

# SO YOU'VE BEEN SUED: WHAT NOW?

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## Circling the Right Wagons: Defining Your Inner Circle

- Decide who truly needs to participate in strategic communications.
- Not everyone who has relevant information needs to be in the inner circle.
- Watch out for group emails.

## Engaging Outside Counsel



## Engaging Outside counsel

- What litigation capacities does your company have?
- If trial counsel is not engaged early, her hands may be tied down the road by positions taken with other side.

## 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 spoliage 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).

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