

# THREE WAYS TO REDUCE LITIGATION COSTS

Change Your Process as Often as the Facts Warrant It

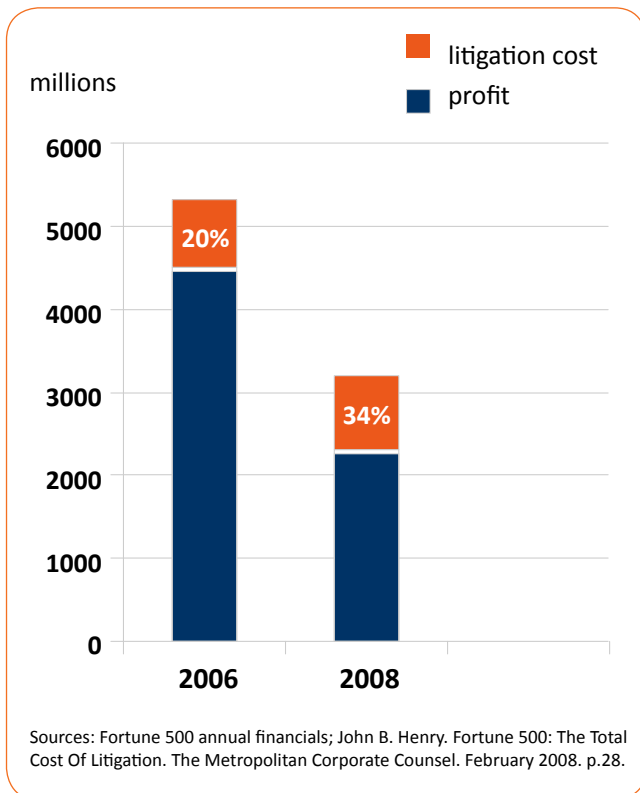


PSS SYSTEMS, an IBM Company



## Change Your Process as Often as the Facts Warrant It

In 2006, litigation costs amounted to 20% of company profits across the Fortune 500 on average. In 2008, profits in the Fortune 500 dropped by half yet litigation costs rose both as a percentage of profit and in absolute terms. Today, litigation cost is 34% or more of corporate profits in the Fortune 500. Controlling and reducing litigation costs can increase profit and the key to unlocking that profit is controlling discovery cost, because it now comprises 50-70% of litigation cost.



In fact, discovery cost over the past five years has gone from a small portion to the majority of litigation costs and corporate counsel is often blind-sided by the total cost; companies are increasingly investing in tools and updating their process to routinely assess total cost, consistently make timely cost-aware decisions, and ac-

curately control the amount and timing of discovery costs. Atlas software provides corporate counsel with the critical facts and the tools to:

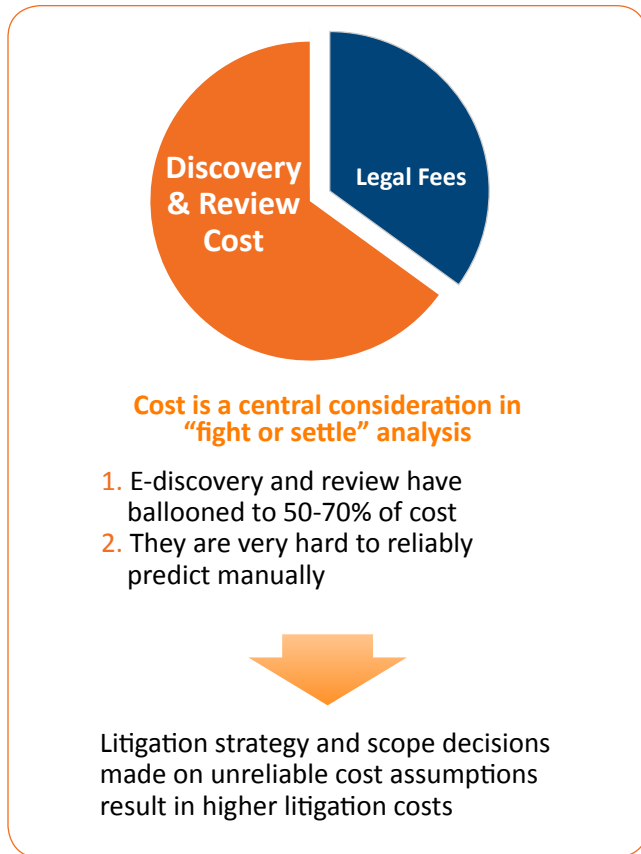
1. Litigate less
2. Produce less data during discovery
3. Defensibly dispose of data

### The Big Cost Levers

#### 1 Litigate Less and Settle Earlier

Pursuing litigation is a business decision, not a religious one – a cost/benefit analysis like other business decisions. Companies determine the course of action based on the total cost of a dispute and litigation process. Unfortunately, companies chronically underestimate these costs primarily because they lack facts about likely discovery costs at the initial go/no go decision point. Case in point: at a large pharmaceutical company, attorneys used a “rule of thumb” discovery estimate of \$35,000 per custodian. However, after a year-long research project to identify the real data volumes per custodian and the true cost, they discovered that the actual cost was \$125,000 per custodian! Discovery costs – and total litigation costs – were 4x the estimate used to make the initial business decision on the course of the dispute itself.

As in many companies, the process had not kept pace with the sea change in litigation cost composition; accurately projecting cost now needs to be part of the workflow at the point the initial legal hold is scoped and custodians and data sources are identified. The forecast needs to be updated continuously as matter facts change so settlement can be reached at the earliest point. Atlas provides corporate litigation departments with automatic and continuous cost forecasting built right into the legal holds and collection workflow process – with no need for complex spreadsheets and tedious data gathering exercises.



Profit-minded companies will modernize their litigation workflow to incorporate more reliable, complete costs forecasts for every matter from day one, and Atlas is the only litigation workflow system to automate cost projections without requiring legal staff to manually enter the matter, price and cost details.

## 2 Reduce the Scope of Discovery to Reduce the Bill

Litigants can make two arguments for reducing the scope of custodians and data: data is irrelevant or it costs more than it is worth. The relevance argument is difficult to win; while the cost argument is more effective, companies need to make the argument factual and compelling. Before using Atlas, companies found that it took four to six weeks to manually gather facts

on custodians and data volume necessary to calculate discovery costs in a large matter and much more in legal fees to compile it into a convincing argument to reduce the scope and burden of production. At one large services firm, it took over 80 hours of in-house effort and another \$100,000 in outside legal fees to pull together the data for a single matter. This level of manual effort makes it impractical to routinely negotiate smaller scope, so companies consistently over produce and over spend.

To make a compelling cost shifting argument, attorneys need to show the cost to produce data is disproportionate to the value of the case. This requires key matter facts, pricing, and historical matter context to calibrate the likely costs – data and cost analysis models most attorneys don’t have. In Atlas, the key matter facts and cost analysis model are built right into the process. A convenient cost calculator for every matter allows them to instantly run scenarios based on the number of custodians and data sources in scope to support their claim and to determine the more appropriate scope of collection and production.

Tom Lahiff, director in PricewaterhouseCoopers Advisory Practice and former corporate litigator, says “one of our clients’ highest priorities is predicting and controlling litigation and discovery costs. Negotiating the scope of production is one of the few levers companies have to reduce cost short of early matter resolution, but the manual exercise to compile data and calculate cost makes it difficult to routinely do so. When custodian, volume and price data are readily available and corporate attorneys have tools to continuously forecast costs, they have the potential to reduce scope routinely and avoid substantial expense.”

**“Built-in discovery cost forecasting is an exciting, timely breakthrough.”**

—Tom Lahiff, Director, PricewaterhouseCoopers

PwC advises clients on litigation readiness and response and is an Atlas solution delivery partner.

### 3 Keep What You Need to, No More, No Less

Ultimately, data volume is the root cause of high discovery (and operating) costs. Ironically, the legal holds process can hijack the corporate data center, bloating data volumes significantly. The legal holds system companies choose must enable defensible disposal. The system must work robustly inside the litigation department *and* across the IT organization. Atlas provides a comprehensive understanding of the company's obligations, and it allows IT to understand those hold and collection obligations by asset and employee. The operational capacity and ready access to current legal duties beyond the legal department are necessary enablers of routine disposal. When IT doesn't know what's on hold, it must assume everything is – the root cause of high data volume and high discovery costs. IT can't efficiently or reliably track legal duties via dozens of emails from various members of the legal team, a sure recipe for failure. It is, therefore, essential that legal teams looking at legal holds think beyond their department's need for notice tracking to how holds can be operationalized beyond their department and how they can enable more efficient data management.

**“The automation and integration of the Atlas platform have made it the de facto standard for legal holds and retention management software.”**

— Karen A. Schuler, *E-Discovery: Creating and Managing an Enterprisewide Program*, Burlington: Syngress, 2008

Atlas is the acknowledged gold standard for legal holds and collection workflow with self service portals for general employees and a powerful governance portal for IT. Atlas provides IT with a complete index of legal duties by asset and employee, links legal obligations to specific IT assets, simplifies legal requests for data, enables data source map and cataloguing with workflows, and more. Atlas closes the loop between the legal and IT department and their respective processes to enable defensible disposal.

### Bottom Line

It really is about the bottom line. Corporate legal departments today can have a huge impact on corporate profit through their decision making, their cost estimates to the business and finance, and their legal holds process. With the facts to make the best initial decision on the course of litigation, the ability to continuously estimate costs to ensure the lowest discovery cost and fastest matter closure, and a legal holds process that doesn't hijack the corporate data center, the legal team can materially reduce corporate cost and risk.

### About Atlas

#### Atlas for Legal Information Governance Solution

Atlas is the gold standard for legal information governance proven by more than 210,000 active holds under management involving more than 15 million custodians and petabytes of data collected, 100,000 retention schedules globally and end users in over 100 countries. Used by 5 of the Fortune 10 and 5 of the global 10 as well as the 5 largest oil, pharmaceutical, financial services, manufacturing, and healthcare companies, Atlas is the trusted solution for world-class companies. The Atlas Suite is the only end-to-end solution for corporate legal, IT, records and business users designed and built on a single, cohesive governance platform.

PSS and the PSS logo are registered trademarks of PSS Systems, an IBM Company. These materials have been prepared for information purposes only. They are not intended to be nor do they constitute legal advice. © Copyright 2009 PSS Systems, an IBM Company. All rights reserved. Three Ways to Reduce Litigation Costs 1010



Call for an ROI on your  
cost savings opportunity.  
**650.810.8722**

[www.pss-systems.com](http://www.pss-systems.com)