

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).

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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.”

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"So You've Been Sued: What Do You Need to Do Now?"