

Discovery Management in the Healthcare Industry

A Case Study by IE Discovery, Inc.

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The Digital Landscape

Today, almost all business communication is digital. This technological revolution has created a headache for corporate legal counsel, especially when managing increasingly large volumes of data from disparate sources and in different formats. Simply trying to locate and identify sources of data can prove to be extremely time-consuming. This data could come in the form of spreadsheets, word processing documents, database files or e-mail and might be located on various servers and workstations across the globe. If this data is not managed properly, companies risk court-imposed sanctions for spoliation of discovery, as seen in two high profile cases in recent years.

In *Zubulake vs. UBS Warburg*, a federal jury ordered that UBS pay \$29.2 million in damages to Laura Zubulake, who sued for sex discrimination. A weighing factor in the jury's decision held that UBS did not adequately produce e-discovery. During the trial, the federal judge made several groundbreaking rulings that make those companies issued with discovery requests responsible for production. The judge then imposed harsh penalties for inadequate e-discovery productions.

As set forth by the *Zubulake* rulings, companies must comply with discovery obligations, such as the production of electronic source materials or they cannot continue in the litigation. E-discovery can no longer be ignored. As a result, corporate counsel must consider the processes and technology necessary to handle e-mail discovery as a means to simply remaining in the litigation.

In *Coleman vs. Morgan Stanley*, a jury placed a \$1.4 billion judgment against Morgan Stanley based on the financial giant's apparent misconduct and concealment surrounding potentially damaging e-mails.

As courts continue to require parties involved in litigation to produce data from various sources and in multiple formats, corporations are tasked with managing the overall discovery process as well as developing data retention and retrieval strategies. Because of the potential volumes of these requests, the cost of collecting, processing, and producing can become a huge unknown in corporate counsel's budget.

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How Discovery Management Helps a Leading Healthcare Organization

The financial health of one of the nation's largest consumer health organizations is inextricably linked to its ability to manage litigation effectively. While this entails optimizing its judgments and settlements, an increasingly large and important part of business litigation involves the proper management of discovery.

In one particular case, a three-party dispute occurred concerning provider contracts whereby the arbitrator required the health provider to collect and process a significant amount of e-mail and execute rolling productions to opposing counsel—all in the span of eight weeks in order to meet the discovery requirements. Expectations for the tight deadline included locating backup tapes from a four-year time period, extracting the e-mails from these tapes, and placing the messages through a search process that flags the messages matching numerous search terms. As an additional requirement, the e-mail would need to be collected and processed without re-creating the Microsoft Exchange environment, which originally routed the messages, because of the exorbitant cost and time involved in re-creating the environment.

To manage such a large and complex case, the healthcare provider turned to IE Discovery,

a provider of discovery management and litigation support services. Leveraging its past experience in processing large amounts of e-mail, IE Discovery quickly designed a strategy necessary to meet the aggressive production schedule. First, both responsive and non-responsive back-up tapes were located and tracked to ensure a verifiable chain-of-custody. After the collection phase, the exchange database (EDB) files were extracted from backup tapes and copied to portable hard drives. Finally, IE Discovery searched and identified relevant e-mails on hard drives and subsequently had the responsive messages restored to a Personal Storage File (PST).

In the span of eight weeks, hundreds of thousands of e-mails were located, extracted, and processed from back-up tapes. As a result, the health provider met the arbitrator's deadlines for rolling productions, thus fulfilling the discovery responsibilities for the litigation. By meeting the deadlines the health organization averted the possibility that the arbitrator would not allow the litigation of the case to continue. Furthermore, one of the potentially largest benefits has yet to be realized: by restoring the back-up tapes to portable hard drives, the company can now quickly search e-mails in the event of future litigation.

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Claims Applications

In another example of efficiency, IE Discovery developed a Web-based application that enables attorneys and experts to analyze insurance claims and related claims information quickly and effectively. As a result of having the foresight to build this application, the company attorneys greatly strengthened their legal capabilities. Counsel could now rely on the claims application for pre-trial preparation and in the courtroom for strategy and cross-examination.

When creating the solution, IE Discovery replaced the paper-based collection with a more efficient process where all of the necessary data for the case—claims, claims checks, reports, and other data—was gathered electronically from multiple departments within the health provider. Because the data existed in several disparate database systems, it had to be transformed into one unified format so it could be easily read.

Prior to the creation of the claims application, the health provider hired workers to manually collate paper copies of the claims and the supporting data—a painstakingly tedious and error-prone process. Attorneys and litigation experts then spent countless hours sorting through the collated paper collection in hopes of locating relevant claims information while

workers photocopied the documents deemed necessary for production and shipped these to opposing counsel.

As initially envisioned, the claims application provided a crucial advantage for the health provider's trial attorney during the trial as a means of analyzing the experts' testimony in the courtroom. When the opposing counsel referred to a specific claim, the trial attorney could use the application to search on the claim number and locate its supporting documents, such as payment of claim. Armed with more information about the specific claim, the trial attorney could question the expert more effectively during cross-examination.

For future litigation and discovery management, attorneys can view the data in the Web-based application, which includes search capabilities for quick location of information and space to record annotations. Instead of having to sift through folders and boxes of paper, corporate counsel now can quickly analyze the claims information, allowing the experts to focus their attention on assembling a better defense rather than spending countless hours locating documents.

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Re-using Applications

The healthcare provider continues to reap substantial returns from its initial investment in the claims application by using the application in similar subsequent claims disputes. By not “re-inventing the wheel” for each subsequent claims dispute, counsel realized both significant cost savings to the discovery process and a faster ramp-up when cases initiate. The company has re-used the core software code for the claims

solution in 10 legal matters for an average development cost of \$10,000 per case. With the majority of costs occurring in the initial development phase, the expense of each additional application has been minimal. The flexibility of the original application design also minimizes the time needed to develop new claims applications and leads to faster roll-outs.

Re-using Electronic Documents

In the past, counsel collected and often re-collected the same corporate paper documents deemed relevant. Collection became a laborious process further slowed by the company departments that managed the documents. To streamline corporate documents, counsel now captures the data with the idea of re-using it for future cases. Across all categories of documents—including reports, claims checks, provider contracts, policies and procedures, marketing materials, and regulatory documents—counsel has re-used more than 3,000,000 pages for various litigation matters. When the attorneys initiate new litigation, they first search the existing repositories without interfering with other area departments in the enterprise. The benefits of re-using corporate documents include:

- **Saving business unit time**
- **Reducing time spent on case collection startup**
- **Minimizing processing costs for copies, re-scanning, and binding**

Gathering and storing electronic versions of reports and claims checks has proved especially useful, enabling attorneys to use current and future claims applications to access the same data without the assistance of core employees. For a specific case in 2005, data collectors gathered and processed all relevant reports in just four weeks, a task that the company could not process in the previous two years because of manpower constraints. Additionally, the images of checks issued to pay claims were collected for various matters, all without disturbing the operations of the finance department. By collecting documents electronically and using the application to link the information, the attorneys avoided interrupting other departments and minimized the chance of human error in matching documents to claims.

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Re-using Electronic Documents - *Continued*

Electronic documents also have a substantial cost savings compared to paper discovery collections. In a matter involving a hospital chain, the health provider experienced significant cost efficiencies by collecting and producing electronic documents. The case involved more than 1,000,000 pages of claims documents, or the equivalent of 400 physical boxes of paper. If selecting the paper route, the collection would have required a minimum of three copies of each document as well as costs for storage, shipping, and hiring personnel to manage the library.

By opting for the electronic option, the health provider did not incur any of the above costs related to paper. More notably, electronic documents save substantially on the cost of legal experts. Instead of experts spending hours to sort and index documents related to a claim, the claims application links the information together. Without the burden of sorting and indexing, experts have more time to devote to analysis.

An additional benefit of using electronic documents involves the ability to confirm that documents are properly indexed and produced. In a claims dispute involving a hospital, the company hired a number of temporary employees to begin a paper collection. Yet, the attorneys discovered that the collection method could not prove that each claim was adequately produced and indexed by Bates number. To

rectify the situation, counsel conducted an electronic collection and placed the documents in the claims application. The indexed electronic documents enabled the attorneys to prove the case that the company had justly made several millions of dollars in payment.

As with legal reports and claims checks, counsel identified categories of documents that bridge many litigation matters and created electronic versions of the documents for present and future cases. One such category is provider contracts, documents that define and detail the relationship between the health provider and health professionals. Initially, a federal regulatory agency mandated that the health provider produce all such contracts. To assist counsel with this project, IE Discovery sent personnel onsite to three facilities located throughout the United States to scan the documents. Not only did counsel satisfy the discovery request for the regulatory agency, but now all provider contracts are stored in a Web-based repository, enabling attorneys engaged in contract disputes to access the contracts from anywhere in the world.

Further efficiencies involved with the re-use of documents can be found in the area of policies and procedures. Corporate counsel decided to create electronic versions of the policies and procedures to reference for litigation. As an added benefit of this decision, counsel realized that locating the most current policies did not interrupt the company's operations.

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Cost Effective Use of Legal Services

Counsel's use of litigation services and legal review has provided a cost-effective and flexible alternative to hiring legal professionals for ad hoc projects. More importantly, out sourcing legal services has enabled the company to focus on the core strategy of the litigation rather than managing a large group of legal reviewers.

In a large class-action suit, IE Discovery quickly ramped up its legal services with 40 additional legal reviewers to evaluate approximately 1,000,000 pages of discovery in a six-week span. To expedite the workload, the reviewers utilized cutting-edge review technology that enabled

the attorneys to view the most current documents in real-time and completed the review in the tight timeframe. In addition to performing reviews, the company also utilizes IE Discovery's legal services for subject-matter expertise, depositions, and witness preparation.

To further assist in the collection of discovery documents, several IE Discovery staff members currently work onsite at the corporate offices. These staff members, who are well-versed in the discovery collection processes, provide a better alternative to hiring and training corporate legal staff expressly to manage discovery.

Conclusion

The healthcare organization's corporate counsel set out to redesign its discovery process as a means of avoiding hefty sanctions and to better manage its legal costs. They have proven that by proactively managing the discovery process, corporate counsel can lower both internal legal and outside counsel costs, provide benefits across the enterprise, and become more responsive to a full load of litigation. Consequently, the corporate legal team has gained efficiencies in several areas of discovery including:

- **Ramping up staff for large legal reviews quickly and easily**
- **Processing and reviewing large volumes of e-mail**
- **Creating processes and applications for effective analysis of claims information**
- **Enabling the easy re-use of software applications, collection processes, and data**

The health provider's proactive discovery strategy has yielded large efficiencies in the planning, collection, processing, review, and production of discovery. The ability to anticipate future discovery needs has meant substantial cost-saving in the re-use of software code, processes, and data. By adopting a nimble and tactical approach to litigation, counsel has the flexibility to meet tight deadlines without compromising the quality of legal representation. In addition, this strategy has strengthened inside counsel's capabilities by enabling the attorneys to focus on the core issues in the litigation— leaving the discovery details to an experienced Discovery Management partner.