

The e-Discovery 4-1-1

A monthly publication of LeClairRyan's
Discovery Solutions Practice



Legal Strategies. Business Solutions.

Welcome to "The e-Discovery 4-1-1"

by Bill Belt

Welcome to the inaugural issue of the LeClairRyan Discovery Solutions Practice (DSP) newsletter, "The e-Discovery 4-1-1." Why "4-1-1?" It is the universal synonym for "information," and it is the street address of LeClairRyan's DSP. Coincidence? We think not. Here you will find concise, timely information and advice regarding electronic discovery issues. We at DSP recognize the sometimes overwhelming volume of information that is distributed on this topic; to help our clients sort through the noise, we aim to provide brief updates on topics of particular interest to our corporate clients. In addition, we want to help you get to know DSP better, so we will be updating you on news, events and successes related to the practice area, as well as introducing you to what truly differentiates DSP from its competitors -- the professionals that serve our clients. E-discovery is a multidisciplinary issue requiring a multidisciplinary response. DSP recognizes this, which is why our client teams include seasoned attorneys, business process consultants and technology professionals. Each month, we will feature a member of our team -- highlighting the unique skills and experiences that individual brings to bear on our clients' problems in this challenging area. We hope that you find the newsletter useful, and we value your feedback. If you have any suggestions or comments, please feel free to contact me at 804.783.1108 or william.belt@leclairryan.com.

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Electronic Discovery Challenges BP Oil Spill Case

by Bill Belt

In some ways, the BP/Deepwater Horizon case, resulting from the April

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Meet DSP

Michael Arnold Brings Legal Technology Expertise to DSP

Michael Arnold is the manager of litigation technology for LeClairRyan's Discovery Solutions Practice. Michael joined the Firm in late June and brings a technology-focused approach to discovery and litigation support based on his unique background, which includes more than six years as information technology (IT) director for another Richmond law firm and more than a decade in the technology industry.

Prior to entering the realm of law and technology, Michael worked as an IT consultant for several major manufacturing companies in Virginia, helping to develop

20, 2010, explosion of an oil rig in the Gulf of Mexico, will be similar to the Exxon Valdez case, the disastrous oil spill that occurred in March 1989. The Exxon Valdez case was, up until now, the largest oil spill in United States waters. However, in at least one way, the two cases will be drastically different. While the *Valdez* case included a vast amount of discovery, mostly in the form of paper, there will be no comparison to the volume of discovery, both paper and electronic, that will be produced in the BP/Deepwater Horizon case.

Electronic evidence includes not only word processing documents and email, but also structured and semistructured databases, collaborative resources, and a variety of communications media, such as voicemail, text messages, instant messages, tweets and webcasts. This case is expected to reach the petabyte (1,000,000,000,000,000 bytes) threshold, and litigants will be forced to rely on methods used in government antiterrorism and counterintelligence efforts to sort through the massive quantity of data. This involves using human intelligence to narrow the search parameters by identifying key players before, during and after the April 20 explosion and leveraging sophisticated search technologies and methods to identify relevant concepts and patterns.

The imperative to preserve and produce potentially relevant documents, whether they exist as numbers on a server or as printed words on a page, is now the indisputable law of the land. For example, California's Civil Discovery Act requires attorneys to pay full attention to digital dimensions of all the cases they try. Amendments to the Federal Rules of Civil Procedure further cemented the place of electronic discovery in American jurisprudence. The recent decision in *Pension Committee v. Banc of America Securities*, 2010 U.S. Dist. LEXIS 4546 (SDNY Jan. 15, 2010), detailed the activities litigants are required to undertake to preserve electronically stored information, including the necessity of issuing written hold notices when litigation is reasonably anticipated.

As a result of *Pension Committee* and other recent cases, the steps taken to preserve digital information relevant to the disaster will be scrutinized. BP, like any company involved in litigation, has a responsibility to preserve potentially relevant information in its possession, custody and control. This may include information that would normally exist only temporarily. Although, as explained in *Rimkus Consulting v. Cammarata*, 2010 U.S. Dist. LEXIS 14573 (SD Tex. Feb. 19, 2010), there are limits as to what constitutes discoverable information and what preservation steps are reasonably required under the applicable circumstances; understanding where those limits reside is of major concern to companies and their lawyers. In a case such as the BP/Deepwater Horizon matter, those limits are likely to be very far

systems that improved user experience while increasing computer and network productivity. Later, working with the design and implementation of 'back-office' technologies that help reduce costs and improve data security, Michael became familiar with the interrelationship of the many different computer systems on which corporations rely.

In his position as the IT director for a local law firm, Michael managed every aspect of the firm's technology, including networking, email, document management, optical scanning, mobile equipment and trial presentation systems. In addition, he consulted with clients on a variety of technology issues, including electronic discovery. Among other things, Michael developed systems and processes to allow for the identification, collection, review and production of electronically stored information in a cost-effective, defensible and consistent form. As a result of his ability to articulate technology issues to a legal audience, Michael was invited by the Defense Research Institute to speak at the organization's 2008 annual meeting in New Orleans; he led a session on how attorneys can leverage technology in their legal practices.

Having a chance to work with many systems, ranging from mainframes to personal computers, and being responsible for the development and support of all technology at his former firm, Michael brings a wide range of skills and knowledge to LeClairRyan and its clients. He looks forward to bringing a new approach to leveraging

out.

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What's New at DSP

DSP Offers New Consulting Services

In recent months, DSP has substantially increased the depth of its consulting capabilities with the addition of two key resources. In April, Dennis Kiker joined LeClairRyan after serving for two years as director of consulting for Fios, Inc., where he worked exclusively with corporate clients on records management and discovery readiness initiatives. While at Fios, Dennis worked closely with business process and MIS consulting expert Vikas Pall, who joined the DSP team in June. Together, Dennis and Vikas bring more than 20 years of business process and e-discovery consulting knowledge to LeClairRyan. DSP team professionals bring a unique, multidisciplinary approach to the challenge of information management and discovery response capabilities.

Records and Information Management Consulting

Effective records and information management can have an enormous effect on the efficiency of an organization's broader business processes and can greatly affect the downstream costs of discovery response. DSP professionals guide clients through formal assessments of existing processes and procedures, development of improved records retention policies and procedures and creation of rational and practical records retention schedules. In addition, DSP professionals help corporations drastically reduce cost and risk through the defensible, compliant disposition of legacy information no longer needed for business or legal purposes.

Discovery Readiness and Response

Utilizing proven methodologies, DSP professionals assess an organization's existing discovery response capabilities, evaluating the people, processes and technologies currently employed in discovery response and making recommendations for improvements to reduce time, cost and risk. Building upon the knowledge gained through the assessment process, DSP attorneys and consultants work with clients to develop and implement a formal Discovery Response Plan (DRP). Each customized plan results in a repeatable business process for identifying, preserving and collecting potentially relevant information, as well as identifying the people, processes and technologies necessary

technology within DSP through improved internal tools and consistent vendor engagements.

Michael is an excellent example of how DSP addresses the unique challenges of modern discovery. Information technology and the law merge in the area of e-discovery, requiring a team with the experience and skills necessary to navigate both worlds. Whether meeting with clients concerning their internal systems and processes or assisting with the legal team's use of technology throughout the case lifecycle, Michael exemplifies how LeClairRyan has extended traditional legal services to provide added value for its clients.

[Learn more about DSP](#)

to efficiently and defensibly comply with discovery obligations. The DRP will include all necessary templates, workflows and documentation necessary for implementation and execution, while leveraging existing processes and technologies to the fullest extent possible. Each DRP is built recognizing that there is no single solution suitable for all organizations. DSP professionals take a particular organization's size, litigation profile and risk tolerance into consideration when implementing the agreed-upon services and tactics.

Discovery Technology Consulting

Technology plays an increasingly critical role in a company's ability to efficiently and effectively identify, preserve and collect information. Because technology investments involve both monetary expenditures and significant commitment of human and infrastructure resources, DSP professionals help corporations assess existing and prospective technologies in light of their value in reducing cost and risk. DSP helps companies better leverage existing technologies and identify, acquire and implement new technologies as necessary and appropriate, while maintaining a critical focus on the effect of such technologies on legal risk.

For more information about these or other DSP services, contact Dennis Kiker at 804.783.1109 or dennis.kiker@leclairryan.com.

CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE AND DO NOT GUARANTEE OR PREDICT A SIMILAR RESULT IN ANY FUTURE CASE

Proactive Discovery Response Improvement Project Helped Prevent Unnecessary Litigation Expenses

Despite minimal demand for electronically stored information (ESI) in discovery, a premiere motor vehicle manufacturer felt it important to proactively prepare for e-discovery response and ensure that, if the need arose, the company could defensibly identify, preserve and collect potentially relevant ESI, while arming its outside counsel with the information necessary to represent the company's interests in discovery disputes. DSP professionals assessed the overall effectiveness of the company's existing discovery and response practices (which were largely focused on paper records), the personnel designated to manage the process, and the technologies employed for discovery purposes.

Through collaboration with the corporate legal, IT and records management departments, the multidisciplinary DSP team identified gaps in current processes and developed a complete discovery response plan tailored for each major business unit, including creation of detailed legal hold procedures and data collections processes. When the company later found itself the subject of a significant demand for ESI, it was prepared to respond in a defensible, cost-effective manner.

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