



TECHGEAR



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WEBLINKS



DICK TERRELL BROWN

of Austin focuses his law practice on family wealth and transitions planning, business entity formation and governance, and estate administration. Visit DickBrownLaw.com.

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DOCUMENT REVIEW:

Unbundling and Offshoring

BY MIKE DOLAN AND JOHN THICKETT

The 2006 amendments to the Federal Rules of Civil Procedure significantly opened the corpus of discoverable documents for new legal actions. All forms of electronically stored information (e.g., emails, computer files, text messages, instant messages, and the electronic gadgets people use to communicate) are open to scrutiny. It is not unusual to see 100 million pages of discoverable data in document-intensive industries such as finance, medical, technology, or oil and gas.

The rising tide of legal costs is affecting the bottom line more than ever. Business leaders and their counsel are looking for new ways to reduce expenses without jeopardizing legal strategies. Many have found that "unbundling" legal services can be a key strategy in decreasing these necessary costs.

APPROACHES TO UNBUNDLING

Companies are reducing outside counsel billings by unbundling document review. Similar to moving corporate IT to IBM in the 1980s, EDS in the 1990s, and Infosys in the 2000s, unbundling is gaining momentum.

Three approaches to the unbundling of document review are gaining traction:

1. Retain a relatively permanent group of document reviewers in-house. Several technology companies are successfully using this approach to control costs. Advantages include good productivity and quality due to a stable workforce and a common, electronic repository that retains knowledge. The approach requires additional time and management bandwidth to implement and control. For most companies, there are utilization and flexibility challenges.
2. Hire contract attorneys on a matter-by-matter basis. Other compa-

nies reduce costs by replacing outside counsel with contractors. However, high turnover rates can pose significant challenges and the time needed for hired guns to get up to speed can affect the pace and consistency of the review.

3. Hire a company that specializes in document review. Staff usually has broad case exposure and experience with multiple software platforms that allow them to identify and use the best tool for each review.

DAVID v. GOLIATH

Recently, DiNovo, Price, Ellwanger, L.L.P. (DPE) was tapped by Bluecurrent, an Austin-based technology company, to assist with an intellectual property trade secret case against Dell. Austin-based DPE is a litigation firm that specializes in complex litigation for IP and commercial disputes.

A common problem in David v. Goliath cases is the tremendous amount of electronically stored information (ESI) and the exorbitant expenses incurred by the parties. Obviously, these expenses affect the smaller "David" much more than the larger "Goliath." According to KPMG, electronic discovery and document review costs comprise 60 to 90 percent of total litigation expenses. With terabytes of data involved, this case was no exception. The ability of Bluecurrent to bear the potentially significant expenses associated with the suit was a major concern from the start.

Facing more than 40 attorneys at an Am Law 50 firm and millions of pages of resulting ESI data, DPE started looking to leverage technology and evaluate alternative document review options.

After evaluating different options with the client, it was agreed that combining a small team of domestic attorneys with a



larger team of offshore document reviewers at \$25 per hour had the potential to be a sound alternative for maximizing the budget. DPE was hesitant to jump headfirst into this option without carefully evaluating the ethical, confidentiality, security, and quality concerns.

Utilizing offshore document review allowed Bluecurrent to litigate against one of the world's largest companies for 18 months until a satisfactory resolution could be reached. When the case settled, Bluecurrent had spent five to 10 times less than traditional practices would have cost and utilized a team entirely of domestic attorneys for the review.

Progressive law firms should not be afraid to think outside of the box if it is in the best interest of the client. DPE needed to level the playing field with a strategy that limited ESI during discovery, used e-discovery best practices, and relied on efficient document review and analysis that leveraged technology. The upfront work paid off and the results of the case stand as an example of how David can beat Goliath.

OFFSHORING IS GROWING

While high-level legal work will likely remain in the United States, proactive general counsel and law firms are evaluating and implementing international options in document review firms. Boston-based Forrester Research estimates the current value of legal work shipped overseas at \$80 million, an amount expected to grow in India alone to \$4 billion by 2015.

Recently, Scott Rickman, associate general counsel to Del Monte Foods, told *The Recorder*, a California law magazine, that "it doesn't make sense to pay \$150 or \$250 an hour at some of the larger firms to do the document review — it just seems like overkill." Technology firms that already rely on a global work force, such as Microsoft and Cisco Systems, are wondering why they need to pay high hourly rates for "grunt work" that can be sent to India for \$25 an hour.

Initially, the waiver of attorney-client-privilege and the unauthorized practice of law were the leading objections that U.S. law firms raised against offshore document review. Recent favorable opinions by legal ethics committees in New York City, Los Angeles and San Diego counties, Florida, and by the American Bar Association have clarified the role of offshore review teams.

A larger concern had been the security of the information once it was sent to the review team. International review firms generally do not store the data onsite; instead, reviewers work directly on their clients' servers through a secure Internet connection. In many cases, reviewers work on computers with inoperable USB ports, disabled CD burners, no printers, and no Internet access. Finally, it is common practice to prohibit cameras or

memory devices, like flash drives, from entering or leaving a review center.

All parties involved in litigation realize that the real issue is the reduction of total cost and time and the minimization of future liabilities. Well-executed document review can garner higher client confidence, significantly lower total costs, and provide flexibility to retain the best outside counsel for specific needs. ★



MIKE DOLAN (top) and **JOHN THICKETT** founded Tusker Group to specialize in legal document review options to in-house and outside counsel. The company integrates India and U.S. operations with client legal teams. Visit www.TuskerGroup.com.

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