Catalyst Consulting Helps Navigate E-Discovery Impasse in CERCLA Lawsuit

Catalyst search professionals guided a judge and litigants to common ground in a major Superfund lawsuit and helped resolve an e-discovery impasse. Superfund is the common name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), a U.S. federal law designed to clean up sites contaminated with hazardous substances.

In this case, a major CERCLA lawsuit had become stuck in the sludge of an e-discovery stand-off. On one side was the former owner of a now-demolished manufacturing plant. On the other was the developer that purchased materials from the plant, only to find they were contaminated. At issue were the sufficiency of the developer’s response to the manufacturer’s e-discovery requests and the adequacy of its search for responsive documents. On a motion to compel, the impasse was to be heard by a federal district judge.

Catalyst Search Expertise Finds an Economical Resolution to an E-Discovery Standoff

The manufacturer contended that our client, the developer, improperly performed its review of some 104 GB of data, resulting in its underproduction of responsive documents. Lawyers for the manufacturer demanded that our client conduct an entirely new round of searches, review and production, using search terms it supplied. Our client needed to find a way to get around the impasse without breaking the bank.

To the search professionals on Catalyst's consulting team, it was readily apparent that the searches proposed by the opposing party were far too broad and would result in an unduly large and expensive set of documents to review. Complicating the matter and adding to the potential expense was that our client’s data was originally processed by a vendor that was now defunct.

As an alternative, we proposed a two-phased approach. First, we would conduct sampling to gauge the adequacy of the original searches. Only if sampling demonstrated the original searches were flawed would we proceed to the second phase, in which we would reprocess the entire set of data.

When opposing counsel continued to object, Catalyst consultants and statisticians became directly involved in negotiations between opposing counsel and in conferences with the federal judge. We explained the

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efficacy of our proposed method and the undue expense of the opponent's proposed method. Only when the opposing party agreed to pay the cost of a full second search did the judge accede to their request.

Catalyst Consulting proved instrumental in helping the judge and the litigants find a common path around this impasse. Our final challenge was to reprocess and load the original data and conduct the new set of searches. Using all the search terms and in all the combinations proposed by opposing counsel, this resulted in nearly 4,000 separate searches.

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