

Defensibly collecting and managing ESI in antitrust lawsuits

An international, for-profit hospital operator, facing a Federal, antitrust lawsuit, had 60 days to prepare for its scheduling conference. This required identifying, preserving and analyzing more than two terabytes of electronic evidence from 80 custodians, with data stored on 100 personal computers, data shares and servers in seven different regional data centers.

The facts

Client: For-profit hospital operator with nearly 200 acute care, psychiatric, and rehabilitation hospitals and 40,000 beds in the United States and abroad

Services provided: Full-scale ESI assessment followed by empowered and on-site collection, processing and hosting of evidence in Fios' award-winning review platform, Prevail®

The situation

A global healthcare operator was under investigation and had just been served with an antitrust law suit in Federal Court. While no document request had officially been received, the initial scheduling conference before the judge was scheduled within 60 days. The judge was a stickler for details, so the client knew it had to be prepared. After consulting with its outside counsel, the client determined that it needed to proactively identify, preserve and collect all potentially relevant evidence that could be requested during discovery. There were 80 custodians involved with a potential of more than 2 terabytes of data dispersed throughout the United States. To ensure the collection of the evidence was done in a timely and defensible manner, the client hired Fios to deliver the following services:

- **Electronically stored information (ESI) assessment** to determine where the potential evidence was stored, types of formats involved, and potential data volumes
- **Empowered and on-site collection** to train and support the IT team during collection, ensuring that all potentially relevant files were preserved and collected without losing key metadata or chain of custody
- **Processing and culling of evidence** to eliminate system files, identify duplicates, and categorize the ESI so it could be published to a review tool
- **Publishing of evidence to Fios' award-winning platform, Prevail®** in preparation for the review once the formal discovery request was in hand, following the scheduling conference
- **Project management support** to ensure all deadlines and processes during the e-discovery collection and follow on activities stayed on track and on budget

The process

Fios met with the corporate legal team at the healthcare operator, as well as with outside counsel and members of the client's IT department, to better understand the scope of the matter and internal capabilities. During the initial analysis, it was determined that the client had the personnel and systems in place for collecting most of the evidence itself, but the IT staff was unsure of how to begin or what processes to follow. To ensure that the evidence collection was conducted defensibly, without losing any key metadata or chain of custody, Fios developed a comprehensive collection plan, which was based off an assessment of the company's electronically stored information (ESI). This assessment identified where the potential ESI was stored, what type of data formats

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were being collected, the accessibility or inaccessibility of the data, potential data volumes, and the optimum tools for conducting the collection. And as a result of the assessment, outside counsel, in conjunction with the Fios team, determined that a forensics copy collection, which preserves all potentially relevant active files with metadata intact, versus a full forensics collection, would best meet the needs of the client and the court.

Following the creation of the collection plan, Fios trained the IT staff on the collection protocols and documentation required, and subsequently placed a collection team onsite to supervise and assist in the process. The Fios consultants worked side-by-side with the client's IT staff over the course of a week and collected just over 2 terabytes of data from more than 100 personal computers and file servers, including both Lotus Notes and Microsoft Outlook files. In addition, they collected 250 gigabytes of business files, such as word processing, spreadsheet, accounting system, voice mail and other proprietary files, from seven different data processing centers located throughout the United States. The team used a combination of internal software systems, including forensic imaging programs and Microsoft's Robocopy, to conduct the collection. As the evidence was collected, each phase was tracked, verified and documented, so that the collection could be authenticated in court. Once all of the ESI had been collected, it was sent to Fios for full-scale processing, culling, de-duplication and publishing to Fios' hosted review platform, Prevail.

The results

The client was able to collect all of the potentially relevant evidence in one week's time, a process that could have taken weeks without proper planning and execution. Upon completion of the collection phase, the legal team found itself in an optimum position. The evidence collection process enabled easy authentication, if necessary, allowing counsel to easily demonstrate the client's good faith. It also gave the legal team a head start on the production deadline and an opportunity to test date ranges and search terms in advance of negotiations. The evidence set had already been processed, prepared for review and published to Prevail. As a result, when the official discovery request was received, the legal team could begin its review immediately and with confidence. Furthermore, the initial planning and assessment completed by Fios, supported by the evidence collection plan and on-site support, resulted in the client being able fully prepared for the scheduling conference — on time and on budget.

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About Fios, Inc.

For over a decade, Fios has helped corporations and their outside counsel reduce risk, control costs and gain management control over the entire spectrum of e-discovery. We are dedicated exclusively to delivering comprehensive services and expert guidance that transform the burdensome nature of electronic discovery into a streamlined, legally defensible business process.

