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## E-DISCOVERY

Spreadsheets, emails, text messages, and more — the volume and variety of electronically stored information (ESI) that might be discoverable in litigation continue to keep pace with the multiplication of ways and methods that we communicate and store data digitally. The growing demands of e-discovery — locating, preserving, reviewing, and sharing ESI — constitute one of the most important trends in litigation. More pressingly, if not properly understood and managed, e-discovery can balloon a client's legal spending, strain and distract owners and executives from day-to-day operations, and affect long-term business goals.

While most boutique and Big Law firms alike are ill-equipped to advise on or handle serious e-discovery, Goldberg Segalla offers a dedicated E-Discovery team's nearly two decades of experience managing and improving e-discovery practices in high-stakes litigation for clients across a variety of industries. We have experience utilizing the latest technologies and best techniques for controlling and effectively using e-discovery. That means that beyond the basic services of ESI management and litigation support, clients also benefit from our deep understanding of questions of privilege and relevance, our grasp of long-range trends in technology and e-discovery rules, and our experience applying our knowledge in the context of proactive and pre-litigation risk management.

We understand the complexities of the civil rules applying to e-discovery, as well as corporate IT infrastructure, backup protocols, and database creation and storage, with hands-on experience working with a multitude of major programs and applications. We partner with our clients and work quickly to understand their systems and processes and identify relevant data sets and sources, as well as the potential admissibility challenges that, as a firm of trial lawyers, we regularly handle during litigation.

### Proven Cost-Saving E-Discovery Techniques

With an intimate knowledge of the applicable state and federal e-discovery rules, we can provide cost-effective (and time-saving) advice, while removing gamesmanship throughout the litigation lifecycle. Our tactics for lowering e-discovery-related legal spending include:

- Taking steps early in litigation to avoid sanctions
- Developing creative ways to review documents
- Cooperating with opponents in setting up joint document repositories
- Limiting the scope of discovery during a Rule 26(f) Meet and Confer conference
- Using Federal Rules of Evidence Rule 502 and Federal Rules of Civil Procedure Rule 16 orders to protect the attorney-client privilege during e-discovery
- Negotiating reductions in the scope of a legal hold
- Reducing the scope of ESI relevant to a matter
- Effectively using the most advanced and vetted analytical programs to help reduce the volume of relevant data
- Selecting the most cost-effective vendor for the collection and production of ESI

### Proactive Preparation, Cost-Effective Defense

Most reported e-discovery sanctions result from the failure to preserve relevant electronic evidence, typically following an event that triggers an organization's duty to preserve the same. We partner with e-

discovery vendors that can provide forensic collection of electronically stored information, including imaging hard drives and network drives. Similarly, we can arrange for review and analysis to be performed by teams of corporate and/or outside counsel at secure review stations, which can be set up virtually anywhere. We have conducted reviews using vendors, contract attorneys, associates, and other members of our team, depending on the experience needed.

Our e-discovery support goal is to identify the requirements of your project at the onset, and then work with your information technology staff and available litigation support services. Together, we will focus on developing a solution that will permit us to identify, collect, preserve, catalogue, and analyze relevant materials for litigation purposes and applicable privileges; produce the same as litigation requires; and ultimately select material for use at depositions and trial.

## **LITIGATION SUPPORT**

We know that there is no “one size fits all” solution to e-discovery concerns. At Goldberg Segalla, we serve clients across a wide range of industries and sectors, and tailor our litigation support solutions on a case-by-case basis, collaborating with our clients to develop a protocol that best fits their specific need. Only then do we identify and select one or more vendors to help deliver the most appropriate and efficient solution. This approach allows maximum flexibility and permits us to work with the most knowledgeable outside vendors in the industry.

Our support goals are to identify the project requirements at the onset, interface with the client’s IT and available litigation support services, and develop a solution that will permit relevant materials to be identified, preserved, collected, catalogued in a database, analyzed for defense purposes and applicable privileges, produced as required by litigation, and ultimately selected for use in the defense of our client at depositions and trial.

## **Effective E-Discovery at Scale: Data Management, Case Management, and Global Litigation Management**

The final result of an ideal plan often includes a relational database. Depending on each client’s needs, this may include:

- .pdf or .tiff images of all information collected, reviewed and produced
- Basic metadata and text for electronic documents
- Bibliographic coding
- OCR text for hard copies
- Subjective coding
- Privilege assessments
- Confidentiality assessments
- Production history
- Tracking, as to exhibit use at depositions, trial, and evidentiary rulings

In many cases, it is also preferable to maintain the document database within a case management program. This structure allows pleadings and transcripts to be linked to the documents, and the documents themselves can be used to develop timelines, chronologies, and demonstrative exhibits.

If pattern litigation emerges and there is a need for litigation management tools, we are familiar with a

variety of case management programs. At Goldberg Segalla, our solutions include:

Creating sets of client documents for production purposes on CD-ROM or DVD using Summation (which we use in our day-to-day practice)

Developing uniform document responses for use in the national management of pattern litigation discovery responses

Working with our clients and vendors to create a proprietary litigation management solution or selecting a suitable litigation management solution from the many available on the market

Partnering with our clients to create a specialized extranet or secure website to facilitate and promote online collaboration among team members located around the world

Developing solutions in pattern litigation where data sets can be stored online and plaintiffs' attorneys can be granted access to a secure website (via a case-specific password) to obtain materials responsive to discovery requests

Working with a vendor to create an online claim process if deemed appropriate as a potential alternative to litigation (often depending on the volume of potential claims involved)

Since we do not view litigation support services as a profit center, we can provide the most objective solutions for our clients. We believe that our tailored approach to litigation support makes the best economic sense to our clients. In addition, this flexible model allows us to work with some of the best-respected outside vendors in the industry for critical litigation support services — giving our clients the best chance for success in all phases of litigation.

#### **Litigation Support: Detailed Services**

Appeal brief hyperlinks

Case management

Chain-of-custody compliance and counseling

Coordination of expert, forensic and other evidence analysis

Discovery counsel to ensure uniform control and tracking of ESI and document productions

Discovery Resources Guide®: these client-specific white papers guide outside counsel through all phases of the litigation lifecycle

ESI and document management support, including issue coding, deposition and trial preparation

Integration of IT contacts and data maps into the Discovery Resources Guide®

Medical literature attorney reviews

Medical literature repositories

Pattern and class-action litigation planning

Model discovery responses

Model pleadings

RFP drafting for litigation support and e-discovery vendor services

Trial support

Trial presentations

#### **RECORDS AND INFORMATION MANAGEMENT**

Our extensive courtroom experience has allowed us to test, refine, and execute information management strategies that are defensible, proactive, and cost-effective. As trial lawyers, we leverage

this experience to help companies avoid a wide array of costly information management mistakes and sanctions. More importantly, our insight and strategies help companies achieve their objectives and reach their long-term goals.

At Goldberg Segalla, we work directly with clients to implement targeted records retention and information management strategies designed to control the ever-increasing volume of electronic information. Our team (including attorneys, IT partners, and vendors) uses our valuable trial experience to craft defensible corporate governance and document retention strategies. Given our experience with litigation support and e-discovery, we can help guide you toward the most cost-effective information management policies and procedures, thereby minimizing the rising costs often associated with preservation, collection, review, and production of electronic information.

### **Trusted Legal Counsel Through the Full Lifecycle of Information Management**

Including a Goldberg Segalla attorney on your information management team has added benefits over traditional records management approaches. For example, our knowledge of case law and our trial experience bring a meaningful perspective to the entire information management lifecycle.

The character of information management has changed significantly over the past 10 years. More than ever, the driving force behind information management is to develop defensible strategies that are designed to avoid sanctions, minimize litigation costs, and protect your company's bottom line. More information management departments are falling under the umbrella of corporate legal or risk management departments — and this trend will continue.

As lawyers, our approach is deliberate, measured, and designed to keep your best interests first and foremost when crafting information management strategies. Because we are not selling a product, our vendor relationships are designed simply to deliver the best information technology solutions to each client's particular needs. With Goldberg Segalla, most deliberations about information management policy and procedures are protected by the attorney-client privilege.

Finally, because we are experienced trial lawyers, we understand exactly how to help clients develop uniform, repeatable, and efficient pre-litigation and litigation strategies for information management. With the growing importance of legal holds, we are at the forefront of providing opinions relating to trigger events, determining whether the duty to preserve records exists, and defining the scope of a legal hold. We also conduct interviews with custodians to confirm adherence to legal hold policy and procedure, in accordance with existing case law.

### **Information Management Services**

- Auditing and training programs

- Custodian interviews to enforce and monitor legal holds

- Data management plans for retention, format, and backup procedures and duration of retention

- Data mapping

- Data, employee and international privacy laws counseling

- Disaster recovery and backup procedures

- Electronic records policy and procedures

- Employee and management training

Employee policies related to e-mail, Internet, company IT usage, and employee use, storage and copying of electronic documents

Legal hold

Notices

Opinions relating to trigger events, the duty to preserve records in anticipation of litigation or investigation and the scope of preservation

Policy and procedures

Records management policy and procedures

Records retention schedules

Release counseling and opinions

Safe communication training