

LITIGATION PROCESS ASSESSMENT AND IMPROVEMENT

Atlas LCC Business Case



Atlas LCC Value Summary

A number of landmark rulings during 2003-2005, including *Zubulake v. UBS Warburg* and *Coleman v. Morgan Stanley*, reset judicial expectations and clarified companies' obligations to preserve and produce all types and kinds of electronic information in litigation. The *Zubulake* standard for litigation communications and collections has essentially become black letter law; a host of state rules and the proposed federal rule changes call for greater controls and process management for legal holds and discovery. The Zubulake checklist below best summarizes the key process requirements:

- 1 Enable your "discovery liaison" to readily describe information custodians, systems, storage, and your retention policies
- 2 Affirmatively and repeatedly communicate legal holds to all affected parties
- 3 Integrate your retention policies and coordinators with discovery challenges and responsibilities
- 4 Actively manage and monitor document collections
- 5 Interview affected employees to determine sources of information
- 6 Monitor compliance with legal holds on an ongoing basis
- 7 Thoroughly document and demonstrate the efficacy of your process
- 8 Prepare to take responsibility for ensuring that information is preserved, collected, and produced

With the **Zubulake Checklist** as the benchmark, the question we face today is how to efficiently and effectively meet the standards and manage these legal obligations. By using Atlas LCC software to automate and systematically manage the process, we can more readily meet the standards and reduce the costs and burdens of litigation. The software would replace the manual processes we use today and complements the other evidence collection ap-

proaches we use now and may elect to use in the future. It provides a workflow that encompasses the process requirements in the **Zubulake Checklist** and provides transparency and controls for the litigation staff responsible for these activities. Using the software, we can reduce costs and risks:

Hard Cost Savings

- Reduce cost of collecting emails and documents
- Reduce disruption on the businesses
- Eliminate unnecessary processing costs and legal review by centrally managing and easily searching emails and documents collected for a matter
- Streamline and automate record keeping
- Reduce the administrative burden of sending notices and reminders
- Cost-effectively close the loop with records managers

Risk and Cost Mitigation

- Keep overhead costs low without compromising process integrity
- Institute a defensible but scalable process
- Achieve consistency request to request, case to case
- Litigate the issue, not the process

These reductions result from automating much of the process, instituting workflows, and enabling the various stakeholders to work in a common system to share and leverage prior knowledge and actions. The primary cost savings come from eliminating or reducing outside processing and review costs and the primary risk reductions come from traceability, visibility, exception management, and process repeatability. The following table compares the burdens and benefits of a manual approach versus using Atlas LCC.

Atlas LCC Value Drivers

A systematic, consistent approach is required. A different approach from attorney to attorney or case to case creates litigation challenges. Innumerable Excel spreadsheets aren't a robust practice and ultimately require additional overhead, data entry, and management leg work to ensure they reflect the actual facts. PSS Systems' Litigation Communications & Collections solution is the first and only software to specifically address the **Zubulake Checklist**. It was designed with expert input and counsel from the top 10 law firms and leading litigators to naturally manage the process from start to finish—reducing risks, costs, and anxiety.

Scope Challenges:

Determining the “who, what and where” manual task repeated every matter; no institutional “prior knowledge”, accuracy's

Notices:

Manually sending, tracked in various email boxes, no visibility, difficult to use more affirmative methods

Collections:

Blind delegation without visibility, tedious to collect from employees

Searching:

Difficult to search collected evidence inhouse so outsourced at high cost; without culling, over spend on review

Recordkeeping:

Very error prone on notepads and Excel; memory moves with employees; always after the fact



Accurate map visible to litigation group, easily synchronized with records retention and IT



Automatically sends notices, reminders and escalations, manage by exception



Assign and manage collection tasks, easily collect docs and emails



Search across emails and documents collected, one case or many; easily manage what is sent for outside processing/review



Built in recordkeeping, easy to coordinate with internal and external legal resources

Assessment Questions

General

- How many attorneys, paralegals, and support staff (IT, Email, RM, etc) handle, setup, and monitor litigation holds?
- What is the average number of matters per year? How many are active at any one time?
- What is the longest running matter and the average matter length (in years)?
- What are external legal fees per year? Average?
- How many employees are typically involved in a matter (get a hold notice, are interviewed, or are collection targets)?
- How large (MB/GB) are typical collections? Where is this information stored? Note that a MB typically translates to 70,000 pages of reviewable information.
- What is the current average cost of review per page or per hour?
- What percentage of discovery is handled internally and what is handled by outside counsel or service bureaus?
- What is the loaded cost of an hour of in-house legal counsel, a paralegal, discovery managers, and support staff time?
- What is the process and how long does it take to determine the individuals responsible for IT systems that may contain evidence in any particular case?
- What is the process and how long does it take to determine those responsible for specific records and information?
- How much time is spent building and maintaining the list of affected people for each matter and over the duration of the matter? How many people do this in the litigation group today? What additional effort is required to compile this kind of report for inside and outside counsel and are there concerns about the completeness or accuracy of such reports?

Notify

- How are hold notices sent today?
- How are notices reviewed and approved within the litigation team prior to distribution today and what record of this review does the company have?
- Do litigation staff currently monitor for compliance with legal holds? How?
- Are reminder notices sent and, if so, who sends them?
- Do you require affirmative responses to hold notices? If so, how are these tracked and who follows up when responses aren't received?
- When working with outside counsel, do you provide complete data and report on which notices were sent to which employees? If you had to, could you readily compile this information for a case and how long would it take?
- How do you keep the record of legal hold notices sent for cases that span long periods of time?

Scope

- How much litigation staff time is required to figure out who is affected by the hold on average?
- How much of that time is spent piecing together a historical view of the organization and employee responsibilities or understanding the changes in the organization?

Interviewing “Key Players”

- How do you identify the key players and do you conduct interviews of these people?
- How and where are the notes of these interviews captured and how do you ensure that inside and outside counsel understand what is learned in them?
- If you had to collect and collate the logs of interviews conducted to identify and preserve relevant data, how long would this take and how would you do it?

Collecting Relevant Information

- How do you determine where information may be stored today and who is responsible for the systems, repositories, file shares, and other physical and electronic custodians?
- How do you manage collection efforts for a case that require different staff, tools, and expertise to collect from different people and systems? How do you ensure that the spreadsheets or other tracking mechanisms are maintained with the case records in a controlled manner? What is the burden to track collections this way?
- Can you immediately search through the emails and documents you collect as you’ve collected them or do you need to do additional processing for the legal staff to determine what it has? How much does this cost?
- How and where do you manage the evidence collected and what is required to ensure chain of custody and controls over it physically?
- Can you easily ask employees directly for their digital and physical files? If so, how do you manage this and track who has complied with the request or not? If not, what is the cost of using litigation, IT or outside firms to collect their materials?

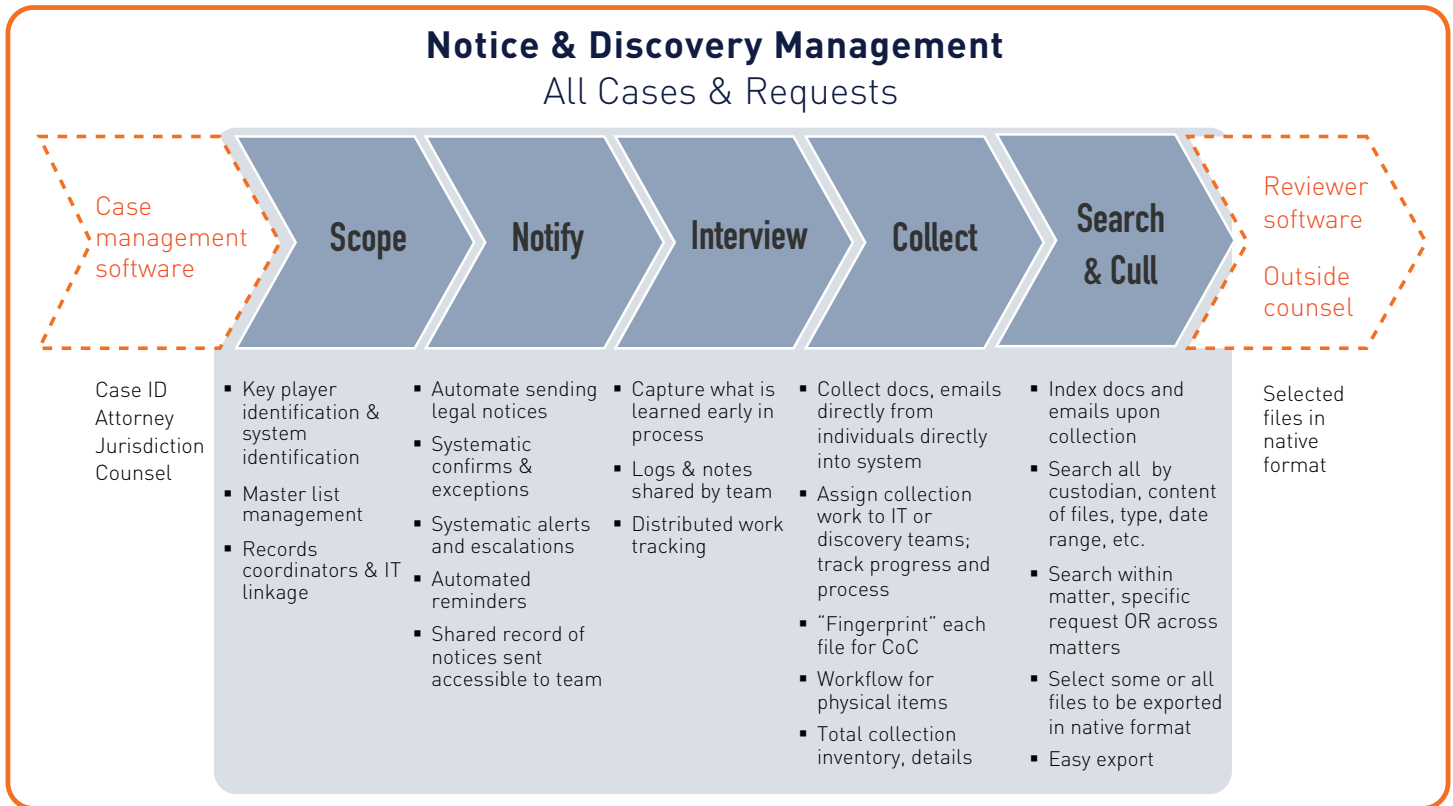
- How do you keep records of what is collected from whom and when? How much administrative time is spent documenting it? Do your attorneys have ready access to these lists or does staff have to compile and prepare reports when this data is needed?

Search & Manage Matter Docs

- Do you send all of the materials you’ve collected to outside counsel automatically or do you cull out irrelevant information in advance?
- Do you have to pre-process either internally or externally the information you collect to open it and search it?
- Can you determine whether information has previously been collected from a person or system for a given time period? If so, is it simple and instant or long and complicated?
- Do you think the amount of data processed or reviewed could be reduced? If so, how and why?
- As new and important information is obtained, can inside counsel quickly identify it and send it to outside counsel working on the matter?
- Can attorneys quickly determine what has been sent to outside counsel in the case to date? If so, how is this done and how is the compiled information managed?
- Is there a single place where attorneys can find a current, accurate list of all evidence collected for a matter and where they can look at the evidence itself and the context of its collection (who, what, when)?

Atlas LCC System

Efficient LCC Process



Drives Benefit & Value

Now you can ...

- Send confirms and not worry about tracking them
- Escalate automatically and know that you have done what's reasonable
- Easily collect directly from employees
- Search from your desktop as soon as you've collected the data
- Cull before you review
- Feel more comfortable certifying the completeness of preservation and production

which...

- Reduces litigation costs significantly
- Improves the likelihood of preservation
- Is defensible and demonstrable
- Improves your defense and reduces your risks



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