands on our time that may necessitate that we talk another time. Because we wear so many hats, it is also important to update us in a clear, concise and succinct fashion on a periodic basis. Every update should begin with a brief recap of the facts. If an issue needs our immediate attention, place those items in bold font or otherwise make them visible.

## ***Everybody Has a Boss***

While you may be intent on impressing us in hopes of getting new business, it always helps if you remember we are answering to someone as well. If possible, learn the structure of the Company's legal department and how the in house lawyers measure success within their department. Know what makes your inside counsel look good within home office. Most outside lawyers measure success by getting a good result for the client on one particular matter. However, this is only one piece of the puzzle. Do not forget for that unlike you, the members of the legal department are not revenue generators. The job of the legal department is to manage risk and save expense. In house counsel are usually viewed as a necessary evil and an unwanted expense. Often, we are seen as an obstacle to making money, or deals, or growing the business. Figure out what your counsel needs to impress the CEO or Board of Directors. Whether that is controlling expense, trying cases to verdict to set a precedent, achieving favorable settlements, maintaining a relationship with an important customer, or snuffing out a bad case before it goes public, the legal department has its own version of "a win"

and what constitutes a “win” may vary from case to case . For example, outside lawyers often approach a case with the mindset that saving the client the money on the lawsuit is a “win.” Of course, objectively, saving expense is a good thing. But, if the end result is achieved through aggressive tactics that ruin or adversely affect a valuable customer relationship, this is not a “win” in the eyes of the company and may ultimately cost the company money in the long run. Learn what it important to the company and what constitutes a “win” in their eyes so that you can give it to them.

## ***We Value Your Opinion***

Every in house attorney has a different story and legal background. Some were litigators, some handled transactional matters, and some even began their career in-house, having never taken a deposition and never stood in front a jury. But what is true for every in house lawyer, is that we are typically generalists. We look to you as the expert on local law and legal trends in your specific geographic area. We want to know what types of damages are available to a Plaintiff in your area, what unique defenses may be available to the company where you sit, and what we can expect out of a judge or a jury in a particular county. We want to know what types of damages are available to a Plaintiff in your area, what unique defenses may be available to the company where you sit, and what we can expect out of a judge or a jury in a particular county. When a case is postured for settlement, we want to hear what you believe the settlement value to be. We want to know what you believe a jury will do and what you think the likely verdict potential may be. We want to know what you believe is the best strategy going forward. While we may not always agree with your recommendation, remember that we hired you to give us advice – not just to present options without giving us your opinion.