

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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