

Exhibit N



DiscoverReady

Fixed Per Unit Pricing Revolutionizes E-Discovery Review

(Originally published in Executive Counsel, November 2007)

By Steven Harber, President and co-founder, DiscoverReady

In a January speech, the general counsel of Cisco Systems stated, "the most fundamental misalignment of interests is between clients, who are driven to manage expenses, and law firms, which are compensated by the hour." His point highlights the ever-present challenge of corporate administrators to weigh the costs of risk management against the practical aspects of controlling them.

Modern litigation is a notorious example of this increasingly common dilemma. With the ghosts of *Zubulake*, a seminal federal case on electronic discovery, still haunting the legal community and new rules that became effective last December forcing accelerated improvements in document administration, business leaders across the country are struggling to streamline e-discovery, specifically e-mail review, while maintaining control over the expense and uncertainty it causes.

In an industry that costs corporate America billions of dollars each year in software improvements, management consultants, legal fees and hardware upgrades, a trend has emerged. Companies are beginning to calculate e-discovery costs based on a fixed per unit pricing model. That is, instead of a law firm or outside service provider charging your legal department on an hourly basis for review, a select few are offering a fixed fee per document. This eliminates the guessing game involved with legal budgets and also provides greater transparency in billing.

A number of Fortune 500 companies are already adopting the per-unit pricing model and are realizing cost benefits. Here are some examples and tips for executives interested in evaluating the model for themselves.

Martha Solinger came to believe that she and her team at Lehman Brothers could manage litigation better, cheaper and faster. By bringing increasing levels of discovery operations in house, hiring a dedicated professional to manage the process, partnering with key vendors and creatively structuring costs, the visionary managing director and head of global litigation for the investment bank has become an industry pioneer. Solinger's secret is to direct the participants and process herself. "If you take control, you will realize substantial savings, improved quality and consistency," she says. "When you let each outside law firm select and compensate vendors, you will not receive optimal pricing and service," she adds.

The first step in taking that control is to conduct an evaluation in order to determine the cost to review each document under scrutiny. This requires collaboration from both the business and legal teams to share intelligence on the background of a particular matter. Prominent discovery consultant Bill Speros of Cleveland, OH-based Speros and Associates, LLC has been studying the issue of cost identification and containment for almost two decades. For companies to significantly reduce certain financial burdens associated with e-discovery, "they must first take time to understand the costs associated with inventory, preservation, collection, processing, reviewing, and producing a single document," he says.

Once Solinger was able to identify the cost of each of these components and begin operating under the 'per document' paradigm for first pass review, Lehman Brothers

realized an almost 60% reduction in costs. This is significant for any organization, but is particularly remarkable for the legal department in a highly regulated industry faced with escalating verdicts and rising legal fees. "Everyone wants to know what litigation is going to cost," she notes. In 2005, she recalled that this was an unimaginably large number that might easily have exceeded one million dollars for a less significant, but e-mail intensive, matter. "With the per document model, however, it could be a tenth of the former cost," according to Solinger.

A key factor for success is proactive planning. Studying case details, crafting and testing review guidelines, implementing carefully developed culling strategies, establishing schedules with milestones, and prioritizing the review of the files of key individuals by importance are all part of this process. This stage will reveal the total number of documents to be reviewed and the anticipated speed at which teams can complete their objectives. This is noteworthy, as some cases require the examination of thousands, hundreds of thousands, and even millions of pages of potentially discoverable information. By planning ahead, a team may be able to eliminate a large percentage of that material.

First pass reviewers traditionally classify documents into the following basic categories: (1) not relevant; (2) relevant or hot (i.e., those that have a direct impact on the matter under investigation); and, (3) potentially protected by the attorney/client privilege. Similar to a factory assembly line, best practices call for a continuous workflow strategy that quickly identifies and corrects document mischaracterizations, such as 'not relevant', when actually 'hot', before the downstream fix becomes too costly.

Most law firms do not implement standardized processes and advanced quality control procedures, so the quality of the work coming out of a "document factory" is likely to be much higher and more consistent. Clients are no longer willing to pay for the inefficiency of a law firm that gets compensated for every hour worked and that may profit from temporary personnel, expensive infrastructure or poor project management. "I want the lawyers to do what they do well and for technologists to do what they do best," notes Solinger.

Based upon a preliminary analysis of a sample set of documents related to a particular case, Solinger's outsourced review provider can fix the project timeframe and cost structure. The technology choice is simplified by focusing on the number of decisions a user can make in an hour with a particular technology. On an average day, many law firms find that contract attorneys using a standard program can typically get through 500 documents each, while analytics software, which visually groups documents into related families, can enable the same people to triple that number.

Further cost savings and quality improvement can be achieved as corporate legal departments establish repeatable processes that consistently apply the same methodology and technology to each matter. This could dramatically affect an organization's ability to plan proactively and help to measure the universal impact of litigation on its global operations.

Lehman's prior cost evaluation methods required an examination of the price per gigabyte to process data, a cost per hour for temporary attorneys and the billing rate sheet for its various outside counsel. It now understands that this level of analysis will not reveal the critical cost for the complete review of a single document and, ultimately, for the entire data set. "Until you get a serious handle on what you are going to spend on the total cost of an e-discovery project, you cannot properly develop a case strategy," says Solinger.

Once corporate legal teams begin preparing for discovery matters using a single per document cost, rather than a disparate group of variable fees, they can more accurately quantify the risk. At McKesson Corporation, for example, the combined processing and review price is currently under \$2 per document. Prior to implementing this model, "it was much more than that," notes Carrie Mallen, the Manager of Litigation Support in McKesson's law department. Lehman's average rates range from \$1-\$2.50 depending on the type, size and complexity of review. In comparison, many organizations are shocked to find that they are paying between \$4 and \$10 per document for review.

These numbers serve as benchmarks for calculating discovery expenses. "It makes budgeting for cases much easier, provides a sense of certainty and is devoid of any hidden charges," says Mallen. They also aid in budgeting and anticipating future needs. "The per document model helps us measure what we are achieving, understand the right choices for any given matter, and forecast the costs, which the finance department is always looking for," adds Solinger.

A key component of this determination is the software that is used for review, such as Attenex Patterns. "The speed at which you can review a large volume makes one leading clustering search tool better than the others," notes Mallen. "Attenex's conceptual clustering and spatial organization of documents significantly speeds review, which is critical in helping us reduce costs without sacrificing quality," adds Gregory Witczak, Lehman's Director of E-Discovery.

Once the entire filtering process is complete, typically less than 10% of the data is left. To create a fixed budget, the final number of documents to be reviewed is simply multiplied by the per document cost quoted by the vendor. "There is enormous savings in outsourcing first pass review and paying the lowest possible price to remove the 90% of unimportant data," says Solinger. Parties that successfully negotiate with their adversaries can further limit the number of documents subject to review and potentially save at least one dollar for each record eliminated.

With protocols that can be easily defended, regular tracking of queries and decisions, stringent quality control procedures, and significant cost savings, outsourced review is certain to help legal departments manage e-discovery better, faster and cheaper. Accordingly, we can expect to see more corporations opting for a per-unit fixed cost pricing model over the next 12 months.

###

DiscoverReady ▪ 55 Broadway, 21st Floor ▪ New York, NY ▪ 10006 ▪ 212.699.3960
www.discoverready.com