



**The Pursuit of Happiness in the Inside-Outside Counsel Relationship:
The Transportation Insurance Perspective.**

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The Pursuit.

The U.S. Constitution guarantees it. Will Smith recently received an Oscar nod for his pursuit of it. Everyone in this room wants it: Happiness... especially in key relationships. But in order to achieve happiness in a relationship, doesn't it follow that there must be some alignment between the parties in terms of what "happiness" actually means? I'm sure Oprah and Dr. Phil would agree that this is true when it comes to personal relations, but how does that affect those of us in the transportation insurance world? To the transportation company, it might mean risk allocation through tight indemnity agreements, prompt and courteous claims service, the assertion of strong defenses *without* reservations of rights, and settlements within policy limits. To *their* insurer it might mean, prompt notice of loss, ready cooperation, and timely production of electronic and hard data. To *their* Inside Counsel, it might mean cost-effective litigation management resulting in positive loss ratios and company profits. To *their* Outside Counsel, it might mean a steady influx of case assignments and a positive business relationship. And to *their* law firm's business managers it might mean more case assignments, more bills paid without question and more referrals to equally amenable clients. Is alignment of these diverse interests possible? And if so, how do we get there from here?

When Fritz and I began to talk about this topic and prior TLA presentations, he shared with me Lenny Kofkin's observation that inside-OC relations are easy. You simply represent your "friends". Having attended TLA events in the past, I couldn't agree more. Yet, I was intrigued and wondered has it always been this way? Especially in the area of my part of this round table: transportation insurance. I knew that the roots of formal risk allocation in transportation go back to at least early Chinese and Babylonian cultures. I recalled that general average found its way into existence during Phoenician times. I've wondered what it was like at Edward Lloyd's coffee house prior to the formalization of today's Lloyd's of London. But we don't really know much about the nature of the lawyer-client relationship back then. I wondered, how has this relationship evolved? And more importantly, where do we go from here?

To find these answers, I first poured over old TLA, TIDA, DRI papers and legal and trade articles written recently on the topic. I drew on my diverse transportation law experience. I drew on the diverse experience of my Canal Insurance Company peers. Then, recognizing that to truly represent the "voice of transportation insurance", I needed to return to the source –I turned to the people who embark on this quest for happiness every day. I turned to you. I put down the books, went out into the proverbial field, and conducted a survey. The question presented was simple: **what are the keys to happiness in the inside/OC relationship as it relates to transportation insurance practice?** I first corresponded with a cross section of IC for some of the major transportation insurance carriers. I then pitched my query to a cross section of over 30 OC who represent these same insurance carriers. The response to the survey was overwhelming and represents the combined voices of most of the continental United States (from New England and NYC to Florida to the great state of Texas to LA and on up the rest of the west coast). The survey fielded responses from inside and outside insurance counsel and litigation managers; solo practitioners and attorneys from large national firms; young lawyers and seasoned partners; the representatives of large non-self insured fleets and those who protect the smallest owner-operators. Many of you are here today. We applaud your contributions.

At the end of the survey, when the tally came in, you might not be surprised to learn that despite our seemingly diverse interests, we all really want the same thing. So, without further ado, here are the keys to happiness in inside and outside transportation insurance counsel relations.



The IC.

From the outside, the IC appears to have the luxury of reporting to and pleasing just one client. However, those who are or who have been IC can tell you that their focus is equally diverted by competing in house customers and demands. Some insurance company legal departments serve their clients by bringing more work inside. Others rely more heavily on their OC. Either way, these IC are constantly courted by firms who want to do their business. Indeed, there may be some of you out there wondering: how can I get --or better yet "earn" -- this transportation insurance business? How can I keep it?

Keys to Happiness for Inside Insurance Counsel Are:

- **Effective Communications.**
- **Proactive, Efficient and Business *Practical* Case Management.**
- **Cohesive and Collaborative Team Work.**

- 1) **Effective Communications:** Strong communications ranked as the number 1 priority for both inside and outside transportation insurance counsel. According to Tracy Slane of Northland Insurance, "Communication is probably one of the most critical aspects of this relationship." Sometimes what seems so obvious is less easy to achieve given the constraints of our mutually packed 24 hour days. Yet, our communications needs are relatively simple. We want:
 - a) **No surprises. This is the uniform #1 wish of all IC surveyed.** Report early, update often. "Keep me informed of key case developments as they occur and return my phone calls and status requests promptly". "Tell me the same week how the recently taken IME or deposition went and how this outcome will impact case strategy." Report at a minimum all key developments in the case as well as deadlines and trial dates so that IC is not caught off guard and so they can report the information up as required in their organization. "If it's a bad one, we want to know about it as early as the facts are available and not on the eve of trial." Similarly, no one wants to find out about a critical case development or via invoice line item without having heard of its impact on the case at or near the time it took place." Most IC surveyed were quick to observe that those attorneys who fail to timely call back or to produce reports usually have a very short shelf life in the carrier's preferred vendor book.
 - b) **Timely status, pre-mediation and trial reports.** Another uniform wish is neatly summarized by CCIC's George Lindh, "Get me the information and risk assessment I need on time so that I can make an informed decision and support your efforts from the inside out. "
 - c) **Use of Preferred Communication Methods & Media.** Know what your IC want and expect from you. We all want to know about key developments as they occur. Yet, we also have different preferences for *how often* and *through what medium* we receive this pivotal information from you. What you may be surprised to learn is that most IC would rather hear from you regularly, briefly and informally via a quick email or phone call as opposed to receiving the periodic formal 10 page report letters that consume so much of the writer and reader's time. As to medium, we've evolved. 5 years ago, a TLA panel on this subject encouraged you to use the new technology known as email as much as possible. Today, we are refining that request and are asking our counsel to please limit your communications to only electronic formats. We do not want to receive hard copies or faxes in addition to email, especially since most of us have or are in the process of adopting imaging and E-billing.
 - d) **Contingency Plans.** Things happen that consume the OC's time, emotional and/or physical energies. Could be business related, might be personal. Planned or unplanned. Please don't simply stop working and stop communicating. Build bench strength to anticipate and handle these needs or develop a contingency plan. IC need to know that an approved team member is available to handle our work or that alternative arrangements are in place should the need arise.



2) Proactive, Business *Practical* Case Management. In the past, a predominant “strategy” in insurance defense was to take a passive, reactive approach to cases. The defense would wait for the plaintiff to act and would react accordingly. Cases would seesaw for years generally propelled by plaintiff’s actions or inactions. When plaintiff’s counsel was lethargic, the approach was to “let sleeping dogs lie” unless and until something happened. Today, more claims professionals realize that the longer a claim remains open, the more expensive it becomes for the carrier. Remember that transportation insurance is a business that operates on a profit margin that is surpassed in narrow band-width only by the used car industry. We rely upon you to assess our case at the outset and to continue to keep us advised of developments as they occur. We set our reserves based upon information we collect from you and our investigators. The amounts we pay out in indemnity and expense dollars directly affect the company’s bottom line. Our reinsurance premiums are based upon these results. We need your help to efficiently and effectively manage our work with business intelligence. This means:

- a) **Conduct Initial Response and Triage.** Help to us to lock down the underlying facts by supporting the investigation and by preserving defense critical evidence. This may mean being available to direct emergency and initial response investigations of serious losses. It certainly means early assessment of evidence: what do we have, what is missing? What is weak? Where are the holes? How do we fill them? Is this key defense witness old, sick, leaving the country? How do we preserve his or her testimony? How do we keep up with the whereabouts of transient driver witnesses? How do we ensure our insured complies with discovery guidelines to prevent spoliation claims? We need you to ask and help develop early answers to these types of questions.
- b) **Engage In Early and Evolving Assessment/Strategic Planning.** Do it and Keep it Real. “Don’t tell me what you think I want to hear, tell me what I need to hear to realistically assess the case from the outset.” Then, continue to evolve your assessment and proposed strategy to fit the case as it develops.
- c) **Work with Us.** Collaborate with your IC to co-develop a case-specific plan, work the plan and jointly reassess it at every critical juncture. If the early facts present a clear liability case to settle, help us to plan and work toward a prompt reasonable resolution of the claim. If this is a case to try, work with us to efficiently and effectively prepare for trial. Please be conscious of the demands on our time. We’ll try to do the same for you. To this end and to avoid “hot buttons”, proof your work product and bills before they go out and give us sufficient lead time to work our end of the case. Recognize that IC’s juggle multiple matters from multiple jurisdictions on a daily basis. If you have not received a response from IC on a matter, touch base to gently bring the in house task back to their front burner. (Holman)
- d) **“Don’t treadmill me!”** Your IC want Value Added Service. This means, don’t litigate every case by rote, working from a boilerplate checklist and 5 course discovery menu. Avoid 15 page report letters that merely regurgitate the information transmitted at the time of assignment.” “Give the client value added service by spending time on things that move the case forward for the client, not because they are ‘good billables.’ IC want results and know the difference working and/or churning the case. Before doing something ask yourself “do the potential benefits of the task outweigh the cost of doing the task”. If so, it’s value-added, and should be done.” (Harris & Essis)
- e) **Avoid Late Case Development and “Skittish” Eve of Trial Retreats.** All IC surveyed are leery of eleventh hour case development. This goes back to the “no surprises” philosophy. No one wants to litigate a matter for 18 months and then be told on the eve of trial that the 25k reserve should go up to policy limits and liability is worse than initially assessed so it would be prudent to settle. “While pre-trial reassessment is an essential component of the litigation management process, don’t cave in on the eve of trial when nothing has changed.” “Changes in counsel’s evaluation of a case shortly before trial is not acceptable. The only acceptable reason would be if new and unexpected evidence came to light.”

- 3) **Cohesive, Collaborative Team Work.** Teamwork goes beyond case-specifics.
- a) **Be An Empathetic Business Partner.**
- i) **Understand the Business of Claims.** “Every industry must watch the bottom line and the insurance industry is the same. OC must work in partnership with the claims department to control costs. The OC profits from the relationship. Thus, moving cases to early, favorable resolution, with minimal allocated loss adjusted expense, is in the OC’s best interest as it builds loyalty and client satisfaction. (Kopka)
- ii) **Take an Interest in Your Insurance Client’s Business.** You may represent a number of us, but no two insurance carriers process their work the same way. Make an effort to visit. Not just to meet potential referral sources, but to really learn the client’s key business processes, relevant organizational structure, and business philosophy and objectives. **In these days of SARBOX and Federal Electronic Discovery Rules, this information is critical.** Mark Libertine of Lancer explains, “We want to have a trial attorney who is familiar with how we operate, knows our expectations and makes an effort to really understand our insured’s business.” This investment may take some of your non-billable time; however, it typically pays good dividends for both you and the client over the long haul.
- b) **Involve IC As Active Part Of Team.** We speak your language and serve as a translator between you, the on-the-ground practitioner, the line adjuster, senior management, and sometimes the board. We not only manage our relationships with your firm on a general level, we can provide invaluable case-specific litigation support. For example, we know company systems and how best to gather internal evidence. We know how to ID company witnesses and assist in their preparation. We are there to co-develop and co-adjust case strategy. When the going gets tough, as it is sometimes prone to do, you want in-house counsel fully aware of the situation and slogging it out towards resolution right there in the trenches with you. Collaborate.
- c) **Practice Creative, Practical and Proactive Law.** During an assigned case, “consider whether the Litigation Process is being managed by you and IC or whether the process is managing you.” (Simms). Recognize that ICs are acutely aware of not only end results but how much it costs to get there. Then,
- i) **At The End Of The Assignment, Go The Extra Mile.** Work with IC to formulate “lessons learned”. Consider ways the client might prevent recurrence of similar situations. For example, you might suggest a stronger worded endorsement or non-cooperation letter, a revised regulatory rule or statute. You might be commissioned to draft it. When results are good, analyze what went well and consider how to translate these achievements to the next case or the client’s claims process. .
- ii) **Be There To Answer the Quick Question.** I once had client who called this service, “Dial-a-prayer”. One IC notes “We expect our attorneys to readily accept calls from our staff members on state specific issues or cases not in litigation. Further, we do not expect to be billed for these calls unless we ask them to complete some type of research. In turn, we seldom if ever challenge a line item on a bill. We look at the overall value this attorney or firm adds to the company.” Bottom line: providing this service, is likely to generate future business, not to mention good will.
- iii) **When You Visit, Offer To Conduct Relevant In Service Training.** This pro-bono investment goes much further than a short glad handing visit. In addition to investing in the client’s staff development, it will give you an opportunity to “show your stuff” to the people who will be assigning you the work. It will ensure you are working off of the same page on fundamental issues. It will enable you to better tailor your work product to fit your client’s needs.
- iv) **Be Our Thumb on Your State’s Legal and Insurance Pulse.** Share with IC developing transportation, insurance and other relevant legal news that could affect our business. We litigate matters nationwide. Help your IC to stay abreast current issues in your area. Newsletters are good. If something is big, consider email. If it is huge, consider a personal call.

So, if communications, case management, and teamwork are the keys to IC bliss, would you be surprised to learn that OC want the same thing?

The OC- Relationships are a two way street. Thus, it is equally important for IC to understand what their OC partners need to achieve happiness. OC have their own challenges to deal with. Like their in house counterparts, only perhaps more so, OC are being pulled in many different directions. They must juggle the demands of internal law firm business, personal performance goals, multiple-client relations, not to mention managing a multiple case litigation calendar. As much as they have passion for their work, this is not a charitable endeavor. Like the carrier they represent, OC are in this, not only to make the world a better place, but also to make money. OC's delicate balancing act is concisely captured by the following survey response:

"In my view, the 5 keys to happiness in the outside/IC relationship can be easily summed up as follows:

- 1) Send cases
- 2) Pay your bills
- 3) Send more cases
- 4) Pay your bills
- 5) Don't be a (difficult) client

Shakespeare and Eminem both agree that the "greatest truth is sometimes said in jest." So IC might need to take heed of this counselor's candid advice. Let's see what some of the others have to say:

The Foundation: Start together and in synch from square 1. Early in the relationship, OC want to know what is expected and required by IC so they can deliver, if not surpass, expectations.

- **Burger King Service.** "Remember, we work for you. Tell us what you want and how you want it." Our job here is to get you what you want and when you want it. It is a personal relationship. You should know us and know that when we give you an opinion, you can count on it. This really is "Burger King". We will do it "your way", but we need to know what that is." (Bush)
- **Company Litigation Philosophy, Guidelines, and General Expectations.** OC want to understand these things early on so that they can better serve the client. (Rosenthal)
- **Clear and Reasonable Litigation Guidelines** – Billing guidelines and any concerns about their impact on the tripartite relationship should be communicated early and openly. (Peritz) What is the company's take on mediation? Who attends and when? Who handles settlement negotiations and when? (Bair, Austin, Venegoni).
- **Clear Administrative Guidance.**
 - **Designated Contacts.** The OC need a designated contact person or persons to whom they can ping when they have questions regarding the overall relationship, case-specific assignments, and accounting and other administrative matters issues. Regularly updating of contact lists and identification of who should be copied on what correspondence would also benefit the communications process. (Derschowitz)
 - **Delegation.** OC want to know early on whether the IC wants associates or other lawyers handling their work. Some appreciate that supervised task based assignments can lower a clients costs. Others only want their designated contacts handling their files. The key is for IC to communicate what he or she wants, so the OC can deliver. (Mosley, Rozelsky)
 - **Share You Business Policies And Practices With Your OC.** The more OC know about relevant policy and process, the more they can serve the company on a claims and enterprise level. (Kopka)



- **Case-Specific Objectives: Is This A Case To Settle Or Aggressively Defend And Try?** “Often times attorneys assume that they know what their client's objective is in any particular case. Some clients take a very aggressive position declaring they will litigate the case to the highest court in the state, while others view cases from an economic perspective, realizing that most settle and want their lawyers to get to that point as economically as possible. The client's philosophy is key to having the client and the lawyer pursuing the same objective. Thus, don't just run with it, find out what your in-house counsel wants, talk about it and then take action on your mutual course.” (Harris & Essis). The OC also want to know what IC expect from them **SUBSTANTIVELY**. “It would tremendously help for the IC to identify the issues that are important to the company. This will enable OC to ensure that this issue is in his line of sight throughout the handling of the case.” (DeRouen; Sickenger).
- **Roles & Responsibilities.** Developing a mutual understanding of roles and responsibilities is critical to the building of any effective team. Every team is different. Every player brings different skills talents and experiences to their position. These differences may influence strategy and play, however at a fundamental level, the IC and OC have different parts to play. It is the OC's role to know state-specific law and their turf. What are the juries like? Judges? Opposing counsel? How have similar cases been decided? It is the OC who assesses, manages, develops and implements the overall litigation plan and communicates changes along the way. When OC represents an insured, the OC's duties, especially when it comes to communications, increase. The IC's role is to support the OC by arming them with the in house ammo needed to get the job done: initial file documentation, mustered in house evidence, banked legal memoranda on similar issues, settlement authority. The IC also supports OC in co-developing case-specific objectives and strategy, risk assessments, evaluations, and serves as internal case advocate.

Building on that Foundation, the Keys to Happiness for OC are:

1. Effective Communications.

- a. **No Surprises.** This key to happiness works both ways. Not only is prompt communication important, but the substance of communication is also important.
 - i. **Conflicts and Coverage Issues.** If there is a potential conflict of interest or coverage issue, OC needs to know about it sooner rather than on the eve of trial. (Hinson)
 - ii. **Relevant Company Changes.** OC want to know relevant changes and new developments involving their insurance clients. Changes in reporting structure, business, forms, and processes can affect how OC view and posture a case. Moreover, the firm may be able to provide training or other in service support to assist the client in managing the change – at least as it applies to their state.
- b. **Responsive Communications.** Technology enables us to communicate faster than ever. Prompt return of phone calls and email is not only a good idea - it should be something we should all be able to expect from each other. (Hinson) Prompt IC responses and decisions are extremely helpful to the process. (Austin) “Many times in litigation, the pace of a case dramatically increases. This can often be good for your case. It keeps the pressure on the other side. Quick responses from IC are crucial to keep the pace alive, preserve the trust and confidence of opposing counsel in settlement discussions, and to adequately respond to motions and discovery requests.” (Venegoni).
- c. **Personal Contact.** OC appreciate personal contact with their clients. In the words of one, “Problems in our business are inevitable, and we have found that if close relationships are established, the relationships often provide avenues to resolve these problems efficiently and well. Personal contact, whether through round table meetings, seminars, business lunches or dinners, case reviews, etc., develops these relationships and creates trust and confidence on both sides. It is satisfying from our perspective to know that if we have an issue or problem,

there is a direct contact person we can go to for both administrative (i.e. rates/fees) or substantive issues". (Pavlovich)

- d. **Clearly Defined Reporting and Documentation Expectations.** Uniform among OC surveyed, was the desire to understand how much or how little reporting is expected and what type of documents the IC would like to receive during the course of litigation. Define Preferences.
- e. **Complete Files.** In order for OC to do his/her job competently and to avoid misunderstandings. OC need fundamental information, such as complete copies of the policy, relevant underwriting materials, and the complete claims and investigative files sooner rather than later. (Austin) They need to know any newly discovered evidence or internal change in strategic plan as soon as possible.
- f. **"Feedback is Good"** The OC want to be able to openly dialogue about issues with their IC: good, bad or ugly. Especially if it has to do with bills. They want to know what is working well and what is not. They would rather hear about something that the IC is unhappy about right away so they can try to fix it rather than allow it to silently build into an unexpected relationship burning file transfer. A Texan OC sums it up nicely: "Let me know if we don't get it right." My name is on the front door and any work product that goes out of this office is my responsibility. If something that I did or one of my staff or associates did is not 100% up to your expectations, call me and let me know so I can fix it. By the same token, when we do a particularly good job, please let us know that, too. Good news is always fun to spread around." (Bush) (Barger & Wolen; Leatherwood; Fraley).

2. Effective Case Management.

- a. **Hire OC as Part of Initial Response and Triage.** "Hire us early enough to gather the facts necessary to present the best possible defense", is a mantra chanted by many OC. A number of transportation firms and industry websites list counsel with Emergency Response capabilities. (McElfish) Just about any transportation defense attorney would attest to the fact that on scene evidence is what factually makes or breaks most cases. There are evidentiary benefits to having an attorney direct on site work product as well.
- b. **Collaborate In Early & Evolving Litigation Plan.** Two heads are better than one. "Work with us to achieve an early consensus regarding litigation goals and the related budget. If the case should be settled, then we can work toward that goal, whereas if the case should be tried, we know what we are working toward." This being said, in transportation law, nothing is certain. IC should recognize that like the defense budget, the litigation plan should be fluid enough to meet demands of case.
- c. **Provide Sufficient Lead Time.** Ensure up front that both sides of the team understand how much time is needed to complete their end of the process. IC need time to review important documents before filing and lead time to obtain substantial authority. OC need sufficient time to review and respond to new suits and finally review and processing documents received back from the company for filing. Matters always take longer to do than one expects and things back up for both IC and OC. Providing sufficient lead time will help. (Barger & Wolen)
- d. **In House Support,** Assuming all is working well, the IC should serve as litigation plan advocate within the company and generally support the OC's work. If help is needed from underwriting or other parts of the company, the IC needs to be on board to enlist the necessary support.



3. **Effective Team Work.** It is essential that a team be set up to handle the company's claims and that all members of the "team" are comfortable and work well with each other. This team should be made up of not only the inside and OC and their teams, but also the investigator, supporting paralegals, and any experts retained. (Lust)
 - a. **Invest in the Relationship.** “Get to know your OC and let your OC get to know you.” “The key to a successful business relationship is to know the people you work with. I think people work better together when they share common interests. Each side tends to feel 'invested' in the other and will work harder not to let the other side down.” (DeRouen) “Interaction over time builds confidence. It also makes the practice of law more enjoyable when you deal regularly with people you have come to know and respect.” (Wall)
 - b. **Trust and Be Loyal To Your OC.** Trust and Loyalty were second only to communications in terms of importance to OC surveyed. “Trust is the bedrock of any successful relationship. The client needs to sense and believe that we are honestly, diligently and aggressively pursuing their interests. Likewise, in order to do our job effectively, we need to know the facts, straight-up from our clients, no hiding the ball. IC should trust us to do what is required.” (Barger and Wolen). Another counsel was more succinct, “There is no place for cynicism in this relationship. If you can't trust your counsel, get new counsel.”
 - c. **“Follow Or At Least Carefully Consider Our Advice”.** “We give advice and make recommendations based on our experience in the local jurisdictions. We are your eyes and ears on the ground. We make recommendations based on each case, not a check list or as an attempt to 'work up' a file just for the sake of working the case up. We want what is best for our clients and only give advice and recommendations based on our clients' best interests. The mutual success of us and our client depends upon positive results. TRUST US, our advice is based on what we think will yield the best results.” (DeRouen; Venegoni)
 - d. **Be Flexible.** It is important for both IC and OC to be able to react to changes that may develop in a case. We all know of cases that appear one way when the claim is first brought, but change dramatically during litigation and discovery. Everyone needs to be able to be flexible and not adhere to one position that may no longer be justified. Transportation Law is dicey and unpredictable. Empathize with OC when your cases involve poorly written laws, unpredictable juries, and judicial hell holes. Good IC should realize that sometimes you lose even if you should have won.
 - e. **Be Reasonable When It Comes To Budgeting, Rates and Billing.** This is a critical key to OC happiness. **Budgets** must be flexible to stay in synch with the case as it evolves. IC should be willing to *promptly pay a fair rate for work performed*. “Feeling underpaid or underappreciated can always interfere with OC's "happiness", just as exceeding budgets and "over billing" can interfere with IC's "happiness". There has to be a **balance between cost containment and quality representation**. Early and open dialogue on this subject is essential. OC much prefers having this conversation with and file reviews by his client as opposed to a **third party auditor**. OC tend to view 3rd party audits as a sign of distrust. They plead for carriers to rely upon the knowledge and instincts of IC and adjusters who are familiar with the claim's nuances, venue quirks, and the complexities and pitfalls of transportation litigation.



Impact of E-Discovery & Evolving Evidentiary Rules on IC/OC Relations: (Reeves)

FRCP E-Discovery and new lines of spoliation cases are changing the rules of the game. They affect front end file prep, strategic planning, and trial risks. This will impact the IC/OC relationship highlighting the need for strong communications, team play and case management. There are some things IC/OC can do to address this phenomenon on the front end.

1. **IC.** Consider working with UW to include document retention reminders in the claims process materials that go out with new policies and/or insurance cards.
 - a. **IC.** Ensure your field adjusters know to inform insureds upon receipt of notices of claim to put a "litigation hold" on their emails, electronic and hard files involving both the vehicle and the driver. "It would greatly benefit OC if the adjuster, as part of standard procedure in investigating claim, would obtain copies of all insureds trip related files, driver and vehicle information (hard and electronic, so they can be preserved. (Austin). It would also be useful to obtain copies of the insured's document retention policy, if any, early on.
 - b. **IC-** Consider commissioning OC to develop vetted in house forms to support this process.
 - c. **IC/OC** Develop an advance global plan for how to respond to electronic discovery in respective territories.
 - d. **OC-** Consider these issues and work proactively with IC to resolve them on at least a case specific basis... at the front end.

The Capture:

The US constitution only guarantees the right to pursue happiness, but it is up to us to capture it on our own. Recognizing that it might be the journey and not the destination, some respondents suggested that our quest be accompanied by Advil or heavy drinking. But I think a one of our own summed our industry's IC/OC relationship best:

"Life is too short. The relationship has to be fun, for everyone. Often the work we do is grim; we deal with the aftermath of highway carnage, injury, death and damage. We need to keep a sense of humor - often irreverent. To a certain extent, it may be like whistling when you walk past the graveyard, but we need to be able to make a joke, share a personal experience, and visit from time to time". (Bush)

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Elizabeth Robertson, Canal Insurance Company



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29. **Law Offices of James Stanton, L.P.**, Bill Venegoni (Tx)
30. **Turner Padget Graham & Laney**, Richard Hinson (SC)
31. **Woodward Hobson & Fulton**, Lee Rosenthal (KY)

Some Secondary Sources:

- Garrett, Allison. The Top Ten Things Your In-house Counsel Wants From You. *Alabama Lawyer*. (Courtesy of Bill Bush), *InhouseCounsel* 18th Annual Survey of General Counsel (IC Version).
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- Larson, Richard A., "Getting Along With Outside Counsel: Consensus Is The Goal, Communication The Key", *The Practical Litigator*, 1/1997. (Courtesy of Alan Yacobian)
- "Listen Up! An In-House Layer Offers Some Friendly Advice to OC, *GC California*. (Courtesy of D. Cameron Beck)'



The following table illustrates just how much we want the same thing.

1) The IC's Perspective:	2) The OC's Perspective:
<p>1) Effective Communications</p> <ul style="list-style-type: none"> a) No Surprises b) Timely status, pre-mediation and trial reports c) Use of Comms Preferences d) Contingency Plans <p>2) Proactive/Business Practical Case Management</p> <ul style="list-style-type: none"> a) Initial Response and Triage b) Early and Evolving Assessment/Strategic Planning c) Collaboration d) Efficient Cost Management e) Avoidance of Late Case Development and "Skittish" Eve of Trial Retreats <p>3) Cohesive, Collaborative Team Work</p> <ul style="list-style-type: none"> a) Empathetic Business Partnerships b) Involve IC As Active Part of Team c) Creative, Practical And Proactive Law 	<p>The Foundation: Clearly Defined Expectations, Objectives, Roles & Responsibilities.</p> <p>1) Effective Communications</p> <ul style="list-style-type: none"> a) No Surprises b) Responsive Comms c) Personal Contact d) Clear Reporting & Documentations Expectations e) Complete Files f) Feedback. Good, The Bad, and The Ugly <p>2) Effective Case Management</p> <ul style="list-style-type: none"> a) Hire OC as part of Initial Response and Triage b) Collaborate in Development of Early and Evolving Litigation Plan c) Provide Sufficient Lead Time d) Provide In House Support e) Creative Collaboration. Efficient Cost Management. <p>3) Well Integrated & Trusting Team Work</p> <ul style="list-style-type: none"> a) Invest in the Relationship. b) Trust and Be Loyal To Your OC c) Take Or At Least Carefully Consider OC's Advice d) Be Flexible e) Be Reasonable re: Budgets, Rates, Billing. Pay promptly.
Impact of E-Discovery & Evolving Evidentiary Rules on IC/OC Relations	

hap·pi·ness

[hap-ee-nis] –noun

1. the quality or state of being happy.

2. good fortune; pleasure; contentment; joy.

Dictionary.com unabridged (v 1.1)