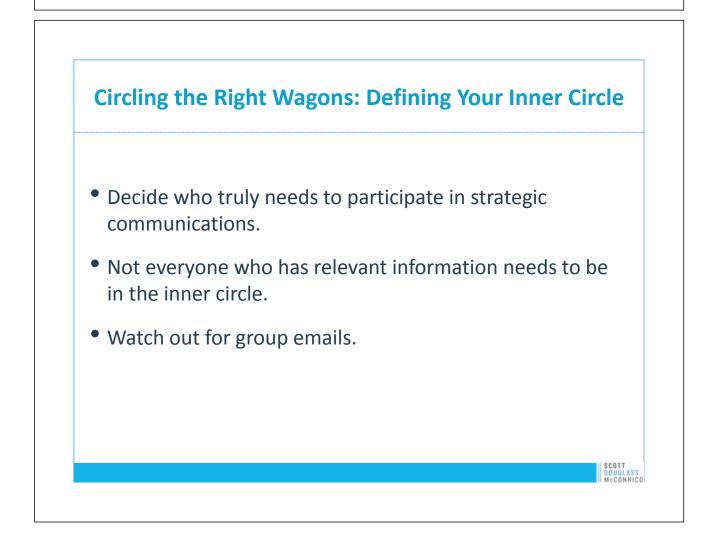
SO YOU'VE BEEN SUED: WHAT NOW?

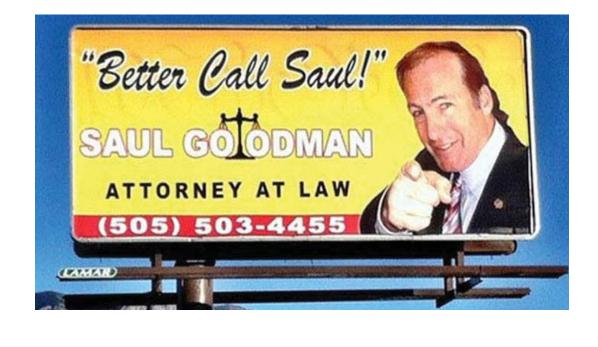
DANIEL C. BITTING CYNTHIA L. SAITER

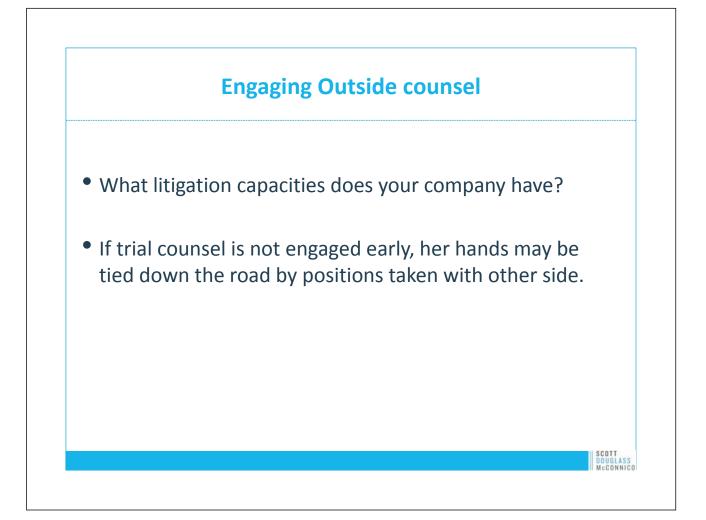
38TH ANNUAL CORPORATE COUNSEL INSTITUTE HOUSTON-APRIL 7-8, 2016





Engaging Outside Counsel





Duty to Preserve Evidence

 Duty is triggered "when a party knows or reasonably should know that there is a substantial chance that a claim will be filed and that evidence in its possession or control will be material and relevant to that claim."

 Substantial chance of litigation arises when "litigation is more than merely an abstract possibility or unwarranted fear."

Brookshire Bros., Ltd. v. Aldridge, 438 S.W.3d 9, 20 (Tex. 2014).

If you don't preserve evidence the trial court may spoliate your whole day

- Trial court has "a wide array of remedies available," including award of attorney's fees or costs, exclusion of evidence, striking pleadings, or even dismissing claims.
- The trial court has discretion to craft other remedies, including a spoliation instruction to the jury.
- "[R]emedy must have a direct relationship to the act of spoliation and may not be excessive."

Brookshire Bros., Ltd. v. Aldridge, 438 S.W.3d 9, 20 (Tex. 2014).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

Title search: So You've Been Sued: What Now?

Also available as part of the eCourse <u>Corporate Counsel 2016: Litigation Update</u>

First appeared as part of the conference materials for the 38th Annual Corporate Counsel Institute session "So You've Been Sued: What Do You Need to Do Now?"