



FENWICK & WEST LLP

Litigation Alert

Inefficient Electronic Discovery Management Can Cost Clients

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On December 14, 2005, the Delaware Chancery Court reduced recovery of plaintiffs' attorneys' fees in a securities case by nearly \$1.2 million, in large part for inefficiently managing electronic discovery. Specifically, the Court pointed out the "obvious inefficiencies" in plaintiffs' decision to print digitally produced documents onto paper and copy that paper for distribution and review.

The Case

In the shareholder class action *In re Instinet Group, Inc. Shareholders Litigation*, Consolidated C.A. No. 1289-N, 2005 Del. Ch. LEXIS 195 (Dec. 14, 2005), plaintiffs' counsel applied for over \$1.6 million of fees and costs after the court approved a stipulated settlement. Plaintiffs claimed nearly \$125,000 of costs for photocopying and related services (most of which was spent converting several hundred-thousand pages of documents from electronic to paper format), and they also claimed attorneys' fees for "a very large amount of time" to review the converted documents.

The Court strongly criticized the decision to convert documents produced in a digital format into a paper format. Vice Chancellor Stephen Lamb wrote,

Rather than simply copying the electronic media to permit the plaintiffs' lawyers working on the case to search and review the document production on a computer screen, the plaintiffs spewed the digital production onto paper and, then, copied the paper for review. This approach both added unnecessary expense and greatly increased the number of hours required to search and review the document production. In fact, the time records submitted include a large number of hours, by multiple attorneys, spent reviewing the documents. Thus, the court must disagree with the plaintiffs' counsel's assertion that "this case was a paradigm of efficient litigation," [footnote omitted] and give less weight than customary to the number of hours expended by plaintiffs' counsel. Additionally, it would be inappropriate to award the full amount of out-of-pocket

expenses, as the very costly decision to "blow back" the digitized document discovery onto paper lacks justification.

Taking into account these electronic discovery inefficiencies and other considerations, the Court awarded plaintiffs only \$450,000 of fees and costs, nearly \$1.2 million less than plaintiffs had claimed.

Practical Implications

In awarding attorneys' fees and costs, courts are more closely scrutinizing the efficiencies of parties' discovery choices and are becoming much savvier about electronic discovery. Regardless of whether fees and costs are recoverable in a particular case, it pays to manage electronic discovery efficiently.

Fenwick & West's Practice Support (FWPS) team works closely with the firm's attorneys to assure that electronic information is collected, winnowed and reviewed in the most cost-effective and high-tech fashion. Our "eDiscovery aware" de-duplication and filtering methods often reduce the volume of data the lawyers review by 20%-80%.

To learn more about Fenwick & West eDiscovery services, please see:

<http://www.fenwick.com/services/2.3.5.asp?s=1034>

http://www.fenwick.com/docstore/PressRoom/LTN_08012005.pdf

<http://www.fenwick.com/services/2.3.0.asp?s=1034>

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